

# ‘The UK’s New Building Product Safety Regulator - Some Reflections from Abroad’

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HM Government’s announcement this week of a new building products safety regulator was apparently spurred on by revelations by the evidence in the Grenfell Tower inquiry of very disturbing industry conduct with respect to product safety. It follows the recommendations in Dame Judith Hackett’s 2018 *Building a Safer Future* report, and is designed to fit the suite of legislation centring on the *Building Safety Bill* currently before parliament.

The regulator is intended to sit within the Office for Product Safety & Standards, and has been described as being there to ‘oversee better management of safety risks for buildings’ and having ‘strong enforcement powers’ for the oversight of the building regulatory regime, investigation and prosecution, education and research, and ‘encouraging’ compliance.

The new regulator will be the public face for a focussed and active (and possibly pro-active) response to the aluminium composite panel (ACP) cladding crisis that pervades high rise residential buildings in the UK and the world.

Apart from the recitation of the duties, obligations, and powers that are found in the legislation, the detail of what and how this ‘new sheriff’ will implement its functions, as well as the time-frames in which this will occur, remains to be seen. There are obvious concerns with the proposals that warrant very careful monitoring.

The ACP crisis is felt all over the developed world. Apart from the obvious and paramount issues of public safety, it gives rise to other very serious concerns. These include the effect upon public confidence in the value and adequacy of its built environment – which has dramatic and surprising knock-on effects. The financial strain on consumers faced with massive costs to rectify ACP problems, and with that, the crisis posed by so many people being faced by threats to accommodation security.

In 2018/2019, New South Wales in Australia, was confronted by these problems. Not only with the ACP crisis, but also with a number of very high profile and potentially catastrophic defects emerged in high rise residential apartment buildings. One requiring evacuation on Christmas eve 2018, with many apartment owners being forced to celebrate Christmas living in cars and on the sofas of their friends/family.

The NSW Government's response was swift, both in regulation and action. In a move foreshadowing this weeks announcement, in 2019, the NSW Government created the office of the NSW Building Commissioner. Like this governments new regulatory, the NSW Building Commissioner was appointed to take a drastic, proactive, and 'hands on' approach to the problem.

Given the then existing powers to investigate and issue directives, the NSW Building Commissioner leapt into action undertaking a number of high-profile inspections, investigations, and activities. For a time, it seemed that his immediate actions included some element of 'name and shame' with respect to defective buildings, both to send a warning to the building industry and also to reassure the public that something was being done.

Shortly after that appointment (perhaps a reverse order to what we are seeing now), the NSW Government began the process of legislative reform to fill out and add power to the process it had begun.

In June 2020, the *Residential Apartment Building (Compliance & Enforcement) Act 2020* came into effect. This gave the NSW Building Commissioner a range of very broad powers to investigate defects in apartment building and to order the 'rectification' of 'serious defects' in those buildings. To ensure action, but with balance, those powers can be exercised where the commissioner forms the view that there 'could' be a serious defect. There are appeal provisions, but these are clearly framed around a comply now, argue later, format.

The range of complimentary NSW legislation reflects many of the features of the regulatory scheme being implemented in the UK.

However, as in Australia, there is community concern in this country that the extent of the problems, the limits to the regulator's powers, and the longer term budgetary constraints, will mean that more needs to be done to implement longer term change than creating the regulator can realistically achieve.

There is concern that 3 ½ years after the Grenfell tower fire, recommendations for legislation, regulation, and regulators are only now being implemented, And that owners and occupants of the thousands of buildings in the UK that are affected by the ACP crisis are still faced with its safety and financial consequences with no clear resolution on the near horizon.

The NSW legislation has not solved all these problems either, but clearly recognised them. In June 2020, at the same time as the *Residential Apartment Building* legislation, it augmented its residential building legislation with the *Design & Building Practitioners Act 2020*.

This Act included 2 significant developments. Firstly, it increased and regulated the range and type of information collected about buildings to be constructed, meaning that owners and occupants will finally have a way of obtaining information about the way that their homes were built.

Secondly, it retrospectively created a duty owed by all those responsible for construction work, given to all owners and subsequent owners of the land with respect to defects in that work. It uses the ordinary law of tort to empower purchasers of buildings 'enforce' compliance with building standards and regulations by making those responsible liable to be sued by those consumers and others that actually bear the effects of sub-standard work.

That statutory duty filled what many saw as a hole in the common law, that has concerned property owners, builders, and the Courts in this country and Australia since at least the early 1970s.

The idea is to relieve the burden on regulatory authorities by arming ordinary people, those directly affected by shoddy work, with the ability to do something about it, and to bring those responsible to account. Letting the builder/developer's self-interest in avoiding litigation operate as a 'self-enforcement' of building quality regulation. There are literally millions of unpaid, but motivated, 'enforcers waiting to hold substandard industry players to account.

No-one can foresee how the ACP crisis will ultimately be solved. However, arming those affected by shoddy work might be one step towards relieving the community stresses at the same time as allowing the regulator to focus its attentions on the particularly heinous elements of the building & development industry.

Australia watches and learns so much from the UK developments. These parallel developments also show the advantages of countries with similar problems and legal traditions learning from one another, and pooling their resources and experience to achieve better outcomes 'quicker'.

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