

**INQUIRY INTO REVIEW INTO THE DESIGN AND
BUILDING PRACTITIONERS ACT 2020 AND THE
RESIDENTIAL APARTMENT BUILDINGS (COMPLIANCE
AND ENFORCEMENT POWERS) ACT 2020**

Organisation: Fire Protection Association Australia

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Public Accountability and Works Committee
Parliament House
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**Review into the *Design and Building Practitioners Act 2020* and
the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020***

Thank you for the invitation to comment on the Committee's review of the above pieces of legislation.

As the peak association for fire protection, covering companies and practitioners from across the industry and reaching around 30,000 people, Fire Protection Association Australia (FPA Australia) welcomes the Committee's investigation.

Timing

As the Committee members undoubtedly realise, the current inquiry is covering ground that is the subject of intense reform work being carried out by the NSW Building Commission.

This work is seeking to abolish both of the above Acts, as well as the *Building and Development Certifiers Act 2018*, in an effort to create a Building Act.

Although FPA Australia supports the creation of that Act in principle, we are concerned that this is going to make significant changes to the fire protection sector without any attempt to assess the efficacy of the existing pieces of legislation or processes established under them.

We fear that this review may be coming too late, due to the NSW Government's stated intention to scrap current programs and to replace them with industry-wide licensing.

Current Government plans

The NSW Government is currently conducting an unprecedented restructure of the construction and post-construction sectors, through the proposed introduction of the Building Bills.

Key elements of the strategy that affect fire protection include proposals to:

- **license all practitioners**, replacing accreditations for fire system design, certification, inspection and testing, and fire safety assessment, and increasing uncertainty for current accredited practitioners;
- **redefine fire protection work** as plumbing, electrical, carpentry, or building;
- **significantly increase inspections and compliance**, increasing the cost of construction.

These will create massive shifts in fire protection – in many cases solely to be seen to be doing something – and will lead to a considerable loss of experience and knowledge from our sector.

The proposals are poorly thought through, will not reduce defects, and will add significantly to the costs borne by the consumer.

These moves fly in the face of evidence – the Government itself has admitted that:

... much of the work identified during inspections of residential and commercial buildings by the building regulator was carried out under a licence ...

Yet, its solution is to extend licensing to more areas, without any apparent plans to increase enforcement or to ensure that practitioners are held to account.

The Government's consultations on these proposals have been rushed, restricted, and focused more on supporting their position than understanding and addressing industry concerns.

While FPA Australia is willing to accept that some areas of fire protection are not working as well as they might, these plans are a significant overreach and will be detrimental to community safety.

By the time the Government realises its mistake, it will be too late for the fire protection sector.

FPA Australia's concerns

Our criticisms of the Government's plans are that the Department of Customer Service:

- has **not put forward a compelling case** to support such significant change;
- has **not been transparent** in its consultation process, initially requiring associations to maintain confidentiality so that it could have "frank and open conversations" about what was being proposed;
- has given **very little time for review** and response of the discussion papers – each paper is released with just four weeks to comment;
- has relied upon **flawed data, surveys, and arguments** to justify changes, despite these being clearly skewed to support particular narratives;
- has **not attempted to develop alternative solutions** in consultation with industry that might address specific areas of concern more effectively;
- is pushing for **across-the-board licensing** despite admitting in an earlier discussion paper that *"much of the work identified during inspections of residential and commercial buildings by the building regulator was carried out under a licence"*;
- proposes to **abolish the Fire Protection Accreditation Scheme (FPAS)** and replace it with licensing, without any attempt to analyse the success of mandatory accreditation;
- has **not indicated how** the move to licensing the more than 400,000 people in construction and post-construction services **will improve outcomes**;
- has provided no indication as to how **auditing and enforcement** will be carried out (*given that 10% of FPAS-accredited fire systems designers (FSD) and fire safety assessors (FSA) must currently be audited each year*); and
- claims that the moves are to reduce rectification costs for consumers, while **significantly increasing the costs** for practitioners and the amount of intervention required throughout construction – these additional costs will be passed down to the consumer, and will dwarf the current cost concerns.

The Government's reforms will effectively replicate the system in force in Queensland, which has been shown to be flawed and unworkable, with industry and consumers alike frustrated at the performance and apparent biases of the Queensland Building and Construction Commission.

This is not an appropriate model for NSW.

Risks to the industry

These reforms are likely to cause tremendous damage to the industry.

The Government's push for licences, particularly the suggestion that all practitioners might be required to have a plumbing, electrical, carpentry, or building licence, will result in significant numbers of practitioners leaving the industry, rather than undertaking a four-year apprenticeship.

The loss of experience will be alarming, and will be replaced by inexperienced tradespeople who happen to hold the "right" licence.

It would add significantly to the cost of fire protection, without providing any improvements in safety, making services already verging on unaffordable even more so.

The Government has admitted that licensing has not stopped defects, but seems committed to introducing it anyway.

When this new system is in place, it will be too late to repair the damage.

Accreditation

FPA Australia was recognised by the Secretary for the Department of Customer Service as an accreditation authority in 2020.

Since then, almost 2,000 people have been accredited in design or fire safety assessment roles under the Fire Protection Accreditation Scheme (FPAS), many of whom are currently working towards qualified accreditation.

It takes five years to see the full impacts of reforms, but the decision was made to abolish accreditation in three years.

This is despite the defects being found having nothing to do with accredited roles.

In return, the Government has stated that it would support the creation of professional standards schemes – as it is not an occupational association, FPA Australia does not qualify for this status.

Thus, the experience and processes developed by the Association over the last four years will be lost, even though no attempt has been made to determine whether accreditation has worked.

The change comes at a time when the Department has asked FPA Australia to introduce a fire systems certification (FSC) accreditation in line for the commencement of an accredited role in February, 2025.

The Association is being asked to develop something that within a year or two may be turned into a licence, resulting in a loss of capital and resources by FPA Australia to meet a short-term goal.

Design and Building Practitioners Act 2020

The above information is not suggesting that there aren't issues with the *Design and Building Practitioners Act 2020* (DBPA).

FPA Australia would agree that there has been undue complexity and duplication between that Act and the *Building and Development Certifiers Act 2018* (BDCA), but this is largely due to the Department implementing reforms that cut across existing regulation.

When the DBPA was being discussed, we raised concerns about the duplication and potential misalignment between the two statutes.

In one of our submissions as part of that consultation, we flagged issues with the new proposals, including:

- the unnecessary duplication of the BDCA;
- the uncertainty about whether a practitioner needed to be accredited or could be registered in other ways;
- the restrictive experience requirements, which prevented practitioners with lower-level licences from being recognised under DBP, thus making the work they perform more expensive for Class 2, 3, and 9c buildings;
- the need for additional design categories; and
- incorrect guidance materials being issued.

Unfortunately, the Government chose not to address these concerns, and the two Acts are thus now at cross purposes.

In particular, by creating alternative pathways for registration under DBPA, the Government created a situation where a practitioner could be making a compliance declaration under that Act, while breaking the law by not being accredited under the BDCA, which regulates exactly the same function.

The DBPA does not take precedence over the BDCA, so practitioners not accredited under FPAS for Fire Systems Design would automatically be in breach of the latter Act, potentially risking a fine of 1,000 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

This has been raised on a few occasions with the Department, but was met with a lack of interest either to acknowledge or to resolve the inconsistency.

While there are undoubtedly some benefits in having legislation like the DBPA, its introduction demonstrated a lack of consistency within the Department of Customer Services, and poor advice on whether new responsibilities are already appropriately addressed by existing statutes.

Further consultation

FPA Australia would be happy to meet with the Committee to discuss any of the above comments.

Please feel free to contact me at _____, if you require further information.

Yours sincerely,

John Collie
Chief Executive Officer