

**Submission  
No 150**

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

**Organisation:** Mascot Towers Owners Corporation

**Date Received:** 4 August 2019

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# **Inquiry into regulation of building standards, building quality and building disputes.**

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## **Submission: Mascot Towers Owners Corporation**

Thank you for the opportunity to assist the Committee in examining causes of the crisis of confidence in construction of high-density residential housing in NSW.

Our submission is the collation of the many thoughts and voices of Mascot Towers.

Our owners and residents have been dealing with the issues before the committee for many years. As evidenced by the large number of confidential submissions, many examples have been swept under the rug because owners rightly feared the impact on property values should they complain too loudly. This way, they believed they retained the option of selling at a reasonable price - and making their problem someone else's.

It's fed a predatory culture in the market. Buyers have more consumer protection buying a \$1000 television than a million-dollar apartment. This remains well understood by unscrupulous players who take full advantage of displaced owners.

The silence surrounding the industry could not last forever... Buildings like ours are the tip of a very large iceberg – relating to, but not exclusive issues pertaining to:

- Cladding
- Fire Compliance
- Waterproofing
- Hot Water
- Drainage
- Rendering
- Tiling
- Cracking
- Consumer Uncertainty
- Insurance

The true economic and social cost of this collapse in regulatory standards cannot be over-stated. The trend towards higher density residential living is long term, global and irreversible. These issues simply do not exist in jurisdictions like Singapore where all stakeholders take their responsibilities to consumers seriously.

**We did not build Mascot Towers,** nor were we involved in certification, inspections and final tick-off for habitation. We do however speak for Mascot Towers on behalf of owners, residents and stakeholders who have been affected by its myriad of issues.

Again, our building is **not** a singular case.

In fact, the multitude of defects being reported in Sydney buildings over the last decade points to a systemic, governmental failure.

“Where is the consumer protection? Who should I trust before buying unit? Do I need to personally hire certified consultant engineers to inspect the building? Even then, how can I trust that engineer's certifications? Buildings are supposed to stand for centuries not for 10 years...”

*Owner Quote*

Whilst Mascot Towers acknowledges the efforts of the Office of Fair Trading in assisting our disaffected residents, more needs to be done across all levels of government.

**Government at all levels have reaped billions of dollars from the Sydney property market** and have provided inadequate contingencies/compensation for crises like Mascot Towers, Zetland, Opal and Sugarcube.

Our owners and residents (through no fault of their own), have relied on the 'system' to provide a satisfactory dwelling. The issues that have occurred across NSW borders on a natural disaster – in that many of the issues are directly out of owners' hands.

At the end of the day, the buck stops with the government. When it goes wrong, they need to put money back in to fix a system they've overseen.

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## **In Response to Terms of Reference**

Our submission provides a response to the committees' terms of reference 1; (a) – The role of private certification in protecting building standards; (b) – The adequacy of consumer protections for owners and purchasers of new apartments/dwellings, and limitations on building insurance and compensation schemes; (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; (d) – Case studies on NSW buildings and the defects discovered in Mascot Towers and Opal Tower.

## **A) Certification Protecting Building Standards**

The public's confidence in the building approval/standards and inspection process has long been shattered. As it stands, the loss of credibility for all developers – good and bad – and the damage to the reputation of apartment living has potentially far reaching consequences for the whole economy in terms of urban planning, transport, housing affordability, labour market mobility, economic activity and social cohesion.

It has not been surprising that issues relating to quality of construction have arisen, with concerns raised consistently over the last decade by professionals in relation to the private certification process and lack of supervision of builders and sub-contractors.

Some aspects of the private certification system work adequately; unfortunately, it does not seem that the overall focus on self-regulation in the industry is functioning well, particularly on larger scale developments where the stakes for structural defects are significant in terms of financial and personal costs.

While it is unrealistic to expect the system will achieve a perfect result for every building every time, the system should guard against defects - particularly significant defects - being considered as 'normal'.

It is concerning to see the number of defects on buildings, particularly significant structural defects continue to rise. There are several media reports, anecdotal accounts, and litigation that suggests new large-scale developments are not meeting the expectations of quality that consumers would expect.

Indeed, there are some within the industry recommending friends and family only buy older apartments constructed during the 1990s or earlier, due to the perceived diminution of quality in newer buildings.

For those directly impacted, we expect the committee will hear abundant evidence of the financial and emotional costs. These are catastrophic and life changing in many, many instances.

**“When I decided to buy my unit in Mascot Towers, I looked into the available reports... based on that report I made my decision to buy the**

**unit as I trusted the engineers, who should know better than me, as well as the government who certified them to execute such audits and inspections.”**

*Owner Quote*

## **B) Consumer Protections, Insurance and Compensation**

Existing warranty provisions are hopelessly inadequate. The costs to rectify falls squarely and unfairly on our owners; many of whom bought into the building mere months prior to evacuation, who through no fault of their own now face tens of thousands of dollars of additional expenses to repair, not to mention costs of removalists, storage, time-off work, etc.

Changes to building warranty insurances has also seen an alarming trend where the number of years a building is insured for and the overall level of coverage has been eroded.

We reiterate; buyers have more consumer protection buying a \$1000 television than a million-dollar apartment.

It's almost comical for our government (NSW) to:

1. Streamline DA's to ensure a steady flow of funds back to the government
2. Sit on the sidelines for years as quality and confidence drop with an arm's length response
3. Allow builders and developers to start phoenix companies in an attempt to cut from responsibility or obligation for a quality construction and development
4. Categorise the owners as 'responsible' for any defects
5. Sit by as levies for remediation costs continue to increase, particularly on problem buildings
6. Provide no immediate assistance for displaced owners during crisis/evacuations
7. Have no funds allocated to rectify structural defects forcing residents out of their homes
8. Act non-committal when other States (VIC) have promised a fund to address these issues

**“With the inadequacy of compensation schemes and the limitations on building insurance, I am now without a home and in a position of no recourse...”**

*Owner Quote*

While the insurance industry wishes to limit its exposure to the growing costs of insuring new buildings against defects, the pairing back of this regime has not been met by adequate changes to prevent defects in the first place.

What we’re witnessing is a drop in insurance levels and cover, a drop in building quality and certification processes, an increase into owner’s liability, an increase to levies to address consistent defects and a government who is not acting.

## **C) The Role of Strata Committees Responding to Defects**

Significant structural defects impose huge financial and personal costs on homeowners, businesses, builders, and insurers in remediation and legal costs. They also undermine confidence in the building industry. They take up the valuable time of courts and regulators and they can also have broader impacts on communities.

Owners of defective building sites face enormous challenges to recover remediation costs from builders or insurers. Homeowners and owners’ corporations (generally with committees of inexperienced volunteers) may have to bring legal proceedings to recover these costs, facing years of uncertainty in structurally unsound and undignified living conditions.

When it comes to defects processes, strata committees often find these time-consuming and expensive to rectify. **Defects they, nor the owners caused; but are ultimately responsible for.**

Further, strata committees generally have no experience in construction or building defect remediation and are often totally reliant on expert reports. These reports are funded through an increase in levies which fund various building consultants, engineers, lawyers etc.

Scheme's need to mount huge expensive cases to recover the costs for defects, some of which take years to settle; and in the meantime, have they a fiduciary duty to maintain and repair common property, for which they need to raise even more additional levies.

## **D) Mascot Towers a Case Study**

**The following is a direct excerpt from the Mascot Towers Building Manger's Submission:**

I provide this submission as the onsite building manager of Mascot Towers from 14/11/14 to current.

As a trade professional, I have met challenges not anticipated of a building only 11 years of age.

The list of maintenance/defects works completed since 2014 to present at Mascot Towers is longer side by side against all other 15 buildings my company has managed; it's just that extensive. To provide an example, the maintenance/defect list of outstanding and completed works since 2016 to present scheduled repair works is 19 pages long.

I will touch on some of the experiences I have dealt with as the building manager of Mascot Towers during this time.

### ***Hot Water***

From the time of occupation until 2016 (when the defect was rectified), the building experienced lukewarm water all year round.

This water in winter was not hot enough to enjoy a hot shower for most of the hours of the day and was felt hardest by shift workers and pilots and air staff working odd hours preparing for long haul flights using the buildings hot water when flow was at its least.

One resident (on a lower level), received no hot water at all if the demand in higher levels for water at the same time was applied. This was due to the design of the system, yet it passed for occupation.

All pumps were designed to the least possible specification, running at full steam at all times and pipe sizes were undersized. Again, these were passed for occupation.



Although it took over 4 mins to achieve reasonable warm water at the kitchen sink when engaged, it was deemed satisfactory as in a court, it was argued that the end goal of achieving hot water was ultimately produced. This is completely unacceptable.

The effects of least possible design include pipe sizing, pump sets and boilers. This 11-year-old building has been forced to spend over \$400,000.00 just to provide residents with hot water to shower.

Least possible design is the unspoken real cost for residents fighting developers and councils that certify works and provide occupation certificates.

A developer cannot be held accountable for functionality barely coping that will fail earlier than its usual life cycle if it technically delivers at the time it is being tested fully knowing it is not coping.

## ***Stormwater***

Local councils make residents jump through hoops for storm water in general yet a recent calculation of the stormwater functionality at Mascot Towers shows the system is much less than 50% functional of the action schematic design of the documents that Bayside council holds and signed off.

How does this happen?

The engineer, building management and two plumbers cannot provide a retrofit solution that can bring the stormwater system back to its original design now that the build is completed structurally. It is evident that the plumbers that fitted the original design were met with the same challenges as we recently faced trying to redesign it, yet someone signed off on this design. Not just someone, but someone from Bayside council.

The effects of this stormwater system have flooded units and their balconies up to 3 levels high.

This is not an oversight; it is complete failure of the system allowing developers to manipulate who ever to sign off on this system that clearly does not meet standards.

## ***Fire Compliance***

Every year building managers across NSW jump through hoops for Annual Fire Safety Statements but a building like Mascot Towers can be self-certified even if it had some of the worst fire breaching defects.

## ***Electrical***

The electrical was passed at Mascot Towers for an occupational certificate. However, in 2015 when the electrical switch room was decommissioned and re-built it was discovered that during initial installation the wrong types of cable were used, some connections could not reach, and power correcting units were not even connected.

## ***Uncertainty***

One of the biggest issues for all owners is the uncertainty, regarding almost everything.

- Uncertainty around why the building deteriorated so rapidly resulting in evacuation
- Uncertainty around the cost to repair
- Uncertainty around when they will be permitted to reoccupy the building
- Uncertainty around paying \$8k per unit (or more for some lots) for a special levy that barely covers the cost of evacuation and investigation into the cause
- Uncertainty around the current government assistance for temporary accommodation, which is due to expire in six weeks. If that happens, people have to fund alternative accommodation, fund their mortgage, fund levies to repair the building, and the value of their unit, for all intents and purposes, is currently zero

We're desperately seeking answers for all stakeholders of Mascot Towers, but the current system leaves a lot of doors open for uncertainty, and even more doors for those responsible to wiggle out of any liability.

## ***Building Management***

The new normal is for developers to create their own building management and their own strata companies. Owners of those buildings will find it particularly difficult to negotiate their

defects when they are unaware the strata management are affiliated with the developers. This is a direct conflict of interest, and another pitfall to owners within strata titled schemes.

The purpose of us highlighting and referring to the building manager's submission is to cement the abnormality and unequitable situation our owners and residents are faced with – through no fault of their own, through no fault of ours.

Our residents have inherited a building with numerous defects... Defects which were originally signed off on by our government, engineers and certifiers as 'within standards'. Somewhere along the lines, maximising profit has become a misinterpretation for 'delivering quality' in the eyes of our government.

**"We are in a very difficult position because of corrupted system and government that's currently trying to wash their hands and not take any responsibility for having some cowboys certified to build and audit buildings and play with investors' money."**

*Owner Quote*

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## **Reinforcing Public Perception – Mascot Tower's Response**

Mascot Towers has been highly reported in the media since the building's evacuation.

Our building has seen a lot of negative articles, which has created a negative view of Mascot Towers, eroded public confidence, destroyed asset appreciation and created confusion.

For example:

**Mascot Towers residents still out in the cold**

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## Mascot Towers owners agree to foot \$1 million repair bill as residents remain homeless

### How building industry must change after Opal, Mascot towers

Independent “check” or “verification” engineers for all large-scale developments need to be returned to the building industry so developers can ensure the structural integrity of their buildings, experts say, following the structural damage to unit blocks like the Opal Tower and Mascot Towers.

## Sydney buyers abandon off-the-plan units for houses after building disasters

### Our focus was and continues to be making sure that more assistance is afforded to the owners and residents of Mascot Towers.

Our owners and residents (through no fault of their own), have been failed by the system, and failed by their government.

As part of our submission, we outline our approach to disseminating information to all stakeholders:

- Within 48hours a website acting as a central information portal for stakeholders and media was created: [www.mascottowersinformation.com.au](http://www.mascottowersinformation.com.au)
- Status updates were sent directly to owners/residents and published to the website
- Our media updates were published to the website
- We created an FAQ
- Our media team handled countless inquiries and responses

- We ensured that our stakeholders had the information we had access to at every step of the way
- We published resources available to stakeholders

**Examples of our status updates to residents are available through the Mascot Towers Information website: [www.mascottowersinformation.com.au](http://www.mascottowersinformation.com.au)**

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## Recommendations

The developer profited of the Mascot Towers development. Building defects consultants, legal practitioners etc have profited from Mascot Towers' story. Local Government profited from rates after rezoning the precinct surrounding Mascot Train station. State Government profited from stamp duty on the area's property sales, and Federal Government has collected millions in GST on all of the construction, consultants, local businesses in the area etcetera (not to mention all the other taxes paid by the residents of Mascot Towers).

We believe that the government should fund remediating the disaster at Mascot Towers. It's unconscionable to think that owners front the bill for defects they played no part in causing. This happened under the watch of government. Mascot Towers demands from the government:

- A clear and definitive action plan from the government to fix this, with no onus on our owners and residents.
- Immediate intervention and ongoing assistance and funding to displaced owners and residents.

We have also received a copy of Strata Community Association's (NSW) submission.

We support the 7 Point Plan that they have proposed:

1. Reintroduction of a robust and accessible Homeowners' Warranty Insurance scheme for all levels of strata development, removing the current four-story exclusion.
2. Increasing the two-year statutory warranty period to at least three years.

3. Along the lines of the precedent now established in Victoria, provide an assistance package for cladding and structurally affected schemes. This may include a combination of subsidised loans, rate/taxation relief and other financial assistance.
4. Legislate within the regulatory framework for builders, developers, designers, and certifiers a clear duty of care to owners and owners' corporations
5. Legislate a statutory chain of responsibility through the entire design and construction cycle
6. Introduce mandatory supervision of private certification
7. Introduce a record of occupation certificates accessible to owners' corporations that is separate from the Office of Fair Trading. This will avoid any conflict of interest with its regulatory functions and enforcement of compliance, licensing and administration of home building compensation fund.

There are solutions readily available to government that will provide effective protection for future owners if implemented. Given the manifest failure of regulatory responsibility, governments have a moral responsibility to respond effectively and provide meaningful assistance to owners' corporations in resolving defects.

The question needs to be asked as to why they are so hesitant to show genuine leadership and firmly commit to a plan for resolving this crisis.

At the end of the day, the buck stops with government.