

Draft

LGNSW Submission on *Building Stronger Foundations Discussion Paper*

July 2019

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Executive Summary

Local Government NSW (LGNSW) appreciates the opportunity to make this submission to the Department of Finance, Services and Innovation (DFSI) on *Building Stronger Foundations: Discussion Paper*.

While the NSW Government's latest efforts to address building regulation issues are a positive step, the Discussion Paper only targets part of the problem and does not address issues with the building sector in a comprehensive way. It also fails to address other reform proposals promised by the Government in recent months following several high-profile incidents with defective buildings. This is symptomatic of a reactive and piecemeal approach by the Government to building reform in recent years.

The recent agreement (July 2019) at the Building Ministers Forum to a national approach to implementing the Shergold Weir Building Confidence Report is a promising indication that the NSW Government will commit to taking a more holistic approach to building reform in future.

A key plank of the NSW Government's reform announcements was the appointment of a building commissioner. This is welcomed by LGNSW, and we note this role can only be successful if it is supported by a regulatory body that is independent, well-resourced, effective and accountable. There must be a commitment from the NSW Government to sufficiently and effectively resource the role as there are no details of funding and administrative support for the building commissioner, and funding for the function was not outlined in the 2019-2020 NSW Budget.

The Discussion Paper is narrowly focused on three areas of the building process, to do with declaring plans, registering 'building designers' and mandating a duty of care. Details of other important changes promised or proposed by the Government are notably absent. These include measures to address concerns about the independence of private certifiers and conflicts of interest and a four-point plan announced by the Government in December 2018 which included an ambitious commitment to annual audits.

There is a view among our members that some of the reforms might lead to an expanded role for councils in the private certification process. Any such proposal must be cognizant of the fact that as experienced council building surveyors have progressively moved to the private sector with the expansion of private certification, councils may no longer have in-house expertise to take on an increased level of certification work. This is particularly the case in non-metropolitan areas. Any proposal to expand the role of local government in regulating private certifiers would amount to a cost-shift and would need to be fully funded, and must be subject to thorough consultation with local government.

LGNSW and councils have called on successive state governments over the past two decades to take actions to address deficiencies with building and certifier regulation. The Shergold Weir Report recommends a comprehensive package of reforms supported by a three-year implementation plan. The Government's Discussion Paper represents only a portion of what is needed to fix the problems with the building regulation system. These reforms in isolation are not enough to deliver well-built, safe and compliant buildings that protect the public interest. The public has a right to expect these outcomes from the building sector but they will not be realised if the fundamental issues and concerns with building regulation are not addressed to improve the capabilities and competence of all building practitioners, audit their activities and introduce measures to make them all accountable for their work.

Summary of LGNSW recommendations

1. *The NSW Government cease consulting on reactive and piecemeal reform proposals and commit to a comprehensive set of reforms, with an implementation plan, meaningful, achievable timeframes, proper resources and expert industry/local government input.*
2. *The legislative amendments requiring declaration of plans must include sufficient penalties for false or misleading declaration and be clear about who is responsible for enforcing these penalties.*
3. *The NSW Government should expedite the Building and Development Certifiers Act 2018 to come into force as soon as possible.*
4. *The concept of registration of practitioners involved in ‘building design’ should be extended to include all building practitioners involved in construction and maintenance, consistent with the recommendations of the Lambert and Shergold and Weir Reports.*
5. *The NSW Government should consider using the ‘competent fire safety practitioners’ accreditation model as the basis for a similar scheme to register all building practitioners and ensure they are made accountable.*
6. *In addition to new duty of care provisions, the Government should review financial protection for consumers, and consider reform options to address the issue of ‘phoenix’ companies.*
7. *The NSW Government commits to adequate funding and resourcing, to support the building commissioner and identify what statutory provisions are proposed. The funding provisions should be clearly identified in the NSW Government’s Budget Papers, for transparency.*
8. *The NSW Government should identify how it intends to address unresolved conflict-of-interest concerns highlighted in the 2018 Options Paper.*
9. *The NSW Government should consider the recommendations of the 2002 Campbell Inquiry which include implementation of a “close relationships” auditing system to address concerns raised about developer and certifier relationships.*
10. *The NSW Government should identify as soon as possible how it will address the need for a coherent package of building reforms, and specifically, how it intends to implement and resource its four-point plan announced in December 2018.*
11. *The Government should establish an expert group of industry/local government practitioners to provide vital input to the design and implementation of reforms.*
12. *The NSW Government should identify as soon as possible how it intends to implement and resource the 25-30% annual audits of certifiers announced as part of its four-point plan in December 2018.*
13. *Local government must be fully consulted in advance on any proposals that could lead to an expanded role for councils in regulating private certifiers, and would need to be thoroughly compensated for any additional drain on ratepayer funds.*

1. Opening

LGNSW is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the Department of Finance Services and Innovation (DFSI) on *Building Stronger Foundations: Discussion Paper*. LGNSW has welcomed reforms in new legislation last year which go some way to strengthening the regulatory framework for private certification. Further, the recent agreement of Building Ministers to a national approach to implementing the Shergold Weir Building Confidence Report¹ is also a promising indication of a more holistic approach to building reform in future.

The Government's latest efforts to address building regulation issues are a positive step. However, the Government's Discussion Paper only targets part of the problem and does not address issues with the building sector in a comprehensive way. Nor does it address other reform proposals promised by the Government in recent months following several high-profile incidents with defective buildings. This is symptomatic of a reactive and piecemeal approach by the Government to building reform in recent years.

This submission argues that implementation of such piecemeal measures alone will not ensure the building and certification system delivers well-built, safe and compliant buildings that protect the public interest. Our concerns about the inadequacy of the regulatory framework and the lack of regulatory enforcement by the regulator (i.e. the Building Professionals Board (BPB)) have been consistently highlighted.²

This submission is structured as follows:

- Section 2 clarifies LGNSW's understanding of the proposals in the discussion paper;
- Section 3 reaffirms LGNSW's long-held views about building regulation and private certification;
- Section 4 makes general comments about the Discussion Paper;
- Section 5 discusses other proposed reforms and announcements by the Government;
- Section 6 discusses local government resourcing; and
- Section 7 contains concluding remarks.

This is a draft submission awaiting review by the LGNSW Board. Any revisions will be forwarded in due course.

2. Background

The NSW Government has proposed the following four reforms:

1. Requiring categories of building practitioners who are defined as 'building designers' to formally declare that plans, specifications and performance solutions they provide are compliant with the Building Code of Australia (BCA), and that builders declare that buildings are built according to the declared plans;
2. Introducing a new registration scheme for 'building designers';
3. Ensuring an industry-wide duty of care is owed to subsequent homeowners; and

¹ Shergold, P. and Weir, B., *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018

² See LGNSW Submission on the *Building and Development Certifiers Bill 2018*, September 2018, pp 4, 6, 10, 22 & 24

4. Appointing a Building Commissioner to act as the consolidated regulator for building in NSW.

The release of the Discussion Paper follows the Government's announcement in February 2019 of the "biggest overhaul of building laws in NSW history"³ in response to the Shergold Weir Report. The Discussion Paper seeks industry and community feedback on the implementation of these reforms.⁴

In addition, the NSW Government announced a four-point plan in December 2018 to improve the certification industry⁵:

1. The biggest compliance operation in the industry's history, with 25-30% of the industry to be audited every year;
2. A zero-tolerance approach to non-compliant certifiers including a new disciplinary policy with increased penalties for corruption and negligence;
3. Better protection for strata buildings with certifiers being unable to work on new strata developments if they have breached the Code of Conduct in the last 12 months; and
4. Increased transparency, which will include more information to homeowners about a certifier's compliance history on an enhanced name and shame register.

3. LGNSW position on building regulation and private certification

LGNSW has opposed the private certification system since its inception because of a deficient regulatory framework and fundamental flaws in protection of the public interest. The local government sector has consistently highlighted concerns about the inadequacy of the regulatory framework and the lack of regulatory enforcement by the regulator (the Building Professionals Board (BPB)).⁶

Private certification must be properly regulated. A robust and reputable regulatory regime must be put in place that delivers well-built, safe and compliant buildings that protect the public interest. From councils' perspective, the public interest includes not only the property owner/buyer, but occupants such as residents/tenants, neighbours, and the wider community.

The issue of building regulation and private certification continues to be a source of frustration for many of our members as demonstrated year-in-year-out with conference motions at the LGNSW Annual Conference. For these reasons, LGNSW last year welcomed stronger provisions in the new *Building and Development Certifiers Act 2018*⁷. It is disappointing that almost 9 months after this new legislation was passed, it is yet to come into force⁸.

³ Media Release, 10 February 2019: Biggest overhaul of building laws in NSW History", Minister for Innovation and Better Regulation, Matt Kean

⁴ Kevin Anderson, MP, Minister for Better Regulation and Innovation, Building Stronger Foundations: Discussion Paper, June 2019, p 3.

⁵ Anthony Roberts, [Media Release](#), 30 December 2018, 'Home Owners First With Zero Tolerance for Dodgy Certifiers' (<https://www.anthonyrrobertsmp.com.au/media/media-releases/home-owners-first-zero-tolerance-dodgy-certifiers>)

⁶ See LGNSW Submission on the *Building and Development Certifiers Bill 2018*, September 2018, pp 4, 6, 10, 22 & 24

⁷ Refer to LGNSW Submission to Building and Development Certifiers Bill, September 2018, pp 10-11

⁸ <https://www.legislation.nsw.gov.au/#/view/act/2018/63/history>

A major deficiency in the building regulation system has been insufficient enforcement of regulations and discipline. As LGNSW has highlighted in previous submissions⁹, building defects and illegal work are a major and ongoing concern for councils. These impose significant remediation costs on individual property and regulatory costs on councils.

LGNSW's policy position on building regulation and private certification can be found on our website¹⁰. LGNSW advocates for:

- Tighter and more effective regulation of private certifiers by the State Government's building regulators – new regulatory arrangements must be strong, proactively enforced and subject to regular and rigorous audit.
- The State Government to take priority action to address the many issues identified in the NSW independent review of the Building Professionals Act 2005 and the Shergold Weir Report.
- A single regulatory body responsible for building regulation and certification that is independent, well-resourced, effective and accountable.
- Extensive consultation with local government on any proposed changes to strengthen building regulation.
- Complying development to be limited to low risk or low impact development, with clearly defined parameters.
- Provisions to protect consumers of building developments against the unsatisfactory professional conduct or professional misconduct of any private accredited certifier who practices as a public official but not in the public interest.

4. General comments on Discussion Paper

4.1 NSW Government Response to the Shergold Weir Report

Part 2 of the Discussion Paper outlines the NSW Government's four reform proposals in response to the Shergold Weir Report. As discussed throughout this submission, these four reforms represent a fraction of the changes needed to fix the systemic problems in the building industry in NSW. The issues and recommended solutions have been identified in numerous reports over almost two decades.

The "four key reforms" in the discussion paper are a reactive and piecemeal response and fail to give regard to one of the key observations of Shergold and Weir, which is that their recommendations "form a coherent package" and "would best be implemented in their entirety"¹¹.

LGNSW Recommendation

- 1) *The NSW Government cease consulting on reactive and piecemeal reform proposals and commit to a comprehensive set of reforms, with an implementation plan, meaningful, achievable timeframes, proper resources and expert industry/local government input.*

⁹ Refer to LGNSW Submissions to the Lambert Review of the Building Professionals Act 2005 (October 2015) and to the BPB Report on "Building Certification and Regulation – Serving a New Planning System for NSW" (March 2014)

¹⁰ [LGNSW Policy Platform](https://www.lgnsw.org.au/files/imce-uploads/581/LGNSW_Policy_Platform_-_060719.pdf), p 11 (https://www.lgnsw.org.au/files/imce-uploads/581/LGNSW_Policy_Platform_-_060719.pdf)

¹¹ Shergold Weir Report, p 38

4.2 Introducing building designers into NSW legislation

LGNSW supports in principle the proposals to require:

- building practitioners who are registered as ‘building designers’ to declare plans and performance solutions are compliant with the Building Code of Australia (BCA); and
- builders to declare that buildings are constructed according to building plans that have been declared to be BCA compliant.

Councils frequently cite examples where the ‘as built’ product varies substantially from the approved plans, or departs from regulated conditions/procedures and construction standards altogether. A recent high-profile example is the case of the ‘Sugarcube’ building which was constructed without meeting development conditions to remediate the site¹². Other examples occur where councils become aware of construction certificates or occupation certificates being issued for a building that does not comply with the fire safety provisions of the BCA.

The requirement for builders to declare that a building is constructed according to the approved building plans may not necessarily result in any improved building outcomes, unless there are substantial penalties attached to non-compliance. Councils consistently report frustration that the penalties for non-compliance are so minimal as to not be a sufficient deterrent. The new *Building and Development Certifiers Act 2018* contain stronger penalties which have been welcomed by local government, however, the Act has not yet come into force. The proposed new requirements for declaring plans must include penalties in the legislation for false or misleading declaration of plans and must be clear about how these penalties will be enforced and by whom (the building commissioner, local government or some other authority.)

LGNSW Recommendation

- 2) *The legislative amendments requiring declaration of plans must include sufficient penalties for false or misleading declaration and be clear about who is responsible for enforcing these penalties.*
- 3) *The NSW Government should expedite the Building and Development Certifiers Act 2018 to come into force as soon as possible.*

4.3 Registration of building designers

LGNSW supports the concept of registering ‘building designers’. This reform is a positive first step, however, as demonstrated in the examples referred to above, poor quality construction is equally, if not more of a concern for building defects and non-compliance than the design plans. As recommended in both the Lambert Review¹³ and the Shergold Weir report, wider reform is required, where building practitioners involved in design as well as construction and maintenance of buildings are registered. Shergold and Weir’s first recommendation¹⁴ is that the following categories of building practitioners involved in the design, construction and maintenance of buildings should be registered:

- Builder
- Site or Project Manager
- Building Surveyor
- Building Inspector
- Architect
- Engineer
- Designer/Draftsperson

¹² ‘Toxic secret kept from owners of Erskineville units’, Sydney Morning Herald, 20 July, 2019

¹³ Lambert, Michael, *Independent Review of the Building Professionals Act 2005 – Final Report*, October 2015

¹⁴ Shergold Weir Report, Recommendation 1, p 15

- Plumber
- Fire Safety Practitioner

Further, this registration needs to include¹⁵:

- compulsory training on the operation and use of the National Construction Code (NCC) as it applies to each category of registration;
- additional competency and experience requirements;
- where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
- evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.

Greater scrutiny is needed when determining the competence of applicants seeking various categories of registration or accreditation. The reforms in place for accrediting ‘competent fire safety practitioners’ could be used as a basis for a model for registering all building practitioners and making them accountable.

LGNSW Recommendation

- 4) *The concept of registration of practitioners involved in ‘building design’ should be extended to include all building practitioners involved in construction and maintenance, consistent with the recommendations of the Lambert and Shergold and Weir Reports.*
- 5) *The NSW Government should consider using the ‘competent fire safety practitioners’ accreditation model as the basis for a similar scheme to register all building practitioners and ensure they are made accountable.*

4.4 Duty of care

LGNSW endorses the NSW Government’s view that “homeowners rightfully expect their building to be built in accordance with applicable laws and that building practitioners should be expected to know whether their work is compliant and bear the risk if it is not”¹⁶.

For years, our members sought to ensure adequate compensation is available for landowners who suffer measurable financial hardship resulting from negligent certifiers and other building practitioners.

LGNSW therefore supports any moves that would make building practitioners liable for damages arising from a failure to take reasonable steps to prevent foreseeable risks of damage as a result of defects in the building.

Having said that, the duty of care proposal relies on the premise of building or strata owners taking legal action against a building practitioner; this may not be a desired first course of action for most owners, because of the time, cost and uncertainty of the legal route. Having duty of care provisions in place should in no way diminish the need to achieve quality building outcomes. As discussed throughout this submission, this will only be achieved through a comprehensive set of reforms which includes proper accountabilities for all building practitioners; strengthened certifier independence; and effective enforcement, oversight and auditing. To complement this there should be improved financial protection for consumers, in the event of non-conforming or poor-quality building work. As a start, building insurance provision and requirements should be the same for all multi-dwelling residential developments (class 2, 3, 4 and 9c buildings), irrespective of the number of storeys or size of the building.

¹⁵ Shergold Weir Report, p 17

¹⁶ NSW Government Response to Shergold Weir Building Confidence Report, February 2019, p 11

Reforms are also needed to address the issue of ‘phoenix’ companies which are used by some in the industry to avoid liability.

LGNSW Recommendation

- 6) *In addition to new duty of care provisions, the Government should review financial protection for consumers, and consider reform options to address the issue of ‘phoenix’ companies.*

4.5 Building Commissioner

A key plank of the Government’s reform announcements is the appointment of a building commissioner. This is welcomed by LGNSW, however, this must be supported by the establishment of a single regulatory body that is independent, well-resourced, effective and accountable. There must be a commitment from the NSW Government to prioritise sufficient funding and staff resourcing to support the role, but details of funding and administrative support for the building commissioner have not been announced. This is of great concern to the local government sector.

Although the Government’s response to the Shergold Weir Report contains a brief outline of the building commissioner role¹⁷, the Discussion Paper is light on details and it is unclear what statutory provisions are proposed to support this role.

LGNSW Recommendation

- 7) *The NSW Government commits to adequate funding and resourcing, to support the building commissioner and identify what statutory provisions are proposed. The funding provisions should be clearly identified in the NSW Government’s Budget Papers, for transparency.*

5. Other reform announcements by NSW Government

The discussion paper is narrowly focused on three areas of the building process, to do with declaring plans, registering building designers and mandating a duty of care. Details of other important changes promised or proposed by the Government are notably absent. These are discussed below.

5.1 Conflict of interest

The NSW Government released an Options Paper in September 2018 to address concerns about the independence of private certifiers and perceived and real conflicts of interest. At the time, LGNSW welcomed the Government’s attempt to address the potential lack of independence between the certifier and the builder/developer. However there were a number of practical difficulties with the options proposed and it is understood that there was little stakeholder support for any of the options. Nevertheless, this has been a major flaw in the private certification system since its introduction 20 years ago and the problem still remains, yet the Discussion Paper has failed to address this issue.

This issue was highlighted as far back as 2002 in the *Report Upon the Quality of Buildings in 2002* (‘Campbell Inquiry’):

¹⁷ NSW Government Response to Shergold Weir Building Confidence Report, February 2019, p 10

The Committee believes that appropriate oversight of the potential conflicts of interest between certifiers and developers can be achieved by other means, in particular, a specific scrutiny program within the general certifier auditing program.

The Committee recommends that the certifier auditing process include a “*close relationship*” audit regime, where certifiers who have a significant repeat client or a client who is a significant income source for the certifier are identified and focused upon for targeted auditing within the general certifier audit program. The Committee would see the Commission developing appropriate thresholds or indicators of close relationships.¹⁸

LGNSW Recommendation

- 8) *The NSW Government should identify how it intends to address unresolved conflict-of-interest concerns highlighted in the 2018 Options Paper.*
- 9) *The NSW Government should consider the recommendations of the 2002 Campbell Inquiry which include implementation of a “close relationships” auditing system to address concerns raised about developer and certifier relationships.*

5.2 Four-point plan

On 30 December 2018, the NSW Government announced a ‘four-point plan’ to improve the certification industry¹⁹ (refer to section 2 of this submission). It is disappointing that the Discussion Paper does not address any of these commitments and the Government has not provided any further information about how this four-point plan is being implemented, let alone resourced.

The announcement of the four-point plan just days after the evacuation of residents from the Opal Tower is symptomatic of the reactive and piecemeal nature of reform proposals to date. These promised reforms must be incorporated as part of a coherent package of reforms supported by an implementation plan and resources to deliver the much-needed changes. Expertise and advice from industry and local government will be vital in designing the details and implementing reforms. The Government should formalise this by establishing an expert group of industry/local government practitioners to provide this input and advice.

LGNSW Recommendation

- 10) *The NSW Government should identify as soon as possible how it will address the need for a coherent package of building reforms, and specifically, how it intends to implement and resource its four-point plan announced in December 2018.*
- 11) *The Government should establish an expert group of industry/local government practitioners to provide vital input to the design and implementation of reforms.*

5.3 Audit program

LGNSW was pleased to see the Government’s commitment in its four-point plan for annual audits of 25-30% of the industry. LGNSW, councils and industry have been advocating for many years for an audit program. However, the Discussion Paper is again silent on how this will be implemented and what statutory powers will be needed to support such a strategy.

¹⁸ Campbell Inquiry, 2002, p 117

¹⁹ <https://www.anthonysrobertsmp.com.au/media/media-releases/home-owners-first-zero-tolerance-dodgy-certifiers>

The importance of having a proactive audit program to restore public trust and improve regulatory oversight, education and enforcement was highlighted by Shergold and Weir, with a recommendation “that each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes”²⁰.

The consequences of a lack of auditing were highlighted as far back as 2002:

*The Committee feels the failure by Government to set up an audit system at the introduction of private certification is the single biggest contributor to the poor outcomes that have emerged in private certification to date. The Committee believes that perceptions of conflict of interest which have dogged private certification since its implementation would have been significantly reduced if a rigorous audit system had simultaneously accompanied the reforms... The Committee believe that to restore confidence in the Private Certification system, the audit program must be designed to capture concerns about conflict of interest.*²¹

As discussed earlier in this submission, LGNSW considers this to be a critical strategy to address real and perceived conflicts of interest between certifiers and building owners. Audits that are triggered in prescribed circumstances such as where there is a ‘close relationship’ between a certifier and builder/developer would help target poor performance without compromising competent practitioners who are found to be achieving the desirable building outcomes.

LGNSW Recommendation

- 12) *The NSW Government should identify as soon as possible how it intends to implement and resource the 25-30% annual audits of certifiers announced as part of its four-point plan in December 2018.*

6. Local government resourcing

Over the last 10-15 years, councils have gradually lost many of their highly qualified and experienced building surveyors to the private sector and most councils do not have the professional resources to take on more certification work. They do not have the flexibility to appoint or engage additional certification staff, as changes in certification work may require. There is a concern that if the number of qualified private certifiers available in the market diminishes due to insurance and other issues, or public trust in the private certifier market is compromised, the volume of applications for certification work to councils could increase significantly.

Councils are also cautious of reforms that could introduce a potentially expanded role in the private certification process. Any such proposal would raise the following issues for councils:

- May be considered as anti-competitive in the current system, where councils are direct competitors of private certifiers.
- Councils should not become de-facto inspectors of private certification work – this should be the role of the NSW government regulator, not local government.
- Councils should not have to step in to fix problems with individual projects or take on projects that no competent certifier wants to accept.
- Allocating or appointing private certifiers is not councils’ core business and many councils are not equipped with the resources to undertake such a function.
- Additional resourcing needs could add to development costs.

²⁰ Shergold Weir Report, p 22

²¹ Joint Select Committee on the Quality of Buildings, ('Campbell Inquiry'), 2002, p 125

Any proposal to expand the role of councils in the private certification process must be cognizant of the fact that as experienced council building surveyors have progressively moved to the private sector with the expansion of private certification, councils may no longer have in-house expertise to take on an increased level of certification work. This is particularly the case in non-metropolitan areas.

Any move to expand the role of local government in regulating private certifiers would amount to a cost-shift and would need to be fully funded. Local government must be fully consulted on any such proposals.

LGNSW Recommendation

13) *Local government must be fully consulted in advance on any proposals that could lead to an expanded role for councils in regulating private certifiers, and would need to be thoroughly compensated for any additional drain on ratepayer funds.*

7. Conclusion

As the Shergold Weir Report has recommended, there needs to be a holistic approach to addressing the range of issues with the building regulation system in NSW. However, the NSW Government response to date has been reactive and piecemeal, rather than comprehensive, well-resourced and well-planned.

The Discussion Paper represents only a portion of what is needed to fix the problems with the building regulation system. These reforms in isolation are not enough to deliver well-built, safe and compliant buildings that protect the public interest. The public has a right to expect these outcomes from the building sector but they will not be realised in the absence of other necessary actions to solve broader deficiencies with building regulation.

LGNSW and councils have called on successive state governments over the past two decades to take actions to address deficiencies with building and certifier regulation. The Shergold Weir Report recommends a comprehensive package of reforms supported by a three-year implementation plan. LGNSW and councils believe that the widespread issues and concerns may never be effectively addressed unless measures are implemented to:

- Prioritise sufficient funding and resourcing for effective regulation;
- Address problems with unauthorised work by introducing suitable sanctions such as fines of a size that would effectively discourage unauthorised work; making builders more accountable; and introducing requirements so that owners who knowingly do the wrong thing are forced to have to rectify non-conforming work;
- Apply greater scrutiny when determining the competence of building practitioners for registration or accreditation;
- Provide better education and training for all building practitioners;
- Establish a program of proactive investigations and audits of certifiers and other building practitioners; and
- Provide for adequate compensation for landowners who suffer measurable financial hardship resulting from negligent private certifiers.

In conclusion, the reforms proposed in the Discussion Paper will be of limited value if the fundamental issues and concerns with building regulation are not addressed to improve the

capabilities and competence of all building practitioners, audit their activities and introduce measures to make them all accountable for their work.

For further information in relation to this submission, please contact Jane Partridge, Strategy Manager, Planning and Transport, on 02 9242 4093 or jane.partridge@lgnsw.org.au.