



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

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Submission to Inquiry into building quality in the ACT

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[REDACTED]

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In December 2004 we purchased a dual occupancy unit, [REDACTED]. [REDACTED] The unit was built by [REDACTED]. Certificate of occupancy No. [REDACTED] was issued [REDACTED]. The Owner Builder and husband lived in the existing house on the block and built with the sole purpose of building and selling for profit. Before purchase we had discussions with the builder and certifier about some significant aspects of the build and drainage. Nevertheless, we went ahead with the purchase as the unit otherwise well suited our needs and we had at that time little understanding of the complexity of the building codes and the lack of protection afforded purchasers. Subsequent events go to the heart of the enquiry into the quality of new buildings and the actual and potential causes of the poor building quality.

Soon after purchase we became concerned about aspects of the build and attempted to engage an independent Certifier for an opinion. None of certifiers approached would look at the building once it became clear we wished to have work of another certifier checked. It was a club with members protecting each other. We approached the Department responsible for building inspection and regulation of Certifiers. We drew a complete blank. There was no way to have quality of the build or the competence of the certification audited by the Department. Any suggestion that the process might be flawed, or certifiers need auditing was met with amazement that I had the temerity to suggest the process might be flawed.

In February 2005 we engaged [REDACTED], a Building Surveyor, to inspect and report on our unit. Among other things [REDACTED] noted the low position of the building and his report stated, "If a blockage was to occur in the storm water lines then it has the potential to flood the residence". This and other matters were taken up with builder. The builder claimed that the features were designed in discussion with and approval of the private certifier. Furthermore, considerable time and expense had gone into the design and construction of the drainage system including "duplicated oversize pipe work".

In February 2010 there was a heavy storm. The drainage system failed, and water entered the house with damage to the wooden floor and rugs. The insurance claim was eventually settled for \$28,000. To investigate the drainage failure we engaged [REDACTED]. This revealed that two 100mm drains (one serving each of the two units on the block) had been merged into the existing single 90mm tie to the main. The tie was a cement pipe dating to the original build and it was obviously crumbling and past its use by date. Furthermore, the junction with the tie was about 60% blocked with concrete and geotextile where an attempt was made to link an agricultural drain. There was gross incompetence in the design of the system and the person doing the drainage work exhibited staggering incompetence. To

overcome this problem our plumber combined the two PVC drains into a single 150mm tie which, with approval through ACTEWAGL and TAMS, was connected directly into the main. Somewhat later we found further problems in the stormwater drainage at the rear of the house. This required rectification to reduce the risk flooding through the back entrance. Together about \$9,000 has been required to make good the drainage system. but there is no guarantee of no future flooding if drainage is overloaded. While insurance covered damage due to flooding the total cost of repairing damage and rectifying the drainage system was about \$37,000.

Following the flooding we contacted the builder but there was no redress as the warranty period for non-structural work was two years and the builder denied any responsibility. The insurance requirements for Owner Builders are less than for commercial builders and in our case the Owner Builder took out no insurance at all. The option of legal action on the grounds of misrepresentation or lack of fitness for purpose through Trade Practises legislation was considered but would have been expensive and uncertain given the opaque responsibilities of the builder, the certifier and the building authority. The lack of insurance also suggested the builder might not have assets to cover any legal loss. The Owner Builder failed to fulfil her responsibilities as set out in Building Act 2004 Authority, for “ensuring the work is only done in a proper and skilful way”. The builder produced a substandard building which by design and poor workmanship was almost certain to result in flooding. The builder was at fault but has been able to completely evade any responsibility whatsoever.

The degree to which the certifier bears responsibility for approval of the design and work in this case is not at all clear. However, the current system of certifiers hired by builders is flawed. At best there is a conflict of interest. At worst corruption seems invited by the system. What builder would hire a certifier known to abide too closely to the rules? Furthermore, there is a lack of any auditing of certification work or any avenue of appeal to relevant building authorities.

The building regulatory system seems in need of improvement. The following points need to be addressed if the problems with oversight of building codes and faulty buildings are to be addressed:

- The system whereby certifiers are hired by the builder results in an unacceptable conflict of interest. Some system is needed where certifiers are appointed by ballot, or by rotation or through a list held by the department.
- If an Owner Builder builds with the express intention of building to sell for profit, or sells within five years, then all the responsibilities applied to a professional builder should apply to the Owner Builder. This must include provision of adequate insurance to cover warranties.
- Warranties on critical non-structural work should be equal to those for structural work. For example, functioning drains and sewers are just as important as structural elements and defects might not be immediately obvious.
- There already exists a complex set of building codes, requirements for builders, warranties, insurance, certification and so on. However, all regulations are useless unless regulatory agencies ensure compliance. Any new system will be effective only if the Government building standards section is given the resources and is furthermore required to ensure compliance with the requirements

- A “user friendly” system is needed for building owners to have complaints investigated and mediated by the Building Authority. This must include provision for redress for owners and penalties for both builders and certifiers if found at fault.

David McKay

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