



Customer
Service

Construct NSW Update Report

February 2021

More information: <https://www.nsw.gov.au/building-commissioner>



Introduction

As part of the NSW Government's response to the *Shergold Weir Building Confidence Report*¹, *Building Stronger Foundations*², the Office of the NSW Building Commissioner (OBC) was established in late 2019 to lead once-in-a-generation reform of the design and building industry. The OBC advises on and implements the new construction industry reform legislation:

- Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020
- Design and Building Practitioners Act 2020

David Chandler OAM was appointed as the NSW Building Commissioner in August 2019 to drive the NSW Government's reform agenda to ensure that confidence is returned to the building and construction sector. In his capacity as NSW's first Building Commissioner he is improving the quality of construction and restoring trust in the industry by leading the delivery of the Construct NSW transformation strategy.

The NSW Building Commissioner provides strategic oversight of building regulation and regulatory changes, actively supporting the NSW Government's commitment to achieving and maintaining best practice regulation. The Commissioner engages with business and professional stakeholders, community members and across the NSW Government to advocate for building policy reform.

The OBC has intentionally been mandated as a small but empowered transformation unit within the NSW Department of Customer Service (DCS). The OBC team comprises 15 staff with extensive experience across the public and private sectors. In 2020 the team established strong and respected engagement with NSW Government agencies, local government, consumer groups and industry associations. The OBC's efforts are well-supported by additional resourcing within the Better Regulation Division (BRD) and Department of Customer Service (DCS).

Within the DCS, the OBC is working alongside the BRD to refresh the Division's capabilities, embrace new future-facing business practices and target earlier intervention in industry governance. During 2021, the BRD will develop a customer and future-facing business strategy to modernise and improve the governance of the NSW construction industry.

¹ <https://www.industry.gov.au/data-and-publications/building-confidence-building-ministers-forum-expert-assessment>

² https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0020/532730/Building-Stronger-Foundations-Discussion-Paper.pdf

1.1 Construct NSW

In 2020, through extensive industry engagement, the OBC developed the **Construct NSW** strategy to drive the NSW Government's reform agenda and collectively address the industry and regulatory transformation needed to ensure consumer confidence in buildings.

"The Construct NSW reform strategy is arguably the most significant microeconomic reform program ever introduced in the NSW construction sector."

- Minister Kevin Anderson MP, Minister for Better Regulation, Innovation and Racing

The Construct NSW strategy is centred around six pillars of reform: regulation, key player ratings, education, contracts, digital tools, and data and research.



The core objectives of Construct NSW are to:

- Establish appropriate regulatory settings to ensure buildings are safe and secure throughout their entire useful life
- Create an industry-wide culture that is customer-focussed, trustworthy and values quality
- Improve the quality and amount of data that is captured and shared throughout the supply chain

- Develop a regulator that is empowered, organised and resourced to be impactful and efficient

The OBC engaged collaboratively and continuously with industry stakeholders in 2020. Six industry working groups, one for each pillar of the Construct NSW reform strategy participated in the shared objectives necessary for industry transformation. A central theme of ‘trustworthiness’ was widely supported by stakeholders and is agreed to be fundamental to rebuilding consumer confidence.

“A trustworthy building should not harm people in its making or use, economically, physically, emotionally or environmentally.”

- NSW Building Commissioner

Throughout 2020 the OBC and BRD teams worked effectively with industry to finalise the regulations that will support the DBP Act and the full package of reform anticipated in the Building Stronger Foundations mandate. Highlights include:

- Implemented the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act* which came into effect on 1 September 2020.
- Collaborated with consumers, industry and government stakeholders (including DCS, DPIE and local government) to activate the updated NSW Planning Portal. An e-strata platform will soon follow, providing a single point of tracking buildings throughout all project stages and into the building’s life cycle. This collaboration will provide a major source of data for BRD to enhance its future capabilities.
- Developed and implemented a Certifiers Practice Standard, available on 1 September 2020, to complement the DBP Act.
- Established a digital learning platform in collaboration with TAFE NSW to accelerate priority learning areas.
- Commenced a Fire sector review to improve clarity and accountability, assessing the end to end functions, capabilities and accreditation needs.
- Developed submissions and advocacy across the industry including improving water-shedding and waterproofing standards, a collaboration with Standards Australia to facilitate the wider uptake of standards, and directing professional associations towards becoming accredited under a Professional Standards Scheme
- Commenced dialogue with the insurance sector to investigate a market-led warranty product for owners of new strata buildings.

Pillar 1 - A customer focussed regulatory framework

Key achievements:

- Implementing a new inspection program in residential high-rise construction by applying the powers established by the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020*
- Consulting on the drafting and establishment of the *Design and Building Practitioners Act 2020* and regulations to ensure they embed the production of trustworthy buildings in NSW's construction industry
- The publication of NSW's first Certifier Practice Standard which establishes enforceable requirements for certifiers assessing class 2 buildings

Under Pillar 1, legislative reforms are being progressed to improve consumer confidence in the safety and amenity of buildings in NSW. In 2020 the OBC focused on implementing major reforms contained in the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* (RAB Act) and *Design and Building Practitioners Act 2020* (DBP Act).

1.2 Residential Apartment Buildings (Compliance and Enforcement) Act 2020

The RAB Act came into effect on 1st September 2020. It provides the NSW Building Commissioner and other authorised officers the powers to enter and inspect worksites at any stage of development, pre and post the issue of an Occupation Certificate. In cases where serious defects are observed, the Building Commissioner can issue Stop Work Orders, Building Work Rectification Orders, and Prohibition Orders.

- Since the RAB Act came into effect, a new inspection team has conducted over 25 audits covering sites in the Sydney metro area, Western Sydney, Newcastle, Wollongong and northern NSW. 16 new inspectors were employed in 2020 drawing upon experienced industry professionals from specialisms such as architecture, certification, engineering, design, building and product compliance. The team will undertake 6 to 10 audits per month across NSW.
- The first audits are revealing work of poor quality and a disappointing understanding of Australian Standards and the Building Code of Australia (BCA). Though several sites have showed compliance and excellence in quality, many sites are delivering work that is non-

compliant. Audits are also revealing that practitioners are hesitant to hold others to account on building quality.

- One Prohibition Order and one Building Work Rectification Order was issued on a construction project. The Prohibition Order was later withdrawn when the risk of consumer harm was sufficiently mitigated due to remedial action taken by the project team.
- All Orders that are currently in-force are published on the [NSW Fair Trading website](#).

1.3 Design and Building Practitioners Act 2020

The DBP Act was passed by NSW Parliament in June 2020. It introduced mandatory registration for design and building practitioners working on Class 2 buildings, duty of care obligations and registration for certain types of engineers.

- The DBP Act will take effect on 1 July 2021.
- In November 2020 the draft regulations were published for public consultation on the [Have Your Say website](#). Submissions closed on 11 January 2021.
- The OBC has also been working with government and industry stakeholders to design the necessary digital and operational systems required to implement the DBP Act.

1.4 The Certifier Practice Standard

Various independent reviews of building regulation in NSW highlighted the need for a document that provided clarity on the role and function of certifiers. The Construct NSW strategy provided the impetus to address this need.

- The Certifier Practice Standard was developed in close consultation with an industry reference panel and the building regulator. The Standard is legally enforceable and sets out what is expected of certifiers in undertaking their important function as public officials.
- The Standard applies to the certification of Class 2 buildings and is expected to be expanded into other classes during 2021. The building regulator will reference the various requirements in the Standard during compliance audits to determine whether certifiers are fulfilling their statutory obligations.
- The Standard is published on the [NSW Fair Trading website](#).

Pillar 2 – Ratings systems to provide greater information transparency

Key achievements:

- Engaged industry specialists in the ratings, financial and advisory sectors locally and internationally to scope new globally-facing risk ratings products for the building and construction sector
- Established a new digital product within the building regulator that consolidates regulatory information from multiple internal and external sources to drive risk-based decision-making
- Signed information sharing agreements with Fire and Rescue NSW and the Department of Planning, Infrastructure and Environment to allow the transfer of confidential regulatory information

Under Pillar 2 the OBC is working with insurers, financiers, risk rating agencies and building industry practitioners to help develop new products that can evaluate the trustworthiness of developers and other industry practitioners. The objective is to ensure that trustworthy buildings, businesses and individuals can be recognised in financial, insurance and consumer markets.

- An Expression of Interest (EOI) was issued to the market in June 2020 seeking provision of multi-party risk ratings based on the information gathered relating to developers, builders and certifiers. The OBC held contractual negotiations with a potential supplier but a final agreement could not be reached. The OBC is continuing to engage with the ratings agencies and potential customers of ratings products to incentivise the establishment of a new market.
- The OBC has been working with digital and compliance teams to develop an internal capacity to rate building projects and players. This platform was finalised in December 2020 and brings together regulatory data from Fair Trading, SafeWork and external agencies such as NSW Fire and Rescue. The product creates a 'single view' of each building project that includes information on all entities involved in the work (e.g. builder, developer, certifier, plumber, etc) and associated compliance-related information.
- A working group of 'trustworthy' developers has been established to workshop potential rating criteria and the product features of decennial liability insurance. The group contains six developers that have been selected by the Building Commissioner and will be expanded throughout 2021.

Pillar 3 – Lifting skills and capabilities

Key achievements:

- Established a strategic partnership with TAFE NSW that resulted in the production of an innovative new digital learning platform
- Achieved 2000 enrolments in 8 weeks for the first learning module

Under Pillar 3 the OBC is seeking to energise the production and delivery of training and education to help deliver a more capable, productive and customer-facing building and construction industry.

- The OBC partnered with TAFE NSW to develop a new digital learning platform that will host a variety of learning modules relevant to current industry needs. The platform allows publication of content produced by Construct NSW as well as other 3rd party providers including TAFE NSW, industry associations, universities and training organisations.
- The first learning module, *Understanding OC Audits*, was released in September 2020. Over 2000 industry stakeholders enrolled in the module within 8 weeks. It provides information on the Occupation Certificate Audit program established under the RAB Act and provides guidance to all involved in residential high-rise construction about their roles and responsibilities to produce trustworthy buildings.
- In December 2020 two more modules were added to the platform. The *Understanding the Importance of Australian Standards* module was developed by Standards Australia. The *Understanding the NSW Planning Portal* was developed by NSW Department of Planning, Industry and Environment (DPIE).
- An additional 19 modules are planned to be produced in 2021, including courses on *Ethics in the Construction Industry* and *Customer-focused Communication*.

Pillar 4 – Strengthening contracts and standards

Key achievements:

- Published model term sheets for build only contracts and consultancy agreements to help the building and construction industry prepare for the commencement of the DBP Act
- Provided industry briefings to key stakeholders in the legal, financing, insurance and banking sectors to help these service providers understand the implications of the DBP and RAB Acts

Contracts underpin service delivery, formalising the relationship between suppliers and beneficiaries by outlining on roles, responsibilities and liabilities and most importantly, allocating risk between the parties involved. Enhancing the design of contacts is intended to provide benefits to all parties to the development including insurers and the professional indemnity market, with greater clarity on roles and responsibility permitting more accurate pricing of liability throughout the supply chain.

- The OBC has worked with lawyers and building practitioners to reframe build only (BO) and design and construct (D&C) contracts to show what is required in construction contracts to reflect the process under Part 2 of the DBP Act. More information is available on [the OBC website](#).
- There are currently two sets of model clauses available for use in a construct-only building contract (AS4000) and a design consultancy agreement (AS4122-2010).
- Provided over 70 briefings to key stakeholders in the building and construction industry to help them understand the implications of the DBP and RAB Acts. Stakeholders included lawyers, financiers, banks, insurers, designers, architects, builders and government agencies.

Pillar 5 – Using digital platforms to drive enhanced accountability

Key achievements:

- Partnered with NSW Department of Planning, Industry and Environment to transform the NSW Planning Portal so that it captures regulatory information across multiple laws
- Commenced procurement to develop a world-leading 'building assurance solution' that would help determine the quality and insurability of buildings

The focus of this Pillar is the 'eConstruction' Program, which is working to transform the NSW Planning Portal to become the primary source of information for buildings under construction, allowing the building sector to transition from analogue recordkeeping to a digitised quality assurance framework.

- The OBC partnered with the NSW Department of Planning, Industry and Environment (DPIE) to evolve the NSW Planning Portal so that it can deliver the following:
 - Implement the *Design and Building Practitioners Act 2020* by facilitating the lodgement of declared documents (designs, drawings, manuals) and registration of practitioners (designers, builders, engineers).
 - Replace existing legacy systems to become the portal used by the Better Regulation Division to administer strata building bonds lodged under the *Strata Schemes Management Act 2015* and certification records required by the *Building and Development Certifiers Act 2018*.
- Began to establish a new strata management system and public portal that will capture key records from building owners to ensure they are meeting various regulatory responsibilities.
- The OBC commenced a procurement process to establish a building assurance solution that creates a record of where a product was made, who made it, to what standards it was made, who installed it, when it was installed and when it was last maintained. Three vendors have produced a Proof of Concept with a final vendor to be selected in early 2021.

Pillar 6 – Using data and research to drive continual improvement

Key achievements:

- Commissioned Western Sydney University to undertake research into the digital capability of builders and designers
- Partnered with Strata Community Australia (NSW) to collect data on the prevalence and impact of serious defects in class 2 buildings
- Published technical case studies to educate the industry on the type of defects being observed in audit inspections

Through this Pillar, NSW will become a leader for research into the performance of the construction sector, using data to foster an industry that is customer-focused, trustworthy and values quality. The outcomes of research will be published and be used to help improve industry practice as well as highlight focal points for the Construct NSW strategy.

- The OBC commissioned the Centre for Smart Modern Construction at Western Sydney University to undertake research into the digital capability of builders and designers involved in class 2 construction. The research achieved 542 responses from 347 designers and 195 builders, making it statistically relevant at the 90% confidence interval. The research report is expected to be published in early 2021.
- The OBC partnered with Strata Community Australia NSW (SCA) to collect data on the prevalence and impact serious defects in Class 2 buildings. In December 2020 the survey was sent to over 1400 SCA strata managers.
- The OBC began publishing case studies based on the findings from inspections carried out under the RAB Act. These case studies translate the learnings and observations of the inspections into content that be used by constructors in Toolbox talks and internal training sessions to help raise awareness of defects and improve performance.