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# EXECUTIVE SUMMARY

## PRIORITIES POLICY 2019 FOR THE NEW SOUTH WALES BUILDING AND CONSTRUCTION INDUSTRY

During the months of November, December 2018 and January 2019, the Master Builders Association of NSW (MBA) undertook active discussion with the building industry in NSW to develop a "Policy Priorities Document" for the upcoming State Election.

These Priorities have been developed through direct consultation with building contractors, specialist contractors and key industry stakeholders from all sectors of industry, including residential, commercial and civil contracting.

An industry survey also formed part of the industry consultation process.

There is general acceptance that opportunities for those who undertake work in the building and construction industry in NSW is strong, however, there are issues affecting the industry's o

## • ESTABLISHMENT OF A BUILDING COMMISSION

**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. An example was provided whereby certifiers and building practitioners were regulated by different government agencies. 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.

A clear example of the duplication of industry regulation and administration is licensing of the residential building sector by NSW Fair Trading and separately, the accreditation of building certifiers by the Building Professional Board (BPB) – the latter itself an agency of the Department of Planning and Infrastructure (DoPI).

Further to this, 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.

An example of the duplication and inefficiencies due to the responsibilities of the three agencies above, can be seen by amendments to the Home Building Act, which established a Public Register of Home Warranty Insurance certificates, which is in addition to the current public registers for licensing administered by Fair Trading and the register for accredited certifiers administered by the BPB. Clearly a simple example where a single authority would be better positioned to establish a consolidated register, providing greater access for consumers and industry practitioners.

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.

Further, we believe that introduction of a consolidated “Building Act” would make future reforms (e.g. introduction of a single state building regulator) more effective.





- **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.

## • SECURITY OF PAYMENT

The NSW Building and Construction Industry Security of Payment Act 1999 (SoPA) was launched by the State Government as a means to achieve, "... swift and fair settlement of any payment dispute as a vital part of the State Government's reform agenda for the NSW construction industry".

The NSW SoPA however, specifically excludes homeowners or owner-occupiers from the SoPA Act.

Maintaining cash-flow is an important issue for housing builders and small business, particularly when the focus by the Home Building Compensation Fund (HBCF) is on a builder's financial capacity. Default on final payment(s) by

home owners is a significant issue for the industry. Relying on tribunal or court processes is time consuming and very costly for all parties.

### MASTER BUILDERS POLICY

Master Builders advocates that the Building and Construction Industry Security of Payment Act be amended to include the contract relationship between homeowner or owner occupier and builder.

## • 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

## • 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 7 days of visiting the workplace.

### MASTER BUILDERS POLICY

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## • EDUCATION AND TRAINING

Master Builders' survey of industry clearly reveals 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 trad 3ce ent1 (2 (5.1o 8 (O (sldocument)1)151 (try ha)20 (v)as)961 0.51 (T)20 (he mlry clearly r)y ha)20 (udie (o diche curr)f of thhe)-20 (



## • WORKERS COMPENSATION – NON SPECIFIC WORK INCIDENT INJURIES

The cost of claims borne by employers of employees for nonspecific work incidents, for example, loss of hearing and bad backs is high. In many instances, these

nonspecific 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.

## • 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 – 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.

## • 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.

