

Building Stronger Foundations consultation  
Regulatory Policy, Better Regulation Division  
Department of Finance, Services and Innovation  
2-24 Rawson Place  
HAYMARKET NSW 2000

Email: [BCR@finance.nsw.gov.au](mailto:BCR@finance.nsw.gov.au).

Dear Mr Dunphy,

The Property Council of Australia is supportive of increasing confidence and transparency in the building and construction industry and that the reforms implemented deliver safe, compliant buildings in an efficient and cost-effective manner.

The Property Council was strong in its leadership to call for a national framework for the consistent implementation of the recommendations from the Shergold Weir *Building Confidence* report and welcomed the commitment recently from the Building Ministers Forum to establish an implementation team within the Australian Building Codes Board tasked with developing and reporting on this national framework, as well as the design, construction and certification of complex buildings.

We note and welcome the fact that the NSW Government has already implemented some of these reforms and that they are progressing more of the recommendations.

As highlighted in the *Building Stronger Foundations discussion paper (the Discussion Paper)*, these reform proposals focus on high-rise residential construction and the reforms outlined in the paper should be aimed at improving consumer confidence in this asset class. These issues are not as relevant in the commercial sector due to the asset ownership structure and contractual arrangements between experienced owner/developers and commercial, large scale builders.

We support any reforms that will improve quality assurance and accountability in the building industry and instils a consistent and transparent approach to building regulation and enforcement in NSW.

In our submission below we outline policy reforms that we believe will improve building and regulatory oversight in this sector.

## The Property Council of Australia

Property is the nation's biggest industry – representing one-ninth of Australia's GDP and employing more than 1.4 million Australians. The largest employer in Australia.

In NSW, the industry creates more than \$81.4 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 and sustainable places.

## A pillar of NSW

The property and construction industry underpins the health and prosperity of the NSW economy. The industry:

- generates over 390,000 jobs – 12 per cent of the workforce.
- provides \$25.4 billion in wages and salaries to workers and their families.
- pays \$20.9 billion in state taxes, Local Government rates, fees, and charges - the state's single largest taxpayer, accounting for 54.1% of Taxes.
- contributes \$63.4 billion directly to Gross State Product – 12.7 per cent of total GSP.

Good, clear reforms to the NSW building industry are critical to ensure the long-term strength of the industry and ensure the community has confidence in the development of our State and the quality of the homes they buy or rent.

## Creation of a Building Commission

**Recommendation: Appoint a Building Commissioner with a broad role that covers both regulatory and enforcement functions with the support of a well-resourced Building Commission.**

The appointment of the NSW Building Commissioner is a positive step to enforce and maintain best practice regulation and oversight of the building industry, however the position must be broader than just a strategic role and we recommend the NSW Government establish a Building Commission similar to the Queensland Building and Construction Commission (QBCC).

This commission should have both regulatory and enforcement functions. It is also recommended that the NSW Building Commissioner assume a similar function to that of the Queensland Commissioner which are outlined in in [section 20J](#) of the *Queensland Building and Construction Commission Act 1991*.

A Building Commissioner with a broad role that covers both regulatory and enforcement functions and with the support of the resources of a building commission will be in the best position to implement key reforms to the building sector.

Past inquiries into the building industry have also made this recommendation.

The Campbell Inquiry (2002) recommended the establishment of a Home Building Commission to oversee regulation in NSW. It was recommended that the Commission incorporate licensing and registration, discipline and auditing, handling consumer complaints and disputes, as well as regulatory development.

Similarly, The Lambert Report (2015) also recommended the establishment of an Office of Building Regulation reporting to a Minister responsible for Building Regulation.

A Building Commissioner with a well-resourced building commission is critical in ensuring a holistic and consistent approach is taken to building regulation and enforcement in NSW.

In addition, as was recommended in the Lambert Report, there should be a stand-alone building Act incorporating the relevant provisions of the *Home Building Act*, the *Plumbing & Drainage Act* and the building regulation and control provisions of the *EP&A Act*.

Currently NSW is the only jurisdiction not to have a separate building Act. It would ensure that one Minister would have responsibility for all building regulation instead of how it is currently structured with responsibility split between multiple portfolios. This would also streamline the regulatory process for the construction industry.

## Registration of Building Designers

**Recommendation: Create a system for registering building designers backed by a strong continuing professional development scheme and auditing and governance system.**

The registration of building designers will improve quality outcomes and accountability within the sector.

It will ensure that those people who work in critical parts of the design and construction of a building have the necessary competencies and qualifications for the scope of work they are expected to undertake, in addition to holding the required insurance.

It would be practical and logical for registration of practitioners to occur at a national level, to ensure consistency of qualifications and competencies across Australia.

Categories of practitioners that should be registered are:

- Builders
- Site or Project managers
- Fire Safety Practitioner / Fire Engineers
- Building Design professionals including, but not limited to:
  - Architects;
  - Structural Engineers;
  - Building Services Engineers ie. mechanical, electrical, hydraulic, fire and lift services;
  - Façade and Waterproofing designers;
  - Civil / Infrastructure Engineers
- Other professionals whose advice is relied upon by the building designers, including but not limited to:
  - BCA Consultants;
  - Geotechnical Engineers;
  - Hydrology Engineers;
  - Environmental (contamination) Engineers

Any registration needs to be backed by a strong, continuing professional development scheme with annual CPD requirements. A portion of these competencies should relate to requirements in the Building Code of Australia (BCA) including standards, legislation and product knowledge.

In most cases formal qualifications should be required for registration. There may be, however, roles where registration should not be restricted to formal education qualifications.

In some fields of work, experienced and knowledgeable practitioners have entered the profession through practical based experience. Competency based assessments by an industry body would be appropriate for registration purposes in these circumstances.

In relation to the registration of engineers, the NSW Government should examine the system in Queensland where a comprehensive registration system has been implemented.

The registration of practitioners requires a strong auditing and governance system. The Building Commissioner should have responsibility for overseeing registrations as well as an auditing and disciplinary role. The Building Commissioner, in consultation with industry groups, should outline the eligibility criteria for registrations including insurance, continuing professional development requirements, offences and a disciplinary process.

## Improving Building Quality

**Recommendation: Each building design professional involved in a build should certify that the plans and specifications prepared by them are compliant to the relevant parts of the BCA.**

The Property Council agrees that each of the building design professionals involved in a build should certify that the plans and specifications prepared by them are compliant to the relevant parts of the BCA, to their expertise.

The Discussion Paper suggests that plans should be lodged with the Building Commissioner who would have the ability to audit these documents. As this stage it is suggested that any plans to be lodged to the Building Commissioner should be for buildings 3 storeys or above that include a residential component.

It is suggested that the following documents are lodged in electronic form:

- I. The approved, Consent Authority stamped DA & S4.55 drawings;
- II. The PCA stamped Construction Certificate drawings, including any revisions to these brought about by a S4.55 approval, or other material change to the design; and
- III. The final issue of AFC (Approved for Construction) drawings.

By taking this approach any material changes to the design will be retained on record.

The head contractor or builder should also sign off on the fact that the build has been certified in accordance with the latest approved documentation. It is recommended that the NSW Government look to Tasmania in this regard and examine [the Form 11A Certificate of Likely Compliance - Building Work](#) which is required under [section 134 of the Tasmanian Building Act 2016](#).

## Peer Review – Improving Structure Design

**Recommendation: Implement a third-party independent peer review of structural designs by engineers as is the practice in Victoria.**

When there is a structural impact in a building it has serious ramifications for residents, and it is important that further safe guards are put in place to reduce the likelihood of this occurring.

We recommend that a third-party independent peer review of structural designs by engineers be implemented, as is the practice in Victoria.

This allows for an independent evaluation of project designs and improves the quality and safety of structural designs, reducing risk. The peer review could occur upon request by the consent authority, building designer or client. Conversely, it could be made compulsory for a building that is over 25 metres in height with a residential component or where shoring works for excavations are over 3 metres in depth. For insurance purposes, the proportionate liability in relation to the peer reviewer should be capped.

## Performance Solutions

**Recommendation: Performance solutions must be documented**

Performance solutions should be documented to ensure documentation verifies compliance with the BCA, solutions are justified and satisfy performance requirements. Written performance solutions should be supported with relevant documentation including but not limited to drawings, modelling and expert opinion.

It is recommended that NSW Government examine the system outlined by the Victorian Building Authority in the [Performance Solutions Procedures and Documentation Practice Note](#), as a method of recording performance solutions. A record of performance solution documentation should be retained by the building owner or owners corporation to prevent incidents of non-compliance being identified by an independent third party building inspector post-completion, which can result in costly reviews and potentially unnecessary rectification work by building owners.

## Self-certification by trades

**Recommendation: An additional layer of certification should be implemented for work related to structure, waterproofing and fire safety, which are the potential sources of major defects.**

It is recommended that an additional layer of certification be implemented for work that relates to structure, waterproofing and fire safety, which are the potential sources of major defects. It is recommended the head contractor (ie. The Builder), should also have to inspect and certify the relevant work. This recommendation should only apply to a building that is three storeys and above in height and includes a residential component.

## Duty of Care

**Recommendation: Create a working group to fully consider the extent and scope of this duty and how this provision should be drafted**

In principle we agree with duty of care provisions, however we would recommend the working group the Department is creating fully consider the extent and scope of this duty and how this provision should be drafted. We agree that all design professionals that contribute to the design and delivery of a building must be held to account for the quality of their work and to a standard expected of skilled and qualified professionals designing and delivering the type of structures they commit to deliver. There are concerns about the extent of losses that may be sought of a proponent, the increase in the cost of insurance and its accessibility, and the need to account for a period or statute of limitations.

A duty of care provision does not however make a developer or builder that has emerged from the collapse of another through insolvency or has 'phoenixed' liable for their poor construction work.

We believe the Government should examine current regulations and investigate what further measures can be implemented to stamp out this practice.

## Chain of Responsibility

**Recommendation: The NSW Government should establish a chain of responsibility, placing duties on building supply chain participants (including designers, manufacturers, importers, suppliers and installers) to ensure building products used in NSW are safe and fit for intended purpose**

It is recommended that the NSW Government establish a chain of responsibility, placing duties on building supply chain participants (including designers, manufacturers, importers, suppliers and installers) to ensure building products used in NSW are safe and fit for intended purpose.

In the first draft of the *Building Products (Safety) Bill 2017* there were provisions to establish a chain of responsibility, however these were removed prior to the introduction of the Bill into NSW Parliament.

It is recommended that legislation be enacted to implement these provisions.

It is noted that Queensland has enacted these provisions in their [Building and Construction Legislation \(Non-conforming products – Chain of Responsibility and other matters\) Amendment Act 2017](#).

If you have any further comments or questions please contact Emma Ashton, Senior Policy Advisor, on [eamshon@propertycouncil.com.au](mailto:eamshon@propertycouncil.com.au) or 0402 277 247.

Yours sincerely,



**William Power**  
Acting Executive Director – NSW