

A Better Deal for Strata Consumer Protection – Building Defects

Background

Building defects remain a major issue for strata lot owners in most new buildings. The University of NSW Sydney Futures research undertaken in 2012 estimated that 85% of new strata buildings have defects after occupation.

Confidence in strata living as a housing option is being undermined by building defects at a time when strata living is critical to delivering much needed new homes. In NSW alone over 1.1 million people now live in strata schemes. Around 70% of the new dwellings being built in Sydney are strata lots.

At the moment, there is vastly superior consumer protection when you buy a fridge, washing machine or car. And yet an apartment is likely to be the biggest purchase of your life. The protection for people buying new apartments off the plan or in buildings over three levels is particularly poor.

Key Policy Positions

Both major parties in NSW have made major announcements in the lead up to the 2019 State election (see over) prompted in part by the Opal Tower fiasco and another apartment fire in Melbourne involving flammable cladding.

These announcements are an important step forward and will help improve things eventually if actually implemented effectively. However they do not, of themselves, deliver a material or timely improvement in the consumer protection provided to people who have purchased or intend to purchase new apartments.

To address this, the following are needed:

1. Establishment of a **Special Commission of Inquiry**, or **Royal Commission** into fully addressing **consumer protection needs** of new apartment owners. Such an Inquiry needs to include (but not be limited to) consideration of the following issues:
 - a. The reduction in consumer protections for apartment owners over the past 20 years, including removal of **compulsory home warranty insurance** for apartment buildings higher than 3 storeys and **watering down** of the original **statutory warranties** under the Home Building Act.
 - b. Options for assisting apartment owners to secure their consumer rights in a cost effective and timely fashion e.g. a government funded scheme for **an apartment owner advocate**. Apartment owners should only have to engage a lawyer in extraordinary circumstances to get defects rectified.
 - c. Better consumer information regarding all players in the building chain involved in apartment building, including developers, builders, engineers and other tradespeople as well as the adequacy of legal recourse by consumers to each of these parties.
 - d. Consumer protection regimes for apartment owners in other jurisdictions in Australia and overseas.
2. A **new senior ministerial portfolio** "Minister for Housing and Building Quality" with responsibility for housing policy, building quality regulation and strata housing policy and services as per separate OCN policy document.

Building Defects – Recent Policy Announcements in NSW

Labor's current proposals¹ are summarised as follows:

1. Enacting the following two key recommendations from the report by Michael Lambert² released to the public in 2016:
 - a. Introduce a standalone building act to strengthen regulations, improve consumer protections and transparency around peoples' rights, and raise professional standards; and
 - b. Establish a new building authority to bring together and build on existing resources to ensure increased oversight and accountability of every person in the construction chain.
2. These key initiatives would be supported by:
 - a. Introduction of a 'chain of responsibility' for everyone involved in the building process;
 - b. Reforming the certification process;
 - c. Developing protocols governing the relationship between certifiers and local councils;
 - d. Establishing a task force to crack down on 'phoenixing' i.e. where dodgy builders and developers hide behind shelf companies to avoid liability; and
 - e. Reviewing the efficacy and impacts of the strata building bond and inspections scheme.

Liberal National Party proposals³ include implementing the Shergold Weir Report⁴ (published in 2018) recommendations requiring:

1. Building designers, including engineers, to declare that building plans specify a building that will comply with the Building Code of Australia;
2. Builders to declare that buildings have been built according to their plans; and
3. Building designers and builders to be registered.

They also include commitments to:

1. appoint a Building Commissioner to act as the consolidated building regulator in NSW, including with responsibility for licensing and auditing practitioners; and
2. Clarifying the law to ensure there is an industry-wide duty of care to homeowners and owners corporations so that they have the right to compensation where a building practitioner has been negligent.

¹ Letter from the Shadow Minister for Innovation and Better Regulation to the Owners Corporation Network dated 21 January 2019

² Independent Review into the Building Professionals Act 2005 by Michael Lambert, released in 2016

³ Press release by NSW Minister for Better Regulation and Innovation Press Release 11 February 2019

⁴ Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia, Peter Shergold and Bronwyn Weir, February 2018