

Submission
No 109

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

Name: Name suppressed

Date Received: 28 July 2019

Partially
Confidential

Submission on :**Inquiry into the regulation of building standards, building quality and building disputes**

That the Public Accountability Committee inquire into and report on the regulation of building standards, building quality and building disputes by government agencies in New South Wales, including:

- (a) the role of private certification in protecting building standards, including:
 - (i) conflicts of interest
 - (ii) effectiveness of inspections
 - (iii) accountability of private certifiers
 - (iv) alternatives to private certifiers,

- (b) the adequacy of consumer protections for owners and purchasers of new apartments/dwellings, and limitations on building insurance and compensation schemes, including:
 - (i) the extent of insurance coverage and limitations of existing statutory protections
 - (ii) the effectiveness and integrity of insurance provisions under the *Home Building Act 1989*
 - (iii) liability for defects in apartment buildings,

- (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,

- (d) case studies related to flammable cladding on NSW buildings and the defects discovered in Mascot Towers and the Opal Tower,

- (e) the current status and degree of implementation of recommendations of reports into the building industry including the Lambert report 2016, the Shergold/Weir report 2018 and the Opal Tower investigation final report 2019, and

- (f) any other related matter.

In response to (a)

An earlier Minister of Planning - Frank Sartor had identified years ago, when grappling with similar questions, of regulation producing “not best practice outcomes”. He came to the conclusion that the minimum educational requirement to work as a building professional was a four year degree in a building / construction management from a university followed by appropriate experience in the building and construction industry. He said it was vital to have that university training to carry out the function of a “certifier” whether employed by a Government agency, Council or in a private professional practice. Similarly a designer (architectural and engineering disciplines) and onsite supervisors should have the same university qualifications. That was particularly in reference to the very buildings now causing vexation to the Parliament of NSW. He also used the word “pissant” to the resistance of change he encountered when trying to advance, what then, was a less than desirable situation.

It is unlikely the State Government nor Local Councils would have the anthropological resources nor budget to take over entirely the role of “inspection and certification”

In response to (b) & (c)

Developers and building companies can be wound up.

Projects must be supervised by real persons. Put the focus at that critical point. Develop a process to protect supervisors integrity from being suborned by a transient building company and developer. The low rise residential building require a nominated licensed / qualified supervisor as well as a Licensed Builder.

Perhaps increase the developers bond – significantly.

Consider a “Contractors All Risk Insurance” scheme that will still stand long after the builder and developer have departed legal accountability.

Require registered or licensed supervisors / project managers to be responsible for those building projects that have a profile “based on a clear risk matrix” - DJH

In response to (d)

The Federal and State Parliament should give formal recognition that building and construction is an applied science. It should be designed, supervised, certified and overviewed (function of the Government) by university trained people in the appropriate discipline with pertinent experience.

Parliament should expunge the conundrum and vicissitudes that exists in the current Acts and Regulations about “conflict of interest”, “involved in design”,

“acting in good faith” that brings about a lack of rigour and knowledge. –
Result – flammable cladding.

Opel tower – after more investigation (by appropriately qualified professionals) - perhaps structural engineering, construction detailing, site supervision and knowledge – but not “certification”

Mascot Towers – would be the province of Geotechnical or Hydrological specialist engineers to determine cause, effect and risk.

In response to (e)

Following the Shergold / Weir report and the last Building Ministers Forum. The most pertinent action that the NSW Parliament could insist upon is that a Professional Standards Scheme should be established nationally to encompass all “building practitioners”.

In general my opinion :

Edmund Burke :

“Wise men will apply their remedies to vices, not names ... otherwise you will be wise historically, a fool in practice – You are terrifying yourself with ghosts and apparitions, whilst your house is the haunt of robbers.”

Dame Judith Hackitt has stated (referring to the British system – but said it equally applied to the Australian system) that she has a conviction that :-

“a radical rethink of the whole system and how it works” is required.

The common thread she identified was ignorance, indifference, lack of intellectual clarity or thinking and inadequate oversight.

The ignorance Dame Judith Hackitt had identified resided as much within Government agencies and Council bodies as outside in the building and construction industry.

Clarity of thought is difficult to find within some agencies

Dame Judith Hackitt stated that the culture must change. To paraphrase :

“It must be truly “**outcomes- based** (rather than based on prescriptive rules and complex guidance) **maintain the spirit of collaboration and partnership**“

Dame Judith Hackitt also made the following statement :

“The criticism about thinking in silos must also be laid in part at the regulatory system that oversees the industry’s activities. Viewed from

one end of the lens it may matter a lot who 'owns' particular aspects of regulation, be that in terms of government departments or different national and local regulatory bodies. But for those on the receiving end this often results in disjointed and confusing guidance – what often gets described as “too much regulation”.

It should be reflected upon, that the current parlous state of affairs, have been overviewed by several state and local government agencies, albeit after a number of changes, since 1998.

It is a poor reflection that a government agency or bureaucracy measures its effectiveness on the number and quantum of fines that it issues.

Another view is that it could demonstrate a systemic failure.

The current regulatory scheme must be moved from a 19th century method based on an adversarial and punitive regime. It appears to be often driven by, as industrial psychologists refer to, “as a Confirmation of Bias”. It ought to be one of a collegial and peer reviewed system. It must champion and recognize knowledge and experience.

The Federal and State Parliament should give formal recognition that building and construction is an applied science. The current regulatory method, is for most part, focussed upon a mere clerical function of form collection.

There are more sophisticated management techniques available in the 21st Century for the oversight that is required of good government.

As identified by Michael Lambert - “the bureaucrats are reluctant to change”

A once in a generation chance is before us to get it right as far as can be expected by best practice.

It is important that a Professional Standards Scheme be enacted nationally. It is paramount to get the underwriters back into the industry. The premium pool needs to be spread amongst all “building practitioners”.

There needs to be a paradigm change - not “more of the same”.

The system, as it is at the moment, is broken.

I would be willing to speak directly and expand on the above.

Yours faithfully,

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