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# Understanding the proposed 'Building Bill' reforms and their potential impact.

A Guide for Builders, Developers,  
and other Professionals

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# Introduction

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In a previous publication by this firm *NSW Government Consultation on Major Building Law Reforms proposed for NSW* we discussed some of the key reforms to the building laws proposed by the NSW Government.<sup>1</sup> We explicated that if passed, these reforms will affect both residential and commercial construction in this state.

A public consultation process in relation to the proposed changes has been concluded and a report on the outcome of that consultation is pending. Whether all proposed amendments will be passed by the parliament is presently unknown.

For the present and until there are further updates from Government on the proposed reforms, this eBook acts as a guide (“Guide”) to builders, developers and the controllers of related entities (including the directors of entities engaged in the building process) in relation to the proposed and complicated ‘Building Bill’ and the related changes in the law, including amendments to the *Design and Building Practitioners Act 2020*.





Although our focus here is on those who may be engaged in work related to residential buildings (Class 2 buildings) as well as strata buildings, this Guide also attempts to explore proposed provisions which seek to significantly expand the liability of builders, developers, design practitioners, and related entities, as well as other building and construction related professionals (hereinafter, altogether “professionals” or “Professionals”).

In essence the proposed changes will impact upon those who are involved in residential and commercial building work, with ‘accountability’ forming the overarching theme of the Building Bill. As the NSW Department of Customer Service has said, *“the government has implemented significant reforms under Construct NSW, focused on creating clear lines of accountability when practitioners deliver substandard work”*<sup>2</sup> and that the very reason why the government is proposing these changes is to ensure that *“all people are held accountable for the supply of safe building products and building work.”*<sup>3</sup>

2 “Frequently asked questions [in the Building Bill]”, at <https://www.haveyoursay.nsw.gov.au/reforming-building-laws/widgets/378685/faqs>, last visited 11 October 2023.  
3 *Ibid.*

In fact, the proposed Building Bill itself (Building Bill 2022) in its section 4, refers to this overarching goal:<sup>4</sup>

*“4 Objects of Act*

*“The objects of this Act are as follows—*

*(a) to ensure competent people use compliant products and processes to create safe, resilient and trustworthy buildings,*

*(b) to establish a customer-focused regulatory framework that protects owners, tenants and other businesses,*

*(c) to implement **end-to-end accountability for building** work in NSW,*

*(d) to enable the NSW building regulator industry participants to adapt to new and emerging trends in construction [emphasis added].”*

Hence the inescapable conclusion is that the Building Bill is onerous on those who “supply [building] products and building work”<sup>5</sup> (i.e. Professionals).

4 Via NSW Department of Customer Service, “Reforming building laws in NSW”, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238243>, last visited 11 October 2023.

5 “Frequently asked questions [in the Building Bill]”, op. cit.,

# A Review

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In our previous publication entitled “*Major Changes to the NSW Building Industry*”<sup>6</sup> we outlined how various developments over a period of time had brought about legislative changes in favour of the consumer in NSW, particularly with respect to building defects and defective building products.

We traced these changes to their founding and to the two very important pieces of legislation, namely the *Design & Building Practitioners Act 2020* (or the ‘DBP Act’) and the *Residential Apartment Buildings (Compliance & Enforcement Powers) Act 2020* (or the ‘RAB Act’) (collectively “**the Laws**”).

We also canvassed the more recent proposed NSW reforms in this area including the release by the NSW Government of three new Bills as part of Construction NSW’s “transformation strategy aimed at restoring public confidence and creating a customer facing building and construction sector”<sup>7</sup> (we refer to these, collectively, as ‘**the Building Bill**’).

The new proposed regime is an ambitious one.

Among other things, these initiatives aim to make the building process “fairer”, “safer”, more regulated, and compliant, simplifying the licensing system (for example for builders and other contractors) at the same time as attempting an “[up]-skilling [of] the building and construction industry” whilst securing “prompt and fair payment for building work”.<sup>8</sup>

<sup>6</sup> See at [https://kreisson.com.au/wp-content/uploads/2021/02/KREISSON\\_-Design-Building-Practitioners-1-2.pdf](https://kreisson.com.au/wp-content/uploads/2021/02/KREISSON_-Design-Building-Practitioners-1-2.pdf).

<sup>7</sup> See “NSW Government Consultation on Major Building Law Reforms proposed for NSW”, at <https://kreisson.com.au/nsw-government-consultation-on-major-building-law-reforms-proposed-for-nsw/>.

<sup>8</sup> Ibid.

Before the enactment of any reforms the NSW government has given the NSW public the opportunity of providing feedback and consultation.<sup>9</sup>

That consultation process opened on 25 November 2022 and according to the NSW Department of Customer Service, that process has concluded.<sup>10</sup> A report on the outcome of the consultation by the Government is yet to be released.

For completeness, we are not aware of any consultative comments or submissions to the NSW government being made publicly available, except for the material made public by individual organisations and entities.<sup>11</sup>

However the NSW Government did, in August of 2022, publish a series of 'Regulatory Impact Statements' which are featured in the Guide's references, and which shed much light on the amendments and the timings of the Building Bill's implementations, which at this stage seem to ultimately point to 2025.

Consultations have included an assessment of proposed changes as related to consumer protections and as related to "the rules around the design, construction, certification and ongoing safety of NSW buildings"<sup>12</sup> which impact upon various areas, including strata and the related strata building bond and inspections schemes.<sup>13</sup>

More recently from 3 July 2023 and well ahead of any foreshadowed enactment of the Building Bill, the DBP Act has expanded to include class 3 and 9c buildings. This is in addition to class 2 buildings for the construction of new buildings.<sup>14</sup>

9 NSW Department of Customer Service, "Reforming building laws in NSW", at <https://www.haveyoursay.nsw.gov.au/reforming-building-laws>, last visited 11 Oct 2023.

10 Ibid.

11 E.g. see the comments by the Law Society of NSW in response to some questions [here](#), last visited 11 October 2023.

12 "NSW Government Consultation on Major Building Law Reforms proposed for NSW", op. cit.

13 More recently the Department of Commerce requested feedback from industry in relation to new licensing proposals See <https://acrassoc.com.au/nsw-news/need-your-comments-by-wednesday-9th-august-2023-re-building-bill-2023/>.

14 <https://www.fairtrading.nsw.gov.au/news-and-updates/notices/changes-to-regulated-buildings-2023> Alteration or renovation work for existing class 3 & 9c buildings will come into effect on 1 July 2024.



One of the most important features of the Laws (DBP Act (*supra*) and the RAB Act (*supra*)) was the classification of buildings and structures to which the Laws referred and the steps which professionals were to take to be compliant with the Laws.

Specifically in this regard, please see further below, as well as our publication “*Changes Introduced by NSW Government in July of 2023 regarding Regulated Buildings*” [here](#).

As we say above, it is not presently very clear when the new NSW government will attempt to implement the reform package. Subject to further reports and decisions from the Government and following the closure of the consultation process, we will explore some of the more relevant details of the proposed Building Bill and the accompanying amendments in the event that these proposals all become law.

In essence, this Guide (or at least this ‘first edition’) assumes that the proposed reforms will *all* be implemented.



# Select Parts of the Building Bill

As we previously said:

- *the Building Bill 2022 incorporates and builds on the Home Building Act 1989 to regulate all building work in NSW (yes, both residential and commercial), including licensing and the approval process for building work;*<sup>15</sup>
- *the Building and Construction Legislation Amendment Bill 2022, and the Building and Construction Legislation Amendment Regulation 2022 is proposed to amend various existing Acts, with the aim of strengthening the legislation supporting the building and construction industry in NSW;*<sup>16</sup> and
- *the Building Compliance Enforcement Bill 2022 aims to modernise and consolidate regulatory compliance powers of various NSW Acts relating to the building and construction industry.*<sup>17</sup>

<sup>15</sup> "NSW Government Consultation on Major Building Law Reforms proposed for NSW", <https://kreisson.com.au/nsw-government-consultation-on-major-building-law-reforms-proposed-for-nsw/>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.





Other legislation (and respective regulation) which will also be amended and which are also to be packaged within the proposed scheme of changes, include:

- *Building Products (Safety) Act 2017;*
- *Strata Schemes Management Act 2015;*
- *Building and Construction Industry Security of Payment Act 1999 (SOPA);* and
- *Environmental Planning and Assessment Act 1979.*

For completeness we point out that the Building Bill package will be replacing the NSW *Home Building Act 1989* ("HBA").

# The Design and Building Practitioners Act 2020 or the “DBP Act”

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One of the major aspects of the proposed changes concerns the DBP Act.

Relevantly the Building Bill refines concepts such as the ‘developer’ allowing owners, or more broadly, the consumers to bring claims as against various Professionals in their respective categories. For example, ‘developers’ - are entities or people who facilitate, carry out, or cause the carrying out of building work.

Even those who simply facilitate the work in some way – may well find themselves in disputes with consumers such as owners corporations.

This is because the Building Bill leaves little doubt that developers owe warranties and duties as ‘developers’.

This ‘developer’ category of Professionals and related entities are liable to be sued in respect of ‘serious defects’ (rather than ‘major defects’ under the HBA) as well as for minor defects.

The proposed re-cast of this category takes into account both the Building Code of Australia (“BCA”) and the National Construction Code (“NCC”) standards when assessing performance requirements.

Breaches of these standards may well constitute a ‘serious defect’.

## Serious defects

Professionals will need to note that in the case of ‘serious defects’, there is no longer a need by the owner or the claimant to show that these have caused (or are likely to cause) an inability to inhabit or use the building, or to cause the destruction of the building, or to threaten the collapse of the building. All the claimant needs to show is that there are aspects of the building or structure, which are non-compliant.

In other words, a ‘serious defect’ may be proved more easily than a major defect, if the proposed changes are enacted.

As an example of this, a ‘major element’ in a major defect scenario within the current system is limited to the ‘loadbearing’ parts of a structure.

That is not the case with ‘serious defects’ which can include any ‘building elements’ which are in turn, simply a part of the building structure.

Moreover, it will not be necessary to prove that the performance of the building element is defective, only that the building element does not meet the relevant standards.

See the side-by-side comparison of the current ‘major defects’ and the proposed ‘serious defects’ definitions within the following table:



<p>‘Major defect’ under HBA (s. 18E (4))</p>	<p>‘Serious defect’ under the Building Compliance and Enforcement Bill 2022 [NSW]; Schedule 2; Dictionary</p>
<p>a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these) and that causes, or is likely to cause:</p> <p>(i) the inability to inhabit or use the building (or part of the building) for its intended purpose; or                      (ii) the destruction of the building or any part of the building; or                      (iii) a threat of collapse of the building or any part of the building.</p> <p>or</p> <p>a defect of a kind that is prescribed by the regulations as a major defect.</p> <p>or</p> <p>the use of a building product (within the meaning of the Building Products (Safety) Act 2017 (NSW)) in contravention of that Act.</p>	<p>a defect in a building element that is attributable to a failure to comply with the governing requirements or the performance requirements of the National Construction Code as in force at the time the building work was carried out, the relevant standards or the relevant approved plans,</p> <p>or</p> <p>a defect in a building product or building element that:-</p> <p>(i) is attributable to defective design, defective or faulty workmanship or defective materials, and                      (ii) causes or is likely to cause-</p> <p>A. the inability to inhabit or use the building, for its intended purpose, or                      B. the destruction of the building or any part of the building, or                      C. a threat of collapse of the building or any part of the building,</p> <p>or</p> <p>a defect of a kind that is prescribed by the regulations as a serious defect,</p> <p>or</p> <p>the use of a building product in the building, if -</p> <p>(i) the use is in contravention of the Building Products (Safety) Act 2017, or                      (ii) the product or use does not comply with the requirements of the National Construction Code, or                      (iii) the product or use does not comply with other standards or requirements prescribed by the regulations for the purposes of this definition.</p>

## Duty of care

Parts of the Building Bill oblige various parties involved in the building process - parties such as builders, suppliers (including potentially other members of the supply chain) and manufacturers - to take reasonable care such that the products they use are compliant with the very purpose for the products.<sup>18</sup>

This means that the Building Bill casts a very wide net upon those who may be deemed responsible for defects, irrespective of whether the defects are serious ones or minor ones.

Generally, given the way in which the building Bill is currently cast, this 'wider net' will provide a more unified statutory duty of care regime for building work in NSW, which duty is owed to both current and future owners.

In effect 'the Building Bill is structured in such a way as to lead potential claimants toward builders, developers (and others) who are 'deemed' responsible.

For example, the proposed section 6 - 'developer' definition - of the draft Building Compliance and Enforcement Bill 2022, refers to persons who "arranged for, or facilitated or otherwise caused, **whether directly or indirectly**, the building work to be carried out [emphasis added]".<sup>19</sup>

18 E.g. see proposed section 19 of the Draft Building Compliance and Enforcement Bill 2022, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238244>, last visited 11 October 2023.

19 See proposed section 6 of the Draft Building Compliance and Enforcement Bill 2022, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238244>, last visited 11 October 2023.



Professionals need to be aware that this ‘wider net’ effectively includes the proliferation and extension of the duty to take reasonable care to not only discrete parts of the building work, but also effectively to the various stages of the process, including inspection, subdivision, certification, as well as the building process itself, *in toto*.

Again, this will mean that all those involved at each and every stage of the building process, including builders, designers and certifiers, owe a duty of care and may be held liable.

Importantly and as implied already herein, this ‘duty of care net’, extends to the suppliers of building products as well as service-providing professionals (**significantly, certifiers will also become liable for economic loss**).

There is also a more stringent regime of control when it comes to non-compliant building products which need to be reported by the Professionals. The builders *themselves* will have reporting requirements (the regulators have many more powers – see further below).

# DBP Act and litigation go hand in hand



In relation to the expansion of the definition of the ‘developer’, in past cases the courts have largely resisted the temptation to include certain parties who may not have been previously considered as ‘developers’. However, under the new regime these parties will most likely be included.

For example, in the case *The Owners – Strata Plan 81837 v Multiplex Hurstville Pty Ltd*,<sup>20</sup> the NSW Supreme Court had earlier ruled that the Owners could not sue Multiplex because the basis for having added Multiplex as a defendant, was a ‘Development Management Agreement’ with the landowners which provided for exclusive access to the property. The problem, the Court calculated, was that Multiplex was not an ‘owner’ and therefore was not a ‘developer’.

If this case was heard under the proposed Building Bill regime, Multiplex would have likely been captured by the statutory warranties.

At the same time as cases such as Multiplex, this expansion of the duty of care espoused in the Building Bill seems to have mimicked some of the ‘less regular’ approaches taken by the NSW Supreme Court.

In *Goodwin Street Developments Pty Ltd atf Jesmond Unit Trust v DSD Builders Pty Ltd (in liq)*,<sup>21</sup> Stevenson J held that the statutory duty of care in relation to construction work, extended to any ‘building’<sup>22</sup> including commercial buildings (under the *Environmental Planning and Assessment Act 1979 (NSW)*).<sup>23</sup>

<sup>20</sup> [2018] NSWSC 1488.

<sup>21</sup> [2022] NSWSC 624.

<sup>22</sup> See also *Roberts v Goodwin Street Developments* [2023] NSWCA 5

<sup>23</sup> We point out that in the case of *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* [2022] NSWSC 659, even the ‘owner of land’ was to have the requisite duty, even where an owner may not have had effective control over the construction.



One thing is certain: with these kinds of proposed changes, the spectre of more litigation will become more prominent and pronounced.

It is also trite to say that professionals will require competent lawyers to help them explore any potential problems which they will need to overcome when faced with significant difficulties in dealing with the pleaded cases against them.<sup>24</sup>

It bears repeating that with changes this significant, professionals will need to be guided through the maze of the response processes, including through the preparation of their evidence - the evidence of their experts, their 'Scott Schedules', and other lay evidence - with timely, efficient and accurate advice; advice which aims to provide the Professionals with a full defence of all rights, ensuring ultimately that the best defence is put before the courts, and tribunals.

This is of course extremely important, because expert and effective legal advice is crucial when it comes to dealing with claims which may on first view, seem 'impenetrable' to some Professionals.

As has been held by the Supreme Court of NSW in cases such as *The Owners - Strata Plan No 87060 v Loulach Developments Pty Ltd (No 2)* [2021] NSWSC 106:<sup>25</sup>

*"The DBP Act was enacted to alleviate the need for a party like the Owners Corporation to prove a duty of care owed to it by the Builder. This reform was seen as being needed in light of the [previous rulings to the effect that] builders and engineers did not owe a duty of care to subsequent purchasers of commercial property. **The DBP Act was not intended to provide a shortcut as to the manner by which a breach of such duty might be established** [emphasis added]."*

In other words, the owners or other claimants will need to prove their case and will need to be able to prove it to the requisite standard, and the Supreme Court has held to this standard again and again.<sup>26</sup>

24 A 'pleading' in the Supreme Court for example states the claim against a professional such as a builder. It is usually a 'List Statement' accompanied by a Scott Schedule.

25 Per Stevenson J, at [35-36].

26 E.g. see *The University of Sydney v Multiplex Constructions Pty Ltd (No 2)* [2023] NSWSC 1019.

## Proposed extension of warranty periods

Related to all this and particularly as related to the expanded 'litigation net' analogy, there is also a possibility that the warranty periods may be extended from 6 to 10 years for the newly defined 'serious defects' and 2 to 3 years for the minor defects.<sup>27</sup>

Again, given all this, if the reforms proceed it is likely that that litigation will invariably proliferate.

In summary, appearing below are some of the more important impacts of the reforms on Professionals:

- developers will have to deal with more overall liability under the DBP Act,<sup>28</sup> added to that will be the potential extension of the 10-year warranty period for the relevant building classes,<sup>29</sup> encompassing an extension on the bond period to 4-years;<sup>30</sup>
- there will be a much more significant duty of care placed upon builders, designers, engineers, suppliers, installers, certifiers and building inspectors;<sup>31</sup>
- manufacturers of building materials (including those who manufacture pre-fabricated off-site buildings<sup>32</sup>) will face the prospect of increased liability in respect of the materials which they manufacture and supply;<sup>33</sup>

27 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building Bill 2022, Part 3, Building Compliant Homes", August 2022, p43, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238451>, last visited 11 October 2023.

28 See proposed section 6 of the Draft Building Compliance and Enforcement Bill 2022, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238244>, last visited 11 October 2023.

29 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building Bill 2022, Part 3, Building Compliant Homes", op. cit. at p43.

30 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building and Construction Legislation Amendment Bill", August 2022, p35, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238620>, last visited 11 October 2023.

31 Ibid. at p45.

32 Ibid. at p19.

33 Ibid. at p23.

- the personal liability of directors and other 'influential' individuals is to increase markedly; for example the Secretary of Fair Trading or the Building Commissioner will have powers to 'pierce through the corporate veil' revealing the directors or significant others involved in the construction process;<sup>34</sup> and
- importantly, application of the regime will be both to residential as well non-residential buildings.<sup>35</sup>

34 Ibid. at p85.

35 Ibid. at p29.





# Other changes of interest

- The Building Bill of course encompasses many other amendments including **'clarification of variations'** within contracts and clarifications of times as related to payment claims and as related to the variations.<sup>36</sup>
- **Extensive powers under the RAB Act:** *Extensive powers are bestowed upon government inspectors allowing them to "investigate, monitor and enforce compliance with the building and construction laws in NSW [with issues relating to] serious defect[s in] residential apartment building[s]. The powers [also] include information-gathering powers and powers of entry which are relied on to carry out the audits [and powers related to the issuing of] prohibition orders, stop work orders, and building work rectification orders".*<sup>37</sup>
- **Fire safety** requirement consolidation is to take effect, from 'concept design', all the way to day-to-day maintenance, encompassing regular auditing of fire safety.<sup>38</sup>

36 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building Bill 2022, Part 3, Building Compliant Homes", op. cit. at p10,

37 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building and Construction Legislation Amendment Bill", op. cit. at p77.

38 E.g. see NSW Fair Trading/NSW Department of Customer Service, "Regulatory Impact Statement: Building Bill 2022, Part 3, Building Compliant Homes", op. cit. at p10.







- **Ensuring that retention moneys are held in trust** for major projects is part of the Building Bill – these constitute a value threshold of \$10 million or more (see further below).<sup>39</sup>
- **Implementing a ‘building information system’** which stores all building related certification for ease of access is a crucial element of the Building Bill.<sup>40</sup>
- **Better protection for payments made under Payment Claims under SOPA is provided.** It should be noted that payment claims need to carry a notice to owner-occupiers which provides them with information as to their rights. There are consequences for the payment claim if such is not included.<sup>41</sup>
- **Professionals need to be aware that the proposal is to mandate and cause to be reported, the maximum progress payments per home-building stage.**
- **Protection against insolvency events** is bolstered by lowering the trust account retention threshold from \$20 million to \$10 million. The trust account expansion provisions also ensure that any disputed amounts can be held in trust until the resolution of the dispute by adjudication or by other means.<sup>42</sup>

39 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, op. cit. at p18.

40 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Building Compliance and Enforcement Bill 2022”, August 2022, p29, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238484>, last visited 11 October 2023.

41 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, op. cit. at p18.

42 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, August 2022, op. cit. at p59.

- The **empowerment of adjudicators in SOPA** matters to arrange for expert engagement and additional testing, with the added benefit that reviews (or appeals to ‘review adjudicators’) of the adjudication result are now possible by both sides—this generally relates to matters involving amounts where the adjudicated amount exceeds the claim or the scheduled amounts by \$100,000.<sup>43</sup>
- **Inspectors (e.g. certifiers) are set to be able to issue rectification notices** to builders and others in the face of defects to avoid delays and later action by the owners of strata plans.<sup>44</sup>
- **Additionally in cases of claim, a strata scheme may be able to access the building bond within 90 days** of the issuance of the defects notice by an inspector, if the defects are not remedied.<sup>45</sup>

43 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, op. cit. at p73.

44 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, August 2022, op. cit. at pp35-36.

45 E.g. see NSW Fair Trading/NSW Department of Customer Service, “Regulatory Impact Statement: Building and Construction Legislation Amendment Bill”, August 2022, op. cit. at p35.



## Licensing changes

**The Building Bill introduces licensing changes** for contractors such as builders and others working within the building industry.

This includes restrictions on 'Owner Builder' permits and the requirement that the work of unlicensed workers be supervised.

The proposal is to introduce a four-level licensing system constituting the licences: 'Builder A' (unrestricted), 'Builder B' (medium-rise), 'Builder C' (low-rise i.e. class 1 and 10 buildings), and 'Builder D' (internal fit-outs).

It is to be noted that waterproofing will be a new class of specialist work, which will require licensing.

Additionally, the threshold value of licenses for building works will be reduced to \$3000 (from the current \$5000); i.e., a license will be required for all work above \$3000.

Furthermore, work which is considered 'high-risk' and which is not simply 'specialist work' will also require a license irrespective of the cost.

These licensing related changes will also impact upon the ongoing training requirements of licence holders in relation to, for example, continuing professional development (CPD), and competency improvements. This can at times come at the cost of a fine if training which is prescribed, is not undertaken and completed.

Related to all that, there is the spectre of demerit points which will be introduced (in addition to the heftier fines mentioned above) which will accumulate with offences committed by builders and others, and which may impact your licence.<sup>46</sup>

<sup>46</sup> For a good treatment of these issues, see NSW Fair Trading/NSW Department of Customer Service, "Building Compliance and Enforcement Bill 2022", August 2022, from p58, at <https://www.haveyoursay.nsw.gov.au/75583/widgets/379760/documents/238484>, last visited 11 October 2023.

## Disputes and regulator intervention

Dispute resolution improvements as between the residential owners and contractors are there to supposedly ensure that there is more cost efficiency in these processes.

As highlighted above, builders need to be aware that the reforms seek to introduce regulator intervention so that government regulators are able to intervene in construction sites and in relation to constructions more generally.

This new system if implemented will mean that not only certifiers, but also the regulator representatives will have powers to demand defect rectification because of say, noncompliance with various specifications or standards.

The mix of powers encompasses the taking of remedial actions including undertakings [encouraging voluntary undertakings where possible to avoid costly disciplinary actions], injunctive relief and the issuance of orders as to rectification, compliance, enforcement as well as 'stop work' orders.

Some of these powers may seem draconian -- the new regime if enacted will also allow for the recovery by the regulator of "reasonable" costs and expenses as related to investigations. Authorised officers will have more power to conduct investigations and enter premises, as well compelling some of the members of the 'material supply chain' to provide information to other nominated members.

**There are also provisions which will prevent "intentional Phoenix activity"**<sup>47</sup> placing the onus on professionals and registered practitioners to ensure that they do not deal with businesses which have been involved in illegal 'Phoenixing' activity within the industry.<sup>48</sup>

As part of the scheme, notifications of non-compliant material to the government will also be a requirement.

47 This is the illegal transfer of below-market value assets to a new company, with the old company deliberately liquidated with the added intention of defeating the interests of creditors (creditors such as the ATO, employees and suppliers).

48 E.g. see NSW Department of Customer Service, "Regulatory Impact Statement: Building and Construction Legislation Amendment Bill", August 2022, op. cit. at p85.



# What does all this have to do with me?



We have already explained how this all relates to builders and developers and Professionals generally, if the reforms become law.

However, it bears repeating that the Building Bill can have a major and perhaps lasting impact on Professionals and on the industry as a whole.

The Building Bill is another serious development and those involved in the building and construction industry in NSW ought to take its provisions very seriously because the changes it aims to introduce will likely lead to more litigation-- the potential is there for significant increases in overheads to Professionals such as builders.

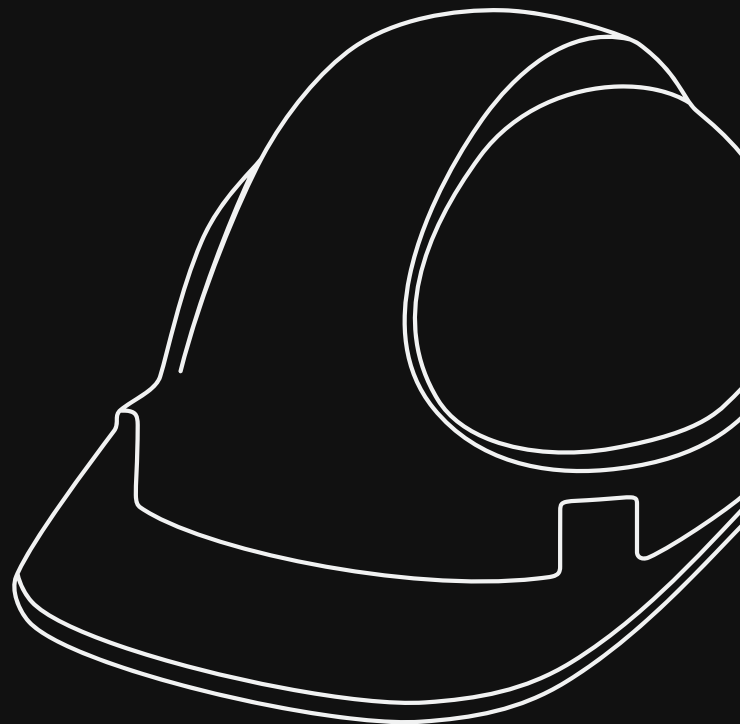
At the risk of repeating this, the Building Bill will have a massive impact on Professionals, people such as developers, building consultants, and others involved in both residential and non-residential building work.

As it is quite clear based upon what we have set out in this brief Guide, obligations are not simply limited to licensed companies, but these extend to directors and 'nominee supervisors'.

This is why it is so important that you obtain good advice in respect of these changes and to obtain it early in order to be able to have control over all the legal implications which the Building Bill will have for your business and in respect of your livelihood.

The experts at Kreisson are able to help you with cost-effective advice.

Find out more [here](#).



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