

# Regulatory Impact Statement

Building Bill 2022

Part 2 – What work can be regulated

August 2022

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## Commissioner's Message

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

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

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

A central theme of Construct NSW is the making of 'trustworthy buildings' – buildings that are fit for purpose, sustainable and measurably less risky. The players who make them must be the most capable. Customers who buy them must be confident to own and occupy them. Further, the financiers and insurers who underwrite policies for constructors and building owners must be confident in the level of assurance.

The Government has implemented significant reforms under Construct NSW, focused on creating clear lines of accountability and significant consequences when practitioners deliver substandard work. We have made significant progress to achieving these outcomes and are gaining traction with industry professionals who are now firmly part of Construct NSW's vision.

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

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

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

**Natasha Mann**

**Commissioner for Fair Trading**

## Glossary

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

Term	Description
<b>2019 Government Response</b>	NSW Government Response to the <i>Building Confidence Report</i> released on 19 February 2019.
<b>ABCB</b>	Australian Building Codes Board – a Council of Australian Government standards writing body that is responsible for the development of the <b>National Construction Code</b> .
<b>ACL</b>	<i>Australian Consumer Law</i> .
<b>BCA</b>	Building Code of Australia – Volumes One and Two of the National Construction Code.
<b>BDC Act</b>	<i>Building and Development Certifiers Act 2018</i> .
<b>Building Confidence Report</b>	' <i>Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i> ' report by Professor Peter Shergold AC and Ms Bronwyn Weir, commissioned by the Building Ministers' Forum in 2017.
<b>Building work</b>	<i>Building work</i> means work involved in, or involved in coordinating or supervising work involved in, one or more of the following: the construction of a building the making of alterations or additions to a building the repair, maintenance, renovation or protective treatment of a building work prescribed by the regulations. The regulations may exclude work from being building work.
<b>CIE</b>	Centre for International Economics.
<b>Class 2 building or building with a Class 2 part</b>	Class 2 buildings are apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. Class 2 buildings may also be single storey attached dwellings where there is a common space below. For example, two dwellings above a common basement or carpark.  A building with a Class 2 part is a building of multiple classifications that has a Class 2 as well as another Class, making it a "mixed class" (for example, a Class 2 with a Class 5 which are office buildings used for professional or commercial purposes or a Class 6, which are typically shops, restaurants and cafés).

Term	Description
<b>Commercial building work</b>	<i>Commercial building work</i> is used to identify buildings and building work that is outside the current focus on the home in the HB Act. It broadly includes Class 3 to 9 buildings under the National Construction Code.
<b>DBP Act</b>	<i>Design and Building Practitioners Act 2020.</i>
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979.</i>
<b>EP&amp;A Reg</b>	Environmental Planning & Assessment Regulation 2000.
<b>HBA</b>	The <i>Home Building Act 1989.</i>
<b>Home</b>	<p><i>Home</i> means a building designed, constructed or adapted for use as a residence, but does not include the following:</p> <ul style="list-style-type: none"> <li>premises not intended to be used for permanent habitation</li> <li>a hostel or backpackers' accommodation</li> <li>a hospital or nursing home</li> <li>a correctional complex, including a correctional centre</li> <li>hotel or motel accommodation or serviced apartments</li> <li>a registered club or a residence within premises licensed under the <i>Liquor Act 2007</i></li> <li>a residence associated with, or provided by, a hospital or educational establishment</li> <li>a building or premises excluded by the regulations.</li> </ul> <p>In this definition a nursing home has the same meaning as in the <i>Public Health Act 2010.</i></p>
<b>Home building compensation scheme</b>	Insurance under the Home Building Compensation Scheme provides a safety net for homeowners, if a licensed business that worked on their home cannot complete work or honour statutory warranties due to insolvency, death, disappearance, or licence suspension for failing to comply with a court or tribunal order to pay compensation to the homeowner.
<b>Home building work</b>	<i>Home building work</i> is regulated work carried out in, on, or for a home.
<b>NCAT</b>	NSW Civil and Administrative Tribunal.
<b>NCC</b>	<p><i>National Construction Code</i> – is published in three volumes. The Building Code of Australia is Volumes One and Two and the Plumbing Code of Australia is Volume Three.</p> <p>It is a performance-based code containing all performance requirements for the construction of buildings, a set of technical design and construction provisions for buildings. As a performance-based code, it sets the minimum required level for the safety, health, amenity, accessibility and sustainability of certain buildings.</p>

Term	Description
<b>NRF</b>	Draft 'National Registration Framework for Building Practitioners' discussion paper released by the Australian Building Codes Board on 26 June 2020.
<b>OBC</b>	Office of the NSW Building Commissioner sitting within the Department of Customer Service.
<b>OC</b>	Occupation Certificate – authorises the occupation and use of a new building or building section.
<b>Owner-builder work</b>	<p>Owner-builder work means home building work that is one or more of the following:</p> <ul style="list-style-type: none"> <li>• the carrying out of exempt building work prescribed by the regulations</li> <li>• the engagement of a licence holder to carry out residential building work</li> <li>• the coordination of the supply and installation of a kit home or pre-fabricated buildings, and</li> <li>• relating to the erection of a dwelling house or secondary dwelling, but only if: <ul style="list-style-type: none"> <li>• development consent is required to carry out the work, or</li> <li>• the work may be carried out as complying development.</li> </ul> </li> </ul>
<b>Product Safety Act</b>	<i>Building Products (Safety) Act 2017.</i>
<b>PSS</b>	Professional Standards Scheme – a scheme approved by the Professional Standards Council within the meaning of the <i>Professional Standards Act 1994</i> .
<b>RAB Act</b>	<i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.</i>
<b>Regulated work</b>	<p><i>Regulated work</i> includes:</p> <p>building work  fire safety work  general building design work  professional engineering work  specialist work  other work prescribed by the regulations.</p> <p>Regulated work requires a licence under the Building Bill.</p>
<b>RIS</b>	Regulatory Impact Statement.
<b>RLLC Act</b>	<i>Residential (Land Lease) Communities Act 2013.</i>
<b>Serious defect</b>	Serious defect, in relation to a building, means—

Term	Description
	<p>(a) a defect in a building element that is attributable to a failure to comply with the governing requirements or the performance requirements of the National Construction Code as in force at the time the building work was carried out, the relevant standards or the relevant approved plans, or</p> <p>(b) a defect in a building product or building element that-</p> <p>(i) is attributable to defective design, defective or faulty workmanship or defective materials, and</p> <p>(ii) causes or is likely to cause—</p> <p>(A) the inability to inhabit or use the building, for its intended purpose, or</p> <p>(B) the destruction of the building or any part of the building, or</p> <p>(C) a threat of collapse of the building or any part of the building, or</p> <p>(c) a defect of a kind that is prescribed by the regulations as a serious defect, or</p> <p>(d) the use of a building product in the building, if—</p> <p>(i) the use is in contravention of the <i>Building Products (Safety) Act 2017</i>, or</p> <p>(ii) the product or use does not comply with the requirements of the National Construction Code, or</p> <p>(iii) the product or use does not comply with other standards or requirements prescribed by the regulations for the purposes of this definition.</p>
<b>SIRA</b>	NSW State Insurance Regulatory Authority.
<b>Specialist work</b>	<p>Means the following, whether or not done in connection with building work:</p> <p>electrical wiring work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></p> <p>gasfitting work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></p> <p>mechanical services and medical gas work</p> <p>medical gasfitting work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></p> <p>medical gas technician work within the meaning of the <i>Gas and Electricity (Consumer Safety) Act 2017</i></p> <p>plumbing and drainage work</p> <p>refrigeration work or air-conditioning work prescribed by the regulations</p> <p>waterproofing work</p> <p>work prescribed by the regulations.</p>
<b>The BCE Bill</b>	The Building Compliance and Enforcement Bill.
<b>The Bill</b>	The Building Bill.

Term	Description
<b>The Department</b>	The Department of Customer Service.
<b>The Regulator</b>	NSW Fair Trading / Office of the NSW Building Commissioner.
<b>The Secretary</b>	<i>Secretary</i> means the Secretary of the Department of Customer Service.

## Executive summary

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

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

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

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

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

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

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

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

Key features of the Bill include:

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

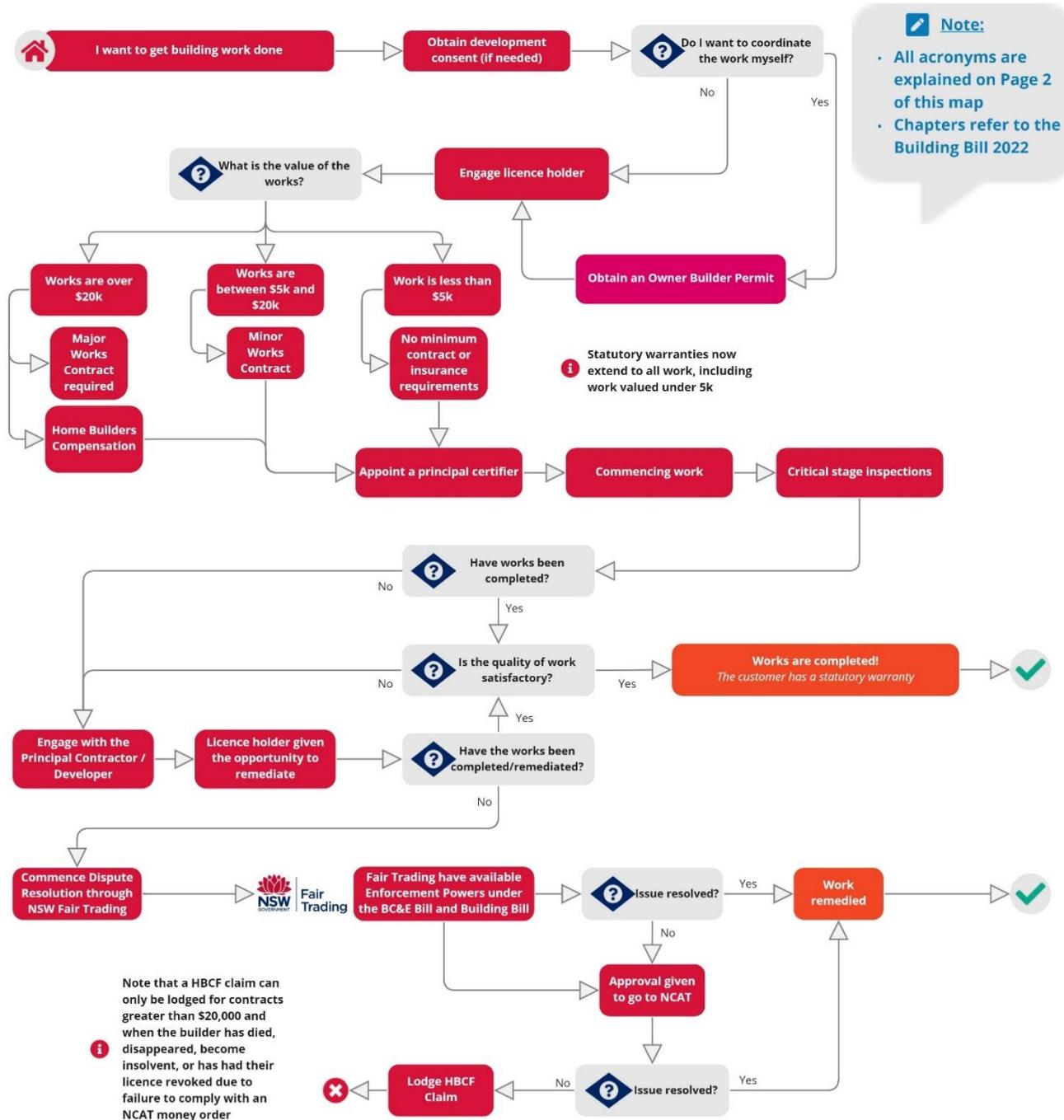
The Bill aims to reshape consumer and industry interaction with each other and with the Regulator. The customer journey map below illustrates several pathways specialist and industry participants may follow under the proposed reforms. Please refer to [Appendix 3](#) for a text description of the customer journey map.

# Home Building in NSW: Customer Journeys

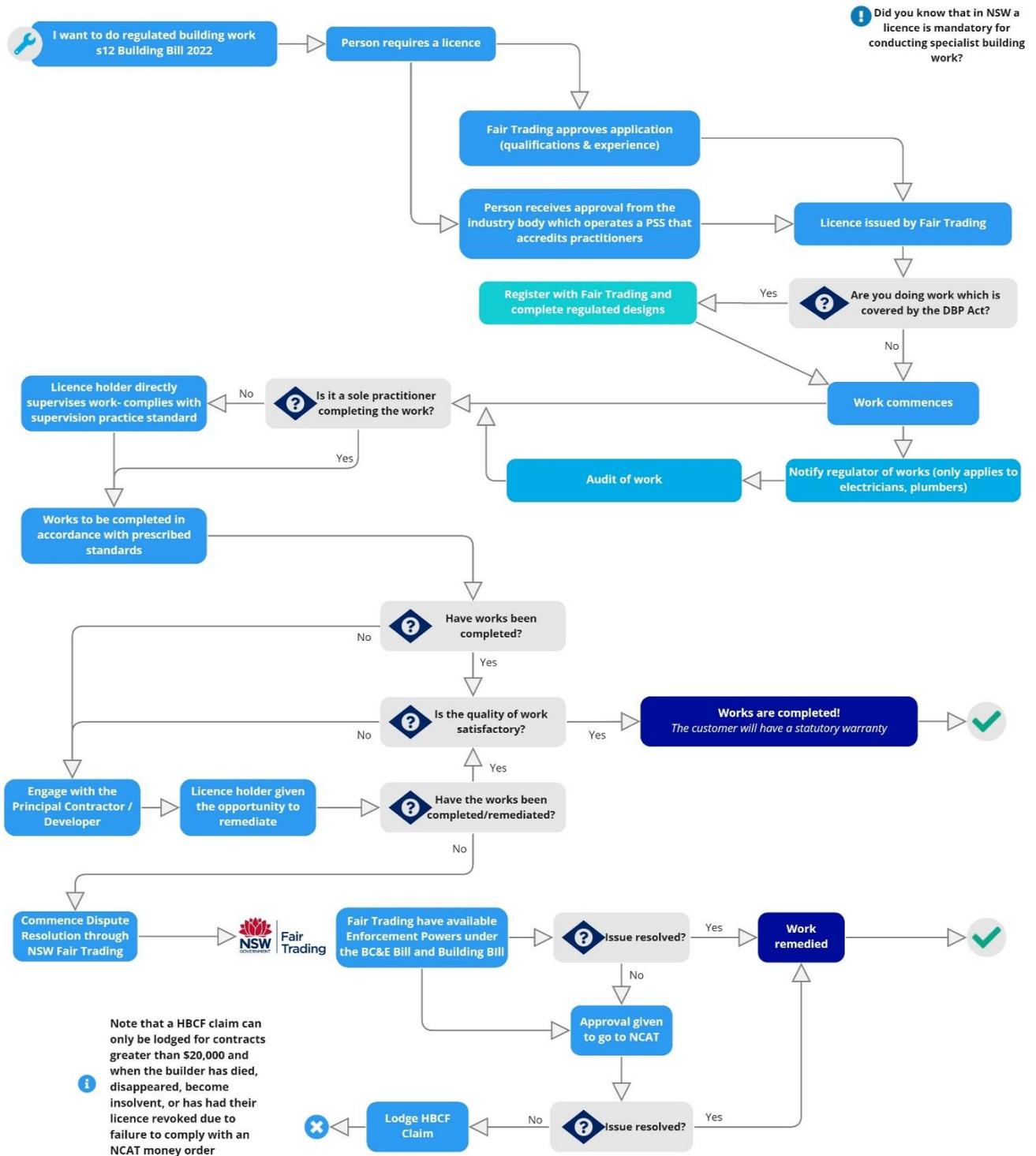


- I want to get building work done. I am a customer.
- I want to do regulated work.

## Residential customer wanting to get building work done



# I want to do regulated work



## Acronyms & References to other Legislation

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

This Regulatory Impact Statement (**RIS**) has been prepared as part of the making of the Bill to:

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

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

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

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

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

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

6	<b>Certification of building work, subdivision work and specialist work (EPA Pt 6)</b> This Chapter includes provisions for certification of building work, subdivision work and specialist work (under the Environmental Planning and Assessment Act 1979 (EP&A Act), Part 6 (including the DBP Act and the EP&A Act duty of care))	<ul style="list-style-type: none"> <li>• <b>Quality and build standards</b> Part 2 (pages 16-23)</li> <li>• <b>Building approvals and duty of care</b> Part 2 (pages 36-39)</li> </ul>
7	<b>Miscellaneous</b>	<b>N/A.</b>
Sch 1	<b>Terms to be included in certain contracts</b>	<b>Home building work in the Bill</b> Part 3 (pages 21-27)
Sch 2	<b>Savings, transitional and other provisions</b>	<b>How do we transition industry into a new scheme?</b> Part 1 and 3
Sch 3	<b>Dictionary</b>	<b>Throughout</b>
Sch 4	<b>Amendment of Acts and other instruments</b>	<b>N/A.</b>

# Consultation process

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## Making a submission

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

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

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

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

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

Please forward submissions by:

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

Mail to: Policy and Strategy, Better Regulation Division

Locked Bag 2906

LISAROW NSW 2252

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

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

## Important note: release of submissions

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

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

### **Identified stakeholders**

The RIS has been provided directly to some stakeholder organisations.

### **Evaluation of submissions**

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

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

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

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

# 1. Key objectives of the Bill

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## Objective

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

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

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

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

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

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

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

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

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

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

## Questions

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

## Relationship to other Bills

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

Key features of Amendment Bill relevant to the Bill include:

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

## 2. Quality and build standards

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### Standards of work

Clause 23 of the Bill allows conditions to be included on licence holders that work must be done in accordance with specified codes, standards, or methodologies, including codes, standards or methodologies prepared by the Secretary of the Department of Customer Service.

For building work under a Complying Development Certificate (EP&A Act) or a Construction Certificate (Chapter 6 of the Bill), the underpinning prescribed obligation is to carry out the work to meet the National Construction Code (**NCC**) provisions. Replicating this requirement as a condition of licence seeks to strengthen the obligation and include stronger repercussions for failing to comply, such as disciplinary action.

The NCC is the set of technical design and construction provisions for buildings, imposing the minimum required level for certain buildings' safety, health, amenity, accessibility, and sustainability.<sup>1</sup> The NCC comprises three volumes, with the BCA being Volumes One and Two and the Plumbing Code of Australia being Volume Three.

The NCC itself does not contain details of every design and construction requirement for building or plumbing and drainage systems. This detail is provided by the NCC referencing documents, for example, Australian Standards, or standards produced by other bodies such as the Australian Building Codes Board (**ABCB**). To comply with the requirements of the NCC, one must also comply with the relevant referenced documents for the work.

The Bill regulates work, such as specialist work, that is not covered by the NCC. This work is required to meet standards which are referenced in legislation. For example, electrical wiring work must comply with the Australian/New Zealand Wiring Rules.

By prescribing minimum standards of work, the Bill seeks to set a minimum standard of work across all building work in NSW. This ensures consistent standards of safety, health, amenity, accessibility and sustainability for all building owners and occupants and the broader community.

Prescribing minimum work standards also ensures that customers of licence holders and other licence holders who are not experts in relevant fields can rely on an independent set of standards to prescribe what work will be done and to what standard.

By imposing a positive obligation to carry out compliant work in accordance with relevant standards and any development consent obligations under the planning system:

- practitioners will be clear about what work they are required to do

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<sup>1</sup> Australian Building Codes Board, *Understanding the NCC*, (2022), <<https://ncc.abcb.gov.au/homeowners/understanding-ncc>>.

- other practitioners will understand how to integrate their work with other practitioners
- certifiers will have a clear standard to assess whether design and building work has complied with the required standards, and
- the end-users of the building will have increased confidence in the quality and trustworthiness of the property.

The Bill also allows other standards and methodologies to be adopted. This is important to fill the gap that sometimes occurs between NCC compliance and quality of work. For example, NSW Fair Trading has a published [Guide to Standards and Tolerances](#), which is relied upon to determine whether a licence holder has carried out work to the expected standard.

Building certifiers under the *Building and Development Certifiers Act 2018* (BDC Act) have obligations through conditions of their registration to comply with the [Practice Standard for registered certifiers](#). This is a standard prepared by the Secretary. The Standard has supported an uplift in industry behaviour, and the Bill allows similar Practice Standards to be produced for other practitioners. This fills the gap between strict statutory requirements for licence holders and the reasonable expectation of expected standards.

## Questions

- 3. Do you agree that a licence holder should have a condition on their licence that requires them to carry out work to a required standard?**
- 4. Are any changes required to other legislation to support clear expectations on the standard of work licenced people must carry out?**

## Supervision

Adequate supervision is an integral component of building and construction work. Supervision improves work safety and quality by requiring experienced practitioners to oversee the work of less experienced persons. Where a licence is required to do certain work, supervision provides a pathway for practitioners to learn how to do that work without compromising personal safety, quality of work or compliance with requisite standards.

Under the WHS Act, there is an obligation for a person conducting a business to provide any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of that business.

There is substantial evidence of the devastating effects of ineffective supervision or a lack of supervision in the building and construction industry, which can result in severe injuries or the death of people who should have been adequately supervised.

In 2021, the NSW District Court fined a Sydney-based refrigeration and air-conditioning company when an apprentice suffered serious injury from an arc-flash explosion in 2017. An arc-flash is the

release of electrical energy that can cause an [explosion](#). The Court found that two apprentices attended the job without being supervised by a licensed electrician when the incident occurred.<sup>2</sup>

In another incident, the NSW District Court found that the death of a first-year electrical apprentice was the result of his safety harness not being set up correctly when installing solar panels. The court heard that the 19-year-old apprentice had only been on the job for a week and had not been provided with instructions or had the harness checked by the supervisor before he fell 6.5 meters.<sup>3</sup>

In 2018, a builder was fined when an apprentice carpenter died after suffering a fall on site. The courts found that the apprentice was left without proper supervision at the Strathfield construction site when the incident occurred.<sup>4</sup>

Although companies are held accountable for the safety of people under the WHS Act, supervisors need to be proactive and understand their responsibilities and duty to those they supervise. Data shows that NSW's apprenticeship and trainee numbers are showing significant growth. As of 1 March 2022, there is a total of 63,426 apprentices in training, showing an increase of 7.5% from the previous year. The top three 'apprentice in training' vocations are from the building and construction industry, with 10,564 electrical apprentices, 10,232 in carpentry and 4,359 in plumbing. Across the building and construction industry, a total of 3,507 apprentices completed their training in 2020. This increased even with the impact of COVID to 3,780 in 2021.<sup>5</sup>

Currently, under the HB Act, an individual must not do any residential building work or specialist work unless they hold a licence or certificate that allows them to do that work or the person is under the supervision of a relevant qualified supervisor. This means that a person can only do building work, such as electrical wiring work, without a licence if the person doing the work is supervised by a licensed practitioner and the supervisor is directly supervising them. Apprentices are not required to hold a licence in NSW and must be supervised.

A company, organisation or person that employs an apprentice makes a commitment to ensure that the apprentice has the necessary support and supervision by qualified, licensed and experienced electricians with relevant skills who are committed to training them.

Other unlicensed persons are used on building sites for general duties. Feedback from the survey carried out by NSW Fair Trading in 2021 (refer to the following case study) and anecdotally from inspectors has suggested that it is not uncommon for unlicensed persons to be undertaking building or specialist work with little-to-no supervision from a qualified supervisor.

The survey focused on the electrical trade, with responses indicating diverse views on persons working unlicensed. Many indicated that only electrical apprentices and licensed practitioners

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<sup>2</sup> *SafeWork NSW v Ultra Refrigeration Pty Ltd; SafeWork NSW v Romolo Prestia* [2021] NSWDC 149.

<sup>3</sup> *SafeWork NSW v PV Solar Pro Pty Ltd* [2021] NSWDC 258.

<sup>4</sup> *SafeWork v Co-Wynn Building Contractors Pty Ltd* [2018] NSWDC 61.

<sup>5</sup> Training services NSW Tableau, *Business reporting*, (2022), <<https://public.tableau.com/app/profile/business.reporting>>.

should be able to carry out electrical wiring work and that unlicensed persons were currently being used as cheap labour to reduce the need for companies to employ apprentices. This is problematic, particularly because the effects of fewer apprenticeships being offered would exacerbate the skills shortage of qualified tradespeople in the future. It is acknowledged that the results of this survey may not be readily applied to other trades where the work being conducted is lower risk.

Nevertheless, respondents acknowledged the need for unlicensed persons due to the current labour shortages experienced in NSW and the high costs incurred by hiring qualified and licensed practitioners to do more basic tasks. The survey indicated that the tasks able to be completed by unlicensed persons should be clarified and strictly limited and that unlicensed persons should be supervised at all times.

Industry associations, unions and NSW Fair Trading inspectors have raised concerns about the inadequacy of supervision of apprentices and unlicensed persons doing certain kinds of specialist work on construction sites. Audits conducted by NSW Fair Trading have revealed that a supervisor is not always present on building sites to oversee apprentices. In some cases, unlicensed persons or only one supervisor may be responsible for supervising more than 40 people at any one time on large construction sites. Sometimes new apprentices are being supervised by 'more senior' apprentices.

### **Case Study - electrical work**

*In late 2021, a public survey and targeted follow-up consultation was carried out by NSW Fair Trading to research supervision practices such as who is supervising electrical work, how they are doing it, and the potential consequences when supervision is inadequate. While the survey concentrated on the supervision of electrical work, it was expected that the findings could also be indicative of supervision practices in other trade occupations under the HB Act.*

*A total of 796 responses were received from apprentices, unlicensed persons, supervisors, people from the building and construction industry and consumers.*

*Feedback received indicated the following:*

- the need for clear, standardised and enforceable guidelines on what supervision is required, due to the current lack of clarity of obligations and how to implement them*
- many supervisors do not adequately understand their obligations and responsibilities in their role as a supervisor,*
- the interpretation of NSW legislation defined as a supervisor 'being present' was not clear and did not differentiate between different levels of supervision*

- *ratio limits were needed to address the common practice of supervisors being responsible for supervising a large number of people on building sites*
- *concerns raised on the use of unlicensed persons and the scope of work they are doing, and*
- *the need to improve the regulatory enforcement of supervisors.*

## **Supervision Practice Standards**

As a result of the feedback received expressing the need for guidelines for supervisors in the electrical industry, a draft Practice Standard has been developed. A Practice Standard sets out the expected conduct and practices of employers, supervisors and people they supervise when carrying out functions of electrical wiring work.

It is proposed that Practice Standards are developed for all licence classes to ensure that supervision obligations are customised to the specific risks posed by different kinds of work. The first standard under development is the Electrical Practice Standard.

The Electrical Practice Standard is planned to cover the following:

- Clarify the roles and responsibilities of employers, licensed electricians, apprentices and unlicensed persons.
- Define three levels of supervision (direct, general, and broad supervision) which will be linked to the tasks being carried out.
  - Direct supervision requires constant one-on-one supervision where the supervisor is physically overseeing the work being undertaken by the apprentice or unlicensed person at all times.
  - General supervision requires a supervisor to provide intermittent guidance and monitoring to ensure a task is carried out safely and correctly. The supervisor must be physically present on the worksite at all times and be readily available to provide instructions and offer assistance as required.
  - Broad supervision requires a supervisor to be present at the start of a workday to provide instructions and guidance to an apprentice and at the end of the workday to check completed work and correct any defective work. An unlicensed person will not be able to carry out any tasks under broad supervision.
- Provide the ratio of the number of persons a supervisor can supervise at any given time based on the level of supervision required, the types of tasks being carried out and the experience of the person being supervised.

- For direct supervision, the ratio must be 1:1. Tasks that require general supervision must have a minimum ratio of 1:3, and tasks that require broad supervision must maintain a minimum ratio of 1:5.

The enforceability of the Practice Standards will be prescribed in the Bill, with the Standards published in the NSW Gazette. Everyone must adhere to the Standards, and it will be an offence for a licence holder to breach the requirements of the Standard. The offence will carry a maximum penalty for a corporation of 3,000 penalty units (or \$330,000) or for an individual 600 penalty units (\$66,000).

The proposed Electrical Practice Standard (which would be used to inform the development of further Standards for other licence classes) imposes new regulatory costs on licence holders. While research indicates practitioners would like clear guidance on how to satisfy legal obligations under the HB Act and WHS Act, prescriptive obligations limit the discretion of practitioners to run their business the way they want. Almost 50% of the apprentices surveyed in their first year indicated they completed work alone which was later checked by the supervisor. The Practice Standard may impact the labour supply market as current practices would need to follow the prescribed ratios for apprentices and unlicensed persons.

For example, the proposed Electrical Practice Standard would limit the number of unlicensed people that a licence holder can supervise. While this restriction is intended to ensure that each unlicensed person can have adequate supervision to do the electrical work safely and compliantly, it may lead to licence holders having fewer people on site or prevent them from bidding for larger projects.

The supervision requirements for unlicensed people have been developed by assessing the higher relative risk of unlicensed people undertaking electrical work against the risk carried by apprentices, who by contrast, have undertaken approved competency-based theoretical training alongside their practical work experience. The proposed Electrical Practice Standard will clarify that there will be no circumstances under which an unlicensed person can do any form of electrical work without supervision and clearly define the tasks they can do in controlled circumstances.

The Bill will also prescribe a penalty for an unlicensed person carrying out work without the supervision of a licence holder. This would also capture apprentices. The maximum penalty for a corporation will be 1,500 penalty units (\$165,000) or for an individual 300 penalty units (\$33,000). This penalty will make the unlicensed person accountable for ensuring they are being supervised by a person that holds a licence to carry out the work. It is relatively simple to determine whether a person holds a licence by checking on the NSW Fair Trading website or the digital trades licence held by the supervisor. It is considered that by not only placing responsibility on supervisors but also on unlicensed people, this will be an effective deterrent in ensuring work is not carried out without supervision. The penalty would enable an unlicensed person to be prosecuted in serious

circumstances such as an apprentice or unlicensed person carrying out electrical work as a side business. The penalty is considered appropriate for the seriousness of the breach and enforces compliance of the work carried out for consumer protection and for the safety of all parties.

The Practice Standards are intended to assist employers, supervisors and apprentices in understanding their legal obligations without causing an unreasonable burden to the industry. The Practice Standard generally replicates best practice requirements and will increase the safety of tradespeople and ensure work is high quality and compliant with the relevant standards. On the other hand, Practice Standards may be inflexible and add to the cost of the work for tasks that would be low-risk. Feedback is sought on how to ensure that the supervision obligations imposed on licence holders are proportionate to the risks of unsupervised work.

Practice Standards have been used successfully for other parts of the building industry to lift the standard of work done by licence holders, including the [Certifier Practice Standard](#) and the [Codes of Practice](#) for working safely under the work health and safety laws. The use of Standards provides clear advice to licence holders on how to safely carry out their responsibilities, particularly in high-risk areas like supervising unlicensed people.

We would like to hear your feedback on the Practice Standard available for public consultation on the Have Your Say website as part of these building reforms.

The additional obligations for ratio limits proposed for supervision would impact the expansion of the Bill into commercial building work. However, it is expected that the impact would be minimal as there are similarities with the current ongoing obligations for supervision under the WHS Act that businesses currently need to comply with.

It is expected that the proposed Electrical Practice Standard will be used as a prototype for other specialist work such as medical gas and air-conditioning work. A similar framework may also be used for non-specialist trades dependant on the relative risk and complexity of the work being carried out. Feedback is sought on which classes of licence should have separate Practice Standards.

### **Non-specialist trades**

A similar framework is expected to be used for other trades dependant on the relative risk and complexity of the work being carried out. Further research and consultation will be carried out in the coming year to determine the classes of licence that would benefit from a practice standard to be developed and the content of the practice standard. Generally, the Practice Standards will specify the work an unlicensed person can carry out and the level of supervision required. As with the practice standards prescribed for the electrical industry, ratio limits may also apply.

### Case study – unlicensed supervisor

*NSW Fair Trading received allegations about a building company using improper conduct and supervision by people with expired licences. It was also alleged there was defective work and deceptive conduct with the builder using fake articulation joints installed in brickwork to hide omission of required joints. This case caused extreme distress and financially compromised consumers resulting in complaints reaching the media. The outcome required the builder to demolish completed brickwork and rebuild, causing a delay of 18 months in the scheduled completion of the project. Other matters are still under investigation.*

### Case study – supervision on multiple sites

*NSW Fair Trading investigated a number of complaints in relation to major renovation work to an existing residence. During the investigation it was revealed by other contractors on site that the supervisor was managing 35 jobs at any one time over 15 job sites with various types of construction. The site was found to have substantial defects including plumbing pipes cut into structural floor joists, non-compliance with plans and specifications for cladding and roof structure and not meeting performance standards with the BCA. A rectification order was issued by NSW Fair Trading. The consumer has now lodged a complaint with NCAT.*

The Bill proposes to prescribe that a person who does not hold a licence when carrying out regulated work must be supervised according to supervision standards. It is expected that other classes of licence holders will adopt similar principles as the proposed Electrical Practice Standard. All other trades such as builders (including project home builders) and plumbers (generally) will be impacted if the number of unlicensed people that can be supervised by a licence holder is limited. The restrictions are intended to ensure that apprentices and unlicensed people are adequately and safely supervised and that their work is compliant. This may lead to developers and companies having more licensed persons on site and increased costs for construction which would flow onto the consumer. For smaller companies, this may prevent them from bidding for larger projects, with more licensed persons needed.

Feedback is sought on which classes of licence should have separate Practice Standards.

### **Regulatory enforcement**

The supervision provisions contained in the HB Act have historically been difficult to enforce due to the obligations on supervisors and employers not being sufficiently explicit. Only 18% of surveyed apprentices said they received direct supervision while completing electrical work and 31% indicated they were not directly supervised at all or were supervised by someone who is not a licensed supervisor. Industry consultation indicates that these rates of non-compliance are likely to

be replicated across other trade types. A report published in 2019 by the National Centre for Vocational Education Research (NCVER) summarised the outcomes of apprentices and trainees who completed or did not complete their apprenticeship or traineeship in 2018.<sup>6</sup> The report indicated that the main areas of dissatisfaction overall for those that completed their apprenticeship/traineeship were pay (18.8%), quality of training facilities (6.9%) and supervision (6.4%). The main areas of dissatisfaction for those who did not complete their apprenticeship/traineeship were pay (34.7%) and supervision (23.3%). Statistics for trade apprenticeships showed that 7.9% were dissatisfied with supervision for completers and 22.4% for non-completers.<sup>7</sup>

Reforms to the existing framework aim to bring supervision standards in line with the majority of other Australian jurisdictions, which are more explicit in prescribing certain levels of supervision based on:

- a worker's experience and the relative risk of a task
- the ratios that must be maintained between qualified supervisors and unlicensed persons
- what constitutes different levels of supervision.

Feedback from the survey showed a strong view supporting unscheduled random audits to enforce supervision requirements and inspection for electrical work. With the clarification of supervision requirements prescribed in the practice standards, NSW Fair Trading will have clearer enforcement powers for supervision in the electrical industry. This will enable NSW Fair Trading to increase the ad-hoc site inspection, which can be expanded when practice standards are developed for other trades.

NSW Fair Trading will only issue penalty notices where it is appropriate to do so. NSW Fair Trading retains the discretion to prosecute serious breaches of requirements under the Act in court.

## **Compliant specialist work**

### **Pre-notification of specialist work**

Currently, the plumbing regulator must be notified prior to any plumbing and drainage work as defined by the *Plumbing and Drainage Act 2011 (P&D Act)*. Emergency work is exempt from this requirement. However, the Regulator must also be notified after the work is complete. The Bill has

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<sup>6</sup> National Centre for Vocational Education Research (NCVER), *Apprentice and trainee experience and destination 2019*, (December, 2019) < <https://www.ncver.edu.au/research-and-statistics/publications/all-publications/apprentice-and-trainee-experience-and-destinations-2019#:~:text=Highlights,-Outcomes&text=In%202019%3A,as%20their%20apprenticeship%20or%20traineeship.>>.

<sup>7</sup> National Centre for Vocational Education Research (NCVER), *Apprentice and trainee experience and destination 2019*, (December, 2019) < <https://www.ncver.edu.au/research-and-statistics/publications/all-publications/apprentice-and-trainee-experience-and-destinations-2019#:~:text=Highlights,-Outcomes&text=In%202019%3A,as%20their%20apprenticeship%20or%20traineeship.>>, p 20.

transferred this responsibility from the P&D Act and supporting regulations to create a single system of notification and compliance for specialist work. Additionally, the requirement to pre-notify specialist work can potentially be expanded in the future as the Bill prescribes that the Secretary has the power to gazette which types of specialist work must be pre-notified.

As NSW Fair Trading expands its regulatory focus on compliance with standards of work, it is proposed that electrical installations as defined in the *Gas and Electricity (Consumer Safety) Act 2017 (G&E Act)* will also be pre-notified. This will allow NSW Fair Trading to have advance notice of work that is subject to an inspection under the Building Compliance and Enforcement Bill.

### **Certificate of compliance**

Certificates of compliance for plumbing and drainage work (as defined in section 4 of the P&D Act) have been a regulatory compliance feature in the P&D Act for a decade. Certificates of compliance for medical gas safety and compliance tests were newly required from 1 November 2020.<sup>8</sup>

Electricians also have an existing responsibility to sign off on electrical installations under the G&E Act and Regulation.<sup>9</sup> These responsibilities are transferred to the Bill, maintaining the 'person responsible for the work' concept. This means that NSW Fair Trading will be able to keep the link between the work and the licence holder. If an apprentice does the work, the licence holder overseeing them will be responsible for ensuring that the work is done according to the regulatory requirements.

### **Will any other specialist work require a certificate of compliance?**

Waterproofing is proposed to be included in the regulatory compliance framework for certificates of compliance. The data demonstrating significant failures noted in Part 1, Chapter 3 and the cost of such failures suggests that greater responsibility for the work being done is required. A certificate of compliance is a signal that the person who has completed the work has done so in accordance with the required standard. A certificate of compliance is also lodged with the regulator and is a record of work completed. Currently, a waterproofer must provide a certificate of compliance to a Certifier at the completion of the work, and this proposal creates an additional requirement to send a certificate to NSW Fair Trading.

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

NSW Fair Trading is currently moving all certificate of compliance and pre-notification work to a single digital platform. NSW plumbers currently enjoy a digital platform with the 'MyInspections' platform. Medical gas fitters and technicians can upload certificates to the MyCertificates portal. However, electricians submit a completed PDF form which generates an email to NSW Fair Trading. Waterproofers will generally provide a paper certificate to a Certifier on site. Creating a

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<sup>8</sup> Gas and Electricity (Consumer Safety) Regulation 2018, section 69C.

<sup>9</sup> Gas and Electricity (Consumer Safety) Regulation 2018, section 37.

single platform for specialists to log in to submit a certificate of compliance will reduce compliance times for specialist trades who will be able to access the platform via a tablet or smartphone device. Any fee for inspection can be paid at the time of lodging a notice of work, making it easier to transact with NSW Fair Trading.

The proposal should be a neutral regulatory change or waterproofers who already have an obligation to provide a certificate of compliance to Certifiers. Additional time may also be needed to send a copy of the certificate to the Certifier while uploading it to NSW Fair Trading. However, this should be negligible. Over a week, this may add up to an additional 30 minutes in administration costs to business, depending on the volume of work each tradesperson completes. As online systems develop, the NSW Planning Portal is expected to offer the option to send a copy to a Certifier and NSW Fair Trading at the same time, reducing additional administration costs to zero.

Electricians will experience an increase in regulatory burden under the proposal to have electrical installations pre-notified. This proposal will increase the time taken to complete administrative type work associated with the role. The time cost associated with the increased administrative burden will likely offset any gains made by creating a portal for uploading certificates of compliance, however, it is anticipated that the pre-notified work will be linked to the certificate of compliance, reducing the time taken to complete the form once work is complete. The portal is anticipated to be smartphone compatible, meaning that there are not likely to be any additional equipment costs needed and that the form can be completed on site at the time work is complete. This time cost will likely be passed on to the end consumer of the service.

### **What are the benefits of the proposals?**

The transfer of the requirements from the P&D Act and the G&E Act into a general requirement for any type of specialist work allows the Regulator to provide an agile response to problems as they arise in the building and construction industry. This provides greater consumer protection to identify and direct non-compliant work to be rectified in accordance with the required standards. It means that high-risk work can be properly targeted for audit and inspection, leading to better performance across the industry.

By adding waterproofing to the certificate of compliance framework, NSW Fair Trading has a better picture of the work being completed across the state, also allowing targeted audit and compliance work to be completed. These certificates work hand in glove with the inspection and rectification powers within the BCE Bill to reduce the instances of non-compliant work. This has the potential to reduce the amount of defective waterproofing work substantially. As noted above, waterproofing defects create a significant cost to end users of buildings. A targeted compliance and enforcement activity supported by certificates of compliance will reduce the number of defects by pointing to work for rectification. It will also enable disciplinary action to be taken against licence holders who falsify certificates.

Certificates of compliance will provide important baseline building data to be included in a future building manual. The Bill includes a requirement that an occupation certificate is not issued unless a building manual for the building has been prepared and provided to the owner of the building.

A building manual is intended to provide building owners with all relevant documents for the ongoing management of the building, including all documentation relating to the building's design and approval. A building manual was a recommendation of the Building Confidence report<sup>10</sup> for commercial buildings (recommendation 20) and the Construct NSW Improving Fire Safety report<sup>11</sup> (for fire safety matters).

## Questions

5. Do you support the expansion of a certificate of compliance to waterproofing work?
6. Do you support pre-notifying electrical installation work to the Regulator?

## Pre-fabricated and manufactured housing

Pre-fabrication and off-site manufacturing can deliver innovative and affordable housing in an efficient and timely way. However, current building regulation has only focused on on-site construction, which has left off-site construction treated as a building product and not subject to the same requirements as traditional building work. The Bill seeks to establish a more comprehensive regulatory framework for this sector without compromising the efficiency and innovation of pre-fabricated construction.

Pre-fabricated building work is the construction of a building, or part of a building, at a place other than its final location, usually within a factory. Pre-fabricated buildings can be referred to by other names such as off-site fabrication, off-site construction, modular buildings or off-site manufacture.

### Nature and size of the industry

As of 2019, the pre-fabricated sector was estimated to account for less than 5% of Australia's \$150 billion building and construction industry.<sup>12</sup> In comparison, internationally, pre-fabrication has a much larger market share in countries such as Sweden (accounting for 84%), the Netherlands (20%) and Japan (15%). Currently, the industry is mainly driven by the demand for low- to mid-rise residential buildings, project homes, and public housing. However, the Australian market is

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<sup>10</sup> Peter Shergold and Bronwyn Weir, *Building Confidence: Improving the effectiveness of compliance systems for the building and construction industry across Australia*, (February, 2018), <[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)>, p 35.

<sup>11</sup> NSW Government - Construct NSW, *Improving fire safety: Industry report on reforms to improve fire safety in new and existing buildings*, (October, 2021), <<https://www.nsw.gov.au/sites/default/files/2021-12/improving%20fire%20safety.pdf>>, p 10.

<sup>12</sup> Advance Manufacturing Growth Centre, *'Prefab Innovation Hub: Feasibility Study'*. (July, 2020). <[https://www.amgc.org.au/wp-content/uploads/2020/07/AMG9384\\_Prefab\\_Report.pdf](https://www.amgc.org.au/wp-content/uploads/2020/07/AMG9384_Prefab_Report.pdf)>, p 4.

forecast to grow 7.5% within the period 2022-2027.<sup>13</sup> The industry has expressed that this growing demand is due to growing awareness about using pre-fabricated buildings as an alternative to traditional homes due to the environmental and cost benefits to consumers.

While the size of the industry is small in comparison to traditional homes, the span of the industry is vast. There are 26 types of pre-fabricated homes, varying from the common modular construction to shipping container homes, and tiny homes.<sup>14</sup> Therefore, there is a complexity in the scale of differences between different forms of pre-fabricated buildings and their construction methods.

## Question

### 7. Given the diversity in the types of buildings in the sector, how can the Bill ensure the whole of the industry is captured?

#### Definition of pre-fabricated building work

Many components make up the entirety of a pre-fabricated or manufactured building, such as products, systems, installation, and traditional building elements. Critically, not all products are the same, with some manufacturers focused on components of a building (such as bathroom pods) and others delivering multistorey buildings that can be installed on site within a day.

Except for specialist building work, pre-fabricated buildings are currently treated as building products and regulated under the *Building Products (Safety) Act 2017 (Product Safety Act)*. The Product Safety Act prescribes protections against using unsafe building products in buildings and provides for the rectification of affected buildings.

While the Product Safety Act effectively promotes the protections for the components that go into pre-fabricated and manufactured housing, it does not go far enough to ensure consumer protections and insurance needed as part of residential building work. Instead, it focuses on whether the product complies or conforms to the required standards, with all assurance done inhouse, and often without the need for the people conducting the trade work to be licenced to do that work (as the work is not treated as building work, the requirement to hold a licence does not currently apply).

In addition to the Product Safety Act, the Australian Consumer Law (**ACL**) provides broad coverage over consumer products and currently is the predominant way to provide protections to customers purchasing pre-fabricated buildings.

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<sup>13</sup> Global Information, Inc 'Australia Prefabricated Buildings Industry - Growth, Trends, COVID-19 Impact, and Forecasts (2022 - 2027)'. (January, 2022), <<https://www.giiresearch.com/report/moi965148-australia-prefabricated-buildings-industry-growth.html>>.

<sup>14</sup> BuildGreenNH '26 Types of Prefab Homes', (April, 2022), <<https://buildgreennh.com/types-of-prefab-homes/>>.

Since 2016 NSW Fair Trading has received 68 enquiries relating to pre-fabricated and manufactured construction. As the HB Act does not extend to this work, consumers have had to rely on the ACL – creating an inconsistent set of protections based on where the building work is carried out. These customers are unable to access some of the key consumer protections available for building work under the HB Act, including cover under the home building compensation scheme, statutory warranties, and NSW Fair Trading’s rectification powers.

Therefore, there is no current building assurance for consumers purchasing pre-fabricated or manufactured homes. There are no requirements on manufacturers to hold a licence to do this building work, even though the end result – a home – is the same.

*Case Study: Homeowners left financially burdened*

*In 2018, the Western Australian Building Commissioner received a complaint regarding defective and late completion of the work on a modular home. The company specialised in building prefabricated modular homes but was found to be no longer trading and failed to rectify the building defects. As a result, the homeowners were left financially burdened and feeling unsafe as the issues were not rectified.<sup>15</sup>*

If this scenario were to occur under the current ACL provisions in NSW, the homeowner would not be covered by consumer protections offered to traditional builds. Given that the manufacturer no longer exists, the homeowners are unable to claim for warranty and have the building defects rectified. The homeowners would also be unable to lodge a claim under the home building compensation scheme as pre-fabricated buildings currently fall outside of this scheme (and are not required to take out cover before work starts, which deprives a homeowner of this protection when the producer is no longer around). The homeowners would therefore be out of pocket for the defects.

The Bill proposes a new regulatory scheme for pre-fabricated and manufactured housing by capturing these types of construction as building work in NSW.

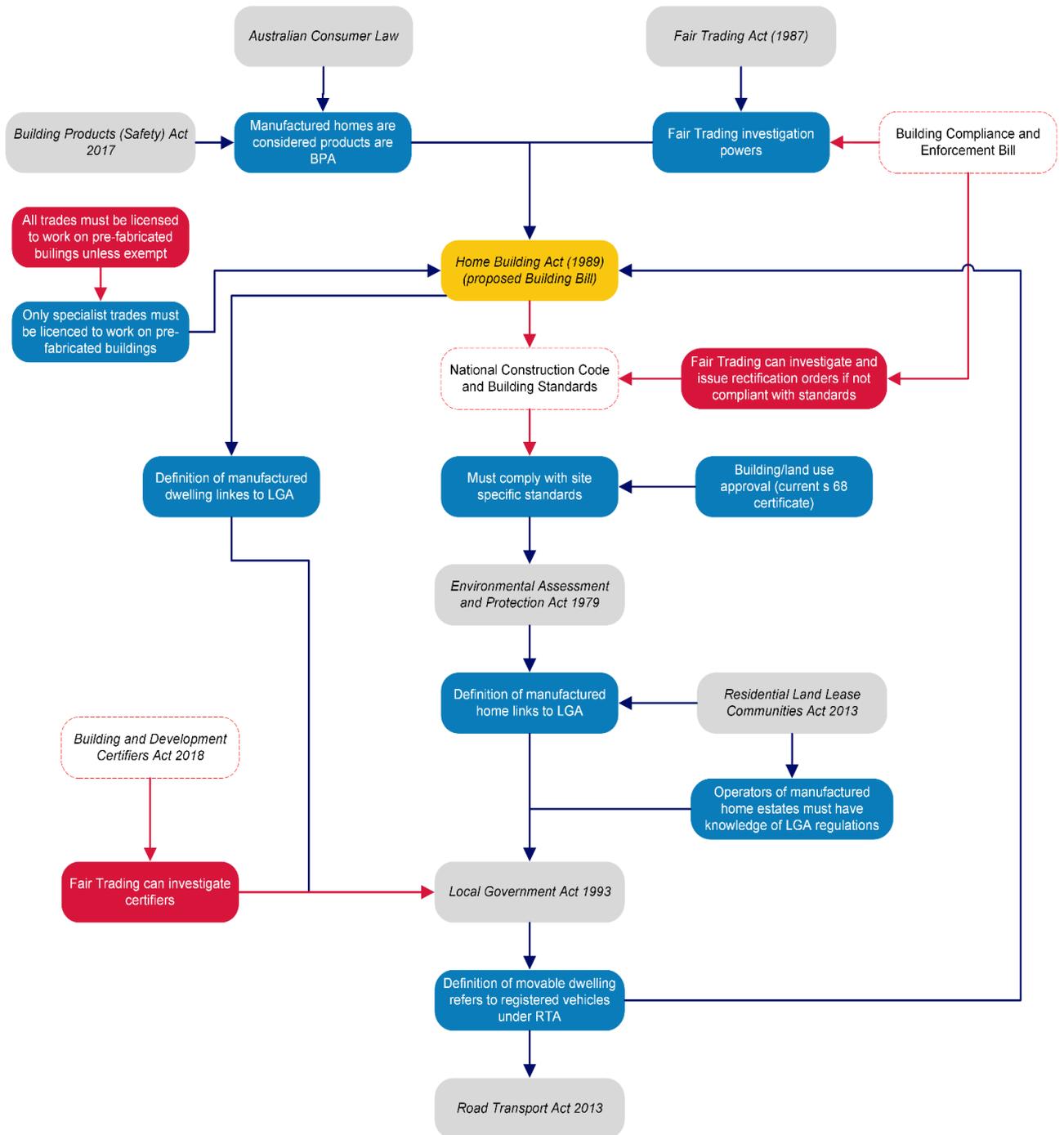
It is intended that by incorporating pre-fabricated and manufactured homes into building legislation, there can be greater oversight of consumer and manufacture protections, certification, and quality of these methods of construction while having a minimal impact on the home building compensation scheme.

Please refer to [Appendix 4](#) for a text description of the below Proposed Pre-fabricated Legislative Framework Diagram.

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<sup>15</sup> Government of Western Australia, Gran Designs WA Pty Ltd and David Mario Polak (October, 2021) <https://www.commerce.wa.gov.au/announcements/fine-failure-fix-modular-home-perth-hills-gran-designs-wa-pty-ltd-and-david-mario>

# Proposed Pre-fabricated Building Legislative Framework



**Key:**  
 ● Legislation  
 ● Current framework  
 ● Proposed changes

**Acronyms**

LGA: Local Government Act 1993  
 RTA: Road Transport Act 2013  
 BPA: Building Products (Safety) Act 2017

Figure 1. Proposed pre-fabricated building legislative framework

## Other jurisdictions

Within Australia, pre-fabricated building products and modular homes are regulated differently depending upon each jurisdiction's policies. Therefore, legislative challenges arise when dealing with the globalised nature of the pre-fabricated industry. Jurisdictional borders make regulating global supply chains difficult, with pre-fabricated building components being transported across State and Territory borders and internationally.

Within Australia, pre-fabricated building products are dealt with under ACL, with no jurisdiction currently regulating prefabricated or transportable buildings within building and construction legislation.

By including pre-fabricated building work in the definition of building work, all pre-fabricated buildings installed within NSW will carry the same legislative requirements. This includes buildings that have been built outside of NSW and transported across jurisdictions. Out of State suppliers will need to meet the same requirements as NSW manufacturers. In addition to these requirements, extra consideration also needs to be given to the transportation, storage and installation of pre-fabricated and modular buildings to ensure work safety requirements are adhered to.

Engagement with pre-fabrication and modular construction operators and peak bodies indicate a desire to be treated consistently with on-site construction. This is expected to provide clearer rules on how work is to be done, particularly ensuring clearer standards of work that all market participants must meet. However, the global supply chains that underpin this sector, including the diversity of work produced off site from single components to entire buildings, require a workable definition for this work and regulatory obligations. This definition should promote consistency and best practice without stifling innovation and efficient building practices that off-site construction offers.

The Department acknowledges that changes to the regulation of pre-fabrication may make supplying this building method in NSW more difficult due to the potential increase to the cost of manufacturing. Uplifting the standards of pre-fabricated buildings and building components will have an effect on the sourcing of quality materials and importation of buildings. This is because greater checks and certification will be needed to ensure that these buildings and building components meet more strenuous requirements which are not in place in other jurisdictions. The Department is seeking input on how to best implement a robust regulatory system for pre-fabricated work that is compliant and offers consumer protections, but also does not burden the production of off-site manufacturing both within NSW and overseas.

## Question

- 8. How can we introduce a robust regulatory scheme for pre-fabricated building work that will not unfairly disadvantage manufacturing and supply to NSW?**

## Defining pre-fabricated and modular construction

The definition of building work under clause 5 of the Bill is intended to be location-neutral when prescribing what building work is. The proposed definition describes building work to include any coordinating or supervision of work involved in the construction of a building, alterations of the building or renovations/remediation/maintenance of a building. This will include buildings constructed off site.

Traditional builds use a range of pre-fabricated products within the construction of a home. These can include pre-fabricated doors, windows, and trusses to form parts of the building. Manufacturers generally specialise in the manufacturing of these products through a standardised process. The Bill proposes that these products remain within the current regulatory framework within the Product Safety Act.

The Bill does, however, propose to include pre-fabricated buildings, and large components (kitchen, bathroom, or modular pods), to be captured and carry the same requirements as traditional builds.

Further, the Department does not propose to capture genuinely moveable dwellings, such as caravans, under the definition of pre-fabricated buildings. The *Local Government Act 1993 (LG Act)* currently prescribes that a "moveable dwelling" is:

- a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
- b) a manufactured home.<sup>16</sup>

Amendments to this definition are therefore necessary to differentiate between these portable devices used for habitation as compared to a relocatable home as moveable dwellings. The Department is proposing to capture manufactured and relocatable homes as pre-fabricated buildings in order to protect owners and subsequent owners through consumer protections, and cover under the home building compensation scheme.

### Question

- 9. How should pre-fabricated building work be defined? How can this be differentiated from the installation of a product (such as pre-fabricated doors, windows, and trusses) under the Product Safety Act?**

### Ensuring compliant work

It has been identified that the use of pre-fabricated components in buildings has increased recently. Research also points to defects in pre-fabricated components costing a lot more to fix

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<sup>16</sup> *Local Government Act 1993 (NSW)*. Dictionary.

when compared to typical construction methods.<sup>17</sup> Pre-fabricated work is not currently subject to the same licensing or planning requirements as on-site construction.

The EP&A Act currently provides that “building” does not include a manufactured home, moveable dwelling or associated structure within the meaning of the LG Act.<sup>18</sup> The LG Act then defines “manufactured home” as a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:

- a) that comprises one or more major sections, and
- b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the *Road Transport Act 2013*,

and includes any associated structures that form part of the dwelling.<sup>19</sup>

By carving manufactured homes from the definition of building, the EP&A Act also carves out this building work from certification requirements under that Act. This means a manufactured home does not need:

- a construction certificate to carry out the building work
- critical stage inspections to be carried out during construction, or
- an occupation certificate issued prior to occupying the building.

Pre-fabricated homes require approval under section 68 of the LG Act to install a home or associated structures if it is outside of a caravan park or manufactured home estate. Plans and specifications must be submitted to council for determination and must comply with all of the design, construction and installation requirements outlined in Division 4 of Part 3 of *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* (clauses 133–136 excepted). Once the approval process is complete however, there is no current regulatory regime to ensure a pre-fabricated installed home is compliant and free from defects.

Therefore, the end result of the current regulatory approach is that this building work is not subject to the same requirements for design and building certification as building work done on site. For example, a certifier is required to inspect waterproofing of a bathroom before a building is completed to ensure the waterproofing is compliant. This is not a requirement for manufactured homes which are delivered as a completed product.

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<sup>17</sup> Callum Stutchbury Parrotte, Hong Xian Li and Linda Tivendale, ‘Defect Occurrence and Management in Prefabricated Commercial Construction in Australia’, (March, 2020), <<https://dro.deakin.edu.au/view/DU:30145573>>.

<sup>18</sup> *Environmental Planning and Assessment Act 1979 (NSW)*. Section 1.4.

<sup>19</sup> *Local Government Act 1993 (NSW)*. Dictionary.

The proposed powers under the BCE Bill would allow the regulator to inspect this work in the same way on-site construction is inspected, but due to the construction methods, this could involve the use of destructive testing. This is not an ideal outcome for the manufacturer or the customer.

In addition to requiring this work to be carried out by licensed practitioners (for example bathrooms to be completed by licenced waterproofers, plumbers and tilers and structural components by licenced builders and carpenters), the Bill would require this work to be overseen by an independent certification process. This process would ensure that the end customer has the benefit of the efficient building process of manufactured buildings while giving them the comfort that the quality of work is the same as on-site construction.

This would impose a new burden on manufacturers requiring them to:

- hire additional licenced practitioners (despite many already meeting this requirement, some parts of the sector do not have licenced practitioners undertaking this building work)
- stop construction while work is independently certified
- ensure compliance with additional transportation, storage and installation.

Feedback is sought, particularly from participants in this sector, on how to protect the efficiency of this construction method while also giving increased assurance over the end product. Despite additional costs to suppliers, it is critical that building work is treated consistently, and consumers are not deprived of critical safeguards based on where the building work occurs.

## Questions

**10. Do you feel that all building work should be carried out by licensed practitioners?**

**11. How could building work done off site be certified as compliant with relevant standards?**

**12. How do we ensure that any certification process is scalable to the industry, noting the differences between those engaged in manufacturing discrete parts of a building against those who produce entire buildings off site?**

## Inclusion of prefabricated buildings and kit homes in Owner-Builder work

The Department acknowledges that kit-homes and pre-fabricated buildings can be an alternative to traditional construction methods as a result of their lower construction costs, reduced project durations, and reduced waste of materials.

Industry feedback has suggested that pre-fabricated work can reduce frequency of defects due to the standardised way of construction and clearer controls relating to on-site installation.

Academic research supports this notion by suggesting that the risks of pre-fabrication defects are lower due to the fact that there are fewer trades and interfaces to coordinate and manage on site.<sup>20</sup> The simplification of on-site installation of pre-fabricated modules reduces the requirement for external contractors and burden of staff management and oversight of workers. Instead, the standardised approach offered within the factory floor can offer better quality controls and use of innovative technology to limit the frequency of defects.

The Bill proposes that owner-builders can coordinate the supply and installation of a kit home or pre-fabricated building as work under the owner-builder permit scheme. Given the increased oversight of pre-fabricated buildings, owner-builders will have greater assurance over quality of work throughout the controls placed on the industry and will have access to consumer protections.

Data collated in the 'Predicting Australian builders intentions to use prefabrication' report suggested that having a greater level of control and tighter specifications in the repetitive manufacturing processes can also contribute to low-cost housing.<sup>21</sup> Additionally, the reduced time spent on site and ability to deliver completed housing can assist in a reduction of labour in rural or remote areas of NSW.

Many owners choose to utilise the owner-builder permit scheme as a cost saving approach to construction. Given the savings benefits and convenience that pre-fabricated buildings and kit-homes offer in comparison to traditional builds, it is proposed that the coordination of these kind of homes will be an alternative for owner-builders than contracting a licensed professional.

## **Alternatives that were considered**

### **Building work, compliance and certification all required at the point of installation on site**

The Department explored a range of options including regulating the point of installation of pre-fabricated and modular buildings. Under this scheme installation of prefabricated building work would mean:

- trades are required to hold a licence to install a pre-fabricated building or key component
- building work, compliance and certification all required at the point of installation on site
- the installer on site is accountable to statutory warranties and consumer protections for the installation for the building
- ACL and product safety standards would continue to be upheld by the manufacturer.

This approach would retain the current regulatory requirements in building pre-fabricated building work within NSW and does not address the current issues around consumer protections and

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<sup>20</sup> Callum Stutchbury Parrotte, Hong Xian Li and Linda Tivendale, 'Defect Occurrence and Management in Prefabricated Commercial Construction in Australia', (March, 2020), <<https://dro.deakin.edu.au/view/DU:30145573>>.

<sup>21</sup> Dale Steinhardt et al. 'Predicting Australian builders' intentions to use prefabrication' (November, 2014), <[https://cms.qut.edu.au/\\_\\_data/assets/pdf\\_file/0007/466063/predicting-builders-intentions-prefabrication.pdf](https://cms.qut.edu.au/__data/assets/pdf_file/0007/466063/predicting-builders-intentions-prefabrication.pdf)>, p 7.

certification. This approach would not ensure building work is compliant at the point of manufacture and restrict the ability of certifiers within the manufacturing process.

While trades on site would need to be licensed in order to competently install pre-fabricated building work, the building work itself would not be covered under this scheme. Therefore, individuals who are responsible for building homes would not be required to be licensed or uphold the same consumer protections as those who are installing the product.

It is evident that without the inclusion of manufacturers in the scheme, individuals would not be able to have the same protections as traditional builds and be disadvantaged in remediating defects.

### **Establishing a voluntary self-certification process for manufacturers**

An alternative approach of self-certification is being considered, acknowledging the imposition of stopping the production process by having a third-party certify pre-fabricated and modular homes. Self-certification for manufacturers of low-risk products can be useful to allow for workarounds to reduce time and cost pressures of having a third-party certify work. This process has been taken up in other jurisdictions, including New Zealand, to incentivise manufacturers to meet quality standards.

*The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 (NZ)*, introduced a voluntary scheme for manufacturers to prove they meet quality and performance standards and have a demonstrated ability to produce buildings with components that comply with the New Zealand Building Code. Through this scheme, consumer protections are implied through the certification of pre-fabricated and modular products.

There are some issues with this scheme as a potential option for increasing regulatory oversight of pre-fabricated buildings within the State. Allowing for a self-certification scheme for pre-fabricated building work would mean that these types of buildings would have a separate certification process to traditional buildings.

As certifiers are public officials and independent regulators of development, they do not supervise or manage building work. A conflict of interest is apparent if a manufacturer also has the ability to certify building work. It is considered that the same standard and certification process should apply for on-site construction as off-site construction, given that the end result should be compliant building work for consumers.

Additionally, given that the scalability of the industry is so vast, with small to medium enterprises competing with major businesses, voluntary self-certification may disproportionately benefit the larger players who are equipped to implement a self-certification process. By allowing all of industry to self-certify, there would be a proportion of manufacturers who produce fraudulent certifications for defective work, leaving consumers disadvantaged.

## Questions

13. How do we ensure that pre-fabricated building work completed outside of NSW can be regulated?
14. Should manufacturers be able to self-certify pre-fabricated buildings? Why or why not?

### 3. Building approvals and duty of care

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#### Building approvals

The Bill proposes moving certification of building work and subdivision work from the planning system (Part 6 of the EP&A Act) to the building system (the Building Bill) to provide better oversight of the standards of work carried out under building approvals.

#### Existing certificates under planning system to be moved into the Bill

The Bill proposes to require certificates to be issued by a certifier before certain kinds of building work or subdivision work can commence in accordance with a development consent. By requiring a certificate to be issued by an independent certifier, building work must meet certain design and building standards before progressing. This process is intended to ensure the building work that is shown on the plans and described in the specifications will meet the requirements of the BCA, as well as being in accordance with the development consent.

Work and activities that would require a certificate before progressing include:

- building work<sup>22</sup>
- subdivision work
- the occupation or use of a building, including a change of use
- the subdivision of land.

Before building work can commence the owner/developer of the land must obtain development consent to do the building work. The requisite process for progressing following consent is:

- if development consent is required – construction certificate
- if approval can be provided under complying development – complying development certificate
- if the work is “exempt development” – no certificate is required.

A construction certificate (clause 192 of the Bill) certifies that building work completed in accordance with specified plans and specifications or standards will comply with the requirements prescribed in the supporting regulations. In practice, this requires the applicant owner/developer to provide sufficient designs to the certifier to satisfy that the building work done under the construction certificate will comply with the BCA and any other prescribed standards.

While the standard of designs will vary depending on the complexity of the design and build process, this stop point provides an independent verification that the work will comply with the prescribed standards and the development consent *before* work commences.

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<sup>22</sup> Defined for the purposes of Chapter 6 of the Bill as physical activity involved in the erection of a building.

A construction certificate cannot be issued if:

- the requirements relating to standards and designs under the supporting Regulation are not met
- any levy owed under the *Building and Construction Industry Long Service Payments Act 1986* remains unpaid
- any designs required to be declared by a registered design practitioner under the DBP Act have not been lodged on the NSW Planning Portal and made available to the certifier.

Where building work is complying development under the EP&A Act, a person may apply for a complying development certificate which authorises that person to carry out building work. The Bill (Schedule 4, Part 4.6) proposes an amendment to section 4.27 of the EP&A Act to provide that a complying development certificate is a certificate stating:

- (a) that specified development is complying development, and
- (b) that if the development is carried out as specified in the certificate, the development will comply with all of the following—
  - (i) the development standards applicable to the development
  - (ii) the standards of building work specified for the development under the Building Act 2022
  - (iii) other requirements prescribed by the regulations, and
- (c) for development involving the erection of a building—the classification of the building in accordance with the Building Code of Australia.

It is proposed that the planning rules under the EP&A Act would continue to determine when a complying development certificate can be issued, but the content of the certificate would be determined by the Bill. Specifically, the standards of building work that apply to the development.

Following completion of work under a construction certificate or complying development certificate, a certifier may issue an occupation certificate (clause 194 of the Building Bill), which authorises:

- (a) the occupation or use of the whole or a part of a new building in accordance with a development consent, or
- (b) a change of building use for an existing building in accordance with a development consent.

An occupation certificate is a critical protection for the end customer that the work carried out on the building meets the required standards and is fit for occupation. For new buildings, the occupation certificate is often the point that settlement occurs, with responsibility for dealing with defects shifting from the developer/builder to the new owner. It is proposed to impose a number of obligations on the issue of an occupation certificate. Imposing the conditions on the issue of the

certificate (that is, before it is issued) has been a highly successful way of securing speedy compliance with the conditions. By preventing an occupation certificate from being issued until these conditions are met, the developer/builder will often work quickly to resolve outstanding issues.

For example, clause 197 of the Bill provides that an occupation certificate cannot be issued if the building requires a building manual. A building manual is a set of as-built designs and guides on how to use and maintain critical building elements, such as fire safety systems.

Building manuals were recommendations of the *Building Confidence* report<sup>23</sup> and *Improving fire safety in new and existing buildings* report<sup>24</sup> as they ensure that future building owners/managers have the information they need to maintain the building. With the Department proposing to impose clear duties on building managers to maintain critical building elements, it is imperative adequate information is provided to ensure that building elements are resilient and meet their expected lifespan.

Requiring developers/builders to prepare a building manual before an occupation certificate can be issued could cause delays for the project if the project lead has not planned for or already completed the preparation of these documents. For example, the DBP Act requires that all building elements for class 2 buildings (residential apartment buildings) have designs declared by registered design practitioners, with any variations to those designs also signed off. Buildings that go through this process will have a complete set of as-built designs.

The Bill also proposes that certificates are required for subdivision work. “Subdivision work” means a physical activity authorised to be carried out in connection with a division of land into 2 or more parts that, after the division, would be adapted for separate occupation, use or be disposed of.

Subdivision works certificates and subdivision certificates ensure that subdivision works comply with relevant development consents and building standards and are appropriately registered.

### **Shifting certificates into the Bill will enhance oversight of building work**

While the proposed changes do not seek substantial changes to current requirements relating to building work, subdivision work, the occupation or use of a building, including a change of use, or

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<sup>23</sup> Peter Shergold and Bronwyn Weir, *Building Confidence: Improving the effectiveness of compliance systems for the building and construction industry across Australia*, (February, 2018), <[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)>, p 35.

<sup>24</sup> NSW Government, *Improving fire safety: Industry report on reforms to improve fire safety in new and existing buildings*, (October, 2021) <<https://www.nsw.gov.au/building-commissioner/building-and-construction-resources/research-on-fire-safety-reforms>>.

the subdivision of land, shifting these requirements from the planning system to the Bill will enhance oversight of the work.

Currently, requirements for building certificates are set out in the EP&A Act and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, which are jointly administered by the Minister for Small Business, Minister for NSW Fair Trading and the Minister for Planning. This also requires joint administration from the Department of Customer Service and the Department of Planning and Environment. However, compliance functions, predominantly focused on the conduct of certifiers, sits with the Department of Customer Service.

The issuing of certificates is focused on ensuring that the work complies with the development consent and any building standards, including the BCA and relevant standards. The Bill establishes the scheme to ensure that work complies with these standards, supported by the DBP Act which provides for additional declarations by key design and building practitioners to accompany the design and construction of certain buildings.

Moving requirements for the issue of certificates into the Bill, while leaving the requirements to secure consent to do the work in the planning system, will mean practitioners will have a single Act to consider when determining the standard of work required and how to meet it through the design, build, certification and maintenance stages of a building's life. It will also allow for changes to be made to these standards more effectively by only requiring changes to a single framework rather than seeking to apply the changes across multiple instruments.

## Questions

- 15. Do you support the proposed shift of the certification system from the planning system into the Bill?**
- 16. What additional regulatory burden, if any, do you consider should be taken into account by this proposed change?**
- 17. What information do you think should be contained in a building manual?**

## Duty of Care

Part 8, Chapter 6 of the Bill proposes a duty of care that consolidates the current Division 6.6 of the EP&A Act and Part 4 of the DBP Act to provide a single duty of care framework for building work in NSW.

Part of the DBP Act provides that a person who carries out construction work has a duty to exercise reasonable care to avoid economic loss caused by defects:

- (a) in or related to a building for which the work is done, and
- (b) arising from the construction work.

The duty is owed to future owners of the land and cannot be delegated or contracted out of.

Division 6.6 of the EP&A Act currently provides a civil action for loss or damage, arising out of or in connection with defective building work or defective subdivision work, cannot be brought more than 10 years after the date of completion of the work.

These provisions work to provide that a person who carries out building work owes a 10-year duty of care to the owner and future owners of the land on which the work is carried out.

During the second reading speech on the Design and Building Practitioners Bill 2019, the then Minister for Better Regulation and Innovation made clear that Part 4 of the DBP Act was introduced to remove:

“any uncertainty that may exist in the common law that a duty is owed to the end user and in respect to liability for defective building work. Any person who carries out construction work will, under the provisions of the bill and for the first time, have an automatic duty to exercise reasonable care to avoid economic loss caused by defects in or related to a building for which the construction work is done or arising out of that work.”<sup>25</sup>

The duty of care applies to all building work and is not limited to only certain buildings. Recent consideration of the provisions has confirmed the broad application of the duty of care, while still requiring a party to prove a breach of the duty as required under the *Civil Liability Act 2002*.<sup>26</sup>

The proposed duty of care in the Bill does not seek to make any substantive changes to the duty of care requirements already in place under the EP&A Act and the DBP Act. It incorporates the same definition of ‘owner’ (see above) for the duty of care and statutory warranty provisions. The proposed amendment seeks to provide a consolidated prescription of obligations to do compliant building work under a single piece of legislation. It is hoped this change will provide a more straightforward assessment of the duty by having a single test, as well as providing clear links to the standards of work required by licence holders and those doing building work.

## Questions

**18. Do you support the duty of care provisions under the DBP Act and EPA Act being consolidated in the Bill?**

**19. How do you feel the duty of care provisions in the DBP Act have been working since they commenced on 10 June 2020? Do you consider any changes should be made to make them more effective?**

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<sup>25</sup> Hansard. *Design and Building Practitioners Bill 2019*, (October 2019), <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#docid/'HANSARD-1323879322-108381'>>.

<sup>26</sup> *The Owners – Strata Plan No 87060 v Loulach Developments Pty Ltd* (No 2) [2021] NSWSC 1068.

## Appendix 1 – Building classifications

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

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

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

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

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

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

**Class 6** - typically shops, restaurants and cafés. They are a place for the sale of retail goods or the supply of services direct to the public. Some examples are dining rooms, bar, shop or kiosk part of a hotel or motel, hairdresser or barber shops, public laundry, market or showroom, funeral parlour and shopping centres.

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

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

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

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

## Appendix 2 – New Sections Guide

### New and existing provisions

Key: New provision Amended provision No change to provision

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

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

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

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

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

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

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

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

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

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

# Appendix 3 – Alternative Text for Home Building in NSW: Customer Journeys

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## Home Building in NSW: Customer Journeys

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

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

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

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

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

## Appendix 4 – Alternative Text for Proposed Pre-fabricated Building Legislative Framework

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Proposed pre-fabricated building legislative framework

There are three legislative changes being proposed that will affect pre-fabricated building: the Building Bill which will replace the *Home Building Act 1989*, Building Compliance and Enforcement Bill, and amendments to the *Building and Development Certifiers Act 2018*.

*Home Building Act (1989)*, proposed Building Bill

Legislation and processes that are incoming connections to the proposed Building Bill (all legislation, processes, and connections are currently existing unless marked proposed)

- Manufactured homes are considered products under the *Building Products (Safety) Act 2017*
  - *Building Products (Safety) Act 2017*
  - Australian Consumer Law
- Fair Trading investigation powers
  - *Fair Trading Act (1987)*
  - Building Compliance and Enforcement Bill, this is proposed
- Only specialist trades must be licenced to work on pre-fabricated buildings
  - All trades must be licenced to work on pre-fabricated buildings unless exempt, this is proposed
- Definition of movable dwelling refers to registered vehicles under *Road Transport Act 2013*
  - *Local Government Act 1993*

Legislation and processes that are outgoing connections to the proposed Building Bill (all legislation, processes, and connections are currently existing unless marked proposed)

- Definition of manufactured dwelling links to *Local Government Act 1993*
  - *Local Government Act 1993*
- National Construction Code and Building Standards, this is a proposed connection
  - Connection to above is:
    - Fair Trading can investigate and issue rectification orders if not compliant with standards, this is a proposed process
      - Above power comes from the proposed Building Compliance and Enforcement Bill
  - Must comply with site specific standards
    - Connection to above is:
      - Building/land use approval which is current section 68 certificate

Legislation and processes that are proposed outgoing connections to various Acts (all legislation, processes, and connections are currently existing unless marked proposed)

- The amended *Building and Development Certifiers Act 2018*, this is proposed
  - Fair Trading can investigate certifiers, this is proposed
    - *Local Government Act 1993*
- *Environmental Assessment and Protection Act 1979*
  - Definition of manufactured home links to *Local Government Act 1993*
    - *Local Government Act 1993*
- *Residential Land Lease Communities Act 2013*
  - Definition of manufactured home links to *Local Government Act 1993*
    - *Local Government Act 1993*
  - Operators of manufactured home estates have knowledge of *Local Government Act* regulations
    - *Local Government Act 1993*