

BANNERMANS LAWYERS CASEFILE:

Developments in building defects claims

Building defects claims against certifiers – The door opens!

Some of the industry practices traditionally adopted by private certifiers have been strongly criticised by two recent decisions of the Administrative Decisions Tribunal (ADT) upholding findings against certifiers made by their regulatory body.

It now seems clear that private certifiers cannot legitimately issue occupation certificates without first carefully inspecting the works nor can they blindly rely upon self-certification by installation contractors who have a vested interest in certifying that their own works are adequate.

The two decisions *Building Professionals Board v Cohen (No 2) [2010] NSWADT 266* and *Dix v Building Professionals Board [2010] NSWADT 160* indicate that competent certification requires certifiers to:

- 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.

It can be readily extrapolated from these decisions 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.

These two decisions further open the door for owners corporations to seek relief against certifiers for defects with regard to negligent certification. This could be of great assistance to owners corporations especially where there is no builder, developer or insurer left to pursue for losses associated with building defects.