

Towers of trouble

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Some of Sydney's new high rises are so plagued with faults that the units fail building codes and are difficult to resell. Gerard Ryle, Harvey Grennan and Jane Burton Taylor report on a system that has gone dangerously wrong.

The unfortunate events at Regis Towers - one of Sydney's newest and biggest apartment blocks - started to unfold in January when Beryl Hardy Nisbett decided to sell. Things might have remained hidden for longer if the couple who wanted to buy her apartment hadn't insisted on bringing along a building inspector. The inspector produced a 16-page report which concluded that "reasonable habitation of the unit would be extremely difficult".

The apartment had cost \$500,000 three years earlier, but the list of alleged building defects was long: cracked plasterwork, incomplete walls screened by false ceilings, mechanical exhaust fans that were inoperable and a fire door that was considered unsafe, according to the report.

Moreover the inspector, Dominic Ogburn, determined that the problems in the Meriton development were unlikely to be isolated. There were, after all, 554 other residential units in the three Castlereagh Street, Pitt Street and Campbell Street buildings that make up the block.

"We strongly recommend that a comprehensive building survey be undertaken on the common areas by the owners' corporation, not least of which to identify similar incomplete unit-separating walls and defective external render," he said.

Hardy Nisbett lost her sale but elements of the report found their way to Sydney City Council, which agreed to inspect a sample of 15 units.

The council inspectors found 14 to be in breach of the Building Code of Australia and notices under the Environmental Planning and Assessment Act began to rain down on the owners' corporation.

Three council-issued notices in March dealt with alleged structural building cracks, defects in a smoke detection system and problems with fire insulation.

On April 24 a formal fire order was issued which stated: "The provisions for fire safety are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire."

Mark Longobardi found out about the fire order because it prevented the sale of his apartment, but others found out about the fire order only this week. Some residents are probably just finding out now.

So, because there is no suggestion that any laws were broken, what laws could allow this situation to occur?

And where does Regis Towers fit into the growing number of complaints about alleged building faults in multistorey units across NSW?

You might have heard the complaints.

There was Harry Seidler's lauded Horizon apartment tower with its intermittently failing lifts, the prestigious Wharf Terraces at Woolloomooloo with its acoustic problems, the Highgate apartment in Kent Street with its alleged electrical and plumbing faults, the Wondakiah at Waverton with alleged rust marks and the Observatory Tower in Kent Street, or as some residents dubbed it, "the clever building from hell", where the lights and air-conditioners came on unexpectedly.

In each case the developers have agreed to fix the problems.

Airing grievances in the Supreme Court earlier this year were residents of the exclusive Hyde Park Towers in Elizabeth Street, where penthouse apartments in the 34-storey block sold for prices of more than \$1.5 million each.

There the residents made a \$17 million statement of claim that alleged a list of problems including sewage smells caused by faulty plumbing, poor internal finishes and \$2.4 million worth of work they claim was needed to meet fire safety requirements. The case is still proceeding.

Even Premier Bob Carr's so-called "pattern book" of the 10 best examples of residential blocks in the state has not escaped.

The *Herald* has learnt that two of Carr's favourite blocks the Peninsula at Manly and Domain at Marrickville have been the subject of concern by residents over the quality of building work. They include alleged problems with plumbing and internal finishes.

You might have heard the complaints without realising where they fit into a bigger pattern. Because, taken in isolation, no single complaint would be enough to lead to calls for reform.

But taken together, according to some observers, they amount to a crisis. They say it is a crisis that is costing hundreds of millions of dollars in unnecessary inconvenience to thousands of consumers each year.

"I think the tragedy is already there," said Jerry Tyrell, a private building inspector. "People are living in noisy buildings ... defective buildings. A lot of people's lives are being altered by it, both financially and emotionally."

To better understand the source of the discord, The *Herald* interviewed dozens of State Government and council officials, industry and insurance executives, property owners and private building inspectors.

We also reviewed hundreds of council documents, strata documents, court documents and previously undisclosed State Government documents. The picture that emerges is not a happy sight for consumers.

Where once there was only one major body that handled building complaints, there is now a plethora of confusing, and sometimes very expensive, options. These can involve tribunals, courts and insurance claims.

Responsibility for building standards is spread across two State Government departments and relies to a great extent on 151 private building surveyors who are accredited by an organisation based in Adelaide.

Local councils, it would appear, are often just the keepers of records supplied by private contractors. Councils don't always check new residential buildings themselves and they often don't hear about problems until well after people move in.

Some say the rot began in 1994 with the effective abolition of the Building Services Corporation (BSC), after its board was dismissed.

Established five years earlier, its role was to handle consumer complaints about builders and to administer a fund gathered from selling home indemnity insurance. This fund, which was levied on builders, was designed as a safeguard to pay out consumers who had been wronged.

The popular perception of the BSC was that it didn't work very well but, in hindsight, it seems it might have been judged too harshly and too early.

"The Building Services Corporation certainly had some problems in terms of quality of delivery and focus on consumers but at least it was a very specifically focused body," said Norm Crothers, a spokesman for the Australian Consumers Association. "It might have been perceived to be close to the industry but it was better than what we have now."

In 1997 the BSC was merged with the Department of Fair Trading, which lumped complaints about substandard building work in with every other consumer complaint.

"The Government removed the only body that was specifically designed to look after consumers," said Allan Colquhoun, a former BSC board member. "There was nothing seriously wrong or corrupt about the BSC. I am not saying it was perfect but it was in its infancy, for God's sake. It was improving."

On one level, the statistics do appear to indicate that things were better.

In 1992 the BSC brought 1063 prosecutions for bad building practice before the local courts. Last year, the number of successful prosecutions was 32, according to figures obtained from the Department of Fair Trading.

As part of the merger of the BSC with the Department of Fair Trading, the Government decided that it would privatise building insurance something builders used to have to get from the BSC before starting a new building.

The concept behind private insurance was that it would force bad builders out of the industry. But the reality appears to have proved quite different.

Two of the three major private insurers turned out to be FAI and HIH companies which are now the subject of a royal commission.

According to the Master Builders Association, private insurance proved so easy to get that builders were even being offered three months' free cover. Regardless of their histories, even the bad builders were being reinsured.

Those events might have contributed to the decline in building standards, but some observers claim that the biggest single reason has been the growing incapacity of public authorities to act as a proper watchdog.

Graham Jahn, the president of the Royal Australian Institute of Architects, said the shift began as early as 1993 when tradespeople began to certify their own work and these certificates began to be relied upon.

"There has been a general drift away by councils and other bodies from getting involved in the private building area," he said.

"That general drift away has created a climate ... where there is not much of a culture of having your work inspected pretty much by anybody, including architects or arms-length contractors or by local councils."

In today's NSW, the person who installs your fire door is the person who issues the certificate to say that it has been installed correctly.

The person who says that your new building complies with the national building code can be a private contractor who is being paid by the developer. And this can be the same person who certifies that the building has been built correctly.

Asked if there were issues flowing from that, Jahn replied: "Clearly there are some issues. How strongly they relate to the drift ... I can't answer that directly."

Three years ago, just as the reliance on so-called "self-certification" was growing, the State Government introduced a scheme that offered developers an option to almost completely privatise the process.

The change opened the way for private building surveyors to do much of the work of local councils by allowing them to issue construction certificates, to inspect various stages of construction and to issue certificates that stated buildings were fit for habitation.

Under the change these "private certifiers" would report directly to the developers who had contracted them to inspect the buildings.

The *Herald* has learnt that private certifiers are used in up to 30 per cent of all new buildings in NSW. Significantly, the majority of those jobs are the bigger projects being undertaken by the larger developers.

Patricia Gilchrist, the executive director of the Urban Development Institute of Australia, which lobbied for the change, said the new system was working well and had cut down on the lengthy delays of the old system.

"I know that sometimes people see it as something a little bit perhaps sinister, but it is really not the way we see private certifiers ... [They are] a spur to better service," she said.

"Where councils held the monopoly, we felt we weren't getting the service. It is particularly a timing issue, there were delays, and when developers have got borrowed money and when they have sold units, people are anxious to move in."

But Peter Woods, the president of the Local Government Association, which opposed the move, said he didn't think the Government had thought the consequences through.

"Our view in local government is that it's not just about maintaining bureaucratic control, it's about representing people to protect their interests," he said. "One of those interests is to ensure quality control."

"We saw enough bad practice before private certification came in ... what happens when we open the floodgates and say all we want is a signature on a piece of paper?"

Some local councils claim to have been left confused by the change.

"[The process] has been done in the absence of the necessary level of detail as to who is going to be responsible for what when things start to go wrong," said James Harrison, who until recently was the director of planning and building at South Sydney Council. "Under the new system it is a lot less clear as to who should or shouldn't be investigating complaints."

Harrison said 13 problem buildings passed by private certifiers had already been identified in South Sydney. In one case, a private certifier had signed off on 39 unauthorised additions, including 14 illegal rooms.

The Lord Mayor of Sydney, Frank Sartor, said his council had also identified a number of problem buildings. "Any fool should be able to see the enormous conflict of interest they [private certifiers] have got," he said. "They should be able to see that this is a major problem."

"The simple fact is that if I am a certifier I will be loath to make trouble for a major developer who gives me a lot of work, so they have a major conflict of interest. I cannot believe that such bad legislation ever got enacted."

The *Herald* has learnt that the main accreditation body for private building surveyors the Adelaide-based Building Surveyors and Allied Professions Accreditation Board (BSAP) is now under review by the State Government.

Of particular concern to the Government is whether BSAP is capable of investigating complaints against its members.

So far, 34 complaints about work carried out by private certifiers in NSW have been made to BSAP, yet none of the complaints has led to the withdrawal of accreditation for any of the surveyors complained about.

BSAP became involved in the process in NSW after the Government called for interested parties to apply for the right to accredit private certifiers.

One of those who answered the call was the Australian Institute of Building Surveyors the organisation behind BSAP.

Geoff Mitchell, the institute's national president, said it set up a system whereby surveyors who had previously worked for local government but who now wanted to work for themselves could apply for recognition.

"Certainly the professional ethics of my members put a lot more accountability into the process than what was there before," he said.

"A lot of complaints that have been received [about members] have been purely driven by a misunderstanding of issues rather than technical incompetence."

But the *Herald* has learnt that the process to determine who a "suitably qualified" person was under the changes was left largely to BSAP because the laws did not stipulate what qualifications were needed.

Now, three years into the scheme's operation, the Planning Minister, Dr Andrew Refshauge, is so concerned about the accreditation criteria being used he intends to introduce major reforms to the process early next year. "There has been some suggestion that there has been some problems," he said. "There are some significant changes occurring ... Making sure the skills, the competences, are appropriate and that [certifiers] are assessed appropriately." IN RELATION to Regis Towers, it would seem that private building surveyors cannot be blamed, because the buildings were signed off by Sydney City Council. There does appear, however, to be an issue about the extent to which the council relied on the honesty of the various subcontractors used by the developer, Meriton.

The *Herald* was able to obtain access to thousands of documents in the council's own files in relation to Regis Towers, and the picture that emerges is sobering.

The documents show that Sydney Council relied to a major extent on dozens of certificates issued by the numerous subcontractors who built the building and who checked its safety aspects. The subcontractors said the work had been completed and the council appeared to have believed them.

Ross Kocass, a Meriton spokesman, said: "It was done under the old system [where] we employ subcontractors, they certify to us that they have done the work as per the plans, and we then certify to council.

"What they [the council] inspect or what they look at is not up to us. And basically it can't be, because it needs to be random."

At least one other local authority was also involved.

The documents show that in January 1999 and again in September 1999 officers from the NSW Fire Brigades visited and inspected parts of the buildings on a random basis.

Three of the resultant reports carried the following paragraph: "Based on certification received and inspections of the building, it is considered that adequate provisions have been made for the preventing and extinguishing of fires, and the protection and saving of life and property in case of fire."

And yet, in April 2001, the City of Sydney issued a fire safety order against the building an order that has yet to be lifted.

Sartor said that under the Local Government Act 1993 the council had no choice but to accept the certificates from people the act defines as "appropriately qualified" persons. Again, the law does not define who an appropriately qualified person is.

"We relied on the certificates that were given to us," Sartor said. "We were obliged under the act to accept these certificates."

Meriton said that once the problems were brought to its attention by the council, the company immediately went back in and fixed them, even though there was no legal obligation do so.

"We were under the impression that everything done there complied with the Building Code of Australia and that, as you know, is one of the most stringent codes in the world," Kocass said.

"At our own cost we went back there and we inspected every unit in the whole place, with the exception of 18 units. We didn't inspect those 18 because we couldn't get access."

"It was basically a commercial decision [to go back in] because our name obviously helps us succeed in the market. Without that we have a lot of problems."

Meriton said it had hired private certifiers to convince the council that the building now met the building code.

For its part, the council wrote to residents this week to say that it would be undertaking its own inspections, beginning on Monday.

The *Herald* understands the council will inspect only 10 per cent of the units.

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