



Royal Commission into
the Home Insulation Program

Report of the Royal Commission into the Home Insulation Program

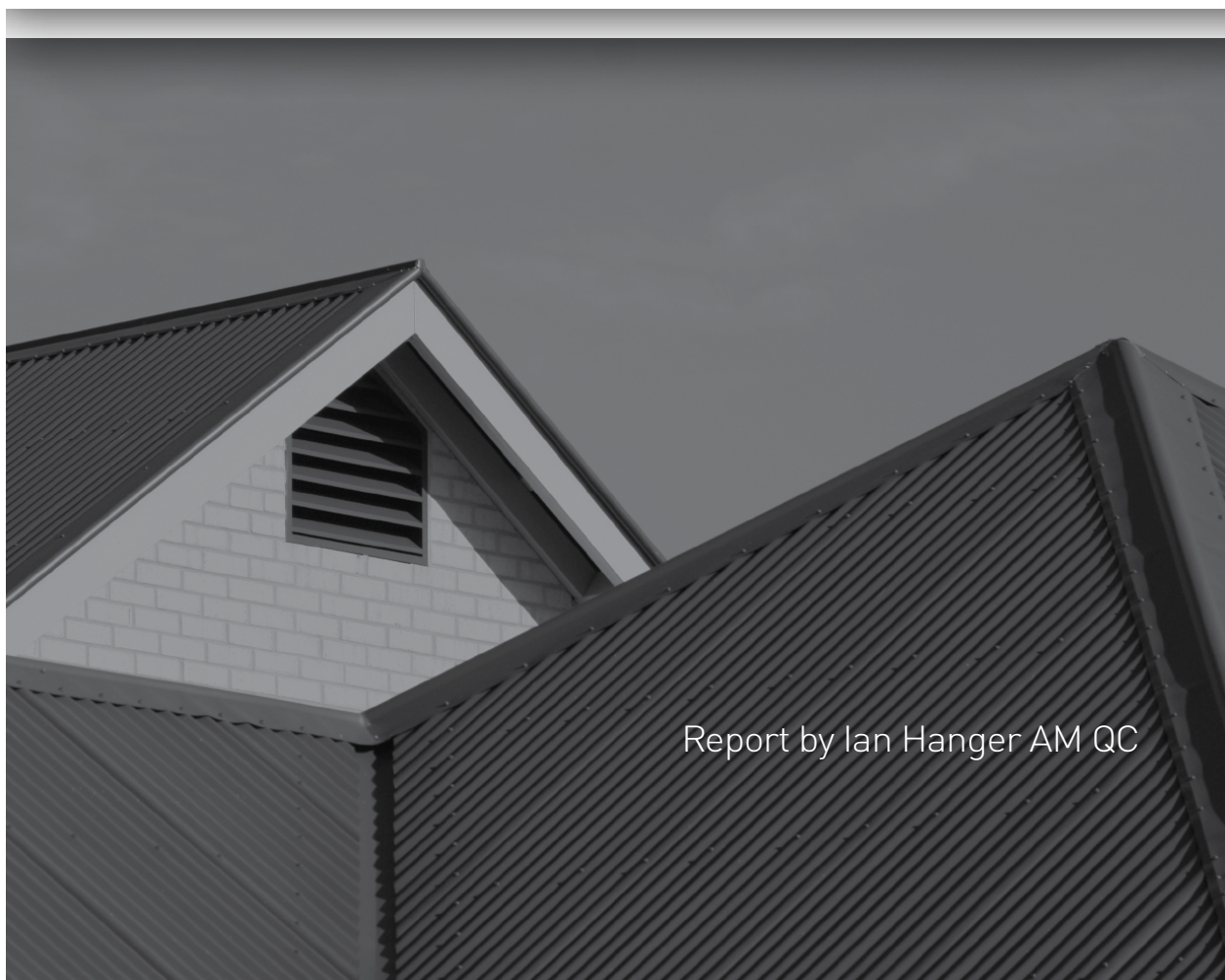


Report by Ian Hanger AM QC



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Royal Commission into the Home Insulation Program

29 August 2014

His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

In accordance with the Letters Patent issued to me on 12 December 2013, as amended by Letters Patent dated 15 May 2014, I have inquired into and prepared a report on matters that arose in the development and implementation of the Australian Government Home Insulation Program.

I have the honour to present to you my report. I also return herewith the Letters Patent.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'R.I. Hanger'.

(R.I. Hanger AM QC)

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1. INTRODUCTION, OVERVIEW AND A MISCELLANY OF MATTERS

1.1 Overview

- 1.1.1 On 3 February 2009, the then Prime Minister, the Honourable Kevin Rudd,¹ announced the Nation Building and Jobs Plan, a \$42 billion initiative of the Australian Government, released as part of its response to the Global Financial Crisis.²
- 1.1.2 A proportionately small part of the Nation Building and Jobs Plan was the Energy Efficient Homes Package, which was initially allocated less than 10% of the total amount to be spent under the Plan. Although proportionately small in dollar terms, the Energy Efficient Homes Package (EEHP), and particularly that component of it concerned with ceiling insulation, then named the Homeowners Insulation Program (HIP), generated a disproportionate amount of negative comment and publicity, both during the currency of the HIP, which ran for only a little over twelve months, and subsequently.³ This Royal Commission is the fourth Australian Government investigation into the Program.⁴
- 1.1.3 Whilst my Report should be read in full to understand the context in which findings and observations are made, it is probably useful to set out a summary of the structure of the Report. I will then deal with some administrative matters concerning the Commission, before dealing with a number of discrete matters that have been raised, and can be conveniently dealt with at the outset of this Report.
- 1.1.4 The EEHP itself comprised three parts: the HIP, which was allocated some \$2.7 billion and was later renamed the Home Insulation Program (HIP); the Low Emissions Assistance Plan for Renters (LEAPR) Program, which was allocated \$613 million; and a further \$507 million allocated to replacing electric hot water systems with solar hot water systems, called the Solar Hot Water Rebate (SHWR) Program.
- 1.1.5 My Terms of Reference, set out at Appendix 1 of this Report, require me to investigate only what is defined therein as “the Program”, being that component of the EEHP described as the HIP.
- 1.1.6 The stated aim for the HIP was to install insulation into the ceilings of some 2.2 million Australian houses in a period of two and a half years. The process of installing insulation into an existing property (as contrasted with installing insulation at the time of construction) is referred to as retrofitting.
- 1.1.7 To put that exceedingly ambitious aim into context, the evidence available to me is to the effect that, prior to the announcement on 3 February 2009, there were in the order of 200 businesses retro-fitting insulation into a total of up to approximately 70,000 houses per annum.

1 Referred to in this Report interchangeably as Mr Rudd or the Prime Minister.

2 AGS.002.021.1986, 1; referred to more fully in Chapter 2 of this Report.

3 Chris Lewis ‘A Recent Scandal: The Home Insulation Program’ in Keith Dowding and Chris Lewis (eds), *Ministerial Careers and Accountability in the Australian Commonwealth Government*, (Australian National University E-Press, 2012) 153-176. Mr Lewis describes the Home Insulation Program as a ‘policy debacle’ and an ‘absolute mess’ (at page 153).

4 The previous inquiries referred to are: Senate Environment, Communications and the Arts References Committee, Parliament of Australia, *Energy Efficient Homes Package (ceiling insulation)*, July 2010; Dr Allen Hawke, ‘Review of the Administration of the Home Insulation Program’, April 2010; Australian National Audit Office, *Home Insulation Program*, Performance Audit Report No.12, 2010-11. Each is considered subsequently in this Report at section 1.4.

- 1.1.8 The HIP thus aimed to achieve an approximately fifteen-fold increase in the number of installations per year, which equated to more than the pre-HIP annual number of installations being carried out each and every month under the HIP.
- 1.1.9 It ought to have been obvious, to any competent administration, that such an exponential increase in work to be undertaken would require a similarly huge increase in the workforce to do it. Indeed, as is discussed in Chapter 2 of this Report, one of the policy objectives for the HIP was to provide work for those thought to be at risk of losing their jobs during the aftermath of the Global Financial Crisis, particularly in the construction and allied industries. This objective was achieved, with the number of insulation installation businesses increasing from approximately 200 prior to the HIP to 8,359 registered businesses with an estimated total workforce of over 12,000 in October 2009.
- 1.1.10 It ought also to have been obvious to any competent administration that the injection of a large amount of money into an industry that was largely ‘unregulated’ would carry with it the risk of roting and other unscrupulous behaviour.⁵
- 1.1.11 Whether it was, and is, appropriate for a government to combine a stimulus policy with a policy such as the HIP lies at the heart of this Inquiry. The tension between the stimulus objective of the policy, with its concomitant need for expedition, and the energy efficiency objectives of the policy, in my view caused a number of decisions to be made under the HIP which unnecessarily exposed workers, particularly inexperienced ones, to an unacceptably high risk of injury or death.
- 1.1.12 It ought to have been obvious, to any competent administration, that if a very large number of people were being encouraged to participate in the HIP, both as employers and employees, they would have a diverse range of pre-existing qualifications and experience. The issue of training and the competencies required of people installing insulation, and the approach taken by the Australian Government to those issues is discussed at length in Chapter 8 of this Report.
- 1.1.13 The issues of training and of installer competencies cannot, of course, be divorced from the regulatory environment in which the insulation installation industry operated. That regulatory environment is discussed in Chapter 3 of this Report.
- 1.1.14 It was observed, by more than one witness who gave evidence before me, that the insulation industry was chosen as being suitable for the HIP, as a stimulus measure, because it was largely “unregulated” and therefore businesses could move quickly into the industry. With the exception of South Australia, which had a licensing regime for insulation installers, there was no insulation-industry specific regulation beyond the generally applicable occupational health and safety regulation. There was a desire by some of those making decisions under the HIP to keep barriers to entry low. That viewpoint serves as an illustration of the preference given to the stimulus nature of the policy over factors such as safety. It is another illustration of the problem mentioned in paragraph 1.1.10 above: if it was foreseeable that unscrupulous operators would seek to access the HIP for financial gain—those responsible for administering the HIP focused a large amount of effort on the detection and mitigation of fraud against the Australian Government—why was it appropriate to assume that those same operators would comply with their workplace health and safety obligations?⁶
- 1.1.15 The background to the need for stimulus is discussed in Chapter 2 of this Report. The onset of the Global Financial Crisis was thought to provide a pressing urgency for intervention by the Australian Government. It is no function of mine to question whether, in a general sense, such urgency for economic stimulus was justified. The stimulus function

5 See paragraph 1.1.14.

6 See Chapter 10.

of the HIP was said to require its substantive commencement on 1 July 2009, with an interim rebate scheme (known as HIP Phase1) to apply with immediate effect from the date of announcement until the full scheme (HIP Phase 2) commenced. I consider that there was no compelling reason to commence the main phase of the HIP on 1 July 2009, other than the generally-perceived need to commence it as soon as reasonably possible, and because the Prime Minister had publicly announced that as the starting date. That is an important finding because the evidence from very many of the witnesses was that they understood this date to be non-negotiable and fixed, and that the need to achieve roll-out of the HIP by that date was the reason that most of the crucial and material compromises to the proper design and implementation of the HIP were made. It has emerged that this date was not perhaps so fixed as was assumed.

- 1.1.16 Workplace health and safety issues occupied a large amount of the Commission's time. In my view, the focus on such issues was consistent with my Terms of Reference.
- 1.1.17 There was much debate about whether workplace health and safety issues were a matter that was of any concern to the Australian Government, or whether it was more properly the concern of the States and Territories. It was said, by a number of federal public servants, that the Australian Government had no regulatory power in the field of workplace health and safety, and therefore that it was not a risk that the Australian Government could control. In my view, this attitude was deplorable. I discuss, in Chapter 11 of this Report, the purported reliance of the Australian Government on the States and Territories and conclude that such reliance was both unjustified and unreasonable.
- 1.1.18 The reality is that the Australian Government conceived of, devised, designed and implemented a program that enabled very large numbers of inexperienced workers—often engaged by unscrupulous and avaricious employers or head contractors, who were themselves inexperienced in insulation installation—to undertake potentially dangerous work. It should have done more to protect them.
- 1.1.19 Four young men died whilst working under the HIP:
 - 1.1.19.1 Matthew Fuller died on 14 October 2009;
 - 1.1.19.2 Rueben Barnes died on 18 November 2009;
 - 1.1.19.3 Marcus Wilson died on 21 November 2009;
 - 1.1.19.4 Mitchell Sweeney died on 4 February 2010.
- 1.1.20 The families of these young men were each granted leave to appear before the Commission and were represented on each day of the public sittings. The families understandably seek to comprehend why their son, sibling or nephew died, and whether their death could reasonably have been prevented. I discuss the circumstances of each death, briefly, in Chapter 12 of this Report. I also discuss the serious injuries suffered by other participants in the program, and injuries suffered by some householders who came forward to share their experiences with the Commission.
- 1.1.21 In my view each death would, and should, not have occurred had the HIP been properly designed and implemented. The decision to permit the use of reflective foil sheeting as ceiling insulation was, in my view, fundamentally flawed. It directly contributed to the deaths of Mr Fuller and Mr Sweeney. I discuss the various types of insulation materials permitted to be used under the HIP in Chapter 4 of this Report. In Chapter 9 I specifically discuss the appropriateness of the decision to permit the use of reflective foil insulation in the HIP.
- 1.1.22 Further, despite knowing that installers were installing reflective foil sheeting across ceiling joists—and attaching it with metal staples—well prior to 14 October 2009, nothing was done to stop that practice. I particularly refer to what occurred (and, perhaps more importantly, what did not occur) in the weeks following Mr Fuller's death

on 14 October 2009. Deficiencies in the supervision of employees, which contributed to the death of Mr Marcus Wilson on 21 November 2009, were also known to be an issue well prior to 14 October 2009 but, again, nothing meaningful was done. Finally, despite electrical safety issues being raised squarely as an issue after the death of Mr Fuller, insufficient action was taken to prevent further tragedies—had it been, I am satisfied that Rueben Barnes' death could have been avoided.

- 1.1.23 I discuss electrical safety and other technical issues in Chapter 5 of this Report. I discuss the audit and compliance program put in place by the Australian Government, and its deficiencies, in Chapter 10.
- 1.1.24 The two most critical decisions taken in the design and implementation of the HIP, against the background of a perceived inflexible start date of 1 July 2009, were the change to the way in which the HIP was to be delivered (the delivery model issue) and the removal of the requirement that all installers have insulation-specific training (the competencies issue).
- 1.1.25 The delivery model issue is discussed in Chapter 7 of this Report and the competencies issue in Chapter 8.
- 1.1.26 My Terms of Reference specifically require me to inquire into warnings that were given to the Australian Government before, and during, the HIP. That topic is dealt with in Chapter 9 of my Report.
- 1.1.27 The HIP had an effect not only on the families of the young men tragically killed whilst working under that program. It also wreaked havoc on pre-existing insulation installation businesses, particularly when the HIP was suspended on 19 February 2010, essentially without warning.
- 1.1.28 It ought to have been obvious to the Australian Government that, had the HIP been delivered as envisaged, it would inevitably have meant the destruction of the retro-fit insulation businesses.
- 1.1.29 A proper understanding of the existing insulation industry, in both its manufacturing and installation capacities, was vital to the proper and careful design and implementation of a successful HIP. I discuss the industry and its internal fractiousness in Chapter 4 of this Report.
- 1.1.30 The decision to effectively terminate the HIP had a profound effect on businesses which manufactured insulation and which were engaged in the installation of it. In particular, businesses that had operated quite profitably and stably before the announcement of the HIP were encouraged by the Australian Government, through the HIP, to engage workers, increase production of insulation by investing in manufacturing facilities and equipment and to conduct a very large number of installations in a short space of time. When the HIP was suspended in mid-February 2010, it was without warning to these and other businesses, with the effect that their quite well-founded expectations were upset, their investment decisions disturbed and considerable loss incurred. Had the HIP been better designed and administered, such loss would have been avoidable.
- 1.1.31 It is no solace to those pre-existing businesses that they had the benefit of the boom whilst the HIP was in operation. Firstly, they had many more competitors, including those who were prepared to make compromises to quality and safety in order to make a quick dollar, and some of whom used sales pressure to obtain work. Most of the businesses in connection with which evidence was given would have preferred to have a stable industry, as it was before the HIP, without the great spike and then the profound and prolonged nadir that they have experienced as a result of the HIP. Secondly, they rightly point out that the community now has a particular view of insulation and insulation installers, tainted by the well-publicised failures of the HIP—failure which, for the most part, is unfairly attributed to them. The rogue operators have, not surprisingly, made their money and moved on.

- 1.1.32 The closure of the HIP caused great hardship for businesses that had, before the HIP, carried out the installation of insulation. They had, among other things, invested in plant and equipment and purchased insulation stock, much of which was wasted and worthless when the HIP was terminated. The remediation packages introduced with a view to mitigating the effects of the termination were insufficient to achieve that aim to any satisfactory degree. I discuss the termination of the HIP and the remediation programs in Chapter 13 of this Report.
- 1.1.33 Finally, in Chapter 14, I discuss lessons that have been learned from the HIP and its consequences for other government programs. In accordance with my Terms of Reference I make recommendations for the future.
- 1.1.34 In summary, I have concluded that there were seven significant failings in the design and implementation of the HIP:
- 1.1.34.1 There was an inevitable and predictable conflict or tension between the two aims of the HIP. One aim was to insulate 2.2 million homes and the other was to stimulate the economy. Both were doubtless admirable aims but there was an inherent conflict between them: the first required detailed and careful planning over time, and the other required speed. In the case of the HIP, planning was sacrificed to speed. A practically unachievable commencement date for the Program, if it was to be properly and carefully designed, was unrealistically adhered to;
 - 1.1.34.2 The allocation of the HIP to the Department of the Environment, Water, Heritage and the Arts (DEWHA), which was ill-equipped to deal with a program of its size and complexity. That problem was significantly exacerbated by the decision to change the delivery model from a regional brokerage model, as proposed by DEWHA, to a direct delivery model, in order to expedite delivery of the HIP. Again, proper planning was sacrificed to speed;
 - 1.1.34.3 A failure, until very late in the HIP, on the part of the Australian Government to identify and manage the risk to installers of injury and death (caused, in part, by patently inadequate advice and assistance by external advisors on risk and project management);
 - 1.1.34.4 Permitting a product to be used under the HIP that was manifestly unsuitable and dangerous;
 - 1.1.34.5 A decision to relax training and competency requirements so as to substitute 'supervision' for insulation specific training, but without the nature of it ever being specified or clarified;
 - 1.1.34.6 Permitting the HIP to commence in Phase 2 without there being in place a robust audit and compliance regime. Such a regime was not satisfactorily operational until after the first fatality;
 - 1.1.34.7 The Australian Government's reliance upon others (the States and Territories and employers) to regulate, monitor, police and enforce such occupational health and safety arrangements as might have been appropriate. Despite professing such reliance, the Australian Government never made clear to the States and Territories what its expectations were of them, nor did it enquire whether they had the resources necessary to act as the Australian Government expected.
- 1.1.35 As with most serious failures of public administration, it is not possible to isolate one error or failure that caused all of the problems that emerged with the HIP. The causes of failure of the HIP were multifactorial. Overall, it was poorly planned and poorly implemented.

1.2 Establishment and operations of the Commission

- 1.2.1 On 12 December 2013, I was appointed by the then Governor-General, the Honourable Dame Quentin Bryce AC CVO, to investigate the processes by which the Australian Government made decisions about the development and implementation of the HIP, especially in the field of workplace health and safety and to investigate claims that deaths, serious injuries and financial losses or damage to pre-existing home insulation businesses arose from it.⁷
- 1.2.2 My Terms of Reference do not call for me to evaluate the merits of the political decisions that underpinned the HIP, whether the considerable expenditure it involved might more productively have been applied to other purposes, or indeed whether any expenditure was necessary to alleviate the anticipated effects of the Global Financial Crisis.⁸ Those are matters of policy for the government of the day and are not within the Terms of Reference of this Commission.
- 1.2.3 The Commission received, largely in response to the 152 Summonses to Produce that were issued, over 500,000 documents and interviewed 118 potential witnesses. Details of the Establishment and Operations of the Commission are set out at Appendix 2 to this report. At the request of the Commission, 93 persons who had participated in interviews also provided written statements. The Commission interviewed 18 persons who did not prepare a written statement and it also received 64 voluntary written statements, primarily from pre-existing home insulation businesses and businesses that were established during the HIP. The Commission also received over 260 emails, letters and submissions from the public. Details of these statements are at Appendix 7.
- 1.2.4 It was determined that it was not necessary to call all 118 interviewees to give evidence at the public hearings of the Commission. Oral evidence was taken from just 55 witnesses. Public hearings occupied 36 days, often sitting extended hours. The proceedings were conducted almost entirely by reference to an electronic database, which saved both time and an enormous amount of paper. I am indebted to not only the numerous legal representatives for sitting long hours, but also to Auscript Australasia, which provided the transcription services and Law in Order, which tirelessly assisted in the document management system that allowed documents to be retrieved electronically and displayed in the hearing room.
- 1.2.5 Notices of Potential Adverse Findings were given to 19 individuals and to the Commonwealth of Australia (Commonwealth). Details about this process are set out at Appendix 8. I do not propose to incorporate in full the Notices and the responses to them in this Report. I have, where appropriate in the body of this report, referred to some of the responses given to the notices. To publish the Notices themselves, when findings have not been made in the terms outlined, in my view would be potentially harmful to the recipient of a notice.
- 1.2.6 The Commission established a dataroom, made available to those granted leave to appear and later to those that received a Notice of Potential Adverse Findings. The dataroom contained 5,634 documents sorted into various folders including folders for key witnesses, daily exhibits, transcript, and other key documents identified by Counsel Assisting, that were grouped thematically (such as Installer Advices, Installer Guidelines or Ministerial Briefings). Access to some documents was restricted depending on the relevance of the document to particular users. In addition, the transcript of the public sittings was posted to the Commission's public website, as were the documents that were referred to in evidence on each day.

7 The terms 'workplace health and safety' and 'occupational health and safety' are used interchangeably in this Report, as both terms were used in the evidence before the Commission.

8 The Terms of Reference are set out in full at Appendix 1 to this Report.

- 1.2.7 The public proceedings of the Commission were held in Brisbane. I am indebted to His Honour Judge Timothy Carmody QC for making a large courtroom available to the Commission in the Magistrates Court complex in Brisbane.⁹ From 14 April 2014 the public sittings of the Commission were live-streamed over the internet.
- 1.2.8 The Australian Government provided a range of financial assistance to eligible parties engaging with the Commission. There were broadly two forms of financial assistance provided: legal financial assistance and the payment of witness expenses. Legal financial assistance was provided to eligible parties to cover their reasonable costs of legal representation and related expenses (such as photocopying, and lawyer travel costs). Witness expense payments were made to assist with the non-legal expenses of attending a hearing (such as a daily witness appearance fee and in some circumstances travel, food and accommodation expenses).
- 1.2.9 More is said of the detail of the work of the Commission in Appendix 2.
- 1.2.10 My thanks, as Commissioner, are due to many people. Mr Keith Wilson QC and Mr Jonathan Horton were Counsel Assisting the Royal Commission and King and Wood Mallesons were engaged as its solicitors. I also had the assistance of experienced legal, administrative and support staff led by Ms Petra Gartmann of the Attorney-General's Department. I am enormously grateful to them all for their great patience, loyalty, wisdom and diligence.

1.3 Work of the Commission—Particular Issues

- 1.3.1 Three particular issues need to be discussed, because they took up much of the time of those assisting me.

1.3.2 Public Interest Immunity

- 1.3.3 In my view, given my Terms of Reference, it was inevitable that the issue of public interest immunity would arise.
- 1.3.4 Public interest immunity is the name given to a body of substantive and procedural rules whereby information that is otherwise relevant is withheld on the ground that the public interest in disclosure is outweighed by a competing public interest in its suppression or non-disclosure.¹⁰
- 1.3.5 The general rule is as described by Lord Reid in *Conway v Rimmer*:¹¹

*“There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done.”*¹²
- 1.3.6 It is not the privilege of the executive Government to decide whether a document will be produced or may be withheld from a court or tribunal, nor indeed from a Royal Commission, which of course is established by the executive Government. Nor can the executive Government, nor any witness, ‘waive’ the privilege.¹³ I was and remain cognisant that, even if the immunity was not raised by any person appearing before me, I am obliged to recognise it, and where necessary apply it.

⁹ His Honour was at the time Carmody QC, Chief Magistrate—he is now Carmody CJ.

¹⁰ Peter Hall *Investigating Corruption and Misconduct, Commissions of Inquiry—Powers and Procedures*, (Law Book Company, 2004), 607 [11.125].

¹¹ *Conway v Rimmer* [1968] AC 910, 940 (Lord Reid).

¹² Referred to, with approval, by Gibbs ACJ in *Sankey v Whitlam* (1978) 142 CLR 1 at 38.

¹³ *Sankey v Whitlam* (1978) 142 CLR 1, 44 (Gibbs ACJ); *Sankey v Whitlam* (1978) 142 CLR 1, 68 (Stephen J).

- 1.3.7 I accept that I am obliged to take the same approach to a claim that public interest immunity exists in respect of particular documents or classes of documents as would a court.
- 1.3.8 Although the question has not been judicially decided, it is generally accepted that a claim to public interest immunity is a “reasonable excuse” that provides an exception to a Royal Commission’s powers to require the production of documents and the giving of evidence. The term ‘reasonable excuse’ is defined in section 1B(1) of the *Royal Commissions Act 1902* (Cth) (the Royal Commissions Act).
- 1.3.9 Further, although there is academic commentary to the effect that the risk that a government may decline for essentially political reasons to press a claim to public interest immunity over documents generated by a predecessor administration could justify a court refusing the compulsory disclosure or tender of documents on grounds of public interest immunity,¹⁴ that issue has not yet squarely arisen for determination by a court.
- 1.3.10 The object of the protection is to ensure the proper working of government and not to protect Ministers or other servants of the Crown from criticism.¹⁵
- 1.3.11 In response to a summons issued by me, the Commonwealth produced during the period 31 January 2014 to 9 July 2014 both documents that evidence Cabinet deliberations (such as notes recording the discussions at meetings of the Cabinet) and documents that fall under the wider meaning of ‘Cabinet documents’ (such as documents prepared by public servants that are considered by the Cabinet). The delay in the production of these documents is discussed at 1.3.54. The initial documents were produced under cover of a letter dated 31 January 2014. It was said that the documents were produced “for the limited purpose of the Commission inspecting them on a private basis (to assess their potential relevance)...without significantly compromising the confidentiality of Cabinet deliberations.”¹⁶ The production of the documents was also said not to constitute a waiver of public interest immunity. The Commonwealth reserved to itself the right to argue against the public dissemination of the documents, including during public hearings of the Commission.
- 1.3.12 The Commission respected the basis on which the documents were produced.
- 1.3.13 At the commencement of the public hearings, the issue of public interest immunity arose again.¹⁷ The Commonwealth sought to redact parts of the first two witnesses’ statements and attachments to those statements, on the basis that they disclosed information that was protected by the immunity.
- 1.3.14 The Commonwealth took the position that, whilst the Commission should have free and unfettered access to what I shall for convenience call Cabinet documents, such information and documents should not be provided to other parties granted leave to appear nor to the general public and they should not be referred to during the public sittings of the Commission.
- 1.3.15 Counsel Assisting had foreshadowed that, whilst not intending to adduce evidence of Cabinet deliberations,¹⁸ he did not wish to be so constrained with regard to documents or evidence that indirectly revealed Cabinet decisions, or which comprised documents prepared for or supplied to Cabinet, or a committee of Cabinet for decision making purposes.¹⁹

14 Stephen Donaghue *Royal Commissions and Permanent Commissions of Inquiry* (Chatswood, 2001), 115-116 [6.3]; Tim Carmody, ‘Royal Commissions, Parliamentary Privilege and Cabinet Secrecy’ (1995) 11 *Queensland University of Technology Law Journal*, 49-66.

15 *Sankey v Whitlam* (1978) 142 CLR 1, 40.

16 AGS.001.001.0527.2.

17 Transcript (17 March 2014) 11-24 (K Wilson) and (T Howe).

18 Transcript (17 March 2014) 11 (K Wilson).

19 Transcript (17 March 2014) 23 (K Wilson).

- 1.3.16 Therefore, I was confronted with the situation where the Commonwealth did not seek to withhold documents and evidence from me, or those assisting me, but did wish to put in place what counsel for the Commonwealth described as ‘protective orders’ to prevent the disclosure of such information and documents to anybody but the Commission.²⁰
- 1.3.17 Whilst not strictly a claim to public interest immunity—which would involve a refusal to produce the documents at all—what was sought by the Commonwealth was treated as a claim to the immunity as against the rest of the world.
- 1.3.18 I directed that the Commonwealth put on evidence and submissions to support the claim made by it.²¹ Affidavits were provided of Dr Ian Watt, Secretary of the Department of the Prime Minister and Cabinet, and Ms Philippa Spence, First Assistant Secretary, Cabinet Division, Department of the Prime Minister and Cabinet. Those affidavits were uploaded to the Commission’s data room for review by those granted leave to appear.²²
- 1.3.19 In his affidavit, Dr Watt explained that the Commonwealth sought to protect two categories of material:
- 1.3.19.1 Primary documents/material being documents submitted to the Cabinet for consideration, or prepared for use in Cabinet, or which directly or indirectly canvass what was discussed by Cabinet or the positions of particular Ministers in Cabinet, including Cabinet Submissions, Cabinet Memoranda, Cabinet Notebooks, Cabinet Minutes, and briefs to Ministers for use in Cabinet (described as primary cabinet material);
- 1.3.19.2 References in other documents (including witness statements and notes) to Cabinet material falling into category (a)—such as references to a decision of the Cabinet, or to material that is to be used in, or attached to a Cabinet submission—the disclosure of which would directly reveal what was considered by Cabinet or a Committee or enable a reliable inference to be drawn about what was considered by Cabinet (described as secondary cabinet material).²³
- 1.3.20 It is a longstanding convention that deliberations and discussions in the Cabinet room are confidential. The reasons for that are obvious, and are set out in Dr Watts’ affidavit.²⁴ The convention underpins the principle of collective responsibility, by which each member of Cabinet supports and is responsible for decisions taken by the Cabinet.
- 1.3.21 I am prepared to accept that the confidentiality of what was actually discussed in the Cabinet room should not be broken by me. The special place of the Cabinet is not to be lightly diminished by revealing its deliberations or fracturing the principle of collective responsibility. That is, I do not propose to question or disclose details of discussions or deliberations amongst the Cabinet, or committees of the Cabinet, nor do I seek to attribute responsibility for decisions taken to a particular individual.²⁵ In my view, my Terms of Reference do not require me to go that far. I am required to inquire into the processes by which ‘the Australian Government made decisions;’²⁶ whether ‘the Australian Government was given or sought any advice;’²⁷ whether the Australian Government failed in certain respects²⁸; and whether the Australian Government ‘should have taken

20 Pursuant to *Royal Commissions Act 1902* (1902) s 6D(3), Transcript (14 May 2014) 4773.

21 Transcript (17 March 2014) 24 (I Hanger).

22 AGS.004.001.0003; AGS.004.001.0001.

23 AGS.004.001.0003, 2.

24 AGS.004.001.0003, 2.

25 See *Whitlam v Australian Consolidated Press* (1985) 73 FLR 414 at 421-2; *Commonwealth v Northern Land Council* at 615.

26 Appendix 1, Term of Reference (a).

27 Appendix 1, Term of Reference (b).

28 Appendix 1, Term of Reference (c).

certain action.’²⁹ The reference to the Australian Government to my mind is a reference to the collective Cabinet or committees of the Cabinet and not to particular individuals.

- 1.3.22 The matter of documents produced for, or generated as a result of Cabinet deliberations—including the actual decisions of Cabinet or its committee—is, however, a different matter. So too is action taken outside of the Cabinet room by a Minister, a Parliamentary Secretary, or the Prime Minister.
- 1.3.23 In support of its position that protective orders should be made, the Commonwealth relied upon a number of authorities that referred to the delineation of what is meant by cabinet documents, and the high degree of protection usually afforded against the production of such documents.³⁰ The authorities concerning cabinet papers were usefully collected together by the Full Federal Court in *New South Wales v Ryan*.³¹
- 1.3.24 Of course, the fact that a document or class of documents has or have characteristics which prima facie attract public interest immunity is not decisive. The claim is always a relative claim, and a balancing exercise is involved.³² The fundamental principle is that documents may be withheld from disclosure only if, and to the extent that, the public interest renders it necessary.³³
- 1.3.25 Here, no effect on national security is involved. The relevant events happened four to five years ago, such that it cannot be said that I am inquiring into a matter that is currently controversial. Much of the material has already been referred to publicly. These are not adversarial proceedings. In this inquiry there is no litigant seeking to vindicate private rights. Although the subject matter of this inquiry assumes a significance by reason of it being the subject of a Royal Commission, there is no present controversy which might tend to cause prejudice beyond what is properly the subject of this Commission, namely an account of, and comment upon, the adequacy of the Program’s design and implementation.
- 1.3.26 There is a public interest in such matters being exposed to public scrutiny. That public interest is heightened by the four deaths that have been attributed to the HIP. The loss of life, especially young lives, is a matter which gives to this Commission a gravity beyond economic considerations, especially when cast in terms of how the deaths might have been avoided and perhaps, more generally, how such consequences might be avoided in future.
- 1.3.27 My Terms of Reference, which are my primary concern, compel me to inquire into how, on what basis, and on what information, the Australian Government made decisions. I cannot undertake that inquiry without at least examining, and reporting on, what was sent to the Cabinet (or its committees), and what decisions were made. The HIP was an administrative as opposed to a legislative program. Accordingly, decisions about the HIP were taken by the executive government, not the Parliament. My role is to inquire into those decisions, and the processes by which they were made.
- 1.3.28 I cannot do so without examining the documents in their entirety (apart from those that reveal actual cabinet deliberations). Nor should I do so secretly. My examination of the documents, and the examination of witnesses about any of the documents should be done in public. Others, including but not limited to family members of the deceased men, have a real interest in knowing what decisions were made, on what information, and

29 Appendix 1, Term of Reference (e).

30 *Commonwealth v Northern Land Council* (1993) 176 CLR 604, 616-8; *Sankey v Whitlam* (1978) 142 CLR 1, 43, 63-4, 98-9.

31 *New South Wales v Ryan* (1998) 101 LGERA 246, 251ff.

32 *Jacobsen v Rogers* (1995) 182 CLR 572, 604.

33 *Sankey v Whitlam* (1978) 142 CLR 1, per Gibbs ACJ at 41, 43.

why particular action was or was not taken. Here the very subject matter of my inquiry is the development and implementation of a particular government policy. In my view, the balance is strongly in favour of rejecting the claim of immunity in so far as it relates to what might generally be called cabinet documents, and to decline to make the protective orders sought by the Commonwealth.³⁴ I am satisfied that disclosure of the cabinet documents in this inquiry would not give rise to the risk of a mosaic analysis that could lead the reader inferentially to an understanding of the deliberations of the Cabinet, as that term is properly understood.

- 1.3.29 I reached this view when the matter was first raised before me, but was not required to express it because a regime was developed whereby the Commonwealth would notify Counsel Assisting of the redactions it proposed to be made to statements and documents. If Counsel Assisting took the view that the redactions did not affect the investigations being carried out, or constrain them from pursuing what they considered were necessary lines of examination in the public hearings, then it became unnecessary for me to rule on whether the redactions were appropriate or not.
- 1.3.30 That position prevailed and worked satisfactorily until Mr Rudd came to give evidence on 14 May 2014. Unlike every other witness who gave evidence at the public sittings, Mr Rudd had not attended an interview with those assisting me prior to giving evidence. He provided his own statement but gave it to the Commonwealth's legal representatives, who proceeded to redact very large portions of the statement such that it became almost meaningless. Senior Counsel on behalf of Mr Rudd objected to the redactions, arguing that it would be unfair for the Commission to receive only half of Mr Rudd's story. Mr Rudd wanted to tell his whole story.³⁵
- 1.3.31 After argument, in which the Commonwealth sought to press the claim of immunity to all cabinet documents, I decided to reject the claim that public interest immunity applied to those parts of Mr Rudd's statement that the Commonwealth sought to redact and to receive the entirety of Mr Rudd's statement, and to make that available in the Commission's dataroom, and more generally.³⁶
- 1.3.32 The Commonwealth changed its position on the following day.³⁷ It then supported the public ventilation of the previously redacted portions of Mr Rudd's statement. Notwithstanding this change, I still had to remain satisfied that no claim to public interest immunity should be preserved in respect of anything said by Mr Rudd. I comfortably reached that view.
- 1.3.33 Subsequently, and as a consequence of the Commonwealth's change of stance, parts of statements previously redacted have been un-redacted. The disclosure of the material previously redacted confirms the view of Counsel Assisting that nothing was previously redacted that shed any light on the matters being investigated by this Commission. Nevertheless I agree that the ventilation of the contents of the documents removed any lingering doubt that anything of substance had been hidden from those who had not seen the full documents.
- 1.3.34 Discussions with the Commonwealth about redactions for relevance, legal professional privilege and public interest immunity continued until 25 July 2014. These discussions occupied much time of those assisting me, a lot of it being, in my opinion, unnecessary. Some redactions remain for the first two categories just referred to, but otherwise un-redacted copies of all relevant documents have been provided in the dataroom.

34 For a more detailed discussion of the width of this term see *Lanyon v Commonwealth* (1974) 129 CLR 650, 653.

35 Transcript (14 May 2014) 4763 (B Walker).

36 Transcript (14 May 2014) 4773-4775 (I Hanger).

37 Transcript (15 May 2014) 4786 (T Howe).

1.3.35 The Royal Commissions Act 1902—limitations

- 1.3.36 The second issue that should be dealt with is a lacuna in the Royal Commissions Act, which does not empower a Commonwealth Royal Commission to compel the production of a statement by a potential witness. This can be contrasted with the legislation in some Australian States and Territories which either directly or indirectly permits the compelling of the production of a statement.³⁸
- 1.3.37 This topic was the subject of discussion in a report of the Australian Law Reform Commission (ALRC).³⁹ The ALRC recommended the empowerment of a member of a Royal Commission or Official Inquiry to issue a notice requiring a person to provide information in a form approved by the inquiry, failing which the member can require the person to attend the inquiry as if he or she had been issued with a notice to attend or appear before the inquiry.⁴⁰
- 1.3.38 This followed a recommendation made by Commissioner Cole QC in 2003.⁴¹
- 1.3.39 Neither Commissioner Cole's recommendation, nor the recommendation of the ALRC has been acted upon. I commend to the Government the discussion at paragraphs 11.65 to 11.85 of the ALRC Report, and recommendation 11-4. I recommend that an appropriate amendment be made to the Royal Commissions Act to empower a Royal Commission to compel the provision of a statement by a potential witness.
- 1.3.40 The inability of this Commission to compel the making of statements by the very many public servants involved in the design and implementation of the HIP led to some initial concerns. One option was to simply call all witnesses in public hearings, perhaps on several occasions, until their evidence was exhausted. That would have been extremely time consuming and, given the number of persons granted leave to appear, potentially very expensive. Another option was to convene private hearings to gather the evidence of witnesses so as to determine who to call in the public sittings of the inquiry. Again, that process is somewhat cumbersome, and would have required me to preside at such hearings, creating a more formal atmosphere for the taking of initial evidence. Such private hearings would, for reasons to be discussed shortly, have been conducted in the absence of all relevant documents pertaining to a witness.
- 1.3.41 Another difficulty that was confronted, in the case of current and past public servants, was Regulation 2.1 of the *Public Service Regulations 1999*, which in summary precludes such persons disclosing information in certain circumstances.⁴² That obligation of confidence also calls in aid section 70 of the *Crimes Act 1914* (Cth) which creates an offence if unlawful disclosure is made. A real question arises as to whether a public servant, voluntarily submitting a statement, or consenting to an interview without being compelled to do so, is making a disclosure 'otherwise required by law', and whether such a person retains the protection afforded by section 6DD of the Royal Commissions Act. This Commission did not wish to expose past or current public servants to the risk of criminal sanctions or disciplinary action simply for voluntarily providing information to it.

38 *Commissions of Inquiry Act 1950* (Qld) s 5(1)(d); *Royal Commissions Act 1968* (WA) ss 7, 8A(2); *Royal Commissions Act 1991* (ACT) s 23(c).

39 Australian Law Reform Commission, *Making Inquiries—A New Statutory Framework*, Report No 111 (2009).

40 Australian Law Reform Commission, *Making Inquiries—A New Statutory Framework*, Report No 111 (2009), 17 (recommendation 11-4).

41 Commonwealth, Royal Commission into the Building and Construction Industry, *Final Report* (2003) Vol. 2 recommendation 1(a).

42 *Public Service Regulation 1999* (Cth), reg 2.1.

- 1.3.42 Against that background, a protocol was agreed between Counsel Assisting and the Commonwealth to facilitate interviews between Commission representatives and past and present public servants as well as a large number of other witnesses, including Mr Garrett, Mr Arbib, and Mr Combet. A copy of that protocol is at Appendix 10 to this Report.
- 1.3.43 By and large, subject to some comments that I will make shortly, the process worked well. As I have said, a large number of statements were prepared. Some witnesses were interviewed and a determination was made that a statement was not required from them, but notes were kept of what they said.
- 1.3.44 The interviews enabled witnesses to go away and think about matters that had been raised, search for documents, and to sign a statement that reflected the evidence they were prepared to give to the Commission.
- 1.3.45 Two additional observations should be made about this process. First, I make comment below about the way in which document production occurred, particularly by the Commonwealth. This meant that at the time witnesses were interviewed, the Commission had invariably not been provided with all documents relevant to that witness. Sometimes that was able to be addressed by showing the witness additional documents that had been produced by the time they came to give evidence in the public sittings. Sometimes a witness had to be asked about documents produced after they gave evidence, in a written exchange. Sometimes the witness' own evidence confirmed that there were additional documents that had not been produced at all. An example of that occurred during Mr Keefe's evidence, and Dr Delbridge's evidence.⁴³ It emerged that a large number (tens of thousands) of emails were stored in a manner that had not been detected by those assisting the Commonwealth. The Commission subsequently interviewed document management personnel to understand how this had occurred.
- 1.3.46 Secondly, both Counsel Assisting and I formed the strong view that current public servants were not entirely forthcoming with the Commission. By that I certainly do not mean that any such witnesses were dishonest. Rather, I mean that I had a real sense that each of the public servants was 'holding back' and being defensive in the evidence they gave. That view has been mentioned elsewhere.⁴⁴ No current public servant volunteered any information. Each had to be asked a direct question to elicit an answer, often a literal answer to the question. Many public servants claimed to have no recollection of important events during the life of the HIP. Others were only able to recall matters when shown documents, and then only to the extent of what was revealed in the document. It seemed that no public servant was willing to contradict another; except when forced to do so by the weight of other evidence, documents, or when their personal reputation was at stake. No public servant seemed willing to attribute any blame for the shortcomings in the HIP to any politician, although some were prepared, when pressed, to allude to such matters.
- 1.3.47 I do not know whether those public service witnesses who gave evidence before me are representative of the wider federal public service, and a pervasive culture of unity (where one doesn't break ranks); or whether perhaps these persons are suffering from 'inquiry fatigue' and felt that this was the fourth Commonwealth investigation into the HIP and that everything had already been investigated, and perhaps the perception was that this Inquiry was established for another purpose. However, if such a perception were held, it ought to have become obvious quite quickly that such a perception was completely baseless.

43 Transcript (1 May 2014) 3320 (T Delbridge); Transcript (31 March 2014) 1451-1453 (K Keefe).

44 Senate Environment, Communications and the Arts References Committee, Parliament of Australia, *Energy Efficient Homes Package (ceiling insulation)* (2010) 3.13. The Senate Report refers to the 'understandable hesitancy of lower ranking public servants to speak "on the record."'

- 1.3.48 There is one further point that I would wish to make about Royal Commission inquiries. They are the highest form of public inquiry in Australia. In the proceedings of this Royal Commission, interested individuals and organisations were given the fullest opportunity to participate by providing evidence, submissions and other information. Parties with leave to appear examined witnesses, offered evidence and made submissions. I consciously refrained, wherever possible, from curtailing any questioning. With very few exceptions, however, the public servant witnesses chose not to make any submissions. Quite extraordinarily, in my view, the Commonwealth chose not to make submissions when given the opportunity to do so. It made some desultory submissions in reply to the submissions of the pre-existing insulation business owners and the State of Queensland.
- 1.3.49 During the course of the inquiry, those whose performance was under examination had the opportunity to offer their views and opinions about the matters being considered by the Commission. Those views and opinions were publicly and openly tested, challenged or accepted, and then evaluated. Those whose conduct might have come into question had the opportunity to have a say. Those whose conduct is the subject of adverse comments were provided with an opportunity to argue against those comments.

1.3.50 The Commonwealth

- 1.3.51 The third matter that I referred to in paragraph 1.3.1 above relates to the role that the Commonwealth played in this inquiry. The Commonwealth was granted leave to appear before the Commission in respect of each term of reference.
- 1.3.52 The Commonwealth made it plain, both in correspondence and during the public sittings of the Commission, that it did not represent any of the past or present public servants. That led to each public servant being independently represented during the public hearings, and, on occasion, during interview. However, it is noteworthy that during the public sittings the Commonwealth did not challenge or even test any of the evidence of current public servants, and often took objections to evidence (which the witness' own counsel did not) that gave the appearance of trying to protect, as best it could, those public servants. This can be contrasted with the approach that the Commonwealth took to those witnesses from 'outside' who criticised Commonwealth public servants or the Commonwealth more generally—they were subjected to a much more robust examination.
- 1.3.53 I query whether, in future commissions of inquiry, a body politic such as the Commonwealth, which does not represent any of the witnesses being called, ought to be afforded the privilege of being granted leave to appear. The Commonwealth did not suggest one witness that ought to be called. It did not generally volunteer documents that were not the subject of a summons to produce. It did not elicit any evidence of its own volition. All of this is despite the fact that it was the repository of the critical documents and the corporate knowledge of what had transpired.
- 1.3.54 Furthermore, the Commonwealth hampered the work of those assisting me by the way in which documents were produced. I am not suggesting that this was deliberate, as opposed to inefficient, nor am I criticising the legal team. In reality, almost all of the important documents relevant to my inquiry were under the control of the Commonwealth, and it dictated which documents were produced and when. Documents were produced piecemeal and haphazardly in 147 separate tranches. Other than in response to a specific request from the Commission, there seemed no logic in the order in which documents were produced. The Commission asked that documents be produced chronologically, however the Commonwealth did not oblige. For example, Cabinet documents were produced, unsorted and in no coherent order, in archive boxes, on a number of occasions. Documents continued to be produced by the Commonwealth until 9 July 2014, after the public hearings had been concluded. The effect this had

on the orderly and efficient examination of witnesses is obvious. However, all of the documents produced by the Commonwealth have been examined by those assisting me and I am satisfied that, despite the way in which the documents were produced, the conclusions that I have reached are well-founded. I am sure that if any documents exist which portrayed the Commonwealth public service in a better light, they would have been produced.

- 1.3.55 I discuss, in the body of my report, the document management system of the Commonwealth, and its deficiencies in the case of the HIP. One example will suffice at this stage to highlight the difficulties caused by the manner in which documents were produced by the Commonwealth. Towards the end of the public hearings, an external drive with over 1 terabyte of data (over 100,000 documents) was provided by the Commonwealth to the Commission. The data came from the Department of Industry, which, as a consequence of machinery of government changes, was the repository of documents held by the former DEWHA. It was said that this data “[does] not form part of the established filing system of the Commonwealth”. First, one might ask how 100,000 documents could fall outside of an established filing system. Secondly, one might ask why these documents were not produced much earlier—there is evidence before the Commission that representatives of the Attorney-General’s Department started meeting with relevant departments in November 2013, before I was even appointed to conduct this inquiry.⁴⁵
- 1.3.56 The Commonwealth very properly raised the matter of public interest immunity. However, the way in which it went about the redaction of statements in the first place, and the subsequent un-redacting of many of the same statements, when instructions were apparently changed on 14 May 2014, was cumbersome and slow. It often led to statements being provided to a party’s legal representatives at the time a witness was called to give evidence, or very shortly beforehand.
- 1.3.57 The Commonwealth’s position on redaction of statements and documents was only finally resolved on 25 July 2014.

1.4 Other reviews

- 1.4.1 At subparagraphs (l) to (q) of the Terms of Reference, I am not required to inquire into a particular matter to the extent that I am satisfied that the matter has been, is being, or will be sufficiently and appropriately dealt with by a number of stipulated inquiries. As far as I am aware, there is no ongoing inquiry, or any foreshadowed inquiry into the HIP.
- 1.4.2 I have, of course, read the report of the Senate Environment, Communications and the Arts References Committee’s inquiry into the *Energy Efficient Homes Package (ceiling insulation)* (The Senate Inquiry Report), the report of Dr Allan Hawke’s *Review of the Administration of the Home Insulation Program* (The Hawke Report) and the Australian National Audit Office’s *Performance Audit: Home Insulation Program* (ANAO Report).⁴⁶ I have also read the reports of State Coroner M. Barnes⁴⁷ and of Deputy State Coroner H.C.B. Dillon.⁴⁸ As part of the evidence provided to these coronial inquests I have read the reports of a number of government officials into the deaths of the four young men. I have

⁴⁵ Statement of Pirani at [13], STA.001.103.0001, 23 July 2014.

⁴⁶ Senate Environment, Communications and the Arts References Committee, Parliament of Australia, *Energy Efficient Homes Package (ceiling insulation)* (2010). (The Senate Inquiry Report); Dr Allen Hawke, ‘Review of the Administration of the Home Insulation Program,’ April 2010. (The Hawke Report); Australian National Audit Office *Home Insulation Program*, Performance Audit Report No.12 (2010-11) (ANAO Report).

⁴⁷ Queensland, Mr Michael Barnes, State Coroner, *Findings of Inquest into the deaths of Matthew James Fuller, Rueben Kelly Barnes and Mitchell Scott Sweeney* (4 July 2013).

⁴⁸ New South Wales, Deputy State Coroner H.C.B. Dillon, *Inquest into the death of Marcus Wilson* (4 October 2012).

not been directed to any other findings of a court or tribunal inquiring into injuries, loss or damage claimed to have arisen from the HIP.

- 1.4.3 There is a difficulty in my relying on the Senate Inquiry Report, the Hawke Report and the ANAO Report, but not agreeing entirely (or at all) with the conclusions presented in them, or in wanting to further investigate some aspects of the matters reported upon. That difficulty results from the application of parliamentary privilege to the reports, which I discuss below at paragraph 1.5.
- 1.4.4 I therefore decided not to rely on the first three reports, but rather to inquire into the matters myself. The powers conferred upon this Commission by the Royal Commissions Act enabled me to delve deeper than the authors of these three other reports.
- 1.4.5 The coronial inquiries were a different matter—in my view, no good purpose would be served in my further inquiring into the causes of death of the four young men, nor into the apparently thorough investigations carried out by the workplace health and safety authorities in Queensland and New South Wales. I generally accept the reports of Coroner Barnes and Deputy Coroner Dillon and propose to rely on their findings as set out in Chapter 12.

1.5 Parliamentary Privilege

- 1.5.1 The *Parliamentary Privileges Act 1987* (Cth) (the Parliamentary Privileges Act) applies to this Commission.⁴⁹ As was pointed out by Counsel for the Commonwealth on a number of occasions during the public sittings, ‘proceedings in parliament’ captures the Senate Inquiry Report, the Hawke Report and the ANAO Report.⁵⁰ In those circumstances, it is impermissible for me, or for any person appearing before me, to act contrary to section 16(3) of the Parliamentary Privileges Act (which is drawn in very wide terms) in respect of statements made, or conclusions drawn in any of those reports.
- 1.5.2 It was not possible, in those circumstances, to contrast evidence given by witnesses who appeared before me with evidence previously given to the Senate Committee, to the Auditor-General or to Dr Hawke by that same witness.
- 1.5.3 For the same reasons, Mr Rudd, Mr Garrett, Mr Combet and Mr Arbib could not be challenged on what they had previously said in Parliament. In saying that, I do not wish it to be inferred that I wished to mount any such challenge.
- 1.5.4 I accept that it is my responsibility to ensure that the processes of this inquiry did not infringe the privileges of the Parliament. Largely for that reason, I have declined to adopt and apply the conclusions of the Senate, Mr Hawke and/or the Auditor-General. It was not, in my opinion, appropriate to do so where that adoption or application would have necessarily foreclosed any examination or contradiction, or even testing, of those conclusions.

1.6 Issues not explored

- 1.6.1 Time did not permit an exhaustive inquiry into all aspects of the HIP. As I have said above, I considered the focus of my inquiry to be on the workplace health and safety issues that arose from the design and implementation of the HIP.
- 1.6.2 I did not consider it necessary to investigate the extent of fraud perpetrated against the HIP because it has been so thoroughly canvassed elsewhere. I do discuss the extent of the audit and compliance program that was (or, more accurately, was not) put in place for the HIP.⁵¹ While many documents were produced by the Commonwealth that showed the

49 See definition of ‘Tribunal’ in *Parliamentary Privileges Act 1987* (Cth), s 3.

50 See *Parliamentary Privileges Act 1987* (Cth), s 16 (2).

51 See Chapter 10.

extent to which fraud was considered and addressed by the public servants administering the HIP, it is a shame that the same thought and effort were not put into addressing issues of safety and potential harm to those working on the HIP.

- 1.6.3 Nor did I investigate in detail the Medicare Australia systems which provided much of the payment and processing system upon which the HIP relied—those systems and processes do not appear to have been trouble-free but such problems as there were did not feature significantly in the evidence before me.
- 1.6.4 In responses to summonses issued to the states of Queensland and New South Wales, I received information about the workplace health and safety investigations conducted in connection with the HIP. This information was also considered in relation to the Coronial inquests into the deaths of the four men and, for the reasons largely discussed at paragraph 1.4.2 above, I did not consider it necessary to further investigate the responsibility of the employers (or contractors in the position of employer) of the four young men. It was unnecessary to investigate the duties which the employers owed to the workers who were killed or injured under the HIP. That they owed duties which, if fulfilled, would have prevented such tragic results, is not controversial. Large fines were imposed upon the employers responsible following investigations by appropriate authorities: QHI Installations Pty Ltd (the employer of Mr Fuller) was fined \$100,000;⁵² Arrow Property Maintenance Pty Ltd (the employer of Mr Barnes) was fined \$135,000;⁵³ and Titan Insulations Pty Ltd (the employer of Mr Sweeney) was fined \$100,000.⁵⁴
- 1.6.5 My focus was not on the unscrupulous or grossly negligent employers. Rather, it is whether the Australian Government as the proponent of the HIP ought to have done more to protect young men such as those that died, or whether it was sufficient for them to be thrown to the mercy of a market in effect artificially created by the Australian Government.
- 1.6.6 Nor have I given any detailed attention to two programs closely associated with the HIP: the LEAPR Program and the SHWR Program. As stated above, I am satisfied that they are not within my Terms of Reference.
- 1.6.7 I also have not investigated in any detail the in excess of 200 fires claimed to be related to the HIP. I did obtain evidence from fire authorities about the fires and those assisting me interviewed witnesses about the subject. I have examined the documents produced by the Commonwealth relating to the steps taken by the Australian Government to address potential fire risks, particularly surrounding the use of downlight covers. My analysis of the data is in Chapter 12 of this report.

1.7 Formaldehyde

- 1.7.1 Two witnesses from the pre-existing insulation businesses, Mr Duncan Herbert and Mr Warwick Batt, raised a concern during their evidence before the Commission that some insulation products imported from overseas and installed in homes contained high and dangerous levels of formaldehyde, a carcinogen. Mr Duncan Herbert gave evidence of an overpowering smell from the imported product. He reported a householder requiring medical treatment because of skin irritation. A sample of such material was provided to the Commission and I arranged to have it tested by the Commonwealth Scientific and Industrial Research Organisation (CSIRO). The results of that testing were received on 16 May 2014 and showed the sample not to contain impermissible levels of formaldehyde.⁵⁵ Mr Herbert, in a supplementary letter raised ongoing concerns.⁵⁶

52 QIC.004.001.0051,1.

53 QIC.003.001.0562,9.

54 QIC.005.001.0777,5.

55 MIS.002.001.0307,2.

56 SUB.001.001.0281,2.

- 1.7.2 In my view, it was not necessary for me to refer this matter to other agencies, such as the National Industrial Chemical Notification and Assessment Scheme (NICNAS), or the Australian Competition and Consumer Commission (ACCC) to investigate the matter further. DEWHA itself raised the matter with NICNAS in February 2010.⁵⁷ It obtained test results at that time, which might be expected to contain higher levels of formaldehyde than that presented to the Commission due to the effluxion of time. Mr Herbert had earlier reported his concerns to the ACCC.

1.8 Evidentiary approach

- 1.8.1 In the Royal Commission into the Building and Construction Industry, Commissioner Cole QC observed that the law does not mandate any particular level of satisfaction that must be achieved before a finding of fact—which carries no legal consequence—may be made by a Royal Commission.⁵⁸ The HIH Royal Commission considered that facts are to be found from the viewpoint that the result must be “intellectually sustainable,” tempered by restraint and guided by the general principle that the standard varies with the seriousness of the matter in question.⁵⁹
- 1.8.2 Both Commissioner Cole QC and Commissioner Owen made reference to, and adopted the so-called ‘Briginshaw’ test, that there should be a state of reasonable satisfaction before a finding is made.⁶⁰ One can put the matter no better than Dixon J:

But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁶¹

- 1.8.3 That is the approach that I have taken. The Commission received a good deal of anecdotal evidence, hearsay and lay opinion evidence. I have been careful not to base findings on such material.
- 1.8.4 In making findings, I draw a distinction between ‘an adverse finding’ and discrete findings, such as findings that resolve disputed questions of fact. I respectfully adopt the statement of Mr Gyles QC as Royal Commissioner into Productivity in the Building Industry in New South Wales:

I can say that I do not accept that in this type of inquiry an adverse finding is the equivalent of a finding of disputed fact, of any criticism of a party, or of the exposure of evidence or material which might reflect badly on a person. Nor do I accept that a warning must be given of all possible ramifications of each piece of evidence before it can be referred to in the Report. I do agree that a party should not be confronted for the first time in the Report with a true

57 AGS.002.029.0680,1.

58 Commonwealth, Royal Commission into the Building and Construction Industry, *Final Report* (2003) Vol. 2 Chapter 5, paragraph [9].

59 Commonwealth, Royal Commission into certain matters relating to the failure of HIH Insurance Group, Report (2003), Part 1, 1.2.6.

60 *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362.

61 *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362.

*adverse finding upon a totally new point or issue it could not have reasonably anticipated. I do not accept that this anticipation can only come from an express statement or warning by the Commissioner or Counsel Assisting.*⁶²

1.9 The families

- 1.9.1 Finally, at this stage I should record that, prior to embarking upon the inquiry in any substantive sense, I met with family members of each of the deceased men. I did so to explain to them the inquiry process and to try to begin to understand the effect of the death of their son, sibling or nephew. I deal with this in Chapter 12.

⁶² New South Wales, Royal Commission into Productivity in the Building Industry in New South Wales, *Report* (1992) vol 7, 129.

2. THE ECONOMIC ENVIRONMENT

2.1 Global Financial Crisis

- 2.1.1 As I discuss in Chapter 6 of this report, the Home Insulation Program (HIP) had its origins in a policy for improved energy efficiency of Australian homes. That policy development commenced after the election of the Government of which Mr Rudd was the Prime Minister in 2007 and continued throughout 2008. It was preparatory to and part of the proposed introduction of a Carbon Pollution Reduction Scheme (CPRS), in respect of which a Green Paper was released in July 2008, and a White Paper in December 2008. That work was, as I discuss in Chapter 6, of much broader ambit than a home insulation scheme.
- 2.1.2 Ultimately, and probably as a result of the events that unfolded at the 15th annual United Nations Climate Change Conference at Copenhagen, the Australian Government did not continue to pursue the CPRS.¹ The decision to defer the scheme until 2012 was made in April 2010.
- 2.1.3 In the second half of 2008, and into the first quarter of 2009, the Australian Government also had to deal with what is now known as the Global Financial Crisis (GFC). How the Government's use of partly-developed energy efficiency policies merged with the perceived need for stimulus to the Australian economy lies at the heart of many of the failings of the HIP.
- 2.1.4 The first signs of distress in financial markets emerged around the middle of 2007 in the United States of America (USA), when two funds related to financial company Bear Stearns announced serious problems with their holdings of mortgage-backed securities.² The dislocation spread through credit markets over the second half of 2007 as concerns intensified about the value of mortgage-backed securities and other asset-backed securities. The financial crisis then reached its zenith in September 2008, when American securities company Lehman Brothers went into bankruptcy, and the large insurance company AIG was rescued by the American Government along with the two large mortgage agencies, Fannie Mae and Freddie Mac.
- 2.1.5 The Lehman Brothers bankruptcy saw many parts of global financial markets come to almost a complete halt as fears arose about the stability of the global financial system. Governments and central banks reacted to these developments with significant and wide-ranging policy responses, including sizeable fiscal stimuli, large reductions in policy interest rates, guarantees of bank deposits and bank debt issuance and, in some cases, sizeable government bailouts of troubled financial institutions. Reflecting the impact of these policy responses, conditions in financial markets started to improve from March 2009 as risk aversion abated.

1 The Climate Change Conference was held between 7–18 December 2009.

2 This summary is taken from Reserve Bank of Australia 'The Global Financial Crisis and its impact on Australia' in Australian Bureau of Statistics *2009-10 Year Book Australia* (Commonwealth, 2010) 687-688. For an excellent discussion of the factors involved in the GFC and how Australia fared, see Dr Luci Ellis, 'The Global Financial Crisis: Causes, Consequences and Countermeasures' (Speech delivered at Emerging from the Global Storm: Growth and Climate Change Policies in Australia Conference, Victoria University, Melbourne, 15 April 2009).

- 2.1.6 As Ms Ellis remarked, in April 2009, perhaps the most basic underlying driver of the GFC was the inherent cycle of human psychology around risk perceptions—a feature that finds resonance in the HIP.³ At the outset of the GFC, perhaps because of pervading economic conditions, the Australian Government's appetite for risk was very much greater than it was as the second half of 2009 unfolded, with the deaths of young men, adverse publicity and negative political ramifications.
- 2.1.7 The intensification of the crisis in confidence following the collapse of Lehman Brothers saw the deterioration of many macroeconomic indicators. The Australian Government decided, first in October 2008 and then again in February 2009, to take steps to stimulate the economy with a view to protecting it from the worst of the GFC. Those measures were, with the benefit of hindsight, largely successful, although that is not my task to assess.
- 2.1.8 One component of the second round of stimulus measures was the HIP. It is always necessary to bear in mind the prevailing mood at the time the HIP was developed and announced, and why it was designed and implemented with, in hindsight, haste and disregard to basic safety considerations. The fact that stimulus was needed is not part of my remit. Whether it was appropriate to combine what was, on any view, a good environmental policy with a stimulus policy is a matter that needs to be considered, for it seems to me that there was a tension between the two objectives of the policy that could not always be reconciled without one giving way to the other.

2.2 The Government response

- 2.2.1 The Australian Government sought to introduce measures designed to stimulate the economy including by encouraging employment. It did so because of a perception that, as the Prime Minister said on 14 October 2008, the prevailing circumstances gave rise to 'the worst financial crisis in our lifetime', one that was 'the economic equivalent of a national security crisis'.⁴ Mr Rudd described these events as 'an almost unprecedented challenge in the worst global financial and economic collapse since the Great Depression'.⁵
- 2.2.2 Australia, at the time, enjoyed relatively good economic circumstances—it had no national government debt and was experiencing healthy economic growth. But it could not, on any reasonable view, have expected to be immune from changes to the major economies in the world, and most notably the USA. It was, for example, forecast in the 2009–10 Australian Budget that unemployment in Australia would reach 10 per cent by mid-2010, with the greatest effect expected to be on lower-skilled workers. Negative growth was predicted for 2009, with the construction industry expected to be particularly affected.
- 2.2.3 The Strategic Priorities Budget Committee of Cabinet (SPBC—then comprising the Prime Minister, Deputy Prime Minister, Treasurer and Minister for Finance) made important decisions about the Government's response. While a number of measures had been put in place to address the changing macroeconomic conditions, the Economic Security Strategy announced by the Prime Minister on 14 October 2008 was the Government's first major fiscal policy response and involved the expenditure of some \$10 billion.⁶

3 Dr Luci Ellis, 'The Global Financial Crisis: Causes, Consequences and Countermeasures' (Speech delivered at Emerging from the Global Storm: Growth and Climate Change Policies in Australia Conference, Victoria University, Melbourne, 15 April 2009).

4 The Hon Kevin Rudd MP, *Address to the Nation: Canberra* (14 October 2008) Parliament of Australia, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media%2Fpressrel%2FGXTR6%22>>.

5 Statement of Rudd at [11], STA.001.080.0001, 15 May 2014.

6 Australian Government, *Mid-year Economic and Fiscal Outlook 2008–09* (November 2008) Australian Government Budget <<http://www.budget.gov.au/2008-09/content/myefo/html/index.htm>>.

- 2.2.4 The second stimulus measure was the Nation Building and Jobs Plan, which was announced on 3 February 2009.⁷ In total, it provided for the expenditure of \$42 billion. The Plan included several components, including approximately \$4 billion for the Energy Efficient Homes Package (EEHP).⁸
- 2.2.5 The EEHP comprised the following programs:
- 2.2.5.1 the HIP, which was allocated \$2.7 billion over two and a half years. It contemplated insulating the ceilings of up to 2.2 million homes,⁹ and rapidly generating some 9,800 jobs in the insulation manufacturing and installation industries;¹⁰
 - 2.2.5.2 the Low Emissions Assistance Plan for Renters (LEAPR), which was allocated an additional \$612.5 million over two and a half years to 30 June 2011.¹¹ This money was to be applied to double the existing rebate available to landlords who installed insulation in their private rental properties, from \$500 to \$1000. The Australian Government estimated that 500,000 rental homes would be insulated under the program, which would result in reduced energy bills and reduced emissions for renters;¹² and
 - 2.2.5.3 the Solar Hot Water Rebate (SHWR) Program, which increased the rebate available to householders who installed a solar hot water system from \$1000 to \$1600.¹³ This program was allocated an additional \$507 million over three and a half years.¹⁴
- 2.2.6 Although launched in the context of the Government's response to the GFC, the EEHP was designed to meet more than one objective: to support the creation of lower-skilled jobs in the housing and construction industry and small businesses; to help households improve the energy efficiency of their homes; and to contribute to Australia's emission reduction goals by reducing greenhouse gas emissions. The first of these objectives was plainly the dominant one and was the main reason for rushing the design and development of the HIP.
- 2.2.7 As events unfolded, the Australian economy slowed, but more moderately than in comparable nations. Australian consumer confidence was recorded as improving in June 2009 following the release of the March 2009 quarter GDP figures, which suggested that the Australian economy had avoided a recession (being two consecutive quarters of negative growth).¹⁵
- 2.2.8 In the 'Updated Economic and Fiscal Outlook' of February 2009, Treasurer Swan and Minister for Finance Tanner stated:

The weight of the global recession is now bearing down on the Australian economy. Growth is expected to be significantly weaker than previously anticipated and unemployment will be higher. That is why the government is announcing a \$42 billion Nation Building and Jobs Plan to provide immediate support for jobs and growth. Without this significant and timely policy stimulus, Australia would face a more severe slow down than forecast. With the Nation

7 FLE.002.001.0108, 25.

8 FLE.002.001.0108, 25.

9 FLE.002.001.0108, 25.

10 Statement of Rudd at [21], STA.001.080.0001, 15 May 2014; HUG.002.002.2995, 1.

11 AGS.002.120.0197, 1 (also AGS.002.030.0003, 1; AGS.002.048.0289, 3; AGS.002.017.0157, 1).

12 ACI.002.001.0031, 1.

13 ACI.002.001.0031, 1.

14 AGS.002.120.0197, 1 (also AGS.002.030.0003, 1; AGS.002.048.0289, 1; AGS.002.017.0157, 1-2).

15 The Hon Wayne Swan MP, *Treasurer's Economic Note: 14 June 2009* (14 June 2009) The Treasury <http://ministers.treasury.gov.au/ministers/wms/content/economicnotes/2009/attachments/013_Treasurer's_Economic_Note.pdf>.

Building and Jobs Plan, economic growth is only expected to slow to 1 per cent in 2008–09 and ¾ of a per cent in 2009–10. With slower growth, the unemployment rate is forecast to rise to 7 per cent by June 2010.

The Nation Building and Jobs Plan has been crafted to strike the right balance between supporting growth and jobs now, and delivering the lasting investments needed to strengthen the economy for the future...

In the face of these extraordinary global conditions, the immediate and overriding priority of the fiscal policy must be to support economic growth and jobs.¹⁶

2.2.9 Under the heading “Designing the Stimulus Package” at page 14, it was stated:

For discretionary fiscal stimulus to be effective in boosting the economy, there are several challenges to meet ...It is common to refer to the criteria of ‘timely, temporary and targeted’.

- *Measures need to be implemented swiftly so that the boost to demand occurs when it is most needed. In the current situation, this means including measures that take effect in the first half of 2009.*
- *The boost needs to fall away over time so that it no longer operates when it is not needed...*
- *Spending needs to be targeted carefully so that it maximises the impact on GDP growth....¹⁷*

2.2.10 On page 20, it was stated:

The insulation program is expected to create a significant number of new Australian jobs. These jobs require limited retraining and so the benefits to the community can be realised quickly.¹⁸

2.2.11 It is not the role of this Inquiry to assess whether the Australian Government’s decisions to stimulate the economy at the times and to the extent that occurred was a reasonable response to the perceived state of the international and national economies, or to make findings about whether those circumstances were at the time properly to be regarded as a ‘crisis’ warranting urgent action. Nor is it my role to appraise the effectiveness of those measures from an economic point of view. Not only would an assessment of that kind be impossible in any precise or reliable sense, but it would also inevitably be infected by the benefit of hindsight when what is called for is an understanding of the knowledge then available and the atmosphere of those times, with all the uncertainty that questions of this kind entail.

2.2.12 In any event, it is beyond the scope of the Terms of Reference for this Commission to traverse what is a multifaceted policy question and therefore one which ought to be deliberated by elected officials operating, as they did, through the mechanism of Cabinet, the proper arbiter for such difficult judgments—such decisions call for value judgments by reference to imprecise and contestable criteria.

2.2.13 I have set out the observations above to record, albeit in overview, the major features of the economic landscape at the time the HIP was announced. Those features are the source, it will be seen, of the perceived need for urgency in the implementation of the HIP.

¹⁶ FLE.002.001.0108, 1.

¹⁷ FLE.002.001.0108, 19.

¹⁸ FLE.002.001.0108, 25.

2.3 The relevance of time

- 2.3.1 An important theme of this Report is that the HIP's formulation and implementation was unduly rushed. That occurred largely because of a belief—which I am satisfied was genuinely held, by officers of the Department of the Environment, Water, Heritage and the Arts (DEWHA) and of the federal Office of the Coordinator-General (OCG—at that time located within the Department of the Prime Minister and Cabinet (PM&C))—that the 1 July commencement date was unchangeable. If, as Mr Rudd contends, there was flexibility in the date if safety considerations were raised, there appears to have been either a miscommunication of that flexibility to DEWHA and OCG officers or an unwillingness by those officers to ask.
- 2.3.2 When the HIP was announced by the Prime Minister on 3 February 2009, it was clearly stated that the program would commence in substance on 1 July 2009. Exactly how that date was arrived at is not entirely clear. Mr Rudd gave evidence that the date had its origins in earlier work carried out in 2008 as part of the National Energy Efficiency Strategy.¹⁹ Mr Rudd expressed the view that the commencement date for the program 'lay properly within the province of our public service advisers.' At paragraph 55(c) of his statement, Mr Rudd said that the 1 July commencement date for the full program was part of the original recommendation from the public service. In a submission to the Commission, Counsel for Mr Rudd said that the 1 July commencement date came from previous proposals by officials including the Insulating Australian Homes Plan proposed on 1 December 2008 and the Climate Proofing our Homes proposal made on 19 January 2009.²⁰ In short, Mr Rudd said that the date was chosen by the public service, which advised that it was achievable.²¹
- 2.3.3 However, that was not the evidence of the public servants who appeared before the Commission. There was unanimity in their evidence that the date of 1 July was one that was imposed upon them, and that they then had to do their best to achieve a rollout of Phase 2 of the HIP by that date. The timeline was variously described as "challenging", "ambitious", "very tight", "a hard barrier", "immutable" and a "religious thing".²²
- 2.3.4 When Ms Wiley-Smith and Ms Brunoro of DEWHA were asked to carry out costings for the program over the Australia Day long weekend in January 2009, they were asked by Mr Johnston of PM&C, to "presume" a 1 July start date.²³
- 2.3.5 Given that the EEHP was first and foremost a stimulus measure, I accept that there was a perceived need for expedition in its rollout. However, I find that neither the SPBC nor the Prime Minister was given any advice by those working specifically on the EEHP, particularly officers of DEWHA, that the specific program could be designed and ready for full implementation on 1 July 2009. Any reference to an ability to deliver a program by 1 July 2009 related to the smaller Sustainable Homes Assistance Package program that was to be developed and implemented in conjunction with the States and Territories. I do not consider it fair to simply assume that such a date would or could be carried forward into a different program being implemented solely by the Australian Government.
- 2.3.6 The greater mischief, in my view, was not so much setting the commencement date of 1 July 2009, but rather in either engendering the view, or in failing to dissuade the view, that the date could not be changed.

19 Transcript (15 May 2014) 4808-4809 (K Rudd).

20 SUB.004.009.0086, 3; SUB.004.009.0086, 6; SUB.004.009.0021, 27.

21 Statement of Rudd at [44], STA.001.080.0001, 15 May 2014.

22 Description given by Ms Avril Kent: Transcript (9 April 2014) 2428 (A Kent).

23 STA.001.002.0043, 1.

- 2.3.7 Mr Rudd was of the view—and there is no evidence to contradict him—that if Cabinet or the SPBC had been asked for a delay in the commencement date because of genuinely held concerns that issues of safety could not be dealt with adequately by 1 July, such an extension would have been granted. Counsel for Mr Rudd told the Commission:

*The officials had five months to consult and develop the Home Insulation Program and if the date was not achievable or the programme carried unreasonable risk to safety, they had the opportunity to advise the Cabinet Committee that the timetable was not achievable and should be extended...*²⁴

- 2.3.8 When asked whether commencement date was moveable, Mr Rudd said:

*My response to that is very simple: had any public servant, any Minister advised the Cabinet that there was a safety risk to either workers or to households, then I'm confident in saying the reaction of Ministers would have been to say, "This has to be dealt with." And if that involved a delay, then that would have been the response.*²⁵

- 2.3.9 In contrast, there is a body of evidence that reflects a belief by the officers of DEWHA and the OCG that the matter of an extension was not so straightforward:

- 2.3.9.1 In a memorandum concerning a meeting on 31 March 2009, at which the delivery model was discussed, which Senator Arbib attended, Mr Hoffman has recorded: "The Program must be in place for the announced 1 July 2009 launch day";²⁶
- 2.3.9.2 Mr Hoffman gave evidence that "there was a very high priority being placed by the Government on achieving that date";²⁷
- 2.3.9.3 Mr Garrett said that he did not know the significance of the 1 July date but was of the view that "it was our job to do it the best that we could to make sure that it happened";²⁸
- 2.3.9.4 Mr Garrett also said that it was understood that timing was always a critical element in the roll out of the program;²⁹
- 2.3.9.5 Mr Arbib, the then Parliamentary Secretary responsible for the HIP, said that it was never explained to him why the start date was chosen;³⁰
- 2.3.9.6 Ms Kruk, the then Secretary of DEWHA from 2 March 2009, said that in her view the 1 July date was immovable;³¹
- 2.3.9.7 Mr Forbes, the then Deputy Secretary of DEWHA, said that he recalled discussions with Mr Mrdak and with Minister Garrett early on about the 1 July rollout date and the challenge that was going to be. He said "they were both very focused on the 1 July so I knew that it was an immutable date".³² Mr Forbes said the two men said it was up to him and the department to make sure we got there (i.e. by 1 July). He said the date was fixed "because

24 SUB.004.009.0021, 27.

25 Transcript (15 May 2014) 4811 (K Rudd).

26 AGS.002.008.0641, 1.

27 Transcript (25 March 2014) 881 (P Hoffman).

28 Transcript (13 May 2014) 4555 (P Garrett).

29 Transcript (13 May 2014) 4557-4558 (P Garrett).

30 Transcript (12 May 2014) 4412-4415 (M Arbib).

31 Transcript (28 March 2014) 1232 (R Kruk).

32 Transcript (3 April 2014) 1808-1809 (M Forbes).

that was what the Prime Minister wanted”.³³ Mr Forbes said that the rigidity of the timeframe led to issues being prioritised. He said it was “a very compressed timeline”;³⁴

- 2.3.9.8 Mr Carter, the then First Assistant Secretary of the Division of DEWHA responsible for the HIP, said that at the meeting on 31 March 2009, it was made clear to him that matters were being decided at a “very senior level” and he didn’t feel it was his place to disagree with the time line.³⁵ The change in business model discussed at that meeting was designed to accelerate the implementation of the program;
- 2.3.9.9 Mr Hughes said that the timing of the program was problematic, and that the pressure of time was the biggest problem confronted by those tasked with implementing the HIP;³⁶
- 2.3.9.10 Mr Kimber said that although he didn’t recall why 1 July was chosen, he did recall a sense of urgency from the Government and from the Department of the Prime Minister and Cabinet around “implementing the program quickly so that we met the economic stimulus objectives”. Mr Kimber said that DEWHA were not allowed the opportunity to conduct as much consultation as they wanted to, to develop any in-house expertise or take the time to develop pilot projects for the program;³⁷
- 2.3.9.11 Mr Hoitink said the date was ‘pretty much fixed’ and was a ‘hard barrier’.³⁸
- 2.3.10 There is a conflict between the evidence of Mr Mrdak and that of Mr Arbib, as to whether an extension to the commencement date was possible, that I discuss at greater length in Chapter 6. Mr Arbib gave evidence that no one told him that the HIP couldn’t be up and running by 1 July. He did concede that was a challenging date.³⁹ Mr Mrdak gave evidence that on four occasions he discussed with Mr Arbib concerns he had about the program commencing on 1 July.⁴⁰ These concerns were not about safety, but about the robustness of the payment and compliance systems. Nevertheless, the response from Mr Arbib was that the date couldn’t be changed. Mr Mrdak did explain that to change the time frame for the HIP would have involved changing an element of a suite of fiscal stimulus measures, which were all timed carefully by government to deal with how they anticipated the global financial crisis would roll out, and its employment impacts in Australia.⁴¹
- 2.3.11 There certainly seems to be a disconnect between the evidence of Mr Rudd, which reflects the view of his Cabinet colleagues, and that of the public servants. Whether the public servants should have done more to clarify whether an extension to the commencement date was permissible is discussed in subsequent chapters. No public servant put in writing any concern about the 1 July deadline. No public servant (other than Mr Mrdak) gave evidence that an extension was asked for and refused. However, what I think is abundantly clear is that, for whatever reason, the public service were working towards a deadline that they perceived was inflexible, and that constraint of time led to many of the unfortunate compromises that were made to the integrity of the HIP and, ultimately, to the safety of those working under it.

33 Transcript (3 April 2014) 1885 (M Forbes).

34 Transcript (3 April 2014) 1805 (M Forbes).

35 Transcript (20 March 2014) 375 (R Carter).

36 Transcript (9 May 2014) 4177-4178 (A Hughes).

37 Transcript (10 April 2014) 2580 (W Kimber).

38 Transcript (14 April 2014) 2854 (D Hoitink).

39 Transcript (12 May 2014) 4412 (M Arbib).

40 These conversations took place on 3 and 31 March, 19 May and 2 June 2009.

41 Transcript (27 March 2014) 1054 (M Mrdak).

- 2.3.12 What is noteworthy is that no one, including Mr Rudd, Mr Arbib and Mr Garrett, gave evidence that there was any economic imperative for a 1 July commencement date. That is, no one was prepared to say that the economic stimulus to be provided by the HIP mandated its commencement by 1 July and, if other considerations—such as safety, audit or compliance— could not be accommodated within that timeframe, that compromises would have to be made. But that is exactly what occurred. The short answer to the question of why it occurred is, on the evidence put before me, perhaps as simple as a lack of proper communication.
- 2.3.13 The perceived need to rush the design and implementation of the HIP brought about a failure to properly consult with industry and the public service about the risks of the changed delivery model and, for related reasons, a failure to heed more than one warning about the risks of installing insulation, and especially Reflective Foil Laminate sheeting (known as RFL).
- 2.3.14 Later parts of this report will consider how the perceived need to rush the design and implementation of the HIP affected the Australian Government's decision-making in material respects, and the unfortunate consequences that resulted.

2.4 Conflict between priorities

- 2.4.1 The Government had two priorities which conflicted. The first was to stimulate the economy by getting money out into the community through the lowest paid workers, who were the people most likely to be adversely affected at the beginning of an economic downturn. The second was to make a significant contribution to reducing carbon emissions by insulating every home in the country. The first required speed. The second required detailed planning on an almost unprecedented scale. Careful planning was sacrificed to the perceived need for speed.

3. THE REGULATORY ENVIRONMENT

3.1 The Regulatory Environment

- 3.1.1 The Home Insulation Program (HIP) was effected by administrative, as opposed to legislative, means. It required the Federal Parliament to authorise the expenditure required for the program through an Appropriations Bill, but was otherwise effected through the Executive, in this case (principally) the Department of the Environment, Water, Heritage and the Arts (DEWHA), the Department of the Prime Minister and Cabinet (PM&C) and their respective Ministers—Minister Garrett and the Prime Minister—and also Mr Arbib.¹ There was also involvement of the Department of Education, Employment and Workplace Relations (DEEWR) in respect of training, and the Department of Human Services (DHS), particularly Medicare Australia, regarding installer compliance and payment mechanisms.
- 3.1.2 The Australian Government's approach was to rely, save for some measures I will presently mention, upon existing legal, regulatory and enforcement regimes, at both the Commonwealth and at the State and Territory level. Whether the Australian Government made its approach clear to the States and Territories is a question to which I give some particular consideration later in this Report.

3.2 Australian Government regulation

- 3.2.1 The Australian Government had regulatory entities and legislation in place which extended to some at least of the activities to be carried out under the HIP. There existed the Australian Competition and Consumer Commission (ACCC), the *Trade Practices Act 1974* (Cth) (now the *Competition and Consumer Act 2010* (Cth) (the Competition and Consumer Act)) and the Australian Securities and Investments Commission (ASIC) and related legislation. These regimes were limited in their reach. They did not extend to workplace health and safety matters per se nor to employers' responsibilities to their employees. However they did, in the case of the *Australian Securities and Investments Commission Act 2001* (Cth), regulate aspects of the activities of companies and their officers relevant to those incorporated entities that registered to be installers under the HIP. The Competition and Consumer Act also extended to conduct in trade or commerce said to be misleading or deceptive and to unconscionable conduct.²
- 3.2.2 There also existed a Federal Safety Commissioner within the DEEWR portfolio. That office had the function of promoting and improving occupational health and safety in the Australian building and construction industry. There was, it appears, an issue as to whether insulation installation, particularly by way of retro-fit, was properly categorised as building and construction work. I note in Chapter 8, which deals with training, that some participants in the HIP took the view that insulation installation was building work, so that when 'supervision' was used, it was almost as a term of art, as that term is understood in the building industry. I am not persuaded that insulation installation is properly so categorised.

1 Senator Arbib was Parliamentary Secretary for Government Service Delivery (from 25 February 2009 to mid-September 2009) and Minister for Employment Participation (from early June 2009 to mid-September 2009).

2 *Competition and Consumer Act 2010* (Cth) Ch 2 ss 18, 20, 21, 22, 29, 34.

- 3.2.3 At the time that the HIP was established, the Federal Safety Commissioner operated under an administrative rather than statutory scheme. The position is now the subject of statute, the *Fair Work (Building Industry Act) 2012* (Cth).³ The Federal Safety Commissioner's present role is to develop, implement and administer an occupational health and safety accreditation scheme for Australian Government building and construction work.⁴ The Federal Safety Commissioner also promotes occupational health and safety in the building industry, including to support compliance with relevant parts of the Building Code.⁵
- 3.2.4 There was little liaison between those working on the HIP and the Office of the Federal Safety Commissioner—this lack of contact perhaps underscores the lack of attention paid to that issue by those designing and implementing the HIP.
- 3.2.5 Also in existence at the time was the National Code of Practice for the Construction Industry.⁶ PM&C considered its applicability to the HIP, but found it did not apply.⁷ I deal with this further in Chapter 7.

3.3 State and Territory regimes

- 3.3.1 It was at the State and Territory level that the primary regimes existed which applied to the installation of insulation in private homes, and more generally to workplace health and safety and concomitant electrical safety issues. Despite work being undertaken over some time at the COAG (Council of Australian Governments) level, at the time of the HIP—as today—there was no constitutional power for the Australian Government to legislate in respect of workplace health and safety matters, and no universal uniform State and Territory laws dealing with that subject.
- 3.3.2 However, there was a statutory obligation in each State and Territory supplementing the common law duty for employers to exercise reasonable care for their employees and to provide a safe system of work, which in turn requires that workers be properly trained and that they are equipped with and use appropriate protective equipment. Although the regimes are separately effected through legislation in each State or Territory, these regimes were materially the same. More recently, in all States and Territories other than Victoria and Western Australia, those laws are ones enacted as part of a deliberate program of harmonisation of such rules.⁸
- 3.3.3 In addition to general duties under such legislation, specific regulations impose requirements on employers and employees working in the building and construction industry. Workers on job sites must have undertaken construction induction training in occupational health and safety legislation (including requirements) and on basic principles

3 Commonwealth of Australia, *Background information about the Office of the Federal Safety Commissioner* (2012) Department of Employment—Office of the Federal Safety Commissioner <<http://www.fsc.gov.au/sites/fsc/commissioner/messagecommissioner/pages/background>>.

4 Commonwealth of Australia, *Background information about the Office of the Federal Safety Commissioner* (2012) Department of Employment—Office of the Federal Safety Commissioner <<http://www.fsc.gov.au/sites/fsc/commissioner/messagecommissioner/pages/background>>. See also *Fair Work (Building Industry Act) 2012* (Cth) s 30.

5 Commonwealth of Australia, *Background information about the Office of the Federal Safety Commissioner* (2012) Department of Employment—Office of the Federal Safety Commissioner <<http://www.fsc.gov.au/sites/fsc/commissioner/messagecommissioner/pages/background>>.

6 Commonwealth of Australia, *The National Code of Practice for the Construction Industry*, <<http://www.fwbc.gov.au/national-code-practice-construction-industry-0>>.

7 Transcript (25 March 2014) 755-756 (S Cox).

8 Commonwealth of Australia, *Jurisdictional progress on the model work health and safety laws* <<http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/jurisdictional-progress-whs-laws>>.

of risk management and the prevention of injury and illness⁹ on completion of which they are issued with an OH&S ‘white card’—this is a requirement across all States and Territories, as well as the Commonwealth of Australia (Commonwealth).¹⁰ The ‘white card’ courses are very basic, however—they can be completed online in about an hour—and teach nothing about working inside a roof; working in the vicinity of electric cables (other than to advise care); or installing insulation.

- 3.3.4 The regulation of electricians and builders is also a matter of State legislative competence (although in some jurisdictions commercial builders are not licensed). Legislation in each State and Territory sets out the circumstances in which a person may lawfully carry out electrical work. Usually (with some exceptions—for example, for those undertaking apprenticeships) a person must be in possession of a licence to undertake electrical work.¹¹ Similarly, to undertake home building work (with some exceptions, for example, under a certain monetary value), a person must be registered or licenced.¹² In both instances, there are a number of classes of licences, depending on jurisdiction.
- 3.3.5 When the HIP was established, South Australia was the only State to require the licensing of insulation installers. Mr Hook, then Coordinator-General for South Australia under the HIP, said that:

Any person or business seeking to contract to install insulation in South Australia must be licensed under the Building Work Contractors Act 1995. They must have a “building work contractor” license which includes insulation within its scope of activities; and either be or employ registered supervisor/s that have insulation within their scope of competencies.

Licensing was administered by the then South Australian Office of Consumer and Business Affairs (OCBA). Building work contractor licenses are individually assessed and tailored to the applicant and the scope of building work they are contracting for. Applicants must demonstrate, amongst other things:

- 3.3.5.1 *Business/financial competency- evidence of relevant business qualifications or business experience; minimum financial requirements for the type of work they are undertaking; and no prior bankruptcy or insolvency.*
- 3.3.5.2 *Fit and proper person—current National Police Certificate*
- 3.3.5.3 *Supervisor/s registration for each type of activity- supervisor competencies can be demonstrated by qualifications or experience backed by references. Supervisors can also be asked to attend a technical interview to verify their qualifications and experience before OCBA will register them.*¹³

9 Commonwealth of Australia, *CPCCOHS1001A Work safely in the construction industry* (Department of Education, Employment and Workplace Relations, Release 1, 2012) 2.

10 See *Work Health and Safety Regulations 2011* (Cth) reg 317; *Work Health and Safety Regulation 2011* (ACT) s 317; *Work Health and Safety Regulation 2011* (NSW) cl 317; *Work Health and Safety (National Uniform Legislation) Regulations* (NT) reg 317; *Work Health and Safety Regulation 2011* (Qld) s 317; *Work Health and Safety Regulations 2012* (SA) reg 317; *Work Health and Safety Regulations 2012* (Tas) reg 317; *Occupational Health and Safety Regulations 2007* (Vic) reg 5.1.21; *Occupational Health and Safety Regulations 1996* (WA) reg 3.136.

11 See requirements in State and Territory legislation—eg *Construction Occupations (Licensing) Act 2004* (ACT) s 84; *Home Building Act 1989* (NSW) s 14; *Electrical Contractors and Workers Act* (NT) s 54; *Electrical Safety Act 2002* (Qld) s 55; *Plumbers, Gas Fitters and Electricians Act 1995* (SA) s 6; *Occupational Licensing Act 2005* (Tas) s 22; *Electrical Safety Act 1998* (Vic) s 38; *Electricity (Licensing) Regulations 1991* (WA) reg 19.

12 See *Construction Occupations (Licensing) Act 2004* (ACT) s 84; *Home Building Act 1989* (NSW) s 12; *Building Act* (NT) s 22; *Queensland Building and Construction Commission Act 1991* (Qld) s 42; *Building Work Contractors Act 1995* (SA) s 6; *Building Act 2000* (Tas) s 19; *Building Act 1993* (Vic) s 176; *Building Services (Registration) Act 2011* (WA) s 7.

13 Statement of Hook at [13] and [14], STA.001.027.0001, 25 March 2014.

- 3.3.6 The South Australian licensing scheme prompted some concerns in the initial stages of the HIP. The Australian Government was concerned that delays in obtaining a licence under the South Australian scheme may negatively affect ‘the desire to get more firms into the installation business to roll out the ceiling insulation program from 1 July’.¹⁴
- 3.3.7 The response of the Australian Government was that installers would be required to obey State laws—whatever they were—and that the problems South Australia had identified were ones with which it would have to deal. Mr Keeffe wrote to Mr Hoffman saying:
- Our line is simple: obey the laws of the state you are working in. Up to the state to manage compliance with their laws. A nuisance only affecting SA.*¹⁵
- 3.3.8 South Australia, as a result, took steps to streamline and fast-track the licensing arrangements so as to create a new licensing category under the *Building Work Contractors Act 1995* (SA) that covered ceiling insulation only, and no other building activity. This category of licence had a streamlined application process, which meant applicants could be licensed in less than a month rather than the usual six to eight weeks. The streamlined scheme still included a dedicated two day insulation training course provided by the Master Builders Association of South Australia.¹⁶
- 3.3.9 The last phrase in the extract in paragraph 3.3.7 above highlights the view of those working on the HIP that any regulation of insulation installation work was regarded as a nuisance, rather than as something put in place to protect workers.
- 3.3.10 There exists national Wiring Rules (of which I say more presently) that are Australian Standards, and which are given legal effect under State and Territory legislation. They require licensed electricians to carry out electrical work to the standards prescribed by those Rules.¹⁷

3.4 Adequacy of the regulatory environment for the HIP

- 3.4.1 A number of witnesses referred to the insulation installation industry prior to the HIP as being largely unregulated.¹⁸ Indeed some witnesses said that this was why the home insulation industry was chosen for inclusion in the stimulus measures—because relatively unskilled workers could be brought into the industry quickly, and there would be low or minimum barriers to entry.¹⁹ This was the advice given to the Strategic Priorities and Budget Committee in January 2009.²⁰

14 AGS.002.008.0931, 3.

15 AGS.002.008.0928, 1.

16 Statement of Hook at [30], STA.001.027.0001, 25 March 2014.

17 See *Electrical Safety Act 1971* (ACT) s 5; *Electrical (Consumer Safety) Regulation 2006* (NSW) cl 32; *Electricity Reform (Safety and Technical) Regulations 2000* (NT) reg 3; *Electrical Safety Regulation 2013* (Qld) s 70; *Electricity (General) Regulations 2012* (SA) reg 53; *Occupational Licensing (Standards of Electrical Work) Code of Practice 2013* (Tas) cl 7; *Electricity Safety (Installations) Regulations 2009* (Vic) reg 106; *Electricity (Licensing) Regulations 1991* (WA) reg 49.

18 Statement of Levey at [176], STA.001.003.0001, 18 March 2014; Statement of Forbes at [57], STA.001.018.0001, 28 March 2014; Statement of McEwan at [29], STA.001.034.0001, 9 April 2014; Statement of Williams at [9.3] and [10.16], STA.001.077.0001, 15 April 2014; Statement of Bowles at [7.1], STA.001.075.0001, 23 April 2014; Statement of Hughes at [25], STA.001.041.0022, 1 May 2014; Statement of Arbib at [27], STA.001.070.0001, 9 May 2014; Transcript (19 March 2014) 193 (B Brunoro); Transcript (25 March 2014) 822 (S Cox); Transcript (27 March 2014) 1049 (M Mrdak); Transcript (31 March 2014) 1479 (K Keeffe); Transcript (8 May 2014) 4048 (A Hughes); Transcript (12 May 2014) 4355 (M Arbib); Transcript (19 May 2014) 3019 (M Bowles); AGS.002.031.1209, 2 (referring to statements of ICANZ representatives at an early meeting with DEWHA and industry); AGS.002.010.0995, 1; AGS.002.032.1469, 1; AGS.002.101.3430, 1; AGS.002.023.3145, 2.

19 Transcript (20 March 2014) 357 (R Carter); Transcript (28 March 2014) 1339 (R Kruk); Statement of Kruk at [37], STA.001.010.0001, 26 March 2014.

20 STA.001.095.0029, 3-4; STA.001.095.0057, 7.

- 3.4.2 Witnesses also gave evidence that there was a view that the HIP should not add a level of regulation that was not there before the program commenced.²¹
- 3.4.3 It was clear that the HIP would cause a large increase in the number of home insulation installations to be carried out—that was, after all, its whole purpose. Those installations were intended, under arrangements which comprised the HIP, to be effected by unskilled workers most of whom, it could reasonably be expected, would be young. Moreover, the incentives the scheme offered were designed to prompt a very large number of installations to take place in a very short space of time.
- 3.4.4 The question is whether it was appropriate for the Australian Government to effectively create a market for work and encourage unskilled people to work in that market, but not ensure that there was a safety net that would protect such workers from the risk of injury at the hands of contractors or employers who did not observe their common law and statutory obligations. To rely on the State and Territory regimes to police their respective workplace health and safety laws seems to me to have been misguided, as those regimes are largely reactive. That is, when an incident happens the workplace health and safety regulators or electrical safety regulators investigate, report and, if appropriate, take enforcement action. What was, in my view, required of the Australian Government with the HIP was the provision of some preventative measures to attempt to mitigate some of the obvious workplace health and safety risks endemic to the HIP.
- 3.4.5 There was another problem with the approach taken by the Australian Government. The 15-fold increase in the number of homes being insulated, the exponential increase in the number of installers carrying out that work and the attraction of young, unskilled workers to the industry are factors which ought to have been understood as likely to place a very much greater burden on State and Territory regulatory regimes. That burden existed in two forms. First, since there would now be a very much greater number of installations occurring over a short period of time, enforcing State and Territory laws would thus become very much more difficult because the resources previously allocated to such a task would now be spread much more thinly. The other burden existed in the nature and circumstances of the installers: they were likely to be unskilled; to have received no training (the HIP did not require them to be trained until well into its implementation); to be young and to be under pressure from those they worked for to be as rapid as possible in each installation—the more installations that were completed, the greater the financial benefit for installer and company alike.
- 3.4.6 What is absent from the evidence, as I explain later in this Report, is any direct discussion by the Australian Government with the States and Territories about whether the regulatory regimes governing workplace health and safety generally—or the construction industry specifically—would be apt to govern the different circumstances and burdens which the HIP was likely to produce. The Australian Government never suggested to the States or Territories that they ought to consider whether their existing regulatory regimes might be placed under additional and /or different pressures or face new regulatory problems with the nature of the HIP and its scale. However, the Australian Government had information, at least by 1 May 2009, that suggested the contrary.
- 3.4.7 Mr David Smith, the Western Australian Coordinator-General, told the Commission that:
- ... the HIP was a much larger scale program than had ever been ... implemented before and the capacity that we had for monitoring, for example, occupational health and safety and electrical safety issues for that matter... wasn't able to cope with a scheme of that scale. Or was unlikely to be able to cope ...*²²

21 Transcript (20 March 2014) 390 (R Carter); Transcript (27 March 2014) 1089 (M Mrdak); Transcript (28 March 2014) 1258 (R Kruk); Transcript (9 April 2014) 2397 (A Kent); Statement of Hoffman at [73], STA.001.008.0001, 21 March 2014; Statement of Kruk at [51], STA.001.010.0001, 26 March 2014.

22 Transcript (1 May 2014) 3304 (D Smith).

- 3.4.8 I also refer to what was discussed at a compliance workshop held on 29 April 2009, and attended by State and Territory Representatives,²³ and the email from Mr Zevon to his DEWHA colleagues on 1 May 2009.²⁴ This exchange is discussed in more detail at Chapter 11, paragraphs 11.2.14–11.2.15 of this Report.
- 3.4.9 The HIP was something which, from the outset, was recognised as being very large, indeed unprecedented, from DEWHA's point of view. DEWHA's risk register of 30 April 2009 acknowledged this, identifying the risk that 'the compliance and regulation framework is not effective in supporting program outcomes'—initially identified as an 'extreme' risk but, as it was considered that it was able to be mitigated, later classed as a 'high' risk.²⁵ Similarly, an early draft of the risk register acknowledged the 'scale of task is new to Department'.²⁶
- 3.4.10 The Australian Government might also have imposed regulatory (albeit not legislatively-based) requirements upon those taking benefits under the HIP, as it held the power of the purse. It did so to some extent through the Guidelines which were issued for Phase 1 and Phase 2. What it decided to include was a matter of its own choice because the States and Territories were not responsible for the final content of Guidelines.
- 3.4.11 Another real limitation of the State and Territory regulatory regimes was that they were largely reactive in nature, that is, there first had to be a complaint, an injury or a fatality before the interest of the relevant authority or agency would be attracted. For installations occurring under the HIP, the situation was no different. It was not until problems manifested that the State and Territory regimes could be mobilised to deal with them. I mention this point because whatever comfort the Australian Government thought it might have from the existence of State and Territory regulatory regimes, it could never have understood them as operating otherwise than I have described. If the Australian Government desired a more prospective or proactive regulatory regime (by which I mean one that might seek to avoid serious injury and fatalities), then it was up to the Australian Government to establish one or to ensure its establishment by the other jurisdictions.
- 3.4.12 I consider later whether it was reasonable for the Australian Government, which controlled this program, to place reliance upon the regulatory regimes of the States and Territories. I also note the warnings and information that the Australian Government had that alerted it to problems with the approach it had adopted in this respect. It became clear, with the deaths of the four men in particular, that serious non-compliance with workplace health and safety laws was occurring in the field. I simply note for the present that no part of the HIP allocated funds to the States and Territories to increase the resources allocated to enforcing, for example, workplace health and safety laws. And at no stage was any form of risk analysis undertaken on whether it was prudent for the Australian Government to accept the State and Territory regulatory regimes rather than seek to enhance them.
- 3.4.13 The adequacy of those regulatory regimes is outside of my Terms of Reference, but I note that the Commonwealth should have considered their suitability before embarking on the HIP.

23 AGS.002.032.0580, 1-3.

24 AGS.002.027.0817, 1.

25 AGS.002.015.1198, 1.

26 MIN.002.001.7548, 1; AGS.002.015.1500, 1.

4. THE INSULATION INDUSTRY AND INSULATION PRODUCTS

4.1 Insulation products

- 4.1.1 Insulation products for residential dwellings fall into two main categories—bulk and reflective—and sometimes the two are combined into a composite material. Their effectiveness in keeping heat in or out (known as thermal resistance) is measured by what is known as an ‘R value’. The R value may be either the product value (derived from the product taken in isolation from other factors) or the total R value, being the thermal qualities of the insulation product installed in particular circumstances, and taking account of other elements which affect thermal qualities.
- 4.1.2 Insulation material may be supplied in batts (which may or may not be coated with a layer of reflective foil), rolls, boards, loose fill or as polyurethane foam. It can also be supplied (in the case of reflective foil insulation, known as Reflective Foil Laminates—RFL), in rolls of sheeting. Samples of the various types of insulation were provided to the Commission.
- 4.1.3 It is important to bear in mind that the HIP provided for “ceiling” insulation and not, for example, “roof” insulation. In new house construction insulation materials, particularly RFLs are used as sarking under the roofline, and as in-wall insulation—that was not provided for under the HIP. Despite that, as I discuss later in this Report, to achieve a specified R-value using RFLs, a whole roof space value had to be determined. The permissibility and the appropriateness of using RFLs as ceiling insulation is discussed in Chapter 9 of this Report.
- 4.1.4 In the roof space, insulation can be laid between the roofing material and the roof trusses (described as sarking); between the joists supporting the ceiling or, in the case of sheet foil, on top of the joists and inside walls. Alternatively, polyurethane foam and cellulose insulation is sprayed into the ceiling cavity and can also occupy the space between the joists and inside the walls. The proponents of various types of insulation claim their product to be better for certain climates. Obviously the effectiveness of the insulation will very much depend on the proficiency of the installation, as well as on more general factors such as the environment and the specifics of the property being insulated.
- 4.1.5 RFLs were seen by some as the preferred choice for insulating ceilings in hot and humid climates and for homes with flat or cathedral roofs, which are common in tropical and subtropical regions.¹
- 4.1.6 Some companies marketed RFLs as suitable for use in retrofitting ceiling spaces, as part of the HIP.² However, Mr Peter Ruz of Fletcher Insulation (one of the two largest insulation manufacturers in Australia, along with CSR Bradford), who was also a director at the Insulation Council of Australia and New Zealand (ICANZ),³ noted that Fletcher Insulation never marketed RFLs for purposes other than as a sarking or as a wall wrap, to be installed at the time of construction of a new house. He said, and I accept, that RFL products are difficult to install in retrofit situations.⁴

1 AGS.002.015.1625, 1.

2 See, for example, CPS.002.001.1487, 1.

3 The membership of which *essentially comprised Fletcher Insulation and CSR Bradford*.

4 Transcript (21 March 2014) 468 (P Ruz).

4.2 Types of ceiling insulation

4.2.1 Bulk

4.2.2 Bulk insulation contains fibres that trap tiny pockets of air, which resist heat flow because the air pockets are poor conductors. Types of bulk insulation include ‘glasswool’ (fibreglass), ‘rockwool’, natural wool (often mixed with polyester), polyester and extruded polystyrene boards (‘Styrofoam’).⁵

4.2.3 These products generally come as batts, boards or blankets. Each product has its respective benefits. For example, rockwool is denser than glasswool and a better sound absorber—however, it is generally more expensive than glasswool.⁶

4.2.4 Loose fill bulk insulation, made of shredded or granulated material, is also available: examples include cellulose fibre, wool and granulated rockwool.⁷

4.2.5 Cellulose insulation is made from recycled newspaper, which is processed and then treated with fire retardant products such as boric acid or borax.⁸ The final product is soft and loose and, unlike fibreglass batts, cellulose fibre is pumped into the roof space by a machine like a concrete pump, which fan-forces the fibres through a large tube. The need for a pump for certain types of insulation has ramifications for whether the domestic power supply cannot be turned off during the installation process, a matter I discuss in Chapter 5 of this Report.

4.2.6 Although the method for installing cellulose or loose fill fibre is different from the method for installing bulk insulation products that are available in batts or blankets, in both cases, the installer needs to be careful not to cover downlights or other fixtures in the ceiling of the house that generate heat. There must be adequate clearance around these electrical ceiling items so that they do not overheat and start to smoulder. The nature of these requirements and the rationale for them is dealt with in Chapter 5 of this Report. The need for downlight covers or clearances around lights is a matter that occupied much attention from those working in the HIP.

4.2.7 Reflective foil laminate insulation

4.2.8 Reflective insulation operates by resisting radiant heat flow due to its high reflectivity and low emissivity (ability to re-radiate heat). It relies on the presence of an air layer of at least 25mm next to the shiny surface. The thermal resistance of reflective insulation varies with the direction of heat flow through it.⁹

4.2.9 Reflective insulation, which can also be known as foil insulation, is usually shiny aluminium foil laminated onto paper or plastic and is available as rolls or sheets (sarking), concertina-type batts and multi-cell batts (a structure made of two to four layers of foil with air spaces in between). Together these products are known as RFLs.¹⁰

4.2.10 The total R-value of RFLs depends on where and how the product is installed—for example, dust settling on the reflective surface can reduce performance.¹¹

5 AGS.002.130.5474, 106.

6 AGS.002.130.5474, 106.

7 AGS.002.130.5474, 106.

8 AGS.002.130.5474, 106.

9 AGS.002.130.5474, 102.

10 AGS.002.130.5474, 106.

11 AGS.002.130.5474, 102.

- 4.2.11 According to Mr Timothy Renouf, a manufacturer of foil insulation and the Secretary of the Aluminium Foil Insulation Association (AFIA) from 1996-2010, foil insulation is particularly suited to homes that are located in hot climates because it is particularly effective at resisting heat-flow which is travelling in an inward/downward direction. Accordingly, when installed in roof cavities in warmer climates (such as Queensland), foil insulation is very effective at keeping heat from entering the living environment.¹²
- 4.2.12 Mr Renouf indicated his belief that foil insulation is also effective for use in cold climates, because it resists heat-flow travelling from inside the house down through the floor. Accordingly, when installed under flooring in cold climates (such as New Zealand and parts of Australia), foil insulation is effective at keeping heat inside the living environment.¹³
- 4.2.13 In relation to the installation of foil insulation, Mr Renouf stated that roll foil insulation had been fixed to roofs, walls and floors with fixing devices (including metal staples) for nearly 60 years prior to the HIP.¹⁴ He did also say that, in relation to the installation of foil insulation in ceilings, it was not a widespread practice across Australia to:
1. lay roll foil insulation out over the top of ceiling joists, and
 2. fix that insulation to the ceiling joists by periodic fixing (indeed Mr Renouf was uncertain what technique would have been used).¹⁵

4.3 Rates of insulation

- 4.3.1 In 2008, 5.08 million Australian dwellings had insulation, with between 65,000 and 70,000 retrofitted insulation installations taking place in Australia per year on average.¹⁶
- 4.3.2 According to the Australian Bureau of Statistics (ABS), out of a total of about 8.2 million homes in Australia in 2008, 61.5% (or 5.06 million) had some form of insulation installed. 1.58 million homes were entirely without insulation, and occupants of the remainder (1.59 million) did not know whether their home was insulated.¹⁷
- 4.3.3 Of the insulated homes, 98% had roof or ceiling insulation.¹⁸ In households without insulation, the main reason given for not installing insulation (33.6% of respondents) was that the occupier was not the owner or not responsible for the home. A further 16.9% identified cost as the main barrier to installation.¹⁹
- 4.3.4 According to Energy Efficient Strategies' 2011 report for ICANZ, *The Value of Ceiling Insulation Impacts Of Retrofitting Ceiling Insulation To Residential Dwellings In Australia*, which analysed ABS data, the rate of retrofit of ceiling insulation prior to the HIP was in steady decline when measured as a percentage of the remaining stock of dwellings without ceiling insulation.²⁰
- 4.3.5 From the statistics just referred to, it can be seen that the HIP and LEAPR, if successful, would have effectively exhausted the supply of houses available for retro-fit insulation and thereby decimated, if not destroyed, the pre-existing insulation businesses.

12 Statement of Renouf at [21], STA.001.043.0001, 11 April 2014.

13 Statement of Renouf at [21], STA.001.043.0001, 11 April 2014.

14 Statement of Renouf at [23], STA.001.043.0001, 11 April 2014.

15 Statement of Renouf at [24], STA.001.043.0001, 11 April 2014.

16 KIM.002.001.6074, 21.

17 KIM.002.001.6074, 21.

18 KIM.002.001.6074, 24.

19 KIM.002.001.6074, 29.

20 Energy Efficient Strategies, 'The Value of Ceiling Insulation Impacts Of Retrofitting Ceiling Insulation To Residential Dwellings In Australia' (Report for ICANZ, September 2011) 8.

4.4 Benefits of insulation

- 4.4.1 The Australian Government estimated that installing insulation in an uninsulated home could deliver reductions of more than 2.5 tonnes of greenhouse gases per year for the life of the dwelling.²¹
- 4.4.2 At the time of the announcement of the HIP, the Government estimated that insulation would cut the normal household's energy bills by around \$200 a year, and could reduce heating and cooling bills by up to 35%.²²

4.5 The Home Insulation Industry

- 4.5.1 At the beginning of 2009, the Department of the Environment, Water, Heritage and the Arts (DEWHA) estimated that there were about 70,000 retrofitted insulation installations taking place on average per year.²³ This accords with the ABS data referred to above. The home insulation industry consisted of around 200-250 businesses, ranging from very large businesses such as Fletcher Insulation and CSR Bradford to very small businesses, the proprietors of some of which gave evidence before me.²⁴
- 4.5.2 It is difficult to ascertain with any precision the number of people employed in installing insulation prior to the HIP, partly because data was not collected and also because 84% of businesses that installed ceiling insulation prior to the HIP also offered other services such as construction, maintenance and handyman services.²⁵
- 4.5.3 The largest number of insulated homes were insulated with bulk insulation, and a minority were insulated with reflective foil insulation. At this time, there were some 33 manufacturing businesses that were members of identified insulation industry organisations. The number of people employed by manufacturers varied significantly.
- 4.5.4 At the beginning of 2009, the following industry bodies existed:
 - 4.5.4.1 Insulation Council of Australia and New Zealand (ICANZ);
 - 4.5.4.2 Australian Foil Insulation Manufacturers' Association (AFIMA);
 - 4.5.4.3 Insulation Manufacturers' Association of Australia (IMAA);
 - 4.5.4.4 Australian Cellulose Insulation Manufacturers' Association (ACIMA);
 - 4.5.4.5 Polyester Insulation Manufacturers' Association Australia (PIMAA);
 - 4.5.4.6 Australian Foil Insulation Association (AFIA).
- 4.5.5 Australian insulation industry organisations were in large part organised around product types. There was a division between large manufacturers and smaller ones:
 - 4.5.5.1 ICANZ represented the interests of its member manufacturers of glass wool and rock wool insulation. Before the HIP, ICANZ had two members, CSR Bradford and Fletcher Insulation Australia and New Zealand, which were together responsible for around 60% of insulation manufacture in Australia at that time.²⁶ Although ICANZ members also manufactured reflective insulation, ICANZ did not represent the members' interests in relation to those products;²⁷

21 AGS.002.101.2881, 1.

22 MIN.002.001.7288, 1. See also, FLE.002.001.0132, 20.

23 Transcript (1 April 2014) 1523 (K Keefe).

24 Transcript (19 May 2014) 5022 (M Bowles).

25 AGS.002.030.1693, 1.

26 AGS.002.010.0776, 3.

27 Statement of D'Arcy at [1], STA.001.001.0001, 7 March 2014.

- 4.5.5.2 AFIMA represented the interests its members—CSR Bradford and Fletcher Insulation—in respect of their manufacture of foil insulation. AFIMA members produced more than 70% of all foil insulation made in Australia;²⁸
- 4.5.5.3 IMAA was a peak body, and had two members—ICANZ and AFIMA. At that time, ICANZ and AFIMA both shared the same membership organisations—CSR Bradford and Fletcher Insulation. ACIMA and PIMAA had previously been affiliated with IMAA, but had left that organisation prior to the HIP;²⁹
- 4.5.5.4 ACIMA represented approximately 10% of the insulation industry,³⁰ through its member organisations, which accounted for 80% of Australia's cellulose insulation manufacturers.³¹ All of the members of the association manufacture and install insulation. At its peak, ACIMA had approximately 14 members;³²
- 4.5.5.5 PIMAA was the principal body representing Australian polyester insulation manufacturers and operates under the auspices of the Council of Textile and Fashion Industries of Australia (TFIA). PIMAA had five member organisations—United Bonded Fabrics; Autex; Martini Industries; Polyester Solutions and Higgins Insulation.³³ Estimates of the portion of the insulation market met by PIMAA members vary from 6%³⁴ to 10%;³⁵
- 4.5.5.6 AFIA represented its member organisations, who were independent insulation manufacturers and merchants within Australia and New Zealand for reflective aluminium foil insulation products.³⁶ In 2006, AFIA had 12 members.³⁷ Mr Herbert estimated that AFIA represented about 5-6% of the total insulation market.³⁸
- 4.5.6 These were the main groups, but not the only insulation industry organisations. For example, AFIA was also an affiliated member of the Independent Insulation Manufacturers and Merchants Association of Australia (IIMMAA), which it describes as representing the collective interest of cellulose, wool and polyester insulation manufacturers and merchants.³⁹ CSR Bradford was also affiliated with other groups, such as the Thermal Insulation Contractors Association (TICA).⁴⁰
- 4.5.7 The industry was very competitive and fragmented, containing players who spoke up for their own products and against all others. Mr Ruz made the following observation on that topic which seems to me to be accurate:

*The insulation industry is renowned for the tension (even animosity) felt between the different product groups—in particular the traditional Glasswool manufacturers (CSR Bradford and Fletcher Insulation—represented by ICANZ), the shredded paper cellulose fibre manufacturers (mainly small, localised players), the polyester manufacturers (Autex, Tontine, Martini and a number of others) and the reflective foil laminates (RFL) and thermo reflective marketers represented by AFIA (Air Cell, Melbourne Home Insulation, Silversark).*⁴¹

28 AGS.002.010.0776, 3.

29 Statement of Ray Thompson at [5], STA.001.068.0001, 12 May 2014.

30 Statement of Herbert at [4], STA.001.004.0001, 13 February 2014.

31 MBA.003.001.0318, 1.

32 Statement Arblaster at [5], STA.001.028.0001, 14 March 2014.

33 Statement of Liaskos at [7], STA.001.001.0356, 14 March 2014.

34 Statement of Herbert at [4], STA.001.004.0001, 13 February 2014.

35 Statement of Liaskos at [10], STA.001.001.0356, 14 March 2014.

36 REN.002.003.0008, 10.

37 Statement of Herbert at [4], STA.001.004.0001, 13 February 2014.

38 Statement of Herbert at [4], STA.001.004.0001, 13 February 2014.

39 REN.002.003.0008, 14.

40 Statement of Ray Thompson at [5], STA.001.068.0001, 12 May 2014.

41 Statement of Ruz at [15], STA.001.001.0193, 3 March 2014.

- 4.5.8 Industry players considered that although insulation generally made financial sense, a number of market imperfections, such as split incentives between landlords who own property and tenants who pay energy bills, acted as barriers to installing insulation.⁴²
- 4.5.9 In the case of split incentives, there was little financial incentive for landlords to invest in insulation when they did not accrue the benefits of this investment. This, and other market failures described by industry, provided government with a rationale for market intervention to improve social and environmental outcomes.
- 4.5.10 The period immediately following the 2007 federal election was ideal for seeking political support for the insulation industry's policy agenda, as a Labor Government would be able to refer to the energy efficiency benefits of installing insulation to support its commitment to the Kyoto Protocol.

42 ICA.002.002.0001, 3.

5. TECHNICAL CONSIDERATIONS

5.1 Introduction

- 5.1.1 The installation of insulation under the Home Insulation Program (HIP) was to take place in roof cavities, being the space between the dwelling's ceiling and its roof. The roof cavity is not, in most houses, a place that is regularly used. It is a place that is only infrequently entered by homeowners and workers. It was accepted by numerous witnesses as a dangerous place, including because of its dark and confined nature, with attendant risks from any improperly installed or damaged electrical cables.¹ There is also the risk of falling through the ceiling.
- 5.1.2 The roof void is a very different environment from the habitable areas of a home. Entry to and use of it is attended by different risks.
- 5.1.3 Generally, roof voids are not illuminated. They take such light as they have from lamps (often downlights) in the ceiling that shine some residual light upwards.² Some have no artificial lighting at all. Some insulation installers spoke of their practice of particularly lifting the roof to afford some natural light and ventilation to their working area.³
- 5.1.4 Electrical wiring is often present in the ceiling space. Mains power might enter the home via aerial street wires through the upper part of the house to the main switchboard. Cables from the switchboard to the various sub-circuits in the house are run across ceiling joists, trusses and other parts of the ceiling void for lighting, for power points and for major appliances such as stoves. Of course the cables may be as old as the house itself.
- 5.1.5 Moreover, cables, and especially lights and appliances such as exhaust fans, produce heat. If thermal insulation is installed so as to prevent that heat escaping, there is a risk of fire.⁴
- 5.1.6 There are fewer protections required of electrical installations in a roof void. There is no requirement in the relevant rules and standards, for example, to have all cables contained in conduit or secreted in a cavity wall. This means that there is less to stop, for example, a staple penetrating an electrical cable. It means also that cables might more easily be displaced.
- 5.1.7 Roof voids are often less well ventilated and insulated than the rest of the home.⁵ If the roof is corrugated iron or made of a product such as Colourbond, then the heat in the roof void might be quite intense. There are often no windows in the roof void to open, or indeed, other means of controlling the temperature. As the death of Mr Marcus Wilson shows, the heat which can be experienced in ceiling voids is so intense as might cause heat exhaustion and dehydration, and ultimately, death.

1 Transcript (18 March 2014) 137 (B Brunoro); Transcript (31 March 2014) 1382 and 1393 (K Keffe); Transcript (24 March 2014) 559 (J Fricker); Transcript (28 March 2014) 1252 (R Kruk); Transcript (15 April 2014) 3055 (A Arblaster); Transcript (8 April 2014) 2243 (G Rashleigh).

2 Transcript (8 April 2014) 2247 (G Rashleigh). Mr Rashleigh spoke about it being 'as light as this room' in a ceiling of a house with 50 downlights.

3 Statement of Hannam at [65], STA.001.019.0011, 27 March 2014; Transcript (7 April 2014) 2075 (P Stewart).

4 Statement of Hunter at [8] and [9], STA.001.061.0001, 2 May 2014.

5 Transcript (8 April 2014) 2235 (G Rashleigh); Transcript (15 April 2014) 3113 (M Hannam).

- 5.1.8 A ceiling is not designed to take the weight of a person in the same way as a floor. As a result, large areas of ceiling are susceptible to breaking under a person's weight.⁶ It is relatively easy to fall through a ceiling.
- 5.1.9 All these risks are ones that, with relatively little reflection, are inherent in roof spaces.⁷ It is not necessary to have any particular expertise to identify them. It is reasonable to expect, therefore, that persons called upon to consider what risks there might be in installing insulation in roof voids would identify risks of these and similar kinds. Such persons would include not only installers, but also persons designing a program such as the HIP.
- 5.1.10 The risks associated with electrical wiring are ones that may be managed and about which much has been written in formal documents. Standards and rules to deal with these matters exist in the form of the Wiring Rules (formally known as *Australian/New Zealand Standard 3000:2007 'Electrical installations'*), the Building Code of Australia (BCA) and other Australian Standards, principally *Australian Standard 3999-1992 'Thermal Insulation of Dwelling—Bulk Insulation—Installation Requirements'*. These apply in different ways and by varying means. I deal below with the main parts of them which have a bearing upon the matters relevant to the Commission, along with an explanation of the circumstances in which they operate or take effect.
- 5.1.11 Even where these Rules and Standards do apply, and have so historically, many homes in which insulation was installed under the HIP were built before the relatively rigorous standards which presently apply. Minimum energy efficiency standards for residential dwellings were included in the BCA in 2003.⁸ The HIP Guidelines specifically stated that they only applied to homes not covered by mandatory thermal performance requirements under the BCA.⁹ Standards for electrical wiring, as with building standards more generally, have become more sophisticated over time and require more of those undertaking such work. That is because, as knowledge of better practices improves, and as risks and means by which they might be avoided or minimised are better understood, inevitably there is an attempt to provide greater personal safety, reduce property damage and avoid workplace injury.
- 5.1.12 Even with these more stringent standards and rules, there is of course no assurance of absolute or rigorous adherence to them. Homeowners may undertake their own electrical work. Even trained professionals might stray, on occasion, from those requirements. There is, consequently, a range of possible circumstances in which those entering roof voids might find themselves.
- 5.1.13 I say something below about the more important of these risks, the technical considerations that bear upon them and the Rules and Standards by which they might be avoided, minimised or managed. I do so as an introduction to the considerations which informed, and ought to have informed, the assessment of risk under the HIP, and the adequacy of the HIP's design and formulation.

6 Transcript (24 March 2014) 572 (J Fricker); Transcript (1 May 2014) 3331 (T Delbridge).

7 Many witnesses described such risks as 'inherent'. Transcript (1 April 2014) 1536, 1540 (K Keefe); Transcript (2 April 2014) 1702 (K Keefe); Transcript (28 March 2014) 1272 (R Kruk); Statement of Forbes at [36], STA. 001.018.0001, 28 March 2014; Transcript (8 April 2014) 2235, 2236 (G Rashleigh). See also Statement of Herbert at [39], STA.001.016.0001, 26 March 2014, who did not use that terminology, but whose evidence is to the same effect and Statement of Hannam at [18], STA.001.019.0001, 27 March 2014, who stated that he made clear at a meeting in March and/or April 2009 that '*[t]here are many dangers in roof spaces ...*'.

8 Nationwide House Energy Rating Scheme (NatHERS), *Administrative and Governance Arrangements* (2014) 4.

9 AGS.002.026.0191, 8.

5.2 Electrical Safety

- 5.2.1 One of the most important of these risks, in the context of the HIP at least, concerned electrical safety.
- 5.2.2 Electrical risks take several forms in the environment of roof voids. There may be a pre-existing electrical problem which causes the roof (or part of it) to be live. In the case of Mr Barnes that is what is likely to have occurred and to have caused his death.¹⁰ The problems might come from past imperfect compliance with the Wiring Rules, home owners having undertaken their own electrical work or indeed a licenced electrical contractor not having performed work to the requisite standard. Or the risk might be as simple as the wiring being very old and in a deteriorated state.¹¹
- 5.2.3 Risks of these kinds might be avoided by an inspection of the roof void being undertaken by a licensed electrician before a person enters it to install insulation. That, however, involves time and cost. Another way in which such a risk might be managed is to turn off the source of electrical supply to the home before the installation takes place. Doing so might avoid a person receiving a shock from live sources in the roof void. But it would mean that the installer has no power available to them for lighting and for the use of any power tools. In some cases installers needed to have power available, including so that exhaust fans could be used.¹² Turning off the power might reduce or eliminate an immediate risk of electrocution, but it poses problems for ventilation using exhaust fans and increases the risk of heat exhaustion.¹³ Another risk exists because opening (i.e. disabling) an electrical circuit from the home's switchboard may not make the circuits in the roof safe. The mains power may enter through the roof void, so even the main switch on the circuit board will disable only the circuit from that point on.¹⁴
- 5.2.4 Even if power is turned off while the installation of insulation is occurring, it does nothing to protect those who might later enter the roof cavity. They would, unless they also turned off the power, be exposed to whatever electrical risks existed, whether a long pre-existing problem or one to which the installation itself had given rise.¹⁵
- 5.2.5 Another kind of risk is that which is inherent in the lower safety protections which apply by reason of the roof void being a place in which cables are less likely to be disturbed. Electrical cables which are not encased in conduit or secured behind cavities are much more susceptible to being penetrated by, for example, a staple than would be the case if they were better shielded.¹⁶ The installation of foil insulation in particular seems to have involved the use of staples: metal staples in the first place and later, when the problem was expressly identified, plastic staples. But even the use of plastic staples does not entirely remove the risk. If a plastic staple is placed through foil and a live electrical cable, there remains a risk that the foil will make contact with the live cable and thus pose a risk of electrocution.¹⁷

10 QIC.001.001.0001, 43.

11 Statement of G Rashleigh at [39], STA.001.011.0001, 26 March 2014. He suggested some 30% of roofs had wiring dating back to before 1945. See also Transcript (8 April 2014) 2267-2268 (G Rashleigh).

12 Transcript (8 April 2014) 2244 (G Rashleigh); Transcript (15 April 2014) 3113 (M Hannam).

13 Transcript (15 April 2014) 3113 (M Hannam).

14 Transcript (19 May 2014) 5097 (M Richards).

15 Transcript (19 May 2014) 5120 (A Leverton).

16 See Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 1.5.4. Measures include protection by barriers or enclosures requiring the use of a key or tool to remove, obstacles and placing out of reach.

17 Transcript (15 April 2014) 3033 (G Doreian).

- 5.2.6 It has long been a requirement to install wiring systems so as to protect them against mechanical damage.¹⁸ The 1931 Wiring Rules, clause 1254(f), required for example:
- Where run in roofs across the ceiling joists, the conductors shall be attached to the sides of wooden battens not smaller than 1 [inch] square, and where laid parallel with the joists, they shall be attached to the sides of the joists. In neither case shall the clips or saddles be more than 18 [inches] apart.*¹⁹
- 5.2.7 In the Wiring Rules, it is provided that, in the case of damage by impact, protection must be by one or any combination of:
- 5.2.7.1 mechanical characteristics of the wiring system;
 - 5.2.7.2 the location selected for it;
 - 5.2.7.3 provision of additional local or general mechanical protection.²⁰
- 5.2.8 The Wiring Rules deem as likely to be disturbed (and therefore as warranting a higher degree of protection) wiring which is installed in ceiling spaces having an access space exceeding 0.6m high.²¹ If cables in such locations may reasonably be expected to be subject to mechanical damage, they must be 'adequately protected'.²² They should also be supported at 'suitable intervals' to prevent undue sagging.²³
- 5.2.9 Provision is made in the Wiring Rules for various specific scenarios as to the location of cables. If, for example, cables pass through a structural member (such as a ceiling joist), they must be protected if concealed within 50mm from the surface of a wall or ceiling and if located more than 150mm from internal wall to wall or wall-to-ceiling corners.²⁴ This protection must be achieved by one of the following methods:
- 5.2.9.1 adequate mechanical protection to prevent damage; or
 - 5.2.9.2 an earthed metallic armouring, screen, covering or enclosure; or
 - 5.2.9.3 use of an RCD (residual current device or 'safety switch') with a maximum rated residual current of 30mA in the circuit.²⁵
- 5.2.10 This last option (that an RCD be installed), has been required for some, but not all, circuits in domestic dwellings since the 1991 edition of the Wiring Rules. However, a relatively recent addition to the Wiring Rules in 2007 extended the RCD requirement to all circuits.²⁶
- 5.2.11 Wiring systems must not be installed through any space formed between roofing material and its immediate supporting member.²⁷

18 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.1.2.

19 *Australian Standard Rules Covering the Essential Requirements and Minimal Standards Governing Electrical Installations for Buildings, Structures and Premises* CC. 1-1931, clause 1254(f).

20 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.3.2.6.

21 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.3.3.

22 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.4.1.

23 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.3.3.

24 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.4.2.

25 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.4.4.

26 It was included in the Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)* by Amendment No 1 to that version of the Rules (effective from July 2009).

27 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 3.9.4.3.1.

- 5.2.12 There are obvious differences between wiring in a ceiling space and wiring in the habitable areas of a home. In the latter case, wiring is commonly contained within a cavity wall, or placed out of reach by running cables under the floor or in the ceiling. Where that is not the case, cables are often enclosed in conduit, which is secured to the ceiling or wall in such a way as to make its removal difficult, and to require the use of a tool to do so.
- 5.2.13 Mr Malcolm Richards, the Chief Executive Officer of Master Electricians Australia gave evidence about the effect of the Wiring Rules and the practices in giving effect to them for cabling in ceiling spaces. That evidence was to the effect that it was good practice (and consistent with the Wiring Rules) to use timber either side of wires where they cross joists or trusses so as to protect them from mechanical disturbance.²⁸ He said this has been the case for very many years.²⁹
- 5.2.14 Regrettably, however, good practice is not necessarily universal practice. The evidence of Mr Graeme Doreian and Mr Tim Renouf suggested that the requirements of the Wiring Rules and the demands of good practice are often flouted.³⁰
- 5.2.15 Regrettably, however, good practice is not necessarily universal practice. The evidence of Mr Graeme Doreian and Mr Tim Renouf suggested that the requirements of the Wiring Rules and the demands of good practice are often flouted.³¹
- 5.2.16 Mr Doreian, a building energy consultant, took an active interest in the proceedings of their Commission. He provided several submissions to the effect that the electrocutions occurred because of a failure by electricians in the past to comply with the Wiring Rules (2007) or the previous Rules by laying unprotected cabling across the ceiling joists.³²
- 5.2.17 If a cable, when it has to cross a joist, is protected, or if the cable were made to pass through the joist, it is true that the chances of a staple piercing the cable under the foil is reduced but not eliminated. It follows that, even if good practice were adopted and the Wiring Rules were followed to the letter, doing so would offer no absolute protection for the cable from being pierced by a staple. It would, however, serve to make the cables more prominent and therefore more readily observable by, for example, an installer of Reflective Foil Laminate (RFL) insulation. Stapling through cables, in these circumstances, is therefore less likely to occur.
- 5.2.18 Mr Doreian was not alone in his condemnation of the work of electrical contractors, particularly in the laying of cables across joists above the ceiling. One retired engineer, who did not wish to be identified, told the Commission that he perceived a drop in standards from when electrical contractors could certify their own work, rather than have their work inspected by a qualified inspector. Other electrical contractors also contacted the Commission to offer their own observations. Their input is greatly appreciated.
- 5.2.19 I accept that in a (perhaps large) number of houses to be insulated under the HIP, the existing wiring did not comply with AS 3000:2007 or its predecessor regulations. For that, the electrical contracting industry must take responsibility. If the electrical wiring had been in accordance with the relevant standards it is possible that three of the young men (Fuller, Barnes and Sweeney) would not have died.

28 Transcript (19 May 2014) 5069, 5102-5103 (M Richards).

29 Transcript (19 May 2014) 5069, 5103 (M Richards).

30 Transcript (19 May 2014) 5069, 5102-5103 (M Richards).

31 Transcript (15 April 2014) 3025 (G Doreian); Transcript (15 April 2014) 3025 (T Renouf).

32 See, for example, DOR.002.001.0001, 1; DOR.002.001.0002, 1- 19; DOR.002.001.0025, 1-2; DOR.002.001.0027, 1; DOR.002.001.0028, 1- 19; DOR.002.001.0047, 1-3; DOR.002.001.0060, 1; DOR.002.001.0050, 1- 7; DOR.002.001.0061, 1-3.

- 5.2.20 However, the focus of my inquiry is on the actions taken by the Australian Government. I recommend, at the conclusion of this Report, that a thorough review be undertaken of the Australian Standards, both pertaining to the installation of insulation, and electrical wiring issues in ceiling voids. At the time the HIP was designed, it appears that no engagement of the electrical industry was undertaken. The officers of the Department of the Environment, Water, Heritage and the Arts (DEWHA) (and other agencies) did not appear to appreciate the risk of non-compliant wiring in ceiling voids. In fact there is a long history of laying wiring across the joists.³³ The presence of non-compliant wiring brought with it at least two consequences. First, those who were designing the HIP ought to have ascertained whether the presence of such wiring was likely. If it was, then steps should have been mandated to make sure, as far as was reasonably possible, that it was safe for an insulation contractor to enter the ceiling space. Secondly, if there was likely to be a prevalence of non-compliant wiring, it makes the decision to permit RFLs to be used in the Program much more difficult to understand. The conductivity of foil is the added risk of that product. Whilst it may safely be used by competent and experienced installers, as a number of users of that product have told the Commission, particularly where no added risk is presented by the state of the electrical wiring, it was a very different scenario for inexperienced installers, such as Mr Fuller and Mr Sweeney. To encourage inexperienced young people to work in an environment where there was a risk of defective electrical wiring, and allow them to install conductive material was, in my opinion, grossly negligent. It is no answer for the Australian Government to say that it was the responsibility of those young people's employers to protect them. The HIP, as I discuss later in this Report, encouraged participation from a wide spectrum of people and took no steps to ascertain their experience in installing particular types of foil, or indeed their experience in installing insulation at all.
- 5.2.21 Both Mr Doreian and other electrical contractors spoken to by the Commission recommended an inspection by an electrician prior to the installation of insulation. Obviously, such a requirement would have added another level of cost and potentially would have led to delays in installations being carried out. That would have been contrary to the stimulus objectives of the HIP.
- 5.2.22 The effect of the Wiring Rules, therefore, understood in light of Mr Richards' evidence (which I accept) can be summarised as follows:
- 5.2.22.1 wiring in parts of ceiling spaces less than 0.6 metres in height are subject to no special rules about how they must be protected from damage or interference;
 - 5.2.22.2 for parts of ceiling spaces higher than 0.6 metres, wiring must be protected from mechanical damage and impact and from undue sagging. But there are many ways by which this end might be achieved. Good practice for some considerable time seems to have been to place timber on either side of wires crossing trusses or joists so as to prevent, mainly, a foot from displacing the cable;
 - 5.2.22.3 overall, the requirements for cabling in ceilings are, quite understandably, not as stringent as in the commonly inhabited areas of the home;
 - 5.2.22.4 no rule or practice required that cables in ceiling spaces be protected so as to prevent them being penetrated by a staple;
 - 5.2.22.5 if, however, good practice and the Wiring Rules were obeyed, the chance of a cable being pierced by a staple would be much reduced;
 - 5.2.22.6 this has been the case for some considerable time.³⁴

33 Transcript (19 May 2014) 5069 (M Richards).

34 Transcript (19 May 2014) 5068, 5069, 5071 (M Richards).

- 5.2.23 I take up this topic again in a later Chapter of this Report in which I deal with the question of whether reflective foil sheeting ought to have been permitted under the HIP.
- 5.2.24 There do exist other means by which the risks can be minimised and even avoided.
- 5.2.25 The wiring circuits of homes are usually fitted with some device designed to stop the flow of excess electricity in the circuit in the case of some extra or additional load being placed upon it or in the event of a short-circuit fault caused by insulation failure. Many people are familiar with fuses (the early forms of these). Later, circuit breakers were widely used. However fuses and circuit breakers do not readily provide protection against electrocution which can result from quite low electrical current (earth leakage current) flow through the body. Thus, earth leakage type circuit breakers were devised and even more recently, Residual Current Devices (RCD). RCDs are more sensitive protective devices that do provide good protection against electric shock and electrocution.
- 5.2.26 The use of such devices has changed over time as technology has improved, and as there have been unfortunate experiences of death and injury from which the body of general and specialist knowledge has improved.

5.3 Residual Current Devices

- 5.3.1 The Wiring Rules (since July 2009) require RCDs to be installed for all electrical circuits, including among other things, circuits, socket-outlets, lighting points and hand-held equipment.³⁵ Before 2007, RCDs were required to be installed, but for a narrower range of circuits and installations. Many, including fixed or stationary cooking appliances such as ranges, ovens or hot plates and fridges and freezers did not require RCD protection.³⁶
- 5.3.2 They are not to be the sole means of basic protection, but augment others such as use of increased insulation cover or protection by barriers, obstacles and placing electrical installations out of reach.³⁷
- 5.3.3 A particular feature of RCDs is that they are capable of interrupting the full load current in a circuit when the earth leakage (residual) current reaches a predetermined value and trips the RCD. The Wiring Rules make provision for this, and the applicable load current rating value that can be interrupted by the RCD is, presently, not less than the greater of:
 - 5.3.3.1 the maximum demand of the portion of the electrical installation being protected by the device;
 - 5.3.3.2 the highest current rating of any overload protective device on the portion of the electrical installation being protected.³⁸
- 5.3.4 RCDs monitor the difference between the flow of electricity going out to a load or appliance (that is, the active wire current) and that coming back from the load (that is, the neutral wire return current) in the circuit. If that difference (the residual current or earth leakage current) reaches the predetermined trip setting value of the RCD, it means that, somewhere in the circuit, current is leaking to earth and there may be a risk of shock. This may be because an electrical appliance is faulty due to a circuit being installed incorrectly, or as a result of a damaged wire, e.g. one penetrated by a staple.

35 Australia/New Zealand Standard 3000:2007 *Electrical installations* (known as the *Australia/New Zealand Wiring Rules*), clauses 1.5.6.3 and 2.6.3.2.1.

36 See, for example, Australia/New Zealand Standard 3000:2000 *Electrical installations* (known as the *Australia/New Zealand Wiring Rules*), clause 2.5.3 (required only for final subcircuits in domestic electrical installations for socket-outlets and lighting); Australia Standard 3000:1991 *Electrical installations—Buildings, Structures and Premises* (known as the *SAA Wiring Rules*), clause 0.5.74.

37 Australia/New Zealand Standard 3000:2007 *Electrical installations* (known as the *Australia/New Zealand Wiring Rules*), clauses 1.5.6 and 2.6.1.

38 Australia/New Zealand Standard 3000:2007 *Electrical installations* (known as the *Australia/New Zealand Wiring Rules*), clause 2.6.2.

- 5.3.5 RCDs are one means by which the risk of electrocution is minimised, and to a very low level. They do not control the voltage, but instead the time for which the current is permitted to flow. Some RCDs (Class I) will trip and interrupt the circuit when the residual current exceeds 10 milliamps and it will interrupt the circuit current within 40 milliseconds. Others (Class II RCDs) will trip with a residual current of greater than 30 milliamps and will interrupt the circuit within 40 milliseconds. Class II, 30 mA RCDs, are the standard type for use in domestic circuits.
- 5.3.6 The time for which the human body is exposed to a current is important because time is one of the two critical factors at issue: the longer the time of current flow in the body the more likely it is that respiratory paralysis will occur, and that there will be an effect on the heart, burns suffered and cardiac arrest occur.
- 5.3.7 The other critical factor is current: the higher the current, the smaller the time for which the body can be exposed to it before injury and death might result. Also relevant, but unnecessary to cover here, is the path which the current might take through the body. So too are factors such as what part of the body makes contact with the circuit, or whether contact is made with wet or dry skin.
- 5.3.8 The particular risk which the evidence before me has shown to exist is the use of metal staples and foil. Obviously, the penetration of a cable with a metal staple, combined with the use of foil had the real potential to cause electric shock or electrocution because both conduct electricity. Plastic staples do not conduct electricity, thus minimising the risk of electrocution. Some risk remains however with the use of plastic staples because the staple may have the effect of completing a circuit by bringing the insulation in contact with a defective live cable.³⁹
- 5.3.9 In summary therefore, the range of electrical risks might be classified as threefold for present purposes:
- 5.3.9.1 exposure, in roof voids, to poor or aged wiring or indeed (as occurred in the case of Mr Rueben Barnes), electrical faults;
 - 5.3.9.2 exposure, in those voids, to wiring which had lower resistance to disturbance or interference than in habitable areas of the home;
 - 5.3.9.3 the use of foil and metal staples, both being capable of conducting electricity and the second being capable of penetrating the coating (insulation and sheathing) on electrical cables.

5.4 Fire

- 5.4.1 The risk of fire is one which, in an immediate sense, is a risk of damage to property but is necessarily one which also involves a real threat of personal injury and perhaps death.
- 5.4.2 My Terms of Reference direct particular attention to damage to property claimed to have arisen from the HIP, which includes fires.
- 5.4.3 No evidence before the Commission suggested that there had been any loss of life as a result of a fire caused by insulation installed under the HIP. There were, however, many fires and some resulted in property damage and in some very few cases, the entire loss of the home. In many of the cases however, the loss was far less extensive.
- 5.4.4 Fire risk emerges in a number of ways. One important way is by the overheating of lamps, luminaires and electrical appliances (such as exhaust fans) in ceilings. The overheating results because air, which would otherwise be circulating around such installations, is unable to escape because insulation has been installed too close.

³⁹ QIC.002.001.0380, 32-33.

5.4.5 Both the Wiring Rules and AS 3999-1992 deal specifically with such matters. Both impose minimum clearances between lamps, luminaires (including downlights), appliances and the installation of insulation to ensure adequate airflow so as to avoid the risk of fire.

5.4.6 AS 3999-1992 provides (in clause 2.6.1):

*The flow of electric current in cables generates heat which is dissipated to the surroundings. The introduction of thermal insulation around cables will reduce the heat dissipation and in some instances may result in electrical cables overheating and the electrical insulation exceeding its rated temperature, and degrading. It is also possible that electrical equipment may overheat if enclosed by thermal insulation.*⁴⁰

5.4.7 Section 4.12 of the 1991 Wiring Rules provided:

*Thermal insulating materials shall be separated by not less than 25mm from any lamps or luminaires and shall not prevent free air flow around or through the luminaire. Where the thermal insulation is of the loose fill type, barriers shall be provided to maintain the 25mm separation.*⁴¹

5.4.8 The 2007 Wiring Rules state on this topic:

4.5.2 Lamps and luminaires

...

Lamps, luminaires and their associated ancillary gear shall be so installed as not to cause undue temperature rise, ignition or deterioration of the materials-

- (a) on which they are mounted; or*
- (b) that they illuminate.*

...

Recessed luminaires and their auxiliary equipment shall be installed in such a manner that necessary cooling air movement through or around the luminaire is not impaired by thermal insulation or other material.

Where thermal insulation is of a type that is not fixed in position, eg loose fill, a barrier or guard constructed of fire-resistant material shall be provided and secured in position to maintain the necessary clearance (see Figure 4.7).

...

*Where thermal insulation may reasonably be expected to be installed in the space containing a recessed luminaire, the luminaire shall be installed in such a manner as to provide for the subsequent installation of thermal insulation.*⁴²

40 Australian Standard 3999-1992 *Thermal Insulation of Dwelling—Bulk Insulation—Insulation Requirements*, clause 2.6.1.

41 Australian Standard 3000-1991 *Electrical installations—Buildings, structures and premises*, clause 4.12.

42 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 4.5.2.

- 5.4.9 Figure 4.7 states that there must be a clearance of 50mm between thermal insulation and an incandescent lamp and 200mm between thermal insulation and a halogen lamp.⁴³
- 5.4.10 The problem with which both sets of rules seek to deal is insulation being installed without respecting safe clearances between things which generate heat (appliances, lights etc) and a product (ie insulation) that would serve to prevent that heat escaping as it ought. The Wiring Rules, because they apply to work performed by electricians, focus on electrical installations whereas AS 3999-1992 approaches the issue from the perspective of the insulation installer.
- 5.4.11 Beyond this risk, there is always the inherent electrical risk of arcing caused by defective appliances or lights, or by loose connections. However, risks of this kind were not identified to the Commission as being in any material respect a matter of interest.
- 5.4.12 Another real risk of fire is in the installation of lamps and and downlights themselves. Although contrary to the Wiring Rules, in some cases, lights are, on occasion, installed in ceilings in too close a proximity to combustible material such as wooden beams.⁴⁴ So, for example, an untrained person might install a downlight without regard to the location of the beam above and in doing so bring that heat producing appliance in very close contact with timber. This, however, is not a problem which is connected itself with the installation of insulation, but another one of the pre-existing problems which might have manifested itself in the course of the HIP's implementation.

5.5 Application and nature of Australian Standards and Wiring Rules

- 5.5.1 I have made reference above to both the Wiring Rules, and to other Australian Standards (which the Wiring Rules also are). It is necessary to say a little more about each.

5.5.2 Wiring Rules

- 5.5.3 The Wiring Rules provide minimum requirements for the design and construction of electrical installations and their safe operation.⁴⁵ The Wiring Rules cover all building electrical installations and are applied through legislative adoption in States and Territories of Australia. All licenced electrical contractors and electricians are bound to comply with the Wiring Rules.⁴⁶ Only such licensed persons are able to perform work legally on electrical installations. The Wiring Rules are also an Australian and New Zealand Standard (Australian/New Zealand Standard 3000:2007) and have been used in regularly updated editions since 1931. The most recent Wiring Rules were issued in 2007 and these continue (with further updates and amendments) to apply to the present day. One of the major changes in the current (2007) issue of the Rules was an expansion of the use of RCDs to socket outlet and lighting circuits rated up to 20 Amperes (with some exceptions).⁴⁷

43 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 4.5.2.

44 See, for example, anecdotal evidence of Mr Hannam: Transcript (15 March 2014) 3104-3105 (M Hannam).

45 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 1.1.

46 See *Electrical Safety Act 1971* (ACT) s 5; *Electrical (Consumer Safety) Regulation 2006* (NSW) cl 32; *Electricity Reform (Safety and Technical) Regulations 2000* (NT) reg 3; *Electrical Safety Regulation 2013* (Qld) s 70; *Electricity (General) Regulations 2012* (SA) reg 53; *Occupational Licensing (Standards of Electrical Work). Code of Practice 2013* (Tas) cl 7; *Electricity Safety (Installations) Regulations 2009* (Vic) reg 106; *Electricity (Licensing) Regulations 1991* (WA) reg 49.

47 Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clause 2.6.3.2.

- 5.5.4 Homeowners are not, as a rule, qualified or licenced to do such electrical work. It is an offence for a person to undertake electrical work without being licenced.⁴⁸ Despite that, however, homeowners may in reality do their own electrical work and do so less than satisfactorily with that fact never coming to the attention of the relevant authorities.

5.5.5 Australian Standards

- 5.5.6 Australian Standards, do not, without more, have the force of law.

- 5.5.7 Two relevant Australian Standards were mentioned in the Guidelines for the HIP:

- 5.5.7.1 Australian/New Zealand Standard 4859.1:2002 (AS/NZS 4859.1:2002) is the Standard for Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions. It was approved in 2002, and subsequently reissued in 2006. The object of it is to address the standardisation of performance verification requirements of thermal insulation materials (excluding glazing) that may be used in buildings.⁴⁹ It is not an installation standard. It addresses questions such as the thermal resistance of insulation including by reference to its 'R-value', standard methods for determining thermal properties, and other considerations such as infrared admittance, solar reflectance and corrosiveness.⁵⁰ It imposes requirements for packaging and labelling.⁵¹ The Standard also addresses, in various specific sections, thermal insulation of particular kinds. Section 9, for example, deals with reflective insulation, being defined as insulation that incorporates a reflective metallic surface in the form of either a rolled metallic foil or metallic deposit.⁵² Reflective insulation may be in various product groups.⁵³ Some of the principal concerns of the Standard appear to be surface corrosion and wet delamination.⁵⁴ This Standard does not concern itself with techniques to be adopted in the installation of insulation.⁵⁵ It deals expressly with certain types of materials and systems, but this is not intended to displace the use of other materials. Clause 1.3 of that Standard provides:

*This Standard should not be interpreted as preventing the use of systems and materials that meet the performance criteria set out in this Standard, but are not specifically referred to it in.*⁵⁶

48 *Construction Occupations (Licensing) Act 2004 (ACT)* s 84; *Home Building Act 1989 (NSW)* s 14; *Electrical Workers and Contractors Act (NT)* s 53; *Electrical Safety Act 2002 (Qld)* s 55; *Plumbers, Gas Fitters and Electricians Act 1995 (SA)* s 13; *Occupation Licensing Act 2005 (Tas)* s 22; *Electrical Safety Act 1998 (Vic)* s 38; *Electrical (Licensing) Regulations 1991 (WA)* reg 19.

49 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, clause 1.1.

50 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, clauses 2.3, 2.4 and 2.5.

51 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, section 3.

52 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, clause 9.1.

53 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, clause 9.2.

54 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, subclause 9.3.3.

55 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, Preface.

56 Australian/New Zealand Standard 4859.1:2002 *Materials for the Thermal Insulation of Buildings—General Criteria and Technical Provisions*, clause 1.3.

- 5.5.7.2 AS 3999-1992 is entitled 'Thermal Insulation of Dwelling—Bulk Insulation—Installation Requirements'. This Standard deals with the installation of 'bulk' thermal insulation in all classes of dwelling.⁵⁷ It did not purport to apply to, for example, RFL thermal insulation materials because it refers to 'bulk insulation materials' (in section 1.5) as 'those in the form of batt, blanket, rigid board or loose fill'.⁵⁸ It was necessary in the HIP Guidelines to import a provision of the Wiring Rules about the clearances for the placement of insulation, so as to ensure application of clearance rules to foil (and not just bulk insulation).⁵⁹
- 5.5.7.3 AS 3999-1992 had application by reason of the HIP Guidelines requiring compliance with it by installers.⁶⁰ However, the only Australian Government sanction for non-compliance was de-registration from the HIP, and there was, as I show below, no more than a perfunctory attempt by the Australian Government to monitor or audit compliance with the Australian Standards until the HIP was approaching its demise.⁶¹ The States and Territories had absolutely no opportunity to undertake such audits and inspections because, as one Coordinator-General of a State told the Commission, State authorities did not know where installations done under the HIP had occurred.⁶²
- 5.5.7.4 Another way in which Australian Standards might have the force of law is by being made a Code of Practice for the purposes of occupational health and safety law. In that case, those Standards constitute one means (and one means only) by which the general duties might be imposed.⁶³ Neither AS 3999-1992 nor the Wiring Rules ever achieved that status, for example, in Queensland.
- 5.5.7.5 Yet another way in which Australian Standards achieve some legal effect is by the Courts having regard to them as evidence of what is known about a hazard or risk and placing reliance upon them in determining what is reasonably practicable in the circumstances.
- 5.5.7.6 It is important to know that almost always, when Wiring Rules are altered, the changes do not operate retrospectively. It would be harsh to impose on every homeowner, a duty to bring their home into compliance with rules as they evolve and change. When building standards change, for example, it is generally not expected that all homeowners will make structural changes.

5.6 General

- 5.6.1 Finally, I turn to the general risks which are of a miscellaneous kind which face those entering roof voids and doing work in them. As the death of Mr Marcus Wilson demonstrates, the heat which can be experienced in ceiling voids is so intense as might cause heat exhaustion and ultimately death.⁶⁴ Mr Hannam in particular gave evidence of the extreme nature of the conditions in ceilings, especially in summer,

57 Australian Standard 3999-1992 *Thermal Insulation of Dwelling—Bulk Insulation—Insulation Requirements*, clause 1.1.

58 Australian Standard 3999-1992 *Thermal Insulation of Dwelling—Bulk Insulation—Insulation Requirements*, clause 1.5.

59 AGS.002.026.0191, 8.

60 AGS.002.042.0057, 1; AGS.002.026.0191, 8.

61 AGS.002.028.0285, 2.

62 Statement of Hook at [33], STA.001.027.0001, 25 March 2014.

63 See for example *Work Health and Safety Act 2011* (Qld) ss 274, 275 (if approved by the Minister, and notification of such approval has taken place).

64 NIC.001.001.0001, 10-11.

of the need to drink very large quantities of water and the fact that workers need to be introduced into that environment slowly and to learn how their body reacts to the exigencies of such circumstances.⁶⁵

5.7 Other observations

- 5.7.1 I have necessarily been summary in my treatment of these matters. My having done so ought not be taken as suggesting there is not a large body of expertise and learning on these topics. Electrocution in the context of the human body is a very specialised and sophisticated field of study and expertise.
- 5.7.2 My purpose, however, in setting out these matters is to illustrate the context in which the HIP was rolled out and the risk which, without any overly detailed undertaking or specialist expertise might readily have been identified. It emphasises, as I say below, the inherent nature of the risks which I have identified and the need for the Commonwealth to have been cognizant of them in designing and implementing the HIP.

65 Transcript (15 April 2014) 3113-3114 (M Hannam).

6. GENESIS AND DESIGN OF THE PROGRAM

6.1 Background to, and early formulation of, the HIP

6.1.1 Early measures: 2008

- 6.1.2 There existed for some years before the Home Insulation Program (HIP) was announced, various proposals and discussions within the Australian Government for improving the energy efficiency of Australian homes. When the Rudd Government was elected in 2007 it brought a large number of election promises that soon occupied the Department of the Environment, Water, Heritage and the Arts (DEWHA). Some witnesses said that before being allocated the HIP, the Department was already working at close to, or even exceeding, full capacity.¹ Many of the policies being developed during 2008 were related to the proposed introduction of a Carbon Pollution Reduction Scheme (CPRS).
- 6.1.3 Development of a strategy to ensure the economy-wide uptake of energy efficiency measures was also stated to be a high priority for the Department of the Prime Minister and Cabinet (PM&C) in 2008–09.² The Strategic Review of Australian Government Climate Change Programs by Mr Roger Wilkins AO was released on 31 July 2008 and considered the efficacy of various climate change programs and their relationship to a possible CPRS.³ During 2008 a whole-of-Government taskforce was established within PM&C to oversee the development of such policies. Chaired by Dr de Brouwer, this taskforce reported to the Government in September 2008.
- 6.1.4 A Council of Australian Governments (COAG) Working Group on climate change and water was also established. That working group had an Energy Efficiency Sub-Group (EESG). A discussion paper was presented in March 2008.⁴ The Chair of the Working Group, Senator Wong, sought ideas on early opportunities for deeper or accelerated energy efficiency. Home insulation was not addressed in any detail at that time.
- 6.1.5 An interim report of the Working Group was produced in May 2008.⁵ It did not address insulation as a stand-alone policy.
- 6.1.6 The Green Paper for the CPRS was released on 16 July 2008. It did not address insulation as a stand-alone policy.
- 6.1.7 The final report of the EESG was submitted on 12 August 2008.⁶ Members of the sub-group included Ross Carter, Chris Johnston and Sasha Kaminski, whose names appear later in connection with the HIP. This report conveyed the options that the EESG recommended to accelerate or expand the uptake of energy efficiency measures in Australia. There is nothing in it concerning insulation of residential premises in any substantive form.

1 Statement of Carter at [13], STA.001.001.0340, 17 March 2014; Transcript (20 March 2014) 339 (R Carter); Statement of Keffe at [31], STA.001.015.0001, 28 March 2014; Transcript (26 March 2014) 925 (M Hoffman).

2 Department of the Prime Minister and Cabinet, *Annual Report 2008–09, Output 1.1—Economic and Industry Policy* (Commonwealth, 2009), 40.

3 Statement of Brunoro at [8] and [9], STA.001.002.0001, 17 March 2014.

4 AGS.002.008.0062, 1–53.

5 AGS.002.008.0007, 1–55.

6 AGS.002.008.0121, 1–94.

- 6.1.8 Mr Rudd, then Prime Minister, wrote to the State Premiers and Territory Chief Ministers in August 2008 advising them of the work being undertaken by the Government in advance of a COAG meeting scheduled for October 2008. The letter referred to the Government's development of a streamlined package of energy efficiency measures designed to complement the CPRS.
- 6.1.9 On 15 September 2008, PM&C prepared (for the Cabinet) the National Energy Efficiency Strategy.⁷ That document made reference to a possible CPRS, but recorded that the Government had not yet made a decision about the final design features of it. The strategy, it was said, must aim to complement the CPRS. It was to include, among other things, a 'Households and Communities Energy Efficiency Initiative'.⁸ It was recommended that a Sustainable Homes Assistance Package be implemented, involving measures for home energy audits and financial incentives for households to improve the energy efficiency of their properties.⁹
- 6.1.10 The Garnaut Climate Change Review Final Report was released on 30 September 2008.¹⁰ That review had been commissioned by Federal, State and Territory governments in 2007, as a study of the impacts of climate change on the Australian economy.
- 6.1.11 At the COAG meeting on 2 October 2008, agreement was reached for the development of a National Strategy for Energy Efficiency (NSEE). COAG was to consider a detailed proposal of this kind in December 2008, including what was to be the allocation of jurisdictional role and responsibilities.¹¹ A meeting of State and Territory energy coordinators was held on 6 November 2008. Documents were produced in 2008 by or for the EESG of the COAG Working Group on Climate Change and Water.¹² They gave some consideration to energy treatments for residential buildings, but at a very general level rather than with any specificity and were cast in terms of policy objectives not specific proposals. In the last of these, the Final Report, there was no recommendation that homes be insulated.
- 6.1.12 Mr Ross Carter chaired the EESG which sat underneath the COAG Working Group on Climate Change and Water.¹³ He had involvement in the preparation of some or all of these documents.
- 6.1.13 On 14 October 2008, Mr Rudd announced the Economic Security Strategy, as a response to what he described as 'the worst financial crisis in our lifetime' and 'the economic equivalent of a national security crisis'.¹⁴
- 6.1.14 In 2008, a taskforce in PM&C was considering measures which might support the introduction of a CPRS. Two DEWHA officers (Ms Beth Brunoro was one of them) were seconded to PM&C to assist.¹⁵

7 AGS.002.131.0227.

8 AGS.002.131.0227, 2.

9 AGS.002.131.0227, 8.

10 Ross Garnaut, *The Garnaut Review: Australia in the Global Response to Climate Change* (Commonwealth, 2011).

11 AGS.002.131.0116, 1.

12 Examples are AGS.002.008.0007, 55; and AGS.002.007.0007, 17-18 (Interim Report); AGS.002.008.0121, 32-39 (Final Report).

13 Transcript (20 March 2014) 327 (R Carter).

14 The Hon Kevin Rudd MP, *Address to the Nation: Canberra* (14 October 2008) Parliament of Australia, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media%2Fpressrel%2FGXTR6%22>>.

15 In 2009, Ms Brunoro was known as Ms Riordan. I have used her current name throughout this Report for consistency. Statement of Wiley-Smith at [6], STA.001.001.0271, 15 March 2014; Statement of Brunoro at [13], STA.001.002.0001, 17 March 2014.

- 6.1.15 The focus of the work at this time was not home insulation. It was just one of a number of possibilities that were being considered. The elements considered to be important at this stage were assistance to low income and disadvantaged households and loans for energy efficiency items or improvements.¹⁶ Ms Brunoro had, however, by this time, undertaken research, for example, on various energy efficiency packages that had been implemented in some Australian States and overseas. Some ‘roundtables’ with stakeholders for these proposals were conducted in 2008.¹⁷ This information was later drawn upon when it came to formulating the proposal that became the HIP in its early form. Ms Juliana Marconi assisted with that research (much of it web-based), but at a more routine or administrative level. Ms Marconi was a junior officer within DEWHA.
- 6.1.16 On 3 November 2008 Ross Carter sent an email to Dr Rhondda Dickson (Branch Head, Industry Infrastructure and Environment Division, PM&C) and Chris Johnston with an attachment ‘NEES Roles and Responsibilities of Commonwealth.’¹⁸ That document was headed ‘Roles and Responsibilities of Commonwealth, States and Territories under the National Energy Efficiency Strategy’. The document stated, in part:
- A cooperative approach to the delivery of the NEES between the three tiers of government is critical as each has distinct, often constitutionally defined, roles which in turn create different opportunities to exercise influence over energy demands. A lack of coordination risks duplication and, at worst, confusion and disengagement by the business and community sectors targeted by energy efficiency policy. It is therefore critical to agree the key issues of cooperation, differentiation of roles and responsibilities, funding and accountability to be jointly addressed by the three levels of government.*
- 6.1.17 These prescient remarks by Mr Carter were not heeded in the design and implementation of the HIP.
- 6.1.18 On 10 November 2008 the Climate Institute released ‘Australia’s National Strategy for Energy Efficiency’, a policy paper.¹⁹ In its introduction the document states:
- ‘The Council of Australian Governments has committed to developing a National Strategy for Energy Efficiency, to be implemented from June 2009.’²⁰ The paper calls for discussion of a national energy efficiency program, at the lowest cost to households, businesses and the economy.*
- 6.1.19 The Government’s fiscal response to the GFC in October 2008 was unlikely to be its final stimulus package. Discussions continued about the integration of energy efficiency measures into the future economic stimulus measures.

16 Statement of Wiley-Smith at [7], STA.001.001.0271, 15 March 2014.

17 Statement of Wiley-Smith at [9], STA.001.001.0271, 15 March 2014. Meetings also occurred in November 2008 with the President of ACOSS and Mr Garrett (AGS.002.005.0823) about residential energy efficiency for low income earners, but there is no suggestion that Ms Brunoro or Ms Wiley-Smith were present at them. On 29 August 2008, there was an NGO Workshop on Disadvantaged Households and Residential Affordability in Melbourne attended by Mr Ross Carter of DEWHA (AGS.002.030.0811, 1-18). A ‘Senior Officials Group on Energy Efficiency’ (SOGEE) meeting took place on 18 December 2008 (AGS.002.033.7516, 1-3). These are examples only of the meetings and consultations which took place about possible energy efficiency programs in the second half of 2008. In addition to these there were numerous National Energy Efficiency roundtable meetings held in August and September 2008 in all the state capitals and in Canberra. 171 stakeholders are said to have attended (AGS.002.101.2857, 1).

18 AGS.002.033.0002, 1-7.

19 The Climate Institute, *Australia’s National Strategy for Energy Efficiency* (2008).

20 The Climate Institute, *Australia’s National Strategy for Energy Efficiency* (2008), 3.

6.1.20 On 7 November 2008 Ross Carter sent an email to his colleagues:

I gather some of this is likely to be the subject of discussion in the next few days. As alluded to the other day I think there is a phasing opportunity for consideration, announcement and delivery of various elements of the NEES-SHAP/NSEE Agenda that may be attractive in the context of a tight fiscal environment and consideration of direct assistance in the CPRS White Paper as well as in providing a negotiating frame for the NSEE. A paper was prepared on the phased approach to the sustainable homes assistance package. This also looked at assistance from the States and Territories²¹

6.1.21 The attachment to the email was titled 'Phased approach to the sustainable homes assistance package'. It stated:

Our intention would be to develop a coordinated package with the States and Territories—to be signalled upfront and incorporated as part of Phase 2'.

'This phasing option would provide time to rationalise programs with the States...

6.1.22 On 28 November 2008 officers in PM&C (including Chris Johnston) put together a 'Taskings' document.²² The document read in part:

Taskings

DEWHA:

1. Provide options for a program to install insulation in under-insulated Australian homes—including the following information:

- cost to fully rebate for all homes / other cost options*
- import intensity of programs (i.e. where are the necessary components made?)*
- skills requirements:*
 - does installation require skilled or unskilled labour?*
 - is there currently the skills capacity required to implement the program quickly?*
 - if not how long would it take to establish the required skills capacity?*
 - how many jobs would the program create (provided as a figure per amount spent (eg jobs per \$10M spent) and*
- an estimation of carbon benefit per dollar cost of program (ie avoided greenhouse gas emissions)*

2. Provide options for a program to install solar hot water systems in Australian homes—including information as per item 1, above.

6.1.23 This was perhaps the genesis of the work that ultimately fed into the development of the HIP, although no documents were produced to the Commission that show that PM&C responded specifically to the tasks assigned to DEWHA.

²¹ AGS.002.033.1532, 1.

²² AGS.002.033.3559, 1.

- 6.1.24 There was a COAG meeting on 29 November 2008 that dealt with climate change issues. It referred to a document of shared understanding. Under the heading 'Energy Efficiency' it stated:

*A range of activities on energy efficiency are being pursued by the Commonwealth and States. A COAG working group on climate change and water, through its energy efficiency sub-group has been tasked with preparing options to accelerate or expand the uptake of energy efficiency measures, including the need for a comprehensive and integrated approach. The Commonwealth has proposed the national energy efficiency strategy will be the single overarching framework for accelerating energy efficiency reforms with streamlined roles and responsibilities to be agreed by December 2008. An alternative finalisation date of early 2009 is now proposed in light of the scope of this task.*²³

- 6.1.25 On 1 December 2008 Ms Wiley-Smith sent to Andrew Parson, Ross Carter and Stephen Oxley a number of 'one page' summaries of various programs.²⁴ These dealt with a variety of energy efficiency measures. One referred to insulation. It was entitled 'Insulating Australian Homes Plans'. It contained the following:

Objective: To accelerate the uptake of insulation by Australian households and stimulate the development of the energy efficiency industry through the provision of a subsidy package for households choosing to insulate their houses.

Cost Options: The total cost for this option is estimated to be approximately \$5.61B over five years (2009 to 2014). It consists of installing insulation costing up to \$1500 per household or the total cost of insulation averaging \$1200.

Impact on jobs: Positive. The majority of insulation materials used in Australia are manufactured locally... Australia's insulation industry incorporates products for residential, commercial and industrial markets encompassing two broad product categories—bulk insulation and reflective insulation. These are available as a number of different insulation materials [footnoting the submission by the Insulation Council of Australia and New Zealand (ICANZ) to the Victoria Energy Efficiency Target Scheme]. The measure would create a demand for additional installers and create job opportunities if [sic] the supply chain. The scale of this measure may also stimulate job creation in the insulation manufacturing sector.

Capacity constraints/ability to deliver: The current insulation installation network has additional capacity at the moment, however would have to expand and create new jobs if the government aimed to have all uninsulated houses insulated. This is a relatively straightforward matter as installers do not require extensive training and can be brought on line quickly [again referencing the ICANZ submission].

*Overall assessment: Installing ceiling insulation provides long-term emissions and energy savings relative to other household investments.*²⁵

23 AGS.002.033.2478, 2.

24 AGS.002.033.3731, 1.

25 AGS.002.033.3751, 1-2.

- 6.1.26 There was also a document on the Energy Savings Trust and Technology Neutral Household Assistance.²⁶ The technology neutral household assistance measure proposed to provide subsidy assistance of up to \$1,500 to all Australian households to purchase, retro-fit and/or install household energy efficiency options, including insulation.
- 6.1.27 On 2 December 2008 Andrew Parsons sent Chris Johnston a document headed 'New Green Deal—Revised Version'.²⁷ This document is set out in a quadrant using carbon impact and jobs impact as the axes. It refers to a number of possible options. In the right upper quadrant styled 'High Carbon Impact/High Jobs Impact' appears: '1. Insulating Australian Homes (*RECOMMENDED*).'²⁸ The 'New Green Deal' or 'Green Jobs' is how PM&C described the package that sought to combine energy efficiency measures with jobs stimulus initiatives.
- 6.1.28 Attachment A to this document is a 'Summary of Proposal and Recommendations'. It is said that the Insulating Australian Homes Plan would have a fiscal cost \$5.6 billion over five years (and that a lower cost option focussed solely on ceiling insulation might be possible). The PM&C view was recommended for further consideration: it was said to have the lowest abatement cost of all proposals ... 'with a substantive impact on jobs and economic activity (the majority of materials are manufactured in Australia, installers require little training and can be brought on-line quickly).'²⁹ Part of Attachment B to this document was the 'Insulating Australian Homes Plan' prepared by Mary Wylie-Smith, referred to above.
- 6.1.29 At the same time the States and Territories were doing their own work on energy efficiency measures.²⁸
- 6.1.30 On 4 December 2008 there was a meeting of the Senior Officials Group of the NSEE.²⁹ This meeting charted what was proposed over the following months.³⁰ It is evident that this group did not envisage the stimulus announcement in February 2009, or their work forming part of it. It also envisaged the continuing involvement of the States and Territories in the development and implementation of policy. I am satisfied that by the first week of December 2008, although more general work had been done that incorporated some work on energy efficiency, what became the HIP was not then in serious contemplation. What was proposed was a package aimed at low income households, including a variety of measures of which insulation was but one option. It was also envisaged that the States and Territories would be involved in any program delivery.
- 6.1.31 In December 2008, the Australian Government released a CPRS White Paper.³¹ It identified a need for cash assistance targeted at low-income households, and referred to a proposal by the Brotherhood of St Laurence (in conjunction with KPMG and Ecos Corporation) that recommended the implementation of a national energy efficiency program. The paper also refers to an Australian Council of Social Service (ACOSS) proposal to retrofit houses so as to minimise energy consumption. The paper suggested that an uninsulated roof cavity could lose 35 per cent of a home's heat, and that insulation was capable of lowering each home's greenhouse gas emissions by more than 2.5 tonnes per year.³² Mr Chris Johnston, an Acting Assistant Secretary in PM&C,

26 AGS.002.033.3754, 1.

27 AGS.002.033.3992, 2-3.

28 See, for example, AGS.002.033.3926, 1-2 (South Australia).

29 AGS.002.033.5549, 1.

30 AGS.002.033.5983, 1-2.

31 Department of Climate Change, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future* (Commonwealth, 2008); PUB.002.001.0436, 1-385.

32 PUB.002.001.0436, 222.

has stated that ultimately it was decided that energy efficiency measures would not be included in the White Paper and would progress separately.³³

6.2 The Sustainable Homes Assistance Package

- 6.2.1 In the period August 2008 to January 2009 the main policy being considered that incorporated home insulation was the Sustainable Homes Assistance Package (SHAP).³⁴ This was for provision of a 'technology-neutral' rebate that households could access after receiving a personalised energy efficiency assessment.³⁵
- 6.2.2 By 12 January 2009 at least, elements of the SHAP were identified as ones that could be improved. One such element was addressing the role of the States and Territories (because of, primarily it would seem, possible duplication in programs). An alternative approach was proposed by DEWHA (through Ms Mary Wiley-Smith) to PM&C, but one directed to low-income and disadvantaged households through agreements with State and Territory governments. The proposal, however, was not expressly targeted at insulation. The mindset at this time involved negotiating with the States and Territories before any rollout.³⁶ It seems unlikely at this stage that there was in contemplation a model by which the Australian Government would be the sole government involved. There are no documents which evidence such an approach being considered.³⁷
- 6.2.3 As matters stood shortly before mid- to late January 2009, the Energy Efficiency Taskforce, based in PM&C, had looked at what energy efficiency opportunities existed across Australian households, what programs were then in place at various levels of Australian government to support households to improve their energy efficiency and whether there was a need for new or enhanced programs.³⁸ Such energy efficiency proposals as were formulated comprised part of the SHAP.³⁹ As part of doing so, Ms Brunoro held a number of roundtable discussions with industry.⁴⁰ Ms Wiley-Smith said in her oral evidence that they involved key organisations and welfare non-Government organisations (NGOs), but they concerned energy efficiency generally, with insulation as one possibility.⁴¹ There was no roundtable, Ms Wiley-Smith said, devoted to insulation, but representatives involved in insulation were included in roundtables (although she could not recall which).⁴² She did not know how those representatives were selected. It was not by her. The roundtables ran in the second half of 2008 to inform policy development that was occurring at a whole-of-government level in connection with the proposed CPRS.
- 6.2.4 Ms Wiley-Smith thought that the SHAP did not have, immediately before late January 2009, at its heart, an object of stimulus. So it was not until late January 2009 that the HIP as it became known was formulated. That is not to say that it was formulated from scratch. It plainly drew on the work that had been carried out throughout 2008, although in a much more focussed way.

33 Statement of Johnston at [9], STA.001.093.0002, 2 June 2014; AGS.002.033.6684, 1.

34 Statement of Brunoro at [15], STA.001.002.0001, 17 March 2014; Transcript (14 May 2014) 4795 (K Rudd).

35 A term Mr Rudd considered meant making payment to householders to make their own selection: Transcript (14 May 2014) 4802 (K Rudd).

36 Transcript (18 March 2014) 118 (M Wiley-Smith).

37 Transcript (18 March 2014) 120 (M Wiley-Smith).

38 Statement of Brunoro at [7], STA.001.002.0001, 17 March 2014.

39 Statement of Brunoro at [15], STA.001.002.0001, 17 March 2014.

40 Statement of Brunoro at [13] and [17], STA.001.002.0001, 17 March 2014.

41 Transcript (17 March 2014) 31 (M Wiley-Smith).

42 Transcript (17 March 2014) 31 (M Wiley-Smith).

- 6.2.5 Dr Dickson has stated that the role of the Industry Infrastructure and Environment Division of PM&C played was to provide ideas related to the energy efficiency work that might be relevant to job-stimulating activities.⁴³ That work came into focus from mid- December through to the announcement of the HIP.

6.3 'A Single Energy Saving Measure'

- 6.3.1 In December 2008, there are records of communications between Mr Rudd and the Secretary of his Department, Mr Moran, about the energy efficiency programs. This was in the context of what was described as the 'green jobs package'.
- 6.3.2 On 12 December 2008, Mr Moran wrote to officers in PM&C referring to work being done in Victoria on 'green jobs' saying 'it may be of interest in the context of the Jan-Feb statement'.⁴⁴ It is plain from Dr Dickson's response that what was being contemplated was a program targeted to low income households.
- 6.3.3 A further email of 12 December 2008 from Mr Moran to other staff in his Department requests a brief for Mr Rudd on what a Government initiative 'would look like' and 'what we would expect the States to do/pay'.⁴⁵ The email refers to this as an area of thinking that 'he' (i.e. Mr Rudd⁴⁶) 'comes back to'. It says 'he clearly hasn't absorbed earlier work'. The email exchanges result in confirmation that a brief along those lines will be prepared. At this stage, however, these discussions are taking place in the context of the COAG national strategy.⁴⁷ The aim was to have the brief to the Prime Minister 'before Christmas'.⁴⁸
- 6.3.4 These issues must have been of particular interest to Mr Rudd because he said to Mr Rimmer on a flight on about 18 December 2008 that the issue was on his mind.⁴⁹
- 6.3.5 A brief to Mr Rudd was prepared in draft at 4:16pm on 18 December 2008.⁵⁰ The stated author of the brief was Mr Johnston. It recommended that a 'package of energy efficiency measures be implemented through COAG', and requested that the Prime Minister '[i]ndicate the level of energy efficiency expenditure that is wanted'. The background to the brief is referred to as being Mr Rudd having requested a brief on how a 'green jobs' initiative could be incorporated into the COAG National Strategy on Energy Efficiency. Attachment A to that brief recorded that the recommended household energy efficiency package is focussed on low income households.⁵¹ There is no mention whatsoever of the package having as one element, home insulation, although mention is made of \$1000 'technology neutral rebates for energy efficiency improvements'. The attachment states, and Mr Rudd agreed, that a draft report on the national strategy had been provided to him in September 2008 and that further work had been done to integrate the household measures into the broader context of the CPRS household assistance package.⁵²
- 6.3.6 The brief stated:
- Implementing an energy efficiency (green jobs) package in conjunction with state and territory jurisdictions would have several key advantages.*

43 Statement of Dickson at [18], STA.001.099.0001, 22 June 2014.

44 AGS.002.033.7376, 1.

45 AGS.002.033.7409, 1.

46 Transcript (15 May) 4795-4796 (K Rudd).

47 Transcript (15 May) 4797 (K Rudd).

48 AGS.002.033.7586, 1; Transcript (15 May) 4797-4798 (K Rudd).

49 AGS.002.033.7586, 1; Transcript (15 May) 4798 (K Rudd).

50 AGS.002.033.7674, 1-2.

51 AGS.002.033.7609, 1.

52 Transcript (15 May 2014) 4800 (K Rudd).

In particular, joint delivery of the measures could enable the Commonwealth government (the Commonwealth) to leverage existing state program delivery networks and reduce costs. It may also enable further streamlining of existing energy efficiency programs on a nation-wide basis as part of a broader package of reforms. The Commonwealth could announce the package from making an announcement regarding the measures in early 2009, as part of a further economic stimulus package and implement the measures as part of the COAG's national strategy for energy efficiency (NSEE). Delivery through COAG would provide climate change benefits, but may delay implementation slightly compared to Commonwealth only implementation. Further analysis of these issues is at [Attachment A](#).

The proposed energy efficiency package is focussed on low income households and comprises: intensive energy audits, \$1000 technology neutral rebates for energy efficiency improvements, and the existing green loan commitment and low emissions plan for renters ... Further detail on this package is provided at [Attachment B](#). An analysis of the impact of this package... on emissions reduction and short term job creation is at [Attachment C](#).

6.3.7 The recommendations made to Mr Rudd were:

- 6.3.7.1 agree that a package of energy efficiency measures be included in the fiscal stimulus package;
- 6.3.7.2 2agree that the measures be delivered through COAG as part of the National Strategy for Energy Efficiency; and
- 6.3.7.3 indicate the level of energy efficiency expenditure that is wanted.

6.3.8 In Attachment A it is stated under the heading 'Background':

'A range of possible energy efficiency measures have been developed for your consideration.

A draft report on a National Strategy on Energy Efficiency which included a range of household measures in the context of a unified cross-sectoral approach, was provided to you in September 2008. Further work was then undertaken to integrate the household measures into the broader context of the carbon pollution reduction scheme (CPRS) household assistance package—and advice on how this could be done was submitted through Troika meetings in November and December 2008. A separate package of energy efficiency measures, for possible announcement as part of a 'green jobs package', was provided to you in early December 2008.

In order to finalise and cost measures, clarity is now required on the proposed package of measures, the quantum of funding available, and the preferred delivery mechanism.

Proposed Energy Efficiency Package:

The recommended householder energy efficiency package is focussed on low income households and comprises: intensive energy audits, \$1000 technology neutral rebates for energy efficiency improvements, the existing Green Loan Commitment and low emissions plan for renters ...

Benefits of working with COAG

The recommended package could be implemented by the Commonwealth alone, or in conjunction with the states and territories (the states), through COAG.

On 2 October 2008, COAG agreed to develop a NSEE, to accelerate energy efficiency efforts across all jurisdictions and to help households and businesses prepare for the introduction of the CPRS. COAG further agreed that streamlined roles and responsibilities for energy efficiency policies and programs would be resolved by December 2008 and implementation of this Strategy would be finalised by June 2009, to ensure that programs assisting households and businesses to reduce their energy costs are in place prior to the introduction of the CPRS.

At its meeting on 29 November 2008, COAG meeting agreed that the determination of streamlined roles and responsibilities under the National Energy Efficiency Strategy should be deferred for consideration until early 2009. Officials are currently developing a package with the states, and discussions to date indicate that the states would strongly support joint delivery of the proposed package.

Implementation through COAG would entail a number of benefits.

First ...

Second, joint delivery would improve the effectiveness of the package by leveraging existing state delivery networks. This would be an important benefit for the Commonwealth. A key area where this may be advantageous would be the delivery of energy efficiency audits. The majority of jurisdictions have existing audit programs in place. Audits have the capacity to drive significant improvements in energy efficiency through behavioural change, and a cooperative approach to delivery that utilises these existing programs may allow for a significant increase in the number or intensity of audits that could otherwise be delivered.

Joint delivery with the states would require negotiations with state governments and agreement before any money could be spent. While this may delay implementation compared to Commonwealth only delivery, we consider the benefits to be gained far outweigh any delays in program commencement.⁵³

- 6.3.9 A hierarchy of objectives document placed economic stimulus at the top of the pyramid and energy efficiency at the bottom of the pyramid.⁵⁴
- 6.3.10 A refined version of this draft was presented to Mr Rudd, and was considered by the Strategic Priorities and Budget Committee (SPBC) of Cabinet in January 2009.
- 6.3.11 As at 18 December 2008, at least, it was still not decided whether the home energy initiative was to be part of the ongoing COAG work or something that the Government ought undertake itself and incorporate into a second stimulus package. From the point of view of PM&C however, as this brief suggests, it was thought that the initiative should be progressed through the COAG process.
- 6.3.12 Ms Wiley-Smith and Ms Brunoro were asked (by PM&C) in December 2008 to look at a possible rebate scheme for one single energy saving measure.⁵⁵ At this point, it would seem, the Government's focus of policy development turned to insulation. A two

⁵³ AGS.002.033.7642, 1-2.

⁵⁴ AGS.002.030.0246, 1.

⁵⁵ Statement of Brunoro at [18], STA.001.002.0001, 17 March 2014.

page description of what a program might look like which focused on insulation only was prepared and submitted to PM&C.⁵⁶ At this stage, however, Ms Brunoro at least was not aware that the development of a home insulation policy was part of a broader stimulus package.⁵⁷

- 6.3.13 Communications with Mr Rudd's office continued into early January 2009. As at 10 January 2009, it was still being considered as to how the Australian Government should include the States and Territories in any scheme '*because of the potential to leverage their contributions and to use their utilities as the delivery network*'.⁵⁸
- 6.3.14 In early January 2009 Dr Dickson prepared a Minute for Mr Rudd which put forward a proposal for implementing the 'Green Jobs (Energy Efficiency) Package'.⁵⁹ This was still focussed on low and middle income households. It was recommended that the rebate amount be set at \$1,000. It recommended a five -year rollout. Dr Dickson describes her proposal as a 'pre-feasibility assessment of an initiative'.⁶⁰ That description rather indicates that policy development was not well advanced.
- 6.3.15 On 15 January 2009 Mr Johnston sent Mr Tune (then Acting Secretary of PM&C) a copy of the draft Green Jobs (Energy Efficiency) Package papers.⁶¹ The documents were sent, as was normal practice, to the Departments of Treasury and Finance and Deregulation (Finance) for costings and comments.
- 6.3.16 As appears from an email from Ms Horvat (an adviser in the Prime Minister's Office) to Mr Johnston on 19 January 2009, Mr Rudd was considering the Green Jobs (Energy Efficiency) Package at this time. The SPBC considered the energy efficiency proposals for the first time on 19 January 2009.⁶²

6.4 Early Involvement by others

Matt Levey (Mr Garrett's office)

- 6.4.1 Mr Matthew Levey was a policy advisor to Mr Garrett at the relevant time. He liaised between Mr Garrett, DEWHA, external stakeholders and internal stakeholders within the Australian Labor Party.⁶³ His first memory of the HIP was that, in late 2008 (possibly in December) Mr Garrett told him that Mr Rudd's office had communicated that they were interested in a 'big idea on energy efficiency policy'.⁶⁴ He had conversations with Ms Wiley-Smith, with whom he had a strong working relationship.⁶⁵ Shortly before 19 January 2009, a policy advisor in Mr Rudd's office contacted Mr Levey and said, according to a note taken by Mr Levey:

*Spoke to Andrew Charlton [another member of the staff in the Prime Minister's office]. Looking at economic stimulus package, quick economic effect, low impact, insulation, stimulus checklist...*⁶⁶

56 Statement of Brunoro at [18], STA.001.002.0001, 17 March 2014.

57 Statement of Brunoro at [19], STA.001.002.0001, 17 March 2014.

58 AGS.002.033.9324, 1; See also Transcript (15 May 2014) 4805 (K Rudd).

59 AGS.002.008.0353, 1; AGS.002.008.0354, 1-5; and AGS.002.008.0359, 1-6.

60 Statement of Dickson at [30], STA.001.099.0001, 22 June 2014.

61 AGS.002.034.0221, 1.

62 AGS.002.034.0627, 1-2; see also AGS.002.034.1522, 1.

63 Statement of Levey at [7], STA.001.003.0001, 18 March 2014.

64 Statement of Levey at [12], STA.001.003.0001, 18 March 2014.

65 Statement of Levey at [15], STA.001.003.0001, 18 March 2014.

66 Statement of Levey at [17], STA.001.003.0001, 18 March 2014.

6.4.2 He also spoke with a Mr Stephen Oxley from DEWHA to this effect:

PM&C working on green jobs stimulus package with SHAP Mark II options, energy efficiency audit and three options. Energy efficiency audit plus grant for rebate of \$1,000. 1–300,000 households then more for two and three. Contemplating this on the table to draw State in delivery arrangements subject to states negotiation. PM&C intending to brief PM on his return. PM&C still very keen for technology neutral. PM wants to talk insulation and solar early to mid-February announcement

They are at \$1,000 figure. Asked by Employment Department.⁶⁷

6.4.3 This accords with the narrative set out earlier which demonstrates a change in focus from energy efficiency initiatives to an energy efficiency policy as part of stimulus measures occurring in mid-January 2009.

6.4.4 Mr Levey then met with Mr Garrett (perhaps on 19 January 2009). His note of the conversation is as follows:

Keep plodding along to deliver optimum package. Want to provide an additional two to three-pager, wraps it up more in language of what we are attempting to do, has names, rollouts, things critical to emphasise. Hard thinking about language, technology specific, nation changing, engagement, sporting clubs, community groups, non-government organisations, others. Something from households least prepared down to middle class, suburb –greening the suburbs, PM says he doesn’t get big ideas from department. Look at earliest optimum version.⁶⁸

6.4.5 Mr Levey took this to mean that Mr Rudd did not get big ideas from his own Department and Mr Garrett was being asked to provide some.⁶⁹ The note is Mr Levey’s summary of the Mr Garrett’s words.⁷⁰

6.4.6 Mr Levey had further contact with Ms Wiley-Smith and Mr Oxley.⁷¹ In one of those discussions, he was told by her that there was no way to negotiate the New Policy Proposal (that I discuss shortly) coming into effect later than 1 July 2009.⁷² More is said later in this Report about the impossibility of achieving the 1 July 2009 commencement date without seriously compromising safety and other important facets of a properly framed program. He was informed that DEWHA officers were being asked to do so by ‘central agencies’, in this case PM&C, and that a two -year program had been proposed.⁷³

6.4.7 His recollection was that Mr Garrett and DEWHA were sympathetic to a rollout longer than two years because their priority was energy efficiency and because, he discerned, there was a sense that ‘doing it faster’ would not necessarily provide the energy efficiency investment that best suited each household.⁷⁴

67 Statement of Levey at [19], STA.001.003.0001, 18 March 2014.

68 Transcript (21 March) 504 (M Levey).

69 Statement of Levey at [22], STA.001.003.0001, 18 March 2014.

70 Transcript (21 March) 504 (M Levey).

71 For example, see Statement of Levey at [44], STA.001.003.0001, 18 March 2014.

72 Statement of Levey at [44], STA.001.003.0001, 18 March 2014; Transcript (21 March) 508 (M Levey).

73 Statement of Levey at [28], STA.001.003.0001, 18 March 2014.

74 Statement of Levey at [31], STA.001.003.0001, 18 March 2014.

- 6.4.8 Mr Levey's notes and the evidence he gave to the Commission confirm that the proposal then under consideration, at least from DEWHA's point of view, was one that involved a regional brokerage model.⁷⁵
- 6.4.9 Mr Levey could not recall DEWHA talking to him about safety concerns at these early stages.⁷⁶ But he did meet with Mr D'Arcy of ICANZ on 29 January 2009. His note of that meeting records the following:

*Implementation and inspection has major problems. Lack of accreditation. Need for installers to do it properly. Maybe lack of adequate insulation. Not a rebound effect. Need for random audits that they can't just throw random insulation in roof. Have an accreditation number as well as a serial number ... [emphasis added]*⁷⁷

Minister Garrett

- 6.4.10 The Prime Minister's office contacted Mr Garrett's office requesting development of an energy efficiency policy.⁷⁸ Mr Garrett said there was 'a call' for policy ideas in the field of carbon reduction and energy efficiency measures. At first, it was not contemplated to be one that needed to have a stimulatory effect. He had a discussion with Mr Rudd on, perhaps, 19 January 2009.⁷⁹ He could not recall the detail of it, but knew it was about what kind of policies could be delivered as a Government in the 'energy efficiency space'.
- 6.4.11 This discussion preceded Mr Levey being instructed by Mr Garrett to prepare a short document about a possible policy.
- 6.4.12 Mr Garrett was not 'specifically informed' that Ms Brunoro and Ms Wiley-Smith were undertaking the work they did. That does seem unusual given that they were officers within DEWHA. And it was not until close to the announcement of the HIP that Mr Garrett learned of what was to be made public.
- 6.4.13 Mr Garrett had no reason, he said, to believe that his Department lacked the capacity to design and deliver the HIP before it was announced. That is because he thought it should be the case that departments should make their own arrangements to ensure that they could.⁸⁰ And it is despite DEWHA being a policy rather than a program delivery department.

Kevin Keffe

- 6.4.14 Mr Keffe subsequently became the Program Manager for the HIP. It is evident from his notes that he was in contact with Mr Levey before the HIP was announced.⁸¹ It is also clear that Mr Keffe was aware of Mr Plevey from EE-OZ in December 2008. The significance of that awareness is apparent when Mr Plevey's warning to DEWHA in late February 2009 is discussed later in this report.⁸²
- 6.4.15 Mr Keffe met with Mr Garrett on 19 December 2008. They discussed the means to implement energy efficiency measures. Mr Keffe's note reads:

*'PM & C—consolidated process—stimulus package...Centrelink/NGO delivery? Rollout 1 July 2010—low income group—COAG—implementation'.*⁸³

75 For example, Statement of Levey at [41], STA.001.003.0001, 18 March 2014.

76 Statement of Levey at [38] and [50], STA.001.003.0001, 18 March 2014.

77 Statement of Levey at [47], STA.001.003.0001, 18 March 2014.

78 Statement of Garrett at [17], STA.001.069.0001, 8 May 2014.

79 Statement of Garrett at [34], STA.001.069.0001, 8 May 2014.

80 Transcript (13 May 2014) 4550 (P Garrett).

81 KEE.002.001.0529.

82 See Chapter 9.

83 KEE.002.001.0532.

- 6.4.16 This note certainly bespeaks an understanding on the part of both Mr Garrett and Mr Keffe in mid-December 2008 that they were working towards a program directed at low income households. That is consistent with my conclusions above.
- 6.4.17 It is evident from Mr Keffe's note of 13 January 2009 that he was aware of the SHAP and that PM&C was in discussion with Mr Rudd regarding a green jobs stimulus package that included household energy efficiency measures.⁸⁴ Mr Keffe's note continues:

'Two year measure—300,000 homes energy audit—delivery model'.⁸⁵

6.5 Focus on insulation: genesis of the HIP

- 6.5.1 I am satisfied that the development of the HIP in any specific sense commenced only in mid- to late January 2009. Responsibility for the formulation of the policy lay with PM&C. Mr Johnston recalls a meeting within PM&C in early January 2009 in which he was informed that the Government intended to launch a stimulus package and energy efficiency measures would form part of it.⁸⁶ Mr Johnston recalls being told that the stimulus measures would be developed in PM&C and not as part of a taskforce approach.
- 6.5.2 Of course, much other work was being done to develop the various components of the Nation Building and Jobs Plan, announced on 3 February 2009. I focus only on the development of the HIP.
- 6.5.3 Ms Wiley-Smith (then Acting Assistant Secretary of Community and Industry Partnerships Branch of the Renewables and Energy Efficiency Division—REED— within DEWHA) was asked for assistance, given her previous work, outlined above. Ms Brunoro who worked with Ms Wiley-Smith, assisted her. As I have noted above, Ms Brunoro had earlier been seconded to the energy efficiency taskforce operating from PM&C. Both reported to Mr Carter (Ms Wiley-Smith more directly than Ms Brunoro) who was the First Assistant Secretary of REED. Ms Brunoro was, at the time, Acting Director in the Community Partnerships Team within DEWHA. Her involvement with the HIP was from its outset, and continued up until 22 April 2009, at which point she was seconded to another Government agency (the CSIRO).
- 6.5.4 On 12 January 2009, Ms Wiley-Smith sent to Mr Johnston some background information. At that stage it was still proposed to deliver any package in consultation with the States and Territories.
- 6.5.5 Under the heading 'Jobs benefits' in one of the documents it was stated:

Further, installation of these products requires relatively unskilled labour—in particular, insulation installers do not require extensive training and can be brought on line quickly—which increases the likelihood that the scheme will result in job creation in the short term.

The majority of insulation materials used in Australia is manufactured locally, representing in excess of \$450M in annual sales and approximately 5,000 jobs. Expanding the current insulation installation network is a relatively straightforward matter as installers do not require extensive training and can be brought on line quickly.⁸⁷

84 KEE.002.001.0539, 1.

85 KEE.002.001.0540, 1.

86 Statement of Johnston at [17], STA.001.093.0001, 2 June 2014.

87 Statement of Johnston at [19], STA.001.093.0001; 2 June 2014.

- 6.5.6 This information had come from ICANZ, in its submission to the Victorian equivalent of what became the HIP.⁸⁸ Of course large businesses such as the members of ICANZ had their own training programs. They also focussed only on the installation of insulation manufactured by those businesses.
- 6.5.7 Mr Johnston states that a submission was prepared for the SPBC, based on the Energy Efficiency (Green Jobs) package referred to above. It included a New Policy Proposal 'Climate Proofing Our Homes'.⁸⁹ At that stage no funding had been approved by the Cabinet for such a policy.
- 6.5.8 Mr Rudd's Office maintained an interest in what was occurring. On 19 January, Ms Horvat sought further information from Mr Johnston about the capacity of the insulation manufacturing industry.⁹⁰
- 6.5.9 Probably as a result of this enquiry from Mr Rudd's Office, PM&C delivered a number of questions to Mary Wylie-Smith on 19 January 2009. One question asked was:

If a decision on the package was made in the next day or two how long would it take administratively for the government to start rolling out the money?

- 6.5.10 The answer was:

Consideration could be given to launching the initiative initially as a rebate, which would be straightforward to administer based on the systems used for existing rebate programs (solar hot water), but simultaneously work on developing alternative delivery arrangements, such as voucher system/NGO delivery for later implementation.

A range of delivery agencies should be considered. In particular, consideration should be given to negotiating delivery arrangements with the states and territories, many of which already administer similar rebate programs. This could be done as part of the National Strategy on Energy Efficiency ... The administering agency would need approximately six months lead time to bring this program fully online—subject to being able to recruit, train and accommodate the staff needed to run the program, and subject to being able to develop the IT system needed to manage a program of this scale. A rudimentary program could be operational within three months, but there would be potentially serious delivery capacity issues revolving around the constraints identified above.

*The Canberra market may not be able to supply staff with the right skill set to deliver the program (largely revolving around data entry and payment processes). Consideration could be given to locating the program administration centre in another city or major regional centre...*⁹¹

- 6.5.11 If this was the source of the belief (expressed by Mr Rudd in his oral evidence) that the public service had advised that the HIP could be designed and ready for rollout on 1 July 2009, then in my view, that belief was capable of being tenuous at best. It can be seen from the document itself, and from the circumstances prevailing at the time (a program directed to low income households, and to be delivered in consultation with the States and Territories) that no suitably reliable advice was being given that what became the HIP, administered solely by the Government, could be ready to roll out in six months.

88 The Victorian Energy Efficiency Target Scheme—AGS.002.007.1003, 1-17.

89 Statement of Johnston at [22], STA.001.093.0001, 2 June 2014.

90 Statement of Johnston at [25], STA.001.093.0001, 2 June 2014.

91 AGS.002.086.2906, 1.

If that was what was relied upon by the SPBC in choosing a 1 July start date, it was seriously misconceived.

- 6.5.12 A document was prepared on 20 January 2009 entitled ‘Additional Information—Modified Sustainable Homes Assistance Package.’ It comments on identified risks:

The two year delivery timeframe has industry relationship implications due to the boom/bust nature of the proposed assistance. For example, a massive expansion of insulation installation across the country would require the industry to significantly expand manufacturing and installation capacity for two years (the industry has signalled that there is reasonable capacity) beyond which time demand would slump. A five year delivery schedule (as proposed in the original SHAP) that addresses the comparatively low level of insulation in Australia would still bolster installation and manufacturing employment without straining capacity and providing no medium to longer term strategy for the industry.

A massive expansion of insulation assistance within such a short timeframe would require a robust compliance framework as the opportunity to attract these financial resources quickly may result in low quality operators and installation practices. Within Australia there have already been numerous reports that some households have paid for insulation where the insulation has not been installed.⁹²

- 6.5.13 Mr Johnston states that on 21 January 2009 he received an email from Mr Tune which forwarded an email that Mr Tune had received from Mr Rudd’s Chief of Staff the night before—it stated that Mr Rudd wanted to see a package on solar water, insulation and smart meters that day.⁹³
- 6.5.14 Mr Johnston told Ms Wiley-Smith that consideration was being given at high levels to a household assistance package, but that it might be different from what had previously been proposed.⁹⁴
- 6.5.15 There was some suggestion at that stage that there would be a need to ‘ramp up quickly’ and that the rollout would be ‘quick’. Ms Wiley-Smith wrote to her colleagues in DEWHA.⁹⁵ On 21 January, Mr Malcolm Thompson replied:

We had a budget discussion with Minister Garrett this afternoon...and took the opportunity to mention that we had had an earlier discussion with you guys about some of the implementation challenges—this was a way of drawing out how much he was across things.

It appears that he is reasonably well informed by his staff but appeared to know little more; he did mention that he had a discussion with Minister Tanner about delivery options and obstacles (he was not more specific than this); Gerard [Gerard Early, the Acting Secretary of DEWHA at the time] pointed out the challenges presented by fast and large scale rollout, and the need to ensure that we have the resources to deliver—he understood and acknowledged these points.⁹⁶

⁹² AGS.002.008.0318, 1-2.

⁹³ Statement of Johnston at [25], STA.001.093.0001, 2 June 2014.

⁹⁴ Statement of Wiley-Smith at [10] to [13], STA.001.001.027, 15 March 2014.

⁹⁵ Statement of Wiley-Smith at [10] and [14], STA.001.001.0271, 15 March 2014; See also Transcript (17 March 2014) 79 (M Wiley-Smith).

⁹⁶ STA.001.001.0279, 1.

- 6.5.16 Additional information was provided by Ms Wylie-Smith to Mr Johnston on 22 January 2009.⁹⁷ This attached a ‘modified sustainable homes assistance package’ document. Under the heading ‘Comments on Identified Risks’ it was stated:

The two year delivery timeframe has industry relationship implications due to the boom/bust nature of the proposed assistance. For example, a massive expansion of insulation installation across the country would require the industry to significantly expand manufacturing and installation capacity for two years (the industry has signalled that there is reasonable capacity) beyond which time demand would slump. A five year delivery schedule (as proposed in the original SHAP) that addresses the comparatively low level of insulation in Australia would still bolster installation and manufacturing employment without straining capacity and providing no medium to longer term strategy for the industry.

While the proposal for householders to only pay ‘the gap’ is a positive outcome for low income households and will increase the uptake of the rebate, there may be cash flow implications for the small business sector ...

A massive expansion of insulation assistance within such a short time would require a robust compliance framework as the opportunity to attract these financial resources quickly may result in low quality operators and installation practices. Within Australia there have already been numerous reports that some households have paid for insulation where the insulation has not been installed.⁹⁸

- 6.5.17 The SPBC met again on Friday 23 January 2009. It considered the proposal that had been put to it by PM&C. It rejected it. Mr Dominic English called Mr Johnston and said that the SPBC wanted some advice on energy efficiency proposals. Mr Johnston was put on speakerphone to the SPBC meeting and answered questions put to him. Mr Johnston advised that for a given amount of money installing insulation in an uninsulated home would provide the single biggest benefit of any energy efficiency measure. Mr Johnston says that this occurred at approximately 2:30pm.⁹⁹
- 6.5.18 At approximately 4:30pm that day, Mr Johnston was contacted by a senior PM&C officer, probably Mr Tune. He was told that the SPBC wanted a program developed that would provide free insulation to every household in Australia. This program had to be developed for SPBC consideration in the morning of 27 January.¹⁰⁰ The intervening period was the Australia Day long weekend.
- 6.5.19 Mr Johnston immediately contacted Ms Wiley-Smith from DEWHA and Mr Paul Emery from Finance. He was instructed to advise them that they should not speak to anybody else within their Departments who did not have a ‘need to know.’¹⁰¹
- 6.5.20 On 23 January 2009 at about 5pm, Mr Johnston requested of Ms Wiley-Smith that the work she was to undertake focus solely on insulation.¹⁰² He sought a two -year rollout, a risk assessment of potential designs and delivery models and a ‘suite of costings’.¹⁰³ The other (relevant) instructions with which Ms Wiley-Smith were issued were:
- 6.5.20.1 there should be no out-of-pocket cost to the householder;

97 AGS.002.034.1772, 1.

98 AGS.002.034.1773, 1-2.

99 Statement of Johnston at [31], STA.001.093.0001, 2 June 2014.

100 Statement of Johnston at [32], STA.001.093.0001, 2 June 2014.

101 Statement of Johnston at [25], STA.001.093.0001, 2 June 2014.

102 AGS.002.008.0315, 1; Statement of Wiley-Smith at [19], STA.001.001.0271, 15 March 2014.

103 Statement of Wiley-Smith at [20], STA.001.001.0271, 15 March 2014.

- 6.5.20.2 she was to prepare a risk assessment of potential designs and delivery models for implementation of the program;¹⁰⁴
- 6.5.20.3 she was to keep the information confidential;¹⁰⁵
- 6.5.20.4 she was not to share the information with colleagues (besides Ms Brunoro) within DEWHA;¹⁰⁶
- 6.5.20.5 she was not to contact industry;¹⁰⁷
- 6.5.20.6 it should be presumed that the program would run for two years from 1 July 2009.
- 6.5.21 All this was to be provided by Monday 26 January 2009 (a public holiday). Ms Brunoro was also requested by Mr Johnston to assist.¹⁰⁸
- 6.5.22 This was the first time, for Ms Brunoro at least, that an energy efficiency measure was based solely on insulation.¹⁰⁹
- 6.5.23 Ms Wiley-Smith and Ms Brunoro worked over the Australia Day long weekend on these tasks. They recommended that what was being proposed be rolled out over a five-year period. Ms Wiley-Smith said she preferred this because of concerns about the boom/bust nature of a two-year rollout on the current industry and the desire for a cautious approach given that a program of that size had not been rolled out previously in Australia.¹¹⁰ They did not work alone. They consulted, for example, with Mr Paul Emery of Finance and staff working for him.¹¹¹ Mr Emery asserts that his Department preferred a five-year rollout and that this advice would have been provided (including to PM&C it would seem).¹¹²
- 6.5.24 On Saturday 24 January 2009 at 7.12am Mr Emery wrote to Ms Wylie-Smith, amongst others, and said:
- One thought to factor in. The data we have indicates that possibly around 200,000 pa are insulated currently. If the increase required under the new program indicates that it would take 3, 5 or 10 years to be done then we should do the costing accordingly. I agree with you that PMC's paper should highlight the need for industry to be asked what is feasible.*
- 6.5.25 On 24 January 2009 at 11am Ms Wiley-Smith wrote to Mr Emery and others stating, *inter alia*:
- Beth and I are looking at the numbers at the moment—and it doesn't look good for a two year program (almost 2.5m additional homes to insulate with no means test)—and as you mentioned the industry is only handling 200,000 home per year the moment....In regards to implementation, we are pursuing costings based on contracting companies to bulk purchase and handle the installs. We are proposing to split Australia into numerous regions, approaching the market and having a separate contractor/provider for each region. The contractor can then employ local installers to carry out the work. We need a call centre and a way of handling demand—possible through a staggered start through the regions, or by prioritising households so that recipients of government payments are insulated first.*

104 Statement of Wiley-Smith at [20], STA.001.001.0271, 15 March 2014.

105 Transcript (17 March 2014) 44 (M Wiley-Smith).

106 Transcript (17 March 2014) 44 (M Wiley-Smith).

107 Transcript (17 March 2014) 55 (M Wiley-Smith).

108 Statement of Brunoro at [26], STA.001.002.0001, 17 March 2014.

109 Statement of Brunoro at [17], STA.001.002.0001, 17 March 2014.

110 Transcript (17 March 2014) 84 (M Wiley-Smith).

111 Statement of Wiley-Smith at [29] and [30], STA.001.001.0271, 15 March 2014.

112 Statement of Emery at [10], STA.001.094.0001, 2 June 2014.

- 6.5.26 There was no consultation with industry as part of this formulation. Ms Wiley-Smith was instructed by PM&C not to do so about ‘capacity’ at least because ‘it might raise expectations’.¹¹³ The only direct industry input at this stage was an ICANZ submission that was provided to DEWHA about the number of installers and capacity within the industry.¹¹⁴ PM&C, however, seems to have contacted some members of industry over the Australia Day long weekend, including Mr D’Arcy, CEO of ICANZ and perhaps Mr Peter Ruz.¹¹⁵ Mr Ruz seems to have been thought capable of talking on behalf of the insulation industry. That proposition is questionable at best given that industry’s competitiveness and fragmentation and because Mr Ruz was associated with a large player in the industry (Fletchers Insulation). Ms Wiley-Smith did not appreciate that ICANZ was a body representing manufacturers. She seems to have thought ICANZ was a peak body representing the industry (including installers).¹¹⁶ In fact it had two members—both manufacturers: Fletchers and CSR Bradford— so its submission ought to have been read in that context. Ms Wiley-Smith, it should be said, relied upon staff and was pressed for time in the completion of the difficult task assigned to her.
- 6.5.27 The work that Ms Wiley-Smith and Ms Brunoro produced took the form of a New Policy Proposal to the SPBC.¹¹⁷ The rebate proposed was initially \$1,200, an amount favoured by Ms Brunoro based upon her research and which she considered to be reflective of the fact that the cost of installing insulation in some dwellings would be less and some would be more.¹¹⁸ That amount was revised upwards on Tuesday 27 January 2009 to \$1,600 on the instructions, ultimately, from Mr Tune, the Acting Secretary of PM&C.¹¹⁹
- 6.5.28 A delivery paper was prepared which included a risk assessment which recommended a five-year rollout as this would allow implementation of the program by companies already established in the industry, provide adequate time for the industry to adjust to the changes in the market and to make longer term business decisions; and it provided enough time for a regional delivery approach to test the program and make any changes before national rollout.¹²⁰
- 6.5.29 The delivery paper commenced:
- This paper identifies the key risks and issues posed to the efficient implementation of the proposed insulation component of the measure and provides a suggested solution that mitigates risks and meets the government’s objectives.*
- 6.5.30 It continued under the heading ‘Commonwealth Oversight’:
- Management of the program would be simplified from a Commonwealth perspective by:*
- *permitting a small number of contracts with lead businesses/entities to be developed and managed, not large number of invoices and payments to installers or householders in each town or locality,*
 - *reducing the significant administrative overheads required by government to manage the procurement and distribution of insulation products and services across Australia,*

113 Statement of Wiley-Smith at [30], STA.001.001.0271, 15 March 2014.

114 Statement of Wiley-Smith at [36], STA.001.001.0271, 15 March 2014.

115 AGS.003.001.0003, 1.

116 Transcript (17 March 2014) 75 (M Wiley-Smith).

117 AGS.002.034.0238, 1-6.

118 Statement of Brunoro at [31], STA.001.002.0001, 17 March 2014.

119 Statement of Wiley-Smith at [45], STA.001.001.0271, 15 March 2014; Statement of Brunoro at [29] and [32], STA.001.002.0001, 17 March 2014; STA.001.001.0331, 1.

120 STA.001.001.0291, 3-12.

- consulting with industry on the development of the program to ensure that it is deliverable and successful in meeting the Government's objectives.

6.5.31 Under the heading on page 4 of the New Policy Proposal (NPP) 'Has the Proposal been Subjected to a Formal Risk Assessment' it is stated:

No. However rough assumptions have been made in determining the package costs as to the numbers of households that will access the various assistance offerings ... Added to this complexity, a package incorporating this range and level of support for household energy efficiency assistance has not previously been made available in Australia... Low take-up of people interested in doing the training course is rated as a low level risk. A high take-up in the training courses is a key element for the delivery of the measure. Participation rates will be maximised through the full subsidisation of course fees.

6.5.32 Under the heading on page 5 'Is there sufficient capacity within the region to support the delivery of the proposal' it is stated:

The insulation installation network may require expansion which will not be a major obstacle as installers do not require extensive training.

6.5.33 Some 19 documents were sent through to PM&C on 26 January. In a document headed 'Insulation Package—Further Questions' it was noted:

ICANZ said that training would take 1 day and that they have a course and training notes available. No specialist skills are required. ICANZ said there were no limits on this side other than people looking for work.¹²¹

6.5.34 The model that was proposed to the SPBC was, to use the words of Ms Wiley-Smith:

As we were recommending the contractual model, we were assuming that the installers would be all large established insulation companies and that training would be required by the employer before installers could start work.

In the proposed model, safety would be a primary concern for the contracted parties. Contracts or funding agreements would specify the WH&S obligations under commonwealth and state laws (at that time) as well as outline how any breach would be managed. We recommended a 'regional rollout' model (to rollout the program step-by-step) where we could test the model and then improve the design of the program in consultation with industry before we rolled it out across Australia.¹²²

6.5.35 Ms Brunoro had a similar understanding, as that was the kind of model which she had costed.¹²³ Indeed, when Mr Johnston made the request he did on the Friday immediately before the Australia Day long weekend, it was for a policy that was to involve a model where 'the Government would tender for suppliers'.¹²⁴

6.5.36 Ms Wiley-Smith said in her oral evidence that risk in terms of workplace health and safety was considered. But the model she costed was one in which the risk in terms of workplace health and safety would have been handled by the contractor through the contractual arrangements with the Government, in a manner similar to the way the

¹²¹ AGS.002.008.0326, 1.

¹²² Statement of Wiley-Smith at [54] and [55], STA.001.001.0271, 15 March 2014.

¹²³ Statement of Brunoro at [33], STA.001.002.0001, 17 March 2014.

¹²⁴ Statement of Brunoro at [33], STA.001.002.0001, 17 March 2014.

Government manages very large construction contracts.¹²⁵ It was something that large providers would in her view cater for. Ms Wiley-Smith said of the model and the risk to which it gave rise:

*In managing risk, partnering with companies already in the industry, who are seeking longevity, already understand the market and have skin in the game, was considered to be the best approach at the time. We also proposed a phased start to the program to enable the design to be implemented and tested in a region, before it was rolled out across Australia.*¹²⁶

6.5.37 Ms Wiley-Smith did not turn her mind to the issue of electrical safety.

6.5.38 In the documents prepared by Ms Wiley-Smith and Ms Brunoro, there is positive reference made to permitting a 'small number of contracts with lead businesses/entities to be developed and managed' as against a 'large number of invoices and payments to installers or householders in each town or locality'.¹²⁷

6.5.39 The model with which DEWHA was familiar in the context of insulation was the Solar Cities program in which large providers were contracted.¹²⁸ The Solar Cities program was a greenhouse gas emissions response within the energy sector. Funding from the Australian Government supported the integration of solar technologies into existing and new residential and commercial buildings. The Solar Cities trials were delivered through a consortium model that involved partnerships between local and state Governments, community groups, industries and businesses. The consortium format made it distinctive from other Government programs, as it was provided almost entirely through commercial enterprises.¹²⁹

6.5.40 The regional rollout is one that Ms Wiley-Smith had identified as operating in the United Kingdom's 'Warm Front Scheme'. That program was one in which government contracted with third party organisations to organise and train installers, book inspections and installations, confirm eligibility for assistance and quality assure the work that had been completed by one of their installers.¹³⁰ Ms Brunoro had conferred by telephone on 18 December 2008 with representatives of Eaga Plc.¹³¹ Ms Wiley-Smith also attended that meeting, or a similar one at or about that time.¹³² The UK's compliance regime was discussed and safety of the installer and householder were considered.¹³³ A note of that teleconference refers to training taking eight weeks and the UK having established a 'training academy', to the scheme having 'experienced failures' at the beginning and to it being 'absolutely vital to conduct independent assessments—to check contractors [sic] work'.¹³⁴ Under the heading 'Lessons for Aust to consider', it was stated:

Interaction with States and Territories is essential—e.g. a national program managed by the Commonwealth, then involve the States and Territories so they can amend/tailor the scheme to suit different needs.

125 Transcript os (17 March 2014) 40 (M Wiley-Smith).

126 Statement of Wiley-Smith at [24], STA.001.001.0271, 15 March 2014.

127 STA.001.001.0291, 5.

128 Transcript (20 March 2014) 394, 398 (R Carter).

129 The Allen Consulting Group, *An evaluation of the governance and administration of the Solar Cities program* (2013) v.

130 Statement of Brunoro at [33], STA.001.002.0001, 17 March 2014.

131 Statement of Brunoro at [21], STA.001.002.0001, 17 March 2014.

132 Transcript (17 March 2014) 73 (M Wiley-Smith).

133 Transcript (17 March 2014) 74 (M Wiley-Smith).

134 STA.001.002.0038, 1-2.

- 6.5.41 Another program that ‘possibly’ received consideration (Ms Wiley-Smith said) was the Victorian ‘VEET’ scheme, run by Sustainability Victoria.¹³⁵ More is said of it later. It was one by which the Victorian Government offered rebates for the insulation of homes in that State. Training was offered as part of it.
- 6.5.42 Risks were identified with this model, including that industry did not have the capacity to meet the demands of the program and ‘over-subscription’. These and other risks are why the paper provided to PM&C recommended a five-year rollout in preference over a shorter one.¹³⁶ Doing so, Ms Brunoro thought, enabled industry to meet the required capacity ramp-up and to ensure the program could be rolled out at the necessary scale. Other risks identified included as follows:

Delivery Technical—Medium

There are significant risks associated with tight timeframes for the implementation of major programs. ...

Costs—Medium

... a package incorporating this range and level of support of the installation of household energy efficacy assistance (particularly insulation) has not previously been made available in Australia.¹³⁷

- 6.5.43 Ms Wiley-Smith said that the risk assessment that her team had been asked to undertake was of the proposal presented, based on the information to date and the consultations that had previously occurred. Ms Wiley-Smith thought this to be the best delivery model.¹³⁸ But it was, as Ms Brunoro pointed out, a short time frame within which to undertake the work which she and her team did.
- 6.5.44 DEWHA had some experience rolling out a program via large providers and handling work safety issues and training in that manner.¹³⁹
- 6.5.45 Ms Wiley-Smith said, on the issue of the industry’s capacity to expand to meet the demand expected to be generated by the HIP, in an email of 1 December 2008 attaching a proposal:

Capacity constraints/ability to deliver

The current insulation installation network has additional capacity at the moment, however would have to expand and create new jobs if the government aimed to have all uninsulated houses insulated ... This is a relatively straightforward as installer [sic] do not require extensive training and can be brought on line quickly. [ellipsis in original]

- 6.5.46 Ms Wiley-Smith preferred the five-year timeframe because it would have avoided in her view the need for the importation of insulation materials.¹⁴⁰ A program like this, Ms Wiley-Smith said, had not been rolled out in this country and so caution was necessary.¹⁴¹

135 Transcript (17 March 2014) 32—33 (M Wiley-Smith); AGS 002.025.0327, 1-16.

136 Statement of Brunoro at [35], STA.001.002.0001, 17 March 2014.

137 Statement of Wiley-Smith at [Annexure 5], STA.001.001.0271, 15 March 2014.

138 Statement of Wiley-Smith at [23], STA.001.001.0271, 15 March 2014; Transcript (17 March 2014) 71-73 (M Wiley-Smith).

139 Transcript (17 March 2014) 99 (M Wiley-Smith).

140 Transcript (17 March 2014) 95 (M Wiley-Smith).

141 Transcript (17 March 2014) 86 (M Wiley-Smith).

- 6.5.47 On 27 January the SPBC met to consider the proposal prepared by Ms Wiley-Smith, Mr Emery and others.
- 6.5.48 Ms Wiley-Smith was asked to re-cost the proposal with a maximum payment of \$1600 per household. That request was made of PM&C by the SPBC. Mr Isaacson (from PM&C) sent an email to Ms Wiley-Smith:

I understand that you discussed with Paul E David Tune's request to PM&C which was 'Also, can you recost the insulation proposal to have a MAX grant of \$1600 per household, still based on no means test'. On our side of things, Paul Grimes has asked us if the imposition of a maximum at \$1600 would impact on (reduce) the average cost. Paul E and I think that there would be minimal impact and that for costings purposes, given the margin of error of all assumptions, we should leave the amount at \$1200. However, we'd appreciate your views.¹⁴²

- 6.5.49 Ms Wiley-Smith responded:

In regards to the \$1200 average, this figure has been arrived at via previous interactions with industry over the last two years (i.e. not in the context of this proposal but through general stakeholder consultations through the work done in the Residential Building Efficiency Team and Green Loans). It was also confirmed with industry and consultants in December 2008 in the development of the comparison table ... We are of the view that significant economies of scale would be achieved at scale—with the caveat that the two year option may have the opposite effect if industry was unable to meet demand levels, i.e. drive the cost up... Just in regards to the \$1,600 cap issue again, we think that if the industry is aware of the cap on costs, and in the absence of extremely stringent and costly compliance mechanisms, there is likely to be some gaming and upwards impact on the cost average.

- 6.5.50 On the same day, Mr Early sent an email to Dr Watt (then the Secretary of Finance) which said:

Sorry for the problems with information about the proposed energy efficiency homes program over the long weekend but wanted to confirm with you that DEWHA was not a key player but, rather, simply providing information as requested by PM&C who specifically told us not to contact the industry. We have still not even seen the paper that went to the PM from PM&C. And, given our incomplete understanding of the proposal being considered, it was PM&C who sought information from industry (after we had supplied the key contacts). It was very difficult for us to respond as positively and quickly to the PM's requirements as we would like when we are partly in the dark about those requirements. Having said that, our staff working throughout the weekend on costings received the fullest possible cooperation from DOFD.¹⁴³

- 6.5.51 The additional costs requested were provided and the SPBC considered the matter again on 28 January 2009. The actual decision made is discussed below.
- 6.5.52 Following consultations on 6 February 2009 conducted by DEWHA with industry representatives from CSR Bradford and Fletcher Insulation (who also were represented by ICANZ), Ms Brunoro shared her understanding of the meeting with participants in an email, in which she noted:

¹⁴² Statement of Wiley-Smith at [47], STA.001.001.0271, 15 March 2014; STA.001.001.0326, 1.

¹⁴³ AGS.002.023.1156, 2.

*Training is a priority, and a plan to ensure all installers have had consistent training would be desirable. You highlighted the one day training package developed by the Victorian Government and your support for it.*¹⁴⁴

- 6.5.53 Ms Wiley-Smith had no further involvement from ‘just after’ the HIP was publicly announced on 3 February 2009.¹⁴⁵ Mr Carter was copied into emails over the late January period. This was a formality because he was away on leave at the time.¹⁴⁶ He had, as will be seen, considerable continuing involvement with the HIP, as well as his significant involvement in the EESG referred to above. Ms Brunoro became, after the HIP’s announcement, Director of the Home Insulation Policy Team, reporting to Mr Keefe. She briefed him when he took over that role.¹⁴⁷ She remained as such until mid-April 2009.¹⁴⁸
- 6.5.54 In that role, Ms Brunoro consulted with industry about the (by then announced) program. The first such meeting took place at Old Parliament House on 18 February 2009. She describes her role as to ‘understand the range of issues relevant to the implementation of the program’.¹⁴⁹
- 6.5.55 More is said of this meeting in Chapter 7, and of the other events that followed immediately after the HIP’s announcement.
- 6.5.56 It remains to say something of Mr Carter’s understanding of the proposed delivery model in this early period. His evidence was to the same effect as that of Ms Wiley-Smith and Ms Brunoro, namely that it was contemplated that large providers be engaged to effect or supervise insulation installations, via a regional delivery arrangement.¹⁵⁰
- 6.5.57 Mr Rudd said that the work done in January 2009 built on earlier work done by Government departments on home insulation.¹⁵¹ He was not specific about how and to what extent, besides saying it was a ‘policy idea’ that came from Government departments before the Global Financial Crisis and was then further developed.¹⁵² I am of the view that, although much work had been done in 2008 in particular about a possible energy efficiency initiative, that work was not in any material way focussed upon home insulation until early 2009. Moreover, it was not until such an initiative became a possible target as a stimulus measure that its real parameters and essential features were designed.

6.6 Cabinet processes

- 6.6.1 In the above narrative of what occurred in the December 2008 to January 2009 period, I have referred to a number of occasions when documents were provided to or requests were made by the SPBC. The process that Ms Wiley-Smith and Ms Brunoro undertook was one initiated by the SPBC. I say something briefly here about the processes by which that occurred.
- 6.6.2 The first Cabinet consideration of the HIP in its early form was by the SPBC of Cabinet. Its members were Mr Rudd, the Deputy Prime Minister (Ms Gillard) and Ministers Swan and Tanner (the four most senior Ministers). The purpose of the SPBC as described by Mr Rudd was to consider and determine the strategic policy direction of the Government,

144 AGS.002.010.0918, 2.

145 Statement of Wiley-Smith at [57], STA.001.001.0271, 15 March 2014.

146 Statement of Wiley-Smith at [27], STA.001.001.0271, 15 March 2014.

147 Statement of Brunoro at [42], STA.001.002.0001, 17 March 2014.

148 Statement of Brunoro at [6], STA.001.002.0001, 17 March 2014.

149 Statement of Brunoro at [45], STA.001.002.0001, 17 March 2014.

150 Transcript (20 March 2014) 337 (R Carter).

151 Statement of Rudd at [20], STA.001.080.0001, 15 May 2014.

152 Statement of Rudd at [21], STA.001.080.0001, 15 May 2014.

to implement the Government's pre-election policies and to develop the Government's overall budget strategy. Decisions of this Committee were 'usually' referred to the full Cabinet.¹⁵³

- 6.6.3 It was the SPBC that had been briefed by Treasury about the GFC in mid-October 2008 as to the nature and scale of those circumstances. Treasury advised that critical decisions would need to be made and on an urgent basis if a recession was to be avoided.¹⁵⁴
- 6.6.4 On 19 January 2009, the 'Nation Building Measures—Stimulus' came before the SPBC. The relevant proposal was at that stage called 'Energy Efficiency and Green Jobs'. It comprised four elements, the first being 'A new Climate-Proofing Our Homes' program at \$3.7 billion over two years, but not including service delivery and other costs and the Low Emission Assistance Plan for Renters (LEAPR), modified to target low income households in rented accommodation.
- 6.6.5 The climate-proofing element was to be delivered in partnership with the States and Territories, and to involve in-home energy audits to up to 900,000 households and rebates of up to \$1,000 to low and middle income households for capital energy efficiency improvements, including insulation and solar or heat pump hot water systems.¹⁵⁵ A comment on that proposal which was before the SPBC was that the proposal was 'complex, insufficiently developed and subject to significant cost uncertainties and implementation risks'.¹⁵⁶ It was recommended to be further considered ahead of the March COAG meeting through a more fully developed submission that addressed the implementation arrangements and risks in greater detail and that further cooperation with the States and Territories could be explored with a view to spreading the implementation and costs burden.
- 6.6.6 Further discussion of this item took place in the SPBC on 21 January 2009. For that meeting, it was recommended that the SPBC agree to the Climate-Proofing Our Homes program as outlined in an attached New Policy Proposal.¹⁵⁷ It was recommended that it be delivered through COAG as part of the National Strategy for Energy Efficiency. One focus for that proposal was to be insulation.¹⁵⁸ It was to be targeted at low and middle income households. That proposal suggested that the average cost of ceiling insulation was about \$1,200 per house, that the insulation industry could expand to meet the additional demand created by the program, and that there be an 'auditor training component' focussed on training 1,360 home energy sustainability assessors.¹⁵⁹ Faster delivery options were noted, including by removing the upfront audit component. Having such audits, it was said, 'would have implication for the speed with which the program could be delivered and rebates provided'. This offer was then extended:

Were Ministers inclined to seek earlier delivery of rebates, an alternative model would be considered that did not require audits to qualify for rebates for the installation of insulation and efficient hot water heaters. Customers would submit bills for installation of these two products which would be rebated by the government up to \$1000. DEWHA estimate that they could commence delivery of such a program within three months, provided they were allocated additional resources to fast track the establishment of appropriate IT systems and guidelines.

153 Statement of Rudd at [22], [21], STA.001.080.0001, 15 May 2014.

154 Statement of Rudd at [11], [12], STA.001.080.0001, 15 May 2014.

155 AGS.001.131.0001, 2.

156 AGS.001.131.0001, 4.

157 AGS.002.131.0008.

158 AGS.002.131.0009, 4.

159 AGS.002.131.0008, 5.

- 6.6.7 There were two drawbacks with the alternative, faster model. First, it was said, it would compromise the environmental and climate change benefits of the program, because it was thought that behaviour needed to change and that in-home audits were the means to achieve that change. Secondly, such a model could not be delivered through COAG.
- 6.6.8 On Friday, 23 January 2009, the SPBC met again. It would appear (from later SPBC papers) that at this meeting, the SPBC requested officials to develop an Energy Efficiency Homes program for consideration, which would run for two years and provide free ceiling insulation and installation for Australian owner-occupiers.¹⁶⁰
- 6.6.9 That program came before the SPBC for its 27 January 2009 meeting. At that meeting, SPBC discussed 'Energy Efficiency'. It was recommended that the SPBC agree to the Energy Efficient Homes program as outlined in associated papers, 'with the final design to be settled between the Prime Minister, the Treasurer, the Minister for Finance and Deregulation and the Minister for the Environment, Heritage and the Arts prior to announcement'. The program as presented was that insulation would be installed at no cost, that there would be a call centre through which householders would register their interest and a request be sent to the 'delivery entity', that there be up to 15 'implementation regions', that a 'lead delivery entity' be selected through a tender process to 'ensure that the assistance can be delivered consistently across the region' and that bulk procurement and sourcing could occur at the regional level. It was said that a compliance program would be implemented to prevent fraud (no mention was made of safety or of ensuring the proper installation of insulation). It was then recommended that program design be finalised only after further consultation with industry to ensure delivery targets could be met.¹⁶¹
- 6.6.10 Under the heading 'Risks', reference was made to the significant increase in installations to be expected. It was said that one option for mitigating this risk was to implement the program over five years instead of two. This, it was said, 'would provide more time for the industry to adjust and to make longer term business decisions'. It was then said:

A rapid expansion of the industry to meet a two year program creates risks if the industry subsequently needs to shed the substantial workforce required to deliver the two years option when demand is subsequently reduced. A medium-term path for the industry may need to be considered prior to the termination of the program.

- 6.6.11 Such a risk, it will be seen in Chapter 13, materialised when the HIP was brought to an end early, after just one year of operation.
- 6.6.12 Other risks were identified, but they related not to safety, but to costs increasing, and the possibility of a need for draught-proofing so as not to limit the effectiveness of insulation.¹⁶² 'Implementation risks' were said to include cost, delivery integration and the following:

Delivery Technical –Medium

*There are significant risks associated with tight timeframes for the implementation of major programs. Tight procurement oversight and regular reporting will be required to meet the delivery schedule outlined in the package—namely aiming for a 1 July 2009 commencement date.*¹⁶³

¹⁶⁰ AGS.002.131.0018, 3.

¹⁶¹ AGS.002.131.0018, 2-3.

¹⁶² AGS.002.131.0018, 5.

¹⁶³ AGS.002.131.0018, 9.

- 6.6.13 The SPBC papers recorded that the Insulation Council of Australia and New Zealand (ICANZ) and Fletcher Insulation had indicated that domestic production of insulation materials could be increased by perhaps 40%, that increasing plant size would take 18 months to two years and that ‘meeting the proposed volumes [is] potentially feasible, but only through imports as the capacity of domestic industry would be quickly exhausted’. ICANZ is recorded as having said that training would take one day and that no specialist skills are required.¹⁶⁴
- 6.6.14 One outcome of this meeting, it would seem, is that the SPBC requested officials develop an option for the Energy Efficient Homes program which would run for 5 years.¹⁶⁵
- 6.6.15 Mr Tune, on about 27 January 2009, requested that the cap be at \$1,600.¹⁶⁶ He could not recall why that figure was chosen.
- 6.6.16 On 28 January 2009, the SPBC considered submissions regarding the EEHP including the HIP. It was resolved that there ought be an ‘interim arrangement’ providing rebates up to a maximum of \$1600 from the day on which the HIP was announced to 1 July 2009, with the details of that program to be settled between PM&C and DEWHA. The final design was to be settled between the Treasurer, Finance Minister Mr Tanner, Mr Garrett and Mr Rudd before announcement. It is not clear that this ever occurred. The papers for that meeting include two alternatives for the program: one for a two-year duration, and the other for one of a five-year duration. The cap proposed was \$1,600. The five-year option was said to allow *‘greater use of domestically manufactured insulation and provide longer-term benefits to the industry’*.¹⁶⁷
- 6.6.17 There is a minute of the SPBC decision of 28 January 2009¹⁶⁸ which reads as follows:
- 6.6.17.1 The Committee noted the papers prepared by PM&C titled:
- 6.6.17.1.1 Energy Efficient Homes Package of 27 January 2009; and
- 6.6.17.1.2 Energy Efficient Homes Package of 28 January 2009
 (‘the paper’)
- 6.6.17.2 The Committee agreed to the Energy Efficient Homes program (EEHP):
- 6.6.17.2.1 as outlined in Attachment A to the Paper ...
- 6.6.17.3 The Committee also agreed that officials meet with Australian insulation manufacturers prior to finalisation of the EEHP design to explore their capacity to expand supply and ensure delivery targets can be met.
- 6.6.17.4 The Committee further agreed that the final design of the EEHP be settled between Mr Rudd, the Treasurer, the Minister for Finance and Deregulation and the Minister for the Environment, Heritage and the Arts (‘the Minister’) prior to announcement...
- 6.6.18 On 3 February 2009, the full Cabinet received an oral briefing from Mr Rudd on the Nation Building and Jobs Plan and agreed to the Energy Efficient Homes Plan, for which \$3.9 billion had been allocated.¹⁶⁹ As will be seen below, this was the same day that the HIP was announced.

164 AGS.002.131.0018, 12

165 AGS.002.131.0208, 3.

166 Statement of Tune at [4], STA.001.092.0003, 15 May 2014; AGS.002.078.0600, 1.

167 AGS.002.131.0208, 4.

168 AGS.002.131.0208, 17-18.

169 AGS.002.131.0074, 1.

6.7 Marshalling of resources

- 6.7.1 Formulating the HIP was something which many of the public servant witnesses said involved intense work and long hours.
- 6.7.2 DEWHA was subsequently allocated funding to undertake further design and implementation work, but the problem seems to have been not the funding itself, or any lack of it, but finding suitably qualified and experienced people to assist. Mr Carter, for example, said that the level of resources (by which he seemed to mean people) and skill sets available were not commensurate with the tasks allocated.¹⁷⁰ The work, he said, was difficult and stressful. Staffing levels were 120-130 at the beginning of 2008 and between 300 and 320 in 2009 within REED.¹⁷¹
- 6.7.3 As will be seen later in this Report, DEWHA's traditional role was as a policy agency.¹⁷² It lacked technical and project management expertise.¹⁷³ The scale of the HIP exceeded that of any other program that DEWHA had previously run.¹⁷⁴ Senior DEWHA staff considered that DEWHA lacked the project management expertise, capacity or system to 'up-scale' for a program of the size of the HIP.¹⁷⁵ DEWHA had no experience with training.¹⁷⁶
- 6.7.4 These factors led to a review and restructure of DEWHA, overseen when Ms Kruk started.¹⁷⁷ This was, however, a 'work in progress' when the HIP commenced on 1 July 2009.¹⁷⁸ It was something that could not be completed within the time by which the HIP was required to start on 1 July 2009.¹⁷⁹
- 6.7.5 The difficulty of course with this is that if the administration of the HIP was weak because of weaknesses in the Department principally responsible for it, that had the capacity to affect the conduct of the work done on the ground, i.e. in homes.¹⁸⁰

6.8 Unorthodox approach

- 6.8.1 Mr Carter considered the process of implementing the HIP to have been unusual because it was an emergency measure being taken by the Government as part of a stimulus package to combat the effects of the global financial crisis in Australia.¹⁸¹ He expanded on this when questioned by Senior Counsel Assisting. The usual process would have been a proposal looked at by various agencies, which provide criticism and comments. The proposal is then refined and results in a more formal submission to the Cabinet. This advanced draft is then sent to the agencies for a more formal draft response, 'and those more formal responses—if they weren't then accommodated in the refinement of the draft, were included in the advice to government of the final Cabinet submission', which in effect allows the agencies to let the Cabinet know the issues they think have not been looked at sufficiently before handing the whole issue over to the Cabinet to make the decision.¹⁸²

170 Statement of Carter at [13], STA.001.001.0340, 17 March 2014.

171 Statement of Carter at [11], STA.001.001.0340, 17 March 2014.

172 Statement of Kruk at [20], STA.001.010.001, 26 March 2014.

173 Statement of Kruk at [41] and [53], STA.001.010.001, 26 March 2014; Statement of Keefe at [81], STA.001.015.0001, 28 March 2014.

174 Statement of Kruk at [47], STA.001.010.001, 26 March 2014.

175 Statement of Kruk at [47], STA.001.010.001, 26 March 2014.

176 Statement of Kruk at [51], STA.001.010.001, 26 March 2014.

177 Statement of Kruk at [25], STA.001.010.001, 26 March 2014.

178 Transcript (28 March 2014) 1235-1236 (R Kruk).

179 Transcript (28 March 2014) 1236 (R Kruk).

180 Transcript (28 March 2014) 1236 (R Kruk).

181 Statement of Carter at [21], STA.001.001.0340, 17 March 2014.

182 Transcript (20 March 2014) 354 (R Carter).

- 6.8.2 The difference between this usual course and that actually adopted in the formation phase of the HIP is obvious.
- 6.8.3 The approach was also unorthodox in another way, discussed in more detail in Chapter 7. Doubtless because of the command that the project had to be initiated quickly, there was a failure properly to clarify roles and responsibilities of DEWHA (and REED in particular), and the OCG and PM&C. The respective roles should have been clarified between PM&C, Minister Arbib, Mr Garrett, Mr Mrdak and the Secretary of DEWHA. Nowhere is this more evident than in a decision of 31 March (discussed in Chapter 7) to change the delivery model from using large providers to one in which homeowners contracted directly with insulation installers. Mr Garrett was not present when a very significant decision was imposed on his Department without warning or discussion with him or his officers. As it turns out, that was probably a bad decision which was then exacerbated by later events. One of those later events was the rejection of advice from industry with regard to mandatory training of installers.

6.9 Observations and findings: early formulation of the HIP

- 6.9.1 It is evident that the HIP proposal that was submitted to the SPBC on 27 and 28 January 2009 drew on work previously carried out by both DEWHA and PM&C in the energy efficiency area. However, the request for a policy that related to insulation only, for all households, and as part of a stimulus measure only occurred from 19 January 2009.
- 6.9.2 The development of the proposal for the HIP mainly occurred in PM&C, which co-opted officers from other departments, including DEWHA.
- 6.9.3 Although she provided information to officers of PM&C prior to 23 January 2009, Ms Wiley-Smith (and Ms Brunoro) really only became involved in formulating the HIP on that date.
- 6.9.4 The request made of Ms Wiley-Smith and Ms Brunoro by PM&C, although not requiring work that was entirely new to either of them, allowed them little time properly to consider a proposal of this magnitude focused, for the first time, solely upon insulation. They worked hard to meet the tight deadline. Necessarily, their assessment of the risks attending the proposal in particular, could not have been fulsome.
- 6.9.5 These officers did what they could, including by including an option for the longer period over which the program should be rolled out (five years rather than two) and identifying some possible risks. The lack of industry consultation about this particular proposal, combined with a perhaps over-stated view to Mr Garrett about the extent to which industry consultation had occurred and endorsed the proposal, was, however, a real deficiency in this process.¹⁸³
- 6.9.6 The task that Ms Wiley-Smith and Ms Brunoro undertook was also limited by the express instructions they were given not to contact industry and not to speak with colleagues.¹⁸⁴ It was the first time Ms Wiley-Smith had been given such an 'exhortation', albeit that it accorded with the understood position with respect to policy formulated for a Cabinet process.¹⁸⁵ It meant, for example, as Ms Wiley-Smith said, that they did not have an ability to assess the impact of a measure like this.¹⁸⁶

183 Transcript (17 March 2014) 54 (M Wiley-Smith); AGS.002.008.0281, 1-2.

184 Transcript (17 March 2014) 44-45 (M Wiley-Smith).

185 Transcript (17 March 2014) 58-59 (M Wiley-Smith).

186 Transcript (17 March 2014) 45 (M Wiley-Smith).

- 6.9.7 The model that was presented was one given on the basis that it had its limitations for the reasons given above. It involved proposed delivery via major players in the industry with considerable experience installing insulation (what I describe as the regional brokerage model). This is a feature which, as will be seen, was one way of dealing with risks such as the personal safety of installers and to provide some assurance that insulation was being installed properly and by properly-trained and/or supervised installers. Ms Wiley-Smith and Ms Brunoro both saw that delivery model as dealing to some extent with the risks that might result if, for example, the model did not place reliance on contracted larger and more experienced companies in the industry. Their express preference for a five-year rollout was one respect in which some real attempt was made to avoid or reduce the risks which attended a program which had a much shorter time in which to be established and rolled out. It must be borne in mind also that the model then under consideration was one that involved large and experienced players, who might reasonably be thought to bring expertise and experience to the program and contracts between them and the Government, being able in some respects to mitigate risks.
- 6.9.8 It should not be lost sight of that the program approved by the SPBC on 28 January 2009 was one that incorporated what I have described as a regional brokerage model. That was not the program that was eventually used.
- 6.9.9 No meaningful advice was given to the SPBC as to the timeframe that was required for the HIP to be properly designed and implemented. Any suggestion that definitive advice was given that the task could be done by 1 July 2009 ought to be rejected.
- 6.9.10 DEWHA was not, at this stage at least, the lead agency on the HIP or even on its formulation. PM&C, at this stage, was directing it and imposing the short timeframes. A desire for haste is evident even at this very early stage of the HIP's development. The time allowed to Ms Wiley-Smith and Ms Brunoro, the instructions given to Ms Wiley-Smith by Mr Johnston about a fast rollout, the desire then for an early February announcement of the program itself and the apparent preference ultimately for a two-year rollout (despite the recommendation by Ms Wiley-Smith and Brunoro and Treasury for a five-year timeframe) are all examples of a clear desire for a very expedited formulation and rollout of a large scale initiative.¹⁸⁷
- 6.9.11 There are many documents about this time which show that what was contemplated was a fast and large-scale rollout.¹⁸⁸ This urgency seems to have infected the entire program and caused less than adequate attention and consideration to be given to questions of risk generally, of personal safety and of compliance.
- 6.9.12 In its initial form, the HIP provided for the management of safety risks via a brokerage model and by its delivery through experienced enterprises. These elements of the program would have better provided for the training and supervision of installers.
- 6.9.13 No, or no proper, consideration was given to the capacity of DEWHA to continue to design and implement such a program.

187 Transcript (17 March 2014) 79 and 83 (M Wiley-Smith).

188 See, for example, STA.001.001.0279, 1-2.

7. DELIVERY MODEL AND RISK ASSESSMENT

7.1 The Announcement

- 7.1.1 On 3 February 2009, Prime Minister Rudd announced the Government's second major stimulus package.¹ It was known as the Nation Building and Jobs Plan to which \$42 billion was allocated.² The first component of it was \$14.7 billion to be directed towards school infrastructure (and known as 'Building the Education Revolution').³ This second component, a \$4 billion Energy Efficient Homes Package (EEHP), included the insulation of 2.7 million household roofs.⁴
- 7.1.2 The announcement was in the following terms:

To support jobs and set Australia up for a low carbon future the Rudd Government will install free ceiling insulation in around 2.7 million Australian homes.

This investment will support the jobs of tradespeople and workers employed in the manufacturing, distribution and installation of ceiling insulation during a severe global recession.

In addition, under the Energy Efficient Homes investment the Solar Hot Water Rebate will be increased from \$1000 to \$1600 from today and the Low Emissions Plan for Renters rebate will increase from \$500 to \$1000.

The Energy Efficient Homes investment will:

- *Install ceiling insulation in around 2.7 million Australian homes;*
- *Cut around \$200 per year off the energy bills for households benefiting from these ceiling insulation programs;*
- *Reduce greenhouse gas emissions by around 49.4 million tonnes by 2020, the equivalent of taking more than 1 million cars off the road.*

Energy Efficient Homes is a key element of the Government's \$42 billion Nation Building and Jobs Plan to support up to 90,000 Australian jobs over the next two years.

2.7 million Energy Efficient Homes

Insulation is typically the most cost effective way to improve a home's energy efficiency. Although all newly-built homes must be insulated, many older homes—up to 40 per cent of Australia's housing stock- remain uninsulated.

This results in many householders paying much more than they need to in energy bills.

1 AGS.002.032.1448, 1-4; Statement of Charlton at [26b], STA.001.085.0001, 13 May 2014.

2 AGS.002.032.1448, 1.

3 AGS.002.032.1448, 1.

4 AGS.002.001.0045, 1.

Once installed, households could save around \$200 per year on their energy bills, as well as improve the comfort and value of their homes.

The Energy Efficient Homes package will modernise Australia's homes, it will enable almost all Australian homes to be operating at a minimum two star energy rating by 2011.

For a time-limited period of two and a half years, from 1 July 2009, owner-occupiers without ceiling insulation will be eligible for free product and installation (capped at \$1,600) simply by making a phone call.

As an interim arrangement, from today and until 30 June 2009, eligible owner-occupiers who install ceiling insulation in their homes will be able to seek reimbursement (up to \$1,600) after the program commences. The Government estimates 2.2 million owner-occupied home will benefit from this program.

Many of Australia's most vulnerable households are renters, who do not own their own home. To help these households lower their emissions and save money on energy bills, the Government will also double the rebate available under the Low Emissions Plan for Renters for landlords to install insulation in their rental properties: from \$500 to up to \$1,000—from today until 30 June 2011. The Government estimates 500,000 rented homes will benefit from this program.⁵ [emphasis added]

- 7.1.3 As I discussed in Chapter 6, the commencement date of 1 July 2009 was conceived without proper thought being given to the practicality or achievability of that date, nor of the ability of Department of the Environment, Water, Heritage and the Arts (DEWHA) to be able to implement the Program by that date.
- 7.1.4 What is abundantly clear from the evidence is that from the outset the 1 July 2009 commencement date was thought to be non-negotiable by those public servants and consultants working on the program.⁶ I have already discussed some of the evidence about this. What is also clear is that if the date of 1 July was not inflexible, that fact was never communicated to the public service.⁷ The fact that the date had been publicly announced by the then Prime Minister, Mr Rudd, as explained above, was sufficient for many public servants to believe that the date was inflexible.⁸ That says a lot about Government at that time. The perceived need to achieve the 1 July 2009 commencement date at all costs resulted in a decision being made to start the program without necessary protections being in place.⁹ As I explain below, a regional brokerage delivery model, advocated in the New Policy Proposal presented to the Strategic Priorities and Budget Committee (SPBC), and approved by it, which would have utilised the experience of larger providers was abandoned partly because of the instruction that the

5 AGS.002.001.0045, 1-2.

6 Statement of Mirdak at [42], STA.001.009.0001, 24 March 2014; Transcript (3 April 2014) 1808-1809 (M Forbes); Statement of Hoffman at [11], STA.001.008.0001, 21 March 2014; Statement of Hoffman at [40], STA.001.008.0001, 21 March 2014; Transcript (16 April 2014) 3251 (J Leake); Transcript (7 April 2014) 2189 (M Coaldrake); Transcript (14 April 2014) 2854 (D Hoitink); Transcript (1 May 2014) 3377 (T Delbridge); Transcript (8 May 2014) 4080 (A Hughes); Transcript (9 April 2014) 2390 (A Kent); Transcript (10 April 2014) 2580 (W Kimber).

7 Commission staff wrote to AGS, representing the Commonwealth, asking whether there was any particular reason why that start date was chosen and whether it was a fixed date or moveable: AGS.001.001.1790, 1. The Commonwealth responded that it was not aware of any additional evidence which explained these matters which had already not been produced to or canvassed in the Commission: AGS.001.001.1789, 1.

8 Statement of Hoffman at [9], STA.001.008.0001, 21 March 2014; Statement of Hoffman at [40], STA.001.008.0001, 21 March 2014.

9 Statement of Carter at [51], STA.001.001.0340, 17 March 2014.

Home Insulation Program (HIP) needed to commence on 1 July 2009.¹⁰ Moreover, for the same reason, training requirements were narrowed.¹¹ No adequate audit and compliance regime was in place for the HIP until it had been in operation for some considerable time, and not until about the time that the first fatality occurred.¹²

7.1.5 Although the decision of the SPBC was that the final design of the Program would be settled by the four named Ministers,¹³ that did not occur, unless it can be said that SPBC approval in June 2009, which I discuss further below, constituted them doing so. I do not think it did.

7.1.6 In the intervening period, it was DEWHA—under the watchful eye of the Office of the Coordinator-General (OCG) and the Department of the Prime Minister and Cabinet (PM&C)—that was responsible for developing the design of the HIP and the means by which it would be delivered.

7.1.7 On 3 February 2009, the date of the public announcement, David Tune (of PM&C) wrote to his colleagues, Dr Rhondda Dickson and Chris Johnston:

DEWHA will need to move very quickly on implementing the new EE measures, particularly the insulation element for owners/occupiers. It seems to me that a very early meeting with the relevant industry group will be needed to emphasise the need for them to ramp up supply urgently and to take them through the proposed implementation arrangements.

Could you please discuss with DEWHA and set things in train with them. This is a high-risk implementation task and I think we will need to stay close to it (noting that DEWHA has portfolio responsibility). For example, I think we should attend a meeting with industry groups and be closely involved in developing the detailed implementation plan.¹⁴

7.1.8 That is in fact what occurred. The delivery model for the program was devised in the OCG. Officers of the OCG attended all significant meetings, including meetings with industry, and meetings of the Project Control Group (PCG).

7.1.9 A meeting was arranged with DEWHA officers for 4 February. No documents pertaining to that meeting were provided to the Commission.

7.1.10 A special Council of Australian Governments (COAG) meeting was held on 5 February 2009. A number of papers were prepared for the delegates from the States and Territories. A paper entitled 'Energy Efficient Homes' described the proposed program for installation of ceiling insulation.¹⁵ On page 2 of the document it is stated:

No State contribution to this measure is required.

...

States are also encouraged to commit funds to implementing energy audit programs—which would complement the energy efficient homes measure by providing households with tools for further reducing energy costs through behavioural change, thereby maximising the benefits of their newly installed installation.¹⁶ [Emphasis added]

10 Statement of Carter at [33], STA.001.001.0340, 17 March 2014.

11 Statement of Keffe at [114], STA.001.015.0001, 28 March 2014.

12 Statement of Hughes at [28], STA.001.041.0001, 1 May 2014.

13 Statement of Rudd at [50(a)], STA.001.080.0001, 14 May 2014.

14 AGS.002.101.2816, 1.

15 AGS.002.034.2771, 1-2.

16 AGS.002.034.2771, 2.

- 7.1.11 By a Communique issued on 5 February 2009,¹⁷ COAG recorded their agreement to new national coordination arrangements for the implementation of the Nation Building and Jobs Plan and the December 2008 Nation Building Statement.¹⁸ COAG agreed that these new arrangements would involve national coordinators at Commonwealth and State levels to support these efforts.¹⁹
- 7.1.12 Under the heading “Energy Efficient Homes” on pages 8-9 of the document appears:
- Leaders endorsed the Commonwealth Energy Efficient Homes Package to modernise Australian homes, resulting in the installation of ceiling insulation up to an additional 2.7 million uninsulated Australian homes. To complement this program, leaders also agree that the States would maintain existing energy efficiency funding levels, and re-direct State funding for other energy efficiency programs such as insulation programs to home energy advice programs, particularly for the most disadvantaged households.*²⁰
- 7.1.13 Leaders also signed a ‘National Partnership Agreement’ on 5 February 2009 relating to the Nation Building and Jobs Plan.²¹ As part of the COAG arrangements, the States and Territories were to maintain existing energy efficiency funding levels, and to re-direct funding to home energy advice programs.²²
- 7.1.14 The decision not to involve the States and Territories in the delivery of the HIP is confirmed by Mr David Fredericks, then Mr Rudd’s Deputy Chief of Staff. He says that was a matter that was considered, and dismissed.²³
- 7.1.15 More is said of the arrangements between the Commonwealth and the States and Territories later in Chapter 11 of this report.

7.2 Administration and governance

- 7.2.1 In addition to the governance structures within DEWHA, the Australian Government introduced two further levels of oversight.²⁴
- 7.2.2 The OCG was established within PM&C to monitor the implementation of the Nation Building and Jobs Plan and to ensure the COAG timeframes and performance requirements were met. On 30 January 2009, Mr Mike Mrdak was asked to undertake that role.²⁵ The role was modelled on that which had operated in Queensland for many years,²⁶ and with which Mr Rudd had become familiar during his time as a Queensland public servant and Ministerial advisor.²⁷ The role was announced on 3 February and Mr Mrdak formally commenced in the position on 9 February.²⁸

17 AGS.002.008.3389, 1-11.

18 AGS.002.008.3389, 4.

19 AGS.002.008.3389, 4.

20 AGS.002.008.3389, 8-9.

21 AGS.002.008.3389, 11.

22 AGS.002.008.3389, 8-9.

23 Statement of Fredericks at [21], STA.001.073.0001, 30 April 2014.

24 For not only the HIP but also all other elements of the Nation Building and Jobs Plan.

25 Statement of Mrdak at [4], STA.001.009.0001, 24 March 2014.

26 Under the *State Development and Public Works Organisation Act 1971* (Qld). Under the Queensland Act, the Coordinator-General is constituted a corporation sole (s 8A) and has statutory authority. Mr Mrdak had only administrative authority.

27 Statement of Mrdak at [5], STA.001.009.0001, 24 March 2014. Mr Mrdak was not involved in the day-to-day operations of the OCG after his appointment as Secretary of the Department of Infrastructure, commencing on 29 June 2009: Statement of Mrdak at [136], STA.001.009.0001, 24 March 2014. See also Statement of Rudd at [33], STA.001.080.0001, 14 May 2014.

28 Statement of Mrdak at [2], STA.001.009.0001, 24 March 2014.

- 7.2.3 Mr Mrdak reported to Mr Rudd's office weekly for the first month or so of his tenure, and then the regularity of that reporting reduced and it became more ad hoc, and there was a reversion to responsible Ministers.²⁹ Most of the OCG's engagement was with Senator Arbib, who was appointed as the Parliamentary Secretary to the Prime Minister for Government Service Delivery, on 25 February 2009.³⁰ This was the second level of oversight. The system of reporting to his office was weekly.³¹ Particularly in the period leading up to 1 July 2009, Mr Arbib maintained an active interest in the HIP, as well as the other components of the Nation Building and Jobs Plan.³²
- 7.2.4 These reporting arrangements were intended to update relevant Ministers on the status of the implementation of the whole of the stimulus package.³³ The COAG communiqué records the need for stimulus to 'flow quickly' through 'rapid implementation' of the Plan.³⁴
- 7.2.5 The staffing of the OCG was kept small, as it was supposed to have only an oversight role. Staff of the OCG included Mr Andrew Wilson, First Assistant Secretary, and Mr Simon Cox, an Executive Level 1 officer.³⁵ Mr Martin Hoffman, referred to below, initially supported the OCG from his position in the Cabinet Implementation Unit, he was later (in 2010) appointed head of the OCG. Each was responsible for HIP-related matters.³⁶
- 7.2.6 DEWHA was allocated responsibility for the HIP upon the announcement of it. Within DEWHA, the HIP was to be administered by the Renewables and Energy Efficiency Division (REED), which had a range of responsibilities for the delivery of energy efficiency programs, including the Solar Homes and Communities Plan and Green Loans.³⁷
- 7.2.7 Mr Kevin Keffe joined REED as an Assistant Secretary in 2008.³⁸ He is an anthropologist by training, but had significant practical experience in the administration of programs within DEWHA.³⁹ Before the HIP, he had responsibility for a range of programs: government energy efficiency and sustainability, nuclear energy, motor vehicle transport energy efficiency, and the Green Loans program.⁴⁰ Some 25 staff reported to him.⁴¹ Mr Keffe was given responsibility for the HIP on 16 February 2009, in addition to his existing work.⁴² Mr Keffe did not have any particular experience with insulation, but nor did his superiors, or those working for him.
- 7.2.8 Mr Keffe's branch expanded to become the Home Energy Branch (HEB) with a core of 36 staff as at May 2009.⁴³ Initially it was Ms Brunoro, Mr Kimber and Ms Spence. Mr Keffe was the 'Project Manager' for the HIP. Mr Keffe reported to Mr Carter.⁴⁴

29 Transcript (27 March 2014) 1037 (M Mrdak), Transcript (27 March 2014) 1041-1042 (M Mrdak).

30 Statement of Arbib at [5], STA.001.070.0001, 9 May 2014.

31 Transcript (27 March 2014) 1042 (M Mrdak).

32 See, for example, Transcript (27 March 2014) 1042 (M Mrdak); Statement of Mrdak at [31-33], STA.001.009.0001, 24 March 2014.

33 Statement of Mrdak at [23], STA.001.009.0001, 24 March 2014. See also Statement of Mrdak at [25], STA.001.009.0001, 24 March 2014; and Statement of Mrdak at [28], STA.001.009.0001, 24 March 2014.

34 AGS.002.008.3389, 1.

35 Statement of Mrdak at [19], STA.001.009.0001, 24 March 2014; Transcript (25 March 2014) 835 (S Cox); Statement of Wilson at [7], STA.001.013.0001, 28 March 2014.

36 Transcript (25 March 2014) 760 (S Cox).

37 Statement of Carter at [10], STA.001.001.0340, 17 March 2014.

38 Statement of Keffe at [18], STA.001.015.0001, 28 March 2014.

39 Statement of Keffe at [2-4], STA.001.015.0001, 28 March 2014.

40 Statement of Keffe at [20], STA.001.015.0001, 28 March 2014.

41 Statement of Keffe at [30], STA.001.015.0001, 28 March 2014.

42 Statement of Keffe at [20], STA.001.015.0001, 28 March 2014.

43 Statement of Keffe at [Annexure 7], STA.001.015.0001, 28 March 2014.

44 Transcript (31 March 2014) 1399 (K Keffe).

Mr Carter was involved with the HIP until November 2009, but he said that his involvement decreased from mid-2009 'to focus on other more complex issues in the Division'.⁴⁵ Mr Carter reported to Acting Deputy Secretary Mr Malcolm Forbes in respect of the HIP.⁴⁶ Mr Forbes was the 'Project Sponsor' for the HIP. He was chairman of the PCG, the role of which I discuss later. Mr Carter was a member of the PCG and the 'Project Director' for the HIP.⁴⁷ The roles of the Project Sponsor, Project Director and Project Manager, which are terms with meanings ascribed by the departmental template for Tier 1 projects, are discussed below at paragraph 7.11.9. Mr Carter met occasionally with Mr Garrett independently, for which briefings there was ordinarily, but not always, a written briefing note.⁴⁸

- 7.2.9 Following the announcement of the EEHP, DEWHA had consultations with representatives of the States and Territories.⁴⁹ More is said in Chapter 11 of this report of the dealings between these two levels of Government. Energy Efficiency Coordinators were established within each jurisdiction as part of the National Partnership Agreement on the Nation Building and Jobs Plan to monitor implementation of the EEHP. Coordinators met periodically in the design phase to discuss the progress of the HIP's implementation.⁵⁰
- 7.2.10 From 6 February 2009, the Australian Government commenced paying rebates to householders for the installation of insulation.⁵¹ Phase 1 of the HIP saw payments made directly to householders, once installation had occurred and after DEWHA had made an assessment of eligibility.⁵² Temporary contractors were engaged by DEWHA to process claims for rebates under Phase 1.⁵³
- 7.2.11 Ms Kruk commenced as the Secretary of DEWHA on 2 March 2009 (having been appointed in December 2008).⁵⁴ She remained in that position until taking leave on 23 August 2010 for personal reasons unrelated to the HIP.⁵⁵
- 7.2.12 Mr Aaron Hughes was, from April 2009, a director in the HEB. He effectively replaced Ms Brunoro. His immediate supervisor was Mr Keffe.⁵⁶ He held that position until August 2009.⁵⁷ He later (in October 2009) was appointed to an acting position as Assistant Secretary, also in the REED.⁵⁸ Shortly afterwards, a restructure led him to take up the position of Acting Assistant Secretary to lead the Home Insulation Branch (which had replaced the HEB).⁵⁹ He had responsibility between April and August 2009 at least for the interface with Medicare, finances, contracts and 'ad hoc' matters associated with the HIP.⁶⁰ He attended many of the relevant meetings discussed below.

45 Statement of Carter at [6], STA.001.001.0340, 17 March 2014.

46 Statement of Carter at [15], STA.001.001.0340, 17 March 2014; Transcript (20 March 2014) 327 (R Carter).

47 KIM.002.002.1043, 1; KIM.002.002.1044, 1.

48 Transcript (20 March 2014) 331-332 (R Carter).

49 AGS.002.040.0411, 1-6.

50 See AGS.002.008.1222, 1; AGS.002.039.2005, 1-5; AGS.002.039.2087, 1-3; AGS.002.039.2084, 1-3; AGS.002.039.2091, 1; AGS.002.039.2090, 1.

51 AGS.002.040.0411, 1.

52 AGS.002.017.0497, 4-8.

53 Statement of Keffe at [30], STA.001.015.0001, 28 March 2014.

54 Statement of Kruk at [7], STA.001.010.0001, 26 March 2014.

55 Statement of Kruk at [8], STA.001.010.0001, 26 March 2014.

56 Statement of Hughes at [5], STA.001.041.0022, 1 May 2014.

57 Statement of Hughes at [6], STA.001.041.0022, 1 May 2014.

58 Statement of Hughes at [7], STA.001.041.0022, 1 May 2014.

59 Statement of Hughes at [8], STA.001.041.0022, 1 May 2014.

60 Statement of Hughes at [10]-[12], STA.001.041.0022, 1 May 2014.

7.3 First Industry Consultation Meeting: 18 February 2009

- 7.3.1 I refer below to a meeting that took place on 6 February with representatives of the Insulation Council of Australia and New Zealand (ICANZ).
- 7.3.2 However, the first formal consultation with members of the wider insulation industry by the Australian Government after announcement of the HIP took place on 18 February 2009 at Old Parliament House in Canberra. It was styled an 'Industry Consultation Meeting' and was chaired by Mr Kevin Keffe.⁶¹ The following people attended:
- 7.3.2.1 Ms Dennis D'Arcy (ICANZ);
 - 7.3.2.2 Mr Ray Thompson (the Insulation Manufacturers' Association of Australia);
 - 7.3.2.3 Mr Warwick Batt (the Polyester Insulation Manufacturers' Association (PIMA));
 - 7.3.2.4 Mr Laurie Moylan and Mr Kevin Herbert (the Australian Cellulose Insulation Manufacturers' Association (ACIMA));
 - 7.3.2.5 Mr Keith Anderson and Mr Steve Oliver (Aluminium Foil Insulation Association);
 - 7.3.2.6 Mr Matt Andell (AGI Insulation);
 - 7.3.2.7 Mr Peter Ruz (Fletcher Insulation);
 - 7.3.2.8 Mr Anthony Tannous and Ms Kristin Harder (CSR Performance Systems);
 - 7.3.2.9 Mr Neil Gow and Mr Bob Appleton (Master Builders Australia);
 - 7.3.2.10 Mr Simon Tennent (Housing Industry Association);
 - 7.3.2.11 Mr James Fricker (a thermal engineer and consultant engaged by DEWHA);
 - 7.3.2.12 Mr Brian Ashe (Australian Building Codes Board);
 - 7.3.2.13 Mr Simon Cox (then Department of Finance and Deregulation),⁶² Mr Chris Johnston and Mr Andrew Wilson (PM&C); and
 - 7.3.2.14 Mr Keffe (as Chair), Ms Brunoro, Mr Holt (Director, Appliances Team), Ms Cathy McArthur, Ms Marconi, Mr Kimber and Ms Spence (a Project Officer (DEWHA)).⁶³
- 7.3.3 It is immediately apparent that there was no representative present from the electrical trades. There are two bodies that it might have been appropriate to invite, being the National Electrical and Communications Association (NECA) and the Master Electricians Australia (MEA). Mr James Tinslay, Chief Executive Officer (CEO) of NECA, said he received no invitation to attend the 18 February 2009 meeting.⁶⁴ It took an unsolicited letter from him to Mr Garrett dated 9 March 2009 to prompt the Government to include him and his organisation on the 'stakeholder register'.⁶⁵ Mr Keffe did so in response to Mr Tinslay's letter on 16 April 2009.⁶⁶ Mr Tinslay's letter is referred to in Chapter 9 of this report when I deal with warnings given to the Government.
- 7.3.4 Mr Tinslay indicated that, at that relatively early stage, it was not entirely clear whether Reflective Foil Laminate (RFL) sheeting would be one of the products permitted to be installed under the HIP.⁶⁷

61 AGS.002.023.0926, 1.

62 Mr Cox was, just some short time after, seconded to the OCG from the Department of Finance and Deregulation: Statement of Cox at [8], STA.001.007.0001, 21 March 2014. At that stage, the issues being discussed were new to him: Transcript (25 March 2014) 752 (S Cox). The secondment was raised with him for the first time on 17 February 2014: Transcript (25 March 2014) 830 (S Cox).

63 AGS.002.023.0926, 7.

64 Statement of Tinslay at [6], STA.001.044.0001, 10 April 2014.

65 AGS.002.014.1412, 1-2.

66 AGS.002.013.0362, 1.

67 Statement of Tinslay at [11], STA.001.044.0001, 10 April 2014.

- 7.3.5 Mr Malcolm Richards, the CEO of MEA was not invited to the meeting on 18 February, nor to subsequent industry consultation meetings in the first half of 2009.⁶⁸ His organisation became active in May 2009 when it released a press release warning of the dangers of house fires being caused by improperly installed insulation.⁶⁹ Mr Richards' involvement became more pronounced after the death of Matthew Fuller.
- 7.3.6 The absence of any representative from the electrical trades from the 18 February industry consultation was a serious oversight, whether or not the use of RFL sheeting under the HIP was then a prominent issue. Insulation, of whatever type, necessarily involves workers entering areas of houses that possess particular risks in terms of electrical safety. I have already said something of the nature of those risks, in the context of ceiling voids. Two of the four fatalities were caused, it would seem, by installers being exposed to risks of the general kind to which I have already alluded, and not the use of RFL sheeting in particular. The failure to engage with the electrical trades reflected an ignorance of one of the major risks attendant upon working in the roof space. Given the letter from Mr Tinslay, and the warning from Mr Plevy of EE-OZ,⁷⁰ it is difficult to understand how a representative of the electrical trades was not invited to subsequent industry consultation meetings. No acceptable explanation was offered for this oversight.
- 7.3.7 Even without the participation of representatives of the electrical trade at this initial meeting, the risks associated with RFL sheeting and electrocution was raised as a potential problem.⁷¹
- 7.3.8 The Minutes of the meeting record the following having been said about that topic and one related to it, namely training:
- ... *The majority seemed to agree that specialist skills are not required and that builders won't necessarily know the technical details (r-values, etc). It was noted that the required course is a fast track course that would not pose as an impediment to anyone wanting to move to the insulation area. Peter Ruz provided an example in NZ, where a similar program had to be suspended because three people electrocuted themselves. The majority strongly recommended mandatory training for insulation installers.*
 - *It was agreed that a common training regime should be given to new entrants to ensure safety and quality.*⁷²
- 7.3.9 Mr Ruz says that he gave to Ms Brunoro, on the day of the meeting, two newspaper articles he had obtained on the New Zealand issue.⁷³ He no longer has copies of the articles. One of those was possibly an article in the *New Zealand Herald* on 12 September 2007.⁷⁴ It reported that a homeowner had died, as had two others that year and a 'professional installer' some years before.⁷⁵ Ms Brunoro does not recall having being handed the newspaper articles but does recall (and has provided to the Commission) a newspaper article that Mr Ruz provided to her on 25 February 2009 about the risk of fire from blow in insulation. This was produced in response to a notice to Ms Brunoro of a potential adverse finding.⁷⁶ It was not therefore put to Mr Ruz to enable him to comment

68 Statement of Richards at [7], STA.001.033.0001, 28 March 2014.

69 AGS.002.014.0007, 1.

70 AGS.002.023.3186, 1-3.

71 AGS.002.023.0926, 5; Statement of Brunoro, at [47], STA.001.002.0001, 17 March 2014.

72 AGS.002.023.0926, 5.

73 Transcript (21 March 2014) 474-475 (P Ruz); Statement of Ruz at [24], STA.001.001.0193, 3 March 2014.

74 Transcript (21 March 2014) 481 (P Ruz). Article is at MIS.002.001.0005, 1-2.

75 MIS.002.001.0005, 1.

76 Response to the Notice of Possible Adverse Findings, letter received by email on 18 July 2014 at paragraph 113.

on it. In the circumstances I am not prepared to find that the articles from the New Zealand papers were given to her. The evidence is equivocal. I accept that, at the meeting on 18 February 2009 officers of DEWHA, PM&C and the OCG were put on notice of the fatalities that had occurred in New Zealand.

- 7.3.10 Ms Brunoro recalled discussion on the range of potential safety risks involved with installing insulation, including fire risks (from installing near downlights and electrical recesses), working in confined spaces and at heights, and asbestos exposure.⁷⁷ These, she said, were identified as risks that training and registration processes would need to address.⁷⁸ The New Zealand experience was, Ms Brunoro thought, raised in this context.
- 7.3.11 Some industry participants felt the Minutes of the 18 February meeting did not accurately or fully record what occurred.⁷⁹ There are however, some contemporaneous records of the issues raised.⁸⁰
- 7.3.12 Mr Ruz was, at the time, a director of ICANZ.⁸¹ He has been in the insulation industry for more than 20 years.⁸² He worked for Fletcher Insulation.⁸³ He had received a call in early January 2009 from someone in either Mr Rudd's Office or perhaps in PM&C⁸⁴ asking for his opinion whether the insulation industry could cope with a program to insulate all of the uninsulated homes in Australia within a two-and-a-half-year period.⁸⁵ He considered this request and discussed it with the senior management of Fletcher Insulation.⁸⁶ He called back a few days later and said that, although there was not enough capacity in factories in Australia to produce the required insulation, there was a lot of excess capacity in overseas plants which could make up the balance of the material needed.⁸⁷
- 7.3.13 Mr Ruz also met with Ms Brunoro and with Ms Horvat (from Mr Rudd's Office), on 6 February 2009.⁸⁸ They discussed the products that should and should not be considered.⁸⁹ He said that RFL should not be considered due to limited performance (as it did not achieve the necessary R-values).⁹⁰ He could not specifically recall discussing safety.⁹¹ He believed that his concerns were dismissed as being intended to limit competition.⁹²
- 7.3.14 What was discussed at this meeting is expanded upon by Ms Brunoro in her email to the attendees of 9 February 2009:

There are a couple of issues that you urged us to progress before this meeting including:

77 Transcript (18 March 2014) 156 (B Brunoro).

78 Transcript (18 March 2014) 156 (B Brunoro).

79 Statement of Batt at [22], STA.001.001.0244, 12 March 2014; Statement of K Herbert at [43], STA.001.016.0001, 28 March 2014; Transcript (4 April 2014) 1966 (K Herbert); Transcript (15 April 2014) 2999 (W Batt).

80 One example is an email from Mr Andrew Wilson to Mr Mrdak and others dated 18 February 2009: AGS.002.008.3585, 1. See also HER.002.002.0033, 1-9; AGS.002.021.0219, 1.

81 Statement of Ruz at [1], STA.001.001.0193, 3 March 2014.

82 Transcript (21 March 2014) 468 (P Ruz).

83 Transcript (21 March 2014) 471 (P Ruz).

84 Statement of Johnston at [41], STA.001.093.0001, 2 June 2014.

85 Statement of Ruz at [4], STA.001.001.0193, 3 March 2014.

86 Statement of Ruz at [6], STA.001.001.0193, 3 March 2014.

87 Statement of Ruz at [6] and [7], STA.001.001.0193, 3 March 2014.

88 AGS.002.026.0855, 1-3; Statement of Ruz at [19], STA.001.001.0193, 3 March 2014.

89 Transcript (21 March 2014) 470 (P Ruz).

90 Transcript (21 March 2014) 470-471 (P Ruz).

91 Transcript (21 March 2014) 471 (P Ruz).

92 Statement of Ruz at [19], STA.001.001.0193, 3 March 2014.

- *The insulation rating guidelines for the program. As you suggested, simplifying this to a limited number of R ratings would provide clarity to consumers, manufacturers and installers, simplify delivery, and greatly assist efforts to meet the challenging timelines proposed . . . You are recommending that two quotes be obtained prior to installation.*
- *Training is a priority, and a plan to ensure all installers have had consistent training would be desirable. You highlighted the one-day training package developed by the Victorian government and you support for it. Are there other training packages that you would recommend and/or support. Do you have any information on the number of installers that have already received this training or an equivalent.*
- *We discussed a proposed regional delivery/intermediary approach and you would consider opportunities and challenges to this approach in the lead up to the detailed discussions.*⁹³

7.3.15 The comments that Mr Ruz made at the 18 February 2009 industry consultation meeting were derived from his contacts in the industry. He had heard about these matters previously, but never investigated them. He undertook his investigation shortly before the 18 February 2009 meeting.⁹⁴

7.3.16 Mr Ruz believes the comments he made arose in the context of safety.⁹⁵ He said that the Chairman, Mr Keeffe, discouraged discussion at that time. He said that Mr Keeffe said something to the effect of ‘okay, we will note that and move on’.⁹⁶ The Minutes do not reflect his recollection of how the meeting proceeded. He said he had been told not to ‘rock the boat’ at these meetings. This was an impression he had obtained from Mr Keeffe, namely that he did not want internal industry disputes raised. It was not a comfortable situation to be in, Mr Ruz said, because he was ‘rocking the boat’.⁹⁷ Mr Keeffe, for his part, was no doubt trying to control what was a fragmented and divisive industry.

7.3.17 Returning to Mr Ruz’s comments, Ms Brunoro did not personally go away and seek to learn more about the experience with the New Zealand scheme to which Mr Ruz had referred.⁹⁸ People working within her team had a role to investigate workplace health and safety issues, but she had no specific recollection of them looking at the New Zealand experience. She did not make sure anyone in the team made enquiries about the New Zealand scheme. Her instructions to them were broader than that, she said.⁹⁹ As matters turned out, with RFLs being permitted to be used under the HIP, the failure to properly understand what had occurred in New Zealand was a serious oversight.

7.3.18 Mr Ruz sent an email to Ms Brunoro and Ms Marconi the day after the meeting, on 19 February 2009.¹⁰⁰ It said:

...

I would also like to stress that we need to ensure the insulation used can demonstrate a MATERIAL R-Value to AS/NZS 4859.1. This is something that can be measured by an independent NATA lab. Fletcher Insulation also

93 AGS.002.017.0159, 1.

94 Transcript (21 March 2014) 471 (P Ruz).

95 Transcript (21 March 2014) 472 (P Ruz).

96 Transcript (21 March 2014) 472 (P Ruz).

97 Transcript (21 March 2014) 473 (P Ruz).

98 Transcript (18 March 2014) 157-158 (B Brunoro).

99 Transcript (18 March 2014) 157-158 (B Brunoro).

100 AGS.002.017.1602, 1.

manufacture reflective foil products (such as Sisalation®) but these products cannot be tested and their performance varies significantly depending on the environmental conditions and the way it is installed. Moreover, reflective products when installed as a retrofit in an attic space will typically be stapled to the roof timbers and we need to heed the experience from new [sic] Zealand where three contractors doing this type of work were electrocuted.

...

*I hope this makes sense. Please feel free to contact me if you require anything further.*¹⁰¹ [emphasis added]

- 7.3.19 Mr Ruz said that he sent this email because ICANZ felt if they were going to raise anything controversial, it was best being done one-on-one rather than at a meeting. He never received a response to it.¹⁰² The fact that he sent the email and received no response to it tends to confirm his recollection of the approach manifested in the meeting.
- 7.3.20 Ms Brunoro made no inquiries as a result of receiving this email. The email, she said, would have been collated with other information obtained from industry to inform future program development.¹⁰³
- 7.3.21 A document entitled 'Actions Arising' dated 19 February 2009 contained no follow-up on the matter that Mr Ruz had raised.¹⁰⁴ Agenda Item 3 and the reference under it to 'compliance issues' was said by Ms Brunoro to be to a separate session for full discussion on matters including that which Mr Ruz had raised.¹⁰⁵ I reject that as implausible. What Mr Ruz had raised cannot fairly, in my view, be described as a compliance issue or to concern regulation, licensing or training, albeit that it might be seen as related to training. This view is confirmed by the fact that the evidence (discussed below) suggests that certain DEWHA officials considered and dismissed the New Zealand experience referred to by Mr Ruz as offering no material assistance and there is an absence of records of the New Zealand scheme being given consideration in a way which is consistent with it being fully discussed at some short time after the first industry consultation meeting.
- 7.3.22 Mr Ruz's 19 February 2009 email does not seem to have been provided to Mr Carter¹⁰⁶ or Mr Keffe¹⁰⁷ or Mr Hughes¹⁰⁸. Mr Carter could recall having a discussion about the 'New Zealand issue', but not when he had it and with whom he had that discussion.¹⁰⁹ He would have expected that the technical teams would look into it. He did not pursue information about the events that had occurred in New Zealand.¹¹⁰ He assumed the material from Mr Ruz would have been filed and stored in an appropriate way. He never went back and sought to ascertain if DEWHA had been warned about risks after Mr Fuller's death, but to be fair to Mr Carter, his involvement in the HIP had by that time decreased.¹¹¹ Mr Keffe said that when the first fatality occurred his 'mind went back to'

101 AGS.002.017.1602, 1.

102 Transcript (21 March 2014) 474 (P Ruz).

103 Transcript (18 March 2014) 162-163 (B Brunoro).

104 AGS.002.010.0857, 1-2.

105 AGS.002.010.0857, 2; Transcript (18 March 2014) 170 (B Brunoro).

106 Transcript (20 March 2014) 347-348 (R Carter).

107 Transcript (31 March 2014) 1391 (K Keffe).

108 Transcript (8 May 2014) 4034 (A Hughes).

109 Transcript (20 March 2014) 347 (R Carter).

110 Transcript (20 March 2014) 348 (R Carter).

111 Transcript (20 March 2014) 349 (R Carter).

the New Zealand experience.¹¹² Mr Mrdak did not know of Mr Ruz's comments until he learned of them after termination of the HIP.¹¹³ Mr Wilson's email of 19 February 2009 to Mr Mrdak and others summarising the main outcomes of the 18 February meeting makes no mention of Mr Ruz's remarks.¹¹⁴ Mr Garrett was not aware of the remarks until the first fatality and not 'fully appraised' of them until, he said, this Inquiry began looking at the matter.¹¹⁵

- 7.3.23 It is necessary to say more about the experience in New Zealand at the relevant time, given that it was an experience to which the Australian Government was, at the very least, alerted by Mr Ruz and which ought to have been investigated at least for the light it might shed on what major risks and difficulties might attend the rollout of the HIP.

7.4 The New Zealand experience

- 7.4.1 In February, April and May 2007, Josef Wennekers (age 50), Peter Campbell (age 36) and Christopher Budden (age 43) died while installing RFL sheeting to floor joists under their homes.¹¹⁶ Each was the subject of a Coronial Inquest, findings in which were published on 1 October 2007, 5 November 2007 and 13 March 2008 respectively.¹¹⁷ In each case, the electrocution was caused by a staple puncturing a live electrical cable whilst RFL sheeting was being installed under the floor.¹¹⁸

- 7.4.2 The Coronial Inquest into Mr Wennekers' death (findings from which were delivered on 10 October 2007) heard evidence from Richard Davenport, an Energy Safe Accident Investigator with the New Zealand Ministry of Economic Development, including on industry installation practice.¹¹⁹ He told the inquest that the New Zealand insulation industry had developed a comprehensive guide to the safe installation of RFL sheeting, for use by commercial installers, following a 'similar accident' involving a commercial installer at least two years earlier. When asked why no action or broader publicity had been provided about the dangers of installing RFL sheeting, Mr Davenport is recorded as having said in his evidence:

*... there was no indication at that point that homeowners were carrying out this work. This was purely commercial activity at this point and I think the government has since been pushing for people to carry out insulation of their homes, and as a result, more homeowners are carrying out this work privately.*¹²⁰

- 7.4.3 In handing down his findings into Mr Wennekers's death, Coroner McDermott recommended:

- safety and awareness campaigns accompany Government campaigns encouraging New Zealanders to make their homes more energy efficient;
- there be closer liaison between Government Departments and other public safety authorities to, for example, maintain a central database of accidents;

112 Transcript (1 April 2014) 1529 (K Keffe).

113 Transcript (27 March 2014) 1049 (M Mrdak).

114 AGS.002.008.0502, 1.

115 Transcript (T 13 May 2014) 4560 (P Garrett).

116 NZE.002.002.0001.2; NZE.002.002.0012.1. NZE.002.002.0008.4.

117 NZE.002.002.0001.7; NZE.002.002.0008.4; NZE.002.002.0012.1.

118 NZE.002.002.0012.1; NZE.002.002.0001.2; NZE.002.002.0008.4.

119 NZE.002. 002.0001.3.

120 NZE.002.002.0001.4.

- retailers and suppliers be required to ensure that RFL sheeting includes a strong safety warning; and
- publicity be given to the importance of installing a Residual Current Device (RCD) (commonly known as a 'safety switch') to houses.¹²¹

7.5 An early warning

- 7.5.1 There seems to have been a line of communication available to DEWHA to contact their New Zealand counterparts. An email was sent from Mel Slade in DEWHA to Ross Carter, copied to Beth Brunoro, on 30 January 2009 which said:

*I've just been speaking to Terry Collins at EECA [the Energy Efficiency and Conservation Authority] who says the NZ government have been talking to their local insulation manufacturers and are considering a stimulus package based on home insulation. He seemed to think it very likely this would happen but gave no indication of time scales. This came up out of the blue in conversation and I did not say anything about what might happen here. Thought you should know because I guess the PM would not be keen on making an announcement after our NZ colleagues.*¹²²

- 7.5.2 Curiously, and inexplicably, none of the DEWHA officers working on the HIP appear to have liaised with their New Zealand counterparts about their respective energy efficiency programs involving home insulation to share information, experience or alert each other to potential problems.
- 7.5.3 Ms Brunoro's team did not give further specific attention to the point that Mr Ruz had raised, despite him having done so at the first industry consultation meeting and immediately after again in his email to her.
- 7.5.4 Other officials were also present at the meeting on 18 February, and it is relevant to know what were their responses to the warning.¹²³ None took any action as a result of it, however the clear impression I gained was that officers of DEWHA working on the HIP were aware of the New Zealand fatalities, but for one reason or another did not think there was any use in investigating what had occurred in New Zealand any further.
- 7.5.5 There was contact between DEWHA officers and Energy Efficiency and Counservation Authority (EECA) (New Zealand) again in July 2009. Mr Kimber was put in touch with Mr Jorg Mager (through Mr David Brunoro of DEWHA) to 'network'.¹²⁴ Some emails were exchanged.¹²⁵ Mr Kimber 'may have' spoken to or met with Mr Mager.¹²⁶ Mr Kimber does not now remember if he did, and he does not remember if he kept in touch with him, despite his saying in an email to Mr Mager that it would be good to do so.¹²⁷ Mr Kimber could not remember if the teleconference mentioned in the 28 July 2009 email took place. He could not offer any explanation (besides time and resource constraints) as to why he did not pursue the communications with EECA.¹²⁸ Mr Hughes who, it was said, was keen to organise a teleconference, said that he was too busy to spare any time to speak to his New Zealand counterparts. Again, this was a missed opportunity.

121 NZE.002.002.0001.6.

122 AGS.002.078.0387, 1.

123 There were ten Government representatives present: see paragraph 7.3.2 hereof.

124 QIC.006.001.3822, 3.

125 AGS.002.025.0203, 1-5.

126 Transcript (9 May 2014) 4254 (W Kimber).

127 Transcript (9 May 2014) 4255 (W Kimber).

128 Transcript (9 May 2014) 4256 (W Kimber).

- 7.5.6 For the most part, DEWHA officials dismissed the New Zealand experience as offering any assistance in the context of risks for the HIP. Mr Forbes, for example, recalled being advised that it was unhelpful on the grounds that the New Zealand scheme involved the installation under the floors of homes, not above the ceiling (as with the HIP).¹²⁹ Mr Hughes did likewise.¹³⁰ Others dismissed it on the grounds that the New Zealand scheme was for ‘do-it-yourselfers’ whereas the HIP was contemplated to be rolled out through major players and for new entrant installers to be trained. Mr Keffe said it was ‘discounted’ because the program to be rolled out in Australia was ‘fundamentally different’ from the New Zealand scheme.¹³¹ The differences he offered were that the New Zealand program had been for unsupervised and untrained do-it-yourself installations.¹³² Mr Keffe accepted when he gave his oral evidence that, at the time, he thought under the floor was a more dangerous place than the ceiling. But he accepts now that ceiling spaces are more dangerous than under the floor.¹³³ As for the issue of supervision, Mr Keffe accepted that this point of differentiation between the HIP and the New Zealand scheme ‘goes’ when one has regard to what actually occurred when the HIP was rolled out.¹³⁴
- 7.5.7 Although some of the New Zealand installers may have been ‘do-it-yourselfers’, ultimately the HIP permitted installers who had received no training themselves (other than securing a readily-obtainable Occupational Health & Safety (OH&S) white card) to undertake work. They may have had no experience whatsoever in installing insulation or indeed, in doing construction-related work.
- 7.5.8 Mr Keffe (amongst others in DEWHA) actively discounted the risk of something similar occurring in Australia in February 2009. Mr Keffe, for example, knew of the New Zealand warning given by Ms Ruz. He had attended (and chaired) the 18 February 2009 industry consultation meeting. He does not appear to have given that warning any great weight. For example his own notes of the consultation meeting make no mention of the Mr Ruz’s remarks or indeed any basis for distinguishing the New Zealand experience for the HIP.¹³⁵
- 7.5.9 Mr Keffe recalled having read a New Zealand news media article about the deaths in New Zealand. The Department apparently considered it, and Mr Keffe had a discussion as to whether the New Zealand experience was applicable to Australia. Mr Keffe said that the New Zealand experience was in relation to ‘do-it-yourself’ homeowners. He did not consider it was applicable because at that stage he envisaged the HIP would have mandatory training programs for people installing insulation (which was not, as events unfolded, the case until well into the HIP’s implementation, and after the first fatality), that there would be a supervisor on site and that there would be strict adherence to State and Territory regulations and requirements.¹³⁶
- 7.5.10 It was not until much later, in October 2009, and after Matthew Fuller’s electrocution, that a HIP Policy Team officer (Ms Sascha McCann) was in contact with a Team Manager from EECA to arrange a meeting about their respective retrofit programs.¹³⁷ In an email, the New Zealand representative (Mr Gleb Speranski) commented:

129 Statement of Forbes at [39], STA.001.018.0001, 28 March 2014.

130 Transcript (8 May 2014) 4033-4034 (A Hughes).

131 Transcript (31 March 2014) 1362 (K Keffe); Statement of Keffe at [59], STA.001.015.0001, (28 March 2014).

132 Statement of Keffe at [59], STA.001.015.0001, (28 March 2014).

133 Transcript (31 March 2014) 1382 (K Keffe).

134 Transcript (31 March 2014) 1383 (K Keffe).

135 KEE.002.001.0552, 1 [incorrectly dated 22 February 2009].

136 Statement of Keffe at [59], STA.001.015.0001, (28 March 2014).

137 In 2009, Ms McCann was known as Ms Kaminski.

*It is a real shame another installer had to die fitting foil under the floor. We stopped using foil on EECA- funded project as of 1 July 2008 and we never regretted that. I have to admit it was not that easy- EECA had a strong pushback from some stakeholders as alternative products were and still are more expensive. However, what is the value of a human's life?*¹³⁸

- 7.5.11 Mr Carter accepted that these matters were ones that ought to have been researched, explored and contact made with the relevant people in New Zealand before this time. He said that 'if these dots had been joined' before October 2009 there was available a means by which Mr Fuller's death might have been avoided.¹³⁹
- 7.5.12 DEWHA then sought further information on the banning of foil insulation. On 22 October 2009, Mr Speranski advised Mr Kimber, Ms Kaminski and Ms Belka that foil insulation had been banned due to poor performance, lack of durability and safety issues around its installation.¹⁴⁰ EECA said in that same email that it had later learned (if after 1 July 2008) of safety problems associated with foil insulation and was alerted to a number of electrocutions that occurred during routine maintenance a few years after the foil insulation was fitted under the house. The use of metal versus plastic staples was canvassed by DEWHA with the EECA. Mr Speranski said that plastic staples were an expensive alternative that would not completely eliminate safety risks.
- 7.5.13 Officers of EECA travelled to Australia and met with DEWHA officers on 10 November 2009.¹⁴¹ Presentations were made, which contained valuable information about why foil insulation was not permitted in New Zealand.¹⁴² There is no reason to think that the information provided by the New Zealand officials in November 2009 could not have been provided before the first fatality, had appropriate enquiry been made, which was as simple as picking up the telephone.
- 7.5.14 Information about the New Zealand experience was, I find, not only made available to the Australian Government by Mr Ruz, it was information that was readily publicly available. I refer below to the evidence of Mr Kevin Fuller (the father of Matthew Fuller) about how easily he discovered the information. This was only one of the ways in which the Australian Government gained knowledge of safety risks inherent in the HIP but it was one which it, for all material purposes, dismissed or ignored.
- 7.5.15 It is regrettable that Mr Ruz's comments at the 18 February 2009 industry consultation meeting were not followed up. Had even the most basic inquiries been made, it would have been confirmed to the Australian Government that what had been said was in fact true, and that persons installing insulation were likely to be exposed to electrical risks, and especially if RFL sheeting was being installed using metal staples. It is one of the avenues by which the Australian Government might better have understood the risks involved in the program it was rolling out at a rapid pace. One would have thought that the mention of the risk of electrocution, plus the fact that electrocutions had in fact occurred in New Zealand would set off alarm bells in the mind of every person present at the 18 February meeting. If they did, there is no evidence of anyone having acted on that information. That was, in my view, a very serious omission.
- 7.5.16 There is no material difference in risk between installing RFL insulation under a floor and in a roof void. In both spaces there are likely to be live electrical cables. Both are places in which, for the reasons I earlier gave when setting out some technical considerations, such cables will ordinarily be less protected than in the habitable areas of a dwelling.

138 AGS.002.017.2244, 3.

139 Transcript (20 March 2014) 419-420 (R Carter).

140 AGS.002.045.0825, 2.

141 Mr Kimber could not recall whether he attended that meeting: Transcript (9 May 2014) 4259 (W Kimber).

142 NZE.002.001.0059, 3.

- 7.5.17 It was not mere oversight or neglect that led to the New Zealand experience being dismissed or downplayed. It was put aside because of misunderstandings by those officers working on the HIP about the simple technical issues involved. It was also put aside because of differences between the New Zealand scheme and the HIP as then being conceived. As the delivery model of the HIP changed, the New Zealand experience became even more relevant as a guide to the types of risks which might be involved in the HIP.
- 7.5.18 The HIP in its design did not remain static and this was another reason why the New Zealand experience was, until it was too late, effectively ignored. As events unfolded, the very features of the HIP considered to distinguish it from the New Zealand scheme in terms, for example, of training, changed so that, by about mid-May, the HIP bore such similarity to the New Zealand scheme that the risks of which Mr Ruz had warned became by then, if not before, absolutely necessary to heed and to investigate, and then to mitigate.
- 7.5.19 Mr Keeffe said that the New Zealand program was a homeowner-installer program but that the Australian Government's focus was on training people to carry out installation. The real risks he saw were associated with fire and downlights. It must also be remembered that the business model of the HIP at this stage was one of delivery through regional brokers and with mandatory training of installers. The difficulty was however, that when the business model changed by both removing the reliance on brokers and then requiring that only supervisors be trained, no one revisited the risk earlier raised, namely that the New Zealand experience had by reason of those changes now become highly relevant and constituted a real warning of the safety risks inherent in the HIP as reframed. The Ruz warning had in effect just dropped off the agenda of anyone involved.
- 7.5.20 This was the first substantive warning of many that were not adequately heeded, or not heeded at all. Had it been properly considered, it was a means by which the deaths of Matthew Fuller and Mitchell Sweeney would probably have been avoided. As Matthew Fuller's father said, all one needed to do was search the internet as he did using the terms, 'foil electricity staples' to find a reference to the New Zealand experience.¹⁴³
- 7.5.21 Knowledge of the 18 February 2009 meeting and what took place at it (including what Mr Peter Ruz had said) remained unknown to Mr Levey until after the first fatality.¹⁴⁴ Ms Kruk knew of it, but could not remember when she was specifically made aware of the New Zealand deaths.¹⁴⁵

7.6 The Early Installation Guidelines

- 7.6.1 At the time that the 18 February 2009 meeting was taking place, draft Guidelines for Phase 1 of the HIP were being prepared. Mr Carter reported to Mr Mrdak about the HIP by email on 16 February 2009 including by providing a copy of the draft Guidelines as they then stood.¹⁴⁶
- 7.6.2 That draft was circulated to industry stakeholders, for example, by Ms Brunoro on 20 February 2009 for 'consideration and feedback'.¹⁴⁷ The decision to circulate them at that time was because of a 'hard deadline', by which she seemed to mean it was a deadline that absolutely had to be met.¹⁴⁸ Responses were to be provided by 3pm on Monday

143 Transcript (16 May 2014) 4991 (K Fuller).

144 Transcript (24 March 2014) 642 (M Levey).

145 Statement of Kruk at [43], STA.001.010.0001, 26 March 2014.

146 AGS.002.008.3386, 1.

147 AGS.002.010.0818, 1.

148 Transcript (18 March 2014) 150-151 (B Brunoro).

(ie 23 February 2009). Recipients were asked to ‘... add comments to the draft document in the relevant area and attach any technical or other material that may be useful to supplement the comments’.

- 7.6.3 The chronological proximity of the first industry consultation meeting and the issue of the draft Guidelines was deliberate. Not only were steps in the program happening in quick succession due to the abbreviated time in which it was to be formulated and rolled out, but the industry consultation meeting was only one source of information utilised by the Australian Government in formulating them. Mr Keeffe told attendees at that meeting that it was intended to seek industry views and ideas on or related to the implementation of the insulation components of the EEHP. A focus, he said, was to obtain industry input on issues required to finalise the Program Guidelines for release on 26 February 2009. Attendees were advised that they could provide comments on the Guidelines by the afternoon of 23 February 2009 (following circulation by the Department by 19 February 2009), essentially over the weekend.¹⁴⁹ That is what in fact occurred.
- 7.6.4 A weekend within which to consider draft Guidelines for a \$2 billion scheme was grossly inadequate and is indicative of the undue speed which always attended the HIP.
- 7.6.5 The Guidelines were, on 26 February 2009, approved by Mr Garrett. I consider them in greater detail presently.
- 7.6.6 Version 1 of the ‘Early Installation Guidelines’ for the Energy Efficiency Homes Package—Homeowner Insulation Program offered some short general information about the Program: why the Government was providing assistance to households, and stressed the availability of ‘early installation’, and that Guidelines for the Program itself would be available from mid-2009.¹⁵⁰
- 7.6.7 Eligibility requirements were imposed. Applicants were, materially, required to be over 18, to be an Australian citizen or permanent resident, submit a reimbursement application with copies of tax invoices from the purchase and installation of ceiling insulation and to arrange for the installation of insulation by an ‘authorised installer.’ The product and insulation requirements were set out in those Guidelines.
- 7.6.8 The Guidelines said that upon 1 July 2009 the Australian Government would be establishing a register of skilled insulation installers by region or location. The purpose of the register was said to be:
- ... to ensure those with appropriate skills and new entrants are available in sufficient numbers, and are skilled to deliver quality installations.¹⁵¹
- 7.6.9 This disclaimer appeared:
- The Australian Government accepts no liability for any loss, damage or cost incurred as a result of, or arising from, the installation of a ceiling insulation which has been the subject to the assistance offered under the Homeowner Insulation Program, or its process.*¹⁵²
- 7.6.10 It was considered important to some working under the HIP that there was a direct contractual relationship between the householder and the installation installer. This was thought, in my view naively, to absolve the Australian Government from any responsibility to householder, installation installer or workers engaged under the Program.

149 AGS.002.025.0219, 1.

150 AGS.002.027.0295, 3.

151 AGS.002.027.0295, 6.

152 AGS.002.027.0295, 8.

7.6.11 In a Departmental document dated 4 March 2009 reference is made to the feedback from industry concerning the first version of the guidelines. It includes:

*The reflective foil products industry is concerned that eligibility of their products is not clear enough in the guidelines. Allowing installers to opt for either a whole roof system R-value or an R-value of the insulation material will confirm that reflective foil based products can be installed under the program as well as bulk insulation products.*¹⁵³

7.6.12 It was proposed to amend the Guidelines to read:

*Products that fall outside the scope of the installation standard (AS3999, 1992) must be installed in accordance with s.3.12.1.1 of the Building Code of Australia.*¹⁵⁴

7.6.13 No satisfactory explanation was given as to why DEWHA officers succumbed to the pressure of the reflective foil industry. But they clearly did. The only way to do so was to allow a whole of roof R-value, something cautioned against by leading industry figures, to which I have referred.

7.6.14 Version 1.1 of the Guidelines was released on 12 March 2009 with amendments to the material R-value, insulation installation and downlights and eligibility of products outside the scope of AS3999.¹⁵⁵ A total roof-system R-value was permitted. The initial guidelines required products to be installed to AS3999-1992. However, as I have set out in Chapter 5, this Standard expressly did not apply to RFLs. The amendment of the Guidelines was, I am satisfied, as a result of lobbying by that section of the industry that installed foil products. It was a matter that was debated at the 18 February meeting and was a matter of some ongoing differences of opinion between rival groups of the industry.

7.6.15 Mr William Kimber, who did great deal of work on preparing the Guidelines, continued to liaise with industry, and be beset by self-interested sections of the industry. Mr Kimber was also in contact with Mr Brian Ashe, Manager–Major Projects and Research of the Australian Building Codes Board (ABCB), regarding technical aspects of the HIP.¹⁵⁶

7.6.16 Ms Horvat from Mr Rudd’s Office took a keen interest in the guidelines.¹⁵⁷

7.7 Mr Kimber

7.7.1 Mr Kimber joined REED (reporting to Ms Brunoro) on 3 March 2009.¹⁵⁸ He then acted as Director (in Ms Brunoro’s position) for two months from late April or May 2009. He worked on the HIP until 21 May 2010 when he took leave.¹⁵⁹ Mr Kimber assisted with the development of the Program Guidelines and technical requirements for the HIP, particularly addressing the matter of R-values.¹⁶⁰ In an email dated 24 February 2009, under the heading ‘Why has a whole roof R-value not been used?’ it is stated:

- *The rounded values chosen allow for enhanced program simplicity for households and installers. Evaluation of whole roof performance is affected by issues such as roof pitch, orientation, and roof materials.*

153 AGS.002.028.1148, 1.

154 AGS.002.028.1148, 1.

155 AGS.002.027.2148, 2.

156 ABC.002.001.0205, 1-2.

157 Statement of Levey at [117], STA.001.003.0001, 19 February 2014; Transcript (21 March 2014) 536 (M Levey).

158 Statement of Kimber at [4], STA.001.024.0001, 4 April 2014.

159 Statement of Kimber at [5] and [6], STA.001.024.0001, 4 April 2014.

160 Statement of Kimber at [7], STA.001.024.0001, 4 April 2014.

- *Performance can be more readily verified without the need for verification of whole roof R-value by qualified assessors, as is required for new houses under the Building Code of Australia.*¹⁶¹
- 7.7.2 After feedback from the ABCB on 25 February,¹⁶² Mr Kimber amended this to read:
- *Using insulation material R-values rather than whole roof values, will allow installer compliance with the program guidelines to be easily and readily verified. This will facilitate the achievement of program objectives.*
 - *A valuation of whole roof performance is affected by issues such as roof pitch, degree of ventilation of the roof, and roof materials. Verification of whole roof R-value by qualified assessors is most practical for new houses as covered under the BCA.*¹⁶³
- 7.7.3 Notwithstanding these sensible suggestions, a whole-of-roof R-value was permitted, to accommodate the use of RFL insulation under the Program.
- 7.7.4 On 27 February 2009 William Kimber wrote to Brian Ashe and others.¹⁶⁴ He said:
- With the early installer guidelines released yesterday we have received some immediate additional feedback from industry. Concerns have been expressed that reflective foil products are being unfairly excluded from eligibility due to:*
- *use of an R-value for the insulation material, rather than the whole roof space, and;*
 - *the requirement to adhere to AS3999-1992...where the installation of reflective foil products is outside the scope of the Standard.*
- The comments also suggest that excluding reflective products in this way is contrary to ACCC fair trade requirements....We don't think that the current guidelines excluded any insulation products that meet the minimum performance requirements, as guided by the BCA. We have also said to industry that we will be continuing to consult with them and receive their suggestions for change in the lead up to implementing the second phase of the programs in mid-2009.*
- In the meantime are you able to provide your views on the technical issues raised in the two dot points above? It is possible to make adjustments to the early installer guidelines if that is needed. However your independent views are needed to inform this...*
- 7.7.5 Dr James Fricker, whose evidence I refer to in greater detail in Chapter 9 when considering whether RFL insulation should have been permitted to be used under the Program, wrote on 26 February 2009 complaining that the way the Guidelines were drafted meant that only bulk insulation was acceptable.¹⁶⁵
- 7.7.6 In assessing the guidelines and the feedback from industry, Mr Kimber and Ms Brunoro were working against the backdrop of a considerable pressure of time—to get things done without necessarily being able to spend the time to do them in a carefully considered way.¹⁶⁶

161 ABC.002.001.2286, 2.

162 ABC.002.001.0209, 1.

163 ABC.002.001.0209, 2.

164 AGS.002.010.0719, 2-3.

165 AGS.002.027.0238, 1.

166 AGS.002.010.0736, 1.

7.7.7 Mr Kimber also liaised with the CSIRO about technical aspects of the Program that were necessary to be resolved for the Program Guidelines. On 27 February 2009 Mr Kimber wrote to the CSIRO asking if it could provide technical advice on insulation products and program design issues.¹⁶⁷ There was discussion about the testing of products for compliance with standards required by the Program. The CSIRO referred Mr Kimber to AS/NZS4859.1.¹⁶⁸ It advised:

The performance issues are very complex and in many cases the in situ performance is uncertain, unresolved and disputed. These matters, and the extremely acrimonious nature of insulation industry, are likely to greatly complicate the process.

7.7.8 For reasons that are not easy to understand this and other warnings about the technical deficiencies of RFL insulation (over and above any safety issues) were not heeded.

7.7.9 On 27 February Mr Plevy of EE-Oz sent his warning to DEWHA.¹⁶⁹ I deal with that, and other warnings in Chapter 9 of this report.

7.7.10 Mr Kimber had, as I have already observed, much involvement in the early design of the HIP. However, I found his oral evidence troubling. He was called twice to give such evidence. He was recalled largely because of evidence given by Dr Troy Delbridge between 1 and 3 May 2014. When he first gave oral evidence, between 18 and 20 April 2014, Mr Kimber professed a very poor recollection of relevant events. When asked about matters in which he was clearly involved and which were within the scope of his role in the HIP, he said (often) that he could not answer the question without being shown documents or simply that he had no recollection. On those occasions where he asked to be shown documents, he was unable in most cases to identify the documents that might assist him to recall the particular events.

7.7.11 Mr Kimber had ample time to prepare to give his evidence. He was interviewed on 2 February 2014.¹⁷⁰ He did not sign his statement until almost two months later (on 4 April 2014). He was separately represented by Counsel at the hearing when he gave evidence.

7.7.12 Although I considered Mr Kimber to be obtuse in the evidence he gave on the first occasion, having had the benefit of observing him give further evidence, I am satisfied that he was basically honest, albeit reluctant, in doing so. I was, for example, not convinced that despite his having written many of the emails about which he was asked, and having for a time been the Acting Director of the Home Insulation Policy Team, that he could lack (to the extent he did) knowledge of the events about which he was asked. He seemed very reluctant to give direct answers to questions asked of him by Mr Perry QC about a series of emails (many of which he wrote) in May 2009 concerning the competencies to be required under the HIP.¹⁷¹ He professed confusion about which phase of the HIP he was being asked about, despite it being obvious (and made clear to him) that the emails concerned the requirements to be applied for the HIP from 1 July 2009 onwards.

7.7.13 On more than one occasion he declined to answer questions without being shown documents, even though they in some cases were annexures to his statement or shown to him on other occasions during his evidence. On one occasion he professed not to recall a document that was annexed to his statement that he had read the night before he gave evidence.

167 DEB.002.004.0027, 5.

168 DEB.002.004.0027, 2.

169 AGS.002.023.3172, 2.

170 Statement of Kimber at [1], STA.001.024.0001, 4 April 2014.

171 Transcript (10 April 2014) 2623-2630 (W Kimber).

- 7.7.14 Mr Kimber was less reluctant and unhelpful in the evidence he gave on the second occasion. He said he became concerned about compliance and safety issues from the first week of the program in February 2009. He became particularly concerned about risks to installers after a meeting on 3 April.¹⁷² The risks to which he was referring related to working in confined spaces and materials handling. He said that the concerns about risk were passed on to his superiors and to the Minister. However, there is no document to confirm this. Mr Kimber also said that he had a concern that the HIP was not 'ready to go' in terms of training or compliance on 1 July and that the risks were such, at or about this time, that it was time to 'take a break'.¹⁷³ I accept this evidence because it is supported by much other evidence, which I refer to elsewhere in this report.
- 7.7.15 I do not accept, however, for the reasons set out above, that Mr Kimber made this clear to his superiors. Despite claiming to have done so, there is no documentary evidence to support this and to the extent he claimed to have done so less formally, he was not able to offer details of having done so such as might render his evidence reliable.¹⁷⁴

7.8 DEWHA: senior administration

- 7.8.1 Ms Robyn Kruk became Secretary of DEWHA on 2 March 2009. She had no involvement in the development of the HIP. She is an experienced public servant, predominantly because of long experience at senior levels in New South Wales.
- 7.8.2 Ms Kruk, before starting in her role, met with Mr Garrett and Senator Wong.¹⁷⁵ Mr Garrett identified the HIP as a priority energy-related program, as having 'demanding timelines' and said the DEWHA would need to be 'adaptive' in designing and implementing it.¹⁷⁶
- 7.8.3 Ms Kruk made several, quite proper concessions without hesitation or any sense of defensiveness. She moved at an early time to identify problems within her own Department with the delivery of the HIP, made such changes as she could and all in the context of a role to which she was new. Very real demands were placed upon her by the HIP being a program for which more than just her Department had responsibility, the time for commencement having been set by others before she started in her role, and the obvious pressure placed upon her to come around to the factors the OCG wanted included in the program, and particularly its extension to 'new entrants and small guys' (to use Mr Hoffman's terminology).¹⁷⁷

7.9 Administrative arrangements

- 7.9.1 There were several Departments and agencies involved in the Program. That is perhaps explanatory of some of what went wrong. I have explained the role of the OCG and DEWHA. PM&C also had an involvement. At the level of the political Executive, Mr Rudd, Mr Garrett and Mr Arbib all had direct and close involvement in various aspects of the Program. Mr Garrett, as the Minister for the Environment had formal control over the HIP. Mr Rudd, as, in effect, the 'Secretary of Cabinet' had control in an overall governmental sense.

172 Transcript (9 May 2014) 4236 (W Kimber); Supplementary Statement of Kimber at [19], STA.001.024.0010, 9 May 2014.

173 Transcript (10 April 2014) 2646 and 2622 (W Kimber).

174 The Commission had the benefit, in the case of Mr Kimber, of having access to the backup tapes containing his emails for the relevant period. This provides some additional support for the observation I have made as to the lack of documentary evidence to support Mr Kimber having made certain matters clear to his superiors.

175 Statement of Kruk at [16], STA.001.010.0001, 26 March 2014.

176 Statement of Kruk at [18], STA.001.010.0001, 26 March 2014.

177 AGS.002.008.0617, 1.

- 7.9.2 The role of Mr Arbib was less clearly defined. He was, between 25 February 2009 and 9 June 2009, the Parliamentary Secretary for Government Service Delivery. Between 9 June 2009 and 14 September 2010, he was the Minister Assisting the Prime Minister on Government Service Delivery. From 9 June 2009 to 14 September 2010 he was also the Minister for Employment Participation. He described his role as ‘very broad’.¹⁷⁸ The dealings he had were mainly with the OCG. Mr Arbib had no portfolio responsibility as such for the HIP, which meant, as I understand it, that he had no formal capacity to make decisions relating to the design and implementation of the Program.¹⁷⁹
- 7.9.3 The understanding that Mr Arbib had of the HIP was that it sought to maximise employment opportunities through a rapid rollout.¹⁸⁰ Indeed, it is a fair characterisation of the thrust of Mr Arbib’s interest in the HIP to say that he was concerned to see the involvement in it of as many people as possible who might be looking for work. Confirmation of this is the absence from Mr Arbib’s evidence (oral and written) of any reference to energy efficiency. It was his job to promote the Program publicly and to try and ensure a rapid rollout and the availability of jobs for those who needed them.¹⁸¹ Sometime after 6 March 2009, Mr Arbib had a telephone conversation with Mr Garrett ‘just to say the Coordinator-General’s Office thought [DEWHA] needed assistance and did he mind if ... the OCG provided assistance’.¹⁸² This obviously related to the formulation of the delivery model for the Program. This, and just one additional ‘follow-up’ meeting on 2 or 3 April 2009, would seem to be the extent of the direct formal communications between those gentlemen about the HIP, something which I find surprising.¹⁸³
- 7.9.4 Perhaps the clearest manifestation of the uncertain and unusual nature of Mr Arbib’s role was his presence at an important meeting (but at which Mr Garrett, the relevant Minister, was not present) to discuss delivery models for the HIP on 31 March 2009, which I have separately dealt with below.
- 7.9.5 These seemingly complicated administrative arrangements were in one sense occasioned by the scale of the Nation Building and Jobs Plan, and the fact that various parts of it were being run by different Departments. There was no doubt a need for some central coordination of it. There was a need to engage with the States and Territories in doing so.
- 7.9.6 The ‘key parameters’ of the HIP that had been set were that 2.7 million homes would be insulated, that the scheme would commence on 1 July 2009 and that the maximum allowance would be \$1,600.¹⁸⁴ Within these parameters, Mr Mrdak said, DEWHA had discretion in the way in which it rolled out the HIP.
- 7.9.7 Another reason why these arrangements were put in place was that there was a perception that DEWHA was experiencing real difficulty in administering the HIP so as to meet the key parameters. Processing times were, for example, slow.¹⁸⁵ DEWHA was an agency familiar with policy development, but not the rollout of a major operational program such as the HIP and nor did it have program management capability that other Departments had.¹⁸⁶ This was something of which Mr Mrdak in particular was conscious.¹⁸⁷ Its personnel, as can be seen from what has been set out above,

178 Transcript (12 May 2014) 4307, 4308 (M Arbib).

179 Transcript (12 May 2014) 4308 (M Arbib).

180 Statement of Arbib at [7], STA.001.070.0001, 24 April 2014; Transcript (12 May 2014) 4317, 4318, 4320 (M Arbib).

181 And, of course all of the other stimulus measures.

182 Transcript (12 May 2014) 4313 (M Arbib).

183 Transcript (12 May 2014) 4313 (M Arbib); see also Statement of Garrett at [65], STA.001.069.0001, 8 May 2014.

184 Transcript (27 March 2014) 1055 (M Mrdak).

185 Transcript (27 March 2014) 1057 (M Mrdak).

186 Statement of Mrdak at [56] and [60], STA.001.009.0001, 24 March 2014.

187 Transcript (27 March 2014) 1057-1058 (M Mrdak).

were not skilled or experienced in the construction industry. Few, if any, seem to have possessed technical skills. Its IT systems may not have been adequate.¹⁸⁸

7.9.8 Mr Mrdak said that:

During the early process of engaging departments responsible for implementing the stimulus programs I sought to gauge whether or not DEWHA was ready to undertake an implementation process. My assessment at the time was that in comparison with other departments with which I was dealing, DEWHA was less well placed in terms of being able to move to the implementation phase quickly. In particular, as the program development progressed during March 2009, it became apparent to me that DEWHA had greater complexity in their program and their preparedness was less than it was for other agencies. My office and my team were therefore initially more engaged with DEWHA than with other agencies. DEWHA also took some greater time than other Commonwealth agencies to identify what the delivery and program assurance issues were. This was reflected in their weekly reports to the OCG.

Also during March 2009, it became apparent to OCG that DEWHA did not have the program experience, IT capacity or the administrative systems needed to cope with the sort of loads that were expected to meet the Government's set targets. To assist in resolving this issue, I made initial calls to the heads of Medicare and Centrelink and we convened a meeting in March 2009 to see whether and if they could assist. As the role of my office was a coordination role, we put the organisations in touch with DEWHA to start the process.¹⁸⁹

7.9.9 Mr Mrdak told a meeting of State and Territory Coordinators he was 'sleepless' about the HIP.¹⁹⁰

7.9.10 These considerations bring me back to the delivery model by which the HIP was to be rolled out. DEWHA, commensurate with its experience and expertise, had sought and recommended the regional delivery/large brokerage model. It was, on any view of the evidence, between about 26 March and into April 2009, a model that was displaced in favour of one that facilitated direct delivery between installer and customer. Gone was the one phone call proposal contained within Mr Rudd's announcement.

7.9.11 DEWHA had no experience in delivering a program of this kind. It was a change, for good reason, that DEWHA had sought—too passively perhaps—to resist. Its profound weaknesses in this field warranted Mr Keeffe, Mr Carter and Ms Kruk being more active than they were in seeking to advise and persuade their Minister, and others if necessary, that the delivery model change ought not be pursued, or at least not be pursued without DEWHA receiving considerable assistance.

7.9.12 On 17 June 2009, a workshop was held with DEWHA to brainstorm 'lessons learnt'.¹⁹¹ A document setting out those lessons was finalised on 6 July 2009. The document listed things that 'we did well', 'what could have been done better' and 'poor'. The top ranking matter that could have been done better was 'Celebrating success' against which this comment appeared, 'The team felt that success could have been celebrated eg a lunch, after work drinks, emails of recognition'. This tends to suggest an overly inward-looking approach to the program and a lack of insight into the persons outside DEWHA liable to

188 Transcript (27 March 2014) 1057 (M Mrdak).

189 Statement of Mrdak at [61], STA.001.009.0001, 24 March 2014.

190 KEE.002.001.0289, 1; Statement of Keeffe at [19], STA.001.015.0001, 28 March 2014; Transcript (27 March 2014) 1060 (M Mrdak).

191 Statement of Keeffe at [125], STA.001.015.0001, 28 March 2014.

be affected by the HIP and its administration. Against this must be balanced that many of the problems with the HIP had not at that time become apparent in the way in which they were about to be. But it does not mean that this could not have been an opportunity for DEWHA to identify at this relatively early stage some of the likely problems which were later to manifest themselves, rather than focusing on itself.

- 7.9.13 Mr Keeffe prepared a presentation about challenges in the delivery of the HIP and his experience with it.¹⁹² It was entitled 'A Wicked Policy and Delivery Challenge for DEWHA'. He delivered it to the Executive of DEWHA on 5 September 2009.¹⁹³ The presentation, deliberately light-hearted in its approach, made clear that Mr Keeffe, and DEWHA for that matter, had experienced great difficulties in the implementation of the Program. The nature and scale of it, and the time within which it was to commence and be implemented, and DEWHA's inexperience in this field are all factors which can be seen in the presentation as having posed problems to its implementation.
- 7.9.14 Mr Keeffe's use of the term 'wicked policy' was not his invention. The Australian Public Service sees wicked problems as issues 'that go beyond the capacity of any one organisation to understand and respond to, and there is often disagreement about the causes of the problems and the best way to tackle them'.¹⁹⁴

7.10 Role and function of the PCG

- 7.10.1 A Project Control Group (PCG) was established for the HIP in early April 2009. It met some 30 times between then and November 2009. It was intended to be a means of ensuring effective and timely implementation of the HIP. It had its genesis in an email from Mr Hoffman dated 6 April 2009 consequent upon a meeting at Mr Garrett's electorate office with Mr Arbib, Ms Kruk, Mr Hoffman and other staffers.¹⁹⁵
- 7.10.2 Primary membership was comprised of DEWHA representatives, PM&C (mostly through the OCG), Medicare, Department Education Employment Workplace Relations, and the Australian Taxation Office. Centrelink and the Department of Human Services attended a number of early meetings. Many meetings had consultants and auditors participating as observers.
- 7.10.3 The PCG had terms of reference. They included:
- 7.10.3.1 To provide oversight and strategic direction to the insulation programs and ensure high standards of governance are met.
 - 7.10.3.2 To provide oversight and strategic direction in managing risks and ensure fast resolution for successful program outcomes.¹⁹⁶
- 7.10.4 In the document, under the heading "Desired Outcomes" is stated:
- *approval of project and risk management plans*
 - *ongoing provision of advice on specific issues related to the insulation programs*
 - *risk are identified and managed effectively.*
- 7.10.5 Initially, PCG meetings focussed on risk identification and the substance of the business model used for delivery. PM&C emphasised Government expectations that targeted training would be immediately delivered to areas suffering job losses. The pressing need

¹⁹² Transcript (31 March 2014) 1465 (K Keeffe).

¹⁹³ Statement of Keeffe at [95], KEE.002.001.0001, 28 March 2014.

¹⁹⁴ Althaus, Catherine, Peter Bridgman and Glyn Davis, *The Australian Policy Handbook, 'Managing the policy process'* (Allen and Unwin, 2013).

¹⁹⁵ AGS.002.008.3542, 1.

¹⁹⁶ AGS.002.008.0525, 1.

perceived by PM&C to stimulate the economy can be seen motivating discussion as to the timing of payments to installers.

- 7.10.6 Minutes were kept of the PCG meetings, and a risk register was presented to each meeting. The content and format of that risk register changed over time. What occurred at specific PCG meetings is discussed in more detail in those parts of the report dealing with specific subject matters.

7.11 The identification and assessment of risk and its treatment

7.11.1 General approach

- 7.11.2 From relatively early in the HLP, there was a recognised need to identify and consider the risks associated with it. Doing so is a necessary part of any such project, and is good project management. Ms Horvat (in Mr Rudd's Office), on 19 January 2009, for example, communicated to Mr Levey a need to '[I]dentify risks, like can training happen in time.' —a most perceptive comment given what subsequently happened to training.¹⁹⁷ Mr Keefe, on his first day in the job on 16 February 2009, discussed with Mr Cox the need to commence a risk management process.¹⁹⁸ He (Mr Keefe) wanted a '*global assessment of the nature of the risks*'.
- 7.11.3 Indeed, one of the earliest tasks undertaken by DEWHA was a workshop to identify risks. It was conducted internally on 3 March 2009, facilitated by Ms Martine Griffiths. The agenda for the meeting was produced to the Commission.¹⁹⁹ However, no other documents were produced by the Commonwealth pertaining to this meeting. They were specifically asked for. I find it unlikely that no documents at all were generated by the meeting, not even one email.
- 7.11.4 That the meeting took place is not in doubt. On the day of the workshop (3 March) Simon Cox wrote to his OCG colleague Andrew Wilson:

I have just briefly popped my head into a workshop being held by the home insulation program team at DEWHA. They are having a workshop/brain storming session in advance of preparing the project management plan for the energy efficient homes package ... They are being assisted in putting their project plan together by their internal project management office so I am hopeful that the end result will be good quality—they ran me through the brain storming that they have been doing today and they seem to have covered most of the issues that will need addressing in advance of the 1 July rollout. They will also be holding a separate risk management workshop which they will invite me to participate in.

*Their second concern is in relation to the amount of ad hoc reporting we may ask them to do in the time between now and the rollout in 1 July. They feel that any time spent on ad hoc reporting will be to the detriment of getting prepared for the rollout. They would appreciate any efforts we can make to minimise the amount of ad hoc reporting required.*²⁰⁰

- 7.11.5 Further, in the weekly update for 9 to 12 March 2009 it was reported that a full project planning session was held on Tuesday 3 March 2009 facilitated by the DEWHA Corporate Project Management Office and attended by PM&C.²⁰¹

197 Statement of Levey at [26], STA.001.003.0001, 19 February 2014.

198 Statement of Keefe at [81], STA.001.015.0001, 28 March 2014.

199 AGS.002.027.2297, 1.

200 AGS.002.008.3576, 1.

201 AGS.002.019.0944, 1.

7.11.6 The HIP was a 'Tier 1' project. That is a Departmental designation for projects, as Mr Keffe explained, 'of high visibility or high risk'.²⁰² The Department had a template for such projects.²⁰³ This becomes a managed document during the life of the project. Various iterations of the Project Plan have been produced to the Commission. It would seem that, at an early stage, some consideration was given to workplace health and safety. The Project Plan, prepared on or about 18 March 2009, noted:

Must comply with relevant OH&S legislation and insulation standards that vary across jurisdictions.

[...]

*The Project will be a successful program provided that ... Existing training for installers is successful.*²⁰⁴

7.11.7 By the time the Project Plan was revised on 11 June 2009, part of the document titled "Exclusions (Out of Scope) read:

The project will not

- *regulate industry (but may highlight regulatory issues with relevant authorities such as ACCC, Standards Australia, State and Territory Fair Trading Authorities and other regulatory institutions.*²⁰⁵

7.11.8 The document also provided that the project would not include workplace OH&S issues for installation of insulation. One of the 'constraints' of the Program was the need to comply with relevant OH&S legislation and insulation standards that vary across jurisdictions.²⁰⁶

7.11.9 In that part of the Project Plan dealing with governance there is reference to a project manager, project sponsor, project business owner, the PCG, a project team, technical specialists, an EEHP project working group, a technical working group, a training working group, a State and Territory working group and consultants. Everyone working on the Program had, it seems, a title.

7.11.10 On 6 March 2009, Juliana Marconi drafted a request for a risk assessment.²⁰⁷ The 'request for services' document was published on 6 March 2009.²⁰⁸

7.11.11 Minter Ellison Consultants were appointed on 13 March 2009 as the 'external risk consultant' for the Program. Ms Margaret Coaldrake (the Chief Executive of that firm) was the person who performed most of the work on that task.²⁰⁹ Ms Coaldrake's formal qualifications, it seems, are in museum administration. She sometime later left Minter Ellison Consultants and started her own consultancy firm, Langdale Consulting. The appointment of Minter Ellison in this role followed a short tender process. The request for tender (issued on 6 March 2009) sought 'suitably qualified and/or Business Analysis Professional to provide the following services':

Analysis of existing project material, including but not limited to Project Plan, Project Schedule, Procurement Plan, Delivery Methodology, Governance

202 Statement of Keffe at [82], STA.001.015.0001, 28 March 2014.

203 MIN.002.001.1609, 1-24; AGS.002.008.0438, 1-23.

204 AGS.002.008.0423, 6.

205 AGS.002.027.1058, 6.

206 AGS.002.027.1058, 6.

207 AGS.002.023.1011, 1.

208 AGS.002.023.1012, 1-2.

209 Her colleague, Eric Chalmers assisted in workshops.

Framework, Communications Strategy and learnings from planning meetings, workshops and stakeholder consultations.

Elicitation of risks from the insulation teams that may not yet be fully articulated or written down and documented

Consolidation of issues, threats, risks, severity, exposure, likelihood and potential damage

Vulnerability analysis

Correlation and assessment of risk acceptability

Provide recommendations for risk mitigation and monitoring that maximise the protection of confidentiality, integrity and availability of information while still providing functionality and usability in relation to the whole-of-project schedule

Documentation of the Risk Assessment in report format explicitly in the context of the project schedule, timelines and project deliverables.²¹⁰

7.11.12 Minter Ellison's response to the request for quote was submitted on 10 March 2009.²¹¹

7.11.13 Ms Coaldrake, in this capacity, prepared the initial Risk Register for the HIP.

7.11.14 She considered her role to be as a facilitator and to prompt or enable DEWHA to identify any risks associated with the HIP:

My role was to work as a facilitator and to assist my client, DEWHA, to identify and assess risks that might impact the successful implementation of the HIP. This involved providing a process by which DEWHA could identify and assess risks to the Commonwealth's development and implementation plan and helping DEWHA develop a risk management plan as part of the HIP Project Plan for the Commonwealth. The focus for the project was on risks to the Commonwealth and its implementation because the Commonwealth cannot manage a risk for someone else.²¹²

7.11.15 Ms Coaldrake worked with Mr Eric Chalmers, another consultant from Minter Ellison consulting, said to have expertise in insurance and risk in the private sector. Ms Coaldrake said that Mr Chalmers had different skills and experience from her, but she was unable to express a view as to whether the skills he possessed were such as to qualify him to advise on the risks associated with the HIP.²¹³ This is unsatisfactory. It was up to her to make sure that she and the people working with her were qualified to provide the services that Minter Ellison consultants had been retained to do.

7.11.16 Ms Coaldrake said that her philosophy, based on having been a client herself for many years, is that there is no point giving people information without them owning it:

I work right alongside the client to draw from them their knowledge and to increase their skills in the area of risk management. That way, the subject matter expertise comes from the client.²¹⁴

210 AGS.002.023.1012, 1.

211 MIN.002.001.1884, 1.

212 Statement of Coaldrake at [6], STA.001.014.0001, 27 March 2014.

213 Transcript (8 April 2014) 2314, 2315 (M Coaldrake).

214 Statement of Coaldrake at [8], STA.001.014.0001, 27 March 2014.

7.11.17 In oral evidence, Ms Coaldrake said she was not a risk assessor and instead was drawing the risks from the Department.²¹⁵ They identified the risks and Ms Coaldrake gave them a process for managing them.²¹⁶ She saw her role as being that of a facilitator.²¹⁷ When pressed in the oral examination of her by Senior Counsel Assisting about why certain risks were not in the Risk Register, Ms Coaldrake said:

*... it wasn't my business to know the answer to exactly what was in each [risk register] document. The documents belonged to the Department. They were managing those.*²¹⁸

7.11.18 She admitted that she did not contribute 'one tittle of hard substantive input into the Department's risk assessment and risk management planning'.²¹⁹

7.11.19 Ms Coaldrake did not believe that she had the expertise herself to identify risks in a project such as the HIP.²²⁰ She assumed that DEWHA officers would have an effective consultation with industry.²²¹

7.11.20 These are, I have no doubt, truthful statements. But they beg the question whether Ms Coaldrake's proper role obliged her to be less passive, not merely a recorder of risks and to collate them, but also positively looking to see herself what risks the project may entail and conducting necessary investigations in doing so. Analysis would seem to me to necessarily involve more than mere passive reception of possible risks from others. For example, Ms Coaldrake did not investigate what other similar programs were being implemented outside Australia.²²²

7.11.21 Ms Coaldrake prepared a consultation strategy for the risk assessment.²²³ Amongst the objectives of the strategy were to:

- Ensure that all risks are identified and assess
- Determine the level of awareness of risk management among the team
- Determine the extent to which existing management controls can effectively mitigate identified risks

7.11.22 The documents that define the relationship between the Commonwealth and Ms Coaldrake suggest that her role was facilitative in nature, but not only that.²²⁴ She was required, for example, to 'analyse' existing material, to conduct a 'vulnerability analysis' and to correlate and assess risk acceptability. Ms Coaldrake needed to ensure that all risks were identified. The risk of death or of injury to installers was in fact identified, both in the workshop facilitated by Ms Coaldrake, and in the Technical Advisors Workshop held on 3 April 2009. The problem is that, having identified that risk, it was thereafter effectively ignored, on the basis that it was not part of the Commonwealth's responsibility to ensure compliance with workplace health and safety laws of each State and Territory.

7.11.23 In her response to the Commonwealth's Request for Quote, Ms Coaldrake said that:

'DEWHA therefore need to know all the areas of the project that might go wrong, the nature of each risk and have in place the capacity ';

215 Transcript (7 April 2014) 2084 (M Coaldrake).

216 Transcript (7 April 2014) 2099 (M Coaldrake).

217 Transcript (7 April 2014) 2084 (M Coaldrake); Transcript (8 April 2014) 2317 (M Coaldrake).

218 Transcript (7 April 2014) 2173 (M Coaldrake).

219 Transcript (8 April 2014) 2320 (M Coaldrake).

220 Transcript (8 April 2014) 2318 (M Coaldrake).

221 Transcript (8 April 2014) 2323 (M Coaldrake).

222 Transcript (7 April 2014) 2091 (M Coaldrake).

223 MIN.002.001.1721, 1.

224 MIN.002.001.0342, 1; MIN.002.001.7447, 2.

'The task for this consultancy is thus to review this complex new policy and implementation project plan and develop a comprehensive but realistic risk management plan, including a set of strategies and actions to mitigate the risks identified.'

'The successful consultants need to bring a combination of:

...

- a deep understanding of risk and a capacity to identify where the policy and project both have inherent risks. This requires a combination of research and facilitation skills.'*²²⁵

7.11.24 One of her 'key tasks' was to be 'review the inclusion and detailing of risks'.

7.11.25 One of the obvious ways that the Program may 'go wrong' was if a very large number of new entrants sought to take advantage of the Commonwealth funds being offered for the installation of ceiling insulation; with such entrants engaging young, inexperienced workers to undertake the installation; and the employers or head contractors having little or no regard to their obligations as employers to take reasonable care for the safety of the workers.

7.11.26 That is not a risk that is apparent only with the benefit of hindsight. It simply required a moment's pause by those determined to introduce the Program to reflect on human nature.²²⁶

7.11.27 Ms Coaldrake's initial contract with DEWHA ended on 30 April 2009. In a practical sense, however, it concluded with the presentation of a risk assessment and management plan to the PCG, a document which Ms Coaldrake described as having been 'draft'.²²⁷

7.11.28 Ms Coaldrake was later asked by Mr Forbes (in his capacity as Chair of the PCG) to continue to advise the PCG on its risk process. She continued in that role until the HIP was suspended in February of 2010. In this capacity, her role was clearly more than a mere facilitator.

7.11.29 I set out below a little more about the work Ms Coaldrake undertook and the steps taken to develop the risk assessment and management plan.

7.11.30 The initial work undertaken by Mrs Coaldrake must be understood as having taken place whilst the delivery model for the Program was in a state of flux. When her business was engaged, what was proposed was a regional delivery model, and that is made clear by the Project Plan and some of the risks identified. However, by the time the Risk Plan and the Risk Register was prepared, focus had shifted to a direct delivery model. This change in focus may indeed have been generated by the risk analysis work undertaken by Ms Coaldrake. One of the most significant risks identified at an early stage was that of the Program not being ready to commence on 1 July 2009. That obviously caused consternation to those working on the Program, those in the OCG and Mr Arbib. A way had to be found to make sure that the Program could commence on 1 July.

7.11.31 Developing the Risk Register (March-April 2009)

7.11.32 On 16 March 2009 a 'project initiation meeting' occurred attended by Ms Brunoro, Mr Kimber, Ms Marconi and Ms Coaldrake.²²⁸

²²⁵ MIN.002.001.1884, 3-4.

²²⁶ Lewis, Chris 2012 'A recent Scandal: The Home Insulation Program' in K Dowding and C Lewis (eds), *Ministerial Careers and Accountability in the Australian Commonwealth Government* (ANU Press, 2013) at pp 161-166.

²²⁷ Statement of Coaldrake at [10], [11], STA.001.014.0001, 27 March 2014.

²²⁸ AGS.002.020.1636, 1.

- 7.11.33 Ms Coaldrake wrote an email the next day to those who had attended the meeting about what she considered to be the outcomes of it. She listed some key sources of risk that had been discussed, including timing, the high profile nature of the program, industry interests and conflicts of interest, supply/demand imbalances, the lack of regulation of the product and new entrants to the supplier/installer group.²²⁹
- 7.11.34 She did not consider the fact that there might be new entrants to the market to be a risk, but a *source* of a risk. To her, the possible risks arising from that source was the inexperience of installers and a lack of qualifications or adequate insurance leading to poor quality installations.²³⁰
- 7.11.35 On 23 March 2009 Ms Coaldrake facilitated a risk identification workshop.²³¹
- 7.11.36 DEWHA had, internally, persons who were responsible for the risk management of the HIP. Ms Martine Griffiths, was coordinating DEWHA's risk management at the time along with Ms Donna O'Brien.²³² Ms Coaldrake's workshop was attended by Ms Brunoro and Ms Marconi, both of whom had been present at the meeting when Mr Ruz had raised the issue of installer safety. The minutes of that meeting were taken by Ms Marconi.
- 7.11.37 The risk assessment plan prepared by Ms Coaldrake was a combination of her own standard template and the standard DEWHA template.
- 7.11.38 Ms Coaldrake said of this process:
- At the risk identification workshop I facilitated a consensus process, which is a process whereby everyone in the room nominates risks and we group them together to come up with overarching risk categories and common risks. This is usually done as simply as giving people post-it note pads and they write down what they consider the risks to be. The individual notes are then collated by topic, noting that in this type of workshop the post it notes will usually cover a mix of risks as well as the sources of, and consequences for, that risk.*
- After the risks were identified, the group at the workshop analysed the risks under each category and then rated them.*
- From recollection, around 20 people from DEWHA attended the risk identification workshop. I do not recall if any of the attendees had specific risk management experience.*²³³
- 7.11.39 The risks identified at this workshop formed part of the risk assessment plan that was finalised at the conclusion of Ms Coaldrake's initial contract. 'Injury to installers—poor quality insulation' and 'Installer Injury' were included in the risks identified in the Risk Identification Workshop.²³⁴ Ms Coaldrake did not, I note, attend this meeting. Her colleague, Mr Chalmers, did.²³⁵
- 7.11.40 Ms Coaldrake said initially in her oral evidence that no one had told her that an installer could die or be injured installing insulation.²³⁶ The documents from the 23 March meeting

229 Statement of Coaldrake at [16], STA.001.014.0001, 27 March 2014; AGS.002.020.1636, 1.

230 Statement of Coaldrake at [17], STA.001.014.0001, 27 March 2014.

231 AGS.002.007.1563, 1.

232 Statement of Coaldrake at [17], STA.001.014.0001, 27 March 2014. Ms Griffiths was on extended leave for much of the year after that, but returned in about June 2009.

233 Statement of Coaldrake at [30 -32], STA.001.014.0001, 27 March 2014.

234 MIN.002.001.5875, 8.

235 MIN.002.001.5877, 1.

236 Transcript (7 April 2014) 2097 (M Coaldrake).

show her recollection to be incorrect. It is likely that risks of this kind were in fact raised.²³⁷ In the early documents, 'installer injury' appears (twice). The likelihood of this occurring is said to be 'almost certain', the consequence 'major' and the, 'risk', 'extreme'. However, this risk never made its way into the Risk Register that went to DEWHA on 9 April.

- 7.11.41 It would seem that the risk of installer injury under the HIP was known to senior officers within DEWHA. Mr Hughes, for example, said that he could recall such an issue being mentioned in the 'early parts' of the HIP. It could not, he accepted, have been via the Risk Register because it made no such reference until much later. Nevertheless, he knew that that installer injury was a risk. It may have been as a result of the 23 March 2009 risk identification workshop in which that risk was identified in express terms. He said:

*... we've all understood that the installation of insulation in roof spaces did—or and could—if not done correctly and appropriately, could pose a problem—could pose a risk of injury to installers.*²³⁸

- 7.11.42 But he did not recall electrocution being discussed specifically in this context.²³⁹

- 7.11.43 Mr Hughes said that, although the risk of installer injury was identified in the early parts of the HIP, and was known to the PCG, the PCG (of which he was a member) decided that the risk would lie with the employer.²⁴⁰ He said this in his statement on that topic:

*The PCG considered the workplace health and safety issues relating to the HIP. However it seemed that the view of the PCG was that the responsibility for workplace health and safety issues fell with the employer under the governance of the applicable State or Territory regulatory authorities. There was a view within the PCG meetings that health and safety risks were already regulated at the State and Territory level and that the HIP was merely providing a facility for home insulation installers and household to gain access to funds to insulate their homes. As I understood it, the HIP was not intended to impact on the installers' employer/employee relationship.*²⁴¹

- 7.11.44 A document of 25 March 2009 refers to an 'initial risk list' having been prepared.²⁴² The document itself relates to a meeting on 25 March 2009. The risk list identifies as one risk 'Installation quality: Quality of installation / control by installers may be inadequate' and then states:

- *Shonky quality installations*
- *Dodgy installers/businesses*
- *Injury to installers—poor quality installation*
- **Installer injury*
- *Installations of poor quality*

- 7.11.45 This risk is said to be 'likely' and the consequence of it to be 'major'.

- 7.11.46 In the Risk Register, however, provided immediately afterwards, the reference to installer injury has been omitted. The only relevant reference is as follows:

237 MIN.002.001.2111, 3.

238 Transcript (8 May 2014) 4038 (A Hughes).

239 Transcript (8 May 2014) 4038 (A Hughes).

240 Transcript (8 May 2014) 4039 (A Hughes).

241 Statement of Hughes at [23], STA.001.041.0022, 1 May 2014.

242 MIN.002.001.5875, 19.

Installation quality and compliance:

quality of installation / control by installers and compliance structures may be inadequate.

- Poor quality installations
- Compliance cost (to Dept or industry) may be excessive and process may be ineffective
- Safety/house fire/damage
- Insufficient number of auditors

7.11.47 None of the commentary accompanying that entry contemplates installer injury, besides, perhaps, albeit obliquely, under the heading 'Assessment', 'poor quality installation' and under the heading 'management plan', '*[e]arly installation guidelines include specific quality and safety requirements*'.

7.11.48 Mr Keeffe explained this omission from the Risk Register as possibly being because if a risk were mitigated, such that it was unlikely, then it may have been removed.²⁴³ I reject that. The whole purpose of the Risk Register was to identify risks *and* their proposed treatments.

7.11.49 All relevant witnesses (ie Ms Kruk, Mr Keeffe) considered (albeit with the benefit of hindsight) that the 9 April 2009 Risk Register gave inadequate treatment to installer safety.²⁴⁴ Some said that they considered the reference to 'safety' in that register was intended to be a reference to installer safety/injury from poor quality installation.²⁴⁵ But this does not accord with the view of Ms Coaldrake, the author of that document, nor to the treatments referred to in respect of that risk in the same document.

7.11.50 It would seem likely that, at some time on 27 March, the reference in the risk documents to installer injury was removed. A reference of that kind can be seen in early documents on that day,²⁴⁶ but not later ones. I have been unable, ultimately, to ascertain with certainty who actually removed the reference to installer injury or, indeed, whether it was removed intentionally or by accident. I think the latter scenario unlikely because the register was regularly scrutinized by a large number of people, and if the risk had been accidentally omitted I am sure that somebody would have picked that up. I am persuaded, therefore, that the risk of installer injury was consciously removed from the Risk Register. I think it is more likely that one or more persons in DEWHA decided to remove the risk, than Ms Coaldrake doing it of her own volition. That accords with the departmental view, expressed by more than one witness, that the risk of workplace health and safety issues lay with the employer and with the States and Territories. One real possibility is that the reference was removed without it being identified in red as a change and that Ms Coaldrake simply overlooked that it had been removed or not transferred over into the new document.²⁴⁷ If that occurred, it may have happened in an email from the Commonwealth to Ms Coaldrake at 12.05pm on the 27 March.²⁴⁸

7.11.51 27 March 2009

7.11.52 An initial draft of the Risk Register was prepared by Ms Coaldrake and sent to Mr Keeffe and Mr Mrdak (among others) on 27 March 2009. The purpose of it was to brief the recipients on the initial outcomes of the risk assessment of the Program. Attached to the

243 Transcript (31 March 2014) 1423 (K Keeffe).

244 Transcript (31 March 2014) 1424 (K Keeffe).

245 Transcript (31 March 2014) 1425 (K Keeffe).

246 MIN.002.001.2646, 2.

247 Transcript (8 April 2014) 2357, 2358 (M Coaldrake).

248 Transcript (16 April 2014) 3166 (D O'Donovan); AGS.002.018.2232, 1; AGS.002.018.2238, 2.

report is a risk assessment matrix, two risk matrices showing the inherent and residual risk values that had been identified, a brief overview of the risk analysis to that point and a draft Risk Register and management plan.²⁴⁹

- 7.11.53 Ms Coaldrake discussed these documents at a meeting with DEWHA executives on 27 March 2009.²⁵⁰ She said that this was the 'reddest' risk register that she had ever seen.²⁵¹ A document highlights the relevant risk 'installation' as red in colour, because it is a 'critical' risk and one that is 'almost certain' to occur.²⁵² The difficulty, of course, is that by this time, there is no reference to installer injury in the Risk Register. After treatment, that risk came down to 'possible' and 'moderate'. The treatment proposed in the Risk Register was:

Build an effective outsourcing model that transfers the fraud risk and allows effective monitoring; Develop process for registration of installers (arrange through third party brokers?); Cover both financial viability and technical capacity; Alternatively let third party contracts to do this; Set up monitoring and reporting processes to identify emerging provider stress; Ensure contract structures provide capacity to monitor and take action on poor performing providers.

- 7.11.54 It can be seen that the program is one, as I said above, that was, contemplated to be structured as a brokerage model.
- 7.11.55 'Installation', Ms Coaldrake says, is a one-word identifier for the installation quality and compliance risk that was identified as a result of the risk identification workshop on 23 March 2009. There were 19 risks identified at the workshop, which all appeared with a one-word identifier on the inherent and residual risk matrices.²⁵³
- 7.11.56 Some risk levels were identified as being unsustainable.²⁵⁴ That is because, Ms Coaldrake said, there were too many risks in the critical category and more work needed to be done to manage those risks so that they were capable of being accommodated.
- 7.11.57 Ms Coaldrake's risk analysis overview included recommendations on risk mitigation. One of the recommendations was to transfer the largest risks to one or more third parties. For some risks, the consequences could not be reduced except by 'off-shoring' or outsourcing the risk. This may have been by insurance arrangements or by giving the risk to a third party to manage.
- 7.11.58 At about this time, Ms Coaldrake considered the program to be 'high risk' and for there to be '*major consequences of poor delivery*'.²⁵⁵ Her vulnerability analysis was, on that occasion, as follows: '*today project is very vulnerable*'. She said that the program would remain relatively high risk. Ms Coaldrake suggested transferring '*the largest risks to third parties (effective outsourcing)*'. Ms Coaldrake expressed these views at the 27 March 2009 meeting (at which representatives of the OCG were also present).²⁵⁶
- 7.11.59 A summary of this meeting was sent by Ms Coaldrake to Ms Brunoro, Ms Kaminski and Mr Kimber on 30 March 2009.²⁵⁷ One issue raised at the meeting was the possibility of

249 MIN.002.001.1479, 1.

250 MIN.002.001.3921, 1; AGS.002.008.3551, 1.

251 Transcript (7 April 2014) 2106 (M Coaldrake); Statement of Coaldrake at [49], STA.001.014.0001, 27 March 2014.

252 MIN.002.001.7097, 5.

253 Statement of Coaldrake at [50], [51], STA.001.014.0001, 27 March 2014.

254 MIN.002.001.1479, 4.

255 MIN.002.001.1479, 4.

256 Transcript (7 April 2014) 2131 (M Coaldrake).

257 AGS.002.018.2219, 1.

extending the time available to develop the second stage of the program by putting in place a hybrid system containing an extension of the rebate system and starting a limited contractor-based system in certain locations. Ms Coaldrake said that she advised that time was a critical factor and that if time could be extended, that risk could be reduced.

7.11.60 Ms Coaldrake prepared a document headed 'Feedback from Branch Head'.²⁵⁸ It records:

Highest risks

- *Highest risk program in the department*
- *Accountability framework/reporting framework*
- *Internal/external stakeholder management*
- *Speed/capacity to deliver*
- *Working/compliance*
- *Model for Phase 2: brokering versus supply for small households*

Other risks (including but not limited to)

- *Safety risks due to wrongly installed batts*

7.11.61 It is apparent that, from Mr Keeffe's perspective at least, the risk of injury to installers, or workplace health and safety risks were either not a risk, or (more likely) were not considered a risk to the department.

7.11.62 On Friday 27 March at 10.54 am Ms Coaldrake sent documents to Juliana Marconi. In the Risk Register sent with that email, in Item 6 'installer injury' was included.²⁵⁹ By 11.56 am the register was updated with the directors' changes, that is changes made by officers of DEWHA.²⁶⁰ 'Installer injury' was taken out. At 12.05 pm Juliana Marconi sent the updated document to Ms Coaldrake.²⁶¹ The draft Risk Register as at 1.30 pm on 27 March shows that 'installer injury' is not included.²⁶² One document includes 'installer injury' in item 6,²⁶³ but in the other version of the Risk Register it is excluded. The risk assessment document sent to the OCG on 27 March said that there were eleven extreme risks before management controls were put in place.²⁶⁴ However, there remained three extreme risks:

Procurement—the inability to conclude, through appropriate procurement processes, the necessary outsourcing contracts by 1 July 2009

Time—limited time available to develop and deliver the program in a properly controlled way in order to reduce arrange or other risks including fraud, compliance, legal and regulatory risk

Political—the risk of political ramifications from a variety of failures in the process systems deliverables etc.

7.11.63 This sequence of documents supports the conclusion stated earlier regarding the likely reason for the omission of the risk of installer injury. It also highlights the obvious concern that would have been generated in the OCG to be told that the procurement risk remained extreme (although as I discuss later the OCG was already cognisant of this risk).

258 MIN.002.001.0126, 1. The Branch Head was Mr Keeffe.

259 MIN.002.001.2646, 2.

260 MIN.002.001.2429, 1.

261 MIN.002.001.3919, 1.

262 MIN.002.001.7548, 1-4.

263 MIN.002.001.3925, 2.

264 MIN.002.001.1479, 1.

7.11.64 30 March 2009

7.11.65 On 30 March 2009 Ms Coaldrake sent a draft Risk Management Plan to Ms Sasha McCann, Ms Brunoro, Mr Kimber and Mr Chalmers.²⁶⁵

7.11.66 31 March 2009

7.11.67 The draft Risk Management Plan was again considered at a meeting with officers from DEWHA on 31 March 2009. This was not the final risk management plan. The results of that meeting were summarised in an email from Ms Coaldrake dated 1 April 2009.²⁶⁶ One outcome was to hold a workshop on 2 April to review the draft risk management plan and the proposed management plan.²⁶⁷ That workshop took place as scheduled.²⁶⁸

7.11.68 Installation quality and compliance risk is identified at number 4 of that document.²⁶⁹ The installation quality and compliance risk incorporated poor quality installations, compliance cost, safety (house fire/damage) and having an insufficient number of auditors. The safety of installers was not identified as a risk in that document, despite it being previously mentioned as such. Ms Coaldrake was clear in her evidence that this reference to 'safety' did not incorporate installer injury.²⁷⁰ It was a risk she saw as being one that the Commonwealth did not 'own'.

7.11.69 Risk register delivered

7.11.70 Ms Coaldrake produced the final Risk Register to DEWHA on 9 April 2009.²⁷¹ It identified risk in the left-hand column and then noted the likelihood and consequence of that risk. The ratings were based on the risk matrix. The Risk Register then outlined how the risk should be dealt with in line with the recommended management plan and the risks were given a new rating after the mitigating circumstances had been considered.

7.11.71 Ms Coaldrake's preparation or oversight of the Risk Register was deficient. Not only did it omit the inclusion of installer injury in any clear or express terms. It is not entirely clear why it was omitted, and Ms Coaldrake in her oral evidence could not recall why. In my view it is likely because, as Ms Coaldrake suggested, and a number of officers of DEWHA agreed, the risk of installer injury was not a risk to the Commonwealth and only such risks needed to be included on the register:

*The safety to people doing the work was not a risk to the Commonwealth's implementation of the HIP itself as the Commonwealth was not responsible for that safety and could not control that risk. It was a risk to the people doing the work and the companies they were working for and was a risk that they had to control.*²⁷²

7.11.72 Ms Coaldrake reiterated that view in her oral evidence and said that a risk of installer injury could never be in a risk register for these reasons, but that it could appear as a 'consequence'.²⁷³ That view is flawed. It casts unduly narrowly (and more narrowly than the project documents entitled Ms Coaldrake to do) the risks to which she was to have regard. A risk of an installer being injured was, on any proper understanding of the risk

265 MIN.002.001.1043, 1 and MIN.002.001.1045, 1-2.

266 MIN.002.001.5910, 1.

267 MIN.002.001.1570, 1-20.

268 MIN.002.001.1570, 1-20.

269 MIN.002.001.1570, 5.

270 Transcript (7 April 2014) 2115 (M Coaldrake).

271 AGS.002.015.1500, 1-5.

272 Statement of Coaldrake at [117], STA.001.014.0001, 27 March 2014.

273 Transcript (7 April 2014) 2120 (M Coaldrake).

Ms Coaldrake had been commissioned to undertake, one that ought to have included, especially once it was raised at the 25 March meeting. The risk to the Commonwealth of the HIP includes the risk to the safety of one of its citizens undertaking work as part of that program. Moreover, Ms Coaldrake was being told at the time (16 March 2009) that there might be new entrants to the supplier installer group, a consideration which would, on her expressed view of the risk assessment process, have been irrelevant.²⁷⁴

- 7.11.73 The omission of that particular risk from the Risk Register is one of the critical factors in the less than adequate attention to and treatment of considerations of safety in the HIP's design and roll out. It is an oversight for which Ms Coaldrake must, in the absence of any explanation by her (and she was able to offer none) be held responsible.²⁷⁵ It is an omission which was perpetuated, for example, in the 'Key Milestone Review' that Ms Coaldrake prepared of 6 July 2009 and in particular its incomplete list of 'program constraints'.²⁷⁶ Her answer to criticism in respect of July is that her role then was different from her role in March and April. In July she says she was advising on the process that the PCG had in place for managing risk. It would seem that a bevy of people were being paid to be concerned with risk and yet they failed to deal with the risk of death or injury about which a specific warning was given in February 2009. The recommendations made as a result of Key Milestone Review were delivered on 14 July 2009.²⁷⁷ An update was delivered in September 2009.²⁷⁸
- 7.11.74 Even if, as I think is the case, Ms Coaldrake's role under her initial contract is to be regarded as largely facilitative in nature, there remains two principal problems with her conduct. First, Ms Coaldrake did not ever seem to make entirely clear to DEWHA just how limited her role was. This left room for assumptions to be made (as Mr Keeffe seems to have done) to the effect that Ms Coaldrake was making some substantive contribution on the risk analysis. Secondly, it was incumbent upon her, even if her role was merely facilitative, to make very clear to DEWHA that a risk which raised the possibility of death or serious injury to installers had been omitted from the final version of the Risk Register, despite having been present earlier, and despite having been raised by the Department's own officers. Doing so required of her no substantive knowledge of the actual risks to which the HIP might give rise. All it required of her was an appreciation that death and serious injury are very serious risks and ought not to be omitted (having previously being raised and included) unless serious consideration was given to why that was to occur. It may be that Ms Coaldrake did not notice that these risks had been omitted, or that she knew, but considered them to be ones the Commonwealth did not 'own' (as I have said elsewhere). In either case, responsibility for the absence of death and serious injury from the Risk Register must fall in large part to Ms Coaldrake.
- 7.11.75 Of additional concern is that Ms Coaldrake appears to have thought that the risk treatments of installer safety were 'clearly not' adequate and were at no stage of that kind.²⁷⁹ This begs the question why if she thought that to be the case, there is no record of her having expressed this view or given this advice to DEWHA.
- 7.11.76 Ms Coaldrake was not an impressive witness. She was able to offer no explanations for omissions from the Risk Register and the other problems I have identified. She gave me no confidence that she was capable of having discharged with diligence the services for which she had been retained. She hid behind being a mere 'facilitator' of risk and as

274 AGS.002.020.1636, 1.

275 Transcript (7 April 2014) 2104 (M Coaldrake).

276 Statement of Coaldrake at [107], STA.001.014.0001, 27 March 2014; MIN.002.001.2718, 1-28.

277 COA.002.001.2600, 1-3.

278 COA.002.001.2603, 1-4.

279 COA.002.001.1622, 11; Transcript (7 April 2014) 2118 (M Coaldrake).

having no advisory or warning role. I do not think her role was so limited. The documents showing the scope of the services she offered and that she was to provide under the various contracts show her to have had the role of analysis and advice. But even if they were not in those terms, I do think the nature of the role she fulfilled cast upon her a duty to advise and warn generally about risk. Her omission of installer injury from the 9 April Risk Register (or her failure to notice that it had been omitted by others, and advice its reinstatement) was a fundamental error. She knew, or should have known, that installer safety was a risk not just to the installer but also to the Commonwealth. Even assuming that her role was merely facilitative, she should have retained the risk of injury to installers in the register. The fact that it is mitigated by suggesting it is primarily a State's responsibility does not justify its exclusion from the register. She failed, until the first fatality occurred, to advise of the real prospect of this risk and even after the death acted slowly (if at all) to give attention to it.

- 7.11.77 In making this criticism of Ms Coaldrake, I would not go so far as the Commonwealth suggested. The view it advanced was that the quote request and Minter Ellison's response to it called for Ms Coaldrake to be a risk advisor. I do not consider the documents referred to (some aspects of which have been quoted and considered above) go that far.
- 7.11.78 I consider Ms Coaldrake's involvement in the project to have been deficient, both in advising and analysing risk and in bringing to the Commonwealth's attention risks that were of a serious and fundamental kind. That finding does not in any way absolve the Department from the need itself to identify risks of installer injury. It had its own internal risk manager and 'risk owners' and had the means of knowledge (and indeed the knowledge) that such a risk existed.
- 7.11.79 Ms Coaldrake's initial contract with DEWHA ended with the provision by her of the Risk Register. Mr Forbes, called her in mid-April and asked her to take on the role of advising the PCG on its risk process.²⁸⁰ I deal later with that second stage of Ms Coaldrake's engagement because there are other important matters which, chronologically speaking, require consideration beforehand.

7.11.80 'Ownership' of risk

- 7.11.81 Ms Coaldrake suggested to Mr Keffe that he nominate individuals to 'own' various risks in the HIP. Individuals were subsequently allocated 'ownership' of the various identified risks.²⁸¹

7.11.82 Risk assessment: knowledge and involvement of Mr Garrett

- 7.11.83 Mr Levey did not specifically recall ever having shown his Minister the risk assessment.²⁸² Mr Levey commented upon the briefings given to Mr Garrett about the new business model.²⁸³ He is not sure that any of the risk assessments made it to the Minister himself. Mr Levey received some of them.²⁸⁴ The weekly traffic light reports were sent to the Minister's office and may have been provided 'on occasion' to the Minister.²⁸⁵
- 7.11.84 When Minister Garrett was briefed about the new business model, risks were identified as remaining, but as being adequately addressed. The matter was dealt with in these terms:

Development and selection of the business model is being informed by a comprehensive risk assessment facilitated by Minter Ellison Consulting,

280 Statement of Coaldrake at [12], STA.001.014.0001, 27 March 2014.

281 Statement of Keffe at [92], STA.001.015.0001, 28 March 2014.

282 Transcript (21 March 2014) 532 (M Levey).

283 Statement of Levey at [163], STA.001.003.0001, 18 March 2014.

284 Transcript (24 March 2014) 595 (M Levey).

285 Transcript (24 March 2014) 596 (M Levey).

*to identify and manage the full range of risk in successful implementation of the Project. The emerging preferred model will adequately address these; however residual risk around: fraud, complaints, and installer and household safety will remain. Our strategies for managing these will be built into the business model wherever possible, or dealt with on an ongoing basis after the business model is put in place.*²⁸⁶ [emphasis added]

- 7.11.85 Mr Garrett could not recall the issue of safety of installers being raised with him specifically before the first fatality occurred.²⁸⁷ But the briefing to him dated 9 April 2009 did mention 'residual risk' and, in this context, *installer and household safety*. When asked about this, he said:

MR WILSON: Did you think—didn't you think you should find out what the residual risk was and how high it was?

THE WITNESS: No, I didn't because there's a sentence that follows that which refers to what was being proposed to particularly manage those risks.

MR WILSON: But in order to make sure that what's said in that sentence came to pass didn't you need to know what the residual risks were?

*THE WITNESS: Well, that would be a matter for my Department and advisors to highlight for me if they determined it to be necessary. It would also be a matter for me to enquire for if I determined it to be necessary, but on the basis of this brief and the way in which this brief was expressed, no.*²⁸⁸

- 7.11.86 Mr Garrett said he had no recollection of the Risk Register ever being provided to him.²⁸⁹ Neither he nor his staff saw it, Mr Garrett said, until 11 February 2010.²⁹⁰ This evidence must of course be read in light of Mr Levey's acceptance that the Risk Register was sent to, and received, by Mr Levey.

- 7.11.87 Mr Garrett explained that he caused searches and inquiries to be undertaken to ascertain whether he was, in the course of the HIP, ever provided with a copy of the Risk Register.²⁹¹ Those inquiries caused a document to be identified. It shows that Mr Levey had the document (that is, some version of it) in March 2009 but there is no record available to the Commission that shows it being forwarded to Mr Garrett.²⁹² I accept that Mr Garrett was not, at any stage before February 2010, provided with a copy of the risk assessment, albeit that he did receive information about 'recent risk assessment and business model work undertaken for and on behalf of REED on the insulation programs'.²⁹³

7.11.88 Risk assessment: knowledge and involvement of Senator Arbib

- 7.11.89 Mr Arbib requested a separate meeting to go through the risk assessment document.²⁹⁴ On 6 March 2009, a meeting took place²⁹⁵ between Mr Arbib and DEWHA officers.²⁹⁶

286 AGS.002.005.0719, 1.

287 Transcript (13 May 2014) 4547 (P Garrett).

288 Transcript (13 May 2014) 4580 (P Garrett).

289 Transcript (13 May 2014) 4572 (P Garrett).

290 Statement of Garrett at [72], STA.001.069.0001, 8 May 2014.

291 Transcript (13 May 2014) 4746 (P Garrett).

292 AGS.002.021.2257, 1.

293 AGS.002.021.2257, 1.

294 Statement of Levey at [96], STA.001.003.0001, 18 March 2014.

295 Transcript (24 March 2014) 645 (M Levey).

296 AGS.002.008.3378, 1.

Mr Cox attended.²⁹⁷ It was after this that Mr Arbib requested a 'risk assessment document'.²⁹⁸ Mr Mrdak requested that Mr Cox pass that request onto DEWHA. The meeting was to take place in the week commencing 30 March 2009.

- 7.11.90 Mr Arbib's recollection was that DEWHA had not done a lot of work about 'risk to government' but his concern was mainly on fraud and malfeasance at that stage.²⁹⁹ He denies receiving the risk assessment document at this time and said he did not see it prior to 12 February 2010 and referred to an email of 22 February 2010 in support of this contention.³⁰⁰ It would not have been sufficient, even if the OCG had told Mr Arbib that DEWHA was now taking matters more seriously (which is what he offered), to quell the concern that Mr Arbib earlier had that DEWHA had done insufficient work on risk.
- 7.11.91 I find that Mr Arbib did receive the risk assessment shortly after his request for it and reject his denial of having done so. I do so for these reasons:
- 7.11.91.1 it is not a request likely, in any event to have been refused given Mr Arbib's position and seniority;
- 7.11.91.2 In the weekly update 20 to 26 March 2009 it is recorded that a risk identification workshop was held on 23 March.³⁰¹ It is then recorded: 'First draft being presented to executives Friday 27 March. Presentation to Senator Arbib on Tuesday 31 March';
- 7.11.91.3 On 26 March 2009 Juliana Marconi sent an email to Harry Zevon, David Hoytink and others at 5.08 pm thanking them for participating in that afternoon's working group meeting and circulating a copy of the Risk Register and asking for their comments by 11 am the following day. It was noted that the Risk Register would be presented at a meeting with Mr Arbib on Tuesday morning (31 March);³⁰²
- 7.11.91.4 In the note of the meeting of 31 March it is contemporaneously recorded:
"A meeting was held today with PM&C/OCG staff, DEWHA staff, a representative from Mr Garrett's office and Mr Arbib to discuss delivery models and risk assessments." ³⁰³
- 7.11.91.5 Mr Levey's note of the 31 March meeting records Mr Arbib as having written down what 'political risk' means.³⁰⁴ This is likely to have been the result of Mr Arbib having seen the risk assessment and read the words 'political fallout' which it contained (in many places), and that the political risk was one of three that remained extreme;
- 7.11.91.6 a note written by Mr Levey of a discussion in which he participated on 20 April 2009 is to the effect that an advisor in Senator's Arbib's office was to 'talk to everyone about risk assessments';³⁰⁵
- 7.11.91.7 it is highly unlikely that Mr Arbib would could have personally requested such a document, only to have dropped the issue and never pressed for its delivery;
- 7.11.91.8 the 22 February 2010 email contains an assertion that the Senator's office has checked its records and can advise that neither he [Mr Arbib] nor his

297 Transcript (25 March 2014) 772 (S Cox).

298 AGS.002.008.3378, 1.

299 Statement of Arbib at [19], STA.001.070.0001, 9 May 2014.

300 Response to the Notice of possible Adverse Findings, Minter Ellison letter dated 11 July 2014 at paragraphs 75-80.

301 AGS.002.007.1557, 1.

302 AGS.002.014.1068, 1.

303 AGS.002.008.0643, 1.

304 Statement of Levey at [145], STA.001.003.0001, 18 March 2014.

305 Statement of Levey at [174], STA.001.003.0001, 18 March 2014.

staff saw the Minter Ellison report prior to receiving it on 12 February 2010. That adds little. There is nothing to suggest that the usual course would have been for that Office to record receipt of such a document in the circumstances in which it was provided.

- 7.11.92 The Risk Register likely seen by Mr Arbib was that with Ringtail number AGS.002.018.2220.
- 7.11.93 As Mr Arbib said, had he read the risk assessment in or about March or April 2009, it would not have been any notice of a potential risk to installers, because it was silent on that topic.
- 7.11.94 The real difficulty is that Mr Arbib seems to have formed a view that participants in the HIP might act fraudulently or dishonestly, but not had an understanding that this might readily extend to a serious failure to adhere to their occupational health and safety obligations. Those views, whilst not absolutely inconsistent, are most difficult to reconcile.
- 7.11.95 Had Mr Arbib read the risk assessment in or about March or April 2009, he ought also to have seen that it omitted any reference to installer safety.

7.12 Changed Delivery Model

7.12.1 Lead-up to the change

- 7.12.2 In late March/early April 2009, the proposed model for the delivery of the HIP was changed in a material way. Up until that point, the HIP was to be delivered via a regional brokerage model, with large and experienced firms in the insulation industry being engaged to effect installations, or to subcontract with others to do so.³⁰⁶ As Mr Rudd announced on 3 February, all householders would have to do would be to call one telephone number and the insulation installation would be arranged for them. This was the model that had been proposed to SPBC before the January long weekend, and accepted by it on 28 January. This was the model that DEWHA had developed for almost two of the six months prior to scheduled commencement of the program.
- 7.12.3 Mr Keffe had prepared a visual depiction of that model explaining its design (including the brokerage model) to senior officials in the OCG, DEWHA and DEEWR and the States and Territories.³⁰⁷ He had spoken to some of the large organisations that may well have been tenderers to carry out the role of regional brokers.³⁰⁸ DEWHA also engaged KPMG to advise on program delivery models.
- 7.12.4 A risk list prepared by Ms Coaldrake listed eight separate potential locations of risk.³⁰⁹ Under the heading "Delivery" the risk was in contract management:
- tender process
 - implementation
 - contract management
 - termination/cessation processes
- 7.12.5 It is evident that the delivery model was a concern to the OCG, particularly whether the Program would be ready to commence on 1 July. In an email sent by Andrew Wilson to Mike Mrdak on 23 March 2009 regarding an email from Mr Gow of the Master Builders' Association, he said: 'I will go back with a holding pattern response but we will need to discuss overall program design with Environment.'³¹⁰

306 Transcript (25 March 2014) 775 (S Cox).

307 Statement of Keffe at [62], STA.001.015.001, 28 March 2014 and KEE.002.001.0011, 1-8.

308 AGS.002.078.03241, 2.

309 MIN.002.001.6217, 1-4.

310 AGS.002.008.3556, 1.

- 7.12.6 On 25 March Malcolm Forbes wrote to Ross Carter and Kevin Keefe and copied Robin Kruk:

In follow up to my email to Matt Levy the other issues Mike Mrdak raised included his strong interest in the program design and risk assessment—we already knew this. He indicated that Terry Moran was also interested and would seek a meeting with the Secretary and ourselves to ascertain progress in the next week or so....I also asked him for any names of consultants that would be helpful in program design and delivery (the fat controller).

- 7.12.7 On 26 March, Mr Keefe sent to Mr Mrdak and other OCG staff an email adapting the draft business model paper to reflect a discussion ‘earlier that afternoon with your [OCG’s] emphasis on the need for a business model that as a priority protected smaller operators’.³¹¹ This occurred, Mr Carter explained, in the context of concerns that in regional, remote and less populated areas, it was less likely that firms would travel to complete only a small number of installations. The email went on to say:

This would leave us with a range of potential approaches (and hybrid approaches) to be explored through a business model process mapping (with KPMG) and the formal risk analysis (with Minter Ellison Consulting). Our decisions on “the kind of business model” we want will inform a procurement exercise that needs to commence early in April. Some models may require Ministerial decisions to change the agreed and announced policy settings.

I would welcome your comments on the draft as we intend to discuss the potential models with KPMG tomorrow.

- 7.12.8 The attachment to that email is a Minute entitled ‘Business Models for Insulation Phase Two’.³¹² It was noted by Mr Keefe and dated 26 March 2009.³¹³ The Minute refers to a draft Risk Management Plan to be provided to Mr Arbib ‘next week’ and to KPMG having been commissioned to assist with the development of ‘our’ overall business model for Program design and delivery. A ‘hybrid’ business model was envisaged which was both to meet low income rental accommodation, rural and remote residence and indigenous communities and also ‘achieve a balance between the competing Government objectives of effectiveness and efficiency and job creation/wide access by market participants’. Mr Keefe accepted that, at this stage the model had not been ‘nailed’.³¹⁴ It remained to decide who would be the brokers. The procurement process was yet to be finalised and the risk management model was still being worked through.³¹⁵

- 7.12.9 Mr Hoffman’s response (by email) was:

... undoubtedly we’re heading towards a hybrid model ... It might be useful to state at the start of the Delivery Models section the principle of the need to preserve the relationship of choice between the householder and any qualified installer—large medium or small. A model that creates an exclusive or monopoly or even preferred brokerage system in a given metro area may struggle not to infringe this principle.’³¹⁶

311 AGS.002.008.3206, 1.

312 AGS.002.008.0664, 1-4.

313 AGS.002.008.0434, 4.

314 Transcript (31 March 2014) 1405 (K Keefe).

315 Transcript (31 March 2014) 1405 (K Keefe).

316 AGS.002.008.0419, 1.

7.12.10 This email was the first time Mr Keeffe formed the view that *'we were in trouble with the brokerage model'*. The 'principle' referred to was one that Mr Keeffe had not heard mentioned before in connection with HIP.³¹⁷ But he did not regard the email as a 'sinking shot', but as a 'shot across our bow'.³¹⁸

7.12.11 In the business model sent by Mr Keeffe to Mr Forbes (through Mr Carter), it is stated:

Phase 2 of both HIP and LEAPR rollout is scheduled to commence on 1 July. In order for that deadline to be met key decision points include:

- *the overall business model for the programs;*
- *selecting a model for national/state/regional brokerage as appropriate;*
- *developing a national or state register of trained installers;*
- *developing an audit evaluation program for installers and installation materials;*
- *design business systems for payment processing;*
- *design monitoring system for job creation and employment maintenance."*

We have commissioned a risk assessment (Minter Ellison) which has analysed and prioritised risks for the Program. As anticipated the Program overall has a high level of overall risk with serious consequences. OCG attended the workshop.

- *we will present the draft risk management plan to Senator Arbib next week.*

We have commissioned KPMG to assist with the development of our overall business model for program design and delivery. At this point we envisage the potential for "hybrid" business models, particularly in response to low income rental accommodation, rural and remote residences and indigenous communities but also to achieve a balance between the competing government objectives of effectiveness and efficiency and job creation/wide access by market participants.

...

Given the scale, speed and significance of program implementation our early preference (as discussed) is to go to market seeking interest and the supply of an end-to-end process that can deliver with minimal execution risks for government.

...

A procurement strategy that tested the market may give rise to partnerships that could deliver (especially in the metro market) an end-to-end business solution with low transaction costs and risks for government. Our preliminary estimate is that such a solution could meet up to 60% of program demand, particularly in metropolitan and densely populated areas of Australia.

Care would need to be taken to ensure that a large market based approach provided adequately for competition and access amongst installers (down to the micro-business scale) as well as insulation manufacturers and suppliers. There is a difficult tension to resolve between efficient and effective delivery, job creation and market access/function. This may mean "hybrid" models that provide for broader business opportunities, target more difficult to service

³¹⁷ Transcript (31 March 2014) 1406-1407 (K Keeffe).

³¹⁸ Transcript (31 March 2014) 1407 (K Keeffe).

clients but also provide for certain and rapid rollout through “major” integrated business model procurement . . .

An alternative model which also needs to be examined would see States and Territories with existing household services...deliver the full range of services for the Commonwealth. South Australia has done some initial thinking on such an approach which they have agreed to provide us on a confidential basis....

There is some urgency in arriving at an early decision on the most likely preferred model for the program as other decisions (call centre design and development and especially procurement) will be shaped by that decision.

- 7.12.12 As late as 26 March DEWHA was advocating a regional brokerage model, and the potential involvement of the States and Territories.

7.12.13 Involvement of Mr Simon Cox

- 7.12.14 Mr Simon Cox was seconded from the Department of Finance and Deregulation to the OCG on about 23 February 2009. His understanding of the role was to assist with developing a project plan for the OCG’s oversight of the Nation Building and Jobs Plan.³¹⁹ He had some input in to the reporting that took place up, ultimately, to the Prime Minister, via Mr Mrdak. The same reports are likely to have been sent to Mr Arbib.³²⁰
- 7.12.15 One of Mr Cox’s first tasks was to ascertain if the National Code of Practice for the Construction Industry (‘the Code’) applied to the HIP. He learned it did not, something he described in an email as ‘good news’³²¹ because had it done so, it would have halted the HIP.³²²
- 7.12.16 Mr Cox thought that the Code was concerned with Unions and so forth . He was wrong, but, as Mr Mrdak explained, that Code would have imposed occupational health and safety management requirements. He accepted that had it been applicable it would have required a lot of investment by firms to get accreditation. Mr Mrdak was particularly conscious of the time involved, noting in his evidence that new regulation involves a period of time to get in place, as well as the intent of the coverage and how application of the Code would affect the entry into the industry.³²³
- 7.12.17 Mr Cox recalls there being three concerns with the brokerage model: timing (getting it ready for the 1 July start date which the government had committed to); concerns within the OCG that smaller companies have access and not just the bigger ones; giving the consumer the choice who came into their house and what product they were able to get.³²⁴ He had some recollection also of ‘legal concerns’ about a contract between the Commonwealth and the provider.³²⁵
- 7.12.18 Mr Cox then prepared a different delivery model. He said that the business model was in a state of flux at the time, that there was a DEWHA preferred model and multiple hybrid models, but does not recall being instructed to do so. The model he prepared was sent to Andrew Wilson and Martin Hoffman under cover of an email stating:

Over the past few days I have turned my mind to what a market-driven approach may look like for the Energy Efficient Homes Package. (particularly focussing on the Homeowner Insulation Program)

319 Statement of Cox at [5],[6], STA.001.007.0001, 21March 2014; Transcript (25 March 2014) 747 (S Cox).

320 Transcript (25 March 2014) 748 (S Cox).

321 Statement of Cox at [Annexure C], STA.001.007.0001, 21 March 2014.

322 Transcript (25 March 2014) 755 (S Cox); Transcript (25 March 2014) 746 (S Cox).

323 Transcript (27 March 2014) 1067 (M Mrdak).

324 Transcript (25 March 2014) 777 (S Cox).

325 Transcript (25 March 2014) 778 (S Cox).

The attached paper contains my thoughts on the matter. It is obviously not complete, but I think it contains a shell of an idea that would be worthy of consideration.

*For discussion.*³²⁶

- 7.12.19 The paper itself was entitled 'Potential Business Model for Rollout of the Full Program-Working Paper'.³²⁷ The 'methodology' was stated as being:

This scheme is designed to allow market forces to work and to deliver the most efficiency/effectiveness without providing a centralised solution.

- 7.12.20 It suggested, on the topic of 'authorised installers', that a list of those authorised to install products under the scheme be compiled. Cox stated:

Prior to the commencement of the full rollout DEWHA in conjunction with States and Territories (where applicable) and the contracted processing centre (if available) will compile a list of installers who are authorised to install insulation under this scheme.

This will reduce the number of dodgy installers, particularly unqualified new entrants.

- 7.12.21 Thus, even Mr Cox still envisaged a role for the States and Territories and a contracted processing centre. Importantly, Mr Cox saw the need for training as an important requirement if there was going to be a market-driven model. He said:

Training for New Entrants"

"Minimum standards should apply to any installers wishing to be included on the authorised list. DEWHA to work with DWEEWR to implement a training regime that new entrants (and potentially existing suppliers) must meet before they can be included on the list.

- 7.12.22 This important safeguard was subsequently removed, as discussed in Chapter 8 of this report.

- 7.12.23 On 29 March, Martin Hoffman wrote to Mr Mrdak and Mr Andrew Wilson:

*I was planning to call the KPMG consultant Monday morning to ensure they are on track. Will also call this Minters person as well for the same reason. Simon Cox has done a good paper on Friday pm re how we see it best working. Will try and get traction with that on Monday. What do you need for Tuesday meeting?*³²⁸

- 7.12.24 Mr Mrdak responded:

*Thanks Martin—let's run through our best fit option and get a note ready for sending to Arbib with key issues/questions for him to consider for the meeting with DEWHA.*³²⁹

- 7.12.25 A PowerPoint presentation was prepared for the meeting with DEWHA officers and Mr Arbib. It sets out the 'PM&C proposed delivery model'³³⁰ It was revised by Mr Hoffman before presentation.

326 AGS.002.030.1116, 1.

327 AGS.002.030.1117, 1-3.

328 AGS.002.008.1239, 1.

329 AGS.002.008.3375, 1.

330 AGS.002.008.0646, 1-5.

7.12.26 In the meantime a meeting took place between Mr Garrett and Secretary Kruk about a wide range of matters but including the implementation of the energy efficiency programs. The meeting took place on 30 March. Malcolm Thompson made a note of the meeting that relevantly provides:

*Energy Efficiency: Secretary spoke to recent risk assessment and business model work undertaken for and by REED on the insulation programs; Minister agreed the need for a full time project manager; also noted the need for a hybrid delivery model to help manage risk and provide a contingency if one approach was not working; Secretary noted that some States have good roll-out models and that we should use these where they exist.*³³¹

7.12.27 Exactly why the Minister's exhortation was never pressed was not explained in evidence.

7.12.28 Involvement of Mr Martin Hoffman

7.12.29 Mr Hoffman's name has been mentioned often above. He joined PM&C on 23 March 2009 as First Assistant Secretary, Strategy and Delivery Division, and had responsibility for the Cabinet Implementation Unit (CIU). He was given responsibility for the HIP from the first week of April until mid-July 2009.³³² He was of a similar seniority to Mr Wilson but was not, formally speaking, a member of OCG.³³³ He did not join the OCG until 2010, but, to use Mr Mrdak's words, he 'provided support to [the] team'.³³⁴

7.12.30 When he commenced in PM&C Mr Hoffman was told that a business model had not yet been settled for the Program, that a range of work had been undertaken by DEWHA and that the time had come when a 'landing needed to be reached'. He knew DEWHA had a preferred business model involving some form of regional brokerage.³³⁵ Information was requested from DEWHA, and a project plan and Mr Keeffe's minute of 26 March, referred to above, were provided.³³⁶

7.12.31 The Project Plan, referred to above, on page 4 lists various exclusions, constraints and assumptions. Mr Hoffman thinks he had a discussion around this date with Mr Keeffe about these matters. One constraint that was identified was the two-and-a-half-year delivery time. Another was 'interaction with State and Territory Government programs'. It is not entirely clear why this was regarded as a constraint. It was expressly assumed that 'existing training for installers is successful', which seems to be related to an exclusion, i.e. that the project would not create a completely new training program or competencies and that it would leverage available competencies through existing national skills training mechanisms overseen by DEEWR.

7.12.32 Mr Hoffman said that the OCG 'identified some issues with' the regional delivery model proposed by DEWHA.³³⁷ Those concerns were that it was important from the perspective of the householders, and potential suppliers, that there continued to be the operation of the market for choice of installers by the householder.³³⁸ OCG was 'wary', he said, of a model that created exclusivity, a monopoly or even preferred brokerage in any particular area that might exclude existing installation businesses and limit new

331 AGS.002.021.2257, 1.

332 Statement of Hoffman at [1-3], STA.001.008.0001, 21 March 2014.

333 Transcript (25 March 2014) 872 (M Hoffman).

334 Statement of Mrdak at [21], STA.001.009.0001, 24 March 2014.

335 Transcript (25 March 2014) 858 (M Hoffman).

336 Statement of Hoffman at [15], STA.001.008.0001, 21 March 2014; AGS.002.008.0423, 1-10.

337 Statement of Hoffman at [22], STA.001.008.0001, 21 March 2014.

338 Transcript (25 March 2014) 863 (M Hoffman).

entrants.³³⁹ Mr Hoffman said he wanted the HIP to be available to as many installers as possible to service 2.2 million households in the timeframe.³⁴⁰ He also said that he was of the view that if the HIP was open to all qualified operators this would help 'us' achieve maximum capacity.³⁴¹

7.12.33 Mr Hoffman, in an email to Mr Keeffe of 26 March, indicated he favoured a model that preserved the 'principle' of the relationship of choice between the householder and any qualified installer.³⁴² He acknowledged that by this time Mr Cox had done the first version of the PM&C business model, the PowerPoint presentation and the accompanying text document and that Mr Hoffman had done the final edit through it.³⁴³ It is not clear precisely who caused the new model to be created. I do find, however, that it was someone in the OCG who was senior to Mr Cox—possibly Mr Hoffman or Mr Mrdak.³⁴⁴

7.12.34 Mr Hoffman made changes to the document, but was not able to identify them.³⁴⁵

7.12.35 The 31 March meeting

7.12.36 One meeting with PM&C had by this time already occurred as an initial workshop. A procurement model was being advanced in which larger companies in the market might supply call centre services, service delivery to houses, job quality assurance and risk carriage on a make good basis.

7.12.37 Concern about the impact on small operators was expressed.

7.12.38 On 30 March 2009, Mr Cox emailed Mr Mrdak and Mr Wilson with a 'possible early delivery model for the [HIP]'.³⁴⁶ He said, in the email, that the model would 'form the basis of a presentation which [OCG will] give to Mr Arbib [on 31 March 2009] if necessary'.

7.12.39 On 31 March 2009, a meeting took place between Mr Arbib, his advisors Mr Bentley and 'Craig', and Mr Keeffe and Mr Carter from DEWHA, Mr Hoffman from the OCG and Mr Levey from Mr Garrett's office as well as officers from PM&C. That meeting was a turning point in the HIP. It seems to be the time from which a new delivery model was openly to be pursued.³⁴⁷

7.12.40 There was conflicting evidence about the effect of the meeting. That conflict exists in the different recollections and understandings that DEWHA officers on the one hand had and the PM&C officers on the other. It seems likely to have been a result of understandable different perceptions of what took place. I discuss that evidence below, because it explains much of what followed and is, on any view, one of the important points at which the nature of the HIP changed in important respects.

7.12.41 Mr Carter understood that the meeting was for the purpose of discussing the business model that DEWHA had developed and hybrid elements of it. He was not sure he had the detail of who would be in attendance, but he thinks he knew Mr Arbib and OCG representatives would be there. The meeting ended DEWHA's proposed business model.³⁴⁸

339 Statement of Hoffman at [22], STA.001.008.0001, 21 March 2014.

340 Transcript (25 March 2014) 864 (M Hoffman).

341 Statement of Hoffman at [26], STA.001.008.0001, 21 March 2014; see also Transcript (25 March 2014) 864 (M Hoffman).

342 AGS.002.008.0419, 1.

343 Transcript (25 March 2014) 875 (M Hoffman).

344 Transcript (25 March 2014) 875-6 (M Hoffman).

345 Transcript (25 March 2014) 876 (M Hoffman).

346 AGS.002.030.1112, 1.

347 Mr Levey expressed such a view in his statement: Statement of Levey at [159], STA.001.003.0001, 18 March 2014.

348 Statement of Carter at [30], STA.001.001.0340, 17 March 2014.

- 7.12.42 The PowerPoint presentation mentioned above was provided to meeting participants, in a hardcopy form.
- 7.12.43 Mr Carter was 'surprised' this model had been prepared.³⁴⁹ This meeting was the first he knew of it.³⁵⁰ The same can be said of Mr Levey.³⁵¹ He was upset, but the source of frustration seemed to have been the respective roles of Mr Garrett and Mr Arbib.³⁵²
- 7.12.44 It was explained to Mr Carter at the meeting how the new business model might work, but the discussion was how DEWHA was going to do it, not a weighing of competing possibilities.³⁵³ He and Mr Keeffe on their way back from the meeting agreed that, as they were not entirely sure about the new model, they would keep developing their old one.³⁵⁴
- 7.12.45 Another document provided to Mr Carter (but perhaps not at the meeting) was Mr Cox's paper on the new business model.
- 7.12.46 Mr Levey observed particular agitation or frustration on Mr Keeffe's part about the presentation of a different business plan.³⁵⁵ His notes of the meeting record Mr Keeffe saying there was a 'critical risk' in the new model. The note is as follows:

Always go through risk assessment in environment portfolio when we are doing a major project. Anecdotal evidence of people heading around with two quote books. Have gone to our legal people but nothing actioned yet. Low level landlords take-up. Pre and post mitigation risk assessment. Discussion of what "critical" means. KPMG on board to iterate between business models and risk assessments. We will have business models in three weeks. Processing backlog in the order of 500 people. The phase 1 may continue right through the program.

*Can't you have different sort of licenses—one for end-to-end one for small installers. That we need to provide access right around Australia from July 1. Would be that any Company that can meet requirements could be licensed. Concern of how quickly we can get a central model in place. PM&C suggested a model—Centrelink. May obviate tortuous legal processes of getting commercial contracts signed. Heavy touch versus light touch regulatory models. That Centrelink could ramp up very quickly and put this in place. Need to start registration process in early May.*³⁵⁶

- 7.12.47 This was thus a model which saw no room for a model focussing on larger providers, but instead to let the market operate with few restrictions.
- 7.12.48 Mr Keeffe said that he had no specific warning before the meeting that the model would be 'abruptly changed' and that:

Mr Carter and I were given the new model as a fait accompli. I remember saying to Mr Carter as we left the meeting words to the effect that we had been blindsided, without adherence to the generally accepted Public Service protocols of advance warning or consultation when a central agency intervened over the top of the work of a line agency. The abrupt transition

349 Transcript (20 March 2014) 370 (R Carter).

350 Transcript (20 March 2014) 370 (R Carter).

351 Transcript (21 March 2014) 546 (M Levey).

352 Transcript (21 March 2014) 546 (M Levey).

353 Transcript (20 March 2014) 370 (R Carter).

354 Transcript (20 March 2014) 370 (R Carter).

355 Statement of Levey at [147], STA.001.003.0001, 18 March 2014.

356 Statement of Levey at [145], [146], STA.001.003.0001, 18 March 2014.

*meant that the stimulus / job creation element of the package would drive the project, that minimum standards would apply under the existing regulatory framework, and that no additional contractual arrangements would be considered by the Commonwealth. The Commonwealth would rely on existing market mechanisms, such as contracts between householders and installation companies, to manage issues, including work health and safety and product.*³⁵⁷

- 7.12.49 He said that the views of ‘central agencies’ would hold sway unless challenged at very senior levels.³⁵⁸ A strong suggestion from such an agency was, for all intents and purposes, to be taken as an instruction so far as a person at his level was concerned.³⁵⁹ Mr Keeffe seems to have treated what OCG communicated at the 31 March meeting as an instruction with which DEWHA would have to comply unless challenged at a level more senior than his. He said he raised his concerns about the new model and the manner in which it had been communicated. Ms Kruk’s evidence corroborates him having done so. The model was raised, between people more senior than Mr Keeffe, at a meeting (discussed below) on 3 April 2009.
- 7.12.50 Mr Keeffe said of the meeting that Mr Hoffman or Mr Mrdak took over the discussion and said that they did not think DEWHA would achieve the procurement requirements in time and the focus should be on the relationship between the householder and the installer as the principle.³⁶⁰ Mr Keeffe said that the model would need to be agreed, but that a brokerage model could deliver and that DEWHA needed to ensure a range of options for delivering the model given the Program’s scale. Mr Hoffman then talked through the model contained in the presentation. Mr Mrdak said that Mr Hoffman’s private sector experience ought to be respected and expressed agreement with the OCG proposal model.
- 7.12.51 Mr Keeffe regarded this process as unethical in the context of the public service and given his seniority. He was ‘seriously cranky’.³⁶¹
- 7.12.52 Mr Arbib could not recall the detail of the discussions that took place.³⁶² He said that he did not endorse any position put at that meeting.³⁶³ The principal concern, he accepted, however, was having a model to roll out on 1 July 2009.³⁶⁴ It was the Medicare model that he said Mr Mrdak advocated as doing that.³⁶⁵ But he did seek to emphasise that he did not endorse that model. He was, however, actively involved in the meeting.³⁶⁶
- 7.12.53 Mr Keeffe left the meeting upset.³⁶⁷ Mr Keeffe and Mr Carter expressed, to each other, their mutual unhappiness. Mr Keeffe said he would speak to Mr Hoffman to say his behaviour was ‘a bit regrettable’ and Mr Carter agreed to speak to Ms Kruk and Mr Forbes.³⁶⁸

357 Statement of Keeffe at [77], STA.001.015.0001, 28 March 2014.

358 Statement of Keeffe at [17], STA.001.015.0001, 28 March 2014.

359 Transcript (31 March 2014) 1407 (K Keeffe).

360 Transcript (31 March 2014) 1445 (K Keeffe).

361 Transcript (31 March 2014) 1447 (K Keeffe).

362 Transcript (12 May 2014) 4348 (M Arbib); Transcript (12 May 2014) 4349 (M Arbib). See also more generally Transcript (12 May 2014) 4350-4351 (M Arbib).

363 Transcript (12 May 2014) 4347 (M Arbib).

364 Transcript (12 May 2014) 4347 (M Arbib).

365 Transcript (12 May 2014) 4347 (M Arbib).

366 Transcript (25 March 2014) 873 (M Hoffman).

367 Transcript (31 March 2014) 1446 (K Keeffe).

368 Transcript (31 March 2014) 1446 (K Keeffe).

7.12.54 Following the meeting Mr Hoffman wrote to Mr Mrdak, Mr Wilson and Mr Cox and provided a note for Mr Arbib.³⁶⁹ This was on-forwarded to Peter Bentley, Mr Arbib's adviser, on the same day.³⁷⁰ Interestingly, Martin Hoffman said: 'Do not send this note for Arbib of course to Kevin'. That rather confirms the strained relationship between Mr Keeffe and OCG following the meeting. The note reads:

This program must be in place for the announced 1 July 2009 launch date. To meet this timeline, full agreement by all relevant parties and the delivery model must be reached by Thursday 9 April.

A meeting was held today with PM&C/OCG staff, DEWHA staff, a representative from Mr Garrett's office and Senator Arbib to discuss delivery models and risk assessments.

Key elements of a preferred model are largely agreed [dot points are then set out].

- *PM&C propose a relatively "light touch" approach....*
- *Program should be open to all insulation installers who meet the required registration standards*

7.12.55 The note concludes: 'Discussions to resolve these key issues are required with the Coordinator-General, DEWHA secretary, Centrelink, CEO etc—and also with PMO and Ministerial officers.'

7.12.56 An email sent on the evening of 31 March corroborates that Mr Keeffe and Mr Carter were upset about the day's proceedings.³⁷¹ In it, Mr Keeffe seeks 'ammo' from Ms Brunoro.

7.12.57 Mr Keeffe said he prepared a written brief to the Secretary expressing his dissatisfaction with what had occurred on 31 March and the change proposed by OCG to the business model.

7.12.58 Mr Keeffe prepared a draft brief to the Minister on about 2 April (in preparation for the 3 April meeting). He did not know whether that briefing was ever sent.³⁷² It was sent, by him, at least, by email to Mr Levey, Ms Kruk, Mr Carter, Mr Kimber and Ms Brunoro.³⁷³ He did so by email given its lateness and before putting it into the formal 'Slipstream' system.³⁷⁴ Although it is possible, he said, that it was never put in that formal system and only ever sent as a draft.³⁷⁵

7.12.59 The briefing states:

The small installer market requires specific consideration and smaller installation businesses have expressed concerns in working under a brokerage arrangement. The business model process is now investigating how the post July implementation model can harness the full capacity of the small installer business market. We are rapidly developing an installer register that would facilitate the ability of small businesses to continue to market and provide installation services as long as they met specific program technical and quality requirements.

369 AGS.002.008.0643, 1-2.

370 AGS.002.008.0642, 1.

371 Statement of Keeffe at [Annexure 24], STA.001.015.0001, 28 March 2014.

372 Transcript (31 March 2014) 1497 (K Keeffe).

373 WID.002.001.0077, 1.

374 Transcript (1 April 2014) 1501 (K Keeffe).

375 Transcript (1 April 2014) 1502 (K Keeffe).

- 7.12.60 The briefing went on to make reference to the Minter Ellison draft risk assessment and stated that *'[t]he initial assessment suggested that the time available to develop and deliver the program in a properly controlled way may be inadequate, especially if substantial procurement need to be met by 1 July'*. Attachment A to the Briefing Note was a discussion paper on the EEHP and the post July 2009 delivery model. Another Attachment A was a Minute from Mr Keeffe dated 29 March regarding 'business models for Phase Two'. Attachment B recorded public comments on program design. Attachment C was a briefing from Ms Coaldrake.
- 7.12.61 Mr Keeffe prepared a briefing for the attention of the Secretary (Ms Kruk) on about 5 April 2009. Its purpose was to brief her on services Centrelink may be able to provide in the delivery of services for the roll out of the HIP. Mr Keeffe said it was part of the 'ammo' which his earlier email sought.
- 7.12.62 Neither document, however, communicates any disagreement with the delivery model being forced upon him by OCG. There is not, in either document, even a hint of any misgivings the author of them might hold in respect of the OCG delivery model, or indeed any preference for the DEWHA model.
- 7.12.63 Full agreement by all relevant parties on the delivery model was said in the note as something that 'must' be reached by 9 April 2009 (just less than a week after the meeting on 3 April). Mr Levey's notes corroborate this timeframe.³⁷⁶ There is a notable disparity between the time for which DEWHA had been considering and formulating its proposed delivery model and the period allowed within which to reach 'full agreement' in not much more than a week on a completely new model. This much abbreviated time period is one reason why, as I later say, it is unsurprising that warnings earlier given may have been overlooked or not properly taken into account. Pressure was being placed upon public servants to agree and implement the program. There was no time to back track to check, with the new delivery model, what features of it might change the risk profile of the project. Nor was there adequate time for calm and proper reflection of the merits and drawbacks of the program under the new delivery model.
- 7.12.64 Mr Hoffman said it was possible that OCG had requested members of DEWHA to attend the meeting on 31 March.³⁷⁷ He accepted that the DEWHA officers had probably had no real notice of the model that the OCG was to present before the meeting took place.³⁷⁸ He suggested in his oral evidence that, at the conclusion of the meeting, DEWHA officials accepted that further investigation of this model needed to be fully done and that the regional delivery model they were working on should be put to one side.³⁷⁹
- 7.12.65 That evidence does not accord with that of Mr Keeffe. Mr Keeffe's evidence, which I prefer, is supported by a contemporaneous email to KPMG, which, as I have said, were engaged to undertake work on the delivery models. On 31 March Mr Keefe wrote to Jack Holden at KPMG:

Looking forward to discussing the proposed business models tomorrow afternoon at the Boathouse.

Can you add to your thinking this: "PM&C proposed delivery model" which was presented today. Apologies but we have no knowledge or forewarning of this process.

³⁷⁶ Statement of Levey at [146], STA.001.003.0001, 18 March 2014.

³⁷⁷ Transcript (25 March 2014) 989 (M Hoffman).

³⁷⁸ Transcript (25 March 2014) 989- 990 (M Hoffman).

³⁷⁹ Transcript (25 March 2014) 883- 884 (M Hoffman).

*In addition, we will need to bring forward the analysis of potential business delivery models (including this Centrelink delivery model) to report to us before Easter in order to present options to Ministers and move ahead with procurement planning etc. We are gathering previous costings and systems information on the Centrelink option...*³⁸⁰

7.12.66 The reference to gathering previous costings and systems information was the 'ammo' referred to by Mr Keeffe, with a view to discrediting Centrelink as a viable delivery or payment vehicle.

7.12.67 In the evening of 31 March, Mr Keeffe also wrote to Mr Wilson, Mr Cox and Mr Carter:

*Andrew. Grateful if you could confirm that we should now rule out an integrated delivery model with existing State Territory registers and rebates. Not discussed so assume not worth further exploration in the current timelines?*³⁸¹

7.12.68 Simon Cox responded on 1 April:

I think that the timeframes to get rolling by 1 July are likely to preclude an integrated delivery model...

7.12.69 Any suggestion that the States and Territories be involved in the delivery model thereby ended.

7.12.70 Mr Mrdak's recollection of the meeting largely accords with the other staff of his office that attended:

*It was agreed that an outcome of the meeting was that DEWHA would further consider the proposed options and the implications of those options. It was agreed that discussions would continue amongst agencies and Ministers to urgently settle the business model.*³⁸²

7.12.71 Mr Mrdak said that he never directed DEWHA to act in a particular way.³⁸³ At the same time, he could not recall an occasion on which it was suggested by OCG that DEWHA take certain steps, where that Department disagreed and went its own way.³⁸⁴

7.12.72 The purpose of the meeting was, Mr Mrdak said, to 'bring some shape to DEWHA's proposal'.³⁸⁵

7.12.73 The reasons which motivated the OCG delivery model were that semi-skilled people could be employed rapidly, owing to a concern by Government that people were being or would become unemployed due to the global financial crisis.³⁸⁶

7.12.74 KPMG proposed three main 'business model options' by a presentation dated 8 April 2009.³⁸⁷ It offered also advice on selecting preferred models. The models were (in this order):

- householder to recruit installers;
- installers be recruited via a call centre or website;
- target direct delivery (for target groups who would not access either of the above models).

380 AGS.002.008.3201, 1.

381 AGS.002.030.1091, 1.

382 Statement of Mrdak at [129], STA.001.009.0001, 24 March 2014.

383 Transcript (27 March 2014) 1046 (M Mrdak).

384 Transcript (27 March 2014) 1046 (M Mrdak).

385 Transcript (27 March 2014) 1084 (M Mrdak).

386 Statement of Mrdak at [81], STA.001.009.0001, 24 March 2014.

387 AGS.002.008.0584, 1-14.

- 7.12.75 The OCG delivery model was motivated by a desire to see small business and new entrants included within it.³⁸⁸ That desire is one which DEWHA itself had no particular interest in devising or pursuing, because it did not relate to the concern of energy efficiency. It is something which arose from the desire for economic stimulus and to reduce unemployment in particular sectors of the economy.
- 7.12.76 Not only, then, was this a matter within the interests of the OCG and Mr Arbib, it is one that OCG pushed hard. The clearest indication of this is Mr Hoffman's email reporting to Mr Mrdak about the 3 April 2009 meeting—that Ms Kruk was 'clear on [the] need to include new entrants and small guys'.³⁸⁹ Ms Kruk said that seemed to her to be more in the nature of making sure she was clear on an instruction rather than a reference to her having pushed the point.³⁹⁰ There is much other evidence that confirms that this point was, to the OCG, non-negotiable.
- 7.12.77 The meeting, I find, was structured to impose the OCG delivery model on DEWHA. Mr Carter and Mr Keeffe had no real alternative but to accept what was being urged on them or advocated by Mr Mrdak. And even if Mr Arbib did not positively endorse the OCG model, his mere presence was enough to be taken by Mr Carter and Mr Keeffe as a positive implied endorsement of what OCG was putting forward. It must be remembered that both Mr Arbib and Mr Mrdak were senior to Mr Carter and Mr Keeffe and this dynamic is likely to have had a profound effect (as indeed it was designed to do) on Mr Carter and Mr Keeffe to indicate to them that resistance was futile.

7.12.78 DEWHA's reaction to the 31 March meeting and the OCG Delivery Model

- 7.12.79 Mr Levey found the change to delivery model 'troubling'.³⁹¹ The key reasons for the change were timing and stimulus. The second of these referred to the desire to target smaller operators, as a kind of 'deliberate inefficiency' in Mr Levey's view.³⁹² The change was one away from centralised control in his view and towards dispersed activity, but coupled with the notion that the Government was somehow going to take responsibility for that activity.³⁹³ Mr Carter did not feel he could resist the demands being made of him.³⁹⁴ He or Mr Keeffe expressed concern that they were going from a relationship between the Department and a few to one with more relationships and a greater number of interactions that would need to occur.³⁹⁵ He could not recall precisely how this was expressed.
- 7.12.80 Mr Cox disagreed that DEWHA had no choice but to adopt the new business model.³⁹⁶ It was not a *fait accompli*, he said, as of 31 March that the OCG model was the one that had to be taken forward.³⁹⁷ For the various reasons discussed above I reject that evidence.
- 7.12.81 Ultimately, Medicare was retained as the medium through which payment claims were made and amounts paid. The large broker and regional delivery models were abandoned.
- 7.12.82 Mr Keeffe briefed Mr Garrett at about this time to seek approval for the Medicare business model and for his approval of the Phase 2 Guidelines for the HIP.³⁹⁸ This is the point at

388 AGS.002.008.0584, 14.

389 AGS.002.008.0617, 1.

390 Transcript (28 March 2014) 1247 (R Kruk); Transcript (28 March 2014) 1249 (R Kruk).

391 Statement of Levey at [155], STA.001.003.0001, 18 March 2014.

392 Transcript (24 March 2014) 593 (M Levey).

393 Transcript (24 March 2014) 593 (M Levey).

394 Transcript (20 March 2014) 375 (R Carter).

395 Transcript (20 March 2014) 377 (R Carter).

396 Transcript (25 March 2014) 791 (S Cox).

397 Transcript (25 March 2014) 791 (S Cox).

398 AGS.002.007.2001, 1-2.

which the large broker/regional delivery model can be regarded as having been formally abandoned. The Minister's approval was obtained.³⁹⁹

- 7.12.83 Mr Carter's evidence on this topic was to the effect that he was blindsided by OCG's proposed new business model, and that it effectively displaced a model that had been more carefully considered by DEWHA.⁴⁰⁰ The circumstances were such that, as he suggested in his evidence, he could not in all reality object to the imposition of the new model. There is, in his and Mr Keeffe's keeping alive the DEWHA proposal even for a period after the 31 March meeting, confirmation in my view that they considered the DEWHA model preferable and hoped that the new model might not ultimately be adopted.⁴⁰¹ There was a later meeting at a Secretary/CEO level that decided in effect that the OCG model was to be preferred.⁴⁰² The decision to change the business model was, despite the relative seniority of these public servants, beyond their control. Mr Carter in particular explained that in the ordinary course his agency would defer to views being advanced by OCG.⁴⁰³ It seems to be true, as regrettable as it may be, that the views and experience of Mr Carter and Mr Keeffe in developing the DEWHA model were not invited by PM&C. The new business model was imposed unilaterally without proper regard to the experience of DEWHA and in particular what had been learned in the industry consultation meetings (of which by that stage there had been two, together with the meeting of 6 February, referred to earlier in this report). In doing so, the very sensible protective measures that Ms Brunoro and Ms Wiley-Smith had built into the proposal (ie a model for regional delivery via large and experienced entities) was swept away, with no obvious appreciation of the significance of doing so. The work done by Ms Coaldrake to that point of time was premised on the DEWHA model. She was not asked to revisit her work after the delivery model was changed. At no time did Mr Carter make known to these senior people significant detrimental features of the model which was being adopted or that the risk profile of the project might now be very different than earlier assessed. Mr Carter, quite rightly, pointed to his and DEWHA's promotion of the regional delivery/large player model as showing a clear preference for it.⁴⁰⁴ Ideally, he would have sought to bring to the attention of senior officials the problems as he saw it in adoption of the new model. But it seems highly unlikely that, had he done so, anything would have been done differently, in light of OCG's apparent resolve to pursue the different delivery model.
- 7.12.84 DEWHA for some short time continued on with developing its old delivery model, seemingly because it had hopes that the new model would not take hold.⁴⁰⁵ Mr Keeffe confirmed this, but said to do so was probably 'courageous'.⁴⁰⁶
- 7.12.85 Mr Keeffe sent a minute to Ms Kruk (through Mr Carter) setting out his concerns and asking her to discuss the matter with OCG (Mr Mrdak) and with the Minister as appropriate.⁴⁰⁷ He and Mr Carter spoke to Ms Kruk the day after the meeting (or perhaps on 31 March).⁴⁰⁸

399 Transcript (20 March 2014) 380 (R Carter); Transcript (28 March 2014) 1236-1237 (R Kruk).

400 Transcript (20 March 2014) 441 (R Carter); Statement of Keeffe at [77], STA.001.015.0001, 28 March 2014.

401 Transcript (20 March 2014) 437 (R Carter).

402 Transcript (20 March 2014) 442 (R Carter).

403 Transcript (20 March 2014) 363 (R Carter); Transcript (20 March 2014) 442 (R Carter).

404 Transcript (20 March 2014) 442 (R Carter).

405 Transcript (24 March 2014) 593 (M Levey).

406 Transcript (31 March 2014) 1447 (K Keeffe); Statement of Keeffe at [Annexure 24], STA.001.015.0001, 28 March 2014.

407 Transcript (31 March 2014) 1449-1450 (K Keeffe).

408 Transcript (31 March 2014) 1447 (K Keeffe).

7.12.86 Ms Kruk's evidence was to the effect that her senior officials had a preference for the brokerage model.⁴⁰⁹ They communicated to her that preference. She had little or no warning of the changes that OCG wanted to make to the business model. Mr Carter and Mr Keeffe briefed her shortly after the 31 March meeting and expressed the sentiment (but not using the word that they had been 'blindsided').⁴¹⁰ I will not set out her evidence on this point in detail because it is sufficient to confirm the evidence of Mr Carter and Mr Keeffe on this topic. There was a general view at the most senior levels of DEWHA in favour of a brokerage model, and an opposition to the new delivery model that OCG was pursuing and, to an extent pushing. OCG, it will be seen, won that contest.

7.12.87 Mr Garrett and Mr Arbib had a discussion on 2 April 2009 at which they were 'broadly in agreement' with the proposed approach.⁴¹¹

7.12.88 Meeting on 3 April 2009

7.12.89 On 3 April 2009, Ms Kruk, Mr Garrett, Mr Arbib and 'the Minister's staff' met at Maroubra, at Mr Garrett's electorate office.⁴¹² A draft brief to the Minister was prepared for this meeting.⁴¹³ This document was copied to Ms Kruk, Mr Carter, Mr Forbes, Ms Riordan and Mr Kimber. It is not clear if it was given to the Minister.

7.12.90 In the draft brief, none of the concerns about the imposition of a business model by the OCG were raised. Nor were any concerns raised about the effect this would have, including whether any additional or new risks needed to be managed as a consequence. Indeed when one reads the brief, without knowledge of what occurred at the meeting on 31 March, it is very much 'steady as she goes', and the change in delivery model is not given the significance it warranted. Indeed under the heading 'Background' in the draft brief, it is said that metropolitan areas will be serviced under the brokerage model. Perhaps this was an effort by Mr Keeffe and others to not tell the Minister of the tension between the OCG and DEWHA, and to convey the impression that the Department very much had matters in hand. Of course, that is not what was in fact occurring.

7.12.91 Under the heading 'Managing Risk' it was stated:

We have briefed you on the Minter Ellison draft risk assessment of the program. This has now entered the second phase of designing risk mitigation strategies to minimise all risks and eliminate as many as possible. The extreme risks that will shape the selection of business models are time and procurement. The initial assessments suggest that the time available to develop and deliver the program in a properly controlled way may be inadequate especially if a substantial procurement needs to be met by 1 July. A finalised risk management plan is expected to be completed before 9 April.

7.12.92 I am unable to find that, either at this time, or subsequently, DEWHA ever advised Mr Garrett that more time was required to roll out Phase 2 of the Program. The language of the advice being given to the Minister was not direct and unambiguous.

7.12.93 For example, it was said in the draft that a separate model had been proposed by PM&C that involved utilising Centrelink infrastructure specifically for call centre monitoring and payment processing systems. What had been proposed/directed by the OCG went further than that. The draft continued:

409 Transcript (28 March 2014) 1236 (R Kruk).

410 Transcript (28 March 2014) 1243 (R Kruk).

411 Statement of Garrett at [64], STA.001.069.0001, 8 May 2014.

412 Statement of Garrett at [65], STA.001.069.0001, 8 May 2014.

413 WID.002.001.0077, 1-12.

We have identified a number of potential challenges to using Centrelink to develop the post July arrangements based on experience and advice gleaned from DHS and Centrelink when costing the proposed sustainable assistance homes package in October 2008...Additionally, we have concerns that Centrelink systems may already be experiencing strain due to the increase use of their services by growing unemployment numbers. These issues are outlined at Attachment A.

7.12.94 Nowhere is it said that the OCG was insisting that its model be used, or that DEWHA was opposed to or concerned about that model. Such advice ought to have been given.

7.12.95 As I have said, it is not apparent whether a finalised version of this brief was ever sent to the Minister.

7.12.96 On 3 April a meeting took place between Mr Arbib, Mr Garrett, Secretary Kruk and others, referred to below. On 1 April officers of OCG met with officers of DEWHA. Simon Cox wrote to Kevin Keefe, Beth Brunoro and others about that meeting:

As we discussed at the Boathouse on Wednesday, PM&C has put together a short term program between now and 1 July of the tasks that need to be accomplished to enable rollout of the HIP program (and the LEAPR) on 1 July. The program has been put together without reference to your internal approval processes, or the nuances that will emerge when the delivery model is decided upon.

I understand that you are putting your own program together simultaneously, so the main benefit of the OCG program may be to cost check against your own to ensure there is no obvious omissions...

The program also suggests that the Steering Committee be convened on a weekly basis to monitor progress, and to provide high level intervention if necessary...⁴¹⁴

7.12.97 This rather suggests that the OCG, at least, took the view that the delivery model had not been finally decided upon. However, I accept that, because of what happened at the meeting on 31 March, and subsequently DEWHA officers reasonably believed that it had been, and took no meaningful steps to challenge that decision.

7.12.98 Whilst the above email may reflect Mr Cox's view, it is evident that those senior to him were progressing with the implementation of the PM&C delivery model. The meeting was convened at Mr Garrett's electorate office. On the day of that meeting Mr Hoffman wrote to Mr Mrdak:

Meeting went well "whatever works". Robyn clear on need to include new entrants and small guys. David Williams (Chief of Staff) for Garrett wants to stay close. Arbib suggested you get Ludwig to the meeting with Finn. All agree we need a project manager ASAP and to start weekly project control meetings next week even without that person.⁴¹⁵

7.12.99 Mr Hoffman emailed Mr Cox and others on 6 April 2009 recommending that there be PCG meetings.⁴¹⁶ The above email also seems to have been the genesis of the engagement of Ms Janine Leake, of whom I speak later in this report. That email referred to the meeting on Friday, 3 April and made reference also to 'Simon's paper':

414 AGS.002.007.1758, 1.

415 AGS.002.008.0617, 1.

416 AGS.002.008.0610, 1.

The Secretary and the Minister compared notes on their personal experience in installing batts! ("not that hard"). Also discussed the central 1800 info line for the "little old lady in Bondi" with the Minister satisfied the proposal as per Simon's paper works.

7.12.100 It also stated:

Continued focus that the program must allow small players and new entrants, who meet minimum standards, to participate from the start.

7.12.101 In the note Mr Hoffman did state:

Good consensus re doing what works, exploring Centrelink rapidly, but not abandoning all other admin/delivery solutions right now.

7.12.102 Mr Cox had poor and incomplete recollection of the relevant events. Although he was a relatively junior officer, it is surprising he was not able to recall more about the relevant events in which, as the documents show, he must have had a close involvement. I thought that Mr Cox's evidence was a good illustration of the point made in Chapter 1 of this Report, about the evidence and the approach to their evidence of the public servants generally.

7.12.103 On 6 April Mr Mrdak sent Ms Kruk a copy of the draft program plan that he said his office 'had developed and provided to your team for consideration'. A copy of this was provided to Mr Bentley, an adviser to Mr Arbib.⁴¹⁷ Enclosed was a Gantt chart that set out what were on any view quite unrealistic timelines.⁴¹⁸

7.12.104 The OCG Delivery Model takes hold

7.12.105 The change to the business model was something which Mr Levey offered as an example of the lack of clarity as to who was driving the HIP and the difficult position in which Mr Garrett was placed.⁴¹⁹

7.12.106 Mr Levey attended the 31 March 2009 meeting, in effect as Mr Garrett's representative.⁴²⁰ He does not recall briefing the Minister about it, but his evidence did not exclude that possibility, given that it was a 'major' point.⁴²¹

7.12.107 Mr Garrett was briefed about the new business model by a written brief dated 9 April and signed by the Minister on 13 April.⁴²² Apart from that brief having mentioned the new business model, it did not mention that the change had been abrupt and unexpected. With that said, Mr Levey had been present at the 31 March 2009 meeting. He accepted that might be a reason why the briefing note need not have made clear the abruptness of the change.⁴²³

7.12.108 The briefing note to the Minister of 13 April recommended that the Minister 'note ... the proposed business model' [emphasis added]. It stated that:

The outline of a preferred business model is emerging through discussions with [PM&C], Centrelink, Medicare Australia, and with the independent consulting advice from KPMG. [emphasis added]

417 AGS.002.007.1754, 1.

418 AGS.002.007.1755, 1.

419 Transcript (21 March 2014) 546 (M Levey).

420 Transcript (24 March 2014) 591 (M Levey).

421 Transcript (24 March 2014) 592 (M Levey).

422 AGS.002.016.0705, 1-2.

423 Transcript (24 March 2014) 628 (M Levey).

7.12.109 The underlining above is intended to highlight that brief to Mr Garrett did not, in terms, seek his approval of the new business model, only that he 'note' what was said to be in outline, preferred only, to be emerging and still to be the subject of discussions. Mr Garrett never approved, and was never asked in terms, to 'approve' a business model that was in any sense said to have been settled upon or nearing completion.

7.12.110 Under the heading 'Issues/Sensitivities' it was said:

Development and selection of the business model is being informed by a comprehensive risk assessment, facilitated by Minter Ellison Consulting, to identify and manage the full range of risks in successful implementation of the project. The emerging preferred model will adequately address these; however residual risk around: fraud, complaints and installer and household safety will remain. Our strategies for managing these will be built into the business model wherever possible, or dealt with on an ongoing basis after the business model is put in place.

7.12.111 The Minister was not told that the 'comprehensive risk assessment' was merely a facilitative process where the risks were identified by the Department and not by an engaged expert; nor that such risk assessment was prepared on the basis of the regional brokerage model where the treatment for a number of risks was to 'outsource' them to third parties (the brokers).

7.12.112 The briefing note is curious in other ways. Advantages of the model were identified (but no disadvantages). One of the advantages was that households were to choose their own installer, and that there would be:

Options for all companies regardless of size and mode of operation to participate either as a registered installer, or as sub-contractor or employee of a registered installer, and choose their marketing strategy.

7.12.113 In reliance on this advice Mr Garrett wrote to Minister Ludwig on 15 April 2009.⁴²⁴ His letter included in part:

The Department will provide the policy direction and business rules to Medicare on key areas like installer eligibility, complaints handling and audit and compliance. The development of the program delivery model is supported by a comprehensive risk assessment undertaken by Minter Ellison Consulting.

7.12.114 Unfortunately, the last sentence is incorrect. The delivery model chosen was not the subject of a comprehensive risk assessment. However, the Minister was not advised of that fact.

7.12.115 There seems no doubt, however, that Mr Garrett, as the Minister vested with responsibility for the HIP by force of Administrative Arrangements, had the ultimate say as to what business model was to be utilised to deliver that program.⁴²⁵ That is why, no doubt, his approval was sought for it. The fact he gave his approval means that he, to that extent at least, accepted responsibility for it.

7.12.116 The note of a meeting held on 8 April (that is, after the brief was prepared for the Minister, but before he signed it) between the Minister, Secretary Kruk, Mr Forbes and Mr Thompson states that Mr Forbes gave an update on discussions and thinking related to development of the business model, and that the Minister indicated a 'greater level of

424 AGS.002.016.0707, 1-2.

425 Administrative Arrangements Order 25 January 2008 (MIS.002.001.0007, 1-43): the 'matters to be dealt with by [DEWHA]' included 'renewable energy programs' and 'energy efficiency'. That might be contrasted with the matters to be dealt with by PM&C.

comfort with progress'.⁴²⁶ What was discussed at this meeting was not the subject of further elaboration, but it is plain that, in addition to the written briefs being sent to him, discussion was also taking place about the Program between the Minister and senior officials of DEWHA.

7.12.117 Ms Brunoro prepared a document for the PCG meeting on 16 April 2009 headed: 'Risk Management—Energy Efficient Home Package'.⁴²⁷ She referred to the Minter Ellison work that had been done to date and said, under the heading 'Next Steps':

The project team carry out a review of the risk plan to align with the proposed new model for program implementation upon signoff of the service agreement with Medicare Australia including:

- reassessment of current and emerging risk ratings, better articulation of mitigating treatments and allocation of responsible risk owners within project teams using the Department's risk templates and guidelines*
- integration of the treatments into the project schedule for weekly monitoring and reporting*
- implementation of an internal Risk Manager to be responsible for the maintenance and reporting of the risk plan and facilitation of further reviews*
- engagement of Minter Ellison Consulting to provide limited independent quality advice of emerging risks going forward (estimated to be one day per month).*

7.12.118 An internal Risk Manager was appointed. Initially that was Amanda Murray-Pearce. Unfortunately for continuity of personnel, Ms Brunoro left DEWHA at around this time. Her position was then filled for some time, on a temporary basis by Mr Kimber.

7.12.119 A Working Group meeting was held on 16 April 2009.⁴²⁸ The final Risk Register prepared by Ms Coaldrake was presented to (and presumably discussed) at this meeting

7.12.120 It may be that a later briefing is the means by which Mr Garrett's approval of the OCG business model was sought. A briefing note dated 11 May 2009 seeks the Minister's approval of the 'Medicare business model for the delivery of the insulation programs' (and for the Phase 2 Guidelines).⁴²⁹ It was said of this model (relevantly) that:

- The Department has progressed a business model solution for the insulation programs with Medicare Australia (Medicare). This model involves Medicare establishing an installer registration and payment functionality using their existing system capabilities.*
- The Department will maintain and progress the information and promotional aspects of the program through websites, advertising and other communications. The Department will also be responsible for compliance and audit functions relating to the programs.*
- The Medicare business model is the only model that the Department can use for the insulation programs given the timeframes and payment volumes involved with the programs.*

426 AGS.002.021.2255, 1.

427 AGS.002.007.1882, 1.

428 AGS.002.014.1057, 1.

429 AGS.002.012.1240, 1-2.

- 7.12.121 Then followed a discussion of 'Issues/Sensitivities', but these were matters directed more to the Guidelines than to the business model. There is surprisingly little said about the business model in the briefing note, perhaps because it was by then considered to be the only one that DEWHA could use given the timeframes which had by then been, for all practical purposes, set. The briefing note does not, as did the earlier one of 9 April 2009 (albeit briefly), deal with risk or the strategies for dealing with them. The written briefings to the Minister about the delivery model fall far short of being as fulsome as might reasonably have been expected given the importance the decision that the Minister was being called upon to make. Nor is it clear in the second briefing note whether the Minister is being asked to approve only Medicare's involvement in the business model, or the new business model as a whole. Whichever it be, the Minister indicated his approval of the recommendations made to him in the briefing note on 13 May 2009. One would have expected that a significant decision such as the change in the delivery model would have been fully explained to and discussed with Mr Garrett. Doubtless this did not occur because the decision had been made by Minister Arbib and the OCG at the meeting on 31 March.
- 7.12.122 A briefing dated 13 May 2009 shows that Mr Garrett signed off on the new business model on that date. But it is not clear that the Minister has been told that the installer competencies had changed before doing so.⁴³⁰ This is a matter further discussed in Chapter 8 of this report.

7.12.123 Risks inherent in the OCG delivery model

- 7.12.124 The new delivery model, as ultimately settled upon, reduced the barriers for entry to a minimum level. It sought to maximise the opportunities for new entrants, by both minimising training requirements and permitting installers—large and small—to register under it. It was a self-avowedly 'light touch' approach, both in the low barriers to entry and by its (misplaced) reliance upon State and Territory regulatory and policing regimes.⁴³¹
- 7.12.125 On 16 April the PCG met and discussed the business model and version 1.0 of the Risk Register.⁴³² Mr Forbes, Mr Carter, Mr Keeffe, Mr Hoitink, Ms Brunoro, Mr Cox, Mr Hughes and Mr Hoffman were present, as was Ms Leake of Everything Infrastructure. Installer safety was not mentioned in it. Mr Cox read the document but does not know if he would have looked for a reference to installer safety within it.⁴³³ If he had read it and noticed that installer safety was not there, he would have raised it because he thought it was important.⁴³⁴ He made no inquiries whether use of the word 'safety' in item 4 of the Risk Register included installer safety.⁴³⁵
- 7.12.126 It was decided to re-engage Ms Coaldrake on an advisory basis to provide assistance to the internal risk manager, assess the risk management process and report back to PCG fortnightly.
- 7.12.127 It is important to note that the model as devised by Mr Cox was not precisely that which was in fact implemented. The OCG model as devised by Mr Cox had as one of its objectives to 'maximise participation of existing businesses'. It was not expressly articulated that the participation of new entrants would be maximised, but Mr Hoffman saw that following from the objective of providing insulation to 2.2 million homes, a very

430 Transcript (24 March 2014) 630 (M Levey).

431 AGS.002.008.0621, 1.

432 AGS.002.007.1870, 1-3.

433 Transcript (25 March 2014) 795 (S Cox).

434 Transcript (25 March 2014) 796 (S Cox).

435 Transcript (25 March 2014) 796 (S Cox).

large increase in the number of installations then taking place.⁴³⁶ But, as ultimately implemented, less reliance was placed upon existing businesses and it became an approach of, in effect 'let the market rip'.

7.12.128 The new delivery model brought with it new and different risks from the model which DEWHA, through Ms Wiley-Smith and Ms Brunoro, had advanced and recommended.⁴³⁷ Mr Hoffman thought that the DEWHA delivery model would not have reduced the risk of the HIP. He explained that there would be a need for a contract with a major provider, and then 'many thousands' of subcontracts.⁴³⁸ There would have been a need to recruit large numbers of staff and companies.⁴³⁹ Mr Hoffman considered that the Australian Government might be faced with greater risk if it were a step removed from the people actually doing the work.⁴⁴⁰ But that cannot be right because the Australian Government was no closer in the relevant sense to the people doing the work under the delivery model ultimately adopted.

7.12.129 Contrary to what Mr Hoffman suggested, the reliance under the DEWHA model to be placed upon large and experienced providers offered some protection against new and inexperienced entrants coming into the scheme. Those larger companies might engage new staff to conduct installations, but they would be responsible for training those staff whether that be formal, on-the-job, or both. The regional brokerage model placed reliance on existing businesses. It offered a means by which the Australian Government, through contract with those large providers, might have required of them, adherence to standards that did not otherwise apply. Once the Program was opened to any and all businesses, the problem became not only that contracts with each became impracticable, but also that there arose the real possibility that the businesses might have less capacity to undertake installations to the requisite standard, and less to lose if it installations were less than satisfactory.

7.12.130 Mr Hoffman read the reference in the Risk Register to 'safety' as including installer safety. He thought that the register ought to have identified such risk.⁴⁴¹ His view was that:

*The reference to safety in the risk register was intended in a general sense to encompass a range of issues, including safety of the householder. It is my recollection that the reference to safety also encompassed the physical and personal safety of installers, which is why there was the requirement of OH&S certification for workers.*⁴⁴²

7.12.131 Mr Hoffman's understanding was wrong. Having regard to the prevailing view that OH&S matters were for the States and Territories to deal with, and that the Program should not be seeking to add any obligation that did not already exist, I think it is difficult to accept that Mr Hoffman's understanding was one that could be reasonably held.

7.12.132 Mr Mrdak said that he would expect a risk assessment of a program such as the HIP to cover issues of safety to both persons and property.⁴⁴³ He regarded the training of the installers as critical.⁴⁴⁴

7.12.133 Before proceeding further, it is convenient to return briefly to the role that Ms Coaldrake fulfilled in the period after delivery of the Risk Register on 9 April 2009.

436 Transcript (25 March 2014) 877 (M Hoffman).

437 Transcript (25 March 2014) 808-814 (S Cox).

438 Transcript (25 March 2014) 880 (M Hoffman); Statement of Hoffman at [33], STA.001.008.0001, 21 March 2014.

439 Transcript (25 March 2014) 881 (M Hoffman).

440 Transcript (25 March 2014) 880 (M Hoffman).

441 Transcript (25 March 2014) 889 (M Hoffman); Statement of Hoffman at [84], STA.001.008.0001, 21 March 2014.

442 Statement of Hoffman at [84], STA.001.008.0001, 21 March 2014.

443 Transcript (27 March 2014) 1071 (M Mrdak).

444 Transcript (27 March 2014) 1049-1050 (M Mrdak).

7.12.134 The assessment of risks associated with the OCG delivery model

7.12.135 The delivery model that DEWHA had advanced and preferred was materially different from that which applied when it was ultimately implemented. The former involved large and experienced providers with whom the Australian Government would contract. Those contracts, on the DEWHA model, would have made provision for supervision of installers, the training of them, mechanisms for occupational health and safety and general performance of installation work. This is one way in which better definition would have been provided of supervision, to overcome the deficiency that Mr Mrdak⁴⁴⁵ and Mr Hoffman accepted was present under the revised installer competencies.

7.12.136 The delivery model that was actually utilised was a 'light touch' approach, or lighter at least than the brokerage model, which would have involved contractual controls on the providers of the installation services. The difference between the two was explained by Mr Keeffe during the Commission's public hearings:

Part of our thinking was that those who were providing insulation and installing it and employing people had skin in the game;⁴⁴⁶ that they had reputations; they had market risk attitudes; they had experience in training, so that they would be carrying out the training. So in our earlier model the responsibility and follow-through on training as a priority would have been carried out by the broker or the large companies. Under the direct access model, the training then—the requirement for training then relied on each individual multiple employer meeting his or her responsibilities to ensure that their workforce was well trained, which is far weaker, in my personal view.⁴⁴⁷

7.12.137 There was, in addition, a risk inherent in DEWHA's inexperience with a delivery model of the kind OCG had devised and advanced. DEWHA, as I have said, had no experience with a delivery model such as this (in contrast to that which it had recommended). That Department laboured under the very real limitations that Ms Kruk in particular in her evidence articulated. The novelty of the model to DEWHA was therefore a very appreciable risk to the successful delivery and completion of the HIP.

7.12.138 Mr Keeffe said that the change in delivery model presented high risks for various reasons. It had deprived the department of two months' lead time for the roll out of the program; it posed an increased risk of injury to installers; potential fraud; and house fires because of the absence of controls that might be expected from the use of regional brokers.⁴⁴⁸

7.12.139 There is a real issue whether, given the change to the delivery model that occurred in April 2009, the risk assessment was ever revised to take account of the new and different risks which would arise from a light touch, demand driven and direct engagement model. There are several persuasive factors which suggest that was not the case:

7.12.140 the Minter Ellison risk assessment was delivered in draft to DEWHA on 3 April 2009. That was the same day on which the meeting took place between Mr Arbib, Mr Garrett, Ms Kruk and others. At that time, the delivery model had not been finally settled upon. It is unclear, therefore, if the Risk Register was delivered on 9 April, how it could possibly have fully considered the risks of the HIP either because the delivery model had not been settled upon, or had only very recently been. There was certainly no time within

445 Transcript (27 March 2014) 1103 (M Mrdak).

446 Echoing Ms Wiley-Smith's paper prepared in January 2009.

447 Transcript (31 March 2014) 1428-1429 (K Keeffe).

448 Transcript (28 March 2014) 1459 (K Keeffe).

which to have consulted with the Commonwealth or industry in the same way as had been occurring about what risks attended the model preferred by DEWHA as distinct from the OCG model;

- 7.12.141 Mr Keffe said that the Minter Ellison risk assessment *'was prepared on the hybrid brokerage model' and 'is not for the direct access model as proposed by PM&C'*,⁴⁴⁹ and
- 7.12.142 the 9 April 2009 Risk Register itself says under the heading *'Installation (quality and compliance): quality of installation control by installers and compliance structures may be inadequate'*:
- *Review mitigation strategies in light of the agreed business model.*
- 7.12.143 As at early April 2009, discussions had not taken place with Medicare and Centrelink.⁴⁵⁰ At the same time, Mr Keffe did suggest that DEWHA had begun to consider changes to the risk assessment to take account of the changed model but that it was primarily based upon the brokerage model and the consultations about it.⁴⁵¹
- 7.12.144 Ms Coaldrake's evidence was that on 28 April she was told by Ms Murray-Pearce that the *'business model had moved on significantly since the original workshops were conducted and many of the original risks had become redundant or changed significantly'*.⁴⁵²
- 7.12.145 It was not imperative at that stage that the Risk Register be fully cognizant of the risks inherent in the OCG delivery model. The Register was to be reviewed regularly and there was still time, at least as at 9 or 16 April, to review and update the Risk Register as necessary. But that, as will be seen, did not occur in any comprehensive sense.
- 7.12.146 There is, however, some evidence that the question of risk was revisited to take account of the changed delivery model:
- 7.12.146.1 the Risk Management Plan was updated to reflect the new business model by 30 April 2009;⁴⁵³
- 7.12.146.2 the recommendations of the Key Milestone Review of 14 July 2009 item 'Review the risk register at the proposed planning day for Operational Phase'.⁴⁵⁴
- 7.12.147 I note, however, that these references post-date the 9 April 2009 version of the Risk Register. Nor are they, themselves, clear that such review as might have occurred was with a fresh mind and with the real differences between the models firmly in mind.
- 7.12.148 At the working group meeting on 22 April 2009, Janine Leake provided an overview of key issues from the last PCG meeting.⁴⁵⁵ She noted that the Project Schedule was a key issue to the OCG. It is noted:
- *Janine provided the working group a risk summary and a detailed risk analysis sheet that was prepared using Minter Ellison's initial risk assessment dated 9 April 2009. In this risk summary/analysis project leaders were allocated for each of the five risks, with specific tasks allocated to project leaders.*

449 Statement of Keffe at [88], STA.001.015.0001, 28 March 2014.

450 Transcript (31 March 2014) 1428 (K Keffe).

451 Transcript (31 March 2014) 1369 (K Keffe); Transcript (31 March 2014) 1419 (K Keffe).

452 Statement of Coaldrake at [77], STA.001.014.0001, 27 March 2014; MIN.002.001.3515, 1.

453 AGS.002.007.1778, 1.

454 COA.002.001.2600, 3.

455 AGS.002.014.1044, 1.

- 7.12.149 At the PCG meeting on 23 April 2009 there was a discussion about Medicare's capability to have registration forms available by 1 June 2009.⁴⁵⁶ The decision recorded is: '1 June deadline, no matter how ugly/pretty it looks.' That reflects the overriding problem with the Program, the desire to get a program to roll out from 1 July, notwithstanding any deficiencies or compromises that were necessary to achieve that goal.
- 7.12.150 Ms Leake was supposed to test the risk management strategies through the stakeholder process. No documents have been provided to demonstrate that was done, or what the results of such consultation were.
- 7.12.151 For present purposes, it is sufficient to focus upon installer safety because that is the risk that in fact materialised.
- 7.12.152 Version 1.2 of the Tier 1 Project Plan dated 16 April 2009 shows that although the delivery model had been changed, no changes were made to that section of the document dealing with risk management.⁴⁵⁷
- 7.12.153 A report on risk management was prepared by Amanda Murray-Pearce for the PCG meeting on 14 May.⁴⁵⁸ It was said that the project team had performed a major review of the Risk Register to align with the new model for program implementation with Medicare Australia. There were currently five primary risks identified and reported against on a weekly basis:
- *The compliance and quality assurance framework is not effective in supporting program outcomes;*
 - *IT systems and business model do not enable successful program delivery;*
 - *Government expectations are not managed effectively (including State and Territory government bodies);*
 - *Stakeholder and communication strategies are not effective;*
 - *Program management activities do not enable successful program planning and implementation.*
- 7.12.154 Each of the five primary risks has been allocated a risk owner who was responsible for the ongoing monitoring and updating of the risk elements.
- 7.12.155 The use of a different template, with the concomitant reduction of risks to five was both confusing and served to 'hide' risks under very general descriptions. Needless to say, the risk of installer injury in particular, or more general OH&S issues were not dealt with in the newer version of the Risk Register.
- 7.12.156 At a PCG meeting held on 21 May 2009, Ms Coaldrake advised that a thorough review of the Risk Management Plan had been completed and issues raised in previous meetings had been addressed.⁴⁵⁹ Further detailed risk plans were in place for legal risk, compliance, communications and Medicare.⁴⁶⁰
- 7.12.157 In the Minter Ellison Risk Management Plan under Risk 1 (Project Methodology and Business Model—Post 1 July) it is stated:
- Extremely limited time to determine and implement—effective project methodology*
- *delivery/business model post 1 July.*⁴⁶¹

456 AGS.002.016.0560, 1.

457 MIN.002.001.3519, 20-21.

458 AGS.002.027.0995, 1.

459 MIN.002.001.2241, 1.

460 MIN.002.001.1467.1

461 AGS.002.019.0069, 1.

- 7.12.158 It was recorded that KPMG was working on alternative business models post 1 July 2009. However no alternative business model was ever implemented.
- 7.12.159 The findings I make about the Risk Register and it taking account of the new business model are as follows:
- 7.12.159.1 the Risk Register, as at 9 April 2009, could not have given any adequate treatment to the OCG business model because the form and nature of that model had not, by then, been formalised or adopted;
 - 7.12.159.2 even leaving aside the business model change, the register, for the reasons I have explained, gave inadequate attention to the risk of installer injury;
 - 7.12.159.3 perhaps because of the conflict between DEWHA and the OCG, there was imperfect understanding (and different views about) of the differences between the business models and the different risks each entailed;
 - 7.12.159.4 there was no comprehensive, concerted or focussed attempt, once the business model was changed, to revisit the Risk Plan (in whatever form) and to think about how the risks might be different from the risks inherent in the model earlier proposed.
- 7.12.160 Having dealt with the period up to the delivery of the Risk Register on 9 April 2009 by Ms Coaldrake and the events at about that time with respect to the change in the model by which the HIP was to be delivered, I now deal in some more detail with the treatment of risk in a general sense in the remaining period of Ms Coaldrake's involvement.

7.12.161 Ms Coaldrake as 'risk advisor': April 2009 to January 2010

- 7.12.162 By the time Ms Coaldrake resumed her involvement with the HIP in late April or early May 2009, she said that the Risk Register had changed⁴⁶² and that there was additional and different information from what was in the Risk Register that she had developed.⁴⁶³ But its mention of the risk which for present purposes is material remained the same. Reference to installer safety or installer injury does not appear. Mr David Hoitink is identified as the person with responsibility for that particular risk.
- 7.12.163 Ms Coaldrake's further involvement was governed by a contract dated 10 July 2009,⁴⁶⁴ following her submitting a proposal dated 23 June 2009 in which she referred to her role being as a 'strategic risk advisor'.⁴⁶⁵ She proposed providing 'high level overview and monitoring of the Risk Register and recommendations about risk management to the PCG'. Although she offered to provide 'strategic advice on risk to the project executive as required', she said she was never 'required' to do so.⁴⁶⁶ A deed of variation later extended her retainer (through Langdale Consulting) until 31 December 2009.⁴⁶⁷ Her engagement was later extended until February 2010.
- 7.12.164 DEWHA appointed a full-time Risk Manager for the HIP.⁴⁶⁸ That person's role was to coordinate and report on the risk management process and to provide feedback. The role was not to manage each individual risk, but rather to manage the risk framework. The function was primarily administrative rather than substantive risk management. In mid-April, the Risk Manager was Ms Amanda Murray-Pearce. After that, the role was undertaken by Mr Nolan Nott.

462 Transcript (7 April 2014) 2211 (M Coaldrake); Statement of Coaldrake at [75], STA.001.014.0001, 27 March 2014.

463 This is apparent too from Tab 8 of the 20 May 2009 version of the Risk Register compared to earlier versions of it.

464 COA.002.001.1168, 1-5.

465 COA.002.001.1242, 1-2.

466 Transcript (7 April 2014) 2156 (M Coaldrake).

467 COA.002001.001.1222, 1-2.

468 Statement of Coaldrake at [75], STA.001.014.0001, 27 March 2014.

- 7.12.165 That role also involved maintaining the Risk Register and following-up with risk owners each week to see how treatments were progressing. The Risk Manager drafted a paper for the PCG each week that Ms Coaldrake checked. If the Risk Manager had any questions about the risk process they would consult Ms Coaldrake.
- 7.12.166 On 28 April 2009 Ms Murray-Pearce told Ms Coaldrake that the business model had changed since the original workshops were conducted and many of the original risks had become redundant or changed significantly. For example, the procurement risk that had been identified as extreme was no longer a major risk because Medicare Australia was responsible for delivering the registration and payment systems and there would no longer be any regional brokers.⁴⁶⁹ The first attachment to the email from Ms Murray-Pearce was a copy of the draft project plan.⁴⁷⁰ A comparison of the differences between the Risk Register prepared by Ms Murray-Smith as at 17 April 2009 and the original Risk Register Ms Coaldrake had prepared was attached.⁴⁷¹ In the new register, 19 separate risks had been condensed down to five key risks.
- 7.12.167 The REED divisional Risk Plan identified the risk of the HIP not being delivered to the Government's expectations.⁴⁷² A potential impact of that risk was identified as being that the quality of installations would be impacted by insufficient training or inappropriate practices. The risk treatment specified was that installer training would be outsourced in consultation with DEEWR.⁴⁷³
- 7.12.168 Ms Coaldrake commented upon that version of the document on 30 April 2009.⁴⁷⁴ Her main concerns were that the characterisation of risk under the REED divisional Risk Plan was somewhat narrow and the Risk Plan may not have been sufficiently detailed to help the PCG really understand the nature of the risks and whether the actions being taken would adequately manage those risks.
- 7.12.169 A 'risk owner's' workshop took place on 19 May 2009 facilitated by Ms Coaldrake. Attendees were David Hoytink, Aaron Hughes, Avril Kent, William Kimber, Greg Lemmon and Robert King—all from DEWHA. Ms Coaldrake said that the purpose of it was to 'confirm the risk owners' role and responsibilities, to agree escalation and delegation protocols for different levels of risk and to determine any further development of risk skills required in the HIP team'.⁴⁷⁵
- 7.12.170 By June/July 2009 every single risk treatment on the Risk Register had a name attached as being responsible for implementing that treatment and reporting on it. Each risk category as a whole had an owner as well as each individual risk treatment. Individual risk owners were listed against the treatment for each risk on the Risk Register. For example, as the Senior Legal Advisor, David Hoytink had the responsibility for checking administration audits and he would have been expected to report on that.
- 7.12.171 On 7 July 2009, an HIP planning day took place.⁴⁷⁶
- 7.12.172 Under risk reference number 1.5 of the Risk Register dated 9 July 2009, Mr Keeffe had responsibility for the risk treatment that all companies would be responsible for ensuring supervision of staff in their employ.⁴⁷⁷

469 MIN.002.001.3515, 1.

470 MIN.002.001.3517, 1-36.

471 MIN.002.001.3553, 1-2.

472 MIN.002.001.3569, 2- 4.

473 MIN.002.001.3569, 9.

474 MIN.002.001.5947, 1.

475 Agenda at MIN.002.001.2135, 1.

476 COA.002001.001.1521, 1.

477 COA.002.001.1711, 1.

- 7.12.173 On 12 June 2009, Ms Coaldrake proposed there be a ‘milestone review’ of the HIP project management.⁴⁷⁸ It was restyled a ‘health check’ by Ms Avril Kent. Ms Kent was a Director of Project Management at the time and worked under Mr Keefe.⁴⁷⁹ A health check, Ms Coaldrake explained, is a quick look at the program to see if it is all working. If things had happened as they should have, a quick health check would have concluded that combining the knowledge about the danger of electrocution from foil, together with the decision that had been made to abandon the need for installer training would dictate a diagnosis of ill-health (or potential morbidity!). On 14 July 2009, Ms Coaldrake sent a final milestone review report to Mr Keefe for sign off (report is dated 6 July 2009).⁴⁸⁰ The purpose of it was to look at whether the HIP was meeting its project management requirements and meeting what the project set out to do.
- 7.12.174 Ms Coaldrake’s milestone review identified several constraints on the HIP, including that the program delivery model was new for DEWHA and that there was a tight timeframe for design and a large administered budget. Both of course were correct as a matter of fact. But nowhere was a risk to safety identified as a constraint.
- 7.12.175 The Department itself earlier raised these same matters. On 17 June 2009 a workshop was held with directors and other representatives from the home energy branch to discuss lessons learned from the program to date.⁴⁸¹ This was facilitated by Mr Keefe. It was noted that there was a need to cut through certain traditional departmental processes to get the program moving on time. The team recognised that certain departmental services were not fully equipped with the fast pace and scale of the requirements imposed upon them. Regarding the multiple/simultaneous objectives, the team recognised that there were some times competing objectives. These included economic versus environmental outcomes; time versus quality; process versus action. The team would have liked more time to plan to enable more assured outcomes and better attention to detail. The team felt that if a ‘taskforce’ approach had been applied, releasing key managers from other functions, it would have enabled better focus on the program.
- 7.12.176 I consider each of these observations was accurate.
- 7.12.177 On 22 June 2009, a meeting was convened to consider the mechanism for meeting the reporting requirements as outlined to the PCG. Version 1.4 of the Tier 1 Project Plan was drafted on 22 June 2009. This was for the design and implementation of the program.⁴⁸²
- 7.12.178 The final design of the Program does not appear to have been referred to either the Cabinet or the SBPC for approval. On 18 June 2009, the Cabinet noted that the main phase of the Program would commence on 1 July 2009. No specific details of program design, business model or risk assessment was considered by the Cabinet, nor, it seems was any briefing provided that dealt with such matters. The same can be said of the SPBC.
- 7.12.179 On 22 October 2009 the PCG decided that a rapid review would be conducted by HIP directors of new and emerging risks. This seems to have been prompted by the then recent death of Matthew Fuller on 14 October 2009.⁴⁸³
- 7.12.180 New risks were identified to Ms Coaldrake on 26 November 2009. They concerned occupational health and safety concerns and the risks arising from the Program being forced to end early.

478 MIN.002.001.2401, 1-3.

479 Statement of Avril Kent at [4] and [7], STA.001.012.0001, 21 March 2014.

480 MIN.002.001.2716, 1 and MIN.002.001.2718, 1-28.

481 MIN.002.001.1318, 1-4.

482 AGS.002.027.1140, 1-38.

483 COA.002.001.3300, 1.

- 7.12.181 In November 2009, a separate risk sub-committee was formed, which included Mr Forbes, Ms Coaldrake and others. The risk sub-committee prepared summary traffic light reports of all the main risk issues for the PCG. The Risk Register changed daily as people updated the status of their risk treatments.
- 7.12.182 In late November 2009, Ms Coaldrake provided risk advice on the early termination of the program.⁴⁸⁴
- 7.12.183 Ms Kent (of whom mention has been made above) had involvement with the HIP from about 11 April 2009.⁴⁸⁵ She worked closely with Mr Coaldrake in relation to risk management.⁴⁸⁶ Ms Kent could recall consideration being given to the safety of people doing the installation work during morning project team meetings.⁴⁸⁷ Her recollection was that:

*... the general view expressed during those conversations was that the States and Territories had responsibility for and ownership of the regulation of occupational health and safety (OH&S) as well as fire safety, and that the Commonwealth ... was not the risk owner for these issues.*⁴⁸⁸

- 7.12.184 Ms Kent had certain understandings (again misplaced) to the effect that the States and Territories would be monitoring installations funded by the HIP without needing to be further prompted by the Australian Government.⁴⁸⁹
- 7.12.185 This was, as I say, misconceived. It is, however, an explanation as to why, as a matter of fact the risk of installer injury was not included in the principal risk documents until after the death of Matthew Fuller.
- 7.12.186 Ms Kent replaced Mr Keeffe as the Risk Manager for the HIP in about May 2009, which made her responsible for 'running a proactive risk process to make sure that we were effectively monitoring what was happening and identifying issues that were arising for the program'.⁴⁹⁰ She also established the compliance sub-committee and was a member of it.⁴⁹¹
- 7.12.187 Ms Kent's role as Risk Manager ceased upon the first fatality.⁴⁹²
- 7.12.188 I add, for completeness only, some observations about the risk assessment and treatment process following the fatalities that occurred under the HIP.

7.12.189 Risk Assessment: Post Fatality

- 7.12.190 It was only after the first fatality that DEWHA (and perhaps others) seemed to have come to grips with the reality of the risk of installer injury under the HIP. The tragedy of this is that it was within the Department's knowledge well before October 2009 that an installer may well be injured—even killed—when installing insulation and especially RFL insulation.
- 7.12.191 A Risk Management Committee was established after Mr Fuller's death.⁴⁹³
- 7.12.192 On 11 October 2009, Ms Coaldrake sent an email to the members of the risk sub-committee stating, relevantly:

484 COA.002.001.2798, 1-7.

485 Statement of Kent at [8], STA.001.012.0001, 21 March 2014.

486 Statement of Kent at [11], STA.001.012.0001, 21 March 2014.

487 Statement of Kent at [17], STA.001.012.0001, 21 March 2014.

488 Statement of Kent at [17], STA.001.012.0001, 21 March 2014.

489 Statement of Kent at [29], STA.001.012.0001, 21 March 2014.

490 Statement of Kent at [23], STA.001.012.0001, 21 March 2014.

491 Statement of Kent at [13(f)], STA.001.012.0001, 21 March 2014; Transcript (8 April 2014) 2381 (A Kent); Transcript (8 April 2014) 2378 (A Kent).

492 Statement of Kent at [34], STA.001.012.0001, 21 March 2014.

493 Transcript (7 April 2014) 2146 (M Coaldrake).

*Consider commissioning independent study on safety of insulation practices for various types of product.*⁴⁹⁴

- 7.12.193 Ms Coaldrake was not able to explain why the Risk Register, after the first fatality, did not allude to the risk of installer injury and why preventing further deaths was not given absolute priority.⁴⁹⁵
- 7.12.194 Ms Coaldrake, on 15 February 2010, told Mr Hughes by email that 'I am not and never was managing risk for HIP'.⁴⁹⁶ She confirmed that view when she gave evidence orally.⁴⁹⁷

7.12.195 Creation of the Taskforce

- 7.12.196 The Energy Efficiency Taskforce was established in DEWHA in November 2009. At that stage, the PCG ceased. It utilised a 'simplified' Risk Register and the ones previously used fell into disuse. Ms Coaldrake had no involvement in the preparation of the simplified Risk Register.⁴⁹⁸ The simplified register (as least as at 26 February 2010) did not cover 'installation and quality by installers is poor'. But it did mention reputation damage (being, it seems, Government reputation). It did allude to a possibility that the HIP would end early due to safety concerns. Ms Coaldrake recommended reinstatement of risks still considered to be 'possible'.⁴⁹⁹

7.12.197 Project management

- 7.12.198 Following on from Mr Hoffman's email of 6 April 2009, referred to above, DEWHA sought project management expertise to assist it. Everything Infrastructure Services Pty Ltd was retained to provide strategic project management assistance for the Program on about 15 April 2009. It provided a proposal to DEWHA.⁵⁰⁰
- 7.12.199 Ms Janine Leake was, primarily, the person responsible for providing the services. She described herself as a 'project advisor'. Her qualifications are in architecture and adult education.⁵⁰¹
- 7.12.200 It was not clear at all from the statement that Ms Leake provided to the Commission what the nature and extent of her involvement with the HIP was. In her oral evidence, she said the work she did between April and June 2009 was to do with the Risk Register (including a workshop with Medicare and how it would interface with the program). She said she provided 'very little' strategic advice, she worked on the project plan and did some tasks associated with PCG meetings.⁵⁰² The contractual arrangements make clear that she herself was to provide 'strategic management services' as part of a wider contract for 'specialist project management services'.⁵⁰³
- 7.12.201 Ms Leake did some small amount of reading only before attending her first meeting concerning the HIP. Her first substantive work was to attend the 16 April 2009 PCG meeting. She saw her role, at that time at least, as being to 'find out what was happening'.⁵⁰⁴ Mr Keffe saw her role somewhat differently.⁵⁰⁵

494 COA.002.001.1133, 1.

495 Transcript (7 April 2014) 2173 (M Coaldrake).

496 COA.010.001.0331, 1.

497 Transcript (7 April 2014) 2156 (M Coaldrake).

498 But she did prepare a comparison of the two: COA.002.001.2750, 1-3; Transcript (7 April 2014) 2176 (M Coaldrake).

499 COA.002.001.2750, 3.

500 Statement of Leake at [4], STA.001.047.0001, 15 April 2014; AGS.002.007.1743, 1-2.

501 Transcript (16 April 2014) 3204 (J Leake).

502 Transcript (16 April 2014) 3210 (J Leake).

503 AGS.002.007.1742, 1.

504 Transcript (16 April 2014) 3210 (J Leake).

505 Transcript (31 March 2014) 3214 (J Leake).

- 7.12.202 Mr Keefe said that her job was to oversee the work of the project scheduler and by use of Gantt charts ensure that the PCG and Mr Keefe were sequencing matters properly. She was also asked by Mr Keefe to work with Ms Coaldrake to ensure risk management was incorporated into the scheduling.⁵⁰⁶
- 7.12.203 Ms Leake did not agree with this. In particular, she said that:⁵⁰⁷
- 7.12.203.1 she did not advise on a day-to-day basis on all of the work because she did not have 'visibility' of everything that was happening;
 - 7.12.203.2 she received a Gantt chart (without knowing who had prepared it). She spent some time working on it and talked to people. This was a 'hands on activity'. She handed the Gantt chart over to Mr King on his return from leave (which was on about 28 April);
 - 7.12.203.3 she was simply documenting the program and [seeing] what was being planned;
 - 7.12.203.4 in the first two weeks, she spoke to Mr Keefe about whether the Australian Government was not going to meet its goals;
 - 7.12.203.5 she was taking advice from public servants who must have known how long things took; but she said she might 'reflect back' to people about whether matters would take the time as scheduled;
 - 7.12.203.6 she did not provide expertise to guide the ultimate decision as to the steps that should be taken for the efficient management of the HIP.
- 7.12.204 Surprisingly, Ms Leake did not seem at all clear on her role. She had never worked on a \$3 billion project before. It was a 'bit of a look see' for her, she said.⁵⁰⁸ She was not able to point to documents or conversations that defined her role. It would seem to me to be elementary that one of the first steps that a person involved in providing "strategic project management assistance" and "strategic management services" ought to take is to understand the nature and scope of his or her role. It was a failing of Ms Leake that she did not. It was a further failing that, in default of any proper definition of her role, that she did not give independent advice about whether the activities as scheduled were, in her experience, reasonably achievable.
- 7.12.205 On the topic of risk, Ms Leake accepted having a role (albeit 'with everyone else', as she wished to qualify it) in identifying risks. Mr Keefe mentioned her as a person who would identify risks and specifically in terms of project scheduling.⁵⁰⁹
- 7.12.206 Ms Leake had her doubts that 1 July 2009 commencement date was achievable because a \$3 billion project takes a year in her view to get off the ground.⁵¹⁰ It is far from clear, however, that such advice was even given by her to anyone in DEWHA or in the OCG.
- 7.12.207 Ms Leake said she had no part in the preparation of the Gantt charts but was 'sure' she would have had input into whether the times were realistic. She also consulted on the project schedule.⁵¹¹ She felt herself 'one of the team' rather than an expert providing advice.⁵¹² Doing so was a complete misunderstanding of her role. It meant that she abrogated responsibility for project management activities that the Program

506 Transcript (31 March 2014) 1417 (K Keefe).

507 Transcript (16 April 2014) 3210-3215 (J Leake).

508 Transcript (16 April 2014) 3216 (J Leake).

509 Transcript (31 March 2014) 1417 (K Keefe).

510 Transcript (16 April 2014) 3217 (J Leake).

511 At least by 23 April 2009: AGS.002.007.1803, 2.

512 Transcript (16 April 2014) 3220 (J Leake).

sorely required and which, no doubt, was one of the main reasons that the services of Everything Infrastructure had been retained in the first place.

- 7.12.208 Her own evidence which I summarise below establishes that she did not take an interest in the matters in which a diligent project manager would have involved herself.
- 7.12.209 At the 16 April PCG meeting, Ms Leake was given an 'action item' to work with Ms Murray-Pearce on the Risk Register.⁵¹³ She worked, she thought, on the template, and how to calculate the significance of risk. She attended a working group meeting on 22 April 2009.⁵¹⁴ Ms Leake was also given a task to set up bilateral meetings with Ms Kaminski and others. It is obvious that she did more than just set up the meeting, by looking at documents and so forth.
- 7.12.210 On 22 April 2009, Ms Leake is recorded as having provided a Risk Summary and detailed Risk Analysis sheet prepared using Minter Ellison's initial risk assessment. Ms Leake had no recollection of her having given any assistance in connection with the document or the meeting at which it was discussed. Nor could she remember anything material about exchanges that took place on about 22 April 2009 concerning training.
- 7.12.211 Ms Leake also attended the PCG meeting on 8 May 2009 and the training workshop that also took place on that day. She did not know why. She thought she was there 'as one of the direct reports to Kevin Keeffe'.⁵¹⁵ Again these responses are highly unsatisfactory.
- 7.12.212 She could not remember 'specifics' of the 8 May PCG meeting: yet she was copied into emails about competency requirements in early May.⁵¹⁶ She could not remember the decision that day to change the competency requirements for installers. She says she was an observer and not a member as such of the PCG so could not have spoken, except on an item specifically allocated to her.
- 7.12.213 Ms Leake also attended a Procurement: Audit and Site Inspection' meeting on 7 May 2009. Early on she realised that procurement of inspectors could not possibly make the target date. Her interest was how the fraud plan could dovetail into the procurement of the auditors.⁵¹⁷ This is at best a small part of project management.
- 7.12.214 The Government, Ms Leake said, would not have direct control over the program (including as to safety). She said she had these concerns 'early on' and raised them with Kevin Keeffe. She said that his response was that he would flag it 'up the line'. This was insufficient. It was her responsibility to see such matters pursued.
- 7.12.215 She knew that the full compliance program could not be put in place by 1 July 2009 and despite this, did not suggest putting back the HIP's start date from 1 July 2009 to a later time. She made no inquiries about why the commencement date was apparently immovable. She thought the reason was that a 'politician had made the announcement.' One would expect that if she is involved with the HIP to provide "strategic management services" one would expect her to provide written advice to the effect: This can't be done in the time allocated.
- 7.12.216 I do not accept that Ms Leake's role was as limited, peripheral and inconsequential as she said it was. She certainly sought to make it less significant than it ought, on any reasonable view, to have been, in both her statement and her oral evidence.
- 7.12.217 Ms Leake declined an offer by the Commission to provide a further statement to deal with the matters which were the subject of her oral examination.

⁵¹³ Transcript (16 April 2014) 3222 (J Leake).

⁵¹⁴ AGS.002.014.1044, 1.

⁵¹⁵ Transcript (16 April 2014) 3244 (J Leake).

⁵¹⁶ AGS.002.030.0010, 1.

⁵¹⁷ Transcript (16 April 2014) 3248 (J Leake).

- 7.12.218 Ms Leake went so far as to say that from 23 April 2009, she had no substantive input into the Program. It would be odd if it were the case that Ms Leake would be retained from outside the public service at a cost of \$1840 per day if she were not to have substantive input, offer some independent perspective, provide advice and generally warn DEWHA (and others) of the major risks it faced to the project schedule from time to time.
- 7.12.219 Ms Leake did tend to characterise her role as being almost secretarial, as her being ‘one of the team’ and her not having taken (and, by implication not being *required* to take) a leadership role. She was, to use her words, a ‘resource’, and this was a team effort, ‘all hands to the pump sort of thing’. Her role was, very clearly, and on any view, more than how she sought to portray it.
- 7.12.220 I find that Ms Leake did not fulfil the duties reasonably to be expected of her. She did not provide, on her own admission, the ‘strategic management services’ to which the Expression of Interest Proposal made reference.⁵¹⁸ She—quite improperly—and despite her work being charged out at a high rate, regarded herself as no more than ‘one of the team’. She seems to have been oblivious as to why she was being invited to meetings (many of them) and allocated tasks. It can only follow that if she was under such a misunderstanding as to her role, she could not have discharged such duties as she, in reality, had.
- 7.12.221 What is most surprising is that she did not seem to see herself as any different from public servants who did not hold themselves out as having specialist skills project management experience or skills and who were paid much less than her.

7.12.222 Possible Postponement of commencement: Mr Mrdak and Mr Arbib

- 7.12.223 One final matter requires separate consideration, namely the attempts made to postpone the 1 July 2009 commencement date that Mr Rudd had announced on 3 February 2009.
- 7.12.224 On 3 March 2009, Mr Mrdak met with Mr Arbib and outlined to him that the timetables were very tight and that there would be real difficulty in meeting the delivery dates. He raised with Mr Arbib whether there was any scope for postponing the start date of 1 July; the target of insulating 2.7 million homes; and the fact that the insulation would be free to householders. He says that Mr Arbib noted ‘the concerns and issues involved with meeting the announced timetable and discussed the urgency for the Government in meeting the announced timeframes’.⁵¹⁹
- 7.12.225 Mr Arbib said that there were many meetings about timeframes being very tight or ‘challenging’ but not that they could not be achieved.⁵²⁰
- 7.12.226 On 6 March 2009, Mr Mrdak’s office arranged a meeting with every coordinator and with senior officers of every department responsible for a program under the stimulus package. After the presentations and after DEWHA representatives had departed, Mr Mrdak and Mr Wilson had a conversation with Mr Arbib about timelines. Mr Mrdak recalls that Mr Arbib said the timelines were not moveable at that time; that it was early in the planning phase and that more work would need to be done before it would be appropriate to go back to senior Ministers and ask for more time.
- 7.12.227 Mr Arbib does not recall saying that and doubts that he would have done so. He does not deny the conversation.

518 AGS.002.007.1743, 1-2.

519 Supplementary Statement of Mrdak at [5], STA.001.009.0026, 19 May 2014.

520 Response to the Notice of possible Adverse Findings, Minter Ellison letter dated 11 July 2014 at paragraph 8 of Annexure 1.

- 7.12.228 Late in the week ending 13 March 2009, Mr Mrdak had a further conversation with Mr Arbib about the identification of problems in meeting the timeline.
- 7.12.229 After the meeting on 31 March which resulted in the changed delivery model, Mr Mrdak says he again raised with Mr Arbib the option of deferring the 1 July start date to later in 2009 because he could not guarantee the robustness of the Program systems. He said Mr Arbib advised that he would need to discuss that with Mr Rudd. Mr Arbib's response to this assertion is that he does not recall the conversation and doubts its accuracy in relation to the use of the term robustness because the model was still being devised and the discussion about robustness would have been premature.
- 7.12.230 Mr Mrdak asserts that Mr Arbib, prior to a meeting on 3 April, said that he had discussed it with Mr Rudd and that every effort needed to be made to get the systems in place for the 1 July commencement. Mr Arbib does not recall the discussion but does not dispute Mr Mrdak's account of it.
- 7.12.231 On around 19 May, Mr Mrdak said that he again told Mr Arbib the matters he had previously communicated. Mr Arbib reaffirmed the start date. Mr Arbib did not recall this discussion.
- 7.12.232 On 2 June, Mr Mrdak said that he told Mr Arbib that he could not guarantee that the systems would not fail and that a September start date would be better. Again Mr Arbib confirmed the 1 July start date. Mr Arbib did not recall any reference to a September start date and pointed to the fact that none of these discussions concerned audit or compliance matters. There is no issue about that.
- 7.12.233 In fairness to both Mr Mrdak and Mr Arbib, I must point out that their evidence to which I have just referred was provided to the Commission by each of them after the public hearings had finished and therefore the evidence was not tested in any adversarial way. However each of them had given evidence and I had the opportunity to observe them both do so.
- 7.12.234 Generally speaking, Mr Arbib was very guarded and defensive in giving his evidence. He inquired, on numerous occasions, whether there were documents that might support a proposition before answering questions and had a poor memory of relevant matters.
- 7.12.235 In the end, I am satisfied that Mr Arbib (while not technically having authority to make decisions) at all times pushed the commencement date of 1 July 2009 despite any concerns expressed by others as to whether it was properly attainable. This is entirely consistent with what was believed to be the PM&C approach.

7.13 Findings

- 7.13.1 I am satisfied:
- 7.13.1.1 that the change to the business model arising in the meeting of 31 March was imposed on DEWHA by OCG;
 - 7.13.1.2 that this was done with no prior consultation with DEWHA and with no serious research being undertaken about the new OCG proposal, particularly concerning risk management;
 - 7.13.1.3 that DEWHA at the time had experience with delivering a program involving a regional rollout that was much smaller than the proposed HIP;
 - 7.13.1.4 that, given an extended timeframe, DEWHA could have delivered the regional rollout program on which it was working;

- 7.13.1.5 that the change to the Program from the regional rollout model to the direct delivery model was to a significant extent the cause of later failures by the Australian Government;
- 7.13.1.6 that Ms Brunoro and Mr Keefe as well as other members of DEWHA were advised in February of the serious risk posed by RFL insulation in conjunction with electricity and did nothing to further investigate it. They should have done so;
- 7.13.1.7 that 3 days of training for novice installers was recommended by the representatives of the insulation industry;
- 7.13.1.8 that under the regional rollout model the DEWHA officials justifiably assumed that training would be the responsibility of the regional rollout providers;
- 7.13.1.9 even though it was created before she had knowledge of the changed delivery model from regional to direct, Ms Coaldrake's Risk Register of 9 April was deficient. It omitted to identify the risk of injury to installers, despite having included that as an almost certain likelihood, with major consequences, and an extreme risk in her earlier Risk Register;
- 7.13.1.10 Ms Coaldrake is in part responsible for the omission from the Risk Register delivered to DEWHA on or about 9 April 2009 of the reference to risk of injury and death to installers of insulation;
- 7.13.1.11 neither Mr Arbib nor Mr Garrett were specifically advised of the risk of injury to installers prior to the first casualty;
- 7.13.1.12 between April and July 2009 the issue of safety of installers was discussed at project team meetings and dismissed as a matter for the States and one where the Australian Government had neither mandate nor operational role;
- 7.13.1.13 Ms Leake was retained to provide strategic project management advice (whatever that may be). She failed to provide advice that the project could not be properly rolled out to commence on 1 July or to ascertain why that date was immovable. She failed to raise issues concerning installer safety or to ascertain the attitude of the States to what DEWHA saw as their obligations in respect of OHS and fire safety;
- 7.13.1.14 Mr Arbib (while not technically having authority to make decisions) at all times pushed the commencement date of 1 July 2009 despite any concerns expressed by others as to whether it was properly attainable;
- 7.13.1.15 The HIP was hurriedly conceived and hastily implemented. It failed because of the insistence by PM&C of the need for undue speed in its implementation. There was a far greater chance of avoiding the risks that affected the HIP as ultimately implemented had PM&C developed the brokerage model proposed by DEWHA prior to 31 March 2009, but that would have taken more time.

8. TRAINING AND COMPETENCIES

8.1 The principal issue

- 8.1.1 On 8 May 2009, the Project Control Group (PCG) agreed to a set of installer minimum competencies, which specified that installers need not receive training in insulation installation, or hold a specified competency, if they were supervised by a person who had been so trained, or held that competency. Those installers had only to have obtained an Occupational Health and Safety (OH&S) 'white card', on any view a most basic form of training and one which it was almost impossible not to obtain.¹ It is necessary to consider in detail the lead-up to that decision, who was involved in making it and why they did so because, as the fatalities in particular show, some installers at least were inadequately skilled and supervised to undertake the work they did.
- 8.1.2 I do so because this is one of the points at which the tension between a perceived need to rush implementation of the Home Insulation Program (HIP) and the careful and proper design of it was resolved in favour of the former and at the expense of the latter.

8.2 Background

- 8.2.1 On 16 February 2009, Mr Canavan, Victorian Coordinator-General, flagged a concern with Mr Mrdak about the accreditation and training of insulation installers.² At the 18 February 2009 Energy Efficiency Roundtable meeting, all participants agreed that special skills were required for installing insulation; that installers ought be registered and be required to meet minimum training standards for installation.³ Mr Mrdak was advised of that fact.⁴ On 20 February 2009, Neil Gow from the Master Builders' Association (MBA) wrote advocating the training of new entrants.⁵ Mr D'Arcy wrote, supporting use of a Victorian model for training.⁶ On 24 February 2009, Ms Brunoro emailed Mr Keeffe saying that there was a need to exclude untrained installers from the HIP, but that appropriately skilled people such as builders ought to be permitted to participate.⁷ On 20 March 2009, a National Industry Consultation Meeting took place at which the attendees agreed that an appropriate training regime would be required. An Installer Training Working Group was proposed to be formed, with representatives from various industry associations.⁸ This meeting recommended a one-day installer refresher course; a two-day trade course and a five-day new entrant course. The agenda for the meeting also proposed some electrical skills training.⁹ The minutes of the meeting recorded that, *'the work involved in insulation could result in a high level of exposure for the Government due to hazards of existing buildings, hazardous materials and occupational health and safety. The program poses a high likelihood of catastrophic consequences (death or serious injury).'*¹⁰

1 Statement of Levey at [73], STA.001.003.0001, 18 March 2014.

2 AGS.002.008.3384, 1.

3 AGS.002.008.0502, 1.

4 AGS.002.008.0502, 1; AGS.002.023.0926, 5.

5 AGS.002.007.1700, 1.

6 AGS.002.010.0776, 1.

7 AGS.002.008.3246, 2.

8 Statement of Cox at [16], STA.001.007.0001, 21 March 2014.

9 AGS.002.010.0945, 2, .

10 AGS.002.029.0915, 1.

- 8.2.2 Despite some resistance from the MBA regarding the need for training of its qualified members, the unanimous view of all industry participants was that training was required for insulation installation, particularly for new entrants. Training was described as a 'main priority'.¹¹
- 8.2.3 On 3 April 2009, an Energy Efficient Homes Package training workshop was held at which the issue of training was again discussed and the minutes record that the attendees agreed on three to five days training including one day of OH&S induction training. Training was to include classroom and on-the-job training.¹² This was in fact the way in which experienced employers in the industry had been operating.¹³
- 8.2.4 Consistently with these events, Mr Mrdak said that the need for training programs for installers was one of the things that was drawn to his attention quite early.¹⁴ He said that it was always important that installers be trained. He thought (at the time he was Coordinator-General) that the training of the firms and all installers was a fundamental and critical part of the delivery of the Program.¹⁵ He thought there should and would be a mandatory level of technical training for all people doing installation.¹⁶
- 8.2.5 Training and installer competencies, however, were not issues which the Office of Coordinator-General (OCG) considered to be the focus for its involvement.¹⁷ Mr Mrdak's office did some work with the Department of the Environment, Water, Heritage and the Arts (DEWHA) and the Department of Education, Employment, and Workplace Relations (DEEWR) on the requirements for training under the HIP.¹⁸ But that work seemed to have involved having those agencies work together more closely and cooperatively rather than having an input into what the training and competencies ought to be.
- 8.2.6 Mr Mrdak was not aware of the decision to change the competencies that was made by the PCG in early May 2009. Nor was he aware that such a decision was to be made.¹⁹ I accept his evidence in that regard.
- 8.2.7 On 15 April 2009, Mr Keeffe emailed officers from the Department of the Prime Minister and Cabinet (PM&C) and said:
- Training is looking healthy. We met again with DEEWR and have contracted Industry Skills Council to rapid-check the scope of the NSW course offerings to see if it can meet national standards and then a roll out through the National RTO [registered training organisation] network. They swear they can have it up and running in advance of our July start. How soon before will be advised soon.*²⁰
- 8.2.8 The next day (16 April), the PCG met and discussed the business model and discussed installer accreditation and minimum competency standards.²¹

11 AGS.002.008.3450, 1.

12 QIC.006.001.0333, 2.

13 Transcript (15 April 2014) 3096 (M Hannam); Transcript (4 April 2014) 2056 (P Stewart)

14 Transcript (27 March 2014) 1049 (M Mrdak).

15 Transcript (27 March 2014) 1049-1050 (M Mrdak).

16 Transcript (27 March 2014) 1077 (M Mrdak).

17 Statement of Mrdak at [27], STA.001.009.0001, 24 March 2014, [27]. At least so far as matters of detail about those issues was concerned: Transcript (27 March 2014) 1090-1091 (M Mrdak).

18 Statement of Mrdak at [88], STA.001.009.0001, 24 March 2014. His office was not involved, however, he said, in the 'technical details of the competencies'. See Transcript (27 March 2014) 1090-1091 (M Mrdak).

19 Transcript (27 March 2014) 1050 and 1079 (M Mrdak).

20 AGS.002.008.3178, 1.

21 AGS.002.007.1870, 2.

- 8.2.9 On 23 April, the PCG considered the issue of training, and was presented with a minute about that topic by Mr Keeffe.²² It was said that the requisite competency and training materials would be ready by 2 June. That Minute showed that advice had been received from DEEWR, the Construction and Property Services Industry Skills Council (CPSISC) and industry, that ‘installers need a minimum level of competence to undertake work in a safe and effective manner’. It recommended that DEEWR further assist with the issue so far as it concerned persons with no prior experience who wished to enter the industry. Mr Hoffman told Mr Keeffe by email of 22 April 2009 that his concern was to:

*make sure we are crystal clear re what training/experience requirements we are going to put on existing and new starters in the industry.*²³

- 8.2.10 Mr Hoffman accepted there was uncertainty about this issue at that stage and that it needed to be resolved.²⁴

- 8.2.11 On 23 April, Mr Hoffman was blunt:

I thought it useful to record a few key points from this morning’s meeting after a little reflection:

- 8.2.11.1 We need relentless focus on the mechanics of the program leading up to July 1...

- 8.2.11.2 We need greater clarity of the issue of qualifications requirements and then training for those requirements. In a discussion after the meeting, DEWHA staff are still struggling to be able to write down the complete list of what will qualify an installer to be registered for the program.... This needs to be nailed ASAP; not least so that we can then ensure through DEEWR that those requirements are able to be provided en masse to new entrants to the industry.

- 8.2.11.3 Issues of fraud, compliance and audit are very important. But my sense is that we have a risk right now of over focus on work streams about these matters to the potential cost of focus on matters in 1 and 2 above. Fraud, compliance and audit matters are NOT on the critical path to successful launch on July 1. Items 1 and 2 are. (I realise of course that they will then rapidly become critical path issues). I trust the above is useful. PM&C/OCG staff will continue to assist in any way we can. As discussed, PM&C will assist in getting high level DEEWR engagement to bring together the employment services providers, RTOs etc.²⁵

- 8.2.12 There is, in my mind, no doubt what Mr Hoffman, and through him the OCG, were trying to achieve a 1 July commencement, and if there were any removable impediments to that occurring, such impediments were to be removed.

- 8.2.13 Mr Cox, who had some involvement in the question of training, was vague in his recollection of the extent to which the OCG took an interest in it and what was done in that regard.²⁶ As I have already remarked in the previous Chapter, his recollection of events generally was very poor. This is surprising given the involvement that he must have had, given the emails he sent, the emails into which he was copied, the position he filled and the persons to whom he reported. To this must be added that he was afforded some considerable opportunity to refresh his memory, both during an interview with

22 AGS.002.007.1840, 1.

23 AGS.002.007.1842, 1.

24 Transcript (26 March 2014) 907 (M Hoffman).

25 AGS.002.008.0672, 2.

26 Transcript (25 March 2014) 759 (S Cox).

Commission staff on 11 March 2014, by reviewing documents provided to him at that time, and his having had some weeks between that interview and the time of appearing before the Commission within which to recall the relevant events and his having prepared a statement.²⁷

- 8.2.14 Mr Cox, in the early framing of the OCG/PM&C business model, had left the issue of training open, and seems to have assumed that appropriate arrangements were yet to be settled upon. It is clear that decisions were later made (after Mr Cox had left the OCG) that required only supervisors and not installers to meet the relevant requirements. No criticism can therefore be levelled at Mr Cox for this aspect of the model. Responsibility for that rests with others.

8.3 Events immediately preceding the 8 May decision

- 8.3.1 The genesis of the idea to remove the need for all installers to receive training (if they were supervised) seems to lie in a document of 1 May 2009. That document was put before the PCG. That document was later (on 4 May) amended (by Mr Hughes).²⁸
- 8.3.2 But even on 4 May, each person engaged by an organisation registered under the HIP was to 'have the competency detailed in paragraph 1 below' (ie OH&S training and substantive training).²⁹ Mr Hoffman conceded that the substitution of supervision of novices in place of training involved balancing the delay resulting from training against the need for a definite rollout by 1 July.³⁰ He justified such an approach on the basis that that was the way the industry had to that point functioned.³¹ The evidence of industry participants, and in particular their evidence of how they trained new employees, does not support Mr Hoffman's understanding of how the industry operated. It is not clear from the evidence whether Mr Hoffman himself made any enquiry of industry to determine what and how training was undertaken.
- 8.3.3 Mr Hoffman said that at some PCG meetings he attended, capability requirements and competencies of installers were discussed. He said that a risk was discussed 'of new people coming into the insulation industry with a lower level of training and the risk of injury to workers'.³² He said in his oral evidence that there were different views expressed about this topic.³³
- 8.3.4 On 30 April, Mr Keeffe prepared a Minute for the consideration of the PCG. That Minute was part of a task that had been assigned to him from a previous meeting. Under a heading 'Conditions for Inclusion Finalisation', he wrote:

Clause 2(a) relates to an installer (and their employees and subcontractors) having an appropriate level of competency in installing insulation. Given the lack of current industry standards for insulation the Department has adopted a minimalist approach and will refer providers to the content outlined at Attachment B providing guidance on what installers should have.

27 These matters were put to him by Senior Counsel Assisting. See Transcript (25 March 2014) 800-801 (S Cox).

28 AGS.002.030.0010, 1.

29 AGS.002.030.0012, 1.

30 Transcript (25 March 2014) 871 (M Hoffman).

31 Transcript (25 March 2014) 870-871 (M Hoffman).

32 Statement of Hoffman at [57], STA.001.008.0001, 21 March 2014.

33 Transcript (26 March 2014) 905 (M Hoffman).

*The Group should note that this approach could give rise to installer quality issues and complaints. The Department will seek to minimise these through compliance processes and audit, and communications and education for households. The Department has removed all references to endorsing installers, skilled installers or preferred installers. The Installer Provider Register is effectively simply a list for households to source one or more installers from. The Department has engaged with DEEWR to progress training and competency levels for the insulation industry. Should the industry requirements change then the competency guidelines will change and registered installers advised.*³⁴

- 8.3.5 A list was presented of agreed minimum competency requirements that various trades would have to meet in order for individuals to be registered under the HIP. Bricklayers, painters and plumbers were also taken to meet the competency requirements. The reason for this seems to be that tradespeople of this kind were thought to possess the requisite skills. For many other trades, it was to be confirmed what position was to apply.
- 8.3.6 On 1 May 2009, Senator Arbib and Ms Kruk met to discuss training. A PM&C document prepared for Mr Arbib as speaking notes records that:

there needs to be significant effort to ensure new installers can be brought on quickly. Interaction with DEEWR needs to be improved.

It went on to say:

*we need to ensure that the communications campaign targets installers and other key delivery partners prior to 1 July.*³⁵

- 8.3.7 Mr Arbib said that he thought it important that there be training for new entrant installers participating in the HIP.³⁶ This view, however, is quite inconsistent with the decision made by the PCG on 8 May in effect doing away with such training in favour of a bare requirement that installers be ‘supervised’. Mr Arbib said that he was not involved to a level of detail to know about such matters. The documents show that recollection to be wrong. One example is the briefing referred to above which seeks to inform Mr Arbib, among other things, that the training of installers was one possible impediment to a 1 July 2009 commencement.³⁷ The view I have formed is supported also by other evidence to which I have referred that Mr Arbib was pushing DEWHA hard on training.³⁸ That could only mean pushing DEWHA to adopt less extensive training requirements, given Mr Arbib’s interest in employment participation for new entrants in particular.

8.4 1 May PCG meeting

- 8.4.1 On 1 May 2009 the PCG met.³⁹ The relevant item of the Minutes of that meeting stated:
- Agenda paper 4a—Attachment B—Competency requirements for registration on the Installer Provider Register:*
- a. **OH&S competency**—the PCG agreed that OH&S competency will be compulsory for installers to be in the register; and agreed that installers will need to have at least one of the competencies below:

³⁴ AGS.002.016.0529, 2.

³⁵ AGS.002.007.1775, 1.

³⁶ Statement of Arbib at [37], STA.001.070.0001, 9 May 2014.

³⁷ AGS.002.007.1775, 1.

³⁸ See paragraph 8.8.6.

³⁹ AGS.002.015.1200, 1.

- b. **Trade Specific competency**—no change
- c. **Insulation specific competency**—some training providers already deliver these competencies.⁴⁰

8.4.2 There is no suggestion in the Minutes or other documents before 1 May that installers may need to have no more than an OH&S competency if supervised by a person who had achieved a trade-specific competency, an insulation specific competency or recognition for prior industry experience.

8.5 Email exchanges between the 1 and 8 May PCG meetings

8.5.1 On 4 May 2009, Mr Hughes emailed Ms McEwen (along with DEWHA officers including Mr Keeffe) providing revised installer competency content. The email read:

*Aidan and I have changed wording slightly to cover some issues. The item raised was that around barriers to entry for unemployed or supervised employees. We don't think this is too much of an issue after thinking it through. Obviously all individuals who install insulation should have OH&S and an insulation installation competency. If they take on an apprentice or a new employee then the first installer still has the required competency and the new employee will gain the competency either through 2 years of work or through undertaking one of the training courses available. Your thoughts would be appreciated.*⁴¹

8.5.2 Before 8 May, Mr Keeffe said everything was progressing posited on the fact that every installer would receive training.⁴² He said this was changed when Mr Hoffman raised as a proposal that there should be no 'blockages' for people coming into work and that this proposal was too slow to be effective, that it would have slowed down the uptake and the opportunity for employment for low skilled workers.⁴³ This theme—that there be low barriers to entry and that small players and new entrants be permitted to participate—is a theme which emerged regularly in the evidence as being something for which the OCG contended at every opportunity. I have already referred to it when discussing the adoption of the OCG/PM&C business delivery model.

8.5.3 One further example is Ms McEwen's evidence. She observed that Mr Hoffman and Mr Downsborough from the OCG raised 'concepts' about the extent of training and whether it was going to be a barrier to people participating in the Program. She considered PM&C to have a higher appetite for risk than her:

*... I was coming from the training perspective, my natural instinct was to say to be more cautious about those training aspects while PM&C had views about making sure that it was all going to happen.*⁴⁴

8.5.4 Ms McEwen did say in her oral evidence that DEWHA seemed to have a similar disposition to PM&C.⁴⁵ I reject that for two reasons: first, she made no mention of that in her statement; and secondly, she does not appear to be in as good a position as others (especially Mr Keeffe) to know the ultimate source of these matters. DEEWR's relationship was primarily with DEWHA, and not the OCG.

40 AGS.002.015.1200, 2.

41 AGS.002.030.0010, 1.

42 Transcript (31 March 2014) 1476 (K Keeffe).

43 Transcript (31 March 2014) 1476 (K Keeffe).

44 Transcript (11 April 2014) 2762 (M McEwen).

45 See Transcript (11 April 2014) 2762 (M McEwen), albeit noting that PM&C concerns may have been expressed more strongly.

- 8.5.5 On 5 May 2009, Ms McEwen responded to Mr Hughes' email with some changes to the draft competency requirements. Her email stated, relevantly:

*I think the concern that Kevin raised at Friday's meeting about on-the-job/ apprentice-style training wasn't actually addressed, so I have put in some suggested words to deal with that.*⁴⁶

- 8.5.6 Ms McEwen made changes to the document setting out the installer competency requirements.⁴⁷ On the issue mentioned in her email to Mr Hughes, her additions were:

*Training staff on-the-job is permitted, however, junior staff not possessing qualifications below must have (1) [Occupational Health and Safety Training] and may not sign off jobs until they have attained relevant competencies or have completed X number of installations/ X period of supervised experience.*⁴⁸

- 8.5.7 Ms McEwen recalled that Mr Keeffe had raised the issue of apprentice-style training at a meeting separate from the 1 May PCG meeting (with Mr Hughes and others). She could not recall much more about what occurred. But it resonated with her, it would seem, because she knew that in the construction industry, people tended to be trained on the job.⁴⁹ The analogy of the insulation industry with the construction industry was not particularly apt. The latter is and was heavily regulated and controlled. The former was not.
- 8.5.8 Ms McEwen's drafting did not remain in the finalised document. It was changed by someone else (she does not know who) before the 8 May PCG meeting to be in the form in which it was relevantly identical to that ultimately approved by Minister Garrett.⁵⁰ It may have been Mr Hughes that made these changes, given that he was the person with whom Ms McEwen was exchanging the draft document in its various forms.
- 8.5.9 Mr Hughes' evidence about the changes to the draft competency requirements was to the effect that the removal of the proposed requirement that installers receive training in circumstances in which they were supervised occurred after the 1 May PCG meeting. It was Mr Hughes who was asked (by the PCG it would seem) to revise the competency requirements because of concerns about 'barriers to entry' and a reluctance to impose a higher standard than that presently in existence.⁵¹
- 8.5.10 Mr Hughes said, both in his oral evidence,⁵² and in his submission in response to a notice of potential adverse findings, that he had been tasked (by Mr Keeffe) with a secretariat role to revise the installer competencies in a way that implemented the PCG's decision at its meeting on 1 May about how the installer competencies should be changed.⁵³ He submitted that his role was not to assess the quality of competencies or attest to their appropriateness to the HIP. That, he said, was the role of others, including the PCG. I reject this evidence to the extent that it seeks to offer a justification for Mr Hughes' apparent unquestioning acceptance of the changes that were being made to the installer competencies. I do so because Mr Hughes was, whether or not he had some

46 AGS.002.030.0010, 1.

47 See AGS.002.030.0012, 1-2, which shows those changes. The changes made by her are those other than prefaced 'AH' [ie, Aaron Hughes] as well as addition of the paragraph quoted above. Ms McEwen's covering email to Mr Hughes is at AGS.002.030.0010, 1.

48 AGS.002.030.0012, 1.

49 Transcript (11 April 2014) 2763 (M McEwen).

50 AGS.002.023.2897, 1-2.

51 Transcript (8 May 2014) 4048 (A Hughes).

52 See, for example, Transcript (8 May 2014) 4042 and following (A Hughes). At no stage during his oral evidence on 8 or 9 May 2014 did Mr Hughes use the word 'secretariat' to describe his role in this respect.

53 SUB.004.001.0005, 4-7.

secretariat role as well, a member of the PCG. He was a relatively senior officer whose role could not have been to act as a mere amanuensis for the PCG. The document he was charged with amending was a formal one, ultimately to be sent to the Minister for his consideration. Mr Hughes may not have had the role of *attesting* to the appropriateness of the changed competencies to the HIP, but he certainly had the role of assessing, appraising and criticising if necessary, the changed competencies then being drafted by him. This arises from his relative seniority, his position on the PCG and by reason of the responsibility he had been given (perhaps by Mr Keffe) of drafting those changes.

- 8.5.11 There is no evidence to show that Mr Hughes made the assessments or appraisal, or made any criticism, for which his role called. Nor was there any evidence of him having warned the PCG that the competencies as he had drafted them left unspecified what was meant by the word 'supervised', and the potential consequences of that omission.
- 8.5.12 I add here, however, that I found Mr Hughes to be a forthright witness. He appeared to be honest in his answers, albeit that some, as I have indicated elsewhere in this Report, reflect a less than accurate understanding of the true state of affairs and, on the occasion to which I refer below in the context of the requirement of supervision, he remained passive when he ought to have intervened. In response to a potential adverse finding Mr Hughes points out that, although present at the PCG meeting, he was not a member and was merely following the instruction of Mr Keffe in implementing the decision made by PCG. I note this but, as a fairly senior officer and Director in the Home Energy Branch dealing with the HIP and the draughtsman, it behoved him to intervene.

8.6 The 8 May meeting

- 8.6.1 Two significant events took place on 8 May: the PCG met and there was also taking place (at the same time it would seem) an industry workshop concerning training attended by representatives of the Insulation Council of Australia and New Zealand (ICANZ), Australian Cellulose Insulation Manufacturers' Association (ACIMA) and MBA among others. It is strange that, at the same time as the PCG was meeting to discuss and decide competencies to be required under the HIP, that representatives of the insulation industry were being consulted about matters which had a very direct bearing upon that decision.
- 8.6.2 The 'key outcomes' of that industry consultation, as recorded by Mr Kimber in two emails of 8 May 2009, show both that the matters under discussion were very much related to the matters which the PCG decided on 8 May and that industry's view (or at least that part of industry that was consulted) was contrary to the position that the OCG reached.
- 8.6.3 In an email sent at 4.24pm on 8 May by Mr Kimber to Mr Keffe, Mr Hughes, Ms McEwen and others, he said the 'key outcomes of the Industry Consultations on Training' to have been, relevantly:

Minimum Competency Requirements

- *Associations recognised that while a mandatory enterprise unit would be ideal, that would not be possible by 1 June 09.*
- *Overall there was general agreement that the minimum requirements struck an acceptable balance given the lack of time for an enterprise unit and the need for low entry barriers.⁵⁴*

⁵⁴ AGS.002.023.3151, 1-2.

8.6.4 Mr Kimber emailed the same recipients later that day (at 6.32pm) saying (relevantly):

Forgot to mention

Enterprise Training Unit (non—mandatory course for New Entrants)

- *Range of views on the number of days for insulation specific training.*
- *Master Builders, ICANZ and Fletchers agreed new entrants would need one day OH&S, plus 2 days insulation specific training (three days in total).*
- *ACIMA felt strongly that it would need to be at least a week.*
- *All participants felt that a 3 day \$500 (or more) course would not be a barrier, as employers would pay for the cost of the training as a necessary investment to avoid much greater “make good” cost from shoddy work in the future. (eg, one foot through ceiling costs \$500 to fix)⁵⁵*

8.6.5 There are a number of points to make about these emails:

- 8.6.5.1 first, it is difficult to reconcile the decision by the PCG to relax, in the way it did, the way in which installers might achieve the competencies. Industry did not seem to regard a three-day course as a barrier, so one of the qualifications on the ‘minimum requirements’ did not seem to exist;
- 8.6.5.2 secondly, the timing of the industry consultation meeting and the PCG meeting made it impossible that the outcomes of the former could be given any consideration in the latter. It *does* seem to me that the industry consultation was, for this reason, nothing more than ‘going through the motions’ rather than being genuinely to inform the Department on, at least, questions of training and minimum competencies;
- 8.6.5.3 thirdly, the result arrived at by the PCG was, on the basis of the documents to which I have referred, contrary to what industry, or the part of it consulted, considered desirable;
- 8.6.5.4 fourthly, the lack of time within which to institute an enterprise unit was not an impediment to one being imposed, albeit at a later stage perhaps than required. The fact that a 1 June 2009 date could not be met was no reason why an enterprise unit could not have been established at a slightly later time, given that the Program was scheduled to run for some two years.

8.6.6 Mr Kimber wrote to Ms McEwen (copying Aaron Hughes and others) saying:

Please find attached industry suggestions for any comments you have (if we were to recommend these changes to the project control group we would need to be rock solid that they will significantly improve safety and/or quality outcomes and/or expand the scope, without representing a barrier to entry.⁵⁶

8.6.7 That makes it plain that DEWHA officers knew the lie of the land so far as installer competencies were concerned.

8.6.8 On 8 May 2009, the PCG decided, as I have already noted, that installers themselves would need to receive no training (other than to have obtained an OH&S ‘white card’) provided a supervisor of them had been so trained.

8.6.9 Mr Carter chaired that meeting. Mr Forbes, the usual Chair, was on leave. There is conflicting evidence about the detail of what took place but, on balance it favours the view that the PCG did not vote on the issue, and that it was regarded by those present that the matter had, or should clearly be, decided.

⁵⁵ AGS.002.023.3151, 1.

⁵⁶ AGS.002.013.2133, 1.

- 8.6.10 Mr Hoffman was supportive of the change.⁵⁷ He said that mandatory training for all installers would slow down the delivery of the Program.⁵⁸ Mr Keffe said he spoke against it, but that no one supported him.⁵⁹ He was anxious about the implications of this decision.⁶⁰ He said that in the discussion on the issue of training, the desire to have quick entry and a low regulatory framework prevailed.⁶¹
- 8.6.11 Mr Carter recalls there being debate at the PCG meeting on 8 May but he could not recall the details of it, or indeed the position he had adopted. I find Mr Carter's lack of recollection on this point unconvincing.
- 8.6.12 The matter was not put to the vote.⁶² Mr Keffe said he raised it with Mr Forbes on his return from leave. He thought Mr Forbes to have been sympathetic but not active.⁶³ Mr Keffe did not, as he had with the delivery model change on 31 March 2009, draft a minute for Ms Kruk's consideration.
- 8.6.13 Ms Coaldrake also attended the 8 May PCG meeting. She could not recall what took place at it concerning competency requirements.⁶⁴ It does seem, however, from her evidence, that the view the PCG might have reached (or at least her understanding of what took place) is that the supervision of installers was a matter for the States and Territories.⁶⁵ No other witness took that view, save for Ms Kent, whose evidence I have referred to in the previous Chapter.
- 8.6.14 Between the decision of the PCG on 8 May and the approval of the installer competencies by Mr Garrett, discussed in the next section of this Chapter, a meeting took place on 18 May between the officers of the OCG, DEWHA and DEEWR.⁶⁶ Mr Mrdak attended as did Mr Forbes, Mr Keffe and Mr Carter. The minutes record:
- It is expected that there will be a large increase in the workforce which brings a requirement to have appropriate training available to give people the skills to undertake the work.*
- It is a largely unregulated industry and the availability of appropriate training, especially with regard to OH&S matters and safe installation of ceiling insulation, is an important part of the overall implementation strategy.⁶⁷*
- 8.6.15 It is simply not possible to reconcile this discussion—only ten days after the PCG meeting—with what was proposed to be done to installer competencies, if reference is being made to mandatory training. No witness attempted to do so. I conclude that what was being spoken of was a need to have training available to those who wished to undertake it, as opposed to being required to undertake it before they could commence work.

57 Transcript (26 March 2014) 920 (M Hoffman); Statement of Hoffman at [71], STA.001.008.0001, 21 March 2014.

58 Statement of Hoffman at [73], STA.001.008.0001, 21 March 2014.

59 Transcript (31 March 2014) 1477-1478 (K Keffe).

60 Transcript (31 March 2014) 1479 (K Keffe).

61 QIC.002.001.0761, 33.

62 Transcript (31 March 2014) 1478 (K Keffe).

63 Transcript (31 March 2014) 1478 (K Keffe).

64 Transcript (7 April 2014) 2137 (M Coaldrake).

65 Statement of Coaldrake at [96], STA.001.014.0001, 27 March 2014.

66 AGS.002.023.2880, 1.

67 AGS.002.023.2880, 2.

- 8.6.16 That conclusion finds support in an email sent by Andrew Wilson of OCG following the meeting to officers of DEWHA and DEEWR.⁶⁸ He asked for a statement with a list of competencies required to be employed as an insulation installer. It is also recorded that PM&C still saw value in Mr Arbib writing to RTOs to note the insulation Program was coming and to stress the importance of the provision of training to delivering the Program and providing employment opportunities.
- 8.6.17 Work continued on developing training material, notwithstanding the fact that training would no longer be mandatory.

8.7 Mr Garrett's approval of the competencies

- 8.7.1 On 6 June 2009, Mr Garrett received a briefing (through Mr Forbes) seeking his approval for the 'installer minimum competencies' prepared by Mr Keeffe.⁶⁹ Mr Garrett approved minimum competencies which did not require installers to receive training if supervised by an individual who had achieved them.⁷⁰ The briefing note stated that the minimum competencies had been designed in consultation with DEEWR.
- 8.7.2 Nowhere in the briefing was it drawn to Mr Garrett's attention that the change to the competencies was removing a key protection for new entrants or that doing so had been done primarily at the instigation of the OCG.⁷¹ Mr Keeffe ought to have done so. He was the author of the brief. He owed it to Mr Garrett to draw these matters to his attention, so as not to suggest or imply that he was supportive of the change. Mr Garrett made the point that the briefing did not contain the level of detail that allowed him properly to assess the relevant matters. For example, it does not explain why the removal of mandatory training for all installers was being effected.⁷² Mr Keeffe explained that this briefing must be understood as having the dual purpose of seeking Mr Garrett's approval of the competencies and to inform Mr Garrett for the purpose of a foreshadowed discussion with Mr Arbib. Even if this explanation be accepted (and I have no reason not to do so) it does not alter the need for it to have been more candid about the nature of the change sought to be effected, the significance of it and DEWHA's attitude to the alteration.
- 8.7.3 Mr Garrett said that he had no recollection of having read the competency requirements in Attachment B to the brief. He said that the attachments may have been removed from the brief before it was considered by him.⁷³ He explained that he had already received a brief that contained these competency requirements and had already signed off on them 'in effect'. Whatever be the case, Mr Garrett must have been aware there *ought* to have been an Attachment B to the briefing, as the briefing note itself recommended that the Minister 'approvethe [i]nstaller minimum competencies at Attachment B', which he did.⁷⁴ He said that he did not have time to read every attachment to briefings and expected important matters to be included in the body of the brief.⁷⁵ It seems clear, as Mr Garrett appears to accept, that he was just not aware that effectively untrained people were permitted under the HIP to install insulation.⁷⁶

68 AGS.002.008.0858, 2.

69 AGS.002.012.1230, 1-2.

70 AGS.002.012.1230, 2. See also AGS.002.012.1235, 1-2.

71 Transcript (31 March 2014) 1482-1483 (K Keeffe).

72 Transcript (13 May 2014) 4584 (P Garrett).

73 Transcript (13 May 2014) 4584 (P Garrett).

74 AGS.002.012.1230, 2.

75 Transcript (14 May 2014) 4725 (P Garrett).

76 Transcript (14 May 2014) 4725 and 4728 (P Garrett).

- 8.7.4 Attachment B, whatever might have been Mr Garrett's awareness of it, was taken to have set the competency requirements in the following form:

Organisations and individuals on the Installer Provider Register must ensure that they (if an individual), and each individual they engage (whether employed or through a sub-contracting arrangement) to install ceiling insulation:

- 1. has the competency detailed in Section 1 below (Occupation Health and Safety Training)*
and
- 2. satisfies either (a) or (b) below:*
 - a) the requirements detailed in one or more of sections 2, 3 or 4 below*
or
 - b) are supervised by an individual who satisfies the requirements for individuals listed above, and who signs off their work on the Work Order Form.*

Section 1 *Occupational Health and Safety Training (to be completed by all persons installing ceiling insulation)*

[...]

Section 2—Trade Specific Competency

Be a licensed builder, electrician, carpenter, bricklayer, plasterer, painter or plumber (or equivalent, if no licensing requirements exist) in the relevant State or Territory. Note: it is recommended that tradespeople without insulation experience consider undertaking insulation specific training.

Section 3—Insulation Specific Competency

Have achieved a statement of attainment from a Registered Training Organisation, against the BCG03 or CPC08 Training Package relating to insulation installation. [...]

Section 4—Prior industry experience

Be an individual who has: experience and skill in installing insulation as a result of relevant work experience over a significant period of time (at least 2 years; and an understanding of the relevant Australian Standards and the Building Code of Australia.⁷⁷

- 8.7.5 It seems likely that Mr Garrett did not have or did not read if he did, Attachment B. He said that he did not know that the effect of it was to remove the training requirement for novices.⁷⁸ It is highly unsatisfactory that such an important decision, despite being explained in the briefing and attachments, could have miscarried in this manner.
- 8.7.6 The briefing to Mr Garrett seeking approval of training requirements and competencies of June 2009 purports to have been prepared at the request of Mr Arbib.⁷⁹ Mr Arbib, I find, must have known of the subject matter of this brief and its three attachments. Had he read and understood them, he could not have avoided knowing of the fundamental

⁷⁷ AGS.002.042.0060, 1-2.

⁷⁸ Transcript (13 May 2014) 4586 (P Garrett).

⁷⁹ AGS.002.012.1230, 1.

change to training and competencies that would see many new entrant installers undergo no training (besides basic OH&S training) before entering roof spaces to install insulation, including foil insulation that had the potential to become electrified.

- 8.7.7 It is also difficult to see how it could reasonably be thought that members of the painting, plumbing and bricklaying trades in particular could be regarded, as a group, as possessing the competencies required for the installation of insulation under the HIP, including the calculation of total R-Value (in the case of reflective foil laminate in particular) and being aware of and knowing how to manage the attendant electrical safety risks. Members of these trades have no necessary exposure to such matters. A bricklayer, for example, might never have had to assess and manage electrical safety risks, and no reason to get into a ceiling cavity.

8.8 What motivated and drove the change?

- 8.8.1 The push for the change to installer competencies seems to have come from the OCG, as another example of removing a potential impediment to a 1 July commencement date.⁸⁰
- 8.8.2 One illustration of this is the following exchange which occurred in the examination of Ms Kent by Senior Counsel Assisting:

MR WILSON: So just take us back to those PCG meetings. ... when the topic was raised, was it a debate: that is, we should do this; no, you shouldn't do that? Or was it simply a direction or a point of view being expressed by PM and C?

MS KENT: Well, I think it was Mr Hoffman actively advocating what he was responsible for doing, which was reminding us of the Government's policy priorities, and reminding us when the discussions were happening where the Government's intent for the money was.

MR WILSON: And I suppose my question then is, did you need reminding? That is, was somebody saying, "No, we want to do something different to that"?

MS KENT: Yes. Well, Mr Hoffmann felt we [needed] reminding.

MR WILSON: Right. And how was that done?

MS KENT: Well, he was—he had a very clear view of—and clearly the government had a very clear view about how they wanted this program to be launched on 1 July and a clear view about where they wanted—this is just my impression but where they had an appetite for risk and where they wanted the priorities to lie in terms of our efforts and our focus. And ... Mr Hoffmann expressed those consistently and quite assertively in a lot of discussions.⁸¹

- 8.8.3 Ms Kent referred to the discussion about training of installers at the PCG meeting as being 'robust' and 'vivid' with the principals being Mr Keeffe advocating training and Mr Hoffman 'leading the charge on "let's get the money out the door".⁸² That is consistent with Mr Hoffman's own acceptance of having 'supported' the decision, albeit that this description would seem to be an understatement of the backing he gave to the idea,

80 See, for example, Mr Carter's evidence, Transcript (20 March 2014) 390 (R Carter), and Ms Kent's evidence, Transcript (9 April 2014) 2397 (A Kent) and Transcript (9 April 2014) 2390 (A Kent)

81 Transcript (9 April 2014) 2390-2391 (A Kent).

82 Transcript (9 April 2014) 2397 (A Kent). See also the evidence of Mr Hughes, Transcript (8 May 2014) 4062-4063 (A Hughes).

or at least, little awareness about the impact that the force of his views, as a senior official from PM&C, had on staff from other Departments.

- 8.8.4 Mr Hoffman's evidence that '*it was a policy objective of the Government to achieve widespread participation to achieve the goals of the Stimulus Package*'.⁸³
- 8.8.5 Mr Hoffman stated that his support for requiring only supervisors, and not all installers, to be trained was based on the view that requiring all installers to be trained would slow down delivery of the Program, and was inconsistent with the industry requirements at that time. In fact, the evidence that I have heard indicates that the established installers who had "skin in the game" is to the effect that they trained and supervised their new employees very closely.⁸⁴ It was somewhat naïve to assume that the enormous numbers of new employers that would enter the market in search of a quick dollar would take the same care. Mr Hoffman explained his position in these terms:

*I believed that it was not the purpose or role of HIP to raise standards in the insulation industry above those that existed prior to the program. I was also concerned that there may be limits to the amount of training available, especially in the early stages, and if everyone who was going to be working in roofs had to do the training it would potentially slow down the delivery of the program. I had these views in the context of understanding that supervision was to refer to ongoing on-site and on-the-job supervision.*⁸⁵

- 8.8.6 Ms McEwen's evidence supports such a finding.⁸⁶ Mr Levey noted (albeit after 8 May 2009 it would seem) that Mr Keeffe had told him that Mr Arbib was 'pushing us hard on training rollout'.⁸⁷ So too does the evidence of Mr Hughes. The impetus to relax the requirements for training of new entrant installers seems to have been caused, when the focus is upon the evidence of Mr Hughes, by two main factors: first, the PM&C officers involved with the PCG wanted to 'move the program along' and second, where there were barriers, they urged that they be looked at closely about whether to remove them.⁸⁸ Both reasons seem, ultimately, to have arisen because it would have taken too long to train such persons and the overarching desire was for removal of such 'barriers' driven by a perceived need to rush the HIP's implementation. They were, working, after all, to a 1 July 2009 commencement date.⁸⁹ There was pressure, Mr Hughes said, from Mr Hoffman and the OCG on timeframes. Mr Hughes explained the pressure in relation to the start date in these terms:

*... everything required under the program was to be completed in a less than six month timeframe. So the driver for completing the competencies, like everything else in the program, was on tight timeframes in order to meet the 1 July time.*⁹⁰

- 8.8.7 It would also have been apparent by 8 May 2009 that the booklet to be prepared for the use of the training organisations for installers would not be ready, let alone being put to use for its intended purpose by 1 July. It must have been obvious that the anticipated new entrants into ceiling spaces for retrofits were not going to have access to this training manual by 1 July or even in the immediately succeeding months.

83 Statement of Hoffman at [26], STA.001.008.0001, 21 March 2014.

84 Transcript (15 April 2014) 3096 (M Hannam); Transcript (4 April 2014) 2056 (P Stewart).

85 Statement of Hoffman at [72-73], STA.001.008.0001, 21 March 2014.

86 Transcript (11 April 2014) 2762 (M McEwen).

87 Statement of Levey at [222], STA.001.003.0001, 18 March 2014.

88 Transcript (8 May 2014) 4055 (A Hughes).

89 Transcript (8 May 2014) 4128 (A Hughes).

90 Transcript (8 May 2014) 4128 (A Hughes).

8.9 The problem of undefined supervision

- 8.9.1 By the change made on 8 May 2009, supervision by a person with insulation-specific training was substituted for the requirement that new entrant installers receive insulation-specific training.
- 8.9.2 The real problem was not so much the change itself, but what means would be adopted to ensure that installers who had received no training would, in actual fact, be supervised, rather than, for example, being merely dropped off at a work site or otherwise given less than adequate assistance to understand the task to be done and the risks that attended it.
- 8.9.3 Mr Hoffman accepted that the final documentation lacked precision and description about what was expected as 'supervision', and that this was a 'pretty big hole'.⁹¹ Mr Mrdak expressed similar views that there was a looseness in relation to defining the supervision requirements, arising from an assumption that supervisors would retain oversight of the individual worksite, as was believed to be normal practice in the building and construction industry.⁹²
- 8.9.4 It was not until much later that, for example, people who had been at the 8 May meeting and made the decision about competencies, realised that 'supervisors' in some cases were simply dropping installers off at a site and picking them up at the end of a job.⁹³
- 8.9.5 Mr Carter accepted with the benefit of hindsight that this decision was 'not a good move to make' and was not a 'good idea' because:
- ... some of the supervisors that got involved in the program weren't providing any local supervision or training, it would seem*⁹⁴
- 8.9.6 Sometime much later (after Mr Garrett had approved the competencies), Mr Carter and Mr Levey had cause to check the meaning of the supervision requirement and the definition of supervision.⁹⁵
- 8.9.7 Another problem with the decision was that it was always apparent then that there would be a very large number of persons that would come into the industry as new entrants:
- It is expected that there will be a large increase in the workforce which brings a requirement to have appropriate training available to give people the skills to undertake the work.*⁹⁶
- 8.9.8 The reliance that Ms McEwen placed on the general practices of the construction industry was unjustified, given that the new entrants would be less likely to adhere to them and would pose a greater risk of not being as diligent in the training and supervision of new and inexperienced staff as would members of the pre-existing and established industry. Furthermore it was apparent as soon as the HIP commenced that there was a concern about what was involved in 'supervision'. In an email from Ms Spence to Ms Kent, Mr Kimber and others on 9 July 2009, the question is asked as to whether supervision is to be direct or indirect because there had been a number of questions about the matter.⁹⁷ That is, quite early in the life of Phase 2 of the Program, the issue was raised, and an opportunity presented itself to clarify the meaning of supervision. That opportunity was squandered.

91 Transcript (26 March 2014) 920 and 934 (M Hoffman).

92 Transcript (27 March 2014) 1104 (M Mrdak).

93 Statement of Kent at [40], STA.001.012.0001, 21 March 2014.

94 Transcript (20 March 2014) 391 (R Carter).

95 Statement of Levey at [325], STA.001.003.0001, 18 March 2014.

96 AGS.002.023.2880, 2.

97 AGS.002.029.0623, 2.

- 8.9.9 Mr Keffe considered then (as he does now) that it ought to have been a requirement of the HIP that all installers be trained.⁹⁸
- 8.9.10 Mr Hughes said that he considered the matter of supervision to be ‘absolutely fundamental’ and he had in mind that the supervisor would be ‘in the roof’ with the installer.⁹⁹ He agreed that greater specificity (on the part of the Australian Government) of what supervision was would have been ‘helpful’.¹⁰⁰
- 8.9.11 The nature and incidents of supervision became a topic of communications within DEWHA shortly after the HIP’s commencement on 1 July 2009.¹⁰¹ Not once in those communications is mention made by DEWHA officers of supervision needing to be close or strict, or indeed that the supervisor ought to be on site when the installations were being effected.¹⁰² Mr Hughes (mistakenly) thought the issue had been the subject of an Installer Advice. But there is no such advice which requires or communicates that supervision be of a particular kind. He thought that the issue of supervision came back to the company’s responsibility to its employees. That may be the reason why, despite being included on emails in which the issue of supervision was discussed, he never intervened and said, for example, that when he had drafted the competency changes before the 8 May PCG meeting, he had in mind that supervision ought to be close or strict, and that the nature of supervision was ‘fundamental’.¹⁰³ In hindsight, Mr Hughes now accepts, he could have ‘asked the question’.¹⁰⁴
- 8.9.12 Mr Garrett said that he had an assumption about the term supervision and what it entailed, and subsequently found out that others did not share this assumption.¹⁰⁵

8.10 Development of the training materials

- 8.10.1 I have set out above the steps taken in deciding who it was that would be required to possess or acquire the competencies. While those decisions were being made, and for some time afterwards, steps were being taken to develop training and course materials to further the achievement of those competencies. That did not, however, happen quickly. It is a factor that made the HIP less safe than it ought to have been. For that reason, I say something about this matter below, albeit rather briefly.
- 8.10.2 Mr Kimber said that because the HIP had been announced and the Government wanted implementation to start as soon as possible ‘there was a lag between when the rebates commenced and when a training course specific to the Program was developed’.¹⁰⁶
- 8.10.3 DEEWR was involved in advising what competencies those involved in insulation installation ought to be required to possess or acquire. The Construction and Property Services Industry Skills Council (CPSISC) was engaged to consult with industry about specific training for the HIP and to develop training materials.

98 Transcript (31 March 2014) 1474 and 1477 (K Keffe).

99 Transcript (8 May 2014) 4058 (A Hughes).

100 Transcript (8 May 2014) 4060 (A Hughes).

101 See, for example, AGS.002.029.0623, 3.

102 See, for example, AGS.002.029.0623, 3.

103 Transcript (8 May 2014) 4058 (A Hughes).

104 Transcript (8 May 2014) 4072 (A Hughes).

105 Transcript (13 May 2014) 4587 (P Garrett).

106 Statement of Kimber at [15], STA.001.024.0001, 4 April 2014.

8.11 DEEWR and the Construction and Property Services Industry Skills Council

- 8.11.1 DEEWR was involved relatively early in liaising with DEWHA regarding training and training materials.
- 8.11.2 In the weekly update for 13 to 19 March, it is recorded that DEEWR had provided advice that 125 registered training organisations could deliver the competencies identified as most relevant, which was a five-day course.¹⁰⁷ It was said that that a draft training plan would be done by 31 March. Correspondence between Jane Spence of DEWHA and Melissa McEwen of DEEWR demonstrates the progression of work undertaken by the respective departments. They also communicated with Kristen Sydney from CPSISC once that organisation was engaged.
- 8.11.3 A request for quote was sent to CPSISC for the preparation of a contextualised training competency. It was said:

*A training program is proposed for the new entrants to the industry and supplementary training for those already in trades...*¹⁰⁸

- 8.11.4 It then set out a number of requirements. This demonstrates to my satisfaction that the officers in DEWHA knew not only that training was required, but also what type of training was contemplated. For example, it included training in electrical risks.
- 8.11.5 A steering committee was contemplated including industry, union and insulation companies to determine the important elements and require additions to the units of competency. That never occurred.
- 8.11.6 CPSISC was also requested to develop an OH&S 'pocket book' for workers in the insulation industry covering required skills and knowledge.
- 8.11.7 CPSISC submitted a proposal to DEWHA on 21 April 2009 to develop support resources for the installation of ceiling insulation.¹⁰⁹ The very fact, that as at 21 April a proposal was presented to develop the training material for a course to teach novices in the industry, would indicate that there was almost no chance that material would be prepared, printed and provided to training institutions to enable them to design courses of instruction, enrol students and train anyone before 1 July. The views of Ms McEwen of DEEWR were sought as to minimum requirements for training.¹¹⁰ DEWHA had been asked to provide advice to PM&C by the following day. Mr Ross gave evidence that CPSISC was instructed to proceed 'exceptionally quickly', and that:

*... the contractual deadlines for the production of the products made it very, very, very clear to me how pressed this program was.*¹¹¹

- 8.11.8 The CPSISC proposal was accepted.¹¹² Kristen Sydney provided comments on the draft training requirement on 24 April 2009.¹¹³
- 8.11.9 On 7 May 2009 CPSISC wrote to Mr Kimber.¹¹⁴ It explained that neither of the existing installation training competency units covered the requirements for the installation of all

107 AGS.002.018.1986, 2.

108 CPS.002.015.0135, 1.

109 AGS.002.008.1256, 1; AGS.002.008.1257, 1-7.

110 Statement of Kimber at [20], STA.001.024.0001, 4 April 2014.

111 Transcript (14 April 2014) 2944 (A Ross).

112 AGS.002.010.1501, 1-2.

113 CPS.002.001.0027, 1-3.

114 AGS.002.010.1449, 1-2.

types of insulation (bearing in mind the Program was to permit a wider variety of types of insulation to be used). The existing unit which covered material other than batts also covered acoustic insulation which was beyond the scope of the requirements outlined by DEWHA. It was explained that the New South Wales implementation guide (which at one stage was thought to be able to be used) covered only one of the insulation units and therefore could not be used.

- 8.11.10 It was considered that the training material could be ready by 1 June.
- 8.11.11 A 'Training Working Group' was held on 8 May 2009. I have already referred to this meeting, held on the same day as the PCG decided to change installer competencies so as to no longer mandate training for all new installers. CPSISC and industry representatives attended. The purpose of it was to review the training materials that CPSISC was preparing and for industry to ask questions and raise any issues about those materials.¹¹⁵
- 8.11.12 On 19 May 2009, CPSISC produced a set of training materials for installers under the HIP.¹¹⁶ It was followed by an Assessment Guide,¹¹⁷ a Delivery Guide,¹¹⁸ and Learning Summary booklets on 1 June 2009.¹¹⁹
- 8.11.13 On 19 May 2009, Mr Downsborough from the OCG wrote to Mr Arbib's Chief of Staff . Part of that email read:

Given the fact that the insulation program should result in a large number of new entrants into the industry, DEWHA took the policy decision that there needs to be a minimum level of skills and knowledge for individuals seeking to register for the program. This mitigates risk to the Commonwealth, the householders and the installers themselves.

In conjunction with DEEWR and following discussions with the industry, DEWHA chose three competencies which would apply to all new entrants with no/limited previous experience. In addition to the basic OH&S construction induction unit which would be required by all registered installers...the competencies required are.... These are units from the certificate III in wall and ceiling lining from the new CPC08 integrated framework construction training package.

The OH&S construction induction unit is widely available across the country for delivery and can also be delivered on line. Usually it would take no more than an afternoon to undertake. The three units of competency outlined above could be delivered in 2-3 days at a total cost of around \$500.

Utilising existing competencies means that there are a number of training providers in a position to deliver these immediately and also ensures that participants will have the option to build these units of competency into full qualifications should they choose to do so. ...

Construction and Property Services Skills Council have been contracted by DEWHA to undertake work to facilitate delivery of these units of competency and allow them to be delivered as a short, coherent training course. This work includes:

¹¹⁵ Statement of Kimber at [23], STA.001.024.0001, 4 April 2014.

¹¹⁶ AGS.002.008.0734, 1-7; AGS.002.023.3126, 1-13; AGS.002.008.0747, 1-9.

¹¹⁷ MIN.002.001.2835, 1-77 (June 2009).

¹¹⁸ MIN.002.001.2941, 1-58 (June 2009).

¹¹⁹ CPS.002.001.0770, 1-36 (May 2009).

- *developing an “enterprise unit of competency”: this is essentially a course of training which amalgamates the key knowledge and skills from the above units and allows them to be delivered either quickly and effectively. ...*
- *developing training materials will include an assessment instrument, a trainer and assessor’s guide, recognition application and a training guide....*

This work is due to be delivered in its basic form by 1 June 2009 to allow immediate delivery. The development of the materials with graphics and a “pocket guide” will be complete by end July 2009.¹²⁰

- 8.11.14 What this document fails to do (incomprehensibly in my view) is to explain to Mr Arbib that, whilst all of the work was being undertaken as stated, it would not be mandatory for any new installer to undertake it, provided the ‘supervision’ was provided to him or her.
- 8.11.15 The materials prepared by CPSISC were thorough. The process by which these materials were developed was the subject of evidence from Mr Ross (Chief Executive Office of CPSISC), and of Mr Plevy from EE-Oz Training Standards Australia (EE-Oz), which was the ElectroComms and Energy Utilities Industry Skills Council. While CPSISC is a body with focus on the construction industry, EE-Oz was the Skills Council with responsibility for electrical work. The Board of each Skills Council comprises employee and employer representatives of the relevant industry. It is not necessary for me to repeat that evidence here, other than to focus on some of the most relevant material of it.
- 8.11.16 EE-Oz was contacted on 26 February 2009 by Mr Paul from DEEWR. He requested the assistance of EE-Oz and communicated also the need for some urgency. Mr Plevy of EE-Oz consulted with his industry and technical advisors and developed some advice. He sent to Mr Paul on 27 February 2009 an email which expressed concern with the retrofitting of insulation for domestic dwellings. The email said this about ‘Installer OH&S issues’:
- *... the entry of installers into older building and disturbing and/or rearranging wiring which may cause an electrical hazard.*
 - *Older buildings may require an electrical inspection before work can be carried out to ensure the safety of older wiring installations.¹²¹*
- 8.11.17 Mr Plevy provided this advice also to the Victorian and ACT Electrical regulators, the former of which held the rotating chair of the Electrical Regulatory Authorities Council (ERAC). Mr Paul’s email to Mr Plevy had proposed a five-day training course for new installers. Mr Plevy did not know why a course of that length did not go ahead, but he thought it may have been because the Government had decided that a training course of that length would be either or both too expensive and too time consuming.¹²² I find however, that the training course—be it three or five days—was not adopted by the Government because it was perceived to be an impediment to new entrants, because of a desire to commence the HIP on 1 July at all costs and because it was thought that the training course could not be instituted before that date or shortly afterwards with sufficient places so as not to restrict the influx of installers into the industry on 1 July.
- 8.11.18 EE-OZ, it should be noted, did not provide any formal advice on the training materials ultimately developed.¹²³

120 AGS.002.030.1178, 1-2.

121 AGS.002.023.3187, 2.

122 Statement of Plevy at [23], STA.001.035.0001, 8 April 2014.

123 Statement of Plevy at [26], STA.001.035.0001, 8 April 2014.

8.12 Availability of materials

8.12.1 Serious difficulties were experienced with the training materials:

8.12.1.1 the materials were not made available when the HIP commenced. When they were first made available (in early August 2009), that was done online, with the result that many installers did not access them;¹²⁴

8.12.1.2 the availability of the Pocketbook was not made known in Installer Advices until the 12th Advisory Note was issued on 26 October 2009, at which time it was said '[t]he Construction Industry Pocketbook, Resources for Installers of Ceiling Insulation is now available on the Installer resources page on the website ...' [emphasis added];¹²⁵

8.12.1.3 the Pocketbook, at the outset (May 2009), contained no warning of the dangers of stapling sheet foil with metal staples.¹²⁶ It was not until July 2009 that the Pocketbook contained the warning:

*Warning: the practice of stapling RFLs to ceiling joists poses a high risk of electrocution.*¹²⁷

8.12.1.4 the Pocketbook was not distributed in hard copy to training organisations until sometime after 27 August 2009¹²⁸ (likely October 2009)¹²⁹ and hard copies were not sent to registered installers directly until December 2009.¹³⁰

8.12.2 Registered training organisation information sessions were held between 22 June and 2 July in each capital city.

8.12.3 Mr Ross explained that the original proposal was that CPSISC would distribute the Pocketbook. But this arrangement was altered by DEWHA in July because it wanted to distribute 200 copies of the Pocketbook to each training provider, that is 20,000 copies in total, and as mentioned that was not done until around October.¹³¹ On 12 November 2009, at a meeting with training organisations, industry and regulators, DEWHA agreed to mail hard copies of the Pocketbook to all registered installers. This was done in December.¹³²

8.12.4 The Pocketbook is a very fulsome document and doubtless would have been very useful for its intended purpose, which was to assist training organisations in delivering courses of instruction.

8.12.5 Without such courses I do not consider that the Pocketbook was sufficiently useful in providing instruction to installers. Assuming they had a copy, it is most unlikely that the average installer would have had the inclination to read it. The warning about the danger of stapling through foil does not appear until page 35 and after quite a deal of somewhat complex material. It should have been anticipated that this warning would not reach the target audience unless that occurred during the intended course of instruction.

124 Transcript (14 April 2014) 2949 (A Ross). DEWHA made the Pocketbook available on its website on 8 August 2009 and was informed that the Pocketbook had been made available on the CPSISC website on 11 August 2009.

125 AGS.002.009.0384, 1.

126 CPS.002.001.1312, 2.

127 CPS.002.001.2920, 2.

128 AGS.002.010.1326, 1; see also Transcript (2 April 2014) 1622 (K Keffe).

129 Transcript (14 April 2014) 2950 (K Sydney).

130 AGS.002.012.1387, 2.

131 Transcript (14 April 2014) 2950 (K Sydney).

132 AGS.002.012.1387, 2.

8.13 Alleged technical errors in the Pocketbook

- 8.13.1 There was evidence of what were said to be shortcomings in the Pocketbook (other than so far as it dealt with the issue electrical safety). Some of that evidence confused provisions of the Pocketbook with what inspectors under the various audit and compliance regimes thought (rightly or wrongly) to be required by the HIP. I am not in a position to resolve these contentions which would seem, in any event, to be about matters which are peripheral to the principal issues that arise from the Terms of Reference.

8.14 Findings

- 8.14.1 Following from the matters set out above, I find that:

- 8.14.1.1 the effect of the change to the competencies finalised on 8 May was to replace the requirement of training for persons inexperienced in the installation of insulation with a requirement they be 'supervised'. It was sought to be justified on the basis that all States with the exception of South Australia had as at that date no requisite training or registration for installers. This does not make it right given that once industry experts were assembled to advise on the need for training their advice was ignored;
- 8.14.1.2 the unanimous view of industry was that training was required. That was also the view of DEWHA;
- 8.14.1.3 The nature of supervision required was not specified in any of the formal documentation for the HIP, such as the Guidelines, the Installer Advices or the Terms and Conditions for registration;
- 8.14.1.4 the PCG's decision to remove the need for installers to achieve the minimum competencies was imprudent where there could be no assurance (and none was sought to be imposed) that the supervisors would in fact supervise as they ought, especially in cases in which the installer was particularly young and inexperienced;
- 8.14.1.5 the decision was pushed by the OCG and with some verve both in the lead-up to the 8 May PCG and during it (principally through Mr Hoffman);
- 8.14.1.6 the principal reason for the OCG doing so was a desire to make barriers to entry to the HIP as low as possible and to permit small players and new entrants to be attracted to the scheme and to achieve the 1 July start date — that date could not be achieved if new installers all had to attend a course of training;
- 8.14.1.7 doing so brought with it an almost inevitable risk that young and inexperienced installers would be exposed to the real risk of injury;
- 8.14.1.8 the decision is one important illustration of a preference being given to a rapid rollout of the HIP over its careful and safe design and implementation;
- 8.14.1.9 it seems likely that Mr Garrett did not have (or did not read if he did), Attachment B to the briefing seeking his approval of the competencies. He did not, in any event, know that the effect of it was to remove the training requirement for novices. It is highly unsatisfactory that such an important decision miscarried in this manner.

- 8.14.1.10 despite having several opportunities to do so, and knowing that installers were not being properly supervised, no Commonwealth officer (and especially Mr Hughes) ever sought to make clear, whether by Installer Advices or otherwise, until after the first death under the HIP, that the supervision for which the competencies called, was to be close, or strict, or to require the presence on site of the supervisor while the installation was taking place;
- 8.14.1.11 the Pocketbook was one useful source of information about safe practices in the installation of insulation. DEWHA ought to have made it available in hardcopy well before October or November 2009.

9. ADVICE, WARNINGS AND RECOMMENDATIONS: SAFETY AND THE USE OF REFLECTIVE FOIL LAMINATE INSULATION

9.1 Introduction

- 9.1.1 My Terms of Reference direct attention to advice, warnings and recommendations given to and received by the Australian Government about, in particular, workplace health and safety and other risks associated with the Home Insulation Program (HIP).¹
- 9.1.2 In this Chapter, I deal with those that concerned the use of Reflective Foil Laminate (RFL) insulation in particular. I also consider, having regard to what the Australian Government knew and was warned about RFL insulation, whether it ought not to have been permitted as one of the products installation of which was to be funded under the HIP, if not from the outset, from immediately after the first fatality in mid-October 2009.
- 9.1.3 On the day the Program was announced by the Prime Minister, one of his constituents sent him an email:

Regarding your proposal to insulate owner occupied homes I wish to implore you to look into the home insulation industry and instigate (a) the quality standards regulation; and (b) some consumer guidance and protection. I know of many people, and I am one of them, who have dealt with home insulation operators and to put it bluntly, they are cowboys...Please, please, please think this proposed stimulus measure through or you will simply be lining the pockets of a bunch of unethical rip off merchants. It will backfire on you as it plays out....²

- 9.1.4 On 4 February 2009, Ben Burdett, a licensed builder from Sydney, wrote to the Master Builders Association of NSW pointing out what occurred with the insulation of houses for the third runway project in Sydney.³ It speaks of observing ‘the aftermath of rogue insulation installation’. Reference is also made to fire hazards. The email includes: ‘I have seen the aftermath of the last government insulation “gift” in houses around Sydney airport; the sound insulation that was installed into houses for the third runway project. Rogue contractors could see a quick buck and despite good quality product, with undue haste and lack of care, real hazards and complete redundancy of whole installations was the result.’
- 9.1.5 Another warning was sent to the Prime Minister’s Office on 4 February 2009 principally concerning the likely cost of the Program, but which recommended that an approved building consultant inspect each house, something that eventually occurred in 2010 when problems with the Program were finally addressed.⁴
- 9.1.6 In all some 33 pieces of correspondence were sent to the Prime Minister’s Office, of which seven raised specifically occupational health and safety (OH&S) concerns. Three concerned electrical safety issues. Some warnings concerned the risk of fires.⁵

1 Especially subparagraphs (b) and (c).

2 AGS.002.007.1532, 1.

3 MBA.003.001.0324, 1-2.

4 AGS.002.008.1330, 1-3.

5 AGS.002.024.0189, 1.

9.1.7 On 9 March 2009, the National Electrical and Communications Association (NECA) wrote to Minister Garrett.⁶ The letter was referred to the Department of Environment, Water, Heritage and the Arts (DEWHA) for a response. As perhaps an indication of how busy he was at the time, Mr Keeffe did not reply to the letter until 16 April.

9.1.8 The letter pointed out that NECA is the national industry association representing contractors responsible for the delivery of an installation of electrical voice and data communication systems in Australia. As such its members are responsible for the majority of electrical installation works in residential, commercial and industrial situations. The letter warned of the risk of house fires arising out of the Program. It stated:

Whilst electrical contractors are aware of these statutory requirements specified in the Australian Standards (AS/NZS3000.2007 Clause 4.5.2.3) it is apparent that many installers of thermal insulation are not. NECA electrical contractors operating in the residential sector regularly report that installers of thermal insulation have covered the lights and have created a potentially dangerous situation. The fire services in the States will also have similar data...

NECA understands that there is no State or national licencing or registration system for 'qualified' thermal insulation installers like there is for electricians, plumbers, builders etc. However, NECA does understand that there are courses available through TAFE and possibly other sources which NECA believes should be a minimum eligibility requirement for the impending government program.

For example, there is a one day course run by TAFE in Victoria for eligibility with the Sustainability Victoria Ceiling Insulation Rebate Program. This may be suitable as a minimum requirement for this Australian government initiative.

NECA also understands that the government's intention is to pay the cost of the thermal insulation installation directly to the installer. This gives the government the opportunity to make it a condition of the payment that the installer of the thermal insulation meet the minimum criteria specified above.

Also, NECA also recommends that the government provides guidance to the general public about the need to ensure that the installers undertaking the work do have the required accreditations. NECA would like to offer its services to assist with ensuring our sector of the building industry is aware of the program and not just thermal installation installers.

9.1.9 NECA was not invited to the industry consultation meeting on 20 March, nor subsequently, despite this letter.

9.1.10 Mr Keeffe responded to the letter from NECA on 16 April 2009.⁷ That letter included:

However, as you have stated in your letter, despite this requirement in the guidelines there remains the risk of new installers not being appropriately trained in procedures to satisfy this and other legal requirements. To ensure that all installers are appropriately trained, the government is currently developing a training program for new entrants to the insulation industry based on existing units in the current nationally endorsed training package. As a part of this, trades people with no insulation experience who are making a shift to insulation installation will require a two day supplementary training.

6 QIC.006.001.1652, 1-2.

7 AGS.002.013.0362, 1.

- 9.1.11 As is clear from the preceding Chapter of this report, the requirement for that foreshadowed training was removed.
- 9.1.12 Mr Chris Boyle from the Queensland Electrical Safety Office (ESO) wrote on 1 April 2009, to Ms Yeend in the Department of the Prime Minister and Cabinet (PM&C):

Given the likely flood of insulation activity from 1 July 2009 I would appreciate your views on what additional advice/action (if any) might need to be taken to ensure that licensed installation installers (with large backlogs of work) undertake a competent and safe job.

- 9.1.13 This letter found its way to Mr Keeffe, but he did not respond to it.

9.2 Advice, warnings and recommendations about the use of Reflective Foil Laminate insulation and the risks associated with it

9.2.1 Mr Ruz: February 2008

- 9.2.2 I have already dealt with important warnings given by Mr Peter Ruz at the 18 February 2009 Industry Consultation Meeting and his email of the following day. These were, as I have found, cogent, and given early in the HIP's development. They ought to have alerted the Government to the very real risks to personal safety that installers of RFL insulation in particular were likely to face.
- 9.2.3 The warnings that Mr Ruz gave must also be seen in light of there being not one person present at the 18 February 2009 meeting who had particular expertise concerning the electrical safety risks that installers would be likely to face. Mr Richards of Master Electricians Australia (MEA—a body that received no invitation to the 18 February 2009 meeting) considered that it was a 'critical oversight' of the Government not to have consulted with his organisation given the inclusion of RFL insulation in the HIP.⁸ As I have said, NECA was also not invited to any industry consultation meeting.
- 9.2.4 Ms Ruz's warnings were not the only ones that the Australian Government had of the very real risks associated with RFL as an insulation product. I deal below with the other warnings and advice given to DEWHA. Some of them, it will be seen, were opportunities for at least one of the later deaths to have been avoided. Most of the warnings, advice and recommendations were ignored or not responded to adequately by DEWHA.

9.2.5 EE-Oz

- 9.2.6 One of the earliest warnings the Australian Government received after the 18 February 2009 Industry Consultation Meeting concerned electrical risks in cases of retrofitting insulation into existing properties. This came from Mr Anthony Plevy, who was a Policy and Products Manager at the ElectroComms and Energy Utilities Industry Skills Council at the relevant time. At the time of the HIP, the organisation was known as EE-Oz Training Standards Australia (EEOz) and it was an industry-owned company that operated as a skills body for the electrical communications and energy utilities industries.
- 9.2.7 On 26 February 2009, Mr Martin Paul from the Department of Education, Employment and Workplace Relations (DEEWR) contacted Mr Plevy to seek assistance with setting competency and training requirements for the HIP. Mr Plevy responded on 27 February 2009 by email and stated:

EE-Oz has some concerns with the retrofitting of insulation for domestic dwellings.

8 Statement of Richards at [8], STA.001.033.0001, 28 March 2014.

As insulation has been mandated for a number of years in state building codes, the majority of the work associated with this program will be in the class of retrofits to existing buildings. The issues in regard to this work and electrical safety are installer OH&S and the longer term safety of such insulation.

Installer OH&S issues relate to:

- *Installer OH&S issues relate to the entry of installers into older building and disturbing and/or rearranging wiring which may cause an electrical hazard.*
- *Older buildings may require an electrical inspection before work can be carried out to ensure the safety of older wiring installations.*

Longer term safety issues relate to:

- *The placement of insulation on, near or over electrical wiring. Insulation retains heat and will immediately “de-rate” the ability of wiring to operate at a safe temperature. This may not lead to immediate problems but may lead to accelerated deterioration and eventual failure of the wiring insulation increasing the risk of fire or electric shocks.*
- *The placement of insulation on, near or over electrical fittings e.g. downlights, ceiling fans, etc, which are in themselves heat sources may also lead to increased risks.⁹*

- 9.2.8 Mr Plevy then went on to recommend minimum training competencies that installers should have. Of course these were never mandated.
- 9.2.9 He made this response after having spoken to some of his industry consultants and technical advisers.¹⁰ The email identifies the issues which Mr Plevy saw at the time as being the key issue for a mass roll-out of retrofitting insulation. He pointed out in his evidence that this was different from installing insulation in newly constructed buildings and those under construction.¹¹ He was not aware at the time he prepared the advice that the use of RFL sheeting was being (or going to be) considered as part of the HIP and so that possibility was not part of his thinking in preparing the advice.¹²
- 9.2.10 On 27 February 2009, Mr Plevy also provided a copy of the advice that he had sent to Mr Paul to Mr Craig Simmons, Mr John Ingram and Mr Ken Gardner, who worked for the agencies with responsibility for electrical regulation in Victoria and the Australian Capital Territory.¹³ At the time, Victoria held the position of Chair of the Electrical Regulatory Authority Council (ERAC).
- 9.2.11 On 25 March 2009, Mr Plevy received a response from Mr Paul about the advice he had earlier given. Mr Paul's email said that the OHS issues Mr Plevy had identified were of 'paramount importance'. Mr Paul noted that DEEWR was working closely with DEWHA and the Construction and Property Services Industry Skills Council (CPSISC) to develop appropriate training for installers and asked Mr Plevy to provide some assistance to CPSISC to ensure 'the relevant electrical hazards/risks/safety strategies' were included in the contextualised OHS components of the course.¹⁴ However, Ms Sydney emphasised that at the time this email was written, CPSISC had not been invited tender to develop resources, and claims not to have seen this email prior to making a statement to the Royal Commission.

⁹ AGS.002.023.3186, 2.

¹⁰ Statement of Plevy at [11] STA.001.035.0001, 8 April 2014.

¹¹ Statement of Plevy at [12] STA.001.035.0001, 8 April 2014.

¹² Statement of Plevy at [13] STA.001.035.0001, 8 April 2014.

¹³ Statement of Plevy at [20] STA.001.035.0001, 8 April 2014; STA.001.035.0009, 1-3.

¹⁴ Statement of Plevy at [23] STA.001.035.0001; AGS.002.017.2144, 1.

- 9.2.12 These statements by Mr Plevey were one further way by which the dangers inherent in retrofitting insulation into homes ought to have been apparent to the Australian Government. Although the advice was given without an awareness that RFL insulation might be used under the HIP in a way that exposed installers to a greater risk of injury or death, it nevertheless raised, in sufficient terms, the risk which might arise from being in a ceiling space, coming into contact with wiring and the risk of disturbing cables which were all material risks inherent in the HIP.
- 9.2.13 In his email of 25 March 2009, Mr Paul provided Mr Plevey with an outline of a proposed five-day training course for new installers, in which OH&S issues (including electrical hazards) were scheduled to take up the whole of the first day. A course in that form, or anything like it, was not ultimately established. Mr Plevey was notified by his Chief Executive Officer (CEO), who had had subsequent discussions with CPSISC that this was because such a course would be too expensive and/or time consuming.¹⁵ EE-Oz was sent only an outline of the intended training program and gave no formal advice on the training materials ultimately developed.¹⁶
- 9.2.14 Much later, on 26 October 2009, EE-Oz (including Mr Plevey) met with federal officials. He (and others) attended a roundtable discussion with Minister Garrett the following day.¹⁷ The minutes of that meeting show that the risks associated with categories of RFL insulation products and methods of fastening were discussed.¹⁸ In particular, it was noted that mechanical fasteners have the potential to pierce electrical cables and cause an electrical hazard. By that time, Matthew Fuller had been killed in the very kind of circumstances which Plevey had foreshadowed (albeit without knowledge of the possible use of RFL sheeting) some six months earlier.
- 9.2.15 *Evidence of internal knowledge by the Australian Government of risks*
- 9.2.16 Relevant to the issue of what warnings, advice and recommendations the Australian Government received about safety risks is the state of its own knowledge about such matters, whether as a result of having received such information, or coming to an awareness by its own efforts.
- 9.2.17 It is clear that DEWHA, from as early as 3 April 2009, was aware of a real risk to, among other things, the safety of installers. This emerges most clearly from the records of a 'Technical Advisory Group Workshop' which took place on that date. It was attended by Tony Marker (Pitt and Sherry), James Fricker (independent consultant), Ian Cox-Smith and Mark Jones (BRANZ—Building Research Association of New Zealand), Brian Ashe (ABCB—Australian Building Codes Board) and Mark Collett (South Australian Government) and others. Mr Kimber was present at that workshop and Mr Keeffe attended part of the meeting.¹⁹ Mr Kimber summarised the discussions that took place at it in an email to Mr Keeffe.²⁰ An agenda produced for that meeting (which was also attached to Mr Kimber's email to Mr Keeffe) said:

SAFETY ISSUES [...]

- *High likelihood of catastrophic consequence (death or serious injury) [...]*

15 Statement of Plevey at [23], STA.001.035.0001, 8 April 2014 .

16 Statement of Plevey at [23-26], STA.001.035.0001, 8 April 2014.

17 Statement of Plevey at [41], STA.001.035.0001, 8 April 2014.

18 ABC.002.001.0167, 2.

19 Statement of Kimber at [50], STA.001.024.0001, 4 April 2014.

20 AGS.002.029.0929, 1.

Key actions

- *Conduct a Risk Assessment Process specifically for the process of installing ceiling insulation. Brian Ashe to provide organisational contacts for who can do this for us.*²¹

9.2.18 The 'Meeting Summary' of that meeting states:

Safety- session chaired by William Kimber

Workshop participants indicated that:

- *The work involved in installation could result in a high level of exposure for the Government due to hazards of existing buildings, hazardous materials and occupational health and safety. The program poses a high likelihood of catastrophic consequence (death or serious injury).*
- *Workshop participants noted that a risk assessment of the installation process is required to determine a tolerable level of risk both for the community and the cost to the Government. No mitigation strategies will produce zero risk and a risk management approach must be taken as it is with BCA [the Building Code of Australia].*²²

9.2.19 Dr Delbridge

9.2.20 It is convenient to consider here the evidence of Dr Troy Delbridge.

- 9.2.20.1 Dr Delbridge attended the 3 April 2009 Technical Workshop and regarded himself as a technical advisor 'a sort of scientific technical advisor to the program on the performance of insulation materials and their use and handling'.²³
- 9.2.20.2 He was engaged specifically to work on the HIP by DEWHA in March 2009 on a 12 month contract.²⁴ That contract did not in terms appoint him in a technical capacity. It gave him the classification of 'APS 6' and indicated that he would be working in the Renewables and Energy Efficiency Division (REED) without a 'specified task'.²⁵
- 9.2.20.3 Dr Delbridge held a PhD in environmental science. He had worked in evaluating the National Blackspot Road Safety Program which had included evaluation of the performance of the engineering measures and economic analysis of the benefits derived from that program.²⁶
- 9.2.20.4 Dr Delbridge reported primarily to Mr Kimber, but he also had direct contact with Ms Brunoro, until she left the Department in late April.²⁷ As will be seen below, the relationship between Dr Delbridge and Mr Kimber became very strained, and Dr Delbridge's contract was, on 29 July 2009, terminated without cause being given (something which the contract permitted). I will come presently to the circumstances in which Dr Delbridge's services came to be terminated. He says he was treated very unfairly, in part because of warnings he gave about the safety risks associated with the HIP and the technical shortcomings in it. Mr Kimber, Mr Hughes and the Commonwealth of Australia (Commonwealth) say Dr Delbridge's contract was terminated because of

21 AGS.002.029.0929, 1.

22 AGS.002.014.1432, 1.

23 Transcript (1 May 2014) 3320 (T Delbridge).

24 Transcript (1 May 2014) 3320 (T Delbridge); AGS.006.001.0001, 1-2.

25 AGS.006.001.0001, 1.

26 Transcript (1 May 2014) 3321 (T Delbridge).

27 Transcript (1 May 2014) 3322 (T Delbridge).

his less than satisfactory performance at work.²⁸ It is not for me to resolve these competing positions. My concern is with what warnings, advice and recommendations Dr Delbridge gave to his employer and the extent they were properly heeded. Dr Delbridge gave evidence, which I accept, that there was only ever one Technical Advisory Group meeting. Dr Delbridge said the group was not allowed to meet again. There is no evidence that it did. No minutes or emails regarding any further meetings were produced to the Commission.

- 9.2.20.5 The findings I would make on this topic are, in summary, that Dr Delbridge did warn the Commonwealth of the impracticability of the assessment of the R-value of RFL sheeting (as did a number of other experts and industry groups, referred to below) and some of the risks inherent in the installation of it. He was persistent in pressing those concerns on, in particular, Mr Kimber. I do not accept the totality of Dr Delbridge's evidence about the warnings he gave and the treatment he received as a result of giving them. Rather than deal with each and every claim he made of having given warnings, advice and making recommendations about the HIP (there are many of them), I set out below that part of his evidence I would accept and the reasons why. Dr Delbridge was, I have concluded, one source of advice, warnings and recommendations that was not treated with sufficient seriousness by the Australian Government. In reaching that state of satisfaction, however, I have not accepted all of what Dr Delbridge said on this topic.
- 9.2.20.6 Dr Delbridge expressed the view that the HIP was not well organised. I think that, having heard all of the evidence and seen all of the documents that I have, that Dr Delbridge's summary is entirely accurate. It would not be unfair to describe the process embarked upon by DEWHA as chaotic. That was very much a function of the time allowed to the Department to do its job.
- 9.2.20.7 Dr Delbridge said that he was not formally briefed when he commenced his role, so he had to work out for himself what was required. He reported to Mr Kimber principally, and described him as a 'gatekeeper' through which he would have to pass in order to access more senior people. He was very critical of Mr Kimber, and said, among other things, that he prevented him raising with other more senior people the concerns that he held.²⁹
- 9.2.20.8 Dr Delbridge gave oral evidence. He had not, before doing so, finalised a statement. He was given access by the Commonwealth to a large volume of emails shortly before he was due to give evidence and that is the reason why no statement was available. Both the Commonwealth and Mr Kimber (through his Counsel) took issue with much of Dr Delbridge's evidence, including, in the case of Mr Kimber, by making a serious attack on Dr Delbridge's honesty, competence and credit.
- 9.2.20.9 Dr Delbridge, on the other hand, described himself as a 'squeaky wheel' and as someone who was treated badly as a result.
- 9.2.20.10 The Technical Advisory Group to which I referred above comprised Mr Ashe, Mr Marker (Pitt and Sherry), Mr Fricker, Mr Jones and Mr Cox-Smith (both from BRANZ) and Mr Collett (from the South Australian Office of Consumer and Business Affairs and who was also Chair of the Australian Standards Committee on Insulation). It met on 3 April 2009. The object of the group,

28 Supplementary Statement of Kimber at [43-49], STA.001.024.0010, 9 May 2014; Supplementary Statement of Hughes at [23], STA.001.041.0018, 4 May 2014.

29 Transcript (2 May 2014) 3500 and 3505 (T Delbridge).

as Dr Delbridge described it, was to *'discuss and receive advice on a range of technical matters, in particular the assessment of safety, insulation quality, product performance, insulation quality'*.³⁰

- 9.2.20.11 Dr Delbridge made suggestions (to Mr Kimber it would seem) as to other persons who ought to be on the group, but it never met again. Dr Delbridge said that he wanted the group to meet monthly and for it to include representatives from other States and Territories, particularly Victoria, which by then had a home insulation rebate scheme in place. He said he raised this with Mr Kimber, but said that his requests were not in writing because he felt at this time that oral discussions would be sufficient.³¹
- 9.2.20.12 The meeting on 3 April 2009 involved discussions about safety. The agenda for the meeting mentions safety and 'Occupational Health Issues (installers)' Dr Delbridge had, he said, 'significant input' into that document.³²
- 9.2.20.13 Dr Delbridge agreed that the minutes for this meeting I have quoted above accurately record what was discussed. He explained that fire was a concern due to insulation being installed too close to downlights or a hot flue, as was death or injury due to a fall (including through the ceiling) or working in confined spaces. So too was an installer making contact with live wiring.
- 9.2.20.14 The 3 April meeting involved discussion of the experience in New Zealand in which people had been electrocuted installing RFL insulation. Dr Delbridge discussed the matter with Mr Kimber *'at least at the time of the technical working group, if not before then'*.³³ The group, he said, recognised there were issues and problems.
- 9.2.20.15 Dr Delbridge asserted that a number of people in the REED knew of the problems with electrical safety because they were present with him at relevant discussions, including at the meeting of 3 April. In particular, he said, the use of non-metallic staples was discussed, as was whether RFL insulation should not be permitted to be used under the Program, on the basis of safety concerns and because it is not effective if it is not properly applied to the structure.³⁴ However, he recalls that the group concluded that, when considering the total R-value (rather than the product R-value), then it did not make sense to exclude RFL insulation which would be a beneficial insulation product in the warmer climates zones.³⁵
- 9.2.20.16 The Technical Advisory Group formed the view that if RFL insulation was to be permitted, it would have to be very carefully supervised and with a safety program.³⁶ This was communicated to the other people involved by way of 'the concept' being put to Mr Kimber, but, Dr Delbridge said, it went nowhere.³⁷ He recalls discussions at that meeting and afterwards that the HIP would not enforce compliance with anything besides existing standards, and recalls forming the impression that it was because the Australian Government did not want any impediments to the rapid roll out of the stimulus measure.³⁸

30 AGS.002.031.1155, 1.

31 Transcript (1 May 2014) 3324-3326 (T Delbridge).

32 ABC.002.001.0032, 1.

33 Transcript (1 May 2014) 3334 (T Delbridge).

34 Transcript (1 May 2014) 3329 (T Delbridge).

35 Transcript (1 May 2014) 3339-3341 (T Delbridge).

36 Transcript (1 May 2014) 3341 (T Delbridge).

37 Transcript (1 May 2014) 3341 (T Delbridge).

38 Transcript (1 May 2014) 3342 (T Delbridge).

- 9.2.20.17 He said he discussed with Ms McCann³⁹, and separately with Mr Kimber, the possibility of engaging a company to provide safety inspections of homes to determine whether it was a safe environment to install insulation in, and completing another inspection after the installation had been installed to assess that the work had been properly done. Dr Delbridge also thought that it would have been better to roll the HIP out over three to five years. Doing so, he said would assure the product supply and better cater for safety.⁴⁰ These were not novel ideas. It will be recalled that the Department's recommendation from the outset was for a five-year rollout.
- 9.2.20.18 He thought also that it was essential that installers ought to undergo training to understand the insulation products and how to install them safely. In his view, it was not enough to have an OH&S 'white card' because that training did not cover, for example, working in ceilings and confined spaces. Again, that was the prevailing view of industry. Dr Delbridge was not advocating something that the Department had not already been advised of.
- 9.2.20.19 Dr Delbridge considered that RFL sheeting could be used in ceilings across joists, provided there were adequate protections in place which were: an inspection of the ceiling space beforehand (and afterwards) by a qualified person; proper training of installers; and no use of metal fasteners.
- 9.2.20.20 I have not set out all the issues which Dr Delbridge says were discussed at the 3 April meeting and said to have been drawn to the attention of DEWHA officers (principally Mr Kimber and Ms McCann) at the time.
- 9.2.20.21 On 7 April 2009, Mr Holt sent an email to Dr Delbridge, Mr Kimber and Mr Keeffe, among others. Mr Holt advocated a more 'interventionist' approach than DEWHA simply relying on market safeguards.⁴¹ This approach was not adopted.
- 9.2.20.22 After Phase 2 of the HIP had commenced, Dr Delbridge raised concerns with Ms Linda Prattley of Safe Work Australia, Mr Bill Mitchell of the Western Australian Government, Mr Robert Pearce of the Tasmanian Government, Mr Chris O'Rourke of the ACT Government, Mr Robert Mayell of the NSW Government, Allan Beacom of the Victorian Government, Brian Adams of the South Australian Government, Mr Neil Watson of the NT Government and Mr Tim Campbell of the Queensland Government about reports of unsafe work practices in the insulation industry, particularly regarding safety working at heights and safe handling of materials.⁴²
- 9.2.20.23 It remains to say something briefly about the circumstances in which Dr Delbridge's contract was terminated before setting out the findings I would make about his evidence.

9.2.21 *Termination of Dr Delbridge's contract.*

- 9.2.22 Dr Delbridge claims to have been dismissed after having raised concerns about safety and other matters, and after speaking to Mr Aaron Hughes about problems with the HIP. The problems included OH&S, compliance, fire risk, parallel imports and non-compliant imported products and other matters. Dr Delbridge told the Commission that Mr Hughes terminated his contract about half an hour after that discussion.

39 In 2009, Ms Sascha McCann was known as Ms Sascha Kaminski.

40 Transcript (1 May 2014) 3342-3345 (T Delbridge).

41 AGS.002.015.0908, 1.

42 AGS.002.014.1132, 1-2; AGS.002.014.1138, 1-2; AGS.002.014.1150, 1-2; AGS.002.014.1148, 1-2; AGS.002.014.1142, 1-2; AGS.002.014.1112, 1.2; AGS.002.014.1121, 1-2; AGS.002.014.1140, 1.2; AGS.002.014.1104, 1-2.

- 9.2.23 On 24 July 2009 at 1.54pm, Dr Delbridge sent to Mr Hughes (along with others) an email in which he stated:

*Rather than playing a continuously backward looking and reactive policy game, we need to begin a more proactive and professional approach.*⁴³

- 9.2.24 On 28 July 2009, Dr Delbridge sent an email to Mr Kimber and Mr Hughes and others which contained the following observations:

I feel an urgent need to inform you again of a few very important facts regarding the technical policy component of our Programs, and how this has been handled with respect to the technical staff (myself) under your supervision. Having been down this path once already so recently, I'm very disappointed that this has not been addressed properly ...

...

*You will also recall the numerous times we have discussed the quantity of technical work required for these programs and the requirement for additional personnel with appropriate skills, yet your categorical reply to this request has always been "that this is not going to happen," you have then demanded that I do less, but subsequently proceeded to increase the work load!*⁴⁴ ...

- 9.2.25 Within half an hour or so, Mr Hughes responded saying that he had asked for a meeting to be set up so that he, Dr Delbridge and Mr Kimber could 'talk through the issues'.⁴⁵

- 9.2.26 Dr Delbridge, upon termination of his contract on 29 July 2009 by Mr Aaron Hughes, sent an email to Mr Ashe in these terms:

Please note that I will no longer be addressing technical and engineering matters on behalf of the DEWHA as of COB today since my contract with the Department has been terminated.

I would like to thank you for your frank and insightful input to the efforts I have been making to develop a truly coherent, realistic and practical technical policy framework for these Programs. Something I hoped could successfully combine respect for the key Australian Standards, the Building Code of Australia, state/territory legislation and the myriad of local government variations—and all of this into a framework that can maximise the environmental and economic benefits possible through improved energy efficiency in older homes.

The burden of technical policy advice will most likely fall to the consultants James Fricker and Dr Tony Marker from now on, as there is no succession plan for maintaining any technical or engineering expertise in-house after my departure. I suspect that you will be approached very soon to provide significant ongoing advice to whomever will be attempting to handle the technical issues that are beginning to overwhelm these programs—I wish you luck! Many of these issues have already been raised with the management team well in advance by yourself, me and a myriad of industry stakeholders; however the approach taken has unfortunately been one of looking backward and responding to issues in a reactionary and disordered fashion.

43 DEB.002.003.0016, 1.

44 DEB.002.002.0013, 13.

45 DEB.002.003.0016, 1.

*It is actually a relief for me personally that I am no longer involved in this work, as my circumstances here have been rather constrained, and in particular fraught with significant personal difficulties due to an almost comprehensive lack of appreciation (dare I say disregard) of the technical and engineering complexities by some of the management team, and the disrespectful and unprofessional attitude that has been adopted towards me.*⁴⁶

- 9.2.27 The alleged treatment of Dr Delbridge is just one example of a marked reluctance by DEWHA to accept that there was a real chance that people could die or be seriously injured as a result of activities undertaken under the HIP. The issue was, regrettably, clouded in the case of Dr Delbridge because of the breakdown in the relationship between him and Mr Kimber. This was to some extent an unavoidable clash of personality types. Mr Kimber came across as a reserved personality whereas Dr Delbridge appeared more animated in his demeanour.

9.2.28 Findings and observations

- 9.2.29 Dr Delbridge raised, at an early stage of the HIP, many problems of a technical and compliance nature. One need not accept the full extent of his oral evidence to so find. There are numerous documents which show, at this early time, Dr Delbridge seeking to bring to attention what he considered to be deficiencies in the HIP's design implementation. Of highest importance for present purposes are the concerns he raised about safety.
- 9.2.30 Mr Kimber told the Commission that Dr Delbridge's contract was terminated because he was not performing at a satisfactory level and that he resisted efforts to establish clear and agreed expectations for his work.⁴⁷ Mr Kimber denied assertions that Dr Delbridge's contract was terminated because he raised safety concerns.⁴⁸
- 9.2.31 I am not persuaded that Mr Kimber acted in the manner that Dr Delbridge alleged. I consider that he was probably keen to ensure he kept Dr Delbridge under control and within the boundaries of the tasks that he was, all things considered, required to achieve. That does not, however, diminish the weight of the substance of Dr Delbridge's evidence. It is clear that Dr Delbridge was, at a time when no one around him was doing likewise, seeing difficulties in the HIP which were very real ones, and ones which later emerged as pressing risks and problems.
- 9.2.32 I do consider Dr Delbridge's evidence to have been reliable in relation to the matters indicated above. There are, however, numerous examples of Dr Delbridge having, in 2009, positively endorsed aspects of the HIP he now says that he opposed. One example is the draft Pocketbook. When he was given a copy in July 2009 (which did not contain the explicit warning it later did about stapling and RFLs, he said in an email 'This is a really excellent resource! Congrat's on producing a very timely and useful product'.⁴⁹
- 9.2.33 It seems to me that Dr Delbridge's position has hardened over the time since the cessation of his contract of employment. Whereas contemporaneous documents show him to be complimentary of, and supportive of some (but certainly not all) of what steps were being taken under the HIP, by the time he came to give evidence, he found it difficult to say anything positive about the work that DEWHA did.

⁴⁶ ABC.002.001.0113, 1.

⁴⁷ Supplementary Statement of Kimber at [57], STA.001.024.0018, 9 May 2014.

⁴⁸ Supplementary Statement of Kimber at [62], STA.001.024. 0018, 9 May 2014.

⁴⁹ AGS.002.010.1355, 1 He did, however, make some 'suggestions and corrections', but not ones that concerned the issue of staples and RFL sheeting.

9.2.34 Another warning from industry

- 9.2.35 Industry expressed concern about the unacceptable risk of stapling through aluminium foil products in July 2009. This occurred when the draft Pocketbook was released for consultation. Mr Cameron Chick (of Fletcher Insulation) said, when he received the draft version, in an email dated 17 July 2009 to Blair Freeman, Jarrod Bernard, Steve Franetic (all of Fletchers) and Mr Denis D’Arcy (CEO of the Insulation Council of Australia and New Zealand (ICANZ)):

Stapling through aluminium products is an unacceptable risk.

A practice recently stopped in NZ due to electrocution deaths.⁵⁰

- 9.2.36 Mr Freeman forwarded Mr Chick’s email to Ms Kristen Sydney on 21 July 2009. Ms Sydney sent it to BMA Consulting⁵¹ that same day and to Jane Spence (who was a project officer within the Home Energy Branch) two days later.⁵² Ms Sydney said she had no discussion with Ms Spence or BMA when she did so.⁵³ Ms Spence acknowledged having received the email⁵⁴ and said that she ‘imagined’ she would have passed it on to her superior—probably Mr Davidson.⁵⁵ She could not recall having any discussion about that email.⁵⁶ Mr D’Arcy recalled having received the email.⁵⁷
- 9.2.37 The substance of the email, as I have explained elsewhere in my report, was incorporated into the Pocketbook with an amendment to page 35, so as to make clearer the risk of using staples with RFL products.⁵⁸ The point I would make, however, about the email itself, is that it was prescient of a risk which later eventuated and which offered a clear opportunity to the Australian Government to avoid those tragic events. The warning in the Pocketbook was one means by which the risk was addressed (albeit very imperfectly because the Pocketbook was not made available in hardcopy form until October 2009). But the risk ought to have been addressed, as I say below, by RFL sheeting being excluded from the HIP altogether.
- 9.2.38 The Pocketbook was generally an excellent resource. In its initial form it did deal with installation risks, described as ‘common installation hazards’ including electrical risks, although not the specific risk referred to by Mr Chick.⁵⁹
- 9.2.39 Importantly it also advised installers to check with a licensed contractor or local regulatory authority if wiring did not conform to Australian/New Zealand Standard S3000:2007 or if it was installed prior to 1989. This recommendation was never highlighted elsewhere.
- 9.2.40 One might reasonably ask why, when a specific risk is drawn to the attention of the Department, in a simple way, reflective foil continued to be permitted to be used under the Program. I must say that I never received a satisfactory answer to that question. The warning by Mr Chick was given three months before the first fatality. That was more than sufficient time for the Department to investigate and take steps to stop the practice of permitting reflective foil to be used, and affixed with metal staples. Had the practice been stopped, Mr Fuller and Mr Sweeney would still be alive. As I conclude below, that practice in any event did not comply with any Standard or the BCA. There was no

50 CPS.002.001.1433, 1.

51 The authors of the Pocketbook.

52 Statement of Sydney at [23], STA.001.055.0001, 28 April 2014.

53 Transcript (2 May 2014) 3572 (K Sydney).

54 Statement of Spence at [13], STA.001.063.0001, 3 May 2014.

55 Transcript (6 May 2014) 3824 (J Spence).

56 Transcript (6 May 2014) 3825 (J Spence).

57 Transcript (10 April 2014) 2671 (D D’Arcy).

58 CPS.002.001.1552, 2.

59 CPS.002.001.0331, 1-3.

good reason for the Australian Government to be paying installers to install a product of dubious insulation value in a manner that was dangerous, and which was not appropriately endorsed.

- 9.2.41 There was also discussion in the Pocketbook of the dangers of heat stress, a particularly relevant matter in the case of Mr Marcus Wilson.⁶⁰

9.2.42 ICANZ

- 9.2.43 Mr D'Arcy of ICANZ, a body which represented the interests of its member manufacturers of majority glass wool and rock wool insulation, said that from the outset (as early as 6 or 10 February 2009), his organisation recommended against the use of RFL insulation due to difficulties in maintaining its effectiveness, safety concerns relating to the concealment of ceiling joists and the safety concerns of RFL insulation being put across electrical cables creating a risk of electric shock or electrocution.⁶¹ Mr D'Arcy, however, was unable to be specific when asked about these matters.⁶² He did say, however, that ICANZ was not aware of any electrocutions that had occurred in New Zealand and that a risk of the kind that had eventuated there did not immediately spring to mind as a risk.⁶³

9.2.44 Training Workshop

- 9.2.45 A Training Workshop took place at the John Gorton Building in Canberra on 8 May 2009. Mr Hannam among others, attended. He claims to have said to Mr Garrett or 'a DEWHA representative' while he was in the room as follows:

The insulation industry is a highly skilled industry. There are many dangers in roof spaces which installers need to be made aware of, including electrocution and heat stroke.

You can't just send unskilled and untrained workers into roof spaces without serious risks to their safety and the safety of homeowners.

If the government does not properly train installers there will likely be injuries and possibly deaths.

*Also, the industry is largely unregulated. Unless you restrict this program to experienced installers, it will be open to fraud.*⁶⁴

- 9.2.46 A 'DEWHA representative' is said by Mr Hannam to have responded:

*We understand that there may be injuries or fraud or maybe deaths and we obviously want safety, but this program is all about creating jobs. The Prime Minister wants to stimulate the economy and this program will get people off unemployment benefits.*⁶⁵

- 9.2.47 The making of this statement is recorded in the evidence of Mr Kevin Herbert as being between Mr Hannam and Mr Kimber, though Mr Herbert remembers the conversation in somewhat different terms.⁶⁶ Mr Kimber denied making the statement.⁶⁷ I am not able,

60 CPS.002.001.0836, 34.

61 Statement of D'Arcy at [2.8]-[2.9], STA.001.001.0001, 7 March 2014.

62 Transcript (10 April 2014) 2660-2662 (D D'Arcy).

63 Transcript (10 April 2014) 2662 (D D'Arcy).

64 Statement of Hannam at [18], STA.001.019.0001, 27 March 2014.

65 Statement of Hannam at [20], STA.001.019.0001, 27 March 2014.

66 Statement of K Herbert at [88], STA.001.016.0001, 28 March 2014.

67 Transcript (10 April 2014) 2653 (W Kimber).

in the circumstances, positively to find whether the alleged words, or words to that effect, were spoken. I regard it as a possibility, but no more than that. Even if the warning was given in the terms suggested, it was unspecific in its terms and could not be regarded as having put the Australian Government on notice of a specific risk or circumstances. In any event, what was allegedly said was not novel. It had been said by many others.

9.2.48 Master Electricians Australia (MEA)

9.2.49 Mr Richards as the CEO of Master Electricians Australia (MEA) wrote to Mr Garrett on 16 October 2009 urging that he remove immediately the rebate for metal insulation products under the HIP.⁶⁸ Mr Richards said that he had drafted this letter before Mr Fuller's death on 14 October, but had not despatched it by the time he learned of that tragedy. I mention that only to demonstrate that Mr Richards was aware of the risk of electrocution occurring, not from the occurrence in which Mr Fuller died, but as a result of feedback from his members of incidents occurring in the preceding months, where electricians were finding dangerous situations where foil insulation had been installed into a house.

9.2.50 Mr Richards did not receive a response to that letter until 19 November but did meet with Mr Garrett on 20 October in Canberra.⁶⁹ Mr Garrett replied by letter of 19 November 2009, claiming that safety was an 'absolute priority' and that a '*strong audit and compliance regimes underpins the Program*'. The letter says:

The Program has incorporated clear guidelines and requirements since its inception, calling up the relevant Australian Standards including the relevant electrical, fire and other safety standards.

A strong audit and compliance regime underpins the program, and installers will be removed from the installer provider register if they do not comply with the program safety requirements.⁷⁰...

9.2.51 It was not right to say that a strong audit and compliance regime underpinned the Program. I will discuss that regime in more detail in Chapter 10, and find that it had been, until October or November 2009, rudimentary and seriously inadequate.

9.2.52 At their 20 October meeting, Mr Richards and Mr Garrett spoke about Mr Richards' letter and the risks of using RFL sheeting as a retro-fitted insulation product. Mr Richards said he '*very strongly urged Mr Garrett to take swift action in relation to the staples and foil*'. He said he was worried more lives would be lost.⁷¹ Mr Garrett's evidence of this meeting, albeit less detailed than that of Mr Richards, was to the same effect.⁷²

9.2.53 After the meeting on 20 October, Mr Richards recalls feeling disappointed by Mr Garrett's response, being a stated commitment to safety, but no actual commitment to take action.⁷³

9.2.54 MEA prepared briefing notes and provided a copy of these to Mr Garrett ahead of meeting with him on 20 October.⁷⁴ Relevantly, those notes mention inexperienced installers installing inappropriate products with little to no knowledge of electrical safety, and that having culminated in the tragic events of the fatality that had then recently occurred. It was said that this was something that MEA had been warning the industry and the Government about since May 2009. Reference is also made to there being numerous other reports of near misses where cables were stapled, but where fortunately no one had been injured.

68 Statement of Richards at [19], STA.001.033.0001, 28 March 2014; AGS.002.025.0268, 1-2.

69 Statement of Richards at [32] STA.001.033.0001, 28 March 2014.

70 AGS.002.017.0069, 1; AGS.002.026.0236, 1.

71 Statement of Richards at [35], STA.001.033.0001, 28 March 2014.

72 Statement of Garrett at [142], STA.001.069.0001, 8 May 2014.

73 Statement of Richards at [36], STA.001.033.0001, 28 March 2014.

74 AGS.002.017.0065, 1-3. Statement of Richards at [33], STA.001.033.0001, 28 March 2014.

- 9.2.55 The earlier warnings to which the briefing makes reference would seem to be advice from EE-Oz (MEA is a board member of this body) to which I have referred above. MEA had also issued a press release in May 2009 warning of the danger of fires if insulation was not installed correctly.

9.2.56 Incidents as warnings

- 9.2.57 The Queensland ESO recorded a number of serious and/or dangerous electrical incidents relating to the installation of insulation in the months prior to the death of Matthew Fuller.⁷⁵
- 9.2.58 For example, on 5 August 2009, insulation fitter Ben Taylor hit an electrical cable with a staple and received an electric shock while installing RFL insulation in a house at Victoria Point, Queensland. Other incidents were also recorded by the ESO, including an incident on 22 May 2009, where an insulation installer received a shock and burns while installing loose-fill insulation at a property in Buderim, and another incident on 6 August 2009 in which two air-conditioning installers who were installing insulation at a home in Deception Bay received electric shocks when a metal staple that was being used to secure RFL insulation pierced an active conductor.
- 9.2.59 Records of electrical safety incidents were kept by the Queensland ESO. They were not ones which were in any way tied to installations taking place under the HIP. There were some 216 'dangerous electrical events' in the month of August 2009 alone and many more (some 3500 for the period February to October 2009).
- 9.2.60 These incidents were not ones reported to the Australian Government at any time before the first fatality. They were, therefore, incidents that could not be regarded as warnings in any relevant sense.

9.3 Observations: Suitability of Reflective Foil Laminate under the HIP

9.3.1 RFL ought not to have been permitted

- 9.3.2 I have formed the view that RFL sheeting ought never to have been permitted to be used as an insulation product under the HIP. Its use should have been ceased when Mr Chick's warning was received in July. At the very latest, it ought to have been banned immediately after the first fatality on 14 October 2009. It took some four further months for this decision to be made.
- 9.3.3 The view I have formed is based upon the following primary matters:
- 9.3.3.1 there was an absence of any established Australian Standard governing the safe installation of RFL sheeting;
 - 9.3.3.2 it was impracticable for an assessment to be made as to whether RFL sheeting would satisfy the technical requirements stated in the Guidelines in any particular case;
 - 9.3.3.3 the use of RFL sheeting was unsafe, and posed a real risk of electrocution to installers and homeowners when used in retro-fit installations as under the HIP.
- 9.3.4 It is convenient to set out my reasoning on these matters at this point, having discussed immediately above the numerous warnings, recommendations and advice given to the Australian Government as to the problems inherent in the use of RFL sheeting and its knowledge of them, and having set out earlier (in Chapter 7) the advice of Mr Ruz to the effect that the use of RFL sheeting had led to the electrocution of people in New Zealand and had been banned.

⁷⁵ QIC.006.001.3086, 1.

- 9.3.5 Before doing so it is necessary to set out how RFL came to be included as an approved insulation product under the HIP in the first place.

9.3.6 HIP included all insulation products

- 9.3.7 The Australian Government designed the HIP so that it could be used to rebate installation of all forms of insulation. It did not exclude particular forms of insulation until its decision, on 9 February 2010 (just a week before the HIP was ended) to ban RFL sheeting.
- 9.3.8 The decision not to restrict the HIP to particular forms of insulation seems to have been based substantially upon a desire to spread the effect of the stimulus funds as widely as possible, also partly upon ignorance as to the way reflective foil sheeting would be installed. There was certainly a view that reflective RFL insulation was a preferred choice for insulating ceilings in hot and humid climates and for homes with flat or cathedral roofs, which are common in tropical and subtropical regions.⁷⁶ The way in which reflective foil sheeting was to be installed was not clear. In a letter of 9 February 2009 from Mr Brian Tikey (then President of the Aluminium Foil Industry Association (AFIA)) he said:

Homes in Queensland that are on piles will be better off with foil placed under the floors or affixed as retro-fit to the underside of roofing rafters as opposed to batts in the ceiling....

- 9.3.9 No mention is made of laying foil across ceiling joists, and affixing it with staples in proximity to electrical cabling.
- 9.3.10 The decision to permit (or more accurately to fund) the use of RFL insulation in the manner described in the preceding paragraph was also based upon ignorance and an inability of the relevant Australian Government officials to make judgments on the mass of material from industry and technical advisors (often self-interested and conflicting). Those officials seemed to find it impossible, because of their lack of expertise, to make choices between the different viewpoints and interests put forward by the various parts of the industry.
- 9.3.11 For example, when Mr Kimber was asked how it was decided whether RFL insulation ought to be permitted to be used, said:

We decided that it was difficult to determine the claims and counter-claims and that what we needed to do was, again, bear in mind that rollout and the participation of the maximum number of players was important to the government and it was decided to go with a policy that was product neutral where any product that was available or complied with the Australian Standard would be eligible to be used.⁷⁷

- 9.3.12 Nor did the Australian Government make any attempt to decide if RFL sheeting complied with the relevant Australian Standards, or whether a new Australian Standard should be established to regulate its use. Mr Kimber said when asked about this:

I don't think we did any deciding of that. We—we relied on the existing information that was in the Australian Standards. So we didn't go and look to update the standard or conduct further work with Standards Australia to make some special bespoke arrangement for the program. We went with what was there existing before the program.⁷⁸

⁷⁶ See Chapter 4.1.

⁷⁷ Transcript (9 May 2014) 4260 (W Kimber).

⁷⁸ Transcript (9 May 2014) 4260 (W Kimber).

- 9.3.13 On 11 March 2009 Tony Rowell, the principal building advisory officer from Workplace Standards Tasmania wrote:

I note the Australian Government is proposing to require the installation of the insulation to be in accordance with AS3999-1992. This is a 17 year old Standard!!!!.

It is not called up in the BCA. However, it is an informative reference document included in ANZS 4859.1: 2002 which is a BCA primary reference Standard ...

In addition, I have briefly looked at this standard and discussed it with our electrical safety people who have advised that the Standard is out of date in respect to the electrical wiring provisions included in the Standard. Apparently the current Wiring Rules include requirements in relation to the location of insulation, electrical wiring and downlights. There could also be other issues that are out of date in the Standard that are not common practices today.

To avoid this situation the Australian Government should before adopting AS3999 as their "Standard" for the installation of bulk insulation have it reviewed and checked for compliance with current practices and relevant Standards and should it be found to require amendment request that it be amended asap by Standards Australia. Alternatively the government could fund a re-writing of the Standard itself which could be called up in the BCA as a DTS reference document as the BCA has no DTS for the installation of bulk insulation.

The Standard (AS3999) also includes administrative provisions. For instance it requires a pre-installation inspection of existing electrical wiring etc. The only person qualified to undertake this inspection would be a registered electrician. However, the government's guidelines do not seem to take account of this in determining Technical Compliance of the installation.⁷⁹

- 9.3.14 Initially, the Guidelines required installation in accordance with Australian Standard S3999–1992. That, of course, did not envisage the use of reflective foil.
- 9.3.15 It seems that under pressure from the foil insulation section of the industry DEWHA relented.
- 9.3.16 The document headed "Foil Products and their applicability in the Home Insulation Program" was prepared by an officer of DEWHA.⁸⁰ It is said that reflective foil insulation products are included in Australian/New Zealand Standard 4859.1:2002. The note reads:

The reflective insulation is generally aluminium foil laminated on to papal plastic and is available as sheets (sarking), concertina type batts and multi-cell batts and foil bonded to bulk insulation. Together these products are known as reflective foil laminates. Under the program, the installation of ceiling insulation must meet the relevant material R-value or total R-value as per the relevant climate zone ... The program requirements for the R-value of foil were developed in close consultation with AFIA who sought the inclusion of the total R-value under the program. In consultation with the ABCB it was agreed that there are clear references to determining the total R-value in the Building Code of Australia to which installers of reflective insulation refers. There was also a long term (30 years) building industry and general market acceptance of

⁷⁹ ABC.002.001.0100, 3.

⁸⁰ AGS.002.039.3073, 1.

the effectiveness of the reflective materials as thermal insulation as a basis of including the product in the program.

It should be noted that the majority of reflective foil products have negligible material R-value (except products such as foil bonded to bulk insulation) and must be installed to the required specifications to be effective.

Reflective foil installation requirements are not included in AS3999-1992.... Products that fall outside the scope of AS3999-1992 must be installed in accordance with Part 3.12.1 "building fabric—3.12.1.1 building fabric thermal insulation and 3.12.1.2 roofs of the BCA. Installers are required to substitute Table 3.12., 1.1 roofs, minimum total R-value in the BCA with the R-value table provided in the Home Insulation Program Guidelines (Table 1, page 8).

- 9.3.17 The reference to sheet foil as sarking accords with its normal use, in new construction. It is not being referred to there as suitable for retro-fit insulation, particularly being laid across ceiling joists. The difficulty with mandating installation in accordance with the BCA is that it does not refer to the affixation of foil sheeting with metal (or indeed any type of) staples. It refers to overlapping the material, or taping it.
- 9.3.18 It can therefore safely be concluded that foil affixed with metal staples does not find support in any regulatory document.
- 9.3.19 The Australian Government, at an early stage of the HIP, did take some steps to understand the nature and properties of the various insulation products. Technical advisors and consultants were retained to assist with this: Pitt and Sherry (Dr Marker) being one of those and another being Mr James Fricker.
- 9.3.20 Dr Tony Marker of Pitt and Sherry was asked, on three separate occasions in March 2009, to provide specialist technical advice on insulation. He said, when asked if cellulose, foil and polyester could meet an R value of 3 where a total roof system approach is applied, 'yes' to cellulose and polyester. In relation to foil he was far more circumspect:

For foil only products, more complex products than those typically on the market would be required to deliver an addition of R2 to the total R-value—multiple highly reflective unventilated air spaces would be required. Such products are likely to be expensive, and required considerable attention to detail when fitted.⁸¹

- 9.3.21 In response to the third request for information (given on 26 March 2009), Dr Marker advised in his report that an amendment to the Building Code would come into force in May 2009 requiring, among other things, that reflective types of insulation would be required to be labelled 'contribution of this product to the total R-value depends on installation and environmental conditions'.⁸² No such requirement existed for bulk insulation products.
- 9.3.22 The total R-value⁸³ of reflective insulation products depends on where and how the product is installed.⁸⁴ It follows that an assessment of the specific properties of a home would be necessary in order to determine whether the installation of RFL sheeting would

81 AGS.002.027.0402, 2.

82 AGS.002.015.0919, 2.

83 Total R-value refers to the thermal insulating properties of the roof and correctly installed insulation material. Is a term used in the Building Code of Australia to refer to elements of the roof construction which will impact on its thermal insulating capabilities. Material R-value is applied to bulk insulation materials and refers to the insulating value of the product alone. Generally, the higher the R-value the better the thermal performance.

84 AGS.002.130.5474, 102.

meet the total R-value required by the HIP Guidelines. This is an exercise that had so many variables and was of such complexity as to be beyond the reasonable means of either the ordinary homeowner or installer. This ought to have been apparent to the Australian Government from the advice it obtained. The result is that there could not have been any reasonable satisfaction that RFL sheet installed under the HIP met the R-value requirements as specified in the Guidelines.

9.3.23 Absence of established standards

- 9.3.24 A gap existed in the established Standards with respect to RFL sheeting. There was no Australian Standard that regulated or addressed the installation of RFL sheeting. Because the HIP documentation made reference in part to existing Australian Standards, this gap extended to the rules that applied to installations taking place under the HIP. The absence of an existing Australian Standard regarding the installation of RFL insulation ought to have acted as a warning to the Australian Government that it could not, by reference to Australian Standards, seek to influence or control the actions of insulation installers. Because the HIP documentation made reference to those standards, this gap extended to the rules that applied to installations taking place under the HIP.
- 9.3.25 Under the HIP Terms and Conditions, the products that could be installed are those that ‘met the insulation product standard—AS/NZ 4859.1:2002 (incorporating amendment 1, Dec 2006) *Materials for the Thermal Insulation of Buildings*.’⁸⁵ In Australian/New Zealand Standard 4859.1:2002, Standards Australia emphasised that this Standard is not an installation standard. Installation requirements can be obtained from other sources, including AS 3999: *Thermal insulation of dwellings—Bulk insulation—Installation requirements*. This Standard specifies procedures for installing bulk thermal insulation consistent with good building practice. It does not specify procedures for installing RFL insulation consistent with good building practice. There is no existing Australian Standard that does so explicitly.
- 9.3.26 After amendment,⁸⁶ the HIP Installation Guidelines⁸⁷ specified that insulation products that fell outside the scope of Australian Standard 3999-1992 must be installed in compliance with part 3.12 of the BCA.⁸⁸ The BCA has been given the status of building regulation by all States and Territories, and it contains technical provisions for the design and construction of new buildings.⁸⁹ In the case of the HIP, the BCA was intended to guide the installation of insulation products not covered by AS3999.⁹⁰
- 9.3.27 Section 3.12 of the BCA is primarily directed at regulating the Energy Efficiency of insulation installation. The provisions require insulation to comply with Australian/New Zealand Standard 4859.1:2002 and to be installed so that the insulation abuts or overlaps adjoining insulation; forms a continuous barrier with ceilings, walls, etc. that inherently contributes to the thermal barrier; and does not affect the safe or effective operation of a domestic service or fitting.
- 9.3.28 The provisions of section 3.12 of the BCA further require reflective insulation (which includes RFL sheeting) to be installed with the necessary airspace to achieve the required R-Value between its reflective side and the building lining or cladding. Reflective insulation must be closely fitted against any penetration, door or window opening, and must be adequately supported by framing members. Additionally, it required each adjoining sheet of roll membrane to overlap not less than 150mm, or be taped together.

85 AGS.002.012.1232, 1.

86 Due to complaint from various sections of the insulation industry that reference to AS3999 unfairly excluded them from participation in the Program.

87 AGS.002.027.0449, 1.

88 QIC.006.001.2174, 8.

89 QIC.006.001.0275, 10.

90 QIC.006.001.2174, 8.

- 9.3.29 Finally, section 3.12.1.2 of the BCA requires a roof-space to achieve a set total R-Value ordinarily specified in table 3.12.1.1 of the BCA (but substituted for Table 1 from the Guidelines of the programs).
- 9.3.30 When the provisions of the BCA are applied to the retrofit of insulation to existing homes, as was the case in the HIP, the provisions of section 3.12.1 set out installation standards for the purpose of ensuring energy efficiency. They do not establish a standard of installation that provides for OH&S.
- 9.3.31 These oversights also affected the Pocketbook. At page 6 of that document, reference is made to reflective foils and the standards applicable to them. But in doing so, it mentions Australian Standards that have no application to RFL sheeting installed over ceiling joists.⁹¹ AS 4200 (which is the Standard referred to in that document) makes no provision for the installation of RFL insulation in this manner (as distinct from sarking, effectively rolled out under the roof).
- 9.3.32 The result is that, although RFL sheeting was open to be installed under the HIP, although not affixed with staples, on any proper understanding of the HIP documentation and the relevant Australian Standards specified therein, there was a lack of regulation of procedural safety standards over installation.

9.3.33 Assessing the R-value of RFL insulation

- 9.3.34 The relevant technical threshold for insulation expressed in the Guidelines was the achievement of the requisite R-value, and, provided the product achieved that requirement, it was eligible for the benefits that resulted.
- 9.3.35 The real difficulty with reflective insulation products is that it is much more difficult to calculate the total R-Value than is the case for bulk insulation products, because the total R-value of reflective insulation products depends on where and how the product is installed.⁹² Calculating the total R-value, although not impossible, was impracticable under the HIP because it could not be expected to be done properly by installers or homeowners.
- 9.3.36 This was recognised at the Technical Advisory Group meeting of 3 April 2009, in the minutes of which it was recorded:

Total R-value is subject to interpretation and is not precisely assessable.

- 9.3.37 To make an accurate assessment of the R-value required specialist technical expertise and assistance. Heat transfer mechanisms are, Mr Ashe of the Australian Building Codes Board, said, different from those for bulk insulation.⁹³ Mr Fricker, although an advocate of RFL insulation, also noted the more complicated nature of an R-value calculation for these products. He said, that in order to calculate the R-value for RFL sheet, there are factors to be taken into account other than the insulation product itself.⁹⁴ He said that only if the required R-value was not very great (such as in Queensland or in the summer) could RFL insulation alone (independent of having been appropriately installed) be regarded as providing quite good insulation.⁹⁵ It is only in combination with other factors that higher R-values are achievable, such factors including sarking, an additional foil at a lower level, ventilation, other insulations and the building structure.⁹⁶ He went so far as to agree that installing RFL insulation without regard to such other factors means that building code requirements as to R-value may not be achieved.⁹⁷

91 AGS.001.020.0222, 1.

92 AGS.002.130.5474, 102.

93 Statement of Ashe at [14], STA.001.083.0001, 19 May 2014.

94 Transcript (24 March 2014) 556 (J Fricker).

95 Transcript (24 March 2014) 557 (J Fricker).

96 Transcript (24 March 2014) 558 (J Fricker).

97 Transcript (24 March 2014) 558 (J Fricker).

- 9.3.38 Tony Marker from Pitt and Sherry also provided advice on 13 March 2009 in response to the questions asked of him by Mr Kimber.⁹⁸ Mr Marker reported:

In relation to Queensland climate zones, added insulation must be effectively at least R2 to deliver BCA standards, and in some climate zones this provides a total R-value of than R3....For foil only products, more complex products than those typically on the market would be required to deliver an addition of R2 to the total R-value—multiple highly reflective unventilated air spaces would be required. Such products are likely to be expensive, and required considerable attention to detail when fitted.

- 9.3.39 In a report dated February 2009 and delivered immediately after the first industry consultation meeting, Mr Fricker advocated the HIP terms not 'prejudicing' forms of insulation other than bulk insulation and pressed for the Guidelines to specify a total R-value to be achieved rather than a product R-value.⁹⁹ He did the same in an email to DEWHA officers on 26 February 2009 in relation to the then recently published Guidelines, and again on 27 February 2009.¹⁰⁰
- 9.3.40 I do not doubt that Mr Fricker is correct in this evidence that RFL insulation can achieve excellent results when properly installed. The point to be made about it is, however, that it is beyond the competence of the ordinary homeowner or installer to know the various factors which bear upon the R-value and what is to be made of them. The fact that it was considered necessary to retain a specialist thermal engineer to undertake the task he did, indicates that it would be impracticable to expect any accurate assessment of the required R-value to be made. It follows that there are likely to have been very many installations of RFL sheet under the HIP that have not met the total R-value as specified by the HIP.
- 9.3.41 I wish to say something more generally about Mr Fricker's evidence. He was retained by the Government as an independent technical advisor. His field of expertise is thermal insulation and not workplace safety or electrical safety.¹⁰¹ He gave evidence about the correct R-value of RFL sheeting. He also expressed some views about safety, to the effect that RFL sheeting could safely be used across ceiling joists. I would reject the evidence he gave of the latter kind. Not only does he (on his own evidence) lack the expertise to give it, but it is inconsistent with much of the other evidence to which I refer elsewhere in this report. But I would reject this view also because he did appear to be have a disposition in favour of RFL sheeting, perhaps quite understandably given his clientele, and because he did not have available to him all the information which had been available to the Government in its formulation and roll out of the HIP.¹⁰²
- 9.3.42 Advice was also sought from BRANZ. Some extended negotiations took place about the terms of the retainer. BRANZ sought an indemnity from the Commonwealth because, it would seem, of concerns it held that an insulation company would attack BRANZ.
- 9.3.43 The early version of the Installation Guidelines specified a product R-value rather than total R-value. It required installations to be in accordance with AS 3999 only. This meant, necessarily, that RFL sheet could never satisfy the requirements of the HIP as they stood at that stage. Concerns to this effect were expressed to DEWHA. They are recorded in an

98 AGS.002.027.0399, 1. ; AGS.002.027.0401, 2.

99 AGS.002.027.0093, 2.

100 AGS.002.027.0238, 1 (in relation to 26 February); AGS.002.030.0163, 1; AGS.002.030.0166, 1; AGS.002.027.0252, 1.

101 Mr Fricker said safety problems were not 'in his expertise': Transcript (24 March 2014) 555 (J Fricker).

102 Mr Kimber, I note, expressed the view that Mr Fricker had 'commercial interests' that he implied rendered the advice he gave less reliable and independent: Transcript (9 May 2014) 4297 (W Kimber).

email from Mr Kimber to Ms Marconi and others on 27 February 2009.¹⁰³ The underlying concern seemed to be a perception that 'reflective foil products are being unfairly excluded from eligibility'.

9.3.44 Safety considerations

- 9.3.45 RFL sheeting poses risks to installers which other forms of insulation, such as bulk insulation or reflective batts, do not. It is a conductive material. The evidence revealed that in practice it is often secured by the use of staples (although need not always be and should not be), and those staples are often metal. Much of the RFL sheeting that was installed in Queensland properties under the HIP was rolled out across ceiling joists and then secured. In doing so, it makes it very difficult to see whether, when staples are being applied, an electrical cable lies under it and is likely to be punctured. Moreover, the laying of the RFL insulation in this manner tends to make it very difficult to see where the ceiling joists are when walking in the ceiling, something which it is important to know because those joists are often the safest means of avoiding falling through the ceiling, given that ceiling material is generally not designed so as to support the weight of someone treading on it.¹⁰⁴
- 9.3.46 It can be seen then that RFL sheeting installed in this manner poses a risk to persons other than installers when they seek to access a roof void at some later time, either because the position of the ceiling joists is hard to ascertain or because of the possibility that the RFL sheeting is 'live', a staple having been placed through it and having connected with an electrical cable.
- 9.3.47 These are not risks that were beyond the knowledge or means of knowledge of the Australian Government. The early warning given by Mr Ruz at the 18 February industry consultation meeting (which I considered in Chapter 8) is just one of very many very clear warnings the Government had that the use of RFL sheeting brought with it very real risks, and risks that required positive action. To the same effect was the warning given by Mr Chick, referred to above. Regrettably, those warnings and many others like it were not adequately heeded. As late as 1 October 2009, Mr Tikey of the AFIA had written to Mr Lemmon in DEWHA expressing concern about safety issues including the installation of RFL insulation in houses with old wiring and urging the need for proper training and accreditation of installers.¹⁰⁵
- 9.3.48 One of the major issues that arises when installing RFL sheeting in roof-spaces is the location of electrical cables and the extent to which they are protected. Mr Doreian urged on the Commission that long established Wiring Rules required electrical cables to be better protected from disturbance than common practice reveals to be the case.¹⁰⁶ He produced to the Commission several photographs which showed examples of electrical cables in ceiling spaces which could only be described as chaotic.¹⁰⁷
- 9.3.49 His evidence was that the installation of RFL sheeting would not be dangerous were it not for the regular and serious departure from the Wiring Rules which, as Mr Richards explained, require, at the very least since 1969 and probably longer, cables to either pass through a ceiling joist or if they pass over them, to have protections either side to prevent, for example being disturbed by kicking or inadvertent contact with feet.¹⁰⁸

¹⁰³ AGS.002.027.2224, 1.

¹⁰⁴ Transcript (24 March 2014) 559 (J Fricker).

¹⁰⁵ AGS.002.028.0078, 1-3.

¹⁰⁶ Transcript (15 April 2014) 3025-3027 (G Doreian).

¹⁰⁷ DOR.002.005.0001, 1-8.

¹⁰⁸ Transcript (19 May 2014) 5069 (M Richards).

- 9.3.50 It does appear that the Wiring Rules are, or in the past have not been, strictly adhered to and that this was a contributor to the electrical safety risks associated with RFL insulation. Mr Richards, for example, said that compliance with the Wiring Rules has not been actively policed for many years.¹⁰⁹ If electrical cables are placed through joists, they are far less likely to be pierced by a staple; if they are protected either side by pieces of timber, the cable is far more prominent, and although not physically protected, far less likely to be pierced by a staple. Mr Doreian had some personal experience in his father's building business many years ago laying timber across a ceiling joist and then clipping electrical cables to it as one way of protecting them.¹¹⁰
- 9.3.51 Mr Doreian's concerns are well-founded. His position, however, must be qualified by two important matters. First, the standard set in the Wiring Rules have not necessarily applied to all houses, whenever constructed. The precise time at which the requirement was introduced was unable to be identified in evidence. It was certainly introduced before 1967, and perhaps much earlier. The point remains, however, that there is the real possibility of the rule not having applied to homes built some time ago. Second, as Mr Doreian himself pointed out, there appears to have been regular non-compliance with the Wiring Rules. This is a fact that any program had to face and deal with. It was a 'risk' that needed to be addressed and managed. An inspection by an electrical contractor, as recommended by AS3999 was one way of doing this. Although it may have been illegal and undesirable for this practice to have been applied, it seems to have been widespread.
- 9.3.52 The Australian Government ought not to have assumed there was rigorous adherence to the Wiring Rules, when, as is apparent, this was not the true state of affairs. The rollout of RFL insulation therefore took place in an environment in which there was exposure to these risks, albeit that the Wiring Rules (since at least 1967) sought to avoid or mitigate this risk.

9.4 The decision to ban insulation from the HIP

9.4.1 October 2009: RFL insulation ought to been banned immediately after the first fatality

- 9.4.2 The matters I have set out above seem not to have come to the realisation of the relevant senior officials until well into the HIP's roll-out. Mr Garrett came to hold the view in October 2009, albeit not strongly enough at that stage to ban RFL sheeting outright, that its installation across joists was attended with considerable risks. There was a flurry of activity between 19 and 30 October 2009. Mr Richards, through his letter to Mr Garrett of 16 October, and associated meeting with Mr Garrett on 20 October, suggested that the Minister prohibit RFL sheeting under the HIP and pointed out the danger of metal staples being used to secure RFL sheeting.¹¹¹ Mr Garrett was briefed by DEWHA in preparation for the meeting with Mr Richards.¹¹² That briefing note (B09/2827) which was dated 19 October, records that DEWHA was having discussions with New Zealand in relation to that country's experience with the use of RFL insulation and whether it complied with Australian Standards (which also apply in New Zealand). On that briefing note, Mr Garrett (on 20 October) wrote the following handwritten comment:

My office will be in touch, I have significant concerns that foil insulation, when not properly installed, is not appropriate!

¹⁰⁹ Transcript (19 May 2014) 5071 (M Richards).

¹¹⁰ Transcript (15 April 2014) 3029 (G Doreian).

¹¹¹ AGS.002.017.0067, 3.

¹¹² AGS.002.015.1625, 1.

- 9.4.3 A briefing to Mr Garrett dated 21 October 2009 (which was signed by him on 24 October) responded to an expressed concern about the stapling of RFL insulation. It said this about the safety of RFL sheeting in comparison to other insulation products when referring to the need to provide a response to MEA:

The Department has consulted with a range of relevant organisations in relation to the issues raised by the Master Electricians. The view of the Australian Building Codes Board (ABCB), the Housing Industry Association (HIA) and the Master Builders Association (MBA) is that:

- *The risks associated with foil are proportionally no more significant than the risks associated with entering a roof space for other retrofit construction work, or with installing other insulation types, providing that all appropriate safety measures are taken by competent installers.*¹¹³

- 9.4.4 The problem with this remark is that it is uninformative because it (expressly) assumes away critical matters, namely that all appropriate safety measures are taken and that installers are competent. The real issue is whether, in the actual situations in which insulation was being installed (that is, with workers who were unskilled and often young, and who were untrained and not closely supervised, if supervised at all) RFL insulation posed an unacceptable risk.
- 9.4.5 That same briefing recommended that Mr Garrett ‘not ban foil insulation products from the Program’.¹¹⁴ It reiterated the earlier advice that ‘foil insulation is covered by the relevant Australian Standards.’¹¹⁵ The author of it was Mr Keeffe, and Ms Belka as ‘secondary contact’. The Minister did not approve the recommendation. Mr Garrett said in his oral evidence that he wanted to meet with relevant organisations to discuss the issues.¹¹⁶ That accords with his handwritten notes on the briefing document: ‘ongoing discussion with relevant organisations’.
- 9.4.6 When Mr Garrett declined to follow the recommendation in the briefing note referred to above, he asked for certain questions to be answered. That prompted briefing note B09/2892 dated 22 October.¹¹⁷ It restated that RFL insulation met the Australian Standards. Regrettably, that statement was simply false. It concluded with a recommendation that DEWHA be requested to convene a meeting of RFL manufacturers, installers, EE-Oz, CPSISC and Standards Australia to review product safety issues and to provide advice on suspending the use of metal staples. They further recommended that industry associations should be asked to produce a best practice guide for the installation of each of their insulation product types for distribution to installers.
- 9.4.7 The Minister did not approve these recommendations either and asked the Department to discuss the matter with him. It is unsatisfactory that DEWHA’s response to Mr Garrett raising very significant reservations about the use of RFL sheeting in the context of considering whether to ban it was to again suggest a meeting be convened. DEWHA already had at its disposal all the information needed to resolve that issue. That information compelled a strong recommendation that the installation of RFL sheeting ought not to be eligible for payment under the HIP.

¹¹³ AGS.002.013.1714, 1.

¹¹⁴ AGS.002.013.1714, 3.

¹¹⁵ AGS.002.013.1714, 1.

¹¹⁶ Transcript (13 May 2014) 4598-99 (P Garrett).

¹¹⁷ AGS.002.014.0404, 1-4.

- 9.4.8 On 20 October (the same day as the meeting with Mr Richards) Ms McCann emailed Gleb Speranski, of the New Zealand government, advising him of the recent death of Matthew Fuller and seeking advice regarding RFL insulation. Mr Speranski responded the same day saying New Zealand had banned RFL insulation on 1 July 2008 and said ‘it is a real shame another installer had to die’.¹¹⁸ He also pointed out that in New Zealand they had experienced real pushback from stakeholders in respect of the banning of RFL insulation, because other products were more expensive.
- 9.4.9 On 22 October in an email to Ms McCann (copied to Mr Kimber and Ms Belka) Mr Speranski refers to the fact that people had been electrocuted in New Zealand by RFL sheeting a few years after it had been installed.¹¹⁹
- 9.4.10 This was vital information that should have been provided to Mr Garrett immediately. The brief to Mr Garrett on 22 October (B09/2892) was a follow-up on the briefing provided on 21 October (B09/2891) in regards to banning the use of RFL insulation.¹²⁰ Yet this brief does not refer to the New Zealand deaths. Perhaps the brief preceded receipt of the 22 October email, but that new information (if such it was) should have been communicated to Mr Garrett immediately. It had been known to the department since 18 February.
- 9.4.11 Nor was such information conveyed to Mr Garrett when he was briefed on 26 October 2009 in preparation for a meeting with industry organisations on 27 October 2009.¹²¹ An issue for that meeting was the question of suspension of use of RFL insulation and/or staples. Mr Keeffe is the author of these briefs. Ms Belka at least was privy to the information and was ‘secondary contact’ for them. In none of the briefs did Mr Keeffe or Ms Belka advise Mr Garrett of information in which they must have known he had a vital interest—that RFL insulation was banned in New Zealand because people had died while using it and it had been a controversial matter in that country. This was a serious failing on the part of either or both Ms Belka and Mr Keeffe.
- 9.4.12 RFL sheeting was, in fact, not as safe as other insulation products because, among other things, it is conductive and is often secured using metal staples. Mr Gow (MBA) agreed with this. RFL insulation was, therefore, in a real-world situation, materially less safe than other insulation products.
- 9.4.13 It was about this time that Mr Keeffe told Mr Garrett that Queensland regulators were increasingly worried about RFL insulation generally.¹²² A briefing note to Mr Garrett (B09/2973) records that:
- The QLD regulators are supportive [of the measures to be contained in revised Guidelines], although their Minister (Attorney General Dick) initially wanted to ban foil.*¹²³
- 9.4.14 This is consistent with the evidence of Mr Leverton from the Queensland ESO, with which I have dealt separately in this report, in considering the position of the States and Territories in Chapter 11.

118 AGS.002.045.0825, 4

119 AGS.002.045.0827, 3.

120 AGS.002.014.0404, 1-4.

121 AGS.002.012.1162, 1-2; Transcript (6 May 2014) 3863-40 (K Belka).

122 Statement of Garrett at [148], STA.001.069.0001, 8 May 2014.

123 AGS.002.013.1712, 1-2. The brief appears to be incorrectly dated 22 October 2009, as it refers to the Minister having met with industry organisations, training bodies and regulatory agencies on 27 October. It is considered likely that the brief was signed on 27 October 2009. It was signed by Mr Garrett on 28 October 2009.

9.4.15 Steps leading to the ultimate ban

- 9.4.16 Mr Garrett was, as I have said, asked by his Department not to ban RFL insulation in late October 2009, notwithstanding that Matthew Fuller had died just a few days earlier as a result of using RFL sheeting and affixing it with metal staples.
- 9.4.17 Mr Garrett did not approve the Department's recommendation not to ban RFL insulation. Yet it was not for several months that RFL insulation was banned from the HIP. That occurred on 9 February 2010, just days before the HIP was brought to an end.
- 9.4.18 The ban itself (styled a 'suspension' at the time) was effected by an announcement by Mr Garrett and by an Installer Advice issued on 9 February 2010. Five days earlier, on 4 February 2010, Mitchell Sweeney died of electrocution while installing RFL sheeting secured with metal staples (despite metal staples having by that time been banned).
- 9.4.19 The significance of these facts for present purposes is why it took three and a half months after the death of Mr Fuller for Mr Garrett to take action—action which, as I have found, ought to have been taken from the outset of the HIP and, at the very latest, immediately following Mr Fuller's death.
- 9.4.20 From what I set out below it will become apparent that I find that the death of Mitchell Sweeney was avoidable, in the sense that a decision to ban RFL insulation ought to have been taken well before 4 February 2010 and, if it had been efficacious, the use of RFL products would have ceased for installations under the HIP. I qualify that finding, however, by the observation that, just as the use of metal staples seems to have continued notwithstanding their banning, so too, it is possible, that RFL insulation would have continued to have been installed notwithstanding the ban. However, if installers were not paid for installing foil, there was little incentive for them to continue to do so.
- 9.4.21 I set out below the steps which occurred between late October 2009 and 9 February 2010 that led to the banning of RFL insulation. They show, as I find below, that the ultimate decision to ban RFL products was not only late, but was infected by administrative incompetence: a failure of diligence of the public service to grasp the material issues; and by an absence of any applied thought—until it was too late—about a matter which ought to have been obvious to all involved in the Program, including Mr Garrett.
- 9.4.22 From late October, MEA was consistent in its view that metal fasteners and RFL insulation posed an unacceptable risk of electrocution.¹²⁴ It made those views clear to DEWHA which in turn were communicated, along with other contrary views, to Mr Garrett.¹²⁵
- 9.4.23 On 1 November 2009, Mr Garrett issued a media release advising of the ban of metal fasteners of RFL insulation.
- 9.4.24 There is scant evidence of any activity within the Australian Government following the decisions made by Mr Garrett in late October 2009 concerning the risks involved in the use of RFL insulation and whether it ought to be banned from the HIP. It seems that it was thought that having banned metal fasteners was sufficient. That of course was not the case because even a plastic staple still has the capacity to result in RFL sheeting becoming live. It was only after further deaths occurred (Rueben Barnes and Marcus Wilson in November 2009 and Mitchell Sweeney in early February 2010) that the issue of banning RFL insulation was revisited.
- 9.4.25 Mr Garrett addressed this issue in the statement he gave to the Commission. He said that, on Monday 8 February 2010, he had a meeting with his staff to discuss banning the use of RFL insulation under the HIP. He said that inspections of Queensland homes for electrical issues with RFL insulation was proceeding much slower than he had expected.

¹²⁴ Statement of Richards at [19], STA.001.033.0001, 28 March 2014; AGS.002.025.0268, 1-2.

¹²⁵ AGS.002.013.1714, 1-3.

He had Mr Levey make a number of enquiries, including with the Queensland ESO. He said that, ultimately, he decided that the use of RFL insulation had to be suspended pending these further investigations.¹²⁶

- 9.4.26 The next day, on 9 February 2010, Mr Garrett announced the suspension of the use of RFL insulation under the HIP. That press release stated:

Today we have taken action to suspend foil insulation from use under the home insulation program. Safety of householders and installers is an absolute priority for the program. Metallic foil is conductive and when installed incorrectly, without undertaking the mandatory risk assessments and in breach of clear program requirements, this product can be dangerous.

Unfortunately, despite strong measures taken to date including banning the use of metal fasteners for foil insulation in November last year, we are still seeing evidence of foil installations which do not meet clear program requirements. That is why we have taken steps today to suspend the use of foil under this program.

*I have instructed my department to continue urgent consultations with technical experts and electrical safety authorities, as well as the foil insulation industry, and based on the outcome of these discussions I will consider what additional steps will be required if foil insulation is to remain eligible for a rebate under the home insulation program.*¹²⁷

- 9.4.27 Installer Advice 23 was released that same day.¹²⁸ It provided recipients with a text of the media release and communicated the decision that insulations involving RFL sheeting would no longer be eligible for assistance under the HIP from 10 February 2010. On 10 February Mr Garrett announced that all RFL insulation installed under the HIP would undergo an electrical safety inspection. The terms of this press release were as follows:

Every home that has foil insulation installed under the Government's Home Insulation Program will undergo an electrical safety inspection, Environment Minister Garrett announced today.

Mr Garrett said that the move to a full program of electrical safety inspections followed the findings of inspections to date which had identified examples of 'live' insulation in roofs.

'I have made this decision today after reviewing the results of insulation electrical safety inspections conducted so far as I believe this is the right move to provide certainty for households about the quality and safety of their insulation job' Mr Garrett said.

*'Householder safety is the absolute priority under this program. The full program of electrical safety inspections for foil insulation reinforces that commitment'.*¹²⁹

- 9.4.28 When asked about these matters in oral evidence, Mr Garrett pointed out that there had not been, in the lead-up to these decisions, a unanimity of views about whether RFL insulation ought to be banned and that he followed what he thought were the appropriate

¹²⁶ Statement of Garrett at [204], STA.001.069.0001, 8 May 2014.

¹²⁷ AGS.002.011.1340, 1.

¹²⁸ AGS.002.013.1086, 1-2.

¹²⁹ AGS.002.008.1271, 1-2.

processes of consultation with the industry, keeping in mind that this is a serious issue, and the Department was recommending something to the opposite of what he was later accepting.¹³⁰ He said this, for example, when asked why it was not until a couple of days before the Program stopped that RFL insulation was banned:

*... you've got the benefit of the wisdom of hindsight to know when the Program was stopped. It wasn't necessarily the case that it would have been then, although it was my recommendation that it should be at that time. I went through what I thought were the appropriate processes of consultation with the industry, mindful that this was a serious issue and that my Department was recommending something I wasn't accepting and it was seeking to be clear about it and get appropriate levels of information so it could make a determinative decision, which I ultimately did.*¹³¹

9.4.29 None of these are cogent or compelling explanations for failing to act for three and a half months, in the circumstances I have identified. From the outset of the Program, RFL sheeting posed a higher and different safety risk from bulk insulation products and reflective batts. Even if the nature and extent of these risks were not known to the Australian Government when the Program commenced, it certainly became known in the course of it. No clearer warning could be given than the death of Matthew Fuller on 14 October 2009. The Minister was obviously of the view that RFL insulation was of such a risk and that it potentially ought to be banned in considering the brief put before him on 24 October 2009. Although other measures were taken following Mr Fuller's death, including the banning of metal fasteners and the institution of some inspection of RFL insulation, they were ultimately ineffectual, and ought to have been more diligently monitored well before early February 2010. In short, there is no excuse for not having banned RFL insulation immediately after Matthew Fuller's death, and it was a manifest miscarriage to do nothing about the issue until shortly after the death of Mitchell Sweeney in February 2010.

9.4.30 After the hearings closed, the Commission received an email from Mr Doreian pointing out that RFL sheeting is used in retrofit ceiling insulation in USA.¹³² He provided a handbook of the Reflective Insulation Manufacturers Association International (RIMA-I). That handbook contains the cryptic words:

*Horizontal installation (directly above and/or ceiling insulation)- RIMA-I acknowledges the placement of a radiant barrier on top of mass insulation in attic spaces subject to the following conditions [...] installation should be accomplished by laying the radiant barrier materials on top of the attic insulation without stapling or taping.*¹³³

9.4.31 The use of the word "acknowledges" in a handbook tends to indicate to me some controversy on the matter. I note also that this publication is authored by an industry group with obvious vested interests. I note also that it does not refer to any actual fixing of the foil to the joists. I mention this because Mr Doreian took such a serious and active interest in the whole of the work of the Commission.

130 Transcript (13 May 2014) 4600 (P Garrett).

131 Transcript (13 May 2014) 4599-4600 (P Garrett).

132 DOR.002.013.0762, 1-2.

133 Reflective Insulation Manufacturers Association International, *Understanding and Using Reflective Insulation, Radiant Barriers and Radiant Control Coatings* (3rd ed, 2014), 14.

9.5 Findings

- 9.5.1 The installation of RFL sheeting ought never to have been permitted under the HIP.
- 9.5.2 Even so, the death of Matthew Fuller on 14 October 2009 was the point at which the use of RFL sheeting ought to have been stopped.
- 9.5.3 The delay of some three and a half months from the time of the first fatality to the time at which RFL sheeting was, belatedly, banned was unacceptably long.
- 9.5.4 The principal reasons why the Australian Government failed to act as it ought in banning RFL sheeting from the HIP was, at the outset, a desire not to be seen to favour one section of the insulation industry over another, the deficiencies in the technical expertise of the Australian Public Service employees, and briefings to Mr Garrett (principally by Mr Keeffe and Ms Belka) that contained serious omissions and failed candidly to state the real risks of RFL sheeting and which were within DEWHA's knowledge.
- 9.5.5 The Australian Government received many warnings about risks attendant on the Program, including specific warnings about the risk of injury to installers. They are set out in the body of this Chapter. It did not act appropriately in responding to those risks. The failure to respond can, to some extent, although not completely, be explained by the frenetic pace at which the Program was being designed and implemented.

10. AUDIT AND INSPECTIONS UNDER THE HIP

10.1 Introduction

10.1.1 When the delivery model for the Home Insulation Program (HIP) was changed to one where there was a direct delivery model, the requirement for a robust and complete audit and compliance program was made all the more important. Rather than an intermediary undertaking these functions, they would be the responsibility of the Australian Government.

10.1.2 The 'Fact Sheet' released by the Australian Government (prior to the 1 July commencement date) stated, under the heading "Monitoring":

To ensure the energy efficient homes package is delivering the right results a rolling audit program is being established.

A portion of all households will be inspected to ensure the right insulation and solar hot water systems are in place and have been installed correctly.¹

10.1.3 Certainly, as at 1 July 2009 such a program was not in place.

10.1.4 The Australian Government knew of the importance of a robust audit and compliance program for the HIP. For example, on 6 February 2009 (just three days after the Program was announced) a forum was held on 6 February 2009 and was attended by Minister Garrett. The briefing for Minister Garrett² contained talking points, which made reference to audits. A document produced as a result of this meeting contained the following:

Auditing Component—Industry" suggested that "we remove the website reference to 2% of homes will be audited. Industry would like the number of audits to be higher but have suggested that even if this is not achievable they would prefer that the low level of audits that will be undertaken was not quite so transparent—so as to discourage any unscrupulous installers...³

10.1.5 Mr Keefe's note of a 19 February meeting with Non-Governmental Organisations attended by Minister Garrett shows that the Minister was aware of a potential for installers "gaming" the system.⁴ That made an effective audit and compliance program essential.

10.1.6 In the KPMG report of 8 April when dealing with the type of delivery model that was adopted, it was said that for such a model 'Audit and quality control needs will be high.'⁵

10.1.7 The response of the Australian Capital Territory Office of Regulatory Services (ORS), to the Australian National Audit Office investigation is instructive. After referring to the fact that ORS had signed a Memorandum of Understanding (MOU) so as to facilitate the provision of complaint information to the Department of the Environment, Water, Heritage and the Arts (DEWHA), it stated:

1 AGS.002.008.3072, 3.

2 AGS.002.012.1275, 1.

3 AGS.002.025.0208, 1.

4 KEE.002.001.0556, 1.

5 AGS.002.008.0584, 10.

It has become apparent that the scale of the home insulation program stimulated enormous nationwide growth in the home insulation industry and it seems that this has prompted entry into the industry by a large number of people who had little, if any, previous experience. ORS is of the view that this was compounded by the fact that this particular industry is largely unregulated therefore there were few checks and balances in relation to the skill and ability of those carrying out the insulation installation. Arguably this has contributed to issues of safety (of workers and householders), installation quality, and the level of compliance with legislation covering consumer rights. Because it seems a number of new businesses were started up in order to take advantage of the demand for home insulation, once the scheme was suspended many of those new businesses then wound down making consumer recourse for unsatisfactory installations virtually impossible.⁶

- 10.1.8 When Phase 2 of the HIP commenced on 1 July 2009, there existed only the most basic regime of audit and compliance. The arrangements that operated between that time and October or November of that year are best described as interim and rudimentary.⁷ Installations were taking place at a very rapid rate in this period.⁸ Despite this, the audit and inspection regime was one that seemed to focus upon possible fraud, and not safety and the quality of those installations. Consistent with this, the audit regime involved, primarily, so-called desktop audits.⁹ Relatively few actual roof inspections took place. It would appear that, on any view, no more than 500 roof inspections took place between 1 July 2009 and early October 2009.¹⁰ This is despite many hundreds of thousands of installations having taken place in the same period under the HIP.
- 10.1.9 It was only from early October 2009 that efforts were made to institute a more formal and adequate regime, with the retention of PricewaterhouseCoopers (PwC).¹¹ Even then, considerable focus remained upon fraud.¹²
- 10.1.10 That is, of course, consistent with the view expressed many times, and already referred to in this Report, that whilst fraud was a risk to the Australian Government, occupational health and safety was not. That view was strongly held by Mr Hoitink. At the industry meeting held on 8 May 2009, already referred to in Chapter 8, audit and compliance was discussed. The notes of the meeting state, under the heading “Audit and Compliance”:

Compliance framework is in development which will include auditing] and quality control with at least 2% audit checks.....DEWHA is not a regulatory authority, it is the responsibility of the States and Territories. DEWHA is working with the Offices of Fair Trading who already have an existing framework for dealing with consumer complaints.¹³

6 ACT.002.001.0072, 1.

7 AGS.002.012.1381 which describes Protiviti’s contract to have been on an interim basis. Details of the proposed work program are at AGS.002.016.1424, 3.

8 In August 2009, DEWHA advised Minister Garrett that 80 000 houses were insulated in July 2009 under the HIP. AGS.002.016.1435, 1.

9 AGS.002.016.1424, 3.

10 The actual number of inspections undertaken during this period is not entirely clear. Kevin Herbert understood only 172 roof inspections had been completed by October 2009—see Statement of Herbert at [84], STA.001.016.0001, 28 March 2014. Other documents suggest 467 roof inspections had been undertaken by 12 October 2009: AGS.002.013.1464, 14; Transcript (14 May 2014) 4627(P Garrett).

11 AGS.002.052.0063, 1-36.

12 AGS.002.052.0063, 26-27.

13 AGS.002.029.0927, 1.

10.1.11 A debate had earlier occurred as to whether police checks, or criminal history reports should be obtained. Mr Keeffe thought they should. The Office of the Coordinator-General (OCG) disagreed. It was another potential delay.

10.1.12 Mr Hoitink wrote to Mr Keeffe and others on 20 April 2009, stating:

Leaving out the requirement for any police or character checks is consistent with the notion that the householder establishes their relationship with an installer and they need to be satisfied the installer is appropriate.

If you can accept, from a policy viewpoint, not requiring any police safe character checks or undertakings as a condition of inclusion on the register, that makes it easier from a legal point of view for the Commonwealth to maintain its distance from the householder/installer relationship.¹⁴

10.1.13 The inadequacy of the audit and compliance activities undertaken before October 2009 was a serious deficiency in the HIP. I have formed that view for several reasons. First, any large program involving the expenditure of huge sums of taxpayers' funds ought to be accompanied by rigorous checks of such a kind to ensure the minimisation of fraud, but also ensure that such quality requirements as the program might stipulate are being met and that this is occurring in a manner which is reasonably safe. The risk of 'gaming' or unscrupulous conduct was well known to the Government. Second, there existed such inherent risks in entering roof spaces and installing insulation that it was incumbent on the Australian Government to check to see whether, in actual fact, the practices that were being applied were ones that were reasonably safe. Thirdly, the HIP Guidelines made it necessary to know whether installations were meeting the specified R value.¹⁵ That could not be known with any certainty until there had been an inspection of installations by persons with sufficient expertise to ascertain that.

10.2 Ernst and Young—Framework documents

10.2.1 The Australian Government engaged Ernst and Young to prepare a Fraud Control Plan, and an Audit Methodology.¹⁶ Such documents were completed in June 2009.¹⁷ By this time, Ms Kaminski had prepared guidelines for the audit and compliance activity. A 'complaints handling unit' was established, as was a complaints handling policy and guidelines. This largely consisted of putting in place a telephone number that could be contacted, and a script of responses that could be given. DEWHA considered, however, that they would 'not [be] resolving individual consumer problems', but instead engaging in 'trend analysis'.¹⁸

10.2.2 The Fraud Control Plan gave attention to such matters as the possibilities of falsification of documents by installers, the auditors being paid bribes to produce false reports and claims being made for work in circumstances in which no work had been undertaken.¹⁹ None of the matters with which that plan was concerned relate to workplace safety and quality, in so far as they did not constitute fraud. As I have earlier pointed out, the focus of this Commission is, at least so far as audit and compliance is concerned, safety, and in particular workplace safety and as to the quality of the installations that took place.

14 AGS.002.008.3162, 1.

15 AGS.002.016.0726, 3.

16 AGS.002.016.0871, 1.

17 Fraud Control Plan: AGS.002.013.2362, 1-22 (Vol 1) AGS.002.013.2384, 1-22 (Vol 2); AGS.002.013.2406, 1-20 (Vol 3); Audit Methodology: AGS.002.046.5712, 1-35.

18 AGS.002.032.1350, 3.

19 AGS.002.013.2362, 14.

- 10.2.3 The Audit Methodology stated this as being its approach:
- 10.2.3.1 A fully integrated approach to audit has been established that will; mitigate the programs' suite of risks including; [occupational health and safety (OH&S)], fraud, quality, financial and other compliance risks, provide the structure for desktop audit procedures and technical site inspections and provide integrated reports to the Department to enable fully informed decision making.²⁰
- 10.2.4 Although the Audit Methodology recognised the need for there to be consideration given to safety, very little of it was directed to that issue. One category of the methodology was 'Installation quality and OH&S compliance'.²¹ Only one component of it called for a technical site inspection. The purpose was said to be to 'agree' [ascertain] that insulation materials meet the required standard (Australian Standard 4859.1/2002), that the R value of insulation installed complies with the HIP Guidelines specific for that location and direction of heat flow, and that there was nothing to suggest that the insulation had not been installed in accordance with Australian Standard 3999-1992 or the parts of the Building Code of Australia (BCA) to which the Guidelines made reference.²²
- 10.2.5 There is no mention of how many such inspections there were to be. It will be seen that very few were conducted in the period between July 2009 and October 2009.
- 10.2.6 At paragraph 4.2.1 of Volume 3 of the Report, it is stated that a working group had been established to 'drive' the audit and compliance program, provide day-to-day management for program delivery and follow direction provided by the Project Control Group (PCG).²³
- 10.2.7 The Ernst and Young Audit Methodology may never have been signed off.²⁴ In any event, it was only ever a preliminary assessment. It seemed to have identified the kinds of issues to which an audit regime ought to have been attentive. The real effectiveness, however, of such a regime, turned upon the regularity of the inspections and the attentiveness of the inspectors to questions of safety and quality. As matters unfolded, there were few inspections and a later and more thorough audit process revealed there to be very extensive problems with very many of the installations conducted under the HIP.²⁵ This alone shows the need for the audit and inspection regime to have been more diligently undertaken by the DEWHA.

10.3 Interim audit and compliance—Protiviti

- 10.3.1 Protiviti was commissioned by the Australian Government on an interim basis to undertake the auditing function. That company had been the internal auditors for the HIP.²⁶ It was retained to provide a temporary compliance function from 1 July 2009 until DEWHA could put permanent arrangements in place.²⁷ Protiviti was to principally investigate fraud derived from the Medicare claims coming in.²⁸ Despite the audit methodology being one concerned with more than just fraud, the 'number one' concern, from the outset, Ms Kent agreed, was fraud.²⁹

20 AGS.002.046.5712, 5.

21 AGS.002.046.5712, 17.

22 AGS.002.046.5712, 22.

23 AGS.002.013.2406, 7.

24 COA.002.001.0680, 2. This document notes that, as at 7 November 2009, the Audit Methodology was yet to be 'officially signed off and accepted by the Department'.

25 AGS.002.013.1076, 3; AGS.002.018.2059, 3.

26 Statement of Kent at [63], STA.001.012.0001, 21 March 2014.

27 Statement of Kent at [63], STA.001.012.0001, 21 March 2014.

28 Transcript (8 April 2014) 2379 (A Kent).

29 Transcript (8 April 2014) 2379-2380 (A Kent).

- 10.3.2 Some documents suggest that only ten field audits were ever conducted before the HIP was closed down.³⁰ Those audits were said to involve an auditor attending a workplace and auditing insulation type and quality and work practices and conducting a quality assurance check.³¹
- 10.3.3 Three companies were engaged in August 2009 to conduct roof inspections.³² One company (Reddo Building Surveys) conducted 52 inspections.³³ The Australian Government does not appear to have information on the number of inspections that the other two companies completed, or, if it did, documents showing this information were not provided to the Commission.³⁴ These inspections seem to have involved an inspector examining the quality of the installation. These companies ceased their work once PwC was engaged.³⁵
- 10.3.4 Protiviti's work did lead, however, to a number of installers being deregistered.³⁶ However, even there, the process that was imposed was overly cumbersome,³⁷ and if there was a need to quickly deal with an installer for breaching workplace health and safety obligations, that was not possible. A graphic example of this occurred after Mr Fuller's death. His employer remained on the register for an inordinate period of time, and only seems to have been removed because of the persistence of Mr Kevin Fuller.

10.4 DEWHA audit activities

- 10.4.1 The HIP project team talked about the risk that people would not comply with their OH&S obligations.³⁸ As I have said in Chapter 11, it was decided by the HIP project team and risk owners (particularly Mr Hoitink) that regulation of those issues was a State and Territory responsibility, and a decision was therefore taken not to include it in the risks they were managing so it did not appear in the compliance regime either.³⁹ This approach was adopted by DEWHA's project team, and according to Ms Kent, by the PCG as well.⁴⁰
- 10.4.2 On 2 June 2009 Mr Keeffe wrote to each State Commissioner for Consumer Affairs seeking their cooperation in developing a compliance framework asking that the States provide information to the Australian Government⁴¹. Subsequently, an MOU was entered into with each State and Territory.⁴²
- 10.4.3 It is inexplicable that a similar MOU was not considered between the Australian Government and the Departments of each State and Territory that administered that jurisdiction's workplace health and safety laws.

30 AGS.002.018.2059, 1; AGS.002.046.5641, 3.

31 AGS.002.018.2059, 1; AGS.002.046.5641, 3.

32 AGS.002.046.5641, 3.

33 AGS.002.046.5641, 3.

34 AGS.002.046.5641, 3.

35 AGS.002.046.5641, 3.

36 Statement of Kruk at [56], STA.001.010.0001, 26 March 2014.

37 PRO.002.001.0684, 1.

38 Transcript (8 April 2014) 2380 (A Kent).

39 Transcript (8 April 2014) 2380 (A Kent).

40 Transcript (8 April 2014) 2382 (A Kent).

41 See, for example VIC.002.001.0902, 1-5. The same letter was written to each State and Territory.

42 See, for example ACT.002.001.1535, 1-14 (Australian Capital Territory); AGS.002.018.1145, 1-14 (Tasmania); AGS.002.018.1159, 1-13 (Western Australia); VIC.002.001.0871, 1-31 (Victoria); QLD.002.001.1318, 1-20 (Queensland); NTA.002.001.0162 (Northern Territory).

- 10.4.4 The risk register prepared for the 18 June 2009 PCG meeting considered DEWHA's capacity to deliver. This risk, designated as extreme pre-mitigation and high post-mitigation, concerned internal capacity to control and deliver the program on time being insufficient.⁴³ This risk was upgraded to reflect the 'urgent need' to focus more tightly on developing agreed business processes (among other things), particularly around fraud and compliance.⁴⁴
- 10.4.5 The Program was the subject of adverse media comment before 1 July. The Australian newspaper sent a list of specific questions to DEWHA. Specific responses to the questions posed by the newspaper are set out in an email from Tracy Bell to Aaron Hughes dated 19 June 2009 Under the heading "Compliance and Audit Strategy" it is stated:
- *The full compliance and audit strategy will commence on 1 July 2009 to coincide with the commencement of the main phase of the programs.*
 - ...
 - *The Department's full compliance and audit strategy will commence on 1 July when the full HIP/LEAPR program rolls out. The compliance and audit strategy will include targeted and random audit/compliance activities including:*
 - i. *inspections of installation work done,*
 - ii. *audit of installer's records relating to the program,*
 - iii. *verification of claims information by households and installers,*
 - iv. *verification of installer compliance with the terms and conditions of registration, and*
 - v. *verification of householder and installer compliance with the program guidelines.*⁴⁵.
- 10.4.6 The first bullet point was simply incorrect. A full compliance and audit strategy was nowhere near ready on 1 July. Whilst the remainder of the second bullet point may be technically correct, in substance, as I have said very few inspections were in fact carried out. As Ms Kaminski said in an email to Mr Kimber and others on 24 June 2009 the ongoing audit was unlikely to commence until September, but from 1 July an interim audit would target site inspections in response to audit activity.⁴⁶
- 10.4.7 DEWHA seconded people from the Australian Taxation Office in early August 2009 to work with DEWHA's compliance team.⁴⁷ Those persons' focus must have been, because of their work background, on fraud and financial matters.⁴⁸
- 10.4.8 DEWHA prepared a Compliance and Audit Framework.⁴⁹ It was based upon the work undertaken by Ernst and Young.⁵⁰ That Framework was endorsed by the PCG on 31 July 2009.⁵¹ Site inspections were foreshadowed, but only in connection with the risk

43 AGS.002.083.2334, 26; AGS.002.083.2334, 28-29.

44 AGS.002.083.2333, 1.

45 AGS.002.008.1019, 3.

46 AGS.002.010.1104, 1.

47 Statement of Kruk at [54], STA.001.010.0001, 26 March 2014; Statement of Kent at [68], STA.001.012.0001, 21 March 2014; Statement of Hughes at [59], STA.001.041.0022, 1 May 2014.

48 AGS.002.017.2351, 3.

49 AGS.002.008.1046, 1-41.

50 AGS.002.035.0599, 3.

51 AGS.002.035.0599, 3.

of fraud.⁵² The Framework seems to have overlooked entirely the risks associated with safety and the quality of installations.⁵³

10.5 PwC

- 10.5.1 From late September 2009, audit and inspections were undertaken under arrangements between the Australian Government and PwC.⁵⁴ PwC oversaw them as head contractor, but acted more as a quality assurance or project manager role than as technical advisor.⁵⁵
- 10.5.2 DEWHA issued a Request for Tender dated 4 August 2009 seeking expressions of interest from external service providers who might be capable of carrying out desktop audits and technical site inspections.⁵⁶ PwC submitted a tender on 1 September 2009.⁵⁷ PwC was selected as the successful tenderer and entered into a contract with the Australian Government on 29 September 2009 for the provision of those services.⁵⁸
- 10.5.3 That contract (by Schedule 1), required PwC to perform and deliver services including data analytics, desktop audits, assurance on the eligibility of householders under the programs.⁵⁹ It specifically called for assurance (through desktop audits) that the HIP Guidelines were being met by installers and householders and that the terms and conditions of registration were being met by installers and that no fraudulent activity was taking place.⁶⁰
- 10.5.4 A random sampling technique was required.⁶¹ Also required to be undertaken were technical site inspections of 'a sufficient number and cross-section of the dwellings insulated under the Programs'.⁶² PwC was to verify aspects of a householder's eligibility as part of the technical inspections.⁶³ That assessment was to include, among other things, whether the insulation had been installed in accordance with Australian Standards.⁶⁴ Also to be undertaken were forensic audit and investigations.⁶⁵
- 10.5.5 Ms Cassandra Michie, who was one of the partners at PwC with the carriage of this work, explained that the focus of it was on possible fraudulent activity and financial considerations.⁶⁶ Ms Michie explained that the services to be provided were as follows:
 - 10.5.5.1 *data analytics*: PwC reviewed claims data provided by DEWHA that had been submitted by insulation installers to identify particular matters (as instructed by DEWHA) that may require further investigation, including claims which possessed unusual characteristics and those for which complaints had been received;

52 AGS.002.008.1046, 21.

53 AGS.002.008.1046, 5.

54 AGS.002.052.0063, 1-36.

55 Statement of Michie at [12(c)], STA.001.037.0001, 13 March 2014.

56 AGS.002.021.125, 1; HUG.002.004.4204, 4.

57 STA.001.037.0066, 1-92.

58 AGS.002.052.0063, 1-36.

59 AGS.002.052.0063, 26-34.

60 AGS.002.052.0063, 26.

61 AGS.002.052.0063, 27.

62 AGS.002.052.0063, 27.

63 AGS.002.052.0063, 27.

64 AGS.002.052.0063, 28.

65 AGS.002.052.0063, 28.

66 Statement of Michie at [4], STA.001.037.0001, 13 March 2014.

- 10.5.5.2 *desktop audits*: PwC reviewed a sample of documentation and conducted audits relating to particular insulation installers to ascertain compliance with the HIP Guidelines. This included verifying whether particular installers had been eligible for registration with the program, testing a sample of claims submitted by installers, reviewing documentation submitted by installers, contacting householders to confirm the installer had carried out the work as claimed and conducting site visits for a sample of installer premises to verify that work had in fact been carried out as claimed;
- 10.5.5.3 *technical site inspections*: site inspections of about 50,000 homes took place to audit the standard of work undertaken by particular installers. PwC engaged United Group Limited (UGL) as subcontractor to carry out the site inspections. UGL inspected and reported on whether insulation was installed in accordance with the work order, whether it resulted in the living area being insulated and whether the insulation was installed in accordance with Australian Standards. PwC received, collated and analysed the results of inspections and reported results to DEWHA; and
- 10.5.5.4 *forensic audit/investigations*: PwC carried out investigations of such installers as DEWHA directed, being ones suspected of making fraudulent claims under HIP for the purpose of gathering evidence of any potential fraud.⁶⁷
- 10.5.6 PwC reported to DEWHA through weekly status reports, some ad hoc reports and papers where directed to do so, and, ultimately, through a report 'Closure of HIP and Interim HISP Inspection Programs'.⁶⁸ It would appear, however, that no overall or ultimate report was produced by PwC resulting from the audits to be conducted under the contract referred to above.
- 10.5.7 Ms Michie said that, in addition to the tasks required by the contract itself, PwC assisted DEWHA with a number of additional services between September 2009 and March 2010 which included:
 - 10.5.7.1 facilitation of a risk workshop to consider the impact of potential policy amendments in relation to the Program (October 2009);
 - 10.5.7.2 electrical safety inspections for 10% of foil-insulated homes in Queensland under the program (November 2009);
 - 10.5.7.3 provision of resources to assist with pre-payment compliance checks for top-up payments to installers relating to the 1 November 2009 changes to the HIP Guidelines (November 2009—January 2010);
 - 10.5.7.4 review of the high level compliance framework for the HIP and assistance with the re-design of a number of elements within the framework (January 2010); and
 - 10.5.7.5 assistance with the design and development of a revised Compliance Audit Plan for HIP (March 2010).⁶⁹
- 10.5.8 I say more about the services PwC provided after the HIP was brought to an end in mid-February 2010 in a later Chapter in this Report. PwC continued to conduct technical site inspections under the original contract to which reference has been made above.⁷⁰

67 Statement of Michie at [12], STA.001.037.0001, 13 March 2014.

68 Statement of Michie at [13], STA.001.037.0001, 13 March 2014.

69 Statement of Michie at [14], STA.001.037.0001, 13 March 2014.

70 Statement of Michie at [17], STA.001.037.0001, 13 March 2014.

- 10.5.9 It would seem to me that, in the course of carrying out what were initially and primarily financial or fraud-related investigations, it obviously emerged that there were some safety aspects which required attention.⁷¹ This is why, no doubt, the Australian Government later instituted two programs, which were directed to ascertaining the adequacy and safety of installations that had occurred under the HIP. I consider these two programs in Chapter 13.
- 10.5.10 It seems likely also that the first two fatalities were contributors to the improvements in the audit and compliance activities for the HIP. On 20 November 2009, PwC wrote to Ms Kent referring to those fatalities and to a statement by Minister Garrett that DEWHA would perform electrical safety inspection of 10% of foil insulated homes.⁷² This was more than one month after the first fatality (and only a day after the second).
- 10.5.11 In any event, the activities conducted by PwC do appear to have been competently executed and overseen. It is a pity that audit and inspection services of this more formal and diligent kind were not acquired by the Australian Government before so late in the Program, and at so close a time to the first two fatalities. Had the Australian Government accompanied the commencement of Phase 2 of the HIP with an adequate audit and compliance regime, it might have learned more fully at a far earlier stage than it did, of the extent of poor quality installations that were taking place, or poor practices in workplace health and safety and of the likely electrical risks attending the use of sheet foil as insulation.
- 10.5.12 Progress was, even under the PwC arrangements, very slow. As at 3 December 2009, just 4 field audits had been conducted.⁷³

10.6 Cause of the audit regime's inadequacy

- 10.6.1 The Australian Government was, by the time Phase 2 of the HIP commenced, only part way to having instituted an adequate audit and compliance regime. Pressure was placed upon DEWHA to commence the HIP without having in place an adequate regime of this kind.⁷⁴ That was because it would not have been possible to have rolled out Phase 2 with a more sophisticated audit and compliance regime by 1 July 2009.⁷⁵
- 10.6.2 The decision to commence Phase 2 of the HIP without there being an adequate audit and compliance regime was another example of a compromise that was made to the safety of it, for reasons of speed in its delivery.
- 10.6.3 This is made clear by the evidence of Ms Kruk, which was as follows:

*I strongly supported the view taken by senior Departmental staff that a compliance strategy needed to be put in place to mitigate the risks identified in the risk register prior to Phase 2 of the HIP being rolled out on 1 July 2009. The tight timeframes for commencing Phase 2 made this process very difficult, particularly as DEWHA did not have extensive project management experience. ... This meant that DEWHA had to have a compliance regime in place for Phase 1 of the HIP, whilst at the same time develop a compliance regime for Phase 2.*⁷⁶

71 AGS.002.013.1076, 3; AGS.002.018.2059, 3.

72 AGS.002.013.1217, 1.

73 AGS.002.012.1381, 4. These involved the audit of, among other things, insulation type and quality, work practices and quality assurance processes.

74 AGS.002.008.0681, 1.

75 AGS.002.008.0681, 1.

76 Statement of Kruk at [53], STA.001.010.0001, 26 March 2014.

- 10.6.4 In reality, the tight timeframes were unachievable. Mr Forbes in his statement explained how the timeframe meant that compromises were inevitable:

There was a need for the HIP to be rolled out with haste to meet the 1 July 2009 roll out date. The meeting of that date was a challenge. At the time the HIP was announced, I was seriously concerned about DEWHA's ability to deliver the HIP in the set time. I have never experienced a time period between Cabinet decision and public announcement and its implementation timetable as short as in the case of the HIP. The HIP implementation timetable was horrendous given the scope of what DEWHA faced. ... Phase 1 of the program commenced as an interim arrangement on announcement by the Prime Minister on 3 February 2009 where householders paid installers and claimed reimbursement from DEWHA. Phase 1 was to cease on 30 June 2009 as it was seen as administratively inefficient but designed to avoid any short term suppression in demand in the insulation industry prior to the launch of the proper program. Phase 1 was managed by REED. Phase 2 was to be developed for implementation from 1 July 2009, and was to be delivered by the Commonwealth, not the [S]tates and [T]erritories. The 5 month timetable required DEWHA to have in place, for example, all the administrative processes including checks and balances through audit and compliance mechanisms; IT system development to underpin administrative processes and payment systems that would protect public funds; procurement and associated timelines for outsourcing where relevant; the recruitment of skilled staff; and the necessary consultations with industry, experts and the states and territories to develop a workable and robust business model with appropriate feedback mechanisms. REED staff worked exceptionally hard under extreme circumstances to meet the timeline and thereafter during the HIP implementation. As noted above in paragraph 36... some compromises were made that left risks remaining to achieve the timeline.⁷⁷

[emphasis added]

- 10.6.5 Audit and compliance is one example of such compromises made. Mr Forbes said, candidly:

When the HIP was announced on 3 February 2009, it had no audit and compliance regime.

Usually, an audit and compliance regime would be in place prior to the commencement of a program. However the HIP was being rolled out in such haste, that DEWHA did not have time to prepare and put in place the audit and compliance regime from 1 July 2009, despite seeking assistance from Ernst & Young, Protiviti (DEWHA internal auditors) on fraud related issues and seconding experienced compliance law enforcement staff from regulatory functions elsewhere within DEWHA.⁷⁸

- 10.6.6 Mr Forbes indicated that the compliance regime was not effective until October 2009, three months after the commencement of Phase 2. He further described the delays associated with implementing the HIP compliance regime in these terms:

I recall being frustrated that the audit and compliance regime was not in place when the HIP Phase 2 commenced on 1 July 2009 as there was no overall deterrent framework in place. Delays in putting the audit and compliance regime

⁷⁷ Statement of Forbes at [44], STA 001.018.0001, 28 March 2014.

⁷⁸ Statement of Forbes at [47]-[48], STA 001.018.0001, 28 March 2014.

in place occurred, as I recall, from time and resource constraints associated with procurement process requirements as this was to be a large contract, the ability of Medicare to develop the coding for its IT systems to provide appropriate data for compliance, DEWHA ability to define the data requirements and basic resource constraints to develop the tender document. As I recall interim solutions were found with the help of DEWHA internal auditors (Protiviti) in analysing data from both Medicare and DEWHA, small scale desk top audits, targeted roof inspections and contact with the Australian Federal Police in regard to potential fraud instances. I cannot recall when the contract was awarded to PricewaterhouseCoopers ... but it was around the end of August and took time from then to wind up. As I recall PWC was not really effective until the beginning of October 2009 with the scaling up of desk audits, on site audits of premises and roof installations.⁷⁹

[emphasis added]

- 10.6.7 Mr Hughes gave evidence about the objects and nature of the compliance regime and the steps taken as a result of the matters it revealed. The view he conveyed was of a healthy and well-directed regime.⁸⁰ However, much of his evidence seems to be about the regime from late November 2009 onwards.⁸¹ His evidence does not touch on means utilised by DEWHA to assess the quality of work undertaken, including the need for or availability of roof inspections.⁸² His evidence does not therefore change the opinions I have formed about the adequacy of the regime and its implementation before that time.
- 10.6.8 I find, therefore, that the audit and inspection regime for the HIP, from at the very least, 1 July 2009 until early October 2009, was seriously deficient in its treatment of the safety of installers and of the quality of installations. The applicable regimes gave inadequate attention to such matters, either through overlooking them entirely (and deliberately), or not conducting anywhere near enough on-site inspections to make any informed view about the adequacy of these important matters.
- 10.6.9 I have observed in the preceding chapter that statements made or prepared by DEWHA to the effect that the HIP was underpinned by a strong audit and compliance framework were wrong, at least as those statements tended to convey such to have been the case before October 2009.⁸³
- 10.6.10 That assertion was made to Minister Garrett in a briefing dated 28 May 2009, which stated *‘the minimum standards [for training and competencies] are appropriate when combined with the strong audit support for the program, and the development of training packages for national rollout’*.⁸⁴ It was untrue to so assert. The Minister was misled into believing that the regime for audit and compliance was strong, when it was clearly inadequate. Mr Garrett’s evidence on this point was to the effect that there ought to have been an audit and compliance regime of sufficient strength in place when Phase 2 of the HIP commenced of the kind that his Department had represented to him was in existence.⁸⁵

79 Statement of Forbes at [47]-[50], STA.001.018.0001, 28 March 2014.

80 Statement of Hughes at [55]-[70], STA.001.041.0022, 1 May 2014.

81 Statement of Hughes at [64], STA.001.041.0022, 1 May 2014.

82 Statement of Hughes at [55]-[70], STA.001.041.0022, 1 May 2014.

83 AGS.002.012.1230, 1; AGS.002.008.1019, 2; HUG.002.004.6276, 1; AGS.002.029.0933, 1; AGS.002.012.1230, 1.

84 AGS.002.012.1230, 1.

85 Transcript (14 May 2014) 4623-4624 (P Garrett); Transcript (14 May 2014) 4627-4628 (P Garrett). I note also that Minister Garrett seems to have been considering whether to inspect every installation that had taken place before December 2009. A briefing to him dated 4 December 2009 noted that doing so would involve the inspection of around 260,000 homes and cost some \$78 million. See AGS.002.012.1381, 5.

11. RELIANCE PLACED UPON THE STATES AND TERRITORIES BY THE AUSTRALIAN GOVERNMENT

11.1 Structure and formalities

- 11.1.1 The Australian Government claims that it placed considerable reliance upon the States and Territories regulating and enforcing activities taking place under the Home Insulation Program (HIP). It did so to such an extent that it did not regard, for most of the time for which the HIP operated, the risk of installers being injured on the job, as a risk that it ‘owned’ or with which it needed to concern itself in any direct sense.¹ In stark contrast, the Department of the Environment, Water, Heritage and the Arts (DEWHA) spent a considerable amount of time and resources in attempting to have in place a plan to combat fraud. The fact that installer safety was not much referred to by DEWHA in Departmental documents after the delivery model changed in mid-April 2009 underscores the very real impression, with which I was left having heard many of the public servants give their evidence, that they honestly believed that they were not to take any steps to deal with the risk of installer injury or death. Some were ignorant of that risk. Others were cognisant of the risk but understood that it was not their role to engage with it.
- 11.1.2 This was a very serious error. Although there can be no doubt that the field of occupational health and safety (OH&S) is one within the province of the States and Territories, and although State and Territory OH&S laws unquestionably applied to installations taking place under the HIP, the HIP so radically changed the nature of the insulation industry and, with it, what it was that States and Territories were expected to monitor and regulate, that the Australian Government was, in my view, obliged to either ensure that the States and Territories knew what the expectation was of them, or to take steps itself to mitigate the risk of installer injury. The Australian Government did neither, rather ‘assuming’ that the States and Territories would monitor and enforce OH&S obligations, without taking any appropriate steps to ensure that such assumption was reasonable. Rather, the evidence shows that the assumption was unreasonable.
- 11.1.3 It was not good enough, in my view, for Mr Keeffe to state, and for Mr Hoffman to concur, that installers should simply obey the law of the State they were working in, and leave it at that.² The Australian Government created in effect a false market, in which it was unreasonable to expect the States and Territories, without any additional funding, to deal with all OH&S issues.
- 11.1.4 As I have concluded earlier in this Report, the Program put in place by the Australian Government provided an incentive for large numbers of people, of varying experience, to attempt to access the Program for financial gain. That is a reality of which the Australian Government was plainly aware.³ The Australian Government removed two important protections for effectively untrained workers. First, it altered the installer competencies,

1 Statement of Kent at [17], STA.001.012.0001, 21 March 2014; Transcript (8 April 2014) 2382 (A Kent); Transcript (7 April 2014) 2098 (M Coaldrake); Statement of Coaldrake at [96], STA.001.014.0001, 27 March 2014.

2 AGS.002.008.0928, 1.

3 AGS.002.010.0833, 1-5.

as I discussed in Chapter 8. Secondly, it allowed unscrupulous operators to more easily enter the market by changing the delivery model as I discussed in Chapter 7.

- 11.1.5 The HIP was something that the Australian Government devised and funded. The Australian Government chose not to implement the scheme by funding the States and Territories to conduct it. In Chapter 6, I referred to recommendations from officers in the Department of the Prime Minister and Cabinet (PM&C) that the States and Territories be involved in the delivery of the Program. That advice was not accepted by the Strategic Priorities and Budget Committee. In the following chapter I referred to the fact that in the Council of Australian Governments (COAG) process that followed the announcement of the Energy Efficient Homes Package (EEHP), no role for the States and Territories was identified for that Program.⁴ That stood in stark contrast to other programs that were to be delivered under the Nation Building and Jobs Plan. Further, as explained in the Coordinator-General's mid-year report, the EEHP was the only component of the Nation Building and Jobs Plan that was 'demand driven.'⁵ It was the one component of the overall plan that made Mr Mrdak 'sleepless.'⁶ There was nothing in that mid-year report about OH&S issues for what became the HIP.
- 11.1.6 In the arrangements that the Australian Government arrived at with the States and Territories, it chose not to seek from them any undertaking to change or enhance in any material way the way in which they regulated or monitored installations that took place, or the manner in which the States and Territories enforced relevant laws. This is despite the fact that it must always have been clear to the Australian Government (which, after all, had designed and implemented the HIP) that the scale upon which installations would take place under that program would far exceed that which had at any earlier time occurred.
- 11.1.7 The Australian Government, having formed the view that OH&S was a matter it could leave almost entirely to the States and Territories, did little to assure itself that doing so was, in practice, a safe and proper step to take. A system of State Coordinators-General (and Energy Efficiency Co-ordinators) was put in place, but it was directed more to the removal of impediments to the HIP's roll out than to considerations of OH&S.
- 11.1.8 Meetings of the Coordinators-General were held at regular intervals.⁷ There were also meetings of Department officers with Energy Efficiency Coordinators. I discuss some of the meetings in more detail below.
- 11.1.9 At no stage did the Australian Government, through DEWHA, make inquiries to ascertain how the very large number of additional installations which the HIP sought to bring about might affect the States' and Territories' capacity to regulate, police and monitor the installations.⁸ It simply did not engage with State OH&S or electrical safety agencies. The Australian Government did not provide any funding to the States and Territories to assist with the additional workload. But most importantly, the Australian Government did not make any information available to the States and Territories until very late in the piece, about where the installations under the HIP were taking place, the kinds of product being installed or who was undertaking that work. That lack of information made it effectively impossible for the States and Territories to undertake any supervisory role, and made any assumption by DEWHA that the States and Territories were doing so untenable.

4 See Chapter 7.1.10.

5 AGS.002.028.1195, 50.

6 KEE.002.001.0566, 1-2.

7 AGS.002.032.1254, 1; AGS.002.008.0479, 1; AGS.002.008.2016, 1.

8 Transcript (1 May 2014) 3304 (D Smith).

- 11.1.10 The real problem with the asserted reliance placed by the Australian Government upon the States and Territories in this respect is that the arrangements which were in place for the regulation and monitoring of insulation installations and the enforcement of relevant laws, were adequate perhaps while the industry remained as it was before the HIP. But once the volume of installations increased so rapidly, it became fanciful to think that the existing arrangements that the States and Territories then had in place could cope in any satisfactory way with the inevitable regulatory demands that would be placed upon them. The problem was only compounded by the fact that many of the installers were new to the industry, and that the whole design of the HIP gave installers every incentive to undertake very many installations. It ought always to have been clear to the Australian Government that the state of affairs that the HIP was likely to bring about would radically alter the nature of the industry that the States and Territories had traditionally regulated, and that this would call for a new and different regulatory approach.
- 11.1.11 Indeed, as I discussed in Chapter 6, perhaps one reason the insulation industry was chosen to be part of the stimulus program was that it was largely unregulated. On a number of occasions witnesses justified non-action by DEWHA on the basis that the insulation industry was unregulated before the HIP, so why should the Australian Government add another layer of regulation or red tape, or put in place some protective measure, when none was there before. That sort of attitude simply ignores the fact that it was the Australian Government that created the frenzy of activity in the industry, and allowed effectively unqualified people to work in it. To suggest that it was the job of the States and Territories to monitor OH&S, and for the Australian Government to effectively 'wash its hands' of the problem was deplorable.
- 11.1.12 Such measures to protect workers entering the industry as were necessary were ones that the Australian Government ought to have ensured were put in place before the HIP commenced: only DEWHA had the necessary information about the likely nature and scale of the installations that the HIP would cause to take place; and only DEWHA was in a position to know the kinds of regulatory responses which would best provide for the safety of installers and householders, and to make checks as to the quality of installations. This ought to have formed part of a high quality audit and compliance program. As I discussed in Chapter 10, such a program was sadly lacking in the case of the HIP.
- 11.1.13 There is one further reason why the Australian Government's reliance upon the States and Territories was misplaced. The State and Territory regimes tended, before the HIP, to be responsive to problems rather than preventive in their identification of potential problems and the treatment of them. So much was adequate when the volume of installation was occurring at the relatively slow rate that they were. The HIP, however, caused such a change to the industry that it ought to have been accompanied by a change to the regulatory arrangements, so as not to rely merely upon *reports* of fires or electric shocks, or on consumer complaints about improperly installed insulation, but to adopt a more preventive model as a way of preventing fires, serious injury and death.
- 11.1.14 In part the failure to put such arrangements in place can be seen as related to the inadequate audit and compliance regime which I have dealt with in Chapter 10 of this Report. In another sense, it evidences a desire by the Australian Government to distance itself from a problem which, had it been dealt with as it ought, might have slowed the implementation of the HIP. The Australian Government seems to have been so eager to roll out the HIP that it was prepared to accept a State and Territory regime for OH&S that was apt, perhaps, for the state of affairs that had existed up until the HIP, but which was manifestly inadequate for that which would operate under the HIP.

- 11.1.15 I set out below some of the detail of the practicalities of the relevant arrangements, followed by the steps by which the Australian Government came to place the undue reliance it did upon State and Territory regulatory regimes. I say something also of the position in Queensland, being the State in which three of the four deaths occurred.

11.2 Practical arrangements and events

- 11.2.1 The creation of the role of the federal Coordinator-General, combined with the agreement recorded in the COAG Communique of 5 February 2009, gave partial effect to the Australian Government's desire to 'support monitoring and implementation of the infrastructure and stimulus measures'.⁹
- 11.2.2 Each State, under the COAG agreement, nominated a Coordinator-General as well as a Coordinator for the areas of social housing, Building the Education Revolution, energy efficiency and transport and infrastructure.¹⁰
- 11.2.3 Mr Mrdak made contact with his Coordinator-General counterparts soon after this appointment.¹¹ At the time Mr Mrdak left the role of the federal Coordinator-General, there were seven people working in his office. He said that the States and Territories did not inform him that they would not be able to cope with the deluge of new people coming into the insulation industry.¹² Whilst Mr Mrdak was not informed of that fact, DEWHA officers certainly were, as I discuss below. Mr Mrdak was of the view that the States would apply their existing OH&S laws to the installation of insulation under the HIP just as they did for other programs.¹³
- 11.2.4 On 26 February 2009, the federal, State and Territory Coordinators-General met in Melbourne. One of the purposes of the meeting was to look at the proposed HIP and to consider how existing State and Territory energy efficiency programs would interact with the HIP.¹⁴ At this stage, however, the delivery model of the HIP had not been settled upon, so those discussions could not have been more than preliminary.¹⁵
- 11.2.5 Mr Cox, who attended that meeting, could not recall what documents were provided to the meeting participants, besides (perhaps) the Phase 1 Guidelines.¹⁶ Nor could he recall any material detail of what information was imparted by the federal Office of the Coordinator-General (OCG) about the proposed HIP.¹⁷
- 11.2.6 Immediately following the 26 February meeting of Coordinators-General, Mr Keeffe emailed participants saying 'we would very much welcome the opportunity to work with State and Territory energy efficiency coordinators on issues including 'integration of accreditation and training for installers'.¹⁸ Mr Cox could not remember how and if this was in fact followed up.¹⁹ Mr Canavan, who was the Victorian Coordinator-General, emailed Mr Mrdak to suggest that he convene an additional meeting to discuss, among other things, the accreditation and training of installers.²⁰ Mr Mrdak passed this email on to Andrew Wilson and Mr Cox saying '[w]e need to ensure these issues are picked up

9 AGS.002.008.3389, 4.

10 AGS.002.008.3389, 10; Statement of Mrdak at [35], STA.001.009.0001, 24 March 2014.

11 Statement of Mrdak at [36], STA.001.009.0001, 24 March 2014.

12 Transcript (27 March 2014) 1053 (M Mrdak).

13 Transcript (27 March 2014) 1054 (M Mrdak).

14 Transcript (25 March 2014) 765 (S Cox).

15 Transcript (25 March 2014) 766 (S Cox).

16 AGS.002.007.1592, 1.

17 Transcript (25 March 2014) 766 (S Cox).

18 AGS.002.008.3234, 1-2.

19 Transcript (25 March 2014) 768 (S Cox).

20 AGS.002.008.3384, 1.

by DEWHA in the meeting with States'.²¹ Mr Chris Boyle from the Queensland Building Services Authority emailed Ms Julie Yeend (Assistant Secretary to the COAG Skills Recognition Taskforce) on 1 April 2009 highlighting a concern about new entrants to the industry, electricity and downlights.²² His email appears to have been forwarded to PM&C, and then to Mr Keeffe, but nothing further appears to have happened.

- 11.2.7 Initially, the meetings of Energy Efficiency Coordinators were occupied with discussing how the HIP would impact on the energy efficiency programs of the States and Territories.
- 11.2.8 On 12 March 2009, a meeting of the Energy Efficiency Coordinators took place in Melbourne. Staff from the OCG also attended. The Minutes for that meeting show that participants discussed installer training and accreditation, and suggested that it was considered an important issue. Mr Keeffe, as Chair of the meeting, indicated that training and accreditation would be important in ensuring that homeowners had faith in installers and that 'the aim is to provide a nationally consistent short course, with particular focus on installation, OH&S and duty of care'.²³ Mr Cox's recollection of this meeting is that training and safety of installers was being taken 'very seriously'.²⁴
- 11.2.9 It is recorded that the States and Territories expressed a wish to comment on the draft guidelines and the delivery model. There is no evidence that such interaction took place. Of course, at this time what was being considered by DEWHA was a regional brokerage model, as is reflected in the agenda for that meeting. There is no evidence the States were consulted when the delivery model was abruptly changed as discussed in Chapter 7. That seems to be confirmed by an email from Mr Keeffe to Ms Kruk on 16 April 2009.²⁵ Perhaps as further indication of the attitude taken at the time, Mr Hoffman responded to this email:

Only real query from my perspective is where the State issues are a risk factor for the July 1 readiness.

- 11.2.10 In fact, in the Tier 1 Project Plan, working with the State and Territory Governments was regarded by DEWHA as a 'constraint'; as was the need to comply with OH&S legislation.²⁶ That is illustrative of the mindset of DEWHA at the time.
- 11.2.11 Mr Mrdak recalled no specific discussion about workplace safety issues relating to energy efficiency at any of the meetings of Coordinators-General, but noted that there were parallel meetings of the Energy Efficiency Coordinators.²⁷ The focus of the discussions between the Coordinators-General, he said, was largely on the timing of Australian Government payments to the States, so that the States could meet their program and project milestones.²⁸ None of the other Coordinators-General raised with Mr Mrdak issues which would have precluded them from applying and enforcing their normal OH&S laws to the implementation of the HIP, nor were deficiencies in those laws raised by Coordinators-General.²⁹

21 AGS.002.008.3384, 1.

22 BOY.002.001.0021, 1-3.

23 AGS.002.028.2247, 4.

24 Transcript (25 March 2014) 771 (S Cox); *Statement of Cox at [15], STA.001.007.0001, 21 March 2014*; Transcript (25 March 2014) 771 (S Cox).

25 AGS.002.007.1880, 1-2.

26 MIN.002.001.1609, 6.

27 Statement of Mrdak at [40], STA.001.009.0001, 24 March 2014.

28 Statement of Mrdak at [40], STA.001.009.0001, 24 March 2014.

29 Statement of Mrdak at [41], STA.001.009.0001, 24 March 2014.

- 11.2.12 Mr Mrdak did not engage the State Coordinators-General in respect of decisions that were to be made on the implementation of the HIP. Three of them gave evidence: Mr Smith from Western Australia; Mr Hook from South Australia and Mr Canavan from Victoria. Dr John Cole, the then Chief Officer of the Queensland Office of Clean Energy also gave evidence. He considers that it would be inaccurate to characterise his role as having been the Energy Efficiency Coordinator for Queensland.³⁰ However, he appears to have represented Queensland in a number of relevant meetings in the first half of 2009.³¹ The effect of the evidence of each was materially the same:
- 11.2.12.1 the HIP was, unlike other programs under the economic stimulus program, one where the Australian Government both retained control of funding as well as administrative responsibilities.³² Dr Cole indicated that ‘it was always seen as a Commonwealth program,’³³
 - 11.2.12.2 DEWHA never made clear to the States and Territories that it was placing reliance upon them to monitor installations under the HIP, and enforce State and Territory OH&S laws;³⁴
 - 11.2.12.3 the States and Territories made known in some form or another the difficulties in their regulation of the HIP given its large scale;³⁵ and
 - 11.2.12.4 that these jurisdictions had no means, in any event, until relatively late in the HIP’s implementation, to monitor and police installations because they did not know where the installations were occurring, what products were being used or the identity of the installers.³⁶
 - 11.2.12.5 Mr Hook, the South Australian Coordinator-General at the time, offered these remarks as observations on the HIP:

In my view, the HIP was poorly conceived, poorly implemented and poorly managed. The Commonwealth appears to have criticised the States for not checking houses to see if they were compliant with State requirements, but the States did not know where [the] installers had been. It never made sense to me that we were expected to send teams out to check that work had been completed properly when we were not aware of where the work has been undertaken.

*The information flow seemed to be one way. The Commonwealth would say that they could not tell us certain information for privacy reasons, but took the view that compliance was a matter for the States.*³⁷

- 11.2.13 The Australian Government had notice that the States’ and Territories’ regulatory systems may be unable to cope with HIP given its nature and scale and the consequences of those forces on the insulation industry. A Compliance Workshop

30 Statement of Cole at [19], STA.001.058.0001, 1 May 2014; Transcript (5 May 2014) 3640 (J Cole).

31 Statement of Cole at [22], STA.001.058.0001, 1 May 2014; Statement of Cole at [50], STA.001.058.0001, 1 May 2014; Statement of Cole at [54], STA.001.058.0001, 1 May 2014; Statement of Cole at [60], STA.001.058.0001, 1 May 2014.

32 Transcript (5 May 2014) 3697 (R Hook).

33 Transcript (5 May 2014) 3643 (J Cole); Transcript (5 May 2014) 3646 (J Cole).

34 Statement of Canavan at [11], STA.001.001.0254, 14 March 2014. Transcript (5 May 2014) 3645 (J Cole).

35 AGS.002.014.1437, 1.

36 Statement of Smith at [11-13] and [17], STA.001.001.0269, 14 March 2014; Statement of Hook at [33-35], STA.001.027.0001, 25 March 2014.

37 Statement of Hook at [33-34], STA.001.027.0001, 25 March 2014.

was convened by the Australian Government on 29 April 2009. It was attended by Mr Kimber, Mr Hoitink and others from DEWHA. The Minutes of that meeting record under Agenda Item 2 as follows:

DEWHA representative, Mr David Hoitink outlined the business model and purpose of the Installer Provider Register. In particular, David described the conditions that installers need to meet in order to register as an installer provider.

- *ACT Planning and Land Authority representative, Mr Craig Simmons made the comment that the scale of the Commonwealth's program would change the dynamics of the existing market conditions for insulation and that this in turn would increase the risk of poor installation from unskilled labour. Attendees agreed with Craig's view.³⁸*

- 11.2.14 Ms Simmons's comments were the subject of an email of 1 May 2009 from Mr Zevon (a DEWHA official who attended the Compliance Workshop) to Mr Hoitink, Ms Kaminski, Mr Kimber and Mr Keeffe saying:

*I think it is necessary to indicate that the State/Territory reps expressed support for Mr Craig Simmons view that our program will herald a major change in the dynamics of the insulation market, thereby making existing regulatory system (including State, Federal and industrial self-regulation) inadequate. This is a major risk which we are all aware of but have been constrained to deal appropriately with. I suggest that we commence thinking about some **smart and pervasive** mitigation measures (even if for our back pockets at this stage). I will send a couple [of] ideas around for consideration later today.³⁹*

- 11.2.15 This email clearly demonstrates that any so-called reliance on the States and Territories to enforce OH&S practices for the HIP was disingenuous. Worse than that, it appears from the email that Mr Zevon (and others) already knew of the 'major' risk to which attention was being drawn. He says that DEWHA officers "have been constrained to deal appropriately with". That can only mean by more senior officers.
- 11.2.16 As appears from the evidence of Ms Avril Kent and Ms Amanda Murray-Pearce, and from his own evidence and submission, Mr Hoitink (who was a recipient of Mr Zevon's email) clearly advocated the view that OH&S was a State matter, and it was not something that the Australian Government should deal with.
- 11.2.17 Beyond that, it was never made clear (even when Mr Kimber gave evidence on the second occasion) what the so-called constraint was and who imposed it.
- 11.2.18 Despite what appears to have been a cogent warning about these matters from the States and Territories, Mr Zevon's email appears to have been disregarded. Mr Kimber said he never saw the email but that he was concerned about that risk.⁴⁰ It is difficult to see how Mr Kimber could not have received the email. But even so, his concern for the risk which that email notified does not ever appear to have been acted on by him in any material way.
- 11.2.19 Had the point been heeded by officials of the seniority of Mr Kimber or Mr Keeffe or Mr Hoitink, it may have promoted more candid and explicit communications by DEWHA to the States and Territories of the nature of the HIP and, no doubt, some more specific information back from the States and Territories about the limitations they would face as a consequence. Such a process was essential to overcome the erroneous assumptions

38 AGS.002.014.1437, 1.

39 AGS.002.027.0817, 1.

40 Transcript (9 May 2014) 4245 (W Kimber).

the Australian Government had about the capacity and willingness of the States and Territories to regulate installations under the HIP. Mr Zevon's email ought to have alerted Mr Hoitink to the absolute necessity of his ensuring the discussion with the States and Territories (responsibility for which were vested with him as relevant risk owner) were actually taking place.

- 11.2.20 It was essential, to any proper implementation of the HIP, that the States and Territories be kept informed as to the nature and status of the HIP and its rollout. The risk register proposed as a means for management of the installation quality and compliance risk, '[r]egular communications with States and Territory regulatory bodies in place [sic]'.⁴¹ However, at the meeting of Energy Efficiency Coordinators on 22 May 2009, Mr Hoitink raised the point that data sharing with the States and Territories may be impeded by privacy issues.⁴² How DEWHA could seek to contend on the one hand that the States and Territories should be attending to all OH&S issues, and yet on the other not release pertinent information to enable such work to be done defies credulity.
- 11.2.21 The Australian Government entered into Memoranda of Understanding with State and Territory governments in respect of the HIP. It did so, however, not with the OH&S agencies, but with those concerned with fair trading.⁴³ In addition, Ms Kent wrote to State and Territory consumer affairs bodies, to seek assistance in putting in place arrangements where DEWHA would be advised of house fires that could be connected with the HIP.⁴⁴ No Memoranda of Understanding were directed to safety in the workplace. Again, that is indicative of a misplaced belief that such a matter was of no concern to the Australian Government.
- 11.2.22 Another example of this was at the training workshop held on 8 May 2009, to which earlier reference has been made.⁴⁵ It is recorded in the Minutes:

DEWHA is not a regulatory authority, it is the responsibility of the States and Territories. DEWHA is working with the officers of Fair Trading who already have an existing framework for dealing with consumer complaints.

- 11.2.23 On 16 July 2009, Dr Delbridge sent an email to State and Territory OH&S bodies.⁴⁶ In it, he said that issues of concern were safe working at heights and safe materials handling. It mentioned the importance of proper training for safety. It did not raise electrical safety as an issue. The purpose of the email seems to have been to raise awareness rather than to require specific action. The email said that the 'advice and help' of the addressees was greatly appreciated.
- 11.2.24 There was no adequate communication by the Australian Government to the States and Territories about the aspects of the HIP which would have been essential to State and Territory agencies playing a role in monitoring and enforcement. It is apparent, for example, from an email exchange between Mr Kimber, Mr Hoitink, Mr Leverton (of the Queensland Electrical Safety Office (ESO)) and others that DEWHA had an inadequate understanding of State and Territory regulatory regimes and that the States and Territories had not been provided with information of where installations under the HIP were taking place.⁴⁷ It would also seem from that exchange that DEWHA's register

41 COA.002.001.2181, 1-12.

42 AGS.002.008.1995, 2.

43 Statement of Kent at [31], STA.001.012.0001, 21 March 2014.

44 Statement of Kent [32], STA.001.012.0001, 21 March 2014.

45 AGS.002.029.0926, 1-3.

46 AGS.002.014.1132, 1-2.

47 QIC.006.001.3564, 34; Transcript (5 May 2014) 3703 (R Hook); Transcript (7 May 2014) 3958 (A Leverton).

did not consistently record what product had been used, so there was no capacity for State and Territory agencies to, for example, target those installations in which reflective foil laminate had been used.

11.3 Australian Government reliance upon State and Territory Regimes

- 11.3.1 The HIP differed from other components in the wider stimulus package (such as Social Housing and Building the Education Revolution projects) in that the program was not implemented by the States and Territories utilising funding from the Australian Government.⁴⁸ Instead the Australian Government administered the program directly. The States and Territories were not given any funding to apply to the administration of the HIP (unlike the position that existed with respect to the Building the Education Revolution program).⁴⁹ Consistently with these factors, different arrangements and treatment under the National Partnership Agreement on the Nation Building and Jobs Plan (NPA) applied to the HIP than for other aspects of the wider stimulus package.
- 11.3.2 One question is whether the HIP was within the scope of the NPA. One view is that it was not because that agreement dealt only with such programs as the States and Territories were administering—Clause 9, for example, of that agreement contemplates the Australian Government providing financial contributions to the States.⁵⁰ I do not favour that view for four main reasons:
- 11.3.2.1 firstly, such a construction of the terms of the agreement itself does not justify that conclusion. The agreement purports to deal with the steps taken to address the implications of the global economic recession for Australia and to maximise the timely and effective delivery of the Nation Building and Jobs Plan (of which the HIP formed part). Even clause 9 of the Agreement (mentioned above) qualifies the Australian Government's obligations to provide financial assistance to the States, ie 'as set out in this Agreement' and refers to Schedules C and D to the agreement (neither of which could on any view apply to the HIP);⁵¹
- 11.3.2.2 secondly, provision is made, in Schedule A to the NPA, for 'implementation and monitoring' of commitments by national coordination arrangements which would seem to me apt to deal with programs such as the HIP which, although matters of federal responsibility, nevertheless are benefitted by being coordinated with the involvement of the States and Territories;⁵²
- 11.3.2.3 thirdly, the evidence of Mr Mrdak, Mr Hook, Mr Canavan and Mr Smith shows that there were, in fact, arrangements in place for the coordination of the rollout of the HIP (among other programs). For example, Mr Smith, Mr Canavan and Mr Hook participated in teleconferences and in face-to-face meetings.⁵³ Although this is no basis upon which to construe the terms of the NPA, it does tend to suggest that there must have existed some agreement, however framed, by which there was involvement of the States and Territories through their Coordinators-General (being offices which, except perhaps in Queensland, had been established under the NPA);

48 Statement of Canavan at [7], STA.001.001.0254, 14 March 2014.

49 Transcript (27 March 2014) 1053 (M Mrdak).

50 AGS.002.087.3591, 4.

51 The same comments apply equally to Clause 10.

52 AGS.002.087.3591, 4.

53 Statement of Smith at [5]-[6], STA.001.001.0267, 14 March 2014; Statement of Canavan at [8], STA.001.001.0254, 14 March 2014; Statement of Hook at [7], STA.001.027.0001, 25 March 2014.

- 11.3.2.4 fourthly, agreements such as this cannot be read as narrowly and strictly as private commercial agreements. They take place in a political context and have, in some ways, the features of constitutional arrangements, albeit at a practical Executive level.
- 11.3.3 What is clear, however—whatever view is taken of whether the HIP was within the scope of the NPA—is that the States and Territories had no specifically defined role in regulating and policing work undertaken under the HIP. The Australian Government and the States and Territories were to work in partnership to establish certain mechanisms and to ensure that the development and implementation of the stimulus packages ‘proceeds quickly and smoothly’.⁵⁴
- 11.3.4 By Schedule A to the NPA (the only schedule capable of applying to the HIP), the Australian Government had the responsibility of establishing an ‘Oversight Group’, which was, in effect, the OCG, to ‘support and monitor the implementation of key infrastructure and stimulus measures’.⁵⁵ The States were to establish ‘monitoring’ (not, I note, oversight) arrangements in their respective jurisdictions similar to those the Australian Government was to institute ‘to ensure that there is a co-ordinated project management and monitoring approach being taken to key infrastructure and stimulus measures’.⁵⁶
- 11.3.5 It is unnecessary for me to recite any further parts of the NPA. It casts on the States and Territories no function requiring them to police or regulate the HIP or even to actively involve themselves in its administration and roll-out.
- 11.3.6 Mr Mrdak’s understanding of the legal arrangements underpinning the coordination arrangements was mistaken. He considered the States and Territories were obliged to deal with:
- ... key milestones for the delivery of various infrastructure projects, establish problem-solving mechanisms to deal with blockages or implementation issues, and provide mechanisms to ensure the effective implementation of programs contemplated by the Nation Building and Jobs Plan and the COAG Agreement.*⁵⁷
- 11.3.7 Ms Kruk also understood the States and Territories to have an obligation to assist in achieving key milestones under the HIP.⁵⁸ But she did not present this view as one supported by more than her understanding. I have already noted earlier in this Report Ms Kent’s and Ms Coaldrake’s understanding of the role to be played by the States and Territories in the context of OH&S. These few examples show there to have been a fundamental misunderstanding by senior Commonwealth officials of the nature and extent of the role which the States and Territories had in connection with the HIP.
- 11.3.8 The role of the States and Territories, both in a formal and practical sense, is best described as an undertaking to deal with blockages or implementation issues.
- 11.3.9 If any confirmation of this were needed, the federal Coordinator-General’s own Progress Report on the Nation Building Economic Stimulus Plan provides it. I referred to that document earlier in this Chapter. That document was produced just after mid-2009. The role it articulates for the State and Territory Coordinators-General was ‘ensur[ing] a coordinated project management approach to delivery’ and to the States and Territories being ‘responsible for reporting on expenditure and benchmarks under the Plan’.⁵⁹

54 AGS.002.087.3591, 4.

55 AGS.002.087.3591, 4.

56 AGS.002.087.3591, 4.

57 Statement of Mrdak at [11], STA.001.009.0001, 24 March 2014.

58 Transcript (28 March 2014) 1330 (R Kruk).

59 AGS.002.028.1195, 14.

- 11.3.10 The understanding of the role of the States and Territories in the field of OH&Swas unclear amongst the relevant participants.⁶⁰ It would have been simple to have explicitly raised what was expected of the States. A cynic might take the view that the matter was not explicitly raised because it would have inevitably led to requests for funding from the States and Territories.
- 11.3.11 The extent and nature of the role of the States and Territories is important because, while the Australian Government's program was one apparently premised heavily upon State and Territory regulation and policing of it, no (or inadequate) mechanisms were put in place to make sure that the States and Territories not only knew of this, but that they had the *capacity* to do so. Moreover, it seems to have been overlooked entirely, until very late, that such regulation and policing as the States and Territories could adopt was rather ineffective without them knowing where the installations under the HIP were occurring, and the nature of the products being used. Ms Kruk seems to have identified this problem (but very late) and she says that Mr Garrett was 'instrumental' in correcting it.⁶¹
- 11.3.12 The issue is important too because so many of the important Australian Government officials did not take the steps they ought to have in connection with the HIP because of the view they took of the States' and Territories' responsibilities. Ms Coaldrake, Mr Mrdak and Ms Kent are just three examples of this. Ms Kent was clear in her view that the issue of OH&S was one for the States and Territories, 'in a Constitutional sense'.⁶² It is a view which seems to have been shared by other members of the PCG. She was told there had been discussions between the Australian Government and the States and Territories, but did not herself have knowledge of what had taken place (or, indeed, whether anything of that kind had in fact happened).⁶³ While it is true that States and Territories have in place OH&S laws, and that these laws apply to work undertaken under the HIP as with any other workplace, she assumed that the States and Territories would monitor the installations because she thought that they had the legal responsibility, 'clearly mandated', to do so.⁶⁴ Ms Kent did not know of any inquiry made of the States and Territories whether they had the resources proactively or preventively to monitor the large number of people coming into the HIP.⁶⁵
- 11.3.13 Ms Kent corresponded with Queensland officials about fires, but not about OH&S.⁶⁶ She recalled that while she may have thought about OH&S, she was too busy to do anything about it.⁶⁷ Mr Kimber suggested that DEWHA consulted with State and Territory agencies responsible for OH&S including on issues of safety under the HIP but he was not able to give details of when and how that occurred.⁶⁸ I find that it did not occur in any material or substantial sense.
- 11.3.14 Mr Hoitink, as 'risk owner' of the risk relevant to OH&S, had responsibility to see that regular communications were taking place between DEWHA and the States and Territories on this topic—however, he did not do so himself or ensure anyone was doing so, although he had an 'expectation' that it had occurred or was occurring.⁶⁹ The evidence shows that this expectation was wrong.

60 Transcript (5 May 2014) 3646 (Cole).

61 Statement of Kruk at [57-59], STA.001.010.0001, 26 March 2014.

62 Transcript (9 April 2014) 2388 (A Kent).

63 Transcript (9 April 2014) 2394 (A Kent).

64 Transcript (9 April 2014) 2396 (A Kent).

65 Transcript (9 April 2014) 2396 (A Kent).

66 QLD.002.001.1405, 1; Transcript (9 April 2014) 2410 (A Kent).

67 Transcript (9 April 2014) 2411 (A Kent).

68 Statement of Kimber at [65], STA.001.024.0001, 4 April 2014; Transcript (9 April 2014) 2556 (W Kimber).

69 Transcript (14 April 2014) 2861 (D Hoitink).

11.3.15 Ms Kent, along with the others I have mentioned, made assumptions about the States' and Territories' responsibilities with respect to the HIP which were both wrong as a matter of law and intergovernmental arrangements, but also supported by assumptions and expectations (in the case of Mr Hoitink in particular) that were also wrong and would have been exposed as such if even the most rudimentary inquiries had been made—namely that OH&S laws were proactively monitored and enforced. The simplest such inquiry was whether the States and Territories had any means (even if they were to monitor installations done under the HIP) to know when and where installations were taking place. They did not, until very late in the HIP, have any such means. Mr Smith in particular was clear in his evidence that the Australian Government was told that his State (Western Australia) at least lacked the resources to conduct compliance functions for the HIP, given its large scale.⁷⁰

11.3.16 The fact that the Australian Government did not make clear to the States and Territories its understanding and expectation of the role they were to have with respect to OH&S and the reliance being placed upon them is confirmed an email of 16 February 2010. The email from Mr Hoffman to the State and Territory Coordinators-General states:

We would like to organise an urgent teleconference meeting early this afternoon— ... concerning the insulation program under the Stimulus Package.

Agenda:

- 1. Understanding State and Territory responsibilities in the areas of:*
 - OH&S and workplace safety*
 - Building and safety regulations*
 - Training*
- 2. Action being taken in these areas in respect of the insulation program.*
- 3. Current investigations occurring*
- 4. Basis for Sharing information re installers and consumer complaints etc.*
- 5. Options for way forward in assisting the Program...*⁷¹

11.3.17 It is telling that, some twelve months after the HIP was announced, the Australian Government was seeking to understand how the States and Territories regarded their responsibilities for OH&S. It is no satisfactory answer to this to say (as did Ms Beauchamp, the federal Coordinator-General at the relevant time) that her intent in calling this meeting was to check the position with the States and Territories and that she was satisfied all parties had the same understanding about OH&S responsibilities.⁷² The fact remains that, one year into the HIP, a senior Commonwealth official (Ms Beauchamp) found it necessary to call an urgent meeting with the States and Territories to discuss a matter which, on any view, ought to have been absolutely clear from the time the HIP commenced. Other witnesses expressed surprise that, so late in the HIP, the Australian Government had considered it necessary to call a meeting of this kind.⁷³

11.3.18 Despite, by this time, there having been four deaths under the HIP and very many known problems associated with the implementation of the HIP, DEWHA and the OCG had done nowhere near enough to clarify and deal with such important matters.

⁷⁰ Transcript (1 May 2014) 3304 (D Smith).

⁷¹ AGS.002.008.1705, 1.

⁷² Statement of Beauchamp at [36], STA.001.067.0001, 7 May 2014.

⁷³ Transcript (1 May 2014) 3308 (D Smith).

- 11.3.19 It follows that the Australian Government's misunderstanding of the obligations of the States and Territories with respect to OH&S contributed to the lack of adequate consideration it gave to that matter under the HIP. It was not until the eve of the HIP's suspension that the Australian Government sought to understand, in conjunction with the States and Territories themselves, were the nature of State and Territory responsibilities in the area of OH&S.

11.4 The Queensland Agencies: the Electrical Safety Office and Workplace Health and Safety Queensland

- 11.4.1 Three of the four fatalities under the HIP occurred in Queensland. Each of those three deaths was caused by electrocution. This is a result of the fact that it was only the climate in Queensland and Northern New South Wales that provided the conditions necessary to achieve the requisite R-value from sheet foil as an insulation product. The State of Queensland sought and obtained leave to appear and took an active role in the Commission's proceedings. These factors make it necessary to give consideration to the special position of Queensland, what communications there were between that State and the Australian Government and what were the means at that State's disposal for the avoidance of the deaths.
- 11.4.2 The focus in the discussion below is on the Queensland ESO, being the State agency which had the responsibility of administering the *Electrical Safety Act 2002* (Qld) and the regulations thereunder.

11.4.3 The Electrical Safety Office, Queensland

- 11.4.4 Mr Anthony Leverton was, in the period, 2008-2009, Director (Policy) of the Queensland ESO.⁷⁴ He held this position for the duration of the HIP. He has no electrical qualifications or experience, but had access to technical advice and assistance within his organisation.⁷⁵
- 11.4.5 He had responsibility for the formulation and management of, and amendments to, ESO policy.⁷⁶
- 11.4.6 Before the HIP, the ESO (by Mr Leverton's efforts) created a database of all the installers in Queensland using the Yellow Pages (later expanded into the White Pages and the internet).⁷⁷ It was maintained during the HIP, but again, from similar sources. None of the information used came from the Australian Government before September 2009.⁷⁸
- 11.4.7 Mr Leverton took steps shortly after the HIP was announced, given what he perceived to be a likely increase in the insulation installations under the HIP, to raise concerns about fire safety with the Queensland Building Services Authority (QBSA).⁷⁹ He did the same to his superior, Mr Lamont. The QBSA never responded to Mr Leverton's communication.
- 11.4.8 In about August 2009, Mr Leverton became aware through Mr Gibson (an ESO regional director) that foil was being used under the HIP as an insulation product and that an electric shock had been reported.⁸⁰

74 Statement of Leverton at [2], STA.001.066.0001, 5 May 2014.

75 Transcript (7 May 2014) 3948 (A Leverton).

76 Transcript (7 May 2014) 3948 (A Leverton).

77 Statement of Leverton at [12], STA.001.066.0001, 5 May 2014.

78 Transcript (7 May 2014) 3949 (A Leverton).

79 Statement of Leverton at [18.1], STA.001.066.0001, 5 May 2014.

80 Statement of Leverton at [20], STA.001.066.0001, 5 May 2014.

- 11.4.9 Mr Gibson said to an ESO meeting about this issue that this was, in effect, a novel use of foil. Mr Leverton thinks he was aware of only one such electrical shock incident, even though ESO records show there to have been at least two such reported incidents about this time, one of them perhaps involving two people.⁸¹ In response to this information, the ESO took some steps, including expanding its audit process to target foil installations.⁸²
- 11.4.10 On 8 October, Mr David Hoitink made contact with Mr Leverton. This was the first contact that Mr Leverton had had with a DEWHA official concerning the HIP.⁸³ Mr Hoitink was prompted to call by a media report he had seen of a ceiling fire at a home in Wellington Point. Mr Leverton acted on that request.
- 11.4.11 Despite Mr Leverton foreseeing the likely increase in installations of insulation under the HIP, and despite Mr Gibson having identified the use of foil as novel and at least one person having received an electric shock while installing it, the ESO took no action which could fairly be described as decisive or sufficient. It was not until after the first death that such action was taken.⁸⁴ Mr Leverton, as I say below, quite reasonably accepted that more could have been done by the ESO within this period.
- 11.4.12 Immediately following the first fatality, the ESO issued an ‘e-alert’ (on 15 October 2009). Mr Leverton sent a copy of it to Mr Hoitink. A meeting of Queensland agencies was convened, chaired by Mr Lamont. That was done so that there could be a discussion and better understanding of the risks to do with fire and electrocution and what might be done in response.⁸⁵ One of the concerns raised was, as Mr Leverton says in his statement, ‘the extent of the Commonwealth’s audit and inspection process’. On 16 October 2009, Mr Leverton asked Mr Hoitink about those arrangements, and was provided with a summary of the relevant matters.⁸⁶ Mr Hoitink said in response that details of a particular inspection could be provided to a ‘relevant State authority’ if work was believed to be in breach of State laws.⁸⁷ This was, it will be seen, because to do otherwise would arguably have been in breach of the privacy arrangements that the Australian Government had instituted for the HIP at the outset.
- 11.4.13 Mr Leverton also, on 20 October 2009, requested Mr Hoitink for access to DEWHA’s register of approved installers for Queensland and especially ‘any details that might show the types of insulation each installer has been approved for’.⁸⁸ Mr Hoitink declined, saying there were ‘privacy issues’ in doing so and that the register does not contain, in any event, details of the insulation material used by particular installers.⁸⁹
- 11.4.14 Mr Leverton said he never received the information he had requested from DEWHA.
- 11.4.15 Peter Lamont and Mr Leverton attended a meeting with DEWHA on 27 October 2009 in Canberra. It was decided at that meeting that metal staples ought to be banned, that downlight covers ought to be compulsory, and that there should be more frequent circulation of training manuals. Banning metal foil was raised as a possibility—but it did not occur until 9 February 2009, after the third death, when Mr Leverton says he “strongly pushed” for the discontinuance of the use of foil.⁹⁰ The ESO’s position on

81 QIC.006.001.3086.1. Transcript (19 May 2014) 5109 (A Leverton).

82 Statement of Leverton at [22], STA.001.066.0001, 5 May 2014.

83 Transcript (7 May 2014) 3954 (A Leverton).

84 Transcript (7 May 2014) 3954 (A Leverton).

85 Statement of Leverton at [28]-[31], STA.001.066.0001, 5 May 2014.

86 Statement of Leverton at [32]-[33], STA.001.066.0001, 5 May 2014.

87 AGS.002.003.1092, 1.

88 AGS.002.005.1138, 1.

89 Statement of Leverton at [36]-[38], STA.001.066.0001, 5 May 2014.

90 Transcript (7 May 2014) 3960 (A Leverton).

the matter was that there was a strong need to 'ensure improved risk assessment, improved training and perhaps a couple of other things as well'.⁹¹

- 11.4.16 On 30 October 2009, Queensland issued the *Electrical Safety (Installation of Ceiling Insulation) Notice 2009* (Qld). It prohibited the use of metal staples and other conductive fasteners when installing ceiling insulation. It also required that each person conducting a business or undertaking that included the installation of ceiling insulation be trained in carrying out an assessment of the electrical risk from such activity and that before installing insulation and on-site operational assessment be conducted of the electrical risk from the installation.⁹² Such a notice was issued under section 42 of the *Electrical Safety Act 2002* (Qld). It authorised the Minister to issue a notice prescribing the way of discharging a person's electrical safety obligation where the Minister had identified circumstances of electrical risk for persons or property and considered that urgent action ought to be taken to deal with that risk.
- 11.4.17 There is no clear reason why such a Ministerial Notice could not have been issued at or about that time effectively banning the use of sheet foil in Queensland whether or not under the HIP.⁹³ I accept, however, the submission made by the State of Queensland to the effect that the extent of the use of reflective foil laminates under the HIP only came to that State's attention after the death of Matthew Fuller and also the submission made on behalf of Mr Leverton to the effect that it is far from clear that a Ministerial Notice banning the use of reflective foil laminates under the HIP would have been effective, ultimately, to achieve that result. These considerations preclude any finding that the State of Queensland failed, improperly, to issue a Ministerial Notice precluding the use of reflective foil laminates in that State whether before or after the first fatality.
- 11.4.18 On 20 November 2009, the Queensland Minister for Industrial Relations wrote to Minister Garrett seeking urgent changes to the training and pre-qualification requirements for installers under the HIP. On 23 November 2009, ESO and WHSQ inspectors commenced insulation installer audits. On 25 November 2009, the ESO distributed an electrical safety alert highlighting the electrical safety issues raised by Mr Barnes' death to around 12,000 ESO subscribers and to all Queensland insulation installers registered with the federal program.
- 11.4.19 In other words Queensland acted proactively, and promptly. I discuss what happened at the time of the suspension of the Program, and thereafter, in the next chapter of this Report.
- 11.4.20 Mr Leverton accepted, in the terms that follow, that more could have been done by the ESO, knowing what it did, about the real risks that existed under the HIP concerning installer safety:

Just speaking from a personal point of view, I guess in hindsight there were probably two periods where—perhaps three but certainly two periods where I look back and see that I and we could—could and should have done more.

One particularly was around about August when the first advice of some strange foil and a shock came in. I think the consensus was we thought that we had got on top of it but we clearly hadn't and we—I don't think we knew the scope either. And the second—a second time I think we could have done more would have been the decision as to whether or not to press harder in respect of the discontinuation of foil insulation from 27 October or thereabouts. So they would be my two deep regrets, my two concerns.⁹⁴

91 Transcript (7 May 2014) 3960 (A Leverton).

92 *Electrical Safety (Installation of Ceiling Insulation) Notice 2009* (Qld) ss 6, 7.

93 Transcript (19 May 2014) 5125 (A Leverton).

94 Transcript (7 May 2014) 3965 (A Leverton).

- 11.4.21 Mr Leverton was candid in the evidence he gave. The Commonwealth of Australian (the Commonwealth) put to him, in effect, that the Queensland ESO ought to have acted much more swiftly and unequivocally to ban foil insulation and to take other measures better to provide for the safety of installers. Such criticisms, valid though they are to the extent of Mr Leverton's quite proper concession, do not lie well in the mouth of the Commonwealth, the level of Government which had primary carriage of the HIP, which had orchestrated its design and shape and left wholly unaddressed, in the manner I have described, the risk to installers of death and serious injury. What the Commonwealth suggested the Queensland ESO ought to have done applies at least as much to itself. It is no excuse for the Commonwealth to point to the few electrical shocks of which the Queensland ESO was aware (but perhaps not the Commonwealth) as being the difference between having an obligation to act and not act. They were a small number of incidents among many others. Those incidents were not clearly causally tied to the HIP and there was no cause for the Queensland ESO to take some special interest in monitoring the installations taking place under the HIP.
- 11.4.22 I consider that the Queensland ESO could have done more to better provide for the safety of installers both before and after the first fatality. But no part of that view ought to be taken as displacing the primary obligation of the Australian Government to ensure that such measures as ought reasonably to have been imposed in the field of OH&S, were in fact in place, whether that be at a federal level or by the States and Territories.

11.5 Summary of findings

- 11.5.1 The Australian Government (erroneously in my view) regarded the risks to installers of death and serious injury as ones that were within the responsibility of the States and Territories to manage.
- 11.5.2 Having taken that view, it was incumbent on the Australian Government not only to make clear to the States and Territories what it was expecting of them (and that it was not itself taking such steps) and to provide all the information that a regulator would require properly to monitor, police and regulate installations and installers. The Australian Government failed to do so. It would have taken little thought on the part of the Australian Government to realise that to flood the market with novice installers and almost certainly a large number of novice employers (ie people qualified in other trades) was going to give rise to OH&S issues and to change the industry such that past methods of regulation would be likely to be rendered inadequate. Indeed the Australian Government was warned of that very likelihood). For the States proactively or preventively to monitor and police the work being done under the HIP would require a totally new approach from the States which were, and are, invariably reactive to OH&S issues. It would necessitate, I assume, a new bureaucratic structure that is informed as to who is installing insulation; what type they are installing; where they are installing; and when they are installing, so as to enable inspections to take place. This was a completely unrealistic hope or expectation.
- 11.5.3 The States and Territories were faced with a program on a large scale, about which they knew little, and which they were not properly resourced to regulate.
- 11.5.4 The States and Territories might have done more to inquire about the HIP and its nature, and to push the Australian Government to disclose more about the installations taking place, the products used and what audit and inspection arrangements DEWHA had put in place. The meetings of the Coordinators-General were the forum through which this ought to have occurred or been arranged.

- 11.5.5 Ultimately, however, responsibility rests with the Australian Government—as the instigator, funder and controller of the HIP—for the absence of OH&S regulation and policing, for not having either assumed regulatory responsibility itself, or taken adequate steps to ensure that those upon which it was placing reliance (State and Territory Governments) knew clearly what was expected of them and had the resources and information required to discharge those functions.
- 11.5.6 I find that:
- 11.5.6.1 the Australian Government failed to take proper responsibility for the regulation of its own program, by its almost complete reliance upon State and Territory regulatory regimes;
 - 11.5.6.2 at no stage did the Australian Government ascertain that State and Territory regulatory regimes would be adequate to deal with the risks to personal safety and property given the nature and extent of the demands likely to be placed upon those regimes by the HIP. This responsibility fell, principally, to Mr Hoitink and Mr Kimber;
 - 11.5.6.3 the Australian Government, wrongly, regarded itself as justified in leaving to the States and Territories almost entirely responsibility for OH&S under the HIP. Mr Hoitink, ultimately, must bear responsibility for that having occurred, both because he was, on the evidence, a key proponent of that view, which carried some weight because of his role as a senior lawyer. Moreover, as owner of the relevant risk, he did not do what was unambiguously required of him, namely to ensure discussions with the States and Territories were taking place on this topic. This reliance upon the States and Territories, and the lack of communications with them, resulted in there being inadequate regulatory arrangements for installations under the HIP.

12. THE FATALITIES, FIRES AND AFTERMATH

12.1 Introduction

- 12.1.1 Four young men lost their lives while installing insulation under the Home Insulation Program (HIP). An Inquest into the deaths of three of them, because they occurred in Queensland, was conducted by the Queensland State Coroner in late 2012 to early 2013.¹ The Coroner (Mr Barnes) made findings as to those deaths and the cause of them. The New South Wales Deputy State Coroner (Mr Dillon) conducted an inquest into the death of the other man as his death occurred in that State.²
- 12.1.2 The Coroners' reports are a useful source of facts about the circumstances in which the deaths occurred. Part of this Commission's Terms of Reference is to investigate whether the deaths could have been avoided by the appropriate identification, assessment or management, by the Australian Government, of workplace health and safety and other risks relating to the HIP and whether there was action the Government could have taken that would or may have avoided those deaths. It was therefore necessary that I understand in some detail the circumstances in which the deaths occurred.
- 12.1.3 I have relied to a considerable extent upon the facts as found by the two Coroners in their inquests into the deaths. I have not, however, done so slavishly. I have had the benefit of a great deal of evidence, some of which went directly to the circumstances of the deaths and how they might have been avoided.
- 12.1.4 The parties with an interest in this issue were given an opportunity to identify those parts of the Coroners' reports which they would wish to challenge or adduce more evidence about. That having been done, I have been able to draw from those reports facts about which there does not seem to be any substantial dispute. I also had the benefit of private discussions with the families of Matthew Fuller, Rueben Barnes and Mitchell Sweeney. I asked for their opinions on the inquests and all indicated that they thought that the Queensland State Coroner had done a thorough job and they were satisfied with the findings as far as they went. They agreed that it was not necessary to again canvass the issues that had been canvassed before the Queensland State Coroner.
- 12.1.5 The Commission's role is of course different from that which the Coroners were charged to undertake. Theirs was to investigate and make findings upon the cause of death and to comment upon anything connected with those deaths that relates to public health or safety, or ways of preventing deaths from happening in similar circumstances in the future. Mine was, as I have said, to ascertain whether, in the particular circumstances of the HIP, and in the light of the other investigations I undertook according to the Terms of Reference, the deaths could have been avoided and whether action should have been taken which would or may have done so.
- 12.1.6 If there appears below to be a difference between what is set out in the section below and observations or findings made by the Coroners, that is only due to the different nature of my task under the Terms of Reference, and the additional evidence of which I had the advantage relating to the other parts of my Terms of Reference.

¹ QIC.001.001.0001, 1-108.

² NIC.001.001.0001, 1-13.

12.2 Matthew Fuller

- 12.2.1 On 14 October 2009, Matthew Fuller, aged 25, was electrocuted installing insulation in Queensland.³ Just before 12.54pm, he collapsed in the ceiling cavity of a residential property at 21 Buttercup Close in Meadowbrook. He had been laying Reflective Foil Laminate (RFL) insulation.⁴ He had been electrocuted. Despite resuscitation attempts, he was declared dead at 1.41pm.⁵
- 12.2.2 His employer at the time was QHI Installations Pty Ltd (QHI). That company, in turn, was a subcontractor to Vision and Network Australia Pty Ltd (Vision) which traded as Countrywide Insulation (Countrywide) and Queensland Home Insulation.⁶ Countrywide had been registered as an installer under the HIP.⁷
- 12.2.3 Matthew had commenced working for QHI on 2 October 2009, less than two weeks before his death.⁸ On the day of the incident, he was working with his 19-year-old girlfriend Monique Pridmore. She had commenced working with QHI shortly after Matthew.⁹ She suffered serious injuries after trying to help Matthew.¹⁰

12.2.4 Matthew's employer

- 12.2.5 Matthew's employer came into existence only shortly before his death. QHI had only commenced operating on 1 October 2009.¹¹
- 12.2.6 Chris McKay was responsible for the running and management both of QHI and a company called BCE Group Pty Ltd in Melbourne (run by his daughter).¹²
- 12.2.7 His son, Christopher McKay, was the director of QHI and responsible for the training and supervision of staff. He was also an installer of insulation. Christopher McKay assumed this position as his father had entered into a bankruptcy arrangement.¹³
- 12.2.8 Benjamin McKay, another son of Chris McKay, was the day-to-day supervisor within QHI. Ben was a qualified and experienced electrician. He was to be the on-site supervisor and not an installer.¹⁴
- 12.2.9 Both Ben and Christopher completed a ceiling insulation installation training course, run by the Master Builders Australia, prior to Matthew Fuller's death.¹⁵
- 12.2.10 QHI operated as a sub-contractor for Vision. It took on many of Vision's jobs because of the McKays' electrical experience (including working in roofs).¹⁶
- 12.2.11 Vision had been registered as a HIP installer through Countrywide.¹⁷ None of the persons listed on the HIP Competency Requirements form were employed by Vision or its trading businesses. One of the persons listed as an employed installer was Ben McKay, even though the company did not, at that time, employ any installers.¹⁸

3 QIC.001.001.0001, 5; QIC.001.001.0001, 30.

4 QIC.001.001.0001, 5; QIC.001.001.0001, 30.

5 QIC.001.001.0001, 31.

6 QIC.001.001.0001, 20.

7 QIC.001.001.0001, 20.

8 QIC.001.001.0001, 23.

9 QIC.001.001.0001, 27.

10 QIC.001.001.0001, 31.

11 QIC.001.001.0001, 20.

12 QIC.001.001.0001, 20.

13 QIC.001.001.0001, 20.

14 QIC.001.001.0001, 20.

15 QIC.001.001.0001, 23.

16 QIC.001.001.0001, 22.

17 QIC.001.001.0001, 20.

18 QIC.001.001.0001, 20.

- 12.2.12 Between 2 October 2009 and 14 October 2009, QHI employed 21 workers. The installers worked in teams of two.¹⁹ On 9 October 2009, Vision (trading as Queensland Home Insulation) issued a quote for the residence where Matthew was electrocuted. The quotation was for 117m² of insulation at a cost of \$1,595.²⁰

12.2.13 Training and Supervision

- 12.2.14 Matthew Fuller was employed by QHI on 2 October 2009 and had completed what the Queensland State Coroner considered to be the 'minimum training requirement'. As he was supposed to be supervised by someone who met the competency requirements, he had only completed the generic one-day construction occupational health and safety (OH&S) induction training.²¹ Matthew's training through QHI, the Queensland State Coroner found, was inadequate, ultimately leading to his ignorance of the danger of RFL insulation.²² That finding is one with which I entirely agree.
- 12.2.15 Ben and Christopher McKay had both undertaken ceiling insulation installation training with Master Builders Australia.²³ The Queensland State Coroner considered this training not to have considered or addressed safety issues associated with RFL insulation and electricity, including how to avoid the piercing of electrical cables and the potential consequences of doing so.²⁴ QHI workers attending this training were, it was found, warned of electrocution but not advised to turn off the power before commencing work on a building.²⁵
- 12.2.16 According to QHI, Matthew's training comprised:
- 12.2.16.1 a meeting on 1 October 2009 to discuss pay rates, the insulation product, the dangers, what the workers needed and what QHI would supply them with;
 - 12.2.16.2 a demonstration by an installer from another company on 2 October 2009; and
 - 12.2.16.3 on-the-job experience from 5 to 9 October 2009, including a discussion on 9 October 2009 warning of cables and to avoid putting their feet through the ceiling.²⁶
- 12.2.17 Monique Pridmore received no training at all before commencing work with QHI.²⁷ There was a suggestion that she was provided with a demonstration on 9 October 2009 when she was working with Matthew and some others.²⁸ Monique, however, indicated she was not provided with an induction or information about foil insulation, and provided with only a crude, limited demonstration of installation.²⁹ She said she was not told to turn the power off before working in a ceiling.³⁰
- 12.2.18 QHI appeared to have training materials addressing, to some extent, these risks, including a Safety Management Manual and Risk Assessment Job Card. The Queensland State Coroner observed that no employee referred to being aware of a Work Method Statement prior to Matthew's death, and Chris McKay agreed that these were created afterwards.³¹

19 QIC.001.001.0001, 23.

20 QIC.001.001.0001, 23.

21 QIC.001.001.0001, 23.

22 QIC.001.001.0001, 68-69.

23 QIC.001.001.0001, 23.

24 QIC.001.001.0001, 25.

25 QIC.001.001.0001, 25.

26 QIC.001.001.0001, 25-26.

27 QIC.001.001.0001, 27; Statement of Pridmore at [16], MON.002.001.0043, 24 January 2014.

28 QIC.001.001.0001, 27.

29 QIC.001.001.0001, 27-28.

30 QIC.001.001.0001, 27.

31 QIC.001.001.0001, 29.

- 12.2.19 Both Matthew and Monique had been booked to undertake the Master Builders course on 16 October 2009, but had withdrawn due to another commitment.³² As I have explained elsewhere in this Report,³³ mandatory completion of insulation installation training was not required until 12 February 2010, and even then that was only for those who did not hold a trade-specific competency or did not have prior insulation installation experience.³⁴

12.2.20 The Day of Matthew Fuller's Death

- 12.2.21 Matthew and Monique were working together on the day of Matthew's death and Monique's injury.³⁵ They had been sent to install insulation at a property located at 21 Buttercup Close, Meadowbrook by Ben McKay. They were supposed to install RFL insulation, laid across the ceiling joists, and staples to the ceiling joists.³⁶
- 12.2.22 At around 1.00pm, they were in the ceiling cavity finishing off the installation, when Monique heard Matthew issue an expletive very loudly, but he did not finish what he was saying. She ran over to Matthew and saw him lying on his stomach shaking. She thought he was having a fit and yelled out to call 000. She approached Matthew and attempted to shake him without result. On shaking him a second time, she received a shock and was thrown backwards. She was unconscious for a short period.³⁷
- 12.2.23 The owners of the property called emergency services and turned off the electricity, but did not isolate the power from the relevant circuit.³⁸ One of the owners saw Matthew lying face down and Monique wrapped in the foil. As a consequence, she received severe electrical burns to her lower left leg.³⁹
- 12.2.24 Emergency services (including an ambulance) arrived. Monique came down through the manhole. Ambulance officers isolated the power at the house switchboard. They entered the roof cavity and found Matthew on his back in one corner of the roof. He was taken from there with no pulse or breath sounds. He was taken immediately to Logan Hospital.⁴⁰
- 12.2.25 Resuscitation attempts were made on him, both in the ambulance and at the Hospital. Despite those attempts, Matthew did not respond and he was declared dead at 1.41pm.⁴¹
- 12.2.26 Monique was also taken to Logan Hospital. She was later transferred to the Royal Brisbane Hospital Burns Unit. She had sustained a full thickness burn to her left lower leg. Monique continued to have treatment as an outpatient and has been left with severe scarring on her left leg.⁴² The effects of these injuries on Ms Pridmore are considered below at 12.25.

32 QIC.001.001.0001, 28.

33 See Chapter 8.1.1.

34 KIM.002.001.4321, 1-2.

35 QIC.001.001.0001, 30.

36 QIC.001.001.0001, 30.

37 QIC.001.001.0001, 30-31.

38 QIC.001.001.0001, 31.

39 QIC.001.001.0001, 31.

40 QIC.001.001.0001, 31.

41 QIC.001.001.0001, 31.

42 QIC.001.001.0001, 31.

12.2.27 Autopsy results

- 12.2.28 The cause of Matthew Fuller's death was found to be electrocution.⁴³ An autopsy identified thermal burns on the top of Matthew's head and on the front of his left knee. These marks were confirmed on close examination to be consistent with electrocution. Minor abrasions were found on Matthew's face and his right shin, thought perhaps to be the consequence of a fall.⁴⁴

12.2.29 The investigation

- 12.2.30 Authorities in Queensland conducted an investigation into these events.
- 12.2.31 A Workplace Health and Safety (WH&S) Queensland inspector attended the scene on the day of Matthew Fuller's death. He inspected the site with colleagues from the Queensland Police Service (QPS) and the Queensland Electrical Safety Office (ESO).⁴⁵
- 12.2.32 In addition, a local electrician, Nathan Hurst, was asked (by State-Government-owned corporation Energex Limited) to attend. Mr Hurst checked the power had been disconnected and then entered the roof cavity with QPS. He was shown a metal staple through the foil insulation, which came out when the sheet of RFL was lifted. The staple had pierced a cable that was connected to a hot water system.⁴⁶
- 12.2.33 On 23 October 2009, representatives from WH&S Queensland and Queensland ESO returned to confirm the findings as to the cause of electrocution. They found that had all the switches, including the switch for the hot water on the switchboard been turned off, Matthew would not have been electrocuted.⁴⁷ Obviously, if Matthew had not been attaching the foil with staples into the ceiling joists, he would not have been electrocuted.

12.2.34 Immediate response to Matthew's death

- 12.2.35 A number of remedial actions were taken by WH&S Queensland and Queensland ESO, including the issue of a Prohibition Notice on 28 October 2009 preventing QHI installing RFL insulation near live electrical equipment in a way that was not electrically safe.⁴⁸
- 12.2.36 Following its investigation, WH&S Queensland identified the below steps as ones that would likely have prevented Matthew's death, including:
- 12.2.36.1 use of non-conductive nylon staples instead of metal staples;
 - 12.2.36.2 use of non-conductive insulation (i.e. cellulose fibre batts) instead of electrically conductive RFL insulation;
 - 12.2.36.3 turning the power off to a house, before installing insulation;
 - 12.2.36.4 ensuring that workers underwent comprehensive risk specific training prior to undertaking unsupervised work; and
 - 12.2.36.5 providing effective and direct on-site supervision, having regard to the low order administrative controls being relied upon, the inherent electrical risks associated with installation, and also to the youth and inexperience of the workers.⁴⁹

43 QIC.001.001.0001, 33.

44 QIC.001.001.0001, 33.

45 QIC.001.001.0001, 33.

46 QIC.001.001.0001, 33.

47 QIC.001.001.0001, 33.

48 QIC.001.001.0001, 33.

49 QIC.001.001.0001, 33.

- 12.2.37 QHI was prosecuted and fined \$100,000 (plus costs) for failure to discharge an electrical safety obligation pursuant to section 27 of the *Electrical Safety Act 2002* (Qld) (the Electricity Safety Act). It ceased operating in February 2010.⁵⁰
- 12.2.38 The Department of Climate Change and Energy Efficiency later pursued Vision (through Countrywide) through debt recovery proceedings for alleged non-compliance with the terms and conditions of registration and HIP Guidelines. This extended to 464 claims considered non-compliant. Vision by this stage had gone into liquidation.⁵¹

12.3 Rueben Barnes

- 12.3.1 On 18 November 2009, Rueben Barnes, aged 16, collapsed in the ceiling cavity of a home at 127 Cocks Road, Stanwell at about 9.10am.⁵² He had been laying fibreglass insulation batts. He was electrocuted while in the roof space. Attempts to resuscitate him were unsuccessful. He was declared dead at the scene at 10.10am.⁵³

12.3.2 Rueben's Employer

- 12.3.3 Rueben's employer was Arrow Property Maintenance Pty Ltd (Arrow). It was registered as an installer under the HIP in or around June 2009. Rueben had started working with that company on 28 October 2009.⁵⁴
- 12.3.4 Arrow was registered with the Australian Securities and Investments Commission (ASIC) in April 2006. Its directors were Christopher and Richard Jackson. It specialised in property maintenance. Both men had some experience in insulating houses before the HIP commenced and were tradesmen by profession (a plumber and a carpenter).⁵⁵
- 12.3.5 On 22 June 2009, Arrow quoted for the supply and fitting of 110m² of insulation in the house at which Rueben was electrocuted. The quote was for the installation of either fiberglass insulation (at a cost of \$1,210) or polyester insulation (at a cost of \$1,540).⁵⁶

12.3.6 Training and supervision

- 12.3.7 As I discussed in Chapter 8 of this Report, by reason of a change of installer competencies, at that time, supervised installers were only required to complete generic one-day construction OH&S induction training.⁵⁷ Before taking up this job with Arrow, Rueben Barnes had completed a year of a carpentry apprenticeship with Rockhampton Home Maintenance as well as 10 units of training at the Central Queensland Institute of TAFE. One of those subjects covered 'Follow[ing] OH&S policies and procedures'. It is not known whether Rueben did any training or induction when he started at Arrow, but his father believes not.⁵⁸ The WH&S Queensland investigation found that Arrow provided minimal training to its staff.⁵⁹

50 QIC.001.001.0001, 34.

51 QIC.001.001.0001, 34-35.

52 QIC.001.001.0001, 5; QIC.001.001.0001, 40.

53 QIC.001.001.0001, 5.

54 QIC.001.001.0001, 37.

55 QIC.001.001.0001, 35.

56 QIC.001.001.0001.37.

57 AGS.002.023.1380, 1.

58 QIC.001.001.0001, 37.

59 QIC.001.001.0001, 43.

12.3.8 The Day of Rueben Barnes' Death

- 12.3.9 Rueben was working with two others on the day of his death.⁶⁰ One of the other men, Gaven Feeney, was the foreman. It was he who was responsible for carrying out a number of onsite inspections.⁶¹ Rueben and another man were working in the ceiling with a long metal pole and a wooden stick.⁶²
- 12.3.10 As the job came to a close, Rueben received a severe electric shock. He went stiff and became unresponsive. The installer with him at the time was adamant that Rueben was not holding the metal pole when he was electrocuted because he recalls him handing him batts at the time, and Rueben was using both hands to receive them.⁶³
- 12.3.11 The two other men, when this occurred, went to the power box to turn the power off. They found the circuit breaker still on, and one of them called out to the owner to call an ambulance and switch off the power. After this, the owner or her son switched off the electricity at the main pole, and she called an ambulance. One or both of the other installers checked the electricity was off and then they pulled Rueben out on to the roof and commenced two-person cardiopulmonary resuscitation (CPR) upon him. They continued doing so until an ambulance arrived. The paramedics instructed the men to continue resuscitation. They took over and continued CPR for a further 25 minutes. Rueben was declared dead at 10.10am at the scene.⁶⁴
- 12.3.12 The cause of Rueben's death was found to be electrocution.⁶⁵

12.3.13 The Investigation

- 12.3.14 A WH&S Queensland and Queensland ESO inspector attended the scene.
- 12.3.15 The investigations found that a metal screw used to fix the plasterboard ceiling to metal ceiling battens had pierced a 6mm² twin thermoplastic sheathed cable in the channel of one of the metal ceiling battens. This had most likely happened during the building process and had made the entirety of that ceiling batten 'live'.⁶⁶
- 12.3.16 The Queensland State Coroner was not able to conclude with certainty whether Rueben was holding the metal pole at the time he was electrocuted (which was being used to place the batts) or whether he had his feet on the batten and his hand on the roof.⁶⁷
- 12.3.17 The WH&S Queensland investigation found that Arrow allowed work to proceed without de-energising or isolating the house, or any of its parts.⁶⁸
- 12.3.18 Arrow was found to have no specific or documented procedures in place for installation of insulation and to have allowed Rueben Barnes to use a conductive, aluminium pole to position or place insulation batts. The investigation also found that there was no fall protection provided for the installers.⁶⁹

60 QIC.001.001.0001, 39.

61 QIC.001.001.0001, 39.

62 QIC.001.001.0001, 39.

63 QIC.001.001.0001, 40.

64 QIC.001.001.0001, 40.

65 QIC.001.001.0001, 42.

66 QIC.001.001.0001, 42.

67 QIC.001.001.0001, 42.

68 QIC.001.001.0001, 43.

69 QIC.001.001.0001, 43.

12.3.19 Subsequent events

- 12.3.20 Arrow was fined \$135,000 in the Rockhampton Industrial Court on 17 September 2010 for breaches of section 27 of the Electrical Safety Act and of section 24 of the (now-repealed) *Workplace Health and Safety Act 1995* (Qld).⁷⁰
- 12.3.21 Arrow ceased installing insulation immediately after Rueben's death. As at 5 November 2009, Arrow had claimed for 78 installations, receiving \$110,353 in Commonwealth funds.⁷¹
- 12.3.22 On 19 November 2009, Arrow was asked to show cause as to why it should not be de-registered from the HIP. It responded by saying that, at the time of registration, its directors were not aware of the requirement for all installers to undergo construction OH&S induction training. On 8 December 2009, the Department of the Environment, Water, Heritage and the Arts (DEWHA) removed Arrow from the HIP installer register.⁷²

12.4 Mitchell Sweeney

- 12.4.1 On 4 February 2010, at about 8.00am Mitchell Sweeney, aged 22, collapsed in the ceiling cavity of a home at 13 Wattle Street, Milla Milla. He had been laying metal-based insulation sheeting. He was electrocuted and was declared dead at the scene.⁷³
- 12.4.2 Mitchell was, at the time, a subcontractor to Titan Insulations Pty Ltd (Titan), which was a registered installer under the HIP. He commenced working for Titan on about 29 September 2009 and had completed insulation training on 2 October 2009.⁷⁴

12.4.3 Mitchell's principal

- 12.4.4 Titan Insulations Pty Ltd was registered with ASIC on 16 September 2009. Nicholas Lindsay and Frederick Palomar were directors. Neither of these men, the Queensland State Coroner found, had any experience with insulation prior to registering for the HIP. Mr Lindsay was a carpenter and Mr Palomar had a diploma in engineering. Neither installed insulation.⁷⁵
- 12.4.5 On 18 September 2009, Titan applied for registration under the HIP. Although Titan was advised it did not meet insurance requirements (a copy of their Certificate of Currency was only provided to Medicare on 14 October 2009) Titan began lodging claims for payment under the HIP on 9 October 2009.⁷⁶
- 12.4.6 Mitchell contracted to Titan and then retained another man, Chase Martin, in November 2009, as his subcontractor to help with installations.⁷⁷

12.4.7 Training and Supervision

- 12.4.8 Mitchell commenced working for Titan on about 29 September 2009. At the time, installers needed to have only the basic construction OH&S induction training qualification. It is unknown whether he completed this, but as Mr Lindsay met Mitchell on a building site, it is most likely he had.⁷⁸

70 QIC.001.001.0001, 43-44.

71 QIC.001.001.0001, 44.

72 QIC.001.001.0001, 44.

73 QIC.001.001.0001, 5.

74 QIC.001.001.0001, 6.

75 QIC.001.001.0001, 44.

76 QIC.001.001.0001, 44.

77 QIC.001.001.0001, 45.

78 QIC.001.001.0001, 45.

- 12.4.9 Mitchell completed the Australian Construction Training Services 'Ceiling Insulation Installers Course' on 2 October 2009.⁷⁹ This course was largely based on the CPSISC training units (to which I have earlier made reference) and included both theoretical and practical assessment. It did not advise participants to turn power off during installations. The course convenor did not demonstrate the use of RFL sheeting and indicated he would have warned of the risks of staples around electrical cables and to avoid RFL insulation.⁸⁰
- 12.4.10 Mitchell and another man, the Queensland State Coroner found, were taken to an onsite power box after the death of another installer to show them how to inspect for a safety switch (Residual Current Device) and which circuits to switch off at the power box before installation. They were told that not all electrical circuits are attached to a safety switch, to perform these checks before installation, and to call an electrician if in any doubt.⁸¹
- 12.4.11 The Queensland State Coroner was also told that Mitchell Sweeney was in attendance shortly afterwards for a further safety box demonstration and a request to read a new safety checklist and an information sheet.⁸² Titan then provided installers (including Mitchell) with plastic staple guns and staples. However, Mitchell kept his metal stapler because he owned it. Other installers had returned their Titan-provided metal stapler and staples.⁸³ Titan made verbal enquiries to confirm use of plastic staples but relied on installers to comply.⁸⁴ Mitchell and another installer kept using metal staples because it was faster.⁸⁵

12.4.12 The Day of Mitchell's Death

- 12.4.13 On 4 February 2010, at about 7.45am, Mitchell Sweeney, Chase Martin and Andres Palomar arrived at a house at 13 Wattle Street, Milla Milla, to install insulation. They had already installed insulation in two other houses in the street that morning.⁸⁶ Titan had quoted for the supply and fit of 100m² of insulation for \$1,200 two days before.⁸⁷
- 12.4.14 The job was small and no risk assessment was undertaken for it. The men were moving toward the manhole to leave when one of them heard a thud. He thought that Mitchell had slipped and cracked something in the roof but then saw Mitchell's leg stretch out to brace. Mitchell did not respond to verbal enquiries. The other man received an initial shock and then a further shock when his back touched the roof as he was moving closer to Mitchell. They then yelled to the homeowner to turn the power off. One of the men told the Queensland State Coroner he was positive that Mitchell was not using a staple gun when he collapsed.⁸⁸
- 12.4.15 One of the men left the roof to turn off the power and shortly afterwards requested the homeowner call an ambulance. The men then carried Mitchell out through the manhole and started resuscitation. A number of people assisted with resuscitation until an ambulance arrived, including a QPS officer.⁸⁹ However, Mitchell was unable to be revived and was declared dead at the scene.⁹⁰

79 QIC.001.001.0001, 45.

80 QIC.001.001.0001, 46.

81 QIC.001.001.0001, 47.

82 QIC.001.001.0001, 48.

83 QIC.001.001.0001, 48.

84 QIC.001.001.0001, 48-49.

85 QIC.001.001.0001, 48.

86 QIC.001.001.0001, 50.

87 QIC.001.001.0001, 45.

88 QIC.001.001.0001, 50.

89 QIC.001.001.0001, 50.

90 QIC.001.001.0001, 5.

12.4.16 Autopsy results

- 12.4.17 An autopsy found the cause of Mitchell's death to be electrocution.
- 12.4.18 It identified marks over the left and right sides of Mitchell's trunk, and some discolouration over the base of his right palm (which may indicate perimortem electrical contact).⁹¹

12.4.19 Workplace Investigation

- 12.4.20 An investigation was carried out by WH&S Queensland, with inspectors from both WH&S Queensland and Queensland ESO attending the scene.⁹²
- 12.4.21 They found that the men had been using metal staples in their installation and that one of those staples had pierced a lighting cable. It is not known which man had inserted the staple that pierced the electrical cable.⁹³
- 12.4.22 Their initial investigations found there was a fault with a lighting cable and the roof of the premises was 'live'. The lighting cable was found to be in contact with the foil insulation (making the insulation 'live').
- 12.4.23 WH&S Queensland found that it is likely that part of Mitchell's body (probably his head or back) came into contact with the metal roof as he was preparing to leave the ceiling, creating an electrical circuit.⁹⁴

12.4.24 The Aftermath

- 12.4.25 Remedial action was taken against Titan (through improvement notices and electrical safety protection notices). On 30 August 2011, Titan was fined \$100,000 after pleading guilty to breaching section 27 of the Electrical Safety Act.⁹⁵
- 12.4.26 Titan was initially included on the list of deregistered installers from 4 February 2010 (but later removed). On 9 February 2010, it was re-listed on this list.⁹⁶
- 12.4.27 Prior to deregistration, Titan lodged 506 claims, totalling \$663,600 for installations carried out between 9 October 2009 and 4 February 2010. Attempts were made by the Commonwealth to withhold \$12,000 in payment and to seek reimbursement for some \$213,400 already paid due to non-compliance in 164 installations.⁹⁷

12.5 Findings of the Queensland State Coroner

- 12.5.1 The Queensland State Coroner made these findings about the workplace arrangements in respect of each of these men:

In each case the employer should have recognised that roof spaces are inherently dangerous places to work and they should have had in place reliable systems to effectively manage that risk. Three people died because that didn't happen with any of the three registered installers. However, the circumstances in which each of the deaths occurred were significantly different.

91 QIC.001.001.0001, 50.

92 QIC.001.001.0001, 51.

93 QIC.001.001.0001, 51.

94 QIC.001.001.0001, 51.

95 QIC.001.001.0001, 51.

96 QIC.001.001.0001, 51-52.

97 QIC.001.001.0001, 52.

Matthew Fuller had a basic occupational health and safety certificate but no experience or training in installing insulation or in similar industries. His employer gave him no training. He was not supervised in any meaningful sense. He was warned not to staple through electrical cords but was not told of the possible deadly consequences of doing so, nor was he told how to avoid it. It is not appropriate to lay foil over power cords but that was what most of the installers were told to do.

In my view, Mr Fuller's training and supervision were inadequate as was the employer's safety management system. These inadequacies directly contributed to Matthew's death.

Rueben Barnes had no occupational health and safety qualifications or certificates, although it seems likely he had some OH&S training or induction as part of his first year carpentry apprenticeship. He received no training in relation to the installation of insulation or the risks to be managed when engaged in the work. He was supervised on site by an experienced tradesman who might have been expected to be more alert to the risks associated with working in roof cavities. The fact that Rueben and another worker used a metal pole to push insulation batts into place indicates their supervision was lax.

The employer had a very basic safety management system but it was not utilised on the job on which Rueben died.

It is unlikely these inadequacies directly contributed to Rueben's death. He was killed by a hidden trap created by another tradesman at some undetermined period before the job in which Rueben was engaged. His death could have been avoided if the electricity had been isolated from the work site. However, I accept the evidence that was not mandated by any regulation then in force and was not common or accepted practice within the building or insulation industry.

Mitchell Sweeney had some experience in installing roof insulation and had completed an accredited insulation installation course. His employer provided no supervision or work safety system on the basis that Mitchell was an independent contractor. However, as a result of Matthew Fuller's death his employer was alert to the dangers of using metal staples with foil insulation and took active steps to ensure its installers did not engage in that dangerous practice and that they were aware of the danger of stapling through electrical cables. However little or nothing was done to assist the installers ensure that the risk of stapling through live power cables was avoided. They were simply warned of the danger. Despite being directed not to use metal staples Mitchell chose to do so and died as a direct result. Despite that, it is by no means certain that had he been using nylon staples he would have survived, although it is more likely.⁹⁸

- 12.5.2 The induction and training of Matthew Fuller and Rueben Barnes was found by the Queensland State Coroner to have been 'clearly deficient'.⁹⁹ That which was provided to Mitchell Sweeney was found to be lacking with respect to electrical safety when installing Reflective Foil Laminate (RFL) sheeting.¹⁰⁰

98 QIC.001.001.0001, 68-69.

99 QIC.001.001.0001, 73.

100 QIC.001.001.0001, 73-74.

12.6 Marcus Wilson

- 12.6.1 On 21 November 2009, a 19-year-old installer, Marcus Wilson, died from heat exposure. He died of complications of hyperthermia suffered during installation of insulation in Western Sydney.¹⁰¹ Marcus was installing top-up cellulose insulation on a very hot day on 20 November 2009 in a house in St Clair, New South Wales.¹⁰²
- 12.6.2 The complications causing death included total organ failure, rhabdomyolysis ('muscle meltdown'), and coagulopathy (a blood disorder that prevents clotting of blood).¹⁰³
- 12.6.3 Marcus was declared dead at Nepean Hospital on 21 November 2009 at 9.03pm.¹⁰⁴

12.6.4 Employment

- 12.6.5 Marcus was installing insulation for Pride Buildings NSW Pty Ltd (Pride), a company registered under the HIP. Pride's primary business at the time of Marcus's death was installing cellulose fibre insulation in the ceilings of houses.¹⁰⁵
- 12.6.6 Pride was not Marcus's employer. He was substituting for his friend Calum McLean who had taken ill. Marcus was to work with Calum's colleague, Collin Cini, for the day, and Calum was to pay Marcus for the work he undertook.¹⁰⁶ The managing director of Pride, Ryan Glover, was not made aware of this arrangement.¹⁰⁷
- 12.6.7 The New South Wales Deputy State Coroner concluded that Ryan Glover was a managing director with high expectations.¹⁰⁸ He insisted that work be performed regardless of circumstances. Accordingly, there was no company rule or practice to cease work in excessive heat.¹⁰⁹ Mr Glover had, however, informed Mr Cini it would be hot that day and he should finish early.¹¹⁰
- 12.6.8 Training provided by Pride was also inadequate. Pride offered training courses but they were rushed (likely at the request of both the participants and Mr Glover) with answers to the assessment given to participants. Participants were docked pay to cover the cost of training.¹¹¹ Further, no instruction was given on how to install cellulose fibre roof insulation.¹¹² Prior to the incident, Pride did not conduct risk assessments or prepare safe work method statements.¹¹³ The New South Wales Deputy State Coroner concluded that Pride did not prioritise the health and safety of its contractors and that anyone working for Pride was potentially at risk.¹¹⁴

12.6.9 Training and supervision

- 12.6.10 Marcus Wilson was a very determined worker who had completed some training at TAFE in insulation.¹¹⁵ Despite this, he had little insulation experience in the workforce and accordingly, was not acclimatised to working in very hot conditions.¹¹⁶ As Marcus

101 NIC.001.001.0001, 1; NIC.001.001.0001, 4; NIC.001.001.0001, 12.

102 NIC.001.001.0001, 4.

103 NIC.001.001.0001, 4.

104 NSW.002.006.0059, 7.

105 NSW.002.006.0059, 1.

106 NIC.001.001.0001, 5-6.

107 NIC.001.001.0001, 6.

108 NIC.001.001.0001, 7.

109 NIC.001.001.0001, 7.

110 NIC.001.001.0001, 7.

111 NIC.001.001.0001, 8-9.

112 NSW.002.006.0059, 21.

113 NSW.002.006.0059, 12-13.

114 NIC.001.001.0001, 7- 9.

115 NIC.001.001.0001, 9; NIC.001.001.0001, 6.

116 NIC.001.001.0001, 6.

was not an employee or contractor of Pride, he had not received any training from that company.¹¹⁷ Pride's workforce in general was largely casual and unskilled in insulation installation.¹¹⁸

12.6.11 The Day of Marcus's Death

- 12.6.12 Earlier on 20 November 2009, Marcus and Mr Cini had installed insulation at Wyoming, New South Wales.¹¹⁹ After a lunch break, Marcus and Collin arrived at 46 Solander Drive, St Clair around 11.30am. This was later than they had anticipated as they encountered unexpected delays earlier that morning.¹²⁰ The temperature recorded nearby at Penrith was 36.7°C at the time.¹²¹
- 12.6.13 In installing insulation at St Clair, Marcus Wilson (with Mr Cini) carried 10 insulation bags weighing 15-20kgs each up a ladder into the roof. They then spent about one hour topping up existing insulation in the ceiling.¹²²
- 12.6.14 Mr Cini noticed Marcus struggling somewhat and suggested that Marcus leave the roof for a break if he was too hot. Marcus took one or possibly two breaks and consumed Coca-Cola provided by the homeowner. Marcus did not like to drink water, and Mr Cini did not see Marcus consume any other liquids.¹²³
- 12.6.15 At 1.30pm, the Bureau of Meteorology recorded a temperature at Penrith of 42.1°C. The temperature in the roof would have been, of course, much higher.¹²⁴
- 12.6.16 After the installation was complete, Marcus was asked by Mr Cini to leave the roof to sweep and tidy the ground floor below. It was at this time that Mr Cini noticed that Marcus was upset or agitated. After completing the job, he suggested that Marcus wash his hand (that had received a cut) and wait in the air-conditioned truck.¹²⁵
- 12.6.17 When Mr Cini returned to the truck, Marcus was not there. Mr Cini proceeded to drive around the surrounding area to look for Marcus, where he found him collapsed on the ground, surrounded by people. Witnesses had seen Marcus running from the job site prior to his collapse.¹²⁶ Mr Cini and others tried to keep Marcus cool with ice. They also gave him water.¹²⁷
- 12.6.18 An ambulance was called and transported Marcus to Nepean Hospital following treatment.¹²⁸ At the time, he was unresponsive and suffering from hyperthermia and tachycardia.¹²⁹ He was pronounced dead at 9.03pm the following night.¹³⁰

12.6.19 Coroner's findings

- 12.6.20 It was determined that, due to Marcus's lack of heat acclimatisation and preference for drinking Coca-Cola, Marcus was vulnerable to heat stroke. The excessive temperatures, manual labour and lack of hydration all contributed to a loss of fluids and physical

117 NSW.002.006.0059, 9-10.

118 NIC.001.001.0001, 8.

119 NIC.001.001.0001, 6.

120 NIC.001.001.0001, 10-11.

121 NIC.001.001.0001, 6.

122 NIC.001.001.0001, 6.

123 NIC.001.001.0001, 6; NIC.001.001.0001, 9.

124 NIC.001.001.0001, 6.

125 NIC.001.001.0001, 6.

126 NIC.001.001.0001, 6.

127 NSW.002.006.0059, 6.

128 NSW.002.006.0059, 6; NIC.001.001.0001, 6.

129 NSW.002.006.0059, 2.

130 NSW.002.006.0059, 6.

stress.¹³¹ Marcus subsequently died from complications arising from hyperthermia, including total organ failure, rhabdomyolysis (or muscle meltdown), and coagulopathy.¹³²

- 12.6.21 The New South Wales Deputy State Coroner found that there were many factors which contributed to Marcus's death. Continuous, hard work in a very hot environment was the first contributor to Marcus's death. Pride's inattention to safety was another contributor, as there were no policies requiring contractors to ensure hydration or take rest breaks, or even cease work, in excessive heat. Pride's demanding management led contractors to believe that work must be performed in all conditions or termination of contracts may result. Further contributing was the delay in arriving at the St Clair house and Marcus's particular vulnerability to heat stress.¹³³

12.6.22 Subsequent Events

- 12.6.23 Around 1 December 2009, Pride, as required by the Australian Government, introduced mandatory risk assessments.¹³⁴ It had after Marcus's death provided all subcontractors with a safe work method statement.¹³⁵ Pride was not prosecuted by NSW workplace health and safety authorities.
- 12.6.24 However, shortly after the incident, Pride was deregistered as an installer and, in 2010, ceased work in the insulation industry altogether.

12.7 Effect on Families

- 12.7.1 The Commission has heard evidence from the families of Matthew Fuller, Rueben Barnes, Mitchell Sweeney and Marcus Wilson about the effect that the HIP and the death of these men have had on them. Ms Monique Pridmore, who was the co-worker and girlfriend of Matthew Fuller, was injured when trying to assist him at the site of the accident and she also provided a statement to the Commission.

12.7.2 The Fuller Family

- 12.7.3 Matthew Fuller was a desperately-wanted and a much-loved and cherished child. He was the only child of Kevin and Christine Fuller.¹³⁶
- 12.7.4 Matthew is remembered as a strong and compassionate man, who showed dedication and commitment, even at an early age. While he was still in high school, he was a prefect, a good swimmer and a champion ten-pin bowler.¹³⁷ He was close to his family, and his parents fondly remember travelling to America with him, and the maturity and care he demonstrated when helping to care for his grandmother in the late stages of her life.¹³⁸
- 12.7.5 Matthew did not know what he wanted to do with his life. In 2005, he decided to take some time away from his university studies to travel and work. On his return to Australia in 2006, he took the opportunity to work in jobs that he knew he would enjoy and which would challenge him. Kevin and Christine Fuller were very proud of their son's strong worth ethic and success in these jobs.¹³⁹

131 NIC.001.001.0001, 10-11.

132 NIC.001.001.0001, 1.

133 NIC.001.001.0001, 10-11.

134 NIC.001.001.0001, 7.

135 NSW.002.006.0059, 19.

136 SUB.001.001.0214.49.

137 Statement of K Fuller at [15], FUL.002.001.0001, 24 January 2014.

138 Statement of K Fuller at [14-17], FUL.002.001.0001, 24 January 2014.

139 Statement of C Fuller at [13], FUL.002.001.0032, 24 January 2014.

- 12.7.6 Matthew met his girlfriend Monique Pridmore early in 2009 and he sought out work that would provide a good income to help him to establish a home with her. Kevin and Christine Fuller considered that this was a significant motive for Matthew seeking work as an insulation installer.¹⁴⁰
- 12.7.7 Matthew's death has clearly had a severe and lasting impact on his family. On learning of Matthew's death, Kevin and Christine Fuller describe themselves as having been in a state of denial or feeling like they were hallucinating.¹⁴¹ It was a very difficult and painful stage of their lives.
- 12.7.8 Kevin and Christine Fuller recounted feeling overwhelmed at the processes involved in concluding Matthew's affairs. Mrs Fuller stated 'There were so many things to organise at a time when we were least equipped to handle them'.¹⁴² Mr Fuller gave this oral evidence to the Commission:

*It takes much too long, much too complex. In the circumstances we need to [...] try and make it easier in that case that there will be something from the government or the Coronial Office or somewhere that you've got like—shall we call it a pack—that will help people go through because that drains your soul.*¹⁴³

- 12.7.9 Kevin Fuller told the Commission about the effects of his grief on his health and on his relationship with his wife:

*Christine and I are each different now in so many ways. Losing Matthew almost ripped us apart. Yet at the same time it has actually pushed us closer together which is a good outcome, I'm happy for that. Our life is different now. It's not easy to get interested in the normal day-to-day things. This has consumed my life [...] I've lost over 14 kilos and I've lost most of my hair. Well, okay. The hair bit might be because I'm getting older but you know what I mean. It's fortunate that I do still have Christine and I still do have a sense of humour because if I didn't have a sense of humour I think I would have gone insane by now.*¹⁴⁴

- 12.7.10 Mr and Mrs Fuller both attended counselling sessions but found it of limited utility. Mr Fuller received advice from a counsellor that the assistance she could provide to him was limited because he was already taking steps to get on with life, but that she is concerned that when the process of seeking answers about Matthew's death is complete, he will fall in a heap.¹⁴⁵ Since Matthew's death, Mr Fuller has spent his life trying to understand why Matthew died and advocating for changes that he considers would ensure that no one else suffers the same fate. Mr Fuller started to seek out information about the circumstances of Matthew's death in the days immediately following it.¹⁴⁶
- 12.7.11 Over the following months and years, Mr Fuller has coped with his grief by going to great lengths to understand everything he possibly can about the events surrounding Matthew's death. Mr Fuller campaigned strongly to have the deaths associated with HIP reviewed by various government inquiries.¹⁴⁷ The efforts of Mr Fuller have, I am satisfied,

140 Statement of K Fuller at [24-25], FUL.002.001.0001, 24 January 2014.

141 Statement of K Fuller at [38], FUL.002.001.0001, 24 January 2014.

142 Statement of C Fuller at [31], FUL.002.001.0032, 24 January 2014.

143 Transcript (16 May 2014) 4989 (K Fuller).

144 Transcript (16 May 2014) 4998-4999 (K Fuller).

145 Transcript (16 May 2014) 4999 (K Fuller).

146 Statement of K Fuller at [47], FUL.002.001.0001, 24 January 2014.

147 SUB.001.001.0214, 48.

significantly contributed to the current Queensland government media campaign directed to drawing people's attention to the dangers that are present when one goes into the ceiling cavity.

- 12.7.12 Mr Fuller's sense of grief and loss was heightened on the occasions that he learned of the deaths of Rueben Barnes, Marcus Wilson and Mitchell Sweeney. He explained this in his statement to the Commission:

*I felt totally responsible. I should have opened up my soul to the media as it started to look like they were the only people who would try to get the message out to the general public about the dangers of working in roof spaces.*¹⁴⁸

- 12.7.13 Kevin and Christine told the Commission that they have not only lost their only child, but also that they have lost the opportunity to become grandparents. Mrs Fuller said 'I will have no children or grandchildren to look after me in my old age, no one to listen to my stories, no one to pass down photos and memorabilia to'.¹⁴⁹

- 12.7.14 Matthew's tragic death has had a devastating effect on Kevin and Christine Fuller and continues to do so. Kevin Fuller told the Commission about the frustration he felt in listening to certain evidence where witnesses were not able to recall certain details:

*So when people go "I can't recall, I can't remember" Christine and I have the opposite problem—we will never, ever be able to forget what the HIP did to us, needlessly killing our only son Matthew.*¹⁵⁰

- 12.7.15 I hope that this Inquiry has filled the gaps in their knowledge and that they can find some solace in the fact that they have done everything humanly possible to determine the course of events leading to Matthew's death and how such tragedy might be avoided in the future.

12.7.16 The effect of the electrocution of Monique Pridmore in going to the aid of Matthew Fuller

- 12.7.17 Monique Pridmore was injured in the same incident that resulted in Matthew Fuller's death.

- 12.7.18 This was her second day working as an insulation installer. She received no training, and had extremely limited contact with any QHI employee other than Matthew.¹⁵¹ The incident had a major impact on her both physically and emotionally.

- 12.7.19 Ms Pridmore was electrocuted while trying to assist Matthew. She sustained severe injuries that caused her to be hospitalised for over five weeks, with extensive out-of-hospital treatment after that time. She was still attending medical appointments on a very regular basis at the time that she moved to the United Kingdom in July 2010, and has subsequently required medical treatment on multiple occasions for infections related to the injuries that she sustained.¹⁵²

- 12.7.20 Ms Pridmore continues to suffer from pain on a daily basis. On some days, she has such severe pain that she cannot stand or move about comfortably.¹⁵³ Ms Pridmore advised that there are other courses of treatment that she is meant to have, but that,

148 Statement of K Fuller at [59], FUL.002.001.0001, 24 January 2014.

149 Statement of C Fuller at [75], FUL.002.001.0032, 24 January 2014.

150 SUB.001.001.0214, 49.

151 Statement of Pridmore at [14-16], MON.002.001.0043, 24 January 2014.

152 Statement of Pridmore at [20-27], MON.002.001.0043, 24 January 2014.

153 Statement of Pridmore at [28], MON.002.001.0043, 24 January 2014.

even four years after the accident, her leg has not healed to the point where there treatments can commence.¹⁵⁴

- 12.7.21 In addition to her physical injuries, which have resulted in significant impairment, Ms Pridmore has also sustained psychological harm.¹⁵⁵
- 12.7.22 In July 2010, Ms Pridmore felt unable to stay in Australia, and chose to go to the United Kingdom, where she spent time with her sister and other friends and travelled. She returned to Australia in May 2012.¹⁵⁶ She still does not like talking about Matthew's death,¹⁵⁷ and is embarrassed by the appearance of her leg, taking many different steps to avoid people seeing her scars or asking questions about her injuries.¹⁵⁸
- 12.7.23 Ms Pridmore does not currently work, and has not done so since the day she was injured.¹⁵⁹

12.7.24 The Sweeney Family

- 12.7.25 The Commission has heard evidence about the devastating and lasting effect that Mitchell Sweeney's death has had on his mother, father, brothers and sister-in-law.
- 12.7.26 The family's moving submission to the Commission referred to the 'the guilt, grief and responsibility that the Sweeney family feel in response to Mitchell's death is unyielding, even more than 4 years later'.¹⁶⁰
- 12.7.27 The family feel partly responsible for Mitchell's death because they encouraged him to move to the Gold Coast in 2009, where he took up work as an insulation installer. When Mitchell was offered work with Titan Insulations Pty Ltd, his father Martin recalls saying words to the effect 'Get out there and make hay while the sun shines'.¹⁶¹
- 12.7.28 These feelings of responsibility have been particularly profound for Mitchell's brother Brendan, who worked in the building industry on the Gold Coast. Brendan introduced Mitchell to a number of people working in the industry, which led to Mitchell working with Titan Insulation. Brendan has never forgiven himself for this and struggles with guilt on a daily basis.¹⁶²
- 12.7.29 Brendan has experienced psychological symptoms that have led to a loss of his sense of purpose, motivation, concentration and confidence.¹⁶³ These symptoms have resulted in job loss and the ending of a relationship.¹⁶⁴
- 12.7.30 Mitchell's death has also had a profound effect on the psychology of his brother Justin Sweeney. Justin's feelings of grief, and the pressures that he felt as the administrator of Mitchell's estate resulted in him distancing himself emotionally from his family, and his work performance suffered.¹⁶⁵
- 12.7.31 Mitchell's parents have both experienced profound grief and loss following the death of their son, which was exacerbated by the pain of watching that grief wreak havoc on the lives of their surviving children.

154 Statement of Pridmore at [32], MON.002.001.0043, 24 January 2014.

155 Statement of Pridmore at [25], MON.002.001.0043, 24 January 2014.

156 Statement of Pridmore at [24], MON.002.001.0043, 24 January 2014.

157 Statement of Pridmore at [18], MON.002.001.0043, 24 January 2014.

158 Statement of Pridmore at [30], MON.002.001.0043, 24 January 2014.

159 Statement of Pridmore at [31], MON.002.001.0043, 24 January 2014.

160 SUB.001.001.0147, 52.

161 SUB.001.001.0147, 52.

162 SUB.001.001.0147, 54.

163 SUB.001.001.0147, 54.

164 SUB.001.001.0147, 54.

165 SUB.001.001.0147, 65.

- 12.7.32 When Mitchell's mother, Wendy, was informed of her son's death, she was inconsolable for months and cried constantly.¹⁶⁶ Her grief was exacerbated by the fact that she lived in a small town, where she and her family were well known and were confronted daily with questions and condolences for their loss. The family's contact details came to be known by media organisations, and Wendy received 'relentless calls for comments' which contributed to her psychological injuries.¹⁶⁷
- 12.7.33 Wendy withdrew from her community, and many of the things that had previously brought her joy no longer served that purpose. She sought counselling for her grief, but found the services available to be inadequate to assist her in dealing with the magnitude of her loss. Notwithstanding the support of her family, all equally pained, Wendy felt alone. Her sense of loss was deepened by watching the effects of grief on her family, and seeing her family rip itself apart in different ways.¹⁶⁸
- 12.7.34 Mitchell's father Martin has sought, very successfully, to be a rock of support for his family. Martin Sweeney swallowed his pain and kept it hidden from his family.¹⁶⁹ He silently shouldered the weight of his wife and children's pain, including having to watch his wife cry herself to sleep and watching his children's lives disintegrate.¹⁷⁰
- 12.7.35 The Sweeney family's submission explained that Martin Sweeney's greatest fear is that once the answers he has searched for are obtained and his family is recovered, he will be engulfed by the emotions that he has kept at bay for years.¹⁷¹
- 12.7.36 The depth of Martin Sweeney's love for his son and the freshness of his grief was evident in the statement that he gave:

*No family should ever have to go through what we've been through and what the families of Rueben Barnes, Matthew Fuller and Marcus Wilson have been through [...]I would also like to finally take this opportunity to say that we love you very much, Mitchell, and we will never stop missing you ...*¹⁷²

12.7.37 The Barnes Family

- 12.7.38 There were eight children in the Barnes family. Sunny Barnes, who is the eldest sister of Rueben Barnes, gave evidence to the Commission on behalf of her siblings. It was a close-knit and well-cared for family. Sunny Barnes told the Commission 'We have great memories as children growing up. It was a great family to grow up in'.¹⁷³
- 12.7.39 Rueben's siblings and his father, Murray Barnes, all remember Rueben as having a strong work ethic and a passion to build things from the time he was a small boy. Rueben's sister Kelsy Barnes told the Commission:

*It was clear that from an early age, Rueben wanted to be a builder. He would watch dad and copy what he did. He'd pull things apart and put them right back together again.*¹⁷⁴

166 SUB.001.001.0147, 53.

167 SUB.001.001.0147, 53.

168 SUB.001.001.0147, 53.

169 SUB.001.001.0147, 56.

170 SUB.001.001.0147, 56.

171 SUB.001.001.0147, 56.

172 Transcript (15 May 2014) 4787 (M Sweeney).

173 Transcript (16 May 2014) 4981-4982 (S Barnes).

174 Statement of K Barnes at [12], BAR.002.001.0012, 23 January 2014.

- 12.7.40 Rueben is remembered as a happy young man, who had a strong work ethic and loved fishing, camping and skateboarding.¹⁷⁵ He was close to his siblings, for example, he and his brother Tully had renovated a boat together.¹⁷⁶
- 12.7.41 The family suffered multiple tragedies in 2009. Rueben's mother Karen passed away after a very long battle with cancer on 13 April 2009.¹⁷⁷ Some of the Barnes siblings recollect that they drew together at that time and supported each other. Sunny Barnes recalled:

*Prior to Rueben's death, our family was a normal, functioning family. We were close-knit, I talked to my brothers and sisters every day and we had dinner every day together. We were dealing with the normal dramas of everyday life and the stress of losing mum.*¹⁷⁸

- 12.7.42 Rueben's sister Jindee compares her experience of losing her mother Karen Barnes against her experience in losing Rueben. Karen had been ill for a long time, and the family had been able to prepare themselves for her death. But Rueben's death came as a complete shock.¹⁷⁹ This fractured the family's relationships, which appear to have already been quite strained following Mrs Barnes death in April. The lives of some of the Barnes children became quite chaotic.
- 12.7.43 In order to respect the family's privacy and wishes, I will not go into detail about all difficulties that the Barnes children have encountered following Rueben's death, and the disintegration of relationships between the siblings and their father. But I have been told about a range of difficulties which members of the Barnes family believe were caused, or exacerbated, by Rueben's death.¹⁸⁰
- 12.7.44 Sunny Barnes gave evidence about the fact that the siblings have had difficulties with their respective careers and in holding down jobs since Rueben's death. Many of the siblings have experienced physical and mental impacts and some have sought counselling. The lack of availability of free counselling services was a barrier to seeking counselling for some of them.¹⁸¹
- 12.7.45 From being a happy well-integrated family, the death of their mother and the death of Rueben has seriously affected their lives. It is to be hoped that the conclusion of this inquiry will bring some closure to the family and help them in their grieving process.

12.7.46 The Wilson family

- 12.7.47 Marcus Wilson had grown up with his sister Jessica in foster care. Jessica Wilson told the Commission that they had a close relationship.¹⁸²
- 12.7.48 Marcus was a very likeable young man and everyone who knew him enjoyed his company. He was kind and sharing with his friends and was loyal to those close to him. It is evident that he was a very hard worker and did not shy away from a challenging job. Ms Wilson told the Commission:

*Marcus had been to TAFE college to undertake some training in insulation and he was a hard worker undertaking casual employment.*¹⁸³

175 Statement of K Barnes at [11], BAR.002.001.0012, 23 January 2014; Statement of R Barnes at [8], BAR.002.001.0043, 28 January 2014.

176 Statement of T Barnes at [25], BAR.002.001.0034, 31 January 2014.

177 Transcript (16 May 2014) 4981 (S Barnes).

178 Statement of S Barnes at [22], BAR.002.002.0001, 24 February 2014.

179 Statement of J Barnes at [15], BAR.001.001.0001, 23 January 2014.

180 Statement of T Barnes at [46], BAR.002.001.0034, 31 January 2014.

181 Transcript (16 May 2014) 4985 (S Barnes).

182 Statement of Wilson at [3], WIL.002.001.0001, 17 January 2014.

183 Statement of Wilson at [3], WIL.002.001.0001, 17 January 2014.

- 12.7.49 She said that the loss of her brother has had a devastating impact on her family and herself.¹⁸⁴ Ms Wilson feels that innocent lives were lost in the pursuit of profit, and that the HIP failed those that it was established to assist—namely lower-skilled workers such as Marcus.¹⁸⁵
- 12.7.50 Less is known of Marcus’ personal circumstances and his background than the other men who died in the course of installing insulation under the HIP. There are many reasons why that is the case, but it is no indication that he was any less valued and loved than the other men. It is understandable that some families might regard these matters as private and highly emotional and sensitive.

12.7.51 Summary

- 12.7.52 The deaths of the four young men and the injury of Ms Pridmore have had devastating effects. Families have unresolved grief. Those who are parents said to me privately that the deaths are against the natural order of things. Children should bury their parents and not vice versa.
- 12.7.53 Some families expressed to me their concern that these fatalities were given so much publicity and scrutiny over a long period of time.
- 12.7.54 It cannot be easy to keep hearing about it publicly and then constantly and painfully being reminded of their loved one.
- 12.7.55 I hope that time will ease their pain.
- 12.7.56 It is evident that the four deaths, to which reference has repeatedly been made, and the injury to Ms Pridmore were not the only consequences of the HIP. The Commission also received evidence from Mrs and Mrs Brierley.¹⁸⁶ Their home was insulated under the HIP on 30 September 2009. Mr Brierley entered the ceiling cavity on 6 October, after the RFL insulation was installed, and because a staple had pierced an electric cable, when Mr Brierley touched that staple and the metal roof, he completed a circuit and electrocuted himself. Fortunately, Mr Brierley survived. He was rushed to hospital and was in a coma for some 15 hours. His health has not returned to what it was prior to the incident.

12.8 Effect of the fatalities and the administration of the HIP

- 12.8.1 It was not until Matthew Fuller’s death that it was brought home to the Australian Government the risks that were inherent in the HIP and the delivery model that had been selected.¹⁸⁷ Officials noted the impact Matthew’s death had on them and others.¹⁸⁸ Some action was taken by the Australian Government.¹⁸⁹ It took even further deaths before the Australian Government was moved to act as it ought to have done earlier—immediately after Matthew Fuller’s death, and in my view before Phase 2 of the Program was launched. It is highly regrettable that, despite the fact that much material was available to the Australian Government and within the knowledge of some of its senior officials, that it took deaths before changes were made to the HIP that ought to have been made at the outset.

184 Statement of Wilson at [3], WIL.002.001.0001, 17 January 2014.

185 Statement of Wilson at [7], WIL.002.001.0001, 17 January 2014.

186 VOL.008.001.0007, 1-3.

187 See Statement of Levey at [252] and [340]; STA.001.003.0001, 18 March 2014.

188 Statement of Kruk at [60], STA.001.010.0001, 26 March 2014. Statement of Keeffe at [127], STA.001.015.0001, 28 March 2014.

189 Statement of Kruk at [60], STA.001.010.0001, 26 March 2014; Statement of Garrett at [138], STA.001.069.0001, 8 May 2014; Statement of Rudd at [50u], STA.001.080.0001, 15 May 2014.

12.8.2 Immediate response to the deaths by the Australian Government

- 12.8.3 'Installer advices' were issued regularly by DEWHA. In all, 26 were issued. The first is dated 29 June 2009 and the last dated 9 March 2010.¹⁹⁰ This was the primary method of communication by DEWHA to advise insulation installers on issues related to the HIP, including safety.¹⁹¹
- 12.8.4 At no time before the death of Matthew Fuller did the installer advices include any reference to installer safety or particular risks that installers should be wary of, such as electrical cables that might not have been correctly installed.¹⁹²
- 12.8.5 For example, in Installer Advice 9, issued on 29 September 2009 there was a section on supervision, advising of the competencies that had to be held by the supervisor, but nothing explaining what supervision actually meant. Installer Advice 10, regarding compliance with State and Territory laws and regulations has been referred to in Chapter 11 of this Report.
- 12.8.6 For present purposes, I have looked at Installer Advices 11 and 12 in some detail.¹⁹³
- 12.8.7 Installer Advice 11 was issued on 19 October 2009, some four days after the death of Mr Fuller. It made no reference to the fatality. It also made no reference (in terms) to the risks of electrocution when installing sheet foil.¹⁹⁴ The Advice relevantly stated:

Installers should ensure that only trained and competent installers are allowed to enter the roof space. The following procedures will help to keep your work place safe:

- *turn off the domestic power supply to the work area and when the installation is complete, turn it back on. Check that light switches and power points are operational before you leave.*
- *Check that residual current devices (circuit breakers) are fitted.*
- *Locate power cables and fittings before you start installing the insulation and ensure that they will not be in the way of any staples or fixings that you will be using.*
- *Use heat resistant protective down light covers or leave the required clearance, generally at least 50mm or 200mm around halogen down lights.*
- *Do not leave debris, including off-cuts, rubbish, loose staples etc in the roof space.*¹⁹⁵

- 12.8.8 Presciently for Mr Marcus Wilson's supervisor the advice also stated:

As summer approaches be aware that the temperature in a roof cavity can get quite high creating the potential for heat related illnesses such as dehydration, heat exhaustion, heat stress and heat stroke.

- 12.8.9 Contact numbers were given for Workcover bodies in each State and Territory. That was inappropriate and reflects poor attention to detail.
- 12.8.10 I note, for present purposes, that this Advice does not purport to compel an installer to turn off the power before entering the roof space, and nor does it warn, in terms, of the risk of electrocution.¹⁹⁶ Instead, it merely notes that:

190 AGS.002.001.0001, 1-32; AGS.002.011.1333, 1-3; AGS.002.002.0068, 1; HAN.002.001.1286, 1

191 Transcript (1 April 2014) 1531-1532 (K Keefe).

192 AGS.002.001.0001, 19-32.

193 AGS.002.001.0001, 16-19.

194 AGS.002.001.0001, 18-19.

195 AGS.002.001.0001, 18.

196 AGS.002.001.0001, 18-19.

It is a safety issue to ensure that electricity is turned off BEFORE undertaking any work in confined roof spaces.¹⁹⁷

- 12.8.11 It is true to say, perhaps, as Mr Keffe did, that at this time it was not entirely clear what had occurred that led to Matthew's death.¹⁹⁸ A similar sentiment was expressed by Ms Kruk.¹⁹⁹ That might be true of Installer Advice 11, but it cannot be true of the next, Installer Advice 12 issued on 26 October.

- 12.8.12 Installer Advice 12 stated, relevantly:

SPECIAL ISSUE ON SAFETY

The Australian Government takes the matter of safety very seriously. For the Home Insulation Program, the safety of householders is paramount. Employers and supervisors play a critical part in ensuring their employees are properly trained and aware of all relevant Occupational Health and Safety (OHS) requirements and that each installation is checked to ensure it meets the Australian Standard as specific in the Program Guidelines.²⁰⁰

- 12.8.13 Then followed this 'Industry comment':

Further to the brief information on safety issues provided in Installer Advice Number 11 of 19 October 2009 the following electrical safety advice has been supplied by Master Electricians Australia:

The process of stapling conductive foils in ceiling spaces where cables are present is highly dangerous. Metal staples may connect a live wire to the entire ceiling of foil without operating protection equipment. This will place the worker and other people entering the ceiling at a very high risk of electrocution. Non conductive securing practices are highly recommended such as taping or nylon staples.

Turning off Main switches and safety switches are good practices but do not eliminate the risk. Many cables in the ceiling are not controlled by these devices. All cables are to be treated alive until proven de-energised by a licensed electrician.

Master Electricians Australia highly recommend engaging an electrical contractor to perform a final test of the installation to ensure it is left safe.

Insulation must be kept 200mm from all halogen down lights and 50mm from any transformers or by a suitable barrier [such as down light covers].²⁰¹

- 12.8.14 Although supervision was referred to, and 'close supervision' was referred to, there was still no explicit statement as to what sort of supervision was contemplated in the guidelines. A link was provided to the pocketbook prepared by Mr Mulhall on behalf of the Construction and Property Services Industry Skills Council. One wonders how many insulation installers would have taken the trouble to access the pocket book, let alone read any of it.

¹⁹⁷ AGS.002.001.0001, 18.

¹⁹⁸ Transcript (1 April 2014) 1538 (K Keffe).

¹⁹⁹ Transcript (28 March 2014) 1355 (R Kruk).

²⁰⁰ AGS.002.001.0001, 18.

²⁰¹ AGS.002.001.0001, 17.

- 12.8.15 Mr Keffe accepted that installer advices prior to Installer Advice 12 should have referred to safety.²⁰² Ms Kruk agreed that these advices ought to have been clearer about the recent fatality and the risk involved.²⁰³
- 12.8.16 Installer Advice 13 (issued on 1 November 2009) advised changes to the Guidelines which were to take effect from 2 November 2009.²⁰⁴ One of the changes was to ban the use of metal staples or other fasteners and, from 1 December 2009, to require a risk assessment to be undertaken before any insulation could be installed in any home.²⁰⁵ But nowhere was it specified that the matters referred to above in Advices 11 and 12 as to turning off power and so forth were to be requirements of the HIP in the sense of being included in the Guidelines.

12.9 Fire incidents related to the HIP

12.9.1 Introduction

- 12.9.2 By late September 2009, notification of fires in houses with insulation installed under the HIP had become an issue for the Compliance Team for the Program. The issue was assuming a profile in the media and DEWHA was receiving information about fires from a number of States.²⁰⁶
- 12.9.3 Safety risks relating to fires were raised with the Australian Government as early as March 2009. I have earlier referred to the warning letter sent by Mr James Tinslay, Chief Executive Officer of the National Electrical and Communications Association (NECA) to Mr Garrett on 9 March 2009, raising concerns regarding the inherent dangers when insulation is installed inappropriately close to electrical equipment and cables, and the risk of fire associated with installation of insulation near downlights. In relation to fires, the letter noted:

Whilst not the only safety issue by far the most dangerous is the risk of fire associated with installing thermal insulation over or in close proximity to recessed luminaires such as the halogen downlights which have become increasingly popular in residential premises over the past few years.

These light fittings run at very high temperatures and the incorrect installation of thermal insulation nearby has been the cause of many fires throughout Australia especially over the previous few years. The incidence of fires in houses has increased to the extent that the Australian Standard dealing with the installation of electrical equipment now has specific requirements for clearance of thermal insulation from such lighting sources.

*The problem is not insurmountable and special protective barriers are now commercially available to ensure that these minimum distances are maintained.*²⁰⁷

202 Transcript (1 April 2014) 1540 (K Keffe).

203 Transcript (28 March 2014) 1355 (R Kruk).

204 AGS.002.001.0001, 15-16.

205 AGS.002.001.0001, 15-16.

206 Statement of Hoytink at [94], STA.001.025.0001, 1 April 2014.

207 AGS.002.013.0360, 1-2.; AGS.002.014.1412, 1-2.

12.9.4 Mr Keefe responded (on behalf of the Minister) in these terms:

Thank you for your letter of 9 March 2009 to the Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, concerning the installation of ceiling insulation. I have been asked to reply on the Minister's behalf and I apologise for the delay in responding.

You may be aware that the guidelines for the Australian Government's Energy Efficient Homes Package clearly state that the insulation installer must follow the wiring and minimum clearance distances as stated in clause 4.5.2.3 and figure 4.7 of the AS/NZS 3000:2007 standard.

However, as you have stated in your letter, despite this requirement in the guidelines there remains the risk of new installers not being appropriately trained in procedures to satisfy this and other legal requirements. To ensure that all installers are appropriately trained, the Government is currently developing a training program for new entrants to the insulation industry based on existing units in the current nationally endorsed training package. As a part of this, tradespeople with no insulation experience who are making a shift to insulation installation will require a two day supplementary training.

The Government does, however, appreciate NECA's offer of its services and as a result. NECA has been added to the stakeholder register for the Energy Efficient Homes Package. Organisations on this register are approached by the Government on an as-needs basis for advice, consultation and information dissemination on various aspects of the Energy Efficient Homes Package.²⁰⁸

[emphasis added]

12.9.5 Mr Garrett did not see Mr Tinslay's letter 'at the time'.²⁰⁹

12.9.6 On 21 September 2009, NSW Fire Brigades and the NSW Office of Fair Trading reported a number fires involving downlights and insulation and issued a warning to householders on insulation fire risks where insulation was located too close to downlights.²¹⁰

12.9.7 As reports of fires increased, the Program Control Group began to focus on the issues of remediation for householders and fires linked to insulation installed pursuant to the HIP, noting 'intense scrutiny around safety issues.'²¹¹

12.9.8 Ian Hunter was the Commander in charge of the Fire Investigation and Analysis Unit at the Metropolitan Fire and Emergency Services in Victoria. He said that, between 1 July 2009 and 1 September 2009, he became aware of a possible increase in the occurrence of reported fires in the metropolitan district of Victoria, where the fires were a result of the close proximity of insulation products with ceiling exhaust fans and downlights.²¹² He was in regular contact with the Country Fire Authority of Victoria and they too reported a possible increase in fires caused by the proximity of insulation products to downlights and ceiling fans.²¹³ He raised the matter with EnergySafe Victoria. He also spoke with Mr Kimber of DEWHA about it on 16 November 2009.²¹⁴

208 AGS.002.013.0360, 2; AGS.002.014.1412, 2.

209 Statement of Garrett at [52], STA.001.069.0001, 8 May 2014.

210 HER.002.003.0478, 1

211 PRO.002.001.1451, 1

212 Statement of Hunter at [14], STA.001.061.0001, 2 May 2014.

213 Statement of Hunter at [15], STA.001.061.0001, 2 May 2014.

214 Statement of Hunter at [16]–[17], STA.001.061.0001, 2 May 2014.

- 12.9.9 DEWHA issued an Installer Advise on 29 September 2009 which included information on downlight clearances and requirements. This reiterated to installers that they were required to install insulation to the standard set out in the Building Standard and associated Australian Standard 3999-1992 'Thermal insulation of dwellings'.²¹⁵
- 12.9.10 On 12 October 2009, Ms Kent sent letters to all States and Territories, intended to focus attention to reporting all fire-related incidents that might be associated with the HIP, so that the Department could be made aware of the incidents and target compliance activity around those notifications.²¹⁶

12.9.11 The Australian Government's response to fire notifications

- 12.9.12 I have already referred to the role played by Mr David Hoitink. His responsibilities included dealing with issues of a legal nature arising in the course of the design and rollout, as well as liaising with State agencies.
- 12.9.13 According to Mr Hoitink, following notification from a State or Territory about a fire that potentially related to the HIP, the information would be forwarded to the Compliance Subcommittee. The Subcommittee would check whether the dwelling had been insulated under the HIP and then order inspections by PwC of houses with insulation installed by the particular installer, to determine whether there was a systemic problem. This approach commenced around early October 2009, once arrangements with the States were established.²¹⁷
- 12.9.14 DEWHA had indicated to the States in the letters of 12 October 2009 that it would be left to the States to take action, including prosecutions in relation to individual incidents.
- 12.9.15 Targeted inspections by PwC were part of the audit program that PwC had been engaged to conduct. That program is discussed in detail in Chapter 10. Random inspections were also part of that program. Where roof inspections were ordered in relation to an installer as part of this process, Mr Hoitink claimed that 5 or 5 per cent (whichever was higher) of their installations would be inspected.²¹⁸ Obviously, as I have discussed earlier in this Report, that did not commence to occur until late in 2009.
- 12.9.16 Data obtained from roof inspections showed that certain installers posed a higher risk than others, in terms of defective installations. Some installers had a higher rate of noncompliance.²¹⁹
- 12.9.17 Mr Hoitink recalled that DEWHA's earlier responses to installers who were associated with a fire incident relating to the program, advised them to arrange a review and, if necessary, rectification by a suitably qualified person of all the other work done by the installer team that had undertaken the installation where the fire incident occurred. Further inspections would also be arranged by DEWHA and any further non-compliance could result in deregistration.²²⁰
- 12.9.18 By December 2009, DEWHA was issuing Show Cause letters after the first reportable incident, providing installers with 24 hours' notice to advise why they should not be removed from the registered installers list.

215 DAR.002.001.0270, 1.

216 AGS.002.018.2036, 2.

217 Statement of Hoitink at [103], STA.001.025.0001, 1 April 2014.

218 Statement of Hoitink at [106], STA.001.025.0001, 1 April 2014.

219 Statement of Hoitink at [107], STA.001.025.0001, 1 April 2014.

220 Statement of Hoitink at [108], STA.001.025.0001, 1 April 2014.

12.9.19 Analysis of fire data

- 12.9.20 During the 12-month period that the HIP was operational, there were some 1.1 million insulation installations.
- 12.9.21 Under Phase 1 (from 3 February to 30 June 2009), 73,005 rebates were paid at a cost of \$103.1 million.
- 12.9.22 Under Phase 2 (from 1 July 2009 to 19 February 2010), 1.16 million payments were made to installers at a cost of \$1.45 billion.
- 12.9.23 The monthly rate of installations varied between just over 3,300 in March 2009 to a peak of 176,000 in November 2009.
- 12.9.24 The Department of Climate Change and Energy Efficiency (DCCEE) engaged the Commonwealth Scientific and Industrial Research Organisation (CSIRO) to provide specialist advice on the development of an inspection and rectification program for non-foil insulation installed under the HIP. In its final report of March 2011, 'CSIRO Risk Profile Analysis—Guidance for the Home Insulation Safety Program', the CSIRO used fire incident data held by DEWHA to develop a risk profiling tool for fire risk in those dwellings insulated between July 2009 to February 2010.²²¹ That report estimated the rate of insulation-related fires in dwellings pre-HIP to have been about 2.54 per 100,000 per year.²²²
- 12.9.25 224 fire incidents have been linked to the HIP, with fire incidents being defined widely, and to include any flames, burning, charring, smouldering or smoking insulation. This equates to 0.02 per cent of installations under the HIP. 80 of those incidents did not require fire brigade attendance. 144 of them involved flames and required fire brigade attendance, and 30 resulted in structural damage to the dwelling. Only a small number of fires resulted in substantial property damage.
- 12.9.26 The CSIRO's analysis of the fire data indicates that the fire incident rate for those homes in which insulation was installed under the HIP is some 1.07 incidents per 100,000 households per year. That rate is below that which applied before the HIP started.
- 12.9.27 No witness disputed the CSIRO findings and analysis. Some expressly agreed. Mr Arblaster (Manager of Enviroflex and one-time President of Australian Cellulose Insulation Manufacturers Association (ACIMA)), for example, said:
- Although there were more fires during the roll out of the HIP, the rate of increase was not greater than before the HIP was established ... My view is consistent with the CSIRO report ...*
- 12.9.28 ACIMA said, in its submission, that the CSIRO report provides a good summary of the situation in regard to fires.²²³
- 12.9.29 CSIRO's analysis of the fire callout data led the CSIRO to make the following conclusions:
- 12.9.29.1 there are significant differences between States, with Victoria and ACT showing much higher fire callout rates (2.3 and 3.5 times the rate in NSW, respectively);
- 12.9.29.2 there is evidence that the fire risk rate is strongly influenced by other factors, especially the presence of previous insulation, which may increase the fire risk by a factor of up to 7;

221 AGS.002.050.1604,1-112.

222 AGS.002.050.1604,1-112.

223 SUB.001.002.0001.4

- 12.9.29.3 there are significant differences due to material, with cellulose showing a fire callout rate 4.4 times higher than glasswool and 5.6 times higher than 'other' ('other' is mainly polyester).²²⁴ For cellulose, glasswool and 'other' (mainly polyester), the ongoing rates are about 7.2, 2.0 and 1.4 per 100,000 dwellings per year, respectively.
- 12.9.30 The rates of fire were highest in Victoria and ACT. One must be mindful, however, of the real possibility that reporting in some States and Territories may have been better than in others.

12.9.31 Fires: Observations and findings

- 12.9.32 It follows that the Australian Government had clear warnings of the risk of fires as a result of insulation being installed too close to downlights and exhaust fans in particular. The Guidelines were in part directed to avoiding such a risk by adopting Australian Standard 3999-1992 and the Building Code of Australia, both of which imposed minimum clearances in such cases. The number of fires in absolute terms *did* increase under the HIP. That is not surprising because there was a huge surge in the number of installations taking place.
- 12.9.33 It would have been of very great concern to me had the rate of fires under the HIP been greater than the rate which prevailed before its introduction. That would have suggested that less care and fewer controls were being exercised than was previously the case or that the warnings given by, for example, NECA's Mr Tinsley, had been ignored.
- 12.9.34 The data, however, with which no witness and no submission sought to take issue, shows that the rate of fires for the period of the HIP was certainly no greater than before that program started. This shows an apparent improvement in the controls and/or in the practices with respect to laying insulation in proximity to heat-producing elements in the ceiling under HIP. Although of course it is regrettable that any fires occurred under the HIP, it is of some comfort that few seemed to have resulted in serious property damage and none are said to have resulted in the loss of life or in serious injury to people.
- 12.9.35 I have not found it necessary to pursue this issue further. The occurrence of fires does not appear to have been an issue of particular concern, other than to the media. I invited the parties granted leave to appear at the Commission and the public to bring to the Commission's attention any particular concern that existed regarding fires.²²⁵ I also issued a request for such information during the public sittings of the Commission. That did result in submissions being made, but none that is contrary to the matters I have set out above.

²²⁴ Members of the cellulose industry pointed out that the definition of fire incident is very wide and that when cellulose is ignited, it smoulders and causes smoke but does not cause structural damage: Statement of Arblaster at [43b], STA.001.028.0001, 14 March 2014. ACIMA pointed out in its submission that some fires may have been connected to insulation when there were other causes. I note this submission, but have not found it necessary to make a finding about it.

²²⁵ Transcript (16 April 2014) 3167-3168. One submission (from Mr Peter Martin) endorsed the approach that I then foreshadowed taking with respect to fires, VOL.032.001.0001.1

13. TERMINATION, REMEDIATION PROGRAMS AND EFFECTS ON PRE-EXISTING BUSINESSES

13.1 Program Termination

- 13.1.1 The Home Insulation Program (HIP) was terminated on 19 February 2010, with immediate effect.¹ The decision to do so was taken by the Cabinet and came after four young men had lost their lives installing insulation under the HIP, extensive adverse publicity about the Program and mounting political pressure, in particular on Minister Garrett. The Australian Government gave no notice to the insulation industry of its intention to terminate the Program.
- 13.1.2 The Australian Government initially presented this decision as a suspension, rather than a termination. That seems to have been because it was giving consideration, at the time it ended the HIP, to introducing an insulation component within a new Renewable Energy Bonus Scheme (REBS). Because the Government decided not to proceed with the insulation component of the REBS, the Government's decision on 19 February 2010 was, for all intents and purposes, a decision to cease Australian Government funding of the installation of insulation in houses.² The effect of that decision was, as is obvious, devastating for insulation businesses.
- 13.1.3 It is clear on the evidence what steps the Australian Government took in ending the HIP and the factors that informed that decision. They are briefly considered below. I do not descend into unnecessary detail because it is the effects of that termination which the Terms of Reference render most material for present purposes, rather than the termination decision itself. After having done so, I consider the remediation programs that the Australian Government established to deal with the safety and other problems that the HIP had caused. The fact that such programs were regarded as necessary, and the scope and nature of the remedial work required are further demonstrations of the shortcomings in the HIP.
- 13.1.4 I then set out the effects of the HIP and its termination on pre-existing businesses, defined by the Terms of Reference as being those businesses that were in the business of insulation installation before the HIP was established. I conclude that the effects on those existing businesses of, in particular, the sudden termination of the HIP in circumstances where the Australian Government had given numerous assurances the Program would continue and had caused those businesses to expand their operations, justify those businesses being compensated.
- 13.1.5 Steps leading to the decision to terminate the Program**
- 13.1.6 In August 2009, the Low Emissions Assistance Program for Renters (LEAPR) was discontinued, and the Homeowner Insulation Program became the HIP. The Program was being taken up at a faster rate than the Government had budgeted for.

1 Statement of Combet at [6]; STA.001.079.0001, 30 April 2014.

2 The media statement announcing that the Australian Government will not proceed with the REBS is at AGS.002.050.2995, 1-2.

13.1.7 On 14 August 2009, Minister Garrett wrote to Prime Minister Rudd,³ stating in part:

The HIP has proven extremely successful in meeting its objectives of supporting and creating employment and providing economic stimulus. The program has the potential for exponential demand, driven by householders and marketed on the ground by a growing installer workforce...

In relation to demand and cost management on HIP I propose to immediately put in place a range of actions which will contribute to compliance, cost and demand management including:

- *requiring physical site inspections for quotations;*
- *increasing quality of installation inspections and scrutiny of installer training qualifications*
- *increased installer compliance communication; and*
- *imposing a “cost effectiveness” set of metrics in the program guidelines with increased scrutiny and compliance response, including suspension and deregistration of installers where price gouging behaviour is evident.*

While it is not possible to derive any quantum of savings from these compliance measures, I believe they must be implemented immediately in order to ensure the integrity of the program and maximise the number of eligible households who can apply within the remaining funding appropriation. Given the significance of the compliance issue, I will closely monitor the immediate impacts of the measures above, and will consider further measures if required ...

13.1.8 I refer to this letter in particular because it is one that was not produced to the Senate Inquiry, and adverse comment has been made about that. Despite speculation to the contrary, in the letter Minister Garrett did not express concern as to safety issues being caused by the HIP.

13.1.9 On 17 August 2009, the Strategic Priorities and Budget Committee (SPBC) adopted Minister Garrett’s recommendations as set out in the four bullet points above.⁴ Subsequently, on 22 October 2009, the SPBC agreed to reduce the maximum to be paid per installation to \$1,200.⁵ Again, this was to dampen demand. At that time the SPBC also agreed to the Minister’s suggested requirement that each householder obtain two quotes.

13.1.10 On 27 August 2009, Senator Arbib released the Commonwealth Coordinator-General’s progress report.⁶ As part of this broader announcement on the economic stimulus plan, the Government announced changes to the energy efficient homes package—closing the LEAPR and capping funding for the HIP. The revised forecast for the number of dwellings to be insulated under the HIP was revised down to 1.9 million.⁷ The program budget was capped at \$2.7 billion.

13.1.11 On 30 October 2009, Minister Garrett wrote to the Prime Minister outlining changes to the HIP concerning electrical and other safety issues.⁸ They included a targeted electrical safety program for homes with Reflective Foil Laminate (RFL) insulation,

3 Statement of Rudd at [50(n)], STA.001.080.0001, 15 May 2014.

4 AGS.002.131.0040, 1-3.

5 AGS.002.132.0062, 1.

6 Relevant extract at AGS.002.009.0373, 1.

7 Under the Energy Efficiency Homes Package, approximately 2.7 million homes were intended to be insulation (2.2 million through the HIP and 500,000 through LEAPR).

8 AGS.002.030.1403, 1-3.

a proposal to disallow the use of metal fasteners and to require the use of appropriate covers over downlights and other relevant ceiling appliances.⁹

- 13.1.12 Mr Garrett sought Mr Rudd's agreement to new Guidelines and to an associated implementation strategy. Mr Rudd agreed and communicated this to Mr Garrett by letter dated 2 November 2009.¹⁰
- 13.1.13 Rueben Barnes died on 18 November 2009 and Marcus Wilson on 21 November 2009. Mr Garrett issued a further revision of the Guidelines dealing with safety, requiring a range of further changes to safety and compliance procedures.¹¹ Version 5 of the Program Guidelines was issued on 1 December 2009.¹² Version 5 primarily precluded the use of metal fasteners.¹³ It also became mandatory for a full risk assessment to be completed by installers on an approved template prior to installing insulation under the Program. I have previously commented, in Chapter 9, that the delay in precluding the use of RFLs after the death of Matthew Fuller was inexplicable.
- 13.1.14 On 18 January 2010, the SPBC considered an Implementation Report of the Government Strategic Plan that had been produced in December of the previous year.¹⁴ At that time, neither energy efficiency nor home insulation were listed as critical issues for the attention of Mr Rudd. Both were indicated as being on track.¹⁵ In fact, all reports from before the commencement of Phase 2 of the HIP, which were displayed in a 'traffic light' format stated that the HIP was 'green'; indicated no cause for concern. In view of the evidence given to this Inquiry, I find that astounding. Nevertheless, it must be accepted, from the position of the Prime Minister, and to a lesser extent Minister Garrett and Senator Arbib, there was no warning given of the very many problems with the Program.
- 13.1.15 The first time that difficulties were raised was in an Implementation Report to the Government in February 2010 (and which was considered by the SPBC in March).¹⁶
- 13.1.16 Mitchell Sweeney died on 4 February 2010. On 8 February 2010, the Expenditure Review Committee agreed to convene a central agency taskforce to undertake a review of budget risks in all demand driven programs in the Department of the Environment, Water, Heritage and the Arts (DEWHA), and to report to the Committee at its next meeting.¹⁷
- 13.1.17 The taskforce undertook an assessment of the HIP, 'foil insulation program' and others.¹⁸ The following significant risks were identified:
 - 13.1.17.1 budget and program design risk, notably safety risk, associated with the HIP and the need for an exit strategy;
 - 13.1.17.2 recent decisions on remediation required for electrical faults associated with foil insulation installations may create additional pressure for the Commonwealth to take on liability in other circumstances, for instance, home assessment and remediation for faulty non-foil insulation installation under the HIP;

9 AGS.002.030.1403, 2. See also Statement of Rudd at [50w], STA.001.080.0001, 15 May 2014.

10 AGS.002.038.6546, 1. See also Statement of Rudd at [50x], STA.001.080.0001, 15 May 2014.

11 Statement of Rudd at [50z], STA.001.080.0001, 15 May 2014.

12 AGS.002.032.1213.

13 AGS.002.032.1213, 7.

14 Statement of Rudd at [50aa], STA.001.080.0001, 15 May 2014.

15 Statement of Rudd at [50aa], STA.001.080.0001, 15 May 2014.

16 Statement of Rudd at [50(aa)], STA.001.080.0001, 15 May 2014.

17 AGS.002.131.0083, 1.

18 AGS.002.132.0082, 4.

- 13.1.17.3 a considered program design, incorporating a full implementation plan and costings, for the Foil Insulation Program was urgently needed to mitigate risks to achieving the stated objectives and risk of abuse by electricians.
- 13.1.18 It was noted that the Taskforce found that DEWHA had not previously delivered high volume demand driven programs and, given the requirement to significantly scale up or introduce programs in a short timeframe, delivering the programs had been challenging. It was further found that under-developed program monitoring and reporting systems had contributed to insufficient oversight, inhibiting DEWHA's capacity to identify and manage emerging risks in a timely manner. The Taskforce said that there may be merit in ensuring that future policy and programs are developed in close consultation with industry and stakeholders so practical implementation risks are identified in the policy development phase. Looking forward, for new programs that are designed to roll out a product or service to a large cross section of the population, Government agencies specialising in service delivery (for instance, those within the Human Services portfolio) should play a close role in advising on implementation and administration or be tasked with directly administering these programs.
- 13.1.19 Between the Taskforce being commissioned, and it reporting, a number of steps were taken. On 9 February 2010, Minister Garrett suspended the use of RFLs under the HIP.¹⁹
- 13.1.20 On 10 February 2010, the Government announced a program of electrical safety inspections which entitled every home that has had foil insulation installed under the HIP to be inspected (estimated to be approximately 49,000 such homes). The program initially involved the household engaging a licensed electrician to conduct a safety inspection with the reasonable cost to be reimbursed to the electrician by the government. The bulk of the approximately 49,000 households that had foil insulation installed were in Queensland (estimated at 37,000).²⁰
- 13.1.21 By installer advice 23 dated 9 February 2010, it was reported that the Minister had suspended foil from the HIP.²¹ He said:
- Today we have taken swift action to suspend foil insulation from use under the Home Insulation Program. ... Safety of householders and installers is an absolute priority for the program.*
- 13.1.22 Having regard to the fact that the first fatality occurred on 14 October 2009, almost four months earlier, I cannot agree that the government took 'swift action'. I have earlier concluded that foil should have been excluded from the HIP soon after Matthew Fuller's death (if it ever should have been allowed to be used in the first place).
- 13.1.23 Having regard to the approach taken by officers of DEWHA, and its advisers, to the issue of workplace health and safety, discussed in Chapter 11 in particular, I cannot accept that the second sentence quoted above accurately reflected the attitude of the Department at any time during the HIP.
- 13.1.24 On 17 February 2010, the SPBC met and considered the recommendations made by the Taskforce commissioned on 8 February 2010.²²
- 13.1.25 The Taskforce Report warned Ministers of significant safety risks associated with the design of the HIP, and safety risks in the HIP including from RFL. There was an urgent need, the Report said, for a rectification program that dealt with the risk of abuse by electricians and the need to exit the overall Program.²³

19 AGS.002.013.1086, 1.

20 AGS.002.008.1364, 1. PricewaterhouseCoopers later estimated that over 58,000 homes were eligible for the Foil Insulation Safety Program: STA.001.037.0431, 5.

21 AGS.002.013.1086, 1.

22 Statement of Rudd at [50bb], STA.001.080.0001, 15 May 2014.

23 Statement of Rudd at [50bb], STA.001.080.0001, 15 May 2014.

- 13.1.26 The SPBC agreed to terminate the HIP, to fund electrical safety inspections, and to establish, in place of the HIP, the REBS.²⁴
- 13.1.27 DEWHA convened a meeting of industry representatives in Canberra on 15 February 2010 to discuss foil insulation issues. At that meeting there was discussion on issues surrounding the delivery of inspections.²⁵ The National Electrical Contractors Association (NECA), Master Electricians Australia (MEA) and the Queensland Electrical Safety Office (ESO) undertook to develop detailed procedures which electricians should follow when undertaking a foil insulation electrical safety inspection to ensure their safety and to appropriately assess the safety of the household.²⁶
- 13.1.28 A meeting of the SPBC was held on 19 February 2010, where it was agreed that the ‘broad design characteristics’ of the REBS including an initial external assessment of proposed implementation arrangements for it (which dealt with safety) was to begin in June 2010.²⁷

13.1.29 The decision to end the HIP

- 13.1.30 The decision to terminate the HIP was made on 19 February 2010.²⁸ At that time 1,144,099 claims had been made under the HIP at a cost to the government of \$1.471 billion. The Taskforce Report (which heavily informed that decision) stated, relevantly:

The Committee may wish to note that the following programs require urgent attention and consider taking the following actions:

with regard to the Home Insulation Program:

terminate the program immediately with only those installations that have been completed by midnight on the day of termination to receive the Government rebate, or terminate the program with a very short grace period to allow the completion of work underway and the notification of installers ...

- 13.1.31 It was decided, at the same time, to appoint Dr Allan Hawke to undertake a review of the HIP and to establish the Foil Insulation Safety Program (FISP), of which I say more below.
- 13.1.32 A few days later, on 22 February 2010, the SPBC, after considering material on safety inspections and rectification work, decided that the Government ought to undertake as many safety checks as necessary to manage any residual risks from HIP. The HIP Review Office was established to oversee this work, and the work of the Review Office was informed by a panel comprised of Dr Ron Silberberg, former head of the Master Builders Association, Mr Peter Tighe, the National Secretary of the Electrical Trades Union and Mr Tony Arnel, the head of the Building Commission in Victoria.²⁹
- 13.1.33 On 24 and 25 February 2010, Queensland ESO representatives met with Minister Garrett and promoted the removal of foil insulation or the installation of safety switches on all capable circuits.
- 13.1.34 On 26 February 2010, Mr Combet, in his role as the Minister assisting the Minister for Climate Change and Energy Efficiency, was given responsibility for managing the HIP

²⁴ Statement of Rudd at [50cc], STA.001.080.0001, 15 May 2014.

²⁵ AGS.002.016.1302, 3.

²⁶ AGS.002.008.1650, 3.

²⁷ Statement of Rudd at [50dd], STA.001.080.0001, 15 May 2014.

²⁸ Statement of Rudd at [50ee], STA.001.080.0001, 15 May 2014.

²⁹ Statement of Beauchamp at [41-42], STA.001.067.0001, 7 May 2014.

post-termination. Mr Rudd said that the appointment of Mr Combet was made taking into account his background and experience including his experience at the Australian Council of Trade Unions.³⁰

- 13.1.35 A Machinery of Government change saw responsibility for the HIP transfer from DEWHA to the Department of Climate Change and Energy Efficiency (DCCEE) on 8 March 2010.³¹ A number of DEWHA officers transferred to DCCEE.
- 13.1.36 Mr Combet's handling of the matter displayed a competence and diligence that was notably absent from the HIP. The same can be said of Dr Martin Parkinson, then the Secretary of DCCEE, and Mr Martin Bowles, who was seconded from the Department of Defence. The Cabinet maintained an interest in the work overseen by Mr Combet. Either the Cabinet, or a committee of the Cabinet, considered HIP-related matters at meetings on 31 March, 15 April, 21 April and 29 April 2010.
- 13.1.37 On 5 March 2010, the Queensland Minister for Industrial Relations wrote to Minister Combet seeking the convening of a meeting of all State and Territory electrical safety and workplace health and safety regulators to advise on any new scheme and on the residual safety issues from the former HIP.³²
- 13.1.38 Dr Hawke considered the proposed REBS. He recommended that a program to fund installation of home insulation should not be included, or should be delayed until safety and compliance could be managed adequately. Mr Combet said that the Government decided not to proceed with the insulation component of REBS having received Dr Hawke's report.³³ Mr Combet recommended that the Government act in this way because:

*... I did not have sufficient confidence that the insulation component of REBS could be implemented with satisfactory mitigation of safety and non-compliance risk. The winding up of HIP and the remediation of problems with HIP already appeared likely to involve a potential program commitment of hundreds of millions of dollars that would also consume massive departmental resources and which was my key priority. ... Additionally, my conclusion was that my Department was simply not equipped with the necessary staffing, information technology, infrastructure, skills and experience to deliver such a program. ... I was primarily concerned with the avoidance of further risk.*³⁴

- 13.1.39 This was a responsible approach to take. On 22 April 2010, the government announced it would not proceed with the insulation component of the REBS.³⁵
- 13.1.40 It is clear from what I have set out above that, by April 2010, the Australian Government regarded the HIP as having been so badly designed and implemented that it found it could not merely adjust it or temporarily suspend it with a view to reintroducing it in a modified form, but that it should be terminated.

13.2 Remediation Programs

- 13.2.1 The problems with the HIP gave rise to the need for two programs that were established for the purpose of identifying and correcting problems that the HIP had caused.

30 Statement of Rudd at [51], STA.001.080.0001, 15 May 2014.

31 Administrative Arrangements Order dated 8 March 2010.

32 QIC.006.001.4115, 2-3.

33 Statement of Combet at [29], STA.001.079.0001, 30 April 2014.

34 Statement of Combet at [30], STA.001.079.0001, 30 April 2014.

35 AGS.002.001.0062, 1.

The first of these, the FISP, was directed to identifying and correcting problems with RFL insulation installed under the HIP. The second program was the Home Insulation Safety Program (HISP), which commenced around June 2010 and involved a program of safety inspections of non-RFL insulation installed under the Program.

13.2.2 Foil insulation Safety Program

- 13.2.3 The FISP was established in April 2010. DCCEE varied an existing contract with PricewaterhouseCoopers (PwC) in order to obtain services in relation to the establishment and operation of the FISP. The purpose of this contract variation was to engage PwC to give effect to a decision that every householder whose home had RFL insulation installed under the HIP would be entitled to receive a safety inspection of their home.³⁶ It was said, for example, in Recital A to the Deed of Variation, that:

*There may be electrical and/or thermal safety risks where foil insulation has been laid on the ceiling structure and has the potential to make contact with electrical equipment/cables and other services in the ceiling space.*³⁷

- 13.2.4 It was also said that the number of households that had participated in the HIP undertaken under the September 2009 agreement was estimated to be 50,000 but that there were likely to be additional homes not yet known.³⁸ Under an interim arrangement before FISP was established, home owners had been able to engage any licensed electrician to conduct a safety inspection and to have necessary rectification work undertaken.³⁹
- 13.2.5 Under the April 2010 Deed of Variation, PwC was to deliver the services in two phases. Phase 1 was estimated to be for ten weeks and to involve engagement of licensed electrical contractors, interim safety inspections and rectification works and development of other plans and governance arrangements. Phase 2 was to be for an estimated duration of six months and to involve the continuation and wider roll-out of these operations. The agreement required the engagement of licensed electrical contractors to undertake safety inspections and rectification work on faults considered to be associated with the HIP. If the licensed electrical contractor identified an electrical fault that was not related to the HIP, they were required to notify the homeowner so that they could make arrangements to have the pre-existing fault repaired.⁴⁰
- 13.2.6 Ms Michie explained in her evidence that the services provided by PwC under this arrangement included:
- 13.2.6.1 managing the program for the inspection and rectification of all households which had RFL insulation installed under the HIP. Phase 1 involved some 1,500 inspections and establishing the necessary governance arrangements and processes;
 - 13.2.6.2 Phase 2 involved contacting approximately 58,000 householders and inspecting some 30,000 homes;
 - 13.2.6.3 PwC again contracting with UGL for it to undertake safety inspections and this time also any rectification services. The safety inspections and rectification works were carried out by licensed electrical contractors. Households with RFL insulation were contacted by telephone from a call

36 AGS.002.040.1148, 1.

37 STA.001.037.0260, 4.,.

38 STA.001.037.0260, 4.

39 STA.001.037.0260, 5.

40 STA.001.037.0260, 10.

centre staffed by UGL and offered an inspection. A licensed electrical contractor then conducted an inspection and, where faults were identified, carried out rectification works. Householders were offered the choice of having RFL insulation removed or having a Residual Current Device (RCDs) installed on circuits in ceiling spaces;⁴¹

- 13.2.6.4 recording data in respect of safety inspections in a database;
- 13.2.6.5 developing and implementing quality assurance processes for the work carried out by UGL and the electrical contractors;
- 13.2.6.6 investigating and reporting non-compliant work or other issues as required by DCCEE; and
- 13.2.6.7 meeting with DCCEE and providing weekly reports as to the results of the safety inspections.

- 13.2.7 The scope of the services that PwC was to provide in relation to the FISP was varied twice by deeds: once on 15 October 2010 and again on 1 February 2011. The first of these variations treated differently the phasing of the project program and included a Phase Three. It was also, at this stage, that greater attention was given to an objective to:

*Mitigate the risks associated with installation of foil insulation under the discontinued Home Insulation Program. All homes with foil installed are to be offered an electrical safety inspection, and either the removal of the foil insulation or installation of a safety switch or switches.*⁴²

- 13.2.8 Safety was said, in Recital G of the deed variation, to be ‘the priority’, and the aim being to inspect and rectify as many houses as possible as quickly as possible without compromising either householder or electrician safety, or the quality of the program. There was a stated expectation that all households in which foil had been installed would be contacted to arrange an inspection during Phase 2 of the FISP and that best endeavours would be made to conduct all inspections and rectifications during Phase Two, whilst also achieving value for money. The variation of 1 February 2011 was the extension of Phase 2.
- 13.2.9 PwC reported the results of the activities undertaken under the FISP, principally, by a ‘Closure Report’ dated 30 June 2011. It provides the results of inspections which had been undertaken. It showed that about 58,000 homes had foil insulation installed and that 31,835 inspections were undertaken under FISP. The reason for the difference is that some householders refused inspections, some had already had inspections undertaken separately and some could not be contacted. In 2,891 cases, householders required specialist inspection, being something outside the scope of the FISP and had been referred to ‘HISP Phase 2’. That program was one put in place to manage any householders that required further action, for reasons such as having no roof access and having asbestos in their roof or solar panels on it.⁴³
- 13.2.10 Through the FISP, RFL insulation was removed from 13,522 homes. RCDs were installed in 12,101 homes. In 5,770 cases, no rectification work was performed and for 533 homes, the inspection found that there was no RFL insulation present. It can be seen that the proportion of households requiring rectification works is a very significant component of those in which reflective RFL insulation had been installed. Some homeowners were so concerned as to opt to have the insulation removed, a decision

41 Statement of Michie at [17], STA.001.037.0001, 13 March 2014.

42 STA.001.037.0291, 4.,

43 STA.001.037.0431, 5.

which left them with an uninsulated house and without the benefit they had derived from the HIP. The total cost of the FISP was \$77.3 million.⁴⁴

- 13.2.11 Of interest in these rectification programs and the audit and inspections carried out under the supervision of PwC, is that no inspector or associated worker lost their life and there were few injuries (including one electric shock), but none that could be regarded as serious in their result.⁴⁵ There were only four reported occupational health and safety incidents in the period to May 2010, each of them considered to be minor.⁴⁶
- 13.2.12 This shows how the risks inherent in entering roof voids and being exposed to potential risks could be controlled satisfactorily with sufficient care, planning and diligence on the part of those with responsibility for its administration. The FISP was an effective response to electrical safety issues associated with the use of RFL insulation.⁴⁷

13.2.13 Home Insulation Safety Plan

- 13.2.14 In June 2010, the Home Insulation Safety Plan (HISP) commenced to provide for safety inspections and rectification works in relation to households that had insulation installed under the HIP, but where the product that was installed was not RFL insulation.
- 13.2.15 The Australian Government again contracted with PwC to provide the necessary services. It did so by a Deed of Variation to the Principal Contract. The deed of variation was dated 28 June 2010, and there were two subsequent variations on 9 July 2010 and 23 September 2010.⁴⁸ The 'additional services' which those variations contemplated were inspection and rectification services relating to non-RFL insulation. Ms Michie said that the services PwC provided included:
- 13.2.15.1 overseeing and managing inspections and rectifications;
 - 13.2.15.2 contracting with UGL and CSR Building Products to undertake safety inspections as directed by the Department [DCCEE];
 - 13.2.15.3 assuring the quality of the UGL and CSR services;
 - 13.2.15.4 managing and analysing data associated with the safety inspections.⁴⁹
- 13.2.16 PwC reported the results of the HISP safety inspections to the Australian Government. It did so, principally, by a 'HISP Phase 1 Closure Report' dated October 2011. That report explains that an 'Interim HISP' and then 'HISP Phase 1' were rolled out and that under HISP, the inspection of 80,000 homes for safety was to take place, something which was completed by the end of April 2011. In fact, 78,904 were inspected. 40,585 were found safe, 18,254 were found to have safety issues which pre-date the HIP and which for that reason required householder rather than Australian Government attention, 2,993 homes required specialist skills to remedy what were considered to be 'HIP issues', and 554 to require 'priority rectification'.⁵⁰
- 13.2.17 Inspections revealed pre-existing problems in a number of houses, largely due to non-compliance with wiring rules, or previous work having been done that had caused a dangerous situation to be present. The FISP and the HISP brought to these householders' attention a problem that they were not aware of, and potentially averted further incidents, unrelated to the HIP.

44 STA.001.037.0431, 10.

45 STA.001.037.0431, 16.

46 AGS.002.063.0784, 3.

47 AGS.002.063.0784, 3.

48 Statement of Michie at [20], STA.001.037.0001, 13 March 2014.

49 Statement of Michie at [21], STA.001.037.0001, 13 March 2014.

50 STA.001.037.0755, 7.

- 13.2.18 Some of the inspections were random, others were targeted. A risk profiling model was adopted by PwC which, in effect, identified risk factors applicable to particular installers identified through inspections and desktop audits. The result was that particular installers were found to have a greater incidence of poor workmanship. This raises, of course, the question why such analysis could not have been undertaken as the HIP was being rolled out, as any proper audit and compliance regime might have been expected to do.
- 13.2.19 There was also a Phase 2 of the HISP. Neither PwC nor UGL, although having tendered for the work, were successful in winning it from the Australian Government.
- 13.2.20 Statistics of the kind I have set out are in some ways bare figures. But they are ones which show a high incidence of problems with the installations carried out under the HIP. Those problems appear to have been higher where RFL insulation was concerned. A very large proportion of homeowners decided to have their RFL insulation removed entirely, a decision that could not have been taken lightly because to do so was to leave the home uninsulated.
- 13.2.21 The Australian Government undertook checks to confirm that the FISP and the HISP had, as best as could reasonably be expected, mitigated the risks to which the HIP had given rise. A review by Booz & Co used the CSIRO analysis of inspection data to complement its analysis. Booz & Co found that the non-HIP insulation environment for households was clearly not risk free.⁵¹ Booz & Co found that inspecting households beyond then current levels was not likely to have a material impact on the reduction of risks.⁵² This was because evidence showed that the level of risk from non-RFL insulation installed as part of the HIP then had effectively the same level of risk as households with insulation installed separately to the program. This level of risk continues to decrease with time.⁵³
- 13.2.22 It does not mean, of course, that there will not be any further incidents associated with insulation installations carried out under the HIP, but that the efforts have been reasonable in the circumstances and are, for that reason, properly to be regarded as adequate. Mr Bowles said that Booz & Co was engaged to look independently at how to end the remediation programs.⁵⁴ Mr Combet said likewise.⁵⁵
- 13.2.23 The test, ultimately, for the remediation programs is the safety with which the relevant services were delivered and the extent to which it was effective to identify risks to safety and property and deal with them so as to avoid their realisation. It seems to be clear that, however expensive and imperfect the remediation programs may have been, they did succeed in addressing these risks, shown by the lack of any evidence since their completion of fires or other adverse events associated with installation effected under the HIP.

- 13.2.24 The remediation programs and the conduct of them support the following findings:
- 13.2.24.1 the safety problems caused by installations carried out under the HIP were far beyond those which, had the HIP been properly executed and managed, could have been warranted;
 - 13.2.24.2 those problems were costly to remediate, in the form of the engagements of PwC, its subcontractors and the rectification works themselves;

⁵¹ QIC.006.001.3062, 9.

⁵² QIC.006.001.3062, 12.

⁵³ QIC.006.001.3062, 10.

⁵⁴ Statement of Bowles at [5.7], STA.001.075.0001, 23 April 2014.

⁵⁵ Statement of Combet at [40], STA.001.079.0001, 30 April 2014.

- 13.2.24.3 the execution of the remediation programs is practical proof that the sorts of tasks that comprised the HIP itself were ones which, with diligent management, could be achieved without loss of life and without any serious injury;
- 13.2.24.4 the scale of defects identified by the HISP and FISP demonstrate that the audit and compliance regime which was established when the HIP was rolled out was seriously inadequate. Inspections and audits of installations (and, perhaps, the risk-profiling of installers with a view to targeting that regime) ought to have been commenced well before September 2009;
- 13.2.24.5 it is a mark of failure of the HIP that the remediation of its effects required such large-scale and expensive programs in the form of the FISP and the HISP.

13.2.25 The Insulation Workers Adjustment Package

- 13.2.26 The Insulation Workers Adjustment Package (IWAP) was designed to provide assistance to support the retention of insulation workers in the insulation industry or related industries until the new REBS began.⁵⁶
- 13.2.27 The package also provided assistance for affected workers to find alternative employment or access a relevant training place where appropriate employment opportunities were not available. The package was said to be worth \$41 million. This included:
 - 13.2.27.1 A \$10 million insulation workers adjustment fund to help workers and firms through the transition period. It will be allocated on the recommendation of a team of existing local employment coordinators and new dedicated insulation employment coordinator.
 - 13.2.27.2 \$15 million for 3,000 structural adjustment places to help re-train installers and insulation manufacturing and assembly workers.
 - 13.2.27.3 \$14.7 million for 4,000 training places to assist insulation installers.
 - 13.2.27.4 \$1.5 million for up to 25 dedicated insulation employment coordinators. These new coordinators would supplement the existing 21 local employment coordinators and broker and facilitate a package of assistance, for eligible installers, manufacturing and assembly businesses which could include access to training and employer incentives.
- 13.2.28 Under the package both insulation workers and insulation installation businesses were eligible to access the package, provided the business had no outstanding serious compliance issues under the HIP.
- 13.2.29 Businesses were encouraged to keep on staff until the commencement of REBS. Criteria were set for assistance. The insulation component of the REBS never started.

13.3 Limitations with the remediation programs

- 13.3.1 The remediation programs had limitations. They were very expensive. An evaluation of the FISP undertaken by Oakton Consulting in June 2011 concluded that there was insufficient time to test the market for inspection and rectification services and to meet the timeline of 6 months for the delivery of the majority of inspections.⁵⁷

⁵⁶ AGS.002.039.0259, 1.

⁵⁷ AGS.002.063.0784, 3.

- 13.3.2 In addition to the expense, many people in industry expressed the view that the inspectors— as licensed electrical contractors, rather than persons with expertise in the installation of insulation—on occasion reached what they considered to be erroneous conclusions about whether the installation was in accordance with proper practice or AS3999.⁵⁸ This of course affected any entitlement of those businesses to access assistance under the IWAP.

13.4 Effect on pre-existing businesses

13.4.1 Introduction

- 13.4.2 Under the Terms of Reference for the Commission, ‘pre-existing home insulation business’ means a business of *installing* insulation in domestic premises that was in existence before 3 February 2009. At the time of the HIP’s commencement, there were approximately 270 such pre-existing entities operating throughout Australia.⁵⁹
- 13.4.3 It is necessary to distinguish between installation businesses and manufacturing businesses. In the case of businesses that did both, that distinction is not always easy.
- 13.4.4 Before the HIP, the installation industry had a successful business model. It was growing at about 5 per cent per annum. In an average year, some 200,000 new and existing dwellings were fitted with ceiling insulation (75% new dwellings; 25% retro-fit to existing dwellings). The HIP caused an exponential increase in its first year, with almost 1.2 million existing dwellings retro-fitted—a six-fold increase in the total delivery or a 24-fold increase in retrofits.
- 13.4.5 Prior to announcing the HIP, the Government sought advice about the capacity of the domestic insulation manufacturing industry. That advice was that manufacturing levels were insufficient to support a Program of the scale proposed.⁶⁰ In early January 2009, Mr Ruz was contacted by Mr Rudd’s office seeking advice concerning the insulation industry’s capacity to insulate all of the uninsulated housing stock in Australia within two-and-a-half years. The advice Mr Ruz provided after consultation was that it would be possible to insulate approximately 2.7 million homes in two-and-a-half years but that Australia lacked the manufacturing capacity to supply all of the required insulation product.⁶¹
- 13.4.6 The Australian Government gave various assurances to the industry so that it might increase its capacity for manufacturing and installing insulation. It is only the effects on those business engaged in installation of insulation that the Terms of Reference require my consideration.
- 13.4.7 It was intended that the HIP would result in the installation of insulation in 2.7 million homes—the estimated number of existing residential housing stock that remained without insulation. Had the Program run its full course, almost all homes in Australia would be insulated and there would no longer be any houses requiring retrofit installation of insulation following the HIP. Upon completion of those activities, it could reasonably be expected that the retrofit home insulation market would effectively be exhausted, with all homeowners of uninsulated existing homes having taken up the opportunity for Government-funded or subsidised insulation.
- 13.4.8 Pre-existing businesses, therefore, had only the duration of the HIP in which to remain operational before the market would be completely supplied and its future business

58 Statement of Stewart at [22-23],; STA.001.021.0001, 1 April 2014

59 SUB.001.001.0050, 4.

60 Statement of Ruz at [6], STA.001.001.0193, 3 March 2014.

61 Statement of Ruz at [6], STA.001.001.0193, 3 March 2014.

exhausted. As such, these businesses had little choice but to register with the Program in order to take advantage of the last remaining months of the existing market.

- 13.4.9 As discussed elsewhere in this Report, low entry barriers and 'light touch' regulation were aimed at encouraging new entrants to the industry to create jobs and establish businesses. There was a desire too for pre-existing businesses to expand rapidly to cope with the additional installations that were to be demanded.
- 13.4.10 The Government's termination of the HIP had a profound and lasting effect on many pre-existing businesses. I set out below some of the detail of the assurances the Australian Government gave about the duration of the HIP and explain how they, together with the sudden termination of it, disrupted expectations and caused financial and personal loss.

13.4.11 Australian Government assurances

- 13.4.12 At the time the HIP was announced, the Australian Government stated that it was committed to the HIP policy, that it would not be revising its decision to invest the amount of \$2.7 billion, and that dollar amount would be invested either by December 2011 or earlier. Mr Kevin Herbert, (former Secretary of the Australian Cellulose Insulation Manufacturers' Association (ACIMA)), said, for example, that:

... undertakings were given at the first meeting formally in Canberra on the 18th [of February] that the scheme would run to the end of December 2011 or until the funds ran out.⁶²

- 13.4.13 Mr Greg Rashleigh stated that, at a meeting on 20 March 2009 organised by DEWHA (and to which representatives of industry had been invited):

One of the industry representatives asked a question to the effect of: "How long will the Program last?" In response, Minister Garrett replied with words to the effect: The scheme will run for the full term or until the money runs out. You can take my word for that.⁶³

- 13.4.14 He went on to say how that statement affected an important business decision he then made:

As soon as Mr Garrett said that and the way that he said it, Mr Garrett's word was enough for me to decide to invest in a new manufacturing mill and ramp up the business to make the most of the Program's time period.⁶⁴

- 13.4.15 Mr Kevin Herbert's evidence about what took place at this meeting was to the same effect:

Noting that this meeting occurred in Brisbane, I recall a number of specific conversations to the effect that Minister Garrett was urging the industry to increase production of product locally so that the program target would be reached during the Government's term, as well as the need of the industry for reassurance that the program was going to run through to completion and that we would be given adequate notice by the Government when the program was to be wound down, so that industry could exercise its own exit strategy. This last matter was crucial to the industry's financial viability.' And further: "I recall that Minister Garrett said in words in response to the effect that ... the Government is fully committed to the Program. We want you to invest. I'm telling you now the HIP has the Prime Minister's backing and we will go through to the end. And by the way, no Government has ever been voted out after its first term.⁶⁵

62 SUB.001.001.0050, 9-10.

63 SUB.001.001.0050, 10

64 Statement of Rashleigh at [27], STA.001.011.0001, 26 March 2014.

65 Statement of K Herbert at [106], STA.001.016.0001, 28 March 2014.

- 13.4.16 Other witnesses provided similar accounts of the Australian Government's assurances concerning the allocation of funds and duration of the HIP.⁶⁶
- 13.4.17 The Australian Government made clear that the funds committed to the HIP were sufficient to complete its stated objectives of insulating 2.7 million homes and that it would continue until 31 December 2011 or alternatively, until the allocated funds were exhausted.⁶⁷ I find that these assurances, made unambiguously and directly to industry, caused industry to invest in their businesses and to engage staff. Much of this would not have occurred had the Australian Government not given such assurances, or made clear that it reserved its right to terminate, suspend or change the HIP at any time without notice. That is because a very much larger number of installations were to take place under the HIP than previously, and at a very much more rapid rate.
- 13.4.18 The way in which the businesses responded to the giving of these assurances was just as the Australian Government wished. The whole purpose of the assurances the Australian Government gave was to prompt businesses to employ more staff, and to expand to cope with the very much larger number of rate of installations. These were precisely the objectives the Australian Government sought through the HIP as a whole—job creation and stimulating the economy.
- 13.4.19 The effect of the assurances was to cause pre-existing businesses to:
- 13.4.19.1 increase their production of insulation products;
 - 13.4.19.2 increase the number of persons they employed or engaged for the purposes of manufacturing and installing insulation; and
 - 13.4.19.3 make capital investment that they would otherwise have not made.
- 13.4.20 I focus here only on the installation aspects of these factors, because that is the matter to which the Terms of Reference direct my attention. I do, however, say something below of how the Australian Government sought to ensure that local insulation manufacturers produced as much as possible and how it sought to achieve that aim. This is context to what I say regarding the increase in the capacity of businesses to carry out the resulting installations of that insulation.

13.4.21 Industry capacity

- 13.4.22 Prior to the HIP, in an average year approximately 200,000 new and existing dwellings were fitted with ceiling insulation (75% new dwellings and 25% retrofit of existing dwellings). In the first year of the HIP, almost 1.2 million existing dwellings were retrofitted—a six-fold increase in the level of delivery previously managed by the industry.⁶⁸
- 13.4.23 The Government received advice early in the HIP that Australia's then current manufacturing levels would be insufficient to meet expected demand. In early January 2009 Mr Ruz was contacted by Mr Rudd's office seeking advice as to the insulation industry capacity to insulate all of the housing stock in Australia that had no ceiling insulation within two-and-a-half years. Following discussion with senior management at Fletcher Insulation, Mr Ruz confirmed that it would be possible to insulate approximately 2.7 million homes in two-and-a-half years. Mr Ruz recalls that he advised at the time that, although there was not sufficient manufacturing capacity in Australia to produce all that the HIP would require, there was excess capacity in overseas plants due to the global recession and therefore imports could fill such shortfall as might exist.⁶⁹

66 Statement of Hannam at [28] and [31], STA.001.019.0001, 27 March 2014; Statement of Zuzol at [19], STA.001.040.0001, 28 March 2014; STA.001.017.0012, 4.

67 See, for example, SUB.001.001.0050, 6-7; QIC.006.001.1651, 1, AGS.002.021.1986, 1.

68 Energy Efficient Strategies, *The Value of Ceiling Insulation: Impacts Of Retrofitting Ceiling Insulation To Residential Dwellings In Australia* (2011) 7.

69 Statement of Ruz at [6], STA.001.001.0193, 3 March 2014.

- 13.4.24 Mr D’Arcy recalled that at the beginning of the HIP, the Insulation Council of Australia and New Zealand (ICANZ) had estimated that if the HIP were to run over 34 months or so, the industry could satisfy the demand created by about 500,000 installations per year. The HIP, however, caused demand well in excess of what had been forecast. At one point, some 5,000 installations *per day* were taking place. This created supply problems. Mr D’Arcy advised the Australian Government at industry meetings, that although ICANZ members had invested and improved production capacity by approximately 30 per cent to meet demand, members were still having to import insulation products from overseas.⁷⁰
- 13.4.25 ICANZ was not the only industry body that was concerned that Australian insulation manufacturers would not be able to increase production capacity sufficiently to meet the demand expected to be created by the HIP.
- 13.4.26 Mr Moylan estimated, for example, that the insulation industry as it existed at the start of the HIP could quadruple its capacity (by operating 24 hours per day). This, however, he said, ‘would satisfy only about a quarter to one half of the demand required to meet the goals of the HIP, namely to insulate about 1.9 million homes in two-and-a-half years.’⁷¹ He recommended that the Government should consider doubling the length of the Program to five years, so that the industry that existed at that time in Australia could meet the demand of the Program. Mr Moylan said that, in response to this, Government representatives simply reiterated that the HIP was to be completed in two-and-a-half years.⁷²
- 13.4.27 Mr Kevin Herbert pointed out that there were real difficulties to be overcome in gearing up both insulation production and installation rates from an estimated pre-HIP retrofit market of 7,000 per month to the DEWHA target of 90,000 month.⁷³

13.4.28 Imported products

- 13.4.29 Australian manufacturers of fibreglass insulation products had reached maximum capacity. Some manufacturers had partnerships with manufacturing plants in the United States of America and they could get supply through those channels. A great deal of insulation material was imported from China and Indonesia. Some witnesses claimed this product to not comply with safe standards for, in particular, formaldehyde. As I said in the Introduction to this Report, a test of a sample of such product by the CSIRO did not reveal there to be unsafe or high levels of formaldehyde in that sample provided to me as an example of the problem. That of course is not conclusive that the problem referred to did not occur.
- 13.4.30 It was never a requirement of the HIP that only insulation products made in Australia be installed. But it was obvious, even with the industry’s own optimistic assessment of its capacity to increase production, that there would be much product imported to meet demand.
- 13.4.31 Mr Rudd is recorded as wanting locally-made product to meet the demand created by the scheme.⁷⁴ Given the purpose of the HIP was to support jobs, this is unsurprising, but it was unrealistic in having regard to what the Australian Government had been told on this topic by the industry itself.

70 Statement of D’Arcy at [2.49-2.50], STA.001.001.0001, 7 March 2014.

71 Statement of Moylan at [24], STA.001.001.0258, 14 March 2014.

72 Statement of Moylan at [25], STA.001.001.0258, 14 March 2014.

73 Statement of Herbert at [16], HER.002.004.0001, 13 February 2014.

74 See AGS.002.027.2227, 2.

13.4.32 Fraud and reputational damage of the insulation industry

- 13.4.33 Pre-existing businesses were affected by the practices of some unscrupulous newcomers. The architecture of the HIP, however, did encourage new entrants. It ought to have been obvious to the Australian Government that such newcomers would be more likely than long-established businesses to chase financial benefit at the expense of quality and safety and the wider standing of the industry.
- 13.4.34 DEWHA was faced with reports that some companies were running two books, when two quotes were required under Phase 1 of the HIP. It was a requirement initially under the HIP that two quotes be obtained before work commenced. One quote would be given in the usual way, but another would be forthcoming without visiting the property of the homeowner and so as to ensure the price was kept artificially high, without there being any actual competition for the work.
- 13.4.35 A few months into the HIP, Mr Stewart became aware that certain individuals were behaving in a manner that he considered to be exploiting the HIP and exploiting homeowners. His company received several calls from former customers who had been visited by salespeople who had inspected the roof cavity of their homes and had advised them that the insulation needed to be replaced. His company conducted checks of these installations. In most cases, he said, it was found that the homeowner had been poorly advised.⁷⁵
- 13.4.36 Mr Fricker said that some home owners removed insulation so as to qualify for 'free' insulation, and that some installers claimed houses to qualify under the HIP when in fact they did not as they already had adequate insulation. He also said some installers had fitted insulation inferior to that for which they had test certificates.⁷⁶
- 13.4.37 Mr Moylan made more general observations about the levels of fraud and poor practices:
- When the program was rolled out, it got out of control very quickly. People flocked to the industry and immediately started to engage in fraudulent and unscrupulous practices, ranging from installing non-compliant product to not installing any product, but getting the customer to sign off on all the relevant forms and claiming the payment. I realised immediately that our industry's reputation was going to be badly damaged. More than that, I could see that the industry itself was going to be badly damaged.*⁷⁷
- 13.4.38 The reputation of the insulation industry suffered as a result of the HIP. The public perception of the HIP was influenced by the adverse events encountered during the Program, particularly the deaths of Matthew Fuller, Marcus Wilson, Rueben Barnes and Mitchell Sweeney, house fires attributed to the Program, and electrical safety concerns.
- 13.4.39 The public perception of unscrupulous behaviour and unsafe work practices impacted directly and severely, the operations and viability of pre-existing businesses, damaging the reputation of the industry. Such perceptions remain. Mr D'Arcy, for example, said that:

*Unfortunately it is my observation that the safety issues arising from the tragic deaths of the four installers during the HIP together with media reports of links between insulation installation and house fires has created a loss of confidence in the insulation industry as a whole resulting in a negative impact for both installers and manufacturers.*⁷⁸

75 Statement of Stewart at [18], STA.001.021.0001, 1 April 2014.

76 Statement of Fricker at [26], STA.001.001.0237, 14 March 2014.

77 Statement of Moylan at [34], STA.001.001.0258, 14 March 2014.

78 Statement of D'Arcy at [3.7], STA.001.001.0001, 7 March 2014.

- 13.4.40 Mr Kevin Herbert stated that from its launch to its closure twelve months later, the HIP and its subsequent HISP:
- 13.4.40.1 destroyed the national insulation installation sector by virtually eliminating the annual retrofit insulation market resulting in the bankruptcy/closure and/or severe financial stress for more than 200 of the 270-plus pre HIP installation businesses since February 2010;
 - 13.4.40.2 wasted around 75 per cent of the Program's total cost of around \$1.5 billion due to its use of both non-specification product & poorly and/or untrained installers;
 - 13.4.40.3 compromised the future delivery of carbon emission reduction targets by those 1.2 million residential dwellings installed under the Program, and who now mistakenly believe they have effective insulation installed; and
 - 13.4.40.4 undermined long term consumer confidence in the post HIP Australian insulation industry.⁷⁹

13.4.41 Early termination

- 13.4.42 No business or industry body was informed prior to 19 February 2010 of the Australian Government's intention to end or suspend the HIP. This is despite the very many clear assurances I have mentioned that seemed to prompt pre-existing businesses to make investments, engage staff and, generally, to expand to cope with the demands of the HIP from both a manufacturing and installation point of view.
- 13.4.43 Some members of the industry did request advance notice of any decision to end the HIP. Mr Hannam said that, at a meeting on 3 February 2010:
- the concern was raised by a number of industry attendees that the Government provide us with advance notice of the program winding down so that we could have enough time to transition our businesses. I recall that assurances were given to us that sufficient notice would be so given.⁸⁰*
- 13.4.44 There is no suggestion that the Australian Government lacked the authority to terminate the HIP. The question for me which arises on the Terms of Reference is as to the effects of that decision, surprising as it was, to end the HIP and, with it, the sudden and almost total collapse in demand for insulation installation.
- 13.4.45 Pre-existing businesses suffered loss when the HIP was brought to an end. Mr Kevin Herbert explained the loss in these terms, which I accept as accurate:
- ... went over a financial cliff. They- they were just left holding very large debts, purchasing future stock and in finance. They had vehicles under finance, and when that was turned off and they had no cash flow—and some of them were owed over \$100,000 it was a financial disaster for them, and some of them took—it took six or eight months to even get those payments back that they were owed, let alone for stock that they had already bought into the hundreds of thousands of dollars that they had to pay for.⁸¹*
- 13.4.46 Mr Stewart described the termination as 'devastating' on his business.⁸² He laid off 38 staff immediately afterwards.

79 Statement of K Herbert at [14], STA.001.004.0001, 13 February 2014.

80 Statement of Hannam at [42], STA.001.019.0001, 27 March 2014.

81 SUB.001.001.0050, 15.

82 Statement of Stewart at [26], STA.001.021.0001, 1 April 2014.

13.4.47 Mr Batt stated:

The suspension of the project was devastating to the industry and Autex. However, at that time, and because the right procedures had not been put in place from the outset, the HIP was not capable of achieving its intended goals. The rorting had become too widespread and there were too many unskilled and unqualified installers who had established businesses.

The negative impacts on the industry would have been limited if the program had run to its initially published date rather than just cut off. This would have allowed for suitable planning and reduced the amount of left over stocks.⁸³

13.4.48 Mr Fricker stated that:

The early termination of the HIP was devastating to the industry that had made (at the urging of the same government) huge investment in the expansion of manufacturing, importing, training, employment, and warehousing. The HIP's early termination caused severe financial loss for a great many investors.⁸⁴

A private statement to the Commission set out the submitter's view that industry experienced artificial demand for insulation created by the HIP, and was then thrown into turmoil by its cancellation. The person reported, for example, that at the time of the HIP's closure, their business directly employed 50 people, and installed insulation in approximately 100 homes per day. Even though all work in progress stopped and customers cancelled forward orders when the HIP was suspended, ongoing costs of staff, vehicle stock holdings and premises under contract remained.⁸⁵

13.4.49 Industry, for a time, had some hope that the REBS would replace the HIP and offer some kind of support for their businesses. Some businesses remained operational and retained staff in expectation of the REBS being established. One such business owner told the Commission that the Government advised industry to keep infrastructure in place in order to participate in a revised scheme commencing in June 2010. He said that his business suffered large losses from 19 February 2010 until April 2010, when it was announced that the revised scheme would not proceed.⁸⁶

13.4.50 However, the Government decided that insulation would not be included in the REBS.⁸⁷

13.4.51 Excess stock

13.4.52 A very large volume of insulation stock existed when the HIP was terminated. That stock has, with the complete collapse in demand for home insulation materials, become excess and virtually valueless.

13.4.53 Some was simply dumped in landfill. Mr Batt said of this:

... there was a huge oversupply of insulation material in the market place. From late February 2010 onwards you could almost get it for free. In addition, as noted above, a large amount of this insulation was non-compliant. I understand that there was a large amount of fibreglass batts that were just dumped into landfill. This was up to something in the order of a size of a

83 Statement of Batt at [53-54], STA.001.001.0244, 12 March 2014.

84 Statement of Fricker at [30], STA.001.001.0237, 14 March 2014.

85 VOL.014.002.0001, 2.

86 VOL.014.002.0001, 2.

87 AGS.002.050.2995, 1.

football field about 40 foot high of a product that is hazardous, carcinogenic and not biodegradable.⁸⁸

- 13.4.54 Mr Moylan explained how, when the HIP ceased, industry was left with a huge excess of insulation products, mostly imported from overseas:

It was told to me by members of the fibreglass batt industry that there were at least 1,000 shipping containers filled with fibreglass batts sitting on docks throughout Australia at that time. In addition, there were factories filled with excess insulation, stacked up to 15m high and 200m long. When they realised that the insulation was worth next to nothing, companies had to pay hundreds of thousands of dollars to have excess fibreglass batts taken to the tip. Trucks that had been loaded with fibreglass batts dumped them in shopping centre car parks just so that they could take their next delivery. Somebody came and told us they had seen this happen at the Melbourne Southland Shopping Centre car park, and I went there to have a look. I saw the batts in the car park and people were putting them into the boots of their cars.⁸⁹

- 13.4.55 Additionally, many businesses found themselves with an immediate freezing of their cash flow. As a result, many businesses had ongoing commitments to suppliers with forward orders that could not be met. Businesses were left with commitments on property leases, vehicles, equipment, and held insulation stock which could not be moved and no longer had any appreciable value. Some businesses had a liability to financial institutions, sold or disposed of vehicles, stock and equipment at a loss, or had to sell their family home to meet their business debts.⁹⁰
- 13.4.56 Further, some businesses reported that they had difficulty obtaining payment from the Australian Government for insulation work that was completed prior to 19 February 2010, and have been subsequently pursued by the Australian Taxation Office for tax liabilities, notwithstanding that DEWHA had not made payments due under the HIP.⁹¹
- 13.4.57 Quite a number of owners of pre-existing businesses have provided detailed statements to the Commission setting out the impact of the HIP on their business. I have agreed that these impact statements will remain anonymous. Many of these statements report that existing business owners lost major assets, exhausted their financial capital and found that their businesses were no longer profitable. A number of business owners found that their paths to retirement were interrupted by the rapid closure of the HIP.⁹²
- 13.4.58 There were many more examples provided to the Commission, of the consequences of the Australian Government's conduct having been the source of untold anger, frustration, familial disharmony, loss of self-esteem and depression. Some examples include:⁹³
- 13.4.58.1 one former business owner's personal bankruptcy has meant that he must relinquish his passport and is unable to visit his extended family overseas, some of whom are in their old age and facing ill health; being prevented from seeing his overseas relatives is very hurtful and humiliating;⁹⁴

88 Statement of Batt at [52], STA.001.001.0244, 12 March 2014.

89 Statement of Moylan at [35], STA.001.001.0258, 14 March 2014.

90 SUB.001.001.0050, 37-38.

91 See for example, VOL.014.031.0001, 6; VOL.014.003.0001, 5.

92 See for example, VOL.014.003.0001,; VOL.014.007.0001, 4; VOL.014.031.0001, 6.

93 VOL.014.013.0001, 5; VOL.014.016.0001, 3; VOL.014.021.0001, 1; VOL.014.029.0001, 6.

94 VOL.014.013.0001, 5.

- 13.4.58.2 another pre-existing business owner has had a heart attack and other health issues which he attributes to the “worry”;⁹⁵
- 13.4.58.3 another person who submitted a private statement about the impact of the HIP on his business is now divorced and suffers from anxiety. He was homeless for almost two years after having to sell the family home. Prior to the HIP, he had had a close-knit family and had been an active contributor to his community by undertaking voluntary work with prisoners;⁹⁶
- 13.4.58.4 another person impacted by the HIP is presently facing the forced sale of his family home, which holds strong emotional connection, as he and his wife were married in the garden and have raised their 3 children there.⁹⁷
- 13.4.59 There were many more examples provided to the Commission of losses suffered by pre-existing businesses. These included the following general categories covering loss of:
 - 13.4.59.1 the market for the domestic retrofit of home insulation;
 - 13.4.59.2 between 85 to 100 per cent of the ceiling insulation stock (on hand or ordered with a liability to pay);
 - 13.4.59.3 leasing costs for warehouses, offices, trucks, cars, plant and equipment;
 - 13.4.59.4 equipment purchase costs for plant and equipment, trucks and cars, warehouse and office;
 - 13.4.59.5 wages and associated costs including superannuation entitlements and workers compensation payments;
 - 13.4.59.6 finance costs, including interest and fees, in relation to loans that were taken out to finance the acquisition of any of the items listed above; and
 - 13.4.59.7 accounting and legal fees in relation to the early wind-up or restructuring of the businesses.

13.5 Particular cases

- 13.5.1 As a result of the HIP and its termination, very many insulation businesses suffered severe financial hardship. Investments they made did not deliver returns. They purchased large volumes of stock that have become almost valueless. This loss of value in turn caused bankruptcies, liquidations, loss of homes and assets, stress, grief and psychological trauma.
- 13.5.2 I set out below a few details of some particular cases. It is not an exhaustive account, but does serve to illustrate the types and extent of loss that was suffered, and connection between that loss and the HIP and its termination. I thank the persons involved for sharing detailed information with the Commission about their personal circumstances.

13.5.3 Insul-safe

- 13.5.4 In 2008, Mr Stewart was the owner and director of Insul-Safe. Insul-Safe's insulation division primarily installed insulation into domestic homes in Queensland and New South Wales. Mr Stewart was also a manufacturer of cellulose fibre insulation products, under the name AAA Cellulose Insulation Pty Ltd. Insul-Safe was a member of ACIMA.

⁹⁵ VOL.014.016.0001, 3.

⁹⁶ VOL.014.021.0001, 1; VOL.014.021.0001, 14.

⁹⁷ VOL.014.029.0001, 6.

- 13.5.5 Mt Stewart said that that between 1985 and 2009, Insul-Safe's insulation division traded successfully.⁹⁸ In the ten or so years leading up to the HIP, Insul-Safe was running five to six trucks on a daily basis and employed between 15 and 20 people in the installation division. It also employed between 5 and 10 people in the manufacturing and marketing divisions. These numbers fluctuated with demand. At times in the years prior to the HIP, Insul-Safe's manufacturing division was busy enough to operate 24 hours per day, five days per week.⁹⁹
- 13.5.6 Because Mr Stewart considered that the HIP would result in the inevitable dissolution of the retrofit market, Insul-Safe expanded rapidly in an effort to make short-term profits to compensate for the loss of capital value of its business after 2011. Insul-Safe increased its staff, expanded its product range and purchased additional trucks and installation equipment.¹⁰⁰
- 13.5.7 After the suspension of the HIP, Insul-Safe attempted to continue trading. However, Mr Stewart claimed the company was unable to survive in circumstances where it was not eligible for compensation or to participate in the HISP, and the market which it had traded in successfully since 1985 no longer existed.¹⁰¹
- 13.5.8 In June 2011, Insul-Safe was placed into liquidation as it was no longer viable. In July 2013, Mr Stewart's claim under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) against DEWHA, submitted to DCCEE, was rejected.¹⁰²

13.5.9 All Seasons Insulation

- 13.5.10 Mr Greg Rashleigh was a director and owner of All Seasons Insulation, Toowoomba. All Seasons Insulation manufactured and installed cellulose fibre insulation. All Seasons Insulation also set up installer agencies in Queensland and Northern New South Wales. It supplied these agencies with information, technology, products and machinery. All Seasons Insulation and its agencies also installed fibreglass, polyester and wool batts from time to time.¹⁰³
- 13.5.11 Before the HIP, All Seasons employed four full-time and one part-time staff. All Seasons had a further 20 installation agencies under the All Seasons Insulation name in both Queensland and NSW, and operated its manufacturing facility, running the factory four days per week, eight hours per day.¹⁰⁴
- 13.5.12 Mr Rashleigh stated, that on hearing the announcement of the HIP:
- I thought that, primarily it would kill the insulation manufacturing and insulation industry. If we insulated every house in two years, there would be no homes left to insulate and our business would not survive beyond the HIP. It just was not possible for us to make enough money in those two years to sustain the business beyond the end of the HIP.*¹⁰⁵
- 13.5.13 Mr Rashleigh told the Commission that he was initially hesitant about investing in business expansion, but on receiving assurances from the Government, made the decision to invest substantially in new equipment:

98 Statement of Stewart at [7], STA.001.021.0001, 1 April 2014.

99 Statement of Stewart at [8], STA.001.021.0001, 1 April 2014.

100 Statement of Stewart at [14-16], STA.001.021.0001, 1 April 2014.

101 Statement of Stewart at [36], STA.001.021.0001, 1 April 2014.

102 Statement of Stewart at [26], STA.001.021.0001, 1 April 2014.

103 Statement of Rashleigh at [3], STA.001.011.0001, 26 March 2014.

104 Statement of Rashleigh at [10], STA.001.011.0001, 26 March 2014.

105 Statement of Rashleigh at [11], STA.001.011.0001, 26 March 2014.

Until we were confident that the program was actually going to run until the end of December 2011 as referred to in the Government's 'Early installation Guidelines' document published at the end of February 2009, we had our business expansion on hold. I recall at that meeting, Mr Garrett answered that question for us. One of the industry representatives asked a question to the effect of: 'How long will the Program last?' In response, Minister Garrett replied with words to the effect: 'The scheme will run for the full term or until the money runs out. You can take my word for that.' [...]

As soon as Mr Garrett said that and the way that he said it, Mr Garrett's word was enough for me to decide to invest in a new manufacturing mill and ramp up the business to make the most of the Program's time period.¹⁰⁶

- 13.5.14 His decision to expand his business was based on these assurances, and a view that All Seasons should ramp-up for the HIP and do as much work as possible before all existing homes were insulated.¹⁰⁷
- 13.5.15 In terms of manufacturing, Mr Rashleigh's company started running the factory at 24 hours per day for five days a week. Towards the end of April 2009, it operated 24 hours per day for seven days a week. At that time, the factory staffed nine people per shift. Even with these expanded operations, All Seasons could not supply its existing agents with enough cellulose insulation product to meet their needs under the HIP.¹⁰⁸
- 13.5.16 As a result, Mr Rashleigh bought a new cellulose insulation-manufacturing mill. The purchase of a manufacturing mill cost in excess of two million dollars, including the cost of machinery components at \$1,529,000, the costs of electrical components at \$446,525 and the cost of installing equipment at \$341,000. It took more than six months to build and a further three months to set up. It was ready to come into production at or about the time the HIP was suspended.¹⁰⁹

13.5.17 Energymasta Australia

- 13.5.18 Mr Lawrence Moylan is an owner and director of the company Energymasta Australia Pty Ltd, which was previously called Fibre Fluf Insulation Pty Ltd. Mr Moylan joined ACIMA in 1982. Mr Moylan's company was a manufacturer of cellulose fibre insulation. Prior to the HIP being rolled out, Mr Moylan had one factory and 10 employees.¹¹⁰
- 13.5.19 Mr Moylan said he raised concerns in industry consultation meetings, that the insulation industry employed only about 2,500 employees prior to the HIP and would need to employ at least twice that amount to meet the HIP objectives (the number in fact grew to about 16,000 people during the HIP, though not necessarily all on a permanent full-time basis).
- 13.5.20 Mr Moylan claimed that it became clear to him that the Australian insulation industry would not be able to meet the demands of the Program and that:
- 13.5.21 the pre-existing, experienced installers would not be able to undertake all of the work;
- 13.5.22 a great deal of unskilled and untrained workers would enter the market to undertake installations under the HIP;
- 13.5.23 installations would likely be undertaken to a poor standard with high risks to the personal safety of installers; and

106 Statement of Rashleigh at [24-25], STA.001.011.0001, 26 March 2014.

107 Statement of Rashleigh at [28], STA.001.011.0001, 26 March 2014.

108 Statement of Rashleigh at [45], STA.001.011.0001, 26 March 2014.

109 Statement of Rashleigh at [46-47], STA.001.011.0001, 26 March 2014.

110 Statement of Moylan at [22], STA.001.001.0258, 14 March 2014.

- 13.5.24 insulation, likely of a sub-standard quality, would be imported from overseas.
- 13.5.25 Mr Moylan suffered financial loss because of the way in which the HIP was terminated. He said:

At the time the HIP was suspended, I had ordered about \$376,000 worth of fire retardant a week prior. It was already on the ship to Australia. Knowing I would have no use for it with the suspension of the program, I sold some of it to a company in Malaysia at a loss of about \$55,000. That was just the start of the financial losses that I made.

After the HIP, there was about 10% of the work that there was prior to the HIP, but with more companies in the industry. I went from making approximately 240 tonnes of product per month to approximately five tonne per month. I had to lay off all of our staff. I had trucks sitting idle in our factory. I ran the business as lean as I could, but I still lost about \$170,000 per year. I propped the business up with money from another business, but it became impossible to keep doing that after four years.

On 18 February 2014, I decided that my business would not recover and I could not continue making those losses. I have state of the art machinery, probably the best machine in Australia for manufacturing cellulose fibre. However, I could not sell the business as a going concern; it was not worth anything. I closed it down after 33 years. We had a beautiful business which my family had started. We had a fantastic product and our industry was strong. Now it has been destroyed. It is heartbreaking.¹¹¹

- 13.5.26 Mr Moylan stated:

It is not only my business that has had to close. ACIMA had about 17 members prior to the HIP. During the program it grew to around 50. Now we have four (maybe even less). Our cellulose fibre industry has not recovered. It has been destroyed.¹¹²

- 13.5.27 Mr Kevin Herbert also claimed that the HIP:

...destroyed the national insulation installation sector by virtually eliminating the annual retrofit insulation market resulting in the bankruptcy/closure and/or severe financial stress for more than 200 of the 270-plus pre HIP installation businesses since February 2010.¹¹³

- 13.5.28 To demonstrate this, Mr Herbert highlighted that of the ten pre-HIP members of the ACIMA, only three remain in business with one of those due to its ownership by one of Australia's leading home builders:

In my view, the combination of the lack of industry regulation, the absence of an insulation product agnostic association, the relatively small size and capacity of the industry that existed as at February 2009 and then Prime Minister Rudd's commercial misjudgement of what was a viable scheme, all made for a "perfect storm" which created the basis for the HIP disaster.¹¹⁴

111 Statement of Moylan at [39-41], STA.001.001.0258, 14 March 2014.

112 Statement of Moylan at [42], STA.001.001.0258, 14 March 2014.

113 Statement of K Herbert at [14], STA.001.004.0001, 13 February 2014.

114 Statement of K Herbert at [21], STA.001.004.0001, 13 February 2014.

13.5.29 Solartex Insulation Solutions

- 13.5.30 Mr Duncan Herbert is the General Manager and Managing Director of Solartex Pty Ltd, which trades as Solartex Insulation Solutions (Solartex). Solartex had been in business for ten years at the time of the announcement of the HIP. 80-90 per cent of Solartex's business prior to the HIP had been residential retro-fitting of ceiling insulation.
- 13.5.31 Mr Duncan Herbert is critical that the Government failed to consult installers when setting up the HIP, noting that, as at February 2009, there was no industry body representing installation contractors, particularly those specialising in the retrofitting of ceiling insulation in the existing housing stock of the residential housing market.¹¹⁵
- 13.5.32 Mr Duncan Herbert said that he felt that Solartex had no choice but to register for the HIP, because customers would seek out registered installers to obtain retro-fit ceiling insulation under the HIP. Had Solartex not registered, it would not have received any residential business.
- 13.5.33 Mr Duncan Herbert further stated that during the HIP, Solartex was forced to change its normal business practices. Prior to the HIP, Solartex would obtain a deposit from the customer initially, and the remainder of the payment once work was completed. That enabled Solartex to secure stock and maintain a balanced cash flow and maintain credit rating with its suppliers. At the commencement of the main phase of the Program, installers were required to submit claims and receive the rebate directly from the Federal Government—as a result, Solartex's operations, cash flow and product supply were negatively affected.¹¹⁶ Mr Duncan Herbert stated:

That is the requirement for the installer to send claims to DEWHA for the amount installed up to \$1600.00 left us as the installer with a mounting cash flow problem due to delayed government payments. There were very long delays -such as 2/3 months- during which time we were expected to be paying our staff and all ongoing costs associated with running a business. This in turn caused supplier account relationship strain (suppliers with whom we had a long term relationship). The credibility of our business was adversely affected in circumstances that were completely out of our control. This situation forced us to take on our first business overdraft. (To this day as a legacy of the failed HIP, Solartex still holds the burden of this financial incumbency).¹¹⁷

- 13.5.34 Mr Kevin Herbert provided the Commission with two examples of individual small businesses in South Australia and Western Australia:

I will give you two examples. One in Western Australia called Andrew Plumber, who had—based on the undertakings the government had given, had gone ahead and borrowed against his house and—and his mortgage, had expanded his small insulation installation business down in Albany quite substantially and then he was one of the ones who, when the scheme was closed without notice—he hadn't been paid.

He was owed a substantial amount of money by his standards. He had stock he had paid for, so he was holding two debts, as it were, and the only alternative he had was to sell his house. So he—he sold his house and then, of course, he hadn't paid his tax for the previous year because he had

¹¹⁵ Statement of D Herbert at [15], STA.001.042.0001, 6 April 2014.

¹¹⁶ Statement of D Herbert at [21], STA.001.042.0001, 6 April 2014.

¹¹⁷ Statement of D Herbert at [22], STA.001.042.0001, 6 April 2014.

money into the scheme as well, so he owed the—out of his house sale, all he had paid for was the balance of the stock he—he had got on terms and his tax, and he was left with—well, living in rented accommodation, his business destroyed, owed—not—I don't think a substantial amount of money, probably about 25 or 30 thousand, maybe a bit more, and no job. So he was one.

The other one on the Gold Coast, a young couple—the wife ran the office. They had three young kids. The husband had run the business. It—it was a franchisee of Greg Rashley [sic] and they had been up there for eight years building this business up on the Sunshine Coast. They, of course, expanded under the same undertakings, and all of a sudden when it was stopped, though, in exactly the same situation as Andrew Plumber in Perth. And this particular fellow whose name escapes me for the moment—his name—his—his wife and he—escapes me. He ended up having to work on the road gang on the local council on their night shift. So he had lost his business. He owed money, a substantial amount of money, for the stock he had bought and was—was—was virtually worthless, and he was working on—on the night gang.¹¹⁸

13.5.35 Delayed payments

- 13.5.36 Payments under the HIP were made by installers making a claim for payment, which was processed by Medicare. The cash flow of those businesses was heavily dependent upon prompt payment of these claims.
- 13.5.37 Several business spoke of very substantial delays in receiving payments from Medicare, such as to threaten their commercial viability. A useful list of them is contained in the submission made on behalf of pre-existing businesses.¹¹⁹
- 13.5.38 Problems of a similar kind seem to have continued after the HIP ended. An owner of a pre-existing business told the Commission that his business was waiting on payment of some \$70,000 after the HIP was shut down.¹²⁰ He went to Canberra to meet with Government to seek support for insulation businesses such as his on 30 April 2010. The reason he was given for the late payments was that money was being withheld from non-compliant businesses. In the case of this business owner, the non-compliance was a single administrative error.¹²¹ In one case, a claim under the CDDA Scheme was approved, which allowed the recovery of the interest that the business owner paid on the amount that was owing, in recognition of the late payment of some of the claims. The CDDA Scheme is briefly considered further below.
- 13.5.39 The Medicare delay in making such payments was another cause of loss to installers, mainly through its effects on cash flow. These delays seem to have been a consequence of both simple processing delays and a decision by the Australian Government not to pay any claims made by business whose activities had been impugned. Although this latter decision is not, on its face, unreasonable, the time taken to assess complaints and decide if the business was, in reality, recalcitrant, took too long.

13.5.40 Government assistance to industry

- 13.5.41 The Australian Government instituted, at or about the same time as it terminated the HIP, some measures designed to mitigate the effects of that decision upon industry and the workforce. Those two packages were known as the IIWAP and the Insulation

¹¹⁸ Transcript (4 April 2014) 2044-2045 (K Herbert).

¹¹⁹ SUB.001.001.0050, 38.

¹²⁰ VOL.014.019.0001, 4.

¹²¹ VOL.014.019.0001, 4.

Industry Assistance Package (IIAP). The first was administered by the Department of Education, Employment and Workplace Relations (DEEWR), the second by AusIndustry. I have already discussed the first program above.

- 13.5.42 The IWAP was intended to provide money to insulation workers who had been affected by the closure of the HIP, to help them to move on to new jobs.¹²² Mr Bowles explained that there had been around some 250 insulation installers before the HIP commenced, but that 10,000 installers had registered at the height of the HIP. The IWAP sought to help 6,000 employees transition to further employment. It was not a package which was aimed at pre-existing businesses or mitigating the effects upon them specifically.
- 13.5.43 The IIAP was to provide financial assistance to home ceiling insulation businesses for inventory held when the HIP was terminated on 19 February 2010. Eligible businesses were able to seek a one-off cash payment of 15 per cent of the value of their ceiling insulation stock holding at 30 April 2010, capped at \$500,000 per claimant. Assistance was not to be provided for RFL insulation products.¹²³
- 13.5.44 Some of those who gave evidence from the industry spoke of having received an amount of this kind, but pointed out that it was a mere fraction of the loss they had suffered.¹²⁴ There was no science behind the government's selection of the 15 per cent figure. Mr Combet said as follows:

*It wasn't particularly scientific, because we did not have a feel at all for the amount of insulation that was kept in stock at the termination of the program. We could speak to the major manufactures, for example, and have a good picture of that. But given there are around 10,000 installers registered under the program, you couldn't get a good feel for it. We did the best work that we could to try and identify a number but—for budgetary purposes, but ultimately once you create an entitlement to 15% of the value of the inventory, you are holding to a cohort of installers, the number might be different than what you budget for. And I do remember it went over \$20million in the end.*¹²⁵

- 13.5.45 He went on to say that a decision had been made not to compensate to the level of 100 per cent because, although there had been abuses under the HIP, he did not want to waste one more taxpayer dollar, and that he had approached the suggestion of any new programs with a great degree of caution. He said that the Australian Government did the best it could to try and identify what the value of the inventory may be and target to the amount of 15 per cent. He accepted that this was a cautious approach but thought it justified in the circumstances. By then, he pointed out, the HIP had been oversubscribed and was running at expenditures well ahead of the budget estimations. He thought a line needed to be drawn under the government's exposure.¹²⁶
- 13.5.46 The circumstances under which Mr Combet was operating were obviously less than satisfactory in the sense that he could not then have known reasonably the extent of the exposure of the Australian Government in terms of the stock piles held by companies. More is known of that now, and much was said in evidence about it. I do not, however, think the approach taken by Mr Combet was unreasonable at the time. However, knowing more now, about the circumstances in which the HIP was terminated

¹²² Statement of Bowles at [6.3], STA.001.075.0001, 22 April 2014.

¹²³ AGS.002.001.0064, 1.

¹²⁴ See, for example, Transcript (15 April 2014) 3084 (A Arblaster); Transcript (15 April 2014) 3160 (M Devine); Statement of Zammit at [70], STA.001.039.0001, 26 March 2014.

¹²⁵ Transcript (16 May 2014) 4933 (G Combet).

¹²⁶ Transcript (16 May 2014) 4399 (G Combet).

and its effects on businesses, the 15 per cent amount would appear to me to be grossly inadequate.

- 13.5.47 Mr Bowles considered these packages to have been administered well.¹²⁷ However, industry was very dissatisfied, and reasonably so in my view. The IIAP recognised, to some extent, the injustice of what had occurred, but made only a minimal contribution to the losses they suffered.

13.5.48 Claims under the Scheme for Compensation for Detriment caused by Defective Administration

- 13.5.49 The Australian Government operates the Scheme for Compensation for Detriment caused by Defective Administration (the CDDA Scheme), to provide payment to persons adversely affected by defective administration.
- 13.5.50 Some businesses made claims under the CDDA Scheme. All but two were rejected. One claim that was accepted was straightforward. An installer was incorrectly de-registered. That installer was paid under the scheme.
- 13.5.51 The Commission heard evidence from Ms Kellie Jackson, who, along with her husband, owned and operated a pre-existing business. That business made a claim under the CDDA Scheme for compensation for losses incurred as a result of the HIP and its termination. Some \$461,140 was claimed.¹²⁸ That claim was refused. An amount of \$440.64 was later awarded as compensation for interest paid by the business as a result of receiving claimed payments late.¹²⁹
- 13.5.52 The Commission considered the claims made under the CDDA Scheme and how they were handled. All decisions made under the scheme were considered by Dr Subho Banerjee, then a Deputy Secretary with DCCEE. A statement was taken from Dr Banerjee, and from those that assisted him, in compiling briefs of material to be considered.
- 13.5.53 It is apparent that the view was taken, in my view correctly, that the CDDA Scheme was not intended to compensate installation businesses for commercial losses caused by a lawful Government decision. Most of the claims were framed to seek compensation for loss consequent on the termination of the scheme. However, the decision to terminate the HIP was not, on any view, defective administrative action.
- 13.5.54 The CDDA Scheme is one where the basis of compensation is moral, rather than pursuant to a legal obligation.¹³⁰ If there is legal liability, the Australian Government expects a claim to be pursued in the usual way.
- 13.5.55 I accept the submission on behalf of pre-existing businesses that the CDDA Scheme has been a wholly unsatisfactory mechanism to resolve the claims of such entities.¹³¹ However, I have carefully looked at the way in which the claims were dealt with, having regard to the vagaries of the CDDA Scheme itself. Although criticism can be made for the length of time that was taken to process the claims, I do not consider that the actual outcomes can be subjected to undue criticism.

127 Statement of Bowles at [6.12], STA.001.0750001, 22 April 2014.

128 Transcript (8 May 2014) 4022 (K Jackson).

129 AGS.002.126.5223, 1.

130 See the reasons given by Dr Banerjee as set out in the Submission on behalf of certain pre-existing home insulation businesses: SUB.001.001.0050, 42—43.

131 SUB.001.001.0050, 42. Add reference to most recent submission also.

13.6 General observations and findings

- 13.6.1 The extent of the losses suffered by pre-existing businesses has been documented in evidence submitted to the Commission. The Commission heard evidence from the principals of ten preexisting businesses. Sixty-five impact statements were submitted to the Commission. Those statements provide insights into the impact of the HIP and its premature closure on a broad cross section of businesses based in every State and the Australian Capital Territory.¹³²
- 13.6.2 I also had the advantage of a detailed written submission on behalf of pre-existing businesses prepared by Mr Windsor SC and Ms O’Gorman and a supplementary submission by Mr Windsor SC directed specifically to the CDDA scheme and its adequacy. The first of these recorded the details of the affected businesses and the nature of the losses suffered, among other things. It was submitted that the Australian Government ought to establish a process for compensating pre-existing businesses, to the extent they could demonstrate loss. It was also submitted, in the latter of the submissions, that any claims for compensation by pre-existing businesses not be under the CDDA scheme. I agree that such arrangements ought to be instituted and that those arrangements be other than by way of the CDDA regime.
- 13.6.3 I find as follows:
- 13.6.3.1 given that the retro-fit industry was intended to have lasted only as long as the HIP, many pre-existing businesses had no option but to register under the HIP or risk being excluded entirely from the business in which they had previously operated;
 - 13.6.3.2 the Australian Government gave numerous clear assurances to industry that the HIP would continue for some considerable time, and for at least a year or so longer than it did;
 - 13.6.3.3 pre-existing businesses acted on those assurances, quite reasonably, by investing in their manufacturing and installation capacities, staff and more generally to fill the demand the HIP would, and did, create;
 - 13.6.3.4 by doing so, these businesses were acting precisely as the Australian Government desired by stimulating the economy and employing people;
 - 13.6.3.5 the decision to end the HIP (sudden and unexpected for industry as it was) brought about the complete collapse in demand for insulation in homes;
 - 13.6.3.6 many businesses did not take the steps they otherwise might have to mitigate their losses, because of a real possibility that the Australian Government would establish a like replacement program of some kind;
 - 13.6.3.7 that replacement program did not eventuate, with some business having incurred further losses in keeping staff on and in other ways in anticipation;
 - 13.6.3.8 the effect of the losses was to devastate many long-standing businesses (some family companies in effect) and to cause as well personal financial collapse and severe despair and emotional harm;
 - 13.6.3.9 that harm and such circumstances justifies pre-existing businesses being compensated.

¹³² SUB.001.001.0050, 7.

- 13.6.4 I recommend that arrangements be put in place for compensating those pre-existing businesses who suffered loss arising from their reliance upon the assurances given by the Australian Government, to the extent such loss is properly to be so attributed, and not by reason of other contributing factors or influences. I leave to the Government the particular form that such arrangements might take and the mechanisms by which the proper quantum of compensation in each particular case is to be ascertained.
- 13.6.5 It would be essential, however, for such a scheme to have any realistic prospect of achieving the objects that I consider essential, that it not be one run by the Government itself. It has shown itself, in the manner I have shown, to lack insight into its own shortcomings.

14. THE FUTURE: AVOIDING REPETITION OF FAILURES

14.1 Introduction

- 14.1.1 When failures occur of the kind that I have set out in this Report, there is often a tendency to see them as arising only within a specific set of circumstances and to conclude that these are unlikely to be repeated. Views of this kind do not inspire an examination of events to draw conclusions about what might be done in the future.
- 14.1.2 I do not think that the deficiencies I have identified are ones that could only have occurred in the specific circumstances of the Home Insulation Program (HIP). Several systemic or fundamental shortcomings can be identified which not only are capable of repetition (of course in different circumstances) but which might be avoided through diligence and the taking of some additional measures.
- 14.1.3 My focus in this Chapter is on those matters and what might be offered in a forward-looking or constructive sense to complete and complement the detailed discussion in this report about the failings in the particular circumstances of the HIP. Many of these observations relate to the work and practices of the Australian Public Service (APS) in designing and implementing policies, but I also make suggestions about options to improve the safety of persons working in roof cavities in Australia.

14.2 Capacity of Commonwealth agencies and staff to undertake projects and programs

- 14.2.1 The Department of the Environment, Water, Heritage and the Arts (DEWHA) was inexperienced in designing and implementing a program of the nature, size and scale of the HIP—it had next to no project management expertise. The shortcomings of the Department were referred to in the Taskforce Report commissioned in February 2010, and to which I referred in Chapter 13. Its Secretary, Ms Kruk, initiated a review when she commenced there, but had insufficient time to complete it before the HIP was due to start. DEWHA lacked the capacity to achieve the tasks which it had been given.
- 14.2.2 This shortfall in capacity is something which seems to have been well known at the senior levels of Government, and quickly became obvious to those working in the Office of the Coordinator-General (OCG). DEWHA was traditionally a policy-oriented agency, and so not accustomed to running programs and offering services that are more operational in nature, and particularly a program of the size and complexity of the HIP. It is especially strange that DEWHA was allocated responsibility for the HIP because the energy efficiency objective of the Program seems to have been subordinated to the perceived need for stimulus and, to that end, speed in delivery. DEWHA was therefore left to design and deliver a policy with a primary objective which would have seen it better placed (if that reason alone can be isolated), for example, within the Treasury, the Department of Industry or the Department of the Prime Minister and Cabinet (PM&C).
- 14.2.3 DEWHA was left with primary responsibility for administering a program on a very large scale, in a very short time and without all the necessary skills, expertise and experience. And even though it was allocated funding for staff to deliver the HIP, it did not recruit appropriately experienced officers to address this lack of capacity. It is not clear whether this was because the wrong staff were recruited, or because suitable personnel were

not available on the job market. DEWHA's incapacity was accentuated because the policy development that led to the announcement of the HIP largely took place outside of the Department (although with input from some DEWHA officers) and in PM&C.

- 14.2.4 Skills and expertise may be acquired. Staff can be seconded and hired. Existing staff can be trained and their skills re-focused and improved. Such steps seem to have been taken here.
- 14.2.5 Whether those steps were adequate is a separate question. In a recent report, the Australian National Audit Office (ANAO) identified shortcomings in connection with DEWHA's management of compliance with conditions of approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).¹ The following recommendations show the capacity of DEWHA at least to be of concern, namely that the Department should:
 - 14.2.5.1 develop a compliance intelligence capability;
 - 14.2.5.2 undertake periodic risk assessments;
 - 14.2.5.3 develop and implement annual compliance monitoring programs that target the greatest risk areas;
 - 14.2.5.4 update investigation procedures and improve the documentation of enforcement responses; and
 - 14.2.5.5 improve record-keeping and performance reporting related to the compliance monitoring function.
- 14.2.6 Although they apply to somewhat different activities of DEWHA, the observations made in support of the ANAO's findings share a similarity with many I make in this Report.
- 14.2.7 What seems to have been left out of account—at least in the case of the HIP—is the way in which these people, many of them new to DEWHA, would work together in an institutional or collective sense. The problem with the lack of experience is that there do not exist the well-established relationships or practices for achieving particular results. The result is that there has never been a testing, in any practical sense, that the mix of people and skills, in the actual environment in which a particular goal has to be achieved, can actually do the task set for them. 'Nothing ever becomes real', as Keats said, 'til it is experienced'.
- 14.2.8 Several considerations follow. When an agency is selected to have responsibility for a program or project, those allocating that responsibility should actively turn their minds to the capacity of the agency to achieve that task, and test the agency's response if any doubts remain. That involves more than simply asking whether the agency has people within it, or can obtain them, with the necessary skills and expertise: it must include some assessment of the experience that institution and particularly its senior managers, has with programs of the kind with which it is to be vested.
- 14.2.9 It is one thing for politicians to promise, the Australian Policy Handbook asserts, it is another for Government agencies to deliver.²
- 14.2.10 If these observations have any basis to them, they show that retaining a large number of staff —well- qualified as they might be—offers no assurance that they will be able to work together successfully to deliver a program. One has to have some satisfaction, based on past experience, that the combination of skills, personalities, managers and other more amorphous factors such as team dynamics, have proved capable of producing results comparable to those sought to be delivered.

1 The Auditor-General, Audit Report No.43 2013–14, Performance Audit, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval* (Commonwealth 2014).

2 Althaus, Catherine, Peter Bridgman and Glyn Davis, *The Australian Policy Handbook, 'Managing the policy process'* (Allen and Unwin, 2013) 169.

- 14.2.11 Another major problem which presented itself in relation to the HIP was that many of the officials in positions of authority lacked relevant skills and experience. One had been a social worker, another had worked with Aboriginal communities, others had been long-serving public servants working in other policy fields. Ms Coaldrake had experience in museum administration and Ms Leake had been an architect. Without directing criticism to any individual for this, I was struck by the lack of personnel with any significant project management experience or any substantive qualifications or experience in dealing with construction projects or technical matters similar to those likely to arise in the HIP.
- 14.2.12 This dearth of suitably qualified personnel translated into an inability of officials within DEWHA in particular to exercise judgment about the competing and often contradictory positions being advanced by various parts of the insulation industry. There were several occasions on which DEWHA officials (Mr Kimber included) expressed an inability to choose between the different views with which the Department was presented. The result was that those officials tended to make no judgments or choices about the competing positions, and sought to accommodate them all. One example was the decision that did not exclude Reflective Foil Laminates (RFL) from the HIP. When external advice was given, it was put to one side when the stimulus objective of the Program raised concern about a timely commencement. A glaring example is that of training. The universal view of industry, the experts, and, it seems DEWHA itself, was that mandatory training was essential. Yet, as discussed in Chapter 8, when the training was likely to delay commencement, it was modified to accommodate the stimulus objective of the Program.
- 14.2.13 Had these public servants had relevant skills and experience, they would have been better placed to make judgments and decisions of the kind required for proper administration of the HIP. The retention of outside experts did not always overcome the knowledge gaps that existed in the Department, as those experts also presented advice that differed in some material respects, and it too, on occasion, called for one view to be preferred over another. DEWHA, because it lacked officials with relevant and substantive expertise and experience, left itself exposed to the cross currents of opinion and vested interests, unable to prefer one over the other or to have the insight about how best to navigate through the competing viewpoints. A glaring example of this was the decision to permit RFLs to be used in the HIP.
- 14.2.14 Drawing on the observations above, I recommend that:
- 14.2.14.1 before charging an agency with the implementation of a complex or large project, some assessment be made of that agency's capacity to deliver it including, most importantly, its experience in delivering similar projects;
 - 14.2.14.2 such an assessment must not be a series of optimistic or visionary statements about what is to be achieved, but ought to be a succinct and candid record of the skills that are essential to the successful delivery of the new program, having regard to the nature and scale of the program and whether the agency has previous experience in delivering comparable programs;
 - 14.2.14.3 the assessment ought to be undertaken by the head of the agency or agencies which are likely to be charged with delivering the project, and a report provided to the relevant Minister to inform the Government's decision about whether the project should be delivered by that agency in that form;
 - 14.2.14.4 the staff that are recruited and utilised be persons with relevant expertise and experience.

- 14.2.15 It is not enough to say, as so often now occurs, that the agency will or can ‘build its capacity’. That is often a euphemism for the agency having a serious gap in its capacity, promising to redress it—but often not knowing how to do so—and under-estimating the difficulty of building institutional (as distinct from individual) competence and capacity.
- 14.2.16 Moreover, agencies should be proactive in building capacity to meet future challenges. Agencies should be positioned to manage the unexpected as well as the expected. As explored in the Australian Policy Handbook:

The demand for a public servant to be proactive goes well beyond being abreast of contemporary thinking, to include informed defensible assessments, even if they are not perfect, of how a system is likely to change and where to focus attention.³

- 14.2.17 I was assisted in forming these views by confidential submissions made by two senior Commonwealth public servants. They identified the following practical ways to improve an agency's capacity to administer projects:
- 14.2.17.1 develop project delivery toolkits (and review the existing ones) to determine whether they are adequately promoted and used;
 - 14.2.17.2 provide project-delivery training to build the capability of APS officers who are, or are likely to be, responsible for managing projects. The purpose of such training would be to ensure that there is a depth of awareness and experience that is more detailed than the approaches that can be promulgated in the toolkits. I have heard the views of some who consider that project delivery training should be provided to as many APS officers as possible, even where their duties do not involve program implementation responsibilities. I would not endorse training on this scale, but do recommend improving institutional capability in respect of project management;
 - 14.2.17.3 create a central team of project implementation specialists that could be deployed to an area that needed resources and expert advice. That central team must also have the capacity to advise on best practice approaches to cost-estimation. It must be recognised, however, that they will be specialists in project management only. This is no replacement for subject-specific knowledge and actual experience in a particular field, and therefore, they would need to work cooperatively with subject matter experts.

14.3 Role of senior management

- 14.3.1 The role of senior managers is to oversee staff and to have overall responsibility for the delivery of the agency's responsibilities, often in the form of projects or programs. In the public service, senior managers have particular roles in serving the political executive, by providing advice, warnings and guidance.
- 14.3.2 Many of the shortcomings in the HIP are failures of senior managers. In general terms, I would summarise the shortcomings of senior APS management involved with the HIP as:
- 14.3.2.1 a failure to provide candid advice to Ministers. This was most exemplified by a failure to warn candidly that the 1 July 2009 commencement date was unachievable if the HIP were to be accompanied by the usual protections and terms (including an adequate audit and compliance regime);

3 Althaus, Catherine, Peter Bridgman and Glyn Davis, *The Australian Policy Handbook*, 'Managing the policy process' (Allen and Unwin, 2013) 230.

- 14.3.2.2 similarly, a lack of candour in the briefings to Minister Garrett concerning the effect and significance of the decision to relax the requirements for training in June 2009;
 - 14.3.2.3 a lack of subject-matter expertise in relation to the environment in which the HIP operated, which resulted in advice being inaccurate, based on false assumptions or poorly targeted;
 - 14.3.2.4 a failure to provide leadership of the HIP, by which I mean to assume responsibility for the program as a whole and do what was necessary with the staff working under them to ensure that their time and efforts were efficiently directed.
- 14.3.3 Sections 10 and 13 of the *Public Service Act 1999* (the Public Service Act) set out the APS Values and Code of Conduct. All APS employees are required to uphold the Values and comply with the Code of Conduct, with sanctions available for breaches of the Code.
- 14.3.4 I found the APS Values and Code of Conduct in practice guide (the APSC Guide)⁴ a valuable resource. It was relevantly updated in May 2009. I refer below to the concept of frank, honest, comprehensive, accurate and timely advice, referred to in section 10(1) (f) of the Public Service Act. After having read all of the documents provided to the Commission, and having heard all of the evidence given particularly by public servants, I have little doubt that had such advice been given at key junctures of the HIP, the tragedies that occurred would have been avoided, and much of the adverse publicity and outcomes obviated. If such advice was given, and documented (about which I say more below), but ignored by the political arm of government, there was little else the public service could reasonably do. The politicians would then, as appropriate, bear the opprobrium and responsibility of ignoring good advice. But that is not what happened with the HIP. Analysing the failings of the HIP was made much more difficult by the lack of clearly articulated advice by senior officials involved.
- 14.3.5 In the case of the HIP, the failings of senior management assured the failure of the project. There can be no substitute for the leadership, advice and decision making that senior managers are required to provide.
- 14.3.6 It ought to be self-evident that senior managers must take an active role and interest in the projects assigned to them. Given that many levels of hierarchy exist in most public service agencies, not all levels need be engaged and involved in every project, because any one agency might have responsibility for many complex projects at the same time, and the time and resources of managers are finite. However, it must be made clear which senior managers are responsible for the project or parts of it. This ought to be formalised and documented. If a manager cannot contribute to a project's delivery, because of the time available to them or because of a lack of experience or expertise, that ought to be made clear. If the person is only temporarily unavailable, or there is an intention that they will assume a more active role once they have developed the requisite expertise or experience, this should be clearly explained. At all times, it must be clearly understood who the responsible senior manager is—this person should be recognised as the Project Sponsor.
- 14.3.7 The role of Project Sponsor (sometimes called the Senior Responsible Officer) is, in most projects, allocated to a senior manager—in the case of the HIP that was, for the first half or so of it, Mr Forbes. The term is a vague one, which, I suspect is part of the reason why, as here, what is expected from the person who fills it can easily be misunderstood.

4 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

- 14.3.8 The project sponsor ought to focus closely on:
 - 14.3.8.1 obtaining 'buy-in' by the Executive and key players (including other relevant departments);
 - 14.3.8.2 resolving different views with other agencies by actively advocating the Department's view, and seeking to resolve differences. In this case, an example is a person more senior to Mr Keeffe being called to have the important discussions with the OCG;
 - 14.3.8.3 providing delegations to the appropriate levels, and
 - 14.3.8.4 ensuring that the right people have been engaged, and that they are working on the right things at the right time. Such matters are more easily discerned by those who sit above the day-to-day work of the project.

14.4 Clearer articulation of roles and responsibilities

- 14.4.1 Committees are not well-suited to making decisions and taking action, yet they are common in the Public Service. The Project Control Group (PCG) is a clear example in the case of the HIP.
- 14.4.2 Most PCG members were extremely passive participants. Decisions were routinely taken by exception—that is, in the absence of debate or dissent, it was assumed that there was consensus. Dissent or debate seems to have been rare. In this regard, 'groupthink' might have prevailed in certain meetings of the PCG, such as in respect of the 8 May 2009 decision with respect to the relaxation of training and competencies in particular.⁵
- 14.4.3 The PCG did not discharge its function of, among other things, providing oversight and strategic direction to the insulation programs and ensuring high standards of governance were met.⁶ The existence of the PCG (like many such committees) was conducive to decision makers (albeit as part of a collective body) avoiding taking personal responsibility for decisions. Its mere *existence* seems to have been treated as having satisfied some substantive purpose when its establishment was merely a *means* by which to achieve steps of substance. The obsession with process at the expense of substance is a particular failing that the HIP reveals. I elaborate below on that topic.
- 14.4.4 There is a further problem with collective bodies in the public service.
- 14.4.5 In the case of the HIP, there was a strong emphasis on seeing the members of the PCG as a 'team', rather than any other form of collective body. This attitude concerns me, because this manner of thinking saw DEWHA prioritise concurrence and cooperation at the expense of robust debate. When such a mentality prevails, any person that challenges the group was perceived as not being a team player, or as somehow unreasonably blocking the will of the majority.
- 14.4.6 In relation to the HIP, the vulnerabilities of a 'team' mentality are highlighted by Ms Coaldrake and Ms Leake, and to some extent, Dr Delbridge. Ms Coaldrake and Ms Leake regarded themselves as being 'one of the team' in spite of the fact that they had been brought in as external experts for the purpose of giving independent advice. They failed in part because they put cohesiveness of the team above clear thought and objective reflection. In the case of Dr Delbridge, he considers that he was ostracised from the team for drawing attention to problems and for expressing dissatisfaction (some of it well-founded) with the way in which the HIP had been designed and was

5 'Groupthink' is a term coined by social psychologist Irving Janis (1972), and is used to describe the mode of thinking that persons engage in when concurrence-seeking becomes so dominant in a group that it tends to avoid realistic appraisal of alternative courses of action. See Irving Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* (Cengage Learning; 2nd ed, 1982).

6 MIN.002.001.1060, 1.

being rolled out. While his managers, Mr Kimber and Mr Hughes, refute this, it clearly demonstrates that certain staff felt constrained in challenging the majority view.⁷

- 14.4.7 I consider that there are two issues which should be examined: a tiered model of collective decision-making bodies, so that the roles of participating individuals are more clearly established, and also steps to promote more deliberate debate to inform robust and considered decision-making.
- 14.4.8 A tiered model for inter-departmental committees of the following kind may overcome to some extent the vulnerabilities that arose from a committee structure such as the PCG, the basics of which I set out below:
- 14.4.8.1 *Board of Management model*—A committee is appointed to make collective decisions. It is expected of all members that they engage on the breadth of issues before the Committee, not just those related to their personal/Departmental interests. Matters would be put to a vote to be resolved. Such a body may not be necessary except on the largest or most difficult projects;
- 14.4.8.2 *Advisory Board model*—Decisions are made by the Senior Responsible Officer/Minister, but those decisions are informed by the views of agencies represented. In seeking participants from other agencies, the lead Department should clearly articulate what expertise they are seeking and what level of engagement is required. Participating Departments should be asked to commit the resources necessary to meet that need;
- 14.4.8.3 *Education/ Information-Sharing Forum*—This provides an opportunity for agencies to inform other agencies that may have an interest about pre-determined decisions. This would not be a decision-making forum;
- 14.4.8.4 *Individual responsibility*—Collective decisions generally reflect the preferences of the individuals that make up the group. Even where decisions are made in a collective forum, the individuals who participate in reaching that decision ought to be held to account, in accordance with their role. It is to be expected that a person will take care in reaching a decision when they know that they will be asked to account for that decision. And people who are unwilling to take responsibility for what they decide when exercising public power and spending taxpayer dollars ought to be regarded as inherently unsuited to having any senior or decision making role. For whole-of-government working arrangements to be effective, the lead agency (and specifically, the Project Sponsor) ought not only have the authority and recognition to act, but they must exercise their role accordingly;
- 14.4.8.5 *Distinct Portfolio Responsibilities*—Where a program or project cuts across multiple portfolios (as the HIP did), there must be clearly-articulated responsibilities at the Ministerial level. Departmental officers are poorly placed to resolve conflicting objectives which arise because of unresolved competing priorities at the Ministerial level. Directions to line departments ought to come via their own Minister, not directly from the Prime Minister via PM&C. This would ensure that decisions about competing priorities are made by the Ministers.

⁷ See Supplementary Statement of Kimber at [43-49], STA.001.024.0010, 9 May 2014. See also Supplementary Statement of Hughes at [23], STA.001.041.0018, 4 May 2014.

- 14.4.9 Flowing from this, a more considered approach should be taken to the role of PM&C as a Department when regard is had to the implementation of policy. A central agency such as PM&C offers a strong and positive role in providing oversight, helping the lead agency to obtain engagement from other Departments and removing barriers where there is a mutually beneficial outcome. However, this value is undone when PM&C itself pushes a particular agenda at all costs and without having any detailed knowledge of the program or project. The early articulation of the respective roles of agencies, and their powers and responsibilities would assist, as would more actively engaged line agency management. In the case of the early stages of the HIP, all advice about the scope and costing of the program went to the Strategic Priorities and Budget Committee via PM&C. Mr Garrett was not involved, and DEWHA had no direct mechanism to communicate information to the Cabinet. It should be incumbent on PM&C in these circumstances to brief Ministers on the advice of the lead agency where it differs from its own advice.
- 14.4.10 I would recommend also that caution be exercised in promoting the concept that a collective body identify itself as a team, without strategies in place to avoid groupthink and to ensure that decisions are informed by individuals having applied their minds to the issues and engaged, where necessary in vigorous constructive debate. While collegiate working is important in a work environment such as the APS, I consider that steps should be taken to ensure that participants in collective bodies are actively thinking about issues from different perspectives, and actively promoting dissent and debate in support of robust decision-making. I consider that utilising tactics intended to direct the attention of thinking would encourage actively mapped-out alternative perspectives of the issues, and in my view, would have resulted in more robust decision-making.

14.5 Governance arrangements

- 14.5.1 By 'governance arrangements' I mean the set of practices, policies and procedures that are exercised by an agency's executive to ensure that objectives are achieved, risks managed and resources used responsibly and with accountability.
- 14.5.2 It seems to me to be worthwhile, for projects of a certain size, budget and tier, that there should be an embedded project management group who report directly to the Project Sponsor/Senior Responsible Officer as the chief client, but who also work very closely with delivery and policy colleagues. This group of individuals should include individuals who are accountable for ensuring the adequate management of the program, and specifically risk and fraud. For example, it may involve a Project Manager, Risk Manager and Fraud Control Manager. This would provide the Senior Responsible Officer with a source of advice that is focused on the active management of the project and risk, and would reduce the likelihood that staff are so busy doing work that they lose sight of the broader project or the broader risk context. In addition, it would present staff working on a program with a clear channel through which to raise concerns about project risks with a person outside their direct reporting line, where they do not consider that their concerns have been given adequate consideration.

14.6 Frank and fearless advice

- 14.6.1 I referred earlier to section 10(1)(f) of the Public Service Act. It is an obligation of public servants that they provide the political Executive with advice that is frank and fearless. It falls to the political Executive to make the most important and difficult of decisions, and to suffer the harsh consequences at the ballot box, in the party room or in Parliament itself if those decisions are unpopular, clearly wrong or otherwise imprudent.

- 14.6.2 It has been a long-standing principle that public servants had security of tenure giving them both longstanding experience in the field of public administration, a great depth of knowledge about that art and the workings of various portfolios. Security of tenure has another important consequence: public servants could, if warranted, advise their Minister against certain courses of action, and in trenchant terms if necessary. The Minister, in turn, was free to act contrary to the advice given, but could of course suffer criticism and censure if that contrary advice was later vindicated.
- 14.6.3 However, these circumstances have changed in recent decades—the public service is no longer automatically a lifetime career, nor does it, for many, offer the security of tenure it once did. The changes have not been all bad: security of tenure tends to protect persons who perform poorly at work or who are, or grow to be, unsuited to the job. But on the other hand, without some security, public servants might reasonably feel less able to give advice to a Minister who, if he or she finds it unpalatable, might take action which threatens that person's employment. More insidiously, Ministers and Department heads might procure written briefings that contain only that information which supports a particular result, premised on the view that for a senior public official to receive advice contrary to the manner in which they wish to act is undesirable and exposes that senior official to criticism. To act in this manner threatens the independence of the public service and the role we require them to fulfill.
- 14.6.4 Public servants, like most people, are reluctant to jeopardise their employment in their chosen career.
- 14.6.5 The solution is not to reinstate security of tenure. There are other means by which the importance of frank and fearless advice might be reinforced and, hopefully, made more common. I discuss them below.
- 14.6.6 The APS ought to reinvigorate its willingness to provide, in writing, advice that is as frank and robust as the advice it is willing to give verbally. This requires cultural change of two kinds:
- 14.6.6.1 senior officials and Ministers being aware they are entitled to act contrary to advice. The fact they received advice contrary to the way in which they act is no necessary or automatic basis to impugn the decision;
 - 14.6.6.2 public officials giving advice must be encouraged to think clearly, to free themselves as much as possible of institutional biases and taboos, and to have courage when giving advice.
- 14.6.7 The APS ought to brief Ministers on the risks inherent in a recommended approach or advise on how the proposed approach might contain faults in the design or otherwise fail to work. Such a concerted focus on assessing the negatives associated with a proposal is a core component of the modes of thinking promoted by Edward De Bono—he refers to this manner of thinking as 'black hat' thinking, and asserts that it should never be seen as an attempt to be obstructionist or argumentative, but instead should be seen as an opportunity to consider negative elements alongside the positives, and to make a decision informed by the balance of each. As a practical measure, there should be a requirement to provide advice of this nature to Ministers at the same time as presenting a brief or proposal for a Minister's consideration. This could be done by including a section in the briefing template which requires the author to air risks relevant to the proposal (a 'devil's advocate' section)—this would provide Ministers with an opportunity to make decisions fully informed about the implications and consequences thereof. Officers must be supported to engage with personal risk when giving advice, rather than to remain complicit with a particular approach thought to be favoured by the Minister or a political adviser. Senior officials must likewise satisfy themselves that advice concerning risks is accurate, independent, and comprehensive. Additionally, advice on

risk, whether delivered in a written submission or verbally, should not be pitched at such a high level that it is impossible for the Minister to discern real tangible risks therein. Ministers and their advisers must not, by subtle suggestion or otherwise, dictate what advice they receive.

- 14.6.8 Advice must be multifaceted. It must look at issues beyond the Department's primary objective. For example, in the case of the HIP, advice on the economic impacts should have focused not only on the macro-economic stimulus impacts, but also on the likely impact on the industry itself in both the short and long term. For example a relevant consideration should have been the fact that at the end of the HIP (had it been successful) there would have been a lack of employment for those involved.

- 14.6.9 As explained in Chapter 2 of the APSC Guide:

*The APS works within, and to implement, the elected government's policies and outcomes . . . Good advice from the APS is unbiased and objective. It is politically neutral but not naïve, and is developed and offered with an understanding of its implications and of the broader policy directions set by government.*⁸

- 14.6.10 it is also said:

Responsive advice is frank, honest, comprehensive, accurate and timely. The advice should be evidence-based, well argued and creative, anticipate issues and appreciate the underlying intent of government policy. Responsive advice is also forthright and direct and does not withhold or gloss over important known facts or 'bad news'.

Responsiveness demands a close and cooperative relationship with Ministers and their employees. The policy advisory process is an iterative one, which may involve frequent feedback between the APS and the Minister and his or her office.

*Responsive implementation of the government's policies and programmes (APS Values (f)) is achieved through a close and cooperative relationship with Ministers and their employees. Ministers may make decisions, and issue policy guidelines with which decisions made by APS employees must comply.*⁹

- 14.6.11 It is a shame that those entrusted with the implementation of the HIP did not adhere to these principles.

14.7 Risk

- 14.7.1 The identification and management of risks under the HIP was seriously deficient. The risk of death and serious injury to installers, among the most serious of all the risks that might eventuate, was identified in working groups and in the risk identification process, but not recorded in the Risk Register and did not appear there until a death had occurred. This is the polar opposite of how a risk management process is supposed to work.

8 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

9 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

- 14.7.2 Other problems affected the proper discharge of the risk function under the HIP, including that even the external risk advisor (along with many officials) thought that this risk was something that someone other than her client was responsible for. She could never have made that assessment in any informed way because it was not for her to decide how the relevant intergovernmental arrangements operated. And even so, the person vested with responsibility for ensuring communications with the State and Territory Governments (as those thought to be responsible for the risk) did nothing to discharge that function.
- 14.7.3 What might be done then in the future to avoid a repetition of this situation, where a risk process sought only to identify and dismiss risks, rather than explore the full range of possibilities and consider how these could be mitigated, and by whom? I would raise each of the following as steps that might be taken:
- 14.7.3.1 *Regular and ongoing engagement with identified risks*—I consider that the APS has already gone some way to achieving this. It is recognised that officials ought to treat seriously the whole question of risks and their management—it is not enough to name and dismiss those problems. The HIP has been a clear lesson in this respect, and I would hope that this Report will serve to make the lessons to be learned a little clearer and reinforce their importance.
- 14.7.3.2 *Risk cannot be abrogated*—Government must recognise that as much as it might seek to do so, risk cannot be abrogated. The responsibility of Government is to care for its citizens and to exercise care and diligence to do everything reasonable to ensure citizens are not placed in danger by its actions, particularly risk of death and serious injury.
- 14.7.3.2.1 The Australian Government should not seek to abrogate responsibility for identified risk. If another party (for example, a State or Territory Government) is identified as being able to mitigate an identified risk, this does not remove the Department's responsibility to take the necessary steps to manage the risk and to ensure that others are doing the same. The Australian Government should engage with the identified risk manager to ensure the adequacy of those arrangements for the new circumstance, and consider whether there are additional steps that it could take to complement that action.
- 14.7.3.2.2 Serious consideration ought to be given to whether the Australian Government is the best entity to deliver a program. Program delivery is very much the bread and butter of State and Local Government. However, for no apparently sensible reason, the HIP was operated by the Australian Government. It was reluctant to engage with the States and Territories despite seeking to make them accountable for all workplace health and safety shortcomings of what transpired.
- 14.7.3.2.3 These points are made in the minutes of a meeting of the Energy Regulatory Authorities Council in May 2010.¹⁰ It is there said that Australian Government agencies are generally ill-equipped to manage program delivery; they require the local knowledge of State and Territory agencies, especially regulators. It is said at page 3 of the minutes:

10 QIC.006.001.4115, 27-32.

DEWHA were reluctant to share information with ESO for the first few months—privacy and data sharing issues need to be rapidly addressed at the earliest stages.¹¹

The earliest possible involvement of State and Territory regulators in relevant federal and State/Territory programs is essential. Such involvement ensures technical and compliance issues are recognised and it provides opportunity for their incorporation in the design stage of such programs.

14.7.3.2.4 I agree with those observations.

14.7.3.3 *Individuals to be responsible for risk management*—The whole risk management exercise fails entirely if those persons charged with responsibilities fail entirely, as here, to take it seriously by not doing what on any view is required of them. There is merit in a governance structure by which an individual (or some few identified individuals) are personally accountable for ensuring that a risk is suitably managed.

14.7.4 Finally, in the provision of frank advice about risks to very senior officials and to the Minister, it should not be assumed that the sole interest is in reputational and political risks, rather than risks to people involved in the policy, program or project.

14.8 Communications

14.8.1 *Communicating with the public*—Many in our community find it hard to read and understand written information. More focus ought to be given to targeting communications to the likely audience—in the case of the HIP, the length, style and timing of written documents were not well tailored to an audience which, in the case of young installers at least was likely to include many who had limited inclination to read and perhaps limited reading and comprehension skills. Those preparing such documents ought to be careful not to revert to meaningless public-service speak or corporate and risk management language, much of which even readers with years of experience in such fields find unnecessarily complicated and confusing.

14.8.2 *The use of language generally*—The lazy use and misuse of language, something of which the public service is particularly guilty, has become a very great problem in recent years. It is common to see, as it was in the Government documents produced in this Commission, the regular use of unspecific words when there exist perfectly apt terms to describe what is intended with precision and clarity. One example was the word ‘challenging’. It was regularly used in the documents to convey that some task or request was likely to be difficult, or perhaps impossible. This term, however, does not tell the hearer or reader whether the challenge is one that can be overcome with some application, careful management and diligence, or whether it is intended to convey that the task ahead ought not to be attempted.

14.8.3 The misuse of language, as Don Watson has shown in his work, although at first glance a question of semantics, can be so gross as to affect the substance of what is to be achieved.¹² The HIP is an example of that. Officials were using words such as ‘challenging’ when they ought to have been saying something more specific. The choice of word reflects also the associated mental process. A public servant who says something is ‘challenging’ has, as a matter of cognitive function, not directed him or

¹¹ QIC.006.001.4115, 29.

¹² See, for example, Don Watson, *Death Sentence: The Decay of Public Language* (2003).

herself to the nature of the problem and its seriousness. They have simply formed a view that something will not be easy. But to think that this constitutes any form of sophisticated analysis is, of course, folly.

- 14.8.4 Worse still is the use of cypher or euphemism in place of clear communication—where an officer has in fact directed him or herself to the nature of the problem, yet is not sufficiently fearless to provide the Minister with frank advice that is set out in very clear terms, for fear of limiting future career prospects.
- 14.8.5 The use of euphemisms to avoid precise thinking or frank communication is a problem that has proved difficult to fix and has in recent years only become worse. To my mind, it is a sign of a lack of mental discipline, a laziness that favours use of the meaningless and familiar. All this comes at the cost of precision and reduces the clarity of communication—and the thought behind it—to ineffectual and pointless activities.
- 14.8.6 The solution turns upon the selection of good, well-trained and experienced people, familiar with difficult tasks and able to demonstrate their past achievements. It is not a matter of simply re-training people who have fallen into poor habits.

14.9 Industry and interested persons

- 14.9.1 When Government intervenes in a market or industry, there are very great consequences. Whether it be via the injection of funds through subsidies or rebates, or by regulatory action, Government action has the capacity to do great good, but also immense harm to the settled balance that exists between consumer and provider, between financier and borrower and between competitors. In the case of the HIP, Australian Government action all but wiped out the retrofit home insulation industry and caused the insulation industry generally great reputational harm, which is expected to last for some years to come. What is more, the very measure of success of the program, namely insulating 2.2 million existing homes, would have necessarily resulted in the entire depletion of the retrofit market within two-and-a-half years.
- 14.9.2 Before Government intervenes in a market in which it has previously had almost no involvement, it needs first properly to understand the industry and market dynamics. It is only by this means that it might be able to comprehend the possible effects of its intervention. It must also understand that, despite its best efforts, it might misunderstand often complex affairs and relationships to which it is not privy.
- 14.9.3 It is only by studying the industry and its dynamics—but doing so with some intellectual humility by acknowledging that the subject matter may not be properly or fully understood—that Government can begin to think it might be in a position to make informed projections about the likely effects of its activities.
- 14.9.4 Furthermore, it is critical to public policy interventions of this scale and nature that Government understand the implications for end users or deliverers. It appears, particularly when it comes to national programs, that policy-makers have too limited a focus on strategic level outcomes such as macro-economic reform, when the greatest single impact a program may have is on the safety or well-being of an individual at the end delivery point of an implemented policy—in the case of the HIP, inside roof cavities. Government must make strenuous efforts to understand the nature of its interventions, and how people at an individual level are likely to be impacted.
- 14.9.5 Greater practical consideration, by those designing and implementing the HIP, of installers entering roof cavities, and the insulation products and equipment they would utilise, would have gone some way to addressing the safety risks installers were exposed to under the Program. It is not enough to develop elegant theoretical policy solutions: they must be commensurately accompanied by a practical understanding of their implications.

14.10 The Australian Government as an informed purchaser

- 14.10.1 The Australian Government, in its engagement of Ms Coaldrake (Minter Ellison Consulting and later Langdale Consulting) and Ms Leake (Everything Infrastructure) acted as a purchaser of expert services, but was ill-informed about them and poorly managed their services after engaging them.
- 14.10.2 The Australian Government must better understand what outside expert services are available and the nature of them so that the APS is an informed purchaser of risk management and project management services in particular. It must also be more thoughtful about what service specifically it is that is required, so that the documents defining the provider's role state with clarity what is to be expected of that expert. In short, the relevant Australian Government officers must have sufficient knowledge to know what service they need from the private sector and to know where to obtain that service and then to evaluate whether they are getting good service.
- 14.10.3 In relation to the work undertaken by the consultants engaged under the HIP, I offer one further comment on the nature of project plans and other project management tools. They should not be little more than a compliance function or reporting mechanism. Traffic light dashboard reports and Gantt charts which I saw in evidence served largely to present a variety of content in novel ways, rather than to engage decision-makers with critical analysis. The value of these tools is only in their capacity to facilitate decision-making—completing a chart is not an end in itself.

14.11 Prioritisation, focus and the obsession with process

- 14.11.1 The work of Government is large and varied. Departments variously devise policy, design programs and administer them, deal with citizens, advise the political Executive and attend to myriad activities which are associated with each of these.
- 14.11.2 Many public servants worked very, very hard to design and deliver the HIP in the short space of time set for them. Many were brought into DEWHA in particular to assist with that. There were, in all, many hundreds of public servants working on the HIP. Yet none documented in any record produced to this Commission any advice that a 1 July 2009 commencement date was not capable of being achieved without compromise to the safety of installers working under the Program.
- 14.11.3 While I do not doubt that the officials working on the HIP were busy, I question whether they were being utilised effectively. When the public servants, therefore, speak of great pressure in their work associated with the HIP, I would question how much of the work they did was directed in an efficient sense to fulfillment of substantive tasks. The Guidelines and Terms and Conditions are brief and ought not to have taken long to draft or to have involved many drafters. The Risk Register was something collated and compiled by an external contractor. Another external contractor was (supposed to be) undertaking project management.
- 14.11.4 It is apparent to me from the documents produced to the Commission by the Commonwealth of Australia (Commonwealth) that much of the work of the officials, in DEWHA in particular, was directed to process, and process which came at the expense of substance. Endless emails were exchanged, and meetings and committees were convened. Very many officials (probably too many) attended the meetings with industry. Yet no one was able, despite this, to see that the Risk Register had omitted an important risk, or that Mr Peter Ruz's warning had not come to the attention of the relevant people and had not been given any serious consideration or acted upon.
- 14.11.5 Much of the work on the HIP is likely to have been misdirected and to have drawn resources, time and attention away from very important matters of substance which were either entirely overlooked or deliberately ignored by officials, in DEWHA in particular.

- 14.11.6 In this respect, the manner of Government operations has altered vastly from earlier days, as revealed by a basic knowledge of the history of the public (and civil) service. It was not so long ago that Lord Palmerston—in the days when Ministers were the ‘engine room’ of their Departments—was able to conduct the affairs of the UK Foreign Office himself with little assistance. He read *‘every report, every letter, and every dispatch received ... down to the least important letter of the lowest vice-consul.’*¹³ He also answered them himself.¹⁴
- 14.11.7 The example of Lord Palmerston does show that, even at a time when Government had very many activities and responsibilities, the administrative function seems to have been carried out much more efficiently and economically than seems often to be the case now.
- 14.11.8 In part the difference is no doubt attributable to greater complexity in modern society and affairs—but this is often overstated. The Foreign Office was, in Lord Palmerston’s day, responsible for the home administration of India: at that time, Britain’s external activities were far from inconsequential, unsophisticated or limited.
- 14.11.9 What has changed? Three matters in my view. The first is the tendency for public officials to focus on process at the expense of substance. They may be busier than they once were, but I do think that much of their effort is poorly directed to the more agreeable and easier activities of process rather than substantive action. The distraction to public servants is caused by further layers of process, training and unnecessary administrative activities.
- 14.11.10 The second contributor to the problem is Government’s greater willingness now to assume responsibility for so many activities. Departments of Government, instead of styling themselves as such, often refer to themselves more ambitiously: for example ‘Corrections Victoria’ or ‘Queensland Health’. This, it must be said, is less prevalent at the Australian Government level, but it does show a focus upon what extra tasks Government might assume than how it might best prioritise its efforts and focus upon those activities most likely to produce benefit for citizens.
- 14.11.11 Unlike private enterprise, the business of Government cannot be measured by market forces. Its projects need not turn a profit, and the impacts that its projects have may not be seen within a single generation. It is blind, to an extent, to the market signals that inform decisions by private firms. Its sources of knowledge, therefore, are very different from those that guide the private sector.
- 14.11.12 Government was not so long ago conceived of as good administration rather than as presenting or executing an agenda for reform.¹⁵ It did not, for example, until the mid-1850s, ordinarily initiate legislation or have some program of systematic reform.¹⁶ I make no criticism of the change, but I do suggest that Government lacks as yet, perhaps for this historical reason, a means by which to know what ought to be its administrative priorities and how best to focus its efforts. This will take time. There is no easy solution, although I do note one that was recommended in recent times in the United Kingdom as a solution to the proliferation there of regulation and of bodies concerned with scrutiny of Government—it was to require that no new bodies and arrangements be instituted without first removing ones of equivalent size and consequence.¹⁷ It would cause a direct comparison to be made about which of two

13 H C F Bell, *Lord Palmerston* 2 v (1936) i, 28.

14 H Parris, *Constitutional Bureaucracy: The Development of British Central Administration since the Eighteenth Century* (1969) 107.

15 S Walpole, *Life of Lord John Russell* (2nd ed, 1889) ii, 96.

16 S A Walkland, *The Legislative Process in Great Britain* (1968) 12.

17 Professor L D Crerar, ‘Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland’ (2007) (‘Crerar Review’).

alternatives is, all things considered, most likely to be successful and beneficial. That is one, but not the only way to provide for Government the kinds of discipline which operate for private entities via market signals and the need for efficient conduct dictated by competitive forces. The remarks I make above ought not to be taken to be directed to the question of deregulation (or indeed necessarily favouring it): merely to the fact that Government in some ways lacks the signals and mechanisms that the private sector has.

14.12 The States and Territories as service providers

- 14.12.1 In the case of the HIP, it was a deliberate decision of the Australian Government not to use the States and Territories to roll out the program. This is despite the States and Territories having very great experience in program delivery at an operational level. Not only do they deliver their own services in their respective jurisdictions, they have experience in delivering Australian Government initiatives, such as construction projects under the *Building the Education Revolution* program.
- 14.12.2 State and Territory service delivery is of course not free from administrative difficulties and inefficiencies. It is true to say, however, that the HIP was a particularly bad example of shortcomings caused by a very inexperienced Department (DEWHA) having been asked to deliver it.
- 14.12.3 The Australian Government no doubt had its own reasons for wanting to retain control of the HIP within its own agencies, despite DEWHA not having the ability or experience to deliver. A cynic might say that a large economic stimulus measure combined with a contribution to the reduction of global warming was something from which federal politicians wanted kudos. That might explain the very minimal engagement with the States and Territories about the HIP by the Australian Government. But there are other possible reasons also: it would have taken some time to reach agreement about the necessary arrangements; and the Australian Government had a legitimate concern to see that the national economy benefitted. It may be that those considerations justified not relying upon State and Territory experience in project delivery at an operational level.
- 14.12.4 I would, however, recommend that in future, where there is a concern about the capacity of federal agencies to deliver a large-scale program such as the HIP, the States and Territories be considered as possible vehicles for delivery, as ought the possibility of engaging private sector providers (as was the case in the early days of the HIP).

14.13 Project optimism and poor predictions

- 14.13.1 It is well established that overconfidence is one of the biggest factors in the making of poor decisions. In the context of large projects, this manifests itself as overly optimistic assessments of both the time within which a project is likely to be completed and the cost likely to be involved in doing so.¹⁸
- 14.13.2 Overconfidence has been shown to bring an illusion of superiority (in which people have an unrealistically positive view of themselves), of optimism (in which people see their future as brighter than that of others) and of control (people behaving as if chance events are subject to their influence).¹⁹
- 14.13.3 The problem of optimism is no better when it comes to groups. Kahneman and Tversky showed many decades ago (in the 1970s) in their 'Prospect Theory' that groups tend to be optimistic in their assessments and to suppress doubts.²⁰

18 Michael J Mauboussin, *'Smart People, Poor Decisions'* (2010) 44 *Futurist* 24.

19 Michael J Mauboussin, *'Smart People, Poor Decisions'* (2010) 44 *Futurist* 24.

20 For which Kahneman received the Nobel Prize in economics.

- 14.13.4 The lessons of these matters—which I have only touched upon—are to recognise the susceptibility of predictions to overly optimistic assessments, and to adjust decision-making accordingly. Organisations, as a whole, tend not to dedicate effort to studying their own mistakes and to keep track of them so that they might learn from them—a tendency identified as one of their major failings.²¹ I would recommend that the Australian Government use the experience of the HIP as a means by which to learn from the mistakes identified in this report, many of which can be traced to overconfidence and unrealistic optimism.

14.14 Responding to fraud against the Commonwealth

- 14.14.1 Under my Terms of Reference I am entitled to explore other matters arising from the implementation of the HIP. As foreshadowed in Chapter 1, this Commission has not spent a lot of time investigating the extent of fraud perpetrated against the HIP because it has been so thoroughly canvassed elsewhere. However, the Commission has received a submission from the Australian Federal Police Association (AFPA) about which I propose to make a recommendation.²²
- 14.14.2 The AFPA and other federal bodies are aware that the current Commonwealth legislation is inadequate to deal with organised ‘white collar’ crime where a corporation is used as the vehicle. The AFPA asserts that puppet directors are used to run companies. The company is stripped and the organised crime boss moves on to another company with new puppet directors.²³ The AFPA understands that \$24 million worth of fraudulent claims against the HIP were written off by the Australian Government.²⁴ The AFPA draws attention to the fact that the Association of Certified Fraud Examiners has noted that, on average, organisations and governments lose 5 per cent of revenue or expenditure to fraud. If that figure is applied to the Australian Government’s estimated spending in the 2013-14 financial year, it would equate to a loss of almost \$19 billion. The AFPA says that if the proportionate figure were applied to the HIP the potential fraud would amount to more than \$170 million.²⁵
- 14.14.3 To combat the above problems, it is argued that there is a need for a *False Claims Act* along the lines of an Act introduced by Abraham Lincoln in 1863 known as the ‘Lincoln Law’.²⁶ I recommend that this possibility be referred to the Australian Law Reform Commission for consideration.

14.15 Electrical safety

- 14.15.1 One of the recommendations made by the Queensland Coronial Inquest into the deaths of Matthew Fuller, Rueben Barnes and Mitchell Sweeney was for the Queensland State Government to run an education campaign about the dangers of working in a roof cavity.
- 14.15.2 As a result, Mr Kevin Fuller, father of Matthew Fuller, along with the Queensland Attorney-General, launched a media campaign on 16 May 2014. The campaign urges:

21 M Schrage, ‘Daniel Kahneman: *The Thought Leader Interview*’ (2003) strategy+business at www.strategy.business.com/article/03409?gko=7a903 accessed 1 July 2014.

22 SUB.001.001.0001, 1-26.

23 SUB.001.001.0001, 4.

24 SUB.001.001.0001, 5.

25 SUB.001.001.0001, 16.

26 SUB.001.001.0001, 6-7 and 16-19.

*There are serious electrical safety risks in ceiling spaces. Whether you are a homeowner or a tradie, there is one simple thing you can do to make it safer before you go up there—turn off all the main power switches at the switchboard.*²⁷

- 14.15.3 The campaign includes television commercials and free brochures containing warning stickers to be placed on ceiling space manhole covers and switchboards in homes. Brochures were distributed via major metropolitan newspapers, handed to homeowners by electricians, and put on display at home hardware stores. This work is to be commended.
- 14.15.4 As Mr Fuller's evidence highlights, while Queensland is leading the way in response to recommendations arising from the Coroner's report, this education work is not being undertaken across the nation. As such, there may be value in, and greater economies of scale reached by launching nationally, through either joint national funding or national coordination, a campaign of this nature that may serve to prevent future fatalities such as those seen under the HIP. The Australian Government, through Safework Australia or some other relevant national body, should undertake with relevant State authorities the coordination of a national media campaign that leverages the work undertaken by the Queensland Government.
- 14.15.5 As I discussed in Chapters 5 and 9, a particular risk to installer safety which has been shown to exist is the use of metal staples and RFLs.
- 14.15.6 The penetration of a cable with a metal staple, combined with the use of RFLs had the real potential to cause electric shock or electrocution because both conduct electricity. While plastic staples may minimise the risk of electrocution, some risk remains because the staple may have the effect of bringing the insulation in contact with a defective live cable, thus completing the circuit.
- 14.15.7 Therefore, to minimise this installation risk, as far as practicable, I recommend that RFLs be banned from use in Australia in circumstances involving the retrofit installation of insulation over ceiling joists within roof cavities. This ban should be given effect by enforceable regulation (not an Advisory Standard or some other mechanism) and it should be undertaken by the relevant Australian Government authority in collaboration with State and Territory authorities. In making this recommendation I am cognisant that there is a place for RFLs in home insulation. When used as sarking or in walls—and in compliance with the Building Code of Australia—foil insulation can continue to be used. However, on balance, the risks outweigh the benefits of continuing to permit RFLs to be laid horizontally across ceiling joists.
- 14.15.8 The Wiring Rules (since 2009) require Residual Current Devices (RCDs) to be installed for, among other things, circuits, socket-outlets, lighting points and hand-held equipment.²⁸ RCDs are designed to stop the flow of electricity in the case of some extra or additional load being placed upon it. They are one means by which the risk of electrocution is minimised. As such, I make the further recommendation that homes predating the 2007 Wiring Rules should be fitted with RCDs to replace existing fuses or circuit breakers or other like devices. State electrical authorities should undertake work in collaboration with the relevant Australian Government authority to urge homeowners—either through statutory instruments or activities such as public awareness campaigns—to install RCDs in dwellings predating the 2009 amendment

²⁷ Queensland Government (2014) *Electrical safety in ceiling spaces campaign*, <http://www.justice.qld.gov.au/fair-and-safe-work/electrical-safety/staysaferswitchoff>.

²⁸ Australian/New Zealand Standard 3000:2007 *Electrical installations (known as the Australian/New Zealand Wiring Rules)*, clauses 1.5.6.3 and 2.6.3.2.

to the Wiring Rules. It may be possible to do this by requiring an electrical inspection and certification at the time of sale of a home—a comparable provision applies in Queensland with respect to swimming pool fencing.

- 14.15.9 As I discussed in Chapter 8, the entry requirements for the HIP were deliberately set as low as possible to permit small players and new entrants to easily participate in the scheme. Doing so brought with it an almost inevitable risk that inexperienced installers would be exposed to the real risk of injury. It was possible for the Australian Government, in designing the HIP, to minimise the barriers to entry because in most States and Territories, there were no requirements for insulation installers to be specifically trained or regulated. To minimise the risk of injury to workers who are required to enter roof cavities, I recommend that there should be a minimum standard of qualification which applies in all jurisdictions for any worker entering the roof cavity. South Australia and Victoria have training models worth investigating. An appropriate Australian Government authority in collaboration with relevant State authorities should undertake this work.
- 14.15.10 While drawing on existing work, the suite of policy options I have recommended here will in combination serve to provide safer conditions for anyone entering a roof cavity, and to minimise a range of risks identified in evidence submitted to the Commission. In isolation, implementation of any single recommendation may not serve to significantly reduce risk of injury, however the implementation of a significant proportion of my recommendations would likely achieve this aim.

14.16 Australian Government document management

- 14.16.1 As I mentioned in Chapter 1 of this Report, considerable delay and frustration was caused by the way in which documents were provided by the Commonwealth to this Commission. What the process has revealed is a quite inadequate system of document management and record keeping by those involved in the HIP.
- 14.16.2 In providing proper advice, and in recording all key decisions, it is necessary for there to be a system of record keeping and for that system to be enforced.
- 14.16.3 It is evident that those engaged in the HIP did not keep detailed records of key decisions and how they were arrived at. Many claimed they were simply too busy to do so.
- 14.16.4 In the 2009 APSC Guide it is stated:

*Good record keeping is also essential to accountability. All significant decisions or actions need to be documented to a standard that would withstand independent scrutiny. Proper record keeping allows others to understand the reasons why a decision was made or an action taken and can guide future decision makers.*²⁹

- 14.16.5 It is also stated that:

*Although not all communication needs to be written, it is good practice to provide advice on key issues in writing, addressed to the Minister. File notes on significant decisions should also be created and retained.*³⁰

29 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

30 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

14.16.6 In chapter 3 of the 2009 APSC Guide, a report of the Auditor-General says:

The level and standard of documentation considered necessary to support an administrative process is always a matter of judgment for management as part of an organisation's control environment. Nevertheless documentation is important for an agency to:

- *demonstrate it has taken all reasonable steps to identify and manage risks*
- *record significant events and decisions*
- *be able to review its decisions and processes thereby identifying strengths and weaknesses in the process, drawing out lessons for the future.*³¹

14.16.7 In an earlier 2003 version of the APSC Guide, *A Guide to Official Conduct for APS Employees and Agency Heads*, the Auditor-General says:

*Often it is considered that maintaining paper or electronic records is too burdensome. This is especially so in an environment where there are time and resource constraints. However, such considerations may be substantially lessened by a soundly based corporate governance framework that is set up to deal with such demands. Perversely, it is such a constrained environment that often requires adequate documentation for accountability purposes. In this context, sound public administration requires key deliberations, decisions and resolutions to be recorded.*³²

14.16.8 Had this practice been followed the task of this Commission would have been easier. Also, the memories of witnesses could have been more easily refreshed by contemporaneous documents. The fading (or non-existent) memories of witnesses of events that occurred five years earlier would have been less of a problem.

14.16.9 The statement of Ms Pirani shows the lengths that the Commonwealth's legal advisers had to go to locate and retrieve documents. It seems that not all emails were stored in the same way, or in the same directories. Retrieving emails—as exemplified in the case of Mr Keeffe, Dr Delbridge, Mr Kimber and Mr Hughes—was a technically-difficult and expensive task. It could not realistically have been asked for, in the case of all Australian Government witnesses.

14.16.10 The emails and other internal documents ought to have been better recorded than they were. As noted in the 2003 version of the APSC Guide,³³ in 1995 the National Archives of Australia issued a policy under the *Archives Act 1983* (Cth) that electronic records have the same status as paper records. The policy states that:

*All digital data created or received in the conduct of Commonwealth business are Commonwealth records under the Archives Act 1983 and need to be managed in accordance with the Act. Commonwealth Government agencies must manage electronic records with the same care as they manage paper records. Agencies must not dispose of electronic records except under an appropriate disposal authority issued by the National Archives of Australia.*³⁴

31 Australian Public Service Commission: *APS Values and Code of Conduct in practice*, 6 May 2009, <https://web.archive.org/web/20091017200430/http://www.apsc.gov.au/values/conductguidelines4.htm>

32 Australian Public Service Commission: *A Guide to Official Conduct for APS Employees and Agency Heads*, p 32-33.

33 Australian Public Service Commission: *A Guide to Official Conduct for APS Employees and Agency Heads*, p 32-33.

34 National Archives of Australia 2001, *Electronic Records* [online], available: www.naa.gov.au/recordkeeping/er/summary.html, 18 July 2001.

14.16.11 The policy also covers emails:

*Email is part of the official business communication of a Commonwealth agency. Emails sent or receive contains information about business activities and therefore can function as evidence of business transactions which are part of the official records of an agency. All email messages created using Commonwealth Government systems are Commonwealth records and must be managed in accordance with the Archives Act 1983.*³⁵

14.16.12 I am not in a position to judge whether the deficiencies in record-keeping and record storage evident in the HIP and in DEWHA are indicative of a broader problem, either within the Department or more widely within Government. However, these deficiencies are very likely exacerbated by the Machinery of Government changes that have occurred since 2010, as well as the lack of compatibility between the various records management systems used by different departments. In conclusion, I suggest that there would be merit in efforts to move towards a whole-of-Government record-keeping system.

14.17 Section 13(2) of the *Public Service Act 1999*

14.17.1 Pursuant to section 13(2) of Public Service Act, an APS employee must act with care and diligence in connection with his/her employment.

14.17.2 It is apparent that this did not always happen. It is not for me to recommend that proceedings be taken against any person. That is a matter for an Agency Head or the Prime Minister and, ultimately, the Public Service Commissioner appointed under the Act to determine in accordance with principles set out in the Public Service Act.

14.17.3 I recommend that relevant Agency Head/s or the Prime Minister consider whether the findings in this report justify a request that the Public Service Commissioner inquire and determine any appropriate action under the Public Service Act.

³⁵ National Archives of Australia 2001, *Email is a Record!*, Archives Advice 20, February 2001 [online], available: www.naa.gov.au/recordkeeping/rkpubs/advices/advice20.html, 18 July 2001.

APPENDIX 1: TERMS OF REFERENCE



ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

Mr Richard Ian Hanger AM QC

GREETING

WHEREAS a measure, known as the "Energy Efficient Homes Package", was announced by former Prime Minister Kevin Rudd on 3 February 2009.

AND a component of that Package was the "Homeowner Insulation Program", which was replaced on 1 July 2009 by the "Home Insulation Program" (both of which form the *Program*).

AND it is claimed that the deaths of Matthew Fuller, Rueben Barnes, Mitchell Sweeney and Marcus Wilson may have arisen from the implementation of the Program.

AND it is important in the public interest that claims that deaths, serious injuries, financial loss or damage to pre-existing home insulation businesses, effects on families and other matters arising from the implementation of the Program be fully explored.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into the matters that may have arisen from the development and implementation of the Program, and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

ENTERED ON RECORD by me in Register of Patents No. 48, page 52, on 12 December 2013

Secretary to the Federal Executive Council

- (a) the processes by which the Australian Government made decisions about the establishment and implementation of the Program, and the bases of those decisions, including how workplace health and safety and other risks relating to the Program were identified, assessed and managed;
- (b) whether the Australian Government was given, or sought, any advice, warnings or recommendations by or from industry representatives, regulatory authorities or other agencies of the Commonwealth, a State or a Territory during the establishment and implementation of the Program, and what action the Australian Government took in response to any such advice, warnings or recommendations;
- (c) whether, in establishing or implementing the Program, the Australian Government:
 - (i) failed to have sufficient regard to workplace health and safety or other risks relating to the Program; or
 - (ii) failed to have sufficient regard to advice, warnings or recommendations mentioned in paragraph (b); or
 - (iii) failed to deal adequately with the risks, advice, warnings or recommendations;

and, if so, why sufficient regard was not had to the risks, advice, warnings or recommendations, or why they were not dealt with adequately;
- (d) whether the death of:
 - (i) Matthew Fuller; or
 - (ii) Rueben Barnes; or
 - (iii) Mitchell Sweeney; or
 - (iv) Marcus Wilson;

could have been avoided by the appropriate identification, assessment or management, by the Australian Government, of workplace health and safety and other risks relating to the Program;
- (e) whether the Australian Government should have taken action, in relation to the identification, assessment or management of workplace health and safety and other risks relating to the Program, that you consider would or may have avoided the deaths of the persons named in paragraph (d);

- (f) the effects of the Program on:
 - (i) the families of the persons named in paragraph (d); and
 - (ii) pre-existing home insulation businesses;
- (g) whether the Australian Government should change its laws, policies, practices, processes, procedures or systems for the purpose of seeking to prevent the recurrence of any failure identified by your inquiry.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you to consider:

- (h) all relevant matters occurring during the period:
 - (i) starting at the commencement of the policy development that led to the introduction of the Program; and
 - (ii) ending at the termination of the Program; and
- (i) all remedial measures undertaken by the Australian Government after the Program was terminated.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We declare that you may:

- (j) consider:
 - (i) damage to property claimed to have arisen from the implementation of the Program; and
 - (ii) the effects on pre-existing home insulation businesses resulting from the damage; and
- (k) make findings or recommendations about those matters;

but you are not required by these Our Letters Patent to do so.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by any of the following:

- (l) the inquests in Queensland and New South Wales into the deaths of the persons named in paragraph (d);
- (m) the findings of any court or tribunal inquiring into serious injuries, or loss or damage, claimed to have arisen from the Program;
- (n) inquiries by State or Territory governments, police forces or other agencies into the deaths of the persons named in paragraph (d) or into serious injuries, or loss or damage, claimed to have arisen from the Program;
- (o) the findings of the Report by the Australian National Audit Office into the Program;
- (p) the findings of the Review of the Administration of the Program;
- (q) any other relevant inquiry, proceeding or finding.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that in these Our Letters Patent:

pre-existing home insulation business means a business of installing insulation in domestic premises that was in existence before 3 February 2009.

AND We:

- (r) require you to begin your inquiry as soon as practicable; and
- (s) require you to make your inquiry as expeditiously as possible; and
- (t) authorise you to submit to Our Governor-General any interim report that you consider appropriate; and
- (u) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 30 June 2014.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 12/12 2013


Governor-General

By Her Excellency's Command


Attorney-General



ENTERED ON RECORD by me in Register of Patents No. 49 , page 15 , on 15 May 2014

Secretary to the Federal Executive Council

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO Mr Richard Ian Hanger AM QC

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 30 June 2014.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 August 2014.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend the Letters Patent issued to you by omitting from paragraph (u) of the Letters Patent "30 June 2014" and substituting "31 August 2014".

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia.

Dated 15th May 2014

By His Excellency's Command

Governor-General

Attorney-General

OPC60546 - A

APPENDIX 2: ESTABLISHMENT AND OPERATIONS OF THE COMMISSION

Pre-commencement

1. My appointment and statutory powers commenced on 12 December 2013, in accordance with the Letters Patent issued by the then Governor-General, the Honourable Dame Quentin Bryce AC CVO, on that date. The Letters Patent are reproduced at Appendix 1.
2. Counsel Assisting were appointed by the Attorney-General, Senator the Hon George Brandis QC, on 17 December 2013.
3. During December 2013, along with Counsel Assisting, I commenced preparations, including reviewing available reference materials to familiarise myself with the Home Insulation Program and the insulation industry. We also undertook an analysis of existing inquiries and inquests, in accordance with the Letters Patent.
4. Public notices appeared in *The Australian*, *The Sydney Morning Herald*, *The Courier-Mail* and *The Canberra Times* on 14 December 2013. These notices provided information on the preliminary hearing, the practice guideline and contact information, and advised the manner in which relevant parties could seek leave to appear and be legally represented.

Evidence collection

5. I conducted the inquiry under the *Royal Commissions Act 1902* (Cth).
6. I issued 152 Summons to Produce documents to a number of people and entities. In response to those summonses, the Commission received in excess of 500,000 documents. Of these documents, at least 12,300 were considered to be relevant.
7. The Commission undertook 118 voluntary interviews for the purpose of obtaining statements of the evidence of potential witnesses. Persons who agreed to participate in a voluntary interview were requested to settle a sworn or affirmed statement based on the information provided to the Commission at the interview. At the request of the Commission, 95 sworn or affirmed statements were provided to the Commission. Given the short timeframe available for this Inquiry, this regime was particularly useful in determining the appropriate witnesses for the public hearings and also allowed the Commission to reduce the time required in public hearings as a significant amount of evidence was introduced in written statements.
8. As foreshadowed in Practice Guideline No. 3, before the commencement of any public hearing of the Commission, parties with leave to appear were provided with confidential electronic access to certain documents likely to be referred to at the public hearing.

Hearings

9. A preliminary public hearing was held on 23 December 2013 at the Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane. At this initial sitting, I made some general introductory remarks about the nature and the scope of the Inquiry. These can be found at Appendix 3.
10. Further public hearings were conducted in Courtroom 34, level 7 of the Brisbane Magistrates Court at 363 George Street, Brisbane. These public hearings commenced on 16 March 2014 and were completed on 19 May 2014, comprising 36 further hearing days during which 55 witnesses were examined.

11. The Australian Government provided a range of financial assistance to eligible parties engaging with the Royal Commission. Eligible parties and witnesses had access to legal financial assistance under the Australian Government's Royal Commissions and Inquiries Scheme and were able to receive witness expense payments to assist with the costs of attending a hearing of the Royal Commission under the *Royal Commissions Regulations 2001*. Eligible former Ministers were able to seek financial assistance under the *Parliamentary Entitlements Regulations 1997*. Eligible current and former APS employees, and members of a Minister's staff under the *Members of Parliament (Staff) Act 1984* (Cth), were able to seek financial assistance in accordance with Appendix E of the *Legal Services Directions 2005*. In some limited circumstances eligible parties were provided financial assistance under the Australian Government's Special Circumstances Scheme. Parties who received financial assistance from one source could not receive financial assistance from another source for the same expense.
12. The Commission hearings were open to the public and, after 14 April 2014, the hearings were live streamed via the Commission's website www.homeinsulationroyalcommission.gov.au.
13. A designated media area was established proximate to Courtroom 34. The transcripts of proceedings were uploaded regularly to the Commission's website, along with copies of exhibits that were not the subject of claims of privilege or public interest immunity or of non-publication orders.

Persons providing support to the Commission

14. The persons supporting the operations of the Commission were required to disclose any possible conflict of interest on commencement and during their engagement with the Commission.
15. Persons supporting the Commission acted in accordance with all applicable professional standards, including the Australian Public Service (APS) Values and Code of Conduct where these persons were employees of the APS, as required by the *Public Service Act 1999* (Cth).
16. Certain staff were also required to be cleared in accordance with the Australian Government Protective Security Policy Framework.

Timeframe of the Commission

17. It was not possible to complete the Inquiry in the six months stipulated by the then Governor-General, due to the large volume of evidence that was received by the Commission.
18. On 15 May 2014, the Governor-General, His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd), amended the Letters Patent to extend to 31 August 2014 the time available to me to make this report.

Budget of the Commission

19. The Commission was completed within the \$18 million budget allocated to it by the Australian Government.

APPENDIX 3: OPENING REMARKS

Opening remarks of Commissioner Ian Hanger AM QC Preliminary Public Hearing—23 December 2013

I've been appointed as the Commissioner under the Royal Commissions Act 1902 to inquire into the development and implementation of the Federal Government's Home Insulation Program. A number of inquiries have already been held into various aspects of the Home Insulation Program. They range from administrative reviews of government processes to coronial inquests into the deaths of four young men. My present intention is not to repeat the examination and findings of those inquiries, nor do I intend to endlessly traverse matters which have already been examined. However, I will undertake a thorough inquiry to collate and examine the existing evidence and to fill the many gaps in that evidence.

Whether directly or indirectly, the Home Insulation Program has been implicated in the loss of four young lives, at least one serious injury, fires and damage to homes, and serious financial loss and damage to individuals and businesses. I acknowledge the presence in the room today of some of the family members of the four young men who lost their lives. I've been asked through the Letters Patent to focus on how the actions of the Australian Government may have contributed to the deaths, injuries and the financial loss and damages to the business.

I will have a particular focus on the way in which the Government identified, assessed and managed workplace health and safety risks and whether the government had sufficient regard for those risks in developing and implementing the Home Insulation Program.

I will investigate whether the Government sought or received advice or warnings when establishing and implementing the Program and, if so, what action was taken in response. I will examine whether the deaths of Matthew Fuller, Rueben Barnes, Mitchell Sweeney or Marcus Wilson were avoidable if there had been a different approach to identifying, assessing and managing, in particular, workplace health and safety risks.

I will examine the actions of the government and the Australian Public Service, I will consider the impact of the Program on pre-existing home insulation businesses and I will consider the relationship between government agencies in managing and coordinating responses to risk. My aim is to find answers to the questions unresolved in previous inquiries, put simply, what really went wrong, what made it go wrong and how can this Commission assist government and industry to ensure that circumstances like the ones we face here don't happen again.

While the means by which I may conduct the inquiry may appear similar to a court or tribunal, a royal commission is not a trial between parties. And I am not a judge sitting to resolve issues between litigants. Rather, my role is fundamentally to investigate and report and, in the course of doing so, to reach conclusions of fact. Neither the conclusions of fact, nor any consequent recommendations will have a binding force on any parties affected or on the government to which I report. However, because of the potential consequences of adverse findings upon persons, rules of procedural fairness will apply to the conduct of this Commission. I will conduct public hearing and through those hearings, witnesses will give evidence before me relevant to the terms of reference. Counsel assisting and those legal representatives to whom I have granted leave to appear will have the opportunity to examine and cross-examine witnesses. I expect all parties

to whom I grant leave to cooperate with counsel assisting the Commission, to be sensitive to the need to avoid unnecessary lines of questioning and to assist the Commission to proceed as expeditiously as is possible.

There is a public interest in ensuring that the process of the inquiry is as open and transparent as is reasonably possible. However, if anyone has information, but is concerned about giving evidence at a public hearing, I can hear matters in the absence of the public and the media and do so confidentially. I encourage anyone with information which might assist the Commission to come forward. If you have information that you think might assist the inquiry, don't be dissuaded from coming forward and providing a statement or a submission to counsel assisting. I expect to complete the inquiry and report to the Governor-General by 30 June 2014, but to do so I must conduct the Commission efficiently.

Submissions made and examination and cross-examination of witnesses should be limited to the terms of reference. Those associated with the Commission are resolved to inquire diligently into the events surrounding the development and implementation of the home insulation program. I have every confidence that with cooperation and goodwill of interested persons, witnesses, government agencies and the legal practitioners, the Commission can proceed efficiently, effectively and importantly provide answers to the questions which to date have not been answered.

Opening remarks of Senior Counsel Assisting, Mr Keith Wilson QC Preliminary Public Hearing—23 December 2013

Commissioner, I have been appointed by Attorney-General, as has my learned friend Mr Horton with whom I appear, to assist this Royal Commission. The terms of reference which have been read this morning are of wide ambit. They extend from the establishment of the Homeowner Insulation Program publicly announced on 3 February 2009 and its replacement with the Home Insulation Program as from 1 July 2009 through to the public announcement of its discontinuance on 19 February 2010 and thereafter by requiring a consideration of remedial measures undertaken by the Australian government after the Program was terminated. This Commission is required to inquire into the processes by which the Commonwealth government made decisions to establish the Program and the basis of those decisions. That will, we believe, also involve looking at interactions between Commonwealth and state and territory governments and their relevant departments.

The Commission is also required to investigate the development and implementation of the Program and to that end, it will be necessary, we expect, for those assisting the Commissioner to request and consider very many documents, not only from those at all levels of government involved in the process, but also from industry representatives and stakeholders who assisted or warned the government at various stages of the process. A particular point of emphasis is likely to be on workplace health and safety considerations. Commissioner, those assisting you have to date issued 76 summonses or notices to produce. They have been, or are in the process of being, served on individuals and organisations considered likely to have information and documents relevant to the terms of reference. We will ask you to issue further summonses and notices to produce in the near future as we identify further persons and bodies likely to have information relevant to the Commission's work. Those served with summonses are, of course, obliged to comply with them unless they have a lawful excuse not to do so.

Documents are likely to be received by the Commission from mid-January 2014. Meanwhile, those assisting you are reading and analysing a range of material that is helping to inform us about the Program and the way in which it was planned and implemented. Commissioner, those assisting you are mindful that some good work has already been done to identify what went wrong with the Home Insulation Program and why. In that regard, we do not propose, unless it is necessary

to do so, to re-invent the wheel and will use, where appropriate, those resources that are already available. As you mentioned, coronial inquests have been conducted in Queensland and New South Wales and valuable information is available as a result. There has been a Senate inquiry and other government-initiated reviews, including by the Australian National Audit Office and Dr Hawke.

You are permitted, Commissioner, by the terms of reference to have regard to the investigations already conducted by others, however, we will not necessarily accept previous reviews at face value, and you are not precluded from exploring some particular issues in more detail or calling evidence which might run contrary to evidence heard or received by those other persons or bodies or indeed disagreeing with recommendations made by them, where that is appropriate and permissible. We intend to make such resources available on the Commission's website and to invite interested persons to make submissions about them.

Commissioner, you are also required to inquire into all remedial measures undertaken by the Commonwealth government after the Program was discontinued. That will also involve, we expect, an examination of very many documents. Commissioner, as well as inquiring into government processes, you are required to fully explore four important topics—the deaths of the four young men specifically referred to in the terms of reference and whether they could have been avoided by appropriate action. The four young men were Mr Fuller, who died on 14 October 2009, Mr Barnes, who died on 18 November 2009, Mr Wilson, who died on 21 November 2009 and Mr Sweeney, who died on 4 February 2010. You are also required to investigate the effects on the families of those deceased men and serious injuries suffered by persons engaged in work during the implementation of the Program. You will also investigate financial loss or damage, pre-existing home insulation businesses affected by the Program. You have mentioned, Commissioner, the families of the young men who were killed. You have granted their families leave to appear before this Commission.

On behalf of the Commission, I encourage those who were seriously injured to come forward and assist the Commission. I also encourage those owners of pre-existing home insulation businesses who were adversely affected by the Program to come forward and assist the Commission. A number of those business owners have already been granted leave to appear. Commissioner, can I also encourage any of those who were involved in the devising, establishment and implementation of the programs, at whatever level of government, to come forward if they have valuable information that will assist the Commission.

Commissioner, as you have noted, you have the ability to hear matters in the absence of the public and the media and to offer the protection of confidentiality in appropriate circumstances. Commissioner, on the issue of applications of leave to appear, they are dealt with in practice guideline 1 of the Commission. You have already considered and determined a number of applications on the papers. It may be necessary to consider others after an oral hearing. In considering further applications to this Commission you will be guided by consideration of the scope of your inquiry as set out in the terms of reference and the extent to which a party seeking leave to appear before you may assist you in examining those matters.

In essence, in our submission, you should have regard to whether an applicant might be better placed to assist the Commission if leave is granted, or whether a grant of leave would enable the Commission to more readily accord the applicant procedural fairness. However, it is important to note that many people will be able to assist the Commission by providing information, making a submission or giving evidence as a witness without the requirement for that person to be granted leave to appear. That is, simply because a person or organisation is not granted leave to appear, it does not mean that the Commission is not interested in what they have to say, or in the information they are able to impart.

And, of course, any person summonsed to appear as a witness has the right conferred by statute to be legally represented if they wish. In our submission, the grant of leave to a party does not and should not infer an automatic right to open-ended participation in any particular hearing. Instead, in our submission, those participating will necessarily be limited to those hearings dealing with those issues to which the party has a substantive and legitimate interest. Of course, Commissioner, the work of those assisting this Commission is not yet sufficiently advanced to enable us to provide you with a comprehensive list of specific issues which we will invite you to investigate in detail.

And, accordingly, it would be premature to link any grant of leave to a specific issue or issues within the ambit of the terms of reference. However, in our submission it is appropriate for a grant of leave to be given on matters in the terms of reference to which a party has a substantial and legitimate interest. With that in mind we have prepared a set of proposed standard terms relating to the grant of leave to appear, which I will now read and which will be posted on the Commission's website:

Leave is granted to appear at the hearings of the Commission at which evidence will be taken or submissions received relating to issues in which the party granted leave has a substantial and legitimate interest. Participation in such hearings by the cross-examination of witnesses, the tender of oral or written evidence or the presentation of submissions will be subject to the grant of further leave which may be granted on terms which may include, without limitation, the following: (1) limitation of the particular topics or issues upon which the party may cross-examination, tender evidence or present submissions, (2) the imposition of time or other limitations upon cross-examination, evidence-in-chief or presentation of submissions, (3) the provision of prior notice to the Commission of documents or other evidence to be tendered or a written outline of proposed submissions, or (4) the requirement that submissions or evidence be presented in writing only.

Commissioner, in future when a reference is made to leave on the standard terms which are taken to be the terms that I have just read. Subject to hearing from individual applicants, we expect to submit to you, Commissioner, that further applications be dealt with by either an immediate grant of leave on the papers on the standard terms, an adjournment to a later time or by the refusal of a grant of leave with liberty to reapply on notice. In our submission, an immediate grant of leave would be appropriate where a party has a clear and demonstrable interest in any or all of the matters before you. An adjournment may be necessary where an applicant may or may not have a relevant interest in a particular matter depending on the issues being considered by the Commission at a future point in time.

And a refusal would be appropriate where the interests of an applicant seeking leave to appear is not readily apparent. But an applicant may wish to reapply having regard to matters for consideration at future hearings. Commissioner, as you and those present will appreciate, it is early days in the life of this inquiry. We expect that as we receive and analyse documents and information the focus of the Commission will shine more brightly in some areas than others. A Commission has available to it an armoury of coercive powers. It is hoped that they do not have to be used often. It is not a matter of choice whether the recipient of a summons or a notice to produce complied with it.

Failure to comply is a serious matter and will be dealt with accordingly. If a person is thought to be able to give evidence that will assist the Commission perform its task, that person will be summonsed to appear. If there is cooperation from those who are asked to provide documents and information, we expect to conduct public sittings in March and April 2014. It is not yet apparent how long those public sittings will last for. To allow insufficient time now to collate and consider the information likely to be produced to the Commission would guarantee an inquiry that could not conduct a comprehensive and careful investigation into the large number of areas mandated by the terms of reference.

Commissioner, though I expect this is said at the outset of every Commission of Inquiry, I wish to reinforce that the Commission does not wish to nor intend to conduct its work as adversarial litigation. If that is how others wish to behave then we will deal with it. However, our intention is to conduct an evolving inquiry pursuing lines of investigation as they arise, perhaps placing more emphasis on one matter rather than another and perhaps coming back to a topic when further evidence emerges that casts it in a different light. The hearing dates and the witnesses to be called will be notified as soon as is reasonably practicable and they will be notified on the Commission's website.

Commissioner, those assisting you will gather the evidence and make the inquiries necessary to enable you to report and make findings and recommendations as you consider necessary and appropriate by 30 June 2014. We currently believe that timetable to be tight but achievable. Because the timeframe is likely to be tight the Commission intends to be firm in its insistence on compliance with time limits. And whilst it will endeavour to meet the personal convenience of witnesses, it may not always be possible to do so. Although the Commission is sitting in Brisbane today, it will not always do so. It is anticipated that as well as Brisbane the Commission will sit in Canberra.

It may, as the need arises, sit elsewhere, although with a view to efficiency and minimising inconvenience to witnesses, the Commission is investigating whether evidence can usefully be taken by video conferencing. Commissioner, I have mentioned several times the Commission's website. I commend it to those interested in the work of the Commission. A transcript of today's proceeding and of all public hearings of the Commission will be loaded onto the website, as will exhibits and other documents referred to during proceedings. Important information such as practice guidelines, dates and places of public hearings will also be posted. For those who are unaware the website address is www.homeinsulationroyalcommission.gov.au.

Further information can also be obtained by contacting the Office of the Royal Commission. By way of final opening remarks a range of legal and administrative and other support systems are required to establish and enable a Commission of this kind to complete the tasks required of it. Their complexity and magnitude are directly related to the issues and the likely volume of evidentiary material that must be identified, obtained, analysed and considered. Resources are being quickly assembled. Hearing rooms have been sourced with the good grace of our colleagues in the public and private sector. Executive and administrative support for this Commission is provided by the office of the royal commission. Communications should be to and through it, although independent counsel and solicitors have been engaged to assist the Commission. As counsel assisting, we have a particular role in gathering and presenting evidence relevant to the inquiry. We expect that other expertise will be obtained as and where necessary. Commissioner, I understand some of those to whom you have granted leave to appear and present this morning.

Thank you, Commissioner.

APPENDIX 4: LEGAL REPRESENTATIVES

1. I was supported in this endeavour by my Counsel Assisting, Mr KN Wilson QC, and Mr JR Horton. Their support was invaluable.
2. Throughout the Commission, legal representatives appeared for the 12 parties granted leave to appear. Details of those representatives are below:
 1. Mr T Howe QC and Mr D O'Donovan (instructed by the Australian Government Solicitor)—for the Commonwealth of Australia
 2. Mr T Bradley QC and Ms AJ Coulthard (instructed by Crown Law (Queensland))—for the State of Queensland
 3. Mr R Perry QC and Ms GB Dann (instructed by Norton Rose Fulbright)—for the family of Matthew Fuller
 4. Mr R Perry QC and Ms ES Wilson QC (instructed by Norton Rose Fulbright)—for the siblings of Rueben Barnes
 5. Mr WM Potts, Mr MJ Williams and Mr A Hanlon (of Potts Lawyers)—for the father of Rueben Barnes
 6. Mr D Barrow (instructed by Ms C Hunter)—for Jessica Wilson on behalf of the family of Marcus Wilson
 7. Mr S Keim QC and Mr DC Fahl (instructed by Maurice Blackburn)—for the family of Mitchell Sweeney
 8. Mr M Windsor QC, Mr M Heath, and Ms K O'Gorman (instructed by McLaughlin and Riordan)—for Peter Stewart and 72 others
 9. Mr I Harvey (instructed by Ashurst)—for Mike Mrdak
 10. Mr A Pomerence QC (instructed by Minter Ellison Lawyers)—for the Hon Mark Arbib
 11. Mr AP Whitlam QC (instructed by TressCox Lawyers)—for the Hon Peter Garrett AM
 12. Mr B Walker SC (instructed by Kennedys Law)—for the Hon Kevin Rudd.

3. The following legal representatives appeared on behalf of witnesses who provided oral evidence, but were not granted leave to appear:
 1. Mr MT Hickey—for Mary Wiley-Smith, Beth Brunoro, Ross Carter, Malcolm Forbes and Kathy Belka
 2. Mr S McLeod—for Ross Carter, Avril Kent and David Hoitink
 3. Mr P Bridgman—for Kevin Keefe
 4. Mr D de Jersey—for Peter Ruz
 5. Mr M Will—for Martin Hoffman
 6. Mr M Treffers—for Margaret Coaldrake
 7. Mr M Spry—for William Kimber
 8. Mr S Lloyd SC and Ms N Johnson—for Robyn Kruk AM
 9. Mr P Dunning QC—for Janine Leake
 10. Mr R Calver—for Neil Gow
 11. Mr GC McCarthy—for Aaron Hughes
 12. Mr L Zwier—for the Hon Gregory Combet AM
 13. Mr PW Evans—for Malcolm Richards.
4. In addition, Ms C Dunlop appeared as a McKenzie friend for Martin Bowles PSM.

APPENDIX 5: PARTIES WITH LEAVE TO APPEAR

1. As Royal Commissioner, I granted 12 parties leave to appear.
2. These parties were:
 1. The Commonwealth of Australia
 2. Kevin and Christine Fuller
 3. Murray Barnes
 4. Sunny Barnes, Tully Barnes, Kelsey Debbie Barnes, Melody Barnes, Jindee Barnes, Rangi Barnes, Jason Barnes and Lyndon Hull
 5. Jessica Wilson
 6. Martin, Wendy, Justin, Sarah and Brendan Sweeney
 7. Peter Stewart, Chair of the Home Insulation Industry Action Group, and 72 others comprising the Home Insulation Industry Action Group
 8. The Hon Peter Garrett AM
 9. The State of Queensland
 10. Mike Mrdak
 11. The Hon Mark Arbib
 12. The Hon Kevin Rudd
3. The granting of leave to appear entitled a person to whom it was granted an opportunity to participate in the proceedings of the Royal Commission, subject to my control and to such extent as I considered appropriate and consistent with the standard terms of leave set out below. In establishing procedures for the granting of leave, I reserved the right to otherwise grant leave on terms as required.

Standard terms of leave

Pursuant to paragraph 12 of Practice Guideline 1, and subject to any other direction made by the Commissioner, the following standard terms will apply to grants of leave to appear before the Commission:

4. Leave is granted to appear at hearings of the Commission at which evidence will be taken or submissions received relating to issues in which the party granted leave has a substantial and legitimate interest.

5. Participation in such hearings by the cross examination of witnesses, the tender of oral or written evidence, or the presentation of submissions will be subject to the grant of further leave which may be granted on terms which may include, without limitation, the following:
 1. limitation of the particular topics or issues upon which the party may cross-examine, tender evidence or present submissions;
 2. the imposition of time or other limitations upon cross-examination, evidence-in-chief or presentation of submissions;
 3. the provision of prior notice to the Commission of documents or other evidence to be tendered or a written outline of any proposed submissions; or
 4. the requirement that submissions or evidence be presented in writing only.
6. All 12 parties engaged Counsel to represent them during the operation of the Royal Commission. Details of Counsel representing parties with leave to appear are included in Appendix 4.

APPENDIX 6: PERSONS PROVIDING ORAL EVIDENCE

1. The Royal Commission conducted 37 days of public hearings on 23 December 2013 and between the period of 16 March 2014 and 19 May 2014. During that time, 55 witnesses were examined, including, in some cases, on behalf of their organisation.
2. The following individuals (in order of initial appearance) gave evidence to the Commission, either in person or by videolink:
 1. Mary Wiley-Smith
 2. Beth Brunoro
 3. Ross Carter
 4. Peter Ruz
 5. Matthew Levey
 6. James Fricker
 7. Simon Cox
 8. Martin Hoffman
 9. Mike Mrdak
 10. Robyn Kruk AM
 11. Kevin Keeffe
 12. Andrew Wilson
 13. Malcolm Forbes
 14. Kevin Herbert
 15. Peter Stewart
 16. Margaret Coaldrake
 17. Gregory Rashleigh
 18. Avril Kent
 19. William Kimber
 20. Dennis D’Arcy
 21. Melissa McEwan
 22. David Hoitink
 23. Alan Ross
 24. Warrick Batt
 25. Graeme Doreian
 26. Timothy Renouf
 27. Andrew Arblaster
 28. Matthew Hannam
 29. Duncan Herbert
 30. Matthew Devine
 31. Jim Liaskos
 32. Brian Zammit
 33. Janine Leake
 34. David Smith
 35. Dr Troy Delbridge
 36. Anthony Plevy
 37. Kristen Sydney
 38. John Cole
 39. Rodney Hook
 40. Anthony Canavan
 41. Kathy Belka
 42. Jane Spence
 43. Neil Gow
 44. Anthony Leverton
 45. Kellie Jackson
 46. Aaron Hughes
 47. Glenys Beauchamp PSM
 48. The Honourable Mark Arbib
 49. The Honourable Peter Garrett AM
 50. The Honourable Kevin Rudd
 51. The Honourable Gregory Combet AM
 52. Sunny Barnes
 53. Kevin Fuller
 54. Martin Bowles PSM
 55. Malcolm Richards
3. I thank them for their assistance in providing evidence to the Commission.

APPENDIX 7: STATEMENTS AND SUBMISSIONS PROVIDED TO THE COMMISSION

1. The following persons provided a written statement at the request of the Royal Commission:

- | | |
|--|----------------------------------|
| 1. The Honourable Mark Arbib | 33. Neil Gow |
| 2. Brian Ashe | 34. Robert Griew |
| 3. Dr Subho Banerjee | 35. Matthew Hannam |
| 4. Glenys Beauchamp PSM | 36. Mike Harding |
| 5. Joanne Beath | 37. David Haslett |
| 6. Kathy Belka | 38. Martin Hoffman |
| 7. Peter Bentley | 39. Glen Hogan |
| 8. Jackie Bishop | 40. David Hoitink |
| 9. Al Blake | 41. Shane Holt |
| 10. Martin Bowles PSM | 42. Rodney Hook |
| 11. Colin Brierley and Lilian Brierley | 43. Natalie Horvat |
| 12. Beth Brunoro | 44. Aaron Hughes |
| 13. Tim Campbell | 45. Ian Hunter |
| 14. Anthony Canavan | 46. Andrew Jagers |
| 15. Ross Carter | 47. Chris Johnston |
| 16. Dr Andrew Charlton | 48. Kevin Keffe |
| 17. Margaret Coaldrake | 49. Avril Kent |
| 18. John Cole | 50. William Kimber |
| 19. The Honourable Gregory Combet AM | 51. Robyn Kruk AM |
| 20. Toni Pirani | 52. Katrina Leach |
| 21. Simon Cox | 53. Gregory Lemmon |
| 22. Ross Davidson | 54. Janine Leake |
| 23. Dr Rhondda Dickson | 55. Tony Leverton |
| 24. Don DiLuzo | 56. Matthew Levey |
| 25. Craig Downsborough | 57. Kerrie-Anne Luscombe |
| 26. Gerard Early PSM | 58. David Magee |
| 27. Paul Emery | 59. Juliana Marconi |
| 28. Peter Fitch | 60. Sascha McCann (née Kaminski) |
| 29. Malcolm Forbes | 61. Melissa McEwan |
| 30. David Fredericks | 62. Cassandra Michie |
| 31. James Fricker | 63. Herve Michoux |
| 32. The Honourable Peter Garrett AM | 64. Terry Moran AC |

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|-------------------------------|---------------------------------------|
| 65. Mike Mrdak | 81. Mali Stanton |
| 66. Brendan Mulhall | 82. Kristen Sydney |
| 67. Amanda Murray-Pearce | 83. Bob Taylor |
| 68. Peter Olsen | 84. Kim Terrell |
| 69. Dr Martin Parkinson PSM | 85. Malcolm Thompson |
| 70. Anthony Plevey | 86. Ray Thompson |
| 71. Scott Rawlinson | 87. James Tinslay |
| 72. Greg Rashleigh | 88. David Tune PSM |
| 73. Malcolm Richards | 89. Mary Wiley-Smith |
| 74. Mark Ridley | 90. David Williams |
| 75. Ben Rimmer | 91. Andrew Wilson |
| 76. Alan Ross | 92. Senator the Honourable Penny Wong |
| 77. The Honourable Kevin Rudd | 93. Julie Yeend |
| 78. Peter Ruz | 94. Brian Zammit |
| 79. David Smith | 95. Harry Zevon |
| 80. Jane Spence | |

2. The following persons participated in an interview with the Commission, but did not prepare a written statement of evidence for the Commission:

1. Dr Troy Delbridge
2. Kim Booth
3. Michael Bostrom
4. Ruth Dewesberry
5. Robyn Kemp
6. Jorg Mager
7. Amanda McIntyre
8. Reg O'Dea
9. Danae Paxinos
10. Matthew Roper
11. Edward Soo
12. Bernadette Welch
13. Kay Winter
14. Gleb Speranski via New Zealand Energy Efficiency and Conservation Authority
15. Potential witness 1 **[Confidential]**
16. Potential witness 2 **[Confidential]**

3. The Commission received voluntary statements from the following individuals or businesses that were pre-existing home insulation businesses in February 2009:
 1. Andrew Arblaster
 2. Chris Aldridge, Clifford Aldridge and Geoffrey Aldridge
 3. Warrick Batt
 4. Adrian Berrisford
 5. Leisa Besson
 6. Robert Celotti and Paul Celotti
 7. Lenny Chuproff
 8. Gavin Clarke and Susan Clarke
 9. Kylie Michelle Cornish
 10. Christopher Cruddas and Deborah Cruddas
 11. Michael Cunich
 12. Denny D’Arcy and Julie D’Arcy
 13. Matthew Devine and Glen Hoggan
 14. Alfred Grech
 15. Brett Heady
 16. Duncan Herbert and Treg Herbert
 17. Kevin Herbert
 18. Geoff Hourigan and Lisa Hourigan
 19. Michael Hunt
 20. Tony Iezzi
 21. Kellie Jackson, Daniel Jackson
 22. Ross Kestle, Kay Kestle and family
 23. Lucas Lambert and Ali Taha
 24. Ulwe Ledermann
 25. Anthony Leenheers
 26. Nicholas Lishenko
 27. Vicki Lovegrove and David Lovegrove
 28. Douglas Mill
 29. Laurie Moylan
 30. Bernie Ode
 31. Peter Olsen
 32. Rick Palfrey
 33. Michael Playford
 34. Andrew Plummer and Heidi Plummer

35. Gerard Quazzola and Ramona Quazzola
36. Greg Rashleigh, Andrew Rashleigh, Brent Rashleigh and David Macpherson
37. Scott Rawlinson and Steven Fitch
38. Peter Sinclair and Kathryn Sinclair
39. Paul Sheehan and Marilyn Sheehan
40. Kent Scarborough
41. Peter Stewart
42. Raylee Taylor and Arthur Mann
43. Colin Thomsen and Erica Thomsen
44. Chris Tierney
45. Robert Wellstead and Janelle Wellstead
46. Tino Zuzul
4. The Commission also received voluntary statements from the following individuals or businesses that were the owners of home insulation businesses that came into existence after February 2009:
 1. Robert Azzopardi
 2. Tarek Bhatti, Chad Egan, Ken Egan and Karen Egan
 3. Paul Commaudo
 4. John Degan and Greg Hay
 5. Mark Delaney
 6. Christine Goodwin
 7. Anthony Harvey
 8. Graham Hyndman
 9. Ronald May
 10. Wesley May
 11. Gavin Peacock
5. The Commission received voluntary statements from the following witnesses:
 1. Alan Austin
 2. Jennifer Bartels
 3. Graham Doreian
 4. Tim Renouf
 5. Catherine Russell
 6. David Stark
 7. Peter Venn

6. The Commission also received over 260 emails, letters and submissions from the public. Submissions from the following individuals have been published:
 1. Ben Aarons
 2. Gary Adamson
 3. Australian Federal Police Association
 4. Australian Foil Insulation Association—Michael Bostrom
 5. Australian Risk Policy Institute—Tony Charge
 6. Anthony Clancy
 7. Frank Duggan
 8. Bernie Elliott
 9. Gary Fortington
 10. The Reverend Father Paul Fyfe
 11. Sue and David Goodwin
 12. Chris Kennedy
 13. Richard Lever
 14. Geoff McDonald
 15. Ken Manning
 16. Peter Martin
 17. Paul Neville
 18. Trevor Mavay
 19. Terry Sandon
 20. Perry Olive
 21. Gordan Plowman
 22. Alex Stuart
 23. Brian Symons
 24. Jay Williams
 25. Cheryl Wragg
 26. Michael Yeates
7. I thank them for their assistance in providing evidence and submissions to the Commission.

APPENDIX 8: ADVERSE FINDINGS

Procedural Fairness and the Making of Adverse Findings

1. Via opening remarks at the preliminary public hearing of the Royal Commission, held on 23 December 2013, I announced my intent that:

*because of the potential consequences of adverse findings upon persons, rules of procedural fairness will apply to the conduct of this Commission.*¹

2. The main requirement of procedural fairness in this context is that the inquiry ‘cannot lawfully make any finding adverse to the interests of [a person] without first giving [that person] the opportunity to make submissions against the making of such a finding’.²
3. The process that was applied by the Commission in relation to the making of adverse findings is set out below.
4. It is important to emphasise that an ‘adverse finding’ in the context of this Royal Commission does not extend to ‘any finding of disputed fact, or any criticism of a party, or the exposure of evidence or material which might reflect badly on a person’.³ Nevertheless, Counsel Assisting the Commission sought to notify parties of a broad range of potential adverse findings he considered open to me to make as soon as possible to allow those persons potentially affected with an opportunity to be heard on these matters.

Commission’s Processes in relation to the making of adverse findings

5. The Commission conducted its hearings in public, live-streamed many of its hearings on its website and posted daily transcripts and exhibits on its website. Therefore, any person, whether they had been granted leave to appear or not, could attend public hearings and monitor the evidence given if they were disposed to do so. All persons or entities who might have had an interest in the outcome of my report were granted leave to appear if such leave was sought.
6. Practice Guideline 5 set out the processes that applied to the making of submissions and any notice of potential adverse findings. This Practice Guideline was issued on 19 May 2014 and amended on 29 May 2014, to reflect a change in timeframe.
7. Practice Guideline 5 provided that:

It is expected that notice of any potentially adverse finding will be given to the person or entity concerned by Monday, 30 June 2014 at 4.00pm. Such notice will be given to the legal representative of the person or entity concerned, if the person or entity was legally represented before the Commission [...]. Any response to a notice of a potentially adverse finding should be given to the Commission by Friday, 11 July 2014 at 4.00pm.

1 Transcript of Proceedings (23 December 2013) 6 (Mr Hanger).

2 *Annetts v McCann* (1990) 170 CLR 596, 600–601

3 New South Wales, Royal Commission into Productivity in the Building Industry in New South Wales, *Report* (1992) vol 7, 129.

8. In the period 30 June 2014 to 3 July 2014, King & Wood Mallesons, the solicitors representing the Office of the Royal Commission, wrote to 18 persons and to the Commonwealth to give notice of potential findings that Counsel Assisting considered were open to me to make on the evidence before the Commission. Where the person or entity was legally represented before the Commission, this correspondence was provided to their legal representative.
9. Persons or entities in receipt of such letters were invited to respond to the issues raised in that notice. Such persons and their legal representatives were granted access to all material tendered in the Commission in preparing their response.
10. The Commission granted additional time for the making of responses to the issues raised in these notices, in recognition of the fact that it had not given all affected persons notice before 30 June 2014, as set out in the Practice Guideline.

Non-Publication of the responses to notices of potential adverse findings

11. In its report 'Making Inquiries', the Australian Law Reform Commission (ALRC) considered whether a person's response to an adverse finding should be published. This is the case in certain jurisdictions. For example, sub-section 35A(4) of the *Royal Commissions Act 1991* (ACT) provides that: 'A copy of a submission made, or statement given, in relation to the comment within the time allowed, must be included in the commission's report of the inquiry.'
12. The *Royal Commissions Act 1902* (Cth) imposes no requirements on Royal Commissions in relation to adverse findings, including whether responses to a notice of potential adverse finding be included within the report. Nevertheless, I gave great consideration as to whether such responses should be published in this case.
13. In its 2011 report, the ALRC was generally in favour of publication:

The publication of responses to possible adverse findings would enable a person affected by such findings to have his or her comments in response put on the public record, and enable members of the public to make up their own minds about the reasoning process employed by an inquiry. [...] the publicity that often accompanies an inquiry means that an adverse finding can cause significant damage to a person's reputation [...]. It is only fair that a person potentially subject to such a finding has the right to have their side of the story published, even if it is not ultimately accepted by an inquiry.⁴
14. However, I considered that there were persuasive reasons against publishing the notices of potential findings and the responses thereto. The notices related to potential findings that Counsel Assisting considered were open to me. In certain cases, the findings I have made in my report have not been made in the terms outlined in those notices. The responses where relevant have been incorporated into the body of my report.
15. Ultimately, I considered that publishing the notices of potential adverse findings and/ or responses to the notices could result in potential harm to these persons.

4 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework*, Report No 111 (October 2009), 15.107

APPENDIX 9: CHRONOLOGY OF KEY EVENTS

DATE	KEY EVENT
September 2008	‘Global Financial Crisis’ commenced with collapse of Lehmann Brothers in the United States of America.
14 October 2008	Prime Minister Rudd announced the Economic Security Strategy.
December 2008	Prime Minister’s Office requested a ‘big idea’ on energy efficiency policy from Minister Garrett.
Late 2008	Department of Environment, Water, Heritage and the Arts (DEWHA) commenced developing a national energy efficiency program
23 January 2009	Strategic Priorities and Budget Committee (SPBC) meeting—SPBC requested development of an Energy Efficient Homes Package (EEHP) which would provide roof insulation and run over two years.
23 January 2009	Department of the Prime Minister and Cabinet (PM&C) officials instructed DEWHA to liaise with Department of Finance and Deregulation (DoFD) to develop a home insulation proposal which would run for two years.
24–26 January 2009	Mary Wiley-Smith and Beth Brunoro (née Riordan), DEWHA, developed home insulation proposal in consultation with DoFD. DEWHA expressed concerns regarding the two year roll-out and developed a second proposal with a five year rollout.
27 January 2009	SPBC meeting—considered home insulation proposal with two year roll-out option and \$1200 rebate. SPBC then requested development of proposal for \$1600 rebate with both two year and five year roll-out options.
28 January 2009	SPBC meeting—considered proposals for two year and five year roll-outs. SPBC not informed of DEWHA preference for five year roll-out. Homeowner insulation program approved with two year roll-out and \$1600 rebate.
3 February 2009	Nation Building and Jobs Plan (NBJP) worth \$42 billion announced. NBJP included the EEHP of which the Homeowner Insulation Program (HIP) was part.
3 February 2009	Phase 1 of the HIP commenced.
5 February 2009	COAG meeting—endorsed the EEHP, agreed to new national coordination arrangements to maximise the timely and effective delivery of the NBJP, and signed National Partnership Agreement.
5 February 2009	Mike Mrdak commenced as Commonwealth Coordinator-General.

DATE	KEY EVENT
18 February 2009	First industry consultation meeting held.
18 February 2009	First SPBC implementation report.
19 February 2009	Peter Ruz, Insulation Council of Australia and New Zealand (ICANZ), emailed Ms Brunoro and advised of safety concerns and risk of serious injury or death to installers. Advised of deaths in New Zealand scheme.
26 February 2009	Early Installation Guidelines released (Version 1).
2 March 2009	Tony Leverton, Queensland Electrical Safety Office (QESO) raised electrical safety and insulation surrounding downlights with Ian Jennings, Queensland Building Services Authority (QBSA), and sought advice on actions to ensure that licensed installers undertook jobs competently and safely.
9 March 2009	National Electrical and Communications Association (NECA) wrote to Minister Garrett raising concerns about dangers when insulation is installed inappropriately near electrical equipment and cables, and the risk of fire associated with installation of insulation near downlights.
13 March 2009	Margaret Coaldrake, Minter Ellison Consulting, engaged by DEWHA to develop risk register and risk management plan.
20 March 2009	Industry roundtable meeting—installer training and industry concerned about requirements for two quotes to be eligible under the scheme were discussed.
23 March 2009	Martin Hoffman joined PM&C as Executive Co-ordinator, Strategic Policy & Implementation Group. Role included assistance to the Coordinator-General.
26 March 2009	Mr Hoffman raised concerns with Kevin Keffe, Assistant Secretary, Home Energy Branch, DEWHA about DEWHA's brokerage model, in that it may not meet the principle "of the need to preserve the relationship of choice between the householder and any qualified installer."
27 March 2009	DEWHA engaged KPMG to develop DEWHA's regional brokerage model.
31 March 2009	Meeting between Senator Arbib, Mr Mrdak, Mr Hoffman, Andrew Wilson (Office of Coordinator-General (OCG)), and Ross Carter and Mr Keffe of DEWHA. Mr Carter and Mr Keffe were advised that the model for delivering the HIP would not be a brokerage model. Matt Levey, policy adviser to Minister Garrett, later advised DEWHA the delivery model was changed from the regional brokerage model because Senator Arbib and OCG wanted priority given to generating small business activity.

DATE	KEY EVENT
2 April 2009	Project meeting focussing on risk management strategies held, with Minter Ellison Consulting distributing the first draft of their risk management plan.
3 April 2009	EEHP technical workshop held.
8 April 2009	First Project Control Group (PCG) meeting held.
8 April 2009	Risk mitigation workshop held.
16 April 2009	PCG endorses the risk management plan.
20 April 2009	DEWHA responded to NECA's letter to Minister Garrett noting that training was in place to address their safety concerns.
23 April 2009	Ms Coaldrake completed the risk matrix and was retained as the HIP Strategic Risk Advisor.
29 April 2009	Industry compliance workshop held.
8 May 2009	PCG changed the applicability of the competency requirements from 'installers' to 'supervisors' and noted management of 'extreme risk.'
10 May 2009	Kevin Herbert of the Australian Cellulose Insulation Manufacturers Association (ACIMA) advised members that DEWHA stated in a training workshop that the program was likely to continue past 31 December 2011 and that DEWHA would persist with agreed targets despite expected fraud and house fires.
18 May 2009	Master Electricians Australia (MEA) issued a media release warning of the dangers of house fires where insulation is installed too close to light fittings.
1 June 2009	Program Guidelines Version 2 issued. The Guidelines refer to competency requirements of supervisors.
29 June 2009	Minister Garrett chaired a meeting with industry where training requirements, fraud risk and issues including supply lines and price creep were discussed.
16 June 2009	Minter Ellison Consulting proposed a Program Management Health Check for HIP and the Department of Education, Employment and Workplace Relations (DEEWR).
26 June 2009	Minter Ellison Consulting published draft results of Program Management Health Check "Record of Consultation" which noted, inter alia, that 'everyone [was] stressed', the division had a large program 'dumped on top', a need for frank and fearless advice to Government during operation phase, the program was 'lurching from crisis to crisis', and that the program started with 'extreme risk'.
June—October 2009	Memoranda of Understanding (MOUs) between the Australian Government and State and Territory fair trading and consumer affairs agencies signed to establish an information-sharing arrangement for complaints made in relation to the HIP.

DATE	KEY EVENT
30 June 2009	Installer Advice 1 issued.
1 July 2009	Phase 2 of the HIP commenced.
1 July 2009	Version 2 of the Program Guidelines released.
1 July 2009	MOU with Medicare commenced.
6 July 2009	EEHP Key Milestones Review published (including at Appendix B the results of the Project Management Health Check). Recommendations included: ensuring risk management plan be brought up to date, urgently finalise risk treatments and review the risk register at planning day.
7 July 2009	HIP project team attended a planning day. Agreed indicators of success included 'no deaths', and the ability to meet expectations to focus on individual circumstances.
15 July 2009	Installer Advice 2 issued.
16 July 2009	DEWHA contacted Workplace Health & Safety Queensland, inviting them to work with DEWHA and Safework Australia in taking a nationally co-ordinated approach to "some very important OH&S issues" identified in the work being undertaken by insulation installers.
22 July 2009	Installer Advice 3 issued.
31 July 2009	PCG meeting.
1 August 2009	KPMG paper: industry supply analysis on the capacity of local manufacturers to meet demand and how a shortage of insulation products might impact quality.
6 August 2009	Installer Advice 4 issued.
7 August 2009	Insulation manufacturers meeting noted that local manufacturers had increased production to try to meet demand, and were operating at full capacity.
10 August 2009	DEWHA followed up their email to Workplace Health & Safety Queensland of 16 July 2009, to which they had received no response, seeking to open a dialogue regarding OH&S issues in the insulation industry.
13 August 2009	PCG meeting held. Supply shortages were discussed.
14 August 2009	Minister Garrett wrote to Prime Minister Rudd seeking agreement to changes to a related scheme and to including a HIP requirement for two quotes.
24 August 2009	Installer Advice 5 issued.
27 August 2009	Installer Advice 6 issued, noting program changes from 1 September 2009.

DATE	KEY EVENT
27 August 2009	Minister Garrett wrote to Prime Minister Rudd regarding work standard concerns and tightening the Program Guidelines.
31 August 2009	DEWHA brief to Minister Garrett, responding to his request for an update on fraud control and compliance activities for the HIP.
1 September 2009	Version 3 of the Program Guidelines released.
1 September 2009	ACIMA provided a submission to DEWHA seeking urgent amendments to the Program Guidelines.
2 September 2009	Installer Advice 7 issued.
3 September 2009	PCG meeting—focus shifted from ‘take-up to compliance.’
3 September 2009	DEWHA were advised that NSW Consumer Affairs had seen a significant volume of recent house fires related to insulation.
4 September 2009	Prime Minister responded to Minister Garrett’s letter of 14 August 2009, agreeing to changes in a related scheme but not agreeing to a HIP requirement for two quotes.
11 September 2009	Installer Advice 8 issued.
25 September 2009	PCG meeting—number of complaints under MOUs with State and Territory fair trading organisations discussed.
29 September 2009	Installer Advice 9 issued.
29 September 2009	Mitchell Sweeney, a 22 year old from Queensland, commenced work with Titan Insulations Pty Ltd, a registered installer under the HIP.
1 October 2009	PCG meeting.
2 October 2009	Mr Matthew Fuller, a 25 year old from Queensland, commenced work with QHI Installations Pty Ltd (QHI).
2 October 2009	QHI conducted a meeting with staff discussing safety regarding electrical hazards.
2 October 2009	Mitchell Sweeney completed insulation training.
6 October 2009	Energy Safe Victoria provided advice to DEWHA regarding house fires caused by insulation.
9 October 2009	Monique Pridmore, a 19 year old from Queensland, commenced working for QHI.
9 October 2009	Installer Advice 10 issued.
12 October 2009	Industry Roundtable meeting. ACIMA advocated for a closely managed run down of the HIP leading to its 31 December 2011 closure “to protect those who had heavily invested in plant etc.” Ongoing issues regarding supply shortages and imports were discussed.

DATE	KEY EVENT
12 October 2009	Energy Safe Victoria's previous advice was updated to include an additional four fires.
14 October 2009	Matthew Fuller died following electrocution while installing reflective foil laminate (RFL) insulation.
14 October 2009	Monique Pridmore seriously injured in the same incident.
16 October 2009	Malcolm Richards, Chief Executive Officer of MEA, issued a press release and wrote to Minister Garrett regarding concern over reports of incidents from members regarding staples used with RFL and insulation laid over downlights.
19 October 2009	Installer Advice 11 issued, including a safety notice which included advice regarding: turning off the power; circuit breakers and Residual Current Devices (RCDs); downlight covers; and high temperatures.
20 October 2009	Mr Richards met with Minister Garrett.
20 October 2009	The HIP policy team at DEWHA sought advice from the Energy Efficiency and Conservation Authority of New Zealand regarding the banning of the use of foil in a similar insulation program in July 2008.
22 October 2009	PCG meeting. Fire statistics were discussed.
26 October 2009	Installer Advice 12 issued (special issue on safety).
28 October 2009	Rueben Barnes, a 16 year old from Queensland, commenced employment with Arrow Property Maintenance Pty Ltd.
28 October 2009	Price Waterhouse Coopers (PwC) facilitated a risk workshop with DEWHA staff.
28 October 2009	Minister Garrett wrote to Prime Minister Rudd seeking agreement to changes to the Program Guidelines and a reduction in the rebate amount.
29 October 2009	PCG meeting—compliance issues were discussed.
29 October 2009	ACIMA raised concerns with Mr William Kimber of DEWHA about their members being forced to undertake training not relevant to installers of cellulose insulation.
29 October 2009	Prime Minister Rudd replied to Minister Garrett's letter of 28 October 2009, agreeing to the proposed changes.
30 October 2009	PwC reported on risk workshop with DEWHA. Discussion included policy changes and the risk that increased fraud may divert resources away from fire, OH&S and safety compliance toward fraud detection.
30 October 2009	Minister Garrett wrote to Prime Minister Rudd regarding changes to the Program Guidelines and a proposed package of safety measures.

DATE	KEY EVENT
1 November 2009	Electrical safety inspections of foil installation in Queensland announced by Minister Garrett.
1 November 2009	Installer Advice 13 issued noting reduction in rebate and prohibition of metal staples.
2 November 2009	Version 4 of the Program Guidelines released—metal staples prohibited and rebate reduced to \$1200.
2 November 2009	Prime Minister Rudd replied to Minister Garrett's letter of 30 October 2009, agreeing to Guideline changes and noting safety measures.
5 November 2009	Mr Keefe responded to Mr Herbert by email, regarding downlight covers, noting that DEWHA did not have a legislative basis to set product acceptability rules or regulate the insulation industry.
6 November 2009	Installer Advice 14 issued.
13 November 2009	Installer Advice 15 issued.
18 November 2009	Installer Advice 16 issued including revised terms and conditions for registration.
18 November 2009	Rueben Barnes died of electrocution while installing fibreglass insulation.
21 November 2009	Marcus Wilson died of heat exhaustion while installing insulation.
27 November 2009	Installer Advice 17 issued noting program changes from 1 December 2009.
30 November 2009	Enhanced training material for the installation of ceiling insulation released by Construction & Property Services Industry Skills Council (CPSISC) for DEWHA.
1 December 2009	Version 5 of the Program Guidelines released—requirement for two quotes introduced.
11 December 2009	Installer Advice 18 issued.
17 December 2009	Installer Advice 19 issued noting installers required to provide evidence of minimum training by 12 February 2010.
23 December 2009	Installer Advice 20 issued noting approved list of insulation products to be introduced.
2 January 2010	Installer Advice 21 issued noting new training requirements.
3 February 2010	Installer Advice 22 issued noting new competency requirements.
4 February 2010	Mitchell Sweeney died of electrocution while installing RFL insulation using metal staples.
9 February 2010	Installer Advice 23 issued noting that the use of foil suspended under the HIP.
10 February 2010	Foil Insulation Safety Program (FISP) commenced.

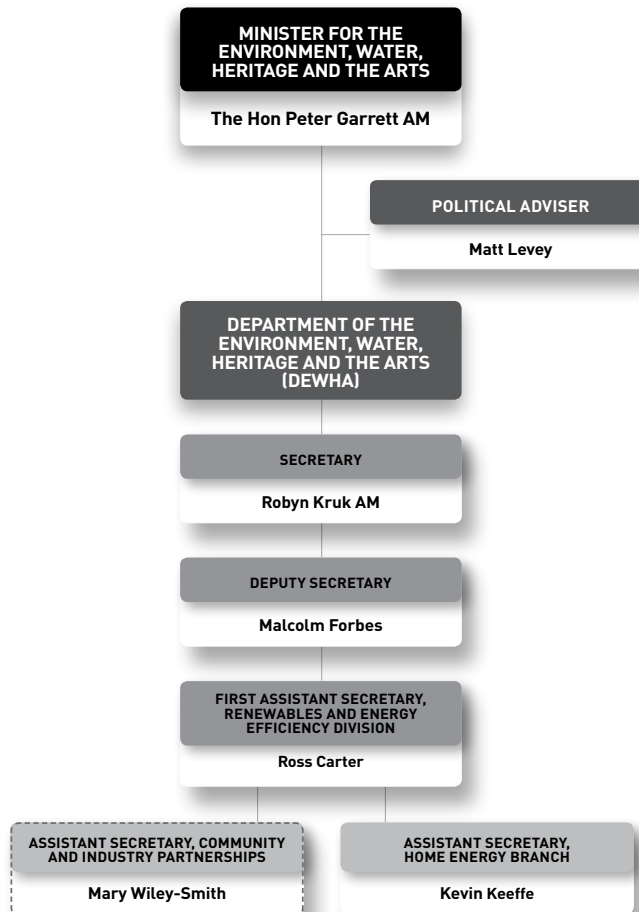
DATE	KEY EVENT
19 February 2010	Installer Advice 25 issued noting HIP to be discontinued as of close of business that day, to be replaced by a Renewable Energy Bonus Scheme (REBS), the insulation component of which would commence 1 June 2010.
22 February 2010	Home Insulation Safety Program (HISP) announced.
24 February 2010	Insulation Workers' Adjustment Package (IWAP) announced.
9 March 2010	Installer Advice 26 issued.
6 April 2010	Report of Dr Allan Hawke's Review of the Administration of the Home Insulation Program published.
22 April 2010	Announced that the insulation component of the Renewable Energy Bonus Scheme would not proceed.
6 May 2010	Insulation Industry Assistance Package (IIAP) commenced.
4 July 2010	IIAP closed.

APPENDIX 10: STATEMENT OF UNDERSTANDING

Statement of understanding regarding certain Commonwealth witnesses at interviews with legal representatives of the Royal Commission into the Home Insulation Package

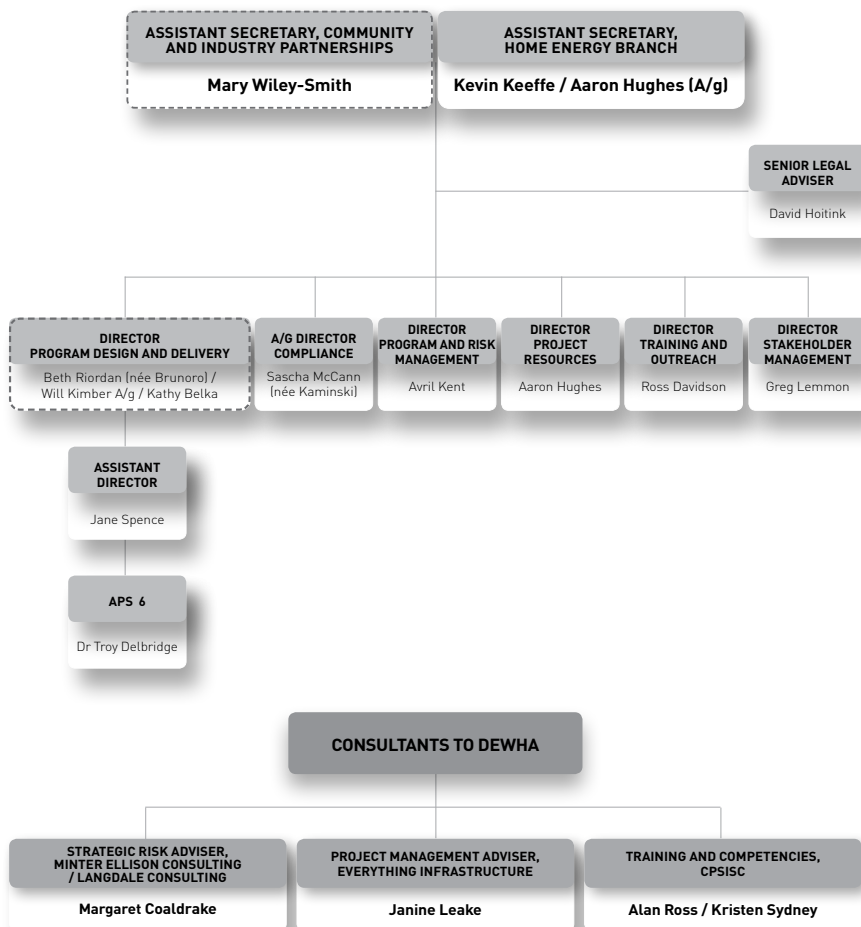
1. The purpose of this document is to set out the basis on which the Commonwealth understands any voluntary interviews are to be conducted with current and former public servants of the Commonwealth, who have made contact with, or sought advice from the AGS, representing the Commonwealth of Australia.
2. The purpose of the interviews is to facilitate, where appropriate, the creation of signed witness statements for use by the Royal Commission for the purpose of its Inquiry.
3. After the interviews, if it is determined that the witness may be required to give evidence at a public hearing of the inquiry a draft statement will be prepared by the Commission and provided to the relevant witness for adoption (by signing), subject to modification or supplementation as the witness considers necessary.
4. After a witness statement has been signed, the Commission will issue a notice to produce the draft and final (ie signed) statement pursuant to s 2 of the *Royal Commissions Act 1902*.
5. If witnesses provide information in the interviews which:
 - i. is amenable to a claim of public interest immunity;
 - ii. is amenable to claim of legal professional privilege; and or
 - iii. attracts parliamentary privilege,the provision of such information is without prejudice to any privilege/immunity claim(s) the Commonwealth (or any other person) may have.
6. Any internal records of the interviews (such as tapes or handwritten notes) are intended to be used and dealt with by the Commission in a manner which does not compromise the confidentiality of those records, and any privilege or immunity which applies to them.
7. Finally, if any former or current Commonwealth public servants wish AGS to be present at their interview, this request will be accommodated.

APPENDIX 11: ORGANISATIONAL CHARTS



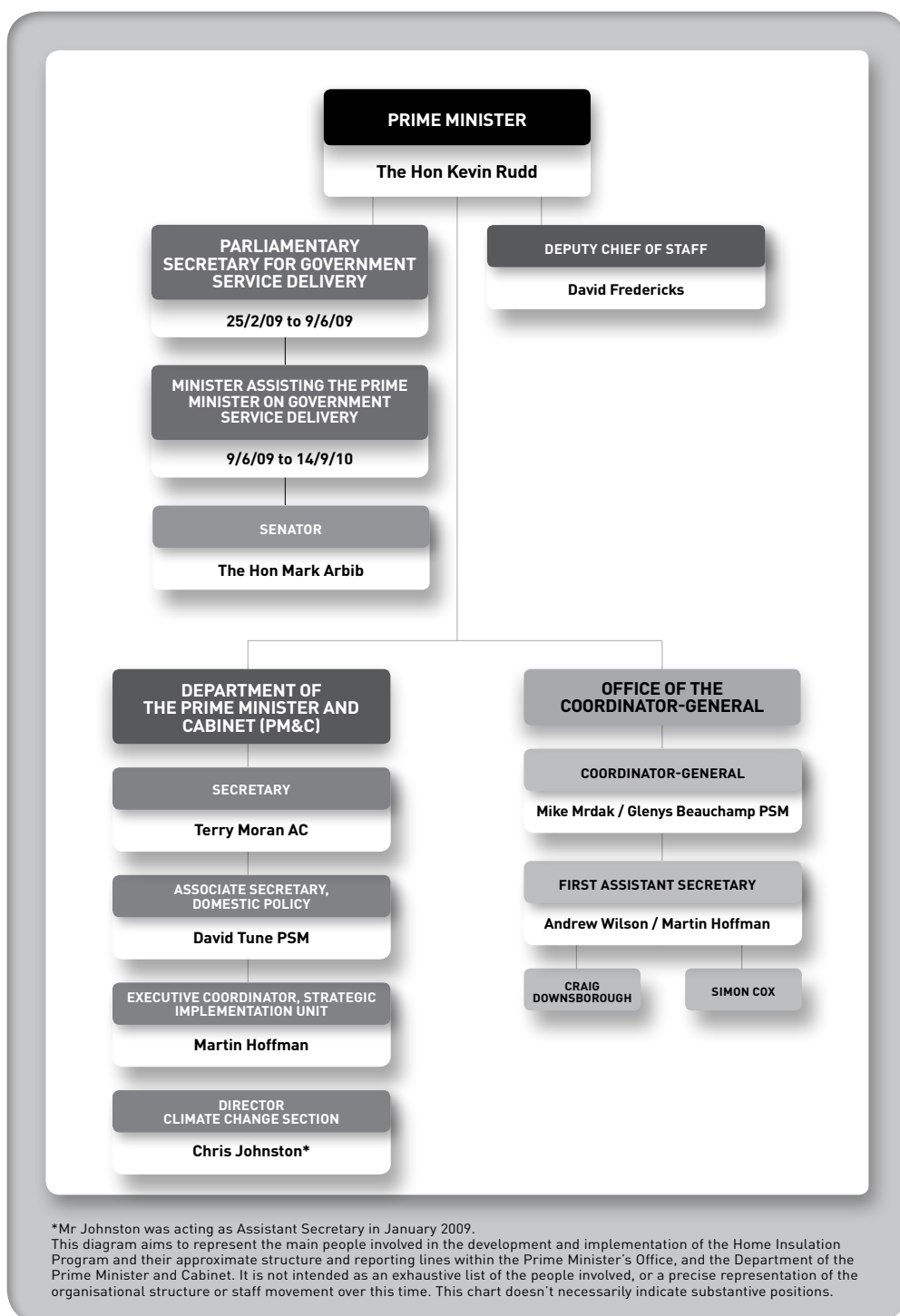
Dashed line = involved mostly in the formulation of the HIP.

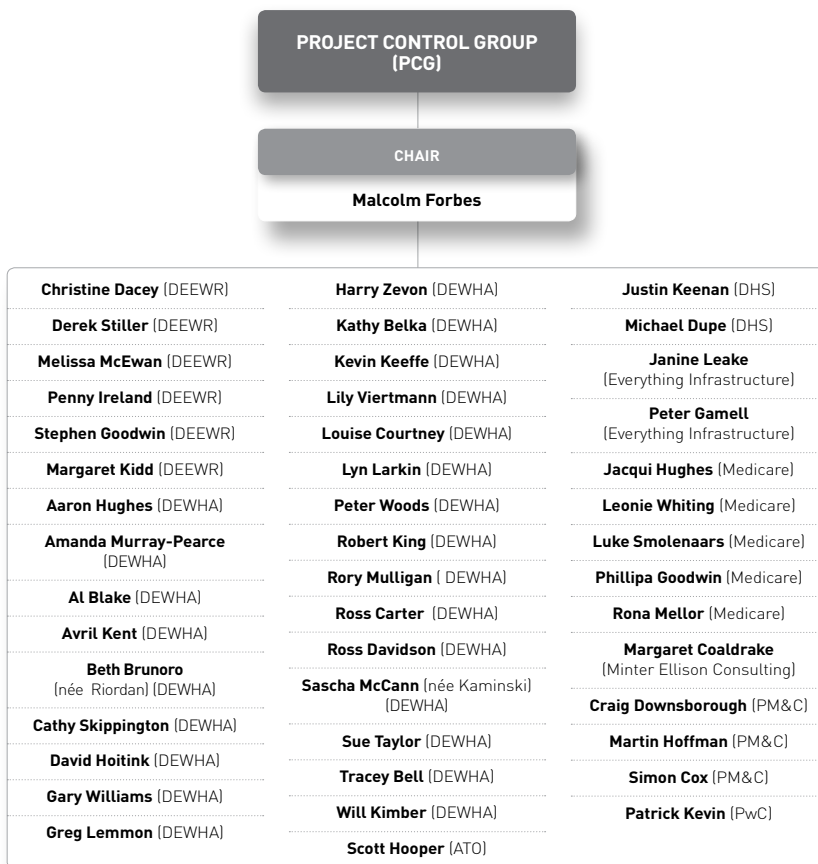
This diagram aims to represent the main people involved in the development and implementation of the Home Insulation Program and their approximate structure and reporting lines within the Department of the Environment, Water, Heritage and the Arts, and the Minister for the Environment's Office. It is not intended as an exhaustive list of the people involved, or a precise representation of the organisational structure or staff movement over this time. This chart doesn't necessarily indicate substantive positions.



Dashed line = involved mostly in the formulation of the HIP. * Some positions were occupied by several different people throughout the HIP.

This diagram aims to represent the main people involved in the development and implementation of the Home Insulation Program and their approximate structure and reporting lines within the Department of the Environment, Water, Heritage and the Arts. It is not intended as an exhaustive list of the people involved, or a precise representation of the organisational structure or staff movement over this time. This chart doesn't necessarily indicate substantive positions.





The Project Control Group (PCG) was set up to facilitate and monitor the development of the Home Insulation Program. The PCG held regular inter-departmental meetings. * This is not an exhaustive list and some staff may have only attended one meeting.

**MINISTER ASSISTING
THE MINISTER FOR CLIMATE
CHANGE AND ENERGY
EFFICIENCY**

The Hon Greg Combet AM

**DEPARTMENT OF
CLIMATE CHANGE AND ENERGY
EFFICIENCY (DCCEE)**

**DEPUTY SECRETARY
ENERGY, SAFETY AND
CORPORATE GROUP**

Martin Bowles

DCCEE assumed responsibility for the Home Insulation Program in 2010 and managed the associated remediation programs.

APPENDIX 12: GLOSSARY OF ABBREVIATIONS

ACIMA	Australian Cellulose Insulation Manufacturers' Association
ABCB	Australian Building Codes Board
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACOSS	Australian Council of Social Services
AFIA	Australian Foil Insulation Association
AFIMA	Australian Foil Insulation Manufacturers' Association
AFPA	Australian Federal Police Association
AGS	Australian Government Solicitor
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
APS	Australian Public Service
AS	Assistant Secretary
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BSA	Building Services Authority (Queensland)
CEO	Chief Executive Officer
COAG	Council of Australian Governments
CPRS	Carbon Pollution Reduction Scheme
CPSISC	Construction and Property Services Industry Skills Council
CSIRO	Commonwealth Scientific and Research Organisation
DCCEE	Department of Climate Change and Energy Efficiency
DEEWR	Department of Education, Employment and Workplace Relation
DEWHA	Department of the Environment, Water, Heritage and the Arts
DHS	Department of Human Services
EECA	Energy Efficiency and Conservation Authority (New Zealand)
EEHP	Energy Efficient Homes Package
EE-Oz (now E-Oz)	ElectroComms and Energy Utilities Industry Skills Council Ltd (now ElectroComms and Energy Utilities Industry Training Council)
EET	Energy Efficiency Taskforce
ESO	Electrical Safety Office (Queensland)
FAS	First Assistant Secretary
FISP	Foil Insulation Safety Program
GFC	Global Financial Crisis
GDP	Gross Domestic Product
HIA	Housing Industry of Australia

HIP	Home Insulation Program
HISP	Home Insulation Safety Program
ICANZ	Insulation Council of Australia and New Zealand
IMAA	Insulation Manufacturers' Association of Australia
IMMAA	Independent Insulation Manufacturers and Merchants Association of Australia
LEAPR	Low Emissions Assistance Plan for Renters
MBA	Master Builders Australia
MEA	Master Electricians Australia
NECA	National Electrical and Communications Association
NGO	Non-Government Organisations
NICNAS	National Industrial Chemical Notification and Assessment Scheme
NSW	New South Wales
NT	Northern Territory
OCBA	Office of Consumer and Business Affairs (South Australia)
OCG	Office of the Coordinator-General
OH&S	Occupational Health and Safety
ORCHIP	Office of the Royal Commission into the Home Insulation Program
PCG	Project Control Group
PIMA	Polyester Insulation Manufacturers Association
PIMAA	Polyester Insulation Manufacturers Association Australia
PM&C	Department of the Prime Minister and Cabinet
PMO	Prime Minister's Office
PwC	PricewaterhouseCoopers
QC	Queens Counsel
QLD	Queensland
RC Act	Royal Commissions Act 1902
RCD	Residual Current Device
REBS	Renewable Energy Bonus Scheme
REED	Renewables and Energy Efficiency Division
RFL	Reflective Foil Laminate
RTO	Registered Training Organisation
SA	South Australia
SHAP	Sustainable Homes Assistance Package
SHWR	Solar Hot Water Rebate
SPBC	Strategic Priorities and Budget Committee
TFIA	The Council of Textile and Fashion Industries of Australia
TICA	Thermal Insulation Contractors Association
VIC	Victoria
WA	Western Australia

