

Submission  
No 176

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

**Name:** Mr Duncan Kennedy  
**Date Received:** 18 November 2019

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Partially  
Confidential

PUBLIC ACCOUNTABILITY COMMITTEE in the Legislative Council  
Re: Inquiry into the Regulation of building standards, building quality and building disputes

Lodged via  
[Public.Accountability@parliament.nsw.gov.au](mailto:Public.Accountability@parliament.nsw.gov.au)

18<sup>th</sup> November 2019

Dear Committee

Regrettably, I was unaware of your inquiry until I read about the release of your “First Report” in the paper last week. I understand that during December you intend holding further sessions and I hereby apply to appear before your Committee in respect to the

- lack of promotion,
- lack of enforcement

and perhaps

- deception even

by the relevant Departments of the NSW State Government in respect to the Security Industry Act 1997 and its predecessor Act, the Security [Protection] Industry Act 1985 as those Acts apply to the personal safety and security and other risks faced by the residents of NSW

- inside their home, strata unit, apartment, retirement villa etc., when (for example) they lock up to go to bed at night
- at their workplace under OH&S legislation
- at public amenities such as hospitals and Rural Fire Service stations
- around public infrastructure (preventable terrorism for example)

(not to mention the risk of preventable robbery and the like)

as a result of trades (used in the building and construction industries) defined under those Security Industry Acts (for example locking systems, door framing configurations, barrier security systems, fencing systems, electronic protection systems and the like) being installed illegally by building tradespersons not holding the mandatory and relevant Police security industry licences (the Act provides for serious civil and / or criminal offences) and often being installed by those tradespersons quite defectively in terms of

- those Security Industry Acts,
- the Fair Trading Act
- the Retirement Villages Act
- the Strata Management Act
- the **Property, Stock and Business Agents Act**

(and probably a host of other Acts)

I have checked your terms of reference and those matters would seem to fall within their ambit

Back on the 26<sup>th</sup> August 2019 I wrote to the new Building Inspector, in part, as follows  
“Never-the-less, and in the hope that you may be able to do something about this issue, I now write to you about the security installed by developers / builders to protect eventual residents from harm that could be caused by an intruder. I have no idea whether or not that might be implied, explicit or contemplated in your appointment criteria but if not then I would argue that it should be

Can I see if I can quickly grab your attention by developing this argument?

- Unchecked, the collapse of the Opal or Mascot Towers, or the combustible cladding issue, could result in say forty deaths and say one hundred injuries and that would be an absolute headline grabbing tragedy
- Over the last twenty years probably not one death or injury from a like event

Although there are absolutely no statistics to back me up, I believe that I have the expertise and the experience to reasonably claim that over the last twenty years there have been

- Some forty or more preventable deaths [added 18/11/19 – if one included residential stand-alone homes that number would most likely exceed 100]
- Some one hundred or more preventable rapes, preventable assaults, preventable molestations and the like [added 18/11/19 – again, add a heap more if we include residential stand-alone homes etc]

just in the apartment block industry alone, following on from an illegal entry by an intruder gaining entry through a device defined under the Security Industry Act but installed illegally and defectively by the developer / builder

You will see in the documentation below that I am claiming that in the strata industry alone some 1,000,000 or more such serious civil and / or criminal offences over the last twenty years by developers / builders in respect to products defined under the Security Industry Act that they have installed without the proper licences

Of course, I recognize that in respect to the Opal Towers and Mascot Towers and the combustible cladding issue that the financial cost of some of the building defects will be astronomical but surely human life and wellbeing outweighs that, regardless of the magnitude of those financial burdens

I could write hundreds of pages on this topic and you might be astounded on how far these issues extend (for example it should be playing its part in anti-terrorism strategies). As a licensed Security Consultant (licensed by the NSW Police) I did some 16,000 site security inspections and I estimate some 1,200 of those after an illegal entry into a building. I believe that I can claim to have done some of the most important security work in the country.”

I later added

“The Security Industry Act is administered by the Security Licencing Enforcement Directorate (SLED) – Under the administration of the Police Department

They have staff of around ten, but they have some seven or eight Acts to administer – so, that equates to around say 1 ½ staff per Act

Solely in respect to their administration of the Security Industry Act (and none of the other Acts)

- More than 55,000 licencees to oversee
- Annual licence fees of over \$9 million (which they expend on just 1 ½ staff to enforce the Act)

As a result

- Hundreds of thousands of serious breaches of the Security Industry Act every year
- Even many licensed firms breach the Act
- Much of the work defined under the Act to protect people inside their home, when they lock up to go to bed at night for example, is being done by non-licenced people and much of it defectively under that Act and under the Fair Trading Act

Because of those breaches of the Act every year we have

- Preventable death following an illegal entry into a building where the locking systems (for example) were done both illegally and defectively
- Preventable rape following an illegal entry into a building where the locking systems (for example) were done both illegally and defectively
- Preventable assault following an illegal entry into a building where the locking systems (for example) were done both illegally and defectively
- Preventable molestation following an illegal entry into a building where the locking systems (for example) were done both illegally and defectively

And yet, not one investigation was carried out by the Police Department to see whether or not a civil or criminal offence under the Security Industry Act had occurred in respect to those installations”

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### Example of the problem

Take the Retirement Village Industry. I now live in a largish Village down on the

Back in October 2017 I made a substantial submission to the Kathryn Greiner inquiry into the retirement village industry

I believe that I can reasonably estimate some 1,600 serious civil and / or criminal breaches of the Security Industry Act in this one village alone and yet I argued the problem is widespread right across the industry

Fair Trading suppressed and continue to suppress my submission.

In our Village alone

- Many front and/or back door locks that have been so defectively installed that some of them, even when properly locked, can still be bypassed in a few seconds without sound and without leaving any evidence of the breach merely by using the likes of a piece of cardboard from a Village rubbish bin – even more of them with celluloid (binder covers purchased from the local newsagent for example) and even more still with “shims” available on the internet (type into Google “gadgetsdirect – door shims”) – (none of which are possible if those locks had been installed properly – clearly the very existence of that website supports my claim – i.e., it would not exist if the problem was not as bad as I say it is) – **I remind your Committee that across NSW every year we have some 40,000 illegal entries where there was no sign of forced entry – I believe that I have the expertise to reasonably claim that some 20,000 of those were through and engaged security product installed so defectively that no trace of the B&E was evident – Note that I also have an e-mail from the Bureau of Crime Statistics confirming that they cannot tell me how many murders or rapes occurred following an illegal entry into a residence through an engaged security device regardless of whether or not there was any sign of that B&E**
- Many windows in the village locked in an open position by only a mere 2 or 3 inches (for example when residents go to bed at night) can be totally bypassed without sound in less than 20 seconds – including time to climb through the window (because the winding armatures have been screwed in place rather than riveted)
- Some of the door framing and door configurations here in the Village breach the aims and objectives of the Security Industry Act, breach clause 58 of the Retirement Villages

Act and in accordance with a High Court precedent apparently almost certainly in breach of Common Law

- Garage doors clearly designated as one of our security devices for the protection of villagers inside their home appear to have been installed illegally under that Act
- Etc.

### **So, should “building security issues” be a concern to your Committee?**

Over the last 6 months alone – and in the retirement village industry alone

ABC News Website

- 29/04/19 – Man charged with **attempted rape** of elderly woman at Greenfields (in Perth) **retirement village after he broke into her home**
- 11/10/19 - 90-year-old wakes up to confront two men in her bedroom after they had **broken into her retirement villa home** (in Adelaide)

And leading the Channel 7 evening news

- 17/11/19 - 84-year-old **seriously assaulted** inside her retirement villa in Bobbin Head Road Turrumurra when she came home to find an unknown stranger **had broken into her retirement unit**

**Now, multiply that out by the number of residences and apartments and commercial premises across NSW and it surely becomes a problem every bit as big as any other aspect that you are considering**

In August 2018, Fair Trading Minister Matt Kean visited our Village and made a promise to my face, witnessed by our Village Resident’s Committee Chairman, that he would assign two senior Fair Trading officers to discuss my submission face to face – some 3 or 4 months later he totally renegeed on that promise

In the last six months, I have received several e-mails from Fair Trading in respect to the Retirement Villages Act (NOTE: Kathryn Greiner has washed her hands of the problem saying she cannot intervene)

- (a) Fair Trading say that they cannot advise me whether or not my carpenter installed lock which when engaged (and before I fixed it by installing an added deadlock) could be breached in 3 seconds flat with a piece of cardboard without sound and without leaving any evidence of that breach contravenes Clause 58 of the Retirement Villages Act – they suggest that I, as an individual villa owner, and regardless of how many other locks in the village have been just as defectively installed, fight it out with Lendlease in court
- (b) Later Fair Trading suggested that it was \_\_\_\_\_ City Council (in respect to \_\_\_\_\_ who should not have issued the occupation certificates without checking out that all security had been done in accordance with the law (The Professional Certification Board have confirmed to me in writing that the certifier would not have signed off on this aspect)
- (c) Later still, Fair Trading told me that I should take the matter up with our Village Manager (our manager refused to answer my questions in writing and submitted on a timely basis, in respect to these issues, at our October 2018 AGM)
- (d) Fair Trading also suggested that I should take the matter up with the Police Department – we had the local Police adviser on home security address the Villagers here at \_\_\_\_\_ a couple of weeks ago – he refused to take my questions and the Lendlease representative threatened me claiming that I had no right to ask such questions
- (e) Finally, Fair Trading have confirmed that they will not release the submission I made to the Kathryn Greiner inquiry and despite my claims outlined above to the Building

Commissioner, they will not discuss the matter any further nor make any attempt at addressing the issues

I remind you Committee that:

I have had 22 questions asked and answered in the NSW State Parliament – all answers have backed up my claims

Morris Iemma as Premier sent me two e-mails – he had instructed John Hatzistergos to investigate – Iemma lost the premiership – the promised investigation never happened

Barry O’Farrell as Opposition Leader sent me some 13 e-mails saying he had variously instructed Michael Gallaher, John Ajaka, Greg Smith and Catherine Cusack to investigate – that never happened

Nathan Rees at the instigation of John Robertson read some 300 pages of my material – he called me up to parliament house to tell me that “it was the biggest scandal he had ever seen put before the NSW Parliament – within a month it would be headline news in both the Press and on Television” – Luke Foley and Michael Daley took over from John Robertson and suddenly Nathan Rees didn’t want to talk to me

David Elliott as parliamentary secretary to Premier Mike Baird acknowledged in writing that I had a case that demanded investigation but then he was made a Minister – initially he confirmed in writing that he would still fulfil his promise to see that these matters were investigated but then reneged claiming that as a Minister he could not get involved

### **In conclusion**

I am hopeful that the information that I have provided above will be enough for you to invite me to appear before your Committee.

However, should you wish me to not only expand on what I have written above but widen it to include the very much wider problems such as public school security fencing , security fencing around our jails, (I promise both are major issues) and all sorts of other building security related issues (for example strata management training manuals demand that strata managers break NSW law when it comes to engaging contractors to carry out works defined under the Security Industry Act) then I would appreciate your urgent advice to that effect

Yours faithfully

**Duncan Kennedy**