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Diverging paths in building safety law: Post-Grenfell reforms in England, Florida, and New South Wales

Transcript of presentation by Michael Teys at the 8th International Forum on Multi-Owned Properties, Sydney, Australia, 28 January 2026

First Grenfell, then Champlain Towers, Florida, and 10 weeks ago, Wang Fuk, Hong Kong.



A trilogy of residential high-rise tragedies in multi owned properties. Three different countries, three different causes, three different sets of laws about building construction and safety, but one result - mass deaths, casualties, and displacement.

Sue Bright from Oxford describes them as 'property moments'. Evan McKenzie, at the last gathering of this group in Spain 2024, described them as 'focusing events' – disasters that persuade government that there is problem and start a process of legislative and regulatory reform.



In Australia, we have had our own trilogy of property moments - focusing events. Fortunately, either through good management or good luck – a matter yet to be studied - we have avoided the deaths that have happened elsewhere, nevertheless, our three high rise failures send a chill down the spine of all who study them.

Lacrosse, Melbourne was a cladding fire that in 2014 pre-dated Grenfell. It spread 13 floors in less than 8 minutes and resulted in a damages award of more than \$12M against the builder. Opal Tower, Sydney was evacuated sensationaly on Christmas Eve 2018 due to structural cracking. Mascot Tower, also in Sydney, was evacuated in 2019 when it began to subside - probably due to a combination of building defects, adjoining construction work and failure to remedy known defects – the trifecta of causes that brought down Champlain Towers with a much more tragic result.

My research is concerned with why these things are happening. More specifically, what impact have laws about building safety had - and might have - on the decision making of the parties in these cases responsible for the delivery and ongoing safety of these buildings.

My presentation to the International Forum on Multi-Owned Properties this week, was a subset of this research and looks at the law reforms that have occurred in London, Florida and New South Wales, since these property moments occurred.

Research in progress

A comparative legal study - building safety laws

Maps legislative reform and government initiatives

Post Grenfell 2017 focus

Distinguishes pre and post occupation reforms

Takes a building life cycle approach



Research aims and questions

The overall aim is to identify the methods used in England, Florida and New South Wales to provide for building safety in multi-owned residential properties.

Specific research questions:

1. How do the front-end design and construction control systems differ?
2. How are ongoing safety and defect risks managed once buildings are occupied?
3. How are major catastrophic risks identified and remediated, by laws and government programs?

Contribution - enables further research to explore the comprehensiveness of 'whole of building life cycle' approach to building safety.

Methodology

1. Post Grenfell reforms analysed singularly for existing and new buildings - identifies initiatives, type (law or state program), its effect, and any measure of effectiveness

2. Comparative analysis by attributes of reforms (e.g. key design construction controls, occupation phase safety regime, new duties of care and financial funding mechanisms)

3. Comparative analysis by 11 stages of a building's life, from concept and planning through occupation, to late life decisions about collective sales and renewal

Research limitations

Before turning to the themes emerging from my research to date, it's important to note some limitations of what I've done so far.



This research is a work in progress

Work to date is a desktop-based review of legislation

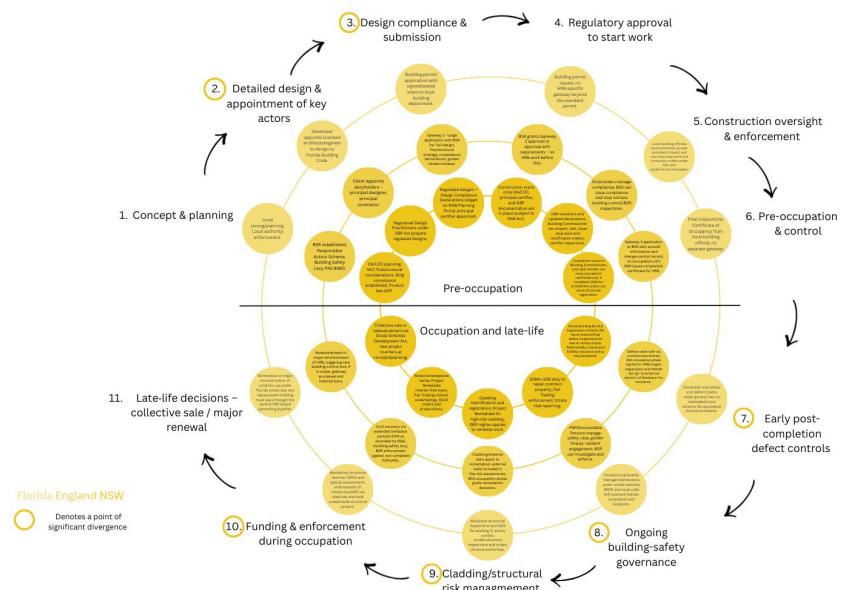
Judicial commentary and other literature yet to be reviewed

Structured interviews yet to be undertaken

This is a study about legislative and regulatory methods. It reaches no conclusions about the effectiveness of reforms

As mentioned, when I was discussing methodology, I'm looking at the impact of law reform through the lens of a building's life cycle from conception to redevelopment.

Building life cycle analysis



This image demonstrates how my research is identifying divergence in approach between the three cases.



There are 11 stages in the cycle of which six are before first occupation and five follow first occupation. Each stage has been studied and compared with the corresponding stage in each place. The inner circle is New South Wales, with England in the middle, and Florida as the outer ring.

Divergent paths have been identified in six of the 11 lifecycle stages.

- Design details and appointment of key actors
- Design compliance and submission
- Early post completion defect control
- Ongoing building safety governance
- Cladding and structural risk management, and
- Funding and enforcement of remediation

In the interest of brevity, I have grouped these into three emerging themes from the research.

Emerging themes

1. Florida focuses more on post occupation laws, tightening condo board governance

2. New South Wales and England take a more holistic view of a building's life cycle

3. Only England has accepted financial responsibility for cladding remediation, and has targeted developers to assist them to defray public cost



Three broad themes emerge from the study so far -

- Florida has focused more on post occupation reforms that tighten financing and enforcement on owners, rather than design and construction of new buildings and refurbishment.
- New South Wales and England have taken a more holistic approach and introduced new laws and programs that focus on both pre and post occupation.
- England has accepted responsibility to fund cladding remediation and has targeted developers to defray the cost.

Theme 1 – Florida's approach

Perhaps reflecting the nature of the property moment in Florida – the collapse of an ageing building with significant known defects and risks, Florida's reforms focus on the obligations and decision making of condo owners and officers rather than the construction and delivery process for new buildings and refurbishment.

Two main initiatives have been enacted –

1. Compulsory milestone structural inspections when a building reaches 30 years post first occupation and then each 10 years thereafter.
2. Structural Integrity Reserve Studies for all buildings, regardless of age, have been made compulsory, as has the obligation to progressively fund the works identified in the study as being required.

Fines and charges can be laid for non-compliance and evacuation orders can be made.

In his chapter on Champlain Towers in the recently published text, 'Private Law and Building Safety', McKenzie notes these reforms represent a departure from the basic condominium policy that owners can be counted on to maintain their buildings in perpetuity.



He also observes the reforms do not provide any form of institutional support or funding to achieve higher level of building maintenance and repairs. He predicts that without such reforms the present cost to bring buildings up to scratch will be beyond many condominium associations with the unintended consequence of this likely to influence affordable housing ownership because condos will be terminated and sold to developers for re-purposing as rental apartments.

Theme 2 – New South Wales and England’s more holistic approach

Pre-occupation

In terms of new buildings and significant refurbishment work, post Grenfell and Champlain, Florida has stayed with the relatively passive ‘certification to code’ approach of the neo-liberal era leaving local authorities and existing planning bodies to enforce codes and standards.

In contrast, England and New South Wales have responded more expansively on both pre and post occupation reforms establishing new legal duties, new duty holders with personal liability, and new agencies that sit above the certification system. These new authorities have far-reaching powers to become more involved in overseeing design and variations throughout construction.

England and New South Wales have both ‘pierced the corporate veil’ to create new personal duty regimes for design and building professionals. Florida has not established a new duty holder category with personal liability for economic loss. All places retain traditional tort and licensing laws.

New South Wales and England have also created new statutory bodies with powers to oversee the submission of design and compliance documentation and to ensure compliance throughout construction.

These agencies, The Building Safety Regulator in England, and the Building Commission in New South Wales, have powers and resources to be more interventionist in seeking information about designs and remaining satisfied that design and construction meet the required standards.



England has adopted a gateway approach with three hard stop points at which construction design and delivery will be stopped if compliance has not been demonstrated. England has introduced the concept of 'Golden Thread' information to accompany plans and specifications. This is a single 'source of truth' showing how the building was designed, built, and is being managed, so that it complies with building regulations and remains safe in use. It covers both 'building work' information (design intent, plans, specifications, construction control plan, change control, i.e. variation records, compliance evidence, photos, fire strategy) and 'maintenance / operation' information (safety case, maintenance and inspection records, resident engagement, mandatory occurrence reports).

In New South Wales, an internet portal has been established for digital lodgement and retention of design and compliance documentation. Variations during construction must be documented and registered within 24 hours of having been made. The enforcement process appears more fluid than England's gateway approach with highly publicised 'anywhere anytime' site inspections.

Recertification notices and stop work orders are issued following these visits which can occur at any stage of construction. These notices and orders are publicly searchable and are accompanied by a 'name and shame' media campaign. Social media channels have also been used extensively by the New South Wales Building Commission to shine a light on bad practices and to 'restore confidence' in the sector.

Further research is required to understand more about how the new regulators in New South Wales and England are exercising their powers on the ground, and to investigate if Florida has changed the way it exercises the enforcement powers the local authorities and planning officers already had to stop unsafe construction prior to Champlain.



Post-occupation

Turning now to post occupation reforms, early-stage defect reform has been strongest in New South Wales, where a statutory defects bond scheme has been introduced, funded by developers to the extent of 2% of the cost of construction.

More recently, a decennial liability insurance product has been released that can be substituted for the defects bond. Latent defect insurance is available in England and Florida, but it is not compulsory as it is in New South Wales in the absence of a defects bond. Each of the three jurisdictions have a system of implied statutory warranties, and forms of homeowners insurance.

Ongoing building safety governance has been a major area of reform in all three jurisdictions – each approaching the problem in a different way.

- We have already discussed the approach in Florida, introducing compulsory milestone structural inspections and Structural Integrity Reserve Studies. New South Wales and England have not followed suit on these reforms. At least not yet.
- In New South Wales, the strict statutory duty to repair common property immediately something falls into disrepair has been given 'teeth' by laws that allow the regulator to enter a strata schemes property to inspect, test, issue remediation work orders, and accept enforceable undertakings to do the work.
- In this area of ongoing safety governance post occupation, England has the additional problem presented by the leasehold system of property ownership of there being no single entity responsible for maintenance and repairs. It has addressed this by creating a new duty holder, a Principal Accountable Person. A PAP is the single, clearly identifiable duty holder who carries legal responsibility for managing fire and structural safety risks in an occupied higher risk building. The PAP (which can be a person or a corporate entity) can be the subject of enforcement and criminal prosecution.



Theme 3 - England's acceptance of financial responsibility for cladding repairs

Again, reflecting the nature of the 'property moment' that triggered reforms, England alone of the three places studied, has accepted liability for the cost of cladding removal and remediation, and has introduced more punitive reform affecting developers and future development work.

England has created a Responsible Actors Scheme that aims to make developers responsible for fire safety defects going back 30 years, pay to fix serious fire-safety defects in buildings they built or refurbished. Developers that join the scheme enter defect remediation contracts to make good their work. Those that don't register can be placed on a prohibited list and can be denied planning approvals for future development work.

England has also introduced a Building Safety Levy on all new construction, commencing 1 October 2026, that will be used to defray the public costs of cladding removal and remediation.

New South Wales on the other hand has not accepted liability for cladding remediation. While leaving primary responsibility with the strata owners for remediation despite granting building approval of their flawed buildings, the government has responded to assist owners in several ways, for example, it has introduced:

- A ban on cladding products with more than 30% polyethylene
- Self-reporting and remediation registration scheme to identify at risk buildings
- Aid via a program called Project Remediate to provide advice and long term no interest loans to cover remediation.

In Florida there has been no change to cladding laws or standards post Grenfell.



Discussion

Apart from the three emerging themes I have spoken about in this brief presentation, there is a more general overarching theme emerging – I am beginning to see a relationship between the nature of the property moment in each place and the type of reforms that have been introduced.

Florida has gone hard on condo boards and owners, reflecting a view that the Champlain disaster was largely due to the failure of the condominium association to maintain and repair its property. Nothing much has changed there on the development side of the equation.

England has gone hard on developers and contractors, and softer on owners and responsible entities. While the Grenfell investigations are yet to be finalised, this approach is consistent with what we have learnt to date about contractors in that case putting profit before lives. For a chilling account, see Peters Apps book 'Show Me the Bodies'.

To coin the Australian gaming vernacular, 'New South Wales has had two bob each way'. Responding to a fire at Lacrosse caused by cladding, structural defects in a new building at Opal Towers, and a range of issues at an older building at Mascot including some poor decision making by the owners post evacuation, the package of reforms while perhaps not as savage as elements of the Florida and English reforms, is the most holistic. Viewed as a package of reforms, almost every stage of a building's lifecycle has been touched.

If this relationship is borne out by further research, then an outcome of this type of comparative socio legal work might be an important lesson in looking beyond our shores and singular events when approaching reform about building care and life safety.