

Response to the NSW Government “*Building Stronger Foundations*” (BSF) Discussion Paper

Whilst the BSF could be recognised as being a belated, but welcome, indication that at last the NSW government recognises that it has a huge problem, it is an extremely disappointing response to the economic and social crisis created, in part, by the Government’s inaction.

I do not consider that an extensive response to the specific questions posed in the BSF is necessary when I am strongly of the view that the underlying regulatory reforms within it are misconceived. I provide an explanation of my reasons for this conclusion.

The major problem in the BSF is that it does not recognise the impact of the actions of unscrupulous, strata unit developers, and the economic and social damage they have caused, aided by the failure of government to impose statutory obligations of compliance upon such developers. The absence of proposals to address these aspects is a glaring absence from the BSF.

The outline and terms of the proposed reforms within the BSF, appear to have been drafted without regard to practice within the construction industry and the application of the law to construction, particularly as to insurance and contracts. The ill-conceived and unworkable concept of reliance upon statutory declarations as to compliance of plans, is the first problem. The second is the presumption that there is some tangible benefit involved in the builder giving a declaration that there has been compliance.

The starting point for ensuring compliance of such buildings is the imposition upon the commercial beneficiary of the development an obligation to ensure compliance. How that obligation is commercially reinforced is the next consideration. As noted below major reputable developers are able to, and do comply. There are also, across the world examples of statutory regimes which underlie and reinforce such obligations.

The broader construction industry is capable of quality and compliant construction. Multi-storey commercial buildings, shopping centres, hospitals and schools are generally not leaking, at risk of fire, or uninhabitable. Those who wish to, or by law are obliged to build correctly, are able to do so. There are many reputable property developers who are able to produce compliant and commercially successful multi-storey residential developments. Some reflection on these facts would be of benefit to the direction of reform. Clearly compliance can be achieved, leaving the question as to how it can be made to apply to multi-storey residential unit developments.

The first step in the process of restoring confidence must be a commitment by the government to ensure that developers of multi-storey residential developments have a statutory obligation to ensure compliance. The next steps are to develop a regulatory model that reinforces and supports that commitment.

Put bluntly, the reforms proposed in the BSF are a poor example of public policy and introduce more problems than they solve.