

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

**Organisation:** Housing Industry Association

**Date Received:** 2 July 2024

---



2 July 2024

Public Accountability and Works Committee  
The Department of the Legislative Council  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Committee Members,

**Review into the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020**

Thank you for the opportunity for the Housing Industry Association (HIA) to provide a submission to the review of the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

**About the Housing Industry Association**

HIA is Australia's only national industry association representing the interests of the residential building industry. As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year as well as small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 400,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, advocate for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry.

## Operation of the Design and Building Practitioners Act 2020

The bulk of the provisions of the *Design and Building Practitioners Act 2020* (DBP Act) have been in operation since 1 July 2021. In that time, HIA has been fielding numerous enquiries and receiving feedback from a broad range of our members impacted by the legislation. This includes apartment builders, developers, building designers, architects, engineers, certifiers, as well as builders who specialise in renovations or remedial work. The feedback we receive covers both urban and rural areas.

While some of the fundamental principles of the legislation are supported, such as ensuring designers, architects and engineers have responsibility for their works and that adequate designs are provided to the builder, some aspects are having a negative impact on the residential construction industry. This is in part caused by the overly complex and confusing regulatory framework which is increasing the costs of construction projects.

HIA notes that the government's own data suggests the majority of buildings were without major defects in the critical building elements, and only around 20% of industry participants were responsible for the majority of issues. However, the legislation is applied across the market broadly and imposes the added cost and complexity just as much on practitioners who were already delivering quality construction prior to implementation of the Act.

### 1. Overly complex regulation

HIA has been consistently of the view the DBP Act should:

- Only apply to buildings 4 storeys and higher;
- Focus on new-build construction; and
- Be well integrated with the existing *Environmental Planning & Assessment Act 1979* (EP&A Act), the supporting regulations, and State Environmental Planning Policies (SEPP).

The initial conversation leading to the development of the DBP Act focused on new large-scale apartment development (greater than 4 storeys). This was because these buildings are not required to have Home Warranty Insurance, and the scale of the development meant the risk and the costs to rectify defective works were higher.

However, when the final legislation was released HIA was disappointed to discover that despite being conceived from the perspective of new-build large scale development, the DBP Act:

- Captures all scales of apartment construction including 3-storeys and lower; thus duplicating the consumer protection of the Home Warranty Insurance Scheme and creating a more onerous legislative environment for developers and builders of those smaller buildings compared to larger and more risky developments. The resulting legislation being disproportionate to the risks involved.
- Applies to the renovation and maintenance of existing buildings and creates a confusing framework for the owners of those buildings. In particular, how the DPB Act interacts with the *SEPP (Exempt and Complying Development Codes) 2008* and impacts emergency repairs and maintenance. Owners' corporations and strata managers have been poorly supported by government through a lack of education on the legislation. HIA still fields frequent enquiries from members regarding what works can or can't be done on apartment buildings without triggering the requirements of the DBP Act.
- Poorly integrates with the building approvals process under the EP&AA Act, creating two parallel streams of documentation and reporting that need to be managed. This places significant additional administrative burden on builders and developers.

- Imposes extensive and unrealistic experience requirements on builders seeking to obtain registration to construct these buildings. This includes requiring 5 years of experience within the last 10 years for an unrestricted registration. This is particularly impactful in rural areas, where most builders conduct a mix of multi-residential, commercial and stand-alone residential housing, as demand fluctuates. These builders may have extensive experience in apartment construction, but if recent demand has been low the bulk of that experience may fall outside the 10-year limit. Rural areas therefore have a dearth of registered builders, and attracting builders from metropolitan areas is challenging.
- Requires practitioners obtain professional indemnity insurance despite there being no established market or adequate product offerings. These provisions of the Act have had to be deferred multiple times as no market has eventuated and suitable products remain unavailable to builders.

In addition, the NSW regulator has made it mandatory for industry to use specific drawing templates, documentation and record keeping forms rather than allowing the industry to use their own forms and templates. Industry has therefore had to readjust their own internal documentation, record keeping and management systems – an additional and unnecessary administrative burden.

## *2. Cost Implications for Construction*

HIA has received reports from members indicating the implementation of the DBP Act has driven up the cost of construction, and this is having a particular impact on low rise development.

Examples of these costs include:

- Members of all scales having to employ additional back-office staff just to manage the complexity of the documentation and submission process created by the DBP Act. For smaller businesses, this can represent a significant additional cost to their business.
- A significant increase in insurance premiums or new limitations on coverage for professional services (designers, architects, and engineers). This is passed down the chain in increased fees for service and hourly rates and reflected in the cost of construction.
- Increased demand on the use of engineers, architects and building designers for additional documentation on top of their typical documentation, adding additional billable hours to construction projects at the increased rates.

In one example provided by a HIA member, the collective impact of the increased design and engineering costs equated to some additional \$20,000 per dwelling, not including the additional administrative costs for the builder. This for a new two-storey, four dwelling 'manor home' development intended to deliver affordable social housing.

There is also the example of an owner seeking repair of a crack in an external balcony. The initial quote for the repair was approximately \$20,000. Once the required consultants and engineers were engaged to meet the requirements of the DBP Act, the scope of works was expanded as further defects were found in the building. The engineers refused to sign off their designs unless an additional ~\$280,000 of other repairs were also completed. This included modifications to all other balconies in the building to bring them into line with current standards, although these balconies had no active leaks and the building was constructed in compliance with the required standards at the time of construction. This project did not proceed and the owner was left with a leaking balcony, as the owners corporation could not afford the full scope.

HIA does acknowledge the NSW Fair Trading has subsequently released guidance to the industry on the demarcation and separation of work within a repair and maintenance project scope.

### **Overall impact on the industry**

Collectively, the end result is that NSW now has the most administratively burdensome and expensive regulatory system for the construction of apartment buildings in Australia.

Our member feedback indicates:

- This is driving development and construction interstate where the regulatory settings are more conducive to development and the construction of apartments.
- Many established builders in NSW are considering leaving the industry or taking up early retirement.
- Rural developers are struggling to find builders to construct apartment projects.
- Apartment owners and strata managers are struggling to understand how to renovate or repair and maintain their buildings, and the added costs are driving some to defer or delay these activities to the potential detriment of the building occupants long-term.

These impacts are particularly felt in the low and medium rise construction space, which is struggling to attract new builders to this sector to meet the forecast demand. This market segment is particularly critical to the NSW Government plans to meet housing supply targets through increased densification as supported by recent developments in planning policy.

### **Building Commission NSW**

In December 2023, the investigation and enforcement powers of Building Commission NSW were extended to include Class 1 buildings (single dwelling houses). The Commission appears to have adopted a compliance and enforcement approach like that used for Class 2 buildings (apartments). HIA is concerned that this somewhat heavy handed attitude is unnecessary and will have real negative effects on the low rise construction sector.

Since its establishment, there have been some examples of the Commission issuing orders that cannot be reasonably complied with within the specified timeframes or appear to override valid provisions within building contracts. There is also concern that some Orders have been issued without any notice or appropriate level of procedural fairness with the scope of the orders arguably being unfair or unreasonable.

As this part of the sector is made up mainly of small to medium enterprises this type of enforcement action can seriously impact the ongoing viability of a business. There is a clear lack of transparency in the operations of Building Commission NSW. If the Commission is going to be effective in the low rise sector, it must have a greater focus on education particularly in the early stages.

If you require any further information in relation to this submission, please contact the undersigned, Mr David Bare, on email \_\_\_\_\_ or telephone number \_\_\_\_\_ or my Executive Assistant Jemima Accadia on email \_\_\_\_\_ or phone \_\_\_\_\_

Yours sincerely,  
HOUSING INDUSTRY ASSOCIATION LIMITED

David Bare  
Executive Director – New South Wales