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NSW's Building Bill 2026 – The Construction Law Perspective: approvals, prefabricated buildings, penalties, duty of care

The Building (Approvals and Practitioners) Bill 2026 (NSW) (Building Bill) will reshape building regulation in New South Wales. Passed by the Legislative Assembly (Lower House) on 28 May 2026, and introduced to the Legislative Council (Upper House) on the same date, it consolidates approvals, certification and practitioner obligations into one regime.

In doing so, it establishes a 'one-stop-shop' regime that seeks to enhance accountability and public confidence through stricter regulation of certifiers and new obligations for building practitioners, while promoting housing affordability and supply through Australia's first regulatory framework for modern methods of construction, including prefabricated and modular buildings.

Key changes at a glance

- **One consolidated regime** – repeals and replaces the *Design and Building Practitioners Act 2020* (NSW) (***DBP Act***), the *Building and Development Certifiers Act 2018* (NSW) and their associated regulations, and repeals and replaces the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW);
- **New terminology** – 'construction certificates' become 'building approvals', and 'occupation certificates' become 'completion approvals';
- **Only owners can apply** – builders cannot apply for a building approval unless they are also the owner;
- **Staged approvals permitted** – early works can proceed while later stages are still being designed;
- **Completion approval consistency** – a completion approval cannot be issued unless the building work is consistent with the development consent;
- **Prefabricated and modular construction recognised** – new 'prefabricated building' concept with manufacturer declaration/instruction obligations; *Home Building Act 1989* (NSW) (***HBA***) protections/requirements may be extended;
- **Stricter approval regime** – maximum penalties increased from $33,000 to $1,100,000 for approval authority (previously known as 'certifier') breach of conflict-of-interest provision; automatic suspension on conviction;
- **Design compliance framework retained** – regulated designs and declarations integrated into approvals process; and
- **Statutory duty of care preserved** – the statutory duty of care introduced in the *DPB Act* in 2020 remains in its non-delegable form and is not subject to proportionate liability.

For principals: building approvals, completion approvals, staging and occupation
Especially those considering commencing projects in the near future, the change in approvals pathway may be the most immediate change. The familiar 'construction certificate' and 'occupation certificate' of the *DBP Act*, as defined in Part 6 of the *Environmental Planning & Assessment Act 1979* (NSW) (***EPA Act***) are to be replaced by 'building approvals' and 'completion approvals' respectively. 'Building work'[1] requires a building approval unless it is complying development, and development consent alone does not authorise building work.

Staged issue of building approvals and completion approvals will be important for project programming. Facilitating earlier stages to commence while later stages remain in design, this will require careful sequencing of regulated designs and design compliance declarations. Completion approvals are now the sole authority to occupy – penalties apply for

occupation without one.

Principals will need to review their contract forms where payment, practical completion, handover and access rights are triggered by 'construction certificates' or 'occupation certificates'.

Such references will likely need to be updated, to reflect building approvals and completion approvals. Consistent with the *DBP Act*, it remains that applications for building approval must be accompanied by a regulated design and design compliance declaration before building work can commence.

Another key consideration is that builders cannot apply for a building approval unless they are also the owner. Construction contracts and development agreements will need to allocate responsibility for obtaining building approvals (and completion approvals), providing information, responding to approval authority queries and managing the consequences of delay.

Post-commencement authorisation can also be important, both commercially and practically during the project. Where building work has already commenced, the changes propose that post-commencement authorisation be sought from the Secretary of the Department of Customer Service,[2] for issue or variation of a building approval.

For prefabricated and modular manufacturers/suppliers: prefabricated building declarations, prefabricated building instructions and HBA exposure

The Bill formally recognises prefabricated and modular construction by introducing the concept of a 'prefabricated building'. This encompasses substantially complete buildings or rooms, and modular components that become building elements once installed. However, a 'moveable dwelling' will not be considered a prefabricated building.

By omitting 'manufactured homes' from the s 1.4(1) definition of 'building' in the *EPA Act*, the Building Bill may also bring prefabricating building within the *HBA* where the work constitutes residential building work. Additionally, manufacturers and suppliers must prepare a prefabricated building declaration confirming compliance with the *Building Code of Australia*, and prefabricated building instructions addressing transport and erection requirements, and provide them to the approval authority.[3] As such, contracts will need to expressly allocate responsibility for prefabricated building declarations and prefabricated building instructions, and any obligations or warranties that may apply under the *HBA*.

Complying development certificates has the same meaning as in the *EPA Act.*

For approval authorities (certifiers): conflict of interest and penalties,

For approval authorities, the Building Bill raises the stakes materially. Maximum penalties for breach of conflict-of-interest provisions[4] by approval authorities (certifiers) have increased from $33,000[5] to $1,100,000. Approval authorities should therefore have internal systems that identify conflicts early, before approvals work is undertaken.

The key maximum penalties[6] applicable to approval authorities are set out in the table below:

Building Bill provision	Offence	Maximum penalty
Clause 63(1)	Carrying out building work without taking all reasonable steps to ensure the work complies with the *Building Code of Australia*.	Individual: $33,000 Company: $165,000 + automatic suspension for at least 120 days
Clause 64(1)	Knowingly or recklessly making or issuing false or misleading documents, declarations or certificates under the Act.	Individual: $66,000 Company: $330,000 + automatic suspension for at least 120 days

Clause 65	Carrying out approvals work other than impartially, seeking or accepting benefits in connection with approvals work, or being improperly influenced by other parties.	$1,100,000 or 2 years imprisonment + automatic suspension for at least 120 days

For principals and contractors (and approval authorities): duty of care

DBP Act ss 36-41 provide that any person who carries out 'construction work' holds a statutory duty of care. Clauses 177-184 of the Building Bill largely preserves the existing statutory duty of care provisions.

Similar to the *DBP Act* ss 39 and 41(3), the Building Bill provides that the statutory duty of care cannot be delegated and is subject to the *Civil Liability Act 2002* (NSW). For the trainspotters, the statutory duty is unlikely to be subject to the proportionate liability provisions of the *Civil Liability Act 2002* (NSW), consistent with the High Court's decision in *Pafburn*.[7]

Whether approval authorities and consultants owe a statutory duty of care – that is, whether they carry out 'construction work' for the purposes of those provisions – and how it applies to prefabricated buildings, will be addressed by the Regulations that have yet to been developed.

Nonetheless, it is notable that the definition of 'construction work' no longer refers to 'building work', but instead to constructing, altering or adding to, repairing, renovating or providing a protective treatment to a building. Manufacturers and suppliers of building products should therefore be aware that manufacturing or supplying a product constitutes the carrying out of construction work.

The Second Reading Speech states that the Building Bill's key provisions will not commence until the Regulations are developed and approved.

For any person performing registered work

The Regulations will prescribe the specific types of work that will require registration and classes (intended to apply to those currently registered under the *DBP Act*: engineers, designers and builders for class 2, 3 and 9c buildings) within each registration type.

'Registered work' carried out by a person who is not authorised to carry out such work attracts a penalty of $66,000 for individuals or $330,000 otherwise.

The penalty is the same for those who seek or receive payment for unauthorised 'registered work', making false representations in relation to the same, or falsely representing work.

For persons involved in residential apartment projects

The Building Bill amends the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW) to allow the Regulations to provide for a dispute resolution scheme involving building work and related work. No draft Regulations have been released. So matters such as the type of alternative dispute resolution procedures involved, whether the scheme will be mandatory, and how limitation periods are to be managed, are unknowns.

Key takeaways

- **All parties (both upstream and downstream)** – if the Building Bill is implemented, then contracts and development agreements will need to update references to construction certificates and occupation certificates. The *DBP Act* s 37 duty of care remains non-delegable, unapportionable and non-excludable.
- **Approval authorities (i.e. certifiers)** – should strengthen conflict checks, given the materially higher penalties and automatic suspension risk for conflict-of-interest breaches.
- **Consultants and principals/superintendents/project managers** – regulated design and design compliance declarations need to be carefully coordinated at each stage, noting the staged approval process and post-commencement authorisation process.
- **Prefabricated and modular manufacturers and suppliers** – should prepare for greater scrutiny of *Building Code of Australia* compliance and new requirements including declarations and instructions. Manufacture and

supply contracts should allocate these risks clearly.

- **Commencement** – since the Building Bill's introduction to the Upper House on 28 May 2026, it was sent back to the Lower House on 25 June 2026 for concurrence – a commencement date is therefore yet to be announced. Much of the Building Bill's operational detail remains to be prescribed by the Regulations before the key reforms can commence.

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[1] 'Building work' as defined at Building Bill cl 10 is defined as physical activity involved in the erection of a building. The broad definition will be narrowed by the Regulations.

[2] The Bill is administered by the Secretary of the Department of Customer Service, on behalf of the Minister for Building: see Statement of Public Interest.

[3] 'Approval authority' is defined as the local council, registered person or Planning Minister.

[4] Defined very prescriptively at Building Bill cl 55.

[5] *Building and Development Certifiers Act 2018* (NSW) s 28.

[6] *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17 provides the monetary sum of one penalty unit as $110.

[7] *Pafburn Pty Ltd v Owners – Strata Plan No 84674* (2024) 421 ALR 133 ('*Pafburn*').

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