



The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

Our reference: BN-04251-2020

Mr David Blunt
Clerk of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt

In April 2020, the Legislative Council Public Accountability Committee handed down the final report on the regulation of building standards, building quality and building disputes.

In accordance with Standing Order 233, I enclose the NSW Government's response to the Committee's final report to be tabled in the Legislative Council prior to 30 October 2020. The Government response also addresses recommendations from the Committee's first report.

Yours sincerely

Kevin Anderson MP
Minister for Better Regulation and Innovation

Date: 28/10/20

*Received at 3.00pm
Friday 30 October 2020
KB*



Legislative Council Public Accountability Committee

Regulation of Building Standards, Building Quality and Building Disputes Final Report

NSW Government Response

October 2020



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Summary of responses to recommendations in the First Report

	Recommendation	Response
1	That the NSW Government expedite the implementation of the regulations to support the <i>Building and Development Certifiers Act 2018</i> , to ensure the Act and regulations are operational well in advance of July 2020.	Noted.
2	That the NSW Government commence the amendments to the <i>Environmental Planning and Assessment Act 1979</i> passed in November 2017, relating to the building and construction industry, that were scheduled to start on 1 September 2019.	Completed.
3	That the NSW Government act now to address the issue of flammable cladding. The committee supports a more centralised approach to the issue of flammable cladding on New South Wales buildings, including a financial support package to assist buildings to rectify and remove it as a matter of urgency.	Support in principle.
4	That the Building Commissioner finalise his work plan as soon as possible, by the end of 2019 at the latest, including detailing the powers, resources and funding required to undertake this role, and make this work plan publicly available.	Completed.
5	That the NSW Government establish a Building Commission as an independent statutory body led by a Building Commissioner, and that the Commission be provided with broad powers and sufficient resourcing and funding to oversee and regulate the building and construction industry in New South Wales.	Support in principle – Broad powers and sufficient resources for the NSW Building Commissioner. Recommendation relating to the establishment of an independent statutory Building Commission is noted.
6	That the NSW Government establish a statutory industry advisory committee to support the Building Commission, with its aims to include strengthening industry ties with government and guiding the strategic direction of the Building Commission.	Support in principle.
7	That the NSW Government, subject to engagement with the insurance industry and economic modelling of the effect of these changes, extend the time period in which to claim under statutory warranties for residential buildings to a minimum seven years for both major and minor defects. Further, the implementation period be as follows: <ul style="list-style-type: none"> • residential buildings currently covered by the Home Building insurance scheme – the timeframe in which the Shergold Weir report recommendations are implemented • all other high rise developments – as soon as reasonably practicable. 	Noted.
8	That the NSW Government consider amending the definition of 'defect' to provide more clarity for home owners.	Completed.
9	That the NSW Government increase the defects bond under the Strata Building Bond and Inspections Scheme, subject to economic modelling of the effect of these changes.	Noted.

	Recommendation	Response
10	<p>That the NSW Government, as part of its implementation of Recommendation 1 of the Shergold Weir report, immediately investigate the current licencing system for building trades in New South Wales, giving particular consideration to:</p> <ul style="list-style-type: none"> • the effectiveness of the existing inspection regime • the need for an independent examination of building trades before a licence is granted, especially for electrical trades • which additional building practitioners should be licenced, including, but not limited to, installation of medical gas and maintenance of fire safety systems. 	Support in principle.
11	<p>That the NSW Government, in accordance with the recommendation from the Lambert Review, undertake to consolidate the existing laws and regulation into a consolidated, stand-alone Building Act covering building regulation in New South Wales. This should be principles-based and written in plain English.</p>	Noted.
12	<p>That the NSW Government establish a single, senior Building Minister with responsibility for building regulation in New South Wales, including administering the new stand-alone Building Act, and responsibility for the Building Commission and its Building Commissioner.</p>	Noted.
13	<p>That the NSW Government amend the Design and Building Practitioners Bill 2019 to address stakeholder concerns raised during this inquiry, in particular ensuring that:</p> <ul style="list-style-type: none"> • all classes of building practitioners and types of buildings are specified in the bill • a Professional Engineers Registration scheme is put in place • a Building Commission is established, as per Recommendation 5 • stakeholders' concerns in relation to the duty of care provisions are reviewed and changes made where appropriate • the duty of care provisions commence on the date of assent of the Act and are applied retrospectively. 	Noted.
14	<p>That the NSW Government not proceed with the Design and Building Practitioners Bill 2019 until it works closely with the Insurance Council of Australia and its members to develop appropriate insurance products. The committee supports bringing forward the final implementation of the bill and the regulations to 31 March 2020.</p>	Noted.
15	<p>That the NSW Government not proceed with the Design and Building Practitioners Bill 2019 until the draft regulations are developed in close consultation with stakeholders and made available to the Parliament for scrutiny. The committee supports bringing forward the final implementation of the bill and the regulations to 31 March 2020.</p>	Noted.
16	<p>That the NSW Government review its response to the Shergold Weir report, in light of the evidence to this inquiry that its response does not fully implement the recommendations. Further, that the NSW Government expedite its response to fully implement the recommendations within three years, by February 2021.</p>	Noted.
17	<p>That the NSW Government revisit its response to the Lambert report, and commit to implement those recommendations not covered in the Shergold Weir report that are specific to the New South Wales building and construction industry by February 2021.</p>	Noted.

	Recommendation	Response
18	That the NSW Government, including through the Building Commissioner, consider the merits of reintroducing a 'clerk of works' on projects of a significant scale as part of its review of its response to the Lambert report.	Noted.
19	That the NSW Government require on-line contemporaneous lodgement through the NSW Planning Portal of all relevant documentation, including plans, drawings and certification, to clearly document the full project as built.	Completed.

Summary of responses to the recommendations in the Final Report

	Recommendation	Response
1	That the NSW Government introduce and debate the powers bill granting the NSW Building Commissioner new powers to ensure building standards as a matter of urgency when the NSW Parliament is reconvened in May 2020, with prompt circulation of the proposed bill to members of Parliament.	Completed.
2	That the NSW Government resume debate on the Design and Building Practitioners Bill 2019 as a matter of urgency when the NSW Parliament is reconvened in May 2020.	Completed.
3	That the NSW Government empower the NSW Building Commissioner to oversee all licencing inspections, within the newly created Building Commission. Further, that the Building Commission hire additional, specialised inspectors to create a more robust inspection regime for building, electrical and plumbing work in New South Wales.	Noted.
4	That the NSW Government release and act immediately on the advice of the NSW Building Commissioner in relation to flammable cladding, or alternatively explain why it prefers an alternative approach.	Noted.
5	That the NSW Government establish a separate division in the Building Commission, modelled on Cladding Safety Victoria, to lead the response to flammable cladding on New South Wales buildings. The cladding division should sit within the Building Commission, as recommended in the first report of this inquiry, and be responsible to the NSW Building Commissioner.	Noted.
6	That the NSW Government require property owners, landlords and real estate agents to disclose whether a building contains flammable cladding, and the progress of any rectification measures, to prospective buyers and tenants within a reasonable timeframe prior to signing contracts and when a property is open for inspection.	Completed.
7	That the NSW Government ensure that all buildings designed for public use such as cinemas, shopping centres, universities, hotels, entertainment centres, childcare centres and hospitals that are assessed as high-risk for flammable cladding are remediated as a priority. Additionally members of the public entering those buildings should be made aware that a building is high-risk. This might take the form of the compulsory display of a notice to this effect and compulsory notification at the time of booking where possible.	Noted.
8	That the NSW Government publish the specific criteria used to classify buildings as no, low or high-risk in regard to flammable cladding.	Completed.
9	That the NSW Government provide significant further resources to Fire and Rescue NSW to enable the Fire Safety Branch to respond to the issue of flammable cladding in a timely and comprehensive manner.	Support in principle.

	Recommendation	Response
10	That the NSW Government urgently establish an expert panel or panels, similar to the panel established in Victoria, to assess and provide advice free of charge on cladding rectification plans, including what materials homeowners can use to replace flammable cladding.	Supported in part.
11	That the NSW Government adopt a practice where genuine purchasers and potential tenants are able to access information from the cladding register or similar database to clarify the cladding status of their potential future home.	Noted.
12	That the NSW Government provide a substantial funding package, proportionate to the Victorian Government's \$600 million package, to fund the rectification of buildings containing aluminium composite panels and building products that may be banned in future. The package should be available to homeowners who have already commenced remediation work.	Noted.
13	That the NSW Government take a proactive role in identifying other potentially flammable cladding products on the market and move to ban them or otherwise prevent their unsafe use in the construction industry.	Supported.
14	That the NSW Government, through the Building Ministers' Forum, seek to amend the National Construction Code to require that building materials do not create a risk of debris falling from a building during fire conditions, including for composite products.	Supported.
15	That the NSW Government, through the Building Ministers' Forum, seek to ensure mandatory accreditation by the National Association of Testing Authorities, Australia (NATA) for all entities that test building materials.	Noted.
16	That the NSW Government undertake a review of the mandatory critical stage inspection regime under the <i>Environmental Planning and Assessment Act 1979</i> with a view to expanding the number and scope of required inspections undertaken by accredited certifiers.	Supported in principle.
17	That the NSW Government consider amending the <i>Environmental Planning and Assessment Act 1979</i> to require a mandatory inspection two years after a development consent has been issued to ensure that construction is consistent with the approved development application plan and the construction certificate.	Noted.
18	That the NSW Government implement the recommendations, where practical, put forward in this report by Mr Michael Lambert to improve the certification system as soon as possible and no later than within two years.	Noted.
19	That the Legislative Council's Public Accountability Committee as part of its foreshadowed inquiry to review the NSW Governments' reforms into the building and construction industry consider as one of its terms of reference the strengthening of public control of certification, such as returning certification to local councils.	Noted.
20	That the NSW Government review the NSW Civil and Administrative Tribunal dispute resolution process for disputes relating to strata buildings to ensure the tribunal has sufficient enforcement powers and to simplify and streamline the dispute resolution process, and to ensure that tribunal members have the relevant expertise.	Supported.
21	That the NSW Government appoint a Strata Commissioner, to sit within the Building Commission that was recommended in the first report of this inquiry.	Noted.

	Recommendation	Response
	<p>Once established, the Strata Commissioner should undertake an initial project to scope their specific responsibilities. These may include:</p> <ul style="list-style-type: none"> • providing training, support and advice to strata committees, particularly on rectifying building defects and flammable cladding and dealing with strata disputes • monitoring and recommending any necessary changes to the policy settings that govern disputes between homeowners and builders and developers • appointing a buildings' initial strata manager to be in place until the first Annual General Meeting. 	
22	<p>That the NSW Government explore additional financial assistance measures for strata homeowners who have major defects in their buildings and who are unable to claim under the statutory warranties scheme or the Home Building Compensation scheme, noting that the committee will further consider this matter in its foreshadowed inquiry to review the NSW Government's reforms into the building and construction industry.</p>	Noted.



EXECUTIVE SUMMARY

The Legislative Council Public Accountability Committee announced its inquiry into the regulation of building standards, building quality and building disputes on 4 July 2019. Throughout the inquiry, the Committee held seven public hearings and received 177 submissions. The Committee handed down its first report on 13 November 2019 and its final report on 30 April 2020.

The NSW Government welcomes the Legislative Council Public Accountability Committee's final report, *Regulation of Building Standards, Building Quality and Building Disputes* (the Final Report).

The Government thanks the Committee for its consideration of these important matters and appreciates the opportunity to respond to the Committee's findings and recommendations and update the Committee on the progress of the Government's building reform agenda since its response to the Committee's first report on 7 May 2020.

Since the Committee commenced its inquiry on 4 July 2019, the Government has made significant progress on its building reform agenda to restore transparency, accountability and quality to the building industry in New South Wales.

On 1 August 2019, the Government appointed Mr. David Chandler OAM as the NSW Building Commissioner. In January 2020, the Government announced its six-pillar Construct NSW transformation strategy to restore public confidence and create a customer-facing building and construction sector by 2025. The strategy includes activities related to legislation, ratings information, education, contracts, standards and research.

A central theme of Construct NSW is the making of a 'trustworthy building'. Trustworthy buildings will be ones that are fit for purpose, sustainable and measurably less risky. The players who make them must be the most capable. Customers who buy them must be confident to own and occupy them. And, the financiers and insurers who underwrite policies for constructors and building owners will be confident in the level of assurance.

Recognising the industry is vital to the success of the Government's workplan to 2025, the Minister for Better Regulation and Innovation established stakeholder consultation groups to support each Strategy pillar. Group membership includes stakeholders representing builders, certifiers, designers, educators, consumers, the digital economy and local and state government.

In June 2020, the Government introduced and passed the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the RAB Act), which furnished the Building Commissioner with a suite of powers to investigate and rectify building work. The RAB Act commenced on 1 September 2020.

At the same time, the *Design and Building Practitioners Act 2020* (the DBP Act) was passed by NSW Parliament, cementing the Government's response to the *Building Confidence* report by Professor Peter Shergold AC and Ms Bronwyn Weir. The passage of the DBP Act marked a turning point in the regulation of the building industry in New South Wales. For the first time in New South Wales, the DBP Act established a clear legislative duty of care that is owed to the end user and in respect to liability for defective construction work. The duty of care commenced on 10 June 2020 and extends to construction work carried out before that date if the economic loss caused by a breach of the duty of care first became apparent after 10 June 2010.

The Government's reform agenda has placed more rigour and integrity on persons involved in the construction process. The DBP Act has introduced more checks and balances in the construction process through regulated designs and compliance declarations, and in doing so, will increase accountability, transparency and quality in the building sector.

The passage of the DBP Act and RAB Act, represents the Government taking decisive steps towards building a better regulatory framework – the first pillar of its Strategy led by the Building Commissioner.

The Acts contain provisions that improve protections and avenues for redress for owners of defective buildings. Firstly, the retrospective duty of care in the DBP Act clarifies the capacity of homeowners to pursue compensation for buildings with existing defects in some circumstances, while the RAB Act empowers the Building Commissioner to inspect building work at critical stages, issue rectification orders for defective building work, and, if necessary, issue a prohibition order preventing an occupation certificate being released.

In collaboration with the national Building Confidence Report implementation team, under the Australian Building Codes Board, work continues to explore how the remaining recommendations of the report can be implemented.

The Government also continues to take decisive action regarding flammable cladding, including its ten-point plan for fire safety, led by the NSW Cladding Taskforce, and in strengthening ties with certifiers, industry and local councils, through the Cladding Support Unit. The Cladding Support Unit has distributed guidance and information resources to all councils with affected buildings, promoting consistency and providing ongoing support to assist councils promptly assess and initiate remediation of buildings.

The Government has also progressed legislative reforms to give greater protections to tenants and purchasers of real estate property. On 23 March 2020, the Government amended the Residential Tenancies Regulation 2019 and the Property and Stock Agents Regulation 2014 to require real estate agents and/or landlords to notify tenants or prospective purchasers if the property is or is part of a building that contains external combustible cladding. The Government is considering opportunities to provide support to residents and building owners seeking to conduct remediation work to respond to flammable cladding risks.

The Government has also made significant progress on its reform agenda to improve the regulation of certifiers. The *Building and Development Certifiers Act 2018* and Building and Development Certifiers Regulation 2020 commenced on 1 July 2020. Together, they clarify roles and responsibilities of certifiers, strengthen conflict of interest provisions and enhance compliance and enforcement powers. The building and subdivision certification amendments to the *Environmental Planning and Assessment Act 1979* commenced on 1 December 2019, providing new compliance powers for principal certifiers to issue a written direction notice to address non-compliance matters.

The work to date as part of the Government reform agenda, reflects only the first tranche of reforms this Government expects to make as part of the biggest overhaul of the NSW building sector. The Government has detailed reform strategy outlined in the Government's six-pillar plan to 2025 and will also undertake a review of the legislative framework that will underpin consideration of an extended first resort insurance product and ensure that the legislation framework works cohesively. The Government is now looking to the future of building regulation and partnering with key industry stakeholders, including developers, practitioners and trades from across the sector to implement the Government's building reform agenda to 2025.

A. The New South Wales Building Commissioner and the *RAB Act 2020*

First Report, recommendations 4, 5, 6 and 12.

#	Recommendation	Response
4	That the Building Commissioner finalise his work plan as soon as possible, by the end of 2019 at the latest, including detailing the powers, resources and funding required to undertake this role, and make this work plan publicly available.	Completed.
5	That the NSW Government establish a Building Commission as an independent statutory body led by a Building Commissioner, and that the Commission be provided with broad powers and enough resourcing and funding to oversee and regulate the building and construction industry in New South Wales.	Support in principle – Broad powers and sufficient resources for the NSW Building Commissioner. Recommendation relating to the establishment of an independent statutory Building Commission is noted.
6	That the NSW Government establish a statutory industry advisory committee to support the Building Commission, with its aims to include strengthening industry ties with government and guiding the strategic direction of the Building Commission.	Support in principle.
12	That the NSW Government establish a single, senior Building Minister with responsibility for building regulation in New South Wales, including administering the new stand-alone Building Act, and responsibility for the Building Commission and its Building Commissioner.	Noted.

Final Report, recommendations 1 and 3.

#	Recommendation	Response
1	That the NSW Government introduce and debate the powers bill granting the NSW Building Commissioner new powers to ensure building standards as a matter of urgency when the NSW Parliament is reconvened in May 2020, with prompt circulation of the proposed bill to members of Parliament.	Completed.
3	That the NSW Government empower the NSW Building Commissioner to oversee all licencing inspections, within the newly created Building Commission. Further, that the Building Commission hire additional, specialised inspectors to create a more robust inspection regime for building, electrical and plumbing work in New South Wales.	Noted.

In January 2020, the NSW Government announced its strategy to build confidence in the construction industry. The Government's Construct NSW transformation strategy will be led by the Building Commissioner to deliver a construction industry for NSW that values quality and puts the customer at the centre. The Strategy includes activities related to legislation, ratings information, education, contracts, standards and research.

A central theme of Construct NSW is the making of a 'trustworthy building'. Trustworthy buildings will be ones that are fit for purpose, sustainable and measurably less risky. The players who make them must be the most capable. Customers who buy them must be confident to own and occupy them. And, the financiers and insurers who underwrite policies for constructors and building owners will be confident in the level of assurance

The six pillars of building reform led by the Commissioner are:

1. A better regulatory framework
Implementing legislation and regulation and transforming the operations of the regulator to have a strong customer focus.
2. Ratings systems
Working with ratings agencies, insurers and financiers to assist in better selection of industry participants. This pillar aims to move away from one-size-fits-all participant recognition and better identify risky players in the industry.
3. Skills and capabilities
Working with educators and building professionals to identify the learning gaps and priority skills required to uplift performance and to support a modern and innovative construction workforce. It will also foster increased productivity by helping to create new innovation partnerships in the supply chain between manufacturers, educators, suppliers and constructors.
4. Strengthened contracts
Ensure that the contracts supporting building and construction work clearly by outlining the various roles and responsibilities that apply to developers, builders, designers, suppliers and certifiers. Contracts must also be modernised to accommodate the changes that will be made through the building reforms.
5. A digital future
Developing digital platforms that will allow the building sector to move from many unconnected data silos into a streamlined digital environment.
6. A reputation for quality research.
Evidence based approach to accessing and closing the gap via case studies and other research to achieve a baseline and measurement against our ability to improve confidence in the sector.

Consistent with the Committee's recommendation to establish an industry advisory committee, each of the above pillars is supported by its own working group, comprising professionals with extensive experience of the subject matter. There are over 150 stakeholders represented on the working groups, with each group meeting every 2 months.

On 4 June 2020, Parliament passed the RAB Act, which commenced 1 September 2020 and:

- establishes a new defect category of serious defect for the purposes of the Act;
- requires developers to notify the Secretary at least 6 months before applying for an occupation certificate;
- allows the Secretary/Commissioner to make a prohibition order preventing the issuing of an occupation certificate or registration of a strata plan if the developer has failed to notify the Secretary of completion;
- prohibits a principal certifier from issuing an occupation certificate in contravention of a prohibition order;

- provides the Secretary and Commissioner with a range of new compliance and enforcement powers, including powers of inspection throughout the construction phase and at any time within ten years of the occupation certificate date;
- provides the Secretary and Commissioner with powers to monitor compliance under the Act including the power to accept undertakings, apply for orders to restrain or remedy contraventions, investigate developers and issue a stop work order;
- establishes a rectification scheme to empower the Secretary to issue a building work rectification order when serious defects are identified through inspections, and to recover the costs incurred by the Secretary in connection with a rectification order.

To support the Building Commissioner's oversight of the new RAB Act and DBP Act, and ongoing work to strengthen consumer confidence in the construction industry, 15 operational staff are dedicated to the Construct NSW six pillar transformation strategy which outlines the Government's strategic reform agenda to 2025. Phased delivery of increasing human resources responsible for the implementation and operation of the new auditing, registration and design lodgement functions will be rolled out from the second half of 2020. In addition to the 15 operational roles, up to 60 new roles will be developed and brought on and off line on an as need basis, that will be responsible for the implementation and operation of the new auditing, registration and design lodgement functions, under the DBP and RAB Acts.

The Commissioner will also be supported by the inspectorate of the Better Regulation Division of the Department of Customer Service. The inspectorate has compliance and enforcement expertise across building, electrical and plumbing work. Hiring additional inspectors for the Building Commissioner is unnecessary at this time.

The NSW Government notes the recommendation to establish a Building Commission as an independent statutory body. As outlined above the current focus is on harnessing and integrating the widest range of resources and diversity of capabilities to the reform agenda and improving outcomes for NSW citizens.

The Government notes section 69 of the RAB Act provides for a review of the Act after 30 March 2022 by the Public Accountability Committee of the Legislative Council, including to "consider the desirability of establishing an independent NSW Building Commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings". The Government will consider any findings made by the Committee's review of the Act.

B. The *Design and Building Practitioners Act 2020* and the New South Wales Government's response to the *Building Confidence Report*.

First Report

	Recommendation	Response
10	That the NSW Government, as part of its implementation of Recommendation 1 of the Shergold Weir report, immediately investigate the current licencing system for building trades in New South Wales, giving particular consideration to: <ul style="list-style-type: none"> the effectiveness of the existing inspection regime the need for an independent examination of building trades before a licence is granted, especially for electrical trades which additional building practitioners should be licenced, including, but not limited to, installation of medical gas and maintenance of fire safety systems. 	Support in principle.
13	That the NSW Government amend the Design and Building Practitioners Bill 2019 to address stakeholder concerns raised during this inquiry, in particular ensuring that: <ul style="list-style-type: none"> all classes of building practitioners and types of buildings are specified in the bill a Professional Engineers Registration scheme is put in place a Building Commission is established, as per Recommendation 5 stakeholders' concerns in relation to the duty of care provisions are reviewed and changes made where appropriate the duty of care provisions commence on the date of assent of the Act and are applied retrospectively. 	Noted.
14	That the NSW Government not proceed with the Design and Building Practitioners Bill 2019 until it works closely with the Insurance Council of Australia and its members to develop appropriate insurance products. The committee supports bringing forward the final implementation of the bill and the regulations to 31 March 2020.	Noted.
15	That the NSW Government not proceed with the Design and Building Practitioners Bill 2019 until the draft regulations are developed in close consultation with stakeholders and made available to the Parliament for scrutiny. The committee supports bringing forward the final implementation of the bill and the regulations to 31 March 2020.	Noted.
16	That the NSW Government review its response to the Shergold Weir report, in light of the evidence to this inquiry that its response does not fully implement the recommendations. Further, that the NSW Government expedite its response to fully implement the recommendations within three years, by February 2021.	Noted.
17	That the NSW Government revisit its response to the Lambert report, and commit to implement those recommendations not covered in the Shergold Weir report that are specific to the New South Wales building and construction industry by February 2021.	Noted.
19	That the NSW Government require on-line contemporaneous lodgement through the NSW Planning Portal of all relevant documentation, including plans, drawings and certification, to clearly document the full project as built.	Completed.

Final Report

	Recommendation	Response
2	That the NSW Government resume debate on the Design and Building Practitioners Bill 2019 as a matter of urgency when the NSW Parliament is reconvened in May 2020.	Completed.

On 3 June 2020, Parliament passed the DBP Act, with most reforms in the Act commencing on 1 July 2021, following public consultation on supporting regulations. In response to stakeholder feedback received throughout the inquiry, the duty of care provisions of the Act commenced on 10 June 2020.

The DBP Act introduces a regulatory framework for the registration of building designers and other building practitioners that prepare and/or declare plans, establishes a profession registration scheme for engineers and enhanced duty of care provisions.

In parallel and in support of a nationally consistent approach, preliminary consultation has been undertaken by the Australian Building Codes Board (ABCB) with stakeholders on options for consistent registration requirements across Australia. Consultation is ongoing.

The proposed supporting regulations to the DBP Act will propose registration requirements for practitioners, including insurance requirements. The Government will be consulting on these requirements, including with the Insurance Council of Australia. To allay the committee’s concerns, the Act provides a regulation-making power to exempt building practitioners where relevant insurance products are not readily available.

In keeping with recommendation 19 of the First Report, the supporting regulations will prescribe the manner and form for electronic lodgement of relevant documents related to building work. The development of the digital portal is currently underway. It is intended that such a portal will eventually hold an end-to-end digital record of design practitioners that contributed to the buildings design, the types of designs that were used, any changes to designs during construction and who was involved in developing the building.

The Government is supporting the progression of the Shergold Weir report on a national scale through its participation in the Building Minister’s Forum, which is the appropriate forum to develop a consistent national response to the report. In total the Government has completed or is progressing 20 of the recommendations of the Shergold Weir report, with the remaining four recommendations under active consideration.

As part of this process, in July 2019, Building Ministers across Australia agreed to establish an implementation team to develop and publicly report on a National Framework for the consistent implementation of the recommendations of the Shergold Weir report, as well as the design, construction and certification of complex buildings.

The Government notes that there have been significant changes to the sector since the Lambert report was handed down. The Government considers that its response to the Shergold Weir report appropriately sets out the current Government position on the issues considered by the Lambert report and also notes that Mr Michael Lambert has publicly supported the Government reform agenda and noted there is a constancy in the findings and recommendations between both reports .

C. Flammable Cladding

First Report

	Recommendation	Response
3	That the NSW Government act now to address the issue of flammable cladding. The committee supports a more centralised approach to the issue of flammable cladding on New South Wales buildings, including a financial support package to assist buildings to rectify and remove it as a matter of urgency.	Support in principle, subject to comments on Rec 12 below.

Final Report

	Recommendation	Response
4	That the NSW Government release and act immediately on the advice of the NSW Building Commissioner in relation to flammable cladding, or alternatively explain why it prefers an alternative approach.	Noted.
5	That the NSW Government establish a separate division in the Building Commission, modelled on Cladding Safety Victoria, to lead the response to flammable cladding on New South Wales buildings. The cladding division should sit within the Building Commission, as recommended in the first report of this inquiry, and be responsible to the NSW Building Commissioner.	Noted.
6	That the NSW Government require property owners, landlords and real estate agents to disclose whether a building contains flammable cladding, and the progress of any rectification measures, to prospective buyers and tenants within a reasonable timeframe prior to signing contracts and when a property is open for inspection.	Completed.
7	That the NSW Government ensure that all buildings designed for public use such as cinemas, shopping centres, universities, hotels, entertainment centres, childcare centres and hospitals that are assessed as high-risk for flammable cladding are remediated as a priority. Additionally members of the public entering those buildings should be made aware that a building is high-risk. This might take the form of the compulsory display of a notice to this effect and compulsory notification at the time of booking where possible.	Noted.
8	That the NSW Government publish the specific criteria used to classify buildings as no, low or high-risk in regard to flammable cladding.	Completed.
9	That the NSW Government provide significant further resources to Fire and Rescue NSW to enable the Fire Safety Branch to respond to the issue of flammable cladding in a timely and comprehensive manner.	Support in principle.
10	That the NSW Government urgently establish an expert panel or panels, similar to the panel established in Victoria, to assess and provide advice free of charge on cladding rectification plans, including what materials homeowners can use to replace flammable cladding.	Support in part.
11	That the NSW Government adopt a practice where genuine purchasers and potential tenants are able to access information from the cladding register or similar database to clarify the cladding status of their potential future home.	Noted.
12	That the NSW Government provide a substantial funding package, proportionate to the Victorian Government's \$600 million package, to fund the rectification of buildings containing aluminium composite panels and	Noted.

	building products that may be banned in future. The package should be available to homeowners who have already commenced remediation work.	
13	That the NSW Government take a proactive role in identifying other potentially flammable cladding products on the market and move to ban them or otherwise prevent their unsafe use in the construction industry	Supported.
14	That the NSW Government, through the Building Ministers' Forum, seek to amend the National Construction Code to require that building materials do not create a risk of debris falling from a building during fire conditions, including for composite products.	Supported.
15	That the NSW Government, through the Building Ministers' Forum, seek to ensure mandatory accreditation by the National Association of Testing Authorities, Australia (NATA) for all entities that test building materials.	Noted.

Increased coordination across all levels of government and industry to overcome flammable cladding risks

The Government has established the NSW Cladding Taskforce as a centralised point of mobilisation to respond to flammable cladding and the Cladding Support Unit (CSU) as a central point of contact for local councils to access the expertise of the government to address buildings that may have potentially combustible cladding. The Taskforce continues to oversee the NSW Government's 10-point plan for fire safety and ensure that fire safety requirements for residential buildings are prioritised and addressed through a whole-of-government action plan for dealing with the fire safety risks associated with external wall cladding.

The Taskforce comprises of members from the Department of Customer Service, Department of Planning, Industry and Environment, Fire & Rescue NSW, Office of Local Government, Data Analytics Centre, NSW Treasury and Department of Premier and Cabinet and local governments.

Buildings potentially affected by combustible cladding have been identified by the Cladding Taskforce by numerous methods:

- the data audit conducted by the Data Analytics Centre (DAC) of 178,000 building records
- the audit of over 6,400 building approvals conducted by the Department of Planning, Industry and Environment
- reporting to the Taskforce by a local council
- identification by Fire and Rescue NSW officers conducting local area visits and inspections
- reporting to the Taskforce by building owners
- self-registration by an owner or manager on the online Cladding Register.

As has been advised to the Committee in responses to questions when buildings are inspected by Fire and Rescue NSW on behalf of the Taskforce the criteria for assessment are the type, amount, arrangement and location of cladding material provided to the façade. These criteria have been communicated, including to local councils. [Formal guidance](#) has been published by the Taskforce reflecting these criteria and emphasising the need to undertake 'whole of building' assessment of affected buildings.

Fire and Rescue NSW continues to play a lead role in ensuring Government's delivery of critical building reform and has conducted more than 7,300 building inspections to operationally assess the risk of combustible cladding in high-risk buildings, with no additional resources. The Government has established a team of seven full time employees in Fire and Rescue NSW to support compliance, inspection, and reform work on an ongoing basis, reassigning firefighters from their normal operational roles to this specialist function.

The NSW Government has audited 185,000 building records and inspected 4,127 buildings. As at 2 October 2020, 3,737 of these are not considered at risk and 390 remain under review, assessment or remediation. Buildings assessed as high-risk, including buildings that are designed for public use, have been notified to the building owner and consent authority for assessment and any necessary remediation, including any necessary interim safety measures needed to immediately reduce risk and protect occupants. The Government continues to work with building owners, residents and consent authorities to proactively manage the risks associated with flammable cladding.

The Government notes the recommendation to publicly identify buildings that have been assessed as high-risk for flammable cladding but believes this process may create security risks for those buildings and does not have the full support of the owners of the lots within those buildings.

The Government has ensured that all relevant parties, including owners, residents and local councils and fire crews, are notified where a building is assessed as high-risk, with obligations also triggered under the *Residential Tenancies Act 2010* requiring real estate agents to notify prospective tenants and purchasers if the building has a rectification order attached to it. This includes public buildings such as cinemas, shopping centres, hotels, universities, entertainment centres and childcare centres. Building owners and consent authorities must take any necessary action to ensure that buildings continue to be safely managed and occupied including determining whether it is necessary to make members of the public aware of the presence of cladding. The Cladding Support Unit has provided significant guidance to local councils on implementing interim safety measures to achieve this.

Building owners can access financial redress via a number of means including claims under statutory warranty provisions of the *Home Building Act 1989* or the new duty of care provision introduced by the *Design and Building Practitioners Act 2020*, or other civil claims against builders, developers, building designers or any other party who may have contributed to the unsafe installation of cladding.

The Government notes Recommendation 12 of the Final Report and will consider opportunities to provide further support to residents and building owners seeking to conduct remediation work to respond to flammable cladding risks.

Improved risk management of flammable cladding through enhanced building products safety schemes

The Government has introduced a comprehensive building products safety scheme to prevent the use of dangerous building products. The *Building Products (Safety) Act 2017* creates a comprehensive building products safety scheme to prevent the use of dangerous building products by conferring powers to the Department of Customer Service to prohibit the use of unsafe building products. The Act also empowers the Department to identify buildings where building products have been used in a way that is prohibited and enable the investigation and assessment of building products so that unsafe uses of building products can be identified, prevented and prohibited.

The NSW Cladding Taskforce proactively and consistently monitors building products for safety and can investigate and ban potentially dangerous products in NSW. The Taskforce also takes a proactive approach to ensure that the labelling and advertising of cladding products is not misleading or deceptive in terms of the product's compliance with the Building Code of Australia, which is a component of the National Construction Code.

The Minister for Better Regulation and Innovation has written to the ABCB seeking a review of the National Construction Code provisions relating to the use of bonded laminates, adhesives and double-sided tape in external walls as a priority.

In July 2020, NSW Cabinet approved the establishment of a Cladding Product Safety Panel, which consists of eight members representing fire safety engineering, building, surveying, certification and construction, Fire and Rescue NSW, Department of Customer Service, Insurance Council of Australia and chaired by Professor Mark Hoffman. The Panel's purpose is to provide advice on the suitability of building products and external wall assembly methods associated with the replacement of non-

compliant and/or non-conforming external combustible panels and other wall cladding systems to ensure that the buildings are made safe and are able to be appropriately insured.

The Government continues to work with the national Building Confidence Report Implementation team, under the ABCB to explore mandatory accreditation by the National Association of Testing Authorities, Australia (NATA) for all entities that test building materials. The implementation team continues to explore the merits and viability of this recommendation, including understanding the impact that mandatory accreditation of all authorities will have on the various testing bodies in Australia, domestic and international supply chain of building products, and the overall time and cost impact to the construction industry in New South Wales.

New rules require disclosure to potential purchasers and tenants

On 23 March 2020, the Residential Tenancies Regulation 2019 and the Property and Stock Agents Regulation 2014 were amended to require real estate agents and/or landlords to notify tenants or prospective purchasers if the property is or is part of a building that contains external combustible cladding.

The agent or landlord must disclose if they are on notice that:

- a notice of intention to issue a fire safety order, or one has been issued requiring rectification of the cladding; or
- a notice of intention to issue a building product rectification order or one has been issued in relation to the cladding.

Genuine purchasers can also request information from the strata managing agent or real estate agent and minutes of the strata committee and owners' corporation and other records kept by owners' corporation, as well as contact the relevant local council or commission a building inspection report.

D. Certifiers

First Report

	Recommendation	Response
1	That the NSW Government expedite the implementation of the regulations to support the <i>Building and Development Certifiers Act 2018</i> , to ensure the Act and regulations are operational well in advance of July 2020.	Noted.
2	That the NSW Government commence the amendments to the <i>Environmental Planning and Assessment Act 1979</i> passed in November 2017, relating to the building and construction industry, that were scheduled to start on 1 September 2019.	Completed.
11	That the NSW Government, in accordance with the recommendation from the Lambert Review, undertake to consolidate the existing laws and regulation into a consolidated, stand-alone Building Act covering building regulation in New South Wales. This should be principles-based and written in plain English.	Noted.
18	That the NSW Government, including through the Building Commissioner, consider the merits of reintroducing a 'clerk of works' on projects of a significant scale as part of its review of its response to the Lambert report.	Noted.

Final Report

	Recommendation	Response
16	That the NSW Government undertake a review of the mandatory critical stage inspection regime under the <i>Environmental Planning and Assessment Act 1979</i> with a view to expanding the number and scope of required inspections undertaken by accredited certifiers.	Supported in principle.
17	That the NSW Government consider amending the <i>Environmental Planning and Assessment Act 1979</i> to require a mandatory inspection two years after a development consent has been issued to ensure that construction is consistent with the approved development application plan and the construction certificate.	Noted.
18	That the NSW Government implement the recommendations, where practical, put forward in this report by Mr Michael Lambert to improve the certification system as soon as possible and no later than within two years.	Noted.
19	That the Legislative Council's Public Accountability Committee as part of its foreshadowed inquiry to review the NSW Governments' reforms into the building and construction industry consider as one of its terms of reference the strengthening of public control of certification, such as returning certification to local councils.	Noted.

The NSW Government has made significant progress implementing reforms to modernise the state's certification laws:

- the *Building and Development Certifiers Act 2018* and Building and Development Certifiers Regulation 2020 commenced on 1 July 2020 and clarify roles and responsibilities of certifiers, strengthen conflict of interest provisions and enhance compliance and enforcement powers.

- established an improved Continuing Professional Development program for all building certifiers, including requiring certifiers to be registered and undertake 25 units of Continuing Professional Education and training per year, and providing the Secretary of the Department of Customer Service the power to require first time applicants to take an examination.
- the building and subdivision certification amendments to the *Environmental Planning and Assessment Act 1979* commenced on 1 December 2019, providing new compliance powers for principal certifiers to issue a written direction notice to address non-compliance, with responsibility for this Part of the Act transferred from the Minister for Planning and Public Spaces to the Minister for Better Regulation and Innovation.

In addition to working through the national Building Confidence Report implementation team under the ABCB on improving critical stage inspections, the NSW Government is already acting to improve the certification industry in New South Wales. This includes developing a Certifiers Practise Guide (Guide) which will detail expectations and have formal, binding standing under the Act. This Guide will help inform the Department of Customer Service's building audits under the RAB Act. Under this Act, certifiers may be prohibited from issuing an occupation certificate in instances where a serious defect has been identified. The Guide has been drafted through consultation with certifiers, designers and engineers, with a working group chaired by Mr Michal Lambert. The Guide was published in September 2020.

Additionally, the DBP Act places more rigour and integrity on persons involved in the construction process. The Government's building reform agenda outlined in Parts A and B of this response, has introduced more checks and balances in the construction process that negates the need to amend the *Environmental Planning and Assessment Act 1979* as per the committee's recommendation.

The Government notes Recommendation 18 of the First Report. The NSW Government consulted extensively on this issue during the development of the DBP Act, and its adoption at this stage was not considered appropriate. NSW has moved away from a 'clerk of works' system and is focused on strengthening the planning and approvals system through amendments to the existing system and the establishment of new, complementary requirements on design and building practitioners.

For example, in October 2017, NSW strengthened its critical stage inspection system through amendments to require certifiers to undertake inspections of the construction site at several stages to ensure compliance.

Likewise, the DBP Act complements and bolsters the requirements under the planning and approvals framework by introducing a suite of new obligations on design and building practitioners to ensure that each step of construction is well documented and compliant with the Building Code of Australia. As part of the Act, certifiers may be prohibited from issuing an occupation certificate in instances where non-compliances have been identified or the required compliance declarations or plans have not been provided. This is complemented by the comprehensive new enforcement powers available to the Building Commissioner under the RAB Act including a compulsory 6-month notification that a developer will be applying for an occupation certificate, the power to block an occupation certificate where the building is not compliant with the Building Code of Australia, the power to order rectification of any serious defect and recover costs associated with that rectification.

E. Reform to strata legislation and building defects.

First recommendations

	Recommendation	Response
7	That the NSW Government, subject to engagement with the insurance industry and economic modelling of the effect of these changes, extend the time period in which to claim under statutory warranties for residential buildings to a minimum seven years for both major and minor defects. Further, the implementation period be as follows: <ul style="list-style-type: none"> residential buildings currently covered by the Home Building insurance scheme – the timeframe in which the Shergold Weir report recommendations are implemented all other high rise developments – as soon as reasonably practicable. 	Noted.
8	That the NSW Government consider amending the definition of 'defect' to provide more clarity for home owners.	Completed.
9	That the NSW Government increase the defects bond under the Strata Building Bond and Inspections Scheme, subject to economic modelling of the effect of these changes.	Noted.

Final recommendations

#	Recommendation	Response
20	That the NSW Government review the NSW Civil and Administrative Tribunal dispute resolution process for disputes relating to strata buildings to ensure the tribunal has sufficient enforcement powers and to simplify and streamline the dispute resolution process, and to ensure that tribunal members have the relevant expertise.	Supported.
21	That the NSW Government appoint a Strata Commissioner, to sit within the Building Commission that was recommended in the first report of this inquiry. Once established, the Strata Commissioner should undertake an initial project to scope their specific responsibilities. These may include: <ul style="list-style-type: none"> providing training, support and advice to strata committees, particularly on rectifying building defects and flammable cladding and dealing with strata disputes monitoring and recommending any necessary changes to the policy settings that govern disputes between homeowners and builders and developers appointing a buildings' initial strata manager to be in place until the first Annual General Meeting. 	Noted.
22	That the NSW Government explore additional financial assistance measures for strata homeowners who have major defects in their buildings and who are unable to claim under the statutory warranties scheme or the Home Building Compensation scheme, noting that the committee will further consider this matter in its foreshadowed inquiry to review the NSW Government's reforms into the building and construction industry.	Noted.

The Government has progressed reforms to give homeowners greater protections from building defects. The duty of care provisions in the DBP Act remove any uncertainty that may exist in the common law that a duty is owed to the end user and in respect to liability for defective construction

work. The statutory duty of care extends to construction carried out before the commencement date of 10 June 2020 in specific circumstances.

The focus of reform is on improving the quality of buildings, raising the standard of practitioner conduct and compliance with the NCC, preventing building defects from occurring and ensuring regulators are empowered to take necessary action to safeguard the interests of building owners and consumers. Consideration of recommendation 7 of the First Report will be considered as part of the implementation of these reforms.

The Government supports recommendation 20 of the Final Report, with the *Strata Schemes Management Act 2015* due for statutory review in 2021 and Department of Communities and Justice is undertaking a review of the *Civil and Administrative Tribunal Act 2013*. The NSW Government will consider as part of these statutory reviews the processes for resolving disputes relating to strata buildings, including through the NSW Civil and Administrative Tribunal.

The Independent Pricing and Regulatory Tribunal is undertaking a review of the Home Building Compensation Fund with the final report due in November 2020. The Government will continue to monitor the operation of the Strata Building Bond and Inspection Scheme in the context of the building reform agenda.

It is hoped that these reviews will consider the Government's initiatives to improve confidence in the residential building market, such as the new reporting obligations under the DBP Act and RAB Act requiring building practitioners to ensure building designs comply with the Building Code of Australia.

The Government considers that the issues highlighted by the Committee relating to the proposal for a Strata Commissioner are already being actioned by the Building Commissioner and the team within the office of the Building commissioner, and the Department of Customer Service. As outlined above, the current focus is on harnessing and integrating the widest range of resources and diversity of capabilities to the reform agenda and improving outcomes for NSW citizens.

A statutory review of strata legislation will commence later this year and will consider options for reform to improve the management of strata buildings specifically including the management of building defects, the appointment of strata managers in the early stages of strata schemes and the Strata Building Bond and Inspections Scheme.