

### Background

The failure of the much publicised Opal Tower building in Sydney and the recent combustible cladding-fueled fire at Melbourne's Neo200 tower has highlighted the extent of the problem across Australia with the poor-quality construction of multi-level apartment buildings. Western Australia is by no means immune to the issues publicised on the east coast with apartment owners in this state facing costly legal battles and repair bills for defects inherited from the original builder. One example of this was made public in March 2017 when the owners of a prominent scheme in East Perth were left with extensive building defects following the collapse of one of WA's biggest builder-developers, Diploma Group.

This was just one of many buildings affected by severe building defects, though many are too afraid to speak out for fear of damaging their property values.

Strata Community Association WA's membership includes people who own and work with strata property in WA, representing more than 110,000 strata lots. The prevalence of building defects and the challenges faced by our members in attempting to have these rectified is one of the most talked about issues affecting the strata industry.

Some examples of building defects experienced in WA include:

- Failed waterproofing to wet areas, planter boxes, courtyards and balconies (which may not be evident for years);
- Combustible cladding has been identified by Building and Energy on several residential buildings, with the full extent of this issue not yet known;
- Imported window assemblies that tend to leak and are not sized correctly;
- Poor quality plaster and render that cracks and loosens, and in some cases detaches and falls;
- Malfunctioning services and lack of compliance with fire codes and standards.

Post completion of a building and once purchasers have settled on their apartment, it is often very difficult to get the builder to attend site to rectify the defects that are reported. This puts the owners in a precarious position where, in order to comply with their obligations under the *Strata Titles Act 1985* (with those same obligations applying under the *Strata Titles Amendment Act 2018*), they **must** repair and maintain common property. Therefore, regardless of the fact that the builder may be legally obligated to rectify a particular defect, if the builder fails to do so in a timely manner, the owners have an obligation to arrange the repairs at their own expense. This is exacerbated in circumstances where the defect is causing a risk to occupant and/or public health and safety.

In cases where the builder refuses to rectify a defect, or in the event that the builder goes in to administration, the owners are then left to carry out rectification works at their own expense as there is no requirement for compulsory Builders Warranty/Home Indemnity Insurance policies for residential buildings over 3 storeys.

The ultimate outcome is that we often find that it is the building owners left to fund expensive defect rectifications due to failures of the builders and consultants responsible for delivering the completed building.

The issues surrounding building defects can be summarised in these key areas:

- 1) Qualified supervision during the construction phase is inadequate. Private supervisors are often ill-equipped to ensure that standards are being met, and there is no government supervision.
- 2) Private certifiers/surveyors may have a conflict of interest when engaged by a builder/developer to sign off on a development as meeting all required standards, particularly if those parties have an ongoing working relationship. Further, many defects may be hidden beneath the surface if not picked up by regular inspections throughout the construction phase.
- 3) There is no insurance available for high-rise buildings and no protection or funds available for property owners in cases where the builder fails to rectify defects. This causes financial hardship for many owners, particularly those in lower socio-economic areas where build quality is likely to be even lower in order to keep costs down.
- 4) Builders often do not attend to repairs in the necessary timeframes, thus requiring the property owners to arrange and fund the repairs to comply with their own obligations and duty of care.

We note that the *Strata Titles Amendment Act 2018* and *Community Titles Act 2018* were a priority of the state government in order to slow the urban sprawl and increase density in inner city areas and around transport hubs. However, infill targets and the state government's vision for vibrant, higher-density communities, will not be achieved if home buyers have no confidence in buying apartments and building owners cannot afford to maintain the building in good, safe working order.

### Action SCA WA Seeks

We believe that the following steps must be considered to improve the construction quality for apartment developments moving forward:

- NSW has recently legislated a requirement for a retention fund where the builder is required to pay 2% of the total construction cost into a trust that the owners can access if defects are identified within the first 12 months and not rectified. This has not yet taken effect in NSW and we recommend observing how this works in NSW before seriously considering a similar initiative in WA.
- A nationally consistent approach to the registration of building practitioners, so that builders couldn't take on work they didn't have the skills for.

- Mandatory inspections including structural inspections, together with certification, at various key milestones during a build. These are often called for in contract documentation, however are not a mandatory requirement.
- Mandatory certification/compressive strength testing of all structural concrete. Often MPa is compromised due to water being added to aid pumping etc.
- Better collaboration between private building surveyors, also known as certifiers, and state and local government to audit building work and take action if there were defects.
- Better mechanisms for the strata company to take action against the building surveyors/ certifiers by allowing the strata company to progress complaints against the builder and building surveyor concurrently.
- Fire authorities should be involved with giving feedback and required to sign off on designs from an early stage.
- There should be a code of conduct for private building surveyors/certifiers and their role should be made clear.
- There should be better documentation from designers showing buildings will comply with national standards and these plans should be reviewed by others.
- On-site physical staged inspections should be required for all building works.
- A comprehensive digital building manual should be created for buildings so that later owners have copies of as-built construction documents, fire safety details and maintenance requirements for all equipment and facilities.
- Implementation of a product certification system for high-risk building products, such as combustible cladding.
- Mandatory licencing of contractors carrying out works that are of a structural nature. It seems illogical that painters are required to be licensed but contractors carrying out vital works such as pouring structural concrete, for example, can do so without any qualifications.
- Extend coverage of mandatory builders warranty insurance to cover residential buildings over 3 storeys and ensure the minimum level of cover required is adequate relative to the size and scale of the build.
- Implement very clear disclosure requirements to ensure purchasers are aware that the 6 year statutory warranty period commences from the date of practical completion and that defects pursued following the expiry of this period are unlikely to be addressed.

Further, we seek support from government for funding assistance for severely affected owners to make repairs in cases where they have no avenue to pursue the builder or responsible parties (eg. where the builder has gone in to administration).