

# Opal Tower structural flaws expose rot in Australian construction industry

By John Wilson  
7 January 2019

As more information surfaces concerning the severe structural faults in the \$165 million, 36-storey Opal Tower in the Sydney suburb of Homebush, it is apparent that the problems stem from a broader crisis caused by self-regulation and the culture of cost-cutting throughout the construction industry.

On Christmas Eve, cracks appeared in a six-metre by three-metre pre-cast panel on level 10 of the tower complex, which has been occupied for less than 12 months. Residents in the building's 392 apartments and businesses on the ground floor were ordered to evacuate. On Saturday, they were told they must wait at least another week before they can reoccupy the building because the specific cause of the cracks has yet to be identified.

A report on the cause of the cracking is due on Friday. To carry out its investigation, the builder of Opal Tower, Icon, has been tearing down walls in some apartments. One resident commented on Facebook: "All of our personal belongings have been thrown in a pile and our furniture is damaged. We received absolutely no notice that they were going to be doing work in our property and this is just appalling."

The most revealing aspect of the Opal Tower faults is that few experts in the building industry appear surprised.

A report presented in April 2018 to the federal, state and territories' Building Ministers' Forum (BMF) stated: "Those involved in high-rise construction have been left largely to their own devices. Where there has been supervision, this has generally been by private building surveyors (also known as certifiers) whom critics argue are not independent from builders and/or designers."

It noted: "We have heard that there is a high incidence of building products in the market that are not compliant with the standards set out in the NCC [National Construction Code], resulting in inferior and sometimes dangerous products being used in the construction of

buildings."

The report was commissioned in the wake of the 2017 Grenfell Tower fire in London that killed at least 72 people and the similar, but not deadly, fire at the Lacrosse tower building in Melbourne in 2014.

On January 4, Geoff Crittenden of the Welding Technology Institute of Australia told the *Sydney Morning Herald* that "about 85 percent of the 600,000 tonnes of fabricated steel imported into Australia every year is non-compliant."

The initial response of the New South Wales (NSW) government and sections of the media was to call for a crackdown on "dodgy certifiers" and "cowboy certifiers." This transparent attempt to scapegoat one element in the whole chain of construction is now wilting under a deluge of information.

Robert Hart from Engineers Australia told the *Australian Financial Review* last week that blaming certifiers alone was "missing the point." He noted that the NSW government had ignored 100 proposed changes to building industry regulation outlined in a 2016 report which it had commissioned.

"They've received so many warnings that the situation is critical, but they've done nothing," Hart said. "You talk about people fiddling while Rome burns, but the man responsible for sorting this out, [Minister for Innovation and Better Regulation] Matt Kean hasn't even picked up the fiddle. It's bloody ridiculous... It's really appalling. Will someone have to die before they'll take it seriously?"

On January 4, Australian Subcontractors Association spokeswoman Louise Stewart indicted the "toxic culture" of pressure put on subcontractors by major building companies to cut costs.

She stated: "The subcontractors are asked to price jobs at the tender stage and even if the work is won, the prices are then shopped around and they are expected to drop

their rates. It's the nature of the industry, that's the way it's been working for years and it's part of the problem."

Stewart noted: "Fifty years ago, builders employed large work forces and the trades were employed by the builder. Now almost none of the trades are employed by the builder. They are all subcontractors. And the subcontractors are played off against each other to get the lowest price. It's destroying the industry. It's eroding the quality of projects."

Two-bedroom apartments in Opal Tower were sold for around \$930,000, while single-room studio apartments sold for \$600,000. Media commentators have speculated that their value will have at least halved. Some owners are already demanding that the developer, Ecove Group, buy back their units. It is highly likely that they will be left to bear massive losses.

In NSW, the developer or construction company must repair the damage if "major" defects in a building emerge within six years of its completion, and two years for "minor" defects. However, these purported protections have been weakened by legal rulings that have defined "major" as meaning a situation in which a building is uninhabitable.

In a 2014 decision, the full bench of the High Court found that Brookfield Multiplex did not owe a duty of care to compensate owners of the Chelsea apartment tower in the Sydney suburb of Chatswood for losses they had suffered due to defects. Colin Grace, a lawyer who acted for the Chelsea Owners Corporation, noted in December last year: "It [the ruling] had a significant notional impact. It implied builders don't have a statutory duty of care to the end user."

In January 2018, the NSW government introduced a "Strata Building Bond" requiring developers to put aside 2 percent of the total cost of the building work to cover any repairs needed during the first two years after it is occupied. However, as Colin Grace noted: "Unless we deal with the fundamental problem of making better construction and better reviews and stages and certification, it won't change at all."

Even when legal rights are in place, they do not necessarily offer protection. At the Elara Apartments, which was completed in 2007 in Canberra's northern suburbs, structural problems led to cracks in the walls. The owners were forced to take legal action against the builder and Master Builders Fidelity Fund, which issues warranty insurance certificates to builders. The day after owners re-commenced legal proceedings in 2017, the builder went into voluntary administration.

The repairs ended up costing about \$20 million, or \$120,000 per apartment, which owners had to pay while they continue to pursue legal action against the Fidelity Fund. In December 2018, lawyers for the Fund claimed in court that a five-year limitation on claims had expired, so the owners were not entitled to any compensation—which in any case is capped at a maximum of \$85,000. There are other reports of owners facing similar situations.

The residential building construction in Australia is worth over \$150 billion per year. A speculative housing boom has been one of the main drivers of economic growth and employment in Australia since the 2008-2009 global financial crisis. The impact of this frenzied speculation is now beginning to be laid bare, with workers and residents burdened with huge mortgage debts or high rental payments for defective products.

At every level of government, in bank boardrooms and across the building industry, the main concern is not the plight of home-owners however. It is the fear that the revelations of sub-standard construction will cause a sharp fall in new home purchases and an even greater slump in property prices.

As the WSWS reported on Saturday, there is clear evidence that the housing boom is over. Sydney's median property price fell by around 10 percent in 2018, equivalent to roughly \$100,000 per dwelling. This took the total fall since the city's market peak in early 2017 to 11.1 percent, the sharpest correction in over 35 years. The annual decline in Melbourne, the country's second largest city, was 9.1 percent, or an average of about \$75,000 per property.

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