

6 April 2023

Mr Paul Scully, MP
Minister for Planning and Public Spaces
2/51 Crown Street
Wollongong NSW 2500

Via email: wollongong@parliament.nsw.gov.au

Re: Association of Australian Certifiers

Dear Minister

Congratulations on your recent re-election as the Member for Wollongong and your elevation to the Minns Ministry.

The Association of Australian Certifiers (AAC) is particularly pleased with your appointment as Minister for Planning and Public Spaces, as you have demonstrated during your time as a Shadow Minister your unwavering support for this sector and those that operate within it.

The AAC's 2023 Policy Platform outlined a series of reforms that need to be undertaken by the next NSW Parliament to support the certification industry and optimal building and development outcomes for the benefit of the broader community.

Our proposed reforms would improve accountability across the industry, support a sustainable certification industry and increase access to housing in NSW.

A number of these initiatives are classified as matters for the Planning Minister.

We must ensure that we have the registered certifiers needed to support the public, broader industry and ultimately the ongoing progress of the State. Reforms must include practical solutions that can respond to housing supply challenges.

Governments across Australia showed great resilience and flexibility during the darkest of times – and the AAC is calling on the NSW Government and next NSW Parliament to show that same level of agility in making the substantial policy reform that is needed.

We would welcome the opportunity to meet with you formally to discuss this and other matters at your earliest convenience.

I can be reached on 0431 082 259 or via email jbrookfield@aacertifiers.com.au.

Yours sincerely



Jill Brookfield
Chief Executive Officer

AAC 2023 Policy Platform – Accountability, sustainability and growth

Supporting the NSW building industry in the interests of the NSW public

The AAC's 2023 Policy Platform outlines a series of reforms that need to be undertaken by the next NSW Parliament to support the certification industry and optimal building and development outcomes for the NSW public.

This Platform is all about driving further accountability improvements across the industry, building a sustainable certification industry and supporting the growth of housing development across NSW.

NSW has made great progress in improving the building and development industry and putting consumers at the centre of decision-making.

Reforms across the industry have focussed on improving accountability of practitioners, which is extremely welcome, but there is more to do.

We also need to ensure that we have the registered certifiers we need to support the public, the broader industry and ultimately the ongoing progress of the State.

The disruptive events of the last three years, from climate disasters to a global pandemic, have changed the way we do business and live our lives.

This has exposed growing problems and also driven innovative solutions to the world of work.

Few felt the restrictions on operations harder than the construction industry, with lockdowns of various projects common place, and other developments hit with hard limitations on the numbers allowed onsite.

This put pressure on all aspects of an industry that was already experiencing workforce challenges – we need a holistic approach to building a sustainable certification industry.

Finally, NSW is quickly facing the reality that it cannot house its people – we need to be looking at practical solutions that can respond to this challenge.

This Platform responds to these issues and priorities improving outcomes and accountability, supporting much-needed housing development and ensuring a sustainable certification industry.

Governments across Australia showed great resilience and flexibility during the darkest of times – and AAC is calling on the NSW Government and next NSW Parliament to show that same level of agility in making substantial policy reform that is needed.

The AAC looks forward to working with policymakers, the broader industry and the community on implementing these important reforms.

About the AAC

The Association of Australian Certifiers (AAC) represents the interests of professionals actively participating in the certification of building and subdivision works in New South Wales.

We represent registered certifiers employed in private practice and in local government and encourage policy outcomes that are in the best interests of the industry and the public.

With more than 1,140 individual members in NSW, the AAC is the profession's peak industry body in the state.

We exist to provide practical support to registered certifiers and represent their views in government and key industry forums.

We also encourage the delivery of quality services in the public interest and promote high standards of ethical and professional behaviour among members.

Summary of recommendations

1. **Develop an official Certifier Workforce Strategy** in consultation with the AAC and other stakeholders to ensure the sustainability of the sector.
2. Strengthen building administration in NSW **through the creation of a Building Minister and dedicated Building Department.**
3. Boost housing supply by allowing **private certifiers to act as principal certifying authorities** for work on subdivisions.
4. **Continuous improvement program aimed at optimising the Planning Portal** with solutions to fix ongoing administrative problems.
5. A comprehensive **auditing program** to manage the performance and behaviour of all registered and licensed persons, with a focus on tradespeople.
6. Commitment to a **continuous improvement schedule for building regulations** to ensure improved outcomes for the public and the removal of any unnecessary red tape.

Contacts

To discuss this Policy Platform, please contact AAC CEO Jill Brookfield on 0431 082 259 or at jbrookfield@aacertifiers.com.au.

Recommendations

Workforce Strategy

The development of an official Certifier Workforce Strategy in consultation with the AAC and other stakeholders.

The certification industry is facing significant workforce challenges driven by a range of factors, including but not limited to insurance pressures, registration processes, an ageing workforce and a lack of education and training pathways.

These challenges need to be addressed in a holistic and comprehensive way, involving both industry and government.

According to a 2022 survey of AAC members:

- Nearly 15 per cent of certifiers will leave the industry in the next 12-18 months through retirement or to find a new career.
- More than 60 per cent of employers said it was already very difficult to employ new certifiers, while 75% of respondents said their organisation didn't have a succession plan in place for departing certifiers – or they didn't know about it if they did.
- 42 per cent of respondents were aged between 50 and 74 and only 16 per cent were aged under 34.
- Less than half (45 per cent) hold unrestricted building surveyor licences – and 52 per cent said they weren't interested in trying to change their status.

These issues are particularly acute in regional NSW, which is already experiencing significant certifier shortages.

The impact of certifier shortages will directly impact the safety of the built environment and the ability for NSW to construct the dwellings needed to house its people.

Therefore, a Certifier Workforce Strategy, which sets out specific targets and timelines, and the progress of which is reported on quarterly is needed.

The Strategy should be developed in consultation with education and training providers, the insurance industry, government, local government and the construction sector.

The Strategy would consider fundamental issues including skills and training pathways; costs and barriers regarding insurance; resourcing levels in the Department of Fair Trading; burdensome registration and renewal processes, and the cost of financial incentives to encourage movement of practitioners to regional areas.

Recommendation - The AAC recommends the Portfolio Minister with responsibility for the building sector convene a working group involving AAC and other relevant stakeholders to develop the NSW Certifier Workforce Strategy which is reviewed quarterly with progress targets and measures identified and reported on.

A dedicated Building portfolio

Strengthening building administration in NSW through the creation of a Building Minister and dedicated Building Department.

As recommended in the *Independent Review of the Building Professionals Act 2005* (Lambert Report), the administration of building regulation should be brought into one portfolio under one Minister.

As per the Lambert Report:

“2.2 Consolidate in an Office of Building Regulation the building regulation and control functions currently undertaken separately within DPE (namely BPU, BASIX and the implementation of complying development policy); the building regulation functions, excluding consumer protection, in Home Building Service; and any policy functions currently within BPB.

2.3 DPE to maintain responsibility for complying development policy but with a close working relationship between DPE and the proposed Office of Building Regulation in regard to the requirements that complying development should adhere to, with the Complying Development Expert Panel to be jointly convened by DPE and the Office of Building Regulation and operate in full consultation with the Building Regulation Advisory Committee.

2.4 Location of the Office of Building Regulation and BPB in one portfolio reporting to a Minister responsible for building regulation, with suitable mechanisms established for a close working relation with local government, Fair Trading and DPE.”

While significant reform has taken place since the release of the Lambert Report, including the welcome establishment of a Building Commissioner and Office of the Building Commissioner, more should be done to consolidate the relevant building functions currently spread across different departments and agencies, including those within the Department of Customer Service and the Department of Planning and Environment.

We acknowledge the government’s intention to bring some legislative provisions together under a single Building Act – but more can and should be done.

AAC strongly believes that bringing these functions into one portfolio would promote greater coordination and reduce complexity in the industry.

Supporting this new approach, the AAC is calling on the creation of **one central** portfolio that brings together all building regulations and control, rather than the current system which sees Ministerial responsibility shared.

Under this model, it is envisaged that the Office of Building Commissioner would sit under this new arrangement, but must continue to enjoy independence and appropriate resourcing.

Not only does this create enormous confusion and duplication among all the industry players, it also creates the perception, and indeed the opportunity, for different directions and interpretations, depending on the respective Ministerial priorities and preferences.

Recommendation - The AAC recommends the next NSW Government bring all building functions under one Minister and department.

Boosting housing supply

Allowing private certifiers to act as principal certifying authorities for work on subdivisions.

Australia, and NSW in particular, is in the middle of a housing crisis.

According to recent figures from the Property Council NSW, Greater Sydney needs to deliver 725,000 homes from 2016 to 2036 to keep pace with growth, but we already face a NSW-wide shortage of 100,000 dwellings.

The Property Council also asserts that on current trend, several districts across Greater Sydney will not achieve their housing target for the 0–5-year period (and are also forecast to not meet their 6-10 year target). Without intervention, the housing supply shortfall in Greater Sydney will increase by 80,000, in addition to the existing 100,000 undersupply in the system. Ultimately this means Greater Sydney will not supply enough housing to meet demand to 2036.

There is no simple reason for the shortfall, a combination of the floods, people relocating to regional areas from city life during the pandemic, and rising interest rates along with cost-of-living pressures have culminated in an unsustainable housing market where demand is outstripping supply.

Additionally, the Department of Planning and Environment has also highlighted that one issue exacerbating this problem is a shortage of labour, stating:

“...we need a collective effort to monitor and maintain the pipeline of potential supply in the face of significant challenges.

“For example, shortages of both materials and labour are currently affecting construction activity in NSW and are expected to remain a challenge in 2022–23.”

Against this backdrop, the *Environmental Planning and Assessment Act 1979* currently prevents a private registered certifier from being the Principal Certifier (PC) on subdivision works in *most* cases.

In simple terms, this means that an experienced, qualified and regulated private registered certifiers can only approve the **design plans** for subdivision works, but they cannot issue a Subdivision Certificate. The local council is the only authority that can issue a Subdivision Certificate.

What has been found to be an unintended consequence of that restriction is that all subdivision requests (including those for private assets such as residential housing), can only be approved by under-resourced councils, rather than a private Registered Certifier who is both qualified and capable to sign off on them.

This is unnecessary red tape that is clogging up the approvals of important subdivisions that would help unlock critically needed land for housing that the people of NSW desperately need.

It is also an anomaly, because currently private registered certifiers can issue sub-division certificates under the Low-Rise Housing Diversity Code, which is working well.

On a day-to-day basis, we are seeing:

- Councils being inundated with applications that they cannot respond quickly to, putting more strain on people looking for housing.
- Some councils are rejecting applications for Subdivision Certificates as they don't have suitable certifiers internally. AAC is aware of some cases where councils have intimated to developers to hire a private registered certifier to issue a Subdivision Certificate, when the registered certifier is prohibited from doing so under the Act. This creates a frustrating cycle of no action, and no outcome for the applicant, and then the community.
- Significant delays on the approvals process for Subdivision Certificates, as simple subdivision applications are grouped in with larger and more complex applications, leading to unnecessary delays.

Allowing private registered certifiers to be the Principal Certifier and sign off on private subdivisions would resolve this issue.

It would free up councils and at the same time allow private registered certifiers to do the work they are qualified and capable to do.

Given private registered certifiers are already **fully regulated** by NSW Fair Trading and are required to carry significant amounts of professional indemnity insurance, the same checks and balances would remain in place to ensure all sign offs adhere to the relevant and specific council requirements.

Importantly, councils will maintain the following controls:

- The ability to refuse any DA approval for subdivision as they see fit.
- The capacity to impose any condition or requirement they deem fit, prior to the issue of the Subdivision Certificate.
- The subdivision layout is fixed at the time of the DA approval, essentially ensuring all council conditions are satisfactorily met.

Recommendation - The AAC recommends the next NSW Minister for Planning and Environment amend the Environmental Planning and Assessment Act 1979 to allow private registered certifiers to issue a Subdivision Certificate as the Principal Certifier on all developments where no public assets are proposed.

Fixing the Planning Portal

Continuous improvement program aimed at optimising the Planning Portal with solutions to fix ongoing administrative problems.

It is not acceptable that the major interface between all participants in the building and construction industry, the Planning Portal, does not provide an acceptable experience for practitioners.

While we welcome the ongoing improvements being made to the Portal, there remains outstanding issues which must be addressed.

Central to this is the significant confusion between what is required by relevant legislative and regulatory instruments, and the operation of the Portal.

There seems to be a lack of understanding within the Planning Portal team of the legal requirements of practitioners regulated by other departments and regulatory regimes, for example registered certifiers.

This can lead to situations where the Portal effectively forces practitioners to disregard the regime they are regulated by in order to use the Portal.

Therefore, there needs to be a greater understanding and coordination between the Portal and other departments and rectification of these discrepancies. Again, this highlights the need for a central building department, as set out in recommendation two of this platform.

Finally, registered certifier businesses have invested significantly into their own systems and are now in a position where they are required to use a lesser system. There therefore needs to be improved interaction between registered certifiers own software systems and the Planning Portal.

Recommendation - The next NSW Government commits to a continuous improvement program aimed at optimising the Planning Portal with solutions to fix ongoing administrative problems.

Accountable practitioners

A comprehensive auditing program to manage the performance and behaviour of all registered and licensed persons, with a focus on tradespeople.

The Government has put in place a range of regulatory measures to ensure better building and development outcomes for the public, including focussing on certifiers, designers, engineers and others.

This missing piece in the puzzle is a focus on the tradespeople actually carrying out the work.

Under the Home Building Act, it is the builder's responsibility to ensure tradespeople have valid licences. They are in breach of the Act if they sub-contract residential building work to an unlicensed entity.

The AAC is concerned that too many tradespeople are operating without valid licences.

Addressing this hugely significant issue is critical to ensuring owners and people more generally, have trust in the built environment and trust in the construction chain.

The AAC is of the strong view that it is the responsibility of all practitioners, including builders, designers, engineers, tradespeople, and certifiers, to deliver quality buildings in the interests of customers and the broader public.

But it is also the responsibility of NSW Fair Trading as the regulator, to ensure that a robust compliance system is in place and enforced to provide oversight and enforce licence conditions.

We therefore urge the Government to increase scrutiny on the activities of unlicensed tradespeople operating on NSW construction sites through a more rigorous compliance or audit program and to publicly report outcomes. Without transparency owners cannot make informed decisions about tradespeople.

This would require more funding to the Office of the Building Commissioner with dedicated staff to conduct audits which would include licence inspection and work.

Recommendation - The next NSW Government establishes an auditing program to be run by the Office of the Building Commissioner that examines all registered and licenced persons, with an emphasis on tradespeople.

Regulatory stocktakes to ensure building regulations are fit for purpose

A continuous improvement schedule for building regulations to ensure improved outcomes for the public and the removal of any unnecessary red tape.

While the government reviews existing regulations on an ad hoc basis, there is a need to be constantly reviewing building regulations to ensure they are fit for purpose.

In a constantly evolving construction landscape, which is characterised by product innovation, new ways of working and technological advances, it is important that regulation keeps pace.

The AAC is of the view that there are a range of regulatory changes needed to address outdated and sometimes contradictory regulatory provisions. These provisions add unnecessary red tape to projects and provide no community benefit.

This makes the work of registered certifiers very difficult, can lead to sub-standard outcomes and creates confusion among the public.

Therefore, a regular, regulatory stocktake of building-related regulations should be undertaken, which is informed by consultation with industry and the public.

Recommendation – The next NSW Government commit to an annual regulatory stocktake of building regulations informed by consultation with industry and the public. A joint government and industry standing committee should also be established to inform stocktake priorities and provide advice to government.

