

BANNERMANS LAWYERS CASEFILE:

Concerns about quality industry certification

The court's response to unsatisfactory industry practices by accredited certifiers

Since the last property boom in 1998, many strata buildings have experienced an array of defect issues. Yet these buildings are still being privately certified for occupation, even in instances where there is a failure to inspect the site. As such, questions must be asked about the asserted practices of accredited certifiers.

Two recent decisions from the Administrative Appeals Tribunal have dealt with this issue. *Building Professionals Board v Cohen (No 2) [2010] NSWADT 266* and *Dix v Building Professionals Board [2010] NSWADT 160* raise concerns about the practices of these certifiers, including:

- a. Buildings not being certified in accordance with relevant legislation and the public's reasonable expectations;
- b. Potential non-compliance with regulations such as fire safety issues;
- c. Claimed reliance on alleged "industry practices", which in fact reflect deficient practices;
- d. Buildings being certified without independent inspection or judgment by the accredited certifier.

Owners Corporation face issues with certification such as building defects and providing annual fire safety statements. These two decisions from the AAT show asserted industry practices to be deficient, and consequently raise concerns about the quality of building certification. Such practices should and do expose certifiers to claims for negligence.



KEY POINTS

- The regulatory body for private certifiers has found that the asserted practices of certifiers to be deficient
- A failure to inspect and then seek to rely on self-certification is not satisfactory industry practice
- Owners' Corporation can find relief against certifiers with regard to negligent certification
- Where there is no builder, insurer or developer to sue for defects, certifiers can and will come under the magnifying glass