



**The Honourable Kevin Anderson MP**  
Minister for Better Regulation and Innovation

Our reference: COR-03977-2019  
Your reference: D19/41637

Mr David Blunt  
Clerk of the Parliaments  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Blunt

A handwritten signature in blue ink that reads 'David'.

**Government response to First report - Report No. 4 Regulation of building standards, building quality and building disputes**

The NSW Legislative Council Public Accountability Committee is conducting an Inquiry into the regulation of building standards, building quality and building disputes and issued First report - Report no. 4 on 13 November 2019.

In accordance with Standing Order 233(1) please find attached the Government response for tabling in the Legislative Council prior to 13 May 2020.

If you would like more information, please contact Sarah Low, Policy Manager, Better Regulation Division of the Department of Customer Service on (02) 9289 6536 or [Sarah.Low2@customerservice.nsw.gov.au](mailto:Sarah.Low2@customerservice.nsw.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Kevin Anderson', with a long horizontal flourish extending to the right.

**Kevin Anderson MP**  
Minister for Better Regulation and Innovation

Date: 7-5-2020

Encl. NSW Government response

# NSW GOVERNMENT RESPONSE TO FIRST REPORT – REPORT NO. 4 REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES

## NSW Government response to the First Report of the Legislative Council Public Accountability Committee Inquiry into the Regulation of Building Standards, Building Quality and Building Disputes

### Introduction

The NSW Government welcomes the First Report of the Legislative Council Public Accountability Committee Inquiry into the Regulation of Building Standards, Building Quality and Building Disputes (the **First Report**).

The Government thanks the Committee for its consideration of these important matters and appreciates the opportunity provided to make a submission, which was received by the Committee on 2 August 2019. Representatives of the Department of Customer Service and the State Insurance Regulatory Authority were also in attendance at hearings of the Inquiry on 12 August 2019, 16 August 2019, 27 August 2019, 5 November 2019, 11 December 2019, and 24 February 2020.

This Government response will update the Committee on the initiatives and reforms to improve the performance of the building industry progressed by the Government since its submission. The Government notes that the Committee released a final report (the **Final Report**) on 30 April 2020 and will provide a complete response to both reports in responding to the Final Report.

### Updates to Government initiatives and reforms

The Government is strongly committed to ensuring the safety of buildings through effective regulation and enforcement. The Government has been progressively working on improving the performance of the sector with many key initiatives and reforms addressing the issues raised in the Inquiry. Since the interim report was tabled in the Legislative Council in November 2019 the Government has specifically:

- progressed a legislative reform program to deliver tangible, industry-wide improvements in building construction and planning;
- continued its four-point plan to strengthen compliance and oversight in the certification sector, and is working on the development of a certifier practice guide;
- continued with a high priority coordinated approach to the assessment and remediation of potentially combustible cladding and provided additional support to councils;
- publicly announced the high level workplan of the Building Commissioner, consisting of six pillars aimed at rebuilding confidence in the construction industry;
- established the Building Reform Expert Panel, a mechanism for regular expert consultation with a broad cross-section of the building and construction sector; and
- contributed to the progress of a coordinated national response to the Building Confidence report by Peter Shergold and Bronwyn Weir driven by the Building Ministers' Forum and resourced by a National Implementation Team.

### Legislative reforms

The Government has made progress in implementing significant reforms to modernise the state's certification laws. The building and subdivision certification amendments to the

## **NSW GOVERNMENT RESPONSE TO FIRST REPORT – REPORT NO. 4 REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES**

*Environmental Planning and Assessment Act 1979* commenced on 1 December 2019, providing new compliance powers for private principal certifiers to issue a written direction notice to address non-compliance matters. In addition, the reforms streamline the issuing of occupation certificates and subdivision works certificates.

Most recently the *Building and Development Certifiers Regulation 2020* was published on 4 March 2020. Together with the *Building and Development Certifiers Act 2018*, the new legislative scheme strengthens the accountability and registration framework for certifiers. Finalising the regulations allows the new legislative scheme to commence on 1 July 2020, and in response to industry feedback provides a transitional period between publishing the Regulation and commencement of the new legislative scheme.

The Government is also in the process of pursuing further important reforms in Parliament to restore public trust and confidence in the building and construction industry. The Design and Building Practitioners Bill 2019 (the D&BP Bill) passed the Legislative Assembly on 13 November 2019. The D&BP Bill delivers on many of the reforms committed to by the 2019 Government response to the Building Confidence Report, authored by Peter Shergold and Bronwyn Weir, and will significantly improve the accountability of practitioners involved in design, building and construction. The Bill remains a priority for the NSW Government. It was developed to significantly improve the accountability of practitioners involved in design, building and construction. The NSW Government will work closely with key stakeholders across the building and construction sector and members of the Legislative Council to pass final legislation through the NSW Parliament early this year.

NSW currently requires residential builders, residential site or project managers (as qualified supervisors), building surveyors/certifiers, architects, plumbers and fire safety practitioners to be registered. The D&BP Bill will introduce the registration of design practitioners, which will include engineers, designers and draftspersons, as well as other unregistered professionals which prepare and declare designs. This will deliver on the targeted recommendations of the Shergold-Weir Building Confidence Report. The Government has indicated its support for the introduction of a scheme to register all engineers and is currently considering the most appropriate mechanism for doing so.

The D&BP Bill sets out new obligations on design and building practitioners to prepare and declare designs, and to ensure that declared designs are being relied upon to produce buildings that are compliant with the Building Code of Australia. It also introduces a statutory duty of care owed by those who undertake construction work, to strengthen protections for existing and subsequent owners of buildings.

When fully operational, practitioners who make declarations will be required to lodge them in a digital format, through an online portal which is currently under development. It is intended that once the portal is fully operational, it will hold an end-to-end digital record of who designed the building, the types of designs that were used, any changes to designs during construction and a full record of who was involved in developing the building.

Finally, legislation is also being finalised to provide the Building Commissioner with a broad suite of compliance and enforcement powers to intervene in and identify and rectify serious defects in existing multi-story residential and mixed-use residential buildings. The powers will extend to those buildings within the same class which have been completed within the last 6 years since the occupation certificate, as well as buildings already under construction. These reforms will provide greater protections for prospective purchasers and current and subsequent owners of residential buildings and will include two significant new powers. The first is a requirement for developers to notify the Building Commissioner of the proposal to apply for an occupation certificate within 6 months, but no more than 12 months before the expected date of completion and a power for the Building Commissioner to prohibit the issue

## **NSW GOVERNMENT RESPONSE TO FIRST REPORT – REPORT NO. 4 REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES**

of an occupation certificate or the registration of a strata plan in prescribed circumstances. The second is the power to issue a stop work order to ensure that building work stops in prescribed circumstances. This legislation will complement the D&BP Bill, as well as existing provisions in the *Home Building Act 1989*. It will also build on existing powers already delegated to the Building commissioner through the *Fair Trading Act 1987*, the *Work Health and Safety Act 2011* and the *Plumbing and Drainage Act 2011*. The legislation will empower the Secretary and those delegates of the Secretary to take greater action against defects and will work together with the home building statutory warranties providing consumers with greater visibility over defects that arise while offering them greater consumer protections.

### **Combustible cladding**

The NSW Cladding Taskforce continues to oversee the implementation of the NSW Government's plan for fire safety and external combustible cladding. It also coordinates ongoing activities to ensure buildings are made safe and emerging issues are addressed.

The Government's Cladding Support Unit (**CSU**) provides a centralised approach to the assessment and remediation of potentially combustible cladding. The CSU was established in September 2019 and provides a single point of contact for local councils that are responsible, under NSW planning laws, for the local investigation and enforcement of building and fire safety standards. The CSU has distributed guidance and information resources to all councils with affected buildings and has hosted two 'town hall' style forums to share information and receive feedback.

The Government has also established the Cladding Product Safety Panel (**CPSP**) to ensure consent authorities receive consistent technical advice on appropriate products to replace non-conforming combustible cladding on buildings. The CPSP's terms of reference were approved by the Minister for Better Regulation and Innovation in January 2020, and the Department of Customer Service and the Building Commissioner are finalising the assessment for appointing panel members.

### **NSW Government workplan**

In January 2020 the NSW Government publicly announced the workplan of the Building Commissioner, which consists of six pillars to rebuild confidence in the construction industry.

The six pillars are focused on the following:

1. legislation and regulation changes,
2. ratings systems,
3. improving skills within the industry,
4. ensuring contracts help meet standards,
5. digitising the industry; and
6. establishing NSW as a leader in modern construction methods.

The Building Reform Expert Panel, consisting of one steering committee group and six key working groups made up of key stakeholders across the building and construction sector, will support the six pillars of the workplan. The Building Reform Expert Panel will provide a mechanism for regular expert consultation with a broad cross-section of the building and construction sector.

In February 2020, the NSW Government announced recruitment for a team to deliver on the workplan and complementary building reform agenda. This includes recruitment for a Transformation Management Team with up to 15 operational staff dedicated to the delivery

## **NSW GOVERNMENT RESPONSE TO FIRST REPORT – REPORT NO. 4 REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES**

of the six pillars and phased delivery of up to 60 new roles responsible for the implementation and operation of the new auditing, registration and design lodgement functions within the D&BP Bill.

### **Progress on the Building Confidence Report recommendations**

NSW has completed or is progressing 20 of the recommendations of the Building Confidence Report (the Report). Four recommendations are under active consideration at the national level.

NSW is supporting the progress of the response to the Report recommendations at the national level under the direction of the Building Ministers' Forum. As part of this, in July 2019, Building Ministers across Australia agreed to the establishment of an Implementation Team to develop and publicly report on a National Framework for the consistent implementation of the recommendations of the Report, as well as the design, construction and certification of complex buildings. A copy of the national Implementation Plan can be accessed at <https://www.industry.gov.au/sites/default/files/2019-03/building-confidence-report-implementation-plan.pdf>.

Work on the recommendations by the Implementation Team, operating under the Australian Building Codes Board (ABCB), is underway. A number of responses are well advanced, including action on education and training, model CPD requirements, support for performance solutions and a definition of 'complex buildings'.

The Building Confidence National Framework provides greater detail on the timing and delivery of each of the Report recommendations. A copy of the Framework can be accessed at <https://www.abcb.gov.au/Resources/Publications/Corporate/Building-Confidence-National-Framework>.