



NEW SOUTH WALES **POLICY PRIORITIES**

Key policy priorities for the
building and construction
industry in NSW

FEBRUARY 2023



**Master
Builders
Association**
New South Wales

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EXECUTIVE SUMMARY

PRIORITIES POLICY 2023 FOR THE NEW SOUTH WALES BUILDING AND CONSTRUCTION INDUSTRY

The Master Builders Association of NSW had discussions with the building industry in NSW from December 2022 to February 2023 to create a “Policy Priorities Document” for the upcoming State Election.

The priorities were developed by talking directly with building contractors, specialist contractors and key industry stakeholders from all sectors of the industry. An industry survey also formed part of the industry consultation process. While there are good opportunities in the building and construction industry in NSW, there are issues that need to be addressed to make the industry more cohesive and productive.

These issues include:

- The establishment of an independent, centralised authority to administer, regulate and oversee the building and construction industry (Independent Building Commission) in NSW.

The establishment of a single building industry regulator is a deserving response to the industry’s economic contribution to the State economy. A single building regulator will, over time, draw together the various government agencies currently overseeing our industry;

It should be noted the MBA recognises the work undertaken by the office of the NSW Building Commissioner, and supports the continuation of this position.

- Architects, building designers and engineers should be accountable for the provision of their services, and be subject

to a licensing structure.

The MBA views the licensing system as fundamental to the competency of practitioners, quality outcomes and consumer confidence in the building industry.

It provides a mechanism for consumer protection by qualifying persons seeking work in the industry. More importantly however, it provides a compliance process to address unacceptable practices and poor performance.

The MBA is concerned the key professional services of designers, architects and engineers, which are fundamental to the construction process reside outside the current licensing regulatory system.

Consequently, there is little accountability in the delivery of design and specification documentation by these practitioners, which leads to a direct risk transfer to builders and certifiers.

The MBA acknowledges that part of the licensing/registration of these key professional services has commenced and is now covered by the Design and Building Practitioners Act 2020. This Act currently covers Class 2 buildings. The Association supports the extension of this Act into other classes of buildings.

- The need for a dedicated senior Cabinet Minister to oversee the building and construction industry.

The NSW building and construction industry contributes over \$69 billion to the NSW economy and is a major job creator, with the sector employing an estimated 395,000 people. The building and construction sector is integral to the NSW Government’s infrastructure renewal program.

- A specific building industry workplace relations agency should be established in NSW to act as a deterrent against unlawful

industrial conduct and coercive behaviour.

- Subcontractors / specialist contractors should be subject to a ‘Continuing Professional Development’ (CPD) program.
- The introduction of licencing regime for those who undertake work in the commercial sector; and
- A complete and holistic review of the Home Building Compensation Fund (HBCF).

Other issues identified through industry consultation and the survey concern Apprentices, cross border (various jurisdictions) construction, education and training as well as the establishment of a consolidated Building Act.

The Association believes that the matters identified above, as well as other industry issues could all be administered by an independent Building Commission.

Sincerely,



Brian Seidler

EXECUTIVE DIRECTOR

February 2023

ESTABLISHMENT OF A BUILDING COMMISSION

Over the last two decades many reports and enquiries into the NSW building and construction industry advocate the establishment of an independent building commission.

In 2002 an inquiry into the Quality of Buildings in NSW (Campbell Report) reported there were a number of structural problems within the home building process, including the fragmentation of the regulatory regime. A key recommendation of the Campbell Report was for establishment of a Home Building Compliance Commission, independent of the State Department of Fair Trading.

Master Builders supported the recommendation. However, the Association sought as a policy position that the establishment of a Building Commission should hold an overarching responsibility for all sectors of the NSW building and construction industry – and not just the residential sector.

Master Builders has, for over 15 years, continued to present this key policy position in order to consolidate the regulation and administration of the building and construction sector in NSW.

More inquiries into the NSW building and construction sector have given support, and also made recommendations for establishment of a single state building regulator.

The 2013 independent Bruce Collins Inquiry into Insolvency in the NSW Construction Industry made the key recommendation that the NSW Government undertake a cost benefit analysis for the establishment of a separate autonomous statutory authority called the “NSW Building and Construction Commission”. (The Baird Government committed to undertake the cost-benefit analysis in 2015).

The NSW Independent Pricing and Regulatory Tribunal (IPART) has also given its support for establishment of a single building authority, to improve building compliance and enforcement. In 2014, the NSW IPART outlined its recommendation

to establish a single state building regulator in its draft report into Local Government Compliance and Enforcement.

The independent review of the Building Professionals Act, (2005) undertaken by Michael Lambert released his report in late 2015. The report, amongst other things, called for the establishment of Office of Building Regulation to consolidate building regulations in the state of NSW.

Other state and territory jurisdictions have for some time, taken a co-ordinated and consolidated approach in recognition of the significance of a vibrant building and construction industry. While there has been inquiries and reviews into the Victorian and Queensland Building Commissions, the outcome of these inquiries resulted in structural changes to the effect of establishing authorities which provide for a co-ordinated approach to building regulation and oversight.

Further, ICARE has responsibility for the administration of the Home Building Compensation Fund which in effect acts as a de facto licensing scheme, by ensuring builders meet rigorous financial criteria for eligibility to procure Home Warranty Insurance coverage.

In recent years wide-ranging regulatory reform of building and building related legislation (e.g. planning, home building, strata) has provided clear evidence of the difficulties and lack of coordination where building and building related legislation is administered across different agencies.

The establishment of the Office of the Building Commissioner (OBC) in August 2019 has seen significant reform in NSW. On the back of calling for a “reformed and modernised” NSW regulator rather than a Building Commission, the OBC has brought substantial changes to the NSW building landscape, including the Design and Building Practitioners Act (2020) and Residential Apartment Buildings Act (2020), and the establishment of NSW Government and Practice Standards for Registered Certifiers to name a few. The work required to reform all sectors of the industry needs to continue.

The Association believes the introduction of a consolidated “Building Act” (currently under discussion) would make future reforms across planning, strata and building easier and ensure consistency and co-ordination in all jurisdictions.



MASTER BUILDERS POLICY

Master Builders advocates the establishment of an independent centralised authority (Independent Building Commission) to regulate and oversee the building and construction industry in NSW

This Authority will draw together the current fragmented approach of various Government departments and agencies to deliver efficiencies and eliminate duplication.

EXTEND LICENSING TO BUILDING DESIGNERS, ARCHITECTS AND ENGINEERS

Master Builders views a licensing system as fundamental to the competency of practitioners, quality outcomes and consumer confidence of the building industry. It provides a mechanism for consumer protection by qualifying persons seeking work in the industry but, most importantly, it provides a compliance process to address unacceptable practises and poor performance.

Master Builders is concerned the key professional services of designers, architects and engineers, which are fundamental to the building and construction process, continue to reside outside of the current licensing regulatory system. Consequently, there is little accountability in the delivery of design and specification services by these practitioners, which leads to a direct risk transfer to builders and certifiers.

The Association supports the introduction of the Design and Building Practitioners Act 2022 which clearly introduces a licensing regime for the design and engineering sector for Class 2 buildings.

The Association believes that such licensing requirements should be considered for other classes of buildings.

Many complaints received by Master Builders are concerned with inadequate design and specification, and architectural designs not fulfilling the design brief, in particular, within the client's budget brief. Consequently, builders are reluctantly positioned as de facto designers and specifiers in order to fill gaps in design detail, or amend designs and specifications in order to satisfy the client's budget.

Furthermore, it is illogical to those with an understanding of the construction process that licensing should start with builders and

trades, and not begin at the fundamental and critical process of architectural design, specification and engineering.



MASTER BUILDERS POLICY

Master Builders advocates the inclusion of architects, designers and engineers into a licensing system for building and construction work in NSW.

DEDICATED CABINET MINISTER

The NSW building and construction industry contributes over \$69 billion to the NSW economy and is a major job creator, with the sector employing some 395,000 people in NSW. The building and construction sector is integral to the NSW Government's infrastructure renewal program and plays a major part in the services that NSW Government provides to the people of NSW.

The NSW building and construction industry is the second/third largest sector

of the economy, is the largest provider of full-time employment and trainees and employs and trains more trade apprentices than other States and Territories across the nation.

Master Builders calls for a dedicated Cabinet Minister to work with industry to drive new reforms, modernise industry policies and programs, and support private sector investments.



MASTER BUILDERS POLICY

Master Builders calls for a senior Cabinet Minister to be responsible for the building and construction industry in NSW.

CONSOLIDATION OF BUILDING REGULATION

The establishment of a consolidated Building Act would underpin and enhance a single building regulatory authority (Independent Building Commission).

Furthermore, future regulatory reform would be greatly facilitated through the benefit of a consolidated Building Act,

which would allow consistency across all jurisdictions which impact on the building and construction industry in NSW.



MASTER BUILDERS POLICY

That the NSW Government commits to commencing a process of consolidating building and building related legislation into a consolidated NSW Building Act.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

Master Builders recognises Continuing Professional Development (CPD) as an investment in building success, leading to better quality in building practice. The Master Builders' industry survey identified a strong view that CPD should be extended to licensed trade contractors (sub-contractors).



MASTER BUILDERS POLICY

Master Builders supports to requirement for sub- contractors to undertake Continuing Professional Development.

HOME BUILDING COMPENSATION FUND (HOME WARRANTY INSURANCE)

The Home Building Compensation Fund (HBCF) or Home Warranty Insurance as it is known, remains one of the most prominent issues for members and the wider building industry.

The overall cost of the home warranty system must be reduced and must be reviewed with a holistic industry approach.

The system can be positively impacted in the short to medium term by:

- Providing better support for builders — less builders become insolvent
- Introducing new system of building practices for 'wet areas'
- Introducing a quality inspection regime for medium density buildings

- Disallowing individuals entry to the system who phoenix
- Reviewing and enhance claims management.
- Providing client training in 'assessing a quote' (don't just accept the lowest)
- Rewarding builders with good building practices and history

Better support for builders involves:

- Transparent and clear eligibility criteria
- Safe haven when experiencing financial difficulties
- Less administration – use KPIs (not only financial)
- Training in financial management

- Mandatory and binding dispute resolution at no cost to the parties.



MASTER BUILDERS POLICY

Master Builders advocates for a complete and holistic review of the Home Building Compensations Fund (HBCF).

WORK HEALTH AND SAFETY

A number of Royal Commissions into the Building and Construction industry have documented the misuse of Right of Entry Permits, particularly in matters relating to alleged safety breaches.

Master Builders advocates for greater accountability on Right of Entry Permit Holders when entering a workplace for WHS purposes.

Consequently, Master Builders advocates that Right of Entry Permit Holders provide 24 hours written notice before entering

a workplace for WHS purposes. Permit Holders must provide the PCBU (Person Conducting a Business or Undertaking) and the Regulator with a written report outlining the nature of the visit within seven days of visiting the workplace.

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LICENSING OF COMMERCIAL CONTRACTORS

To carry out construction work in the commercial sector of the building industry in NSW requires no formal licence.

In fundamental terms contractors who construct multi-storey office buildings are not subject to a formal licence regime.

This is not the case in other jurisdictions across Australia.

A recent survey of MBA members indicated strong support for the

introduction of a licensing regime for those contractors who undertake work in the commercial sector.

MASTER BUILDERS POLICY



Master Builders advocates for the establishment of a Government and industry working groups to examine the licensing requirements of commercial contractors in NSW.

CROSS BORDER CONSTRUCTION

NSW is in a unique position with state borders with four jurisdictions, namely Queensland, Australian Capital Territory, Victoria and South Australia.

Contractors who conduct work in cross-border regions continue to face a myriad of variances in legislative and technical procedures when working in a number of cross-border regions. This “red tape” often

leads to delays in projects which can often cause cost increases for all involved.

Differences in Home Warranty Insurance, licencing requirements — (both in the commercial and residential sectors), and continuing professional development are but a few.

MASTER BUILDERS POLICY



Master Builders recommends that a detailed study of the various cross border jurisdictions be undertaken to identify and remove impediments to timely construction.

EDUCATION AND TRAINING

Master Builders' industry surveys clearly reveal that the building and construction industry has an aging work force.

The main feeder to replenish licensed builder numbers is through the apprenticeship system which, at the current rate, will only be able to replace half of the retiring tradespeople and/or those who leave our industry.

Industry studies indicate that over the next four to five years the amount of building and construction work to be undertaken in NSW is substantial. The industry, as a whole, needs to embrace the training of young people through apprenticeships and traineeships, so that we have the necessary skills to meet this demand.

In order to attract new entrants to the building and construction industry, the NSW government should apply mechanisms to reduce the cost of living for apprentices that offset the impediment of lower apprenticeship ages. This could include exemptions from NSW toll charges, discounts on vehicle registration and vouchers to purchase starter Personal Protective Equipment (PPE) and tool kits.

To encourage employers to take on an apprentice or trainee, significant wage subsidies should apply which recognise the time, commitment and costs involved in employing and training an apprentice or trainee.

In order to give building and construction businesses more flexibility and individual workers greater opportunities for recognition of their skills and experience, consideration of broadening the licensing regime to include licence categories for semi-skilled trade work areas. For example: A licence for waterproofing on internal wet areas only. A licence for carpentry work in pre-fabrication only.

Further to meet the demand of the future skills needs of the industry, Master Builders recommends the NSW Government reinforces the requirement of a specific ratio of apprentices to tradespersons on all State Government-funded projects.

The ratio should be incorporated into the NSW Code of Practice for the building and construction industry and tender documentation.

MASTER BUILDERS POLICY



The MBA advocates the introduction of mechanisms to reduce the cost of living for apprentices such as provide exemptions from NSW toll charges, discounts on vehicle registration and vouchers to purchase starter Personal Protective Equipment (PPE) and tool kits.

Further, to encourage employers to take on an apprentice or trainee, significant wage subsidies should apply which recognise the time, commitment and costs involved in employing and training an apprentice or trainee be available.

Master Builders advocates the NSW Government continue the requirement of a specific ratio of apprentices to tradespersons on all State Government-funded projects.

The ratio should be incorporated into the NSW Code of Practice for the building and construction industry and tender documentation.

WORKPLACE RELATIONS

With a changing approach to workplace relations at a national level, the commercial sector of the building and construction industry in NSW believes an industry specific regulatory framework should be established to ensure a strong and disciplined approach to the rule of law. Such a framework will ensure that responsible behaviour of industry parties continues to be encouraged.

Master Builders advocates for the establishment of a well-resourced building and construction industry specific agency in NSW.

This industry specific regulatory agency would also need to be equipped with sufficient statutory powers and penalty

provisions to act as a meaningful, ongoing deterrent against coercive behaviour and unlawful industrial conduct.

Further, Master Builders advocates that the NSW Code of Practice and Industrial Relations Management Guidelines should be revised and strengthened, so the State Government is better able to enforce acceptable standards of behaviour across its projects, as a major client to the building and construction industry.

MASTER BUILDERS POLICY



Master Builders advocates for the establishment of a well- resourced specific building and construction industry agency in NSW, to act as a deterrent against coercive behaviour and unlawful industrial conduct.

Master Builders advocates that the NSW Code of Practice and industrial relations guidelines should be revised and strengthened, so acceptable standards of behaviour are achieved and maintained on projects throughout NSW.

WORKERS COMPENSATION – APPRENTICES / TRAINEES

The cost, liabilities and exposure of workers compensation to employers training apprentices and/or trainees is a major barrier to their engagement.

Master Builders’ survey clearly identifies that builders would rather forego training apprentices than confront this inherent risk.



MASTER BUILDERS POLICY

Master Builders advocates that in order to give added incentive to employers to engage young people in apprenticeships and traineeships, the workers compensation premium and the cost of any claim, should not be borne by the employer, regardless of the size of the employer, for the duration of the apprenticeship.

WORKERS COMPENSATION – DEEMED WORKER

Industry surveys have consistently rated workers compensation as a major issue confronting building businesses.

The definition of a deemed worker continues to be a major issue, particularly for the residential building sector, which is heavily reliant upon small contracting entities – often single operators – undertaking specialised trade work.

Master Builders believes simply adopting the common law definition does not deliver the desired clarity or certainty.



MASTER BUILDERS POLICY

Master Builders seeks the ambiguity surrounding the definition of employee versus contractor be clarified through legislation.

WORKERS COMPENSATION – NON-SPECIFIC WORK INCIDENT INJURIES

The cost of claims borne by employers of employees for non-specific work incidents – for example, loss of hearing and bad backs is high.

In many instances, these non-specific incident injuries can greatly impact on a company’s ability to continue trading.



MASTER BUILDERS POLICY

Master Builders advocates that all non-specific work incident injuries be treated as an industry injury and funded through an industry claim pool established for such injuries.



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