Submission No 10

INQUIRY INTO FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

Organisation: Plumbing Trades Employee's Union (PTEU) NSW Branch

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Re: Further inquiry into the regulation of building standards

Thank you for the opportunity to contribute to the Upper House Committee inquiry by the Parliament of NSW into **the regulation of building standards**. This submission is from the NSW Branch of the Plumbing Trades Employee's Union (PTEU), the leading representative of plumbing and fire protection workers in New South Wales (NSW).

We believe the quality and level of regulatory oversight in NSW can improve significantly; and must improve if public safety is to be maintained and public confidence in the system preserved.

In the attached submission we outline some **important points of context** in terms of the vital role plumbing and fire protection play in keeping the people of NSW safe. We make the point that we believe the problems with the NSW construction sector are **deep seeded and systemic** and extend beyond issues around cladding and private certification. And, in the context of seeking to improve community safety, which is what the Inquiry is ultimately about, we make the argument that an **improved fire protection licensing** and registration scheme for NSW will significantly improve community.

We strongly support the further inquiry by the NSW Parliament into the regulation of building standards in this state and consider it a valuable first step. The PTEU would welcome the opportunity to discuss our views on the regulation of building standards direct with the Committee.

Yours sincerely

Theo Samartzopoulos
NSW State Secretary

SUBMISISON

Background

The PTEU strongly support the Public Accountability Committee's inquiry (and any other reviews or inquiries) which is aimed at improving the efficacy and adequacy of the government's regulation of the built environment in NSW. Efficacy and adequacy are key considerations, however, above all other considerations in our view, is a consideration of the extent to which the current regulatory framework and its administration, is leading to a reduced level of **safety in the built environment of NSW.**

As the leading representative of plumbing and fire protection workers in New South Wales (NSW), we represent the interests of our members first and foremost. The focus of this submission is therefore on the issues which most directly impact our members. However, we also play a strong, collaborative, whole of industry, role within the broader construction sector. And, given that the work of our Industry is so integral to the succuss and safety of the wider building sector, we are heavily invested and **active stakeholders in the broader building industry in NSW**, and believe the themes we raise have resonance in the industry more broadly.

Context

A balanced regulatory framework is required

The focus of the Committee's inquiry is the issues already identified pertaining to flammable cladding, private certification of and engineering reports for construction projects. Clearly, these identified elements of the regulatory framework in NSW are not operating as effectively as they could or should be. If they were there would be no need for the Inquiry.

However, we would argue that **these identified pressure points are symptoms of broader, systemic problems**. In our view, the current system is, and is perceived to be within the sector, ineffective. There is, to some extent a **"wild west" attitude** amongst some in the building industry in NSW. We are all aware of numerous examples of building companies doing poor quality work and then disappearing into a maze of shell companies and "phoenixed" entities, making themselves untouchable in terms of responsibility for remediation work and/or consumer compensation.

There is no dedicated building or plumbing regulator in NSW, as there is in Victoria for example, and there is a perception at least that there is a **lack of plumbing expertise** within the notional regulator, Fair Trading. Our members and out stakeholder partners in the industry report to us that they perceive Fair Trading to be difficult to deal with and navigate, that clear answers to technical or related industry questions or requests for advice are unable to be met, and a **sense that "nobody's watching".**

In our view the current regulatory model is not working. The challenges around with the efficacy of the NSW building regulatory system run much deeper than just cladding and certification and extend to things like a **lack of regulatory presence, expertise, visibility, credibility, and authority**. And, as a result, there is the absence of a strong working relationship between the regulated and the regulator, and significant uncertainly in the industry about where the accountabilities and responsibilities of the various players in the system begin and end.

Safety and compliance in building is supported by a whole series of regulatory input and output measures – from the importation of products right through to "sign off" on complex plumbing installation on a multi-story apartment complex and everything in between. The regulatory framework for building and plumbing in NSW relies on this series of regulatory measures and instruments, some national and some state based, working

together to ensure the amenity and safety of the built environment in NSW. There is a National Construction Code, and it is federal regulations, for example, which govern what products can enter the industry from overseas and the product certification schemes which apply to those products once there are in the system. State based regulations govern who can work in the sector, what type of work they can do, and the quality and standards of work they are required to deliver. Staged certification schemes supported by inspections and audits, monitor and in theory, improve, quality and compliance. When working together and in a balanced way, regulatory measures **can ensure that the objectives of the legislation are achieved**, and consumers and practitioners have some market protections.

However, **for a range of reasons the NSW regulatory framework has become unbalanced** (with private certifiers, for example, carrying a greater share of the regulatory load in terms of accountability than was intended, and audit and inspection playing virtually no role at all). As a result, the regulatory framework for building in NSW is operating in a sub optimal way, exposing practitioners, consumers, and the broader community to preventable risk.

In an operating context where key parts of the regulatory framework are not working effectively (and we have an environment where private certifiers are signing off on shoddy work, or where inappropriate building materials, like flammable cladding, enter the supply chain and become embedded in the built environment), **the lifesaving and property protecting work of the plumbing and fire protection industry is even more critical**. For example, throughout Sydney and in other parts of NSW there are dozens of buildings which contain flammable cladding. The residents of those buildings are totally reliant on the effectiveness of the fire protection system to keep them alive in the event of a fire.

We submit that the **entire framework for regulating building in NSW should be subject to a review** and reform process. Rather than being driven by a desire to reduce regulation, such a review should examine how all the various components of the regulatory framework are working together. It should look at what is working well (such as Fire Protection licensing), here and in other jurisdictions, and seek to replicate it with a view to ensuring that the people of NSW are as safe as possible.

<u>Community health and safety</u>

The Committee is concerned with improving the safety of the built environment in NSW. We submit that any discussion of public safety in the industry needs to recognise the key nexus that exists between plumbing and fire protection (and by extension plumbing regulation) and **public health and risk mitigation**.

At a first principle's level, the core reason **plumbing regulation exists is to protect public health**. Plumbing (and Fire Protection) is the first line of defence against a myriad of public health risks. Good quality plumbing is all that stands between the community and a whole range of hazards, toxins, substances, diseases, and disasters. As mentioned above, think of fire safety in high density buildings for example, and the role regulations, or the lack of them, played in the flammable cladding. More currently, the role ventilation plays in the transmission or containment of COVID 19 is an issue now in focus, providing another real and current example of the extent to which the community relies on the skills of plumbing and related trades to keep us all safe.

The role of **regulation as a preventer or mitigator of market failure**, is particularly important in the plumbing industry. As is the case in many parts of the economy, the plumbing 'market', if left to its own devices, is subject to market failure(s). In theory, restrictions on market conduct, in the form of effective regulation, help prevent or at least mitigate the impacts of those market failures.

Effective regulation, which addresses risks at their source, is essential for public health and economic development. This is because, unlike *some* other markets, where a market failure occurs in the plumbing market, the impacts are often significant, expensive, dangerous, widespread, and even deadly. Often, the impacts of

plumbing failures (be they the result of deliberate non-compliance or accidents) are not detected for years after installation and are often not contained to the parties involved. These failures can be catastrophic for affected individuals, investors, and communities.

Further, a large component of the work of the plumbing and fire protection sector involves the **maintenance and/or servicing** of systems, facilities, and equipment (in major public hospitals, schools, shopping centres etc). In that context, and unlike many other elements of the building ecosystem which are more "point in time" elements, maintaining compliance and safety for plumbing systems is an ongoing challenge, yet vitally important to public safety.

Quality and currency of skills and training

Professionally installed and maintained systems keep the public safe from a range of diseases, such as legionella, and toxic and volatile substances like gas and carbon monoxide. In this context, professionally (and safely) installed and maintained means that the systems are installed and serviced by professionals with the acquired **skills and whole of system knowledge that can only come from thorough, layered learning acquired over a three-year Certificate III qualification**.

New products, systems and innovations are entering the sector all the time, requiring new skills and knowledge. Remaining current, upskilled, and up to date is becoming increasingly important but also increasingly challenging for plumbing practitioners, consumers, and regulatory agencies.

As products and practices change**, added complexities and additional risks arise**. In the domestic and commercial plumbing space, for example, the increasing requirement around efficiency means that plumbing systems are now storing grey and black water in some cases on site for further use treatment rather than disposal which complicates plumbing system requirements. Additionally, increased use of non-drinking water through reticulated third pipe systems means that risk associated with cross contamination are increased.

Key points

Improved fire protection licensing and registration scheme will significantly improve community safety.

It is the strong view of the PTEU, as well as other stakeholders in our industry, such as the leading fire contractor representative body in Australia, the National Fire Industry Association (NFIA), that community safety in NSW could be significantly enhanced if NSW adopted a holistic approach to the licencing and registration of fire protection professionals, one which included the particularly important Inspect and Test functions.

The industry experience in other States tells us that licensing and registration works. A robust regulatory framework for Fire Protection will:

- Better *protect the community* and property in the event of a building fire;
- *Reduce the risk* of fire deaths, fire injuries and property harm and destruction;
- *Improve training and safety* for fire protection workers;
- *Improve compliance* with building fire safety regulations leading to reduced costs for owners, occupiers, government, emergency services and local government;
- *Increase community confidence* that work is performed by appropriately skilled workers to the prescribed standards; and
- *Reduce risks for fire fighters* responding to fire emergencies.

Under current arrangements, the community of New South Wales is being exposed to significant and unnecessary risks from fire. We submit that a thorough and robust licensing and registration for Fire Protection

practitioners – the men and women who inspect and test the Fire Protection systems in our tower blocks, public hospitals, schools, shopping precincts etc – would be a major part of the solution.

Despite facing the same risks as people living in Melbourne or Brisbane, **the residents of Sydney and other NSW regions have much less protection** against a Grenfell type fire disaster than their countrymen who live north and south of our state borders. Residents of domestic and public buildings and tower blocks in Victoria and Queensland are much safer than those in NSW because those States have a holistic and well-functioning regulatory framework for Fire Protection which includes licencing and registration of practitioners, including the important Inspect and Test functions.

In those other States, all aspects of Fire Protection work are considered licensed work, able to be done only by a licensed professional. This is how it should be, and means that in those states, the design, installation and maintenance of Fire Protection systems and their subsequent certification can only be carried out by those with skills, **knowledge and understanding of how the overall system works**.

Unfortunately, **in NSW, only the installation is regulated work**, with the *Inspect and Test* functions able to be legally carried out by anyone with an "Accreditation" handed out with no external scrutiny by a non-government peak body representing manufacturers and product developers (by the Fire Protection Association) - not the government or the industry as a whole.

Flammable cladding crisis – Fire Protection the key to community safety.

Since the 2014 Lacrosse Tower fire in Melbourne and the 2017 Grenfell Tower fire in London, there has been a sustained focus on addressing the issue of flammable cladding, particularly in relation to high rise residential buildings where the risk to occupants is very high.

The Grenfell disaster is an extreme and tragic example of where the **use of inappropriate materials combined with inadequate fire protection systems can result in catastrophe**. The Lacrosse Tower in Melbourne was clad in Grenfell type flammable aluminium cladding, and the fire spread to 13 stories in 13 minutes. If not for a well-functioning and properly installed and maintained fire protection system, the Lacrosse fire would have been a major catastrophe. A further fire broke out in the 41 storey Neo200 apartment building in Spencer Street in Melbourne's CBD in February 2019. Again, **it was the effectiveness of the Fire Protection systems which prevented a large-scale tragedy.**

In NSW, the state's cladding taskforce audited over 185,000 building records and conducted over four thousand inspections. **As a result, 225 buildings in the state have been deemed high risk**. The fire risks posed by flammable cladding are clearly unacceptable.

There are two main ways to address or reduce those risks, both of which are important. One is to remove the non-compliant cladding, and another is to make the occupants of those buildings safer. The current policy approach is to focus on the removal and replacement of the non-complaint cladding. We support the intent to remove all the non-complaint material from the NSW building stock. However, we are increasingly uncertain about the extent to which this is practically achievable.

Even pre COVID, a task of this size would take years if not decades to complete. In COVID times, with the associated limits on materials, labour, movement and capital, the task becomes prohibitively impractical. Adding complexity is the fact that many of these buildings are owned by Owners Corporations, which face the challenge of dealing with an industry in which lines of accountability, responsibility and liability are opaque at best; with complex insurance arrangements; disparate owner cohorts with varying interests and varying abilities to raise the necessary funds for remedial works.

And those necessary funds could range from the tens of thousands to the tens of millions of dollars depending on the project. In NSW apartment owners forced to replace flammable cladding on high-risk buildings can access interest-free loans from government. The government has allocated $1B to the loans program, giving some indication of the anticipated costs involved.

We submit that the complexity, scale, and costs involved in the remediation program will likely mean that many of the at-risk buildings will not be remediated for many years - if at all. In this context, we would argue that government consider redirecting part of that allocated $1B, or allocating additional funds, to improving the fire safety level of the affected buildings.

Buildings which are clad in non-complaint flammable material, by definition, are at higher risk of fire. It makes sense that **additional (to standard) fire safety testing and inspection regimes** should be enacted and applied to those buildings (monitoring for fire hazards on balconies for example).

Unless or until the remediation work program is complete, we would suggest that **allocating funds to support** additional inspections, testing, servicing and in some cases upgrading, of the Fire Protection systems within the relevant buildings would be a very practical use of government resources and would make the occupants of those buildings considerably safer.

In a similar vein, we submit that the government could be **working more closely with the Fire Protection industry** with a view to providing practical training and related industry development support. Not only is it vital that we have enough well-trained fire protection professionals to protect the community now, but also in future, and we would welcome the opportunity to work more closely with policy makers and regulators about the best ways to ensure the fire protection sector is ready and equipped to perform its vital life saving and property protecting work.

Effective Fire Protection requires thorough Cert III level training

As occurs in many highly cost competitive sectors, especially in a political context in which deregulation itself is considered a desirable end, industry fragmentation or segmentation can occur. We understand that pressure comes on regulators and policy makers to view established systems as a series of component parts which can then be "opened up" to a broader market of competitors, resulting, it is argued, in efficiencies and consumer benefits.

But we know this does not work when applied to plumbing and fire protection ***systems***. To view the Fire Protection qualification as just the aggregation of the individual competencies is to be ignorant of how their interplay actually works, and not an appropriate construct in the Fire Protection context. Fire Protection systems are a **series of interlocking components and connections**, each dependent on the other for the system to be effective.

That is why the **Certificate III** in Fire Protection qualification obtained under an Australian Apprenticeship Agreement represents the build-up of layered and inter-connected components of knowledge, competency and experience that **has a value greater than the sum of all its component parts**.

To properly service and maintain a contemporary Fire Protection system, an individual needs to know how the system works in its entirety. That is why in Victoria, Queensland and NSW, a license is required to install a Fire Protection system, and a thorough and comprehensive qualification is required to obtain that license. In Victoria and Queensland (but not NSW) a license is also required to inspect, test and maintain those systems.

It is imperative that all aspects of Fire Protection work carried out by competent practitioners with the appropriate qualifications and credentials. The best way to achieve that is to adopt a licensing framework like that in place in other jurisdictions which **would ensure all elements of Fire Protection work (including inspection and testing) are the exclusive domain of licensed persons**.

As the Committee would be aware, the Federal Parliament recently passed legislation to amend the Mutual Recognition Act 1992 (C'th) to introduce a uniform scheme of **automatic mutual recognition** (AMR) by enabling an individual who is registered for an occupation in their home state to carry on those activities in other states and territories (with a series of exceptions and discretions).

Whilst we note that the enabling NSW legislation exempted Plumbing and Fire Protection (amongst others) from the application of AMR for a time limited period, it is still **very important that the NSW Fire Protection system is not left behind the rest of the country**. To work across borders, and to make AMR work, there needs to be a

common level of qualification for practitioners in the participating jurisdictions. It would be a poor outcome for the residents of the country if the low bar set in NSW became the benchmark qualification. We submit that the opposite should occur. **NSW should seize this opportunity to ensure that it has a Fire Protection licencing scheme** in place with license requirements at least as high as those required of practitioners in Victoria or Queensland.

In our view, from a policy and regulatory change perspective, creating an effective licencing scheme for Fire Protection for NSW would be a **relatively straightforward process**. NSW could effectively borrow the design of the licensing framework, drawing on the best features of the other state's currently functioning schemes. In some cases, there would be an opportunity to effectively mirror the regulatory provisions.

The PTEU would welcome the opportunity to discuss this issue, or any of the other practical suggestions or policy matters raised in this submission with the Committee, or with relevant government representatives as appropriate.

Summary

- The **PTEU is supportive of the Inquiry** and believes the quality and level of regulatory oversight can and must improve if public safety is to be maintained and public confidence in the system preserved.
- Addressing issues relating to flammable cladding and private certifiers is a positive step, but only one small part of a wider **regulatory framework which is in need of a holistic review and reform.**
- Given the failings in other parts of the regulatory framework (eg: flammable cladding crisis), the role of **skilled and experienced plumbing and fire protection practitioners is vitally important**.
- One immediate way to improve community safety in NSW is for the State to **adopt an improved fire protection licensing and registration scheme** which will ensure the residents of NSW are no longer less safe than people who live in other States and Territories.