



Public Accountability Committee

Regulation of Building Standards, Building Quality and Building Disputes

**Submission number 65
Evidence given on 27 August 2019**

Response to a question on notice

Question from the Hon John Graham

Do you have any view about why the key review, the Lambert review, does not come to the same conclusion as you?

Answer

The Lambert Review was announced by the NSW Government in late 2014. It did not invite submissions, so we didn't make one.

Mr Lambert described it as an information-gathering process initially and after gathering information invited representatives of relevant organisations to meet.

depa was invited to meet the Review, which we did on 10 March 2015, accompanied by two members involved in managerial roles in significant sized councils which had made the effort to retain as much of the certification work as possible. They also had experience in managing complaints from the public about private certifiers and one in particular, had made multiple complaints to the BPB making about poor standards of private certifiers in their local government areas.

Primarily we were asked questions by Mr Lambert and our information went to the inadequacy of the oversight regime and the terms of reference primarily focused on whether the Act was properly managing certification of building, subdivisions and with an opportunity to extended further. While we made it clear that we hated the system a because it was incapable of managing the inherent conflict of interest between a developer paying their own certifier, and believe the system should not provide private options at all, the Review was more interested on focusing on changes that could be made to better manage an existing system.

Which it did.

I remember observing to Mr Lambert that I hoped the government would be more respectful of his recommendations than it was of those made by Dyer and Moore.

There were subsequent submissions invited to a Draft Discussion Paper but we took the view we had made our views known to Mr Lambert.

Mr Lambert could not have come to the same conclusion as us, because we didn't invite him to do so and, just like this current exercise, we are alone in proposing this. It would have been a courageous recommendation.

And given the failure of NSW governments to embrace the recommendations made by the Lambert Review, we might as well have called for it to be returned to local government because even if the Review had recommended that, it would also have been ignored or rejected by Government .

2 Question from the Hon Scott Farlow

Has there been anything else that has changed or was there a more rigorous assessment process when Council was doing it? What was that missing ingredient?

Answer

Councils effectively managed building and development using a building application and/or a development application up until 1998 when amendments were made to the Environmental Planning and Assessment Act to incorporate everything in one application.

Up until that time councils generally conducted inspections of all building development, including steel reinforcement for concrete floor slabs, columns and beams, and other structural elements. Some councils still do, albeit a very, very small number.

After the 1998 incorporation of local government's role in the *Environmental Planning and Assessment Act*, two significant things happened which have contributed more than anything else to the collapse in quality control, the quality of buildings and consumer protection:

First, apartment buildings over three stories were removed from homeowners' warranty insurance under the *Home Building Act 1989*. This allowed builders and developers to "evaporate" (both physically and as a legal entity) after the Occupation Certificate was issued. This exposed owners to significant financial risk, as we have seen so vividly.

Second, the *Environmental Planning and Assessment Regulation 2000*, at clause 162A, required "critical stage inspections" that must be undertaken by an accredited certifier, whether that be a private certifier or an employee of Council.

The problem buildings that drove this investigation, class 2, 3 & 4 buildings (generally flats, including high-rise apartment buildings , require an inspection of:

1. Fire protective service penetration – minimum of one of each type on each storey where there could be multiple penetrations;
2. Internal fire-resisting walls/elements separating sole-occupancy units – minimum sample of 30% of sole-occupancy units on each storey;
3. Wet area (bathrooms, toilets, laundries) waterproofing – minimum sample of 10% of rooms;

4. Stormwater drainage connections; and
5. Completed building

There's something missing, isn't there? There is no requirement for any other elements to be inspected including fire-isolated exits, ventilation systems, fire hydrants, other fire control systems or elements but more importantly, there is no obligation to inspect construction..

There is no requirement for a certifier (Council or private), or anyone, to inspect any of the structural elements of these buildings. This should have been a WTF moment, but the Government and the Opposition waived it by.

Yours sincerely

Ian Robertson
Secretary