

# **Construction, Forestry, Maritime, Mining and Energy Union Construction and General Division New South Wales Branch Submissions on the Building Stronger Foundations Discussion Paper: Implementing the NSW Government Response to the *Shergold Weir Building Confidence Report* June 2019.**

## **I. Introduction**

The Construction, Forestry, Maritime, Mining and Energy Union Construction and General Division New South Wales Branch (CFMMEU) welcomes the opportunity to make recommendations to the Building Stronger Foundations Discussion Paper: Implementing the NSW Government Response to the *Shergold Weir Building Confidence Report*(**Discussion Paper**) June 2019.

The CFMMEU represents approximately 20, 000 members in the building and construction industry. As such, the CFMMEU has a stake in the industry in ensuring the safety of its members whilst the construction phase is being undertaken. Our members take extreme pride in the work that they do and want to ensure work they do is in accordance with the industry standards. The CFMMEU is concerned that the current system in place, which is supposed to safeguard the industry from defective works and ensuring adequate industry standards is being jeopardised through a lack of independent oversight. We believe that there is need for immediate action to effectively regulate construction industry.

Accordingly, the CFMMEU makes the following submissions and recommendations:

## **II. Declaring that plans comply with the BCA and other relevant requirements**

Whilst we agree with the discussion paper that certain occupations should be held accountable for their portions of work, this does not go far enough in terms of ensuring that plans are compliant. We find it concerning that in the discussion paper it is noted that private certifiers will retain their existing powers and functions. We believe that the current system of allowing private certifiers to oversee key process is not viable due to the lack of independent oversight. The recent events at an Alexandria apartment block raise concerns of this issue.

*“Residents of an Alexandria apartment block are at a “public risk” after a private certifier illegally allowed them to move into a building that the City of Sydney was so concerned about it sought demolition orders.”<sup>1</sup>*

Private certifiers are involved in key processes such as issuing development certificates and construction certificates. They are also involved in inspections of critical stages during the

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<sup>1</sup> ‘Residents at risk: Council sought demolition orders on Alexandria block’ 24 July 2019 Carrie Fellner  
<<https://www.smh.com.au/national/residents-at-risk-council-sought-demolition-orders-on-alexandria-block-20190723-p52a1t.html>>



construction that ensures the building is in accordance with development consent and legislative requirements. Developers, Builders and/ or other occupations that fall under the building designer umbrella are able to choose their own private certifier. These are undoubtedly important aspects of ensuring that the building will be compliant with the relevant legislative requirement.

It is especially concerning for multi-story apartment blocks over three stories who are subject to the Strata Building Bond and Inspections Scheme.<sup>2</sup> In this scheme developers are obliged to appoint a building inspector to carry out the final inspection and reports for the defect bond scheme. Furthermore, there is a legitimate concern of potential conflicts of interest with Developers, Builders and/ or other occupations that fall under the building designer umbrella, are able to choose their own private certifiers and inspectors. There is a risk that private certifiers and inspectors role of ensuring these compliances, are being deluded by ulterior motives. We are unable to point to any mechanisms within the system that will provide oversight into a potential conflict of interest.

### **Recommendation**

We recommend that all present functions that are carried out by private inspectors and certifiers to be clearly independent from the projects, and that they be registered in an independent body. This could either be through reverting back to allowing the local council to exercise these functions or when the Building Commission is established through its authorised officers. In doing so, we believe that this will lead to greater transparency, consistency and a surety that these functions are carried out in accordance with the relevant legislative requirements.

### **III. Registration of Building Designers and further requirements for other occupations within the industry**

*17. Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?*

### **Recommendation**

In respect of builders we submit that they be fully licensed. Not only in respect of the registration itself, but in the broader context of as a prerequisite to perform any work in the Building and Construction industry. Presently, a Builder performing commercial building work is not required to hold a NSW Fair Trading Licence. This is particularly concerning, given the likelihood of allowing individuals without any appropriate qualifications or experience being allowed to hold such important positions in array of projects. Additionally, licenses are a necessary requirement in ensuring oversight as to whom is actually performing the work.

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<sup>2</sup> Strata Schemes Management Act 2015 (NSW)



## **Recommendation**

*18. What occupations or specific activities are involved in 'building design' and should be in scope for the registration scheme?*

We would support the registration of occupations architects, builders, building designers, draftspersons, applicable categories of engineers in the building and construction industry, persons responsible for a building project, building surveyor, quantity surveyor and project managers.

## **Recommendation**

*19. What should be the minimum requirements for a registration scheme?*

We would recommend that all occupations as listed above be fully licensed with NSW Fair Trading as a prerequisite to become registered. Additionally, we would also suggest that apart from registering into a scheme, which requires these professions to complete mandatory further education. In doing so, there is a mechanism in place for these professions to be constantly working towards bettering their education in their field.

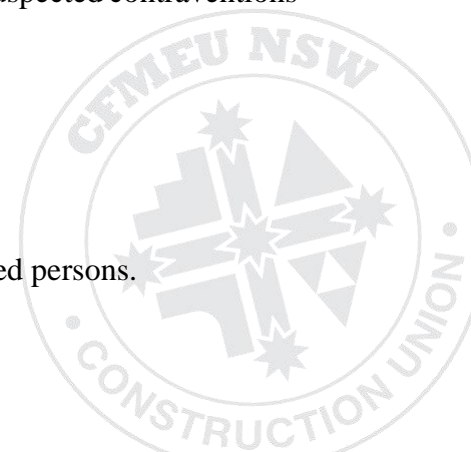
## **IV. Establishment of a properly constituted Building Regulator**

### **Recommendation**

At present there is no such regulator and/or governing body in NSW. This needs to be urgently addressed. The Victorian Building Authority (VBA) and Queensland Building and Construction Commission (QBCC) both have a broad scope of powers to effectively regulate their construction industry's respectively. It is recommended that those same powers be replicated in New South Wales. We understand that the QBCC body constitution and powers is an adequate model to adopt. This has been previously recommended by the Bruce Collins QC inquiry into the Construction Industry Insolvency in NSW.

For the Building Commissioner to effectively regulate the construction industry they must be given access to powers that will not only deter, but will also penalise those that do not abide by the laws put in place. Such powers that we would recommend being given are the following:

- A broad power to direct builders to rectify any building work in circumstances where the commission is of the opinion that building work is defective.
- Appropriate powers given to authorised officers to investigate suspected contraventions of the building code.
- Inspection at mandatory notification stages
- Record of Inspection of building work.
- Persons carrying out inspections must be registered or prescribed persons.



- The ability to suspend or revoke a registered person of a registered occupation.
- Sufficient penalties for those that break the law.

This list is not exhaustive and there is a variety of other powers that the QBCC and VBA have that must be considered to be adopted to the new NSW building commission. It is imperative to ensure that the new Commission is given sufficient tools to effectively regulate the industry.

## V. Requirements for Insurance

The form of insurance for ‘Building Designers’ should be aligned with other practitioners in the building industry and that would be professional indemnity insurance. If relevant occupations are held accountable for their portions of work for a Building, they must be insured in the case that something goes wrong for that portion of work. Whilst we agree the importance of these occupations being insured, there is a greater issue at hand and that is inadequate insurance for owners of apartments over three stories. Under the Home Building Act 1989 owners do not have access to home warranty insurance. Buildings that are over three storeys are subject to the strata building bond scheme. Unfortunately, there may be instances where the defect bond scheme cannot cover the costs for structural defects. In these instances owners corporations are wide-open to further expenses in relation to either rectification, and/or litigation.

*As of recently it has been reported owners in the ‘Opal Tower, are facing a \$2 million insurance renewal, 20 times more than the \$100,000 premium last year, as the NSW building and construction crisis is served another blow amid Mascot Towers defects.’<sup>3</sup>*

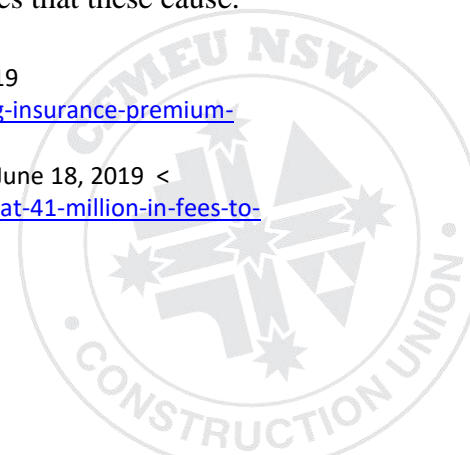
*Further ‘owners of the Mascot Towers are about to be hit with a million-dollar emergency repairs levy, that is predicted to increase to \$5.5 million by the time all the repair works are completed on the troubled towers.’<sup>4</sup>*

It is clear from the Mascot Towers example, that some developers and some builders set up corporate structure designed to avoid future defective work liability. The owners of property in Mascot Towers have no legal entity or person to sue or seek compensation from, the entities involved in that development having long ceased to exist.

It is evident from both of these incidents that there is not an adequate insurance scheme in place. Residents are placed in positions of financial hardship through no fault of their own. These are incidents that we undoubtedly do not want to see replicated again. However, in the unfortunate event that another incident like this is replicated, we recommend that the state government implement an insurance scheme address the potential issues that these cause.

<sup>3</sup> ‘Opal Tower owners face \$2m building insurance premium’ Su-Lin Tan June 28 2019 <<https://www.afr.com/real-estate/residential/opal-tower-owners-face-2m-building-insurance-premium-20190627-p5222n>>

<sup>4</sup> ‘Mascot Towers cost estimated at \$5.5 million in fees to owners’ Phoebe Loomes June 18, 2019 <<https://www.news.com.au/national/nsw-act/news/mascot-towers-cost-estimated-at-41-million-in-fees-to-owners/news-story/ebcfa0d6cabd27df0b6602b0b0f677a0>>



## **Recommendation**

That an insurance scheme be established for these owners, where by the developer must take out the insurance with a provider. The insurance should be enough to cover future issues such as defects and other structural issues that may occur.

## **VI. Cladding**

Although, not specifically mentioned in the discussion paper, combustible cladding is an issue that we believe is currently not sufficiently being addressed. We are yet to be aware of any commitment to fund rectification works to remove non-compliant cladding. There is an estimated 1100 buildings with potentially combustible materials. It is concerning there is not a swifter approach to establish the means in ensuring that these buildings are rectified to eliminate the presence of combustible materials. We recommend that the fund be established immediately so that rectification works can commence as soon as possible, and to avoid a disaster and significant loss of life.

## **VII. Conclusion**

As outlined in these submissions it is evident that there is a need for immediate reform in order to prevent the issues that the industry is facing. Unfortunately, the suggestions made for reform in the discussion paper do not go far enough in terms of addressing the heart of the issues. There is a lack of independency and oversight within the industry; this is resulting in widespread issues in respect of quality of buildings and whether they are compliant. Additionally, we have concerns that owners of apartments are placed in the strata bond scheme is not viable, as outlined above some are being left in difficult circumstances and in financial ruin. We believe that a new scheme must be established that can adequately rectify any future defects or structural problems. Establishing a NSW Building Commission/Regulator will be a step in the right direction to effectively regulate the industry. However, such body must be given the means to be able to effectively do so, as outlined above in these submissions.

We are hopeful that this discussion paper will be a step in the right direction and that this is the beginning of necessary reform in the industry. Given the short time frame to provide these submissions and the variety of other issues that the industry is facing, we like to be involved in further consultation in respect of the regulation of the quality and compliance of buildings.

