We have recently contributed towards a submission drafted/ made by LGNSW. Below are our additional comments which speak to that submission as much as possible to assist.

- With respect to points 4.1 and 4.2 around the scope/ initial focus on Class 2 buildings, the comments by others adequately identifies that work needs to occur in respect to education before they could prioritise/ include Class 1 work (alterations and additions and the like). Generally, the Regulatory Impact Statement is a good baseline document as to the proposed processes but is geared to the high end developments. The small scale work has been left out. There are elements of what could be deemed small scale work still captured in this scope/ initial focus on Class 2 buildings (which is what we as a Council/ certifier see more of compared to flat buildings for example). Specifically, small scale Class 2 buildings like dual occupancies where one sits above the other, manor homes, fitouts of mixed use/ class buildings. Most of the legislation relates to the Occupation Certificate stage, with requirements for building compliance declarations, accompanying documentation and so forth to be provided to the Principal Certifier prior to consideration of an Occupation Certificate. The Act and these Regulations deal with requirements for designers and builders to be appropriately accredited and then to provide design compliance and building compliance statements before construction, during construction, at times of variations, prior to Occupation Certificate, and subsequent to the issuing of an Occupation Certificate. There appears to be no clear nexus to the Development Consent/ Construction Certificate or Complying Development Certificate approvals for any of the required documentation. Instead they seem to relate to the bit between approval and completion. For the small scale work noted above there is a risk that if the owner/ applicant is not aware and does not follow the processes outlined in obtaining the documentation required they will not be able to provide copies of the ones to be given to the Principal Certifier at the Occupation Certificate stage. Perhaps the Regulations could be supported by information sheets; compulsory ones at application lodgement stage through the Portal would be best. The Department are doing separate work on standard and prescribed conditions concurrently, perhaps a standard and/ or prescribed condition of consent for such developments (closer to June 2021) when the Regulations would come into force) that advises applicants that the provisions of the Act and these Regulations applies to certain classes/ their development and carries with it significant obligations?
- With respect to recommendation three it refers to consistency with "development consent" which extends to both Development Consent/ Construction Certificate and Complying Development Certificate approvals. This point is not always clear and could be reiterated.
- Point 4.2 adequately covers the relationship between the Act and these Regulations and the Environmental Planning and Assessment Act 1979 (and Regulations). There is other relevant legislation that needs to be considered too, namely State Environmental Planning Policies, Building and Development Certifiers Act 2018, Home Building Act 1989, Strata Schemes Management Act 2015 and the like). This is nothing new but adding another to the mix makes it even more difficult to interpret and reconcile for all involved in particular the public who already find it difficult to navigate building legislation.
- With respect to point 4.4 principle of registration for engineers is supported as noted by others, but the type of work Local Government engineers do is very broad in its scope and does not fit nicely into the six categories listed (accepting the scope/ initial focus on Class 2 buildings hence the specific inclusion of geotechnical engineering). There is a financial and staffing impost on Councils that come with the registration of engineers and it is unclear what specific aspects of work this applies to as covered in your draft submission. Some of this engineering and other certification work that Council staff do

now is contestable in that it can be done by either Council or private Registered Certifiers. It may be that Councils decide to exclude themselves from certain types of contestable work to avoid this.

- With respect to the Regulations specifically, primarily relating to fire safety matters:
- It is stated they commence in their entirety on 1 July 2021 however the Act states that Part 3 Division 2 will not come into effect until a day appointed by proclamation. It is assumed that the references to the Regulations in this regard would not be in effect until such time.
- Part 2 Regulated designs and types of work. Clause 13 defines what building work is excluded. Given the comments by others it is noted that work carried out in line with Development Control Order and the repair, renovation or protective treatment of a fire safety system are excluded.
- Part 3 Requirements for designs and building work. Clause 16 provides that principal compliance declaration is to made prior to building work commencing and be lodged on the Portal. As it states prior to building work commences; it allows a Construction Certificate to be issued without someone having to check this until the Occupation Certificate is applied for pursuant to Clause 18; at which time the building would have already been completed defeating the purpose (see above comments on timing generally).
- Clause 26 allows for variations to the approved design after building work commences, provided that the variation do not relate to a performance solution. This could be read as requiring the Principal Certifier assess the variation to ensure BCA compliance and makes no mention as to the degree of variations to the building work that is permissible; which could be contradictory to the Environmental Planning and Assessment Act 1979 (see above comments/ your recommendation three).
- Part 5 Recognition of professional bodies of engineers. Clause 45 requires professional bodies to audit CPD only rather than past or current projects. Failure to comply with the Act is ultimately identified through complaints to the professional bodies to have the matter investigated as per Clause 39. This is reminiscent of private certification in its infancy, requiring some 20 years to reach a level of maturity within the industry at a cost of owners purchasing into substandard buildings due to the regulator using a reactive/ adhoc based complaint system investigating defects once they were identified. This places the responsibility with Council to address the non-compliant work usually many years down the track, with the community having to pay the price. It is recommended that inherent checks are incorporated into legislation in earlier steps, such as prior to the issue of Construction Certificate rather than at the Occupation Certificate stage once the building is built. Alternatively, a more proactive auditing regime of registered practioners with respect to projects would assist with monitoring performance and guiding professional behaviour.
- Clause 46 provides that a public website is maintained. It is unknown at this stage which professional bodies have been approved to facilitate accreditation and if the website is to be administered by the Secretary or by individual professional bodies.
- Part 6 Insurance. Clause 71 provides that design practitioners, professional engineers and building practitioners may have professional indemnity policy that contain exceptions or exclusions. It needs to be ensured that the registered practitioners are undertaken and certifying work that is covered by the professional indemnity policy they have obtained.

Schedule 1 sets out the categories and the regulation limits accreditation to the following fire safety disciplines:

- Professional engineer Fire Safety engineering
- Design Practioner Fire safety engineering
- Design Practioner Detection and alarm systems
- Design Practioner Fire sprinklers
- Design Practioner Fire Hydrant and fire hose reel
- Design Practioner Mechanical smoke control
- The difference between Professional engineer Fire Safety engineering and Design Practioner Fire safety engineering is understood to be:
- Professional engineer Fire Safety engineering pursuant to Section 31 of the Act is a professional who would undertake work using the application of advanced scientifically based calculations;
- Design Practioner Fire safety engineering is defined as a person who prepares regulates designs, which we would take to mean applying requirements from prescribed standards and codes and applying them to a design.
- Possible further clarification of the roles would be ideal as this "duplication" also occurs with structural engineering, mechanical engineering, geotechnical engineering, electrical engineering and civil engineering.