RESEARCH ANALYSIS

Non-cladding building defects

CLADDING SAFETY Victoria

VICTORIA State Government

Aboriginal acknowledgement

Cladding Safety Victoria respectfully acknowledges the Traditional Owners and custodians of the land and water upon which we rely. We pay our respects to their Elders past, present and emerging. We recognise and value the ongoing contribution of Aboriginal people and communities to Victorian life. We embrace the spirit of reconciliation, working towards equality of outcomes and an equal voice.

List of contents

Executive Summary

Cladding Safety Victoria (CSV) has identified a significant number of non-cladding related building defects in the course of addressing buildings within the scope of the Victorian Government's Cladding Rectification Program.

As of May 2023, of the 359 buildings funded by CSV which have combustible cladding, nearly 50 per cent have non-cladding defects (i.e., structural, fixing and sealing, water ingress), and of these nearly 80 per cent were identified to have water/moisture related structural damage, which are indicators of the presence of mould. Of the latter buildings:

- 38 per cent were found to have water or moisture related damage; and
- 33 per cent had missing or insufficient waterproofing.

Balconies were by far the location where defects were most frequently identified (which may be attributed to CSV's focus on the facade of the building). The majority (78%) of impacted buildings were constructed within the last 10 years. Buildings of four to 10 storeys were observed to have more non-compliance/defects than those above 10 storeys.

The average cost of defect rectification for an owners corporation is $180,000 per building. CSV estimates that this equates to be between $2,433 and $8,213 per apartment owner in a building with defects.

Defects arise from poor architectural design, defective construction by poor workmanship by trades under the supervision of builders or maintenance issues and have the potential to present serious safety risks to residents.

CSV has identified the most common barriers for owners in resolving these defects are:

- rectification costs;
- sourcing funds for rectification;
- lack of awareness of the problem;
- poor understanding of their rights and responsibilities for ongoing maintenance (in many instances owners have failed to regularly check their balconies, decks and balustrades over time); and
- disagreement among owners or owners corporations on the approach that should be taken for rectification.

While the source of the issue is primarily attributed to the builder, the problem of building defects more generally is symptomatic of broader underlying levels of non-compliance with the National Construction Code, including serious fire safety deficiencies, inadequate waterproofing and the presence of black mould in new buildings (arising because of water ingress).

1. Background

1.1 About the Cladding Rectification Program

Cladding Safety Victoria is responsible for delivering the Victorian Government's $600 million Cladding Rectification Program. As of September 2024, CSV has funded cladding rectification work for more than 430 privately-owned apartment buildings affected by higher-risk combustible cladding, with more than 350 of these projects now complete. This means that approximately 18,800 homes and more than 35,000 Victorians are now safe from the dangers of combustible cladding.

The Cladding Rectification Program has provided CSV a unique opportunity to examine the performance of external wall systems behind the external layer of cladding. It has identified extensive non-cladding related non-compliance and defects, with the most prevalent relating to balconies and resulting in moisture ingress, impacting structural integrity and occupant health. An analysis of balconies was the focus of a previous report prepared and published by CSV on its website in 2023.

In addition to this report, CSV also published a report in July 2024 called *Compliance in Building Design* which reveals widespread misapplication of Victoria's regulatory requirements for external wall cladding by the key professionals responsible for the design and permitting of buildings, namely the architects, draftspersons, fire safety engineers and building surveyors.

2. Methodology, limitations and assumptions

2.1 Methodology

CSV utilised raw data recorded by its Independent Project Managers, Clerk of Works and Project Officers undertaking due diligence on buildings assessed as eligible for funding in the Cladding Rectification Program. It comprised a sample size of 359 buildings as at May 2023, of which 174 had some kind of non-cladding defect identified.

Data was collated and categorised according to types of defects identified, building height and the number of affected sole occupancy units (SOU) affected, location of the defects in the building, the known causes of those defects, the costs associated with them, and their degree of severity.

2.2 Limitations and assumptions

While CSV has obtained a valuable data set relating to identified issues occurring in relation to funded buildings, further analysis and assessment of each building is required to determine definitively the root cause of these issues.

Further, CSV has not reviewed or undertaken in-depth analysis or review of design documentation which may determine if the identified defects are a result of a design fault as opposed to defective building work, building non-compliance or a maintenance issue; concomitant with this, CSV does not therefore assign liability to the practitioners involved in the construction of these buildings based on the information collated in this research analysis.

3. Context

Defects arise from poor architectural design, defective construction by poor workmanship by trades under the supervision of builders or maintenance issues and have the potential to present serious safety risks to residents if not addressed promptly.

Underlying moisture problems arise because of water ingress caused through either faulty design, defective or incorrect products used, issues with installing waterproof membranes, plumbing failures, poor maintenance, or condensation forming due to poor water vapour management. These are all factors that are likely to lead to mould growth, rust and corrosion if not addressed in time or prevented from occurring.

CSV has identified considerable and widespread serious non-cladding building defects on buildings designated to be funded for cladding rectification through CSV's program. These defects include pervasive black mould, framing non-compliance, leaking roof and gutters, balconies, rotting framing and non-compliant water proofing issues.

CSV's findings also highlight the likelihood that these defects are not confined to buildings in the Cladding Rectification Program but are pervasive in Class 2 construction with a particular concentration in buildings between 4-10 storeys in height.

CSV's findings are consistent with research undertaken by the Victorian Building Authority (VBA) which has undertaken or supported research to help understand major regulatory harms and opportunities to improve consumer outcomes. The research has identified that these issues have arisen because of poor architectural design, defective construction by builders or maintenance issues, and have the potential to present serious safety risks to residents.[1]

The findings and implications outlined in this research analysis are consistent with the experience of other jurisdictions, both interstate and internationally, who are all grappling with the issue of building defects, and its adverse social and economic impacts on residents and the wider community in general.

CSV has analysed the extent and underlying causes that the discovery of non-cladding defects during the course of cladding rectification are having on overall cost and time delays in completing the agreed works.

1 Victorian Building Authority - *Examining indoor mould and moisture damage in Victorian residential buildings*, **https://www.vba.vic.gov.au/about/research/examining-indoor-mould-and-moisture-damage-in-victorian-residential-buildings**

3.1 Balcony defects

During the course of the Cladding Rectification Program, CSV has been confronted with considerable and widespread serious balcony issues and other non-cladding building defects on buildings designated to be funded for cladding rectification through CSV's program.

Defects with balconies can arise due to either poor architectural design, defective construction by builders or maintenance issues, and have the potential to present serious safety risks to residents.[2]

3.2 Black mould

Black mould, also known as *Stachybotrys chartarum*, is a type of mould that can grow in homes and buildings with high moisture levels which can occur because of water ingress. The VBA defines water ingress when water penetrates into a building and:

> **"...can occur for various reasons and in different ways, leading to immediate damage or slow deterioration of building elements. If left untreated, it may lead to severe structural damage and expensive repairs, or health issues from mould growth."** [3]

Mould has been associated with an increased risk of respiratory symptoms, respiratory infections and exacerbation of asthma and other effects of exposure by the World Health Organisation (WHO, 2009).[4] The presence of black mould has also become the subject of media attention.[5]

2 Coroners Court of Victoria – *Balcony changes needed after 2017 collapse*, **https://www.coronerscourt.vic.gov.au/balcony-safety-changes-needed-after-2017-collapse**

3 Victorian Building Authority – *Water ingress – balconies, decks and terraces*, **https://www.vba.vic.gov.au/consumers/guides/water-ingress-balconies,-decks-and-terraces**

4 World Health Organization – *WHO guidelines for indoor air quality: dampness and mould*, **https://www.who.int/publications/i/item/9789289041683**

5 ABC News – *Defect-riddled apartments covered in mould could be write-offs as repair costs mount*, **https://www.abc.net.au/news/2022-11-29/mould-in-apartments-leads-to-huge-damage-bills/101692710**

4. Key findings

CSV has identified considerable and widespread serious non-cladding building defects on buildings designated to be funded for cladding rectification through CSV's program. These defects include pervasive black mould, framing non-compliance, leaking roof and gutters, balconies, rotten framing and water proofing issues.

CSV has analysed the extent and underlying causes that the discovery of non-cladding defects during the course of cladding rectification are having on overall cost and time delays in completing the agreed works.

The analysis indicates:

- 175 buildings (50 per cent) of the total funded buildings in CSV's Cladding Rectification Program (359 as of May 2023) have been identified as having defects unrelated to cladding.
- Of these, 137 buildings (79 per cent of buildings with defects other than cladding as at 31 May 2023) have been identified with water/moisture-related structural damage in those buildings which are key indicators of the presence of mould.
- In total, CSV has identified at least 42 buildings in its program (i.e., 31 per cent of the total number of buildings with defects) which contain one or more mould-related defects. This represents 12 per cent of the total number of funded Class 2 buildings in the program.
- CSV has identified the presence of black mould spreading from wall cavities into insulation, timber and plaster on 14 buildings (10 per cent of all defect buildings) caused primarily by the same water ingress issues that have led to defective balconies.
- 47 per cent have defective balconies, balustrades and terraces with structural damage caused by water ingress issues.
- In total, more than 550 defective balconies have been identified with these problems that have been left unaddressed by the owners.
- 33 per cent have waterproofing issues due to lack or insufficient waterproofing.
- 78 per cent of impacted buildings were constructed less than 10 years ago.
- The average cost of defect rectification for an owners corporation is $180,000 per building;
- The costs of defective balconies over total construction contracts (initiated for cladding works) comprises approximately 38 per cent; and
- On average, the cost of defect rectification will be between $2,433 and $8,213 per apartment owner in a building with defects.

The types of defects that CSV has identified include:

- **Structural**
  - sagging/non-alignment
  - other non-compliance issues
- **Fixing and sealing**
  - sealant joints
  - cracked concrete and tiles
  - loose panels
  - missing sealant, end-caps and gasket damage
- **Water ingress**
  - pipe leakage
  - planter box membranes
  - pooling
  - corrosion
  - fungus/algae
  - peeling paint and plaster
  - staining/efflorescence
  - timber warp/rot

Figure 1 reveals that of the 174 buildings where CSV has been able to assess the cause of the defects (342 defects in total) a significant number of defects are related to insufficient water proofing and improper drainage systems leading to water ingress issues. This figure is a count of the total percentage of defects found.

Figure 1. Defect distribution by type

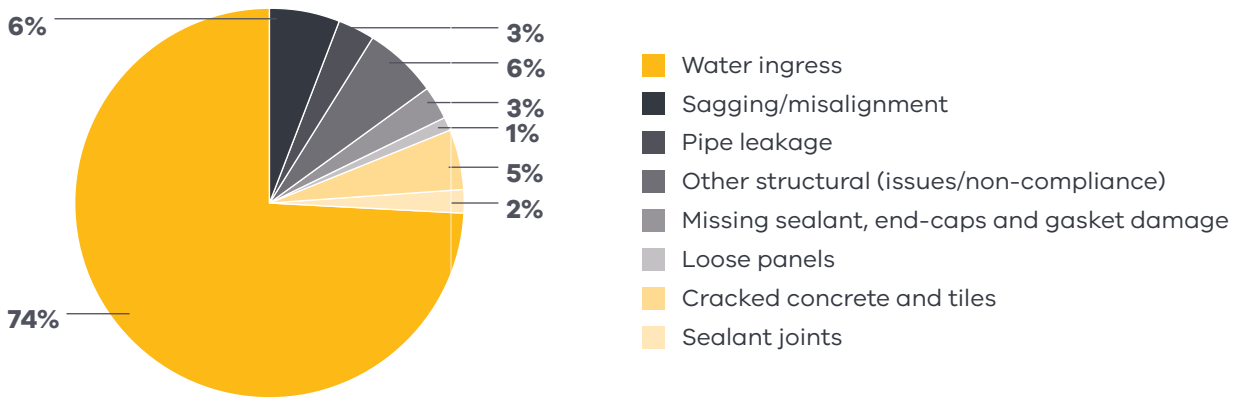


Figure 2 reveals that of the 175 buildings where CSV has been able to assess the cause of the defects (172 in total), a significant number of buildings have balcony defects related to insufficient water proofing and improper drainage systems leading to water ingress issues.

A total of 102 buildings have defective balconies, of which 79 buildings have issues related to water ingress as the primary cause of defect. Overall, about 73 per cent of the balcony defects are caused due to water ingress (mainly lack of waterproofing or poor workmanship) and a further 20 per cent are related to cracked concrete and tiles, sagging/misalignment, and structural issues. Of these, around 50 per cent were constructed more than 10 years ago (based on available data).

Figure 2. Balcony defects by category and building age

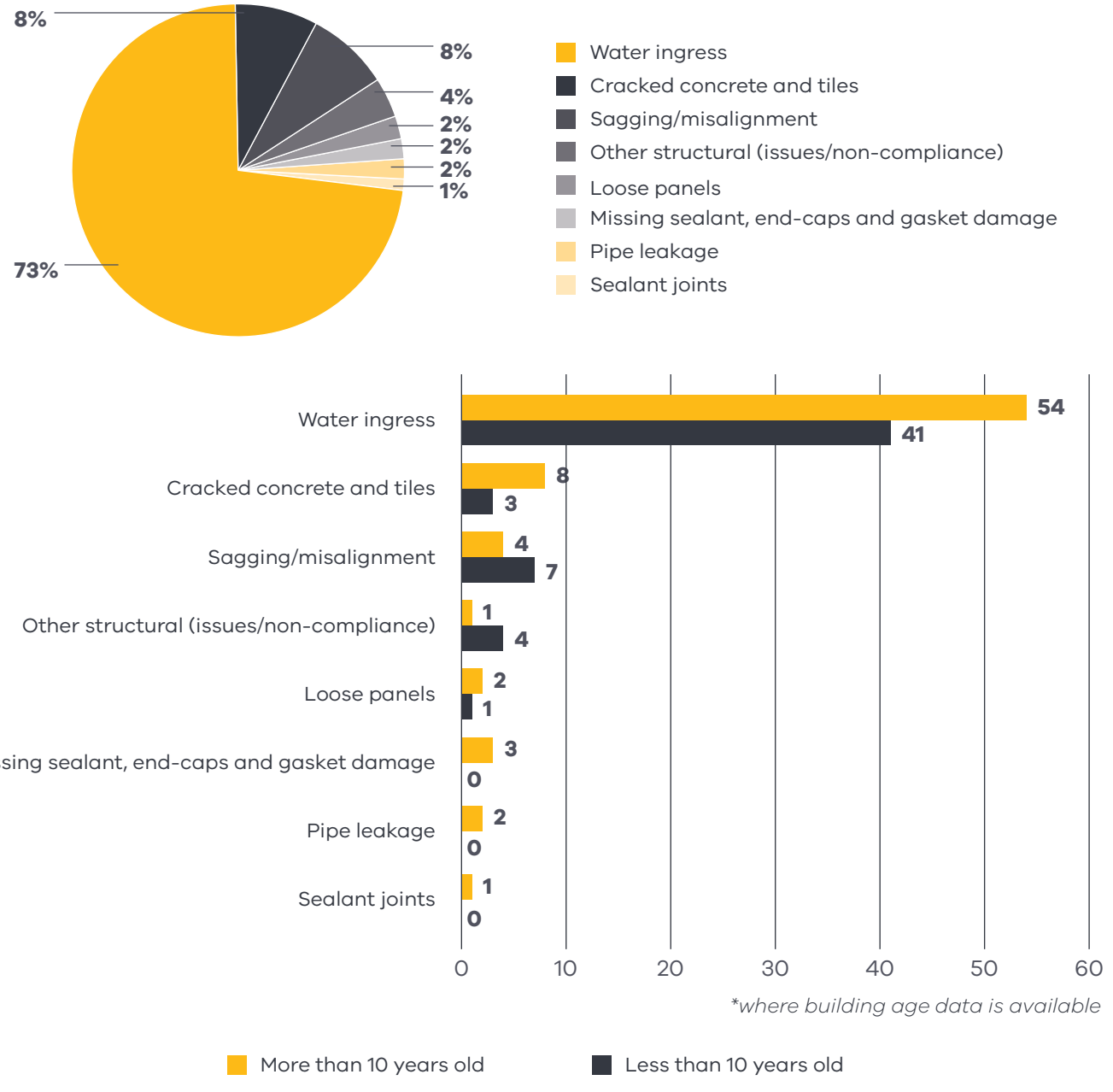
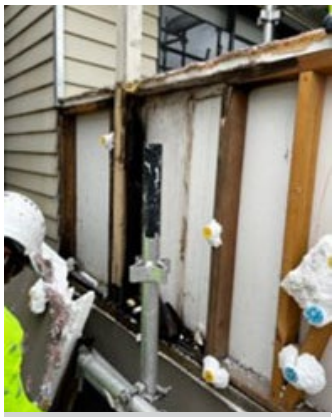
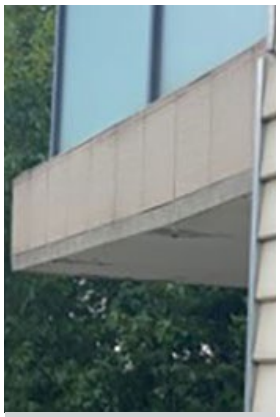


Figure 3. Example of water ingress affecting a balcony on a funded building in CSV's program (comprising 26 sole occupancy units)

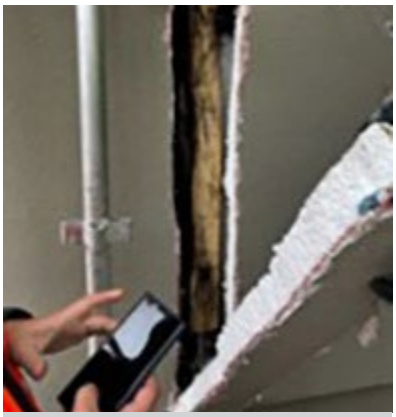
Bottom plate of timber framed balustrade.



Timber framed balustrade showing water damage coming through capping.



Water damage to soffit evident from balcony above.



Timber framing to balustrade rotten from water ingress. No sarking sitting behind EPS cladding.

Tiling not sitting flush on concrete slab. No screed or membrane present. Moss and mould evident from pooled water.

Figure 4. Example of balcony with structural issues on a funded building in CSV's program (comprising 35 sole occupancy units)

The fixings into the timber supports missing the timber completely.

The timber supports are showing signs of degradation from water damage. Also noting this post is cantilevered over the slab edge.

Balustrade posts half supported on concrete slab and half supported on timber screwed into the side of the slab.

4.1 Balcony-related defects by building height

In terms of building size, the data indicates that most low-rise buildings have water ingress issues on balconies of which CSV estimates the majority will require funding of between $1 million and $5 million to rectify – see Figure 5.

Figure 5. Balcony-related defects by building height

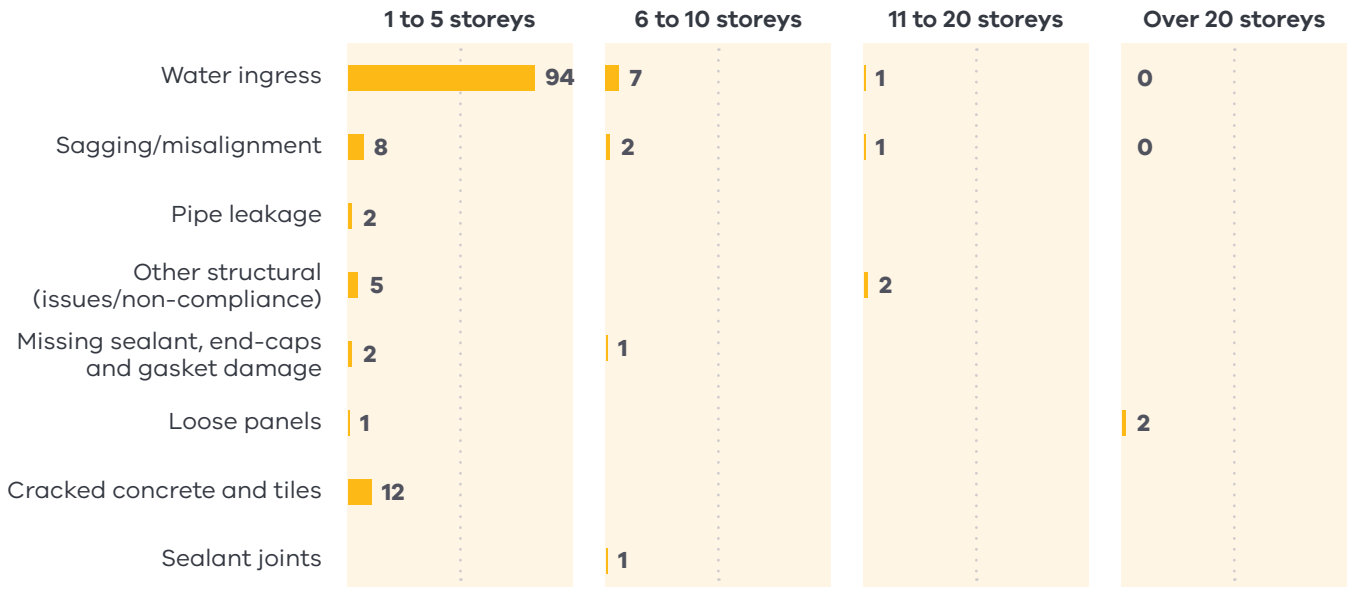
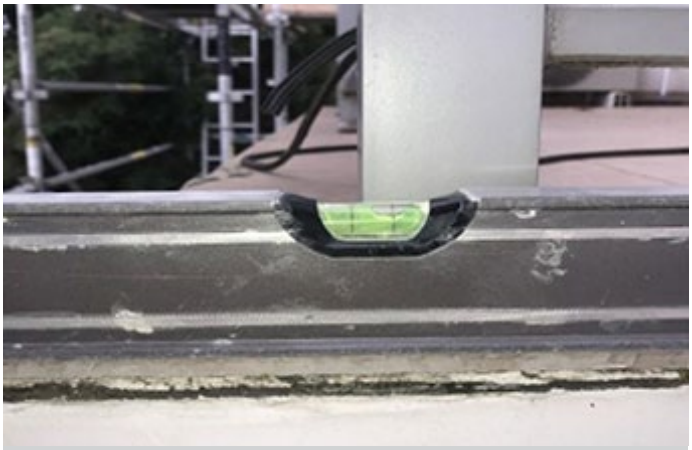


Figure 6. Example of insufficient or no waterproofing affecting a balustrade on a funded building in CSV's program (comprising 12 sole occupancy units)

Improper water proofing around balustrade fixing providing areas for water ingress to structural elements.



Balcony falling steeply away at edge.

Water ingress to balconies – owners corporation not rectifying as part of the program. MBS has previously issued Emergency Order on these units.

Figure 7. This apartment's ceiling has collapsed after years of water collected from the balcony above it

Figure 8. Black mould on the ceiling and walls in this apartment

The presence of black mould on parts of the ceiling and walls in this apartment is extensive and widespread.

A total of 82 buildings (47 per cent) have had defective balconies caused by water ingress issues and a further 33 buildings (19 per cent) have waterproofing issues due to lack or insufficient waterproofing as the chief cause of the defects. In addition, seven buildings appear to have balcony defects relating to poor design.

Figure 9 shows that buildings constructed more than ten years ago have more water-related damage than newer buildings. The causes for this are varied but could be because of aging pipes or irregular maintenance over time. Those buildings which indicate sagging/misalignment could be caused by the buildings 'settling' unevenly into the ground. Overall, time plays a factor in some defects, as is expected.

In Victoria, owners can bring proceedings against building practitioners for compensation for defective building work up to 10 years after the completion of building work. Cladding defects have a limitation period of 15 years (which was extended in 2021 from 12 years previously).

There is no compulsory building warranty insurance for multi-storey residential buildings that are more than three storeys. Further, domestic building insurance policies are only available in circumstances where the builder dies, becomes insolvent or disappears for a period of six years from completion of the building work. These issues, in combination with the anecdotally common practice of builders using single-use companies to manage a project and afterwards dissolving it, leaves consumers facing many challenges and expensive legal proceedings to seek compensation for faults and defects.

Figure 9. Defects by building age

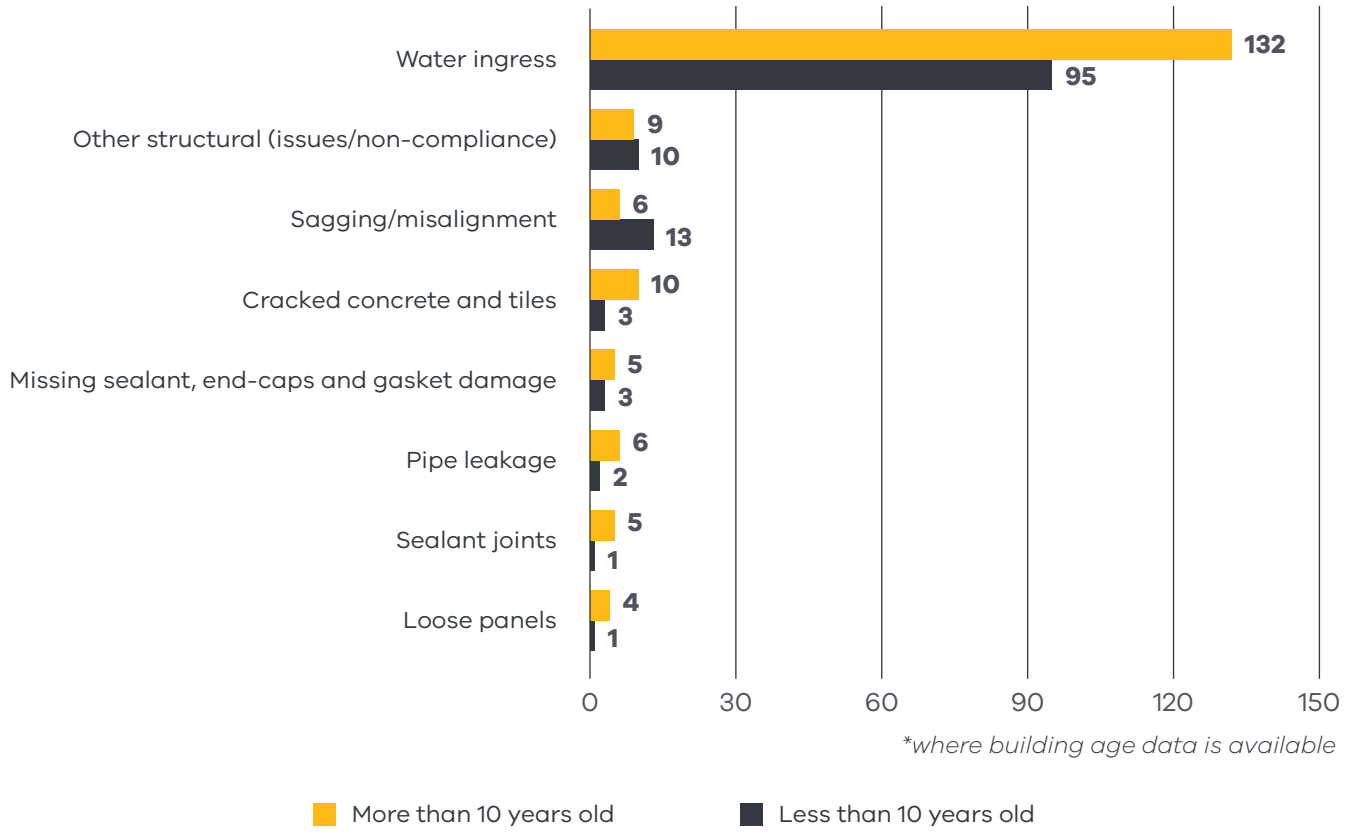


Figure 10 shows that buildings over ten storeys in height have fewer defects than low or medium-sized buildings (between four and ten storeys in height). This is unexpected because taller buildings are more complex, so theoretically should have more defects.

Figure 10. Building defects by number of storeys in buildings funded by CSV

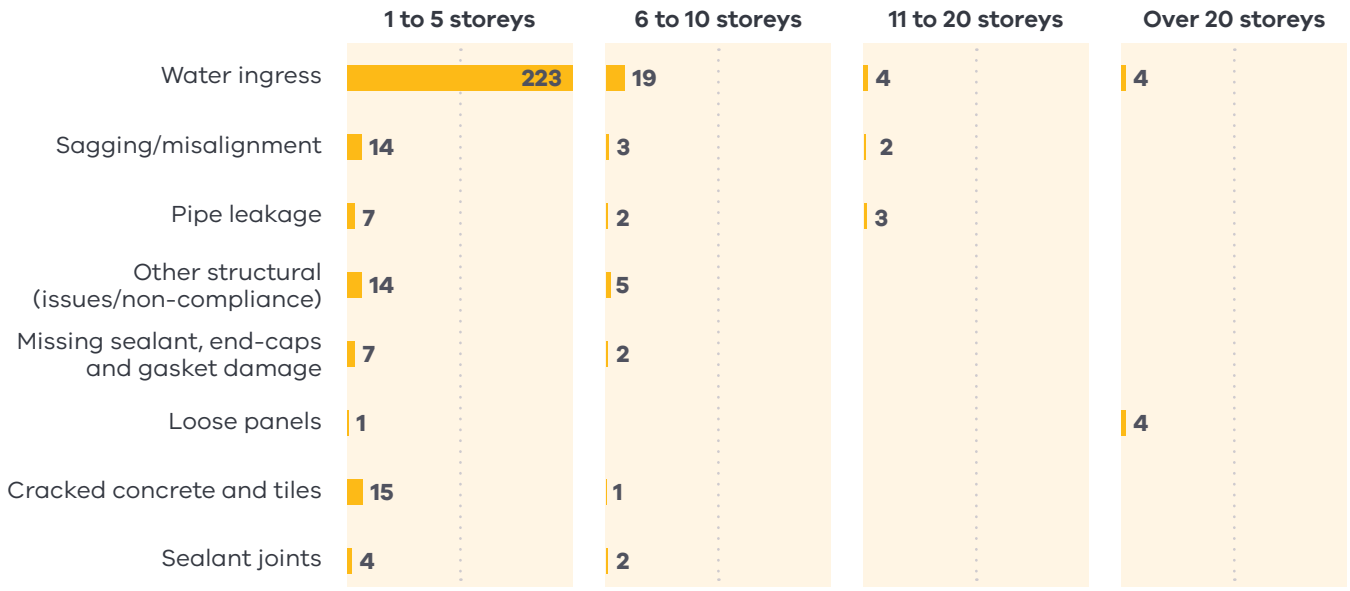


Figure 11 shows the location and number of defects for all buildings in the sample data. Balconies are, by far, the more common defect locations.

Figure 11. Number of defects and their location within buildings

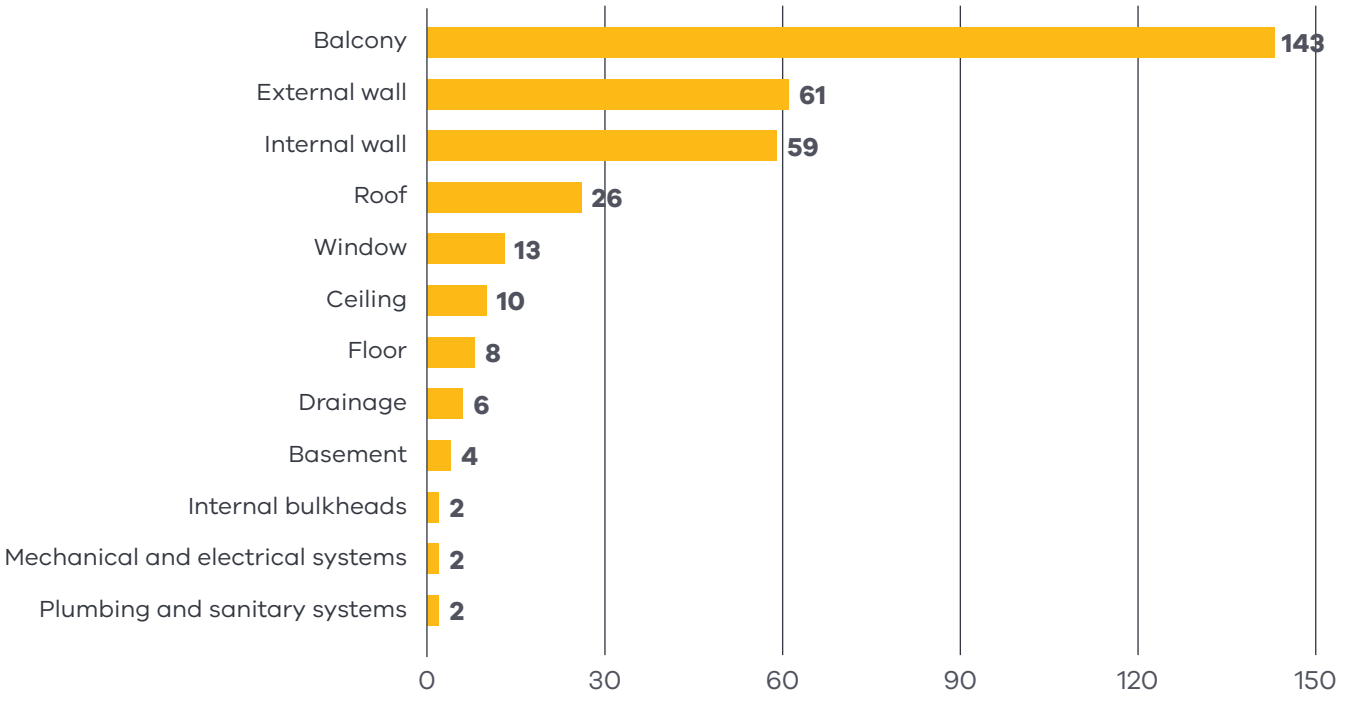


Figure 12. Examples of water ingress in a building in CSV's program

Rotting timber.

Moisture seeping through plaster walls.

4.2 Timber-framed balcony defects

Many of the balcony defects, as assessed by CSV and the VBA, are particularly prevalent on timber-framed balconies built in the period between 1997 and 2015 where National Construction Code (NCC) amendments allowed for timber-framed concessions on low-rise Class 2 and Class 3 buildings of Type A or Type B construction[6] to be constructed with timber framing and/or non-combustible materials in circumstances where non-combustible materials, concrete or masonry would otherwise be required.

The Code was evidently interpreted by the building industry in a way which did not meet its intent. The intent being, that the concession only applied to the use of timber framing or a combination of timber framing and non-combustible materials and not the external wall as defined by the NCC. It was never intended to allow combustible components, including external wall cladding, to form part of the external wall system. As a result, some practitioners have not installed membranes and/or cladding flashings on balconies in accordance with the manufacturer's specifications.

6 A building's construction 'Type' describes the level of fire resistance that certain parts of buildings need to have. There are three Types of construction (A, B and C), which are determined by the building's use (e.g. its building class) and the number of storeys in the building. Type A buildings have the highest risk and are required to be the most fire resistant.

Figure 13. Example of insufficient or no waterproofing affecting a balustrade on a funded building in CSV's program (comprising 12 sole occupancy units)

Upper level balcony; tiling removed to show rotten timber to balcony structure, and bottom of apartment stud wall.

Underside of balcony; substrate with significant rot from water and timber joists showing rot.

4.3 Cost of rectifying defects

CSV has attempted to estimate the costs associated with rectifying defects.

Of the 174 buildings that CSV has found to have defects, 92 have had defect rectification works costed. This information has been made available to CSV via the owners corporation.

CSV is able to compute a rectification cost per SOU based on the costs of defect rectification, the buildings that those costs apply to and the number of SOUs in each building.

Again, this calculation was undertaken separately for low-rise, medium-rise and high-rise buildings – see Table 1 below.

The knowledge of the defect rectification costs per SOU allows for:

- an average cost per building to be calculated; and
- a state-wide cost of rectification to be calculated.

Table 1 provides the data used for these cost estimation calculations.

Table 1. Cost of defects per SOU by building height cohort

Building height cohort	Buildings	Total SOUs[2]	SOUs with a cost impact[3]	Percentage of total SOUs impacted	Total cost of defect rectification	Cost per SOU (all SOUs)	Cost per SOU (impacted SOUs)
A. Low-rise (2-4)	70	1,527	1,188	77.8%	$12,541,196	$8,213	$10,557
B. Mid-rise (5-8)	14	722	460	63.7%	$2,096,952	$2,904	$4,559
C. High-rise (9+)	8	1,902	841	44.2%	$4,627,263	$2,433	$5,502
Total	**92**	**4,151**	**2,489**	**60.0%**	**$19,265,411**	**$4,641**	**$7,740**

Notes

1. The total number of apartments or sole occupancy units (SOU) in each building is known to CSV.
2. In many instances the costs of defects can be attributed to a subset of the full population of SOUs in a building. Where the number of SOUs impacted by the defect is not enumerated, the calculations used in this table assume that the deflect applies generally to the buildings and extends to all SOUs in the building.
3. Using knowledge of the total defect cost estimates and the number of SOUs, it was possible to calculate both an:
   - average cost per SOU; and
   - an average cost per impacted SOU.
4. Separate costs per SOU were estimated for buildings in three building height cohorts, recognising that any extrapolation of these numbers to a broader population pool should recognise the observed difference in defect costs for buildings of different heights.

5. Discussion

The safety risks to the community posed by building defects caused through poor design, construction or maintenance are considered as unacceptable and have led to fatal outcomes.

A multi-faceted strategic response is required to both expedite and increase the effectiveness of response to the harms posed by balconies.

CSV is concerned that the situation in relation to defective balconies is widespread and has proliferated over at least two decades; this is not a new issue.

While the source of the issue is primarily attributed to the builder, the problem of building defects more generally is symptomatic of broader underlying levels contributing to non-compliance.

The data highlights that the current process of defect rectification is causing unnecessary strain and cost to owners, with Owners Corporation Managers often responsible for steering owners through the process. Property owners in many instances have failed to regularly check and maintain their balconies, decks and balustrades over time.

Disputes in relation to balcony and other defects can be complicated due to the technical nature of the issues and often cannot be satisfactorily resolved without expert evidence as to the cause of the defects.

The prevalence of waterproofing and water ingress defects, coupled with the quantum of repair works funded by owners, suggests this is a significant issue for the construction industry and for consumers, which will impact professional indemnity and property insurers. This may also undermine confidence in this type of building at a time when government is seeking to increase housing density through Victoria's Housing Statement.

Building insurance policies will have exclusions associated with wear and tear, gradual deterioration, developing flaws, building defects and rectification of faulty workmanship, among others.

Domestic Building Insurance is not currently required and will therefore not be available for buildings over three storeys in height.

In terms of the immediate impact for property owners, broader defects (beyond cladding) are not covered by CSV's funding. This means that owners are required to cover both the expenses for these additional works and the costs of pursuing a building defects claim against the builder. CSV reported that approximately $52 million has been spent by owners to date on the rectification of non-cladding defects identified during cladding remediation work.

To the extent that construction drawings and specifications do not contain sufficient detail, there is potential exposure for design professionals and building surveyors, who issued permits permitting the works and approved the works through mandatory inspections, to be the subject of civil claims.

Building insurance policies will often have exclusions associated with wear and tear, gradual deterioration, developing flaws, building defects and rectification of faulty workmanship, among others. Domestic Building Insurance under the *Building Act 1993* is not required and will therefore not be available for buildings over three storeys in height.

While it is not within the scope of this research analysis to describe the Victorian regulatory landscape or to highlight any planned or proposed reforms of the Victorian Government to address building defects in the near future, CSV has instead undertaken a desktop review in Attachment 2 summarising other schemes within Australia and internationally that have tried to address building defects more generally. It is hoped that this analysis can provide a useful resource tool for policy makers in both government and industry.

6. Reform opportunities for further consideration

This research analysis acknowledges there is an opportunity for government to develop operational, legislative and regulatory initiatives to ensure the community is protected from risks posed by building defect issues.

Any reforms in this area need to focus on strengthening quality and safety standards by improving:

- building architectural design;
- construction/workmanship practices;
- ongoing building maintenance by owners and owners corporation managers;
- effective oversight by relevant building regulatory authorities, including strengthening compliance, enforcement and disciplinary measures; and
- reforms to the regulatory system that:
  - clarify roles and responsibilities across all the industry participants;
  - improve insurance coverage and accessibility;
  - provide effective dispute prevention and resolution processes; and
  - focus on improving the use of compliant and conforming building products and technologies.

APPENDIX A:
Non-cladding building defects case studies

The following two case studies are derived from buildings referred to CSV's Cladding Rectification Program and provide indicative examples of the kinds of issues faced by CSV in addressing cladding on buildings where there are non-cladding defects identified.

CASE STUDY 1

Non-cladding building defects – Dandenong, Victoria

This building is a four-storey complex containing 10 apartments. It was built in 2009 and was developed by the company 4S Constructions.

After the building was referred to CSV's Cladding Rectification Program, a due diligence inspection was conducted. This involved a review of building plans, architectural drawings, a fire engineering report, as well as an on-site inspection involving pilot hole drilling and examination of the external wall cavity. The building's architectural drawings specified the use of a composite concrete cladding product, commonly known as Conpolcrete or QT, which is of lower combustibility. However, CSV's investigations determined that the external cladding material installed was expanded polystyrene (EPS) cladding which is combustible. Around 67 percent of the external facade consisted of high-risk EPS cladding. Based on the information available, it is not clear how and why this material was substituted, including whether the contractual framework permitted this substitution.

CSV's due diligence team observed several non-cladding defects, including widespread water ingress resulting in deterioration of structural timbers, corroded steel balcony supports, widespread mould and failed sealing joints on cladding and capping. Following the discovery of these significant non-cladding latent defects, CSV notified the owners corporation and Municipal Building Surveyor, in this case the Victorian Building Authority, about the presence and known extent of the non-cladding defects.

In anticipation of the work required to fix the non-cladding defects, the Owners Corporation Manager assisted owners to take out a strata loan.

Before CSV-funded works began, the builder undertaking the rectification works performed further detailed investigation of the building to give the owners corporation more certainty about the extent of the non-cladding defects. The builder created a combined scope of works which involved cladding rectification activity, to be funded by CSV, and non-cladding repair works, funded by owners.

The construction phase ran smoothly, and high-risk EPS cladding was replaced with Hebel. Other works included replacing water damaged and rotten timber, plaster board and areas of mould.

Fortunately, due to the in-depth analysis of the building at an early stage, the extent of the defects was well understood by the time work began and the owners didn't incur any significant additional costs beyond the existing variations.

Mould and staining on apartment ceiling.

Deterioration of timber balcony.

Cracking along blockwork joints.

Widespread staining of rendered surfaces.

CASE STUDY 2

Non-cladding building defects – Altona, Victoria

This mixed-use three-storey building in Altona was constructed in 2010 and contains 33 residential apartments.

The building comprises two levels of concrete slabs and lightweight timber construction above the ground floor. In November 2020, the Municipal Building Surveyor (MBS) issued a Building Notice for the removal of the EPS cladding and several essential safety measure non-compliances. The original builder previously informed the owners corporation that it would complete the cladding rectification works at cost price on the condition that CSV fund the works. The owners corporation subsequently advised that it did not wish to reengage with the original builder due to concerns around building quality.

CSV's due diligence phase commenced in March 2022. This involved a desktop review of available building documentation, an onsite inspection and material testing. The building was found to contain almost 1500m^2 of cladding, covering 55 per cent of the total facade area. The due diligence team noted several other defects including visible water damage at multiple apartments due to failed membranes on the tiled concrete balconies, and cracked render on the external walls.

Following the commencement of cladding removal, rotten timber framing and damaged, non-compliant balcony balustrades were observed at multiple locations around the building. Water ingress had infiltrated the timber-framed balustrades via the concrete balconies, and in some cases the damage to balcony balustrades was so severe that visible movement was observed when pressure was applied. These latent conditions significantly impacted the delivery of cladding rectification works as they have to be addressed before cladding rectification can continue. Other latent conditions rectified by the owners own cost include a non-compliant timber framed screen wall, mould issues, leaking box gutters, misplaced ventilation pipes and leaking windows.

The project has benefitted from the clear, productive communication between the Independent Project Manager and the owners corporation. The owners have been proactive in dealing with the latent conditions at the building and to date have spent over $60,000 on rectifying non-cladding defects. The cost to rectify all defects was $240,000, an average of $7,000 per apartment. In addition to existing owners corporation funds, a strata loan was taken out to pay for this work.

Works were completed in late 2023.

Rotten framework caused by water ingress.

Example of waterproofing damage that is being replaced.

Corroded steel frames caused by water leakage.

Damaged insulation.

APPENDIX B:
Jurisdictional comparison on government responses to addressing building defect issues

Key inquiries undertaken over the past decade across several jurisdictions identify different approaches to addressing building defect issues. Appendix A focuses on five key jurisdictions (England, Ireland, Scotland, New Zealand and NSW).

England

Shortly after the Grenfell Tower fire on 14 June 2017, the Ministry of Housing, Communities and Local Government (MHCLG) established the Building Safety Programme. The Programme sought to identify and remediate buildings with unsafe combustible cladding.

Following the fire, the government commissioned the Grenfell Tower Inquiry[7] and a review of building regulations and fire safety (the 'Hackitt review').[8] Like other jurisdictions, this exposed other failings in the building regulatory framework. To address these issues, a new regulatory framework for building safety, a Building Safety Act and a new Building Safety Regulator was established.

Building Safety Act 2022

The Act introduced a new regime for 'higher risk buildings',[9] which are high-rise residential buildings that are 18 or more metres high or have seven or more storeys. To oversee the new regime, the government created the Building Safety Regulator (BSR), which sits within the Health and Safety Executive (HSE).

The Act created new rules for the construction, refurbishment and occupation of higher-risk buildings including:

- Developers need to obtain approval from the BSR to build new higher-risk buildings and make changes to existing higher-risk buildings. These new rules took effect in October 2023.
- Higher-risk buildings must have an 'accountable person' who must assess and manage building safety risks (which are risks to people's safety from the spread of fire or if a building were to collapse). The BSR will check whether they comply with their duties.

The Act introduces the concept of "relevant defects" and the responsibility for asset managers to ensure the upkeep and safety of such buildings. Some examples of common relevant defects include:

- Structural defects: foundation issues, and problems with load-bearing elements which could lead to significant structural instability and potential collapse.
- Fire safety defects: faulty or ineffective fire doors, inadequate fire-stopping, and malfunctioning fire detection and alarm systems can fail to contain fire and smoke, endangering occupants.
- Health and safety defects: combustible or non-compliant cladding materials can exacerbate fire spread, posing severe risks. Inadequate ventilation can lead to poor indoor air quality, affecting the health of the occupants.
- Other significant defects: any defect that threatens the overall integrity, structural stability and safety of the building, such as water ingress or electrical hazards, is considered significant.

7 Grenfell Tower Inquiry, *Grenfell Tower Inquiry* (website), **grenfelltowerinquiry.org.uk**

8 Government of the United Kingdom, *Independent Review of Building Regulations and Fire Safety: Hackitt review* (website), **gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review**

9 Parliament of the United Kingdom, **commonslibrary.parliament.uk/research-briefings/cbp-8482/** (website), **commonslibrary.parliament.uk/research-briefings/cbp-8482/**

Building Safety Regulator (BSR)

The BSR[10] was established to:

- Regulate higher-risk buildings.
- Raise safety standards of all buildings.
- Help professionals in design, construction, and building control, to improve their competence.

The BSR sets out rules to protect the design and construction of higher-risk buildings.

Building (Amendments) Regulations 2023

Further changes were implemented in 2023[11] following the enactment of the *Building Safety Act 2022* and the *Fire Safety Act 2021*. The amended regulations aim to achieve three objectives:

1. mandate the competency of persons involved in the compliancy aspects of design and construction;
2. introduce clear and unambiguous separation between design compliancy and construction compliancy; and
3. assign new obligations on four key duty holders to the project:
   - the client (the person for whom the works are being carried out);
   - the designer that prepares a compliant design;
   - the Principal Designer for Building Regulations Compliancy (PDBR) that verifies the compliancy of the design; and
   - the Principal Contractor for Building Regulations Compliancy (PCBR) that ensures compliant construction, based on the design.

The client acts as the enabler, ensuring that the other duty holders have the competency, resources and sufficient time to fulfil their own duties. Under the Regulations they are also obliged to provide building information, as soon as is practicable, to every designer and contractor on the project. If the client fails to appoint a PDBR or PCBR, it will be deemed to have appointed itself to undertake these roles.

Enhanced building safety regime

From April 2024, all work related to new or alterations of existing higher-risk buildings is subject to the new enhanced building safety regime, which is administered and enforced by the BSR. The BSR thus replaces the role of local building control authorities. The private building control sector can no longer supervise work to build a new or alter an existing higher-risk building. From 1 October 2024, all former "approved inspectors" ceased to have any legal function, and these are required to receive a "registered building control approvers" (RBCAs) licence from the BSR.[12]

10 Health and Safety Executive, *About the Building Safety Regulator* (website), **hse.gov.uk/building-safety/regulator.htm**

11 Department for Levelling Up, Housing & Communities, *Changes to the building control process for higher-risk buildings and wider changes to procedural building regulations applying to buildings in England* (PDF), **assets.publishing.service.gov.uk/media/66b377e3fc8e12ac3edb0bfb/Building_Circular_Letter_-_Changes_to_the_building_control_process_update_January_2024.pdf**

12 Health and Safety Executive, *Building control bodies and professionals* (website), **hse.gov.uk/building-safety/building-control/overview.htm**

Ireland

In February 2021, an Independent Working Group was established by the Irish Government to examine defects in housing and, in particular, to:

1. identify the scope of fire safety-, structural safety- and water ingress defects in apartments and duplexes;
2. evaluate the scale of apartments and duplexes affected;
3. propose a means of prioritising defects;
4. evaluate the cost of remediating defects;
5. recommend appropriate mechanisms for resolving defects; and
6. consider financing options including options for those impacted by defects to access low-cost, long-term finance.

Findings

The Working Group estimated that between 50% and 80% of all apartments constructed between 1991 and 2013 may be affected by one or more defects, i.e., fire safety-, structural safety- or water ingress defects, with fire safety defects the most prevalent form of defect.

The Working Group concluded that defects arise from a variety of design, product, supervision, inspection and workmanship issues. The defects manifested both as non-compliances with building regulations and as actual damage. In the case of fire safety, defects rarely resulted in damage, and they were more likely to arise due to the omission of measures, poor detailing, or the misuse or poor installation of products.[13]

Key recommendations

The recommendations arising from the Working Group's Report are as follows:

- **Discovery and identification of defects:**
  - A central organisation should provide an advice and support service to owners' management companies and apartment owners on the remedial works process.
  - The bodies representing the various building professionals should establish registers of members who are willing and competent to provide services in relation to the remedial works process.
- **Identification of remedial works required:**
  - Where necessary, interim measures should be carried out, pending the implementation of full remedial works, to enable continued use of the building as an apartment/duplex building.
  - Any programme to address fire safety-, structural safety- and water ingress defects in purpose-built apartments/duplexes constructed between 1991 and 2013 should be planned, prioritised and adequately resourced over a suitable period of time.
- **Engagement with statutory bodies:**
  - Apartments/duplexes should, where practicable, be remediated to the standard that applied at the time of their original construction, e.g., in respect of fire safety, the original Fire Safety Certificate or appropriate Technical Guidance Document.
  - Where it is not practicable to achieve the above standard identified, alternative approaches and options should be considered that provide a reasonable level of life safety protection in accordance with Fire Services Acts.

13 Working Group to Examine Defects in Housing, *Defects in Apartments* (PDF), **assets.gov.ie/230877/388a8d0e-8d71-4054-9a1a-931061c9a208.pdf**

  - To support the development of a reasonable and practicable approach to resolving defects, and in order to ensure a consistent approach nationwide to remediation, a Code of Practice should be developed to provide guidance to building professionals and Local Authority building control / fire services.
  - Provide general guidance to building professionals on structural safety - or water ingress defects.
- **Carrying out of remedial works:**
  - Remedial works should be carried out and supervised by a competent builder and should be inspected by a competent building professional / competent building professionals.
- **Certification of remedial works:**
  - Remedial works should be certified in a prescribed format by both the competent building professional and the competent builder, in accordance with the Code of Practice.

New legislation to address building defects

On 18 September 2024, the Irish Government approved the priority drafting of the Apartment and Duplex Defects Remediation Bill 2024 to support the remediation of apartments and duplexes with fire safety, structural safety and water ingress defects, constructed between 1991 and 2013.[14] The legislation will provide a statutory basis for the establishment of a remediation scheme aimed at protecting the safety and welfare of those living in apartments or duplexes with such defects that occurred during construction.

A 'whole building' approach will be taken, ensuring common areas and shared spaces are also remediated where required to the relevant standard. It's envisaged that the Housing Agency will play a central role in the administration of the scheme and that Owners' Management Companies will be funded to carry out the necessary remediation works, with specific limitations or exemptions on certain commercial owners.

To ensure that important life-safety works are not paused, the government has also decided that remediation works related to fire safety defects, entered into or commenced as of 18 January 2023, will form part of the remediation scheme, subject to terms and conditions.

Such works would need to be agreed with local authority Fire Services and the government has approved the principle of allowing remediation costs already incurred or levied to be covered under the legacy defects scheme, within the scope and defined parameters of this scheme.

Buildings Standards Regulatory Authority

In July 2024, the Irish Government approved the drafting of legislation to establish a new Buildings Standards Regulatory Authority, following the recommendations with a report of a steering group set up to examine the issue of improving compliance and strengthening oversight in the construction sector, while also enhancing public confidence.[15] The steering group's report sets out the following functions for the new authority:

- strengthen the oversight role of the State in respect of the design and construction of buildings;
- strengthen the oversight of the marketing and use of construction products;

14 Department of Housing, Local Government and Heritage, **gov.ie - Government approves priority drafting of Apartment and Duplex Defects Remediation Bill 2024.**

15 Building Standards Regulator Steering Group, *Report of the Building Standards Regulator Steering Group* (PDF), **assets.gov.ie/299017/4f9847ad-b884-45d5-b8f8-d2983b020f53.pdf**

- reduce the risk of building failures and recurring defects;
- improve public-service delivery by further developing consistency in the application of building-control, construction-product, and other related EU legislation;
- drive compliance with legislative provisions; and
- enhance public confidence in construction-related activity.

In addition, the new body should have "effective powers of inspection and enforcement, and an appropriate suite of sanctions". The report noted several weaknesses in the current system – including lack of resources, staff-retention issues, varying levels of enforcement, and the inconsistent application of regulations.

The government will potentially need to resolve thousands of homes, including various defects in between 62,500 and 100,000 apartments and problems with some 7,000 homes in Donegal and other counties where buildings have sustained damage due to concrete blocks containing excess amounts of minerals mica and pyrite.

Scotland

In August 2021, the Scottish Government produced an advice note in response to London's Grenfell Tower fire in 2017 setting out a process on how to determine the level of risk posed by existing multi-storey residential buildings, including blocks of flats, student accommodation and hospitals.

An important companion piece to this guidance is the Scottish Government's Single Building Assessment Programme, which was initiated in August 2021 with the identification of 25 buildings that 'were most at risk'.[16]

The guidance clarifies under what circumstances appraisals should be carried out on buildings to determine the fire risk and when an inspection should not be necessary. It also outlines when temporary measures, such as a waking watch, should be implemented within a block where a fire risk has been identified.

It also distinguishes between buildings that are 'extensively clad' and 'partially clad' with the most dangerous types of cladding – generally agreed as a more sophisticated approach than that adopted by English authorities.

Interestingly, the note also provides separate guidance for buildings above 11 metres and below 11 metres (fire resistance standards were introduced in October 2019 which require any Scottish building over 11 metres to have non-combustible cladding). Once again, this is a different approach to the British Government, which generally assesses risk based on an 18-metre threshold and has not emphasised a difference between extensively and partially clad buildings.

In September 2021 the Scottish Government issued a further report on the use of high-pressure laminate (HPL) on buildings.[17] Noting that while not as high-risk as aluminium composite material (ACM), the cladding used on the building in Grenfell, this was still a concern that affected 393 buildings, 95 of which were high-rise.

Currently the program design and the delivery regime is immature with only 105 buildings being part of a pilot for the cladding remediation program, but experts believe this could include an additional 300 buildings across Glasgow, Edinburgh, Dundee and Aberdeen.[18]

16 Scottish Government, *Cladding Remediation Programme: Single Building Assessment specification* (website), **gov.scot/publications/single-building-assessment-specification-sba**

17 Scottish Government, *High pressure laminate cladding - data collection: summary report* (website), **gov.scot/publications/high-pressure-laminate-cladding-data-collection-summary-report/**

18 International Fire & Safety Journal, *Ministers criticised for slow spending on cladding remediation in Scotland* (website), **internationalfireandsafetyjournal.com/ministers-criticised-for-slow-spending-on-cladding-remediation-in-scotland**

There is no risk-based model in place at this time, though they strongly recognise that PAS 9980 (which is currently under update review) will be utilised to guide and conduct their reviews.[19]

Safety assessments

Obtaining a safety assessment can cost around £6,000 and there are few people qualified to provide this service. Accordingly, the Scottish Government are providing free safety assessments to properties with external cladding, known as the 'Single Building Assessment' (SBA). Inspections commenced in August 2021 on the 25 highest risk buildings.

The SBA comprises an external wall appraisal and broad fire risk assessment of the whole building (not solely focused on cladding). It is intended to provide a realistic view of how much work is required to reduce the risk from 'high' to 'low'. It is expected that buildings with safe cladding will be 'green lighted' to provide reassurance to owners and occupiers.

Housing (Cladding Remediation) (Scotland) Act 2024

In June 2024, the *Housing (Cladding Remediation) (Scotland) Act 2024* came into force.[20] The Act empowers Scottish Ministers to assess and remediate risks to human life created, or exacerbated, by the external wall cladding systems of buildings that meet the following criteria:

- is a defined apartment building;
- has an external wall cladding system;
- is 11 metres or more in height; and
- was built or developed between 1 June 1992 and 1 June 2022.

The scope of buildings covered by the Act differs to those defined as 'higher-risk buildings' in England. This divergence is deliberate and intended to ensure that the legislation reforming the current regime in Scotland is appropriate to the context/scale of the issue within Scotland.

Apart from strengthening the powers of SBAs (in addition to the technical guidance that has been published), the Act allows for additional work assessments (AWA), undertaken after an SBA has been carried out and remediation work in response to an SBA report or an AWA report identifying work needed to address risks to human life associated with a building's external wall cladding system. The cost to the Scottish Government of procuring any such works will be recovered via the Responsible Developers Scheme (see below).

Cladding Assurance Register

The Act requires the maintenance of the Cladding Assurance Register (CAR), containing details of buildings which have had an SBA carried out. The CAR will also detail any work identified by an SBA report as being required to address risk to human life created or exacerbated by a building's external wall cladding system.

Offences

The Act set out a range of offences including providing false or misleading information for the CAR, failing to supply information required for carrying out an SBA or maintaining the CAR, occupying an evacuated premises and obstructing or failing to assist with assessment work. These are criminal offences punishable by a fine or in the case of occupying an evacuated premises, a fine and/or imprisonment.

19 Scottish Government, *External wall systems in existing multi-storey residential buildings - fire risk: advice note - version 2* (website), **gov.scot/publications/scottish-advice-note-determining-fire-risk-posed-external-wall-systems-existing-multi-storey-residential-buildings-version-2-0**

20 Scottish Government, *Cladding Remediation Programme: factsheet* (website), **gov.scot/publications/cladding-remediation-programme-factsheet/pages/legislation-and-regulations**

Responsible Developers Scheme

The Act provides for the establishment of a responsible developers scheme (RDS). The purpose of the RDS is to encourage developers to address or contribute towards the costs of addressing the remediation of residential buildings that they were wholly or partly responsible for developing. This will include any costs incurred by the government in arranging the carrying out of remedial works in response to a SBA report or an AWA report in relation to a building on the CAR.

Building Safety Levy

Following consultation with the UK Government, the Scottish Government had secured the power to introduce an equivalent building safety levy on the construction of new residential buildings in Scotland.[21] This mirrors the levy in the UK, that imposes a levy to provide a source of revenue to fund remedial works required to rectify historic building safety defects in residential buildings in England.

The next step is for the UK Government to introduce legislation to allow this to be implemented by the Scottish Parliament. Further details regarding how the Scottish Building Safety Levy will operate will be progressed via consultation and discussion between the Scottish Government, UK Government and the construction industry.

Amendments to the Building Act

After consultation with stakeholders, the Scottish Government will seek to make amendments to the *Building (Scotland) Act 2003*. The proposed amendments impose stricter sanctions and increase penalties for offences under the Act in a bid to deter poor behaviour and raise building standards.

New Zealand

The leaky homes crisis is an ongoing construction and legal crisis in New Zealand concerning timber-framed homes built from 1988 to 2004 that were not fully weather-tight. The problems often include the decay of timber framing which, in extreme cases, have made buildings structurally unsound. Some buildings have become unhealthy to live in due to mould and spores developing within the damp timber framing. The repairs and replacement costs that may have been avoided were estimated in 2009 to be approximately NZ$11.3 billion (affecting 43,000 homes and 309 schools).

Findings

The 2002 report by the Overview Group on the Weathertightness of Buildings that was appointed to investigate the causes of the leaky building crisis found that a number of factors led to the crisis.[22] This included a shift from a prescriptive regulatory system in 1993 to a more self-regulated regime. Some developers and builders knowingly or carelessly constructed buildings with numerous faults and short-cuts. An architectural design trend towards Mediterranean-style houses with complex roofs, plastered exterior walls, internal decks and small or no eaves was also factored in.

Local authorities also issued Building Consents based on insufficient documentation, failed to carry out inspection of the work during construction and issued code compliance certificates for buildings which were later found to have leaking problems. Consequently, some councils now share significant financial responsibilities with the builders (which in many cases have closed or otherwise removed themselves from liability) and the owners. Court cases have generally assigned around one third of the financial responsibility to local authorities.

21 Scottish Government, *Scottish Building Safety Levy* (website), **gov.scot/policies/taxes/scottish-building-safety-levy**

22 Overview Group on the Weathertightness of Buildings, *Report of the Overview Group on the Weathertightness of Buildings* (PDF), **fyi.org.nz/request/12275/response/46795/attach/5/The%20Overview%20Group%20on%20the%20Weathertightness%20of%20Buildings.pdf**

Other causes that led to buildings being leaky included:

- increase in the use of cladding systems such as fibre cement sheet that were not used within their specifications or not installed correctly, and relied on a paint finish as the primary defence against water ingress resulting in very damp conditions which are ideal for rot; and
- lack of detailed drawings for buildings due to the breakdown of the apprenticeship system and unqualified builders in the marketplace, as well as a lack of Council staff expertise carrying out building inspections to ensure weathertightness.

Reforms implemented as a result

The following changes were implemented arising from the inquiry which included:

- New legislation which introduced a licensing scheme for building designers, builders and related trades.
- Councils were required to be registered with a central authority and were to be subject to regular quality control procedure checks (however, Council building inspectors remain unlicensed).
- The building regulatory agency was dissolved and replaced by a government department focusing solely on building and housing.
- Aspects of the Building Code and timber standards were re-written and greatly expanded.

Several thousand homes still await renovation. The Government's bailout package of $6 billion shared between government and local authorities has not been successful as in most cases owners have to bear 64 per cent of the costs of rectification (26 per cent Councils and 10 per cent government funds) while also forcing homeowners to sign away their rights to sue for more.

Building System Reforms

Beginning in 2021, the New Zealand Government began a broad review of the building system with an aim to address the issues in construction that hinder productivity, efficiency, and the delivery of safe, healthy and durable buildings.[23] The Building Systems Reform involves multiple law changes, the first of which was the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* passed by Parliament in June 2021.

Building Amendment Act 2021

The Act introduced mandatory minimum information requirements for building products, enabled the creation of a new voluntary certification scheme for modular component manufacturers, paved the way for a strengthened product certification scheme, and set stronger penalties to promote higher levels of compliance with the building regulatory system.

Changes to occupational regulation

The New Zealand Government aims to amend occupational regulations to lift the performance of all building professionals and tradespeople and hold accountable those who do not meet the standards set for them. The government has progressed work on three occupational groups as part of this programme including engineers, plumbers/gasfitters/drainlayers and Licensed Building Practitioners. The government also plans to conduct a review of the occupational licensing arrangements for electrical workers and architects.

Consumer protection and evaluation

Following a review of current legislative consumer protection measures, the government will take action to enable homeowners to make informed decisions, improve industry capability and reduce the risk to homeowners during the construction process.

23 New Zealand Government, *Building System Reforms* (website), **building.govt.nz/getting-started/building-system-reforms**

Reviewing the Building Consent system

Early in 2024 the government announced it will introduce new regulations to:

- make it easier to make minor product or design changes for building consents;
- enact new legislation to enable the use of building materials from trusted overseas jurisdictions, initially focusing on those that have been approved by Australian jurisdictions. This will remove the need for new products to be certified domestically, and is expected to increase the availability of building products and contribute to lowering the cost of building in New Zealand;
- exempt small building projects under NZ$65,000 from paying the building levy; and
- require councils to submit timeframes for building consents applications.

Construction data from Stats NZ shows that it takes an average of 569 days to build a home, increasing to nearly 600 days if the building consent processing time is included. The changes aim to amend the current regulations that are unclear and inflexible and unnecessarily delay the building process. As an example, if it becomes necessary to swap out a comparable building product because of a supply shortage, a new building consent application must be submitted, or the builder has to wait until the specified product becomes available.

Construction projects are relatively more exposed to risks of delays arising from material shortages and supply chain disruptions. This is also exacerbated by the lack of market competition for building products in New Zealand. The GIB (a domestically manufactured plasterboard) shortage experienced in 2022 was a notable example of this.

Building consent authorities will still need to assess building work to ensure it complies with the Building Code, but builders will not need to submit new consents for minor product or design changes.

New South Wales, Australia

In 2020, NSW inaugurated the Office of the NSW Building Commissioner to improve the quality of construction of residential apartment buildings and restore trust in the industry through the Construct NSW strategy.

The *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* grants sweeping powers for the NSW Building Commissioner and authorised officers to take action against defective building work through a register of in-force prohibition orders, building work rectification orders, stop work orders, and enforceable undertakings for buildings with residential apartments.

For example, the NSW Building Commissioner may make an order prohibiting the issue of an occupation certificate and/or the registration of a strata plan for a residential apartment building when:

- an expected completion notice was not given or was given less than six months before the application for the occupation certificate was made;
- an expected completion amendment notice was not given or was given less than six months before the application for the occupation certificate was made;
- a serious defect in the building exists; and
- a building bond has not been given.

Construct NSW

Construct NSW focuses on six areas of industry reform: regulation, ratings, education, contracts, digital tools, and data and research.[24]

Further, the *Design and Building Practitioners Act 2020* introduced two new registration schemes for practitioners working on residential apartment buildings: one for professional engineers and one for designers and builders. Designers and builders also have new obligations to declare and lodge designs and building work on the NSW Planning Portal.

Under this program, NSW intends to develop ratings systems in conjunction with ratings agencies, insurers and financiers to develop a world-first construction assurance tool to make it easier for homeowners and the regulator to identify trustworthy buildings. This will apply a risk-based approach where regulatory attention is focused on the riskiest players.

Other elements of the program include working with the education sector and industry professionals to upskill the construction workforce, strengthening contracts and standards across residential building construction and developing digital platforms to deliver accountability and transparency across the industry sector.

Project Remediate

In 2021, NSW introduced Project Remediate which is a voluntary (opt-in) three-year program to replace flammable cladding for eligible Class 2 residential apartment buildings (an estimated 225 buildings).[25]

Project Remediate offers:

- a 10-year interest-free loan and assistance from experts (providing quality assurance and program management services);
- financial support is available for eligible building owners; and
- building owners will end up with replacement cladding that is certified, safe, long-lasting and insurable.

Project Remediate has also arranged public liability, professional indemnity and contract works insurance for all contractors and consultants who do work and provide services under this program.

Building Commission NSW

From December 2023, the Building Commission NSW took over building and construction-related regulatory and compliance work from NSW Fair Trading and acts as a standalone specialist regulator.[26] Its key functions include:

- inspections and compliance for build quality of residential buildings;
- overseeing licensing of tradespeople, design practitioners and certifiers;
- handling complaints regarding buildings and licensed tradespeople; and
- reviewing policy to reform building laws in NSW.

24 Customer Service, *Construct NSW Update Report January 2021* (PDF), **nsw.gov.au/sites/default/files/2021-02/Construct-NSW-Update-Report-January-2021.pdf**

25 Building Commission, *Replace flammable cladding through Project Remediate* (website), **nsw.gov.au/departments-and-agencies/building-commission/replace-flammable-cladding-through-project-remediate**

26 Building Commission, *Building Commission NSW* (website), **nsw.gov.au/departments-and-agencies/building-commission**.

Other reforms and initiatives recently implemented by the NSW Government include:

- reforms to the current construction-related legislation in the Building Legislation Amendment Act, passed by Parliament in November 2023. One major change in the new swathe of reforms was a further expansion of the Commissioner's powers, including granting the power to inspect building sites and deal with building defects even during the construction phase. Other companion legislation remains at the review of consultation phase;
- the introduction of "Decennial Liability Insurance", providing owners with defects insurance coverage for a period of no less than 10 years from completion of the building;
- increasing the Building Bond Scheme from two per cent to three per cent, giving owners of residential apartments greater security against defects.

Inspection Powers Expansion

In November 2023, changes to the *Home Building Act (NSW) 1989* allows inspectors of the Building Commission NSW to investigate the construction of buildings covered under the Home Building Act, which include for example, freestanding houses, duplexes and terraces (known as Class 1 buildings under the National Construction Code).[27]

Inspectors will be able to enter residential homes under construction or where construction work is being undertaken to inspect build quality. If a building is occupied, an inspector can only enter part of the premises used for residential purposes with permission of the owner or by a search warrant. Inspectors may examine, test, take samples or seize things to determine building compliance or if they believe it may be connected with defects in the building.

The inspector may issue a rectification order to the contractor for:

- defective building work;
- work that could result in a defect; or
- as a consequence of the defect, other structures or if work has been damaged.

Inspectors may also issue a stop work order to a developer where they believe that if building work continued, there could be significant harm or loss to the public or occupiers, including future occupiers of the building.

Penalties can apply for failure to comply with a rectification or stop work order.

Site inspections no longer need to be triggered by the lodgement of a building dispute to the regulator. Instead, builders and trades working on these residential buildings are being put on notice that their work may be inspected at any time. This replicates existing powers for residential apartment buildings (known as Class 2 buildings under the National Construction Code).

Anti-phoenixing laws

In November 2023, to combat the high rates of insolvency the construction industry experiences when compared to other industries, changes were made to the *Home Building Act (NSW) 1989*. These include the ability for the regulator to refuse an application, cancel a licence or disqualify a person from holding a contractor licence if the person has been involved in the management of a company which has become insolvent in the previous 10 years. This reverses the presumption of a person securing a licence and places responsibility on applicants to demonstrate they are not at risk of future insolvency.

27 Fair Trading, *Changes to building legislation in NSW* (website), **fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-building-legislation-in-nsw**

Decennial (10-year) Liability Insurance and Strata Building Bond Inspection Scheme

Decennial Liability Insurance (DLI) is an insurance product that covers the common property of strata apartment buildings (known as Class 2 buildings under the National Construction Code) against defects for a period of 10 years.

The developer will take out the insurance policy before occupation of the building and it provides an alternative option to the Strata Building Bond and Inspection Scheme (SBBIS), which operates under the *Strata Schemes Management Act 2015*.

DLI covers rectification of defects up to the contract cost of the apartment building even if the developer or builder becomes insolvent or ceases operation. The SBBIS will only cover the costs of defect rectification up to the value of the bond paid (currently 2% of construction value).

The Act also allows for changes to be made to the existing strata building bond rate. From 2 November 2024, the rate a developer was required to hold as a bond against defects increased from 2% to 3% of the total cost of the building contract. This will provide greater consumer protection for apartment building owners covered by the SSBIS.

New suspension powers

Powers have recently been strengthened to allow for the immediate suspension of a certifier, design practitioner, principal design practitioner, building practitioner or professional engineer while disciplinary action is being finalised. This applies if the registration holder has been issued with a show cause notice and the person has engaged in conduct that would constitute grounds for a suspension, is likely to continue to engage in the conduct and there is a danger of significant harm if the certifier, practitioner or engineer continues to undertake work.

This power is already in place for builders and contractors under the *Home Building Act 1989* and the Act duplicates these same powers to ensure the regulator has equal powers to address dangerous and harmful behaviour from certifiers and registered practitioners. This power is similar to powers in place in Victoria under the *Building Act 1993*.

Building products safety

Planned for implementation in 2025, the introduction of a chain of responsibility and new duties for manufacturers, suppliers, importers, designers, and tradespeople involved in building product supply, aims to enhance accountability throughout the entire process.

The new duties will include ensuring products are compliant and safe for their intended use and that certain information is made available and shared about the product to other persons in the building product supply chain.

New powers have also been provided to the Building Commission NSW to issue building product warnings and directions and to ban, recall and investigate non-conforming building products.

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