

– Questions on Notice to the NSW Government – Building Inquiry – 12 August 2019

1. There are Lambert Review recommendations which called for implementation within six months. Why were they not implemented?

The Lambert Report included a proposed implementation plan at Chapter 18.

That plan included 'key principles and success factors' for successful implementation of the reforms including: Government commitment to reform; agreeing an implementation plan; designating a Minister responsible for delivering the reforms; resourcing the reforms; and involving key stakeholders.

The NSW Government released its response to the Report in September 2016.

The Government Response (page 2) committed to implement priority reforms: to overhaul the regulation of certifiers: clarify Ministerial responsibility and administration of building laws; implement a package of fire safety reforms for both new and existing buildings; and establish a Building Regulators Committee to improve coordination across Government.

Those reforms have been implemented.

Mr Lambert also set out 12 priority reform actions (page 315). Those actions and the corresponding status of implementation is set out in [brackets] below.

1. Determine the approach to be taken to legislative reform and commence work on the structure and principles of the legislation governing building regulation and certification [*Done through reform of the Environmental Planning & Assessment Act and Building & Development Certifiers Act*].
2. Continue with the rewrite of the complying development codes and put in place the supporting infrastructure necessary for an effective system [*Done by the DPIE and ongoing*].
3. Establish an appropriate level of coordination and integration between the Home Building Service's licensing function for builders and other trades and the BPB accreditation of certifiers, including upfront triaging of complaints and inquiries [*Done*].
4. Establish the eBuilding project team to develop the eBuilding information system strategic plan [*Certifier data collection was implemented. Reform is ongoing as part of the ePlanning reforms. As part of the NSW Response to the Building Confidence Report there will be a requirement for 'declared' plans to be lodged in a digital format with the Building Commissioner. This is also being progressed as part of the national BMF implementation plan*].
5. Identify and confirm the key objectives for building regulation and certification and the performance measures for assessing progress against each objective [*Done through reform of legislation including through recently amended objectives of the Environmental Planning & Assessment Act. Government agencies are continuing efforts to improve performance measurement to track progress and better inform future decision-making by the NSW Government*].
6. Subject to any necessary changes to reflect Government positions on the reforms set out in this report and consultation with the Minister for local government on the proposed protocol [*see 8 below*], take forward to consultation with stakeholders the draft practice guide [*Not complete. The practice guide was not in a suitable form to take forward for consultation. Due to subsequent review and reform activity the practice guide could not be finalised. When the current reforms are settled this will be revisited*].

7. Commence an education program for the community on the role and responsibilities of certifiers [*Done and ongoing as part of education and communications. To be further progressing as part of the reform of the Act*], finalise a standard engagement letter between owners and certifiers and arrange for the engagement letter and a one page explanation of the role of certifiers to be included with the standard building contract [*Not supported in the Government response*].
8. Prepare and execute a partnership agreement between the state and local government covering planning and building regulation [*The Building Commissioner will lead efforts to further develop collaborative mechanisms in consultation with Local Government, Department of Planning, Industry and Environment, Fire and Rescue NSW and relevant stakeholder associations*].
9. Establish working parties to progress, respectively, the recommendations relating to reformed fire safety system regulation [*Supported in part in the Government response and completed*] and to establish certification of waterproofing [*Not supported in the Government response*] and review the BCA waterproofing standard [*This could not be achieved as Standards are controlled by Standards Australia and are developed and reviewed by national processes, not individual governments or organisations. It is understood that Standards Australia is currently considering a project proposal to undertake a review of the waterproofing standard.*].
10. Prepare for industry consultation (to be released after the consultation on the practice guide and the certifier/council protocol) a consultation paper on the proposed reforms to the building regulation and certification system as outlined in Chapter 14 of this report, suitably augmented and with a greater level of supporting information (for example, setting out the structure and content and operation of the proposed building manual for class 1b to 9 buildings) [*There has been ongoing consultation with industry about sector reforms*].
11. Establish the audit program for certifiers and link to education bulletins and other training strategies [*Commenced and ongoing*].
12. Commence work with the two certifier associations and the Professional Standards Authority on a model of professionalism to apply to the associations and certifiers [*Not supported in the Government response. However, this is now being pursued nationally as part of certification reforms*].

2. How long will the public consultation (for the Building Development Certifiers Regulation) go for? Provide a detailed plan for this.

The proposed timeline for the finalisation of the Regulation, which is a prerequisite for commencement of the *Building and Development Certifiers Act*, is as follows:

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| • Drafting of the Regulation and RIS | July 2019 through August 2019 |
| • Consultation with stakeholders | end September 2019 |
| • Public consultation | end October 2019 |
| • Revise and redraft Regulation to reflect consultation | November 2019 |
| • Submit final Regulation to Executive Council for approval | end November 2019 |
| • Gazette the Regulation | mid December 2019 |
| • Stakeholder education program commences | January 2019 to June 2020 |
| • New Act and Regulation commence | 1 July 2020 |

3. What are the ongoing costs associated with auditing 25-30% of the certifier industry (as proposed by the Minister's four-point plan)?

The total ongoing annual cost is \$864,000.

4. Is the funding committed to for the auditing process within the budget?

Funding comes from the existing NSW Fair Trading budget.

5. How many builders have lost their licence as a result of the audits?

Builders are not audited as part of the certifier audit program.

6. Is there anybody in the last six months that you can think of, in a high-profile case where we have seen terrible building defects? Has anybody lost their licence in the last six months as a result of the terrible building defects we have seen?

From 1 January 2019 to date, three Home Building Licences have been cancelled due to disciplinary action.

7. The number of licences that have been cancelled/disqualified.

580 across 2018-19.

8. You said in your opening statement there were 488 successful prosecutions. Do you know if any of those resulted in the cancellation of licences?

Prosecutions are proceedings through a criminal judicial process, separate and apart from licence cancellations.

9. How many prosecutions were initiated in total?

524 prosecutions were initiated.

10. How many prosecutions were unsuccessful?

36 were unsuccessful.