12

Regulation, deregulation and re-regulation: The apartment quality crisis in Sydney

Bill Randolph, Martin Loosemore, Laura Crommelin and Hazel Easthope

On 24 December 2018, news broke of cracks appearing in a new high-rise tower block in Sydney Olympic Park. For the unfortunate 3,000-odd residents of Opal Tower, the beginning of the holiday season had turned into the start of a nightmare. They were evacuated that night, and within days the New South Wales state government had launched an official inquiry. Some two-and-a-half years later, a multimillion-dollar settlement had been reached with residents, and the structural defects had been repaired. But the legal fight over who was responsible – developer, builder, contractors, certifiers, engineers, planners – was still rumbling through the courts (Bartsch 2022).

With the Opal Tower evacuation following the tragic Grenfell Tower fire in London in 2017 (BBC 2019) and the 2014 Lacrosse cladding fire in Melbourne (Dunstan 2019), the risks of defective apartment construction were becoming harder to ignore. But for those paying attention, the evidence had long been accumulating that the New South Wales apartment building industry was in crisis. Fifteen years prior, a final report of the New South Wales Parliamentary Joint Select Committee on the Quality of Buildings (the Campbell Inquiry) recognised the lower level of consumer protection afforded to home buyers compared to other consumer items, especially with regards to defect rectification (Joint Select Committee on the Quality of Buildings 2002). It noted the failures of the deregulated building certification

system and "the general lack of professional rigour" (Joint Select Committee on the Quality of Buildings 2002) in the industry, which provided buyers with little visibility and assurance that apartments were free of defects. The report also dedicated a whole chapter to the issues around quality in residential strata schemes (i.e. apartment complexes).

Since 2002 there have been multiple government inquiries, committees and reports on a range of building quality issues, including a major report by Lambert (2015) on the New South Wales system and a high-profile national review by Shergold and Weir (2018). Researchers also raised the alarm long before the Opal Tower evacuation. Research published in 2012 by two of the authors reported that 72 per cent of strata owners in New South Wales were aware of defects in their buildings, rising to 85 per cent in buildings built since 2000 (Easthope, Randolph and Judd 2012). And owners' advocacy groups and industry participants had also been highlighting the issues (Owners Corporation Network 2017), to little avail.

Despite this history, the furore that erupted after the Opal Tower incident seemed to come as a sharp wake-up call to the New South Wales government and the development industry. Suddenly, defective apartment complexes were featuring on front pages (Saulwick, Gorrey and Visentin 2019), alongside reports of recalcitrant developers not fixing defects or creating shell companies to carry out apartment projects then shutting them down before they can be pursued over defects costs – a practice known as "phoenixing" (Gladstone and Fellner 2019). Further research also emerged to emphasise the extent of the problem. A report by the Construction, Forestry, Maritime, Mining and Energy Union (2019) estimated that more than 3,400 residential buildings across Australia had combustible cladding. Our own research examined documentation for a random sample of strata-titled properties completed between 2008 and 2017 across three Sydney local government areas, and estimated that at least 51 per cent had defects (Crommelin et al. 2021). Common defects included internal water leaks and external water ingress, structural cracking and fire safety defects – the same "big three" areas of concern identified by Johnston and Reid (2019). These findings made clear that many defects were not simply cosmetic issues, but problems that could threaten health and safety. Research also demonstrated that the costs of defective work are

significant, both financially (with rectification expenses estimated at between $5.2 billion and $7.2 billion nationwide: Equity Economics & Development Partners 2020) and emotionally (with measurable mental health impacts on owners: Foster, Hooper and Easthope 2022).

With media and public attention now firmly focused on the issue, the resulting threat to "consumer confidence" (New South Wales Government 2019) in purchasing apartments prompted a rapid regulatory response. Most notably, this involved the appointment of a Building Commissioner dedicated to improving building quality, who drove the introduction of major legislative reforms in 2020. But why did it come to this? In many ways, the story of apartment defects in New South Wales is one of a confusion of regulation, deregulation and re-regulation, compounded by government and industry insouciance about enforcing quality compliance despite mounting evidence of the market's failure to police itself. This chapter draws on findings from our recent research (Crommelin et al., 2021), including interviews with 66 industry experts, to illustrate how the regulatory framework failed to offer sufficient protection to apartment buyers for decades. The result was a need for rapid government re-engagement with quality oversight, after the Opal Tower fiasco made the prevailing deregulatory approach politically untenable.

Where did it all start?

The start of the apartment defects crisis in New South Wales can be traced back to intersecting processes that came together during the latter part of the 20th century, in a climate of increasing market liberalisation.

Firstly, the introduction of strata titling in 1961 radically rebalanced the risks and responsibilities of apartment development. Previously, apartment buildings were owned either outright or through company title (where individual owners held shares in a company that owned the building). Company title exposed lenders to risk, as they could not gain access to a separate title in the event of a borrower default. Strata titling removed this risk by creating separate titles for individual apartments, thus greatly expanding the finance available for

apartment buyers and freeing developers to sell to anyone who could secure a mortgage (Easthope 2019). This simple but fundamental change launched the strata revolution.

The second factor was the sugar hit of financial deregulation after the 1980s, which allowed funding to be funnelled into both the supply and demand side of the housing market. The deregulated financial market gradually built the pressure under a ballooning asset bubble, of which residential property became a major beneficiary. This "financialisation" of housing (Aalbers 2016) radically reshaped the supply and demand of housing as a financial asset generating capital gains. This was further boosted by the rise of the mum-and-dad investor landlord, supported by favourable tax changes in 1999 when the pre-existing negative gearing benefits for landlords making losses were compounded by the 50 per cent reduction in capital gains tax liability on sales. At the same time that governments were significantly reducing investment in public housing, these neoliberal policies drove the market provision of rental housing as a substitute and laid the foundations for a dramatic expansion of the private apartment landlord market (Pawson, Milligan and Yates 2020). When high immigration levels, the low interest rate regime of the 2010s and monetary easing were added to the mix, this further inflated property values and added to the attractions of apartment development (Wood and Viforj 2015).

Thirdly, the strata revolution gave rise to an asymmetric development model that allowed unscrupulous developers to take advantage of the "client" being an uncoordinated group of individual consumers who are likely to be relatively unsavvy (compared to commercial or institutional clients). As Easthope and Randolph have argued, this development model is characterised by fragmented responsibilities and split incentives for decision-making across the design, construction, marketing and operational phases of a building's life cycle, thus encouraging risk shifting to end users (Easthope, Randolph and Judd 2012; Easthope and Randolph 2016). This has been compounded by the increasingly common off-the-plan sales model that puts buyers in a weak market position by selling homes before they are fully specified and built, with limited opportunities to back out if the final product does not meet expectations (Reid et al. 2021).

Adding density into this heady mix was the final component. The growing aversion to urban sprawl among city planners by the 1990s, motivated by concerns around future sustainability (Haaland and van Den Bosch 2015), justified and spurred the new "compact city" planning orthodoxy favouring urban density and renewal (Randolph 2006; Bunker et al. 2017). Developers were now encouraged to build at much higher densities than ever before, inevitably adding complexity to the construction process.

Together, these elements – the strata revolution, the financialisation of housing, the favourable investment environment and compact city planning – set the scene for a 21st-century apartment boom across Australia. And boom it did! In the ten years to the end of 2021, some 870,000 new multi-unit dwellings were approved nationally (ABS 2022, Table 6). By 2017, apartments accounted for around half of all dwelling output compared to just over a quarter in 2009 (Troy et al. 2020). Ninety per cent of this growth was in major urban areas (Rosewall and Shoory 2017) and, by 2020, around 20 per cent of the population lived in strata properties, with a shared insured value of over $1 trillion (Easthope, Thompson and Sisson 2020). In the process, apartment buildings also got taller. In the 15 years to 2018–19, the number of building commencements in medium-rise (4- to 8-storey) apartment buildings increased by 95 per cent, in high-rise (9- to 19-storey) buildings increased by 153 per cent, and in super-high-rise buildings (more than 20 storeys) by 361 per cent. In contrast, building commencements in walk-up buildings (up to three storeys) declined by 46 per cent (ABS 2020).

Motivated by the prospect of enormous profits in an undersupplied market, new developers entered the fray and began building increasingly tall and complex buildings. Tradespeople were now faced with new building techniques for which traditional methods were inadequate. But in the rush to maximise boom-time profits, developers often put contractors under extreme pressure to complete jobs quickly to meet tight financial deadlines. This market climate made strong regulatory oversight more important than ever, to counteract the strong financial incentives to finish things cheaply and quickly. Instead, the apartment boom coincided with a steady trend towards deregulation and industry self-regulation, as the next section will explain. The result

was an ongoing decline in standards leading to the eventual "shock" of the Opal Tower evacuation.

Deregulating building quality governance

One of the biggest contributors to the apartment quality crisis has been the sequence of changes to the regulatory framework for ensuring quality in the building industry. Building regulation and certification are a complex regulatory space with responsibilities spread across federal, state and local levels (Lambert 2015). In New South Wales, the Department of Planning and Environment has oversight of the building approvals process, while New South Wales Fair Trading sits under a different minister within the Department of Consumer Services, and is responsible for strata and for consumer protection as well as construction industry licensing. In addition, the Minister for Emergency Services oversees fire safety standards through Fire and Rescue NSW. Meanwhile, local government approves some development applications, undertakes some certifications and has some responsibility for compliance with building standards on completion. And last but not least, the federal government has responsibility for developing building standards, fulfilled through the creation of the National Construction Code, which incorporates the Building Code of Australia. It is hardly surprising that this fractured approach to responsibility has led to governance problems on the ground.

While this complexity would create challenges on its own, the system has also been subject to deregulatory pressures since the 1980s, as the neoliberal push towards "streamlining" regulation took hold across government. This was promoted by the Council of Australian Governments with the view that it would drive up productivity and efficiency (Ruming et al. 2014). State and federal governments shifted towards a light-touch approach to building regulation, which increasingly relied on industry self-regulation rather than government oversight. As one interviewee described it, the guiding ethos became "let's cut down, we don't need to see documentation of this, it doesn't need to happen, let's just get it done fast" (architect).

This approach was justified by claims that deregulation would produce more housing more quickly and more affordably, thus responding to growing housing pressures as metropolitan populations grew rapidly (Gurran and Ruming 2016).

Prior to this deregulatory push, the oversight of building quality in New South Wales had been relatively strong, with clerks of works providing onsite oversight (City of Sydney 2019) and close monitoring of building professionals' licences. As one of our interviewees explained:

> The move has been, starting in the '80s, to move away from big government and move towards self-regulation and so forth . . . I think 20 years ago you certainly saw a lot more people, for example, in [New South Wales] Fair Trading, who had been there in the '90s and were part of a very strong, highly resourced, highly budgeted regulatory and compliance machine. (Strata lawyer)

However, the landscape changed dramatically in the intervening three decades, as another participant confirmed:

> There's been no regulatory oversight. Just none, zero . . . It's just a complete failure of regulation. There's a cultural issue, there's economic issues, but it's a regulatory issue where . . . the neoliberalism movement towards self-regulation, which happened to coincide with globalisation so that we had more product being shifted around the world and imported, and then intersect that with urbanisation, so we had a rush on building. Each of those three things have happened simultaneously and the result is, we have bad product, bad buildings. (Academic)

This pared-back approach was supported by the development industry, which has regularly lobbied authorities to reduce the red tape of planning controls and building regulations (Forrest 2020). As a participant put it:

> [the] New South Wales government particularly is tied to, and its agenda has always been tied to, developer interests, which is why

> the strata laws have been so backward for so long. It's because every time that they try or the strata owners lobby tries to do something, the developers come in and say it's going to be the end of the world, and everyone backflips. (Supplier)

These dovetailing pressures of a booming market, a deregulatory agenda and political pressure from the development industry led to a multitude of shifts in how the apartment market operated and was overseen. Here we point to two key examples of how this deregulated landscape has contributed to poor-quality apartment construction over the past three decades – private certification and the downgrading of consumer protections – before turning to look at how the government has sought to fill these gaps through re-regulation in the past four years.

Privatising and deregulating the building certification system

In New South Wales, a neoliberal reform that has proved critical to the reduction of apartment quality was deregulation of the certification process. In the past, ensuring a dwelling was fit for habitation and built as permitted were primarily the concern of local government, by way of the local council's building officer. But in 1997, the New South Wales government deregulated the certification system to allow accredited private certifiers to issue occupation certificates (Park 2010). Without an occupation certificate, the developer is unable to finalise the sale of apartments, as the building cannot be legally occupied. Ostensibly, the introduction of private certifiers was undertaken to inject a degree of competition into what was previously an entirely public authority activity. It was hoped that this would take the strain off under-resourced local governments and speed up the certification process where local governments were not providing certifications at the rate the booming market demanded.

Under this semi-privatised certification system, a principal certifying authority, which can now be either a local council certifier or a private certifier, is appointed by the developer before construction starts. This system creates an inherent conflict of interest for the private certifier who is paid by the developers, but whose building projects

they are meant to monitor (Jewell 2016). Furthermore, the system is designed to be self-policing, with the certifier relying on tradespeople to confirm that their work has met the required standards. And while private certifiers can withhold an occupation certificate if they believe work is substandard, there are strong disincentives to do so, as it may mean the loss of future work with that developer.

In addition to the inherent flaws in the privatised certification model, the deregulatory push also led to a reduction in government monitoring of certifier professionalism. From 2005 onwards this had been the role of the Building Professionals Board (BPB), with responsibilities to investigate compliance and discipline certifiers. While creation of the BPB was meant to improve the oversight of certifiers, resource constraints and the light touch regulatory agenda meant the BPB "lacked teeth" (LGNSW 2014). While egregious malpractice could lead to the certifier being struck off, in practice this rarely happened; a 2013 inquiry noted that only seven certifiers had lost their accreditation in the preceding five years (Maltabarow 2013). The fact that BPB audits were primarily desktop reviews rather than onsite inspections compounded this issue (Maltabarow 2013; LGNSW 2014).

Furthermore, the light touch approach also informed Fair Trading's approach to the licensing of other building professionals, on whom certifiers relied to confirm works were up to standard. The lack of oversight here meant there was little risk if the work proved to be sub-par. As one participant explained:

> The early '90s [Fair Trading] had a group of 100-plus inspectors running all over the subcontractors, and the licensing of subcontractors. They disbanded that licensing regime and auditing regime. [It] used to run with an iron fist, so contractors were afraid. They valued their licence, they understood what it actually meant to lose their licence. The problem now is, we're not doing licence checks . . . You have to make a licence worth something. (Private certifier)

Meanwhile, although local councils remain involved in certification of some projects and are responsible for collecting and managing records of private certification in their local government area, their ability to

perform these roles has also been undermined. Councils have not been immune to the ascendant small-government ideology, and have come under increasing financial pressure in particular due to stringent rate capping. The internal functions of local planning departments were also reorganised in the name of greater efficiency, with responsibility for a particular development broken down into specific components of the process between different staff. This led to a loss of holistic oversight, as a council certifier explained:

> There is a disconnect even within a council between all the different roles, whereas in the old days . . . I had a multidisciplinary team of engineers, planners, building surveyors, admin staff and all the rest of it. So whatever went on in [my local government area], you couldn't fart in [my local government area] unless I knew about it . . . But now what's happened is everyone's gone away from area-based responsibility into application responsibility . . . so that people don't tend to get that sense of overview, or care or responsibility. (Public certifier)

These changes have affected the certifiers' capacity to undertake certification in a comprehensive way. In addition, these insights speak to the wider structural issues that have resulted from the deregulation agenda reducing accountability across the industry. Private certifiers have often been made the scapegoat in recent years (Hair 2018), and it is clear that the self-regulation model of certification has proven inadequate. But private certification alone did not lead the industry to where it was by the time Opal Tower began cracking; the deregulation agenda has run much deeper, with impacts across all levels of government.

The reduction of consumer protections

One may argue that the deregulation agenda had a laudable aim in seeking to facilitate a faster and cheaper housing supply, and a small number of unlucky consumers buying a lemon was a reasonable price to pay for maintaining a property-induced economic boom that kept

much of the New South Wales population feeling wealthy. But this perspective is hard to align with other regulatory changes that downgraded the rights of affected consumers to seek redress, even as deregulation meant the risks to consumers were growing.

Most notable here were changes to insurance requirements and statutory warranties that occurred in the 2000s. Before this, in New South Wales, the Home Builders Warranty insurance scheme required all builders to insure their buildings for future defects. After the collapse of the HIH Insurance Group in 2001, which had insured approximately a third of the market, the government found itself "carrying all significant risks from volatility and essentially subsidising the private market" (*icare*: Insurance and Care NSW 2020). A subsequent inquiry recommended an end to compulsory insurance coverage for builders of high-rise developments, with justifications including the expectation that members of a large development consortium would monitor other participants (*icare*: Insurance and Care NSW 2020). The government accepted this recommendation and, since 2003, insurance is no longer required for the construction of new multistorey buildings of four or more storeys in New South Wales.

So while the government insurer icare still provides last-resort builders' insurance via the (renamed) Home Building Compensation Fund (HBCF) scheme for residential construction up to three storeys, builders in the high-rise market do not need to meet *icare*'s oversight requirements. This means owners in larger buildings have no last-resort recourse if their builder collapses or disappears, and may also attract less diligent developers towards larger developments, as one participant explained:

> Because there's no insurance product, all the dodgy builders, all the ones that are going to cut corners, they all go to the [high-rise] multi-unit apartments because there's no requirement for them to meet the criteria for them being allowed to offer [HBCF] insurance. (Developer)

Adding insult to injury, in 2012 the government shifted more risk onto consumers by reducing the statutory warranties under the *Home Building Act 1989* (New South Wales) from seven years for all defects, to

six years for major defects and two years for other defects. Our research shows that these timeframes create major challenges for consumers. Defects often are not apparent immediately, meaning that owners may not know they have a problem until well into – or after – the warranty period. The fragmented nature of strata ownership also complicates bringing a claim within these timeframes, as it requires coordinating multiple owners. The net effect has prompted strata lawyers to conclude that "the worth of the [minor defects warranty] is doubtful" (Bannerman 2014).

Even before the Opal Tower evacuation, concerns about the effect of these cuts to consumer protections had gathered enough pace to prompt the New South Wales government to act, leading to the introduction of the Strata Building Bond and Inspections Scheme in 2018. The scheme applies to new strata buildings of more than three storeys, and works by requiring developers to lodge a building bond (2 per cent of the contract price) with Fair Trading, which can be drawn upon to pay for rectifying defective building work. If the bond is not needed to fix defects within two years of completion, the money is returned to the developer, thus creating an incentive to produce quality work, while also ensuring owners with defects are not left high and dry by phoenixing.

Yet even before the scheme was finalised, its shortcomings were apparent. Of particular concern was the inadequacy of a 2 per cent bond to cover the cost of rectifying serious defects, especially given past research on defects in houses has found that they cost on average 4 per cent of the contract price to rectify (Mills, Love and Williams 2009). An interviewee confirmed that these concerns were well founded: "Two per cent's a lot of money if you haven't got problems, and it's bugger-all if you really do have problems" (developer).

Another problem is that the scheme's two-year window does not allow for many serious defects to become apparent. This is compounded by the requirement that inspections only be visual (rather than invasive), meaning that serious defects like faulty waterproofing membranes or fire dampers may remain undetected, and be excluded from cover.

Overall, our participants concluded that the scheme is largely ineffective. As one put it:

> I think it was a knee-jerk policy that, on paper looked like it was going to hold some level of accountability to the developer, but . . . the system was so distorted initially and manipulated, to the extent where I have seen . . . a fair amount of new developments – [but] I have not seen a building defect bond [paid out] personally . . . So the system has already learnt how to divert around that level of culpability or liability or responsibility. (Strata manager)

In many ways, the story of the Strata Building Bond and Inspections Scheme perfectly reflects the regulatory landscape in New South Wales over the past three decades, where there was little appetite for stronger regulations, and the few attempts to improve consumer protection were inevitably watered down or stymied by poor implementation. But that all changed after Christmas Eve in 2018, when the government finally saw the writing on the wall and entered a new re-regulatory phase.

Enter the New South Wales Building Commissioner

Under intense political, media and community pressure following the Opal Tower evacuation, the New South Wales Premier, Gladys Berejiklian, acknowledged that the deregulatory approach wasn't working (Saulwick, Gorrey and Visentin 2019) and announced the creation of a new role – the New South Wales Building Commissioner – to lead a suite of building industry reforms. The commissioner is responsible for investigation and disciplinary action for misconduct, overseeing end-to-end licensing and auditing, and driving legislative change. David Chandler OAM was appointed in August 2019 and has developed a strategy and implementation plan called Construct NSW, which aims to rebuild public confidence in the apartment market with reforms to be undertaken through to 2025.

The reforms are underpinned by two new pieces of legislation: the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (New South Wales) (RAB Act) and the *Design and Building Practitioners Act 2020* (New South Wales) (DBP Act). The RAB Act grants new powers to the Office of the Building Commissioner (OBC)

to investigate building work and require rectification of defects in buildings under construction, as well as existing buildings for up to six years after occupation. These are the powers underpinning the OBC's highly publicised audit regime, under which selected new buildings are being inspected by government inspectors before completion. The Act authorises the issuance of a building work rectification order if the Secretary of the Department of Customer Services "has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect in relation to a residential apartment building" (s.33). The secretary can also issue stop work orders (s.29) and prohibition orders (s.9), which prevent an occupation certificate being issued until quality issues are resolved.

Complementing these new inspection powers, the DBP Act has three main functions:

- to introduce new registration requirements for designers, engineers, specialists and builders, to provide greater oversight and ensure they are adequately qualified
- to require that designers lodge building designs before construction starts, and that builders lodge "as-built" plans upon completion. Builders must also declare that the completed building complies with the lodged designs and the National Construction Code.
- to introduce a statutory duty of care for practitioners, to make it easier for owners to sue if a person carrying out construction work fails to exercise reasonable care to avoid economic loss caused by defects.

As part of the OBC's reforms, owners are also now being encouraged to report building defects to a newly reinvigorated New South Wales Fair Trading (NSW Fair Trading 2020). While responding to defects complaints is not a new function for Fair Trading, the light-touch approach had previously resulted in limited support for owners, with a focus on dispute management rather than investigation or enforcement. As one interviewee explained:

> At the moment you go to Fair Trading and you say "I've got a problem with my building, what can I do?" They'll say "well let's get people in and we'll have a chat, and we can see if we can resolve

> it". [Then] they say "well they're not going to talk to you" . . . [so] do I have a good case to go to the Tribunal? Fair Trading will say, "well there's the law, you decide. We're not going to tell you. That's not our job". There's a big disconnect right there. (Strata journalist)

Due to these limitations, reporting defects to Fair Trading has not been common practice; the Building Commissioner recently found that only 17 per cent of buildings with major defects had reported (Chandler 2021). Time will tell whether reporting defects to the revitalised Fair Trading proves a more fruitful experience.

While these reforms give the OBC significant new legal powers, the government is also looking to market-led solutions to help improve building quality. Of particular note is the OBC's support for industry-led efforts to develop rating tools to assess the risk associated with developers (New South Wales Government n.d.). In response, the credit ratings agency Equifax has developed a tool called iCirt, which assigns ratings based on a range of data including creditworthiness, insurance data, regulatory breaches and legal claims. While the government may use tools like this to identify risky players and focus resources, it is also hoping these tools will enable consumers and industry players to better assess risk in the market. In this way the government is once again advocating a hands-off solution to regulatory oversight, with a poor rating meaning a poor performer is put out of business, rather than having to be disciplined by government.

Our participants generally expressed cautious support for these reforms. As one explained:

> So I think the Building Commissioner's on the right path and I really do think that he's tackling [the problem] from multiple directions that will eventually change the industry. But it's an industry that's – we may be looking at 50 years' deterioration in standards and crafts that needs to be addressed. (Rectification specialist)

While it is too early to assess the long-term impact of the re-regulation process on building quality in New South Wales, the scope of the

reforms suggests that the New South Wales government is taking building quality issues more seriously than it has in years.

Conclusion

The history of the apartment defects crisis in New South Wales is a complex picture of regulation, deregulation and re-regulation, with time still to tell whether the new regime will right past wrongs. A large part of the story has been a failure of neoliberal public policy, which facilitated the steady erosion of checks and balances that previously protected apartment owners and residents.

The broader lesson from New South Wales's experience is that when markets involve power imbalances like those that exist between large developers and individual consumers, governments must be actively involved in maintaining a level playing field. Both the carrot and the stick must be in the regulatory toolkit, along with the resourcing for both to be wielded effectively. Otherwise, in the memorable words of one research participant, all you've got is "a tin-star sheriff": "He's sitting on the verandah of the sheriff's office with his empty shotgun on a rocking chair and the cowboys ride past. Everyone knows they've got no budget and [are] not going to do anything, [so] they'll keep playing" (strata lawyer).

It is clear from the New South Wales experience that the "tin-star sheriff "approach to managing the construction industry is not good enough. Simply deregulating and relying on industry to police itself has not worked, as there are far too many misaligned incentives and power asymmetries at play. Without proactive government intervention, asymmetric markets like these will inevitably fail. And whether it be in a collapsing building or a market collapsing through loss of confidence, one way or the other it will be consumers who end up bearing the brunt of this failure.

References

Aalbers, M. (2016). *The Financialization of Housing: A Political Economy Approach*. Abingdon, UK: Routledge.

Australian Bureau of Statistics (2020). Telling storeys – apartment building heights. https://www.abs.gov.au/articles/telling-storeys-apartment-building-heights.

Australian Bureau of Statistics (2022). Building approvals, Australia. https://www.abs.gov.au/statistics/industry/building-and-construction/building-approvals-australia/latest-release].

Bannerman, D. (2014). NSW: Home Building Act statutory warranties – what is the two year warranty for non structural defects worth? *Look Up Strata*, 17 June (updated 25 August 2023). https://www.lookupstrata.com.au/home-building-act-statutory-warranties/.

Bartsch, P. (2022). Out-of-court settlement reached over opal tower. *The Urban Developer*, 20 May. https://www.theurbandeveloper.com/articles/out-of-court-settlement-reached-over-opal-tower.

BBC (2019). Grenfell Tower: what happened. *BBC News*, 29 October. https://www.bbc.com/news/uk-40301289.

Bunker, R., L. Crommelin, L. Troy, H. Easthope, S. Pinnegar and B. Randolph (2017). Managing the transition to a more compact city in Australia. *International Planning Studies* 22: 384–99.

Chandler, D. (2021). OC audits are now evidencing construction's fault lines. *LinkedIn*. http://tinyurl.com/2u2z7ytp

City of Sydney (2019). Submission to the inquiry into regulation of building standards, building quality and building disputes (Submission No. 143). Sydney: New South Wales Parliament.

Construction, Maritime, Mining and Energy Union (2019). Shaky Foundations: the National Crisis in Construction, Construction, Maritime, Mining and Energy Union, Sydney, NSW, Australia

Crommelin, L., S. Thompson, H. Easthope, M. Loosemore, H. Yang, C. Buckle and B. Randolph (2021). *Cracks in the Compact City: Tackling Defects in Multi-Unit Strata Housing*. Sydney: City Futures Research Centre, University of New South Wales.

Dunstan, J. (2019). Lacrosse apartment owners awarded $5.7 million in damages after flammable cladding blaze. *ABC News*, 28 February. https://www.abc.net.au/news/2019-02-28/lacrosse-apartment-owners-win-5.7-million-cladding-fire-damages/10857060 .

Easthope, H. (2019). *The Politics and Practices of Apartment Living*. Cheltenham, UK: Edward Elgar Publishing.

Easthope, H., and B. Randolph (2016). Principal–agent problems in multi-unit developments: the impact of developer actions on the ongoing management of strata titled properties. *Environment and Planning A: Economy and Space* 48: 1829–47.

Easthope, H., B. Randolph and S. Judd (2012). *Governing the Compact City: The Role and Effectiveness of Strata Management. S*ydney: City Futures Research Centre, University of New South Wales.

Easthope, H., S. Thompson and A. Sisson (2020). 2020 Australasian strata insights. *City Futures Research Centre*. ehttps://cityfutures.ada.unsw.edu.au/research/projects/2020-australasian-strata-insights/.

Equity Economics & Development Partners (2020). *The Cost of Apartment Building Defects*. https://static1.squarespace.com/static/61b14c4abbc81a1543f55180/t/621c29c886998f2ad87180da/1646012880788/APARTMENTDEFECTS_Equity%2BEconomics%2BModeling%2Bof%2BCost.pdf.

Forrest, T. (2020). Urban Taskforce responds . . . to a host of issues on planning and fast tracking. *The Fifth Estate*, 28 April. https://thefifthestate.com.au/articles/udia-responds-to-a-host-of-issues-on-planning-and-fast-tracking.

Foster, S., P. Hooper and H. Easthope (2022). Cracking up? Associations between building defects and mental health in new Australian apartment buildings. *Cities and Health*: *6*(6), 1152–1163.

Gladstone, N., and C. Fellner (2019). Small business flattened by "dodgy" builders in phoenixing epidemic. *Sydney Morning Herald*, 17 December. http://tinyurl.com/2s4m5szw

Gurran, N., and K. Ruming (2016). Less planning, more development? Housing and urban reform discourses in Australia. *Journal of Economic Policy Reform* 19: 262–80.

Haaland, C., and C.K. van Den Bosch (2015). Challenges and strategies for urban green-space planning in cities undergoing densification: a review. *Urban Forestry and Urban Greening* 14: 760–71.

Hair, J. (2018). NSW government to crack down on dodgy building certifiers following Opal Tower saga. *ABC News*, 30 December. https://www.abc.net.au/news/2018-12-30/opal-tower-damage-sparks-nsw-government-crackdown/10673968.

icare: Insurance and Care NSW. (2020). NSW Home Building Compensation Scheme. https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-icare-n.-agius-1-jun-2020-083451027.pdf.

Jewell, C. (2016). NSW to take action on building certification failure. *The Fifth Estate*, 27 September. https://thefifthestate.com.au/business/government/nsw-to-take-action-on-building-certification-failure/.

Johnston, N., and S. Reid (2019). *An Examination of Building Defects in Multi-owned Properties*. Melbourne: Deakin and Griffith universities.

Joint Select Committee on the Quality of Buildings (2002). *Report upon the Quality of Buildings*. https://www.parliament.nsw.gov.au/ladocs/inquiries/1855/Report%20upon%20the%20Quality%20of%20Buildings%20V2.pdf. [Campbell Inquiry]

Lambert, M. (2015). *Independent Review of the Building Professionals Act 2005: Final Report*. https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0017/604520/Independent-review-of-the-Building-Professionals-Act-2005.pdf.

LGNSW (2014). Submission to the Building Professionals Board Report on "Building Certification and Regulation – Serving a New Planning System for NSW". Local Government NSW, Sydney, Australia, https://lgnsw.org.au/common/Uploaded%20files/Submissions/LGNSW-submission-to-bpb-maltabarow-report-march-2014.pdf.

Maltabarow, G. (2013). *Building Certification and Regulation – Serving a New Planning System for NSW*. https://s3.ap-southeast-2.amazonaws.com/dpe-files-production/s3fs-public/dpp/164762/Maltabarow_report.pdf.

Mills, A., P.E. Love and P. Williams (2009). Defect costs in residential construction. *Journal of Construction Engineering and Management* 135: 12–16.

New South Wales Government (2019). NSW Building Commissioner appointed. *NSW Government News*, 7 August. https://www.nsw.gov.au/news/nsw-building-commissioner-appointed.

New South Wales Government. (n.d.) Restoring confidence in the construction industry using iCIRT to rate building professionals. http://tinyurl.com/2s36zzsm

NSW Fair Trading (2020). Strata, https://www.nsw.gov.au/housing-and-construction/strata https://www.nsw.gov.au/housing-and-construction/strata

Owners Corporation Network (2017). Submission to the inquiry into the effects of non-conforming building products on the Australian building and construction industry (supplementary submission no. 88). Canberra: Senate Economic References Committee.

Park, H. (2010). *NSW Planning Framework: History of Reforms*. Sydney: NSW Parliamentary Library Research Service.

Pawson, H., V. Milligan and J. Yates (2020). *Housing Policy in Australia*. New York, NY: Springer.

Randolph, B. (2006). Delivering the compact city in Australia: current trends and future implications. *Urban Policy and Research* 24: 473–90.

Reid, S., M. Pocock, S. Caldera and T. Wilson (2021). Considering buying property off the plan? Here are 6 crucial steps to protect yourself. *The Conversation*, 13 October. http://tinyurl.com/pkt68deb

Rosewall, T., and M. Shoory (2017). Houses and apartments in Australia. *Bulletin* (June). https://www.rba.gov.au/publications/bulletin/2017/jun/1.html.

Ruming, K.J., N. Gurran, P.J. Maginn and R. Goodman (2014). A national planning agenda? Unpacking the influence of federal urban policy on state planning reform. *Australian Planner* 51: 108–21.

Saulwick, J., M. Gorrey and L. Visentin (2019). "It hasn't worked": premier admits Sydney's building industry is failing. *Sydney Morning Herald*, 10 July. http://tinyurl.com/56zuasxh

Shergold, P., and B. Weir (2018). *Building confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.*, Canberra: Department of Industry, Science, Energy and Resources.

Troy, L., B. Randolph, S. Pinnegar, L. Crommelin and H. Easthope (2020). Vertical sprawl in the Australian city: Sydney's high-rise residential development boom. *Urban Policy and Research* 38: 18–36.

Wood, G., and R.O. Viforj (2015). The facts on Australian housing affordability. The Conversation, 12 June. https://theconversation.com/the-facts-on-australian-housing-affordability-42881.