DISCUSSION PAPER

REMEDIAL BUILDING WORK IN NSW

Project Showcase - Risk, Proportionality, and Regulation

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1. Introduction

ACRA's 2026 project showcase series ('*Showcase'*) builds upon the remedial-government five-year long consultation, regarding the unintended consequences of legislative reform on the remediation of existing buildings.

The *Showcase* transforms the conversation from the meeting room to onsite (a live environment/people's homes), where we can demonstrate the remedial challenges in NSW, following the commencement of the Design and Building Practitioners Act 2020 (NSW) (*DBP Act*), related NSW Planning and National Construction Code (NCC) reforms.

Individually, the *Showcase* projects each examine a specific issue encountered when remediating existing buildings. Collectively, they provide a coherent narrative illustrating how the:

- Interplay between the NSW planning legislation and the NCC; and
- The DBP Act statutory duties; and
- Treatment of building elements as systems; and
- Uncertainty around residual risk and responsibility;

are influencing scope, cost, and decision-making in remedial building works in NSW.

2. Objective

The intent of the *Showcase* is to support informed discussions with the NSW Government, in exploring policy considerations in addressing the unintended consequences of the collective impact of the DBP Act, Planning legislation and NCC reforms.

When applied to remediation of existing buildings the combination of the DBP Act statutory duty of care and practitioner liability, NCC compliance requirements and planning triggers, discourages **proportionate remediation** and drives whole-of-element reconstruction.

The focus of the *Showcase* is to:

- demonstrate how the regulatory framework is operating in practice;
- identify where additional regulatory guidance or refinement may improve the regulation of the remediation of existing buildings;
- explore if legislative change may be required, and what that might look like; and
- promote an integrated regulatory system that supports the remediation of existing buildings.

Legislative reform will promote better outcomes for existing building owners, improve the performance of the remedial building industry and support the Government's Housing Agenda.

The remedial-government consultation outcomes to date, such as:

- the Remedial Building Work Fact Sheet;
- Planning Housekeeping Fact Sheet and clarification (and subsequent amendments) of Clauses 2.51 and 2.53 in the planning legislation (CODES SEPP); and
- the NCC2025 NSW variation

have, according to ACRA, significantly improved owners' outcomes, reducing costs and accelerating remediation, without diminishing safety or legislative compliance nor regulatory oversight, with more work to do.

The remedial-government consultation since 2021, has demonstrated that clear regulatory guidance can significantly influence remedial building work outcomes, benefitting owners, the industry and government alike. **Strong regulatory oversight, supported by continued discussion and education, is essential in enhancing the regulation of the remediation of existing buildings.**

The core issue explored throughout ACRA's *Showcase* is that practitioners can clearly define responsibility for building elements they replace BUT cannot define responsibility for building elements they retain. Consequently, proportionate repair approaches are not feasible from a risk perspective, despite potentially being technically feasible.

3. Demarcation

Demarcation issues identified throughout the remedial-government consultation process need detailed exploration in resolving the emerging and significant unintended consequences. ACRA's advocacy experience in NSW has provided ACRA with the opportunity to understand the multi-layered legislative landscape impacting the remediation of existing buildings. ACRA's *Showcase* has been designed to demonstrate the significant issues when considering demarcation (upon other things) when remediating existing buildings.

The demarcation discussion can only proceed with a strong understanding of the NCC and how the NCC impacts the remediation of existing buildings. The past two years (or more now) of ACRA's consultation with the BCNSW Policy team regarding the NCC2025 illustrate this.

It is ACRA's view that the DBP Act has significantly improved accountability in NSW. ACRA supports the objectives of the legislation; however, the DBP Act creates a substantially different risk environment when applied to the remediation of existing buildings (compared to new builds). For new construction, practitioners design and certify an entire compliant building system. In the remedial building industry, practitioners are required to work with existing building elements, which may not be compliant with current codes, cannot practically or economically be replaced in their entirety and form part of larger interconnected systems (e.g. waterproofing systems).

In NSW, in the absence of clear guidance on managing residual risk when unable to meet Deemed-to-Satisfy (DtS) provisions of the NCC, practitioners generally favour broader scopes in meeting the DtS provisions, to achieve certainty of responsibility and reducing significant risks of liability. Once interfaces are disturbed, retaining legacy construction becomes difficult to certify without introducing foreseeable future risk.

Of significance for owners of existing buildings in NSW is the impact of the interplay with planning legislation. The adoption of a performance solution, triggers planning approval. This means added costs and timeframes (ACRA Consultation paper, Lockart and Mackay 2025)[1].

At its core, demarcation is the ability to clearly define where a practitioner's responsibility begins and ends. Without an accepted statutory mechanism for demarcation, practitioners remain exposed to liability for outcomes associated with retained building elements that fall outside of the intended scope of the Regulated Design. This creates a strong motivator to expand the scope of remedial works to eliminate uncertainty rather than manage it. Practitioners are now responsible for 10 years post completion of the works, as introduced by the DBP Act. With limited or no guidance available,

[1] ACRA (15 July 2025) Lockart, D & Mackay, T. The proposed NCC2025 waterproofing and water shedding provisions and the impact on owners of existing Class 2 buildings in NSW

practitioners are hesitant to take on additional risk of predicting the outcome, if a strict compliance option (DtS) is available.

It is ACRA's view that the issue can only be resolved by strong guidance from the regulator and requires:

- **Legislative recognition of demarcated remediation; and/or**
- **Regulatory guidance that creates certainty for practitioners around responsibility boundaries; and/or;**
- **Legislative change.**

4. Emerging Themes

ACRA's *Showcase* highlights several consistent themes:

i. Implementation is Linked to Legislation

Where government intent is clearly articulated (as with the *Remedial Fact Sheet* and *Planning Codes SEPP* reforms), industry adapts quickly and positively. Remedial building work in NSW sits at the intersection of State Planning controls, State building legislation (including the DBP Act), and the NCC. While these frameworks operate more coherently for new construction, their combined application to existing buildings often results in contemporary performance requirements being applied to legacy construction. This can make localised repairs, or partial remediation, difficult to implement defensibly, as modern compliance expectations, system-based standards, and statutory risk obligations were not drafted with existing buildings as the primary reference point.

ii. Localised Repairs are Technically Feasible but Regulatorily Challenging

In practice, uncertainty around residual risk and responsibility can make proportionate, localised repairs difficult to certify. A common assumption has been that the demarcation challenges identified in this paper can be resolved using Performance Solutions rather than DtS Provisions. ACRA has consistently advocated that we do not agree with this view.

While Performance Solutions provide flexibility and are a useful component of the NCC framework, they do not resolve the fundamental issue highlighted by ACRA's *Showcase,* i.e. uncertainty around the responsibility for retained building elements and the allocation of residual risk. In remedial contexts on existing buildings, Performance Solutions require practitioners to make assumptions regarding the future performance of existing building fabric/interfaces/systems that remain outside the scope of the Regulated Design. While investigations and verification testing can reduce uncertainty, they cannot assure the future performance of existing building fabric/interfaces/systems.

Therefore, **the issue is not the availability of Performance Solutions but the absence of a recognised framework for proportionate remediation and clear allocation of responsibility where retained building elements remain in service.**

In ACRA's submission to the Streamlining and Modernising the NCC, Discussion Paper (December 2025)[2], ACRA proposed the following:

'….. to introduce an Existing Building Code (EBC) – including standalone Performance Requirements, Deemed-to-Satisfy Provisions and Specifications EBC1, EBC2 etc. as 'National Construction Code (NCC) – Volume Four: Existing Building Code (EBC)' (or alternatively 'Existing Building' sub-sections in Volumes 1, 2, 3). This will create a standalone statutory instrument for Building Works to Existing Buildings including common remedial works, aligned with government policy to streamline approvals and reduce regulatory burden while maintaining safety and quality.'

We appreciate that the NCC governance review will take time, and that it will be complex and challenging. In the interim, ACRA suggests that it would be prudent for the NSW Government to explore

[2] ACRA SUBMISSION (24 February 2026) Streamlining and Modernising the National Construction Code (NCC), Discussion Paper

measures where we can address the emerging issues outlined herein, in promoting the ability and affordability for owners in remediating their existing buildings.

iii. Risk Mitigation Drives Scope

The DBP Act has inadvertently shifted remediation decision-making toward risk elimination rather than risk management, particularly where interfaces or partial systems are involved.

The NSW approved variation to the NCC2025 Volume 1 Section F (waterproofing and water shedding provisions), following two years of consultation, accentuated the significance of scope and cost creep, when applying modern building regulations (which have been developed primarily for new buildings) to ageing buildings.

The current multi-layered legislative landscape creates a situation where the safest position for practitioners is to eliminate uncertainty rather than manage it. Where responsibility for retained building elements (when demarcating) cannot be clearly defined practitioners will most likely mitigate risk by:

- Adopting DtS pathways, which:
  - increases scope, and
  - replaces entire systems and/or components to ensure building elements;
- Avoiding demarcated solutions and Performance Solutions;
- Avoiding predicting the future performance of retained elements; and
- Avoiding relying on retained building fabric.

ACRA's *Showcase* highlights the growing uncertainty among practitioners as to whether professional indemnity insurance adequately responds to remedial building works involving partial upgrades, retained elements, or demarcated scopes under the DBP Act, which in turn influences risk appetite and scope decisions.

iv. Flow On Impact – Cost Escalation

Increased costs commonly arise from strict adherence to DtS provisions, rather than from actively managing compliance risk through an alternative pathway, e.g. Performance Solution, or "demarcation". Cost escalation is driven more by the need for certainty and defensibility rather than by over-engineering or excessive technical standards and is often compounded by broader construction industry price increases and economic conditions.

5. Why This Matters for Government

More than half of NSW strata buildings require some form of remediation or repair, and NSW contains more than 1,000,000 Class 2 dwellings.[3],[4] Fewer than 20,000 new Class 2 dwellings are approved annually[5].

The overwhelming majority of the residential buildings that NSW will rely upon over the coming decades already exist. Accordingly, appropriate attention should be given to the regulatory framework governing the remediation of existing buildings because this will affect:

- Housing affordability;
- Asset values and resilience;
- Strata costs;
- Consumer outcomes; and
- Delivery of the Governments' housing objectives.

[3] NSW Department of Customer Service (2023), *2023 Strata Defects Survey Report*, Office of the Building Commissioner, Sydney, pp8.

[4] Easthope, H., Lu, Y. & Riviera, A. (2025) Australasian Strata Insights 2024, Sydney: City Futures Research Centre.

[5] Australian Bureau of Statistics (2025) *Building Approvals, Australia (8731.0), Series A118787488F: Apartments – Total, NSW*. ABS, Canberra.

ACRA supports better regulation of the remediation of existing buildings. ACRA does not advocate for reduced standards, diminished consumer protection, the return of poor quality/short-term repairs or reduced practitioner accountability. ACRA's objective is to create a framework that allows risk to be appropriately managed when applying the principles of 'demarcation'.

The remedial-government consultation has promoted 'remedial' legislative awareness for all stakeholders, ACRA and the regulator alike. It is our view, that 'we' (BCNSW and stakeholders) need to take a wholistic approach and consider the multi-layered legislative landscape impacting the remediation of existing buildings. The legislative landscape is complex. Together 'we' should explore demarcation in better understanding the technical and legislative issues, in addressing the emerging challenges impacting the remediation of existing buildings.

Despite the complexities, the *Showcase* acknowledges that the DBP Act is functioning as intended in raising standards and accountability. ACRA supports the DBP; however, the Showcase also demonstrates that:

- in remedial contexts,
- particularly for existing buildings with mixed-age construction,

There is a need for guidance and/or legislative change to support:

- proportionate remediation, including but not limited to demarcation and Performance Solutions;
- clearer understanding by the 'system' of responsibility where partial systems are retained,
- improvements in setting industry and owner expectations.

6. Recommendation - Continued and Ongoing Discussion

This discussion paper is intended to support a constructive dialogue with BCNSW, the government more broadly, industry and the professional indemnity insurance market on:

- the interplay between DBP Act, NSW planning legislation, NCC and the unintended consequences on the remediation of existing buildings;
- how the DBP Act interacts with remedial building works;
- how localised repairs and residual risk can be better understood and managed;
- how future guidance or policy tools could preserve consumer protection while avoiding unnecessary escalation of scope and cost; and
- the potential need for legislative change in resolving the significant issues showcased.

The issues are complex when considering the multi-layered regulatory system, with potential legislative change required. In supporting legislative change, a strong understanding of the technical issues is paramount. ACRA welcomes the opportunity to continue our work with the BCNSW in exploring how we can together resolve the significant legislative challenges for the remediation of existing buildings when demarcating.