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Better Regulation Division
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RE: Building Bill 2024 - Regulation of prefabricated building work

We thank the Department of Customer Service and Building Commission NSW for the opportunity to provide feedback on the position paper on proposed regulation for prefabricated building work.

The Property Council has been actively engaged in the building reform work underway in NSW. We commend the NSW Government and the Building Commissioner on their achievements to date in progressing reforms to ensure the integrity and quality of built form in multiple classes of buildings.

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. Together, our members own, fund, develop and manage Australia's largest portfolios of residential and land lease communities (LLCs), also known as Manufactured Housing Estates (MHEs).

Overview

As outlined in the position paper, prefabricated building work is an underutilised construction method in Australia, representing only five per cent of construction work, which is considerably less than other comparable countries. Growth in this market has the potential to deliver more homes to NSW at speed and scale and offers an alternate construction method that is easier to assure for quality and compliance.

The Property Council welcomes the proposed improvements to the regulation of prefabricated building work, which will bring greater clarity, consistency and quality to the development and installation of manufactured homes. We note that the Department of Planning, Housing and Infrastructure is running a concurrent Phase 1 exhibition of proposed amendments to the planning framework for manufactured home estates, caravan parks and camping grounds.

It is critical that the Department of Planning, Housing and Infrastructure and Building Commission NSW carefully consider how these reforms will impact the treatment of MHEs in the planning system, including how reforms in either framework may inadvertently impact on the capacity of MHE developers to provide much needed housing stock.

The Property Council understands the Building Bill aims to create a single regulatory framework for prefabricated building work and remove inconsistencies across the planning and building

systems, effectively creating a new definition of prefabricated building work. While we are not opposed to these objectives, the reforms, unless carefully calibrated with the state's planning system, may create a series of unintended consequences.

The position paper outlines the following, *"manufactured buildings will be treated as building work... to ensure that this type of building work is treated consistently with onsite construction - removing inconsistencies between local government areas and providing certainty for those seeking development consent. This definition will carry across the planning and building regulatory frameworks to ensure a consistent regulatory approach from initial planning consent through to occupation"*(p. 11).

While well intentioned, regulating manufactured homes as "buildings" under the Building Bill has the potential to undermine the existing approval pathway for MHEs under section 68 of the Local Government Act 1993 (LG Act) if not carefully managed. The entire MHE feasibility relies on a fundamental legal distinction between manufactured homes and buildings, and as such should be kept separate to avoid seriously undermining a growing housing supply market.

The Building Commission also proposes that *"prefabricated design work and building work carried out in Australia will be subject to self-certification where the design or manufacturer holds a licence or registration issued by an Australian authority"* (p. 21). We understand the certification process will also be split into three processes covering design, manufacture, and transport and installation of prefabricated building work.

While the Property Council broadly supports improvements to the certification process for prefabricated building work, it is unclear whether this process is intended to run in parallel with or replace the existing certification regime for manufactured homes in the Local Government (MHE) Regulation. Further clarification is required for industry to better understand the implications of this regulatory change.

The Property Council broadly supports bringing prefabricated buildings into the Design Compliance Declaration (DCD) scheme under the Design and Building Practitioners Act 2020 (DBP Act), noting our comments above. The position paper states that off-site manufactured work would need to be accompanied by a "compliance declaration" by a manufacturer, which would be a precondition for the *"local council or certifier overseeing the development... [to] allow the work to be treated as "prefabricated building work"*(p. 24).

It is important to note that private certifiers currently have no legislative function in the installation of manufactured homes and moveable dwellings. To support this change, we recommend amendments be made to the Environmental Planning and Assessment Act 1979 (EP&A Act) and current LG Regulation to allow private certifiers to have a greater role in the installation of manufactured homes. Furthermore, the Property Council recommends that a consistent private certification regime for all manufactured homes be established, irrespective of whether they are constructed off or on site, to better support product innovation and flexibility in construction and delivery while providing regulatory certainty.

Councils only have a limited certification function in the installation of manufactured homes and moveable dwellings (see clause 69 of the LG (MHE) Regulation). Expanding this function to include verification of a "compliance declaration" for the prefabricated building work should only be done if there is an expanded role for private certifiers under the proposed changes.

Thank you for the opportunity to provide a submission on the regulation of prefabricated building work. We have provided further responses to the answer sheet to below. If you have any questions about this submission, please contact NSW Policy Manger, Michael Player at mplayer@propertycouncil.com.au.

Yours sincerely



Katie Stevenson
NSW Executive Director
Property Council of Australia

Answer Sheet

Q1: Does the proposed definitions of prefabricated building work and associated concepts provide a clear delineation between offsite manufactured work that should be treated as 'building work' and building products? What changes could be required to achieve this outcome?

A: Yes, the proposed definition makes the distinction between building work and building products clear.

However, the proposed Building Bill needs to ensure that although the inclusion of "prefabricated building work" within the concept of "building work" may have the effect of treating prefabricated manufactured homes as if they are like buildings constructed on-site, they remain separate concepts under planning law, and manufactured home installation continues to be subject to the approval pathway under the LG Act.

Q2: Do you support a consistent definition for prefabricated building work across planning, building and local government legislation? If not, what changes between these frameworks do you propose?

A: A consistent definition of prefabricated building work is important across the legislation that regulates building work.

Please refer to Question 1 for our concerns regarding the risks of creating a single definition which will carry across the planning and building regulatory frameworks.

Statutory warranties

Q3: It is proposed that prefabricated building work has specialised rules in relation to statutory warranties. Do you support this approach? Why?

A: We support this approach as prefabricated building work should be regulated to provide the same level of consumer protection as other construction methods.

Where the work is captured under “home building work”, the relevant consumer protections, such as statutory warranties and dispute resolution, should attach to these homes irrespective of the construction method.

Q4: If there are specialised rules for prefabricated building work statutory warranties, do you support treating whole buildings and components of buildings separately as it relates to relocations?

A: Yes, we agree with the proposed treatment for relocations.

Home building compensation scheme

Q5: Do you agree that prefabricated building work should be covered by the Home Building Compensation Scheme? If yes, do you think it should be treated consistently with onsite construction or differentiated rules? If no, how should consumers be protected from the risk of defects and insolvency?

A: Prefabricated homes should be treated consistently as onsite construction methods.

Kit homes

Q6: Should kit homes only be captured by the proposed rules for prefabricated building work where they are delivered to site as 3-dimensional forms, or should all kit homes be treated as prefabricated building work?

A: Kit homes should be treated consistently, regardless of whether they are constructed off-site or on-site. Differentiating this may cause further confusion regarding regulation.

Proposed licences

Q7: Do you support a requirement for designers and engineers to be licensed when preparing designs for prefabricated building work?

A: Yes, designs for prefabricated building work should be captured under the DBP Act, consistent with other building work. Designers and engineers will therefore be required to be licensed in accordance with licence classes under the forthcoming Building Bill 2024.

Q8: Do you support a licence requirement for prefabricated building work manufacturers? If yes, how should the licence operate (Option A or Option B or another option)?

A: Option B is preferable as it provides a supportive transition for prefabricated manufacturers, while they adopt to new regulations.

Unlike onsite builders who would be represented under the other proposed licence classes, prefabricated builders have affordances that come with standardised forms of manufacturing in a controlled offsite environment.

A distinguished licence class recognises these affordances and provides the option for these prefabricated builders to upskill so that manufacturers can eventually expand their remit to complete work onsite.

Q9: How should the eligibility requirements to hold a licence be set?

A: Consultation with prefabricated manufacturers will be essential to gauge a realistic competency requirement.

Q10: Are there other issues that the Department should take into account when finalising the proposed licensing framework for building work that could impact prefabricated building work?

A: Refer to the answer to Question 1 regarding interaction with the planning amendments for MHEs.

Declaration of designs

Q11: Should designs for prefabricated building work be required to be produced and signed off by a registered designer or engineer?

A: Yes, this should be consistent with building work under the DBP Act.

Q12: Do you support restricting the type of design work a registered design or engineer can carry out on prefabricated building work to the same types of building work they can do for onsite constructed buildings?

A: Yes.

Q13: Would a design declaration process appropriately ensure that prefabricated building work complies with relevant standards without the need for independent certification prior to building work commencing?

A: Yes.

Q14: How should designs produced outside of NSW be handled?

A: Designs outside of NSW must be compliant under the DBP Act and require a design compliance declaration.

Certification of prefabricated work

Q15: What form of certification for building work do you consider will most effectively ensure compliant work in the prefabricated building work sector?

A: Self-certification would be the most effective.

Self-certification ensures the efficiencies of offsite manufacturing are captured. These include the standardisation of components and the assembly line format of construction, with the same elements being reproduced concurrently. This also allows for increased quality control and a decreased risk of defects compared to onsite construction.

Q16: What type of work should be declared by the manufacturer? What type of work should require an independent or third-party certifier?

A: Plumbing and electrical work. This should be consistent under the DBP Act. The proposed self-certification process should be sufficient.

Q17: Do you support the proposed approach for prefabricated work manufactured outside of NSW?

A: Yes.

Installation

Q18: Do you support compliance declarations being relied on by the certifier as evidence of the prefabricated building work's compliance with the NCC?

A: Yes.

Q19: What additional factors should be considered by a certifier when issuing an occupation certificate for a development where work has been constructed offsite compared with a development constructed wholly onsite?

A: Refer to comments in the covering letter regarding the need for a consistent private certification regime and the current limited role councils have in certifying the installation of MHEs.

Transitional arrangements

Q20: Do you support the rules proposed for prefabricated building work to commence in one go or be staged across 2025 (classes 1, 2, 3 and 9c) and 2027 (all other NCC classes of building).

A: We support staged commencement of the new rules for prefabricated building work (i.e. classes 1, 2, 3 and 9c to commence in 2025, and remaining classes to commence in 2027).

Chain of responsibility

Q21: Do you support the use of a chain of responsibility framework to oversight the design, manufacture and installation of prefabricated buildings?

A: Yes.

Q22: How can we ensure that prefabricated buildings are transported and delivered onsite without compromising its certification process?

A: Agree with the proposed. The transportation of prefabricated buildings is included in the chain of responsibility and will require certification by licensed builders.

Q23: Do you think an industry practice standard is required for the transportation of prefabricated buildings?

A: Yes.