

**INQUIRY INTO FURTHER INQUIRY INTO THE
REGULATION OF BUILDING STANDARDS**

Organisation: Strata Choice
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Public Accountability Committee
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Dear Committee

FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

Strata Choice hereby makes the following submission with respect to the *Further inquiry into the regulation of building standards and the efficacy and adequacy of the government's regulation of building standards and specifically*, as follows:

For almost four decades Strata Choice has provided strata management services to the community of New South Wales, has extensive experience managing strata properties of all sizes, from 4 Lot suburban apartment buildings to 650+ Lot mixed use high density towers in the Sydney CBD to complex Building Management Committee schemes. Strata Choice employs more than 100 staff across its various business divisions and is committed to providing quality lifestyle outcomes for its clients and staff.

The cost, effectiveness and safety concerns arising from the use of flammable cladding

Since the 2014 Lacrosse Tower fire in Melbourne and the 2017 Grenfell Tower fire in London, there has been a sustained focus on addressing the issue of flammable cladding installed to residential properties in particular. Owners Corporations for the affected strata schemes have faced the issue of inheriting a hazard passed on from the original builder or have been affected by defective remediation or upgrade works that have utilized now banned or mislabelled materials.

The Lot owners [and residents] within affected schemes are faced with the inherent issue of facing a continued fire hazard and the personal anxiety that brings. The only options available to this threat is for a costly fire engineered solution or the complete removal and replacement of the substandard product with a

compliant system. Within that, implementing these solutions are costly to the individual Lot owners to fund and disruptive to the residents.

Exacerbated by this is the added cost of the mandatory insurance cover that Owners Corporation's face with vastly increased premiums to manage that risk until rectification can be attended to. The Committee should recommend that the NSW Government liaise with the Insurance Council of Australia as to providing, a more tailored and cost effective insurance product to distressed properties whilst the cladding removal/remediation is being undertaken.

Strata Choice welcomes the Project Remediate initiative by the NSW Government and the Office of the Building Commissioner and its support to distressed Owners Corporations via the interest free loans, the quality assurance scheme and the innovative project management service. Whilst Project Remediate's eligibility rightly encompasses Class 2¹ buildings at first instance, there is the continued issue that defective cladding that exists on commercial strata schemes. No doubt Project Remediate will prove successful, the Committee should look to consider that it be extended to assist purely commercial strata properties which face similar funding and insurance problems as residential.

Private certification of and engineering reports for construction projects

Strata Choice and its clients have welcomed the NSW Government's regulation of building standards initiatives, which are largely based on recommendations made in the final Shergold-Weir Report². That report found that there were significant and concerning problems with the construction industry on a nationwide scale. There is to doubt these problems have led to a manifest lack of public confidence in the quality of the defective product delivered in recent decades by some developers. This detracts from those builders and developers who consistently provide trouble free high quality construction projects.

Defects are due simply due to poor construction practice, with large numbers of practitioners lacking competence and not properly understanding the National Construction Code and/or have never received proper training on the Code's implementation.

¹ Building Code of Australia . Vol 1 Section A multi-occupancy dwellings

² Shergold Weir Report '*Building Confidence*', February 2018

Defective properties leave Owners Corporation's and its Lot owners with legacies of ongoing remediation and, more often than not, costly legal action. Much of the cost of legal action for an Owners Corporation, or indeed the rectification process, involves engineering assessments as well as discovery for the provision of plans, designs and performance solution documents.

Strata Choice welcomes this requirement for practitioners to now provide declarations for "as-built" regulated designs and variations design documents must to be submitted via the NSW planning portal within 90 days after the Occupation Certificate is issued as set out in the *Design and Building Practitioners Act* (2020) (**the Act**). Ultimately, as the eventual owner of the property, these documents belong to the respective Owners Corporation and should be fully intact.

The requirement in the Act that all registered practitioners to be 'adequately insured'³. Adequately insured means that a practitioner is required to have an adequate level of indemnity for the liability that could be incurred by the practitioner in the course of their work⁴. The Committee should consider setting a minimum level of insurance that each practitioner should hold for their respective profession. Should an Owners Corporation need to undertake costly litigation there will be a greater pool of funds to draw upon should damages be sought for defective work.

Other considerations

Building bonds and inspections

As multi-level apartments of more than four storeys in height are exempted from insurance under the Home Building Compensation Fund⁵ there is little scope for recovery for such an Owners Corporation should both a builder and developer declare insolvency. The welcome introduction of the bond and compulsory post completion inspections system as set out in Part 11 of the *Strata Schemes Management Act* 2015⁶ was a vast step forward in the alleviating the pressure on distressed Owners Corporations. But this scheme is still underutilised, it remains complex to access and has tight time constraints due to the limitations within the Home Building Act⁷ as to statutory warranty periods and the time taken for latent defects to manifest.

³ Refer s11 *Design and Building Practitioners Act* (2020)

⁴ Refer Part 6 of the *Design and Building Practitioners Regulation* 2021

⁵ *Home Building Regulation* 2014 (NSW) regulation 56

⁶ See also the *Strata Schemes Management Amendment (Building Defects Scheme) Act* 2018

⁷ *Home Building Act* 1989 - Sect 18e

There is also a small window of opportunity for an Owners Corporation to review and obtain advice on the final inspection report (being no earlier than 21 months, and no later than 2 years of the completion of the building). Simply, Owners Corporations have an limited time constraint to obtain advice and / or take legal action to preserve its rights if there are any discrepancies within the report.

As well as considering an amendment to the time constraints, the Committee should consider extending the level of the bond payable from 2% of the final construction cost to a more realistic level, more often than not the bond may not be sufficient to cover all the structural defects in the building. The cost of remediating a simple defect is often a multiple of the original new construction cost. More often than not, given the inadequate level of funds in the bond, an Owners Corporation still have to undertake costly litigation to preserve and exercise its existing rights to statutory warranties⁸.

We thank the Committee for its consideration to this submission which, at the discretion of the Committee, can be made publicly available.

Yours sincerely,

Jim McDonald
Associate Director

⁸ *ibid*