

**Submission
No 169**

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

Organisation: MCG Quantity Surveyors

Date Received: 3 September 2019

(a) The role of private certification in protecting building standards, including:

(i) Conflicts of interest

With the engagement of the private certifier being primarily commissioned by the head contractor, there is certainly examples of conflicts of interest between the certifier and the head contractor and what is best for the development and in turn, the client (owner / developer).

This bias towards the head contractor by the certifier is an age old one, money. With the engagement of the services of the certifier coming from the head contractor, they are in effect, a client of the head contractor.

This should be no excuse for the certifier to become an advocate to the head contractor, in lieu of what is best for the development and remaining unbiased.

As a quantity surveyor, we are regularly requested by financiers and developers to enquire, comment and review the mandatory inspections that are identified as required to be completed to the site as per the approved Construction Certificate.

This instruction is expressly denied in nearly all attempts when the quantity surveyor contacts the certifier direct. This request for provision of these inspection certificates must be through the head contractor, as in the words of the certifier, the head contractor is their client.

In the case that the head contractor is too busy, or not of the belief that this co-operation is required, these certificates will not be provided for review. Similarly, the provision of these certificates in a timely manner from being inspected, is not required to be provided to any parties, including the head contractor until the 'Occupation Certificate' is provided.

Albeit as quantity surveyors, we endeavour to apply pressure of non-payment of progress claims without the provision of these mandatory inspections for review, this is actually not a contractual or legislative requirement.

From my experience a quantity surveyor, given the certifier refers to the head contractor as their client and the certifier requires instructions to be provided to them from the head contractor, there is a conflict of interest between that particular relationship and the relationship of the certifier to the development as the party responsible for approving and inspection the works.

Given the developer is actually funding the cost of the development and will accept ownership of the development once the works under the construction contract have been completed, the developer is unable to ensure that works are progressing to scope, design or engineering standards throughout the construction, rather the client is the head contractor.

(ii) Effectiveness of inspections

In NSW, the mandatory inspections as defined by the private certifier, deemed appropriate for the various construction types, Clause 162A of the Environmental Planning and Assessment Regulation 2000 sets out the mandatory critical stage inspections. They are:

For class 1 and 10 buildings (including houses, garages and the like), building work on the development site must be inspected:									
At the commencement of building work									
After excavation for, and prior to the placement of, any footings									
Prior to pouring any in-situ reinforced concrete building element									
Prior to the covering of any framework for any floor, wall, roof or other building element									
Prior to covering waterproofing in any wet areas									
Prior to covering any stormwater drainage connections									
After the building work has been completed and prior to any occupation certificate being issued in relation to the building									
In the case of a class 2, 3 or 4 building, the building work on the development site must be inspected:									
Prior to covering waterproofing in any wet areas									
Prior to covering any stormwater drainage connections									
After the building work has been completed and prior to any occupation certificate being issued in relation to the building									
In the case of a class 5,6,7,8 and 9 building, the building work on the development site must be inspected:									
At the commencement of building work									
Prior to covering any stormwater drainage connections									
After the building work has been completed and prior to any occupation certificate being issued in relation to the building									

The first mandatory inspection that a private certifier and the BCA indicate as being required on these building types is “*At the commencement of building work*”.

This inspection certificate is not provided and in 15 years of quantity surveying, has never been provided to me for review.

Likewise, the inspections for the covering of steel and prior to pouring concrete are on occurrence, deemed incomplete and requiring additional make good instructions from the certifier. However, no additional site inspection is conducted by the certifier. In other cases, when asked by the quantity surveyor for the head contractor to have the certifier to send through inspection sheets to declare that the works completed to site are in line with the construction certificate approvals, the feedback is that the certifier is not actually inspecting the works personally, however relying on the inspections of the engineer responsible for the design.

Therefore, the private certifier is not actually inspecting the works, deemed to be mandatory on their construction certificate.

In addition to the aforementioned, another mandatory inspection required and requested by the private certifier is that 10% of the waterproofing be inspected. Similarly, it does not note what portion of the 10% is to be inspected, meaning the first 10% or the last 10% or 10% across the duration of the project. Meaning that in a 100 x unit development, the head contractor could have 90 x units already waterproofed and tiled over, with the certifier only inspecting the last 10 x units. When the quantity surveyor has pushed the certifier to provide the evidence of the waterproofing being inspected, we have been told that they are unable to provide this certificate as yet as they are waiting on the certification from the actual waterproofing sub-contractor. This indicates that the certifier is not actually inspecting the works themselves.

In a recent development site that we were engaged as quantity surveyors, the head contractor had provided to us, all the mandatory inspections (except the commencement of works to site). The private certifier had also by way of email, indicated that all the works required to be inspected, had been inspected. Over the following fortnight, relationships between the developer and the head contractor failed and the financier funding the development was forced to become mortgagee in possession and complete the works via a project manager and a new head contractor.

Through comprehensive investigations undertaken by the financier, the private certifier was requested to conduct a site inspection of the site and provide a report to any failing the previous head contractor may have had, with the intention of this report to be provided to the new head contractor, once they were appointed.

The report was extremely damning and outlines a plethora of defects and non-complaint building materials, building heights exceeded, slab RL to high, fire rated plasterboard excluded from party walls where it was required and some bathrooms not waterproofed at all.

This report was completed by the same private certifier that was employed by the previous head contractor and whom only around a fortnight earlier, provided in writing that all required inspections and works completed to site were in compliance.

(iii) Accountability of private certifiers

From my understanding there is currently little to no accountability on the private certifier to ensure works are completed to the required building codes and engineering requirements. Especially considering that any defects or rectification works required to ensure the development complies, lies within the head contractor's scope of works and responsibility to rectify.

As noted above in point (ii), pertaining to extensive defects and rectification works required to be completed to an existing property, the certifier was not held accountable and the rectification works required to be completed by the new contractor, based on the findings of the certifiers report, was deemed the responsibility of the previous head contractor and legal proceedings were taken against the previous builder.

In a recent research paper pertaining to the examination of building defects in residential multi owned properties, there has been some great findings. These findings were authored by Nicole Johnston (Deakin University) and with Sacha Reid (Griffith University).

In summary, two studies have been undertaken to identify the most common building defects in residential multi-owned properties. The studies were both conducted by the same group of researchers (Easthope, Randolph and Judd).

The first study conducted in 2009 found that the most common defects identified by lot owners were water ingress, internal and external wall cracking, roofing and guttering problems and tiling faults.

In 2012, anchored off the original study, the researchers surveyed a larger owner cohort where respondents identified water leaks (42%), internal and external wall cracking (42%), exterior water penetration (40%), guttering problems (25%), defective roof coverings (23%), plumbing faults (22%), and tiling related defects (20%).

In the interest of endeavouring to find out why these defects are ever present; attempts have been made by the researchers to identify the stages (in development) in which defects arise.

Interestingly, and of a surprise to me, the study showed that 50% to 60% of building defects are attributed to design issues and would have been preventable with better design. Therefore, concluding that some 40% to 50% of defects arise in the construction phase.

Furthermore, of the percentage of defects that were attributed to the findings, some 32% originated in the earlier phases of development (including design), approximately 45% originated on site and remaining approximate 20% related to materials and machines.

It appears that data was collated from various building consultants and auditing companies, with the breakup of these providers noted as follows; some 99 x report providers from NSW, 66 x report providers from QLD and 47 x report providers from VIC.

Similarly, an additional method of further drilling down to gain a deeper understanding of the prevalence of these defects was to interview these stakeholders. With some 21 interviews conducted across the 3 states, with a guide provided to them with the questions based on review of the literature. Of these 21 interviewees, lawyers and committee members made up 12.

In the process of the data collection, and by a way of summarising the findings, it was noted that many of the interviewees suggested that human error played a significant part in the building defects. This human error was largely summarised as misuse of building products (due to lack of knowledge), poor workmanship, time pressures (cutting corners), poor supervision, lack of training, lack of licensing and trade accountability.

Having noted this, further observations (mainly two recurring observations) were made by the interviewees regarding organisations factors that contributed to building defects and the prevalence of the building defects. The first recurring observation was the motivation to make a profit and the second was time pressures that resulted in mismanaged process time allocation and co-ordination of trades.

When questioning surrounding the use of Private Certifiers was raised and if Private certification systems were flawed, the general consensus of the 12 x lawyers and committee members was that the system was deeply flawed, with committee members raising more pointed concerns that the private certifying system was not only conflicted in their interests but their documents were at times fraudulent.

In what I found to be staggering, one of the interviewees, a private certifier, noted that "it is not feasible to inspect every element of the building either before or after construction". With the certifier adding "Responsibility must be on all those involved in the building process".

Best Regards,

Marty Sadlier AAIQS MRICS
Director

MCG QUANTITY SURVEYORS

Sydney / Melbourne / Brisbane / Adelaide / Canberra / Newcastle

T

E

W <https://www.mcgqs.com.au>