

Submission
No 44

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Organisation: Willoughby City Council

Date Received: 23 July 2019

Parliament of New South Wales
The Public Accountability Committee of the NSW Parliament
The Committee Chair
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Sir,

Thank you for the opportunity to comment on this important inquiry into the regulation of building standards, building quality and building disputes.

With recent examples of building defects and flammable cladding, questions have been raised in respect of the building industry, the inspection regime and the quality control of building products used in the construction of buildings. Willoughby City Council welcomes the inquiry into the industry and believes that changes are necessary to ensure, not only the safety, but also the protection of consumers with regard to the construction of new buildings.

This submission focuses on the terms of reference specifically in respect of the impact of private certification and the adequacy of building protection.

The following comments are provided, but are not limited to:

1. Private Certification:

- Consideration should be given to a review of the certification process, with the view of giving a greater role to Local Councils within their Local Government Area. Councils are independent bodies, whose Officers are bound to the ethics, control and supervision of a public authority,
- There is a perceived question of conflict of interest in the private certification industry, between private certifiers and developers, due to the fact that the developers chose and pay the Certifiers,
- There is generally a misconception by the public that the Certifier has an overriding and constant control of a high rise residential or commercial building. The fact is the Certifier is rarely involved in the building process of high rise construction, very unlike single occupancy buildings whereby every stage of construction requires the Certifier to inspect prior to the building process continuing.

2. Inspection Regime:

- Current legislation specifies the number and type of inspections to be undertaken through the various stages of a buildings construction – ‘Critical Mandatory Inspections’. This inspection regime may need to be addressed in light of recent examples of building construction failures, particularly relating to high rise buildings,
- The current inspection regime (specifically for Class 2-9 Buildings) may need to be expanded,
- There appears to be a push by the Building Professionals Board to enforce disciplinary action against ‘Certifiers’, however their enforcement action does not appear at this stage to be impacting on any improvements to the industry,

3. Building Quality Control

- Consideration should be given to the accreditation and professional indemnity insurance of every individual trade ensuring that those trades that sign off work are appropriately skilled and accountable for their work and trade. Builders licenced and controlled by the Builders Licencing Board, prior to its abolition in 1987, appeared to provide better building quality than the unregulated system operating in NSW at the present time,
- Recently, as a result of multiple cladding fires to high rise buildings around the world, and after the cladding fire resulting in the high death toll in Grenfell, England, some cladding products have had their CodeMark building product certifications withdrawn and the National Construction Code has been amended to more clearly define the suitability or otherwise of cladding products,

4. Non-Conforming Building Products (Flammable Cladding)/Building Defects:

- There is currently no one authority or scheme that is responsible for the remediation of the flammable cladding problem. Currently in NSW this role has been divided amongst the State Government, Fire & Rescue NSW and Local Councils. Responsibility needs to be more clearly defined,
- Most of the retrospective fire safety issues relating to flammable cladding have been left to local councils to investigate and commence legal proceedings for cladding replacement,
- Flammable cladding along with examples of other non-conforming building products demonstrate a need for reform within the industry,
- Legislation has recently been tightened to prohibit the most flammable examples of exterior cladding.

5. Insurance coverage/consumer protection:

- Purchasers expect some level of confidence that a building has gone through a process of scrutiny that achieves a level of safety and protection,
- Insurance coverage, especially in respect of the use of flammable cladding, has become an unresolved issue given the expense involved in rectifying the problem,
- Reforms to Conveyance Legislation is required to ensure greater levels of consumer protection to the purchaser,
- Currently, developers can employ unlicensed, uninsured, unqualified people to construct multi-storey buildings and therefore have less insurance and quality control than single occupancy dwellings. These groups of people often set up 'Phoenix' companies that disband shortly after construction is completed to avoid building defect litigation. After the completion of high rise building(s) the owners have no recourse to compensation,

- Some developers of multi-unit buildings hold onto the majority of units and control the strata body until the 2/6 year defect period expires to avoid building repair costs. The Strata Schemes Management Act introduced in November 2016 prohibits the Strata Manager being connected to the developer,
- The State Government recently required a modest 2% of building costs to be kept as a bond for the repair of building defects. Recent reports of serious structural and life threatening defects in multi storey buildings highlight the deficiency of a 2% bond. The bond should be an active and very strong deterrent to substandard building work and the subsequent disruption and rehousing of occupants, significant repair/rebuilding work and loss of investments by owners. A figure of 10% would not be considered unreasonable.

The concerns and comments raised by Willoughby City Council regarding the regulation of building standards, building quality and building disputes are not exhaustive and this submission has included recommendations that are considered to be of greatest importance that would benefit the public interest and consumer protection.

Yours faithfully,

Willoughby City Council