

# THE SIGNIFICANCE OF OPAL TOWERS' CONSTRUCTION DEFECTS IN SHAPING BUILDING INDUSTRY REGULATORY REFORMS

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## Abstrak

Di Sydney (NSW), pekerja muda lebih suka memilih tinggal didekat pusat-pusat kota, di apartemen yang terjangkau dibanding harus bepergian dari pinggiran kota. Demikian juga halnya dengan kelas menengah dan orang kaya akan memilih bermukim dikondominium modern dan eksklusif disekitar pusat-pusat kota. Pertumbuhan kebutuhan apartemen tersebut mendorong terjadinya transformasi landscape pusat kota dari rumah tinggal konvensional menjadi apartment. Ledakan kegiatan konstruksi apartemen menjadi peringatan bagi pemerintah New South Wales (NSW) terkait dengan peningkatan jumlah laporan cacat bangunan. Diantara dua kasus cacat structural adalah Menara Opal dan Menara Masscot. Kasus tersebut telah menjadi berita utama selama beberapa saat dan telah menarik perhatian publik. Pemerintah NSW dengan segera melakukan investigasi kasus tersebut. Temuannya menyimpulkan bahwa adanya cacat bangunan yang bersifat structural dan laten yang muncul setelah ijin huni telah dikeluarkan. Korporasi Strata mengajukan tuntutan untuk meminta pertanggungjawaban para pihak dan meminta agar segera dilakukan perbaikan. Tulisan ini dimaksudkan untuk mengeksplorasi betapa pentingnya kasus Menara Opal ini, sehingga dapat memberi arah kepada reformasi regulasi di sektor industri bangunan di NSW. Sumber informasi yang terkait kasus ini sangat terbatas, dan sebagian besar mungkin tidak dapat diperoleh dari informasi publik. Pada akhirnya, pemerintah NSW mereformasi regulasi industri konstruksi.

**Kata Kunci:** *Cacat structural, korporasi pemilik strata, reformasi regulasi.*

## Abstract

In Sydney, young workers prefer living closer to the city centers, in affordable apartments, rather than commuting from the suburbs. The middle class and the rich will also choose to live in the modern and exclusive condominiums around the city centers. The growing demand for apartments stimulates the transformation of the city centers' landscape from free-standing residential houses into apartments. The vast growing construction of apartments has alarmed the New South Wales (NSW) Government due to the increased number of reports on building defects. The two major structural defect cases were Opal Tower and Mascot Towers. The cases made headlines for quite some time and attracted public concern. The NSW Government immediately investigated the case. The findings concluded that structural-related latent defects emerged after the issuance of the occupation approval. The strata corporation filed lawsuits to hold various parties accountable and demanded immediate rectifications. This article aims to explore the significance of the Opal Tower, which led to regulation reform in the building industry in NSW. The source of the information related to this case was limited, and perhaps most was not on the public disclosure. In the end, the NSW Government reformed the building construction industrial regulations.

**Keywords:** *Structural defects, owner corporation, regulation reform.*

## INTRODUCTION

The Opal Tower residential apartment is a 36-storey building comprising 392 lots of apartments. The building is located within the Sydney Olympic Park. The construction of the tower commenced sometime in 2015 and was completed in June 2018. Shortly after, the residents began to move in. On Christmas Eve 2018, the occupants were terrified by unusual noise coming from the 4th and 10th-floor slabs. The inspections discovered cracks on the slab and wall. The evacuation of the residents was necessary to allow for a comprehensive investigation. The OT Christmas Eve nightmare, in a split second, became the center of media headlines across Australia.



*Figure 1: Opal Tower, Sydney,  
Source: [www.residencestyle.com](http://www.residencestyle.com), 2022*



*Figure 2: Skynews coverage of the Opal Tower incident during the evacuation on Christmas Eve, 2018*

The independent investigation commissioned by the NSW Government concluded that the newly occupied modern building had latent structural defects. Without being specific, several parties were involved in the development and construction of Opal Tower, notably the developer, the main contractor, the structural design consultant, and the insurers. The Sydney Olympic Park Authority (SOPA) was also tangled in the OT case. In June 2019, the NSW Government was preoccupied by a similar incident in **Mascot Tower**, located just 6 km from the Sydney CBD. Hundreds of the residents were evacuated to allow for a comprehensive investigation. The findings revealed that the cause of the defects was considerably similar to the OT. The Owners Corporation (OC) filed lawsuits to the Supreme Court demanding immediate rectifications and financial compensation for relocation and emotional distress.

## RESEARCH METHODS

The OT incidence is a unique case. Informal dispute resolution in the incident was not obvious but leaned towards the class action litigation process. The NSW government's response to the OT incident was considerably proportionate and rapid. This article aims to examine the significance of OT incidents and the rationale behind the NSW Government's reform of the building regulations. The two profound and inseparable sources of information were reviewed, primarily the final report of the independent investigation. The second report was the NSW Government's response, which leaned towards building industry regulation reform. No in-depth analysis was conducted, nor were any court proceedings and rulings reviewed. It is merely reviewing the NSW Government that focuses on taking different pathways instead of being fully involved in the vortex of dispute resolution that was critically needed. An important piece of the reform was the establishment of the Office of Building Commissioner to oversee the enforcement and administration of regulations.

## DISCUSSIONS

Within days after the OT incidents, the Department of Planning and Housing of the NSW Government engaged independent building investigation specialists and multiple parties directly involved and associated with the OT. The main parties of the investigations were the principal developer, design engineers, builders, insurance companies, strata owners, building managers, and the owners' corporation (OC) represented the strata owners. The NSW Government required answers to the three key questions: (1) the causes of the damage, (2) the rectifications required, and (3) the recommendations to avoid the recurrence of similar incidents.

On the 19<sup>th</sup> of February 2019, the final report of the independent investigation on the OT incidence was released, concluded the presence and causes of the damages without specifying the responsible parties over the failures, as quoted below:

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*We have considered all evidence put before us and have concluded that the causes of the observed damage were related to a combination of design and construction matters, in particular, changes made after the original design and exacerbated by construction issues... and added... We have not sought to indicate who was responsible for any of the causes but rather establish their structural basis.*

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Concerning the rectifications (TOR 2), the final report recommended undertaking sequential activities that include redesigning the failure parts followed by a design check and recertified. After completing the work, certify the approval for occupation.

The answers to the TOR 3 on how to evade the reoccurrence of similar incidents, the report recommended stringent oversight of the project from the planning throughout the operation phases. It also recommended additional third-party design checks and onsite checks before issuing various types of certificates. Another important recommendation was to establish a building structural review board to establish and publish facts on structural-like defects to allow for future amendments or updates to relevant standards or acts.

Shortly after the report was released, the OC filed class action lawsuits through the NSW Supreme Court against various parties, including the developer, the main contractor, and the SOPA. In federal court, the contractor began another battle demanding insurance companies over the rectification cost incurred, and the trial was conducted in the Federal Court. In the OT case, informal dispute resolution was underutilized even though it is an international best practice and is well-adopted in various acts and countries as a legal philosophy (Hardjomuljadi, 2000).

Academics and other parts of society also made several sharp comments that flooded the media. Amongst the notable comments was the accusation of the wrong policy of privatizing building certification. Geoff Hanmer, an academic, argued against the argument that the privatization policy is the main factor of building defects. He commented, as quoted from the media (Hanmer, 2019), *“It might well be a contributing factor, but what went wrong at Opal Tower is much more complex than that. Making certification a government responsibility again won’t solve it”*

His argument was based on the evidence that similar cases had occurred long before the privatization policy was implemented. Therefore, instead of intervening in certification, the government takes a proactive role throughout the developmental cycle, not the endpoint, which is the occupation certification. The UNSW City Futures Research Center also conducted research from 2009 to 2012, which indicated that 85% of strata owners had experienced one or more defects in buildings constructed in 2000 (Easthope et al, 2012).

### **The need for Regulation Reform**

Lessons learned from the Grenfell Residential Tower in London, which caught on fire in mid-2017 and caused the loss of 72 lives, the Australian Government has commissioned

two Australian key figures, Shergold and Weir, to review building safety across Australia (The Shergold-Weir, 2018). The title of the report, “Building Confidence,” was released in February 2018. It contains several recommendations, amongst others, to reform the building industry regulations, ensuring the accountability of all parties involved in planning, design, construction, and maintenance. In February 2019, two months after the OT incident, the NSW Government published its response to the Shergold Weir report and acknowledged the recommendations, as quoted below:

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*The NSW Government supports the vast majority of the Report’s recommendations and will implement the following major reforms across the construction industry:*

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As committed, the NSW Government conducted a series of public consultations, feedback, and debates involving stakeholders in the building industry. The Government realized that there were signs of uncoordinated and fragmented enforcement and administration of building regulations. It was the rationale behind the NSW Government’s decision to establish The Office of the NSW Building Commissioner (OBC) in late 2019. As the regulatory body, The OBC oversees building industry regulations, and the administration ensures proper standards, safety compliances, and prevention. The OBC has the extrajudicial power to investigate serious building defects. Its members can enter construction sites, conduct inspections, issue stop work orders, prevent an occupation certificate from being issued, and order developers to rectify defective buildings. Another amendment increases the NSW Building Bond scheme to ensure sufficient funds to cover the repair of future defects. A post-evaluation is essential to measure the impact of the regulation reform on newly built residential apartments.

## **CONCLUSION**

The OT incident, which involved multiple parties and several million in defect rectification, compensation, and litigation costs, led to the reform of the NSW building industrial regulations, consistent with the recommendation of the Shergold Weir report. The reforms were essential to ensure the quality and compliance of buildings throughout the planning to occupancy.

The establishment of OBC was necessary to administer and enforce the building industry regulations in NSW and, ultimately, restore public trust. Amendments to the Building Bond Scheme were necessary to ensure sufficient funds to cover potential building

defects. Regrettably, a similar case like OT has caused irreparable property value loss, which will remain unforgettable by the affected strata owners. In the OT case, several parts of the disputes could have been solved faster through an informal and reconciliatory process, which would have reduced the cost of litigation.

## REFERENCES

- Better Regulation Division. (2019). *NSW Government response to the Shergold Weir Building Confidence Report*. Department of Finance, Services and Innovation. NSW, Australia. Retrieved from <https://Response-to-Shergold-Weir-Building-Confidence-Report.pdf>
- Hanmer, G. (2019, January 19). There are lessons to be drawn from the cracks that appeared in Sydney's Opal Tower, but they extend beyond building certification. *The Conversation*. Retrieved from <https://theconversation.co>
- Hardjomuljadi, S. (2020). *Use of Dispute Avoidance and Adjudication Boards*. Jakarta, Indonesia: ASCE.
- Easthope, H., Randolph, B., & Judd, S. (2012). *Governing the Compact City*. ISBN 978-1-74044-009-7. Retrieved from [https://Governing\\_the\\_Compact\\_City\\_EXECUTIVE\\_SUMMARY.pdf](https://Governing_the_Compact_City_EXECUTIVE_SUMMARY.pdf)
- NSW. *Strata Schemes Management Act 2015* (Australia 2015 and subsequent amendments).
- NSW. *Strata Schemes Development Act 2015* (Australia 2015 and subsequent amendments).
- NSW Government, Customer Service. (2021). *Construct NSW Update Report*. Retrieved from <https://www.nsw.gov.au/sites/default/files/2021-02/Construct-NSW-Update-Report-January-2021.pdf>
- Shergold, P., & Weir, B. (2018). *Building confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*. Retrieved from [https://building\\_ministers\\_forum\\_expert\\_assessment\\_building\\_confidence.pdf](https://building_ministers_forum_expert_assessment_building_confidence.pdf)
- Unisearch. (2019). *Opal Tower Investigation Final Report Independent Advice to NSW Minister for Planning and Housing*. NSW, Australia: John, C., Mark, H., & Stephen, F. Retrieved from <http://OPALTOWERINVESTIGATIONFINALREPORT-Figures Rev0>
- Stefanovic, S. (2019, January 1). Design and construction issues uncovered. *Architecture & Design*. Retrieved from <https://OpalTower:Designandconstructionissues uncovered|Architecture & Design>