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Australia's property industry

Creating for Generations

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Mr Angus Abadee
Director, Building and Construction Policy
Department of Customer Service
via email: BCR@customerservice.nsw.gov.au

Building Legislation Amendment (Building Classes) Regulation 2022

Dear Mr Abadee,

The Property Council of Australia welcomes the opportunity to provide a submission to the New South Wales Government regarding comments and feedback on the proposal to amend the *Design and Building Practitioners Act 2020* as well as the *Residential Apartment Buildings Act 2020*.

The Property Council has been heavily engaged in the building reform work happening across NSW, including making a submission in March 2022 regarding the *Home Building Act 1989 (NSW) & Tranche II Construct NSW Reforms*. We commend the work of the NSW Government and the Building Commissioner in their achievements to date in ensuring the integrity and quality of built form in multiple classes of buildings.

Property is the nation's biggest industry, representing one-ninth of Australia's GDP and employing more than 1.4 million Australians, as well as being the largest employer in Australia. In NSW, the industry creates more than \$581.4 billion in flow on activity, generates around 387,000 jobs and provides around \$61.7 billion in wages and salaries to workers and their families.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable and safe places.

The following comments below have been lodged via the Governments 'Have Your Say' Portal for consideration. Should you have any questions regarding the content of this submission, please contact Matthew Wales, NSW Senior Policy Adviser on mwales@propertycouncil.com.au or 0451 146 886.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michelle Guido".

Michelle Guido
Acting NSW Deputy Executive Director
Property Council of Australia

Feedback:

Expanding the Design and Builders Practitioners Act 2020 to Classes 3 to 9c

Do you support the expansion of the DBP obligations to Class 3 and 9c buildings? If not, why?

The Property Council has identified significant issues that may arise during the expansion. These concerns include:

- Existing projects who engage interior design firms for example for refurbishments will also need to engage qualified registered architects to sign off on works related to waterproofing of wet areas. This is an added cost on what are often already tight budgets.
- Any changes introduced via the expansion of the DBP Act require redesign, redocumentation and recertification which impacts fees, budgets and program on each individual project.
- Adding to this is the complexity around breaking down Construction Certificates. Property Council has received examples of members who have resubmitted 8 times on one project. This has an impact on the delivery of a project due to both the complexity already mentioned, as well as the added burden placed on engineers and certifiers who require several weeks to review information. This is causing significant delays to construction programs, including mobilisation periods.

Our members concern with the D&PB Act expansion relate to offering exemptions where different classes of use were impacted by being linked to a residential use. Point in case previously discussed was retail, where a minor fit-out should not require the same detailed review and signoff process for the base build, noting minor retail leases are committed late in the build and as purely internal works do not have the same risk as the base build or base build mods. In new-build projects within both the class 3 and 9c space, it can equate to significant increases in documentation and certification efforts, this equates to approximately a 20 percent increase in fees to cover additional documentation, coordination, and admin time to collate and upload certificates. Coordination and detailing typically done in the Construction Phase, particularly on D&C contracts needs to be advanced and locked in prior to Construction Certificates being issued.

Recommendation:

The Property Council of Australia strongly recommends the Government continue to prioritise the requirement of supply and affordability to the market and prevent the additional hurdles for development and connected industries that will now be included under the Act. With impacts from COVID-19 and construction challenges still being felt, pushing back proposed changes will allow industries adequate time to adjust to the increased costs which will be incurred on projects. By grandfathering projects that have already commenced avoids delaying projects and adding burdens and costs to the purchasers of developments already underway.

Is the proposed timetable for commencement of the reforms suitable? If no, what should change?

As the proposed date of commencement is 3 April 2023, in order to deliver the industry a clear indication on requirements and for additional resources to be adequately sourced for oversight and compliance, more time is needed to ensure best outcomes for the Government and the sectors impacted.

Recommendation:

The Property Council of Australia recommends the Government takes the time to ensure delivery outcomes of the policy can be met with staffing and training measures. A new commencement date of 3 April 2024 would be able to get the required number of design practitioners qualified for the additional oversight on complex issues.

Design Practitioners classes

Should practitioners registered under existing classes in DBP for Class 2 work be automatically eligible to work on Class 3 and 9c buildings?

Support in Principle.

Overall, we support the need to have trained practitioners to increase safety for developments across the state. The inclusion of additional developments requires additional resources and 'tapping into' trained practitioners, which will ease the burden on the new policy.

Should there be an unrestricted class of building designer? Why or why not?

A base level should be accepted following the level of training received, number of years worked, and their portfolio of projects completed to standard, there should be an unrestricted class to allow talented persons to work across classes for ease and simplicity.

Should the temporary pathways for registration ('grandfathering provisions') and competency assessments that were available when the legislation first applied to Class 2 be reopened for the expansion to Classes 3 and 9c? Why?

The Property Council supports measures to increase efficiency and productivity in the industry. By reintroducing competency assessments will give access to a larger pool of workers to take up tasks on Class 3 and 9c that otherwise wouldn't causing possible delays and additional cost.

Qualifications

Are the existing qualifications appropriate for registration as a Building Practitioner for Class 3 and 9c work?

The current system is being amended to increase checks on compliance and not to amend education and training of accessors. The industry takes care of the education aspect and seeks the amendments

are targeted at accountability of compliant designs and not the determination of compliant buildings, which is more appropriate.

As Building Practitioners registered for DBP won't also have licenses under Home Building Act, should these practitioners be subject to additional CPD or other requirements?

The proposed Building Bill 2022 will replace the Home Building Act, replace the Plumbing and Drainage Act 2011 and transfer and consolidate the duty of care provisions from the DBP Act and the EP&A Act. Therefore, linking a new policy requirement to a replaced policy may not be the way forward for an industry as agile and active as the development industry.

Professional Engineers Scheme

It is proposed for the expansion to occur in April 2023. Do you support this timeframe? If not, why?

As the regulation is proposed to commence in April 2023, there does not appear to be any transitional arrangements for developments that have already commenced prior to that date. Therefore, a longer lead time would be required for the grandfathering of already commenced developments.

For the first year of the Professional Engineering Scheme, practitioners who did not meet the qualification requirements could become registered for Class 2 buildings if they successfully completed a competency assessment and had 10 years relevant experience in the previous 15 years. Should this alternate registration pathway be reopened when the scheme is expanded to those working on Class 3 and 9c buildings? Why?

Support in Principle.

On the job training should count for experience if competency is proven. High demand on increased assessments requires all qualified persons to be on the job.

A levy to maintain momentum restoring confidence in the industry

Do you think industry should contribute to the cost of the Construct NSW reforms? Why or why not?

An additional levy on an industry that is currently heavily taxed from all three levels of Government adds another disincentive for developers and investors to work in an essential industry. The lack of housing supply and affordable housing is a concern to not only the state but the country. Developers have a choice on projects to undertake and added levies on their activities in a particular state makes NSW unattractive for investment.

Applying the levy to building work

Do you support the levy attaching to each Expected Completion Notice (ECN)? Why or why not?

An additional levy on an industry that is currently heavily taxed from all three levels of Government adds another disincentive for developers and investors to work in an essential industry. The lack of housing supply and affordable housing is a major Government concern to not only NSW but nationally.

Developers have a choice on projects to undertake and added levies on their activities in a particular state makes NSW unattractive for investment.

Basis for recovering the key costs of the reforms

Are there any comments you would like to make on any aspect of building and construction legislation in NSW?

With the aim for this legislation to come into force in April 2023, the main concern for the Property Council and our members is there does not appear to be any transitional arrangements for developments that have already commenced prior to that date.