

**Submission
No 73**

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

Organisation: Shelter NSW

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NSW Parliamentary Inquiry: Building Standards, Building Quality and Building Disputes

Shelter NSW submission
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About Shelter NSW

Shelter NSW has been operating since 1975 as the peak housing policy and advocacy body in New South Wales, with a vision of “A secure home for all”. We pursue this vision through critical engagement with policy and practice, and thought leadership. We provide systemic advocacy and advice on NSW policy, planning and legislation to resolve housing inequality, and we seek to ensure the voices of consumers are given prominence in discussions around policy, practice and review.

Our approach involves engaging, collaborating and connecting with people and organisations across the housing system including government, the private and not-for-profit sectors, and consumers. We conduct and commission original research to investigate the causes of inequality and injustice in housing, to ensure our agenda for a fairer housing system and a secure home for all, remains firmly rooted in rigour and evidence.

Our membership is broad and diverse. It includes organisations that provide and manage social and affordable housing, and individuals who work across the field, tenants and their representatives, advocacy groups and a range of other services and individuals with interests in the housing sector.

About this submission

Shelter NSW’s would like to commend the Public Accountability Committee for establishing the *Inquiry into Building Standards, Building Quality and Building Disputes*. This is not only a timely inquiry, the broad terms of reference provides an opportunity to address what we believe are system wide and far reaching failures.

Our submission aims to contribute to this critical public conversation, by commenting on the policy direction of current proposals for reform of the building industry, and recommending the principles that must underpin reform. We want to ensure that the voice of the consumer – buyers, owners and renters - is front and centre as the Government, Parliament, industry and the community, work towards solving this challenge.

Shelter NSW's submission is informed by consultation with our members and stakeholders, including consumers who are currently seeking remedies for defects in recently completed hi-rise apartments, and professionals who work in the housing sector.

The underlying principles for any reform should be to protect the most exposed and the most vulnerable, and these are the consumers - the owners, the renters, especially owners and renters with lower incomes. Our premise is that if the system works for them, it is more likely to work for everyone.

The importance of ensuring the system that regulates building standards (including building products) and building quality and disputes, is not only efficient, but effective, cannot be overstated. It's well understood that the State's and indeed the nation's economic prosperity, is heavily dependent on the housing market and a vibrant building industry. More fundamental than that, we are talking about people's homes – the biggest and most important purchase for the vast majority of people.

“Poor building quality has a significant cost on consumers, industry and governments. However, the financial impact does not factor in the stress on homeowners, and the commercial impact on subcontractors and small businesses who can't compete with operators who cut corners on quality and safety.”ⁱⁱ

Beyond protecting the value of people's homes and promoting an industry that is vibrant, innovative and sustainable, there are clearly gaps in the current system which means that even at the most basic level, the system is sometimes not meeting its core function – ensuring homes are safe and habitable.

The current landscape for consumers: who has benefited from cutting red tape?

It would be difficult to find an area that has undergone more reviews and regulatory change than the residential building sector. To plot the changes would make for a complex picture, but the direction of regulatory change has been to reduce the State's involvement (both State and Local Government) and increasingly rely on industry self-regulation.

“Some of the systemic issues are driven by deregulation of building approval processes in 1989, the overdevelopment of land not suited to high rises, and the fact builder's liability was reduced to pretty much nil.”ⁱⁱⁱ

Over more than a decade, consumer protection schemes for residential buildings have been privatised and whittled away. As notions of smaller Government and the efficiency of the private sector took hold, Government building insurance schemes became private insurance schemes and the scope of home owners warranty has been progressively reduced.

However, the promises of efficiency and viability of deregulated and private insurance schemes were not delivered; the collapse of HIH, one of the biggest private insurers in home building in 2001, is a case in point.

But instead of recognizing the inherent problems in the direction of reform, especially for consumers, what followed were further reductions in consumer protections to reduce insurance exposure. The threshold for coverage increased and caps on claims and the statutory time limits reduced.

And here we are today; owners can't live in the homes they purchased and are exposed to hefty costs for rectification works and possibly also legal proceedings; renters having to find emergency accommodation in an unaffordable market after paying bond and rent for a place that is uninhabitable; and investors who are not only exposed to the cost of rectification works, they still need to meet their obligations to tenants. The uncertainty and lack of options available to lower income renters is particularly stark. Many renters are already living in rental stress in the private rental market, and likely have few financial reserves or agency to access alternative accommodation.

The home owners warranty scheme is [described as a scheme of "last resort"](#) and it would not be unreasonable to surmise that it was designed with consumer protection as a secondary consideration to that of the continued "viability" of the insurance scheme.

But what the current crisis has glaringly highlighted, is the gaping hole when it comes to protections for consumers of hi-rise residential buildings. While the home owners statutory warranty is far from an ideal system, owners of residential buildings with more than 3 storeys don't have access to a statutory warranty scheme.

For residential buildings of more than 3 storeys (where building contracts were entered into after 1 January 2018) some consumer protection is offered from a scheme of building inspections and strata building bonds for rectification works, funded by contributions from the developer (at 2% of the contract price), but it only applies for the first two years after completion.

It seems extraordinary that given the Government's reliance on the residential development market (especially the hi-rise residential market) to meet our growing housing needs and as a generator of economic wealth and state revenue; we find that buyers of hi-rise units have little consumer protection.

Shelter NSW's position is that decades of reform have not worked and we find ourselves in the current situation, because previous reforms focused on industry viability or the Government's budget bottom-line, rather than the needs of the consumer.

The tip of the iceberg, yet we don't know how big the iceberg is

Three years ago as residential development was in the throes of a record construction boom and high density housing construction surpassed detached housing for the first time, our ["Equitable Density"](#) research reports flagged many of the negative impacts of an increasingly compact city on low income households and those who are vulnerable.

While the visual impact of hundreds of people evacuating a gleaming new 26 storey tower, when they should have been preparing to celebrate Christmas in 2018, was indeed dramatic, it was pretty much foreseeable. Since then, more buildings have been evacuated - a total of four known incidences. Stories of more structural defects (without evacuations) in newly completed buildings are now coming to light.

There have been signs along the way for many years:

- the fatal fire at West Terrace in Bankstown in 2012;
- non-compliant combustible cladding and the Lacrosse fire in Melbourne in 2014;
- the recall of fire causing, non-compliant electrical cables in 2014;
- the incredibly tragic fatal fire at the Grenfell public housing apartments in London in 2016 (also an issue with non-compliant combustible cladding);
- residents evacuated from residential apartments at Opal, Mascot, Zetland and Erskinville.

But these are the stories that make it to the media. There are many more that don't. The fact that we don't know the extent of the defects and nature of building quality problems, structural or otherwise, exposes a system that has failed to effectively monitor such a critical industry. A 2012 research report by the City Futures Research Centre, [Governing the Compact City: The Role and Effectiveness of Strata Management in Higher Density Residential Developments](#) gives us a good idea of the scale of the challenge we face. It found that in a survey of owners, nearly three-quarters of all respondents indicated that one or more defect(s) had been present in their scheme. For buildings constructed from 2000, the figure was higher at 85%. City Futures is undertaking follow-up research [Cracks in the Compact City: Defects in Strata](#) looking at the growing problem of building defects in the trillion dollar, multi-unit housing sector that now provides almost half of new Australian housing.

Shelter NSW is concerned that if our regulatory system can't answer the questions – what are the specific building quality issues consumers face and how prevalent are these problems – it's failing in one of its core functions.

If we had a single overarching regulatory scheme, with a single oversight authority, with not only the powers, but the resources, to monitor the industry and collect data on the issues, would we be in the position we currently find ourselves in?

A question we need to explore is; how did we get to a point where it has taken evacuations and an eleventh hour warning of industry collapse to hasten a response?

Again, we come back to what Shelter NSW sees is a fundamental failure. And that is, who the system is designed for? We suggest that the system has lost its way, because it has lost sight of the consumer.

The issues that have been exposed so far are not confined to one part of the building system. Shelter NSW believes we should proactively look for issues in building standards and the regulatory system that may have escaped our attention so far. As Mark Singer, architect and Shelter NSW member recently penned [in The Fifth Estate](#), we must recognise the building sector as an ecosystem, and any fix must look at all parts of and players in the whole system.

Building Stronger Foundations Discussion Paper

Shelter NSW supports the implementation of the Shergold-Weir review recommendations in their entirety.

Shelter NSW would like to emphasise, that not only is there an urgent need for a regulatory regime that is robust, transparent and independent, there must also be a clear legislative mandate to act on behalf of consumers to protect their rights and their interests as the primary objective.

And regulatory authorities must have the resources required to be able to effectively enforce standards, including on-site visits. When we spoke to a consumer who is currently assisting his elderly parents and his sister to remedy building defects in newly built apartments that were purchased off-the-plan (and completed within the last 3 years), he spoke of a system that relied on paperwork rather than on-site inspections and the need for a well-resourced complaints process;

“Many private certifiers rely on paperwork from other professionals rather than physically attending building sites themselves”.

“Ensure existing building laws are enforced and well-resourced and we need a timely complaints system”.

Standards, rules and regulations are only as good as the quality and diligence of the system to monitor and enforce them.

Recommendations beyond Shergold-Weir

As Shelter NSW member and architect [Mark Singer noted in The Fifth Estate](#), until we look at all the players in the building ecosystem, we will only ever be tinkering around the edges;

‘A spotlight is needed on the roles and activities of the most powerful actor in the system, the property developer, to address community confidence in the building sector.

Property developers are top of the food chain – controlling investment decisions, landbanking, design development, costs, tendering, and quality control. Developers employ consultants, contractors and certifiers directly or indirectly, in design & construct contracts and value management exercises.’

Mark has recommended additional reforms including;

- Bed down the NSW Building Commissioners job and resourcing with enabling legislation. Address the insurance premium threat to the construction industry. Handle unexpected outcomes and “unknown unknowns”.
- Work with the federal government to implement the 24 recommendations of the Shergold-Weir Report.
- Seek backing for a national approach to customer protections through the Building Ministers Forum and federal ministers, to address developer and builder liability, establish a national

indemnity insurance scheme for the construction sector, and develop unsafe product policies for housing developments.

- Set up a Royal Commission to untangle the current development ecosystem and developer roles and practices, and to suggest long-term national reforms to the development sector that will address current building failures and owner losses, and produce safe, healthy, well-built and long-lasting buildings.
- Re-examine pre-1980 building practices to identify potential reintroduction of effective past practices that reduce risk of defects, such as the Clerk of Works role representing the client's interests on-site, still commonly used in the EU and UK building sectors. At the same time, examine risky developer practices such as "value management" that aim to find cheaper ways to construct buildings by altering approved designs.

Shelter NSW also recommends:

- Ensuring the regulatory authorities that are involved in any aspect of building quality including the new Building Commissioner, Fair Trading NSW and Local Governments are well-resourced
- Consider establishing a central and comprehensive database on the nature and extent of building quality problems
- Consider issues beyond the focus on new buildings standards, compliance, and insurance, including standards for existing buildingsⁱⁱⁱ; construction of informal dwellings that are non-compliant and often unsafe^{iv} and "phoenixing"

"Phoenixing – the illegal practice in which directors liquidate a company in order to avoid paying debts, only to re-emerge under a new guise. It allows so many hopeless builders to get away with it over and over again, rebirthing their dodgy companies and causing the next unsuspecting customer untold grief"^v

Finally, if we make consumer protection the primary objective, enshrining this in our building statutes, we will know that we are heading in the right direction. And we can't afford to wait for a national approach. NSW must act quickly, and if necessary, we must take the lead, as the Victorian Government has done in relation to the issue of non-compliant combustible cladding.

Please do not hesitate to contact Shelter NSW's Senior Policy Officer, Agnes Yi, on agnes@shelternsw.org.au should you wish to discuss this submission.

Regards,

Karen Walsh
Chief Executive Officer

ⁱ Homeowner who spoke to Shelter NSW about his experience building his home

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ⁱⁱⁱ [Poor quality housing and low income households](#): by Edgar Liu, Chris Martin & Hazel Easthope, for Shelter NSW in conjunction with the City Futures Research Centre, Faculty of Built Environment, UNSW, June 2019

^{iv} [Informal accommodation and vulnerable households](#): A report prepared in conjunction with the Sydney Policy Lab and the Urban Housing Lab (University of Sydney) by Prof Nicole Gurrán, Dr Madeleine Pill, Dr Sophia Maalsen, Dr Tooran Alizadeh & Dr Pranita Shrestha, April 2019

^v Homeowner who spoke to Shelter NSW about his experience building his home