

**Submission
No 89**

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

Name: Mr Aidan Ellis

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Submission to the Upper House Inquiry into Building Standards

(a). The role of private certification in protecting building standards.

- (1) Conflicts of interest**
- (2) Effectiveness of inspections**
- (3) Accountability of private certifiers**
- (4) Alternatives to private certifiers**

Where private certifiers are employed by builders/developers there will always be the temptation for the Certifier to comply with the employer's requirements. As things stand, there may be few inspections along the way or even none at all. The private certifiers may just sign off on forms without actually seeing the job. At present they do not seem to be accountable to anyone so they may sign off on work that is not compliant with Australian Standards, does not match up with architectural or engineering specifications or is simply unsafe.

In the case of The Landmark Building where I am an owner, all of the above has occurred. A Private Certifier certified the building in 2008 and owners began moving in. Problems were noted immediately mainly connected with leaking windows, doors, ceilings and floors. In the years following, further problems emerged, various building reports were commissioned at the expense of the Owners Corporation culminating in a litigation compliant report from engineers, BAAM Consulting in 2016. This very comprehensive report noted many breaches of Australian Standards such as lack of insulation in walls and ceilings and non rated windows and doors. These windows and doors have created huge problems especially on the top floors of this building which stands in Category 1 Terrain. Water enters the apartments every time it rains and if heavy rain is accompanied by wind, it pours in, saturating carpets and furnishings and causing serious problems with mould. The "as built" plans for the top floor of The Landmark Building could not be found but the original architect attested that the plans had been altered a number of times. BAAM Consulting found there was inadequate bracing of walls and roof, the James Hardie Exotec cladding product had been incorrectly installed allowing water ingress, the balcony floors sloped incorrectly and many of the balustrades and edgings unsafe. In January 2017 an abseiler had to be employed to prevent a large piece of balcony edging from blowing on to the Pacific Highway at Charlestown.

In spite of all these faults, this building had been certified by Private Certifiers who apparently made no on site inspections either during or after the build. The Owners Corporation believes there is no way they can be held accountable.

If certification must remain in private hands, certain requirements should be in place. Firstly, builders/developers should not be able to select who they use, in order to prevent conflict of interest. Secondly, the certifiers should be appropriately qualified and required to inspect and report on specific stages of the building process as well as on the finished product. Thirdly, they should be able to be held responsible for the report they produce. A further suggestion here is that independent inspections occur at pertinent stages of the build such as concrete pours to ensure that correct products are used and corners are not cut. In many cases, once a process is complete and a section covered up it is not possible to ascertain simply by a visual inspection that a process has been correctly followed and the correct materials used. Obviously these requirements are going to add to the cost of building but if, in the longer run, they can avoid the huge costs of rectification being suffered by many owners now, the additional costs would be justified.

(b). The adequacy of consumer protections for owners and purchasers of new apartments/dwellings and limitations on building insurance and compensation schemes.

- (1). The extent of insurance coverage and limitations of existing statutory protections.
- (2). The effectiveness and integrity of insurance provisions under the Home Building Act 1989.

To my knowledge, The Landmark Building Owners Corporation has never been able to claim under insurance the cost for any repairs related to defective building. The building is over three storeys and consequently the builder is not required to take out such a policy. Without better regulation of the building process and the ensuring that Australian standards are upheld I can understand that the cost of policies would be high and perhaps insurance companies would be reluctant to insure structures over three storeys thus this issue is tied in with the private certification issue above. I believe that owners of apartments in buildings of above three storeys should have the right to safely built buildings and the same insurance rights as any other home owner.

Currently we have contents and public liability insurance for our apartment but it specifically excludes anything which may be related to defective building as the insurance company has noted that the building is not "structurally sound or watertight". The company which insures the whole building is well aware of the defect problems and reviews the policy every six months. Presumably if such an event as a major fire were to occur, the insurer would make absolutely sure it couldn't be related to a defect before making any payment.

(3). Liability for defects in apartment buildings.

It would seem obvious that the builder/developer should be liable for the defects in an apartment building they have built. In the case of The Landmark Building, the builder/developer liquidated two companies as soon as it became apparent that the Owners Corporation was planning to take legal action. It seems wrong that this person can do this and still continue in business both as a financial planner and as a director of a large project home company. This practice is criminal in other places, why not here?

The proposal for a 2% bond to be placed to rectify defects occurring in the first two years of occupation is inadequate. The quote for rectification in The Landmark Building was over \$5,000,000.00 in 2016 which was nearly 25% of the build cost and other buildings are similarly and more seriously affected. Also, many large buildings are only partially occupied at the end of two years and it often takes longer than this for serious defects to manifest.

I believe the NSW Government is also liable for these problems. They are responsible for making the laws which have allowed builders/developers and private certifiers to be unaccountable for defective buildings and they are collecting large sums in Stamp duty every time these defective properties change hands.

Solicitors, Vendors, real estate agents and Strata Management Companies are also involved in continuing the problems. Material facts are frequently not disclosed, Strata searches are not always transparent and are not undertaken carefully enough and people buy units in buildings which may have serious defects both in the individual apartment and in the common property. Again, in these cases, there is no accountability. In our case, we believe our solicitor failed in his duty of care by not alerting us to problems with the common areas which were evident in the Strata report, neither the previous owner nor the real estate agent told us of the water ingress problems and other pertinent material facts relating to the apartment even though they would have been well aware of them.

(C) The role of Strata committees in responding to building defects discovered in common property, including the protections offered for all Strata owners in disputes that impact on only a minority of Strata owners.

I believe that too much is asked of Strata Committees and they have too much responsibility. Today, many buildings are large and complex, many are seriously defective and most Strata Committees are made up of unqualified, inexperienced people who may have various vested interests in the decision making process. In the case of The Landmark Building, the Strata Committee spent around \$500,000.00 obtaining legal advice and building reports and only last year has any actual rectification work begun. The very expensive litigation compliant report from BAAM Consulting Engineers which I believe was necessary, was only ordered because inaccurate legal advice led the Committee and hence the Owners Corporation to believe the builder/developer could be made to foot the bill. When this was found to be not the case, they had a

further report to document only the very urgent work. With quotes of over \$1,000,000.00 the Strata Committee persuaded most of the Owners we could have it done much cheaper with a local builder. The work was commenced on lower floors and proceeded slowly, leaving owners with the most seriously affected apartments waiting. This work is currently still proceeding with the first of the most seriously affected top floor units completed this year. The elderly widow occupying this apartment had to move into a rented apartment for eight months, was subjected to abuse and ridicule from other owners, was very stressed and died two months after her return. I have now been living in a rented apartment for three months while work proceeds slowly on my apartment.

It has required mediation with the Department of Fair Trading, a hearing at NCAT and a Notice of Intent from Lake Macquarie City Council to arrive at the position where we are now and still only some of the urgent work will be completed. An enormous amount of unnecessary money has been spent, serious angst has been created amongst residents and far from the work being completed more cheaply, the special levies will continue and the building will continue to be degraded.

I believe the system of Strata Management should change to accommodate the complex issues faced in Strata living. I suggest that experts such as engineers, electricians, plumbers, accountants etc be consulted as soon as needed and their advice followed rather than serious issues be decided by inexperienced amateurs. These experts could come from a panel rather than be tied in with the Strata managers, to prevent conflict of interest. If important defect repair work were undertaken as soon as the defects became apparent it would avoid buildings deteriorating unnecessarily, sales of units being compromised and individuals being victimised.

Strata Committees could still exist to perform the more social duties connected with Strata living and to be a first port of call for the everyday issues which arise.

(d) case studies related to flammable cladding.

The Strata Committee for the commercial section of The Landmark Building has organised to replace the small amount of flammable cladding on the building. No further comment.

(e) No comment

(f) I would be pleased to address this inquiry at any time. I have written and photographic material to back up my submission which I would be pleased to present to assist the inquiry.

Aidan Ellis