

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

Organisation: Development and Environmental Professionals' Association
(DEPA)

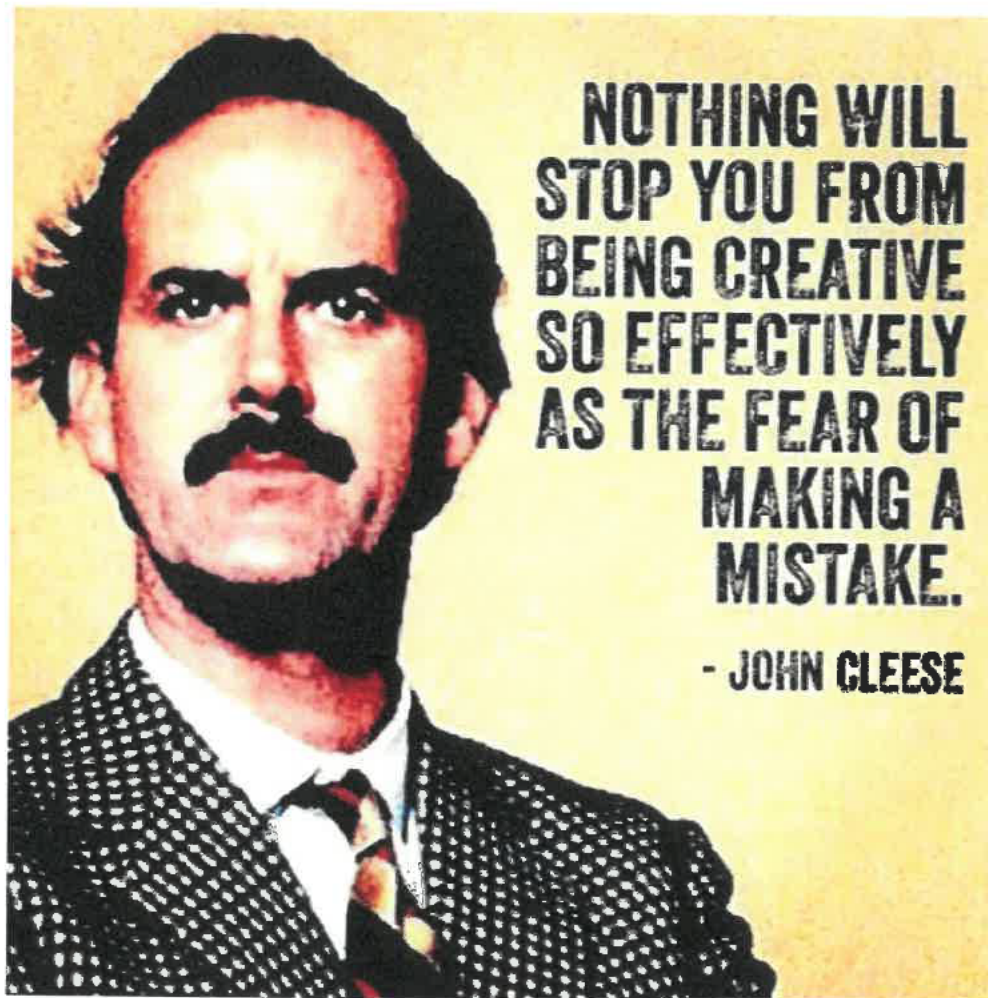
Date Received: 26 July 2019

26 July 2019

Mr David Shoebridge MLC
Chair
Public Accountability Committee

Dear Chair, Deputy Chair and Committee

Inquiry into the regulation of building standards, building quality and building disputes



depa is the New South Wales registered union covering health, building and planning professionals in local government. We have also been named the Health Surveyors' Association, the Health and Building Surveyors' Association, the Environmental Health and Building Surveyors Association and for the past 12 years the Development and Environmental Professionals' Association as our membership has developed.

We have been a vigorous opponent and critic of the moves to privatise local government building control that started in the 1980s. At that time, and under the *Local Government Act 1919*, building control was regulated solely by local government with council employees, employed to protect community interests and safety (remembering that building regulation began from concerns about fire and poor health) and to ensure that construction and development complied with planning instruments and proper standards. Up until the *Local Government Act 1993*, council officers had the responsibility under Ordinance 70 of the *1919 Act*, to amongst other things, at 10.1 ensure

"every part of the building shall be erected in a good and workmanlike manner".

Leaving aside the gender specificity, there's not much evidence of *"workmanlike manner"* in the five Sydney apartment developments currently under a cloud and, in varying ways, uninhabitable, nor those buildings with their flammable cladding.

Local government officers were also responsible for issues to do with the quality of construction and construction materials and, from 1971 to 1987, the Builders' Licensing Board complemented local government regulators. The BLB's inspectors were charged with the responsibility of ensuring quality of construction who would, when required, regularly attend on-site with Council building surveyors.

While it might be an old-fashioned concept, each site, particularly the larger and more complex constructions, invariably had a clerk-of-works, employed by the builder/developer whose primary responsibility was the quality of construction, effectively to ensure the *"good workmanship"*. The clerk-of-works was the first contact for the council building surveyors on-site and regularly issues about quality would be determined by the clerk-of-works with the council building surveyor - often assisted by inspectors from the BLB.

Regulation and compliance worked, there's never been a more effective system, until these layers of regulation and control were compromised and stripped away.

They need to be returned and it is entirely within your power to recommend this.

Over 30 years unsuccessfully fighting the same concept, we have watched the ineffectiveness of the 1989 initiative, pushed through by a non-consultative Department of Local Government dishonestly asserting it had consulted with industry parties when it hadn't; a taskforce to resolve the inherent insurance liabilities from that initiative which was abandoned without a solution; the influence of the Victorian Government's decimation of local government with the sacking of all councils and compulsory amalgamations, ensuring that the then-powerless local government sector was unable to contest the introduction of private certification; developers calling for governments to act as they continue to do only in the last fortnight; initiatives aimed at appeasing developers; all the while with faux consultation, or no consultation; panels and taskforces stacked with developer interests finally resulting in the introduction of private certification in the Environmental Planning & Assessment from Act from 1 July 1998, rammed through the Parliament by the Carr Government, and particularly Planning Minister Craig Knowles, based on a misunderstanding of the Victorian model and its applicability in New South Wales, making assertions about reducing costs when the evidence was that costs would increase, and fantasy expectations about the benefits of competition. All unanimously opposed by all local government bodies, the Australian Consumers Association and a variety of environmental protection organisations as well. An unfortunate history.

Then, the hostility about the corruptibility and failures of the private certification system (because Craig Knowles thought it should operate without any overriding control other than accreditation by

professional bodies); the establishment of the Building Professionals Board to regulate the unregulatable; multiple reviews and investigations to try to better regulate the unregulatable; the embarrassingly transparent move for the BPB to accredit Council employees - which we all know now originated in a whiteboard exercise by the BPB CEO looking at the income stream flowing from accrediting council employees already better managed and controlled in their jobs in Council.

So, after 30 years of watching governments of both persuasions dismantle regulatory regimes and institutions that provided quality controls in construction that no longer exist, depa has learned that there are really, for us, two response for occasions like this.

The first is optimism, that this new group of people (like you), open-minded, interrogative, vigilant and enthusiastic might be the ones to decide that giving a developer the power to pay their own certifier was so fundamentally conflicted that it should never have proceeded, that it should be abandoned, that it should go back to local government control, complemented by a proper regulatory regime from the State.

The second, is not quite so optimistic, the expectation that not a great deal will happen, the flawed system, failing, corruptible, opaque, with no real capacity to manage the inherent conflict of interest of being paid by the developer will have some cosmetic changes (that is, putting more lipstick on the pig) and set us up, yet again for the future with another "we told you so moment".

No one will make a submission to you, or happily provide explanations and encouragement in person, who participated in and witnessed this entire process, more than we will. We wish you clear heads, open minds and the courage to redress the last 30 years of history and political decisions all masquerading as economic reform.

Who could be more inspiring to you than John Cleese. One of a handful of people who revolutionised comedy in the 1960s and 70s and without whom our lives would be less rich with fewer dimensions and rewards.

Don't be afraid of making a mistake, be afraid only of failing to fix the problem.

Recommendations to the Committee

- (a) Acknowledge that the inherent conflict of interest in a developer paying their own certifier has failed, to the extent that there can be no confidence in the system of regulation and building compliance. This failure has led to a crisis in building construction standards and materials and a consequent collapse in confidence in the apartment market in Sydney.

Acknowledge there are no steps that can be taken that can dignify or restore confidence by additional regulation, control, or other mechanisms to make the allocation of a private certifier effectively independent from the developer paying them.

Over an agreed timeframe, say over five or 10 years, take steps to close down the private certification system that has operated since 1998, and any accreditation and control regimes that are part of that system.

Over the same timeframe, and in consultation with local government and those organisations representing employees affected, and the relevant government departments and ministers, return building control to local government.

Those discussions/negotiations between the NSW Government and local government to include funding arrangements to allow councils to properly resource the return of these historic responsibilities.

- (b) Restore adequate consumer protections for owners and purchasers of new apartments/dwellings, remove any time limits on liability and ensure whoever builds it, fixes it.
- (c) Ensure the role of Strata committees and responding to building defects in common property are managed fairly, including on Strata owners in disputes that impact only a minority of Strata owners.
- (d) Ensure that building materials, such as external cladding, satisfy rigorous and appropriate testing regimes to ensure that they are inflammable, including the adequacy of Australian Standards.

Attached are several documents, comprising a selection of submissions to government as the folly of private certification has developed and continued, where we say pretty much the same things but try to say them in different ways to a new audience:

- 1 How it all began so badly in the 1980s and continued in the 90s
- 2 depa's submission to the Joint Select Committee on the Quality of Buildings November 2001
- 3 A response by depa to the July 2004 DIPNR discussion paper Accreditation of Council Certifiers we titled, "A no-holds-barred diatribe by depa against the latest in a long line of stupid, half-baked and misconceived ideas."
- 4 Comments by depa on the Improving October 2018 Certifier Independence; Options paper
- 5 depa submission in response to the Building Stronger Foundations Discussion Paper 24 July 2019

Yours sincerely

Ian Robertson
Secretary
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