

Update on proposed reforms to NSW building regulation

The NSW government is consulting with stakeholders on its next round of reforms to building regulation. There are literally dozens of reforms proposed across a number of Acts and regulations.

For the purposes of this summary I have split the reforms into seven topics as follows:

1. [Expansion of the operation of the *Design Building Practitioners Act 2020*](#) to class 3 and 9c buildings;
2. [Improvements relating to fire safety](#);
3. [The creation of a new Building Act](#) which will do lots of things including:
 - a. To require that designers, builders and trades undertaking all classes of building work be licensed/registered; and
 - b. To extend the definition of building work to off-site prefabricated products;
4. [Consolidation and modernisation of compliance and enforcement powers](#) in one new Act that will apply across multiple Acts and regulations;
5. [Increasing developer and director responsibility](#) and regulating intentional phoenix activity;
6. [New building product supply chain laws](#);
7. [Various other miscellaneous reforms](#) including:
 - a. Enhancements to the building defect bond scheme;
 - b. Recognition of qualifications and experience assessments by bodies operating a professional standards scheme
 - c. Security of payment legislation reforms;
 - d. Standardising CPD requirements;
 - e. Strengthening enforcement powers – including for certifiers.

[Consultation on the first 2 topics](#) was open for six weeks and closed on 7 October 2022. Material published for consultation consisted of two regulatory impact statements and two sets of draft regulations.

The remaining five topics are part of a much larger package of reforms that are open for consultation for 12 weeks closing on 25 November 2022. [Key documents and consultation instructions for these six topics of reforms can be found here](#). This includes five regulatory impact statements, three draft bills, one draft regulation and draft supervision practice standards.

The government will take the time to review feedback and refine the proposals with new legislation expected to be introduced in mid 2023. I understand there has been support for these reforms across all members of Parliament so it is hoped they will proceed regardless of the outcome of the NSW state election in March 2023.

The proposed reforms are extensive and described in hundreds of pages of regulatory impact statements and draft legislation that has been [published on the FT website](#). This document is a summary of the reforms. Given the enormity of this package, it does not identify every single reform.

1. Expanding the DBP Act - Background

In 2020 the NSW government passed two key pieces of legislation, the *Design and Building Practitioners Act 2020* (DBP Act) and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (RAB Act). The reforms were developed by the Office of the Building Commission in collaboration with the Department of Fair Trading (OBC/FT).

Under this legislation several major reforms were delivered. The DPB Act required registration for engineers and other design professionals if providing design services for class 2 buildings (ie multi-unit, multi storey apartments) including mixed use buildings containing class 2 (ie where you have a mix of retail or office space with apartments). There are 19 classes of design practitioner under the current scheme.

The DBP Act requires that all regulated designs¹ and variations to regulated designs must be declared as compliant by a registered designer or engineer before being lodged into the NSW government e planning platform. [Guidance Material](#) and a [Design Practitioner's Handbook](#) were published by the FT to support the legislation.

The DBP Act also provides that the builder must undertake building work in accordance with declared design and issue a declaration before an occupancy certificate is issued stating that the building work complies with declared designs and the Building Code of Australia (BCA). Lodgement of the declaration together with prescribed documents into the NSW government's online planning portal (NSW Planning Portal) is also required.

A statutory duty of care was created which provides that designers, product manufacturers, developers and builders owe a duty of care to owners corporations and purchasers of apartment buildings. This was intended to make it easier for owners corporations and apartment owners to recover compensation for defective building work.

The RAB Act provided several powers to the Secretary to enable audits of buildings within 6 months of their completion and of any building completed within the previous 6 years. The powers included the ability to call in documents for a project, inspect the site, issue rectification orders, enter into undertakings and prohibit the issuing of an occupancy certificate pending rectification of 'serious defects'. In addition, the DBP Act provided powers to audit declared documents lodged in the e planning platform and to issue stop work orders where designs were inadequate. This enabled the OBC/FT to assess how design practitioners were meeting their new DPB Act obligations. Importantly, the RAB Act also made provision for a levy to be collected to fund the audit and education program.

The education program was intended to improve competencies across the industry and support implementation of the reforms. Through a partnership between the OBC/FT and TAFE NSW called [Construct NSW](#), a number of short courses, or 'micro credentials' were created which all practitioners can undertake to help them understand the legislation and what is expected of them. Over the past 18 months, 18 courses have had been created and there have been over 23,000 enrolments.

The proposal is for the DBP Act to be expanded to apply to class 3 and 9b buildings.²

With regard to professional engineers, whilst the requirement for declared designs under the DBP Act scheme will only apply to class 2, 3 and 9c buildings, the requirement for a person providing engineering services to be registered will be expanded to cover all building classes. The registration

¹ The DBP Act introduced the term 'regulated design' which includes all 'building elements' that are defined to include fire safety systems, waterproofing elements, load bearing elements, the building enclosure, mechanical plumbing and electrical services and prescribed things.

² Class 3 buildings include short term accommodation, hotels, hostels and low-cost accommodation. Class 9c buildings are residential care buildings including aged care and residential disability care facilities.

scheme for engineers will be moved to a new Building Act (discussed below).³ Engineering disciplines covered by the NSW reforms will remain the same as under the DBP Act, namely structural, civil, mechanical, fire safety, electrical and geotechnical, but only in relation to the construction of any class of building.

2. Fire Safety Reforms

The [Regulatory Impact Statement](#) for reforms regarding fire safety issues follows extensive consultation with the stakeholders which culminated in the [Industry report on reforms to improve fire safety in new and existing buildings](#). The reforms will be made to the *Environment Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (EPA-FS Regs) with a longer term plan to relocate the content of this Regulation into a consolidated framework for building regulation.

The fire safety reforms are summarised as follows:

- Design phase – to mandate that all designs with performance solutions on prescribed fire safety matters for class 2-9 buildings be referred to FRNSW at three stages, namely, the design brief stage, prior to the issuing of the construction certificate and prior to the issuing of the occupancy certificate. The changes would allow FRNSW to determine which buildings it will prepare a report for at which stages based on a risk assessment. Statutory time frames will apply so that FRNSW must tell a developer whether it intends to comment. If the certifier determines not to follow the recommendations, they must set out their reasons in writing.
- Construction certificate stage - Fire Safety Schedules – currently a Fire Safety Schedule is issued at the time of issuing a construction certificate for any class 1b - 9 building. It must set out all current and proposed fire safety measures for the development and the standard to which they must be maintained. The reforms will create templates for fire safety schedules with a view to improving the quality, accuracy and consistency of fire safety schedules.
- Prior to occupancy - Fire Safety Certificates - currently the inspection and testing of active and passive fire safety systems must be carried out and certified by a ‘properly qualified person’ prior to the issuing of an occupancy certificate. The proposal is to transition to ‘accredited practitioners’ performing this function. The accredited person must be ‘independent’, ie not the same person that installed the fire safety system. However, the accredited person may be from the same company as the installer. There will be several categories of accredited certifier who must meet a code of conduct and hold prescribed qualifications and experience to be accredited. Approved accreditation bodies will audit accredited persons.
- Maintenance obligations– AS 1851 – a process for routine maintenance to meet AS 1851-2012 will be mandated under the proposed reforms. It is intended for owners to appoint properly qualified persons to undertake such maintenance and make records required by AS 1851. Maintenance requirements for fire systems not covered by AS 1851 or for performance solutions will be

³ The expansion of the registration of engineers would align NSW to other jurisdictions that also require engineers to be registered ie Qld, Victoria, NT, Tasmania with WA and the ACT also announcing they will introduce engineers registration. The Qld and Victorian schemes also require engineers providing specified engineering services outside of the building industry to be registered whereas NT and Tasmania’s registration schemes and the proposed schemes for WA and ACT only apply to engineers involved in the building industry.
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provided for in fire safety schedules. Councils and FRNSW will be given powers to inspect maintenance records on site.

- Correcting fire safety schedules – owners will be able to request a replacement fire safety schedule from councils and, in some cases, principal certifiers. Such requests may be made to correct minor errors or inconsistencies, including to amend standards of performance or add references to relevant fire engineering reports.

3. The creation of a new Building Act

It is proposed to replace the *Home Building Act 1989* (HB Act) and *Plumbing and Drainage Act 2011* with a new Building Act which would:

- bring the duty of care provisions that were introduced by the DBP Act into the new Act;
- bring the process for the approval of building work and subdivisions across from the *Environment Protection and Assessment Act 1979* (EPA Act) to the new Act;
- consolidate fire safety practitioner schemes to create a single Accredited Fire Safety Practitioner Scheme that will cover fire safety engineers and other accredited fire safety professionals;
- contain the requirements for the expanded professional engineers' registration scheme (referred to above);
- provide for graduated registration of designers with three levels of registration based on building complexity;
- require builders and trade contractors undertaking any class of building work in NSW to be licensed;
- introduce graduated licence types for builders based on complexity of work with three levels namely, high rise (unrestricted), medium rise (all class up to 3 storeys and 2000m²) and low rise (class 1 and 10 only);
- introduce licensing for building inspectors undertaking pre-purchase inspections or defect report inspections;
- simplify the current trade contractor licensing types with a single 'license to undertake work' replacing the four current licence types of contractor licence, endorsed contractor's licence, supervisor certificate and tradesperson certificate;

Importantly these reforms mean that for the first time in NSW persons involved in the design and construction of commercial building work will need to be licensed/registered.

Co-regulation with professional industry bodies

With regard to the assessment of applications for a license or registration, the proposal is for co-regulation with approved professional associations. In particular those who operate approved professional standards schemes will have their schemes recognised. This is intended to encourage professional bodies to establish professional standards schemes approved by the [Professional Standards Councils](#). The Secretary will also be able to approve other bodies to assess and accredit applicants for registration, a process that has been in place already under the DBP Act.

FT will retain resources to undertake assessments itself and to oversee the assessment processes of approved assessment bodies. It will also remain the ultimate decision maker on whether to grant a licence to a person accredited by an approved body. At present it is proposed that those bodies operating professional standards schemes will only be involved in the assessments for licensing,

however the RIS is seeking comments on whether their auditing programs under professional standards schemes could also be recognised by FT.

Owner builders

The owner-builder scheme requires owners of homes that wish to manage and arrange their own building work to obtain an owner-builder permit. Only one owner-builder permit can be obtained every 5 years. There are concerns that the current owner-builder permit scheme:

- is being used by owners for commercial gain to avoid licensing obligations under the HB;
- is resulting in work with high rates of non-compliance; and
- is resulting in higher risks to workers due to owner builders not understanding or implementing work health and safety obligations.

As a result, there will be tighter restrictions on who is able to apply for an owner-builder permit, what work can be done and by whom. The proposed reforms are summarised as follows:

- owners wishing to apply for an owner-builder permit will need to provide additional evidence to establish that:
 - o they are natural persons with their name on the property title;
 - o the property is not owned in partnership or jointly with a corporate entity;
 - o they intend to reside in the property as their principal residence;
 - o they have completed prescribed training.
- Building work that can be performed under an owner-builder permit will
 - o no longer include work on dual occupancy dwellings;
 - o be required to have development consent and plans lodged on the NSW government's online planning platform ;
 - o only be able to be carried out by the unlicensed owner if it is 'exempt work' which will have minimal impact on the building;
 - o be able to coordinate the supply of kit homes or prefabricated buildings with a licensed builder or trades engaged to physically carry out that work.

Increasing quality controls & appropriate supervision

It will be a condition of holding a license that licensees must perform their work in accordance with relevant standards and codes, including the National Construction Code (NCC). It will also require licensees to integrate their work with others and adopt methodologies which will be set out in practice standards to be developed for different groups of licensees.

A new suite of practice standards will be published for specialist trades which set out expected conduct and practices of employers, supervisors and people they supervise when performing their work. The intention is to clarify roles and responsibilities with a view to improve supervision over apprentices and unlicensed people on building sites. There will be different levels of supervision required for different tasks, as well as prescribed ratios for the number of persons a supervisor can have responsibility for at any given time. Direct supervision will be required to have a 1:1 ratio, general supervision 1:3 and for broad supervision 1:5. A draft supervision standard is published as part of the consultation materials.

Failure to comply with the new practice standards will be an offence with maximum penalties of \$330,000 for a corporation and \$66,000 for individuals. Enhanced enforcement powers will be given to enable FT officers to undertake audits and ad-hoc site inspections to assess compliance with practice standards. The proposed Building Compliance and Enforcement Act (discussed below) will

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also contain a range of enforcement powers that could be used where practices standards are breached, including penalty notices and education and training notices.

Specialist licencing – Plumbing, electrical, medical gas safety & waterproofing

The current requirements for notification and certificates of compliance under the *Plumbing and Draining Act* and the *Gas and Electricity Act* will be brought into the new Building Act.

Waterproofing work will be added to the specialist licencing scheme which will include a new requirement for the issuing and lodgement of compliance certificates with FT by licensed waterproofers.

Pre-fabricated and manufactured housing

Under the proposed reforms, the construction of some prefabricated products will be captured within the definition of building work which means it will have to be performed by licensed builders and trades.

The reforms will not apply to all prefabricated products. For example, prefabricated doors, windows and roof trusses will remain regulated under the Australian Consumer Law and *Building Product (Safety) Act 2017* and genuinely moveable dwellings, such as caravans, will not be captured by these reforms. Instead the intention is to confine the application of these new laws to larger products such as kitchen or bathroom pods and kit homes.

In addition to these products being required to be constructed by licensed persons, they will also be subject to an independent certification process and to meet prescribed standards for transport, storage and installation. Pre-fabricated products captured by the new laws that are constructed outside of NSW but supplied to NSW will have to comply with the new laws.

Consumer protections for home building contracts

A range of improvements to consumer protections are proposed. These include refinements to mandatory contract clauses relating to terminations, variations, suspension of works and non-payment; and changing display home requirements to reflect online advertising. There will also be work to improve education and guides for consumers which are based on research from the NSW Behavioural Insights Unit about consumer behaviour.

The reforms also propose limiting the percentage of the contract price that can be claimed at various stages of work. This reform is based on research showing builders tend to require payments in advance of work being completed which leaves owners vulnerable if a builder becomes insolvent.

Implied Warranties

The HB Act currently provides for implied warranties that ‘run with the land’ for the benefit of purchasers. Breaches of implied warranties are currently categorised as ‘major’ and ‘minor’ with claims for minor defects needing to be brought in the NSW Civil and Administrative Tribunal (NCAT) or courts within two years and for major defects within six years of completion of the building work.

Comments are sought on whether the term ‘major defect’ should be changed to the broader term ‘serious defect’ as current defined under the RAB Act. Consideration is also being given to extending the time for bring claims for serious defects to ten years and for other defects to three years. The RIS discusses the pros and cons of these proposals and seeks comment from stakeholders.

The reforms reflect a strong push for owners to seek dispute resolution assistance from FT prior to commencing legal proceedings. It is proposed to move to a new dispute resolution model which would require owners to complain to the FT prior to commencing proceedings at NCAT. FT would attempt to assist parties to resolve disputes so as to avoid costly legal proceedings. FT's role would include inspecting alleged defects, issuing a 'home building work direction' and taking action against licensed persons where they do not comply with directions. The home building work direction may include requiring money to be refunded to owners.

It is also proposed to extend the application of warranties to apply to:

- prefabricated products;
- any work performed, rather than only work provided for under the contract;
- any person who enters into a contract with the owner or who otherwise facilitates or arranges the home building work (to cover situations where more than one person contracts with an owner for the work).

The time limits of claims for breach of the warranties run from 'completion' of the work. This definition is proposed to be refined to reduce complexity. One example discussed is that for large buildings subject to staged approvals and multiple occupancy certificates, completion will be the date of the certificate that authorises the occupation and use of the whole building.

4. Consolidate and modernise compliance and enforcement powers under a new Building Compliance and Enforcement Bill (BCE Bill)

The intention of the new BCE Bill is to consolidate and modernise the powers in the RAB Act and other acts into one place. The new powers will apply across the following legislation:

- the *Building Compliance and Enforcement Act 2022* (subject to enactment);
- the *Building Act 2022* (subject to enactment);
- the *Building Construction Industry Security of Payment Act 1999*;
- the *Building and Development Certifiers Act 2018*;
- the *Building Products (Safety) Act 2017*;
- the *Design and Building Practitioners Act 2020*; and
- the *Gas and Electricity (Consumer Safety) Act 2017*.

At present the position of Building Commissioner is not recognised in legislation. It is proposed that the new BCE Act will provide for the employment of a Building Commissioner and for the Building Commissioner to be an authorised person under the Act. The Secretary would also be able to appoint other people to be authorised persons.

The powers given under the RAB Act applied to class 2 buildings only. It is proposed for these powers to be extended to allow for rectification and prohibition orders where there are serious defects identified in any class of building.

In the proposed BCE Bill the requirement for developers and owners to notify FT six months prior to applying for an occupancy permit and to pay a levy based on the value of the work, which is used to fund enforcement, will apply to class 2, 3 and 9c buildings.

Authorised officers will have a broad range of investigative powers as well as audit powers which can be used to audit licensed and registered persons or bodies. They will also have the power to take a broad range of actions to remedy non-compliance including:

- entering into undertakings;

- issuing stop work orders – but only where a non-compliance could result in significant harm, loss to the public or occupiers or significant damage to property;
- issuing compliance notices - which are described as a dispute resolution tool that will require rectification of non-compliances and can be issued to a developer, person engaged in or responsible for the work or an owners' corporation or community land association. Compliance notices will be able to be issued up to three years after completion of work for defects that are not 'serious defects'. Failure to comply with a compliance notice can be referred to NCAT for further action;
- issuing plumbing and drainage work directions;
- issuing building work rectification orders – for 'serious defects' that relate to unsafe building work which may cause severe physical and financial harms to consumers. The definition of 'serious defect' is very similar to that in the current RAB Act except that it refers to compliance with the NCC rather than the BCA and will also allow an order to be issued to prevent the use of an unsafe building product or a building product in an unsafe way.

A published register of all in-force actions issued by authorised officers and other prescribed information will provide transparency to consumers. In addition, the Secretary will be able to issue warning notices to inform the public about risks in dealing with license holders, former licence holders or others who have breached the legislation.

A new demerit points scheme will be introduced which will provide for licence holders to accumulate demerit points for breaches of obligations under building legislation. Similar schemes exist in the ACT and Qld. The proposed scheme will provide for points to be accrued after:

- a prosecution resulting in a conviction or finding of guilt where the court believes demerit points should still be imposed;
 - the payment of a penalty notice;
 - disciplinary action is taken resulting in a monetary penalty or other specified remedial action;
- or
- a penalty notice enforcement order is made for not paying a penalty notice.

Demerit points will remain in force for 3 years.

Maximum penalties that may be imposed by courts for offences are proposed to be based on a system of tiered offences ranging from tier 1 to 5. The maximum penalty for a corporation for a tier 1 offence would be \$1.1 million and for an individual \$220,000. Continuing offences would attract additional penalties for each day for tier 1 to 3 offences.

The BCE Bill also provides for penalty notices (also known as infringement notices or on-the-spot fines). However, a new and novel alternative to penalty notices will be to empower authorised officers to issue an 'education and training notice'. This would require the recipient of the notice to undertake a specified course intended to address a skills gap identified by the inspector. The cost of completing the course will be less than the penalty under a penalty notice.

5. Increasing developer and director responsibility & regulating intentional phoenix activity

In a bold move to seek to regulate 'phoenixing', there are several amendments to the BDC Act and DBP Act and in the new Building Act that seek to increase responsibility for developers and directors of licensed entities and to regulate intentional phoenix activity. These are summarised as follows:

- The term ‘intentional phoenix activity’ will be defined by reference to the activities of directors and cover situations where:
 - the director is involved in liquidating or otherwise dealing with the first body corporate with the intention of avoiding the payment of debts of the first body corporate (including taxes, employee entitlements and amounts due to creditors);
 - the director establishes the registration, control and management of another body corporate with the intention that the second body corporate will:
 - continue business activities similar to the business activities of the first body corporate and using assets from the first body corporate;
 - be under the control or management of persons who are, or are close associates of persons who had control or management of the first body corporate before the liquidation or other dealing mentioned in the first limb
- There will be a new duty on a registered practitioner to take ‘reasonable steps’ (which are to be defined in a guidance document) to ensure that persons with whom the registered practitioner enters or maintains a ‘business association’ (which would be a defined term) are not, or have not been, involved in intentional phoenix activity in an industry relating to building and construction. A breach of the duty would be a ground for disciplinary action.
- There are new provisions to prevent persons from being licensed or to suspend their license where they have a ‘close associate’ who would be unsuitable or would not be a fit and proper person to be licensed. The term ‘close associate’ will include a person who exercises influence over the person applying for the licence or their business and intentional phoenix activity will be an activity that would render the close associate unsuitable.
- The new Building Act expands the definition of ‘developer’ to reflect a broad range of business structuring models used in the industry and ensure that warranty requirements that apply to home building apply to those who have control over building projects and should be responsible for compliance.
- For corporate licence holders, directors will have obligations to ensure that building work is being monitored and checked for compliance. The corporation must outline how they will effectively manage nominated supervisors to perform their role. Nominated supervisors must hold a license in the category of work they are supervising. They will be responsible for ensuring compliance with the NCC and required to report non-compliance issues directly to FT or risk losing their license. Corporations will also be held liable for non-compliance with codes and standards.

Executive and Corporate liability

A common experience for consumers is where directors avoid personal responsibility for defective or non-compliant building work carried out by companies that engage in practices that have minimal quality assurance, place undue pressure on trades to work faster and for less, and arrange for the use of cheaper, non-conforming products.

The reforms to be found in the BCE Bill have the expressly stated intention to ‘pierce the corporate veil’. They propose to make directors or ‘influential individuals’ be able to be prosecuted for an offence by a company if they:

- aided, abetted or procured the commission of the offence;
- induced, whether by threats or promises, the commission of the offence;
- conspired with others to effect the commission of the offence; or
- otherwise were knowingly concerned in, or a party to, the commission of the offence.

The company need not be prosecuted in order for a director to be taken to court for these offences.
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In addition, the BCE Bill identifies certain offences as executive liability offences (also known as director liability offences). The proposed executive liability offences are:

- contravening an undertaking, including a building product undertaking;
- failing to comply with a stop work order; and
- failing to comply with a building work rectification order.

6. New building product supply chain laws

Reforms to the *Building Product (Safety) Act* (BPS Act) will prohibit the supply of non-conforming products which will be defined to include building products that:

- fail to meet the NCC, standards or legislation;
- do not possess the characteristics they are represented to have by a person in the chain of responsibility, independent of how they are used;
- are not suitable or safe in relation to a particular use.

Building products are defined in the current BPS Act as 'any product, material or other thing that is used or could be used in a building'. This will include pre-fabricated building products which are proposed to be regulated under the new Building Act.

Duties are proposed to be imposed on all those in the building product supply chain including product designers; manufacturers; importers; suppliers; designers who specify or recommend building products; and installers and those who supervise installers. The duties are proposed to apply to directors of companies in the supply chain.

The duties include:

- not designing, importing, supplying, specifying or installing non-conforming products with each person in the chain responsible to satisfy themselves that the product is not non-conforming;
- each person in the supply chain ensuring
 - o specified information is provided with products as they pass along the supply chain;
 - o products are fit for purpose and meet relevant performance requirements;
- each person in the supply chain must report events or use of the product which has impacted on safety.

Information required to be with a product will include its intended use, how it meets relevant standards or laws, any conditions or restrictions for safe use, and installation and maintenance instructions.

The Secretary would have power to issue building product supply or use bans, warning notices and recall notices. They will also be able to apply to the Supreme Court for a trading prohibition order for repeat offenders. The suite of investigation and enforcement powers under the current BPS Act would apply in relation to breaches of the non-conforming product laws.

7. Other miscellaneous reforms

Enhancing rectification of strata buildings

Reforms are proposed to the *Strata Schemes Management Act 2015* and *Strata Schemes Management Regulation 2016* in relation to the Strata Building Bonds and Inspection Scheme (SBBIS).

The SBBIS was established in 2018 to require 2% of the contract price for the construction of an apartment building to be lodged with FT to secure funds to pay for defect rectification. A regime for mandatory defect inspections and reports by independent inspectors applies with the Secretary approving APAs to establish panels of suitably qualified experts to undertake inspections. An interim report is prepared and the builder is given time to rectify before a final report is carried out. At present new defects can only be listed in the final report as 'observations'. The reforms will enable new defects to be listed as additional defects which the developer will have 90 days to rectify.

The maturity date for bonds will be extended from three years to four to allow for defect rectification and the resolution of disputes. The new Building Act will also improve the dispute resolution service offered by the FT (discussed above) which owners can use as part of the SBBIS.

There is evidence that developers sought to avoid the application of the SBBIS by entering into contracts before 1 January 2018 even though building works for those projects did not commence until several years later. To address this, any applicable project that does not have a construction certificate by 1 January 2023 will be required to lodge the bond, even if they entered into a contract before 1 January 2018.

The reforms also propose to strengthen the process for the approval of APAs and to create offences for persons falsely representing to be building inspectors when they are not on an APA inspector panel.

Recognition of qualifications and experience assessments by bodies operating a professional standards scheme

The *Building and Development Certifiers Act 2018* is proposed to be amended to provide that people accredited by bodies operating an approved professional standards scheme that are not already registered by the FT, may apply to FT for registration. Subject to conducting probity checks, the FT will accept the person for registration without the need for its own assessment of qualifications and experience.

Standardising CPD requirements

Changes are proposed to be made across existing legislation to provide for a standardised CPD regime which will include of 'whole-of sector digital solution for recording CPD training'. The intent is to lift the quality of the content of CPD rather than the number of hours required. Different practitioner groups will still be required to attain different hours of CPD. Architects can continue to operate their own CPD scheme and will not be included in the new scheme.

Security of payment (SOP) legislation reforms

There are 3 areas of reform to the SOP legislation proposed, namely:

- to require that where a builder issues a payment claim to a homeowner, a prescribed Homeowners Note be given to assist owners to understand the SOP scheme;
- to lower the threshold for requiring cash retentions to be held in a separate trust account from projects valued over \$20 million to projects valued over \$10 million; and
- to provide a limited basis on which an adjudication can be reviewed by a court, namely:
 - o where the claimed amount or the adjudicated amount determined exceeds \$100,000; and
 - o only after the respondent pays any undisputed amount to the claimant and any disputed amount into a trust fund; and

- prohibiting any submission that was or could have been raised before the original adjudicator.
- providing adjudicators with discretionary power to arrange for testing or engage an appropriately qualified person to investigate and report on any matter.

Strengthening enforcement powers for certifiers

Amendments are proposed to the EPA Act to broaden the power of the appointed certifiers. The certifier will be able to issue a written direction notice where the certifier becomes aware of a 'serious defect'. It is said this will impose greater responsibility on the certifier to resolve defects earlier in the constriction process and reduce reliance on the building regulator (FT) to intervene to rectify towards the end of the project. The RIS acknowledges this will create more work for certifiers and may result in an increase in their fees but says the reform is consistent with the intended function of the certifier as an avenue to achieve the prompt rectification of defects.

Other improvements to enforcement powers

The reforms will also amend information gathering powers to provide that where a corporation is compelled to provide documents or information (because a corporation cannot claim the privilege against self-incrimination) that evidence collected can be used in criminal proceedings.

The Secretary will be able to issue a 'written investigation cost notice' to a person requiring them to pay some or all costs associated with an investigation carried out by the FT. Such a notice will only be able to be issued for unusual or complex investigations where substantial costs have been incurred that would not usually be incurred, for example the services of experts have been required.

Bronwyn Weir
Director
Weir Legal and Consulting
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