

## Article Information

Authors: Daniel Fitzpatrick, Robert Riddell, Jack Ragg

Service: Dispute Resolution & Litigation, Planning & Environment, Projects Infrastructure & Construction, Property & Development, Regulatory Compliance & Investigations, Strata & Community Title

Sector: Infrastructure, Real Estate

---

## Significant reforms proposed for the NSW construction sector

**The NSW Government has released three Bills as part of the 2020-25 Construct NSW transformation strategy aimed at restoring public confidence and creating a customer-facing building and construction sector by 2025. Many of the changes proposed are very significant. Stakeholders are encouraged to stay alert as to their impact on strategy, processes and behaviours:**

---

- the [Building Bill 2022](#) proposes replacing the much maligned and often amended omnibus *Home Building Act 1989* to regulate all building work in NSW (yes, both residential and commercial), including licensing and the approval process for building work;
- the [Building and Construction Legislation Amendment Bill 2022](#), and the [Building and Construction Legislation Amendment Regulation 2022](#) is proposed to amend various existing Acts, with the aim of strengthening the legislation supporting the building and construction industry in NSW; and
- the [Building Compliance and Enforcement Bill 2022](#) will replace the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*, with the aim of expanding regulatory compliance and enforcement powers for the building and construction industry in NSW.

### Building Bill 2022

The Building Bill is aimed at ensuring best practice regulation of all building work, including consolidating the approval process for building work, fire safety requirements for building work, and key consumer protections.

Key features of the Building Bill include proposals regarding:

- 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;
- clarifying contract processes for residential building work around variations and payment processes, including 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;
- 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.

### Building and Construction Legislation Amendment Bill 2022

The Building and Construction Legislation Amendment Bill and Regulation is aimed at making miscellaneous amendments to current building and construction legislation.

Key features of the Building and Construction Legislation Amendment Bill include proposals regarding:

- introducing new duties on persons in the building supply chain and additional Secretary powers around the supply of building products in the *Building Product (Safety) Act 2017*;
- making changes to the *Strata Schemes Management Act 2015* to ensure inspectors are empowered to identify and rectify defects throughout the inspection process and developers are required to pay the building bond to rectify defects;
- strengthening the adjudication processes for building work payment claim disputes within the *Building and Construction Industry Security of Payment Act 1999 (SoP Act)*;
- allowing certifier bodies that operate a professional standard scheme to play a role in the accreditation of certifiers under the *Building and Certifiers Development Act 2018*; and
- making amendments to the *Environmental Planning and Assessment Act 1979* to create clearer responsibilities for certifiers that will reduce the need to use powers under the RAB Act.

## **Building and Construction Legislation Amendment Regulation 2022**

The key proposals featured in this Regulation is to:

- require payment claims to owner occupiers to attach a Homeowners Notice information to help them understand their obligations in responding to a payment claim and the consequences of not doing so; and
- extend protections by requiring retention money to be held in trust for projects with a value threshold of \$10 million (currently the requirement only exists if the head contractor's construction contract with the principal (the main contract) has a value of at least \$20 million).

## **Building Compliance and Enforcement Bill 2022 (BCE Bill)**

The purpose of the BCE Bill is to create a single legislative framework for the regulation of building compliance and enforcement. The BCE Bill will:

- replace the RAB Act while retaining the powers given to the NSW Building Commissioner under the RAB Act to deal with non-compliant developers and serious defects in buildings; and
- expand the existing powers under the RAB Act (which are currently limited to Class 2 buildings) to cover all building work across NSW.

Key proposals featured in the BCE Bill include:

- consolidating and strengthening the powers for authorised officers to investigate, gather information and enter premises;
- providing remedial action including undertakings, injunctive powers and issuing orders to seek compliance, stop work as well as rectify building work;
- establishing a consistent disciplinary action process across all licence holders;
- introducing a demerit points scheme to deter licence holders from committing offences and provide sanctions for repeat offenders;
- increasing penalty offences for serious matters; and
- expanding the application of the developer notification scheme and complementary prohibition order powers to more classes of buildings.

## **Have your say**

Public consultation is open in respect of these Bills until 25 November 2022, you can complete a survey or make a written submission [here](#).

Following consultation, it is anticipated that the proposed Bills will be introduced in Parliament in 2023.

*This article has been written for general educational purposes only, and is not to be taken as legal advice. Should you require legal advice on your specific situation, please contact the author.*