Submission No 137

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

Organisation: Toplace Group

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Submission to the NSW Parliamentary Inquiry
Prepared by Toplace Group
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Overarching statement

The construction and property development industry cannot be held solely accountable for retrospective changes to building codes, once they have passed certification.

There must be a recognition that implementation of regulation of building products, design and construction methods require due consideration and time by the government to ensure fairness.

This is a communal issue to be addressed by all stakeholders whether they be developers, builders, consultants, subcontractors, the government, industry regulators, product suppliers, insurers or apartment owners.

Please see Toplace's views and responses below in specific regard to the Inquiry's Terms of Reference:

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,

Regarding point (i) 'conflicts of interest', it is Toplace's view that an independent certifier can carry out their role without having a conflict of interest. We support the need for rigorous certification of these independent experts.

Before private certification, the onus of certification previously lay with local government to oversee the certification process and in the past, this task, for some councils, has proven too onerous and in particular, time consuming, particularly in larger LGAs for a number of reasons:

- local councils have been under-resourced (by staff available or by having the necessary skill sets to certify certain large-scale, complex developments);
- for the process of certification to be thorough, a local council-appointed certifier would be required to physically be on the project site overseeing all forms of construction from the start of the project to the completion; and
- the sheer number of projects under construction at the same time would mean major delays would result, should a council-appointed certifier be required to oversee each project.

With regard to point (ii) 'effectiveness of inspections', Toplace reiterates that without an independent certifier being physically on site for every project, inspections could be delayed or fail to take place.

Regarding point (iii), although private certifiers must of course be held accountable within the ambit of their expertise, we note that they rely heavily on the expertise and advice of other experts including engineers, architects, fire engineers and the like.

Regarding point (iv) 'alternatives to private certifiers', Toplace believes that there are no rational alternatives to private certifiers however, the system and process can be improved by the implementation of more oversight such as an independent body where concerned stakeholders can have certification reviewed at the end process. This would likely require less expenditure of government funds in restructuring the system.

(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,

Toplace's view is that there are already sufficient consumer protections in place, not least of all statutory warranties. Indeed there is a real danger that if we overreact to these kinds of issues that the balance shifts too far in favour of owners and it makes it impossible for the industry to survive.

A recent example of additional consumer protections which have been introduced is the Defect Bond Scheme (introduced in 2018).

Regarding points (i) and (ii), Toplace does not hold any particular view on insurance and defers to the stakeholders of the insurance industry.

Regarding point (iii), interestingly, it is frequently an issue for builders and developers that subcontractors that carry out work are unwilling to rectify defective work despite being paid in full by the developer and/or builder and in these cases it is not reasonable that the builder and/or developer end up having to bear the cost to the owner's corporation. Some thought should be given to subcontractors having direct liability for defects in the work they carry out.

(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,

Toplace's experience has been that very often strata corporations engage in sharp practices when trying to negotiate outcomes in respect to defects as opposed to approaching it in a fair and forensic manner. The failure here is in the adversarial nature of the process, encouraging overstatement of issues and highlights the need for independent private experts to factually determine what is fair.

Toplace offers no comment on minority rights.

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

Toplace is on record saying that delivering quality and safe homes to consumers is its business. The reality is that the industry is not under-regulated and in situations like Mascot Towers and Opal Towers, despite media reporting, are the exception and not the rule.

On the subject of flammable cladding, the new retrospective laws have perhaps unintentionally created an artificial crisis in the industry by flagging buildings which are in fact safe, as being at risk of fire. The focus must be on actual safety and there needs to be better recognition that a building is not solely comprised of cladding. It is in fact, a combination of all its measures and all its materials, some of which are flammable but can be countered by fire safety measures. The government has not failed the industry in this regard, as the industry is highly regulated.

Toplace is of the view that owners affected by flammable products installed on buildings which were certified at the time of installation, should be compensated by the suppliers, manufacturers or the government.

We respect and recognise that owners of affected properties will not be able to occupy or rent the property causing extreme financial distress. Further, even if the owner can sell the affected property to mitigate their loss it will be at a greatly reduced value to the purchase price. If a mortgage is involved the property will be sold at less than the amount owed, just adding to the owner's already calamitous financial position.

(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

Toplace does not wish to comment on these reports.

(f) any other related matter.

Toplace believes that the NSW Government should consider the following pressing issues:

1. Looking into subcontractor roles and their liability in respect of the above framework.
2. Evaluating the qualifications of subcontractors.
3. Evaluating the qualifications and liability of consultants.
4. Streamlining the development approval and certification processes so that the focus of development can be on genuinely important issues such as structural and fire safety.

Undoubtedly, there will need to be future legislation on these issues. We encourage the government to engage in industry-wide consultation and careful deliberation in respect of any resulting legislation to ensure that not only is it effective, but that is also realistic and truly reflects industry requirements.

If the committee wishes to contact us for further comment, please send your inquiry to info@toplace.com.au