

NSW Government Response to the Independent Review of the *Building Professionals Act 2005*

SEPTEMBER 2016

Executive Summary

The NSW Government has received the final report of the statutory review of the *Building Professionals Act 2005* ('the BP Act'). The review was conducted independently by Mr Michael Lambert and comprised the first major review of the BP Act, as well as considering a range of other building and planning matters.

The NSW Government has a standing commitment to achieving and maintaining best practice regulation across all of the industries that the Government regulates. This includes achieving a system of building regulation and certification in NSW that supports both the achievement of the NSW Government's state priorities, while managing risks to safety, health, amenity and sustainability of the design and performance of buildings.

The response to this statutory review is an important component of the NSW Government's agenda to improve the building and planning system in NSW. The NSW Government has already completed amendments to home building laws in 2015, and is developing regulations to allow the commencement of re-written laws governing the development and management of strata schemes. These will be complemented by reforms to the systems that help protect consumers and sub-contractors from risks of builder insolvencies through the Home Building Compensation Fund and security of payment laws. The NSW Government has also committed to releasing draft amendments to the *Environmental Planning and Assessment Act 1979* ('the EP&A Act') in the second half of 2016, which will help to build a simpler, modern planning system.

The review found that the current BP Act is not achieving its policy objectives and requires legislative change, as well as a range of issues relating to the administration of the BP Act and the wider building and planning system. The NSW Government supports 72 recommendations of the report in full or in part, and will implement the following priority reforms to ensure that the building certification system is effective for checking that development and subdivision complies with conditions of planning consent and essential building requirements:

- **Overhaul the regulation of certifiers:** interim amendments to the BP Act will be introduced in late 2016 to fix important information gaps about certification, and subject to consultation with local government and certifiers. This will be followed in early 2017 by the release of a consultation exposure Bill to rewrite the BP Act, with the final Bill to be introduced into Parliament in the second half of 2017. This work will be led by DFSI.
- **Clarify Ministerial responsibility and administration of building laws:** the draft amendments to the EP&A Act that will be released in the second half of 2016 will include the consolidation of key building provisions, which will be allocated to the Minister for Innovation and Better Regulation. Administrative responsibility for the BP Act will be consolidated within DFSI together with the administration of other building-related laws.
- **Implement a package of fire safety reforms for both new and existing buildings:** the Department of Planning and Environment (DPE) and Department of Finance, Services and Innovation (DFSI) will release draft reforms for public consultation by early 2017, to be implemented by amending the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). These will include measures targeted at multi-storey residential buildings.
- **Immediately establish a Building Regulators Committee to improve coordination across Government:** The Committee will be co-chaired by DFSI and DPE and will include other Government agencies involved in building regulation.

An additional 70 recommendations will be subject to further investigation. The Building Regulators Committee will lead this work. There are 8 recommendations that the NSW Government does not support at this time. A full table of the recommendations and responses is attached.

The NSW Government will improve collection and publication of planning and building data and information

The final report includes recommendations relating to better systems to capture, use and share building and planning data and information, and improving measurement of public policy outcomes. There is a range of building and planning documentation and information collected by various agencies within the NSW Government and local councils as part of their ordinary operations, or that is collected and held by certifying authorities. At present this data is held in different systems, in different formats, is used for a variety of different purposes, and may be subject to duplicative collection processes, where businesses must re-supply information that has already been given to another agency or council in a previous transaction.

The NSW Government will expedite amendments to the Building Professionals Act to facilitate centralised collection of key building and development certification data from certification authorities and accreditation holders.

As a priority step to fill data gaps, amendments to the BP Act will be prepared for introduction into Parliament before the end of 2016. These will provide the power to require certifying authorities and accreditation holders to report certain building and development data, and will be subject to targeted consultation with industry and councils during drafting and implementation.

It is expected that a certifying authority or accreditation holder would be required to notify specific information:

- when appointed;
- at one or more key points during the development / construction; and
- at a point at the end of development / construction.

Information to be notified is expected to include a small set of data. For example, when appointed, the data to be notified might be: who appointed the Principal Certifying Authority; the building location, building type and the principal contractor. This will provide a level of real time, centralised information about development and construction activity across NSW that is currently unavailable.

This information has high potential value for a range of purposes. This includes, an improved Government service provision, better targeting of industry and consumer information, better targeting of compliance and regulatory activity, and informing evidence-based policy for the building sector.

The NSW Government will continue initiatives to improve the collection and provision of data, information and guidance, such as DPE's Planning Portal. The NSW Government will also explore new ways that data can be used to offer innovative and new advice, guidance and information for consumers and industry. This will provide people with the ability to make better informed decisions with regard to building related matters, improve evidenced-based decisions by Government, and allow a better informed market to produce better building outcomes.

The NSW Government will overhaul certifier regulation

A primary consideration of the statutory review was to examine whether the BP Act is an effective way to regulate the accreditation of certifiers. The final report identified a range of issues with the current system and recommended a number of ways in which certifier accreditation could be improved, including legislative changes.

The NSW Government will enhance certifier accreditation by re-writing the *Building Professionals Act 2005* to revise its structure and content.

The NSW Government considers that the problems with the current BP Act are such that it should be re-written while remaining a standalone piece of legislation. The new law will be renamed the 'Building and Development Certifiers Act', better reflecting its function of regulating and accrediting of certifiers. A draft exposure Bill will be released for public and industry consultation within 6 months, and a final Bill will be introduced into the Parliament within 12 months. This work will be led by DFSI.

The 'Building and Development Certifiers Bill' will:

- establish overarching objectives to focus and clarify the legislation's purpose;
- clarify a certifier's role and responsibilities, including that certifiers are not responsible for the performance of work, quality control or management issues which are the responsibility of the builder;
- enable better management and oversight of certifiers through improved complaints handling procedures and new mechanisms to facilitate proactive risk-based audits;
- provide powers to allow the regulator to become involved in the selection of certifiers for some projects where there is a high risk for potential non-compliance or where there are issues around certifier independence;
- establish strong incentives, independence, accountability and liability for certifiers for checking that building work complies with the terms of its development consent and meets essential standards;
- draw on the experience of the auditing and financial services industries to support the independence of certifiers, including possible rules about the relationships between certifiers and developers or builders;
- allow industry accreditation schemes to be recognised as the basis of, or instead of, Government-issued accreditation for some certifier roles;
- introduce new requirements around data collection and reporting to improve ongoing oversight of system performance and improvement over time;
- facilitate better co-ordination of building and certifier regulatory functions by formally integrating the functions of the Building Professionals Board and Secretariat into the DFSI;
- amend existing insurance provisions, while noting the effort that has been directed to the development of the industry's 'Certicover' insurance scheme;
- support the integrated planning and building approvals framework currently in place in NSW; and
- streamline, modernise and update the language and structure of the Act, including removing the current processes for updating administrative instruments and instead prescribing such details in the supporting Regulations.

The NSW Government will pursue non-regulatory options to improve certification outcomes in tandem with the proposed legislative changes

The NSW Government will bring together key building regulatory functions in a 'Building and Construction Service'

The NSW Government is implementing the most unified system of building and planning regulation in Australia, with key responsibilities housed in only two Departments: DPE and DFSI. From 1 July 2015, the Building Professionals Board secretariat was transferred to DFSI, and the secretariat has been co-located with the Fair Trading Home Building Service in Parramatta.

The NSW Government will complete the integration of the Building Professionals Board within DFSI, by consolidating the functions of the Board and the Fair Trading Home Building Service into a new 'Building and Construction Service' which will fall under the direction of the Secretary of DFSI. This will facilitate alignment of similar licensing, investigation and disciplinary activities to regulate professionals in the building industry. It will allow clearer pathways for people wishing to make a complaint about building industry participants.

The NSW Government will improve guidance for certifiers by establishing best practice industry standards through the creation of a 'Practice Guide'.

The final report notes there is often confusion around the roles, responsibilities, functions and accountability of certifiers and highlighted this as a major deficiency in the current regulatory system. This lack of clarity for consumers, builders, councils, private certifiers and others increases inconsistencies within the system, causes unnecessary disputes and leads to an overall lack of confidence in the effectiveness of building certification.

The NSW Government accepts the final report's recommendations to create a 'Practice Guide'. The Practice Guide will be a recommended reference document for certifiers, created and maintained administratively, rather than a statutory instrument. Further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.

The NSW Government will consolidate Ministerial responsibility for building laws

Responsibility for laws that directly govern building work is currently divided principally between the Minister for Planning, and the Minister for Innovation and Better Regulation. Consistent with the statutory review's recommendations to reduce fragmentation of Ministerial responsibility for building laws, the NSW Government will consolidate responsibility for building within one Ministerial portfolio. Exposure draft amendments to the EP&A Act that will be released in the second half of 2016 will include the consolidation of key building provisions building certification, and which will enable the allocation of these responsibilities to the Minister for Innovation and Better Regulation.

The NSW Government will implement a package of fire safety reforms

The NSW Government is concerned by instances where inspections during or after the construction of buildings have failed to properly identify fire safety risks or do not result in their rectification. Such failings are of particular concern where they occur in multi-storey residential buildings where risks to life safety are highest.

The NSW Government will take immediate action to strengthen fire safety certification for new and existing buildings

This will be achieved through working with industry and the community. DPE and DFSI will jointly prepare draft amendments to the EP&A Regulation. This will be released for consultation by early 2017, so that industry and the public can provide input on the scope and design of the reforms. The reforms that will be consulted on will cover the following:

Annual fire safety checks for existing buildings:

- The Government will develop and consult on a scheme that enhances the current system of “annual fire safety statement” checks of some residential and commercial buildings. This will include improving administrative guidance and standardising documentation.
- Community confidence in the competence of the people undertaking the checks will be increased. Options for achieving this include by requiring the use of certain licensed or industry accredited contractors for inspections, potentially including the Fire Protection Accreditation Scheme or other industry operated schemes.

Targeting problems at the design, construction and pre-occupation stages of construction of new buildings:

The NSW Government will introduce more rigour around checking the design and construction process to ensure that key fire safety provisions are reviewed. Options include:

- Make principal certifying authorities (PCAs) responsible for choosing who will do the “fire safety certificate” inspection of completed building work (currently the landowner who is developing the property makes this decision), and providing a copy of the certificate to Fire and Rescue NSW (FRNSW). The NSW Government will also consider whether the inspection and issuing of the certificate should be performed by certain licensed or industry accredited contractors. Guidelines and standardised documentation will be developed to help certifiers perform this role.
- In multi-dwelling residential buildings, prescribe a mandatory time gap between when a fire safety certificate is issued, and when the occupation certificate is issued (e.g. 10 days) so that FRNSW can perform risk-targeted inspections.
- Increase critical stage inspection requirements in some types of buildings, in particular for multi-storey residential buildings. Potential inspections may include a pre-excavation site inspection, and inspections of fire compartmentation and service penetrations during construction.
- Require that developers provide plans and specifications for fire protection systems to the certifying authority (CA) or PCA, who is issuing the construction certificate (CC) or complying development certificate (CDC) for the development. This may include that the developer provide the plans and specifications before starting the installation or modification of the fire protection system. The NSW Government will also consider whether fire protection system designs should be certified by certain licensed or industry accredited contractors.

- Require that developers proposing alternative solutions must provide the CA or PCA a report detailing how the solution complies with the requirements of the National Construction Code. This may include specifying that the CA or PCA do certain checks, and require that information about the alternative solution be recorded with the approval documentation.

The issues identified in the final report of the review include matters relating to non-conforming building products or non-compliant use of building products, such as flammable building cladding. Ministers from the Commonwealth and State and Territory Governments have agreed to take collective action to address these issues at a national level. For more information see:

- / The Building Ministers Forum (<http://tinyurl.com/zybvkgc>)
- / The Australian Building Codes Board (<http://tinyurl.com/zoa8nvr>)

The NSW Government will establish a Building Regulators Committee to improve coordination across agencies for building-related matters

The NSW Government agrees that interagency coordination is an essential component in achieving effective building regulation reform. The Government will establish an inter-agency committee called the 'Building Regulators Committee' which will be co-chaired by DFSI and DPE, and include other relevant Government agencies such as Fire and Rescue NSW and the Office of Local Government. The Building Regulators Committee will be responsible for ensuring a collaborative, connected approach on building regulation issues across the NSW Government. The first task of the Building Regulators Committee will be to drive the implementation of the key actions agreed to the Government's Response to the statutory review of the BP Act. The Committee will also have an ongoing role responding to emerging cross-agency issues about the building sector and where future reforms require joint agency action to implement reform.

The NSW Government will consider further reforms dealing with building and certification, including fire safety

Following the consolidation of key building provisions of the EP&A Act under the administration of the Minister for Innovation and Better Regulation, the NSW Government will work to develop and implement further reforms. The Building Regulators Committee will examine a range of recommendations of the statutory review of the BP Act that have been referred for further consideration, and are listed in the attached table. These will include potential changes under the EP&A Act, BP Act and administrative reforms. This work will include, and overlaps with, revisiting reform proposals previously included in Chapter 8 of the 2013 Planning White Paper. Additional work on how best to ensure fire safety is appropriately addressed will be an early priority for this work, building on the package of fire safety reforms outlined above. This work will include considering whether further regulation, licensing or industry accreditation should be adopted in respect of roles involved in installation and maintenance of fire protection systems.

NSW Government Response to Recommendations

The NSW Government’s response to the Statutory Review’s 150 recommendations is outlined below:

Key to legislative acronyms in this table: **EP&A Act** – *Environmental Planning and Assessment Act 1979*; **BP Act** – *Building Professionals Act 2005*; **HB Act** – *Home Building Act 1989*; **P&D Act** – *Plumbing and Drainage Act 2011*

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
No.	REFORM PROPOSAL		
Create a principles based legislative framework for building regulation			
1	1.1 The Government makes an upfront public commitment to achieving and maintaining best practice building regulation and certification in NSW to improve the safety, health, amenity and sustainability of the design and performance of buildings and to this end engage the community and industry in consultation on the basis of the reforms.	None - administrative	Supported – This is an existing priority and the Government is committed to achieving these objectives.
2	1.2 Establishment of a revised legislative basis for building regulation and certification in a separate Building Act, incorporating relevant provisions of the Home Building Act, the Plumbing & Drainage Act and the building regulation and control provisions of the EP&A Act in a principles based, plain English form with a clear statement of objectives and with the details to be incorporated in more flexible instruments including regulations and codes, noting that it is essential to maintain the integrated nature of planning and building regulation which in principle can be achieved with separate legislation.	Several: EP&A Act HB Act P&D Act (+ potentially others)	Not supported – building elements of the EP&A Act will be simplified and consolidated, with responsibility transferred to the Minister for Innovation and Better Regulation. While agreeing that building regulation can be improved and consolidated, the arguments for a Building Act are not compelling. A Building Act could undo the benefits of the integrated planning and building system. In particular, the current complying development system would be undermined if there were a separate Planning and Building Act and that increased costs and delays would result. A more viable option would be a separate Building Chapter of the EP&A Act and Regulation.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
3	1.3 In the event that it is decided not to create a separate Building Act, that the current building regulation and control provisions in the EP&A Act be consolidated in one part of the Act and rewritten in a principles based form, with supporting regulations and codes. This should progress ahead of any general rewrite of the EP&A Act.	EP&A Act	Supported in part – building elements of the EP&A Act will be simplified and consolidated, with responsibility transferred to the Minister for Innovation and Better Regulation.
4	1.4 Continue with the rewrite the Complying Development SEPPs in close consultation with the building regulator and industry in a form comprehensible to the industry and for all future changes to or extensions of Complying Development policy to be fully coordinated between DPE and the proposed Office of Building Regulation, and with full consultation with BRAC.	EP&A Act	Supported in part – DPE will continue reforms to complying development, such as the re-write of the General Housing Code, expansion of complying development to include medium density housing, development of a new Inland Code, and a review of complying development standards for greenfield areas of NSW.
5	1.5 Maintaining the Building Professionals Act as a separate Act, amended to incorporate a statement of objectives and provide greater flexibility in terms of the changes set out in Table 11.1 of this report, including the handling of licensing and accreditation in the one organisation for the entire building sector.	BP Act	Supported in part – BP Act will be rewritten as an exposure Bill to be released by early 2017 for public consultation.
Strengthen the administration of building regulation and certification			
6	2.1 Create an appropriate level of coordination and integration between the licensing of building practitioners and the accreditation of certifiers, with a particular view to improving navigation for those with certifier or builder complaints.	None - administrative	Supported – functions to be consolidated within DFSI.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
7	2.2 Consolidate in an Office of Building Regulation the building regulation and control functions currently undertaken separately within DPE (namely BPU, BASIX and the implementation of complying development policy); the building regulation functions, excluding consumer protection, in Home Building Services; and any policy functions currently within BPB.	None - administrative	Supported in part – elements of the EP&A Act will be consolidated and responsibility transferred to the Minister for Innovation and Better Regulation. Transfer of associated administrative responsibilities from DPE to DFSI will be considered in conjunction.
8	2.3 DPE to maintain responsibility for complying development policy but with a close working relationship between DPE and the proposed Office of Building Regulation in regard to the requirements that complying development should adhere to, with the Complying Development Expert Panel to be jointly convened by DPE and the Office of Building Regulation and operate in full consultation with the Building Regulation Advisory Committee.	None - administrative	Supported in part - DPE will maintain responsibility for complying development policy. Coordination between DPE and DFSI will be improved by establishing a Building Regulators Committee. DPE will also consult with stakeholders as appropriate.
9	2.4 Location of the Office of Building Regulation and BPB in one portfolio reporting to a Minister responsible for building regulation, with suitable mechanisms established for a close working relation with local government, Fair Trading and DPE.	None - administrative	Supported in part – responsibilities for building regulation will be consolidated within DFSI reporting to the Minister for Innovation and Better Regulation (see also Rec 7). Coordination between DPE and DFSI will be improved by establishing a Building Regulators Committee, which will also include the Office of Local Government.
10	2.5 While the Office of Building Regulation and the BPB could logically be located in either the Planning portfolio or the Finance, Services and Innovation portfolios, greater merit is seen in the location in the Finance, Services and Innovation portfolio in view both of the transfer of the BPB to that portfolio and the Government commitment to creating a commercial regulator hub in the Finance, Services and Innovation portfolio.	None - administrative	Supported in part Per recommendation 7 & 9.

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11	2.6 The Office of Building Regulation to adopt an outward focussed approach to regulation, keeping up to date on building and construction industry developments and seeking to establish a regular forum involving all state and territory building regulators for the exchange of information and to discuss the approach to building regulation.	None - administrative	Supported in part – These are existing practices that the proposed consolidated regulatory body will continue (see rec 7).
12	2.7 The Minister responsible for Building Regulation to appoint the Building Regulations Advisory Council (BRAC) which should have its membership expanded to include representatives from all the key industry bodies to advise the government on improving building regulation and the quality of the building product.	None - administrative	Supported in part – Membership of advisory bodies including DPE’s BRAC and DFSI’s Building Industry Working Group will be periodically reviewed to ensure membership includes appropriate industry representation.
13	2.8 The Office of Building Regulation and DPE, with input from the BPB, seek to improve the understanding, integrity and robustness of the complying development process including by improving industry and community understanding, achieve greater involvement by councils in addressing community inquiries on complying development and exploring options for remedial review in an efficient and timely manner where councils have reasonable basis for believing that a CDC has not met the requirements.	None - administrative	Supported in part - DPE will maintain responsibility for complying development policy, and will continue initiatives to improve understanding and operation of the system
14	2.9 The Office of Building Regulation and DPE, in consultation with the ABCB, review BASIX to explore ways that it could be integrated into the sustainability provisions of the BCA over time.	EP&A Act	Supported in principle - DPE will explore options for harmonisation at a national level.
Implement an information systems strategy for the building regulation and certification system			
15	A commitment be made to developing and implementing an e-Building strategy as a joint project involving the Office of Building Regulation,	EP&A Act	Supported in principle – DPE and DFSI will continue efforts to improve digitisation and accessibility of information for industry and the community.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
	BPB and local government, with full consultation with the building industry and the e-Building Branch of DPE, seeking to achieve digitalised and standardised building information that is accessible and transparent and capable of generating performance and outcomes information.		
16	An early priority be to fully evaluate the use of Building Information Modelling both as a tool to improve the performance of the building industry and as a regulatory tool.	EP&A Act	For further consideration - to be further considered by the Building Regulators Committee
17	Outcome measures should be developed against which to track progress in achieving the objectives of the building regulation system.	None - administrative	Supported in principle - DPE and DFSI will continue efforts to improve data gathering, sharing and performance measurement to track progress and better inform future decision-making by the NSW Government.
Enhance the accountability and clarify the role of certifiers			
18	4.1 Enhance the accountability of certifiers to act in the public interest by:		
18A	4.1A Establishing and maintaining a practice guide for each category of certifier to create a benchmark for the process that should be followed by certifiers, with the guide given legal effect.	BP Act	Supported in part - a Practice Guide will be issued as an administrative instrument. Further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.
18B	4.1B Creating a program of proactive investigations and audits of certifiers and certification as practiced in the building sector, linked to the education and training program.	BP Act	Supported – the NSW Government will consolidate the BPB’s functions within DFSI and redirect its funding to data, compliance and audit activity.

NSW Government response to the statutory review of the *Building Professionals Act 2005*

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
18C	4.1C Providing greater clarity to the community about the role and responsibility of certifiers, to reduce or eliminate misconceptions about the role of the certifier, including each building contract provided to an owner being accompanied by a leaflet which sets out the role and responsibilities of a building certifier and compares and contrasts this with the roles and responsibilities of a builder.	BP Act	Supported in part – the role and responsibility of certifiers will be clarified through both the re-write of the BP Act and through administrative guidance and education.
18D	4.1D Utilising the partnership arrangement between councils, certifiers and the state to assess and monitor the working relation between private certifiers and councils.	None – administrative	For further consideration – a partnership arrangement is not being adopted at this time. The recommendation will be further considered by the Building Regulators Committee.
18E	4.1E Restructure the written contract between certifiers and the beneficiaries of developments as a letter of engagement between the certifier and the beneficiary of the development making clear the regulatory role and responsibility of the certifier and the obligations of the owner/developer, with a standard template established and execution of the letter of engagement to be enforced by the BPB.	BP Act	Supported in part – the re-write of the BP Act will include reviewing statutory controls on contracts.
19	4.2 As an initial stage in the reform process, and subject to the approval of the Minister responsible for building regulation Government approval of the legislative and regulatory changes contemplated, the practice guide for building certifiers developed by the BPB Reference Group, together with the proposed protocol governing the relationship between certifiers and councils, subject to the approval of the minister responsible for building regulation and the Minister for Local Government, being subject to industry consultation and early implementation and subsequently updated as additional building regulation and certification reforms are adopted.	BP Act	Supported in part - a Practice Guide will be issued as an administrative instrument. Further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
20	4.3 A state agency take responsibility for the collection of building approval information from local government and be consolidated with complying development certificate information to create a regular collection of building activity information that will be utilised by both the Office of Building Regulation to track trends and be passed onto the Australian Bureau of Statistics (ABS), replacing the current separation collection undertaken by the ABS from each individual council.	None – administrative	Supported in part - see recommendation 15.
Establish a partnership model between the state and local government in respect to building regulation and certification			
21	5.1 Establishment of a partnership agreement involving local government, the Office of Building Regulation and the BPB, with consultation with AAC and AIBS, to establish and oversight the operation of a protocol for the respective roles, responsibilities and relationships between private certifiers and councils as building consent and compliance authorities.	None – administrative	For further consideration – a partnership arrangement is not being adopted at this time. The recommendation will be further considered by the Building Regulators Committee.
22	5.2 The first priority to be addressed under the partnership model is to be the development of the building information system, as well as oversight of the operation of the protocol for the roles and responsibilities for councils relative to private certifiers in respect to compliance and enforcement.	None – administrative	For further consideration – a partnership arrangement is not being adopted at this time. The recommendation will be further considered by the Building Regulators Committee.
Achieve and maintain a best practice building regulation and certification system			
-	6 Proceed with industry consultation and assessment of the following comprehensive program of reforms of the building regulation and certification system:	-	-
Planning, design and approval			

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
Exempt developments			
23	6.1.1 Those categories of exempt development with potentially significant building safety and performance implications a requirement be assessed as complying development.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Change of existing building or use			
24	6.1.2 All material building and use changes that have significant potential implications for building safety and performance to require approval, with a consistent set of change impact assessment principles for proposed material building and use changes being developed.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
25	6.1.3 The detailed change impact assessment is undertaken at the certification rather than planning approval stage.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Quality of building and critical building systems and elements design and certification of design			
26	6.1.4 Certification be required for building plans of categories 2 to 9 buildings by appropriately qualified and experienced persons who are accredited under the BP Act, with the BPB to assess the qualification groups that should be accredited by class of building and with further consideration to be given as to whether to extend the requirement beyond those categories.	EP&A Act BP Act	Supported in part –the NSW Government will consider additional requirements for building plans with a focus on fire safety. DPE and DFSI will jointly prepare draft amendments to the EP&A Regulation. This will be released for consultation by early 2017. This will include consulting on requiring that developers provide plans and specifications for fire protection systems to the certifying authority (CA) or PCA, who is issuing the construction certificate (CC) or complying development certificate (CDC) for the development. This may include that the developer provide the plans and specifications before starting the installation or modification of the fire protection system. The NSW Government will also consider whether fire protection system designs should be certified by certain licensed or industry accredited contractors.

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
27	6.1.5 Building plans must show key regulated measures and features and the supporting specifications to the plans include sufficient detail to evidence design compliance with the standards.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
28	6.1.6 Building plans involving staged development must show each stage's relationship to the overall development and details of the sequencing path.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
29	6.1.7 While it will be possible at the DA/CDC stage to provide statements of design intent on the building plans, before work on that aspect can commence, the certified plans for the design will need to be submitted.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
30	6.1.8 Suitable qualified and experienced persons who are accredited or recognised under the BP Act be required to certify the design of all critical building systems and elements in Class 1b to 9 building, with BPB to identify the necessary skills and experience and, if possible, professional associations that accredit such persons.	EP&A Act BP Act	Supported in part – see recommendation 26.
31	6.1.9 An early priority should be to establish the accreditation requirements for the design of fire safety systems.	BP Act	Supported in part – see recommendation 26.
Development approvals – information requirements and conditions and consistency of conditions across councils			

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
32	<p>6.1.10 A working group of metropolitan and regional council planning and building officers be convened by the Office of Building Regulation to develop in stages the following:</p> <ul style="list-style-type: none"> • a standard set of information requirements to support development applications • a standard set of construction management conditions • a standard set of Development Approval heading and conditions but with flexibility to add to or vary those conditions where a case can be established for so doing which is subject to peer review • guidelines on how to reduce the need for detailed building information requirements at the DA stage. 	None – Administrative	For further consideration – to be further considered by the Building Regulators Committee
Imposing standards in excess of the BCA			
33	<p>6.1.11 Councils that wish to apply a standard higher than the BCA to a class or classes of building must establish a case for so doing, supported by a benefit cost analysis and the review must be published and submitted for assessment by a suitably independent party.</p>	EP&A Act	Supported in part – DP&E is considering the best mechanism for achieving consistency with the BCA.
Heritage items			
34	<p>6.1.12 Building certifiers should be required to call on suitable heritage expertise when certifying projects in heritage conservation areas and heritage items in Local Environment Plans.</p>	EP&A Act BP Act	For further consideration – to be further considered by the Building Regulators Committee
35	<p>6.1.13 Councils operating in heritage conservation areas and where heritage listed items are included in the LEP should undertake a role to ensure protection of heritage buildings and items and this be incorporated in the proposed protocol.</p>	EP&A Act	Not supported – this is already a function of councils.
Accreditation of town planners			

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36	6.1.14 BPB to allow for the accreditation of town planners who building certifiers can draw on for expert advice.	BP Act	Not supported –A case for accreditation of town planners has not been demonstrated by the review.
Peer review and decision support			
37	6.1.15 Office of Building Regulation establishes Peer Review Panels for alternative solutions and other matters relating to critical building elements and systems.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Section 96 approvals			
38	6.1.16 Agreement be reached with councils as part of the partnership agreement for target turnaround times for Section 96 applications.	None – Administrative	Not supported – there are already adequate timeframe requirements and reporting on turnaround times.
Certification to allow commencement of building work			
Clarity of requirements for issue of construction certificate or CDC			
39	6.2.1 The information requirements to support a CC or CDC be codified and provided to all applicants.	None – Administrative	Supported in part – DPE and DFSI will consider opportunities to improve documentation standardisation, and better capture and make available a range of building and planning information and documentation.
40	6.2.2 The process for management of certification documentation for development that are subject to more than on CC or CDC be codified.	None – Administrative	Supported in part – see recommendation 39.
41	6.2.3 In line with the proposals for information systems reform, a standard format is established for CCs and CDCs and the information contained therein be enhanced to improve approval transparency.	None – Administrative	Supported in part – see recommendation 39.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
42	6.2.4 Both the applicant and the builder be provided with the full CC/CDC approval documentation prior to commencement of building work.	None – Administrative	Supported in part – see recommendation 39.
Need for consistency in the CC and CDC process and sufficient supporting information			
43	6.2.5 The CC and CDC building review processes be brought fully into alignment.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Assessment and certification of alternative solutions			
44	6.2.6 Standardised report requirements be developed for all classes of alternative solutions.	None – Administrative	For further consideration – to be further considered by the Building Regulators Committee
45	6.2.7 Each alternative solution be subject to a standardised report that will be part of any application for a CC or CDC, with a requirement for the report to be certified by a properly accredited person.	BP Act & Administrative	Supported in part – the proposed package of fire safety reforms will include considering whether developers should be required to provide more information about alternative solutions to the certifying authority or Principal Certifying Authority.
46	6.2.8 Councils capture information on all alternative solutions and that a portal be established as part of the Information Technology Strategy to allow access to the information by relevant authorities for both auditing and research.	None – Administrative	For further consideration - DPE and DFSI will consider opportunities to better capture and make available a range of building and planning information.
47	6.2.9 Documentation on the approved alternative solution and any conditions attached to it be included in the building safety schedule and to be incorporated in the building manual.	EP&A Act	Supported in part – see recommendation 45
The ‘not consistent’ test			

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
48	6.2.10 The “not inconsistent test” be replaced with a “consistent test” and formal criteria be set out in code or regulation for what is required for a development to meet the consistent test.	EP&A Act	Supported – Is included in planning reform proposals previously announced by the Minister for Planning
Distinction between certifying authority and principal certifying authority			
49	6.2.11 The issue of combining versus separation of the CA and PCA role be the subject of consultation at the time of the release of the industry consultation paper including the reform proposals set out in this report.	EP&A Act	Not supported – The roles of the certifying authority and principal certifying authority should continue to be separate to retain the oversight role of PCAs.
Accessibility of building plans			
50	6.2.12 It be required that a fully specified building plan accompany all CCs and CDCs.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
51	6.2.13 The owner/developer has responsibility for ensuring that the builder is provided with the CC or CDC and all supporting documentation including the approved plan at the time of certification or at the time the builder is appointed, if that is after certification, with the certifier to confirm this has occurred.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Building in stages			
52	6.2.13 Where building work is to be constructed and certified in stages it be a requirement that the certifier take full account of and documents the proposed work’s relationship with the overall project.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Implications of the Burwood Council versus Ralan Case			

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
53	6.2.14 DPE undertake a review of the legal and policy implications of the case and determine whether it is necessary to effect legislative change or have the process of issuing CCs clarified, with the Office of Building Regulation to give consideration to any procedural changes that should occur with councils handling of CCs.	None – Administrative	Supported in part - DPE is considering the impact of the Burwood Council versus Ralan Case
Conditions for CC and CDC			
54	6.2.15 Accredited certifiers be given the ability to place conditions on the issue of CCs or CDCs provided these conditions conform to a prescribed set of conditions.	EP&A Act	Supported - To be considered as part of planning reform proposals previously announced by the Minister for Planning
Building construction stage			
Specific matters impacting on strata title developments			
55	6.3.1 BPB to give consideration as to whether additional accreditation requirements or conditions should apply to certifiers acting as PCAs for strata developments.	BP Act	Support in part – to be considered by DFSI as part of re-writing the Building Professionals Act.
56	6.3.2 A higher incidence of audits be undertaken of the certification of strata and community title developments in recognition of the higher risk factor due to the absence of the ultimate owner during the construction stage.	None – Administrative	Support in part – DFSI will establish a system of audit to be funded by the consolidation of the current industry Board and redirecting its costs. Appropriate risk focus of audit activity will be considered as part of establishing the audit function. Ongoing cost recovery and statutory arrangements for future pro-active investigation and audit activity will also be considered as part of re-writing the Building Professionals Act.
Improved information for the community			

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
57	<p>6.3.3 An electronic noticeboard be established by councils which provides information on developments once they proceed to construction stage, such that each development in a council area, be it exempt, complying development or subject to a DA, is electronically listed with the following information provided:</p> <ul style="list-style-type: none"> • copy of plan and supporting information on the development; • name of the owner/developer; • name and contact details of the builder; • name and contact details of the certifier; and • contact person if further information is required or a complaint to be registered. 	None - Administrative	Supported in part – DPE and DFSI will consider opportunities to improve documentation standardisation, and better capture and make available a range of building and planning information and documentation.
58	6.3.4 An agreed protocol be documented for council staff for dealing with queries regarding developments in the council area.	None – Administrative	Supported in part – DPE and DFSI will consider opportunities to improve information for the public and councils, and support efficient referral of queries to agencies or other parties that are best able to respond.
Adequacy of mandatory building inspections			
59	6.3.5 An additional pre-commencement site inspection be required for all classes of buildings.	EP&A Act	Supported in part – expansion of critical stage inspections will form part of the package of fire safety reforms to be released for public consultation in early 2017 in the form of exposure draft amendments to the Environmental Planning and Assessment Regulation 2000.
60	6.3.6 Further consideration and consultation be undertaken to determine whether to expand the number of mandatory inspections for Class 2 to 9 buildings.	EP&A Act	Supported in part – see recommendation 59

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
61	6.3.7 Certifiers be required to undertake a risk assessment for any Class 2 to 9 building that they are to certify at the commencement of the construction stage and determine, based on that risk assessment, what additional inspections above and beyond mandatory inspections, would be appropriate and prudent.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
62	6.3.8 The practice guide for building certifiers set out clearly the requirements for undertaking a risk assessment of a building.	BP Act	Supported in part - a Practice Guide will be issued as an administrative instrument. Further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.
63	6.3.9 Certifiers be required to prepare and issue an inspection schedule with each CC/CDC for building work in order to clearly communicate to the builder what is expected by the certifier.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
64	6.3.10 Require the certifier to confirm and document during each critical stage inspection that the work is consistent with the development consents.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
65	6.3.11 Remove the “unavoidably missed” inspection process and require that all buildings must be assessed for an occupation/completion certificate.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
66	6.3.12 Where a building has a missed critical stage inspection, it be a requirement that notification is issued to the local council within 24 hours of the missed inspection and the certifier is required to undertake the inspection using whatever additional means are necessary to assess the work, with any additional cost caused by the missed critical inspection is to be borne by the party responsible for the missed inspection.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
67	6.3.13 Building certificates not to be provided for buildings that have missed an inspection.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Improving the certification process for critical building systems and elements			
68	6.3.14 Suitably qualified and experienced persons be accredited to certify the installation, commissioning and ongoing operation of critical building systems and elements.	EP&A Act BP Act	Supported in part – DFSI and DPE will develop and consult on an initial package of fire safety reforms, which will explore options to improve certification of critical systems relating to fire at the pre-occupation stage, and ongoing inspections after buildings are occupied. Further work will also be done by the Building Regulators Committee to consider whether additional regulation, licensing or industry accreditation should be adopted in respect of roles involved in the installation and maintenance of fire protection systems.
69	6.3.15 In identifying the skills and experience to be accredited the BPB makes every effort to draw upon existing professional associations and their accreditation systems.	BP Act	Supported in part – The proposed fire safety reform package will include consideration of industry accreditation schemes for some roles, potentially including the Fire Protection Accreditation Scheme. The proposed re-write of the BP Act will also allow industry accreditation schemes to be recognised as the basis of, or instead of, Government-issued accreditation for some certifier roles.
70	6.3.16 The certifier be required to critically review the work and certification of any critical building system and element to ensure it is consistent with the BCA and meets the approval requirement.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
71	6.3.17 Critical building systems and elements be defined for Class 1b to 9 buildings to include structural, electrical, mechanical and hydraulic systems and measures and waterproofing.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
72	6.3.18 Early priority be given to the implementation of an accreditation and certification scheme for the installation and commissioning of fire safety systems and measures and waterproofing.	EP&A Act BP Act	Supported in part – see recommendation 68
73	6.3.19 Documentation on the critical building systems and elements be incorporated in the building manual.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
74	6.3.20 Certification by accredited specialists of the design, installing, commissioning and maintenance of fire safety systems and the installation of waterproofing be accorded a high priority and act as a test case for more general reforms to the certification area.	EP&A Act BP Act	Supported in part – see recommendations 26 and 68
75	6.3.21 Investigation to be undertaken of the suitability of the BCA waterproofing standard and of factors contributing to the unsatisfactory experience in waterproofing in the building sector.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
Fire safety schedules			
76	6.3.22 The fire safety schedule be replaced with a building safety schedule which is created at the time of the issue of the CC or CDC and which is updated throughout the construction period to record all relevant building safety features including, but not limited to fire safety.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
77	6.3.23 At completion of the building project the building safety schedule and the information collected is incorporated into the Building Manual for ease of reference.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Issue of occupation/completion certificate			
Clarifying criteria for the issue of an occupation certificate			

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
78	6.4.1 All developments approved by a development consent or CDC, once completed, to require a Development Completion Certificate (DCC) which will certify that all planning conditions have been met and that the completed building is in accord with the approved plan. Where a development is staged, a DCC can be issued for the completion of each stage.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
79	6.4.2 Where a building is capable of occupation and it is desired to occupy it in part or in whole ahead of full completion, an OC can be applied for which will certify that the building is safe and fit for its approved use and be required to include a report on all outstanding matters that need to be completed before a DCC can be applied and the timetable that will apply for completion.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
80	6.4.3 There be a general requirement that a DCC be issued within a defined period of the issue of an OC with it being a statutory offence if this is not done.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
81	6.4.4 Where the building is of a nature that will not be occupied or is not required to be occupied prior to completion, for example, a fence or swimming pool, all that will be required will be a DCC.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
82	6.4.5 The Conveyancing Act 1919 be amended to require that a DCC be provided as part of any conveyancing transaction.	Conveyancing Act 1919	For further consideration – The prescribed documents that must be attached to conveyancing transactions for the sale of land will be reviewed when the Conveyancing (Sale of Land) Regulation 2010 is remade in accordance with the requirements of the <i>Subordinate Legislation Act 1989</i> .
83	6.4.6 Home insurers be encouraged to require that an OC or a DCC be provided by applicants for home and contents insurance.	None - A decision for insurers	For further consideration – this is a matter for consideration by insurers as part commercial decision-making about their product offerings.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
	Issue of development completion certificates where there is unauthorised work		
84	6.4.7 For a building that has unauthorised work in the sense that the work has materially deviated from the approval, it be required that a DCC/OC must be applied for and no occupation of the building or conveyancing can be undertaken until a DCC/OC is issued.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
85	6.4.8 For a building that has unauthorised work in the sense that the work has not been subject to an initial approval, a building certificate cannot be applied for and instead a certificate of acceptance of unauthorised work can be applied for and issued based on a rigorous assessment paid for by the owner along with any rectification costs with it noted in the records that the building has not been subject to the normal approvals process and hence potential buyers need to be aware of the risks involved.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
86	6.4.9 For buildings that are covered by recommendation 6.4.8, penalty fines be imposed which are set on a tiered basis relating to the value of the development work to act as a substantial disincentive for unauthorised work being undertaken.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
	Building information and maintenance		
	Building manual		

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
87	6.5.1 Subject to a more detailed specification of the proposal and the undertaking of a cost benefit analysis, it be a requirement of the beneficiary of the development that a building manual be created for all new Class 1b to 9 building that would include all relevant information relating to building plans, approvals, critical building systems and elements, additions and modifications and annual building safety certificates, with the manual issued in conjunction with the DCC.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
88	6.5.2 The manual be maintained online with access available to the relevant council and FRNSW.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
89	6.5.3 The manual be updated for any additions or alterations to the building and include the annual certification of building safety systems.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
90	6.5.4 The requirement for a building manual to be phased in for all existing class 1b to 9 buildings over a suitable period once the system has been established for new buildings and subject to the results of the cost benefit study.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
Building maintenance			
91	6.5.5 It be a requirement that the annual fire safety certificate for Class 1b to 9 buildings with a fire safety system is provided by a person accredited to undertake this function and that the essential fire safety measures that need to be certified annually be clearly specified.	EP&A Act BP Act	Supported in part – DFSI and DPE will develop and consult on a package of fire safety reforms, which will explore options to require the use of certain licensed or industry accredited contractors for fire safety inspections.
92	6.5.6 Further consideration be given to what requirements should be established for other key aspects of building safety for class 1b to 9 buildings.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
	Fire safety systems and certification		
	Active fire protection		
93	6.5.7 It is required that certification be provided by accredited persons with the necessary qualifications and experience for the design, installation, commissioning and maintenance of fire safety systems, preferably drawing upon the existing accreditation schemes developed by the relevant professional associations.	EP&A Act BP Act	Supported in part – see recommendations 26 and 68.
94	6.5.8 Noting the recent amendment to Clauses 144 and 152 of the EP&A Regulation, further consideration should be given by FRNSW and the building regulator to whether the categories of alternative solutions referred to FRNSW should be varied to ensure that all suitable types of alternative solutions are identified.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
95	6.5.9 Legislate for there to be notification to FRNSW of the issue of a fire safety certificate for the installation of a fire safety system for a Class 1b to 9 building and a mandatory 10 working day period before an OC/DCC can be issued within which period FRNSW can decide whether or not to inspect and assess the installation, noting that FRNSW will not be able to question the design, with a corresponding removal of Clause 152 of the EP&A Regulation.	EP&A Act	Supported – DFSI and DPE will consult on a package of fire safety reforms which will target problems at the design, construction and pre-occupation stages of construction for new buildings, including the option to prescribe a mandatory time gap between when a fire safety certificate is issued, and when the occupation certificate is issued (e.g. 10 days) so that FRNSW can perform risk-targeted inspections for new multi-dwelling residential buildings.
96	6.5.10 Incorporate the <i>International Fire Engineering Guidelines</i> or an alternative equivalent requirement as a mandatory referenced document for the purposes of undertaking the process of designing the fire safety system and documenting it.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
97	6.5.11 Provide FRNSW with the power to issue penalty infringement notices for non-compliant fire safety systems.	EP&A Act	Supported - This has been achieved through recent amendments to the Environmental Planning and Assessment Regulation 2000.
98	6.5.12 Request FRNSW, in concert with the building regulator, to develop a program of inspections of targeted existing buildings which would be required to have fire safety systems to assess the adequacy of the systems and based on the results, to communicate to building owners and councils the areas of most frequent problems and the types of buildings involved. This should be combined with the imposition of meaningful fines to owners of existing buildings with deficient systems.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
Passive fire protection			
99	6.5.13 Consideration be given to making clearer and more explicit the standards for passive fire protection work, drawing upon best practice in the industry.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
100	6.5.14 Consideration be given to enhanced review by building certifiers of passive fire protection work to ensure it adheres to suitable standards.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
101	6.5.15 It be required that persons installing passive fire protection are suitably trained and licensed.	Other Act	Supported in part – see recommendation 68.
Subdivision development and certification			
102	6.7.1 Allow for an extension of the security period allowed under the EP&A Act during which security is posted and an obligation is placed on the developer of the subdivision to rectify defects in assets passes over to the ownership and responsibility of the council.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
103	6.7.2 Noting the accreditation and accountability requirements for private subdivision certifiers and subject to confirming the effectiveness of protections in place to ensure that public assets such as roads transferred to the council as part of a subdivision development are of a suitable standard, the requirement for councils' local environment plan to approve of private subdivision certifiers being able to be appointed as PCAs or issue subdivision certificates be removed and accredited private certifiers be allowed to act as PCAs for subdivisions and issue subdivision certificates.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
104	6.7.3 Recognise in the partnership agreement with councils that private subdivision certifiers are fully entitled to issue construction and compliance certificates and councils are not to represent to the contrary and that the role of councils in respect to a Section 88B strata or subdivision certification is to confirm the wording of the condition or restriction.	None - Administrative	For further consideration – a partnership arrangement is not being adopted at this time. The recommendation will be further considered by the Building Regulators Committee
105	6.7.4 Council subdivision certifiers be required to be accredited with BPB on the same basis as council building certifiers are accredited, but with suitable transition arrangements to apply to existing council subdivision certifiers.	EP&A Act BP Act	Not supported – The case for accreditation of council subdivision certifiers has not been demonstrated by the review.
106	6.7.5 Work be undertaken by the Office of Building Regulation with local government on developing a standard for engineering design requirements for subdivisions.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
107	6.7.6 A pre-qualification scheme or accreditation be established for subdivision subcontractors and designers, utilising the RMS scheme for prequalification of road subcontractors as a possible model.	BP Act	Not supported – The case for the proposed pre-qualification scheme or accreditation has not been demonstrated by the review.
Water utility assets			
108	6.8.1 In all cases where the Local Water Utility will become the asset owner, the utility must be given the opportunity and authority to assess at the design/planning stage the proposed assets and to inspect and approve or reject the creation and acceptance of water industry assets and that OCs and subdivision certificates cannot be issued without the water utility's acceptance of those assets.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee.
109	6.8.2 That educational material be developed by BPB in conjunction with the Water Directorate to highlight to certifiers their obligations in respect of these matters.	None – Administrative	For further consideration – to be further considered by the Building Regulators Committee
110	6.8.3 That the Office of Building Regulation work with the NSW Water Directorate, the ABCB and relevant industry groups to develop a national set of engineering plans for water industry infrastructure.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee.
Licensing of commercial builders			
111	6.9.1 Licensing not be extended to commercial builders as there is no requirement for consumer protection of their clients given that they are experienced and informed clients but that Fair Trading undertake an assessment of whether the criteria for experienced and informed clients applies for small to mid-range developments.	HB Act	Supported – licensing will not be extended to builders and tradespeople in commercial buildings. Specialist licence categories under the HB Act will continue to apply to both commercial and residential buildings.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
	Reducing impediments to the use of the NCC		
112	6.10.1 The NSW Government through its membership of the ABCB and the Building Ministers' Forum raise the proposal of Australian Standards in respect to the building and construction industry being made available free of charge to industry in general, noting that the economic benefit of free access is likely to be significantly higher than the revenue foregone.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
113	6.10.2 The NSW Government raise through the Building Ministers' Forum the need for a process to address any valid interpretation issues with respect to the Australian Standards and the NCC, noting that a failure to have a consistent national interpretation could result in varying interpretations and approaches in each jurisdiction.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
	Non-conforming products and materials		
114	6.11.1 The NSW Government support through the Building Ministers' Forum the development of a national building certification scheme that is risk based.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
	Enhance the professionalisation of certifiers through accreditation, education, training and support for certifiers		
	Improve the certifier accreditation scheme by:		
115	7.1.1 Extending the range of professional and academic qualifications that can be considered for building certifiers by identifying what professional qualifications have reasonable mapping with the knowledge required for certifiers, what the gaps in knowledge are and what training programs would be required to bridge the gaps.	BP Act	Supported in part – the re-write the BP Act will include reviewing the professional and academic qualification requirements of accredited certifiers.

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
116	7.1.2 Bringing the accreditation fee charged to certifiers more into line with that charged in other states.	BP Act	For further consideration – the re-write of the BP Act will include reviewing accreditation fees.
117	7.1.3 Expanding the accreditation scheme to recognise nationally recognised training organisations and universities.	BP Act	Supported in part – see recommendation 115.
118	7.1.4 Working with relevant tertiary institutions to develop an assessment tool that can assess the knowledge of certifiers in each category against what is required for that category, as well as identifying the gaps that need to be addressed to move to a higher category and using this tool as an objective means to assessing the knowledge of certifiers.	None - Administrative	Supported in part – see recommendation 115.
119	7.1.5 Extending the current annual accreditation system from an annual scheme to allow for accreditation for a period of three to five years for certifiers with satisfactory history, with provision to continue with annual accreditation where a certifier has a less satisfactory record, until such time as there is evidence of an improvement in performance.	BP Act	Supported – the re-write of the BP Act will include reviewing the existing accreditation renewal requirements, with a view to extending the accreditation period beyond one year, subject to further consultation.
120	7.1.6 Replacing the current manual accreditation system with a fully online system which consolidates, in one database, information on certifiers including qualifications, accreditation history, history of continuing professional development, complaints lodged and outcomes.	None - Administrative	Supported in principle - DFSI will continue efforts to digitise and existing government processes while improving data gathering, sharing and performance measurement to track progress and better inform future decision-making by the NSW Government.
121	7.2 Consideration be given to the creation of a building certifier classification A1R, that is A1 Regional that would provide sufficient capability for a certifier with suitable experience to certify for the typical range of building work undertaken in regional NSW.	BP Act	Not supported – the creation of a new certifier class based on the geographic location of the accreditation holder raises significant equity and competition issues and is not supported by the NSW Government.
	Expand the education and training role of the BPB by:		

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
122	7.3.1 BPB taking greater responsibility for the design and content of the continuing professional development (CPD) program for each category of certifier, in concert with the relevant professional associations, including standards to be met by training providers.	BP Act	Supported in part – the re-write the BP Act will include reviewing the continuing professional development requirements for certifiers.
123	7.3.2 Developing a continuous process of establishing education and training needs for certifiers based on evidence such as data from investigations and advice from certifiers and their professional associations.	None - Administrative	Supported in part – the re-write the BP Act will include reviewing the continuing professional development requirements for certifiers.
124	7.3.3 Establishing and actively maintaining a panel of suitable training course designers and providers who will work closely with BPB to address and gaps in training needs of certifiers.	None - Administrative	Supported in part – the re-write the BP Act will include reviewing the adequacy of existing training requirements and providers.
125	7.3.4 Monitoring of training and education including CPD to ensure relevance, currency and achieving expected learning outcomes, with audits to focus on content and quality of learning material and suitability of lecturers/trainers/educators.	None - Administrative	Supported in part – the re-write the BP Act will include reviewing the adequacy of existing training requirements and providers.
126	7.3.5 Establish an online system for management of CPD, including a list of CPD training approved by the Board for certifiers to choose from and an online diary system for certifiers to record their training in real time.	None – Administrative	Supported in principle - DFSI will continue efforts to digitise and existing government processes while improving data gathering, sharing and performance measurement to track progress and better inform future decision-making by the NSW Government.
127	7.3.6 Establish criteria and a process for the assessment and recognition of qualifications.	BP Act	Supported in part – the re-write the BP Act will include reviewing the adequacy of existing training and qualification requirements.
128	7.3.7 Develop and provide an online Accreditation Exam which can be used to allow both self-assessment and BPB assessment of the knowledge of certifiers in various categories.	None - Administrative	Supported in part – the re-write the BP Act will include reviewing the adequacy of existing training and qualification requirements.

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	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
129	7.3.8 Broaden the scope of accreditation to include accreditation with respect to town planning, building design and the design, installation and commissioning of critical building systems and elements, including fire safety systems and waterproofing, with BPB to assess what other areas would benefit from accreditation.	BP Act	Supported in part – see recommendations 26 and 68.
	Expand the support provided to certifiers by:		
130	7.4.1 Establishing, maintaining and publicising a single dedicated hot line for all building regulation and certification inquiries, consolidating the advice function currently provided separately by BPB, BCU, e-Business Branch in respect to BASIX and the Codes Unit.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
131	7.4.2 Establishing in conjunction with the Certifier Associations a both an Advisory Panel of experienced certifiers who can provide more in depth guidance to certifiers, particularly on complex buildings and alternative solutions as well as a Reference Panel for mandatory review of certain designated complex matters.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
132	7.5 BPB develop with universities, certifiers, councils and private certifiers a program for providing work experience for students, traineeships and facilitating a career path for each category of certifier.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
133	7.5 BPB to establish for guidance of certifiers and potential customers, an indicative fee schedule for each class of building work, based on undertaking the work set out in the practice guide.	None - Administrative	Supported in part - further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.
134	7.6 BPB undertake occasional audit of the fee structure of councils and private certifiers.	BP Act	For further consideration – to be further considered by the Building Regulators Committee

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
135	7.7 All councils be required, if they are not already doing so, to separate the commercial building certification function from the planning and building compliance functions and set fees that at least recover full costs.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
136	7.8 BPB undertake occasional audits of councils to ensure there is full separation of the commercial certification function and that charges reflect at least full cost recovery.	BP Act	For further consideration – to be further considered by the Building Regulators Committee
137	7.9 BPB to work with the Professional Standards Authority, the two certifier associations and accredited certifiers to develop a model of professionalism to apply to certifiers as individuals and their associations with a view to evolving the associations to Professional Standards Schemes.	None - Administrative	Supported in part – the expected standards of certifiers will be more clearly articulated in the proposed Practice Guide. Further consultation on the form and content of the Practice Guide will be undertaken before it is finalised.
Refocus of the complaints handling process			
138	8.1 Refocus the approach to the investigation of complaints concerning certifiers to assess and act on the underlying development issue raised by the complainant in a timely manner before addressing possible professional misconduct or unsatisfactory professional conduct by certifiers.	BP Act	Supported in part – the re-write of the BP Act will review existing complaints handling procedures and measures will be explored to improve responsiveness to complaints.
139	8.2 More timely and effective handling of complaints, through both the application of more resources, more effective management of complaints and clear advice to the community about the process and potential outcomes.	None - Administrative	Supported in part – the re-write of the BP Act will review existing complaints handling procedures and measures will be explored to improve responsiveness to complaints. New mechanisms to facilitate proactive risk-based audits will also be pursued as part of this process.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
140	8.3 Establish a less prescriptive approach in the legislation to the handling of complaints to facilitate a more streamlined administrative approach.	BP Act	Supported in part – the re-write of the BP Act will review existing complaints handling procedures and measures will be explored to improve responsiveness to complaints.
141	8.4 Establish a complaints lodgement and management system, which should also include creating an integrated database of all the information on accredited certifiers, including complaints and disciplinary actions, and this information, should be accessible to potential clients.	None - Administrative	Supported in principle - DFSI will continue efforts to digitise and existing government processes while improving data gathering, sharing and performance measurement to track progress and better inform future decision-making by the NSW Government.
142	8.5 Broaden the range of penalties that can be imposed, covering not just certifiers but all building professionals, to include: <ul style="list-style-type: none"> making greater use of an existing system of penalty infringement notices to address detected administrative and procedural errors introducing a demerits point system, noting a demerit system is in place in Queensland and has the benefit that it takes account of an individual action that of itself may not justify a fine or suspension of accreditation, but may justify more serious action if it becomes part of a pattern 	EP&A Act BP Act	Supported in part – the re-write of the BP Act will review certifier penalties.
Enhance the sustainability of Personal Indemnity Insurance			
143	9.1 Section 109ZK(1) of the EP&A Act be amended to set a maximum liability period for all parties in building work to six years, aligning with the home warranty insurance period and in line with the period of cover available for run-off cover under PII.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
144	9.2 BPB work with the certifier associations and certifiers in general to seek to create Certicover as the industry scheme for accredited certifiers in NSW.	BP Act	Supported in part – the re-write of the BP Act will review existing insurance provisions, and will be mindful of efforts that have already been directed to the development of the industry's Certicover insurance scheme.

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
Appropriate resourcing and funding			
145	10.1 An evaluation be undertaken of the Planning Reform Fund levy to both assess its continuing rationale and if it is established that it has an ongoing rationale suitable transparent and accountable reporting be put in place on the use of the funds.	EP&A Act	For further consideration – to be further considered by the Building Regulators Committee
146	10.2 The Treasury in concert with BPB and the designated representatives of the Office of Building Regulation work to develop both an overall resource requirement for the BPB and the OBR to enable them to undertake the role and functions as set out in this report and to determine the source of funding model that combines in appropriate proportions budget funding, fees and a levy of DAs and CDCs as a funding model.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
147	10.3 The Treasury work in concert with the Office of Local Government on developing a funding model that sets a cap on the levy that individual councils can apply to DAs and CDCs to meet the cost of building compliance.	None - Administrative	For further consideration – to be further considered by the Building Regulators Committee
B. IMPLEMENTATION			
A resourced, committed and accountable implementation approach			
148	11.1 The Minister responsible for building regulation be given ministerial responsibility and authority to drive the reforms.	None - Administrative	Supported – building elements of the EP&A Act will be simplified and consolidated, with responsibility transferred to the Minister for Innovation and Better Regulation.
149	11.2 An early and essential priority be the establishment of the Office of Building Regulation whose early establishment is essential to the success in implementing the reforms and achieving the targeted	None - Administrative	Supported in part – building elements of the EP&A Act will be simplified and consolidated, with responsibility transferred to the Minister for Innovation and Better Regulation. Transfer of associated administrative

	Building Professionals Act Review Recommendation	Legislation concerned	Government Position
	outcomes.		responsibilities from DPE to DFSI will be considered in conjunction.
150	11.3 The implementation of the reforms fully involve the key stakeholders.	None - Administrative	Supported - Ongoing consultation will continue to be a key component of the reform process.