



The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

Mr. Steven Reynolds
Acting Clerk of the Parliaments and Clerk of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr. Reynolds

I write to provide the Government's response to the Public Accountability Committee -
Further inquiry into the regulation of building standards.

I understand the response is due for tabling today 25 August 2022.

Please do not hesitate to contact my office if you require any further information to enable
the tabling and uploading of the response on the Parliament website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello'.

The Hon. Victor Dominello MP

Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

Date: 25 August 2022

*Received on behalf of
the Clerk of the Parliaments
on 25 August 2022*

A handwritten signature in blue ink, appearing to be a signature of the Clerk of the Parliaments.



Legislative Council Public Accountability Committee
Further inquiry into the regulation of building standards

NSW Government Response

August 2022



The NSW Government welcomes the Legislative Council Public Accountability Committee's *Further inquiry into the regulation of building standards*, which acknowledges the significant work of the NSW Government to lift the quality of design and building work in NSW and to hold all participants in the NSW construction sector accountable for the work that they do.

The NSW Government's Construct NSW reform agenda is transforming the NSW residential construction sector to put quality and the customer at its centre, through comprehensive regulatory reforms, a re-invigorated building regulator, ratings information, education, contracts, standards and research.

A central theme of Construct NSW is the making of a 'trustworthy building'. Trustworthy buildings will be ones that are fit for purpose, resilient and measurably less risky. The players who make them must be the most capable. Customers who buy them must be confident to own and occupy them. Further, the financiers and insurers who underwrite policies for constructors and building owners will be confident in the level of assurance. The Government's work to enhance the capability of the NSW building regulator is focused on ensuring these outcomes are being achieved.

The *Design and Building Practitioners Act 2020 (DBP Act)* and *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)* have equipped the building regulator with comprehensive powers to ensure compliant upfront design, clear accountability throughout the construction process, and powers to remediate defects.

The Government also continues to take decisive action regarding flammable cladding, including Project Remediate and other elements of the Government's ten-point plan for fire safety, led by the NSW Cladding Taskforce, and in strengthening ties with certifiers, industry and local councils, through the Cladding Support Unit.

Project Remediate is a landmark three-year program to help remove combustible cladding on 225 buildings known to the Cladding Taskforce. Project Remediate is coordinated by the NSW Building Commissioner and offers eligible owners of residential apartment buildings interest free loans over a 10-year period with repayments to commence upon completion of the work. Project Remediate also offers expert assurance and project management services to provide technical and practical support to owners corporations and strata managing agents.

Responding to fire safety risks in NSW buildings remains a priority for the Government. The Government is working to enhance the role of Fire and Rescue NSW (**FRNSW**) in the building design and certification process, to increase resources for FRNSW to improve processing times and better engage with industry at the early stages of the design and construction process through the implementation of the recommendations of *the Improving fire safety: Industry report on improving fire safety in buildings* and improvements to the Fire Brigades Regulation 2014.

The Government has also made significant progress on its reform agenda to improve the regulation of certifiers, including the *Building and Development Certifiers Act 2018* which will clarify roles and responsibilities of certifiers, strengthen conflict of interest provisions and enhance compliance and enforcement powers.

The work to date as part of the Government reform agenda, reflects only the first tranche of reforms this Government expects to make as part of the biggest overhaul of the NSW building sector. The Government has a detailed reform strategy outlined in the Government's six-pillar plan to 2025 and is currently consulting on further reforms, including a review of the *Home Building Act 1989* and the legislative framework that will underpin consideration of an extended first resort insurance product and ensure that the legislation framework works cohesively.

The Government is now looking to the future of building regulation and partnering with key industry stakeholders, including developers, practitioners and trades from across the sector to implement the Government's building reform agenda to 2025.

#	Recommendation	NSW Government response
1.	<p>That the NSW Government adopt the Public Accountability Committee's previous recommendations to establish a single, senior Building Minister with responsibility for building regulation in New South Wales, including administering the new stand-alone Building Act and responsibility for the Building Commission and its Building Commissioner.</p>	<p>Not supported.</p> <p>The NSW Government does not support creating a standalone Building Commission as the regulation of the construction industry is being effectively oversighted by the Department of Customer Service.</p> <p>Construct NSW is not only lifting the capability of industry but also NSW Fair Trading and Safe Work NSW within the Department of Customer Service – allowing the NSW building regulator to become one of the most interventionist and outcomes focused regulators in Australia. It is achieving this by embedding the functions of the Office of the Building Commissioner back into the regulator to embed the capability that will ensure effective regulation of building and construction.</p> <p>Construct NSW reforms are working – lifting the capability of the regulator to deliver the outcomes identified by the Committee that will restore confidence to the NSW construction sector.</p> <p>More time is required to fully realise these outcomes, but the early indicators show the Government is making progress:</p> <ul style="list-style-type: none"> • proactive inspection regimes that leverage the data capability of the Department of Customer Service are accurately identifying risky behaviour earlier in the design and build process to rectify non-compliant and unsafe work, • a customer-centric dispute resolution process that focuses on resolving building disputes earlier, which will encourage more customers to come to the regulator to resolve their disputes, • enhanced use of digital infrastructure offered within the Department of Customer Service is creating a 'single view of building' that allows collaboration across Safe Work NSW and NSW Fair Trading, FRNSW and local councils to enforce NSW building and planning laws, • a new approach to industry capability delivered through an online learning platform with targeted content that responds to the areas of need identified through proactive audits

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		<p>and comprehensive industry engagement,</p> <ul style="list-style-type: none"> leveraging industry-driven initiatives to tackle untrustworthy players and behaviours, including the iCIRT ratings tool, work to introduce a decennial liability insurance product and a blockchain building assurance solution to provide assurance over products and practitioners working on a building. <p>The success of the Construct NSW reforms in class 2 buildings to date will now be expanded to other types of buildings to ensure that the NSW building regulator within the Department of Customer Service continues to deliver customer-centric, data-driven and risk-based regulation of the NSW construction sector.</p> <p>NSW is not aware of any evidence showing that a Commission structure has achieved superior outcomes in building regulation in other Australian jurisdictions.</p>
2.	<p>That the NSW Government ensure that the Building Commission be provided with broad powers and sufficient resourcing and funding to properly oversee and regulate the building and construction industry in New South Wales with a strong customer focus. As an essential component, these powers must be extended to class 1 buildings and others where people sleep at night and whose occupants rely on safeguards.</p>	<p>Noted.</p> <p>The Government continues to provide comprehensive powers and resourcing to the Department of Customer Service to implement its transformational building reforms.</p> <p>The Government supports the proposed expansion of powers into other classes of building and will undertake public consultation on draft legislation, including the Building Compliance and Enforcement Bill 2022 and Building Bill 2022.</p>
3.	<p>That the NSW Government move all regulatory responsibility for the building and construction industry from NSW Fair Trading, and its accompanying resources, to a newly established Building Commission, with a fundamentally different culture of enforcement and compliance, to protect consumers and restore confidence in the building and construction industry.</p>	<p>See response to Recommendation 1.</p>
4.	<p>That the NSW Government urgently create a category for registration under the Design and Building Practitioners Act 2020 for interior designers and review the five year experience threshold for architects to be registered for class two work under that Act.</p>	<p>Completed.</p> <p>On 10 December 2021, the Design and Building Practitioners Amendment (Miscellaneous) Regulation (No 2) 2021 provided that fit out of commercial properties in buildings with a class 2 part does not require a design compliance declaration. This amendment allows</p>

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		<p>interior designers to design fit outs of these premises (except structural work which must be done by an architect or structural engineer).</p> <p>An occupational licensing scheme for interior designers and building designers is being considered as part of the ongoing review of the <i>Home Building Act 1989</i>.</p> <p>From 2 March 2022, the Design and Building Practitioners Amendment (Miscellaneous) Regulation 2022 resolves the concerns around architects' experience raised by the Committee by providing less experienced architects a pathway into the DBP scheme. This approach was co-designed with the Australian Institute of Architects.</p>
5.	That the NSW Government place additional statutory controls on phoenixing and phoenixing activity in the building and construction industry.	<p>Supported and will be subject of stakeholder consultation as detailed below.</p> <p>The NSW Government is a member of the Commonwealth Phoenix Taskforce, which was formed in 2014 to detect, deter and disrupt illegal phoenixing. While phoenixing is not unique to the building and construction industry, the NSW Government is committed to putting in place strong regulatory measures to respond to illegal phoenixing, including its ongoing collaboration with other jurisdictions.</p> <p>In addition to its involvement in Phoenix Taskforce, the NSW Government is taking steps to address the impacts on phoenixing in the building and construction industry:</p> <ul style="list-style-type: none"> • rollout of the iCIRT developer rating tool to empower the market to set higher standards of transparency, governance and quality of construction and de-incentivising the behaviours that lead to phoenixing, • working with industry on the design of a decennial liability insurance product to provide a remedy for consumers dealing with defects that lasts for 10 years regardless of the liquidity of the original developer or builder, • improving data sharing arrangements with other regulators, including the Australian Tax Office, to provide clearer pictures of the behaviours of those engaging in illegal phoenixing,

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		<ul style="list-style-type: none"> consulting on amendments to legislative frameworks to make it easier for the regulator to track companies and directors who have participated in illegal phoenixing and push them out of the industry.
6.	<p>That the Office of the Building Commissioner and NSW Fair Trading ensure that there are clear lines of communication, responsibility and procedural fairness in respect of decisions about building prohibition orders, so that the rights of purchasers are fully protected.</p>	<p>Supported and will be subject of stakeholder consultation as detailed below.</p> <p>The NSW Government is consulting on a draft Building Compliance and Enforcement Bill 2022, which would expand the enforcement powers under the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i> to all buildings.</p> <p>The draft Bill includes clear procedural fairness requirements to ensure that the exercise of powers by the building regulator continues to be proportionate and justified.</p>
7.	<p>That the NSW Government strengthen legislation to ensure that building purchasers are protected from changes to prohibition orders preventing them from triggering sunset clauses to rescind their contracts prior to a property under a prohibition order being deemed suitable for occupation.</p>	<p>Noted.</p> <p>The NSW Government notes the findings of the Committee and has made changes to the building regulator's process for imposing and removing orders under the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i>.</p>
8.	<p>That the NSW Government ensure that it acts on the recommendation of the statutory review of the <i>Strata Schemes Development Act 2015</i> and the <i>Strata Schemes Management Act 2015</i>, to establish, in partnership with key stakeholders, a targeted program of support and education for strata residents and owners corporations to build capability in and understanding of strata scheme operation and governance and expressly regulate to provide that regulated attendance fees and costs may be paid to strata committee members undertaking relevant training</p>	<p>Supported and will be subject of stakeholder consultation.</p> <p>The Government will look to introduce legislation to implement these reforms.</p>
9.	<p>That the NSW Government implement each of the recommendations of the review report by Mr Michael Lambert for Construct NSW, <i>Improving fire safety: Industry report on reforms to improve fire safety in new and existing buildings</i>.</p>	<p>Supported and will be subject of stakeholder consultation.</p> <p>The Government has commenced the design and implementation of the recommendations from the <i>Improving fire safety: Industry report on reforms to improve fire safety in new and existing buildings</i>.</p> <p>This includes public consultation on a draft Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety)</p>

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		<p>Regulation 2022 which would improve compliance with requirements for design, certification and maintenance of fire safety measures by:</p> <ul style="list-style-type: none"> • increasing oversight of performance-based design solutions through enhanced involvement of Fire and Rescue NSW, • establishing a new category of certifier to verify the performance of installed fire safety measures before buildings can be occupied, • mandating improved documentation of fire safety measures which is relied on for certification, inspection and maintenance, • mandating standards for the maintenance of fire safety measures. <p>The Government has also commenced consultation on a draft Building Bill 2022, which would move all fire safety obligations into a single regulatory framework, including an end-to-end licensing process for all practitioners working on fire safety systems.</p>
10.	That the NSW Government act urgently to require that post installation certification of fire systems be completed by an accredited certifier before an occupation certificate can be issued.	<p>Supported and will be subject of stakeholder consultation.</p> <p>The amendment is proposed through the draft Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022</p>
11.	That the NSW Government implement a requirement for practitioners to be licensed in order to inspect, test and maintain fire protection systems in New South Wales.	<p>Supported and will be subject of stakeholder consultation as detailed below.</p> <p>The Government has commenced consultation on a draft Building Bill 2022, which would move all fire safety obligations into a single regulatory framework, including an end-to-end licensing process for all practitioners working on fire safety systems.</p>
12.	That the NSW Government address further requirements on building manuals via the Environmental Planning and Assessment Regulation, and in doing so, adopt the proposal developed by the Australian Building Codes Board, towards a nationally consistent approach.	<p>Supported.</p> <p>The NSW Government will implement the requirement to produce a building manual as part of its next phase of building reforms and its implementation of the <i>Improving fire safety: Industry report on</i></p>



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13.	<p>That the NSW Government abandon the system of self-accreditation by building certifiers and instead empower and resource a Building Commission, as envisaged in recommendation 2, in consultation with local councils, to fulfil this role.</p>	<p><i>reforms to improve fire safety in new and existing buildings</i> report.</p> <p>Not supported.</p> <p>All private and council certifiers must be registered with NSW Fair Trading.</p> <p>Fair Trading undertakes risk-based audits of certifiers to order remediation or punish certifiers for breaches of their obligations. Since the beginning of 2021, NSW Fair Trading has acted against two certifiers. In both cases their licences were revoked with one being prohibited from reregistering.</p> <p>These obligations have been enhanced by the Building and Development Certifiers Act 2018, which prescribes the roles and responsibilities of certifiers, strengthens conflict of interest provisions and enhances compliance and enforcement powers.</p> <p>The work of certifiers has also been enhanced by the introduction of the DBP Act, which prevents a certifier issuing a construction certificate or complying development certificate without declared designs for all building elements. This will ensure certifiers have better quality plans and are empowered to push back against poor quality design and building work.</p>
14.	<p>That the NSW Government undertake an independent review of the adequacies of Clause 1 in Schedule 1 of the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021, in allowing councils to adequately fund the regulatory and compliance activities required to be undertaken by local councils across New South Wales.</p>	<p>Not supported.</p> <p>The Government opposes the recommendation as the regulatory amendment has clearly met its objective of transparency, accountability and consistency of approach.</p> <p>The NSW Government announced a new approach to compliance funding in 2021 to create a more certain, consistent and transparent planning system. These changes sought to address concerns raised by the industry and the community about the lack of transparency, consistency and timing of compliance levies on development applications, while simplifying the compliance cost notice framework to make them a more useful enforcement tool.</p> <p>While it is recognised that councils play a big role in monitoring and enforcing local development, compliance activities have</p>

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		<p>always been seen as a core part of a council's general functions and as such there has not been a dedicated funding stream for it. Instead, most councils have funded these activities from revenue sources like rates and fees for DAs.</p> <p>Although some councils had sought to recover their compliance costs through a separate levy, these levies were often not well thought out and simply overburdened developers with additional costs without achieving better compliance outcomes. It was also questionable as to whether councils had the legal authority to charge developers in this way.</p> <p>The prohibition in clause 259 of the <i>Environmental Planning and Assessment Regulation 2021</i>, which came into effect on 1 January 2022, sought to clarify this situation and stop councils from charging excessive and potentially illegal compliance levies under the <i>Local Government Act 1993</i>.</p> <p>While the removal of the compliance levy will financially impact the councils that were already charging a levy or those that were about to introduce one, overall these changes should have a positive impact on industry and the community by creating consistent rules and preventing councils from charging excessive fees. For this reason, an independent review of the adequacies of the prohibition is not considered necessary.</p> <p>However, the NSW Government recognises the pressure councils are under to deliver and in recognition of the important role that councils play in the planning system and are continually looking at other measures that can be introduced to support them in undertaking their functions. To date, the Minister for Planning has made changes to compliance cost notices framework to make it easier for them to recover costs from their investigations and enforcement activities. The Government has also invested significantly in initiatives like ePlanning that seek to simplify the planning system and make assessment and compliance work simpler and more cost effective for councils.</p>
15.	That the NSW Government ensure that any future government-endorsed or regulated rating	Noted.

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	<p>system for the corporate entities responsible for class 2 buildings, at a minimum be managed and closely overseen by a government agency, ideally the created Building Commission.</p>	<p>While the developer rating tool iCIRT was created by the Office of the Building Commissioner, it has been handed over to market rating specialist Equifax.</p> <p>It is critical that a ratings tool is driven by market operators.</p> <p>The Construct NSW reforms create an enhanced role for Government in overseeing industry but also put more responsibility on industry players to call out untrustworthy operators.</p> <p>Industry stands to benefit the most from a market that is considered trustworthy – ratings will provide a financial benefit to those who develop quality buildings, have clear and accountable governance structures and who have systems in place to resolve disputes when they occur.</p>
16.	<p>That, in order to facilitate the timely and effective remediation of flammable cladding across the state, the NSW Government, as a priority:</p> <ul style="list-style-type: none"> - work with Local Government NSW to provide enhanced funding to local government to contribute to the costs of regulatory activity related to cladding compliance, and associated legal work - work with the insurance industry and other stakeholders to find a solution to the professional indemnity issue, so that the engineers and other consultants required to undertake this skilled work are not exposed to unnecessary risk. 	<p>Noted.</p> <p>The NSW Cladding Taskforce and Project Remediate are working closely with affected councils on all aspects of cladding remediation.</p> <p>The NSW Government is also continuing to work with the insurance industry to respond to market pressures on the availability and affordability of professional indemnity insurance.</p> <p>The insurance industry has highlighted the reforms in NSW are leading the way nationally towards improved compliance and the necessary conditions for insurers to improve market offerings, including work to introduce a decennial liability insurance product in NSW.</p>
17.	<p>That the NSW Government provide a substantial funding package, proportionate to the Victorian Government's \$600 million package, to fund the rectification of buildings containing aluminium composite panels and building products that may be banned in future. The package should be available to homeowners who have already commenced remediation work.</p>	<p>Noted.</p> <p>The NSW Government has committed to the funding and assurance provided in Project Remediate and has no plans to replicate the Victorian approach.</p>
18.	<p>That the NSW Government continue to support the urgent adoption of mandatory cavity barriers under the National Construction Code in order to address the risk of fire spreading on buildings that have significant aluminium external cladding installed. In the event that the National Construction Code is not rapidly amended to</p>	<p>Noted.</p> <p>The NSW Government supported such inclusions in the next edition of the National Construction Code.</p> <p>The NSW Government will consider its position on this issue following</p>

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	provide for this, a separate NSW requirement should be adopted.	commencement of the 2022 National Construction Code.
19.	That the NSW Government resource and empower the NSW Building Commissioner to assess the risk to health and safety from buildings that have had aluminium cladding installed with façade systems that created the risk of fire spread in the past five years.	<p>Completed in line with Government's previous commitments on responding to cladding.</p> <p>The NSW Government has provided the NSW Building Commissioner and Department of Customer Service with significant additional resources and broad powers under the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i> to audit design and building work on residential buildings and order rectification work as required.</p> <p>The Government has also provided further funding for a pilot program to audit additional legacy buildings to use the regulator's powers to secure rectification of building defects.</p>
20.	That the NSW Building Commissioner and NSW Cladding Product Safety Panel ensure, as a matter of urgency, that each cladding product both whether composite or solid aluminium be tested against the Australian Standard 1530 (oven test), and also the Australian Standard 5113 (wall test), and that a comparison of the performance of each product be published on the Panel's website. Further, that if solid aluminium is found not to be comparably safe, it be abandoned as the endorsed product to replace cladding under Project Remediate.	<p>Noted.</p> <p>The Cladding Product Safety Panel is undertaking a program of independent testing of materials to determine their suitability for inclusion as materials for rectification under Project Remediate.</p>