# Regulatory Impact Statement

## Ensuring building products are safe and suitable p 20-31

**1. Do you support the persons included in the chain of responsibility (clause 8B) being held accountable for non-conforming building products or for non-compliant use of the product? If not, why?**

**2. Are there any other persons that should be added to the chain of responsibility and therefore be held accountable for non-conforming or non-compliant building products? If yes, who and why?**

**3. Do you support the following duties being imposed on persons in the chain of responsibility? If not, why?**

• Ensuring conforming products and compliant use of building products (clause 8E)

• Providing information to others in the chain about a building product (clause 8F)

• Builders and installers to provide information to the owner about the building products they use (clause 8F(4))

• Notifying the Secretary when becoming aware of non-compliance or safety risk of a building products (clause 8H)

• Notify the Secretary of a voluntary recall (clause 8J)

• Comply with any safety notices for warnings, bans or recalls (Part 3)

• Provide safety notices or other information to others in the supply chain, if required (clause 15I and 15J)

• Manufacturers or suppliers may be requested to conduct a product assessment of a building product (clause 38)

**4. Focusing on the duty to provide information about building products, are there any challenges associated with persons in the chain of responsibility satisfying this duty?**

**5. Do you support the following additional powers for the Secretary to manage non-conforming or non-compliant building products? If not, why?**

• Building product warning (clause 15)

• Building product supply ban (clause 15B)

• Building product recall (clause 15F)

**6. The maximum penalty for breaching a building product use or supply ban or a building product recall will be;**

• $220,000 or 2 years imprisonment, or both and $44,000 each day the offence continues; or

• for a body corporate, $1,100,000 and $110,000 each day the offence continues.

**Do you support this maximum penalty? If not, what do you think the penalty should be?**

**7. The reforms for building products will commence 12 months from passing through Parliament and receiving formal assent. Does this timeframe allow enough time for industry to prepare for the new requirements? If not, what timeframe do you propose and why?**

## Enhancing rectification of Strata Buildings p 33-45

**8. Should the strata building bond paid by developers be extended to cover building defects identified in the final inspection carried out 21-24 months after the building has been completed? If not, why?**

**9. Should the developer be given an extra 90 days to rectify defects identified in the final inspection or should the rectification costs come directly out of the building bond?**

**10. Are there any issues with the strata building bond being retained for a longer period while defects are remediated?**

**11. The reforms for extending the building bond will commence 6 months from passing through Parliament and receiving formal assent. Does this timeframe allow enough time for industry to prepare for the new requirements? If not, what timeframe do you propose and why?**

**12. Now that the strata building bond scheme has been in place since 2018, do you think it is reasonable to phase out the transitional period so that it applies to more buildings. If not, why?**

**13. Do you think it is reasonable for developers who commence strata building work after 1 January 2023, regardless of when contracts were entered, to have to comply with the scheme? If not, why?**

**14. It is proposed that all developers will be required to comply with the scheme if a construction certificate has been issued after 1 January 2023, even if they entered into the contract before 1 January 2018. Is there another way we could achieve the same outcome to ensure that all strata developers are required to pay the security bond?**

**15. Do you support the introduction of a formal framework for the approval of APAs to improve their accountability? If not, why?**

**16. The Bill will require an APA to have certain critical elements as part of the scheme to establish the strata inspection panel (i.e. appointments process, disciplinary action and complaints handling policy, records keeping and reporting requirements). Are there any other critical elements that an APA should be required to have to manage the appointment of building inspectors?**

**17. Do you support that a penalty provision should be prescribed for a person that falsely represents themselves as a building inspection? If no, why?**

**18. A maximum of 300 penalty units ($33,000) will apply to this offence. Is this penalty sufficient? If not, what should it be and why?**

**19. Do you think that owners in a strata development should be able to access the NSW Fair Trading dispute resolution service before a building inspector is appointed under the SBBIS? Why or why not?**

## Improving professional standards and competencies p47-48

### Flexible pathways for certifier registration

**20. Do you support the proposal for approved professional bodies with a PSS to undertake competency assessments to determine whether an applicant has the appropriate qualifications, skills, knowledge and experience to hold registration as a certifier? Why or why not?**

**21. What benefits or challenges do you think arise from an approved professional body undertaking competency assessments for registration purposes?**

**22. Do you consider that this pathway should be limited to bodies operating a PSS? Why?**

### Continuing Professional Development p 49-51

**23. Do you support the standardisation of CPD across the building and construction industry? Why or why not?**

**24. Do you support extending CPD requirements to include specialist practitioners? Why or why not?**

**25. How many hours of CPD do you think the average practitioner should be required to do per year? Why?**

**26. Should it be up to industry or the regulator to determine the CPD requirements for individual practitioner types? Please explain your answer.**

**27. Are there any practitioner types that are not currently required to do CPD to be registered that you think should be required to do CPD? If yes, please give examples of the practitioner types you think should be doing CPD.**

### Training as a response to a breach p52-53

**28. Do you agree that education and training notices may be more effective than monetary penalties to fix non-compliant conduct and encourage permanent behaviour change? Why or why not?**

**29. Do you have any concerns about introducing education and training notices as a form of early intervention disciplinary action? If yes, please explain what any challenges may be.**

**30. Do you agree that there should be a bigger focus on early intervention disciplinary action to proactively address non-compliance in the industry? Why or why not?**

**31. Do you think that the proposed additional PIN for non-compliance with an education and training notice will be effective in encouraging offenders to complete the prescribed training (rather than opting to just pay the PIN amount)? If not, please provide any suggestions for how we could better incentivise offenders to complete the prescribed training.**

## Ensuring fair and prompt payment p 54-58

**32. The reforms relating to Security of Payment will commence 6 months from passing through Parliament and receiving formal assent. Does this timeframe allow enough time for industry to prepare for the new requirements? If not, what timeframe do you propose and why?**

**33. It is proposed that when a builder serves a payment claim on a homeowner under the SOP Act, the payment claim must be accompanied by a Homeowners Notice. This proposal is not for all payment claims made in the industry, only payment claims served on a homeowner by a builder. Do you support this proposal? If not, why?**

**34. The RIS identified potential impacts of the reform and how these have been moderated (i.e. narrowing the application and targeted education and awareness strategy). Are there any other challenges that need to be considered for successful implementation?**

**35. Do you agree providing homeowners with more information, including the consequences of not responding to a payment claim, would encourage prompt payment by the homeowner to the head contractor? If not, why? Are there any other strategies that could be considered?**

### Securing greater protection of retention money for projects p 59-64

**36. Currently, the SOP legislation requires a head contractor to hold a subcontractor’s retention money in trust if the head contractor’s construction contract with the principal has a project value of at least $20 million. It is proposed for the project value threshold to be lowered to $10 million to capture more construction contracts (and subcontractors) and protect retention money withheld in the event of an insolvency. Do you support lowering the project value threshold for payment of retention money? If not, why?**

**37. If you do support lowering the project value threshold, do you support lowering it to $10 million? If not, what alternative amount do you support. Why?**

**38. In the RIS it was noted that the costs associated with establishing and maintaining a retention money trust account are offset by the removal of the annual reporting requirements in December 2020 (which were estimated to cost head contractor businesses up to $10,000). Are there any other reasons for not lowering the $20 million threshold?**

### Adjudication review mechanism p64-71

**39. An adjudication review provides an additional opportunity for the original adjudication determination to be reviewed and a new determination issued (without the parties being required to go to court). Do you support the proposal to allow a party to seek a review of an adjudication determination to be heard by another adjudicator? Why or why not?**

**40. Do you think there should be any limitation on which matters can be reviewed by another adjudicator (i.e. limited by monetary amount or type of matter)? Why or why not?**

**41. Do you think there should be different eligibility criteria (i.e., qualifications, experience or additional training) for a review adjudicator? Why or why not?**

### Adjudicator powers p72-75

**42. Currently, an adjudicator has powers to request further submissions, call a conference and carry out inspections. It is proposed to additionally allow an adjudicator to arrange for the testing of a matter and engage an appropriately qualified person to investigate and report on any matter (unless both the parties to the adjudication object). Do you support the additional powers recommended by this proposal? If not, why?**

**43. Do you think that the benefit of the additional powers, such as a better-informed determination, outweighs any concerns that the proposal may lengthen the time for resolving disputes? If not, why?**

**44. Does the legislation need to address who is required to pay for any testing or the engagement of an expert to investigate and report on certain matters? Or should this form part of the fees of the adjudicator to be shared by the parties in such proportions determined by the adjudicator?**

## Robust regulatory intervention p76-89

### Strengthening the role of certifiers in responding to serious defects

**45. Do you support the expansion of certifier powers to hand out WDNs where they identify a “serious defect”? Why or why not?**

### Issuing BWROs for products failing to comply with the NCC (not limited to the BCA)

**46. Do you agree that BWROs should be able to be issued where non-compliance with the PCA is identified? Why or why not?**

**47. Do you think the expansion of the application of BWROs will improve the way in which prefabricated products are regulated? Why or why not?**

### No privilege against self-incrimination for body corporates

**48. Do you support that information gathered by the Department should be able to be used as evidence against a corporation? If no, why not?**

**49. This reform will also apply to individuals in their capacity as a representative of a corporation such as a director of the company. Should the information collected from the representative be able to be used against the corporation in criminal proceedings? If not, why?**

### Promoting accountability to deter intentional phoenix activity

**50. Do you support the proposal to place a duty on a registered practitioner to take reasonable steps to ensure that persons they deal with aren’t involved in intentional phoenix activity? Why or why not?**

**51. Do you agree with the proposed definition of “intentional phoenix activity”? Why or why not? Please make any suggestions for change.**

**52. Do you support that a failure to comply with the duty is addressed through disciplinary action rather than being an offence? Why or why not?**

**53. Would you support a mandatory reporting requirement if a person reasonably suspected that a director of a company has, will or is engaging in intentional phoenix activity?**

### Recovering costs to maintain a strong regulatory approach and increase accountability

**54. Do you support the proposal to provide the Secretary with the power to give a written investigation cost notice requiring a person to pay some or all costs associated with an investigation? Why or why not?**

**55. Do you believe that the limitation to the power for the Secretary to issue an investigation cost notice is sufficient? Why or why not?**

**56. Is the definition of “exceptional costs and expenses” reasonable?**

**57. Are the appeal provisions reasonable?**

# Building and Construction Legislation Amendment Bill 2022

*Please use this section to provide feedback on the proposed Bill. Headings have been included to assist you in providing feedback on particular topics covered in the Bill.*

## Schedule 1 Amendments relating to building product safety

## Schedule 2 Amendment of Strata Schemes Management Act 2015 No 50

## Schedule 3 Amendment of Building and Construction Industry Security of Payment Act 1999 No 46

## Schedule 4 Amendment of Home Building Act 1989 No 147

## Schedule 5 Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

## Schedule 6 Amendment of Building and Development Certifiers Act 2018 No 63

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## Schedule 7 Amendment of Environmental Planning and Assessment Act 1979 No 203

## Schedule 8 Amendments relating to corporate self-incrimination

## Schedule 9 Amendments relating to training or education as alternative to disciplinary action

## Schedule 10 Amendments relating to intentional phoenix activity

## Schedule 11 Amendments relating to continuing professional development

## Schedule 12 Amendments relating to investigation cost recovery

# Building and Construction Legislation Amendment Regulation 2022

*Please use this section to provide feedback on the proposed Regulation. Headings have been included to assist you in providing feedback on particular topics covered in the Regulation.*