



Shaping the future of insurance law

Digital reform initiatives to reboot NSW building industry

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*The NSW Government has introduced sweeping legislative changes that are intended to regain public confidence in the construction industry. This is **Part 4** of Wotton + Kearney's coverage of these landmark legislative changes and the implications for insurers.*

Click here to revisit [Part 1](#), [Part 2](#) and [Part 3](#).

AT A GLANCE

- The NSW Government is implementing building reforms which aim to change the culture and capability of the NSW building industry.
- These deep, wide-ranging reforms are being implemented in stages.
- From 1 July 2021, two of the Six Pillars of the building reforms address the use of data and involve a digitised compliance regime (digital platform) and a ratings system.
- These digital resources will be highly valuable for underwriters of construction risks.

BACKGROUND

David Chandler, NSW Building Commissioner, says that the planned digitised compliance regime and ratings system will be “game changers” for the NSW building industry. In a construction industry where he estimates 20 per cent of players account for 80 per cent of the problems, these digital tools will flag the riskier projects and allow the regulator to keep an eye on them as they progress.

These resources will be a good source of information for underwriters and are also expected to increase consumer confidence. This is particularly important in the high-rise residential market, which has been severely eroded by high profile building failures like Mascot Towers.

ADDRESSING THE ISSUES WITH DESIGN

As covered in greater detail in our [previous article](#), from 1 July 2021 the Design and Building Practitioners Act 2020 (NSW), will require:

- design practitioners who prepare regulated designs to declare that their designs comply with the Building Code of Australia (BCA)
- building practitioners to declare that their building work complies with the BCA and the regulated design, and
- the declared design drawings and ‘as built’ drawings to be electronically lodged.

Importantly, the new regime requires the design and ‘as built’ drawings to match. The builder will be responsible for any deviation, including any on-site variations (potentially thousands). The certifier can only issue the occupation certificate after the comparison process is complete.

Mr Chandler says that his office will have the capability to quickly assess whether the declared designs match the ‘as built’ drawings. He said it took just three seconds to digitally compare 200 declared designs with 200 as built drawings in a trial of the system.

For insurers, this will be a significant development as it offers clear accountability for deviations. Currently, disparities result in expensive finger-pointing between the various construction professionals and lead to disputes that arise from issues involving uncertainty about the ‘final’ authoritative design documents and as built constructions departing from the design documents.

DIGITAL PLATFORMS

The NSW Government’s digital platforms will be comprised of:

Strata Portal

The Strata Portal will provide a single source of information for strata schemes. It will also provide strata owners and managers access to ‘as built’ designs for their apartment buildings and include a digital version of the building manual.

Single View of Buildings (SVoP)

The SVoP will merge data from different inspectors and regulators. This allows enhanced intelligence, more effective data sharing and better allocation of resources for targeted and proactive compliance action, resulting in more effective regulation of the construction sector.

Multi-Party Risk Rating Tools (MPRRTs)


MPRRTs will rate builders, certifiers and developers based on the quality of their previous projects. It will provide insights into the trustworthiness of the key players delivering apartments in NSW. This will be available to the regulator, project financiers, insurers and client advisers.

The tools are being designed so they can be used across all jurisdictions, rather than being just NSW-specific.

Building Assurance Solution (BAS)

The BAS is a multi-jurisdictional, risk mitigation tool that will calculate a trustworthy index for individual buildings. It will consist of a register of certificates for the aggregated materials and a record of individuals who have contributed to the design, construction and maintenance of a building.

The BAS will be a perpetual, single source of truth about a building, containing all certificates on a common platform that will be available to future owners and maintainers.

 **The planned digitised compliance regime and rating systems will be a significant development for the NSW building industry as it offers clear accountability for deviations.**

RATING SYSTEM

The rating system, which is being built by data company Equifax, will cover builders, developers, engineers, designers, certifiers and manufacturers. It will award them an overall score based on a range of metrics, such as:

- their financial history
- their record on workplace safety
- handling of customer complaints
- financial credibility
- the age of the business, and
- whether there are any suspicions of phoenixing (creating a new company to continue the business of another company that was deliberately liquidated to avoid paying debts).

Mr Chandler described this as joining up ‘data silos’ that have never been connected before and said: “The days of opaque, un-regulated, multiple data sources that do not feed to single sources of truth are rapidly coming to an end.”

For example, the rating system will help address phoenixing issues as it will link up details of company directors and their past relationships with other directors of insolvent companies. Those with lower scores will be flagged on a database and their projects will be scrutinised by the NSW Building Commissioner. They run the risk of the Building Commissioner blocking the building's occupation certificate if he deems the project is non-compliant or potentially dangerous. Without an occupation certificate, buyers are not required to settle on a purchase, a building cannot be occupied and a developer could be forced to refund buyer deposits.

For underwriters, the ratings system is likely to be a very useful resource in identifying good and bad risks, and pricing them accordingly.

IMPLICATIONS FOR INSURERS

These digital initiatives will give insurers a transparent and accessible way to rate buildings, and the design and building professionals who work on them. This information, combined with other reform initiatives, should result in the building and construction industry being a much better risk for insurers in the long run.

Mr Chandler has stated: “Insurers [will] be able to price building insurance risk based on these ratings. From this, we hope to help facilitate a 10-year first resort insurance product to be available to the most trustworthy building makers. Not a legislated requirement but, market-led.”

While the digital platform and rating system are only being implemented in NSW, there is the potential for this technology to be rolled out nationally.

In NSW, any short-term uncertainty and angst caused by the introduction of the new laws should give way to a new era of good quality buildings, and greater transparency and accountability. This is welcome news for insurers, especially given the projected increase in high rise residential development over the next few decades to accommodate Sydney's growing population. As the Building Commissioner has emphasised, the aim is to make the high rise residential building sector an attractive proposition for insurers in the years ahead.

Commentary to come

In the meantime, Wotton + Kearney's construction PI team will continue to cover these developments as they emerge and answer any of your questions (please feel free to contact us).

NEED TO KNOW MORE?

For more information please contact us.



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