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Building Stronger Foundations Consultation
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Submission: Bannermans Lawyers

Thank you for the opportunity to assist the Committee in examining the deregulation disaster causing the current building crisis in the state of New South Wales.

We have acted in over 300 defects matters for owners corporations and have made previous submissions on reforms introduced in the *Home Building Act 1989* since 2012 and the *Strata Schemes Management Act 2015* since the date of its commencement.

The table below summarises the changes made since 1997 that have contributed to the current crisis our State now faces:

Date	**Statutory warranty against builder and developer**	**Home Warranty Insurance**	**Other statutory protections**	**Minister introducing the reform**	**Legislation introducing reform**
1997	Introduction of private building certification			Craig Knowles (Minister for Urban Affairs and Planning; Labor)	Environmental Planning and Assessment Amendment Act 1997 No 152
1997 to 1.7.2002	7 year statutory warranty – all defects	7 year first resort home warranty insurance – all residential apartments		Faye Lo Po' (Minister for Fair Trading and Minister for Women; Labor)	Building Services Corporation Legislation Amendment Act 1996
1.7.2002	7 year statutory warranty – all defects	○ 2 year warranty last resort insurance – all defects ○ 6 year last resort insurance – major defects ○ All residential apartments		John Aquilina (Minister for Fair Trading; Labor)	Home Building Amendment (Insurance) Act 2002 No 17
31.12.2003	7 year statutory warranty – all defects	○ 2 year warranty last resort insurance – all defects ○ 6 year last resort insurance – major defects		John Della Bosca (Minister for Commerce; Labor)	Home Building Amendment (Insurance Exemptions) Regulation 2003

		○ Only for residential apartment in a 3 or less storey buildings			
1.7.2012	○ 2 year statutory warranty – all defects ○ 6 year statutory warranty – major defects	○ 2 year warranty last resort insurance – all defects ○ 6 year last resort insurance – major defects ○ Only for residential apartment in a 3 or less storey buildings		Anthony Roberts (Minister for Fair Trading; Liberal)	Home Building Amendment Act 2011
1.1.2018	○ 2 year statutory warranty – all defects ○ 6 year statutory warranty – major defects	○ 2 year warranty last resort insurance – all defects ○ 6 year last resort insurance – major defects ○ Only for residential apartment in a 3 or less storey buildings	2% bond scheme – unsecured developer funds, claimable in insolvency by the liquidator	Victor Dominello (Minister for Innovation and Better Regulation; Liberal)	Strata Schemes Management Act 2015; Strata Schemes Management Regulation 2016
2019 beyond	○ 2 year statutory warranty – all defects ○ 6 year statutory warranty – major defects	○ 2 year warranty last resort insurance – all defects ○ 6 year last resort insurance – major defects ○ Only for residential apartment in a 3 or less storey buildings	2% bond scheme – unsecured developer funds, claimable in insolvency by the liquidator + potential claim for breach of duty of care against designers*	Matthew Kean (Minister for Innovation and Better Regulation; Liberal)	Legislative change being considered but of little help.
*Note: this breach of duty of care will rarely be accessed as the very substantial amount of losses the owners incur are not due to poor design. In only less than 2% of the 300 plus cases we have acted for owners corporations in have the builders and developers opted to sue the designers for contribution.					

It can be seen that the previous Labor Ministers of the Office of Fair Trading have, over the years, introduced legislation that contributed to the crisis. In more recent years, however, the Ministers from the Liberal party must share a small part of the blame.

Nonetheless, to improve a series of words in legislation, codes or standards and expect the current situation to miraculously improve the standard of building work (never achieved anywhere and at any time in Australia) is wholly unrealistic.

More than ever what is needed is fair play, especially by the office with ‘fair’ in its name. In an environment where all developers pay the same amount of tax (upwards of 20% of the payment cost) and where all owners pay similar amounts of stamp duty (being approximately 5% of the purchase price of a strata unit), owners should be granted equal protection by NSW Fair Trading, regardless of the height of their building.

The current 2% building bond scheme does not provide enough protection to owners in buildings with 4 or more storeys. Under the Home Warranty Insurance scheme a lot owner has access to $340,000 of government funded money to rectify building defects whereas a 2% building bond on an average $200,000 per lot cost equates to the sum of $4,000 only. This amount is simply not enough and, to make matters worse, the amount of the building bond can be claimed by liquidators should a developer company be wound up.

It is time that all lot owners were treated fairly, especially when they continue to pay top dollar for residential units in New South Wales (not including, of course, stamp duty and any interest) and often struggle to make ends meet after paying their mortgage instalments due to the high cost of housing.

The current Liberal government has the opportunity to right the wrongs of Labor, as tabled above, and use the taxes paid by developer and owners of residential units for the product its users paid for and underpin a crucial public policy, that of a stable, secure housing environment.

We suggest the following changes for your consideration:

- Abandon private certification.
- Home warranty insurance to be provided to all levels of strata schemes.
- Use the developer's 2% bond money as further security for the home warranty insurance.
- The current statutory warranty of 2 years for all defects is insufficient and should, at minimum, be for a period of 3 years.
- The definition of "major defects" should incorporate lack of adequate waterproofing and weatherproofing of a building, regardless of whether lack of same causes collapse, destruction or inability to use part of the building.
- That NSW Fair Trading not be forced into the conflicted position to be the licensor, regulator, enforcer and insurer. These roles, and at least the home warranty insurance component, should be split between different Ministers.

We are happy to meet and discuss this further at your convenience.

Kind regards,

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