

# Regulatory Impact Statement

Building Bill 2022

Part 1 – Who can do the work

August 2022



## **Published by**

Better Regulation Division

Department of Customer Service

[www.customerservice.nsw.gov.au](http://www.customerservice.nsw.gov.au)

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## Commissioner's Message

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I am proud to present this Regulatory Impact Statement and proposed Building Bill 2022.

The NSW Government's Construct NSW transformation strategy is working to restore public confidence in the building and construction sector and create a customer-facing sector by 2025.

The strategy, and appointment of the NSW Building Commissioner, respond to repeated failures in the design, construction and certification of buildings that had led to substandard building work.

A central theme of Construct NSW is the making of a 'trustworthy buildings' – buildings that are fit for purpose, sustainable 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 has implemented significant reforms under Construct NSW, focused on creating clear lines of accountability and significant consequences when practitioners deliver substandard work. We have made significant progress to achieving these outcomes and are gaining traction with industry professionals who are now firmly part of Construct NSW's vision.

To ensure government, industry and consumers maintain momentum in restoring confidence to the sector, this Regulatory Impact Statement and the proposed Building Bill 2022 propose the next phase of reforms. This next phase of Construct NSW will focus on strengthening consumer protections and enforcement powers; ensuring trade practitioners are suitably skilled to carry out their work; making all persons are held accountable for the supply of safe building products and building work; and ensuring fair and prompt payment.

Recent building incidents have emphasised the devastating impacts that building defects have on building owners and occupants. The Department of Customer Service (**the Department**) is committed to supporting the building and construction sector and providing NSW with a built environment that puts safety and quality at the top of the list.

I encourage you to take part in this consultation process and have your say on the proposed reforms that will assist in strengthening NSW building laws.

**Natasha Mann**

**Commissioner for Fair Trading**

# Glossary

The following is a list of terms and acronyms used in this document.

Term	Description
<b>2019 Government Response</b>	NSW Government Response to the <i>Building Confidence Report</i> released on 19 February 2019.
<b>ABCB</b>	Australian Building Codes Board – a Council of Australian Government standards writing body that is responsible for the development of the <b>National Construction Code</b> .
<b>ACL</b>	<i>Australian Consumer Law</i> .
<b>BCA</b>	Building Code of Australia – Volumes One and Two of the National Construction Code.
<b>BDC Act</b>	<i>Building and Development Certifiers Act 2018</i> .
<b>Building Confidence Report</b>	' <i>Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i> ' report by Professor Peter Shergold AC and Ms Bronwyn Weir, commissioned by the Building Ministers' Forum in 2017.
<b>Building work</b>	<p><i>Building work</i> means work involved in, or involved in coordinating or supervising work involved in, one or more of the following:</p> <ul style="list-style-type: none"> <li>• the construction of a building</li> <li>• the making of alterations or additions to a building</li> <li>• the repair, maintenance, renovation or protective treatment of a building</li> <li>• work prescribed by the regulations.</li> </ul> <p>The regulations may exclude work from being building work.</p>
<b>CIE</b>	Centre for International Economics.
<b>Class 2 building or building with a Class 2 part</b>	<p>Class 2 buildings are apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. Class 2 buildings may also be single storey attached dwellings where there is a common space below. For example, two dwellings above a common basement or carpark.</p> <p>A building with a Class 2 part is a building of multiple classifications that has a Class 2 as well as another Class, making it a "mixed class" (for example, a Class 2 with a Class 5 which are office buildings used for professional or commercial purposes or a Class 6, which are typically shops, restaurants and cafés).</p>
<b>Commercial building work</b>	<i>Commercial building work</i> is used to identify buildings and building work that is outside the current focus on the home in the HB Act. It broadly includes Class 3 to 9 buildings under the National Construction Code.
<b>DBP Act</b>	<i>Design and Building Practitioners Act 2020</i> .

Term	Description
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979.</i>
<b>EP&amp;A Reg</b>	Environmental Planning & Assessment Regulation 2000.
<b>HBA</b>	The <i>Home Building Act 1989</i> .
<b>Home</b>	<p><i>Home</i> means a building designed, constructed or adapted for use as a residence, but does not include the following:</p> <ul style="list-style-type: none"> <li>• premises not intended to be used for permanent habitation</li> <li>• a hostel or backpackers' accommodation</li> <li>• a hospital or nursing home</li> <li>• a correctional complex, including a correctional centre</li> <li>• hotel or motel accommodation or serviced apartments</li> <li>• a registered club or a residence within premises licensed under the <i>Liquor Act 2007</i></li> <li>• a residence associated with, or provided by, a hospital or educational establishment</li> <li>• a building or premises excluded by the regulations.</li> </ul> <p>In this definition a nursing home has the same meaning as in the <i>Public Health Act 2010</i>.</p>
<b>Home building compensation scheme</b>	Insurance under the Home Building Compensation Scheme provides a safety net for homeowners, if a licensed business that worked on their home cannot complete work or honour statutory warranties due to insolvency, death, disappearance, or licence suspension for failing to comply with a court or tribunal order to pay compensation to the homeowner.
<b>Home building work</b>	<i>Home building work</i> is regulated work carried out in, on, or for a home.
<b>NCAT</b>	NSW Civil and Administrative Tribunal.
<b>NCC</b>	<p><i>National Construction Code</i> – is published in three volumes. The Building Code of Australia is Volumes One and Two and the Plumbing Code of Australia is Volume Three.</p> <p>It is a performance-based code containing all performance requirements for the construction of buildings, a set of technical design and construction provisions for buildings. As a performance-based code, it sets the minimum required level for the safety, health, amenity, accessibility and sustainability of certain buildings.</p>
<b>NRF</b>	Draft 'National Registration Framework for Building Practitioners' discussion paper released by the Australian Building Codes Board on 26 June 2020.
<b>OBC</b>	Office of the NSW Building Commissioner sitting within the Department of Customer Service.
<b>OC</b>	Occupation Certificate – authorises the occupation and use of a new building or building section.

Term	Description
<b>Owner-builder work</b>	<p>Owner-builder work means home building work that is one or more of the following:</p> <ul style="list-style-type: none"> <li>• the carrying out of exempt building work prescribed by the regulations</li> <li>• the engagement of a licence holder to carry out residential building work</li> <li>• the coordination of the supply and installation of a kit home or pre-fabricated buildings, and</li> <li>• relating to the erection of a dwelling house or secondary dwelling, but only if: <ul style="list-style-type: none"> <li>i. development consent is required to carry out the work, or</li> <li>ii. the work may be carried out as complying development.</li> </ul> </li> </ul>
<b>Product Safety Act</b>	<i>Building Products (Safety) Act 2017.</i>
<b>PSS</b>	Professional Standards Scheme – a scheme approved by the Professional Standards Council within the meaning of the <i>Professional Standards Act 1994</i> .
<b>RAB Act</b>	<i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.</i>
<b>Regulated work</b>	<p><i>Regulated work</i> includes:</p> <ul style="list-style-type: none"> <li>• building work</li> <li>• fire safety work</li> <li>• general building design work</li> <li>• professional engineering work</li> <li>• specialist work</li> <li>• other work prescribed by the regulations.</li> </ul> <p>Regulated work requires a licence under the Building Bill.</p>
<b>RIS</b>	Regulatory Impact Statement.
<b>RLLC Act</b>	<i>Residential (Land Lease) Communities Act 2013.</i>
<b>Serious defect</b>	<p>Serious defect, in relation to a building, means—</p> <p>(a) a defect in a building element that is attributable to a failure to comply with the governing requirements or the performance requirements of the National Construction Code as in force at the time the building work was carried out, the relevant standards or the relevant approved plans, or</p> <p>(b) a defect in a building product or building element that-</p> <ul style="list-style-type: none"> <li>(i) is attributable to defective design, defective or faulty workmanship or defective materials, and</li> <li>(ii) causes or is likely to cause— <ul style="list-style-type: none"> <li>(A) the inability to inhabit or use the building, for its intended purpose, or</li> <li>(B) the destruction of the building or any part of the building, or</li> </ul> </li> </ul>

Term	Description
	<p>(C) a threat of collapse of the building or any part of the building, or</p> <p>(c) a defect of a kind that is prescribed by the regulations as a serious defect, or</p> <p>(d) the use of a building product in the building, if—</p> <p>(i) the use is in contravention of the <i>Building Products (Safety) Act 2017</i>, or</p> <p>(ii) the product or use does not comply with the requirements of the National Construction Code, or</p> <p>(iii) the product or use does not comply with other standards or requirements prescribed by the regulations for the purposes of this definition.</p>
<b>SIRA</b>	NSW State Insurance Regulatory Authority.
<b>Specialist work</b>	<p>Means the following, whether or not done in connection with building work:</p> <ul style="list-style-type: none"> <li>• electrical wiring work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></li> <li>• gasfitting work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></li> <li>• mechanical services and medical gas work</li> <li>• medical gasfitting work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></li> <li>• medical gas technician work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></li> <li>• plumbing and drainage work</li> <li>• refrigeration work or air-conditioning work prescribed by the regulations</li> <li>• waterproofing work</li> <li>• work prescribed by the regulations.</li> </ul>
<b>The BCE Bill</b>	The Building Compliance and Enforcement Bill.
<b>The Bill</b>	The Building Bill.
<b>The Department</b>	The Department of Customer Service.
<b>The Regulator</b>	NSW Fair Trading / Office of the NSW Building Commissioner.
<b>The Secretary</b>	<i>Secretary</i> means the Secretary of the Department of Customer Service.

## Executive summary

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Responses to recent building incidents have driven reforms under the Construct NSW transformation strategy to improve transparency, accountability, and the quality of work in the NSW building and construction industry. The reforms have highlighted the costs of substandard work, which are felt by everyday homeowners and building owners who rely upon building practitioners to produce compliant work.

Building failures across all building types increase costs to building owners, other practitioners, financiers, and insurers to remediate defects and are an increased risk to safety for people left with non-compliant building work. These failures tarnish the industry even for those who produce quality work and negatively impact overall confidence in the building and construction industry.

The Department has implemented significant reforms under Construct NSW, focused on creating clear lines of accountability and significant consequences when practitioners deliver substandard work, including the *Design and Building Practitioners Act 2020 (DBP Act)*, and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*. The focus of these reforms has initially been on residential apartment buildings.

The Building Bill 2022 (**the Bill**) is part of the next stage of Construct NSW and is intended to ensure best practice regulation of all building work, complementing and supporting the broader building framework.

Since August 2021, the Department has held five industry roundtables, two focus groups and two written submission processes to support the development of the Bill. A broad cross-section of building and construction organisations across the industry have been represented. Direct consultation was also held with individual stakeholders outside of the roundtables to deep-dive into their feedback on niche subject matter issues.

The purpose of the Bill is to create end-to-end accountability for building work in NSW. This Bill seeks to consolidate and regulate several key elements of the building and construction industry. These include:

- what building work is intended to be regulated and who should be licensed to perform it
- the approval process for building work
- fire safety requirements for building work, and
- key consumer protections that have been preserved for residential building work.

The Bill also provides an opportunity to extend some of the key features of building regulation in NSW to all building work, including licensing tradespeople, building designers and professional engineers on all buildings.

Key features of the Bill include:

- expanding licensing requirements to cover trades operating in the commercial building sector
- expanding the definition of ‘developer’ to better cover those who should be responsible for contractual and statutory warranty responsibilities, obligations under the home building compensation scheme, and ensuring a definition that is consistent and fit for purpose for commercial developers
- clarify contract processes for residential building work around variations and payment processes. This includes prescribing when payments can be claimed in relation to major work contracts
- restricting the work an unlicensed person can do under the owner-builder permit system,
- revising the statutory warranty scheme and the definition of ‘major defect’ for residential building work
- enhancing the dispute resolution model for residential building work to provide a more time and cost-effective way to resolve disputes between licence holders and residential customers
- making it a requirement for all licence holders to supervise the work of unlicensed people in accordance with gazetted practice standards
- bringing all certificates that come after development consent through the planning system into the building system
- consolidating all fire safety requirements for building work, from the design stage, through installation and certification and to maintenance and annual audits, under a single Bill to improve fire safety, and
- introducing a new regulatory scheme for pre-fabricated and manufactured housing.

The Bill aims to reshape the consumer and industry interaction with each other and with the Regulator. The customer journey map below illustrates several pathways specialist and industry participants may follow under the proposed reforms. Please refer to [Appendix 4](#) for a text description of the customer journey map.

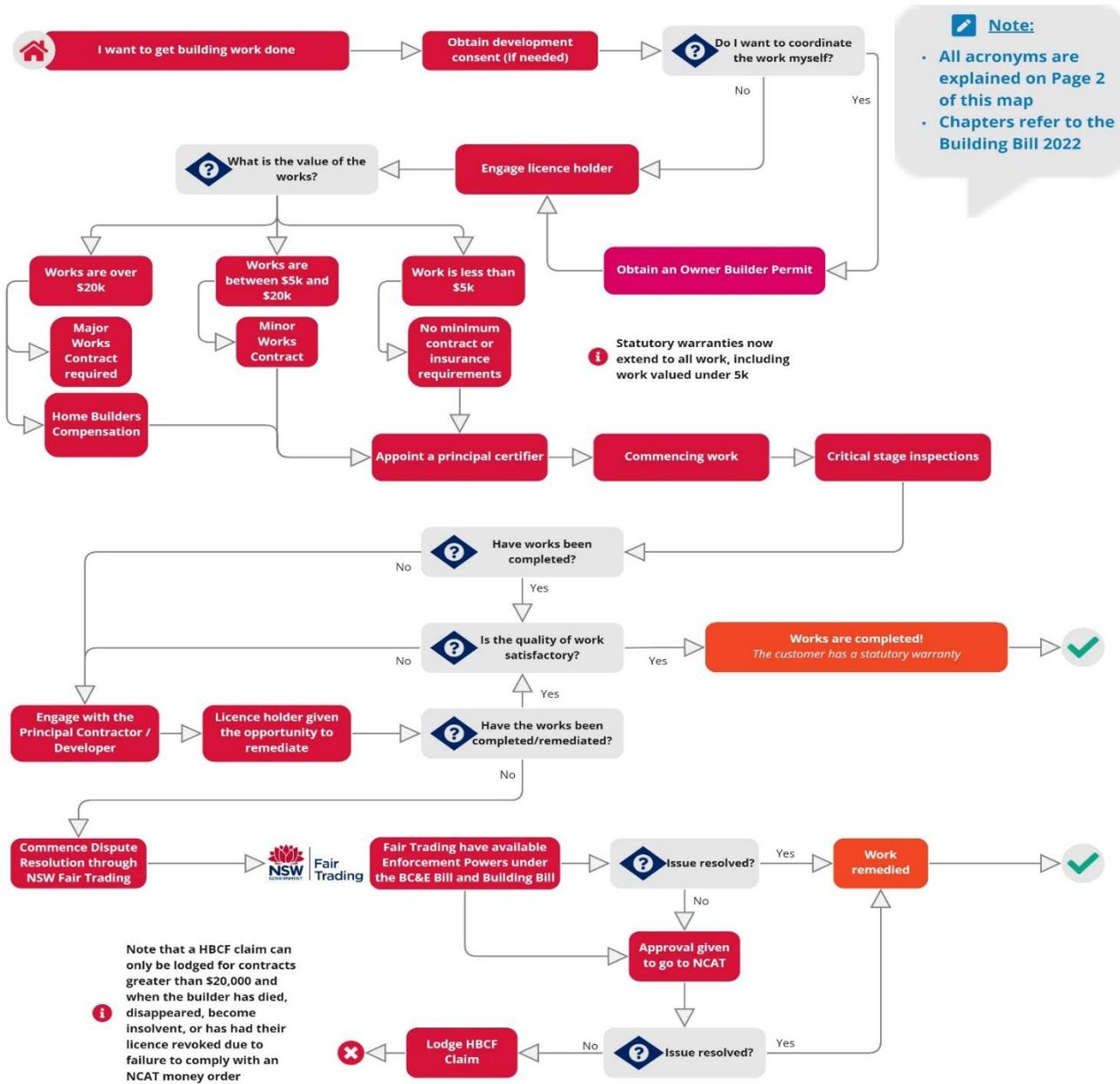
# Home Building in NSW: Customer Journeys



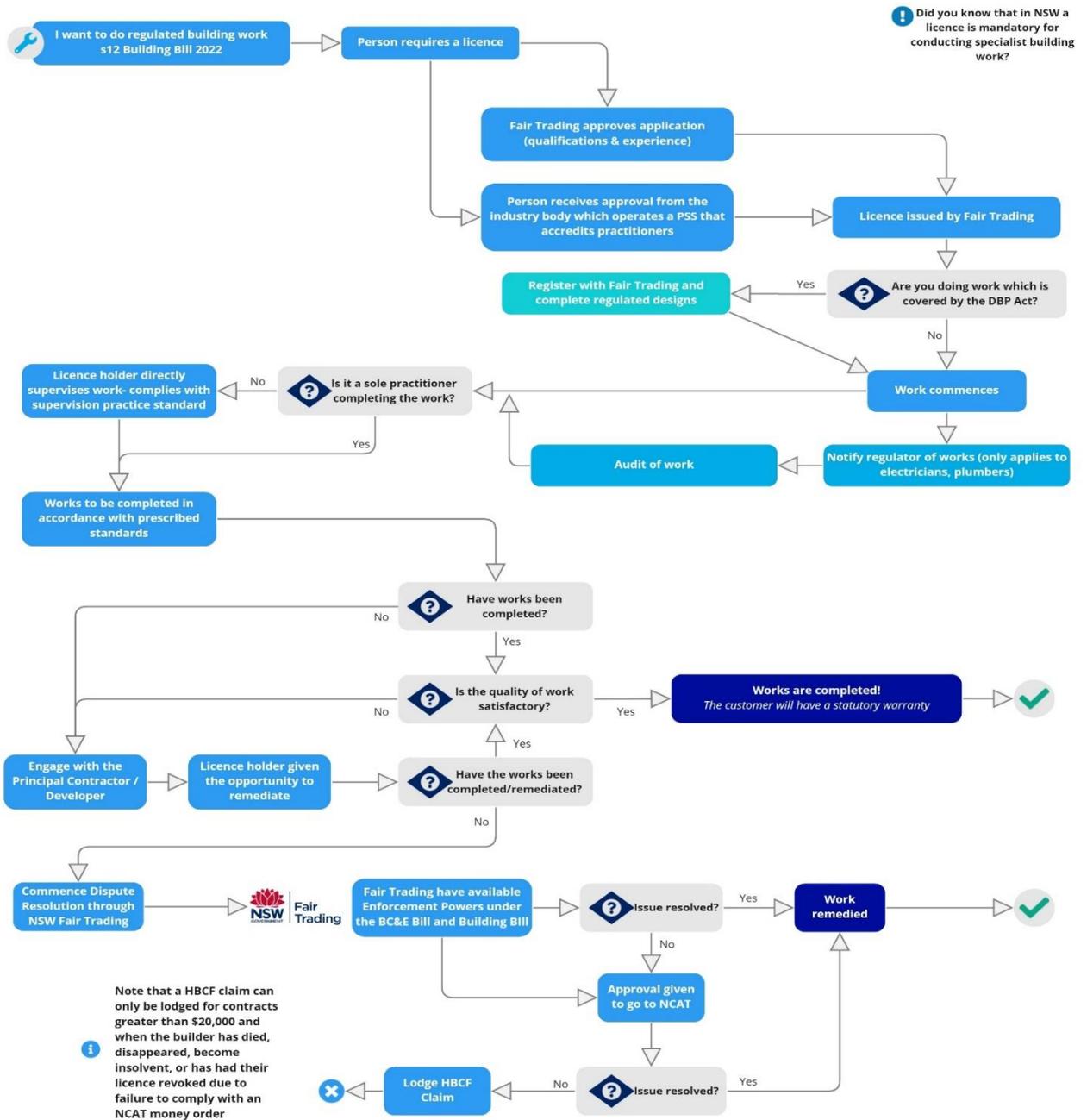
What do I want to do?

- I want to get building work done. I am a customer.
- I want to do regulated work.

## Residential customer wanting to get building work done



## I want to do regulated work



### Acronyms & References to other Legislation

- **BCE Bill** - Building Compliance and Enforcement Bill 2022
- **EP&A** - Environmental Protection and Assessment Act 1979
- **CDC** - Complying Development Certificate
- **HBCF** - Home Building Compensation Fund
- **PSS** - Professional Standards Scheme
- **NCAT** - NSW Civil and Administrative Tribunal

The Regulatory Impact Statement (**RIS**) has been prepared in three volumes as part of the making of the Bill to:

- identify and assess direct and indirect costs and benefits, to ensure that the Bill is necessary, appropriate and proportionate to risk
- demonstrate, when compared to alternative options, that the Bill provides the greatest net benefit or the least net cost to the community, and
- demonstrates that any regulatory burden or impact on government, industry or the community is justified.

The RIS sets out the rationale and objectives of the Bill and the various options for achieving the objectives. It also provides a discussion on important aspects of the Bill and seeks feedback from stakeholders and the community. This RIS should be read in conjunction with the Bill.

There will be a twelve-week public consultation period on the Bill.

Submissions are invited on any of the matters raised in the discussion in the RIS or anything else contained in the Bill. All submissions will be considered and evaluated, and any necessary changes will be made to address the issues identified before the Bill is finalised. The process for submitting comments is explained in the following section.

The RIS has been divided into 3 parts for ease of access. The following table provides a quick guide to the RIS outlined in order of the Bill:

Chapter in the Bill	Title and Description	Part/Chapter in the RIS
1	<b>Preliminary</b> This Chapter sets out the objects of the Bill, some key definitions, and functions of the Secretary	<b>Key Objectives of the Bill</b> repeated in all parts – Chapter 1
2	<b>Licensing for regulated work</b> This Chapter sets out the proposed licensing and supervision scheme for regulated work and requirements for licence holders.	<ul style="list-style-type: none"> <li>• <b>Review of building licensing</b> Part 1 (pages 21-45)</li> <li>• <b>Specialist occupations</b> Part 1 (pages 46-64)</li> </ul>
3	<b>Home Building Work</b> This Chapter includes provisions for contract requirements, statutory warranties, and owner-builder work.	<ul style="list-style-type: none"> <li>• <b>Owner-builder permit scheme</b> Part 1 (pages 73-78)</li> <li>• <b>Home building work in the Bill</b> Part 3 (pages 16-27)</li> <li>• <b>What happens when something goes wrong?</b> Part 3 (pages 28-49)</li> </ul>
4	<b>Reviewable decisions and resolving disputes</b> This Chapter sets out the proposed dispute resolution scheme and the powers to issue home building work directions	<b>Dispute procedures</b> Part 3 (pages 43-49)
5	<b>Home building compensation scheme</b>	<b>Home building compensation scheme</b> Part 3 (page 50)
6	<b>Certification of building work, subdivision work and specialist work (EPA Pt 6)</b> This Chapter includes provisions for certification of building work, subdivision work and specialist work (under the Environmental Planning and Assessment Act 1979 (EP&A	<ul style="list-style-type: none"> <li>• <b>Quality and build standards</b> Part 2 (pages 16-23)</li> <li>• <b>Building approvals and duty of care</b> Part 2 (pages 36-39)</li> </ul>

	Act), Part 6 (including the DBP Act and the EP&A Act duty of care))	
7	<b>Miscellaneous</b>	<b>N/A.</b>
Sch 1	<b>Terms to be included in certain contracts</b>	<b>Home building work in the Bill</b> Part 3 (pages 21-27)
Sch 2	<b>Savings, transitional and other provisions</b>	<b>How do we transition industry into a new scheme?</b> Part 1 and 3
Sch 3	<b>Dictionary</b>	<b>Throughout</b>
Sch 4	<b>Amendment of Acts and other instruments</b>	<b>N/A.</b>

# Consultation process

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## Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the Bill, whether or not it is addressed in this RIS. You may wish to comment on only one or two matters of particular interest, or all of the issues raised.

To assist you in making a submission, an optional online survey is available on the Have Your Say website at <https://www.nsw.gov.au/have-your-say>.

However, this survey is not compulsory, and submissions can be in any written format.

An electronic form has been developed to assist you in making a submission on the RIS and the Bill. The electronic form is available on the Have Your Say website and is the Department's preferred method of receiving submissions. Alternatively, you can email your submission to the address below. The Department requests that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive).

More information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email to: [hbareview@customerservice.nsw.gov.au](mailto:hbareview@customerservice.nsw.gov.au)

Mail to: Policy and Strategy, Better Regulation Division

Locked Bag 2906

LISAROW NSW 2252

## The closing date for submissions is 25 November 2022.

We invite you to read this paper and provide comments. You can download the RIS and the Bill from <https://www.nsw.gov.au/have-your-say>. Printed copies can be requested from NSW Fair Trading by phone on 13 32 20.

## Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be

circumstances where the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

### **Identified stakeholders**

The RIS has been provided directly to some stakeholder organisations.

### **Evaluation of submissions**

All submissions will be considered and assessed. The Bill will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Bill is finalised.

### **Presentation of Bill in Parliament**

After the Minister for Fair Trading has finalised the Bill, it will be presented to, and considered by, the NSW Parliament in 2023.

Once passed by both Houses, the Bill will be forwarded to the Governor for assent and published on the official NSW Government website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

# 1. Key objectives of the Bill

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## Objective

People who engage builders, tradespersons, designers and engineers have expectations that those practitioners are competent, their work is safe and compliant, and that building laws exist to support them appropriately when needed.

The purpose of the Bill is to establish a future focused regulatory framework for all building work in NSW while retaining and building on effective regulatory features of the HB Act that have been the cornerstone of the residential construction industry for decades.

The Bill is part of the next stage of Construct NSW and is intended to ensure best practice regulation of building work, complementing and supporting the broader building framework. To achieve this, the Bill outlines the licensing requirements, including who must be licensed, how they are licensed and what it means to be licensed. It includes standards that must be upheld by licence holders, including integrity and building standards.

The Bill also carries over and maintains certain requirements, including contracts, statutory warranties, the home building compensation scheme, what it means to be an owner-builder and how disputes about home building work can be resolved.

A significant change in the Bill also involves a transfer of building and subdivision certification under the current of Part 6 of the Environmental Planning and Assessment Act 1979 (**EP&A Act**), signalling a stronger link between compliance, licensing, building standards and better performance and outcomes.

Efficiencies have also been developed where possible, recognising the contribution the *Plumbing and Drainage Act 2011* (**P&D Act**) inspection framework provides to specialist work. The P&D Act is proposed to be repealed and the current framework expanded in the Bill for certain additional specialist work.

Finally, as the Bill is proposed to create the overarching framework for compliant and safe buildings in NSW, the duty of care provisions from the DBP Act and EP&A Act have been transferred over and consolidated.

The objects outlined in the Bill to achieve compliant and safe buildings are to:

- ensure competent people use compliant products and processes to create safe, resilient and trustworthy buildings
- establish a customer-focused regulatory framework that protects owners, tenants and other businesses
- implement end-to-end accountability for building work in NSW, and

- enable the NSW building regulator and industry participants to adapt to new and emerging trends in construction.

## Questions

1. **Do the identified objectives support both the industry and regulator to be future focused, responsible and support all people who interact with it to achieve a fair outcome?**
2. **After reviewing the Bill do you think that it supports these intended objectives?**

## Relationship to other Bills

This Bill will, subject to public consultation and support, incorporate reforms proposed in the Building and Construction Legislation Amendment Bill 2022 (**Amendment Bill**). The regulatory impacts of the reforms proposed in the Amendment Bill are addressed in a separate Regulatory Impact Statement (**Amendment Bill RIS**) which are not repeated in this RIS. The Building Compliance and Enforcement Bill 2022 (**BCE Bill**) is part of the Construct NSW reform agenda and complements this Bill. As outlined in that RIS, the compliance and enforcement powers for all building and construction legislation are proposed to be consolidated in a single Act. Further information about those reforms is included in a separate Regulatory Impact Statement for the BCE Bill (**BCE RIS**).

Key features of Amendment Bill relevant to the Bill include:

- standardise the way that CPD requirements are prescribed to make it easier for CPD units to be carried over between schemes under the DBP Act, *Building and Development Certifiers Act 2018* and licence holders under this Bill.
- Placing a duty on a registered practitioner to take reasonable steps to ensure that persons with whom the registered practitioner enters or maintains a business association are not, or have not been, involved in intentional phoenixing activity in an industry relating to building and construction.

## 2. Building work and its application in the Bill

Under the HB Act, a person is required to comply with licensing, contracting, insurance building work standards if doing ‘residential building work’. The Bill proposes to regulate all building work, which is defined in clause 5 of the Bill. It very broadly outlines the types of both physical and intellectual work that should be licensed and includes:

- work involved in, coordinating, or supervising the construction of a building, as understood in the National Construction Code (**NCC**), including alterations, additions, repairs, maintenance, renovation or protective treatment of a building,
- anything else prescribed by the regulations.

Additionally, the Bill proposes to include a broad set of other industries which are collectively referred to in clause 9 as ‘regulated work’. If a person or entity would like to carry out any type of regulated work, they will need to undergo the process outlined in the Bill to obtain a licence. The industries are illustrated in the table below:

Type of Work	Current licensing requirements	Proposed new requirements
Building work	Licence only needed if carrying out residential building work (subject to exemptions)	All building work requires a licence (subject to exemptions)
Fire safety work	Licence needed as: <ul style="list-style-type: none"> <li>• an accredited practitioner (fire safety) (under the Fire Practitioner Accreditation Scheme under the BDC Act.</li> <li>• a registered certifier (fire safety-related classes under the BDC Act)</li> <li>• a registered design practitioner (fire safety related classes under the DBP Act)</li> </ul>	Fire Safety Engineers and Fire Safety Practitioners under a Fire Practitioner Accreditation Scheme will hold a licence
General building design work	Licence only needed as: <ul style="list-style-type: none"> <li>• a registered architect (under the <i>Architects Act 2003 (the Architects Act)</i>)</li> <li>• a registered design practitioner (architect, building design and</li> </ul>	Licence holder under the Bill.  Architects will continue to be registered under the Architects Act.  Design Practitioners will still be registered under the DBP Act for declaration functions

Type of Work	Current licensing requirements	Proposed new requirements
	engineering design classes under the DBP Act)	
Professional engineering work	Registered under the DBP Act for work on a class 2 building (typically multi-unit residential buildings where people live above and below each other)	Licence holder under the Bill for all building work
Specialist work	Always requires a licence	No change except waterproofing now included as specialist work

Table 1: Work captured as regulated work

Chapter 6 of the Bill also contains a definition of ‘building work’ to outline the scope of work that a Certifier will inspect. It is a narrower definition than the other building work definition used to outline what work requires a licence. This definition has been carried over from the EP&A Act in its current form. Further information about these changes is contained in Part 2, Chapter 3.

### Questions

3. Does the definition of building work in Chapter 2 of the Bill capture most types of work performed in the building and construction industry?
4. What may have been unintentionally excluded or included in this definition?
5. Does the definition of regulated work capture the people who work in the industry?
6. What may have been unintentionally excluded or included in this definition?

### A simplified system of licensing

Currently, the HB Act requires people, corporations and partnerships who work in the residential sector to be licensed if they carry out work which is worth more than \$5,000. Other laws, such as the *Gas and Electricity (Consumer Safety) Act 2017 (G&E Act)* and the P&D Act, work with the HB Act to create a licensing framework for people who do specialist work. The BDC Act and the Architects Act create standalone registration frameworks for building professionals across all buildings. The DBP Act also creates standalone registration for Professional Engineers as well as licensing for certain practitioners who make declarations about their work and its compliance with the Building Code of Australia (BCA) for class 2 buildings.

The Bill proposes to incorporate the existing Professional Engineer registration scheme from the DBP Act and accredited fire safety practitioner scheme from the BDC Act and expand the existing trade licence categories to those working in the commercial sector. Combining regulation of both the residential and commercial sectors would allow a consistent approach across the construction industry of what is built, what standards it should be built to, and who should be building it.

To make this change, the existing HB Act licensing framework needs to be simplified to make it fit for purpose and future proof the regulation of the building and construction industry in NSW.

The current system of licensing is complex and has many different types of licences or permits. The main licence issued is a contractor licence. Others include a supervisor certificate, endorsed supervisor certificate, tradesperson certificate and an owner-builder permit. Examples of the current licensing system and how the categories operate are contained in the table below:

Licence Category	Who can do the work	Work permitted
<b>Contractor Licence</b>	<ul style="list-style-type: none"> <li>• Holder of the licence</li> <li>• Member or a partnership, or</li> <li>• Officer of a corporation that is, the holder of a contractor licence authorising its holder to contract to do that work,</li> <li>• Employee of a holder of contractor licence</li> </ul>	<ul style="list-style-type: none"> <li>• Residential Building Work</li> <li>• Specialist Work</li> </ul>
<b>Endorsed Contractor Licence</b>	<ul style="list-style-type: none"> <li>• Holder of the licence - authorising the holder to do the work</li> <li>• Individual under the supervision and subject to the direction of a holder of the endorsed contractor licence</li> </ul>	<ul style="list-style-type: none"> <li>• Doing or supervising: <ul style="list-style-type: none"> <li>○ Unqualified Residential Building Work</li> <li>○ Unqualified specialist work</li> </ul> </li> </ul>
<b>Owner builder permit</b>	<ul style="list-style-type: none"> <li>• Holder of the permit - authorising the holder to do the work</li> <li>• Employee of permit holder</li> <li>• Unable to contract to do work</li> </ul>	<ul style="list-style-type: none"> <li>• Residential Building Work</li> <li>• Unqualified residential building work</li> </ul>
<b>Supervisor Certificate</b>	<ul style="list-style-type: none"> <li>• Holder of the certificate</li> <li>• Individual under the supervision and subject to the direction of a holder of the supervisor certificate</li> <li>• Unable to contract to do work</li> </ul>	<ul style="list-style-type: none"> <li>• Doing or supervising: <ul style="list-style-type: none"> <li>○ Unqualified Residential Building Work</li> <li>○ Unqualified specialist work</li> </ul> </li> </ul>
<b>Tradesperson Certificate</b>	<ul style="list-style-type: none"> <li>• Holder of the certificate</li> <li>• Unable to contact to do work</li> </ul>	<ul style="list-style-type: none"> <li>• Unqualified Residential Building Work</li> <li>• Refrigeration and air-conditioning work</li> <li>• Unqualified specialist work such as electric, medical gas and plumbing under supervision</li> </ul>
<b>Unlicensed individual</b>	<ul style="list-style-type: none"> <li>• An individual under the supervision and direction of a qualified supervisor- i.e. the</li> </ul>	<ul style="list-style-type: none"> <li>• Unqualified residential building work (under supervision)</li> </ul>

Licence Category	Who can do the work	Work permitted
	<ul style="list-style-type: none"> <li>holder of a supervisor certificate or endorsed contractor licence</li> <li>Unable to contract to do work</li> </ul>	<ul style="list-style-type: none"> <li>Unqualified specialist work (under supervision)</li> </ul>
<b>Apprentice/ Trainee</b>	<ul style="list-style-type: none"> <li>An individual under the supervision and direction of a qualified supervisor- i.e. the holder of a supervisor certificate or endorsed contractor licence</li> <li>Unable to contract to do work</li> </ul>	<ul style="list-style-type: none"> <li>Unqualified mechanical services and medical gas work (under supervision)</li> <li>Unqualified medical gas technician work</li> </ul>

Table 2: Existing HB Act licence categories

The proposed change to licensing in the Bill is a shift from a 'licence to contract' to a 'licence to do the work'. The regulatory focus when issuing and maintaining a licence will be on assessing the skills necessary to perform work and the outcomes produced. This shift is necessary to create quality buildings that are reliable, safe and fit for long-term use. This refocus sits alongside the suite of powers that have recently commenced through implementation of the Construct NSW transformation strategy, restoring confidence in the residential building market by enhancing and improving products produced.

### What are the regulatory impacts of reducing licence categories?

A single licence will replace the:

- contractor licence
- endorsed contractor licence
- supervisor certificate and
- tradesperson certificate.

People who are transitioning in from overseas or from another jurisdiction who may not have the right qualifications may still obtain a provisional licence. A provisional licence will usually be conditional on a person to gaining certain experience and skills or working under certain supervisory standards. This is unchanged from the current arrangements. There is also no change for unlicensed people, apprentices or trainees who can continue to work under supervision. Further information about supervision and requirements for licence holders is contained in the next chapter.

This change is expected to reduce regulatory impacts for people in determining which licence type is needed for the role they perform. A simplified system improves the customer experience and reduces time needed to find information and make decisions about the different licence types. Currently, fees for each licence type vary, however these are likely to change as a result of rationalising the different categories into a single type. People who opt to obtain a supervisor or a

tradesperson certificate will likely experience fee increases while people who obtain contractor licences will likely experience reduced fees. Overall, the change is expected to be beneficial to all licence holders.

A single licence type is the underpinning framework for the different occupations intended for inclusion in the Bill and supporting Regulations. The next chapter includes the review to assess if licensing remains the correct regulatory approach and outlines the details of each licensing proposal and its likely regulatory impacts.

### 3. Review of building licensing

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#### Does the building and construction industry need licensing?

The purpose of creating a licensing framework is to allow a person or entity to participate in a market when there is clearly a need for government intervention and the intervention will be efficiently administered.<sup>1</sup>

Existing licensing frameworks under building legislation have been reviewed to determine if it remains appropriate to require certain people to be licensed to do building work and whether there are opportunities to redesign the framework to be more efficient. A preliminary outcome of the licensing review discussed in this RIS is to extend occupational licensing across the building and construction sector.

NSW Fair Trading has been the custodian of consumer protection in the residential building market for decades, helping people work through non-compliant construction issues under the HB Act. However, the current building licensing framework in NSW leaves an unequal distribution of risk. For example, specialist trade workers, architects, certifiers, and fire safety practitioners all have responsibilities for commercial building work, but builders and non-specialist trade workers, building designers and professional engineers do not.

The building industry also includes many people that work across the residential and commercial building space who are subject to different requirements depending on the work they are doing. People who have been refused a licence in the residential building market are able to freely operate in the commercial sector.

The previous regulatory focus has been appropriately directed toward improving outcomes for the 'homeowner' consumer. However, there is a growing body of evidence pointing to issues throughout the broader building industry that requires regulatory intervention. Consumers in the commercial building industry range from highly sophisticated commercial entities to small business owners. The less sophisticated consumers in the commercial market suffer from the same vulnerability as a consumer in the residential market.

At a national level, the Building Confidence Report (**BCR**) highlighted issues in the industry, commenting that:

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<sup>1</sup> Independent Pricing and Regulatory Tribunal, *A best practice approach to designing and reviewing licensing schemes*, (March, 2013), p 6.

*“We found that, until relatively recently, there has been almost no effective regulatory oversight of the commercial building industry by regulators. Those involved in high-rise construction have been left largely to their own devices”.*<sup>2</sup>

The BCR also noted that the lack of regulatory oversight of commercial buildings meant that purchasers had limited assurance of a building meeting the standard of the NCC.<sup>3</sup> There is a reasonable public expectation that all buildings, irrespective of NCC class, are constructed to a minimum level of quality and are fit for purpose.

### **Impacts of defective work on third parties**

Consumers are particularly vulnerable to building defects. There is substantial cost to consumers in remedying defects and the presence of defects increases the risk to health and safety of people living in non-compliant buildings.

The prevalence of defects is a critical problem for home and building owners in NSW. For example, the June 2019 Deakin University and Griffith University report into building defects in residential multi-owned properties found that in NSW, around 97% of buildings analysed had at least one defect across multiple locations, with each building having an average of 16 defects each.<sup>4</sup> In general, the most common defects found were building fabric and cladding (40%), fire protection (13%), water proofing (11%), roof and rainwater disposal (9%), and structural (7%).<sup>5</sup>

A recent research report into residential strata properties in NSW found that 39% of all strata buildings sampled experienced serious defects in the common property and that an estimated \$331,829 per building was spent by owners' corporations to resolve serious defects.<sup>6</sup> It has also been estimated that the costs associated with building defects nationally is \$714 million per year for Class 1 buildings and \$1.3 billion per year for Class 2 buildings.<sup>7</sup>

An average of \$61 million per year has been paid for major defect claims under compulsory home building scheme over the last ten years (this includes claims on policies issued by icare under the

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<sup>2</sup> Peter Shergold and Bronwyn Weir, *Building Confidence: Improving the effectiveness of compliance systems for the building and construction industry across Australia*, (February, 2018), <[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)>, p 4.

<sup>3</sup> Peter Shergold and Bronwyn Weir, *Building Confidence: Improving the effectiveness of compliance systems for the building and construction industry across Australia*, (February, 2018), <[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)>, p 21.

<sup>4</sup> Nicole Jonston and Sasha Reid, Deakin University, *An Examination of Building Defections in Residential Multi-owned Properties* (June, 2019), <[https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0030/831279/Examining-Building-Defects-Research-Report.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0030/831279/Examining-Building-Defects-Research-Report.pdf)>, p 21.

<sup>5</sup> Nicole Jonston and Sasha Reid, Deakin University, *An Examination of Building Defections in Residential Multi-owned Properties* (June, 2019), <[https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0030/831279/Examining-Building-Defects-Research-Report.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0030/831279/Examining-Building-Defects-Research-Report.pdf)>, p 21.

<sup>6</sup> NSW Government - Construct NSW, *Improving Consumer Confidence: Research report on serious defects in recently completed strata buildings across New South Wales*. (September, 2021), <<https://www.nsw.gov.au/building-commissioner/research-on-serious-building-defects-nsw-strata-communities>>, pp 6, 37

<sup>7</sup> Centre for International Economics, *Building Confidence Report: A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, p 3.

Home Building Compensation Fund (**HBCF**) as well as policies issued by private sector insurers under the former home warranty scheme).<sup>8</sup> This can be considered a conservative estimate as to the true defect costs, as these claims are limited to residential building work over \$20,000 for buildings that are three storeys or under, and in circumstances where the building business cannot honour its obligations to the homeowner due to insolvency, disappearance, death or licence suspension due to failure to comply with a money order of the Tribunal or court in favour of the homeowner.

Anecdotal information gathered from commercial building inspectors (for specialist trade inspections and work, health, and safety inspections) notes that common themes in commercial buildings are similar to class 2. These include cracking, essential safety management, weatherproofing, and roof defects.

Building defects in all buildings present a cost to building owners and the people who use them. Poor building quality also represents a hazard to the public. For example, in 2015, a Class 6 commercial shopping centre ceiling collapsed during a busy holiday period.<sup>9</sup> The same shopping centre experienced another roof incident in 2022.<sup>10</sup>

Not all commercial buildings are owned by multi-national corporations with the commercial savvy to litigate in response to building issues. Small to medium enterprises and not-for-profit entities make up a large proportion of business owners and users of non-residential buildings in NSW. These include factories, small shops and their associated fit-outs, warehouses, storage facilities, clubs, sports facilities and more. It is reasonable to assume that all the owners and users of these buildings would expect their construction to be safe, compliant, and usable.

The Centre for International Economics (**CIE**) estimated that the cost of lost tenant revenue, rectification work, claims on insurance (making individual and industry-wide premiums higher), legal and other work, health costs, and property damage due to defects in class 1 buildings is \$714 million a year and \$1.761 billion a year for class 2 to 9 buildings (with \$470 million of that cost coming from commercial buildings).<sup>11</sup>

### **Is licensing appropriate?**

Licensing remains an appropriate approach when there are impacts on third parties, the risk of detriment is high, the market is unlikely to provide an adequate response and another option will

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<sup>8</sup> State Insurance Regulatory Authority, *Home Building Compensation data tables June 2021* (2022), <<https://www.sira.nsw.gov.au/corporate-information/home-building-compensation-fund-reports>>.

<sup>9</sup> Michael Koziol and Emma Partridge, Sydney Morning Herald, *West Bondi Junction roof collapse*, (December, 2015), <<https://www.smh.com.au/national/nsw/westfield-bondi-junction-roof-collapse-20151216-glp567.html>>.

<sup>10</sup> Mark Saunokonoko, Sydney Morning Herald, *Rain-hit Westfield Bondi Junction ceiling collapses onto escalator* (March, 2022). <<https://www.9news.com.au/national/westfield-bondi-junction-ceiling-collapses-onto-underground-escalator/ebd196cd-1a38-4d30-9347-0a6aa1cfe09c>>.

<sup>11</sup> Centre for International Economics, *Building Confidence Report: A case for intervention* (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, pp 3 – 4.

not solve the issue.<sup>12</sup> Before considering licensing as an option, any new licensing framework should consider the same principles.

Defects have occurred in many parts of the industry where licensing has been required for some time. The Bill seeks to address the rate of defects in residential and commercial building work by using licensing to determine who can do the work, and what would cause a person to lose that authorisation. Recent reforms in class 2 buildings have begun to effect change and the momentum must now continue to ensure lasting transformation.

### **What is being proposed?**

In response to continued defects that lead to high consumer detriment, the main licensing proposal arising from the review of the HB Act is to include commercial work in the licensing framework. Licensing is one regulatory tool that will be used to enforce minimum standards and ensure only people who are competent stay in the market. As the commercial sector is included in the licensing framework, increased oversight will mean reduced defects and better outcomes for customers.

A licensing framework instils confidence in consumers that work can only be carried out by competent, qualified, and experienced people. The framework is supported by a robust process of initial assessment to obtain a licence followed up by consistent regulatory oversight. Together, these elements produce better outcomes for all industry participants. Consistent application of standards across the entire industry will improve outcomes for developers and those who pay for building work – ultimately pushing poor-performing trades out of the market. As a larger market player with greater access to technology and resources, the commercial sector has a role to play in improving standards across the entire sector – leading to consistent outcomes for the market. The list of major licensing proposals is as follows:

- requiring a licence to carry out building work for all building classes (i.e. residential and commercial building work),
- simplifying and reducing the categories of licences available,
- addressing supervision of persons through individually tailored practice standards where appropriate,
- clarifying the duties of nominee supervisors who represent corporate and partnership licence holders,
- introducing graduated licence classes for builders based on the complexity of the work they are carrying out,
- creating a central licensing framework by transferring existing licence provisions for professional engineers from the DBP Act and accredited fire safety practitioners from the BDC Act to the Bill,

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<sup>12</sup> Independent Pricing and Regulatory Tribunal, *A best practice approach to designing and reviewing licensing schemes*, (March, 2013), p 13.

- continuing to license specialist work, and
- include waterproofing as specialist work.

A licensing system provides a barrier to entry for people not competent to do building work. This provides a critical consumer protection (seeking to prevent remediation time and money costs for home and building owners) and business to business protection ensuring principals and subcontractors can rely on each other to do compliant work.

To complement the licensing scheme there will be positive regulatory requirements for licence holders that focus on producing quality and compliant work, including carrying out work in accordance with relevant approvals and designs, and carrying out work to a quality standard that meets reasonable expectations.

## **Expanding licensing into the commercial sector**

### **What is meant by commercial work?**

Commercial building work is used to identify buildings and building work that is outside the current definition of residential building work in the HB Act. It broadly includes class 3 to 9 buildings under the NCC, as outlined in Appendix 1.

While single building classifications have been used for ease of reference, the reference to commercial buildings is intended to be broad to reflect the fact that most, if not all, modern buildings are mixed-use and have several NCC classifications, such as an office building (class 5) with a carpark (class 7a).

Conversely, people who work in the industry have told us they would like the freedom to work across both industries. They would like their credentials, licences and experience recognised in both the residential and commercial industry as is the current situation with specialist trades. The rationale for expanding regulation to the commercial building industry is based on the proposition that consumer confidence in the building sector will not occur without intervention. There is also little evidence to suggest that industry or market forces alone are sufficient to realise an increase in building quality or the competence and skills of people carrying out work.

### **Is there information to support intervention?**

There has been no systematic study or specific data on the prevalence of defects in commercial buildings, most issues are played out in the courts. The costs of court cases and defects are also reflected in professional indemnity products for building and construction professionals. According to data provided by the Insurance Council of Australia, the construction industry is one of the worst performing sectors. Professional indemnity costs have more than doubled since 2013. The gross

loss ratio of claims for the 2021 financial year is 102% indicating that payouts for professionals in the industry are far exceeding expected losses.<sup>13</sup>

Although clear data and research on defects in Class 3 to 9 buildings are not readily available, it can be reasonably deduced that the prevalence of defects is no less than in other classes. Until recently, there was little research into the extent of the problem in class 2 buildings. The spotlight on class 2 buildings has unearthed several issues that had not previously been quantified. A lack of clear data does not guarantee a lack of issues.

The expanded licensing scheme proposed in the Bill appropriately targets the main driver of the risk – the person carrying out the work. Applying licensing requirements (in addition to other regulatory requirements) to the appropriate person will also allow for more equitable distribution of risk across the building industry. Other building regulatory requirements such as the development consent and building approval process applies to all building types, with greater regulatory emphasis on commercial buildings.

For example, class 1b to 9 buildings are subject to more rigorous fire safety licensing and performance solution requirements than class 1a buildings. However, despite this focus on standards, there is no minimum standard for the level of experience or qualifications for most tradespeople who work on many parts of a building in the commercial sector.

Defects in buildings have wide ranging impacts that extend beyond the customer who entered into the original contract. They extend to subsequent owners, financial institutions, costs on the home building compensation scheme, and the people who are responsible for rectification work. A global industry survey of over 600 Australian and international construction companies found that they spend around US\$177.5 billion per annum in labour to deal with non-optimal costs such as fixing mistakes, looking for project data and managing conflict resolution.<sup>14</sup> Defects are a cost to every person involved. Having the right skills on site and putting processes in place to manage work is the focus of the proposed licensing framework.

### **Impacts of information asymmetry**

Building work is a contractual arrangement between parties, either between an individual consumer and a licence holder or between business to business. Research conducted by the University of NSW into defects in the residential apartment sector found a key consumer issue is 'information asymmetry', where buyers have significantly less access to information than sellers.<sup>15</sup>

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<sup>13</sup> Insurance Council of Australia, *An insurance industry perspective: Professional indemnity insurance & building risks*, (December, 2021).

<sup>14</sup> Plangrid, *Construction Disconnected: rethinking the management of project data and mobile collaboration to reduce costs and improve schedules*, (August, 2018), <[http://pg.plangrid.com/rs/572-JSV-775/images/Construction\\_Disconnected.pdf](http://pg.plangrid.com/rs/572-JSV-775/images/Construction_Disconnected.pdf)>, p 6.

<sup>15</sup> Laura Crommelin et al. UNSW, *Cracks in the Compact City* (October, 2021), <<https://cityfutures.ada.unsw.edu.au/research/projects/defects->

This information asymmetry places consumers at a significant disadvantage as a party to the transaction. This finding aligns with stakeholder feedback received by the Department, that raised issues concerning the power imbalance between consumers and licence holders when entering into a contractual arrangement.

Consumers are rarely able to accurately determine whether a person is competent to do the work they are contracted to do until after work has commenced. This means consumers are entering into contractual arrangements without a clear understanding of a person's competency. The financial risks for consumers are immense, with some consumers needing to take out additional loans, move out of their business or home while the work is being completed, or postpone other expenses.

Consumers generally have a low level of understanding of the building industry and its regulatory frameworks. This is because many consumers may only engage with licence holders a few times in their life. Consumers generally also have difficulty in accessing relevant information and data to make informed decisions. Similarly, small-to-medium enterprises are also impacted by information asymmetry due to the nature of the contractual chain in the industry.

While smaller businesses largely drive the industry, the hierarchical structure creates layers of subcontractors from the client down.<sup>16</sup> This structure leaves all contractors in the chain vulnerable to the terms in the overarching contract, whether it is tight timeframes or payment terms. It also leaves subcontractors with little to no control over the other people they are working with – even those whose work will directly impact their contractual obligations.

A licence provides a ready guarantee to complement contractual obligations – not only does a person hold contractual obligations to do work to a certain standard, the licence provides a quick way of verifying a person's capability to meet that standard.

### **How is the market responding to defects?**

The commercial sector largely utilises litigation to resolve disputes about defects. The matter is argued in contract, with unequal bargaining power along the contractual chain. Smaller businesses often do not have the means to argue in the courts and will often wear losses as a result. Medium-to-large scale enterprises can hide substandard work by 'phoenixing', leaving affected parties with little to no remedies as companies have been deconstructed once the project is complete.

Adjudication of matters under the Security of Payment legislation also reveals evidence of defective work. Defects are a common reason why a developer or builder will withhold payments to their contracted parties.

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strata/#:~:text=This%20ARC%20Linkage%20project%20addresses,half%20of%20new%20Australian%20housing.>, pp 19 – 20.

<sup>16</sup> Adrian Kemp et al., HoustonKemp, *Financial impacts of statutory trusts in the building and construction industry* (November, 2019), <[https://www.fairtrading.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/532235/HoustonKemp-Report-Financial-impacts-of-statutory-trusts-16-Jun-19.pdf](https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0020/532235/HoustonKemp-Report-Financial-impacts-of-statutory-trusts-16-Jun-19.pdf)>, p 4.

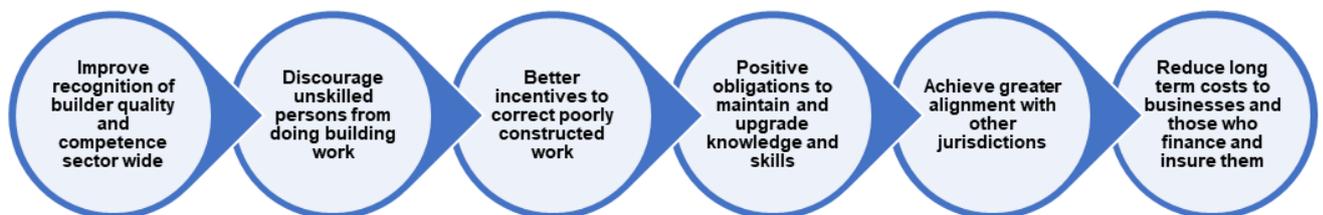
The Department has been working closely with the industry to develop the iCIRT ratings tool to respond to defects. iCIRT is a market-led rating tool for builders and developers. It is provided by Equifax, a regulated international ratings agency. iCIRT seeks to overcome the information asymmetry between industry participants and consumers by allowing providing an independent risk assessment.

### **What does expansion mean in practice?**

The broad definition of ‘building work’ noted above will mean industry participants must be licensed to do the work unless exempted by regulation. The Department understands that there is a heavy reliance upon contingent and unskilled labour in the market, and so allowances have been made for licensed persons to supervise unlicensed persons, subject to practice standards. More information about the practice standards is contained in Chapter 2 of the Building Bill RIS Part 2.

Another underlying assumption in this change is that the commercial market is already utilising licensed occupations to an extent and where possible to ensure quality builds on site. There is not expected to be any additional licensing in categories where other licence frameworks exist, such as high risk work licenses under WHS laws. Other existing licence categories may be expanded for some plant, for example an excavator licence could be expanded into larger machinery such as an underborer. The major changes are expected to be in the category of Builder licence where there has previously not been a commercial licence available. Further discussion about the impacts and costs for builders is discussed below.

The intended outcomes of including commercial building work in the Bill is to:



*Figure 1: Intended outcomes for expansion of licensing into the commercial sector.*

### **Questions**

- 7. Are you aware of defects in non-residential work?**
- 8. If you currently run commercial projects, what proportion of people on site hold a trade licence?**

## Regulatory costs and benefits of expanding licensing

While the entire residential sector and large parts of the commercial sector are familiar with holding a licence, this will be the first time many practitioners will be required to secure and hold a licence.

This represents potential costs to business, including:

- time costs associated with understanding the new regulatory requirements and reflecting these in their business practices,
- licence fees required for new or expanded classes of licence to carry out commercial building work, and
- an introduction of monetary penalties for offences, including operating without a licence.

It is anticipated that these costs are likely to be included in building work costs and ultimately passed onto the end consumer. Due to skills shortages in some occupations, there is potential for pressure on wages costs, which may also lead to increased building costs.

Regulatory compliance activities such as record keeping and continuing professional development (CPD) activities are estimated at \$118/hour<sup>17</sup> and it is estimated that these activities will on average, take around 70 hours per licence holder. These are expected to be one-off implementation costs.

Many of these costs are already borne by licence holders, either through existing planning obligations (including the requirement for certain documentation to be provided pre and post-construction), as well as obligations under contracts (with other parties) and insurance (to secure business insurance). Many of these are sunk costs, making the increased obligations minimal in many cases for businesses. The costs are likely to represent more effort for small and medium businesses that do not already have these kinds of reporting structures.

To offset this, the Bill has sought to minimise additional reporting obligations, with the proposed compliance efforts focused on ensuring that work complies with the relevant standards set out in the NCC and Australian Standards. As these requirements exist already, the increased business administration costs following implementation should be minimal.

Additional requirements for CPD are detailed in the associated impact assessment in connection with the Amendment Bill.

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<sup>17</sup> NSW Productivity Commission, *Productivity Commission White Paper 2021*, (May, 2021), <<https://www.productivity.nsw.gov.au/sites/default/files/2021-06/Productivity%20Commission%20White%20Paper%202021.pdf>>, pp 139-140.

## Licensing costs

A licensing scheme will impose costs on business through licensing fees, currently \$326 for a new one-year individual licence or \$649 for three years and \$999 for five years. Entity licences are currently \$518, \$1,095 and \$1,919 respectively.<sup>18</sup>

As of 30 June 2021, there were 137,923 construction businesses in NSW.<sup>19</sup> Small businesses make up a large proportion of those businesses with 83% reported to be small businesses employing 1-4 FTE.<sup>20</sup> Accounting for the existing number of licences issued by NSW Fair Trading, it is anticipated that 20,000 more licences will be required across the industry. This estimate is based on the number of existing organisations working in the wider industry that currently do not need a licence, adjusted to reflect that some licence holders will already work in the commercial sector, and some will continue to be exempt from needing a licence.

The government will incur costs to implement and maintain the new regulatory requirements. This includes one-off implementation costs associated with developing forms, guidance materials and system changes to accommodate the increased scope.

To reduce the burden on licence holders, Fair Trading would ensure that all licences are issued through a digital platform, with information previously provided to the Department leveraged to support a licensing application. Currently, a straightforward building practitioner registration application under the DBP Act can take around two hours to complete and issue if all the required information is submitted, is verifiable and no further information is required. It is estimated however, that only around 25% of applicants meet this criterion. Most applications will need more assessment time before a licence can be issued. NSW Fair Trading is exploring ways to make the application and renewal process more efficient. Feedback has indicated that applications and assessments take longer if the information provided is deficient or the applicant doesn't have the correct skills for the licence being applied for.

## Regulatory benefits

The end customer is the primary beneficiary of a licensing scheme that secures competent people overseeing work, disincentivises undesirable licensee behaviour, and excludes problematic actors from the industry. Furthermore, a licensing scheme enhances Fair Trading's data collection capabilities to allow for better targeting of policy and compliance activities.

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<sup>18</sup> NSW Fair Trading, *Home Building Fees*, (2022). <<https://www.fairtrading.nsw.gov.au/help-centre/fees/home-building-fees>>.

<sup>19</sup> Australian Bureau of Statistics, *8165.0 Counts of Australian Businesses, including entries and exits, June 2017 to June 2021*.

<sup>20</sup> NSW Productivity Commission, *Productivity Commission White Paper 2021*, (May, 2021), <<https://www.productivity.nsw.gov.au/sites/default/files/2022-04/Productivity-Commission-White-Paper-2021.pdf>>, pp 139-140.

For residential consumers the benefits are expected to include increased clarity around who is competent to do the work. Existing minimum contract monetary thresholds for some licence categories will no longer apply (currently \$5,000 in NSW). This means that more people will need to undergo minimum qualification and suitability checks before doing regulated work in NSW. This provides greater surety for consumers who want to have building work done. Residential customers will also enjoy clearer contracting arrangements, outlined further in chapter 2 of the Building Bill RIS Part 3.

Existing home building cover provisions that have been carried over will continue to provide protections in addition to warranties and access to remedies via NSW Fair Trading.

The increased focus on quality and performance will lead to improved levels of compliant work, decreasing the impacts of defective work, lowering the cost of remediation. The licensing scheme is complemented by clearer building approval requirements and stronger compliance and enforcement powers (outlined further in [RIS link]). Together these will reduce the number of defects occurring in the first instance, and where rectification is required, ensuring that the costs are borne by the party responsible for the defect.

The compliance powers include a disciplinary framework that is integral to upholding the integrity of the licensing scheme. This allows the scrutiny of the conduct of licence holders and enables the sanctioning (including further education) and removal of poor players from industry.

This is also a bottom-line benefit to businesses. The average cost to rectify a defect in a Class 1 detached dwelling is \$3,440, and a defect in a Class 2 apartment is \$9,349.<sup>21</sup> Parties are expected to experience reduced dispute resolution costs, which will cover a broader range of practitioners. This includes the financial costs of NSW Civil and Administrative Tribunal (**NCAT**) fees - between \$52 and \$554<sup>22</sup> and other costs such as time, work to prepare, and the uncertainty of the dispute outcome, which can make it difficult for consumers and builders to plan ahead, especially in the case of serious defects.

As noted above, globally, the industry spends US\$177.5 billion annually managing conflicts. Having skilled people on the job with procedures in place to minimise defects and ensure quality work will reduce these costs, offsetting the cost of education, licensing and administration costs. The realised benefits to consumers are expected to outweigh the cost to licence holders.

For commercial consumers, the benefits are expected to be replicated, with the exception of home building consumer protections. This is particularly true for small business owners who rely on trades to build and maintain assets that businesses own and occupy. Reliable, historical information about a potential tradesperson available through the licensing register can save time.

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<sup>21</sup> Centre for International Economics, *Building Confidence Report: A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, p 17.

<sup>22</sup> NCAT, *Fee at NCAT* (2022). <<https://www.ncat.nsw.gov.au/ncat/forms-and-fees/fees-at-ncat.html>>.

For example, avoiding costs in the first place by knowing that the tradesperson engaged is being held to a performance standard is a significant potential cost saving. Relying upon the compliance and enforcement capabilities of the regulator instead of wearing this cost or going to court is also a significant cost saving for most small businesses.

Benefits are not limited to customers. Businesses who operate in the industry are also expected to benefit from the proposals. Where greater consistency is achieved, licence holders who work across multiple jurisdictions will benefit from mutual recognition, reducing regulatory burden. The Bill will achieve greater national consistency through aligned licence classes and types to allow licence holders to work across other states and territories more effectively. Where appropriate the licensing framework will apply competency standards consistent with the National Regulatory Framework (**NRF**). Details on the NRF are outlined on page 65 of this RIS. .

Businesses will find it easier to engage competent people who they may not have worked with before. A reliable compliance history will allow a business to assess the risks it is willing to take with a new party. There are likely to be fewer poor performers in the market, as demerit points and penalties for non-compliance begin to impact licence holders.

Furthermore, securing better quality practitioners to work on projects, including builders and engineers, is likely to reduce pressure on overall project timing, costs and financing.<sup>23</sup>

As noted in the table below, it is more cost effective for both consumers and licence holders to have competent people on site, avoid defective work or to catch defective work early and not have to rectify it later.

	At Construction	At completion (+5 years)	Rectify cost at construction as % of cost at completion
	\$	\$	%
<b>Footing inspection</b>	1 360	6 875	23.1
<b>Roof framing inspection</b>	250	6 250	4.0
<b>Completion/final</b>			
<b>Bushfire construction requirement</b>	1 100	1 500	73.3
<b>Plasterboard installation</b>	315	3 700	8.5
<b>Waterproofing</b>	10 400	15 000	69.3

Table 3: Rectification costs during construction vs five years after  
Source: CIE, *Building Confidence Report: A case for intervention*, July 2021, p 87.

<sup>23</sup> Procure, 'The Data Differentiator' (November, 2021) <<https://www.procure.com/en-au/ebooks/the-data-differentiator-for-the-commercial-property-industry>>.

Finally, expanding the licensing scheme to the commercial building sector is an important step towards grappling with the ongoing issues in the sector. It will allow Fair Trading to collect data about licence holder activity and identify more precisely the most at risk areas in the commercial construction industry. In turn, this will allow Fair Trading to better target resources and policies to address ongoing market failures in the form of asymmetric information, poor build qualities, and unethical conduct. The licensing scheme is a mechanism that both allows for a better understanding of the sector and to more precisely regulate the sector.

### **What alternatives were proposed?**

Before settling on the proposed licensing framework, the Department proposed alternatives for industry stakeholders to consider and determine if the original licensing objectives remained valid. Stakeholders were also given an opportunity to consider alternatives to the current system. These alternatives included a risk-based approach to licensing, using a combination or targeted use of the following:

- a star rating on licence holders to demonstrate excellence or increase private enterprise rating systems
- further utilising the existing principle-based approaches in the Australian Consumer Law (**ACL**) and Work Health Safety
- using financial assurances on projects
- open data
- negative licensing
- placing a stronger reliance on technology to identify risk.

Star-rating systems are a form of self-regulation and can be an important reputational tool for a business, demonstrating their accountability to customer service and quality. Star-rating systems can be supported by the Department or market operators by publishing ratings data and making it available to consumers. This would be a useful tool for consumers but would not suffice as a standalone product.

The Department is supportive of the increased use of iCIRT and other ratings tools and sees that market-based ratings will overcome many of the deficiencies in quality of work and compliance with standards. However, these ratings tools do not currently reflect the work of individual sub-contractors and tradespeople, who the proposed licensing framework is looking to impose new obligations on to ensure compliant work.

While iCIRT is a regulated ratings tool, other kinds of ratings systems have less rigour in how they assess the quality of a practitioner. This puts a lot of responsibility into the hands of customers who may not have the competency to make an assessment on the relative capability of a practitioner. There are some benefits to seeing the kinds of work a person has done previously, and qualitative information about how they have interacted with customers. However, it is unclear how this kind of

system could ensure effective oversight for practitioners in the long term, particularly for new entrants who would not have the benefit of a star/rating despite being competent.

The ACL provides automatic consumer guarantees. Section 60 of the ACL requires a person in trade or commerce to supply their services with due care and skill. Section 61 of the ACL expands on this requirement, indicating that services supplied must be reasonably fit for the specified purpose. Finally, section 62 of the ACL requires that the services be provided within a reasonable time. The contract between the parties will guide the level of performance expected, allowing the parties to agree on what is an acceptable standard.

These laws provide strong complementary regulation; however the ACL does not act as a gateway to entry for industry participants. It doesn't restrict people from operating in the market if they are a poor performer and it doesn't rely upon any specialist skills or qualifications to perform a role.

Negative licensing allows people to operate without a licence to a standard prescribed by a regulatory framework for low-risk trade work. Where a standard or condition is not met, people are then sanctioned from operating in the industry by the power prescribed in legislation. Negative licensing for low-risk home building trades was a recommendation of the NSW Productivity Commission White Paper.<sup>24</sup>

While negative licensing may be adopted for certain trades, it is not proposed to use negative licensing broadly in the construction sector because it is considered too high-risk for the sector. Feedback from stakeholders indicates that the risk to public health and safety is too great to consider negative licensing. This is because negative licensing is reactive and can only address issues once the harm has occurred and that low-risk work can still have high consumer detriment. For example, poorly executed dry plastering of a house can incur significant rectification costs.

Financial assurance is a form of monetary security deposited as a guarantee of performance for particular work. The strata building bond and inspection scheme is an example of how financial assurance has been used to guarantee rectifications rather than burdening the consumer with the cost of remedying the breach.

This was not pursued because it may not be a cost-effective proposal on smaller jobs or for smaller businesses. It would only suit larger players in the market, and this is not the level of risk that an alternate scheme would be intended to operate for.

All of these alternative proposals were thoroughly tested through consultation with specific stakeholders and received little support over traditional licensing. Much of the stakeholder

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<sup>24</sup> Productivity Commission, *Productivity Commission White Paper 2021* (May, 2021), <<https://www.productivity.nsw.gov.au/sites/default/files/2022-04/Productivity-Commission-White-Paper-2021.pdf>>, p. 117.

feedback suggested that the alternative approaches would do little to address the issues facing industry, being poor quality work and impacts to consumers.

Other alternatives such as a demerit points scheme, principles-based legislation placing positive obligations on people, and co-regulation received strong stakeholder support. These concepts have been included in the broader proposals.

## Questions

- 9. Would any of the alternatives to licensing considered and not pursued contribute to reduced conflicts and defects? Please provide data/evidence to support your response.**
- 10. Are there any other costs or benefits to the proposed licensing framework that are not detailed here? Please provide data to support your response.**
- 11. Will a licensing framework combined with regulatory oversight contribute to better quality, safer and more compliant buildings? Please provide rationale/evidence to support your response.**

## Proposed changes to builder licences

The licence currently available for builders is issued under the HB Act as a contractor for residential building work. A building licence allows a person to:

- do any work involved in constructing a dwelling or altering or adding to a dwelling,
- construct or erecting a garage, carport or shed (including kits),
- bathroom, kitchen or laundry renovations,
- swimming pool building and structural landscaping,
- screened, glass or pool enclosures,
- atriums and conservatories,
- house lifting (e.g. permanently raising the height of an existing structure),
- removing and resitting dwellings, and
- saunas and steam rooms.

To obtain the licence, a builder must complete the required qualifications and practical experience requirements published on the NSW [Fair Trading website](#) as well as meet the suitability tests outlined in section 33B of the HB Act. Experience must be obtained in the residential sector to obtain a licence.

The experience component can be problematic for people who have completed their apprenticeship and subsequent building work in the commercial sector and have little to no experience in the residential building sector. Further experience must be gained in the residential building sector to obtain a contractor licence, sometimes leading to experienced and competent workers leaving the commercial sector to obtain the experience necessary to obtain a builder

licence and having to work under another person to gain this experience. While this requirement is practical and suitable, given the differences between commercial and residential work, it does not help the commercial sector to retain talented builders who might otherwise have stayed in the commercial industry.

As noted above, the commercial sector is not immune to defective work, which is one of the issues the proposed licensing framework in the Bill seeks to address. Creating minimum education and experience requirements as a gateway to licensing for all people doing building work, and supportive education or sanctions for players who do not perform to standard, are ways that shortfalls are addressed.

However, it remains appropriate to differentiate between different kinds of building work to ensure that the person doing the work is competent. This is a product of the varying complexities of different kinds of building, with a single storey free standing house being less complex than a data warehouse or multi-complex hospital. This complexity comes from the need for various design features and components to be factored in the build. Using the hospital example, the following video from Health Infrastructure provides an overview of the three major phases of planning, design and build that must be factored in before a project begins:



Figure 1: Health Infrastructure's How to Build a Hospital video [https://www.youtube.com/watch?v=bd\\_hl-qRI8s](https://www.youtube.com/watch?v=bd_hl-qRI8s)

Executing a plan on the scale detailed in the video takes significant skill, expertise and knowledge.

While the Bill proposes that experience doing building work should include work done on commercial and residential buildings, it is proposed that builder licences restrict the kind of building

a person can do work on to ensure that they are appropriately qualified to do the work. While the details of this approach will be settled in the supporting Regulation, the Bill will use the NRF to inform the kinds of work that can be done under each of the proposed building licences.

The NRF provides that builder work is the acquisition, coordination and deployment of people, equipment and materials to the construction of a new building or alteration to an existing building where the building is required to meet the requirements of the NCC.<sup>25</sup> Builder work includes inspecting the fabrication, construction and testing of any part of a building and signing a certificate that states the building construction work complies with the NCC. Aligning with the NRF, the following category of builder licences are proposed:

**Builder 1 – High-rise and commercial:** this unrestricted level would permit builders to carry out building work for all NCC buildings.

**Builder 2 – Medium-rise:** this restricted level would permit builders to carry out building work for all NCC buildings up to three storeys in height and 2,000m<sup>2</sup> in area.

**Builder 3 – Low-rise, residential:** this restricted level would permit builders to carry out building work in NCC classes 1 and 10 only.

While the specific eligibility requirements will be the subject of further consultation on the Bill in developing the supporting regulations, the Department's initial consultation with industry indicates that the proposed differentiating factor between different classes will be experience.

By using experience rather than prescriptive qualifications, the graduated licences will ensure that competent practitioners are not prevented from doing more complex work. It will also provide a clear pathway for new entrants into the market to move their way from less to more complex work overtime.

Graduated licensing will allow those already working in the industry to continue working. If builders do not meet the new requirements for higher graded licences, they can increase their skills through updated education and experience to progress in the industry. Graduated licensing will provide a clear progression path for building and trade work by setting clear expectations for each graduation and a clearer understanding of what work can be carried out under each licence.

Following a review of building standards regulation, the first report of the Public Accountability Committee building quality and building disputes noted the importance of licensing builders across the industry.<sup>26</sup>

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<sup>25</sup> Australian Building Codes Board, 'National Registration Framework for building practitioners' (December, 2021) Table 4 – Taxonomy for Building production, Construction p 31.

<sup>26</sup> Public Accountability Committee, *Regulation of building standards, building quality and building disputes*, (November 2019), Recommendation 11 and 12, <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2540/Regulation%20of%20building%20standards,%20building%20quality%20and%20building%20disputes;%20First%20report%20-%20Report%20No.%204.pdf>>.

## Other options considered

A single licence class was considered, however this will not help builders to attain mutual recognition when working in other jurisdictions. In the States and Territories where commercial builder licences are issued, multi-level licences are issued. The following table provides a basic illustration of the different types of builder licences available. The framework outlined in the NRF is the first step towards automatic mutual recognition, however it is yet to be adopted nationally.

	Residential	Low	Medium	Commercial/ Open
<b>QLD</b>		Class 1 or 10, class 2-9 with gross floor up to 2,000m <sup>2</sup>	Class 1 or 10, up to 3 storeys on class 4-9	Unlimited
<b>ACT</b>		Two storeys of class 1,2 or 10a	Up to 3 storeys	Unlimited
<b>TAS</b>		Class 1 or 10, class 2-9 with gross floor up to 2,000m <sup>2</sup>	Class 1 or 10, up to 3 storeys on class 4-9	Unlimited
<b>VIC</b>	Domestic class 1,2 and 4	Up to 15m excavation up to 3m	Up to 25m excavation up to 8m	Class 2-9
<b>NT</b>	Work valued over \$12,000	N/A	N/A	N/A
<b>WA</b>				work valued over \$20,000
<b>NSW (current)</b>	Work valued over \$5,000	N/A	N/A	N/A
<b>NSW (proposed)</b>		Class 1 and 10	Up to 3 storeys and area of 2000m <sup>2</sup>	Unlimited

Table 4: Builder licensing in Australian jurisdictions

Class 2 buildings have more in common with commercial buildings and therefore it makes better sense to share the knowledge and experience of builders across the sector. The focus is on the skill set necessary to perform the role rather than proposing constraints that limit the capacity to take on a project.

## Questions

- 12. Do you think the proposed builder licence levels strike the right balance? Should other descriptions such as floor space or building height be considered?**
- 13. Do you think that a single class of builder licence should be considered? Why or why not?**

## Regulatory costs and benefits of changes to builder licences

There will be costs for builders who work in the industry but are not currently licensed. These costs for industry include:

- time costs associated with understanding the new regulatory requirements and reflecting these in their business practices
- licence costs required for new or expanded classes of licence to carry out commercial building work
- compliance costs through the introduction of monetary penalties for offences, including operating without a licence.

These costs are likely to be included into building work costs and ultimately passed on to the end consumer, resulting in a likely marginal increase cost for some building work.

Businesses are likely to need time to understand their new requirements, with the added costs outlined for the expansion of commercial licences likely to impact builders subject to the new licensing requirements.

A licensing scheme will impose costs on business through licensing fees, currently \$714 for a new one-year individual builder licence or \$1,337 for three years and \$2,337 for five years.<sup>27</sup> It is difficult to determine how many additional licences will be included in this proposal. There is potential for up to 3,000 additional licences in the newly created categories.

There will be a potential cost associated with the availability of licensed builders in the short term. The commercial sector does not currently licence builders and therefore, there may be a shortage of builders who meet the minimum requirements to hold a licence. With scarcity of available tradespersons, projects may be delayed, and existing licence holders have less competition. Less competition can lead to project price increases. However, it is anticipated that this will be largely offset by staging the licensing requirements. Further detail about the transition of newly included licence categories is contained at the end of this Part.

NSW Fair Trading is working with the NSW Department of Education to ensure that new entrants to the sector have enough support to secure required qualifications. Builders and associations will be consulted on the best way forward for pathways into increased grades of builder licences for existing licence holders. Builders who currently work in the sector will have support and time to assess current skills and qualifications against the new requirements so that they can meet their obligations. The increased capacity to rely on mutual recognition will also provide a pathway for interstate builders to work across jurisdictions.

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<sup>27</sup> NSW Fair Trading, *Home Building Fees*, (2022). <<https://www.fairtrading.nsw.gov.au/help-centre/fees/home-building-fees>>.

This will need to be carefully managed. The graduated licensing system intends to reserve more complex building work for more experienced practitioners. While this should secure better quality buildings, there will be costs borne by builders currently working unrestricted who will have new restrictions on the kinds of work they can perform because they lack relevant experience.

For example, a person may be leading building work on an eight-storey office building despite having limited to no experience as a builder. While this example is on the margins, it illustrates that some building businesses will either need to restructure their operations (bringing on board more experienced people) or limit the work that they contract for. This will be a significant burden – limiting the freedom to contract – but is focused on requiring builders of complex buildings to have experience doing that work before they are leading the work without supervision.

There will also be costs incurred by Government to implement and maintain the new regulatory requirements. These include one-off implementation costs associated with developing forms, guidance materials and system changes to accommodate the increased scope.

As noted above, the regulatory burden of interacting with the Department as part of the application process is currently being redesigned to create a faster and more efficient interaction.

### **Regulatory benefits**

The regulatory benefits for expanding into commercial work are largely replicated for builders. The main benefit expected is a reduction in the costs associated with defects. The costs to the builder will be offset by the benefits of improved levels of compliant work. Research shows that rectifying defects in homes during construction compared to five years later is on average of 2.5 times more than if rectified during construction.<sup>28</sup> These costs are often passed on to a subcontractor or taken out of retention money depending on the size and timing of the project. Reduced defects and improved working procedures and relationships improves productivity – benefiting all parties of a contract.

Builders will also benefit from reduced turnover of apprentices who complete their trade in the commercial space who must leave their employment to gain experience in the residential space in order to obtain a builder licence. Turnover costs include hiring, termination administration, training and induction. These costs multiplied over the course of an apprenticeship can be significant and having the ability to retain staff for the additional experience component of a licence is a significant avoided cost to a commercial builder.

For customers, clarity over the qualifications and skills of the company/builder being hired to complete the project will provide peace of mind. The public register of NSW licences will provide an

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<sup>28</sup> Government of Western Australia Department of Mines, Industry Regulation and Safety, *Reforms to the building approval process for single residential buildings in Western Australia* (September, 2019), <<https://www.commerce.wa.gov.au/publications/reforms-building-approval-process-single-residential-buildings-wa-cris>>, p 67.

overview of the track record of all builders in NSW. The proposed Building Compliance and Enforcement Bill (**BCE Bill**), which complements the Bill, gives the additional peace of mind that any builder who has failed to meet the required standards across all building classes will be held accountable.

For developers, having access to the public register also provides a background of the builder being engaged. Builders who have excellent track records will have their track record on display and poor performers will likely find it harder to seek engagement.

Where greater consistency is achieved, licence holders who work across multiple jurisdictions will benefit from mutual recognition, reducing regulatory burden. The Bill will achieve greater national consistency through aligned licence classes and types to allow licence holders to work more easily across States and Territories. Where appropriate, the licensing framework will apply competency standards consistent with the NRF.

While final eligibility requirements would be settled in supporting regulations (subject to further consultation), the proposed approach would be guided by the NRF aligning with commercial builder licensing in other jurisdictions such as Queensland, Victoria and the ACT. While some jurisdictions have moved to create higher eligibility standards based on qualifications, NSW will look to focus on capability through on-the-job experience to assess eligibility for higher classes of building licences.

## **Questions**

**14. Will there be any other costs or benefits associated with this proposal?**

**15. Do you agree that builders should have their compliance record listed on the NSW licence register?**

## **Corporate licence holders and nominee supervisors**

It is proposed that corporations and partnerships can hold licences under the Bill. This approach is consistent with existing business practice, while still ensuring accountability for the work done by individuals on behalf of the entity.

Under the HB Act, an entity can be issued a licence to do residential building work and specialist work. The licence holder is required to nominate a supervisor who will oversee the work done on behalf of the corporate licence holder. The nominated supervisor needs to meet certain eligibility requirements to ensure that the person is qualified to oversight the building work or specialist work done under the licence.

Where a breach of an obligation occurs, for example the work is not compliant or a contractual term is breached, the corporate licence holder is held responsible, with the nominated supervisor also held accountable as the chosen representative of the corporation. For certain kinds of

conduct, including failing to hold the correct cover under the home building compensation scheme, individual directors of the corporate licence holder can also be held liable for misconduct (even where they are not directly involved in the commission of the offence).

It is proposed to continue this model under the Bill by:

- allowing body corporates to hold a licence
- corporate licence holders being required to appoint a nominee supervisor who will be responsible for overseeing work done by the corporate licence holder
- requiring all directors/partners of the corporation and the nominated supervisor to meet minimum eligibility requirements, including being a fit and proper person.

In addition, a policy or procedure must be put in place to demonstrate how the work is being monitored on each site and how work is being checked to ensure it is compliant. The corporation or partnership must outline how they will effectively manage the nominee supervisor to perform their role and how they intend to regularly communicate about each project underway (see clause 47 of the Bill).

It is acceptable to have several nominee supervisors oversee the work, report back on progress made, and note any compliance issues. As the role of the nominee supervisor is not a special category of licence in the Bill, the entity is permitted to find a person that has the skills and qualifications necessary to oversee the work, and they can be more flexible in how that role is applied. There is, however, a requirement that the nominee supervisor is a licence holder in the type of work being performed by the corporate applicant.

The nominee supervisors must ensure that the work they oversee complies with the relevant standards of work mandated under the Bill, as well as meet supervision and conduct requirements of licence holders. Nominee supervisors are intended to enhance the oversight of work – not provide a way for corporate licence holders to abrogate responsibility.

The increased flexibility for entities also means increased accountability. The nominee supervisor will be expected to ensure all work complies with the Act, the NCC and any other requirement under the BCE Bill (see clause 48 of the Bill). The nominee supervisor is also expected to report any non-compliance issues directly to NSW Fair Trading (see clause 48(3) of the Bill), or risk losing their licence or face tough penalties. A corporation will also be held accountable for non-compliance with relevant codes and standards.

### **Regulatory costs and benefits of the change**

Businesses are likely to need time to understand their new requirements. Additionally, time will be needed for corporate and partnership licence holders to develop and implement policies and

procedures for nominee supervisors. Regulatory compliance activities are estimated at \$118/hour<sup>29</sup> and it is estimated that these activities will on average take 70 hours per licence holder. These are expected to be one off implementation costs.

Corporations are expected to benefit from not needing to utilise the nominated supervisor certificate any longer. One of the main concerns with this scheme has been licence lending and a lack of oversight on projects. If corporations have several people with the skills and capabilities to oversee work they are free to be listed on their licence. As noted above, the trade off in flexibility is a raised expectation that all licence holders who take on this responsibility will be held accountable for poor standards. A failure to maintain the policy and procedures of the company can result in a loss of licence.

## Questions

**16. Will the proposed changes to corporation and partnership licence holders improve the oversight of work? Please provide evidence or data to support your view.**

**17. Do you think any additional responsibilities are required for either the corporation/partnership or nominee supervisor?**

## Close associates

The Bill defines 'close associate' primarily for licensing assessment requirements. In particular, the 'close associate' definition is relevant to a ground for finding that a person is not a suitable person to carry out 'regulated work'. It means that a person may not be considered suitable to be issued a licence if a close associate of the person, who exercises 'significant influence' over the person applying for a licence or the operation and management of their business, would not be a fit and proper person to be licensed (cl 14(2)(f)). The Secretary may also, by written notice, request information such as financial and other confidential information from a close associate to assist in making a licensing decision.

A close associate is defined in the Bill as:

- a business partner, or
- an employee or agent of the other person, or
- a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the other person or a person referred to in the first two dot points has a beneficial interest, or
- a person who has a relationship of a kind prescribed by the regulations with the other person, or

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<sup>29</sup> NSW Productivity Commission, *Productivity Commission White Paper 2021*, (May, 2021), <<https://www.productivity.nsw.gov.au/sites/default/files/2021-06/Productivity%20Commission%20White%20Paper%202021.pdf>>, pp. 139-140.

- a corporation that is a subsidiary, within the meaning of the Corporations Act, of the other person, or
- holds or is entitled to exercise, in relation to the other person or the business of the other person, another relevant financial interest, relevant position or relevant power, or
- exercises a significant influence over the other person or the operation or management of the person's business, or
- a person prescribed by the regulations.

Within this definition

**relevant financial interest** means:

- a share in the capital of the business, or
- an entitlement to receive income derived from the business, whether the entitlement arises at law, in equity or otherwise.

**relevant position** means the position of director, manager and other executive positions and secretary, however described.

**relevant power** means a power, whether exercisable by voting or otherwise and

- whether exercisable alone or in association with others:
  - to participate in a directorial, managerial or an executive decision, or
  - to elect or appoint a person to a relevant position.

The benefit of this proposed definition is that it clearly indicates specific types of people as close associates. Consideration will be given in the regulations to list additional persons, including generally listing family or personal, employment, or business associates based on section 30 of the BDC Act. Alternatively, it could be modelled on section 5 of the HB Act and include specific people including a current or former spouse/de factor partner, a child, grandchild, sibling, parent or grandparent.

Negative licensing allows people to operate without a licence to a standard prescribed by a regulatory framework for low-risk trade work. Where a standard or condition is not met, persons are then sanctioned from operating in the industry by the power prescribed in legislation. Negative licensing for low-risk home building trades was a recommendation of the NSW Productivity Commission White Paper.<sup>30</sup>

While negative licensing may be adopted for certain trades, it is not proposed to use negative licensing broadly in the construction sector because it is considered too high-risk. Feedback from

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<sup>30</sup> NSW Productivity Commission, *Productivity Commission White Paper 2021*, (May, 2021), <<https://www.productivity.nsw.gov.au/sites/default/files/2021-06/Productivity%20Commission%20White%20Paper%202021.pdf>>, p 117.

stakeholders indicates that the risk to public health and safety is too great to consider negative licensing. This is because negative licensing is reactive and can only address issues once the harm has occurred and that low-risk work can still have high consumer detriment. For example, poorly executed dry plastering of a house can incur significant rectification costs.

Financial assurance is a form of monetary security deposited as a guarantee of performance for particular work. The strata building bond and inspection scheme is an example of how financial assurance has been used to guarantee rectifications rather than burdening the consumer with the cost of remedying the breach.

This was not pursued because it may not be a cost-effective proposal on smaller jobs or for smaller businesses. It would only suit larger players in the market, and this is not the level of risk that an alternative scheme would be intended for.

All of these alternative proposals were thoroughly tested through consultation with specific stakeholders and received little support over traditional licensing. Much of the stakeholder feedback suggested that the alternative approaches would do little to address the issues facing industry, including poor quality of work and impacts to consumers.

Other alternatives such as a demerit points scheme, principles-based legislation placing positive obligations on people, and co-regulation received strong stakeholder support. These concepts have been included in the broader proposals.

## Questions

**18. Is there a better way to determine who is a close associate?**

**19. Should additional elements be incorporated into the definition of close associate?**

**20. Should broad terms of family or personal, employment, or business associates be used to determine a close associate?**

**21. Is it better to itemise the relationships to be clear in law?**

## Changes proposed for specialist trades

Specialist trade work is differentiated by the additional risk the work brings, either to public health and safety, the detriment the work can cause if performed poorly, or the risk to the tradesperson if carried out without due skill. The existing categories of specialist licences are:

- plumbing and drainage
- gasfitting
- medical gasfitting
- electrician
- air conditioning and refrigeration work
- mechanical services.

Specialist trade work is treated differently to other building and trade work in recognition of the high-risk and specialist nature of this work. Because of this, any person carrying out or supervising this work, irrespective of where the work is carried out, is required to be licensed.

It is proposed to retain the current concept of differentiating specialist trade work from other building and trade work. The requirement to hold a licence for specialist work will be based on the nature of the work and will continue to apply to that work whether it is in relation to a building or not. For example, the electrical wiring work required to install lamps in a public park is required to be carried out by a licence holder. Specialist work is also proposed to continue to require a licence irrespective of the cost of work, with only limited exemptions provided in the regulations, such as the replacing of tap washers.

*Case Study: Unlicensed electrical trade work*

*On 21 February 2022, Safework Queensland advised that the NSW District Court ordered Ultra Refrigeration Pty Limited to pay a fine of \$150,000 for allowing unlicensed electricians to carry out electrical work without proper supervision.*

*The offence occurred in 2017 when two unsupervised apprentices started work on replacing a circuit breaker in the main switchboard with the power still on. One of the workers removed the faulty circuit breaker before trying to insert a new circuit breaker. However, the new circuit breaker was the wrong size. In an attempt to fit the circuit, the worker's steel pliers came into contact with live power, causing an arc flash explosion.*

*One worker was temporarily blinded and suffered burns to his exposed hands and fingers, while the other worker was treated for shock. Licensing or adequately supervising apprenticeships is necessary for specialist trade work due to the serious nature and risk to safety incurred in this work.*

**New proposal – include waterproofing as a specialist trade**

Modern construction techniques have evolved the types of structures that are waterproofed along with the technologies used to do the work. The complexity of waterproofing in structures has also increased, with balconies in multi-unit, multi-storey structures, deep multi-use basements and the emergence and popularity of roof top gardens.

Waterproofing is proposed as a new category of specialist work licence to recognise that waterproofing work is now more involved. It is no longer simply the work involved in applying barriers or membranes to floors and walls in areas such as bathrooms, showers, laundries, and external balconies to prevent moisture penetrating behind fittings and linings to protect the structure of the building and to maintain the amenity of the occupants.

Under the current licensing structure, there have been an unacceptably high rate of defects in waterproofing. The CIE research found that the largest component for defect costs in class 1 and 2

buildings is waterproofing, accounting for 27% of those costs.<sup>31</sup> The same report also found that waterproofing was the most common defect in commercial Class 3 to 9 buildings at 21.1%.<sup>32</sup> Other research has quoted high levels of waterproofing defects in residential buildings 11.5% (Griffith University),<sup>33</sup> and 37% (Office of the NSW Building Commissioner). Data collected from the NSW Government's Occupation Certificate Audit (**OC Audit**) program, an inspection regime introduced under the RAB Act for Class 2 buildings, showed waterproofing as a serious defect in 37% of OC audits.

By making waterproofing a specialist trade, a person will need to hold a licence to do this work irrespective of the value of the work or where it is done. A licence holder will also be subject to other obligations detailed in this RIS.

### **Regulatory costs of the proposal**

Maintaining the existing specialist categories is policy neutral. There are no additional licensing requirements proposed. There is the potential for reduced licensing fees if the increased number of licences and efficiencies in new systems justify a reduction in overall fees. However, this is not guaranteed and remains unknown until further consultation is complete.

Waterproofing is currently a required licence for residential building work, and the fees are \$326 for a new one-year individual licence or \$649 for three years and \$999 for five years.<sup>34</sup> A corporation licence is \$518 for a new one-year specialist licence, \$1,095 for three years or \$1,919 for five years. There will be additional industry costs for the number of new licence holders required to carry out the expanded scope of work.

Some trade businesses currently offer multiple services, which will now be restricted for waterproofing. Occasionally, builders will complete waterproofing work, and this would now need to be added as a specialist class to a licence. The current fee for this is \$309 for individuals and \$786 for corporations.<sup>35</sup> A builder who wishes to add this specialist trade to their licence would also need to complete the necessary qualifications and demonstrate the required skills and experience to complete the work when applying.

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<sup>31</sup> The Centre for International Economics, *Building Confidence Report – A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, pp 4.

<sup>32</sup> The Centre for International Economics, *Building Confidence Report – A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, p 4.

<sup>33</sup> Johnston, N, Reid, S, Griffith University, *An examination of Building Defects in Residential Multi-owned properties*, (June, 2019), <[https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0030/831279/Examining-Building-Defects-Research-Report.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0030/831279/Examining-Building-Defects-Research-Report.pdf)>, p 57.

<sup>34</sup> NSW Fair Trading, *Home Building Fees*, (2022). <<https://www.fairtrading.nsw.gov.au/help-centre/fees/home-building-fees>>.

<sup>35</sup> NSW Fair Trading, *Home Building Fees*, (2022). <<https://www.fairtrading.nsw.gov.au/help-centre/fees/home-building-fees>>.

However, more is required to uplift waterproofing quality, including giving practitioners greater expertise in waterproofing design/integration to ensure waterproofing systems integrate effectively with other building work.

## **Engineers**

### **Transfer of professional engineering registration scheme to the Bill**

Currently, the DBP Act and Design and Building Practitioners Regulation 2021 (**the DBP legislation**) establish two registration schemes:

1. Design Practitioners, Principal Design Practitioners and Building Practitioners to provide compliance declarations (the compliance declaration scheme), and
2. Professional Engineers to perform professional engineering work (the professional engineers registration scheme).

It is proposed to transfer the professional engineers registration scheme from the DBP legislation to the Bill. This is because this registration scheme sits naturally in the Bill.

The primary purpose of the Bill is to outline the licensing requirements, including who must be licensed, how they are licensed and what it means to be licensed. It includes standards that must be upheld by licence holders, including integrity and building standards.

Comparatively, the original design of the DBP legislation did not intend for the registration/licensing framework for professional engineers to be held in the DBP legislation. The introduction of the registration/licensing framework for professional engineers into the DBP legislation came about through the parliamentary debate process.

There will be no implications from the transfer of the professional engineers registration scheme from the DBP legislation to the Bill. There will be no changes to the scheme, it will continue to operate as it does currently.

The Department will utilise various communication channels to provide regular updates to stakeholders on when the scheme in the DBP legislation will cease and the provisions within the Building legislation will begin.

### **Registration of engineers**

The Department is committed to enhancing public trust in the building and construction industry by continuing to register Professional Engineers. The importance of the registration of engineers is highlighted in the following case studies:

### Case Study: A House with No Piers<sup>36</sup>

*Construction of a home in regional NSW in 2009 resulted in the owners commencing three and a half years of legal proceedings in NCAT.*

*The weight of expert evidence found that the footing design prepared by the design engineer was inadequate. Further, the design was for a slab and piers and the piers were not constructed by the builder.*

*The Council officer failed to identify that the footings were not constructed in accordance with the approved design when conducting mandatory inspections.*

*The owners made complaints about the design engineer and the builder's expert engineer to their professional industry association. Both complaints were dismissed demonstrating a lack of willingness by the industry association to hold their members to account for what the weight of evidence showed was incompetent and unprofessional conduct by the engineers. The legal case was poorly managed by the owners' legal team and the absence of piers was not put before NCAT. Due to this, NCAT found that the builder had constructed the footings in accordance with the design. The owners were ordered to pay the builder's costs. In total, their own and the builder's legal and expert witness costs were \$301,000.*

*The NSW Building Commissioner inspected the site in mid-2020. He observed the excavated footings and the absence of piers under the slab. The NSW Building Commissioner commissioned a report and further investigation by NSW Fair Trading into the conduct of the builder and certifier to understand in detail what occurred in this matter, and how to prevent these outcomes for consumers.*

### Case Study - Opal Tower, Sydney Olympic Park

*Opal Tower is a high-rise residential building located in Sydney Olympic Park. It has 36 storeys above ground and three basement levels below ground. Construction was completed in 2018 and occupation of 392 residential apartments commenced.*

*On Christmas Eve 2018, residents of Opal Tower reported loud noises, including a loud "bang", reportedly of internal origin, and presumably associated with the structure of the building. Early investigations of the source of these loud noises identified cracks in a load-bearing panel on Level 10 of the building, forming one of the exterior walls at the base of one of the inset slots. Later investigations revealed further cracking of the hob beam supporting the cracked load-bearing panel. Subsequent investigations also identified other*

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<sup>36</sup> NSW Government, *The House with no Piers: A review of the issues relating to alleged defects in the construction of a home and the related complaints and dispute process*, (September, 2021), <<https://www.nsw.gov.au/sites/default/files/2021-02/the-house-with-no-piers.pdf>>.

*cracked concrete structural members at Level 4 of the building, again at the base of an inset slot feature.*

*To prevent future occurrences of such cases, experts engaged by the NSW Department of Planning and Environment to investigate the likely causes of cracking recommended the creation of a registry of engineers. The experts recommended “registered engineers should have a high level of competency including recognised qualifications benchmarked to international education standards, minimum level of professional practice and currency of continuing technical professional development. Certifications and approvals associated with the design and construction of a building should only be undertaken by a registered engineer in their specialist area of expertise.”<sup>37</sup>*

### **The existing registration framework**

Under the existing professional engineering registration framework in the DBP legislation, from 1 July 2021, a person is required to be registered to carry out professional engineering work if that work is in civil, electrical, fire safety, geotechnical, mechanical or structural engineering and it is carried out directly in relation to the design or construction of a class 2 building (residential apartment buildings) and buildings with a class 2 part (mixed use buildings such as apartments sitting above a shopping centre).

The only exception to this is where a person works under the direct supervision of a licenced Professional Engineer or is specifically authorised to perform professional engineering work by the DPB legislation.

When designing the existing engineering registration framework, the Government’s first priority was to introduce the reforms to the residential construction sector with an initial focus on multi-storey residential apartments and related mixed-use developments. This was to address the significant failures in building standards which occurred prior to 2021 such as the Mascot Tower and Opal Tower incidents.

The Department’s intention has been to roll out the registration scheme for professional engineers working on all kinds of buildings in NSW to ensure an effective and fit-for-purpose reform that ensure consumer safety.

The licensing of engineers is no longer intended to be restricted to class 2 buildings or buildings with a class 2 part, rather it would apply to buildings classified 1 to 10c including single dwellings, hospitals, factories, storage buildings, and shops. **Appendix 1** provides an overview of the building classifications within the BCA.

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<sup>37</sup> Unisearch Expert Opinion Services, *Opal Tower Investigation Final Report: Independent Advice to NSW Minister for Planning and Housing* (February, 2019), <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/opal-tower-investigation-final-report-2018-02-22.pdf>>, p 15.

## The proposed expansion of the registration framework

It is proposed that at the commencement of the Bill (estimated late 2023/2024), engineers will be required to secure a licence before carrying out professional engineering work directly in relation to the design or construction of buildings in the following classes:

- **class 1 and 2** - standalone single dwellings of a domestic or residential nature and apartment buildings,
- **class 3** - residential buildings other than Class 1 or Class 2 buildings, or a Class 4 part of a building. Examples include a boarding house, guest house, hostel or backpackers (that are larger than the limits for a Class 1b building).
- **class 9c** - residential care buildings that may accommodate residents who have various care level needs. They are a place of residence where 10% or more of persons who reside there need physical assistance in conducting their daily activities and to evacuate the building during an emergency.

It is proposed that engineers, doing professional engineering work in all other classes of buildings, will be required to hold a licence from 2025. The staggered approach to the commencement aims to assist the industry to adapt to the new registration requirements.

The Bill maintains the existing exclusion from 'professional engineering work' under the DBP Act if the work is only provided in accordance with a document that states the procedure or criteria for carrying out the work, and the work does not require the application of advanced scientifically based calculations.

### Example

*The construction of temporary structures such as scaffolding would be professional engineering work for the initial design of the structure to determine its structural integrity. Once the design has been produced, a person on site following the instructions prepared for them would not be doing professional engineering work.*

It is proposed that the classes of professional engineer under the DBP legislation would be replicated under the Bill's supporting Regulation to cover:

- structural engineering
- civil engineering
- mechanical engineering
- fire safety engineering
- electrical engineering
- geotechnical engineering.

The Bill seeks to outline the framework for the expansion of the registration framework proposal. General feedback is sought on this proposal, noting it mirrors the existing framework in DBP. As currently applies, it is proposed that professional engineers will need to comply with a Code of Practice setting out professional and ethical standards, complete a set amount of relevant education and training each year, hold relevant insurance and comply with a Practice Standard, which is in development.

The Department proposes to outline and consult on the detail of this proposal, including who will be required to register under the scheme, eligibility requirements for registration and an analysis of the costs and burdens of applying the scheme to the different classes of buildings, within the Bill's supporting Regulation. Stakeholders will have further opportunities to provide their feedback on this detail in the future.

Clause 10 of the Bill provides for the expansion of the licensing of engineers through the definition of 'professional engineering work' which is carried out "directly in relation to the design or construction of a building prescribed by the regulations" (clause 10(1)(b) of the Bill). The buildings applicable (Class 1 to 10c) are proposed to be outlined in the Bill's supporting Regulation.

### **Reasons for the proposed expansion of the registration framework**

The appropriate regulation of engineers provides greater consumer confidence in the end construction result, increased standards and ensures professionals are competent. Through effective regulation and enforcement, NSW Fair Trading can better ensure the quality and safety of buildings.

The registration of engineers ensures engineers in NSW:

- meet qualifications, knowledge, skills and experience requirements set by the Secretary for registration class(es) they are seeking registration in
- meet ongoing compliance with a Code of Practice
- meet ongoing insurance requirements
- meet ongoing requirements for continuing professional development.

The proposal for the licensing of engineers to apply across all building work in NSW moves us closer to national uniformity with Queensland and Victoria. Registration for engineers in Queensland has been in place for more than 90 years. In 1930 the then Queensland Government passed the original Professional Engineers Act, creating the Board of Professional Engineers Queensland (BPEQ) and bringing in the registered professional engineer of Queensland (RPEQ) system.

While the ultimate eligibility requirements will be subject to further consultation, there is a risk that imposing a licensing obligation on waterproofing may lead to shortages in this profession.

However, this could be the result of two competing reasons:

- competent practitioners who have been able to work without minimum qualifications would now be pushed out of the industry or required to work under someone who holds a licence
- many people working in the industry have been doing so without the competency to do so and the work they are doing is not compliant.

### **Regulatory benefits of the proposal**

Given the high costs of defects in this area, any reduction in the rates of defects will greatly outweigh the costs. The cost to rectify waterproofing defects represents between 11% (for Class 1 buildings) and 38% for Class 2 buildings of the total rectification costs.<sup>38</sup> Based on the NSW Government's review of strata building defects, this would represent an average rectification cost of \$126,000 for a Class 2 building.<sup>39</sup> As noted above, around 42% of buildings experience a waterproofing defect. According to the Urban Development Institute of Australia, in 2021, there were 15,417 completions on multi-unit dwellings.<sup>40</sup> If trends in defects continue along the research trajectory,<sup>41</sup> an anticipated \$815.8 million in defects can be anticipated in the pipeline of work. Not only is this a cost to the end consumer, but it is also a cost to business in both time and erosion of profits. If upskilling industry participants and using a licensing system to restrict poor players from working in the market, significant cost savings can be experienced by both consumers and businesses alike.

### **Questions**

- 22. Have you experienced any difficulty in accessing existing courses to complete trade skills. If so, where are you located?**
- 23. Do you agree that waterproofing should be a specialist category of licence (ie. needed regardless of the size of the job)? Please provide data/evidence to support your answer.**
- 24. Do you think that any existing categories of specialist work should be deregulated? Please provide data/evidence to support your answer.**

<sup>38</sup> The Centre for International Economics, *Building Confidence Report – A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>> p 4.

<sup>39</sup> NSW Government - Construct NSW Improving consumer confidence, *Research report on serious defects in recently completed strata buildings across New South Wales* (September, 2021), <<https://www.nsw.gov.au/building-commissioner/research-on-serious-building-defects-nsw-strata-communities#:~:text=The%20report%20found%2039%25%20of,the%20building%20and%20construction%20industry.>>, p 8 (based on 38% of the average defect cost of \$331,829).

<sup>40</sup> Urban Development Institute of Australia, *UDIA State of the Land 2022* (March, 2022), <<https://udia.com.au/research/udia-state-of-the-land-2022/>>, p. 13.

<sup>41</sup> Nicole Johnston and Sacha Reid, Deakin University, *An examination of building defects in residential multi-owned properties*, (June, 2019), < [https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0030/831279/Examining-Building-Defects-Research-Report.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0030/831279/Examining-Building-Defects-Research-Report.pdf)>.

## Building designers

The proposed definition of building work will also capture design work which seeks to regulate practitioners doing that work who are otherwise not registered for the work, for example as architects or professional engineers.

While a person must be registered under the *Architects Act 2003* to be an architect, and under the Bill to be a professional engineer, the Bill proposes to licence other designers who do design work on NSW buildings, including building designers and interior designers.

Under the Bill areas of building design that fall within the definition of 'building work' would require a licence before the practitioner can do work. For designers who are not registered as architects under the Architects Act or as professional engineers under the Bill, this will be the first time they are required to register to practice in NSW.

The details of the eligibility requirements for these designers would be settled following further consultation on the supporting Regulation but would have the following features:

- a person must hold a licence to do certain design work
- the person must meet minimum competency requirements, including experience, qualification, knowledge and skills
- a person who holds a licence would be subject to conditions of licence prescribed under the Bill and its supporting Regulation.

Currently, there is no consistent approach to the regulation of building designers across Australia. The following provides a summary of the approach in those jurisdictions which currently register building designers:

Jurisdiction	Licence types/scope	Application
Victoria	<p>Draftsperson is a category of building practitioner with three classes:</p> <ol style="list-style-type: none"> <li>1. Building Design (Architectural)</li> <li>2. Building Design (Interior)</li> <li>3. Building Design (Services)</li> </ol> <p>Scope of work between classes only limited by the type of work authorised.</p>	<p>Must be registered to carry on business of preparing plans for building or preparing documentation relating to permits or permit applications.</p> <p>Applies to commercial and domestic building work.</p> <p>Architects and endorsed building engineers are exempted (separate registration schemes apply).</p>
Queensland	<p>There are three types of Building Design classes:</p> <ol style="list-style-type: none"> <li>1. Building Design – low rise</li> <li>2. Building Design – medium rise</li> <li>3. Building Design – open</li> </ol>	<p>Must be registered to prepare plans and specifications for buildings.</p> <p>Applies to commercial and domestic building work.</p>

	Note: there are also speciality services design classes (hydraulic, fire and mechanical services design)  Scope of work between classes limited by building class type and floor area/number of storeys.	Architects and professional engineers are exempted (separate registration schemes apply).
Tasmania	Building Designer is a type of building services provider licence with three classes:  1. Restricted 2. Limited 3. Domestic  Note: there is also a building services designer licence with four categories (mechanical, electrical, hydraulic and fire services).  Scope of work between classes limited by building class type and floor area/number of storeys.	Must be registered for the design and documentation of buildings.  Applies to commercial and domestic building work.  Architects and engineers are exempted (separate licence types exist for those practitioners)

Table 5: Registration of building designers across Australia

The model guidance for the NRF was published in December 2021, representing a nationally agreed response to recommendations 1 and 2 of the BCR. Recommendations 1 and 2 propose the registration of building practitioners involved in building design, construction, and maintenance.

The NRF proposes that a person must be registered as either an architect or as a building designer to design and document buildings to meet the requirements of the NCC. A building designer is an individual registered at level 1, level 2 or level 3 in the discipline of building design.

Exemptions are available only where the person works under the direct supervision of a registered architect or building designer, or where the person does design and documentation work that is excluded from the definition of 'general design work' – in which case they must be registered in the relevant discipline of engineering design or specialist design or be supervised by a person who is registered in the relevant discipline of work.

The NRF defines general design work as: *the development of construction design documentation, specifications and reports relating to the design of a new building or alteration to an existing building where the design is required to meet the Performance Requirements of the NCC but does not include engineering design work or specialist design work.*<sup>42</sup>

A building designer's work is further restricted depending on the level of registration they hold:<sup>43</sup>

<sup>42</sup> Australian Building Codes Board, *National Registration Framework for building practitioners* (December, 2021) <<https://www.abcb.gov.au/sites/default/files/resources/2021/BCR-rec1%262-National-Registration-Framework.pdf>>, p 38.

<sup>43</sup> Australian Building Codes Board, *National Registration Framework for building practitioners* (December, 2021) <<https://www.abcb.gov.au/sites/default/files/resources/2021/BCR-rec1%262-National-Registration-Framework.pdf>>, pp 43 - 53.

- A **level 1 building designer** can work on any class or size of building without supervision, and may develop specialisation through work experience and CPD. They must hold NCC Volume One and Volume Two accreditation relevant to unlimited general building design work.
- A **level 2 building designer** can work on medium-rise buildings without supervision, as well as any class or size of building under the general supervision of a level 1 building designer. They must hold NCC Volume One and Volume Two accreditation relevant to medium-rise general building design work.
- A **level 3 building designer** can work on low-rise buildings without supervision, as well as any class or size of building under the direct supervision of an architect or a building designer level 1 or level 2 (where permitted). They must hold NCC Volume One and Volume Two *or* only Volume Two accreditation relevant to low-rise general building design work.

The NRF also uses benchmarks of qualifications and recent and relevant experience for each level of each occupation to show the type of competence expected.

The DBP legislation currently requires building designers to be registered to prepare regulated designs and make compliance declarations for low and medium rise class 2 buildings. Not all building designers need to be registered, only those who take responsibility for making the declaration. Building designers are otherwise not registered under that legislation to do general design work for all classes of building.

Industry representatives for interior designers have made submissions to Government to recognise interior design as a discrete class of design practitioner under the DBP Act.<sup>44</sup> While the Department does not support at this time the requirement to have a standalone class of design practitioner for interior design under the DBP Act, establishing a standalone licence for interior design under the Bill would recognise the specialisation of this kind of designer without requiring them to declare work under the DBP Act.

Fee amounts under the DBP legislation were determined by weighing up a number of variables, such as the number of people likely to require registration, the time and costs it would take to process an application, and the number of staff required to process applications within those time and costing limits. Different licence types and fee structures were also considered to ensure that each fee accurately reflects the administrative effort and resources required to process each application. Fees for building designers were considered a level 2 licence on the basis that

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<sup>44</sup> Public Accountability Committee, *Further inquiry into the regulation of building standards report 11*, (February, 2022), < <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2831/Report%20No.%2011%20-%20Public%20Accountability%20Committee%20-%20Further%20inquiry%20into%20the%20regulation%20of%20building%20standards.pdf> >, pp 28 – 30.

applications were expected to be more challenging to process. This is because they require qualifications to be validated and will therefore be more time and resource intensive. The current fees for new registration for building designers are set out in the following table.

Class	1 year fee (\$)	3 year fee (\$)	5 year fee(\$)
Design Practitioner – Building Design (low rise)	440	990	1,650
Design Practitioner – Building Design (medium rise)	440	990	1,650
Design Practitioner – Corporation	1,366	3,074	5,122

Table 6: Fees for registration of building designers under the DBP legislation

Noting that the effort involved in assessing an application for a building designer under the proposed Bill will be the same, these fees give an indication of the likely registration costs for building designers. Registration under the Bill may result in fees under the DBP legislation being reduced for building designers, as the application may be simpler to process if it relies on assessing information that has already been vetted under the Bill.

While there will be increased costs for some designers, many designers have already undertaken accreditation and membership of industry bodies that would be similar to the proposed accreditation process to secure a licence. Industry representatives have provided anecdotal evidence to Government that registration will provide confidence in the industry as a whole by more clearly differentiating between competent, trustworthy designers and untrustworthy practitioners.

For customers, the proposed licensing scheme for designers would provide a clear indicator of the person’s competency to do the design work. Customers would be able to check on the free online register that sets out what kind of work a person is competent to carry out. For example, small business owners looking to fit out a new restaurant could secure the service of a licenced designer to oversee the work, with that practitioner subject to rigorous obligations under the Bill to ensure work is safe and compliant.

## Questions

**25. Do you support licensing building designers and interior designers?**

**26. What scope of work should building designers and interior designers be able to do?**

**27. How would this licensing scheme interact with the Architects Act, which restricts “architectural service” to registered architects?**

## Fire safety

Fire safety practitioners operate in a complex regulatory landscape. They provide many different services throughout the building lifecycle, accompanied by varying degrees of regulation or industry accreditation. Fire safety practitioners are a specialised part of the building sector who are responsible for the design, installation, commissioning, maintenance, and periodic testing of fire safety systems.

The different functions of fire safety practitioners are currently divided between different regulatory schemes:

- competent fire safety practitioners (under the Fire Practitioner Accreditation Scheme under the BDC Act), which includes Fire Systems Design, Fire Systems Certification, Inspect and Test (routine service) and Fire Safety Assessment.
- fire safety engineers (under the DBP Act)
- fire safety design practitioners (under the DBP Act)

It is proposed to combine the first two registration frameworks under the Bill, as well as making changes to other licensing requirements to ensure that all practitioners working on fire safety are competent and experience to do so. Design practitioners are proposed to be kept separate under the DBP Act due to the specific functions they carry.

A key fire safety function is carrying out 'regulated work' (within the meaning of the BDC Act). This regulated work includes prescribed fire safety functions as part of the building approval process and the ongoing testing and maintenance of fire safety systems in buildings.

For fire safety practitioners (accredited practitioner (fire safety) and certain registered certifiers) the functions relate to relevant fire safety systems being hydraulic fire systems (automatic fire sprinklers and fire hydrant systems), fire detection and alarm systems, and mechanical ducted smoke control systems.

These practitioners are responsible for:

- endorsing plans related to complying development and construction certificates for BCA compliance of a relevant fire safety system
- endorsing the non-compliance of provisions of the BCA relating to the operational performance of a relevant fire safety system
- carrying out functions for the ongoing testing and maintenance of fire safety measures in buildings.

Regulated work also includes functions for fire safety engineers (under the BDC Act) being the preparation of performance solution reports, and the signing off of building work involved that performance solution prior to an OC being issued.

Other reforms are being proposed for fire safety practitioners and the detailed analysis can be found in the Fire Safety Regulation Regulatory Impact Statement.

In October 2021, the NSW Government released the *Improving fire safety in new and existing buildings* – a report by a working group of industry experts that identified ways the NSW Government could improve fire safety.<sup>45</sup>

Underpinning the report were recommendations to ensure that all fire safety practitioners should be appropriately licensed, registered, or accredited. The Bill would seek to implement these recommendations.

Proposed changes from the current requirements including:

- requiring all practitioners who design, install, certify or maintain a fire safety system to hold a licence under the Bill, and
- limiting work that cuts across other classes of licence to those who hold concurrent authorisation in fire safety and the other class (for example hydrant installation requiring a plumbing and fire safety licence).

### **What are the regulatory impacts?**

Imposing stricter licensing conditions, including requiring all practitioners involved in the design, installation, certification and maintenance of fire safety systems to be licenced, represents a cost to business.

Licensing costs for an individual are currently:

- accredited practitioner (fire safety) - \$990 initial fee and \$1,100 for annual renewal.
- registered certifier - \$782 (for one year) and annual renewal.
- registered design practitioner - \$440 initial fee (for one year) and \$330 annual renewal.<sup>46</sup>

Introducing new classes of licence, with eligibility restricted to those with experience doing fire safety work and minimum competency requirements, could restrict some businesses currently doing this work from continuing to do so. Specifically, this could include generalist trades undertaking passive fire work and specialist trades without fire safety accreditations undertaking work related to fire safety systems.

The proposed licensing scheme does not seek to stop these people from doing work but will require them to prove they are competent to work on fire safety systems.

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<sup>45</sup> NSW Government, *Improving fire safety in new and existing buildings* (October, 2021), <<https://www.nsw.gov.au/building-commissioner/building-and-construction-resources/research-on-fire-safety-reforms>>.

<sup>46</sup> NSW Fair Trading, *Registration fees*, (2022), <<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/design-and-building-practitioners/registration-fees>>.

Competency is a critical factor in the fire safety sector. NSW Fair Trading's occupation certificate audit program found serious defects of fire safety systems in around 46% of buildings inspected, being the second most common defect identified.<sup>47</sup> Recent research on defects in strata buildings also found that around 38% of buildings completed in the last six years had serious fire-related defects.<sup>48</sup>

While many defects in a building pose a financial cost to the building owner and those living and using a building, defects in fire safety systems can lead to catastrophic risks to life.

The benefits of instituting a comprehensive licensing framework for all fire safety practitioners is clear – competent practitioners producing fire safety systems that meet requirements under the National Construction Code and relevant standards that are free of defects and will keep people safe.

A single licensing framework, rather than a licensing system spread across a number of frameworks and gaps for certain practitioners, would lead to “greater cross-disciplinary integration between the roles of fire system design, fire safety engineer and contractor to ensure there is a single point of responsibility for the integrity of the entire fire safety system (active and passive) within a building.”<sup>49</sup>

## Questions

- 28. Do you support combining existing licensing and registration requirements for fire safety practitioners into a single framework or should the schemes be kept separate?**
- 29. What are the likely impacts on existing business practices if all practitioners involved in fire safety systems would need to be licenced?**
- 30. What consideration should be given to dealing with the cross-over of fire safety systems with electrical wiring work and plumbing work? What changes to current licences would be required to ensure a practitioner is competent in fire safety work and the other specialist trade area?**

## Building inspectors

It is proposed that building inspectors who carry out pre-purchase inspections or defect report inspections should be included in the licensing framework. It is anticipated that builders with long

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<sup>47</sup> OC audits are targeted on class 2 projects under construction that exhibit high-risk characteristics. This figure relates to audits conducted from September 2021 to September 2022.

<sup>48</sup> NSW Government - Construct NSW, *Improving consumer confidence: Research report on serious defects in recently completed strata buildings across New South Wales*, (September, 2021), <<https://www.nsw.gov.au/building-commissioner/research-on-serious-building-defects-nsw-strata-communities>>, p 26.

<sup>49</sup> NSW Government, *Improving fire safety: Industry report on reforms to improve fire safety in new and existing buildings*, (October, 2021) <<https://www.nsw.gov.au/building-commissioner/building-and-construction-resources/research-on-fire-safety-reforms>>, p 12.

term industry building experience looking to transition into a new career can be licensed in this class. Other occupations may be included as necessary and appropriate.

The *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009 (Occupational Act)* amended the HB Act and removed the requirement for pre-purchase property inspectors to be licensed through elimination of the building consultancy licence. The review behind the Occupational Act found that with guidance on what skills and experience to look for, consumers should be able to engage a suitably qualified person to undertake a house inspection.

However, the Department has received feedback that consumers are having issues with sourcing appropriately qualified building inspectors to deliver these reports. Providing reports prior to a sale of a property is a high-risk area with serious repercussions for consumers.

Consumers are often pressured to find a building inspector quickly or use one offered by the vendor to be in a position to make an offer on a property as quickly as possible. In this time-constrained environment, consumers are making decisions to secure the services of sub-standard practitioners who are producing poor reports that do not provide the consumer with an accurate understanding of the condition of a building.

With deregulation, customers rely on the inspection report being completed to Australian Standards. When there is a problem with the report, leading to a loss, the customer can rely on court action for a remedy. The action can rely on breach of contract, misleading and deceptive conduct, negligence, or a breach of section 60 of the ACL. It is difficult to identify in litigation what a building inspector should have identified at the time of the inspection.

*Case Study: Negligent building inspector*

*A 7-year-old girl suffered significant head injuries after falling more than 2.5 metres when a baluster she was leaning against broke. Her family had just moved into their Bulli home after a building inspector looked at the property and issued a favourable report. The report listed verandas/balconies among the areas he had inspected but made no mention of any work required on the baluster that would give way under the child's 31kg body, six months later. A consultant architect said the balcony slats were "at the point of failure" at the time of the inspection and that this would have been obvious to a competent inspector. The family were awarded damages for the negligence of the inspector incident however due to no regulation in this area, there are no sanctions for the inspector to prevent him from continuing to work in the industry.<sup>50</sup>*

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<sup>50</sup> Angela Thompson, Illawarra Mercury, *Building inspector Nigel Walsh found negligent after Bulli girl's life-altering fall from balcony*, (March, 2017), <<https://www.illawarramercury.com.au/story/4499476/shoddy-building-inspectors-report-caused-bulli-girls-horrific-balcony-fall/>>.

## **Regulatory costs and benefits of the proposal**

Re-licensing this profession would provide consumers with access to an online register of competent practitioners, who are subject to regulatory oversight and must do work in accordance with prescribed standards.

Re-licensing represents a cost to business – requiring the business owner to secure a licence (including meeting the required eligibility requirements) and meet minimum requirements under the Act. Licensing, and imposing standards of work would require current operators to adapt how they work to comply with the requirements. As there are no specific building qualifications required to start conducting building inspections, some current business operators would be required to hire a licensed person to act as a nominee supervisor if they are structured as a corporation or, alternatively some businesses may be forced to operate in other jurisdictions where there are no licensing requirements.

This will be the subject of further consultation as part of the Regulation making process, however feedback is welcome about what occupations may be considered suitable hold building inspector as an additional class.

### **Questions**

**31. Do you agree that building inspectors should be licenced?**

**32. Which current construction industry occupations could hold a building inspector licence?**

## **What work can be done without a licence?**

Under the Bill, a person doing building work, regulated work or specialist trade work must hold a licence to do so. The Bill provides that regulations can contain exemptions to this requirement.

In the HB Act, persons who complete work valued at \$5,000 or less,<sup>51</sup> including the cost of materials are not required to hold a licence. This threshold is imperfect as long-term detriment can still be caused by work valued up to the threshold. Also, work that is performed over the threshold could also be considered low risk, adding regulatory impost where it may not necessarily be needed.

These principles were outlined in the 2018 Better Business Reforms where 13 categories of licences were nominated for removal. Those reforms did not progress as stakeholder feedback at the time indicated that the licence types were needed. With the reset of licensing to focus away from a 'licence to contract' into a 'licence to do work' and regulatory compliance, it is time to revisit the existing list of licensed occupations.

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<sup>51</sup> This does not include specialist work which must requires a person to hold a licensing irrespective of the cost of the work.

The flexibility of prescribing the requirement for a licence in the regulations also provides the option to apply a monetary threshold based on the occupation. For example, smaller painting jobs or home maintenance may not require a licence but if a licence holder wishes to work on larger projects where the risk of detriment may increase, a threshold may be appropriate. Other occupations are considered low risk and do not require regulatory intervention, such as the recent move to re-regulate internal flooring systems.

Furthermore, other areas such as civil construction, railways and mines have remained the domain of Work Health and Safety Laws or captured by regulation in other ways. For the most part, this may remain appropriate. Views are sought from interested stakeholders to understand if exemptions from licensing in some of these areas, such as civil construction remains appropriate. Some building and construction occupations may be high risk to personal safety but low risk for defects and should therefore be adequately managed via risk control measures under Work Health and Safety obligations. These occupations would include high risk work licences such as crane operators, scaffolding and demolition.

### **Classes of licence that may not require a licence**

Views are sought to assess the risk of market failure or consumer detriment in classes of occupation that may be newly captured with the expansion of the scope of the Bill. In some jurisdictions, such as Queensland, a person who wishes to be a Project Manager needs to be licensed. Other occupations such as site estimators could be captured by the definition of 'building work'. Throughout the discovery phase of the Bill's development, there was no evidence presented to demonstrate that these types of occupations require licensing. Views are sought on the necessity of licensing for these occupations.

### **Why limited to NCC classes? Why not infrastructure?**

Civil construction is never completed error free and yet only particular occupations work licensed in that industry. On the other hand, specialist occupations must be licensed to work in the industry due to the nature of their licence. Defects also occur in civil construction, which is usually managed in contract enforcement or litigation. Defects or sub-optimal designs of this kind do not usually impact the general public until there are extraordinary situations, such as the recent floods impacting the Northern Rivers. In February 2022, distribution channels were significantly disrupted after the Pacific Highway was cut off by flood waters in several places between Ballina and Tweed Heads. The highway north of Grafton was also closed due to flooding. The closures impacted northern regional areas as grocery supplies come out of Queensland and cannot easily be redistributed from Sydney.<sup>52</sup> It would be inequitable to attribute these road closures to the design

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<sup>52</sup> The Guardian, *Trucks stranded and supermarkets bare as floods cut off Pacific Highway*, (February, 2022), <<https://www.theguardian.com/australia-news/2022/mar/01/pacific-highway-closures-motorway-closed-nsw-flooding-ql-queensland-trucks-australia-floods>>.

and build of the roads, but it is not unreasonable to expect that the design and construction of such infrastructure has quality assurance processes in place.

The Department intends to retain obligations around licensed persons doing specialist work. The Department also understands that there are fewer claims due to defective work in civil construction. Therefore, there are no plans to introduce licensing for non-specialist trades at this stage – pending views from consultation.

## **Questions**

**33. Should any regulated work be carried out without a licence? Why or why not?**

**34. Do you consider a monetary threshold an appropriate way to exempt occupations from licensing requirements? Should the value vary by occupation?**

**35. Should some professional work such as project managers and estimators be exempt from holding a licence?**

**36. What licences should be prescribed in the Regulation?**

**37. Are the current licensing levels in civil construction appropriate?**

## **Why are we keeping other building professionals separate?**

### **Architects**

Architects are currently registered by the NSW Architects Registration Board under the Architects Act. This is recognised to be a sophisticated standalone regulatory scheme that does not require immediate intervention. We propose this legislation remains separate at this stage.

### **Professions under the DBP Act?**

The registration frameworks under the DBP legislation commenced on 1 July 2021. Further work is underway to expand the scope of this scheme (See the Amendment Bill RIS. While the registration of professional engineers is proposed to be moved from the DBP Act to the Bill, the registration of design practitioners, principal design practitioners and building practitioners is proposed to be kept in the DBP Act.

These practitioners will not be incorporated into the Bill as the DBP Act only requires selected persons to be registered to carry out a particular function. This is currently limited to certain classes of buildings. Licences that will be captured by the Bill are 'occupational' licences such as builders, electricians, plumbers etc. An occupational licence is required by all persons who will be carrying out all types of work in their chosen occupation. A licence will be required under the Bill irrespective of the type of building they are working on.

The DBP Act, by comparison, does not require all practitioners to be registered and those who are registered are only registered for the purposes of performing a specific function – being the making of a declaration about BCA compliance for their work. How a person otherwise conducts

themselves in their profession outside of making and providing declarations is otherwise unregulated under the DBP Act. For example, where an architect or building designer prepares a regulated design and takes on responsibility for declaring that the design complies with the BCA, they must be regulated under the DBP Act to make the declaration.

## **Certifiers**

The BDC Act and supporting regulation commenced 1 July 2020. Under the BDC Act, certifiers are registered to:

- determine applications for complying development, construction certificates and occupation certificates
- issue compliance certificates
- carry out swimming pool barrier certification
- issue certificates for subdivision works, and subdivisions
- inspect building work at specific stages to determine consistency with approved plans, and compliance with legislative requirements and conditions of consent
- take action to address non-compliant work and, if needed, report it to the appropriate authority, such as the local council.

Certifiers do not supervise or manage building work.

Given the different functions that certifiers carry out to those doing design and building work, it is proposed to keep the certifier's regulatory framework separate from other building professionals. Following consultation, further consideration may be given to considering whether some classes of certifier could be transferred to the Bill in future.

## **Questions**

**38. Do you support registering and oversight of these practitioners under separate pieces of legislation, or should they be brought into a whole of industry Bill?**

**39. If they are kept separate, what measures should be introduced to ensure consistent obligations apply to all involved in building work in NSW?**

**40. If they are not kept separate, and incorporated into the Bill, what parts of the Bill should change to make this transition effective and consistent with the broader intent of the reform?**

## **How are we utilising the NRF?**

The NRF was developed following recommendations from the BCR, which recommended that each jurisdiction require the registration of certain building practitioners. To support this recommendation, the BCR indicated that each jurisdiction should prescribe consistent

requirements for the registration of building practitioners. Building ministers established a BCR implementation team who consulted extensively on the creation of the NRF. The end product is a national guidance model for jurisdictions to implement when they are best placed to do so.

The ABCB consulted on a draft framework over 12 weeks from June 2020. 755 industry associations, businesses, governments, educational institutions and individuals provided a submission to the consultation. Following consultation, the NRF was further refined, and Building Ministers endorsed it for States and Territories to implement in November 2021.

The NRF outlines recommended requirements for building designers, architects, engineering design, specialist design, specialist consultants, builders, fire systems installers, plumbers, project managers and certifiers. As noted above, not all these practitioners are proposed to be licensed under the Bill, nor are their existing schemes being modified. The skills requirements of licensed occupations will also be detailed in the supporting regulations, giving adequate time to consider the implications of implementing some of the NRF model.

### **What are the benefits of adopting a nationally consistent model?**

The Bill and its supporting regulations will significantly improve mobility of occupations throughout all jurisdictions in Australia through better alignment of licence classes, the minimum competency requirements and the type of work authorised to be carried out by licence holders.

The benefits of national consistency include automatic mutual recognition, detailed in the Department of Prime Minister and Cabinet's economic impact assessment of December 2020.<sup>53</sup> The assessment found that increased labour mobility can decrease total downtime costs by 10%.<sup>54</sup> It also found that around 124,000 licence holders will benefit from reduced administration costs across all licences nationally, leading to high capital yield.<sup>55</sup>

There are competition benefits associated with reduced costs to operate nationally, which can be passed on to end customers. And finally, nationally consistent data allows regulators to identify poor performers who may move across jurisdictions, reducing the potential for poor work practices to spread across jurisdictions.<sup>56</sup>

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<sup>53</sup> Department of the Prime Minister and Cabinet, *Economic impact assessment of automatic mutual recognition of occupational licensing - final report*, (December, 2020), <<https://www.pmc.gov.au/sites/default/files/publications/economic-impact-assessment-of-amr.pdf>>.

<sup>54</sup> Department of the Prime Minister and Cabinet, *Economic impact assessment of automatic mutual recognition of occupational licensing - final report*, (December, 2020), <<https://www.pmc.gov.au/sites/default/files/publications/economic-impact-assessment-of-amr.pdf>>, p 10.

<sup>55</sup> Department of the Prime Minister and Cabinet, *Economic impact assessment of automatic mutual recognition of occupational licensing - final report*, (December, 2020), <<https://www.pmc.gov.au/sites/default/files/publications/economic-impact-assessment-of-amr.pdf>>, p 14.

<sup>56</sup> Centre for International Economics, *Building Confidence Report: A case for intervention*, (July, 2021), <<https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf>>, p 96.

## **What are the expected costs?**

As noted above, any costs would be associated with newly captured occupations who would have to outlay licensing costs, any updated education costs and business administration costs associated with the proposal. While not settled, these costs could potentially impact building designers, fire system installers and builders. The benefits are expected to outweigh the costs, especially in relation to businesses that will benefit from increased productivity and reduced administration costs.

## **Co-regulation**

The Bill proposes that all practitioners hold a licence to do building work in NSW. While NSW Fair Trading will issue all licences, the Bill proposes to grant functions to approved industry bodies to accredit practitioners on behalf of NSW Fair Trading. This would allow practitioners to demonstrate eligibility to hold a licence with NSW Fair Trading (in line with eligibility requirements set out in the supporting regulations) or be accredited by an approved body.

To move to this flexible pathway framework, the Department proposes to utilise the extensive knowledge and expertise of occupational bodies and professional associations who hold a professional standards scheme under the *Professional Standards Act 1994*. These bodies will be relied on to undertake assessments of applicants for a licence under the Bill.

If approved by the Secretary of the Department of Customer Service, the approved body would assess an applicant and consider whether the applicant has the appropriate qualifications, skills, knowledge and experience to hold a licence (skills recognition). If assessed as meeting these requirements, the applicant would be referred to the NSW Fair Trading to undertake the final registration process (such as probity checks).

A similar framework is already established in the DBP Act, where approved professional bodies can assess the qualifications and eligibility of persons applying to be registered as professional engineers.

This flexible pathway framework would allow those practitioners with extensive capability who have not attained the prescribed minimum qualifications to participate in an assessment by a body (with a professional standards scheme) to ascertain if they could be registered.

Adopting this approach would allow the registration of practitioners to take a more qualification-neutral approach and enable an assessment of an applicant's capacity to consider their qualifications, as well as their skills, knowledge, and experience.

While NSW Fair Trading has extensive experience in assessing licensing applications for building professionals, sharing the ongoing assessment of an applicant's capability with bodies operating a

professional standards scheme would provide a new pathway for applicants without compromising quality.

Professional standards schemes bind an occupational association to monitor, enforce and improve the professional standards of its members. They are designed to help protect the people, or consumers, who use their members' services. Professional standards regimes are predominately focused on rewarding good behaviour and continuous improvement in the professional standards of service providers.

These associations are organisations that have been approved by the Professional Standards Council as being able to represent professionals of a particular occupation. As at May 2022, relevant professional standards schemes for the building industry are limited to Australian Institute of Building Surveyors Ltd and Association of Consulting Surveyors National Ltd but the Department understands a number of other organisations are nearing approval of a professional standards scheme.

Professional standards schemes cap the civil liability or the amount of damages that can be paid by professionals who belong to a participating association's scheme. These caps are designed to be high enough to cover the vast majority of claims and will only apply to a professional if they can prove they have enough insurance and/or business assets to cover the potential damages awarded by a court. This is how professional standards schemes provide confidence in compensation if a claim succeeds.

The Bill proposes that co-regulation is limited to competency recognition for the purposes of assessment, but comment is sought on whether additional oversight and co-regulatory functions could be assigned to these bodies.

As this process is voluntary for professional industry bodies and its members, it is not seen as adding any regulatory burden to industry.

However, by providing benefits to these bodies to carry out co-regulatory functions that others cannot, it is hoped that more industry bodies will professionalise and stand-up professional standards scheme. These schemes increase confidence in industry not only through the increased obligations on members of the scheme to meet minimum behaviour and competency obligations, but also consumers' confidence in an industry that takes self-regulation seriously.

## **Questions**

- 41. Do you support allowing professional bodies to play a role in accrediting practitioners?**
- 42. What are the risks of this model?**
- 43. What other functions do you consider appropriate to give these bodies when they are operating as a co-regulator with Government?**

## 4. Owner-builder permit scheme

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An owner-builder permit gives authorisation to individuals wanting to complete, supervise or coordinate building work on their home. It reduces the barriers for an owner to build or renovate their home, while also ensuring quality and protections for subsequent owners.

Under the HB Act, owner-builder work is any work, including supervision and coordination of the construction, alterations, repairs or additions to a property:

- where the reasonable market cost (including labour and materials) exceeds \$10,000
- which relates to a single dwelling-house, dual occupancy<sup>57</sup> or a secondary dwelling that:
  - requires development consent under Part 4 of the EP&A Act, or
  - is a complying development within the meaning of that Act.

The owner-builder permit scheme is designed to minimise the on-cost for owners and subsequent owners by sustaining a regulatory system that offers legislative requirements and consumer protections for works an owner can complete on their home.

The holder of an owner-builder permit is responsible for:

- overseeing and supervising all tradespeople
- ordering materials and managing the building site
- obtaining all necessary council and authority approvals
- ensuring that the financial, taxation and insurance requirements of the building work are met and fully comply with all laws
- being aware of obligations under the *Workers Compensation Act 1987* and the *Work Health and Safety Act 2011* to provide a safe work environment that complies with SafeWork NSW requirements
- ensuring any contractor engaged is appropriately licenced and insured to do the work contracted for
- warranting that the materials and work will be fit for the purpose and result in a dwelling that can be occupied.

Under the HB Act, owner-builder permits authorise only the work allowed to be done by the owner-builder under the permit, and therefore expire once the work is complete. In addition to this, only one owner-builder permit can be issued within any five-year period, unless the application and any

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<sup>57</sup> An owner-builder permit will only be issued regarding a dual occupancy in cases of special circumstances

earlier permit relate to the same land, or special circumstances exist. Therefore, owner-builders can only apply for a permit once every 5 years and have an unrestricted time to complete works.

### **Defective owner-builder work**

Despite the owner-builder permit scheme being introduced to allow legitimate building on a person's property to be overseen by the owner, the scheme has seen a massive, unintended expansion since its initiation, and is being used to avoid obligations under the HB Act. With over 533,000 owner-builder permits issued within NSW under the scheme. It appears that some people are using the scheme to provide opportunities for commercial gain or profit, while avoiding the obligations involved in becoming a licensed builder and obligations under the home building compensation scheme.

An example of this is seen in the case of *Ku-ring-gai Council v Chan* [2017] NSWCA 226, where the purchaser of an owner-builder property uncovered serious structural issues that did not comply with consents and plans – a product of an under-qualified person overseeing complex building work. This case, along with many others demonstrate issues subsequent owners have faced with the issue of poor building work and defects which are not covered by the home building compensation scheme.

The Bill proposes the retention of existing consumer protections such as warnings on the notice of sale, however this does not prevent defects or non-compliant work. Further restrictions on the scheme are proposed to address these issues.

As a result of unsafe installation, non-compliant work or lack of work health and safety knowledge, owner-builder work creates a large risk to an individual's safety (the owner, the people working on site and future owners). For example, the NSW District Court found in *SafeWork NSW v Anthony Hanna*; and; *SafeWork NSW v Milia Hanna* [2021] NSWDC 708 that the death of an air conditioning installer resulted from a fall on an owner-builder construction site, as there were no handrails or guard rails on the partially completed metal staircase, nor the second floor. The judge determined that owner-builders failed in their obligations to ensure the safety of workers at their site.

While the *Work Health and Safety 2011* prescribes minimum safety obligations, the Bill proposes to restrict the work unlicensed people can do under the scheme to ensure there is minimal impact to the structure and safety of the building work.

Under the proposed new scheme, owner-builders will only be able to carry out certain exempt building work, engage with a licensed contractor, or coordinate the resourcing and installation of kit homes and pre-fabricated building work.

There will also be tighter restrictions on who is able to apply for an owner-builder permit and their land use.

WHO	WHERE	WHAT
<ul style="list-style-type: none"> <li>• an individual</li> <li>• the owner of the land on the title</li> <li>• over the age of 18</li> <li>• completed the training and education required</li> <li>• not a holder of another owner-builder permit</li> <li>• have no owned land in conjunction to another owner-builder permit</li> </ul>	<ul style="list-style-type: none"> <li>• work completed at the intended principal residence</li> <li>• a dwelling house or secondary house</li> <li>• obtained development consent with plans lodged on the e-planning portal</li> </ul>	<ul style="list-style-type: none"> <li>• exempt building work, or</li> <li>• engage a licence holder, or</li> <li>• coordinate the supply and installation of a kit home or pre-fabricated building</li> <li>• carry out building work within 5 years</li> </ul>

Figure 2: Proposed owner-builder scheme

## What are we proposing?

### Restricting the 'who'

Complaints and feedback received by industry have revealed that the current owner-builder permit scheme does not serve its intended purpose of assisting homeowners to complete works on their own home. Instead, feedback received shows that some people are using the scheme to by-pass their consumer protections and obligations under the home building compensation scheme.

According to ABS data, in 2006, approximately 1,931 people were living in improvised dwellings in NSW.<sup>58</sup> This group includes owner-builders and other people accessing alternative accommodation. However, data captured by NSW Fair Trading suggests that there has been a dramatic spike in the number of people accessing the owner-building scheme. Over the financial years between 2019 and 2021, there were 14,000 owner-builder permits issued. Owner builders represented 12% of overall construction of single and duplex/triplex dwellings in NSW over the 2019 to 2021 financial years. This rate is not compatible with the number of owners continuing to reside in their home.

The Bill proposes tightening the eligibility criteria for owner-builders applying to get a permit. To ensure that owner-builders are using the scheme for its intent, additional requirements will be introduced including requirements for permit holders to be:

- named on the property title and
- an individual (not a corporation, partnership or other association).

While these requirements reflect the current provisions enforced under the HB Act, additional evidence relating to the land title must be submitted for proof of ownership by the owner-builder.

Further measures have been included relating to the occurrence of multiple owner-builder permits. The Bill will carry over the HB Act provisions whereby permit holders must prove they have not held an owner builder permit within 5 years. Additionally, they must also prove they do not own or

<sup>58</sup> Australian Bureau of Statistics, 'Census of Population and Housing: Estimating homelessness', (2006), <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/2049.0Main+Features12006?OpenDocument=>>>.

have owned land within the relevant period, either in a partnership or otherwise, that has had an owner-builder permit issued.

### **Restricting the 'where'**

The Bill proposes restrictions on the land type and habitation of owner-builders. Under the Bill, owner-builders must prove an intent to reside on the property as their principal residence. The 'intent to reside' clause (clause 81(2)(c)) has been added to ensure that owner-builders meet the scheme's intended purpose by residing in the property rather than using the property for monetary gain. The Secretary has been given powers to determine the applicant's evidence of intent.

To reflect this change, the dwelling type that can be constructed under a permit has been restricted under the Bill to building work relating to a dwelling house or secondary dwelling where development consent or complying development approval has been given.

The exceptional circumstance provisions for dual occupancy dwellings will be removed as this type of building work no longer fits the intent of the permit scheme. As previously mentioned, the new intention of this scheme is to ensure homeowners complete works on their own home and discourage developers from avoiding their obligations. Feedback received from industry stakeholders shows that developers are using the dual occupancy provisions to by-pass their consumer protections and obligations under the home building compensation scheme.

For better administration of the owner-builder permit scheme, it is proposed that plans and additional information will be required to be lodged on the NSW Planning Portal.

### **Restricting the 'what'**

Under the current provisions, subsequent owners have faced issues of poor building work and defects which are not covered by insurance. Non-compliant owner-builder work can cause significant structural defects that undermine the premises' integrity, leaving subsequent owners having to remediate defects (along with the associated costs).

Restricting the kinds of work that an owner-builder can do without a principal contractor overseeing the work will not resolve all risks of non-compliant work. However, restricting the kinds of work that an inexperienced or unqualified owner-builder can do will limit the kinds of work where defects could occur.

The Bill is proposing to refine the owner-builder permit scheme to ensure unlicensed people are not completing major building work. Owner-builders will only be allowed to complete 'exempt work' on their home. These are works that are considered to have minimal impact on the building, such as installing a deck or painting a house and will be outlined in the supporting regulations.

In addition to this exempt building work, an owner-builder under the new scheme will be allowed to coordinate the installation of a kit home or pre-fabricated building. An owner-builder will be able to

take on a project manager function to coordinate the supply and installation of offsite buildings onto their site. A licensed builder is still required to complete building works, installation of the building and any ancillary structures. This construction method has been included as it allows for a cost-effective, and less risky technique of construction and will be accompanied by greater consumer protections proposed under this Bill (see Part 2, Chapter 2).

Owner-builders must engage with licensed persons to complete work on their property and will not be able to do work that requires a licence themselves. The intent of this change is to ensure safety for owner-builders while also addressing issues of defects for subsequent owners.

After gaining industry feedback, the Bill proposes the retention of the five-year relevancy period for owner-builder permits. This allows owner-builders to complete work on their land within a reasonable time period, whilst deterring individuals from misusing the scheme

### **What are the regulatory costs and benefits?**

There were 20,052 owner-builder permits issued between July 2019-April 2022. The proposed amendment to this scheme is expected to carry no regulatory impact to the work these owner-builders can do. As part of the transitional arrangements, anyone who is currently completing owner-builder work can continue to do so under the HB Act provisions, with an additional period given to allow for the operational adjustments needed to implement the new scheme.

On commencement of the proposed new scheme, owner-builders who previously were allowed to complete works on their home under the \$10,000 threshold will no longer be allowed to complete non-exempt building work. These restrictions are expected to reduce the number of owner-builder permits taken up under this scheme, as owner-builders will need to employ a licensed tradesperson to complete this work for them. This will raise the current cost of doing owner-builder work.

This restricts the work unlicensed individuals can do, however ensures work is able to be better regulated. The robust licensing framework proposed in the Bill is designed to allow a competent person to complete work that is compliant and regulated by NSW Fair Trading. Licensed practitioners carry imbedded protections through an understanding of standards, mandatory contract requirements, insurance and statutory warranties and by ensuring that the work completed must be compliant. If work is not compliant, remediation can then be taken. Therefore, by allowing only licensed individuals to complete regulated building work, there is an increase in the quality of work and greater confidence for purchasers, with reduced cost for remediation.

## **What alternatives were proposed?**

### **Retaining the status quo**

During industry consultation as part of the HB Act review, the Department sought input from industry and consumer representatives over whether to retain the owner-builder permit scheme in its current form.

Feedback from industry supported complaint and compliance data held by NSW Fair Trading that continuation of the current scheme would likely lead to ongoing issues with defects seen within the owner-builder space. As identified above, a retention of the current provisions mean that subsequent owners do not have adequate means of protections and can face costs for rectification of uncompliant or defective owner-builder work.

In addition to this, building industry feedback has identified that the current owner-builder permit scheme is being exploited by some people as a means to negate their consumer protection obligations. However, there is a lack of owner-builder representation to counter this view. If the current provisions were to be retained, without the inclusion of the intent to reside clause, individuals would be able to continue to exploit the scheme for monetary gain rather than its intended purpose.

### **Abolishing the scheme**

Noting concerns with the lack of expertise of owners to oversee building work, the review considered abolishing the scheme and requiring all work to be overseen by a licensed practitioner.

However, after extensive industry consultation, submissions from industry showed that abolishing the owner-builder permit scheme may lead to unregulated work. Removing owner-builders from the regulatory scheme would mean there would be no supervision of unlicensed trade work and therefore no pathways for intervention for non-compliant work within this space.

Instead, by including additional provisions requiring owner-builder permits to lodge documents on the NSW Planning Portal, greater oversight and auditing, owner-builder work could become more compliant and trustworthy for future purchasers.

### **Questions**

- 44. Do you think there needs to be more regulation of the current owner-builder permits scheme?**
- 45. How do we ensure that owners are able to complete works on their home without risking defects and safety to subsequent owners?**
- 46. What exempt building work should be allowed to be completed without a licence?**
- 47. Should dual occupancy dwellings be allowed under the scheme?**

## APPENDIX 1 – Building classifications

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Building classifications are labelled “Class 1” through to “Class 10”. Some classifications also have sub-classifications, referred to by a letter after the number (e.g. Class 1a). A building may have parts that have different uses. In most cases, each of these parts is classified separately. A building (or part of a building) may also have more than one use and may be assigned more than one classification.

**Class 1** - houses. Typically, they are standalone single dwellings of a domestic or residential nature. These buildings can also be horizontally attached to other Class 1 buildings. When attached they are commonly referred to as duplexes, terrace houses, row houses and townhouses. In these situations, they must be separated by a wall that has fire-resisting and sound insulation properties. The Class 1 classification includes two sub-classifications: Class 1a and Class 1b. A Class 1a building is a single dwelling being a detached house; or one of a group of attached dwellings being a town house, row house or the like. A Class 1b building is a boarding house, guest house or hostel that has a floor area less than 300 m<sup>2</sup> and ordinarily has less than 12 people living in it. It can also be four or more single dwellings located on one allotment which are used for short-term holiday accommodation.

**Class 2** - apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. The NCC describes the space which would be considered the apartment as a sole-occupancy unit (SOU). Class 2 buildings may also be single storey attached dwellings where there is a common space below. For example, two dwellings above a common basement or carpark.

**Class 3** - residential buildings other than Class 1 or Class 2 buildings, or a Class 4 part of a building. Class 3 buildings are a common place of long term or transient living for a number of unrelated people. Examples include a boarding house, guest house, hostel or backpackers (that are larger than the limits for a Class 1b building). Class 3 buildings could also include dormitory style accommodation, or workers’ quarters for shearers or fruit pickers. Class 3 buildings may also be “care-type” facilities (such as accommodation buildings for children, the elderly, or people with a disability) which are not Class 9 buildings.

**Class 4** part of a building is a sole dwelling or residence within a building of a non-residential nature. An example of a Class 4 part of a building would be a caretaker’s residence in a storage facility. A Class 4 part can only be located in a Class 5 to 9 building.

**Class 5** - office buildings used for professional or commercial purposes. Examples of Class 5 buildings are offices for lawyers, accountants, government agencies and architects.

**Class 6** - typically shops, restaurants and cafés. They are a place for the sale of retail goods or the supply of services direct to the public. Some examples are:

- dining room, bar, shop or kiosk part of a hotel or motel
- hairdresser or barber shop
- public laundry
- market or showroom
- funeral parlour
- shopping centre

**Class 7** - storage-type buildings. The Class 7 classification has two sub-classifications: Class 7a and Class 7b. Class 7a buildings are car parks. Class 7b buildings are typically warehouses, storage buildings or buildings for the display of goods (or produce) that is for wholesale.

**Class 8** - A factory is the most common way to describe a Class 8 building. It is a building in which a process (or handicraft) is carried out for trade, sale, or gain. The building can be used for production, assembling, altering, repairing, finishing, packing, or cleaning of goods or produce. It includes buildings such as a mechanic's workshop. It may also be a building for food processing, such as an abattoir. A laboratory is also a Class 8 building, even though it may be small. This is due to the high fire hazard potential.

**Class 9** - buildings of a public nature. The Class 9 classification has three sub-classifications: Class 9a, Class 9b and Class 9c. Class 9a buildings are generally hospitals, referred to in the NCC as health-care buildings. They are buildings in which occupants or patients are undergoing medical treatment and may need physical assistance to evacuate in the case of an emergency. This includes a clinic (or day surgery) where the effects of the treatment administered involve patients becoming unconscious or unable to move. This in turn requires supervised medical care (on the premises) for some time after treatment has been administered. Class 9b buildings are assembly buildings in which people may gather for social, theatrical, political, religious or civil purposes. They include schools, universities, childcare centres, pre-schools, sporting facilities, night clubs, or public transport buildings. Class 9c buildings are residential care buildings that may contain residents who have various care level needs. They are a place of residence where 10% or more of persons who reside there need physical assistance in conducting their daily activities and to evacuate the building during an emergency. An aged care building, where residents are provided with personal care services, is a Class 9c building.

**Class 10** - non-habitable buildings or structures. Class 10 includes three sub-classifications: Class 10a, Class 10b and Class 10c. Class 10a buildings are non-habitable buildings including sheds, carports, and private garages. Class 10b is a structure being a fence, mast, antenna, retaining wall, swimming pool, or the like. A Class 10c building is a private bushfire shelter. A private bushfire shelter is a structure associated with, but not attached to, a Class 1a building.

## Appendix 2 – Proposed licensing categories

Building Work	Trade Work	Design work	Specialist Work
low rise medium rise open	bricklaying	building design	disconnection and reconnection of fixed electrical equipment (condition)
erection of prefabricated buildings and structures	carpentry	interior design	air-conditioning work
swimming pool building	dry plastering	engineer	advanced liquefied petroleum gasfitting work
kitchen, bathroom, and laundry renovation	pool fencing		draining work
structural landscaping	concreting		electrical wiring work
	glazing		gasfitting work
	joinery		liquefied petroleum gasfitting work
	metal fabrication		plumbing work
	painting		refrigeration work
	roofing		water plumbing work
	stonemasonry		medical gasfitting work
	wet plastering		medical gas technician work
	some plant operators not currently licensed by SafeWork NSW		mechanical services and medical gas work
	solar installers		fire protection engineer
			waterproofing

## APPENDIX 3 – New Sections Guide

### New and existing provisions

Key: New provision Amended provision No change to provision

Bill reference	Provision in Bill	HB ACT reference	Other Acts reference
<b>Chapter 1</b>	<b>Preliminary</b>		
1	Name of Act	Section 1	
2	Commencement	Section 2	
3	Definitions	Section 3	
4	Objects of Act	NEW	
5	Building work	NEW	RAB Act s 5
6	Close Associate	Cl 5 of Sch 1	
7	Functions of Secretary under Act (HB Act, s 106)	Section 106	
<b>Chapter 2</b>	<b>Licensing for regulated work</b>		
<b>Part 1</b>	<b>Preliminary</b>		
8	Definitions	NEW	
9	Work to which this chapter applies	NEW	
10	Professional engineering work (DBP s 31)	NEW	DBP Act s31
11	Specialist work	NEW/ Section 3D	
<b>Part 2</b>	<b>Licensing of persons carrying out regulated work</b>		
<b>Division 1</b>	<b>Preliminary</b>		
12	Regulated work requires a licence	NEW/ Sections 12 to 15 C	
13	Licensing of persons to carry out regulated work	NEW	
14	Grounds for finding that a person is not a suitable person to carry out regulated work	Sections 20, 25	
<b>Division 2</b>	<b>Application for licence</b>		
15	Application for licence	NEW + sections 19, 24	
16	Secretary may obtain information from third parties	Section 35	
17	Grant or refusal of licence	Sections 20, 25	
18	Duration of licence	Section 42	
19	Variation of licence	Section 62	
<b>Division 3</b>	<b>Recognition of eligible persons</b>		
20	Skills recognition by approved professional bodies	NEW	
21	Approval of professional bodies to grant skills recognition	NEW	
<b>Division 4</b>	<b>Conditions of licences</b>		
22	Conditions of licence	Sections 32 (2) (b), 36	
23	Compliance with standards or methodologies	NEW	

24	Conditions may provide that authorisation takes effect later	NEW	
<b>Division 5</b>	<b>Suspension or cancellation of licences</b>		
25	Grounds for suspension or cancellation of licence	Sections 22, 56, 57	
26	Suspension of licence	Section 64	
27	Cancellation of licence	Section 64	
28	Suspension or cancellation may be subject to conditions	NEW	
<b>Division 6</b>	<b>Miscellaneous</b>		
29	Offence of contravening condition	Section 36 (2)	
30	Offence of lending licence	Section 46A	
31	Voluntary surrender or suspension of licence	NEW	
32	Recovery of unpaid fees	Section 67	
33	Licence register	Section 120	
34	Exercise of certain Secretary functions by professional bodies	NEW	
<b>Part 3</b>	<b>Requirements on licence holders</b>		
<b>Division 1</b>	<b>Insurance or other arrangement</b>		
35	Licence holders must be indemnified	Sections 22, 103	
36	Regulations	Section 103	
<b>Division 2</b>	<b>General Requirements</b>		
37	Qualifications, skills and experience	Section 25	
38	Secretary may publish guidelines for supervision of unlicensed employees	Sections 14, 15A, 15B, 15C	
39	Code of conduct	NEW	
40	Licence holder to notify other persons of certain changes	NEW	
41	Licence holder to notify Secretary of certain events	Section 22	
42	Return of licence	Section 44	
<b>Division 3</b>	<b>Additional requirements for licensed corporations</b>		
43	Directors of licensed corporations must ensure regulated work carried out lawfully	NEW	
44	Directors of licensed corporations must report certain conduct	NEW	
45	Licensed corporation must ensure regulated work carried out by individual	NEW	
46	Licensed corporations and partnerships—nominee supervisors	NEW	
47	Duties of licensed corporations and partnerships	NEW	
48	Duties of nominee supervisor	NEW	
<b>Chapter 3</b>	<b>Home building work</b>		
<b>Part 1</b>	<b>Preliminary</b>		
49	Building work to which Chapter applies	NEW	
50	Date of completion of home building work (HB Act s 3B)	Section 3B	
51	Date of completion of new buildings in strata schemes (HB Act s 3C)	Section 3C	
<b>Part 2</b>	<b>Contract Requirements</b>		
<b>Division 1</b>	<b>Preliminary</b>		

52	Definitions	NEW	
53	Application of this part	Sections 6, 92 (4)	
<b>Division 2</b>	<b>Major works contract</b>		
<b>Subdivision 1</b>	<b>Requirements for major work contracts</b>		
54	Application of Division	NEW	
55	Form of major works contracts	Section 7	
56	Variations	NEW	
57	Display homes (cf s 9)	Section 9	
58	Maximum progress payments (cf ss 8 and 8A)	Sections 8, 8A	
<b>Subdivision 2</b>	<b>Rescission and cooling off periods</b>		
59	Application of Subdivision	Sections 6, 7BA (8)	
60	Recission	Section 7BA	
61	Variation or avoidance of cooling-off period	Section 7BA	
62	Person may rescind contract if cooling-off statement not included	Section 7BB	
<b>Division 3</b>	<b>Minor work contracts</b>		
63	Requirements for minor work contracts	Section 7AAA	
<b>Division 4</b>	<b>Other requirements</b>		
64	Terms of home building work contracts	Section 7E	
65	Certain terms and conditions void in home building work contracts	Section 7E	
66	Consumer information (cf s 7AA)	Section 7AA	
67	Copy of contract (cf s 7B)	Section 7B	
68	Arbitration clause prohibited	Section 7C	
69	Interests in land under contract	Section 7D	
70	Enforceability of contracts and other rights	Section 10	
<b>Part 3</b>	<b>Statutory Warranties</b>		
71	Definitions	Cl 1 of Sch 1	
72	Persons having benefit of warranties	NEW	
73	Duties of persons having benefit of statutory warranty (HB Act s 18BA)	Section 18BA	
74	Persons responsible for providing statutory warranties	NEW	
75	Warranties (HB Act s 18B)	Section 18B	
76	Proceedings for breach of statutory warranty (HB Act s 18E)	Section 18E	
77	Commencement of proceedings if building bond lodged (HB ACT s 18E(1A))	Section 18E (1A)	
78	Defences (HB A s 18F)	Section 18F	
79	Warranties may not be excluded	Section 18G	
<b>Part 4</b>	<b>Owner-builder work</b>		
80	Definitions	Cl 1 of Sch 1; Section 29	
81	Applications for owner-builder permits	Section 31	
82	Authority of owner-builder permit	Section 32	
83	Duration of owner-builder permit	NEW	
84	Cancellation of owner-builder permit	NEW	
85	Unlicensed contracting	Section 32AA	
<b>Chapter 4</b>	<b>Reviewable decisions and resolving disputes</b>		
<b>Part 1</b>	<b>Resolving building disputes</b>		

<b>Division 1</b>	<b>Preliminary</b>		
86	Definitions	Section 48A	
87	Meaning of “building claim”	Section 48A	
<b>Division 2</b>	<b>Dealing with building disputes and claims</b>		
88	Notification of disputes	Section 48C	
89	Secretary may determine disputes	NEW+ Sections 48D, 48E	
<b>Division 3</b>	<b>Jurisdiction in relation to building claims</b>		
90	Application for determination of building claim	NEW + Section 48I	
91	Jurisdiction of Tribunal in relation to building claims	Section 48K	
92	Tribunal responsible for resolving building claims	Section 48L	
93	Jurisdiction for actions against refusal of insurance claims	Section 48M	
<b>Division 4</b>	<b>Powers of Tribunal</b>		
94	Determination of building claims	Section 48O	
95	Secretary must be informed of compliance with order	Section 48T	
96	Failure to inform of compliance	Section 48U	
<b>Division 5</b>	<b>Home building work directions</b>		
97	Application of subdivision	NEW	
98	Home building work directions	NEW	
99	Recovery of refund	NEW	
100	Regulations	NEW	
<b>Division 6</b>	<b>Miscellaneous</b>		
101	Requirement to notify Secretary of court order to pay money in relation to building claim	Section 48V	
<b>Part 2</b>	<b>Jurisdiction of Civil and Administrative Tribunal</b>		
<b>Division 1</b>	<b>Administrative reviews</b>		
102	Review by Tribunal	Sections 83A, 83B	
103	Time limits for review of Secretary’s decisions	Section 86	
104	Determination of reviews	Section 85	
<b>Division 2</b>	<b>Unjust contracts</b>		
105	Jurisdiction relating to unjust contracts	Section 89D	
<b>Chapter 5</b>	<b>Insurance</b>		
<b>Part 1</b>	<b>Insurance (HB ACT Part 6)</b>		
<b>Division 1</b>	<b>Preliminary</b>		
106	Definitions	NEW	
107	Mandatory insurance extends to rectification work	Sections 92 (5), 96(4)	
108	Operation of mandatory insurance for owners of land (HB ACT ss 92C, 99(2A) and (2B))	Sections 92C, 99(2A), 99 (2B)	
<b>Division 2</b>	<b>Insurance requirements and premiums</b>		
<b>Subdivision 1</b>	<b>Mandatory insurance</b>		
109	General requirements for mandatory insurance (HB ACT s 102)	Section 102	
110	Insurance periods (HB ACT s 103B)	Section 103B	

111	Limits on claims (HB ACT ss 103BB and 103BC)	Sections 103BB, 103BC	
112	Notification of insurer (HB ACT s 92A)	Section 92A	
113	Insolvency or death in partnership carrying out home building work	NEW + Section 99(1)	
114	Insurance not required for persons carrying out work for contractor (HB ACT s 98)	Section 98	
<b>Subdivision 2</b>	<b>Insurance relating to major work contracts</b>		
115	Work under major work contracts must be insured (HB ACT s 92)	Section 92	
116	Mandatory insurance for work carried out under major work contracts (HB ACT s 99)	Section 99	
<b>Subdivision 3</b>	<b>Insurance relating to speculative work</b>		
117	Definitions	NEW	
118	Speculative work not carried out under a contract must be insured (HB ACT ss 96, 100)	Sections 96, 100	
119	Exemptions from insurance requirements (HB ACT s 97)	Section 97	
<b>Subdivision 4</b>	<b>Developers</b>		
120	Developers not entitled to claim under mandatory insurance	NEW	
121	Obligations of developers (HB ACT s 96A)	Section 96A	
<b>Subdivision 5</b>	<b>Premiums</b>		
122	Premiums (HB ACT s 103BE)	Section 103BE	
123	Filing of premiums (HB ACT s 103BF)	Section 103BF	
124	Rejection of premiums by Authority (HB ACT s 103BG)	Section 103BG	
125	Arbitration after rejection of premium (HB ACT s 103BG(6) and (7))	Sections 103BG (6), (7)	
<b>Subdivision 6</b>	<b>Miscellaneous</b>		
126	Contracts for sale of land voidable if certificate of insurance not provided	Section 96	
127	Register of insurance and other particulars (HB ACT s 102A)	Section 102A	
128	Part may not be excluded (HB ACT s 103D)	Section 103D	
129	Exemption for work done for public sector agencies (HB ACT s 103E)	Section 103E	
130	Regulations (HB ACT s 103C)	Section 103C	
<b>Division 3</b>	<b>Insurance Guidelines</b>		
131	Insurance Guidelines (HB ACT ss 103EC and 103ED)	Sections 103EC, 103ED	
132	Insurance Guidelines for the determination of premiums (HB ACT s 103BD)	Section 103BD	
133	Regulations relating to Insurance Guidelines (HB ACT s 103EE)	Section 103EE	
<b>Division 4</b>	<b>Home Building Operational Fund</b>		
134	Home Building Operational Fund (HB ACT s 103EF)	Section 103EF	
135	Payment of contributions by licensed insurers (HB ACT s 103EG)	Section 103EG	
<b>Part 2</b>	<b>Insolvent insurers (HB ACT Part 6A)</b>		

<b>Division 1</b>	<b>Preliminary</b>		
136	Interpretation	Section 103F	
137	Insolvent insurers	Section 103G	
138	State indemnity after insolvent insurer dissolved	NEW	
<b>Division 2</b>	<b>State indemnity</b>		
139	State indemnity	Section 103I	
140	Amount of State indemnity if other claim made	Section 103I (3)	
141	State indemnity claim must be made to Authority	Section 103K	
<b>Division 3</b>	<b>Determination of claims</b>		
142	Payment of claims	Section 103L	
143	Assignment of rights	Section 103M	
<b>Division 4</b>	<b>Home Building Insurers' Guarantee Fund</b>		
144	Home Building Insurers Guarantee Fund	Section 103OA	
145	Contributions to Guarantee Fund	Section 103OB	
<b>Division 5</b>	<b>Miscellaneous</b>		
146	Functions of Authority	Sections 103S, 103Z	
147	Authority may enter into agreements and arrangements with liquidator of insolvent insurer	Section 103U	
148	Recovery of amounts under contracts or arrangements for re-insurance or co-insurance or guarantees or indemnities	Section 103V	
149	Liquidator to notify claims administrator of claims	Section 103W	** Rename section
150	Directions for certain documents and information	Sections 103X, 103Y	
151	Authority may take certain legal proceedings	103Z	
152	Review of decisions of Authority	NEW	
<b>Part 3</b>	<b>Alternative indemnity products (HB ACT Part 6B)</b>		
153	Alternative indemnity products	Section 104	
154	Approval of alternative indemnity products	Section 104A	
155	Alternative indemnity product may be used instead of insurance	Section 104B	
156	Regulation of alternative indemnity products	Section 104C	
157	Insolvent providers	Section 104D	
158	Insurance Guidelines relating to alternative indemnity products	Section 104E	
<b>Part 4</b>	<b>Insurers and providers (HB ACT Part 6C)</b>		
<b>Division 1</b>	<b>Licensing of insurers and providers</b>		
<b>Subdivision 1</b>	<b>Preliminary</b>		
159	Definition	NEW	
160	Offence—unlicensed insurers and providers	Section 105A	
161	Self-Insurance Corporation is licensed insurer	Section 105B	
<b>Subdivision 2</b>	<b>Application for licence</b>		
162	Application for insurer's and provider's licence	Sections 105C, 1-5D, 105E	
163	Grant or refusal of licence	Section 105F	

164	Duration of licence	Section 105G	
165	Variation of licence	Section 105H	
166	Assignment of licence	Section 105K	
<b>Subdivision 3</b>	<b>Conditions of insurer's licence and provider's licence</b>		
167	Conditions on licence	Section 105H	
168	Offence of contravening condition	Section 105H (6)	
169	Imposition of civil penalty on or censure of licensed insurers and providers	Section 105M	
<b>Subdivision 4</b>	<b>Suspension or cancellation of licence</b>		
170	Grounds for suspension or cancellation of licence	Section 105N	
171	Suspension of licence	Section 105L	
172	Cancellation of licence	NEW+ Section 105N	
173	Suspension or cancellation may be subject to conditions	NEW	
<b>Subdivision 5</b>	<b>Records and information</b>		
174	Records relating to insurer's and provider's licences	Section 105P	
175	Certificate evidence of certain matters (HB ACT s 105P(2))	Section 105P (2)	
176	Publication of information about licence holders (HB ACT s 105R)	Section 105R	
177	Accounts, returns and other records of licensed insurers and providers	Section 105W	
178	Information and documents to be provided to Authority by licensed insurers and providers	Section 105X	
179	Licensed insurer and licensed provider reports	Section 105Y	
<b>Division 2</b>	<b>Miscellaneous</b>		
180	Application of this division	NEW	
181	Power of Supreme Court to deal with licensed insurers and licensed providers	Section 105Z	
182	Notification to Authority of certain defaults	Section 105ZA	
183	Proceedings for non-compliance	Section 105ZB	
184	Data required to be supplied to Authority by licensed insurers and licensed providers (HB ACT s 121C)	Section 121C	
<b>Chapter 6</b>	<b>Certification of building work, subdivision work and specialist work (EPA Pt 6)</b>		
<b>Part 1</b>	<b>Preliminary</b>		
185	Definitions	NEW	EPA s 6.1
186	Subdivision of land	NEW	EPA s 6.2
<b>Part 2</b>	<b>Certifiers</b>		
187	Functions of certifiers	NEW	EPA s 6.5
188	Directions by principal certifiers	NEW	EPA s 6.31
<b>Part 3</b>	<b>General Requirements</b>		
189	Requirements before building work or subdivision work commences	NEW	EPA s 6.6
190	Requirements before home building work commences (EPA Reg, ss 71 and 150)	NEW	EPA Reg Cl 71, 150

191	Work or activity that requires certificate	NEW	EPA s 6.3
<b>Part 4</b>	<b>Certificates for building work</b>		
192	Construction certificates	NEW	EPA ss 6.4, 6.7
193	Restriction on issue of construction certificate	NEW	EPA s 6.8
194	Occupation certificates	NEW	EPA ss 6.4, 6.9
195	Restrictions on issue of occupation certificates	NEW	EPA s 6.10
196	Effect of occupation certificate on earlier occupation certificates	NEW	EPA s 6.11
197	Owners building manual	NEW	EPA s 6.27
<b>Part 5</b>	<b>Certificates for subdivision work and subdivisions</b>		
198	Subdivision works certificates	NEW	EPA ss 6.4, 6.13
199	Restriction on issue of subdivision works certificate	NEW	EPA s 6.14
200	Subdivision certificates	NEW	EPA s 6.4
201	Restriction on issue of subdivision certificates	NEW	EPA s 6.15
<b>Part 6</b>	<b>Work requiring compliance certificates</b>		
202	Compliance certificates	NEW	EPA ss 6.4, 6.16
203	Persons who may issue compliance certificates	NEW	EPA s 6.17
204	Restriction on issue of compliance certificates	NEW	EPA s 6.18
<b>Part 7</b>	<b>Certificates of compliance for specialist work</b>		
<b>Division 1</b>	<b>Preliminary</b>		
205	Definitions	NEW	
<b>Division 2</b>	<b>Notifiable work</b>		
206	Certain specialist work must be pre-notified to Secretary	NEW	Plumbing and Drainage Act s 9
207	Emergency work does not have to be pre-notified	NEW	Plumbing and Drainage Act s 10
208	Notice of defective installation or system	NEW	Plumbing and Drainage Act s 11
<b>Division 3</b>	<b>Inspection of specialist work</b>		
209	Inspection of specialist work by Secretary	NEW	Plumbing and Drainage Act s 12
210	Responsible person to notify Secretary when work is ready for inspection	NEW	Plumbing and Drainage Act s 13
<b>Division 4</b>	<b>Obligations to supply certificates of compliance and plans</b>		
211	Person to give certificate of compliance after specialist work completed	NEW	Plumbing and Drainage Act s 15
212	Supply of plans	NEW	Plumbing and Drainage Act s 16
<b>Division 5</b>	<b>Miscellaneous</b>		

213	Obligation to prevent threats to public health or safety	NEW	Plumbing and Drainage Act s 17
214	Authorised fittings required for specialist work	NEW	Plumbing and Drainage Act s 8
<b>Part 8</b>	<b>Duty of care</b>		
215	Definitions	NEW	DBP s 36
216	Extension of duty of care	NEW	DBP s 37
217	Limitation on time when action for defective building work or subdivision work may be brought	NEW	
218	Economic loss—owners corporations and associations	NEW	DBP s 38
219	Duty must not be delegated	NEW	DBP s 39
220	No contracting out of Part	NEW	DBP s 40
221	Relationship with other duties of care and law	NEW	DBP s 41
<b>Part 9</b>	<b>Appeals</b>		
222	Appeals against failure or refusal to issue certificate	NEW	EPA s 8.16
223	Deemed refusal for purposes of appeal	NEW	EPA s 8.17
224	Regulations	NEW	
<b>Part 10</b>	<b>Miscellaneous</b>		
225	Crown subdivision, building, demolition and incidental work	NEW	EPA s 6.28
226	Certifiers may be satisfied of certain matters	NEW	EPA s 6.29
227	Assumption of compliance with conditions precedent to the issue of certificates	NEW	EPA s 6.30
228	Regulations	NEW	EPA s 6.33
229	Regulations—general	NEW	EPA s 6.6 (4A)
230	Regulations—smoke alarms in buildings providing sleeping accommodation	NEW	EPA s 6.34
<b>Chapter 7</b>	<b>Miscellaneous</b>		
<b>Part 1</b>	<b>Premises affected by loose-fill asbestos insulation (HB ACT Part 8, Div 1A)</b>		
231	Definitions	Section 119A	
232	Asbestos insulation register	Section 119B	
233	Warning signs	Section 119C	
<b>Part 2</b>	<b>Offences</b>		
234	Disclosure and misuse of information	Section 121	
235	Secrecy of information	Section 121A	
236	Offences by corporations	Section 137	
237	Onus of proof—reasonable excuse	NEW	
238	Penalty notices	Section 138A	
239	Proceedings for offences	Section 139	
<b>Part 3</b>	<b>Miscellaneous</b>		
240	Building Administration Fund	Section 114	
241	Service of documents	Section 123	
242	Exchange of information—Authority	Section 121B	
243	Exchange of information—Secretary	NEW	
244	Delegation	Section 122	
245	Personal Liability	Section 144	
246	Certificate evidence	Section 131	

<b>247</b>	Regulations	Section 140	
<b>248</b>	Review of Act	Section 145	

# APPENDIX 4 – Alternative Text for Home Building in NSW Customer Journeys

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## Home Building in NSW: Customer Journeys

### Part 1 - Residential customer wanting to get work done

- 1) I want to get work done
- 2) Obtain consent (if needed)
- 3) Do I want to coordinate the work myself? (If yes, go to 3a, if no continue on to 4)
  - a) Obtain an owner builder permit
- 4) Engage licence holder
- 5) What is the value of the works?
  - a) Works are over 20k
    - i) Major works contract required
    - ii) Home Builders Compensation
  - b) Works are between \$5k and \$20k
    - i) Minor works contract
  - c) Work is less than \$5k
    - i) No minimum contract or insurance requirements
- 6) Appoint a principal certifier
- 7) Commence work
- 8) Critical stage inspections
- 9) Have works been completed? (If yes, go to 10, if no, go to 10a)
- 10) Is the quality of work satisfactory? (If no, go to 10a, if yes, works are completed)
  - a) Engage with the principal contractor / developer
    - i) Licence holder given the opportunity to remediate
- 11) Have the works been completed/remediated? (If yes, go back to 10, if no go to 12)
- 12) Commence dispute resolution through NSW Fair Trading
- 13) NSW Fair Trading have available Enforcement Powers under the BC&E Bill and Building Bill
- 14) Issue resolved? (If yes, works are remedied, if no go to 15)
- 15) Approval given to go to NCAT
- 16) Issue resolved? (If yes, works are remedied, if no go to 17)
- 17) Lodge HBCF claim

### Part 2 - I want to do regulated work

- 1) I want to do regulated building work s12 Building Bill 2022
- 2) Person requires a licence
  - a) Fair Trading approves application (qualification and experience)
  - b) Person receives approval from the industry body which operates professional standards scheme that accredits practitioners
- 3) Licence issued by Fair Trading
- 4) Are you doing work which is covered by the DBP Act? (If yes, go to 4a, if no, go to 5)
  - a) Register with Fair Trading and complete regulated designs
- 5) Work commences

- a) Notify regulator of works (only applies to electricians, plumbers)
  - i) Audit of work (for electricians, plumbers)
- 6) Is it a sole practitioner completing the work? (If yes, go to 7, if no go to 6a)
  - a) Licence holder directly supervises work and complies with supervision practice standards
- 7) Works to be completed in accordance with practice standard
- 8) Have works been completed? (If yes, go to 9, if no, go to 9a)
- 9) Is the quality of work satisfactory? (If no, go to 9a, if yes, works are completed)
  - a) Engage with the principal contractor / developer
    - i) Licence holder given the opportunity to remediate
- 10) Have the works been completed/remediated? (If yes, go back to 9, if no go to 11)
- 11) Commence dispute resolution through NSW Fair Trading
- 12) NSW Fair Trading have available Enforcement Powers under the BC&E Bill and Building Bill
- 13) Issue resolved? (If yes, works are remedied, if no go to 14)
- 14) Approval given to go to NCAT
- 15) Issue resolved? (If yes, works are remedied, if no go to 16)
- 16) Lodge HBCF claim