

Submission  
No 133

**INQUIRY INTO REGULATION OF BUILDING  
STANDARDS, BUILDING QUALITY AND BUILDING  
DISPUTES**

**Organisation:** Property Council of Australia

**Date Received:** 2 August 2019

---

Mr David Shoebridge MLC  
Chair  
Public Accountability Committee  
Legislative Council  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Mr Shoebridge,

**Inquiry into the regulation of building standards, building quality and building disputes**

The Property Council welcomes the opportunity to make a submission to the inquiry into the regulation of building standards, building quality and building disputes. Consumers, building owners, building practitioners and insurers need certainty and confidence in building regulation which will ensure the community has confidence in the development of our State and the quality of the homes they buy or rent.

**The Property Council of Australia**

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

In NSW, the industry creates more than \$81.4 billion in flow on activity, generates around 387,000 jobs and provides around \$61.7 billion in wages and salaries to workers and their families.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play.

The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

**A pillar of NSW**

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

- generates over 390,000 jobs – 12 per cent of the workforce.
- provides \$25.4 billion in wages and salaries to workers and their families.

- pays \$20.9 billion in state taxes, Local Government rates, fees, and charges - the state's single largest tax payer, accounting for 54.1% of Taxes.
- contributes \$63.4 billion directly to Gross State Product – 12.7 per cent of total GSP.

### **Strong and Transparent Building Regulation**

The NSW Government has made building reforms a priority and have announced they will be introducing legislation by the end of the year in relation to their response to the *Building Confidence Report* by Shergold Weir.

These reforms include:

1. Requiring categories of building practitioners who are defined as 'building designers' to formally declare that plans, specifications and performance solutions they provide are compliant with the Building Code of Australia (BCA), and that builders declare that buildings are built according to the declared plans;
2. Introducing a new registration scheme for 'building designers';
3. Ensuring an industry-wide duty of care is owed to subsequent homeowners; and
4. Appointing a Building Commissioner to act as the consolidated regulator for building in NSW.

The Property Council has welcomed the announcement of the appointment of a NSW Building Commissioner to audit and regulate the industry. A Building Commissioner with a broad role that covers both regulatory and enforcement will be in the best position to implement key reforms to the building sector. We suggest that the NSW Government give the NSW Commissioner similar functions to that the Queensland Building Commissioner legislated under section 20J of the *Queensland Building and Construction Commission Act 1991*.

In the Property Council's submission to the NSW Government's *Building Stronger Foundations Discussion Paper*, released in June 2019, in our submission to this paper we outlined policy reforms that we believe will improve building and regulatory oversight in this sector. The submission is attached at Appendix A.

### **A proactive approach to Cladding**

The Property Council believes that building reform and regulation issues should be addressed on a national level and we welcomed the resolution from the Building Ministers Forum in July where they agreed to a national framework for the consistent implementation of recommendations of the Shergold Weir *Building Confidence* report. It was agreed at that forum to establish an implementation team within the Australian Building Codes Board tasked with developing and reporting on this national framework, as well as the design, construction and certification of complex buildings.

However, a plan was not agreed to implement a consistent and best practice Australia-wide response for risk assessment and a rectification strategy for existing buildings with combustible cladding with an agreed timetable that reflects the urgency of the issue. (See Appendix B)

In June 2017, the NSW Government established an inter-agency Fire Safety and External Wall Cladding Taskforce (the Taskforce) in response to the Grenfell fire in London. The Taskforce has representatives from the Department of Finance, Services and Innovation (DFSI), the Data Analytic Centre (DAC), the Department of Planning and Environment, Fire and Rescue NSW, the Office of Local Government, Treasury and the Department of Premier and Cabinet.

The Taskforce developed a whole of government action plan to prioritise and address fire safety requirements for residential buildings, including dealing with fire safety risks associated with external wall cladding. Priorities of the task force include:

- conducting a data audit to identify buildings that are most likely to contain aluminium cladding and other types of cladding.
- providing information and advice to the owners and managers of the buildings identified in the data audit. If required, this will include a recommendation to immediately check documentation and approvals and to have a fire safety assessment conducted by a fire protection expert.
- making checks for cladding compulsory and requiring the owners to report back on whether cladding is in situ on residential buildings.
- strengthening fire safety legislation through amendments to the Environmental Planning and Assessment Act and Regulation (EP&A Act and Reg) to improve the building certification system and strengthen development compliance requirements.
- expediting other reforms to building regulation and certification.
- cracking down on unsafe building products by introducing legislation that prevents their importation, supply, selling or use.

Each State has taken a different approach to the issue and a national approach would reduce confusion, clarify the scale of the challenge and support a viable professional indemnity insurance market that provides the coverage needed by industry participants and building owners.

Currently In response to the issue of flammable cladding, Australian and international insurers are introducing strict exclusions relating to cladding in mandatory professional indemnity insurance products for building practitioners in the supply chain.

Key professions within the property industry are struggling to acquire appropriate insurance cover, with building surveyors, engineers and architects particularly affected. This issue exacerbated by the jumps in premium for indemnity insurance renewals for certifiers who have been able to attain insurance, with annual payments increasing to rates upwards of 10 times. This issue could have serious impact on future building and construction activity in NSW.

The Property Council holds the view that the NSW Government must play a strong role in auditing at risk buildings and commit to a consistent and transparent risk assessment and rectification strategy for the state.

In NSW currently, Local Councils have the responsibility to audit and provide rectification orders for buildings which may have combustible cladding. This is likely to lead to inconsistent outcomes across the different local government areas, with some councils

not having the expertise or resources to manage the issue appropriately. There is also a reliance on private consultants, who may be required to take a conservative approach, to protect and indemnify themselves, which will lead to costly and unnecessary rectification.

The approach of the Victorian Government in establishing the Victorian Cladding Taskforce with leadership from Ted Baillieu and John Thwaites, has increased the transparency surrounding the issue in that State. The taskforce's final report outlines clearly the scale of the task, how risk has been assessed and the steps that will be taken towards rectification.

The taskforce was asked to:

- Assess the extent of non-compliant external cladding on Victorian buildings
- Advise on the rectification of non-compliant external cladding
- Recommend changes to the regulatory system.

A clear framing on how audits are undertaken, how many buildings are at risk and at what degree, and a plan about how rectification can be funded would clear a large degree of uncertainty surrounding the issue and return confidence into the industry.

Victoria implemented a proactive inspection program (Statewide Cladding Audit) undertaken by the VBA. This includes physical inspection of each of the buildings, followed by assessment by an expert panel who assigns a risk rating to assist with prioritisation.

In the Victorian Cladding Report released in July 2019, it is also recommended a dedicated authority is established to support owners and occupants in rectifying building and ensure risks from cladding are brought to an acceptable level.

The Property Council would urge the State Government take a similar approach in NSW.

### **Private Building Certifiers**

Private building certifiers has attracted criticism and scrutiny over recent years and there appears to be some confusion in the community about what their role is. It has been suggested that the certifier role should once again be the responsibility of the Local Councils.

The Property Council does not support this, as the reason private certification commenced was due to corruption by officers in Local Government. In addition, due to the complexity of some builds, and the specialisation of some certifiers, it is doubtful that Local Councils would have the expertise or resources to do this role efficiently or effectively.

Currently there is a small pool of certifiers in NSW that the development industry would approach and employ in large scale developments. Companies evaluate the certifiers, examining their expertise in large and complex scale projects, their team, scale of company and resources as well as insurance levels.

It should also be noted in the Final Report to Opal Tower, the authors found no evidence that the building certifiers had been deficient in regard to statutory expectations. In the case of Mascot Towers, Botany Council was the professional certifying authority.

The role of the certifier has been examined in 2005 when there was an Independent Review of The Building Professionals Act, otherwise known as the Lambert Report. This is in addition to the Shergold Weir Report released in 2018.

The State Government implemented a number of recommendations related to building certifiers from both reports and in 2018 the new Building and Building Certifiers Bill was introduced and passed by NSW Parliament. This Bill introduced new powers related to conflict of interest, enforcement and increased penalties. This is in addition to existing powers to discipline certifiers that are operating contrary to the public interest.

At this stage we would urge that once the Act has commenced, that the new reforms be evaluated for their effectiveness prior to implementing any new reforms in the sector.

The NSW Government needs to increase their auditing and governance of building certifiers to identify and eliminate any sub-standard operators. Auditing along with increased education for both the industry and the community would assist in raising standards, improving independence and meeting community expectations.

The Property Council welcomed the announcement by the former Minister for Better Regulation and Innovation, Matt Kean on 31<sup>st</sup> December 2018 of a four-point plan which included a target of auditing 25-30% of the industry each year. The Property Council also supports the other measures in the plan which include:

- A zero-tolerance approach to non-compliant certifiers;
- Better protection for strata buildings with certifiers being unable to work on new strata developments if they have breached the Code of Conduct in the last 12 months; and
- Increased transparency, which will include more information to home owners about a certifier's compliance history on an enhanced name and shame register.

Thank you again for the opportunity to make a submission to the inquiry. Please do not hesitate to contact  
if you would like to discuss any aspect of this letter further.

Kindest Regards,

**Jane Fitzgerald**  
**Executive Director - NSW**  
**Property Council of Australia**

2 August 2019