



**DON LEDINGHAM**

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SUBJECT: Consumer Protection for the Building Industry - Shergold Report  
DATE: 23 July 2019  
TO: Dept of Fair Trading

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The current spate of reports of major defects in buildings has brought to a head the weaknesses in the property market whereby the property purchaser of Residential Flat Buildings, (High Rise Apartments) has very little protection when defects are discovered after they have purchased their property.

No doubt the implementation of the Shergold Report will go a long way to improve the performance of the building industry however I believe that it will not solve the problem of the vulnerability of Unit owners when facing costly repairs caused by inherent building defects.

For residential homes the Home Warranty Insurance, or Home Building Compensation Fund (HBCF) as it is now referred to in NSW, covers the homeowner (and subsequent owners) where the contracted building work is incomplete or defective and the builder has either died, disappeared, become insolvent during construction or has failed to respond to a rectification order within 30 days of it being issued. The cover lasts up to 6 years from completion of the domestic building work or termination of the domestic building contract (6 years for structural defects and 2 years for non-structural). In NSW for example my understanding is that the HBCF is only available on residential buildings with a value over \$20,000 and has a limit of \$340,000. Similar legislation is enacted in other States.

Unfortunately a similar insurance scheme such as HBCF does not apply to Residential Flat Buildings.

In yesterday's building environment the Architect and the respective engineering disciplines i.e. structural, mechanical, electrical, hydraulic were able to monitor the performance of the builder and various trades due to their engagement for full design services.

In today's building environment the Developer has complete control over the building processes. Usually the design team carry out design concepts only and the Developer/Builder engages contractors to complete the works under a design and construct basis.

Authorities have opted out of inspecting the works and now rely solely on private certifiers to certify that the completed project is in compliance with the appropriate Standards and Regulations.

Unfortunately these procedures have proven to be unsuccessful as in my role as an expert on Hydraulic Services issues I have observed a number of circumstances whereby expensive replacement/repair has been required.

The current spate of building defects where buildings have become uninhabitable have brought these issues to a head.

I have identified some of the issues that have allowed this situation to develop:

1. Developers are cost driven so that they are always looking for a cheaper and faster method of construction.
2. Subcontractors are usually engaged on a design and construct basis.
3. There is no organisation except for the builder himself checking the works of the builder and the subcontractors on site.
4. Building materials and methods of construction are becoming more sophisticated and sometimes untried which increases the risk of failure.
5. New materials from other countries are often accepted on the basis of overseas standards such as the Din standard. These standards are not always appropriate for Australian conditions
6. Private Certifiers are engaged by the builder which can compromise his impartiality.
7. Private Certifiers do not have the training to understand the technicalities of every component of the building and rely solely on certificates provided by the installing contractors.
8. The Certification System allows the installing Contractors to certify their own works.
9. It is possible for a Contractor to Design, Install and Certify his own works without any other legal identity checking his design, checking that the installed works comply with codes and checking that the Certification is appropriate for the works.
10. The Authority will accept the certification of the private certifier verbatim without checking in detail whether all the certificates presented are appropriate.

The above issues highlights the risks in building which in the past have resulted in failures and unless addressed will result in failures in the future

The issues raised in the Shergold report to improve the qualifications of participants in the building industry and to strengthen the rules and regulations will go a long way to improve building industry standards however it will not provide protection to the Unit owner in the event of costly building defects that occur outside the current warranty periods.

The only way to protect the Unit owner is to indemnify the owner against building defects for a reasonable period of time

I would suggest that the Developer/Builder be required to Warrant the building against any building defects and that an appropriate financial scheme in favour of the Unit Owner be instigated to cover the cost of repair without limit for a period of ten years. Such warranty should be transferrable to a new owner within the ten year period.

The financial scheme could be in the form of a bank guarantee or Insurance policy and should be comprehensive enough to cover all eventualities of non performance of the Developer/Builder so that the current and future owner is protected for the ten year warranty period.

The NSW Dept. of Fair Trading quotes on their website that:

“**NSW Fair Trading** safeguards the rights of all **consumers** and advises business and **traders** on **fair** and ethical practice. ... **NSW Fair Trading** investigate unfair practices and ensures that the products sold in **NSW** are safe and meet their regulations and safety standards.”

An appropriate insurance scheme similar to HBCF will achieve these goals

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