

**– Questions on Notice to the NSW Government –
Building Inquiry – 27 August 2019**

1.

The Hon. MARK BUTTIGIEG: I will put it a bit more diplomatically: It is one thing to have a system in place that requires a series of certifications for all the different grades and inputs into a building; it is quite another to have an enforcement regime which makes sure that happens, isn't it? Where I used to work we had a system called "hazard assessment checks". It was a tick-and-flick exercise to say, "That is a hazard there, that is a danger there. I have done it, off I go." **It strikes me that this whole process is based on the same tick-and-flick approach and because there is no enforcement regime, people do not do it properly. Would that be a fair statement?**

Ms WEBB: Are we talking about enforcement regimes for all types of certifiers or—

The Hon. MARK BUTTIGIEG: Yes.

Ms WEBB: We certainly have some enforcement activity in relation to certifiers. We have disqualified some and have certainly fined some, but **we will need to take on notice whether any of those cases relate to the more specific categories.**

The Certifier classes that are accredited to issue mandatory certificates are:

- A1 – A3 Building Surveyors are authorised to issue mandatory Complying Development Certificates, Construction Certificates and Occupation Certificates and Swimming Pool Certificates of Compliance
- B1 Subdivision Certifiers are authorised to issue mandatory Subdivision Certificates
- C 10 Fire Safety Engineering Compliance Certifiers are authorised to issue mandatory Compliance Certificates for alternative solutions for fire safety design or construction work
- D1 Strata Certifiers are authorised to issue mandatory Strata Compliance Certificates
- E1 Swimming Pool Certifiers are authorised to issue mandatory Swimming Pool Certificates of Compliance.

The following tables set out the enforcement activity that has been undertaken by NSW Fair Trading in relation to certifiers. Table A sets out the number of fines and cancellation by certifier category and Table B sets out compliance actions for all types of certifiers.

Table A – Fines and cancellations by certifier category

Certifier category at time of complaint, investigation or audit	Fines 2014/15 – 2018/19 (excluding penalty infringement notices)	Cancellations 2014/15 – 2018/19
A1 Building Surveyor	35 fines issued totalling \$566,000	1
A2 Building Surveyor	25 fines issued totalling \$227,500	3
A3 Building Surveyor	14 fines issued totalling \$137,500	0
B1/D1 Subdivision Certifier / Strata Certifier	1 fine issued totalling \$25,000	0

Certifier category at time of complaint, investigation or audit	Fines 2014/15 – 2018/19 (excluding penalty infringement notices)	Cancellations 2014/15 – 2018/19
C10 Fire Safety Engineering Compliance Certifiers	0 fines	0
E1 Swimming Pool Certifiers	2 fines issued totalling \$35,000	1
C7 Structural Engineering Certifier	1 fine issued totalling \$10,000	0
Other	0	0

Table B – Disciplinary actions by all categories

Description	2018/19	2017/18	2016/17	2015/16	2014/15
Imposition of conditions	6	1	0	5	0
Accreditation suspended	0	0	0	1	0
Accreditation cancelled	3	1	0	1	0
Accreditation holder disqualified from reapplying for a fixed period	3	0	0	1	0
Disqualify certifier from being a director ^[1]	0	0	0	0	0
Disqualify director from being a director ^[2]	0	0	0	0	0
Caution	1	0	3	5	3
Reprimand	34	5	9	26	24
Educational course order	10	1		11 (1 varied by NCAT)	0
Fine imposed	23	4	7	21	23
Fine (original \$ value imposed by Fair Trading)	\$443,500	\$47,000	\$66,500	\$253,500	\$115,500
Certifier to report on practice	0	0	0	4	2

^[1] see section 31(4)(j) Building Professionals Act 2005

^[2] See section 31(4)(k) Building Professionals Act 2005

2.

The Hon. JOHN GRAHAM: Do you agree with Mr Lambert when he says that very few of those categories have people who are licensed for them and none of them actually provide compliance certificates? [on the certifiers Mr Tansey discussed in the 12 August hearing]

Mr TANSEY: I would probably prefer to **take that on notice** and go back to Mr Lambert's transcript.

Questions were taken on Notice by Government Officials regarding the evidence of the Officials in relation to the roles of accredited certifiers, building practitioners undertaking building work, the issuing of compliance certificates, and the evidence and submission to the Inquiry of Mr Michael Lambert.

The NSW Government officials noted that there are a range of types of certifiers, accredited by category, as listed in Appendix A of the NSW Government submission. Officials also noted that all certifiers are required to meet pre-requisites for accreditation.

To become a certifier in NSW, in every category you must apply to the Building Professionals Board (BPB) and:

- demonstrate you have the required knowledge, skills qualifications and experience set out in the accreditation scheme
- demonstrate you are a fit and proper person
- provide evidence of having the required professional indemnity insurance (except if a council employee covered by the council's insurance) and
- pay an accreditation fee.

The accreditation scheme sets the criteria to be an accredited certifier in NSW and the assessment process. It also establishes a code of conduct and an annual program of continuing professional development.

Certifiers determine applications for construction certificates and complying development certificates and may be appointed as the principal certifying authority for the development (if they hold the appropriate accreditation). The principal certifying authority issues the occupation certificate at the completion of the development.

The principal certifying authority, or another accredited certifier, carries out critical stage inspections during construction to ensure the building work is in accordance with the development consent and legislative requirements.

At the end of construction, the property owner must apply to the principal certifying authority for an occupation certificate. The principal certifying authority will conduct a final inspection and issue this certificate if satisfied that the building is suitable for occupation or use. A building must not be occupied or used without an occupation certificate

Accredited certifiers issue development certificates to confirm they are satisfied the development meets legislative requirements.

There are different development certificates for each type and stage of development.

- *Construction certificates* state that work completed in accordance with approved plans and specifications will comply with legislative requirements.
- *Complying development certificates* state that proposed development is complying development and (if carried out as specified) will comply with relevant development standards and legislative requirements.

- *Occupation certificates* authorise the occupation and use of a new building, or a change of building use for an existing building.
- *Compliance certificates* confirm that work or designs comply with specified standards.
- *Strata certificates* authorise the registration of a strata plan, strata plan of subdivision or notice of conversion.
- *Subdivision certificates* authorise the registration of a plan of subdivision.

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NSW Government officials note that in evidence and submission to the Inquiry, Mr Michael Lambert commented on the use of compliance certificates.

As noted above, compliance certificates are one type of development certificate. Compliance certificates confirm that work or designs comply with specified standards.

Under the Environmental Planning & Assessment Act a compliance certificate is required in relation to building work or subdivision work in circumstances prescribed by the regulation. A compliance certificate may be issued by a certifier, or persons prescribed by the regulations as being authorised to issue a compliance certificate.

Non-accredited persons can issue professional advice regarding building work and whether in their opinion it meets certain standards, but this is not the same as a “compliance certificate” under the Environmental Planning and Assessment legislation.

NSW Government officials noted the distinction between those responsible for certifying building work and construction and those undertaking the building work.

The NSW Government officials noted that traders undertaking residential and specialist building work are also subject to licensing requirements in a significant number of different classes.

There are different types of licences available in NSW depending on whether you want to contract or supervise work.

A **contractor licence** allows you to contract and advertise to do work. You can only do the types of work described on your licence card. Contractor licences can be issued to individuals and to companies and partnerships. You can choose to have a contractor licence issued for one or three years.

A **qualified supervisor certificate** allows you to supervise and do the work described on your certificate. Qualified supervisor certificates are only issued to individuals. Certificates are issued for three years. A qualified supervisor certificate does not allow you to contract for work.

An **endorsed contractor licence** is issued to individuals who apply for a contractor licence and who also have the qualifications and experience needed to be a qualified supervisor. Endorsed contractor licence cards have 'contractor licence (Q)' printed on them to show they are also equivalent to a Qualified Supervisor Certificate.

A **tradesperson certificate** allows you to do plumbing, drainage and gasfitting work with minimum supervision. Individuals who hold a tradesperson certificate cannot sign off on work. Any work they do must be overseen and signed off by someone who holds a contractor licence or qualified supervisor certificate. Tradesperson certificates are only issued to individuals. Certificates are issued for three years. Tradesperson certificates used to be known as a 'journeyman'.

The following licence classes are required by law in NSW:

General Building Work:

1. Building

Other Building Work:

2. Erection of prefabricated metal-framed home additions and structures
3. Kitchen, bathroom and laundry renovation
4. Structural landscaping
5. Swimming pool building

Specialist Work:

6. Air conditioning and refrigeration
7. Electrical
8. Disconnection and reconnection of fixed electrical equipment
9. Plumbing,
10. Draining
11. Gasfitting

Trade categories:

- | | |
|--|---|
| 12. Bricklaying | 23. Minor maintenance/cleaning |
| 13. Carpentry | 24. Minor tradework |
| 14. Decorating | 25. Painting |
| 15. Dry plastering | 26. Roof plumbing |
| 16. Excavating | 27. Roof slating |
| 17. Fencing | 28. Roof tiling |
| 18. General concreting | 29. Stonemasonry |
| 19. Glazing | 30. Swimming pool repairs and servicing |
| 20. Installation of security doors, grilles
and equipment | 31. Underpinning/piering |
| 21. Joinery | 32. Wall and floor tiling |
| 22. Metal fabrication | 33. Waterproofing |
| | 34. Wet plastering |

NSW Government officials note that in evidence and submission to the Inquiry, Mr Michael Lambert highlighted that some installation work is undertaken by persons that are not required by NSW law to be licensed. An example cited by Mr Lambert included the installation of fire safety systems (submission page 8). It is correct that this work is not occupationally licensed in NSW.

The Hon. JOHN GRAHAM: Okay. I want to put to you some evidence which was put about unlicensed electricians operating in New South Wales. It was about companies, provided by Justin Page, advertising for unlicensed electricians—overseas-qualified electricians—and trade assistance, advertising in breach of the law. **There were 19 companies advertising for these workers, including on Government contracts. I do not know if you are aware of that evidence?**

Ms WEBB: We are aware—this is the evidence from the Electrical Trade Union [ETU]?

The Hon. JOHN GRAHAM: Yes. It was very concerning, on the face of it.

Ms WEBB: Yes. We certainly have had some contact from the Electrical Trade Union, both in Fair Trading, but also SafeWork about unlicensed electrical activity. We have certainly taken away some licences from some people and we have certainly investigated some issues where there have been allegations of unlicensed work. The specifics of that particular case—**it may be best if I take that detail on notice, about the 19.**

ETU provided evidence to the Committee concerning 19 companies allegedly advertising for unlicensed electricians. Fair Trading requested copies of this evidence and were advised by the Committee that this was not possible as the evidence was provided confidentially.

Fair Trading has provided information about its response to complaints received concerning unlicensed electricians in response to the following questions on notice.

3.

3. The Hon. JOHN GRAHAM: You have said that you are aware of the evidence and I want to test the evidence with you, because it was very concerning. The ETU was very specific about 19 companies—it ran through a couple of examples. **Can you give us any assurance that that is not the case—that there are not overseas electricians operating on big Government projects, for which there is blatant advertising saying, "Come over here and work if you're unlicensed or from overseas."**

Ms WEBB: I am not aware of that specific allegation. I am definitely **happy to take it on notice whether the ETU has brought that specific one to our attention.**

As noted, Fair Trading has not been able to identify any record regarding the ETU allegation of 19 companies advertising for unlicensed electricians. In November 2018, Fair Trading wrote to the ETU to provide details of how to report the performance of suspected unlicensed electrical work to Fair Trading.

On 30 May 2019, Fair Trading received an email from the ETU who raised concerns about unlicensed work being performed on the NorthConnex project. In June 2019, NSW Fair Trading Building Inspectors conducted a site visit at the Northconnex Project. The Investigators spoke with 14 persons performing electrical work. 13 of these people were appropriately licensed and the one unlicensed person appeared to be performing work under the requisite supervision. No offences were detected.

Representatives from Fair Trading and Safework NSW are scheduled to meet with the ETU in late September 2019 to discuss collaboration on alleged unlicensed activity in the industry.

Where Fair Trading has received complaints raising concerns about advertisements for unlicensed electricians, all matters are assessed and, where appropriate, action is taken. Fair Trading may conduct an investigation into a complaint and a site inspection of the location where the alleged unlicensed work is occurring. Fair Trading conducts regular compliance checks of sites conducting electrical work. This includes proactive inspections as well as inspections in accordance with complaint handling procedures.

4.

Ms WEBB: And we certainly do have quite a lot of complaints in the field of electrical licensing.

The Hon. COURTNEY HOUSSOS: **Can you provide us on notice how many?**

Ms WEBB: Yes, definitely.

The Hon. COURTNEY HOUSSOS: **How many complaints you have received,** and how many—

Ms WEBB: Complaints we have had and how many investigations, how many disciplinary actions, yes we can do that.

The Hon. COURTNEY HOUSSOS: And **how many prosecutions have resulted from that?**

Ms WEBB: Yes, absolutely.

The Hon. COURTNEY HOUSSOS: And **licence cancellations?**

Complaints:

NSW Fair Trading received 19 complaints concerning alleged unlicensed electrical work for the 2017/2018 financial year and 24 complaints for the 2018/2019 financial year.

Disciplinary Actions:

Of the above complaints received, alleged breaches of the legislation administered by Fair Trading were identified in 37 complaints. During this period, Fair Trading issued 19 trader education letters (warning letters) for various breaches such as unlicensed contracting or seeking work without a licence.

Prosecutions:

During the FY18/19 NSW Fair Trading brought four prosecutions against individuals relating to unlicensed electrical work. Results include:

- The conviction of an individual in October 2018 for offences under the *Home Building Act 1989* relating to completing electrical work unlicensed. The individual was sentenced to imprisonment to be served by way of an Intensive Corrections Order for a period of two years; and
- The conviction of [Daniel Scott Harrison](#) in January 2019 for several offences under the Crimes Act and the Home Building Act 1989. The offences under the Home Building Act 1989 included contracting for electrical-related work whilst unlicensed. Mr Harrison was fined \$13,000, ordered to pay compensation to the consumer of \$12,026 and ordered to complete 300 hours community service.

Licence Cancellations:

Licence Type	Cancellation Year	Cancellation Reason	Count
Contractor Licence	2018	Close associate - not fit and proper	1
Contractor Licence	2018	Deregistered	1
Contractor Licence	2018	External administration - current	8
Contractor Licence	2018	No Nominated Supervisor	34
Contractor Licence	2018	Voluntary winding up	1
Contractor Licence	2018	Winding up order/Liquidation	1
Contractor Licence	2019	Cancelled – director of a company currently under external administration	1
Contractor Licence	2019	Deregistered	5
Contractor Licence	2019	External administration - current	7
Contractor Licence	2019	Issued In Error	28
Contractor Licence	2019	No Nominated Supervisor	11
Contractor Licence	2019	Winding up order/Liquidation	12
Qualified Supervisor Certificate	2019	Issued In Error	9

5.

The Hon. JOHN GRAHAM: Thank you. So I might **invite a bit more of that on notice** [on the grey area identified where there is debate with the ETU about what constitutes licenced-unlicensed work].

The *Home Building Act 1989* prohibits a company or individual from advertising for any residential building work over \$5,000 or specialist work of any value, such as electrical wiring, plumbing, draining, gas fitting, air conditioning and refrigeration work, to be carried out without having a current contractor licence, unless the unlicensed worker is exempt and their working conditions meet the legislative requirements.

For a worker, such as an apprentice, to carry out electrical wiring work, a qualified supervisor must be present at all times where the work is being done. They must be available to be consulted by, and give directions relating to, how the work is done, and personally ensures that the work is done correctly.

An electrical licence is required before to undertake any *electrical wiring work* in NSW, regardless of the cost of the work and regardless of whether the work is residential, commercial or industrial.

Electrical wiring work means the physical work of installing, repairing, altering, removing or adding to an *electrical installation* or the supervising of that work. An *electrical installation* means any fixed appliances, wires, fittings, meters, apparatus or other electrical equipment used for (or related to) conveying, measuring, controlling and using electricity in a particular place. It does not include:

- any electrical equipment (other than a meter) used, or intended to be used, to generate, transmit or distribute electricity that is:
 - owned or used by an electricity supply authority, or
 - located at a place that is owned or occupied by such an authority.
- any electrical article connected to, and extending or situated beyond, any electrical outlet socket,
- any electrical equipment in or around a mine,
- any electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current,
- any other electrical equipment, or class of electrical equipment, prescribed by the regulations.

6.

The CHAIR: One of the areas where the Government has done something is the October 2017 changes about fire safety regulations. I saw a number of you in the audience when the previous witnesses came forward. They said that they were very surprised that at the last moment a key part of the regulatory framework, which **was requiring a competent fire safety practitioner to sign off on the as-built fire safety mechanisms, had been removed from the regulations. Can you explain how that happened?**

Mr Tansey: You are correct, Chair, I did hear Mr Smith and his colleague make that point. No, I honestly cannot remember exactly why changes were made when the regulation was finalised. It is not our regulation, as it was, it was the environmental planning and assessment regulation, so it was actually developed up by our colleagues in the planning department. **Happy to take that on notice, why it changed.** I think the question was around, yes, the plans being part of that reform as well.

The CHAIR: Why are we having this debate? Surely, if you are going to have reform about making sure that the fire safety elements of a building are up to speed, and as recently as October 2017 the Government moves in this regard, why would you not include a requirement that the the as-built fire safety regime be inspected and certified by somebody competent? Why is this debate happening?

The Department of Planning, Industry and Environment Has provided the following Response:

The proposal to involve 'competent fire safety practitioners' in the sign-off of as-built essential fire safety measures was removed from final amendments to the Environmental Planning and Assessment Regulation 2000 that came into effect in October 2017. This was in response to key stakeholder feedback and concern on the practical complexity of certifiers determining the competence of practitioners in the absence of an accreditation scheme for installers.

It was decided to proceed with mandatory involvement of ‘competent fire safety practitioners’ for design work without delaying the legislation, as establishing the competence of design practitioners is less complex and determinations on the competence of fire system designers has been undertaken by industry for some time and is more mature.

The proposal for the involvement of accredited competent fire safety practitioners at the sign-off stage is intended to be revisited after a recognised accreditation scheme for installers is in place. Building owners are still required to ensure that the measures are assessed by a ‘properly qualified person’.

7.

The CHAIR: Can you explain why about half of, as she identifies—perhaps more—of the recommendations from the Shergold-Weir report have not been picked up by the New South Wales Government to date?

Recommendations 3, 6, 8, 9, 10 11, 18, 19, 20, 4, 21, 23 and 24, **but perhaps you could address that on notice?**

Questions were taken on notice by Government Officials regarding the recommendations of the ‘Shergold Weir’ report and the plan for implementation in NSW.

NSW Government officials noted that the details of the NSW government response to each of the recommendations of the ‘Building Confidence’ Report authored by Prof Peter Shergold and Ms Bronwyn Weir are set out in the ‘Building Stronger Foundations’ Discussion Paper that was publicly released by the NSW Government in June 2019.

The Discussion paper is available on the Fair Trading website - https://www.fairtrading.nsw.gov.au/data/assets/pdf_file/0020/532730/Building-Stronger-Foundations-Discussion-Paper.pdf

NSW Government Officials also noted that in addition to reforms being implemented by each State and Territory, including NSW, some of the recommendations are being implemented through a national approach.

The national implementation plan was released in March 2019 and is available on the Building Ministers’ Forum Website – <https://www.industry.gov.au/sites/default/files/2019-03/building-confidence-report-implementation-plan.pdf>

8.

The Hon. JOHN GRAHAM: We are aware of the discussion paper. I think the concern is just how limited it was in scooping up these recommendations. I think the question is actually about: Is there an implementation document? Will you have these in place within the three years? [On the Government’s progress and implementation of the Shergold-Weir recommendations].

Ms WEBB: Once the legislation is passed. Okay.

The Hon. JOHN GRAHAM: So it will be a comprehensive response? It will not be the cherrypicked couple of things that are in this discussion paper. It will address each of those recommendations. Is that the intention?

Mr TANSEY: Yes. Happy to do that. As I said, it is already in the public domain, as are most of the reforms being progress nationally. They are also in the public domain in a national implementation plan, **so happy to provide those on notice to show recommendation by recommendation with a level of completeness or progress.**

As above.

9.

The Hon. JOHN GRAHAM: **The Government submission says that legislation will not be this year [Building Development Certifiers Regulation]. That is correct, is it not?**

The CHAIR: Feel free to take that on notice.

Mr TANSEY: **I have undertaken to take that on notice.**

A written response was provided to the Committee on this matter on 28 August 2019.