

**INQUIRY INTO FURTHER INQUIRY INTO THE
REGULATION OF BUILDING STANDARDS**

Organisation: NSW Government


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The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

Our reference: COR-04228-2021

Mr David Shoebridge MLC
Chair
Legislative Council Public Accountability Committee
By email: david.shoebridge@parliament.nsw.gov.au

Dear Mr Shoebridge 

NSW Government Submission to Legislative Council Public Accountability Committee
Further inquiry into the regulation of building standards

The Legislative Council Public Accountability Committee is conducting a *Further inquiry into the regulation of building standards*.

The Submission details the work of the NSW Government to lift building standards in NSW to restore confidence to the NSW construction sector. The Submission sets out the Construct NSW reform agenda, and the achievements of the Government to proactively respond to risks in construction, including imposing and enforcing new obligations for designers and engineers, builders and developers, and certifiers.

The Submission also explains how the rollout of the NSW Government's Project Remediate will provide comprehensive financial and program management support to owners dealing with flammable cladding.

The NSW Government provides this Submission to support the Committee's inquiry into the regulation of building standards.

Yours sincerely

Kevin Anderson MP
Minister for Better Regulation and Innovation

Date: 



Legislative Council Public Accountability Committee
Further inquiry into the regulation of building standards

NSW Government Submission

August 2021

EXECUTIVE SUMMARY

The Legislative Council Public Accountability Committee announced its Further inquiry into the regulation of building standards (the Inquiry) on 24 May 2021. This Inquiry follows the Committee's most recent inquiry the 2020 *Regulation of building standards, building quality and building disputes* inquiry.

The NSW Government welcomes the Legislative Council Public Accountability Committee's current inquiry, which provides an opportunity to consider the NSW Government's reforms to lift the quality of design and building work in NSW, and to hold all participants in the NSW construction sector accountable for the work that they do.

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. Further, 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.

From 1 July 2021, the DBP Act also introduced two new registration schemes for residential apartment buildings: one for Professional Engineers and one for designers and builders. 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 Building Confidence report can be implemented.

The Government also continues to take decisive action regarding flammable cladding, including Project Remediate and other elements of the Government's 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.

Project Remediate is a landmark three-year program to help remove combustible cladding on up to 239 eligible residential apartment buildings known to the Cladding Taskforce. Project Remediate is coordinated by the NSW Building Commissioner and offers owners of eligible buildings interest-free loans over a 10-year period with repayments to commence upon completion of the work. Project Remediate also offers expert assurance and project management services to provide technical and practical support to owners corporations and strata managing agents.

Fire and Rescue NSW (FRNSW) performs a key role in the building design and certification process, with some aspects of this role detailed within legislation. Fire and rescue services are recognised across jurisdictions as subject matter experts for fire brigade intervention and for life safety expertise in the event of fires and other emergencies. Involvement of fire and rescue services from the early stages of design and throughout the investigation, design and construction process is therefore critical.

FRNSW is currently partnering with other NSW Government regulators to create greater intelligence on built environment risk. FRNSW's involvement in the building design and certification process allows the collection of data on performance solutions and other trends in the building industry. FRNSW is currently increasing resources to improve processing times and to better engage with industry at the early stages of the design and construction process.

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 *Home Building Act 1989*. 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*

Construct NSW transformation strategy

In January 2020, the NSW Government announced its strategy to restore confidence in the construction industry. The Government's Construct NSW transformation strategy is being 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.

Stronger powers for the building regulator to lifting building standards in NSW

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.

In June 2020, Parliament passed the *Building Legislation Amendment Act 2021* to further enhance the powers of the building regulator by creating new grounds for the issue of a prohibition order and significantly increasing penalties. These changes ensure that non-compliance with building standards or directions for the regulator can no longer be seen as the cost of doing business.

Since 1 September 2020 there have been 73 full audits and 23 Anywhere / Anytime audits of building work under the RAB Act completed across NSW involving both Fair Trading and Safework NSW inspectors. These audits are informed by extensive data collection and analysis by the Department to ensure that high-risk projects and practitioners are subject to these audits. To support this work there are:

- 22 inspectors across the Better Regulation Division conducting occupation certificate inspections under RAB (due to be 30 by September 2021)
- 30 inspectors and auditors to be appointed to support the audits under the Design and Building Practitioners Act
- Over 70 operational staff, including 12 in the Office of the Building Commissioner, are dedicated to the Construct NSW six pillar transformation strategy which outlines the Government's strategic reform agenda to 2025

These audits have found significant rates of serious defects in residential apartment buildings. For example, of the 73 audits undertaken since the commencement of the Act:

- 46% of buildings have a serious defect related to building services,
- 43% of buildings have a serious defect related to fire safety, and
- Over 39% of buildings have a serious defect related to waterproofing.

While engagement between developers, builders, designer and architects and inspectors from NSW Trading have led to positive responses to defects in building work, the RAB Act allows the building regulator to issue orders for the work to be fixed and can prevent the issue of an occupation certificate

until defects are remedied. Since 1 September 2020, Fair Trading has issued 8 prohibition orders, 13 building work rectification orders and 1 stop work order and 1 Enforceable Undertaking under the RAB Act.

Better use of data to inform regulatory intervention and market confidence

NSW regulators are working to create greater intelligence on built environment risk. This risk intelligence is based on various aspects of the design, proposal and the trustworthiness of the individuals, developers, builders, certifiers and engineers involved in development projects.

This includes the implementation of new digital products, including the NSW Planning Portal and the building digital twin, to create new capability that will combine existing internal and new internal and external data pools to provide a single view of projects across NSW.

For example, the DBP Act will ensure that comprehensive designs are lodged on the NSW Planning Portal before building work commences, and that once a project is completed copies of the as-built designs will be on the NSW Planning Portal. The designs will be accompanied by a contractor document to ensure that the NSW Planning Portal has a record of the designers, engineers, builder and building contractors who worked on the project.

These products, and supporting legislative frameworks, assists in identifying risks that need to be addressed through compliance and licensing schemes, and helps to target education and training programs, such as the Construct NSW Digital Learning Platform, to where industry capability uplift is needed.

The Government has also helped to establish a new market for regulated ratings services provided by the private sector. In July 2021 Equifax introduced their iCIRT, the first risk rating tool of its kind. The rating service tool will initially assess developers and builders, and is likely to be extended to other practitioners over time.

B. The *Design and Building Practitioners Act 2020* and the registration of professional engineers

End to end accountability in the design and construction of residential apartment buildings

On 3 June 2020, Parliament passed the DBP Act, with most reforms in the Act commencing on 1 July 2021. 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 for building elements and performance solutions, establishes a registration scheme for professional engineers and enhanced duty of care provisions.

From 1 July 2021, the DBP Act will apply to design and building work and professional engineering work carried out on class 2 buildings and buildings that have a class 2 component. Class 2 buildings are typically multiunit, multi-storey residential apartment buildings, but less commonly they can also include single-storey attached dwellings where there is a common space below (for example a granny flat above a principal dwelling, or two dwellings above a basement carpark).

The decision to apply the reforms to class 2 buildings first is consistent with the NSW Government's commitment to resolve significant failures in apartment building standards in recent years. During consultation on the draft supporting Regulation for the DBP Act, the Government received significant support for expanding the mandatory registration requirements beyond class 2 buildings, as well as some stakeholders supporting exempting certain class 2 buildings from the requirements under the DBP Act.

Those in favour of expanding the registration framework beyond class 2 buildings supported expanding to all classes of the National Construction Code, with some proposing this happen immediately. Others were comfortable with a staged approach, recommending that class 3 buildings (such as boarding houses and backpacker hostels, hotels and motels) and class 9 buildings (public buildings such as hospitals, schools, theatres, sporting facilities and aged care buildings) should be prioritised in the next stage of the reforms.

Some submissions sought to restrict the application of the reforms to exempt certain class 2 work from the requirements of mandatory registration and compliance declarations. For example, exempting all work under three storeys from the requirements of the DBP Act due to the potentially increased costs of small, low-budget projects under the scheme.

The Government determined that its focus on class 2 buildings, and buildings with a class 2 component (mixed use buildings), in stage 1 of the reforms would ensure that the new obligations targeted the kind of work that had been failing to meet the required standards, while balancing the regulatory costs on smaller operators and consumers. This approach will ensure that the new scheme will work to protect the health, safety and welfare of all occupants in class 2 buildings.

Other classes under the National Construction Code will be brought into the scheme over time in close consultation with industry and the community to ensure that the new regulatory obligations achieve the desired outcomes of competent practitioners doing compliant work.

Registration of professional engineers working on class 2 buildings

In addition to the new compliance declaration scheme, which requires registered design and building practitioners to declare that design and building work meets the requirements of the Building Code of Australia (Volumes 1 and 2 of the National Construction Code), the DBP Act introduces for the first time a registration scheme for professional engineers working on class 2 buildings.

Consistent with the Government position to introduce these new regulatory requirements where the risk is most acute – class 2 buildings – the Government has initially introduced a registration requirement in the following engineering classes: structural, civil, fire safety, mechanical, electrical, and geotechnical.

If a person is doing professional engineering work in one of these classes of engineering on a class 2 building,¹ they must be registered or supervised by someone who is. From 1 July 2021, there are three pathways for a professional engineer to be registered.

Under Pathway 1, an engineer can register with NSW Fair Trading through the Service NSW portal. To be eligible for registration, an engineer must have at least 5 years recent and relevant experience (experience in that class of engineering on class 2, 3, 9a or 9c buildings), and meet the qualification, knowledge and skills requirements prescribed in the Design and Building Practitioners Regulation 2021 (the DBP Regulation).² In addition, a professional engineer registered under Pathway 1 must meet mandatory continuing professional development (CPD) and insurance requirements prescribed in the DBP Regulation. Since 1 July 2021, over 1,000 engineers have been deemed as registered under Pathway 1 while their applications are assessed.

Pathway 2 allows the Secretary of the Department of Customer Service (the Secretary) to approve a professional engineering body to undertake assessment, registration or recognition of professional engineers to meet registration requirements under the DBP Act. Under Pathway 2, a professional engineering body will be assessed to determine its competency to undertake these assessment processes, as well as its ongoing competency to ensure that engineers registered under their scheme continue to meet the requisite engineering competency requirements.

If a professional engineering body is approved under Pathway 2, that body can determine the qualification, knowledge, skills, CPD and insurance requirements an engineer must meet before being eligible for registration under the DBP Act. The minimum experience requirements under Pathway 2 are the same as Pathway 1.

No professional engineering body has been approved under Pathway 2 to register or recognise professional engineers under the DBP Act. However, NSW Fair Trading has established a Registered Professional Engineering Body taskforce to work with professional engineering bodies to stand up systems and processes to meet the requirements under Pathway 2. As at 23 August 2021 the taskforce has been in contact with or is aware of four bodies in relation to the requirements for recognition.

Pathway 3 allows the Secretary to recognise professional engineering bodies to be responsible for assessing eligibility and ongoing registration requirements for Professional Engineers in accordance with the requirements of a Professional Standards Scheme (PSS).

The professional engineering body will be responsible for operating a scheme for assessing an engineer's suitability for registration, and setting CPD and insurance requirements to maintain registration, in accordance with the requirements of the PSS. NSW Fair Trading will play no role in assessing the suitability of the body's scheme, acknowledging that these bodies have already undertaken a rigorous assessment process by the Professional Standards Council to have a PSS. Under that process, these bodies are required to have strategies, systems and resources in place to ensure ongoing responsibilities are met under the PSS.

No professional engineering body is currently operating a PSS. To support industry's efforts to put in place stronger industry-led oversight of professional engineering work, the NSW Government, through NSW Fair Trading, the Office of the Building Commissioner and the Professional Standards Authority, is working with engineering bodies to upskill in their oversight functions. This includes providing comprehensive data to inform risk-based interventions against engineers not meeting expected standards.

¹ Professional engineering work is work that requires, or is based on, the application of engineering principles and data to a design, or a construction, production, operation or maintenance activity, relating to engineering.

² Qualification, knowledge and skills requirements are prescribed in Schedule 2 of the DBP Regulation.

C. Project Remediate and the NSW Government's response to flammable cladding

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

The Government established the NSW Cladding Taskforce (Taskforce) to identify buildings with potentially combustible cladding and support local councils to address non-compliant and unsafe use of cladding materials. Sitting under the Taskforce is the Cladding Support Unit (CSU), 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 is comprised of members from the Department of Customer Service, Department of Planning, Industry and Environment, FRNSW, Office of Local Government, NSW Treasury and Department of Premier and Cabinet.

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 over 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 FRNSW 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.

To determine if cladding is present and poses a higher risk, FRNSW, on behalf of the Taskforce, conducted an operational assessment of each building. Buildings considered a higher risk were referred to consent authorities (Local Councils or Department of Planning, Industry and Environment) for further investigation. A significant number of these have already been cleared.

Buildings are considered cleared if:

- they do not have cladding that FRNSW considers increases safety risks
- the cladding has been investigated and cleared by a consent authority
- unsafe cladding has been fully remediated.

When buildings are inspected by FRNSW on behalf of the Taskforce the criteria for assessment are the type, amount, arrangement and location of cladding material provided to the façade and how the cladding would, if combustible, impact upon fire-fighting operations in the instance of a fire. 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. The remaining high-risk buildings pose an unacceptable risk to our community and an unacceptable risk to responding firefighters.

While rectification processes are underway, it is important these non-compliant buildings have all other risk controls managed to the highest standards. This is to ensure that other controllable risks are managed to reduce the overall risk that building occupants are facing while non-compliances exist in their buildings.

This means making sure that fire and life safety systems within these buildings are maintained to the highest possible standard and that occupants of these buildings have all the information they need to minimise risk and to ensure they are as safe as possible in the event that a fire does occur. These

controls need to be managed as rigorously as possible until these non-compliances are adequately resolved and life safety can be restored. The Cladding Taskforce has provided guidance to local councils on appropriate interim fire safety measures to consider as part of a whole-of-building assessment, and monitors the extent to which such measures are imposed.

FRNSW also plays a lead role in supporting Government's delivery of critical building reform. FRNSW has conducted more than 7,300 inspections on over 4,100 buildings to operationally assess the risk of combustible cladding. FRNSW has temporarily allocated additional resources to support building inspections and assessments.

FRNSW has undertaken a comprehensive assessment of high-risk buildings, including developing pre-incident plans and allocating an enhanced operational response level in the event that a fire occurs in high-risk buildings. Training has occurred with operational firefighters and a cladding fire training facility has been erected at the FRNSW Emergency Services Academy.

The NSW Government has audited 185,000 building records and inspected over 4,100 buildings. The vast majority of these are not considered at risk. As at July 2021, 393 buildings remain under review, assessment or remediation. The current status of buildings is published on the Taskforce website at <https://www.nsw.gov.au/nsw-cladding-taskforce>

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 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.

The requirement to assess and remediate unsafe cladding applies equally to 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 until remediation work is carried out, including making owners and occupiers 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.

Non-residential building owners are likely to have a 'single owner' ownership structure, financial capacity to fund remediation work, sophisticated building management and risk management capabilities and the capacity to deploy or procure building assessment, fire engineering and remediation technical expertise. The Cladding Taskforce has observed that non-residential buildings are typically assessed and made safe promptly and proactively by building owners in consultation with the consent authority. The Taskforce continues to track the status of these buildings as reported by councils and consent authorities, which issue the necessary orders or approval for interim safety measures and remediation work and ensure compliance.

The Taskforce also tracks and receives updates from Government clusters on the assessment and remediation of combustible cladding on government-owned buildings. Sophisticated asset management and building infrastructure teams across government coordinate these remediation programs.

Project Remediate is focused on providing real support to address high risk flammable cladding

On 17 November 2020, Project Remediate was announced in the 2020-21 NSW Budget to provide no-interest loans and an assurance service for the remediation of combustible cladding on high-risk residential apartment buildings. Project Remediate is coordinated by the NSW Building Commissioner and is focused on eligible buildings that are:

- a residential apartment building (Class 2) – including mixed-use such as part commercial/part residential buildings, and
- confirmed by the Cladding Taskforce to have a high-risk combustible cladding façade that requires remediation.

As at July 2021, 239 residential buildings were found eligible to join the program.

Project Remediate offers eligible buildings a 10-year interest-free loan for remediation work to address the flammable cladding, as well as assurance and project management services to provide technical and practical support to owners corporations and strata managing agents. These assurance and project management services include:

- a managing contractor that is responsible for arranging and overseeing the logistics of delivering remediation works to each building and providing industry-leading customer service to the building owners, as well as managing the delivery of the complete program of work,
- a global façade consultant engaged to provide program-wide design guidance, maintain a 'pattern book' or repository of design information to avoid project designers 'reinventing the wheel' for each building, and translate the advice of the Cladding Product Safety Panel into design rules to be followed for each project,
- the Cladding Product Safety Panel that will determine the appropriate products and systems to be used under the program. The Insurance Council of Australia is represented on the Panel to ensure proposed products and systems can be fully insured when installed on the buildings,
- pre-qualified panels of suppliers to deliver services under the program, to ensure the suppliers have the necessary experience and qualifications to deliver quality work at good value to the owners, and
- Fire and Rescue NSW is collaborating with the Office of the Building Commissioner on Project Remediate to ensure safe buildings are delivered on completion of the project.

The managing contractor for the program, Hansen Yuncken, was appointed in July 2021, and is arranging the procurement of the global façade consultant, expected to commence in September. Investigation teams will also commence work to assess the first buildings in September, with the design and planning of remediation solutions quickly ramping up in the following months. The Office of Project Remediate has been engaging widely with stakeholders during the establishment of the program, including ongoing consultation and engagement with the strata sector and the development of a training module for strata managers and committees and communication packages to inform strata owners corporations about the program.

While the scheme is voluntary for building owners to participate in, Project Remediate provides immediate financial and specialist advice to building owners looking to address a significant risk to their building and occupants. Owners will have a say in the design of solutions for their building, but will not need to deal with the complexities of procuring suppliers and evaluating technical design and engineering proposals.

Residential building owners that choose not to opt in to Project Remediate can arrange the remediation of their building independently, and will need to ensure the intended solution complies with Fire Safety Orders and/or development controls issued by the local council or consent authority. Remediation work will also need to comply with the *Design and Building Practitioners Act 2020*. This means a registered design practitioner must prepare designs for the remediation proposal and declare that the work meets the requirements of the Building Code of Australia, and lodge this declaration on the NSW Planning Portal before a registered building practitioner can commence work.

All remediation work, inside and outside Project Remediate, is also subject to audit by NSW Fair Trading. Audits of cladding remediation work will consider the type of cladding material used and the design and installation of the cladding system. NSW Fair Trading recently issued public guidance to industry about this process which is available [here](#).

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.

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 Panel's first report was published in April 2021 and contains recommendations on categories of products that can be used in Project Remediate, subject to specified testing, design and installation requirements. As always, it is important to note that it is the installed *system*, not only the materials or products, that contributes to the safety and effectiveness of the remediated façade.

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.

Failure to abide by this requirement may lead to a penalty of up to \$22,000.

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. The role of Fire and Rescue NSW in ensuring compliant and safe buildings

The current legislative role of FRNSW in the certification process is detailed in the Environmental Planning and Assessment Regulation 2000 (EP&A Reg). This role relates to the provision of advice to Certifiers and Principal Certifiers in the issuing of Construction Certificates and Occupation Certificates for certain developments and the approval of certain exemptions to fire safety standards.

FRNSW also undertakes other roles that enhance the certification process that are not currently specified in the EP&A Reg. In particular, FRNSW's role in the Performance-based Design Brief (PBDB) (formerly referred to as the Fire Engineering Brief (FEB)) process for the development of Performance Solutions relating to fire safety.

Fire and rescue services are recognised across jurisdictions as subject matter experts for fire brigade intervention and for life safety expertise in the event of fires and other emergencies. Involvement of fire and rescue services in the regulatory process facilitates the construction of buildings in a manner that is compatible with the operational requirements of the fire and rescue service and ensures that occupant evacuation and fire brigade intervention will occur safely and expediently in the event of a fire or other emergency.

From time to time, industry stakeholders offer the view that the role of fire and rescue services should be further restricted in the regulatory process. Restricting the role of the fire and rescue service would not serve the community well. This would limit the ability to make comment on fire brigade intervention matters and important matters relating to community safety more broadly.

Rather, FRNSW strongly recommends enhancement of our role in the regulatory process. While FRNSW recognises that a better resourcing model currently being implemented will improve application processing times and responsiveness to industry, a reduction of this important regulatory role would be inconsistent with the unique expertise that FRNSW offers in the regulatory process and would further reduce community confidence in the building industry in NSW. Certain elements of the building industry have proven themselves to be untrustworthy with this level of responsibility for community safety. The Government has prioritised the restoration of safety and confidence in the built environment. FRNSW's regulatory role, and even further enhancements of it, is an important part of restoring that safety and confidence. This is consistent with the recommendations of the Building Confidence Report (Recommendation 8) to ensure that developers, designers, builders, engineers and certifiers engage with fire authorities during the design process.

Performance-based Design Briefs

Clause A2.2 (4) of the National Construction Code (NCC) came into effect on 1 July 2021. This clause requires relevant stakeholders to be consulted in the development of a Performance Solution. This process is referred to as a Performance-based Design Brief (PBDB) within these proposed provisions. In relation to fire safety matters this process is defined within the International Fire Engineering Guidelines as the Fire Engineering Brief (FEB).

FEBS are a function that is currently undertaken by FRNSW in accordance with the International Fire Engineering Guidelines. The uptake of industry in undertaking an FEB process is varied and it will often depend on the individual practitioners whether FRNSW is engaged at this stage of the design process. Those that do engage with FRNSW ensure that the best possible outcome for fire and life safety is achieved. FRNSW, developers and our community are better assured that safety in the built environment is enhanced by this engagement process.

Early involvement of FRNSW in the design process ensures that consultation with building designers and fire authorities occurs at a point in time where it is easy for advice to be incorporated into designs. Failure to refer relevant fire safety proposals could have major adverse fire and life safety implications for responding fire brigade personnel and other building occupants.

Role of FRNSW pre-occupancy inspections

Under clause 152 and 152A of the EP&A Regulation, FRNSW inspects certain buildings prior to occupation. This is an important role performed by FRNSW as it ensures that critical aspects of the

construction and installation are in accordance with the agreed design and they facilitate efficient and safe occupant evacuation and fire brigade intervention.

Other measures to enhance building fire safety

The Government is reviewing fire safety regulation throughout the whole building lifecycle (from design and construction to maintenance) with industry, councils and building owner representatives. Proposals are being developed to strengthen fire safety in buildings for owners and occupants including consideration of supporting fire safety certification with specific fire safety expertise. A working group has been established by NSW Fair Trading and the Office of the Building Commissioner to support this review.

E. Certifiers

Comprehensive regulatory obligations are in place for all certifiers in NSW

In NSW, as at 23 August 2021, there were 1,957 registered individuals and 16 registered bodies corporate. There were 1,221 registered individuals in the three building surveyor classes of building surveyor-unrestricted, building surveyor-restricted (all classes of building) and building surveyor-restricted (class 1 and 10 buildings). There were 178 registered individuals in the class of building inspector.

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 joint responsibility for this Part of the Act between the Minister for Planning and Public Spaces to the Minister for Better Regulation and Innovation.

Since the commencement of the new Act and supporting Regulation on 1 July 2020, investigations of certifiers have led to two certifiers being referred for disciplinary action, 21 penalty infringement notices issued.

Since 1 January 2021, over 5158 applications for complying development certificates were determined by private certifiers, with an additional 614 being determined by councils. Further, the following have been issued by private certifiers and councils:

Determination Authority	Construction certificate	Occupation certificate	PC Appointment	Subdivision certificate	Subdivision works certificate	Grand Total
Certifier	4161	2169	542	61	35	6968
Council	3353	1086	123	1004	114	5680
Grand Total	7514	3255	665	1065	149	12648

The oversight of certifiers under the *Building and Development Certifiers Act 2018* is complemented by new obligations under other building legislation and reform

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 details expectations of competency and work standard for certifiers, and have formal, binding standing under the Act.

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.

Since the Committee's previous inquiry into building, the Australian Institute of Building Surveyors (AIBS) has been approved to operate a PSS for certifiers (from 1 July 2021). As an approved PSS, AIBS is obliged to monitor and enforce the standards of its members, as well as to drive improvement in the quality of work and competency of members.