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*Practice Group(s):*

*Real Estate -  
Construction*

## A New Planning System for NSW: How Proposed Changes to Planning Laws Will Impact the Building and Construction Industry

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### The White Paper: A New Planning System for NSW

The white paper (Paper) was released on Tuesday 16 April 2013 and included details on how the NSW new planning system would be implemented, while also responding to the questions raised in submissions to the Green Paper released in July 2012. The changes to the planning laws are extensive and have both direct and indirect impacts on the building and construction industry. The changes will be implemented through the introduction of a new Planning Act (the Act), which is currently in the exposure draft stage (Planning Bill 2013). A range of potential changes that directly impact the building and construction industry have been outlined below.

The Paper and the proposed legislation are open for public comment. The closing date for submissions is 28 June 2013. This will be the last opportunity to comment on the proposed legislation.

### Changes to Building Regulation and Certification

The key proposed changes outlined in the Paper for building regulation and certification are:

- additional accreditation of occupations involved in the design and construction of a building
- compulsory certification of particular aspects of building and construction
- increased quantity of documentation through all stages of the building cycle
- additional support for certifiers on complex building matters
- stronger disciplinary guidelines on certifiers.

### Better Quality Building Design

To ensure that consideration has been given to building code requirements, planning approvals and other standards during the design phase, there are proposed plans to require all building design plans to be prepared and certified only by qualified persons.

The qualified persons include accredited building designers and registered architects who are responsible for preparing the plans and will have to sign off their designs, as well as accredited specialist engineers, fire protection system designers and energy efficiency consultants who must issue a compliance certificate to confirm that their designs comply with the appropriate standards, including the Building Code of Australia (BCA). The accreditation procedure will require the person to demonstrate they have the knowledge, skills and competency needed to conduct inspections and issue a compliance certificate.

## **How Proposed Changes to Planning Laws Will Impact the Building and Construction Industry.**

### **Better Approval of Development**

In order to increase the speed of approving development consents, standard construction matters including, on site security fencing, sedimentation controls and hours of construction will now be addressed in construction certification rather than in the development consent.

In order to remove confusion, it is proposed to remove the separate principal certifying authority; rather an accredited building certifier will have a range of duties including issuing the construction approval, inspecting the work, issuing the occupation or completion certificate on completion as well as preparing the compliance report and demonstrating how the development will comply with the BCA.

It is proposed that building certifiers will have the option (for small, low scale developments) or compulsorily (for complex building types) to use the expertise of additional relevant accredited professionals to approve particular aspects of the development.

### **Better Construction Compliance**

The Paper found that documentation dissemination and availability in the construction industry should be increased. Therefore, the new Act will require all relevant documents be provided to the appropriate parties (applicant, council, consent authority, landowner) once the construction certificate is issued. The development consent and the certified plans and specifications will also be required to be on site and be available at all times.

In order to increase the level of compliance with the BCA, building certifiers will now have to review all plans and issue a compliance certificate for important aspects of the construction (structural mechanical, electrical and fire systems) before any construction work commences. Building certifiers will also have added responsibilities of reporting unauthorised building work to councils and providing assistance to councils during an investigation of those works.

A major issue identified in construction compliance is the substandard performance of the critical stage inspections. To improve critical stage inspections, it is proposed to require building certifiers to thoroughly inspect and document all elements of the building work commonly the subject of building defects (safety, structure and sound insulation). It is also proposed that a new mandated procedure must be followed before an occupation or completion certificate can be issued, if an inspection is missed or the building certifier does not undertake any inspections.

In order to create greater efficiencies in the approval process, the Act will change the certificates required for certain buildings and structures. An occupation certificate will now only be required if the building or a portion of a building can be physically occupied. If a building or structure cannot be occupied, but it has been subject to either a construction or development certificate (including swimming pools), then only a compliance certificate (completion) will be required.

### **Improving Life Cycle Building Performance and Compliance**

One of the key proposed changes is the improvement of the life cycle building performance and compliance through a mandatory building manual. The building manual (Manual) will contain up to date and readily accessible key building information and will be required for Class 1b to class 9 buildings (ie buildings other than single dwellings and associated buildings such as sheds, garages and carports). Two copies of the Manual must be created, with one Manual to be available in the building and another copy to be held at the council. As the building manual will reflect the current approved status of the building at all times, it will need to be continuously updated.

## How Proposed Changes to Planning Laws Will Impact the Building and Construction Industry.

In order to create a comprehensive and cohesive document, the Manual will replace the fire safety schedule. All of the information presently in the fire safety schedule, which was previously completed before works started, will be incorporated into the Manual, but the accuracy of the information will be greatly improved, as the Manual will be completed at the end of the project.

### Key Legislation Requirements for Building Regulation and Certification

The key legislative changes proposed by the Paper include the:

- introduction of objectives for building control into the Act
- transfer of certain building issues from the planning approval stage to the construction certification stage
- requirement for all building work to be certified by one building certifier
- introduction of a compliance certificate (completion) instead of the occupation certificate for buildings and structures that are not able to be occupied
- creation and maintenance of a Manual for buildings and structures
- certification of building plans, critical building services and the installation of critical building systems by an accredited certifier
- introduction of mandatory review by qualified peers for complex buildings
- introduction of a mandatory critical stage building inspections aimed at the elements of the building work that are commonly the subject of building defects
- introduction of a mandatory procedure to issue an occupation or compliance certificate despite unauthorised work being carried out.

### How This Will Impact You

The Paper is in the last stage for community involvement before the legislation is debated in parliament. The proposed changes may differ from the ultimate legislation enacted. For now, participants in the building and construction industry should watch this space and be aware that the proposed changes are currently being formalised. Most of the proposed changes will need a major lead time in order to allow the industry to adjust. Therefore, the transitional provisions will be vitally important. As a consequence of the Paper not outlining any transitional provisions, there is uncertainty as to how the Act will operate during the transitional period.

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## How Proposed Changes to Planning Laws Will Impact the Building and Construction Industry.

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