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Dear Home Building Review Team

Thank you for the opportunity to provide further feedback on the proposed Home Building Bill and the associated position papers. The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy, and affordable dispute resolution services across NSW.

The Building Bill aims to strengthen consumer protections within the building and construction industry while eliminating unethical or unlawful practices. This ambitious reform seeks to overhaul the regulatory framework governing the sector. The policy proposals span three draft bills and one draft regulation, presenting a wide-ranging and complex set of reforms. These include:

Expanding the definitions within the Home Building Act to increase the scope of building work covered by consumer protection provisions.

Introducing a new regulatory framework for prefabricated and manufactured building work, which will impose compliance obligations across the entire value chain, from manufacturers, builders and design practitioners to certifiers and tradespeople.

Reforming the licensing framework with changes to the assessment process and the introduction of a co-regulation model.

Changes to the regulatory framework for building certifiers and fire safety practitioners by creating clear chains of responsibility, imposed through tougher penalties and enforcement powers.

It is beyond the scope of the Commission's expertise to provide detailed and specific feedback on technical aspects of these proposals. Ultimately industry stakeholders are best placed to provide this feedback. To fully understand its impact on small businesses, consultation and collaboration with these stakeholders is essential. Their input will provide valuable feedback to help shape appropriate measures to address industry challenges and ensure a comprehensive understanding of potential costs and benefits.

It would be contrary to the Better Regulation Principles to proceed with inadequate consultation or attempts to understand the impacts of small business, including through rigorous cost-benefit assessment. The Commission strongly advises against proceeding with complex reforms of this nature in the absence of transparent and publicly available regulatory impact assessment.

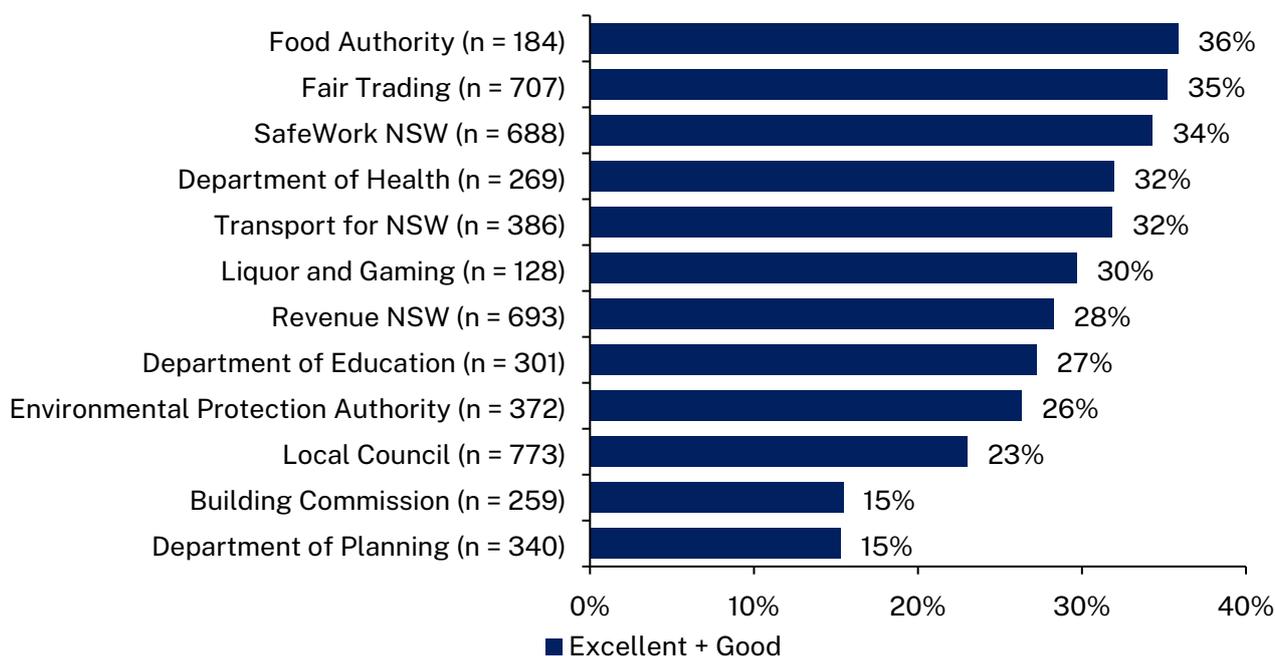
### **Potential missteps could exacerbate existing challenges in the building industry**

Small businesses operating in the construction industry are under severe pressures, including pipeline uncertainty, cost escalations, cash flow challenges, and capacity constraints. These pressures significantly impact their ability to deliver work. In the NSW construction industry alone, insolvencies have risen by 26 per cent year-on-year and are the highest of any industry. Amid these financial strains,

the industry is struggling to keep up with a rapidly evolving regulatory landscape, leaving it with limited capacity to navigate a growing suite of complex challenges.

The Commission recently conducted a survey inviting respondents to share their feedback on interactions with specific NSW regulatory authorities, rating their experiences with each agency (see Chart 1). The survey revealed the lowest rated regulatory authorities were those with responsibilities relating to building and planning approvals. When considered alongside stakeholder concerns about an overly complex and difficult planning and approval process, this feedback suggests that adding further layers of complexity could worsen already unsatisfactory experiences.

**Chart 1: Regulatory authorities rated ‘Excellent’ or ‘Good’**



Poorly designed and overly complex regulation could have a chilling effect on activity and capacity in the industry, and it is important to be clear as to how regulatory proposals will achieve desired outcomes. The Commission is concerned the consultation documents fail to sufficiently assess and transparently identify the impacts of the proposed requirements, offering little justification for why specific measures are necessary. Additionally, they do not adequately address the trade-offs or consider the broader impacts on housing affordability, labour shortages, and other constraints within the planning and design system.

### Small business impact assessment

The Commission recently conducted a [Review of small business experiences with regulatory policymaking](#). As part of this review, a survey of over 1,000 small business respondents revealed that only 10 per cent had previously participated in public consultations on new NSW Government policies or regulatory proposals. Additionally, 45 per cent of respondents indicated that they do not believe the regulatory impacts on their small businesses have been adequately assessed and just 7 per cent agreed regulation was designed around their needs.

The Commission reiterates prior submissions on the Home Building Bill,<sup>1</sup> regarding the lack of impact assessment and options analysis relating to the proposed changes. New definitions of ‘home building

<sup>1</sup> NSW Small Business Commission (May 2024), [Submission to the NSW Building Commission Consumer Protection Discussion Paper](#)

work', the inclusion of 'incidental work' and amended definitions of 'major defects' for statutory warranties, will have an impact on the costs of Home Building Compensation Fund (HBCF) premiums and claims. The degree of impact analysis in the *Consumer protections for home building work position paper* is limited, and only acknowledges some level of impact on a contractor's liability. A requisite of the Better Regulation principles is an analysis of the costs and benefits for all options, with particular attention paid to the impacts on small businesses.

The options proposed to address the issues impacting certification and the building approvals process have been assessed against the 'key objectives' of the proposed reforms. These key objectives are:

1. to support housing supply targets
2. addressing Government election commitments regarding certifiers
3. ensuring building industry participants are accountable for Building Code of Australia compliance
4. enhancing customer outcomes such as better building quality.

At a more basic level it is imperative to ensure the benefits of the proposed reforms exceed costs, noting the potential for regulatory complexity to impose deadweight losses. The Commission maintains that comprehensive cost-benefit analysis is required to provide assurance that the community will benefit from proposed reforms and advocates compliance with the NSW Government's Guide to Better Regulation (TPP 19-01).<sup>2</sup> Assessing options solely against the aforementioned four key objectives fails to consider the broader impacts of policy options required when applying the Better Regulation Principles.

### **Small business impact statement**

Smaller businesses bear a disproportionate burden in understanding, implementing, and maintaining compliance compared to larger enterprises. As previously noted, the industry is currently grappling with significant challenges, including material and labour shortages, delays, and other inflationary pressures, compounded by international uncertainties. These factors must be carefully considered when determining the timing and scope of industry reforms.

The Commission recommends that a Small Business Impact Assessment (SBIS) be undertaken on the final recommended reforms. Such an assessment should consider the specific compliance, time and financial costs imposed on small business as distinct from larger entities which may find it easier to navigate proposed reforms. A SBIS should also consider whether scalable options are more appropriate rather than a one-size-fits-all approach, including through simplified compliance options to reduce paperwork, transition periods or tiered approaches for lower risk activities. This will ensure the recommended options achieve the greatest net benefit whilst also meeting the policy objectives.

### **Flexibility for small business**

Flexible options should be considered for small businesses when evaluating the regulatory proposals. Particularly with reference to the monetary thresholds for the HBCF insurance cover and contract variations. The \$20,000 threshold for requiring insurance has not changed since 2012, despite the costs of building work having increased over the last decade. Recent increases in labour and material costs as well as supply chain disruptions have contributed to higher project costs over the past few years. Options should be considered to provide premium relief to small businesses that may face difficulties in meeting these higher costs.

Consideration should also be given to exempting small businesses from the requirement to document contract variations in writing, by imposing a threshold amount. Any variations that added an additional cost below this threshold would not require the need for the variation to be documented in writing. The position paper acknowledges that stakeholders are concerned with overregulation of the home building

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<sup>2</sup> NSW Treasury (2019), [NSW Government Guide to Better Regulation](#)

sector and that the added requirements of written contract variations would place an undue burden on the industry.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer Megan Bennett, at either [megan.bennett@smallbusiness.nsw.gov.au](mailto:megan.bennett@smallbusiness.nsw.gov.au) or (02) 9372 8767.

Yours sincerely

Chris Lamont  
**Commissioner**  
**NSW Small Business Commission**

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