



# Roundtable Paper

*Tranche II Building Reform proposals*

February 2022

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# 1. The purpose of the roundtable discussion

## 1.1 Background

As part of the next phase of reform to the building sector under Construct NSW, the NSW Government is seeking to make changes to existing Acts to ensure they support the Government's work to restore confidence to the NSW construction sector.

In this Roundtable Paper, the Government would like to present areas of reform which will be discussed at the upcoming roundtable being held on **Wednesday 23 February 2022**.

You are invited to attend the roundtable to share your valuable insights regarding the proposals. You may wish to provide feedback for all of the proposals, or alternatively only the proposals which are of particular interest to you.

These proposals have been identified as areas of concern in the building and construction industry through stakeholder engagement, information gathered as part of previous reviews, inquiries, and studies and Departmental learnings and experience.

## 1.2 The roundtable

During the roundtable, the Department's facilitators will provide an overview of each proposal. The breakout sessions will focus the discussion on specific questions about selected proposals. In this Roundtable Paper the proposals with Discussion Points indicate what will be a focus of discussion in the breakout sessions.

If you have particular questions or comments on proposals that are not discussed in the breakout sessions, you are welcome to email us a written submission at [hbareview@customerservice.nsw.gov.au](mailto:hbareview@customerservice.nsw.gov.au) no later than **16 March 2022** or organise a meeting with us.

To ensure the roundtable discussions provide a clear reflection of industry views, we ask that you look over the proposals in this Roundtable Paper and come prepared to participate. The feedback and data provided by stakeholders at the roundtable will be used to shape and refine each proposal.

## 1.3 Public consultation

During Quarter 2 2022 the Department will engage in public consultation on this package of reforms, alongside the remake of the *Home Building Act 1989*. The proposals discussed at the roundtable (as well as some additional proposals) will be outlined in detail in a Regulatory Impact Statement (**RIS**). The RIS will assess the regulatory impact assessment of each proposal and will be accompanied by a draft Bill.

In addition to the comments provided at the roundtable, you are welcome to provide a written submission before and during the public consultation. All submissions will be considered and assessed.

## 2. Areas of reform/proposals

### ***Security of Payment Act reforms***

The proposals seek to enhance the existing payment claim and adjudication processes under the *Building and Construction Industry Security of Payment Act 1999 (SOP Act)* to better promote fairness between the parties and ensure that the object of the Act is not eroded through unnecessary judicial review. In addition, the reforms seek to expand protections for subcontractors' retention money from insolvency.

Specifically, amendments are proposed to:

- prescribe particulars and additional information that must be included in payment claims to help respondents understand their obligations in responding to a payment claim, and the consequences of not doing so;
- introduce a right for either the claimant or the respondent to apply for an adjudication determination review (similar to the model in [Victoria's Security of Payment legislation](#));
- reduce the project value threshold (at [clause 6 of the Regulation](#)) from \$20 million to \$10 million to extend obligations for retention money to a broader scope of construction projects; and
- require an adjudicator to complete a visual verification of the work/goods where parties dispute whether construction work or the supply of related goods and services has been completed or supplied. A corresponding power of entry for adjudicators to enter a premises to undertake the visual verification is also proposed.

### **Discussion Points**

#### **Payment claims**

Feedback indicates that payment claims currently contain minimum information. Some respondents may not understand the significant consequences of non-payment including suspension of construction work or legal action commencing against them.

To remedy this, and create a higher set of minimum standards, it is proposed to include additional information in payment claims aims to inform respondents of:

- what to do once they have been served a payment claim;
- timeframes in which to respond to a payment claim with a payment schedule;
- the legal consequences of failing to respond, such as the claimant suspending the construction work or recovering the unpaid portion as a debt due to the claim in court; and
- where to get help, including reading the [Security of Payment Guide on the NSW Fair Trading website](#), reading the relevant provisions in the SOP Act, or seeking legal advice.

We are considering different options to give effect to this proposal:

- (a) the Department prescribes a payment claim form on the NSW Fair Trading website which must be used by all claimants. This form would include the prescribed particulars and

information that must be included such as details of the legal consequences under sections 15 and 16 of the Act; OR

- (b) the particulars and additional information may be prescribed in the legislation and claimants can use their own form, as long as it contains the required particulars/information. The Department could provide a sample form that claimants use at their discretion.

## **Q. What practical implications do we need to consider in determining which option to adopt?**

### **Adjudication review**

Currently, the SOP Act does not provide for an adjudication determination to be reviewed. If a party is dissatisfied with a determination, they may take the matter to the Supreme Court for judicial review which is limited to determining the validity of the adjudicator's exercise of their function and not its substantive merit. This significantly increases costs for all parties, both financially and through delays in finalising disputes.

Establishing a review mechanism that provides parties with a limited avenue for remedying erroneous determinations is considered a practical measure to better control the overall cost and improve the finality of adjudication determinations. There needs to be a balance between upholding the legislature's intention of providing a rapid, informal process for resolving progress payment disputes (thereby maintaining a contractor's cash flow) and preserving a party's right to seek judicial relief from adjudication errors.

A similar approach has been proposed in other reviews and jurisdictions.

### **Key elements of the Victorian model**

- both claimants and respondents have a right to apply for a review;
- the right is limited to reviewing the erroneous inclusion/exclusion of 'excluded amounts';
- adjudicated amount minus the 'excluded amount' must be paid by the respondent prior to applying, and the 'excluded amount' must be paid into a designated trust account;
- the application is made to the same Authorised Nominating Authority (ANA) involved in the original determination;
- the adjudicator must either confirm the original determination or substitute a new determination.

### **The Murray Review Recommendation**

The Victorian model was considered in the [Murray Review](#), which ultimately recommended the following deviations:

- the right not being limited, but only applying where the adjudicated amount is equal to or greater than \$100,000 of the scheduled amount, or lower than \$100,000 of the claimed amount, or the adjudicator has rejected the adjudication application.
- a respondent prohibited from including new reasons in the application for review.
- the application is made to the Regulator who appoints an adjudicator from a panel limited to more senior and experienced adjudicators.

**Q. Do you think the scope of a party's right to review of an adjudication determination should be limited? Why? If so, what model do you support, or is there another proposal you would suggest?**

**Q. Who should pay for the adjudication determination review application, the applicant, respondent, or both parties? Or is this a matter that should be left to the discretion of the adjudicator to determine based on the circumstances?**

**Q. Should there be any criteria for being a review adjudicator such as the review adjudicator being more senior or experienced than the original adjudicator? Would it be acceptable for the authorised nominating authority who dealt with the original adjudication to use its own discretion and allocate an adjudicator they consider would be best placed to be the review adjudicator?**



## ***Design and Building Practitioners Act reforms***

The NSW Government is committed to expanding the *Design and Building Practitioners Act 2020* (**DBP Act**) and supporting Regulation (**DBP legislation**) to further building classes, ensuring more buildings are designed and built by competent practitioners who are accountable for their work. The Government's objective is to introduce reforms across all building classes to ensure safe and compliant buildings across the State. More information on these reforms and the responsibilities of practitioners can be found in **Annexure A**.

It is proposed that the next phase of the DBP legislation should be expanded into **class 3** (shared accommodation facilities such as boarding houses, student accommodation, hotel/motel buildings, typically capable of housing more than 12 people) and **class 9c** (residential care facilities). The intention is to mirror what has been done with class 2 for mixed-use buildings, meaning this would extend the scope to include the entire building where there is a class 3 or 9c part. This means that the DBP legislation would apply to buildings such as pubs with accommodation or hotels that have retail and entertainment venues below.

**Class 3:** Residential building other than a Class 1 or 2 building, which is for the accommodation of unrelated people, includes, boarding house, guest house, hostel, backpackers or hotel (typically capable of housing 12 people or more). 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 9c:** are residential care buildings. 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.

## **Discussion Points**

### **Building work exemptions**

The DBP legislation applies to the construction of new buildings as well as building work for repairs, renovation and remediation. Clause 13 of the Regulation covers work that is exempted as building work. This means exempted work is not subject to the compliance declaration requirements under the DBP Act.

The current exemptions are necessary as certain work may not be able to comply with the Building Code, such as Development Control Orders for legacy buildings, while other minor works have been excluded as they are considered low risk, such as exempt development under the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

Work such as the fit-out of class 5 and 6 parts of a building has been excluded as this work was considered low risk and carried out by practitioners who may not be eligible for registration under the DBP legislation. Practitioners carrying out this work may only have experience in commercial rather than residential building work. The current controls in place are appropriate to safeguard this work.

The following work is currently excluded from the DBP legislation:

- Exempt development work under the EPA Act, except waterproofing work, unless the waterproofing work is for alterations to a kitchen, bathroom, laundry or toilet of a single dwelling.
- Work conducted under a council order (under section 124 of the *Local Government Act 1993*), or a development control order (under Division 9.3 of the EPA Act). However, the DBP Act does apply to remedial cladding work conducted under these orders.
- Work conducted for the fit-out of part of the building that is a class 5 or 6 building part, or will be a class 5 or 6 as a result of a change of building work connected with the work. The work must be subject to a development consent that primarily relates to the fit-out. The exemption does not apply to structural work for a fit-out, which will continue to be subject to the reforms.
- In limited cases, some mechanical, plumbing, and electrical services work and fire safety systems work.
- In limited cases, some work exempted under clauses in the EPA Regulation, and the *Home Building Act 1989*. Read Clause 13 of the EPA Regulation for the full details.
- Some work carried out under the HomeBuilder Grant scheme.

Expanding the DBP legislation will bring a range of buildings into the scheme, such as:

- pubs with accommodation in regional/remote NSW;
- university dormitories;
- jails;
- hotel buildings, including restaurants, retail and entertainment areas within the building;
- boarding houses; and
- crisis accommodation for carers/visiting patients in buildings that provide health services.

**Q. What exemptions, if any, do you think should be introduced for building work on class 3 or 9c buildings?**

**Q. Are there particular exemptions that should apply to certain types of buildings within these classes? For example, allowing waterproofing work for multiple units in a boarding house without being subject to the DBP Act.**

**Q. The requirements will also apply to the non-class 3 and 9c parts of a mixed-use building. Are there exemptions needed specifically for these parts?**

**Q. Should any of the existing exemptions not apply to class 3 or class 9c building work?**

### **Design Practitioner classes**

Registered Design Practitioners will need to prepare and declare the designs for all of the building elements and performance solutions.

### **Building elements:**

- the fire safety systems for a building
- waterproofing,
- structural component of a building
- the building enclosure,
- the mechanical, plumbing\* and electrical services required to achieve compliance with the Building Code of Australia,

\*Note only the plumbing requirements under the Building Code are required, so does not include the Plumbing Code.

The current classes of Design Practitioner are:

- Architectural
- Architectural (with a condition for medium rise buildings) – [available 1 March](#)
- Architectural (low rise buildings) – [available mid 2022](#)
- Building Design (low rise)
- Building Design (medium rise)
- Civil Engineering
- Drainage
- Drainage (restricted)
- Electrical Engineering
- Façade
- Fire Safety Engineering
- Fire Systems (detection and alarm systems)
- Fire Systems (fire sprinkler)
- Fire Systems (fire hydrant and fire hose reel)
- Fire Systems (mechanical smoke control)
- Geotechnical Engineering
- Mechanical Engineering
- Structural Engineering
- Vertical Transportation



There is also a class for a Body Corporate to be registered as a Design Practitioner. Registered Body Corporate Design Practitioners need an employee who is a registered in the relevant class of Design Practitioner to which the design relates to make declarations for designs on behalf of the body corporate.

**Q. Should practitioners registered under existing classes in DBP for class 2 work be eligible to work on class 3 and 9c buildings?**

**Q. Are further practitioners required for class 3 and 9c buildings?**

**Q. Will further practitioner classes be required to cover work on a building part that might be mixed with a class 3 or 9c building?**

## **Building Practitioner classes**

Not all builders working on a project need to be registered as a Building Practitioner under the DBP legislation. Only the principal contractor who is contracted to do or arrange the building work needs to be the Building Practitioner. Whoever is contracted to do the building work is the Building Practitioner and therefore must be registered. Therefore, developers may be Building Practitioners.

As it is the contract that determines who the Building Practitioner is, Body Corporates are also able to be Building Practitioners. The Body Corporate currently requires a contractor licence under the *Home Building Act 1989 (HB Act)*. A Body Corporate must nominate an individual registered Building Practitioner to make declarations on behalf of the body.

The following classes of Building Practitioner are:

- Body Corporate nominee
- Body Corporate nominee (with a condition for medium rise) – [available 1 March](#)
- Body Corporate nominee (with a condition for low rise) – [available 1 March](#)
- General
- General (with a condition for medium rise) – [available 1 March](#)
- General (with a condition for low rise) – [available 1 March](#)

Current eligibility requirements for registration as a Building Practitioner are linked to licences under the HB Act, such as contractor licences for body corporates, and either a supervisor certificate for general building work or endorsed contractor licence for general building work for individuals.

As building practitioners engaged in class 3 and 9c work may not carry out building work that currently requires them to be registered under the HB Act (as class 3 and 9c work is excluded from the definition of 'dwelling' under Schedule 1, clause 3(3) of the HB Act), the DBP Act will need to set the qualifications for practitioners without reliance on HB Act licences.

The eligibility criteria for Building Practitioners would therefore require qualifications. An option would be to mirror the qualifications needed for registration as a general builder under the HB Act. This information is included in more detail in **Annexure B** but generally requires:

- a Certificate IV in Building and Construction or Building Project Support including mandatory units and either a carpentry or bricklayer licence or qualification or Diploma of Building and Construction.
- a degree in building, construction, construction management, construction project management, construction economics, applied science (building), or quantity surveying from an Australian university which requires the applicant to undertake the equivalent of four years' full-time study and a mandatory work placement.

**Q. Are the existing qualifications appropriate for registration as a Building Practitioner for class 3 and 9c work?**

**Q. As Building Practitioners registered for DBP won't also have licences under the HB Act, should these practitioners be subject to additional CPD or other requirements?**

**Q. Should there be additional qualifications required for this work?**

### **Restrictions: low and medium rise buildings**

Existing practitioner classes that have restrictions are restricted in terms of the definitions of low and medium rise buildings. The restrictions may reflect lower eligibility in terms of qualifications or experience and therefore, the work that the practitioner is able to do is limited.

#### **Low rise:**

- low rise building means a class 2 building or a building containing a class 2 part that has a maximum gross floor area of no more than 2,000m<sup>2</sup>, but does not include a building that is Type A or Type B construction.

#### **Medium rise:**

- medium rise building means the following classes of building, but does not include a building that is Type A construction for the purposes of a class 4, 5, 6, 7b and 8 building—
- (a) a class 2 building or a building containing a part of a class 2 building that has a rise in storeys of no more than 3,
- (b) for a building in relation to which the ground level or first storey of the building is classified as a class 7a building—a class 2 building or a building containing a part of a class 2 building that has a rise in storeys of no more than 4.

**Q. Are the definitions of low and medium rise applicable once expanded to class 3 and 9c buildings?**

**Q. Building designers are limited to a maximum of four storeys under the DBP legislation for consistency with the State Environmental Planning Policy 65 (SEPP). The SEPP does not apply to class 3 or 9c buildings. Should building designers have any limits on class 3 and/or class 9c buildings?**

## ***Building Products (Safety) Act reforms***

Currently, the building regulatory framework does not allocate appropriate responsibility to a significant proportion of the supply chain for building products. Licensed builders that install products at the end of a sometimes complex supply chain are faced with high penalties for non-compliance, while individuals who produce or supply products bear little responsibility and may have reduced incentives to create products that are safe and fit-for-purpose. The *Building Products (Safety) Act 2017 (BP Act)* will be expanded to ensure that all persons involved in the chain of responsibility for building products are to be held accountable for the design, manufacture, supply and use of safe building products.

Specifically, modelling off the Queensland reforms (Part 6AA of the *Queensland Building and Construction Commission Act 1991*), amendments are proposed to:

- establish the concept of ***non-conforming building products*** as building products that do not comply with NCC requirements or standards, do not perform, or possess the characteristics, as represented, or are unsafe or unsuitable for an intended use;
- impose a range of duties on persons who form part of the chain of responsibility for the supply of building products to ensure that building products supplied and used in NSW are safe and fit for purpose; and
- expand powers to the Secretary to issue building product warnings, building product recalls and building product supply bans and impose penalties for breaches of duties.

## **Discussion Points**

### **Duties to be imposed**

The primary duty for each person in the chain of responsibility will be to, as far as reasonably practicable, ensure that any building product they design, manufacture, supply, use (install), or incorporate into designs are not a non-conforming building products for an intended use.

Further, persons in the chain of responsibility will be required to make available certain information about building products and provide the information to others, including building owners, where possible.

A duty will also be imposed on persons in the chain of responsibility to report certain events such as the use of a non-conforming building product and events where the use of these products have had an impact, such as death or serious injury.

It is proposed that the persons in the chain of responsibility will capture the following people:

- product designers;
- importers;
- manufacturers;
- suppliers;
- designers (including architects and engineers); and
- installers.

An installer will cover a person who:

- personally installs the product in the building; or
- supervises the installation of the product in the building; or
- carries out the relevant work in relation to which the product is installed in the building; or
- engages a person to do an activity mentioned above.

**Q. Are there any person or class of persons that should be included or excluded from the chain of responsibility?**

### **Providing information**

The intention is for manufacturing instructions or any other information relevant to a building product to be provided to each person in the chain of responsibility so that they understand how the product designer or manufacturer intended the product to be used and the installation method to avoid the product from being non-conforming.

It is proposed that all building products will need to be accompanied by information that communicates the following:

- The suitability of the product for its intended use and to demonstrate the product legitimately meets the relevant Australian Standards.
- The conditions and circumstances in which the product can be safely used, e.g. in internal areas or not above certain heights.
- Instructions as to how the product should be installed, e.g. the type of fastener, adhesive or mounting system to ensure NCC compliance.
- Instructions on how the product must be used to remain compliant with the NCC, e.g. cladding that can only be used below certain heights must have this specified.

**Q. Is there any other information that should be listed that should accompany all building products?**

**Q. How can we ensure this obligation is consistently enforced with respect to products manufactured in Australia and overseas?**

## Amendments to the *Strata Schemes Management Act 2015*

Reforms to the operation of the strata building bond and inspections scheme in the *Strata Schemes Management Act 2015 (SSM Act)* seek to improve consumer protection by enhancing remedies for building defects.

Specifically, amendments are proposed to:

- Expand the use of the building bond (2% of the contract price for the building work is secured) provided by developers to enable defects identified in the final inspection (up to 24 months after construction) to be rectified by the building bond. Currently, the Act prohibits a building inspector including defective building work not identified in the interim report (written at 15-18 months after construction), in their final report (other than work arising from rectification of defective building work identified in the interim report).
- Ensure building inspectors are paid for their duties under the Act by enabling the building inspector to seek payment for inspection reports before releasing the report. There have been repeated instances where an inspector has provided a report and has not been paid, or paid on time, for this work.
- Impose a penalty offence for a person falsely representing themselves as a building inspector or having been appointed as a member of a strata inspection panel by an authorised professional association (**APA**).
- Establish requirements for the appointment of APAs who manage strata inspection panels. Requirements will include the body outlining their processes for appointing inspectors, managing conflicts of interest and complaints, and disciplinary action. This will provide greater transparency around the appointment and regulation of building inspectors and APAs.
- Amend the transitional arrangement to require developers that have not been issued a construction certificate before 1 January 2023 to be subject to the strata building bonds and inspection scheme, even if the contract was entered into before 1 January 2018. This will phase out the transitional arrangement put place for developers to transition into the scheme and ensure consumer protections are provided to owners for the rectification of building defects.

### Discussion Points

#### Defects in final report

Currently an interim report is carried out by a building inspector 15-18 months after construction of a strata building has been completed. The building bond that is paid by the developer can be used to rectify defects identified in the interim report.

Any additional defects identified by the building inspector at the final inspection carried out between 21-24 months cannot be rectified using the security bond. Owners and owners' corporations must resort to legal avenues and NCAT to have developers pay for the rectification work.

**Q. What practical considerations arise if building inspectors are able to identify defects in their final report that were not apparent when conducting the interim inspection?**

**Q. Are there any circumstances that defects should not be rectified using the money secured by the building bond?**

## **Payment of building inspectors**

The Act requires a building inspector to furnish both the interim and final reports to the developer and other parties, not later than 14 days after they have completed each report. Stakeholder feedback has identified repeated instances where a building inspector has not paid, or paid on time, for their work.

One proposed option is for the building inspector not to provide a copy of either the interim or final report until they have been paid by the developer for the inspection and report. The reports are the trigger in the scheme to enable the security bond to be released to the developer. Withholding the reports by the building inspector will result in a delay in the developer accessing the bond.

An alternative option is to mandate that the building inspector to be paid before carrying out the interim or final inspection. On appointment by the developer, the building inspector would provide an estimated cost to carry out the inspection and provide the report. The developer would be required to pay the building inspector before any inspection is carried out. This could be formalised in the contract arrangement between the parties to ensure the building inspector carries out the work he has been paid to do.

**Q. Which option do you consider is more appropriate to ensure that building inspectors get paid by the developer? What practical considerations would apply to each option?**

**Q. Are there any alternative options that better deliver on the policy outcome?**



## Licence conditions for unlawful and unethical conduct

The building and construction industry suffers a high incidence of insolvencies compared to other industries in NSW. While market forces play a part, there are other factors including serious imbalances of power in contractual relationships, unconscionable behaviour and unlawful and criminal conduct such as illegal phoenixing.

This reform will amend various Acts, including the *Home Building Act 1989*, *Building and Development Certifiers Act 2018* and *Design and Building Practitioners Act 2020* to place a positive obligation on licence holders and directors of licence holders to refrain from working or associating with a company or person that has engaged in unlawful conduct, including where the practitioner knows that the person has become bankrupt and not paid a liability for defects.

It is proposed that this could be regulated by making it a condition of their licence that they must take reasonable steps to satisfy themselves that a person they are entering into a contract for building work has not illegally phoenixed or been declared bankrupt. The various Acts already prescribe that a breach of a licence condition is an offence and disciplinary action can be applied.

### Discussion Points

**Q. In your experience, is unlawful and criminal conduct such as illegal phoenixing common in the building and construction industry? Illegal phoenix activity is when a company is liquidated, wound up or abandoned to avoid paying its debts. A new company is then started to continue the same business activities without the debt. When this happens outstanding debts are not paid, which can include taxes, creditors and employee entitlements.**

**Q. Since the laws around illegally phoenixing and insolvency are not state-based laws, the NSW Government cannot make many legislative changes to prevent this activity. Are there any non-legislative actions (other than our proposed approach) that the NSW Government could implement to prevent this behaviour?**

## Further amendments in the Tranche II project

In addition to the amendments discussed in the breakout rooms, we are proposing to make further minor amendments to legislation and are seeking your feedback on these proposals. Please email us a written submission at [hbareview@customerservice.nsw.gov.au](mailto:hbareview@customerservice.nsw.gov.au) no later than **16 March 2022** or we are happy to arrange a meeting to discuss.

### **Amendments to the *Building and Development Certifiers Act 2018***

It is proposed that industry bodies or associations that have established a Professional Standards Scheme (PSS) can apply to the Secretary to be recognised as entities with responsibilities for the approval of registration or oversight of certifiers. These bodies could then determine whether a person meets relevant qualification, experience, knowledge, skills, insurances and continuing professional development requirements to qualify as a certifier under the Act.

This approach would hand over accreditation responsibilities to these bodies, allowing their members to be approved to practise as a certifier in accordance with the standards of the PSS rather than those prescribed by the Regulation. This is on condition that if the Regulation imposes a minimum standard the PSS must also ensure this standard is met for the accredited certifiers.

Modelling the approach adopted in the new *Design and Building Practitioners Act*, a move to supervised self-regulation, through flexible registration recognition pathways, can strengthen the efforts of the certifier profession to exceed minimum requirements and to use their special knowledge and skills in the public interest and to deliver services of the highest standards.

### **Amendments to the *Environmental Planning and Assessment Act 1979***

It is proposed that certifiers are given the discretionary power to issue a Written Direction Notice (WDN) where there is a defect that is considered a “serious defect” under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (RAB Act).

Currently the grounds for certifiers issuing a WDN are limited and provisions in the RAB Act to issue Building Work Rectification Orders are being issued by building inspectors instead.

The effect of this change is to invest more responsibility on the certifier to resolve the defect, which will reduce the number of interventions required by the building regulator to respond to building defects.

## Amendments to various legislation

### **Training and education as a substitute/alternative to disciplinary action**

There are a range of disciplinary action mechanisms for breaches to building legislation including fines and cancellation of licences. To respond to initial or less-serious breaches by a practitioner it is proposed that specified education and training may be imposed as a way of preventing the practitioner from reoffending.

This reform will provide authorised officers with the power to impose specified education and training for an offence as an alternative to issuing a penalty infringement notice. Without these options for early intervention, there is a risk that disciplinary action will not address and rectify examples of poor practice and will instead allow these behaviours to become accepted as common practice.

## **Standardise approaches to continuing professional development (CPD) across all building and construction related functions**

It is proposed to standardise the way that CPD requirements are prescribed to make it easier for CPD units to be carried over between schemes, update the standards/amounts of CPD and allow a whole of sector digital solution for recording CPD training. This would provide a user-friendly solution for recording and maintaining completed CPD in a consistent way and provide seamless auditing of CPD requirements.

CPD requirements vary across building and construction practitioner types that are legally required to undertake CPD as a condition or requirement of maintaining a licence or registration. This is a complicating factor particularly in circumstances where a practitioner may hold several licence or registration types that use different units of measurement or systems to achieve CPD.

## **Annexure A – Practitioner obligations under the Design and Building Practitioners Act 2020**

The legislation requires registration of designers responsible for designing the key elements of the building, such as the fire safety systems, waterproofing, structural elements, building enclosure and mechanical, plumbing and electrical services required by the Building Code. Registered Design Practitioners responsible for designing these building elements or any performance solution, need to make declarations that their designs comply with the Building Code and the relevant standards and ensure their design integrates other designs and building work. Only designs and declarations by registered Design Practitioners for these key building elements or performance solutions can be used for building work.

The DBP legislation also requires the Building Practitioner, who is the principal contractor, to be registered. Before the Building Practitioner can commence building work, the Building Practitioner must have designs and declarations for the key building elements and lodge them on the Planning Portal, where they are available for audit by the Department. The Building Practitioner must build in accordance with the designs and if variations are required, the Building Practitioner needs the variation to be designed and declared by a registered Design Practitioner.

Before the Occupation Certificate is applied for, the Building Practitioner must make a declaration that covers whether the building work has been built in accordance with the designs from the registered Design Practitioners and whether all the building work (including building work that isn't a building element or performance solution) has been built in accordance with the Building Code of Australia

## **Annexure B – Building Qualifications**

### **Qualifications to register as Builder (general)**

You must meet one of the two qualification criteria below:

1. VET qualifications and units of competencies:

- CPC40120 (current) Certificate IV in Building and Construction, or
- CPC40320 (current) Certificate IV in Building Project Support, or
- CPC40110 / BCG40106 / CPC40108 Certificate IV in Building and Construction (Building), or
- CPC40208 / BCG40206 Certificate IV in Building and Construction (Contract Administration), or
- BCG40306 / CPC40308 Certificate IV in Building and Construction (Estimating), or
- BCG40506 / CPC40508 Certificate IV in Building and Construction (Site Management),

**and** including all of the following units:

- CPCCBC4001 (current) Apply building codes and standards to the construction process for Class 1 and 10 buildings, and CPCCBC4053 (current) Apply building codes and standards to the construction process for Class 2 to 9 Type C buildings, or
- BCGBC4001A / CPCCBC4001A Apply building codes and standards to the construction process for low rise building projects, and
- CPCCBC4002 (current) Manage work health and safety in the building and construction workplace, or
- BCGBC4002A / CPCCBC4002A Manage occupational health and safety in the building and construction workplace, and
- CPCCBC4003 (current) Select, prepare and administer a construction contract, or BCGBC4003A / CPCCBC4003A Select and prepare a construction contract, and
- CPCCBC4004 (current) / BCGBC4004A / CPCCBC4004A Identify and produce estimated costs for building and construction projects, and
- CPCCBC4005(current) / BCGBC4005A / CPCCBC4005A Produce labour and material schedules for ordering, and
- CPCCBC4006 (current) / BCGBC4006A / CPCCBC4006A or CPCCBC4006B Select, procure and store construction materials for low rise projects, and
- CPCCBC4007 (current) / CGBC4007A / CPCCBC4007A Plan building or construction work, and
- CPCCBC4008 (current) Supervise site communication and administration processes for building and construction projects, or
- BCGBC4008A / CPCCBC4008A / CPCCBC4008B Conduct on-site supervision of the building and construction project, and
- CPCCBC4009 (current) / BCGBC4009A / CPCCBC4009A / CPCCBC4009B Apply legal requirements to building and construction projects, and
- CPCCBC4010 (current) Apply structural principles to residential and commercial constructions, or

- BCGBC4010A / CPCBC4010A / CPCBC4010B Apply structural principles to residential low-rise constructions, and BCGBC4011A or CPCBC4011A or CPCBC4011B Apply structural principles to commercial low-rise constructions
- BSBESB407 (current) Manage finances for new business ventures, or
- BSBSMB421 / BSBSBM406 / BSBSMB406A Manage small business finances, and
- CPCBC4012 (current) / CPCBC4012B / BCGBC4012A / CPCBC4012A Read and interpret plans and specifications, and
- CPCBC4018 (current) / BCGBC4018A / CPCBC4018A Apply site surveys and set out procedures to building and construction projects, and
- CPCBC4024 (current) / BCGBC4024A / CPCBC4024A Resolve business disputes

**Plus** any of the following:

- a current carpentry or bricklaying contractor licence or qualified supervisor certificate, or an approved qualification that would allow the issue of such a licence (for details of approved qualifications, see Carpentry or Bricklaying), or
- Diploma of Building and Construction (Building) - CPC50220 (current) / BCG50206 / CPC50208, or
- Diploma of Building and Construction (Building) CPC50210, and including the following units:
  - CPCBC5004 (current) / CPCBC5004A Supervise and apply quality standards to the selection of building and construction materials, and
  - CPCBC5005 (current) / CPCBC5005A Select and manage building and construction contractors, and
  - CPCBC5007 (current) / CPCBC5007A or CPCBC5007B Administer the legal obligations of a building and construction contract, and
  - CPCBC5009 (current) / CPCBC5009A Identify services layout and connection methods in medium rise construction projects
- Bachelor of Housing from an Australian university or a degree in civil engineering, structural engineering, architecture, housing, construction, construction management, construction project management, construction economics, applied science (building) or quantity surveying from an Australian university

**OR**

2. A degree in building, construction, construction management, construction project management, construction economics, applied science (building), or quantity surveying from an Australian university which requires the applicant to undertake the equivalent of four years' full time study and a mandatory work placement.

A "degree" excludes an associate's degree or an honorary degree.