



# Submission to the Building Stronger Foundations – Discussion Paper

July 2019

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A stronger, more transparent and accountable building sector is a benefit to the whole community.

The Committee for Sydney welcomes the opportunity to provide a submission in response to the NSW Government's discussion paper, *Building Stronger Foundations*.

We believe that this is an important step forward towards a better building industry.

Two of Sydney's high-rise buildings have failed spectacularly. For an organisation like ours, that advocates for well-designed, well-located density as a core part of a forward-looking planning agenda, these building failures are highly disturbing. The Government must ensure that buildings are built the right way. If we can't trust new buildings to be safe, how can we ask Sydneysiders to embrace higher densities?

## The big picture

First of all, it's important to keep perspective: the vast majority of new construction is completely sound. It is only a tiny minority of buildings that have had significant failures.

Second, the building code prioritises safety above all else. Vacating a building so repairs can be made is quite different from fatal collapse.

But with that said, two evacuations are too many. Although it's quite difficult for us to gauge how widespread the problem is, there is no denying that something needs to change.

## What's happened so far

In February 2018, the NSW Government received the Shergold/Weir report, *Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, which produced 24 recommendations to improve the national best practice model for effectively implementing building regulation and the National Construction Code.



In February 2019, the NSW Government published their response to the Report. This response accepted a majority of the recommendations, but since this time the implementation of these recommendations has been slow.

Last month, the NSW Government released the *Building Stronger Foundations* discussion paper mentioned above. This discussion paper indicates that 20 out of the 24 of the recommendations of the previous Shergold/Weir report have already been completed or are in progress, with four under consideration by the Government.

The Committee welcomes the release of this discussion paper on the back of the Shergold/Weir report and believe that it is a step in the right direction. **We believe the Government should move quickly and aggressively on the reforms, in order to restore confidence in the building industry.**

After consulting with our members and in formulating any proposed legislative and/or regulatory amendments, the NSW Government should focus on the following key reforms:

### **Making Sure that Buildings are built the way that they are designed**

It is important to ensure that we have well designed, well-built buildings being delivered across Greater Sydney to accommodate the increasing population.

The community needs to have confidence to live and invest in the buildings that are being delivered.

Since the failure of two of Sydney's high-rise buildings, the community are rightfully calling into question the safety and integrity of all the high-rise buildings that have been constructed over the last decade.

With a further 190,000 dwelling to be delivered over the next five years, what can be done to give confidence back to the community?

The Building Code of Australia (BCA) outlines the standards for the design and construction buildings that the building industry must adhere to. The Australian Building Codes Board, who administer the code, mission is to address issue relating to the safety and health; amenity and accessibility, and sustainability in the design, construction, performance and livability of new buildings.

Already, plans for the design and construction of buildings must comply with the Building Code of Australia.

**The Committee believes that 'building designers' who have the technical expertise should be required to sign off and statutory declare that the plans are complaint with the BCA.**

As noted in the discussion paper the plans can change between the development application stage and the issuing of a construction certificate. As a result, the



Committee believes that this required declaration should occur as part of the issuing of the construction certificate stage.

**Similarly, the Committee believes that those who build the building are best placed to determine whether the building has been constructed according to the plans.**

The Committee believes that Builders are in the best position to undertake this.

The Committee has concerns in relation to potential overregulation and the pressure this may place on housing affordability more generally. **We would encourage the Government to ensure that these processes are efficient and streamlined so that any time delays and related increased costs are avoided.**

**Given recent reports that the insurance industry is cautious about issuing policies in light of the high-rise building failures, the Government should be conscious of the overall impact on the building industry.** Should insurers fail to provide policies to the building industry or dramatically increase premiums, housing affordability could be detrimentally affected.

This could also effectively result in a decrease in the number of certifiers. Should this occur it will cause delays in delivery and may have the potential to adversely effect the housing targets.

### **Registration for Building designers, architects and engineers**

The community needs to trust those who design, construct and regulate the building industry. This could be achieved through the regulation, through registration of the industry.

**The Committee supports a registration system for those 'who provide final designs and/or specifications of elements of buildings'.**

A registration system must ensure that professionals in the building and construction industry have obtained the requisite level of expertise and skills to carry out the work that they are being engaged for. It also must ensure that that the professionals are a 'fit and proper' person.

**Should they fail to adhere to these requirements, the Committee believes that through an effective registration system they could be deregistered. This would result in a stronger and more trust industry.**

However, the Committee believes that the registration process shouldn't fundamentally increase the cost of the building which would have a detrimental effect on housing affordability.

It is well established that other professions are subject to registration such as teachers, doctors and lawyers. All these professions have trusted places in our community.



Arguably, this level of trust results from the community relying on their skills and expertise to deliver the services that they are after.

It also arises due to the simple notion, that should one of those professionals misbehave, or act negligently, then they will be subject to disciplinary procedures and possible deregistration and no longer be able to participate in that industry.

All three of these example industries are also required to undertake continual professional development in order to remain at the forefront of new ideas, concepts, regulations, skills and procedures.

The community can trust these professionals because they know that they should be at the top of their game and have a disincentive to misbehave.

### Protection for homeowners

**The Committee supports enabling homeowners to seek compensation if a building practitioner has been negligent.** Currently there is no protections for homeowners if the contract to buy the home contained clauses about liability relating to defects. Put simply, this does not pass the pub test.

The community rightfully believe that if they are buying an apartment, they should be free of concerns that it is unsafe or unlivable. Further, if it is found to be defective, they rightfully believe that they should be able to hold those responsible liable to rectify the defects.

The NSW Government has indicated that they believe that this is not the best approach.

**The Committee supports the required legislative and regulatory amendments needed to ensure that a duty of care is owed to the homeowner.**

### Building Commissioner – the enforcer

**The Committee supports the appointment of a Building Commissioner who will regulate all aspects of the NSW building industry and have the power to take disciplinary action for improper conduct, as mentioned above.**

The Committee also welcomes the establishment of a centralised agency to regulate and oversee the building sector. This change can be seen as a step forward to alleviate the community's concerns about the integrity and safety of their homes.

**The Committee believes that this new agency should be properly resourced in order for it to effectively carry out its wide-reaching functions.** Proper resourcing is also required to ensure that the building industry is not detrimentally affected.



The Committee looks forward to the appointment of the Building Commissioner and the resulting regulation of the building sector.

Should the Minister for Innovation and Better Regulation, his office or agency wish for further information, please reach out to Daniel Hill, Policy Principal, at [daniel@sydney.org.au](mailto:daniel@sydney.org.au) or (02) 9927 6515.

### **About the Committee for Sydney**

The Committee for Sydney is an independent think tank and champion for the whole of Sydney, providing thought leadership beyond the electoral cycle. Our aim is the enhancement of the economic, social, cultural and environmental conditions that make Sydney a competitive and liveable global city.