



**Matthew Kean MP**  
Minister for Innovation and Better Regulation

Mr Brian Seidler  
Executive Director  
Master Builders Association NSW  
By email: [executive@mbansw.asn.au](mailto:executive@mbansw.asn.au)

Dear Mr Seidler

Thank you for providing me with a copy of the Master Builders Association of NSW (**MBA**) '*Policy Priorities 2019*' document. The Premier has asked me to respond to you directly with regard to the NSW Government's plan for improving building regulation across the State and how this relates to each of your policy priorities.

### **The NSW Government Plan**

The NSW Liberal National Government is committed to achieving strong building and certification systems in NSW. On 10 February 2019, the NSW Government announced its response to the Shergold Weir Report and a package of reforms to improve the building and construction industry. The NSW Government supports the vast majority of the Shergold Weir Report's recommendations and has committed to implementing the following reforms across the construction industry:

- requiring building designers, including engineers, to declare that their plans comply with the NCC and requiring builders to declare that buildings have been built in line with those plans;
- requiring builders and building designers to be registered to ensure that they have the skills needed to sign off on plans and that disciplinary action can be taken against them for misconduct;
- appointing a Building Commissioner who will be responsible for the registration, auditing and disciplining of the building practitioners; and
- ensuring that building practitioners owe a duty of care to owners' corporations and subsequent titleholders of residential developments, as well as unsophisticated construction clients who are small businesses. This means that homeowners will have a right to pursue compensation when they suffer damage because of a building practitioner's negligence.

### **The MBA Policy Priorities 2019**

The NSW Government's plan is closely aligned with the MBA's '*Policy Priorities 2019*' as set out below.

#### *Establishment of a Building Commission and Consolidation of Building Regulation*

A key part of the NSW Liberal National Government's response to the Shergold Weir Report is to appoint a Building Commissioner to act as the consolidated regulator for the construction industry in NSW. The Building Commissioner will be responsible for the licensing and auditing of registered practitioners, and for other key functions necessary to lead and oversee building regulation and administration.

The Commissioner's role will include:

- licensing and authorisation of building practitioners;
- residential building investigations;
- building plan regulation and audit;

- residential building inspections and dispute resolution;
- plumbing regulation;
- electrical and gas safety regulation;
- strata building bond scheme;
- building product safety;
- building and construction security of payment scheme; and
- engagement and strategic collaboration with local government.

Strong investigative powers conferred on the Building Commissioner will allow the Commissioner to monitor and scrutinise suspected incidents of wrongdoing in the industry. The Building Commissioner will also be empowered to take disciplinary action, such as suspending or cancelling registrations, and to order rectification of building work in circumstances of non-compliance.

#### *Extend Licensing to Building Designers, Architects and Engineers*

The majority of building professions in NSW are currently licenced or accredited, including certifiers, architects and tradespeople who complete residential building work valued at more than \$5,000.

As part of its response to the Shergold Weir Report, the NSW Government will require building designers, architects, engineers and other building practitioners who provide final designs and/or specifications of elements of buildings to declare that the building plans specify a building which will comply with the building regulations. The NSW Government will also require builders to declare that buildings are constructed in accordance with the building plans.

To ensure that building practitioners have the skills needed to complete the documentation to a high standard, the NSW Government will introduce registration schemes for currently unregistered designers (including engineers) and commercial builders who intend to make declarations. The registration schemes will be contingent on practitioners holding appropriate insurance and will be implemented following wide consultation.

#### *Home Building Compensation Fund*

The NSW Liberal National Government strives to continuously improve the Home Building Compensation Fund (**HBC Fund**) and put downward pressure on overall scheme cost without reducing protections for consumers. The NSW Government is working closely with industry, icare and the State Insurance Regulatory Authority (**SIRA**) to deliver more holistic upfront support for builders to mitigate risks that can lead to claims against home warranty insurance. The MBA and its members were involved in these constructive discussions and collaboration will continue throughout 2019.

Industry views, including those of the MBA, on options to better support builders, reduce risks, encourage good building practices and protect consumers are welcomed and will continue to be taken into account in determining further reform options for the HBC Fund.

#### *Continuing Professional Development*

Following stakeholder consultation as part of the Better Business Reforms in July 2018, the NSW Liberal National Government intends to conduct a broader review of Continuing Professional Development (**CPD**) requirements for building practitioners to ensure that CPD remains relevant and provides the intended benefits. This will ensure that CPD requirements are consistently applied across different licence categories, the requirements remain reasonable and the cost of compliance does not outweigh the benefits.

#### *Security of Payment*

In November 2018, the NSW Liberal National Government passed significant reforms to the *Building and Construction Security of Payment Act 1999* (**SOP Act**). As part of these reforms, the exclusion of owner-occupiers from the security of payment law was removed from the SOP Act to the Regulation.

Further financial assessment and stakeholder consultation will be undertaken to determine if owner-occupiers should be captured under the SOP Act protections to ensure there are no unintended consequences of this reform.

### *Workplace Relations*

The NSW Liberal National Government has budgeted for the delivery of a record \$89.7 billion in infrastructure over the next four years in order to build the schools, hospitals, roads, rail and other infrastructure the people of NSW need. This pipeline cannot be delivered on time and on budget without an efficient, effective building and construction sector supported by appropriate regulation.

The federal Australian Building and Construction Commission (**ABCC**) plays an important role in ensuring the construction industry operates in a fair and productive manner in NSW. Federal Labor's threat to abolish the ABCC, if brought to fruition, would inevitably increase the likelihood of unrestrained, disruptive industrial action in the construction industry.

The NSW Liberals and Nationals will continue to monitor the Federal workplace relations environment. In the event that the ABCC is abolished, a NSW Liberal National Government would remain open to the establishment of a state-based building and construction regulatory agency and the strengthening of the NSW industrial relations system, to deter unlawful industrial action and enforce acceptable standards.

### *Workers Compensation*

- *Establish an 'industry claim pool' to fund non-specific work incident injuries (e.g. hearing loss and 'bad backs')*

The NSW Government is aware that costs associated with hearing loss and other 'non-specific' claims are a concern for some employers. The Government, through SIRA, is engaging with key stakeholders and industry to further understand related complexities and identify mechanisms to reduce and appropriately apportion costs. The current legislative framework provides that an employer (who is not exempt) is liable for costs if a worker suffers an injury that occurred as a result of, or in the course of, employment. There must be a causal link between the injury and the work performed, irrespective of whether the injury arises from a specific incident. The NSW Liberal National Government is committed to further engagement with industry on this matter.

- *Resolve ambiguity in the definition of 'deemed worker' to resolve issues related to industry reliance on 'single operators'*

The definition of a deemed worker applies beyond the construction industry. In recognition that the definition of a deemed worker in the workers compensation legislation can be complex, particularly for small business, the NSW Government has established a Gig Economy Reference Group to inform solutions to challenges arising from the changing nature of work in the 21<sup>st</sup> century. The NSW Government welcomes input from industry on options to improve certainty for employers and workers, to ensure that workers compensation entitlements and obligations are fair and clear.

- *Exempt employers of all sizes from liability for workers compensation premiums and claims costs for apprentices and trainees*

The NSW Government's Market Practice and Premium Guidelines (**MPPG**) require licensed insurers to provide details of their apprentice incentive schemes as part of their premium filing. The NSW Government is monitoring insurer compliance with the MPPG and will continue to analyse policy options to incentivise employers to engage apprentices and trainees. I encourage the MBA to provide its views on how this can best be achieved.

### *Education and Training*

The NSW Liberal National Government works closely with industry and its representative bodies to identify, measure and report on current and emerging skills gaps in the construction sector and related trades.

Last year, the NSW Government announced its plan to mandate minimum levels of training in all major Government construction contracts at levels consistent with the targets of the Infrastructure Skills Legacy Program, including for general construction:

- 20% of the total labour force on a project to be of 'learning workers' (defined as trainees and workers who are updating their qualifications to meet the needs of the infrastructure project); and

- 20% of all relevant trade positions on a project to be apprentices.

*Cross Border Construction*

The NSW Liberal National Government works closely with other jurisdictions at the Building Ministers' Forum to improve building regulation across Australia and, where possible, promote consistency between the legislative and technical procedures of each State and Territory.

In particular, the NSW Government supports mutual recognition of occupational licensing and work with inter-jurisdictional agencies to automatically recognise licences of certain occupations is ongoing.

I would like to take this opportunity to thank you and the MBA for your continued engagement with the NSW Government on these important issues and I look forward to working with you moving forward to deliver a stronger, better future for your members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Kean'.

**The Hon Matthew Kean MP**  
Minister for Innovation and Better Regulation