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21 September 2015

Mr Michael Lambert  
Independent Reviewer  
GPO Box 39  
Sydney NSW 2001

Dear Mr Lambert,


**Independent Review of the Building Professionals Act 2005 – Submission on  
Draft Report August 2015**

The Institute of Public Works Engineering Australasia (NSW Division) supports the need for an independent review of the building professionals Act 2005, and we welcome the opportunity to provide feedback on the *draft Report* released in August 2015.

This submission takes into account input by a wide range of sources including the IPWEA (NSW) Board, IPWEA (NSW) staff and councils members.

Please do not hesitate to contact John Roydhouse on tel: 8267 3007 or email [John.Roydhouse@ipwea.org](mailto:John.Roydhouse@ipwea.org) in relation to this submission.

Yours faithfully,



Mr Warren Sharpe OAM  
**President**  
**IPWEA NSW**



Mr John Roydhouse  
**Chief Executive Officer**  
**IPWEA NSW**

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# **Independent Review of the Building Professionals Act 2005**

**Submission by**

**INSTITUTE PUBLIC WORKS ENGINEERING  
AUSTRALASIA (NSW Division)**

**21 September 2015**

**Warren Sharpe OAM  
President  
IPWEA NSW**

**John Roydhouse  
Chief Executive Officer  
IPWEA NSW**

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## Executive Summary

IPWEA (NSW) welcomes the opportunity to make this submission to the independent reviewer, Mr Michael Lambert, in response to the *Independent Review of the Building Professionals Act draft Report*, released in August 2015. The release of the *draft Report* follows a month long exhibition of the *Building Professionals Act Review Discussion Paper* released in May 2015. We note that there is a high level of public interest in this matter as 78 written submissions were received during the public consultation period, and almost 300 people attended public and council consultation sessions at nine locations across NSW. In addition, almost 800 people responded to two online surveys conducted by the Building Professionals Board (BPB).

IPWEA (NSW) is also interested in building regulation and certification as they are core functions of local government, and the primary responsibility of many IPWEA (NSW) members. IPWEA (NSW) represents nearly all of the 152 local council across NSW and has well over 700 individual members in NSW. The *Building Professionals Act 2005 Review* also comes at a critical time for the local government sector with the Independent Pricing & Regulatory Tribunal (IPART) currently assessing how council proposals meet the NSW Government's '*Fit for the Future*' criteria developed by the Office of Local Government (OLG).

The *Fit for the Future* criteria focused heavily upon the financial sustainability of local councils. However, IPWEA (NSW) believes that improving financial sustainability alone will not be sufficient to address systemic weaknesses in the local government sector. For example, the local government sector needs strategic assistance to ensure it continues to have the right people with the right skills, especially engineers, to meet the needs of communities into the future. IPWEA (NSW) is well positioned to support councils through its knowledge, expertise and leadership and is willing to work with state and federal government to address the worsening skills shortage.

IPWEA's submission on the *Building Professionals Act 2005 Review* focuses on four key issues raised by member councils, and identified within the independent reviewer's *draft Report (2015)*. In summary, IPWEA (NSW) recommends:

1. *Independent certification to remove an inherent conflict of interest.*
2. *Greater clarity about the roles and responsibilities of councils and private certifiers.*
3. *Retain local government oversight of subdivision certification, particularly where new community infrastructure will be handed over to councils.*
4. *Address the shortage of certifiers by enhancing professional development opportunities for certifiers.*

## **About IPWEA (NSW)**

The Institute of Public Works Engineering Australasia (IPWEA) is a not-for-profit, membership based, professional organisation representing engineers and others involved in the provision of public works and services predominantly in the local government sector. The Institute comprises a National office and Divisions across all states and New Zealand. This submission has been prepared by the NSW Division.

### **IPWEA (NSW) Purpose:**

The company is established to be a charity with the purpose of advancing public works excellence in Australia, particularly in NSW by:

- Conducting and publishing research into improvements to the processes used in public works and services to enhance NSW Communities
- Working with government at all levels to ensure that the interests of the community are represented in regards to the public decision-making process relating to public works and services, and
- Providing a forum for all people engaged in public works to discuss best practice and enhancing the future for NSW Communities.

### **IPWEA (NSW) Mission:**

IPWEA (NSW Division) has stated a mission to enhance the quality of life of NSW communities through excellence in public works and services. This is achieved through our professional association that effectively informs, connects, represents and leads public works professionals for NSW.

### **IPWEA (NSW) Vision:**

IPWEA (NSW) is recognised as the leading professional development association that effectively informs, connects, represents and leads public works professionals for NSW.

IPWEA (NSW) is therefore ideally placed to take a lead role in advocating for reform of the building regulation and certification system as this is an area that affects both our membership base and, importantly, the health and wellbeing of the general community.

## Terms of Reference

The Review's terms of reference give Mr Michael Lambert (Reviewer) the ability to:

- Undertake a review of the Building Professionals Act 2005 (Act) under section 97 of that Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives, and
- Examine the Independent Pricing and Regulatory Tribunal reviews into Licence Rationale and Design and Local Government Compliance and Enforcement (IPART reviews) and identify any implications or outcomes from those reviews which relate to building regulation reform, and
- Review any other reports produced since the Act was assented to which relates to building regulation reform of the certification of building work.

There is an explicit requirement in the terms of reference to consider the following reports:

- 2002 report by the Joint Select Committee on the Quality of Buildings
- Building Certification and Regulation-Serving a New Planning System for NSW, George Maltabarow: May 2013
- IPART draft report, Local government compliance and enforcement: October 2013
- Draft Home Building Regulation 2015 and associated Regulatory Impact Statement.

The following reviews and reports are also relevant to the terms of reference:

- NSW Home Warranty Insurance Inquiry (the "Grellman" report) final report 30 September 2003
- Productivity Commission Research Report, Reform of Building Regulation, November 2004
- Fire Protection Systems Working Party Report: October 2010
- Building Professional Board, Better Buildings Model 2012
- NSW Building Regulation Working Party Report: January 2012
- Collins Report: Final Report of the Independent Inquiry into Construction Industry Insolvency: November 2012
- Planning White Paper: April 2013
- Strata and community Title Law Reform Position Paper: November 2013
- Review of the complaints, Investigation and Disciplinary Functions of the BPB: May 2014
- IPART Final Report, Reforming Licensing in NSW, Review of Rationale and Design 2015

## Background

The current *Building Professionals Act 2005* Review comes after a number of other reviews and reports over the past 15 years that have largely failed to deliver substantive reforms of the building regulation and certification system<sup>1</sup>. The current Review also comes after many years of lobbying for change by the local government sector, the building industry and the general public, as well as the release of research and media reports on the incidences of building defects, especially in the residential building sector. Sadly, deaths and injuries have also occurred due to deficiencies in the system including the 2012 Bankstown apartment block fire and the Lane Cove balcony collapse. The former is currently the subject of a coronial inquest. In addition to these human tragedies, there is also a significant economic cost on the community<sup>2</sup>.

On 12 September 2014, then Assistant Minister for Planning, the Hon. Rob Stokes, announced the appointment of Mr Michael Lambert to review the *Building Professionals Act 2005* and continue to reform the NSW planning system. In May 2015, Mr Lambert released a *Discussion Paper* to invite input on the review of the *Building Professionals Act 2005*. Mr Lambert's *Discussion Paper* (2015) provided a comprehensive overview of the NSW building and construction sector and outlined the government's rationale for reform. Following extensive stakeholder feedback and public consultation, a *draft Report* was released by Mr Lambert in August 2015 with feedback invited until 21 September 2015. The *draft Report* outlines a number of recommendations and the targeted outcomes that are sought to be achieved. A final report and submission to the relevant Ministers is to be completed by 31 October 2015.

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<sup>1</sup> Lambert, M (2015) *Independent Review of the Building Professionals Act: Discussion Paper May 2015*. Page 5.

<sup>2</sup> Lambert, M (2015) *Independent Review of the Building Professionals Act: Draft Report August 2015*. Pages 13 & 27.



## Response to the Draft Report (August 2015)

The following are IPWEA (NSW) comments relating to the *draft Report*:

### 1. Independent certification to remove an inherent conflict of interest

The financial relationship between developers and private certifiers represents an inherent conflict of interest. It is a commercial reality that private certifiers would want to maintain good relations with builders and owners / developers in order to ensure future work. The concern therefore is that private certifiers are reluctant to report incidences of non-compliance (including defects) to the consent authority. To remove this inherent conflict of interest, the engagement of certifiers should be administered by a third party on behalf of developers. The Building Professionals Board (BPB) would logically fulfil this function if properly resourced and granted relevant powers.

Since the Environmental Planning & Assessment (EP&A) Act was amended in 1998 to allow building certification by private certifiers, significant community concerns have been raised about the level of defects in newly built properties. The current review of the *Building Professionals Act 2005* comes after research and media reports have highlighted the significant incidence of building defects, especially in the residential building sector<sup>3</sup>. Local councils (inc. Warringah) have also lobbied state government over the issue for many years particularly following a number of major incidents such as the collapse of a building site in Collaroy in August 2014<sup>4</sup>.

A major research study of strata properties in NSW conducted by the City Futures Research Centre identified serious issues relating to the prevalence of building defects, especially within new buildings. As part of the research study, 1,020 strata owners were surveyed between March and November 2011 representing approximately 990 strata schemes across NSW. Of those surveyed, 72% indicated one or more defects that has been present in their scheme at some stage. The most common defects identified were internal water leaks, cracking to internal or external structures, and water penetration from the exterior of the building<sup>5</sup>.

The BP Review *Discussion Paper (May 2015)*<sup>6</sup> and *draft Report (August 2015)*<sup>7</sup> have both identified that there is inadequate data available on the level of building defects and complaints in NSW. Although NSW Fair Trading collects information on defects from complaints about residential building work, it does not have a more general source of data on defects. The City Futures research presents a good estimate albeit based upon the findings of a self-reporting survey. The IPWEA (NSW) therefore supports calls for improvements to the collection and reporting of data regarding defects and complaints to better inform evidence-based policy and to monitor the effectiveness of the system.

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<sup>3</sup> Easthope, Randolph & Judd (2012) *Governing the compact city: The role and effectiveness of strata management, Final report*. City Future Research Centre, University of New South Wales.

<sup>4</sup> Manly Daily (2014) *"Private certifiers system a conflict of interest and Building Professionals Board needs new powers: Warringah Council"*.

<sup>5</sup> Ibid. Page 65.

<sup>6</sup> Ibid. Page 4.

<sup>7</sup> Ibid. Page 13.

## **2. Greater clarity about the roles and responsibilities of councils and private certifiers**

IPWEA (NSW) is pleased that within the *draft Report* Mr Lambert acknowledges the need for greater clarity about the roles, responsibilities and functions of councils and private certifiers<sup>8</sup>. The *draft Report* clearly articulates the concerns raised by member councils especially the need for greater clarity about when councils should exercise their compliance role, and cost recovery for undertaking compliance actions where a private certifier is involved. The resulting confusion also leads to frustration and resentment within the community towards councils and certifiers in general.

The *draft Report* recommends a partnership approach to clearly set out the roles and responsibilities of councils and private certifiers. Establishing a partnership arrangement may resolve some of the communication issues between organisations and private certifiers. IPWEA (NSW) supports, in principle, a partnership model noting the Food regulation model identified by both IPART (2013) and the independent reviewer in the *draft BP Review Report* (2015).

We note that a Local Government Reference group currently exists and was established following the release of the Maltabarow Report in 2013<sup>9</sup>. The IPWEA (NSW) is not a member of the Local Government Reference Group and so cannot comment on the ability of the Reference Group to deliver an effective platform for interaction between private certifiers and local government.

## **3. Risks associated with proposed changes to certification of subdivisions**

The *draft Report* recommends that the current restrictions on the participation of accredited private certifiers in subdivision work be placed on a similar basis to the approach applying to private builder certifiers<sup>10</sup>. The IPWEA (NSW) and its members are concerned that this could negatively impact upon the delivery of public infrastructure including non-compliance by developers when constructing major infrastructure works including roads, stormwater, sewer, water supply systems, and major flood drainage systems. Defects in these assets are subsequently rectified by the community at the expense of delivering other community services.

The draft Report recommend the following changes:

- *Remove the requirement for councils' local environment plan to approve of private subdivision certifiers being able to be appointed as PCAs or issue subdivision certificates and simply allow accredited private certifiers to act as PCAs for subdivisions and issue subdivision certificates*
- *Recognise in the partnership agreement with councils that private subdivision certifiers are fully entitled to issue construction and compliance certificates and councils are not to represent to the contrary*

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<sup>8</sup> Ibid. p. 177.

<sup>9</sup> Maltabarow, G (2013) *Building Certification and Regulation: Serving a New Planning System for NSW*.

<sup>10</sup> Ibid. P. 211.

- *Councils be directed that their only role in respect to a Section 88 B Instrument, strata or subdivision certification is to confirm the wording of the condition or restriction.*

IPWEA (NSW) is concerned that given the inherent conflict of interest for private certifiers, this may result in sub-standard public works being delivered to councils and the community. Sub-standard work can include defective work, non-complying works, incomplete works that would result in disputes between the private certifier, developer, council and the contractor. Commercial realities dictate that developers would want to deliver community infrastructure as cheaply and quickly as possible. Private certifiers would therefore be under immense pressure to either accept poorly constructed infrastructure or issue a construction certificate that does not fully comply with standards. We are therefore seriously concerned about the short and long term ramifications for public safety and costs associated with the replacement and rectification of poorly constructed infrastructure.

The draft Report also recommends that:

- *Council subdivision certifiers be required to be accredited with BPB on the same basis as council building certifiers are accredited*
- *NSW work with the ABCB on developing a standard for engineering design requirements for subdivisions.*

IPWEA (NSW) supports the *draft Report* recommendation that subdivision certifiers be required to be accredited with Building Professionals Board (BPB) on the same basis as council building certifiers are accredited. It is important however that technical staff within councils who are not degree qualified are given an achievable pathway to gain accreditation. IPWEA (NSW) is willing to take a leadership role on this issue in partnership with other relevant organisations including the Building Professionals Board (BPB).

#### **4. Address the shortage of certifiers by enhancing the professionalization of certifiers through accreditation, education, training and support for certifiers**

IPWEA (NSW) agrees with Mr Lambert's the finding that there is a need to enhance the professionalisation of certifiers through accreditation, education, training and support for certifiers. More needs to be done by both the NSW State Government and industry to maintain the necessary supply of certifiers over the next 10 years. It is also our understanding that a disproportionate number of the 1,600 certifiers in NSW are aged over 50 and will reach retirement age within the next 15 years.

More broadly, there is an engineering skills shortage across Australia requiring urgent state and federal government attention. Regional areas in particular are experiencing difficulties in attracting appropriately qualified staff to ensure that community infrastructure needs are met. Local government is now heavily reliant on

international graduates, especially in regional areas of NSW, to fill vacancies. We refer to the IPWEA's submission to the 2012 Senate Committee *Inquiry into The Shortage of Engineering and Related Employment Skills* in which we highlighted that "Engineers are globally in short supply, with Australian higher education providers producing only around half of the graduates needed to fill domestic demand".<sup>11</sup>

Research conducted by IPWEA through the Beaton Survey<sup>12</sup> (2011) also shows that that we have an ageing workforce with over half (57.6%) of respondents aged between 40 and 60 years. Some of the key barriers preventing the industry from attracting young people to become certifiers include:

- the cost and difficulties in obtaining professional indemnity insurance,
- relatively low wages paid by councils,
- lack of support for sole traders, and
- inadequate career pathways.

IPWEA (NSW) therefore calls on the state government to facilitate the development of industry programs aimed at encouraging employment of graduate engineers, cadets and trainees in NSW councils. IPWEA (NSW) has previously stated that it is prepared to work with the LGEA, Universities, OLG and LGNSW to develop a student placement program that will increase the level of 'practical' experience provided to under-graduates, to ensure job readiness and provide qualified skilled resources to all Councils, particularly those in regional NSW.

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<sup>11</sup> Roydhouse (2012) *Submission to the Senate Inquiry into the Shortage of Engineering and Related Employment Skills*, IPWEA (NSW). Available from: <file:///C:/Users/dbriant/Downloads/Sub\_04%20(1).pdf>. Page 2.

<sup>12</sup> Beaton Research & Consulting (2011) *Annual Business and Professions Study*.

## Conclusion

In summary, IPWEA (NSW) recommends:

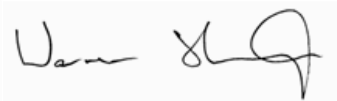
1. *Independent certification to remove an inherent conflict of interest.*
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3. *Retain local government oversight of subdivision certification, particularly where new community infrastructure will be handed over to councils.*
4. *Address the shortage of certifiers by enhancing professional development opportunities for certifiers.*

We appreciate the opportunity to make this submission to Mr Lambert on the *Review of the Building Professionals Act (2005) draft Report*, and would welcome the opportunity to provide further details on the issues raised within this submission.

## Contact

Please do not hesitate to contact John Roydhouse on tel: 8267 3007 or email [John.Roydhouse@ipwea.org](mailto:John.Roydhouse@ipwea.org) in relation to this submission.

Yours faithfully,



Mr Warren Sharpe OAM  
**President**  
**IPWEA NSW**



Mr John Roydhouse  
**Chief Executive Officer**  
**IPWEA NSW**

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