

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

Organisation: Property Council of Australia

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Public Accountability and Works Committee
NSW Government

By email: PAWC@parliament.nsw.gov.au

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

The Property Council of Australia (the Property Council) welcomes the opportunity to provide a submission on the Public Accountability and Works Committee's review into the *Design and Building Practitioners Act 2020* (DBP Act) and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (RAB Act).

Many of the provisions of the DBP Act have been in operation since 1 July 2021. During its operation, the Property Council and our members have questioned several aspects of the legislation, therefore we are supportive of the review and encourage the Committee to consider the views expressed by industry on the important framework established under these Acts.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. As Australia's peak representative of the property and construction industry, which employs more Australians than any other sector, the Property Council's members include investors, owners, managers and developers of property representing all asset classes across NSW. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable, and safe places. As such, the Property Council is extremely well-placed to provide feedback and comment on behalf of our members on the DBP and RAB Acts.

Broadly, the Property Council supports the principles of the DBP and RAB Acts, and the broader policy objective to improve performance and increase consumer confidence in the construction sector.

We support the work done to date and commend the government on their recent investment in supporting the building commission. Despite this broad support, we encourage continued engagement with industry to gather feedback and ensure these objectives remain relevant and can be effectively realised.

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, but 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.

Since the introduction of the DBP and RAB Acts, the property industry has been required to make substantial investment in understanding, upskilling, and implementing procedures to comply with new requirements. The goodwill of industry in making this investment is a testament to their commitment to deliver high-quality residential buildings, and ensure confidence is instilled in the sector. To this end, we wish to highlight the consultative nature of the Building Commission to date and encourage the open and consultative nature of the Commission to continue working with industry and help industry adapt to the reforms and deliver quality building work. As with the introduction of any legislation, there have been, and will continue to be, teething issues with the framework which require collaboration and refinement of the Acts.

The Property Council supports regulation that bolsters confidence in the industry, however we note that additional costs of implementing legislation drive up the cost of construction and therefore the cost to purchasers across New South Wales. While we support the principles of the DBP and RAB Acts and this review, we wish to highlight a number of specific matters which require review that have been raised by our members.

Duty of Care

The first matter relates to the duty of care imposed under the DBP Act on anyone who carries out building work. We believe there is an unintended consequence of this requirement that, as currently drafted, it applies to all buildings. The effect of this is that the duty of care extends well beyond the intended building classes and would capture building works such as the State's infrastructure projects. The uncapped liability associated with this duty of care would then result in significant ramifications that severely impact State government infrastructure projects.

It is clear this duty of care obligation is an unintended consequence; therefore, we request this matter is reviewed and the legislation amended to clarify the building classes which are to be captured.

Insurance Liabilities

Anecdotally, the introduction of the DBP and RAB Acts has resulted in a drop-off and avoidance of builders in the residential sector, due to the insurance mandates applying directly to each individual registered professional and not to the businesses. The NSW Government has also assumed, incorrectly, that all professional work can be covered by professional indemnity insurance and has given very limited guidance on what levels of cover, deductibles, exclusions or what policy wordings gives adequate protection to the individual or consumers. Without adequate guidance, there is a risk that members may do work that is not covered by appropriate insurance or not do work that is.

At a time of such need for new housing, the approach of the DBP and RAB Acts and regulator need to be considered in the context of the need for new housing. As outlined in this submission, the Property Council supports the principles of these Acts, but the approach and implementation of the Acts needs to be balanced with ensuring the ongoing viability of the residential sector. Government should pursue all avenues to understand how the principles can be achieved while not placing additional barriers on housing delivery, particularly during the Housing Accord period to 2029.

While the DBP & RAB Acts are aimed to increase consumer confidence in the residential construction sector, the onerous nature of the requirements within the Acts, puts NSW behind the likes of Queensland for attracting capital to invest in residential projects across the state, exacerbating the housing supply shortage.

Overall, the Property Council is supportive of the principles of the DBP and RAB Acts, and is encouraged by this review to ensure that the Acts are effective in achieving the purpose of increasing consumer confidence.

If you have any questions on our submission or wish to discuss the matter further, please contact me via email to kstevenson@propertycouncil.com.au.

Yours sincerely,

Katie Stevenson

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