

BANNERMANS FACT SHEET:

Unsatisfactory Industry Practices by Accredited Certifiers

There seems to be an ever increasing proportion of strata buildings suffering from an array of defect issues. Occupation Certificates for many of those buildings have been issued by private certifiers. Private Certifiers often argue that they are entitled to rely upon appropriately worded certificates as evidence that the various aspects of the works have been properly installed. Thus, it is argued, they cannot have any responsibility if there are defects in the works contrary to the certificates provided to the certifier. There have been numerous examples of certifiers issuing occupation certificates without inspecting the works and/or relying blindly upon self-certification by installation contractors as sufficient evidence that the works have been properly installed.

Two recent decisions of the Administrative Decisions Tribunal (ADT) have commented upon these issues - *Building Professionals Board v Cohen (No 2) [2010] NSWADT 266* and *Dix v Building Professionals Board [2010] NSWADT 160*. Both decisions upheld the findings of the Building Professionals Board (the regulatory body for certifiers) against the subject certifiers. The upshot of these decisions is that the ADT has strongly supported the Building Professional's Board's findings that competent certification requires that certifiers:



- Physically inspect the works;
- Be more than a 'postal box' for self-certification by installation contractors and sub-contractors;
- Form an independent view of what standards should be referenced in a certification of any aspect of the works and make enquiries when any of the appropriate standards are not properly referred to;
- Perform, where practicable, simple independent checks of self-certified works (at least in relation to fire and life safety issues); and
- Not issue an Occupation Certificate without a careful inspection of the finished works.

These decisions in our view provide some good guidance as to what is required for competent professional conduct by private certifiers. It can be readily extrapolated from this that where a:

- private certifier has not met these minimum requirements for competent practice,
- in circumstances where competent practice by the certifier would have resulted in a defect being identified and resolved prior to the issue of an occupation certificate (and the consequent registration of a strata plan);

An owner or subsequent owner should have a reasonable case for damages against the certifier for at least a portion of the cost of rectifying the defects.

It should be noted that the site inspection/checking of self-certified works to achieve competent practice discussed above will in many cases go beyond the critical stage inspections required by clause 162A of the EPA Regulation.