

Parliamentary Inquiry into Regulation of Building Standards, Building Quality and Building Disputes

OWNER CORPORATIONS NETWORK

OPENING STATEMENT

Chair, Committee Members,

Thank you for inviting the Owners Corporation Network to appear before you today. My name is Jane Hearn - I am the acting Chair of OCN stepping in for Mr Phil Gall who is interstate. I appear with OCN Executive Officer, Karen Stiles.

The fire in the Lacrosse building in Melbourne and the catastrophic Grenfell fire in London have brought the issue of flammable cladding to the fore. In NSW, the public evacuation of Opal Tower and Mascot Tower has put a spotlight on the entire industry. The independent evidence has shown for some time that building defects is endemic in high rise residential buildings. It is self-evident that NSW is facing a systemic failure in the industry and in the regulatory system.

There are four major factors that have delivered the 'defects crisis':

1. The introduction of self-regulation to the building code in the name of housing affordability – without regard to the cost of rectification.
2. The importation of cheap and unsafe building products like flammable cladding.
3. Urban consolidation as a government objective enabling taller and more complex residential building, resulting in a clear threat to life.
4. The introduction of the “design and construct” model with its \$2 “single purpose vehicle” – to deliver the cheapest outcome.

There are now over 80,000 strata schemes housing over a 1 million people. 38% of schemes were registered after 2000. With rapid urban development, more and more people are living in increasingly taller, more complex residential and mixed-use buildings.

At the same time the level of consumer protection has been wound back. Home warranty insurance for buildings over 3 storeys was removed in 2003 leading to the perverse outcome that riskier constructions are the least scrutinised. The risk of costly defects has been shifted away from developers, builders, and government to the innocent purchaser. These buyers have no bargaining power and little more than a glossy brochure of their “award-winning” luxury apartment.

New strata owners are at a significant disadvantage. They do not know each other and have little knowledge, no funds and may have limited English. The handover of a building is easily exploited to cause delay and avoid warranty obligations. The strata manager is appointed by the developer, and treads a very fine line. Proving a claim is a long, technical process and the use of \$2 companies and “phoenixing” leaves them with an expensive pyrrhic victory. They have nowhere to turn.

Living with defects can be devastating and it is a recipe for conflict, especially if it is a minority of owners directly affected. The impact on peoples' health and wellbeing while they live with the defects is least researched part of the defects story. And, we must not forget the people living with flammable cladding, many of them on fixed incomes. In NSW, the legal obligation and financial burden has been imposed entirely on innocent owners.

First Step

We welcome the Premier's commitment to introduce urgent reform as the first step to deliver higher construction standards. OCN is part of a key stakeholder group working to agree on the first tranche. We must prevent defects in the first place. Licensing builders, with extra requirements to build above 3 storeys, would be a start. Protection for the interests of the ultimate owners needs to be embedded earlier in the construction process.

The Insurance Council of Australia has recommended that the States and Territories adopt a ten years defects liability. This is the global standard that we must move to. But we also need a more effective, less conflict-ridden process for when defects do occur. I refer you to the research paper on decennial liability and insurance included with our submission.

It is time for some blue sky thinking.

NSW now has the opportunity to lead the way.

But this problem has a long tail.

What is to be done right now?

OCN has recommended to the NSW Government that it:

- (1) Develop a strategy to finance and ensure rectification of buildings with flammable cladding as a priority; and
- (2) Look into funding options for owners left with significant defects and no-one to sue, such as long term no interest or low interest loans - 7% is not acceptable.

In closing, defect issues are just one of dozens of complex issues facing strata schemes. This is not small-scale – about 20% per cent of people live in strata and some predict it will be 50% by 2040. The vast majority of schemes are less than 20 units (89% LRS 2018) and have limited capacity to obtain expert advice. The number of high-rise buildings (4 storeys +) is increasing housing larger populations in more complex arrangements. In the last 12 months alone another 18, 000 high rise (4+ storeys) have been approved.

The resources of the Department of Better Regulation and Innovation have not kept pace with the growth. OCN urges this committee to recommend that NSW create a role for Commissioner for Strata Living and fund a Strata Committee Support Service.

Thank you.

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Director OCN
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