

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

Organisation: City of Sydney Council
Date Received: 28 July 2025

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Talina Drabsch
Director
Parliament House, Macquarie Street, Sydney NSW 2000

Dear Talina

Public Accountability and Works Committee Review into the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 and related draft government bills

Thank you for the invitation to make a submission into the NSW Legislative Council's Public Accountability and Works Committee's review of the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

This submission responds to the following term of reference as amended by the Committee on 27 June 2025:

2. That, in conducting its review, the Committee consider any legislative proposals or draft government bills that are intended to repeal the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

The City notes the Committee began its Review on 21 May 2024 and initially received submissions in July 2024. In August 2024 the Building Commissioner conducted a limited industry consultation including with the City of Sydney on 3 draft building bills proposed to replace 9 existing acts. These were not tabled in parliament. The matters raised in the City's submission are included herein.

The Australian Institute of Architects (AIA) have noted advice from the Building Commissioner and the Minister for Building that the draft Building Bill would be released for public comment mid this year. On 27 June 2025 the Committee amended its terms of reference to include consideration of any legislative proposals as noted above.

The City is concerned that the draft Bill will not be available for the consideration of the Committee or stakeholders. On 16 July 2025 the Lord Mayor requested the Committee extend the time for submissions and for the Committee to report until after the release of the draft bills, so the public and the Committee have the necessary information to make submissions and conduct the review.

Summary of the City of Sydney's position

We generally support increased consumer protection and better building standards and quality within new consolidated acts and regulations.

It is often regarded that the purchase of a home is the biggest investment people make, yet if its speculative (off the plan) or newly built it has the least effective consumer protections compared to other goods and services. We suggest that consumer protection of new home buyers is paramount to restore confidence in the property market and must cover design and performance, approvals, construction and integrity, and be insurable and warranted for an appropriate period.

We seek an open consultation process on the new Building Bills and any associated regulations to avoid the risks of unintended consequences for consumers that could exacerbate the very issues it seeks to cover.

Risks include:

- *Good construction practice is not the only quality consumers want in a home.* Concentrating focus on building practice may inadvertently undermine other consumer benefits contained in good planning and design policy and associated regulation. For example, the provision of the sound amenity objectives and design criteria of the Apartment Design Guidelines is at risk of being undermined.
- *The role of professionals to serve the public interest must not be reduced.* Not incorporating all the provisions of the Architects Act into the new Bill may undermine architects' duty and ability to provide the public with professional advice and information beyond their role in building design and management of building contracts.
- *The detail of the changes needs to be considered as a whole at the same time.* Although early drafts of the Bills have been sighted, the regulations and consequent amendments to other acts and regulations have not. We are particularly interested to understand the relationship between the new Bills and regulations and the Environmental Planning and Assessment Act and its Regulations.

Extract of City of Sydney submission to the Building Commission on 28 August 2024

The need for reform

The NSW Government has undergone multiple inquiries and investigations with more than a decade of consultation into the NSW building industry, its standards and quality. The findings of these investigations, coupled with multiple incidents of major failings in building construction, have been unequivocal in their recommendations for urgent reform to ensure construction quality and safety in our built environment, and to protect the consumer. The *Regulation of building standards, building quality and building disputes First report* – 2019 clearly indicated the need, noting:

“There is no question that a standalone Building Act is both necessary and urgent. A standalone Building Act, as suggested by many of the key industry stakeholders, overseen by a single Minister and regulated by a properly resourced Building Commission, would ensure that a comprehensive regulatory regime is put in place to address the current building crisis. Instead, the government has taken a siloed

approach: we are left with parallel regimes with similar sounding regulatory models that have no connection with existing arrangements.”

As referred to in our submission in August 2019 regarding that Inquiry, we reiterate that as part of any reform, the most pressing issue for government is to return to quality control during the construction phase by trained professionals (engineers, architects) who are bound by a Code of Conduct that puts the public interest first rather than their corporate entity’s interests first (under corporations law).

The professional cohort within the process that meets a quality control requirement are registered architects (under the NSW Architect's Act). Quality control failures, in the case of the Opal Tower, include the lack of on-site inspection of superstructure pours (where plastic sheet was found to be cast in) and subcontractor works (where the precast panels steel layout and sizing) was not inspected before they were cast. Architects were not found to be liable for such failures.

Recommendation:

- 1. Undertake further consultation on the proposed reforms and expand to include other key stakeholders, including the City of Sydney and professional bodies.**

Repeal of the Architects Act 2003: Importance of the role of trained architects vs building designers

As sites become denser and building typologies change from detached dwellings to diverse models of multi-unit housing, there will be even greater reliance on design quality in arrangement and composition as much as construction excellence in their execution. The City of Sydney believes that design competency is critical to maintaining social license in this built environment transformation.

We have relied on trained architects being regulated in NSW under the *Architects Act 2003*. Australian architects are professionally insured and are required to have ongoing registration with state and territory bodies, five years of tertiary education, two years of practical experience, the completion of logbooks before taking a registration exam plus ongoing professional development.

Architects are registered and develop concepts for structures and translate concepts into images and plans. Architects create the overall aesthetic and look of buildings and other structures, but the design of a building resolves far more than its appearance. The architect ensures the design is functional, safe, and economical to suit the needs of the end users. The documentation also specifies the building materials and products.

We agree with the following points put by the Australian Institute of Architects:

“There is a difference between ‘building designers’ and architects. Architects’ education requirements are generally 5 years of study and a Masters degree, followed by qualification experience requirements (a minimum of two years) and further assessment against specific competencies through an examination process.

Building designers are generally educated through accredited TAFE building courses and/or other construction-based pathways of 2-3 years duration; the skills gained in these courses are heavily focused on smaller size building, and standard construction techniques.

Typically, 'building designers' find career paths in the largest part of the construction industry, supporting the construction of individual houses and townhouse style medium density developments. Increasingly, however, some developers are approaching building designers to undertake the design and /or documentation of larger multi-unit residential developments.

At present, the Architects Act protects the title of architect but does not reserve critical work for architects. In NSW, the Housing SEPP effectively reserves Class 2 for apartment buildings 3 storeys or more. To truly protect the consumer, certain work should be reserved to accredited architects, engineers and building designers according to their competencies, such as Class 2 buildings.

Recommendations:

- 2. Maintain the role and expertise of architects in ensuring quality of the built environment.**
- 3. Clearly differentiate between architects and building designers, and clearly outline the scope, extent and type of work each profession is allowed to undertake, and the technical skills, experience and registration or licence requirements.**

Unclear definitions and interactions with requirements for design quality of residential flat buildings

The last 20 years in NSW has focused on the design quality of buildings (former SEPP 65) and ADG requiring qualified designers to certify design certificates for Class 2 multi-unit residential buildings. At the same time there has been a loss of construction quality and oversight through the privatisation of certifiers and a lack of robustness in the system. This erosion of construction quality and accountability appears to be the focus of the reforms and the establishment of the building commission. However, this may lead to the lowering of the design quality of buildings compared to the current situation.

The Draft Bill has the potential to create unintended consequences with its proposed co-regulation model and its lack of clarity regarding the requirements for licensing of architects vs building designers, in particular the class of building design competency is licenced to oversee.

Pre-existing planning legislation which the City of Sydney strongly supports, requires a qualified designer as being **registered architect** (competency) for the design of buildings over 3 storeys. On the other hand, the draft Building Bill proposes a much wider group of lower competent individuals, with less oversight as being able to oversee high risk building construction.

This undermines the skills and competencies that architects are required to have and will weaken the requirement in planning legislation for architects have ongoing involvement in building design with poorer design and housing outcomes being the result.

Multi-unit residential buildings, mixed-use buildings and speculative commercial buildings require high level skills and expertise. From 20 years of experience at the coal face of design approvals and satisfying consent conditions through construction, **we fundamentally believe that only fully qualified and experienced professionals should be responsible for delivery of design services and project management for these types of buildings.**

A limited number of different class of licence (registration) could be issued according to building class and size however these classifications must be partnered with training requirements and supervised experience to be eligible to obtain a licence for more complicated building types and size.

It is of upmost importance that the definition of Design Practitioner – Building Design (Restricted) must align with Clause 29 of the Environmental Planning and Assessment Regulation which requires buildings of three or more storeys be designed by a *registered person as an architect under the Architects Act 2003* (dictionary). **Therefore, the definition of medium rise and the aligned building practitioner needs to relate to a maximum of two storeys** (not three as currently drafted). At a minimum this requirement needs to be carried over to the new legislation and used for any building over three storeys to be consistent across legislation.

We recommend that any proposed changes are not considered until the interaction of a new Building Act with other key pieces of legislation is resolved and that any proposed changes are consistent with the requirements and definitions included in the Housing SEPP.

Recommendations:

- 4. Insert a clear definition of Design Practitioner – Building Design (Unrestricted) that aligns with Clause 29 of the Environmental Planning and Assessment Regulation 2021 which requires buildings of three or more storeys be designed by an architect.**
- 5. Amend the description of “medium rise building design” in Part 2 Clause 26 of the draft Regulation to a maximum of two storeys (not three as currently drafted).**
- 6. Make consequential amendments to the definition of a qualified designer under the Environmental Planning and Assessment Regulation 2021 so that it defines a qualified designer as a person licensed as an architect under the Building Act.**

Loss of Architectural Board autonomy in new draft Bill

The proposed Bill, while bringing many aspects of the current Architects Act into its text, does not adequately respect the key role of the Architects Board. We have particular concern and do not support the proposals for:

- Removing the requirement that the quorum at a meeting of the Architects Board include at least two registered architects
- Including the provision that the Secretary will be responsible for developing the Code of Conduct for Architects; and
- Narrowing the scope of the ‘general functions’ of the Architects Board.

We further note there is potential for further confusion in the draft Bill’s terminology, such as considering the Architects Board a “Body Corporate” and in not clearly defining an architect as one who is registered with the Architects Board, as opposed to simply one who is ‘licensed’ as an architect.”

Recommendation:

- 7. That changes to incorporate the current Architects Act 2003 are consistent with the current Act's definitions and continue the current role of the Architects Board in its present form and do not narrow its scope.**

We believe that new draft bills may be imminent. We reserve comment on the forthcoming draft bills and intend to make another submission to the committee at that time. We respectfully request that the committee consider our forthcoming submission after the advertised closing in good faith.

If you would like to speak about the review, please contact the undersigned on

Yours sincerely

Graham Jahn AM LFRAIA Hon FPIA
Executive Director
City Planning | Development | Transport