



Investigation report



Can we fix it?

Building certification in the NT

November 2024

Our Office acknowledges the traditional owners of the Northern Territory and recognises their continuing cultural and spiritual connections to their lands, waters and communities. We pay our respects to all Aboriginal and Torres Strait Islander people and their cultures, their elders past and present, and to future generations.

Can we fix it? - Building certification in the NT

Contents

EXECUTIVE SUMMARY	1
RECOMMENDATIONS.....	7
CHAPTER 1: BACKGROUND AND INVESTIGATIONS	9
CHAPTER 2: MAINTENANCE AND SAFETY OF NTG BUILDINGS	23
Certification and safety	23
Further certification of works related to base buildings	23
Inspection and maintenance.....	24
Current inspection and maintenance processes	24
CHAPTER 3: CERTIFICATION OF NTG LEGACY BASE BUILDINGS.....	32
Implementation and enforcement of 2016 changes to mid-2022	32
Limitations in 2016 provisions	35
NTG actions since mid-2022	37
CHAPTER 4: OMBUDSMAN COMMENT ON NTG BUILDINGS	43
2016 to mid-2022.....	43
NTG actions since mid-2022	44
Public assembly.....	45
Exemptions.....	45
Greater protections for public assembly	46
Dual and potentially conflicting roles	47
CHAPTER 5: MARRARA STADIUM	51
Hydrant system	53
CHAPTER 6: OTHER CERTIFICATION ISSUES	56
Post-certification fire safety inspections	56
Remote certification	57

EXECUTIVE SUMMARY

1. This report relates to building certification and safety in the NT. However, several of the points discussed have broader relevance across the NT public sector. They include:
 - a) The importance of timely and regular review of legislative and administrative schemes to ensure they are operating effectively.
 - b) The risks of maintaining a 'persuasive' approach to regulation for too long a period, in the face of obvious problems.
 - c) The reputational and administrative risks of failure to act in a timely manner when government is in breach of a regulatory scheme.
 - d) The important role of the Northern Territory Government (**NTG**) at ministerial and senior executive level in monitoring and providing public assurances of safety for major public assembly events.
 - e) The need to carefully manage dual and potentially conflicting roles held by government agencies, in this case, the roles of regulator and property owner.
2. Building certification¹ involves independently inspecting and approving construction work to ensure it is suitable for occupation and meets quality, safety, health and other standards. Requirements in the NT are governed by the *Building Act 1993* (the **Act**).
3. The genesis of this investigation² was the discovery that over 300 properties owned or leased by the NTG did not have required building certification. The NTG owns multiple sites, often with many buildings on each site. This includes some of the most prominent structures in the Territory. Many of these were built decades ago before the Act commenced but are now caught by its provisions, including the need for building certification. I will call these **legacy base buildings**.

¹ Also described as occupancy certification.

² Conducted initially on a joint basis with the Independent Commissioner Against Corruption (**ICAC**) but continued solely as an *Ombudsman Act* investigation.

Building safety

4. The investigation led me to consider what building certification means in terms of ongoing quality, safety and health of a building.
5. I accept, as stated by the Department of Infrastructure, Planning and Logistics (**DIPL**)³, that the absence of certification for a NTG-owned legacy base building (many built when building permits and certification was not required) does not mean a building is unsafe.
6. There is no doubt that certification provides an essential assurance for new buildings and new building work on existing buildings. The issue of further certifications for new works on existing buildings can also provide a level of assurance as time passes.
7. However, certification gives a ‘point in time’ assurance. It is a key indicator of the safety of new and recent building work but there is more to assessing and ensuring safety, quality and health of buildings as they age over decades.
8. To that end, I explored in considerable detail, the steps taken by the NTG on an ongoing basis to monitor, maintain and repair its many facilities. I conclude that current NTG measures appear to represent a very thorough approach to condition assessment and maintenance of government assets. It is generally well structured and well placed to identify and address issues with the safety, quality and health of NTG-owned buildings.⁴

Marrara Stadium

9. With regard to Marrara (TIO) Stadium (the **Stadium**), I obtained extensive records of monitoring, repairs, maintenance and new building works over time, including over 50 occupancy certificates issued in relation to specific work undertaken at the Stadium since 2010. There is no doubt a multi-faceted and ongoing effort to maintain the safety and quality of the Stadium. I do not suggest there are issues with the safety of the Stadium

³ In September 2024, relevant functions of DIPL were split between the new departments of Lands, Planning and Environment (**DLPE**) and Logistics and Infrastructure (**DLI**). This report will continue to refer to ‘DIPL’ except where the context requires, e.g., where a recommendation is made for future action.

⁴ This should not be taken as an indication that I have exhaustively assessed current systems, approaches and resources and found that there is no potential for change. No system is perfect and there is always room for improvement. Nor do I express a view on the safety, quality, health or amenity of any particular building. The investigation has not attempted to conduct such assessments but has examined the extensive records provided and formed the view that there are very real and meaningful efforts in place.

but note different expert views have been expressed over time about the best ways to deal with risks and achieve occupancy certification.

10. The public events hosted at the Stadium can attract very large crowds of men, women and children from across the whole spectrum of the Territory community. The events are frequently supported or sponsored by the NTG. The Stadium is owned by the NTG. It is important that the NTG be in a position to continue to assure the public with regard to safety and precautions in place to deal with any potential adverse incidents. I consider it is in the public interest that the NTG be able to publicly affirm that all reasonable steps have been, and continue to be, taken to deal with identifiable risks.
11. I suggest that the advent of a new Government and a new department provides an opportunity for the NTG to review safety aspects in relation to the Stadium base building and reiterate public assurances in this regard. I consider this can be undertaken quite apart from questions around certification.

Time taken to act on legacy base buildings

12. As for certification of legacy base buildings generally, I explored the history of the building legislation, a 2009-2016 moratorium on enforcement and a solution legislated in 2016 that created two new types of occupancy certification (Certificate of Substantial Compliance and Certificate of Existence), with more easily achieved requirements. That amending legislation extended certification requirements to all buildings within relevant areas, whenever they had been constructed. This caught many NTG-owned legacy base buildings, some of which were decades old by then.
13. The 2016 amendments may have assisted with certain aspects of certification but they did not prove practically effective in relation to NTG-owned legacy base buildings.
14. One of the practical problems faced was that many of the more complex buildings, including public assembly buildings, were excluded by the NTG from the issue of the simpler Certificate of Existence that might otherwise have provided a path to certification. Another problem was the hesitation of private certifiers to be involved in certification of pre-existing buildings where they were unable to view latent features or records they would normally have access to for newer buildings. This no doubt

contributed to a related problem with securing necessary insurance for the provision of such services by certifiers.

15. These issues contributed to, but did not justify, a lack of progress in resolution of the certification issue for NTG-owned legacy base buildings from 2016 to mid-2022. It is unclear why this state of affairs was allowed to persist for so long. There were undoubtedly significant challenges in obtaining certification for those buildings. The 2016 solution did not work for them. These problems must have been apparent relatively early in the process.
16. A period of perhaps a year or two to consider and trial alternative approaches might have been considered understandable. However, I have not been able to identify an adequate justification for failure to consider and progress alternative solutions much sooner than 2022, leaving the NTG apparently in breach of regulatory requirements and open to adverse commentary and action, for that extended period.
17. One of the core objectives of requiring occupancy certification is to give assurance that adequate measures have been implemented to ensure the safety of the building. As indicated above, such certification is not the sole determinant of building safety. Lack of certification does not mean there has been a failure to take steps to ensure safety. And the mere fact that a building has certification does not mean it remains safe for all time. Safety considerations require ongoing inspection and maintenance, which the NTG has provided substantial evidence of. However, the lack of timely, concrete action to comply or to explore alternatives in relation to legacy base buildings, left it open for people to query the safety of the many NTG buildings that do not have occupancy certification.
18. Maintaining a 'persuasive' approach to enforcement for an indefinite period, in the face of obvious practical problems with the scheme, with the NTG as the main miscreant and with public perception of building safety at risk, was highly problematic.
19. The time taken to act may be reflective of multiple priorities and limited resourcing. It should not, by itself, raise alarm with regard to the health or safety of those buildings. It is nevertheless concerning. It highlights a clear need for timely and regular review of legislative and administrative schemes to ensure they are operating effectively.

Legislative change necessary

20. Following enquiries by the ICAC about these issues, the NTG created a Building Compliance Taskforce (**BCT**) and a Building Compliance Unit (**BCU**) to address issues around non-compliant NTG-owned and leased properties.
21. The then Minister also announced a review by an external consultant of current governance and oversight arrangements in relation to building licensing, regulation and dispute resolution in order to propose a model suitable for the NT context. That review, by KPMG, has been finalised but the report is not yet publicly available.
22. Some building certificates have been issued as a result of the work of the BCU but the BCT recognised that the only practical solution for legacy base buildings is likely to involve legislative change. The BCT has put forward proposals to the NTG for change. I recommend that those changes be considered with priority. I further recommend any legislative solution should provide adequate protections around maintaining the safety, health and amenity of legacy base buildings.
23. Once legislative changes are in place, it will be important for the NTG to act promptly to make sure necessary steps towards compliance and ensuring maintenance of safety, health and amenity are undertaken in a timely manner.

Public assembly buildings

24. I also considered the need for greater protections in relation to buildings used for public assembly. The nature of such buildings may vary greatly from basic single level structures that occasionally play host to public meetings to major edifices with multiple levels that host thousands of members of the public on a regular basis. Many of these may be NTG-owned but others may be in private hands. Whoever owns them, the need to ensure the safety of so many means mandating ongoing monitoring and assessment mechanisms is worthy of close consideration.
25. Particularly in relation to major venues that are likely to attract large numbers in tightly packed circumstances, it is appropriate to consider whether there is a need for additional legislative requirements to assess ongoing structural integrity as well as other health and

safety aspects, as such buildings age. A 40 year old building where large crowds gather on a regular basis will warrant further ongoing scrutiny (required by law) even if it has previously been certified. I have not investigated precedents for such requirements in other jurisdictions but it is a matter that I believe merits consideration by the NTG.

26. In raising this issue, I do not suggest there is a deficiency in current scrutiny or care of any buildings considered in this investigation. I merely draw attention to the potential benefits of a statutory requirement along these lines.

Dual roles

27. During the investigation, I suggested that it appeared DIPL faced problematic dual roles as a regulator for certification that was also required to act on behalf of the NTG as an owner of many buildings required to comply with the legislation. I raised the question whether this dual role placed DIPL in an awkward position, with the prospect that any prosecution enforcing the requirements for certification would be met with claims that DIPL should first be prosecuting the NTG.
28. DIPL explained the steps taken to ensure an administrative separation of the functions. I consider there is a tension in the same entity having overall responsibility for the two functions but acknowledge the likelihood that those with most expertise in the relevant areas are likely to be based in the same department. I note this issue has significantly abated with the split of these functions between DLPE and DLI with the recent change of government. It is nevertheless important for the NTG to remain alive to the potential for conflict of interest and to ensure appropriate measures are maintained to deal with it.
29. Three departmental chief executives were provided with a draft of this report and gave pertinent feedback. I thank them for their input. Minor amendments to the draft have been made to recognise or reflect their comments.
30. My recommendations are set out in the body of the report but also listed on the next page for ease of reference.

Peter Shoyer
NT Ombudsman
November 2024

RECOMMENDATIONS

Recommendation 1

NTG and DLPE give priority to developing a legislative solution to the current impracticality of achieving certification for legacy base buildings.

Recommendation 2

NTG and DLPE ensure that the proposed legislative solution provides adequate protections around the safety, health and amenity of legacy base buildings.

Recommendation 3

NTG and DLPE consider the merits of additional legislative measures to require appropriate checks are made on an ongoing and regular basis to ensure the continuing safety, health and amenity of buildings used for public assembly.

Recommendation 4

NTG and DLI review and, if necessary, engage additional, expert advice, including advice from NTFRS, to put them in a position to provide public assurances as to the safety of the Marrara Stadium during major public events.

Recommendation 5

NTG and DLPE consider issues relating to timing of NTFRS inspections and remote certification in any review of certification requirements.

DLPE agreed with the recommendations involving it, responding with regard to each:

1. Work has commenced on the instructions to amend the Building Act and Regulations to provide certification pathways for existing buildings in the NT. DLPE will undertake targeted industry consultation on the proposed approach once we have agreement to proceed.

2. The proposed legislative solution addresses this and I am confident it can provide comparable protections for safety, health and amenity of legacy base buildings compared to other buildings that have met requirements for building certification, and also provide a point in time check for compliance with relevant codes/standards.

3. DLPE is considering the best approach to ensuring regular assessment of buildings used for public amenity applying both legislative and non-legislative approaches and in consideration of the best fit legislation. Analysis of the approaches used by other jurisdictions is underway.

5. Options have been canvassed to address this issue, including the timing of NTFRS inspections and practices of off-site building certifiers which will be pursued as part of a broader suite of building reform.

CHAPTER 1: BACKGROUND AND INVESTIGATIONS

NT Building regulation

31. Building in the Northern Territory is currently regulated through the *Building Act 1993* (the **Act**). The Act includes, among a range of matters, provisions relating to:
- a. building practitioners;
 - b. building certifiers;
 - c. building standards;
 - d. building permits;
 - e. occupancy certification;
 - f. enforcement; and
 - g. consumer protection.
32. The objects of the Act are:⁵
- (a) to establish, maintain and improve building standards; and*
 - (b) to facilitate the adoption and efficient application of national uniform building standards; and*
 - (c) to facilitate national uniform accreditation of building products, construction methods, building designs, building components and building systems; and*
 - (d) to maintain, enhance and improve the safety, health and amenity of people using buildings; and*
 - (e) to promote and provide for the construction of environmentally efficient buildings; and*

⁵ Section 3 of the Act.

- (f) to provide an efficient and effective system for granting building permits and occupancy certification, administering building matters and resolving building disputes; and*
- (g) to reform aspects of the law relating to the legal liability of regulatory agencies and building practitioners; and*
- (h) to facilitate national uniformity in the training and qualifications of certain building practitioners and the recognition of qualifications on a national basis; and*
- (ha) to provide for the registration of building practitioners; and*
- (hb) to provide for the investigation, audit and disciplining of building practitioners; and*
- (hc) to establish a scheme relating to residential building consumer protection and the provision of residential building insurance or fidelity certificates; and*
- (j) to facilitate the cost effective construction of buildings; and*
- (k) to aid the achievement of an efficient and competitive building industry.*

33. There is a Director of Building Control whose functions are:⁶

- (aa) to investigate complaints against, and to audit the work and conduct of, building practitioners; and*
- (ab) to conduct disciplinary proceedings in relation to building practitioners before the Practitioners Board; and*
- (ac) to prosecute alleged offences against this Act or the Regulations, whether the alleged offender is a building practitioner or another person; and*
- (a) to advise the Minister on all matters relating to building in the Territory; and*

⁶ Section 8 of the Act.

- (b) *to promote research into building matters; and*
- (c) *to liaise with groups and bodies involved in the building industry and with other interested groups or bodies on building matters; and*
- (d) *to publish reports and disseminate information on building matters; and*
- (e) *to carry out periodic reviews of this Act and the Regulations; and*
- (f) *to report on any building matters when required by the Minister to do so; and*
- (g) *to liaise with any national body established to deal with building regulation matters; and*
- (h) *such other functions as are imposed on the Director by or under this or any other Act or as directed by the Minister.*

34. The primary focus of this investigation has been on certification aspects of building regulation, in so far as they relate to older NTG-owned buildings and as they interact with the function “*to maintain, enhance and improve the safety, health and amenity of people using buildings*”.

35. In recent decades, achievement of objects around building standards has involved, “*the adoption and efficient application of national uniform building standards.*” However, it is fair to say that building standards evolve, often substantially, over time, making compliance over time a moving feast.

2009 Moratorium on building certification

36. In 2009, the NT Government (the **NTG**) identified multiple issues around compliance with certification requirements. One media report described the issue as follows:⁷

⁷ Jane Bardon, ABC News, 27 August 2009, <https://www.abc.net.au/news/2009-08-27/illegal-occupation-buildings-uncertified/1406936>.

Illegal occupation: buildings 'uncertified'

More than a quarter of all public and private structures in the Northern Territory, including a new police station, parts of the Berrimah jail and Royal Darwin Hospital, do not have occupation certificates to ensure they are safe, a Government task force has revealed.

The Government set up the task force in March to assess how many buildings and structures did not have occupation certificates following an argument over a withdrawn prosecution of the owner of an uncertified Red Rooster restaurant in Tennant Creek.

The task force has found there are currently almost 36,000 permits for buildings and structures that are still not certified, some of which date back to the 1960s, including 2015 government properties.

Some of the buildings that do not have occupation certificates include the new Casuarina police station, low security buildings at Berrimah jail, the birthing centre at Royal Darwin Hospital and several new schools.

The task force points out that occupation certificates are designed to confirm that buildings have been built in accordance with the building permit.

"Lack of a certificate does not imply that the building is unsafe", the report says. ...

37. A later NT Government in 2016 described the problem as follows:⁸

Buildings in the Northern Territory generally reflect the regulations and building standards of their time. Anyone familiar with building control in the Northern Territory will know that legislation has evolved and has been enhanced throughout the years. Regulated building areas have also expanded as the population has increased.

In the past, Commonwealth ordinance regulated the construction of buildings. After Darwin was destroyed by Cyclone Tracy in 1974, buildings had to comply with higher

⁸ Hon D Tollner, Minister for Lands and Planning, Second Reading Speech, *Building Amendment (Occupancy Certification) Bill 2016*, 10 February 2016, Hansard 7740-41.

wind code standards. Shortly after self-government, in 1983, the Northern Territory Building Act was introduced and buildings were constructed in accordance with the NT Building Code. This was suspended by the 1993 Building Act, which created private certification and adopted the national construction code. This is the system that exists today.

In 2006 when the Northern Territory, and especially Darwin, was on the brink of significant development, requirements for certification were tightened to require additional documentation and inspections to cover critical stages of building work. The basis for the issue of an occupancy permit was also amended to require full compliance with the requirements of the act and regulations.

A more robust regulatory environment, however, created an inflexible certification system. As a result impasses occur when the requirements of the act and regulations are not met in full. For example, if there are unapproved variations and the building permit has expired, a new permit is needed. If by this time technical standards have changed, the building must be upgraded. It is also unlikely for a certifier to complete certification if all the prescribed conditions and requirements have not been fulfilled.

As an occupancy permit is the only mechanism for certification, there are building works that may comply with the relevant technical standards but cannot be lawfully occupied because the legislative requirements have not been complied with in full. There is also a culture of non-compliance and, anecdotally, it is understood that there are many unapproved works and works that do not comply with relevant technical standards. In addition, the public is generally unaware of its obligations, and the enforcement of regulations has been inadequate.

38. A moratorium on enforcement action in relation to non-certified building work commenced in April 2009 and ultimately remained in place until mid-2016.

2016 certification provisions

39. Ultimately, the NTG developed a legislative solution, described as follows in the Explanatory Statement to the *Building Amendment (Occupancy Certification) Bill 2016* (the **Bill**):

The purpose of this Bill is to amend the [Act] to provide for the issue of occupancy certification on an expired Building Permit and to create two new categories of occupancy certifications in addition to the existing Occupancy Permit.

The amendments will include:

- provisions to enable the making of an application for a Certificate of Substantial Compliance to a Building Certifier and the granting of the Certificate by the Certifier; and*
- provisions to enable the making of an application for a Certificate of Existence to the Building Certifier, the making of a recommendation for that Certificate by the Certifier to the Director of Building Control (the Director) and the granting of the Certificate by the Director.*

The amendments are designed to create alternative pathways to building certification while reflecting the true level of compliance achieved by building works.

40. In introducing the Bill, the Minister for Lands and Planning stated:⁹

Since a moratorium was declared in 2009 there has been a focus on reducing the thousands of building permits that have been lodged but not finalised by an occupancy permit. To date, many of these building matters remain unresolved.

The proposed amendments to the act are in response to calls from building owners and industry for a practical resolution to finalise outstanding certification. When the proposal to create alternative pathways to certification was discussed in 2014, there was a positive reaction overall as it presented an opportunity for certification impasses to be finalised and for buildings to be lawfully occupied. In addition there was to be recourse for existing unapproved building works to apply for certification. At the same time there was recognition that the existing building matters must not be resolved in any way that compromises building standards and public safety. The amendments require that in relation to all categories of occupancy certification the building works

⁹ Hon D Tollner, 10 February 2016, Hansard 7740-41.

must be suitable for occupation, otherwise the works cannot be occupied and enforcement action may commence.

The bill will introduce two new alternative pathways to certification. For works covered by a building permit the certifier will consider the relevant building legislation and standards that were in force at the time of the permit. If all of the conditions and requirements for an occupancy permit are not fulfilled, the building owner will have the ability to seek certification by applying for a Certificate of Substantial Compliance. The certifier must, however, be satisfied that the works comply with all relevant technical standards and were completed under a valid building permit.

If the certifier is unable to determine that works meet the criteria for a Certificate of Substantial Compliance, the owner may apply for a Certificate of Existence. An application for this certificate may also be made if works are unapproved. The bill enables the issue of a Certificate of Existence by the Director of Building Control on recommendation by a certifier. The certifier must assess that the building works comply with a reasonable level of safety, health and amenity. It is intended that the Director of Building Control will issue guidelines under section 167B of the [Act] that will describe what is considered a reasonable level of safety, health and amenity.

Certificates of Existence cannot be issued for hospitals, schools, emergency shelters or any other high-risk buildings and essential facilities. This category of certification will also only apply to buildings completed before the amending legislation has commenced as it has been specifically created to address legacy building issues.

The bill also inserts a provision that makes it clear that occupancy certification can be issued if the building permit has expired.

I expect building owners to welcome these amendments as they introduce some flexibility within the current certification system in order to resolve certification impasses without compromising its integrity. The integrity of the building certification system will not be compromised as, at present, unapproved building works have not undergone any form of assessment. By introducing a mechanism whereby the work

can be assessed and determined to be suitable for occupancy, public safety is expected to be enhanced.

...

These amendments will achieve the right balance between regulatory compliance, public safety and pragmatism. The new system recognises that unavoidable events occur during construction. While there is now a practical mechanism to deal with these events, the different occupancy certifications will reflect the true level of compliance achieved by buildings and creates an incentive for people to do the right thing. This creates transparency, increases confidence in property transactions and enhances consumer protection. With better information, potential buyers are likely to price the true value of a property. This, in return, is expected to encourage owners to comply with certification requirements in order to achieve the highest level of occupancy certification and, therefore, price for their properties.

41. The Bill was duly passed and the amendments commenced on 1 May 2016.
42. In essence, the new scheme was intended to allow alternative, and less strict, approaches to facilitate certification of buildings and building work. Nevertheless, even the lowest level of certification, the Certificate of Existence, was intended to ensure that *“building work must meet a reasonable level of safety, health and amenity. What is reasonable is proposed to be defined through guidelines, and one of the key elements of that test will be that the structure would need to meet current wind loading and fire safety standards.”*¹⁰
43. A key element was that certification requirements extend to buildings constructed in the past, sometimes many decades ago, even if they had not been subject to a requirement for a building permit or certification at the time of construction (**legacy base buildings**).

¹⁰ Hansard, 17 March 2016, 8036.

NTG-owned legacy base buildings excluded from Certificate of Existence

44. Importantly for this investigation, it was clear from the outset that the base level, Certificate of Existence, would not be available for many NTG-owned legacy buildings. In debate, the then Minister stated:¹¹

... It is proposed that all classifications of buildings are able to obtain any level of certification. However, buildings that are categorised as importance levels three and four, such as hospitals, schools, emergency shelters and buildings that accommodate a large number of people, are not able to apply for a Certificate of Existence.

45. This exclusion was reinforced in the *Occupancy Certification Guidelines* issued by Director of Building Control:¹²

A Certificate of Existence cannot be granted for:

- buildings classified by the National Construction Code as 'Importance Levels 3 and 4' e.g. hospitals, schools, emergency shelters, buildings that accommodate a large number of people, and other high risk buildings and essential facilities; or*
- building works associated with fire safety systems.*

These types of buildings and building works must comply with the requirements for an Occupancy Permit or a Certificate of Substantial Compliance.

46. In practice, the steps necessary to obtain a Certificate of Substantial Compliance, let alone a Certificate of Occupancy, have, for many NTG-owned legacy buildings, proved a seemingly insurmountable hurdle.

47. However, it is important to remember that many NTG-owned legacy base buildings were constructed at a time when building permits and certification was not required for such

¹¹ Hansard, 17 March 2016, 8036.

¹² https://nt.gov.au/_data/assets/pdf_file/0009/271395/occupancy-certification-guidelines.pdf, 7.

buildings. For example, with respect to Marrara Stadium, the Department of Infrastructure, Planning and Logistics (**DIPL**)¹³ advised:

... a final certificate for the building was issued by the Assistant Secretary Operations, former Department of Transport and Works on 12 July 1993 stating that the works under the contract had been final and satisfactorily executed. The plans that were used for construction were all certified and signed by the appropriately qualified and delegated persons confirming that they meet the legislative requirements at the time of construction.

At this time, these arrangements were fairly standard for government infrastructure. Other buildings across the government owned buildings portfolio have a similar status

...

48. The evidence suggests that many, if not all, of the more substantial NTG-owned legacy base buildings were nevertheless constructed under close supervision by NTG officers who were both expert and experienced in design and construction. The *ex post facto* imposition of building permit and certification requirements on those legacy base buildings does not reduce the quality of the work undertaken or the supervision of the work carried out at the time of construction.

Progress to mid-2022

49. In the debate around the Bill, the then Minister foreshadowed an incremental approach to enforcement, stating:¹⁴

Once these amendments are in place an effective enforcement regime is necessary to ensure ongoing compliance. At least initially, there will be a focus on facilitating compliance, not active enforcement. Building owners and industry will be given reasonable time to manage the new system from an administrative point of view. It is, however, expected that owners of buildings that have reached an impasse initiate the

¹³ In September 2024, relevant functions of DIPL were split between the new departments of Lands, Planning and Environment (**DLPE**) and Logistics and Infrastructure (**DLI**). This report will continue to refer to 'DIPL' except where the context requires, e.g., where a recommendation is made for future action.

¹⁴ Hon D Tollner, 10 February 2016, Hansard 7740-41.

certification process once the new system is in place. If a building owner refuses to obtain certification, enforcement action may commence.

50. While a new Government took office not long after the amending legislation commenced, a similar 'persuasive' approach was adopted to enforcement. Efforts were made to promote compliance. However, in the face of hurdles to effective implementation, it appears that there was limited progress in terms of compliance or enforcement in respect of legacy base buildings up to mid-2022. The hurdles and lack of progress are discussed in Chapter 3.

Joint ICAC / Ombudsman investigation

51. In March 2022, the Independent Commissioner Against Corruption (ICAC) announced he was investigating compliance of the base grandstand building at Marrara (TIO) Stadium with building certification requirements. In the course of enquiries he received information suggesting there were more than 300 other sites, either owned or occupied by the NT Government, with buildings or structures that did not have occupancy certification under the Act. Those sites included Parliament House, the prison at Holtze, the Royal Darwin Hospital and the Darwin Entertainment Centre, as well as numerous public schools and police stations.
52. Following discussions, he and I determined to jointly investigate the extent of non-compliance and why and how this had occurred. We signed a joint investigation agreement in August 2022 and sought information from the public, stating:

We want to hear from any person, particularly those who work in building, certification and building insurance industries, who might have information relevant to this investigation.

53. In line with that agreement, I commenced an 'own initiative' investigation under the *Ombudsman Act 2009*.
54. Over the course of the joint investigation, a large amount of information was obtained from DIPL and a number of public sector officers and private sector participants in the building industry were interviewed. Detailed information was obtained in relation to a

discrete number of sample sites, many of which had multiple buildings constructed on them.

55. After consideration of the evidence obtained, and discussion with me, the ICAC determined he was no longer satisfied that the investigation was of a kind that should be advanced by his office and that the matters were more appropriately dealt with as administrative actions under the *Ombudsman Act 2009*. He therefore terminated the joint investigation and referred the matters to me for consideration.
56. On my consideration of the available material, I believed further investigations of administrative actions were justified and so decided to continue my 'own initiative' investigation. This report records the outcomes of my investigation.
57. In closing the joint investigation, we wrote to the then Minister for Infrastructure, Planning and Logistics¹⁵ on 27 July 2023, noting my continuing investigation and drawing to her attention issues raised in the evidence of one public sector officer. The Minister replied, advising of her decision (which had pre-dated our letter) to commence a review of the NT building system. She stated she had requested DIPL to give due consideration to the matters raised in the evidence we drew to her attention and that it was "*essential that these points are not only acknowledged but also thoroughly examined and integrated as necessary during the course of the upcoming review*".

Progress since mid-2022

58. In June 2022, the Minister announced establishment of a Building Compliance Taskforce (the **Taskforce** or **BCT**), made up of senior agency representatives¹⁶, to review all government owned buildings in building control areas, and provide advice to government on appropriate pathways to compliance with the requirements of the Act.
59. DIPL tasked a Building Compliance Unit (**BCU**) comprising six staff with progressing certification.

¹⁵ The Hon Eva Lawler MLA.

¹⁶ For example, Taskforce attendees have included representatives from DIPL, the Department of the Attorney-General and Justice, Northern Territory Police, Fire and Emergency Services, the Department of Education, the Department of Health and the Department of Territory Families, Housing and Communities.

60. As noted above, in July 2023, the Minister announced there would be a review by an external consultant of current governance and oversight arrangements in relation to building licensing, regulation and dispute resolution in order to propose a model suitable for the Northern Territory's context.¹⁷
61. In September 2023, the Minister advised that exemption from compliance would, on the recommendation of the Taskforce, be issued to buildings and building works on 298 government owned land parcels, while DIPL undertakes work to achieve occupancy certification for *"as many buildings and building works as appropriate"*.¹⁸
62. The Minister advised that, in addition of work on specific buildings and building works, DIPL would continue to *"assess the adequacy of the [Act] and make recommendations where required in consultation with industry"*. In that regard, the Taskforce has made a number of recommendations for legislative change for consideration by the NT Government.

KPMG review

63. DIPL advised that the independent consultant, KPMG, commenced its review in October 2023, stating:

An independent consultant has been appointed to review the administrative arrangements for the licensing, regulation and dispute resolution for building in the Northern Territory and propose an alternative model that will improve coordination, better utilise existing resources and improve access to specialised skills and consider the establishment of a Building Commissioner.

The consultants work and the Taskforce will inform consideration of any other amendments to building roles and legislation for Government consideration. It is this

¹⁷ Minister for Infrastructure, Planning and Logistics, *Building reforms: Building Commissioner for industry oversight considered*, 12 July 2023, <https://newsroom.nt.gov.au/article?id=f81d9771a9ccd94b6eda90bf45139f61>.

¹⁸ Minister for Infrastructure, Planning and Logistics, *Building Compliance Taskforce Update*, 21 September 2023, <https://newsroom.nt.gov.au/article?id=2f0fbec1921e610ef006ede4d9c10551>.

work in parallel including feedback from the staff in the Department on the legislation that will assist in providing advice to Government on any future amendments.

64. I met with KPMG on 18 March 2024 to draw attention to issues of relevance arising in the course of investigations by our Office.

65. I was ultimately provided with extracts from the final KPMG report but have not obtained access to the full report, which I was advised was under consideration by Cabinet.

Ombudsman investigation

66. Since finalisation of the joint investigation with ICAC, I have raised a substantial number of queries or issues for consideration by DIPL and sought and been provided with a large amount of documentation, including:

- minutes and other records of Taskforce meetings;
- documents prepared for, or provided at, Taskforce meetings;
- documents created or obtained by DIPL that relate to assessment of health or safety (including fire safety) of buildings or methods for assessing and recording health and safety;
- documents that record routine maintenance and safety checking for a wide range of government owned buildings;
- documents relating to condition assessments of sample buildings of substance;
- extensive documentation relating to Marrara Stadium; and
- extracts from the final KPMG report.

67. The assistance of DIPL in responding to our many queries and providing extensive records is much appreciated.

CHAPTER 2: MAINTENANCE AND SAFETY OF NTG BUILDINGS

Certification and safety

68. Acquisition of a building permit and certification are essential, legislated steps in assuring the quality, health and safety of any new building or new building work. In the current NT system, private building certifiers play a key role in those processes.
69. However, it is important to appreciate that certification is a 'point in time' exercise. It provides assurance of compliance with relevant building standards and building safety, at the time the certificate is issued. It does not speak to the ongoing quality, health or safety of a building over time.
70. Certification provides robust assurance at the start and initial stages of a building's life but cannot be solely relied on to ensure quality, health and safety as a building ages appreciably. More is needed to give continuing assurance, with greater care required the older a building gets.

FURTHER CERTIFICATION OF WORKS RELATED TO BASE BUILDINGS

71. One mechanism that can provide a level of assurance arises when further building works are undertaken in respect of a base building. These further works will themselves require certification. While certifiers would not routinely revisit all aspects of the base building, it does present an opportunity to identify any patent issues requiring attention.
72. Some buildings may not be frequently altered but many, particularly those subject to a substantial level of use by staff or the public, are refurbished or improved at recurring points through their lifecycle. This is particularly the case with NTG-owned sites. Many cover large areas of land with multiple buildings that are refurbished or modified on a regular basis, as the needs of the public and agencies change.
73. To show the extent of certification of works, DIPL provided a list of over 11,000 instances of building permits with occupancy certification obtained for works on NTG-owned properties. For example, building work undertaken at the Murrumbidgee Stadium in the period from 2010 to February 2023, was subject to the issue of more than fifty certificates of

occupancy by qualified certifiers. This recurring need for certification (albeit focussing on discrete new works) provides relatively frequent opportunities for expert scrutiny of quality, health and safety issues.

INSPECTION AND MAINTENANCE

74. Another mechanism for ongoing quality assurance is to conduct routine inspections and maintenance to identify and fix issues as they arise.¹⁹
75. I discuss below evidence provided by DIPL of its extensive and ongoing inspection and maintenance programs in relation to NTG-owned buildings. This provides a picture of a large and ongoing investment in assuring the quality, health and safety of those buildings.

Current inspection and maintenance processes

76. To get a clear picture of the steps taken to inspect and maintain NTG-owned buildings, I asked DIPL to describe how such activity is undertaken and recorded, with a particular focus on health and safety. DIPL advised:

[NTG] undertakes regular repairs and maintenance on buildings. The department has established period contracts to undertake cyclical maintenance and urgent minor repairs on assets. Period contracts ensure the delivery of a stringent maintenance regime. These contracts are designed by discipline e.g. electrical, hydraulic, mechanical, building etc. As part of the cyclical maintenance programme, all statutory requirements involving life safety systems are checked and maintained to current Australian Standards. These systems include fire, exit and emergency signage, fire doors etc. Refer to attached maintenance records.

...

Cyclical maintenance is documented by DIPL technical staff with relevant experience in that discipline. Documentation is contained in the department's record management system files.

¹⁹ Of course, issues may also be identified on an *ad hoc* basis by people working in or visiting a building.

77. The DIPL Repairs & Maintenance (**R&M**) program is described as follows:

The R&M program has three defined work streams to target the different areas of the maintenance regime:

1. **Cyclical Maintenance (CM)** is the regular preventative or statutory maintenance to ensure that essential elements of a building asset perform when needed, reducing the likelihood of breakdown and the need for urgent repairs. Statutory maintenance is compulsory to meet legislative requirements under Acts, regulations or other statutory instruments, which includes standards and codes referred to in an Act, regulation or statutory instrument. Common examples of statutory maintenance include fire detection systems, fire sprinklers, emergency lighting and exit lights, asbestos management plans and registers, portable fire equipment and lifts.
2. **Specific Maintenance (SM)** is the maintenance to restore or keep the integrity of an asset in good operational condition. SM is usually identified, costed and planned through condition asset inspections. Common examples include painting, roofing repairs, carpet replacement, major air-conditioning repairs and bores/generator replacement. DIPL manages all mechanical/electrical/plumbing and major items.
3. **Urgent Minor Repairs (UMR)** is used for unforeseen repairs that are categorised as immediate, urgent or routine dependent on the type of repairs for reasons of health, safety and security. Common examples of UMR include building repairs (broken windows, broken door hardware etc.), plumbing repairs (leaking taps, burst/blocked pipes etc.), electrical repairs, mechanical repairs (generators, air-conditioners etc.):
 - o Immediate - attend and make safe within two hours;*
 - o Urgent - attend within two business days; and*
 - o Routine - attend within 10 business days.*

The DIPL R&M team continue to implement and improve relevant asset management systems to ensure that timely and targeted maintenance is identified. The maintenance system utilises over 100 period contractors (with the appropriate accreditation) across the Territory in delivering this work. DIPL have staff in the five regions and continue to provide support and advice to the agencies as required.

78. DIPL also provided spreadsheets that record inspections, repairs and maintenance in relation to each site. DIPL noted it is looking to improve its processes by working towards a fully integrated computerised maintenance management system.

79. The types of routine inspection vary from site to site as necessary but a selection from various sites is set out below:

- Lift maintenance
- Legionella maintenance
- Fire door inspection
- 3 monthly clean out
- Air-conditioning maintenance
- Security test
- Fire detection system
- Generator maintenance
- Electric doors
- Audit water sample
- Portable fire equipment inspection
- Welding fume extractor service
- Exit & Emergency light maintenance
- Medical gas regulator
- Fire pump
- PA system
- Backflow & thermostatic mixing valves (TIO)
- Vertical multistage pump
- Grease arresters
- Lighting tower RCD test.

80. To provide an example with respect to fire safety, DIPL set out processes undertaken at three sample sites (Parliament House, Darwin Supreme Court and Darwin High School):

With the implementation of the Strategic Asset Management team, a new Maintenance Plan - Building Fire Services ... has been developed which provides the maintenance strategy for fire systems. This includes regulatory requirements, indicative replacement time frames for end of life systems and what the acceptable condition of the asset is. This information is then utilised to form the basis of the period contracts.

However, it is important to note that when the current maintenance contracts were raised, the maintenance and repair specifications were included within the scope of the relevant contract.

To enable maintenance to occur at each site, you must have a register of systems to be able to apply the maintenance to. [Details for each site were provided in an attachment.]

The maintenance requirements for each system can then be referred to the Maintenance Plan - Building Fire Services. For example, at the Supreme Court, there is one fire indicator panel. If you refer to ... the Maintenance Plan you can identify that the fire indicator panels require regular services including one annual service.

We have then retrieved the relevant fire maintenance customer service number records indicating the works completed against each asset For example, you can see on ... this attachment that monthly services have been completed, with the annual completed in the month of November 2022

We have not retrieved all asset technical reports for each service completed due to the complexity of recovering them from the system, however have included some examples of the service documentation received

Annual Testing

It is important to note that when a site is to have its once yearly - overall systems evaluated as part of the annual testing of a site it is a combination of multiple

contractors attending the site simultaneously, dependent upon how many systems tie into the fire detection/protection and alarm systems.

To illustrate - the annual testing of the fire systems at the Supreme Court was undertaken on the 19 November 2022.

This was a scheduled and planned process that involved three period contractors attending site to ensure all systems are working in conjunction with each other in the event of a fire per AS1851, broken up to tasks as follows:

1. Fire Services contractors tests all fire Indicator panels, sprinkler systems, fire doors, sound level readings for alarms / Emergency Warning and Intercommunication System and system communication with Northern Territory Fire Alarm System Transmission.

2. Mechanical contactor tests that all air conditioning systems shut down and that fire dampers are closed to inhibit the spread of fire.

3. Building Management System contactor attends to test that all systems activate as required. This would include the opening of magnetically latched doors for evacuation.

81. I reviewed the material provided by DIPL and sought further information, stating:

Ensuring health and safety

It is essential that any longer term solution [to certification issues] ensures that health and safety issues are adequately addressed, for example, at least along the lines necessary for the current Certificate of Existence, 'a reasonable level of safety, health and amenity' or similar.

From a practical point of view, DIPL has in place an extensive array of cyclical inspection and maintenance measures that address health, safety and amenity issues for all government owned buildings. DIPL has provided detailed records for a large number of buildings. This comprehensive program would appear sufficient to deal with faults in existing equipment/systems.

However, it may or may not identify gaps in cover such as:

- a) gaps in protection afforded by existing systems (for example, inadequate provision of fire safety exits, poor or intermittent water pressure or requirements based on inaccurate assessments of crowd volumes); or*
- b) structural defects or inadequacies that may impact on health or safety.*

As to the latter, DIPL states that, in addition to its maintenance program, it undertakes building condition assessments on a three year rolling program. These audits are said to inspect the asset's structural integrity, external roofing systems, mechanical, hydraulic, fire detection systems, electrical distribution boards, general building fabric and associated infrastructure such as driveways, walkways, car parks and entrance roadways.

82. In response, DIPL stated:

- a) As part of DIPL's current period contracts to undertake the cyclical maintenance programme, all statutory requirements involving lifesaving systems are checked and maintained to current Australian Standards. These systems include fire, exit and emergency signage, fire doors etc.*
- b) To assist with achieving part of the taskforce recommendations, each lot (based on priority order) will be inspected by qualified building certifiers and engineers.*

Under the panel contract, DIPL is engaging building certifiers and engineers to inspect the buildings and safety systems to assess against the certification requirements to achieve one of the three levels of occupancy certification: an occupancy permit, a certificate of substantial compliance or a certificate of existence. Following the inspections the building certifier or engineer will provide DIPL with recommendations to achieve a level certification.

Incidents or reports of structural defects or inadequacies are actioned through DIPL's current period contracts to undertake the cyclical maintenance programme, three year rolling condition assessment or when reported directly through Urgent

Minor Repairs. Additionally, any structural defects or inadequacies are actioned following a weather event, e.g. cyclone, earthquake etc.

83. I also asked for further information on DIPL's three year rolling condition assessments. I was provided with:

- DIPL's *Asset Inspection and Condition Assessment Procedure* (47 pages) which includes its Asset Condition Reporting and Assessment Process Flow, giving an overall summary on how assets are reported and assessed; from Urgent Minor Repairs reporting and the Budget Cabinet review process;
- a site inspections database, which provides an overview and details of site inspections conducted over three years. DIPL noted 53,626 inspection areas over two years, in respect of 4,821 structures;
- a register of assessments, with detailed spreadsheets containing assessments for individual sites, and details of work required;
- copies of documentation relating to recent three year condition assessments of seven sample buildings of substance, being:
 - Marrara Stadium
 - Casuarina Bus Depot
 - Yirra House Secure Care Facility
 - Alice Springs Supported Accommodation
 - Darwin Port
 - Nichols Place
 - Pine Creek Health Centre.

84. The documentation provided is extensive. For example, there were 642 entries relating to inspections and maintenance work on buildings, electrical, fire and mechanical for Marrara Stadium and grounds alone. Most entries relate to routine inspection and maintenance. Some are in response to notifications of issues or concerns by staff or visitors.

85. Minor remedial work for each site is identified in one spreadsheet (E). Actioning it is a matter for usual work processes of government (discussed above and in the Manual). Work Health & Safety (**WHS**) and safety concerns, if any, are recorded in another spreadsheet (F). Checking for such items is excluded from routine inspection scope but any concerns must be recorded if they become apparent in the course of an inspection. A sample identified only a relatively small number of sites with Spreadsheet F entries. The work identified as needed in the particular cases did not appear to be major in nature. While the exclusion of these issues from scope may, on its face, raise a concern, in practical terms, these regular inspections significantly increase the prospect of picking up on early signs of any current or developing defects.
86. Overall this appears to represent a very thorough approach to condition assessment of government assets. It is well structured through the Procedure Manual and the very detailed spreadsheets. It is well placed to identify and address issues with the quality, health and safety of NTG-owned buildings.
87. One cannot entirely discount the possibility of some latent structural defect in a legacy base building that cannot be identified in the course of ongoing routine inspections or during certification processes for new works. While I am not in a position to quantify such a possibility, as noted above, there is evidence that NTG-owned legacy base buildings were constructed under close supervision by NTG officers who were both expert and experienced in design and construction. And one must acknowledge the fact that most such buildings are many decades old and appear to have ‘withstood the tests of time’, without major structural issues emerging.
88. As stated by the NTG, the absence of certification for a NTG-owned legacy base building (built at a time when building permits and certification was not required) does not mean the building is unsafe. NTG has shown that it has a systematic approach to assuring the ongoing quality, health and safety of its buildings. No system is perfect but the evidence provided indicates the NTG approach is thorough and robust.²⁰

²⁰ See footnote 4, for discussion on the nature of our assessment.

CHAPTER 3: CERTIFICATION OF NTG LEGACY BASE BUILDINGS

Implementation and enforcement of 2016 changes to mid-2022

89. Following consideration of information provided, I wrote to DIPL expressing my initial views on the action taken from 2016 to mid-2022, stating:

DIPL faced enormous challenges in terms of the number of legacy government-owned buildings (base buildings) with which it had to deal. Many of the base buildings were constructed forty, sixty or more years ago, in times when there were very different approaches to building regulation, particularly for government buildings. These challenges were exacerbated by reluctance on the part of private certifiers regarding certification of legacy base buildings where they had not been involved in construction, heightened further by issues with certifiers obtaining adequate insurance cover.

One might query the move to commence legislation in a form that would apparently mean that, from day one, NT agencies and private owners would be occupying multiple buildings in breach of the law. It may be that the extent of non-compliance and the overwhelming issues with securing certification were not immediately apparent or appreciated.

In any event, from September 2016, DIPL was faced with legislative requirements that it needed to address, both as a regulator and on behalf of the NTG owner.

As for the latter role, we now know there are around 300 lots, some with many buildings on, that were being occupied in breach of the legislation.

The available information suggests that the approach DIPL adopted was to gradually work towards certification. Taking the TIO Stadium as an example, considerable efforts have been made and work undertaken over time but there have been numerous complications. There have also been differing expert views about what is necessary to achieve certification. A number of issues requiring rectification have been addressed as they have been raised.

However, the information provided suggests efforts in relation to other legacy base buildings have been limited and largely unsuccessful. As buildings were altered, new building permits were sought and, in many cases, occupancy permits granted. Many of the larger complexes have had numerous building permits and occupancy permits issued for new works on base buildings. However, these covered the new works, not the base buildings.

In such cases, observable requirements for remedial action would usually have been noted by the certifier and actioned (for example, a need for additional exit signs or emergency lighting) but the potential for underlying issues in the base building has not often been within scope. As noted, certifiers have usually been reluctant to sign off on base buildings for certification purposes, even where they may acknowledge there are no obvious concerns with the safety of a base building which has stood for many years.

This does not mean that there are or were health or safety issues with base buildings. Many were constructed by government to a high standard. However, they were not required to go through certification at the time they were constructed and achieving later certification is proving highly problematic.

The intention behind the 2016 amendments was clearly to provide a variety of certification options that would allow a more flexible approach to certification, particularly for legacy buildings, while ensuring a level of safety and amenity.

However, from the outset it was apparent many government owned legacy buildings would not qualify for the more flexible certification options. This may have been because it was considered additional assurances were needed for buildings that would often invite the attendance of a large number of people and, in some cases, public assembly of large crowds. Yet, for many buildings that never had a building permit (not necessarily required under past legislation) DIPL advises there is no legislative scope for them to ever satisfy requirements for existing occupancy certification options.

There may have been initial optimism that the NTG could promptly work towards securing occupancy permits for all major buildings but any such prospect must have

faded quickly. There were also, no doubt, many competing priorities facing DIPL that limited the attention and resources it felt able to allocate to the issue.

90. DIPL responded:

DIPL has continued to work towards achieving building certification where required since 2016, which includes assets such as TIO Stadium.

...

Since 2016, third-party certifiers have provided building certification for buildings where works have been undertaken. This allowed certification, not only just for new works, but in most cases provided a review of the life safety systems of a building to ensure any modifications aligned with systems and regulations, and were not impacted by new works. In some cases, this provided upgrades or improvement to the life safety functions (such as fire systems, egress and exit lighting, as examples), of a building (as indicated in your comments above). Over time, ongoing, progressive certification where possible as part of the completion of new work packages became an alternative way to achieve a level of certification.

...

Through ongoing efforts to gain base building certification on TIO Stadium, additional challenges not envisaged in 2016 have become apparent. As recognised in the above statement, DIPL has experienced a number of mitigating factors influencing progress in the space of building certification. This includes differing professional opinion, a changed commercial environment and the ability to obtain professional insurance increasingly challenging for industry.

91. DIPL also advised:

Of the 111 notices/orders [issued since commencement of the Act], 21 building notices and nine building orders have been issued to property owners with respect to non-compliance with section 65 of the [Act]. No prosecutions have been undertaken in respect to non-compliance with section 65 of the Act.

Enforcement actions were not undertaken during the building moratorium which was in place from 28 April 2009 to 30 June 2016. The moratorium suspended any

enforcement of the [Act] on existing building works with incomplete or no certification, subject to there not being serious health or safety issues.

Since the moratorium was lifted, [DIPL] has continually engaged with owners regarding existing building works with incomplete or no certification. During these liaisons, the department has outlined the steps owners need to take to achieve certification and advised that prosecution would only be undertaken as a last resort.

92. As the then Minister envisaged in 2016, the initial emphasis was on persuasion, with education and encouragement. It appears that, while efforts were initially made to have certifiers assess legacy base buildings, there was little progress in terms of actual occupancy certification of these buildings through to mid-2022, in the face of a number of limitations to the new scheme discussed further below.

LIMITATIONS IN 2016 PROVISIONS

93. In response to our queries, DIPL has described the following limitations on the work of the Taskforce that have essentially applied for NTG-owned legacy base buildings since 2016:

There are limitations in the legislation to achieve occupancy certification for unauthorised works (e.g. the original structure), particularly if those buildings/building works are classified as public assembly. ...

...

In addition to the challenges identified, further challenges facing the Taskforce include:

- *a certificate of existence is not an option for buildings/building works:*
 - *completed after 1 May 2016*
 - *identified in the National Construction Code as Importance Level 3 or 4*
 - *classified as public assembly*
- *resourcing (time and cost) required to complete this project, both internally and externally*

- *passage of time that has passed and information available*
- *limitations of current government systems including the requirement to extract information from multiple systems*
- *funding availability to: conduct audits on each lot; engage certifiers; undertake remediation works; internal personnel resources*
- *time required to complete audits of buildings/building works on all lots*
- *difficulties in engaging with certifiers due to: a lack of appetite from industry given the complexities of the project; certifier availability; and constraints in achieving occupancy certification (e.g. insurance limitations)*
- *challenges in obtaining occupancy certification for expired building permits where the certifier is no longer operating including the willingness of other certifiers to accept the transfer of expired building permits from other certifiers*
- *impact on industry in engaging building practitioners to finalise/undertake certification works*

...

There is no mechanism in the current legislation to exempt specific buildings or building works from requiring a building permit and the Act does not allow for a building permit to be granted after works have been completed.

The Act does not permit the granting of an occupancy permit or certificate of substantial compliance without a corresponding building permit. As such, a certificate of existence is the only occupancy certification for building/building works completed without a building permit granted. However, a certificate of existence cannot be granted for [the works noted in the first bullet point above].

94. A fundamental problem with implementation has been the reluctance of experts who were not involved in initial construction of legacy base buildings to make or contribute to an assessment of the legacy base building. Many buildings are of considerable age. The basics of initial construction are hidden under concrete or brickwork. Relevant plans

and other records from decades ago are either not available or incomplete by modern standards. There are inherently escalated risks to professional reputations in making such judgment calls on the basis of limited information. There is an accompanying financial risk and questions over the capacity to secure cost-effective insurance. Certifiers will often include caveats in their reports to define and limit the scope of their assessments. Even so, the added complexity and risk involved in involvement in certifying legacy base buildings is a detractor from taking on such work.

95. Further, for major NTG-owned legacy base buildings, particularly those where public assembly occurs, the lower threshold Certificate of Existence was never available. The standard to be achieved for certification has therefore been higher and, at least from a relatively early juncture, has appeared even less achievable.

NTG actions since mid-2022

96. In establishing the BCT in June 2022, the NTG advised:²¹

The Building Compliance Taskforce is being formed due to the complicated nature of certifying older buildings, as has been experienced through the Marrara Stadium certification process.

Northern Territory Government buildings are safe. The Territory Government undertakes regular repair and maintenance works or upgrades on our infrastructure assets, such as schools and hospitals. In Budget 2022 there is \$93 million allocated to repairs and maintenance.

97. The then Minister for Infrastructure, Planning and Logistics, who had previously issued a declaration exempting the Marrara Stadium from compliance with the Act, advised that the exemption would be extended past 30 June.
98. On 12 July 2023, the Minister announced a review would be undertaken by a consultant to “make recommendations to the Minister ... on current governance and oversight

²¹ Minister for Infrastructure, Planning and Logistics, *Establishing a Building Compliance Taskforce*, 27 June 2022, <https://newsroom.nt.gov.au/article?id=d5760d0f6b849a4b2f9a007e7799a61f>.

arrangements and to propose a model suitable for the Northern Territory's context.”²²

The Minister stated, *“As part of the review, we will examine whether an administrative model overseen by a Building Commissioner would improve governance and efficiency outcomes for all licensing, regulation and dispute resolution processes in the building industry.”*

99. An update on the Taskforce in September 2023 advised²³:

A number of buildings and building works on 298 specified land parcels, some predating self-government, have been identified as not receiving occupancy certification upon completion of construction.

[DIPL] is undertaking work to achieve occupancy certification for as many buildings and building works as appropriate.

100. In the same release, the Minister advised that, while that process occurs and on recommendation of the Taskforce, an exemption from requiring building occupancy certification under the Act would be issued to all the specified land parcels, stating:²⁴

This exemption does not mean any of the identified buildings are not suitable for occupancy. This is a legacy administrative matter.

Government buildings are subject to a stringent repairs and maintenance program to ensure ongoing safety and functionality.

To assist in achieving compliance of exempt buildings and building works, DIPL will continue to undertake the following actions:

²² Minister for Infrastructure, Planning and Logistics, *Building reforms: Building Commissioner for industry oversight considered*, 12 July 2023,

<https://newsroom.nt.gov.au/article?id=f81d9771a9ccd94b6eda90bf45139f61>.

²³ Minister for Infrastructure, Planning and Logistics, *Building Compliance Taskforce Update*, 21 September 2023, <https://newsroom.nt.gov.au/article?id=2f0fbec1921e610ef006ede4d9c10551>.

²⁴ *Ibid.* Re the exemption, see also DIPL *Occupancy Certification Exemption* webpage: <https://dipl.nt.gov.au/lands-and-planning/building/occupancy-certification-exemption> and DIPL Fact Sheet: https://dipl.nt.gov.au/_data/assets/pdf_file/0010/1214677/buildings-works-specified-land-exempt-occupancy-certification.pdf.

- *establish a panel contract of building certifiers, who, as part of their work, will undertake inspections*
- *complete audits of buildings and building works on specified land parcels*
- *obtain occupancy certification where possible*
- *assess the adequacy of the [Act] and make recommendations where required in consultation with industry.*

101. In response to a query regarding a projected timeframe for completion of the work of the Taskforce, DIPL advised in October 2023:

Given the extent of buildings that currently do not have occupancy certification along with the complexities of the process in obtaining occupancy certification and legislative constraints, the department is unable to estimate the length of time it will take to obtain occupancy certification on all existing buildings/building works on government owned land. The Northern Territory Government is committed to complete this project.

102. As of October 2023, DIPL advised that it had resolved 147 building permits outstanding through either granting of occupancy certification or cancelling the building permit (in the instance where works did not commence). While this no doubt reflects much effort on the part of the BCU staff, it represents only a minute portion of the task at hand.

103. On 15 December 2023, DIPL further advised:

A pathway resolution analysis has been undertaken by the Building Compliance Taskforce in order to resolve legacy building issues. As part of this process the Taskforce considered the current issues with TIO Stadium and also reviewed and considered the implications and successes of legislation in other Australian jurisdictions. This review revealed other jurisdictions had found alternate legislative pathways to manage legacy issues. The approach differs significantly across the country, but as an example, Queensland does not require building certification for Government owned buildings. The Taskforce proposed in its recommendations that legislative amendment was necessary to create a pathway to address matters of

legacy non-compliance under the [Act]. Once legislative amendment has occurred, compliance will be addressed under a prioritisation schedule for these buildings to gain certification. These recommendations were accepted by the Minister, and the Department is preparing for implementation and legislation amendments accordingly. The Taskforce continues to operate and meets as required when decisions or actions are required.

104. Although further information was provided with regard to the nature of recommended legislative changes, my understanding is that no final position has been reached by the NTG, noting the change in the NT Government in August 2024.

105. With regard to the Taskforce and NTFRS involvement, DIPL advised in April 2024:

At the [BCT] meeting held on 29 August 2023 ... , the NTFRS²⁵ proposed to cease the provision of professional advisory services as it was considered a duplication of effort considering [DIPL] is undertaking individual assessments on all buildings/building works declared exempt from requiring occupancy certification. Following this meeting, the provision of professional advisory services was ceased by NTFRS. DIPL has established a panel contract of 14 building certifiers who have commenced investigations on buildings/building works on the exempt lots. DIPL will liaise with NTFRS throughout the investigation process.

106. At that time, DIPL also advised:

The building certifiers will conduct onsite inspections on buildings/building works on NTG owned land to identify what is required to achieve occupancy certification. The building certifier will write to the Director of Building Control and provide evidence to support the recommendation. Where occupancy certification cannot be obtained for buildings/building works on NTG owned land, DIPL will obtain documentation equivalent to a certificate of existence or certificate of substantial compliance. It is anticipated that legislative reform will address the issues of occupancy certification, particularly those issues relating to public assembly buildings. The reports obtained by

DIPL for those buildings/building works where occupancy certification cannot be obtained under the current legislation may assist in achieving occupancy certification following legislative reform.

DIPL has notified the Department of Corporate and Digital Development (DCDD) of known non-compliant buildings/building works on privately owned land where the building is leased by the NTG. Now that DIPL has the consultant panel on board, DIPL work with DCDD on next steps to identify the non-compliances to see if they are related to fit out works as part of an NTG lease or are part of the building owner's obligations. This meeting has been scheduled for mid-May 2024.

107. DIPL further advised in July 2024:

[DIPL] is undertaking audit inspections of buildings/building works on NTG owned land in two stages. The first stage is to identify what work needs to be actioned for the certifier to issue a letter stating that the safety systems are to a standard that deems the asset to be safe for use. A scope of works will be developed based on the audit recommendations. In the second stage, once the recommended works are completed, the certifier can issue a letter to the Director of Building Control stating that a certificate of existence or a certificate of substantial compliance can be issued for buildings that are not classified public assembly. Once legislative reform is achieved the building certifier can then request this for those building/building works classified as public assembly.²⁶

108. With regard to NTG-leased private buildings, DIPL further advised:

A letter has been drafted for [DCDD] to provide to building owners, advising that DIPL has identified non-compliant buildings/building works. Building owners will need to approve for DIPL to access their building files to determine if the non-compliance relates to building works for fit outs as part of an NTG lease or the original structure.

²⁶ DIPL provided a list of 49 lots where audits had been completed, with a further 7 lots where audits had been commenced.

If the non-compliance relates to the original structure, it will be the building owner's responsibility to rectify.

109. Although it was not the focus of my investigation, I also sought information in relation to steps taken by DIPL with respect to non-compliance of works not owned or leased by the NTG. DIPL advised that the legislative reforms it is exploring are anticipated to assist in resolving non-compliance for all works, whether NTG-owned/leased or otherwise. DIPL also stated:

The NTG provides assistance to land owners in addressing non-compliant buildings/building works. The NTG website provides assistance and advice on how to get occupancy certification, health and safety requirements and non-conformance, and how to lodge complaints or settle disputes. There are avenues for owners and builders who want to resolve a dispute or complain about a building, contractor or sub-contractor in the Northern Territory.

110. The question of non-compliance in respect of privately owned and occupied buildings is clearly an issue of importance for the NTG. It is certainly a matter for the NTG to consider in the course of legislative development. However, I do not propose to address it further in this investigation.

CHAPTER 4: OMBUDSMAN COMMENT ON NTG BUILDINGS

2016 to mid-2022

111. In debate in 2016, the then Minister responded to suggestions that the new provisions should be reviewed within two years, stating:²⁷

It is always imperative that government reviews legislative reforms to ensure they have been and continue to be effective and appropriate to the jurisdiction in which they operate. These reforms are no different and in that respect will be monitored from commencement and reviewed on a regular basis.

112. In contrast, a situation prevailed for six years from mid-2016 where, despite some efforts, there seems to have been little substantive progress in the NTG addressing breaches of the Act. And the failure to ensure compliance regarding NTG assets obviously detracted from DIPL's ability to effectively enforce the law in relation to private owners.

113. It is unclear why this state of affairs was allowed to persist for so long. There were clearly significant challenges in obtaining certification for NTG-owned legacy base buildings. The solution implemented by the 2016 amendments to end the Moratorium did not, on reflection, effectively address all the issues. I have not been able to identify an adequate justification for failure to consider alternative solutions much sooner than 2022, leaving the NTG apparently in breach of legal requirements and open to adverse commentary, for that extended period.

114. Further, one of the core objectives of requiring occupancy certification is to give assurance that adequate measures have been implemented to ensure the safety of the building. As indicated above, such certification is not the sole determinant of building safety. Lack of certification does not mean there has been a failure to take steps to ensure safety. And the mere fact that a building has certification does not mean it remains safe for all time. Safety considerations require ongoing inspection and maintenance, which DIPL has provided substantial evidence of. However, the lack of timely, concrete action

²⁷ Hansard, 8036-7.

to comply or to explore alternatives in relation to legacy base buildings, left it open for people to query the safety of the many buildings that do not have occupancy certification.

115. The time taken to act may be reflective of multiple priorities and limited resourcing. It does not, by itself raise alarm with regard to the health or safety of buildings. It is nevertheless concerning. There was a clear need to conduct regular and ongoing reviews of the effectiveness of the system.

NTG actions since mid-2022

116. I acknowledge the work undertaken by the BCT and the BCU since mid-2022 in relation to the process for certification of individual sites, along with the major ongoing work undertaken by DIPL and other agencies on a daily basis to ensure maintenance of quality, health and safety of NTG-owned buildings.

117. The latter comment should not be taken as an indication that I have exhaustively assessed current systems, approaches and resources and found that there is no potential for change. No system is perfect and there is always room for improvement. Nor do I express a view on the safety, quality, health or amenity of any particular NTG-owned building. The investigation has not attempted to conduct such assessments but has examined the extensive records provided and formed the view that there are very real and meaningful efforts in place.

118. What is clear is that the work being undertaken by the BCU is unlikely to be truly effective without appropriate legislative changes. There are aspects of the current legislative system that do not permit, or at least do not effectively facilitate, solutions. Prompt consideration of recommendations for legislative change is important.

Recommendation 1

NTG and DLPE give priority to developing a legislative solution to the current impracticality of achieving certification for legacy base buildings.

Recommendation 2

NTG and DLPE ensure that the proposed legislative solution provides adequate protections around the safety, health and amenity of legacy base buildings.

Public assembly

EXEMPTIONS

119. As noted, the then Minister declared under section 65(1A) of the Act that occupancy certification is not required for NTG-owned buildings on specified lots. Section 66 of the Act prohibits promotion, conduct or permitting use for the purpose of a public assembly in the absence of certification.²⁸ I sought clarification from DIPL as to whether, in addition to negating the offence provisions in section 65, the exemption permitted public assembly by negating the application of section 66.

120. DIPL's position was that the declarations effectively negate the application of the offence provisions in both sections. I confirmed with DIPL that it had obtained legal advice in

²⁸ Sections 65 and 66 of the Act provide:

65 Occupancy certification to be obtained

(1) A person must not occupy a building unless:

- (a) occupancy certification has been granted for the building; or
- (b) a declaration under subsection (1A) is in force for the building.

Maximum penalty: 85 penalty units.

(1A) The Minister may, by Gazette notice, declare, in relation to a building or building work:

- (a) that occupancy certification is not required; or
- (b) that occupancy certification is not required and a provision of the Regulations applies to the building or building work.

(2) A person must not occupy a building in contravention of the occupancy certification granted in relation to the building.

Maximum penalty: 85 penalty units.

66 Buildings etc. not to be used for public assembly without occupancy permit

(1) A person must not promote or conduct a public assembly in a place, building or temporary structure unless an occupancy permit has been granted which permits its use for that purpose.

Maximum penalty: 85 penalty units.

(2) The occupier of a place, building or temporary structure must not permit the place, building or temporary structure to be used for the purpose of a public assembly unless an occupancy permit has been granted for that purpose.

Maximum penalty: 85 penalty units.

relation to the issue. I formally required production of that legal advice for the purposes of the investigation.

121. On occasion, we encourage an agency to get legal advice to ensure it is acting within the law. We do not attempt to second guess legal advice that has been obtained unless there is a demonstrable problem, for example, it is based on assumptions of fact that are clearly wrong or has not taken into account material case law or clearly relevant statutory provisions. In such a case, we would normally point out any obvious additional factors and suggest the agency seek further legal advice to clarify the position.

122. In the current case, I consider it was appropriate for DIPL to seek legal advice. I do not propose to discuss the nature of the legal advice or address the issue further.

GREATER PROTECTIONS FOR PUBLIC ASSEMBLY

123. However, the query does raise the question of whether added protections should be required for buildings where public assembly takes place.

124. I have previously noted that certification is a 'point in time' measure and that buildings need to stay safe beyond the time of their initial construction. The inclusion of section 66 by Parliament reinforces the special nature of buildings where there is public assembly.

125. The nature of such buildings may vary greatly from basic single level structures that occasionally play host to public meetings to major edifices with multiple levels that host thousands of members of the public on a regular basis. Many of these may be NTG-owned but others may be in private hands. Whoever owns them, the need to ensure the safety of so many means ongoing assessment is worthy of close consideration.

126. Particularly in relation to major venues that are likely to attract large numbers in tightly packed circumstances, it is appropriate to consider whether there is a need for additional legislative requirements to assess ongoing structural stability as well as health and safety aspects, as such buildings age. A 40 year old building where large crowds gather on a regular basis may well warrant further scrutiny (required by law) even if it has previously

been certified. I am not aware of such requirements in other jurisdictions but it is a matter that I believe warrants consideration by the NTG.

127. In raising this issue, I am not suggesting there is a deficiency in the current scrutiny of any buildings considered in this investigation. I am merely drawing attention to the potential benefits of a statutory requirement along these lines.

Recommendation 3

NTG and DLPE consider the merits of additional legislative measures to require appropriate checks are made on an ongoing and regular basis to ensure the continuing safety, health and amenity of buildings used for public assembly.

Dual and potentially conflicting roles

128. In November 2023, I wrote to DIPL, stating:

The [new provisions] commenced 1 May 2016 and the Moratorium ended on 30 June 2016. DIPL was established in September 2016 and, from that time, it is arguable that DIPL faced problematic dual roles as a regulator for certification that was also required to act on behalf of the NTG as an owner of many buildings required to comply with the legislation.

As a regulator DIPL advises that, “since the moratorium was lifted, [it] has continually engaged with owners regarding existing building works with incomplete or no certification. During these liaisons, [it] has outlined the steps owners need to take to achieve certification and advised that prosecution would only be undertaken as a last resort.” It has issued building notices and building orders but has not prosecuted anyone for a breach of certification requirements.

This dual role has arguably placed DIPL in an awkward position, with the prospect that any prosecution enforcing the requirements for certification would be met with cries that DIPL should first be prosecuting the NTG. This is notwithstanding the intention to act, initially at least, to educate and encourage compliance, with prosecution as a last resort. An initial focus on persuasion is not unusual when onerous regulatory

requirements are introduced. However, there are issues with maintaining that approach, to the exclusion of prosecution, for a prolonged or indefinite period, when there is little or no evidence that people are moving towards compliance.

129. DIPL responded:

The Director of Building Control is appointed in accordance with the [Act] and is granted various powers and functions in accordance with that legislation. The Director of Building Control undertakes the duties and upholds the legislative requirements of the [Act].

The [Act] does not distinguish between public and private building asset ownership and the Act makes it clear the objectives and legislative requirements of all buildings in the Northern Territory which the Director of Building Control upholds.

*To support the role of the Director of Building Control **it is important to note that the Department Organisational Chart physically and operationally separates the Director of Building Control role from the delivery of infrastructure and the management and maintenance of Government built assets. This structural change ensures that the role of the Director of Building Control is undertaken in accordance with legislative requirements.** [my emphasis]*

The Director of Building Control works with all building owners to ensure that compliance can be achieved. This is evident with respect to TIO Stadium where successive Directors have worked with the Department to achieve certification, particularly in light of the amendments to the legislation in 2016 that facilitated alternate pathways to certification.

Specifically with respect to the Moratorium, in April 2009, a moratorium on building enforcement was declared by the then Minister. The moratorium suspended any enforcement of the Act on existing building works with incomplete certification or no approval, subject to there being no serious health or safety issues. The purpose of the moratorium was to encourage existing building owners to achieve compliance. During

the moratorium new building work (i.e. after 28 April 2009) must meet all certification requirements and enforcement action may apply for any breach identified.

The Building Advisory Services (BAS) Branch within the Department investigates complaints or allegations on behalf of the Director of Building Control relating to unsafe or unlawful building work that may be a breach of the Act or Regulations. BAS receives allegations from members of the public or other government agencies and information is gathered by an authorised officer through site inspections. BAS will assess and undertake a preliminary investigation in relation to all allegations to facilitate compliance with legislation through both non-enforcement and enforcement measures. BAS takes a risk-based approach to best utilise resources to prioritise those matters posing the biggest risk to the community and to effectively achieve the objects of the Act.

Investigations into allegations about non-compliant building works primarily look at whether the works have been approved and/or are safe regardless of asset and building ownership. Where building works are found to be unapproved, BAS works with the property owner to remedy the situation, which may include having the works approved by a building certifier or removed.

The Director of Building Control decides if the public interest is best served prior to undertaking an action in relation to a complaint, including the non-enforcement or enforcement actions available.

As at 15 November 2023, 767 non-moratorium complaints have been closed, there are 237 active complaints, of which 49 moratorium complaints remain open and are actively being investigated.

From 28 April 2009 to 15 November 2023, BAS closed approximately 945 complaints.

The enforcement action taken included:

- two Emergency Orders under the Act;*
- nine Building Orders under the Act;*
- 28 Building Notices under the Act;*
- 89 warning letters regarding low risk compliance matters;*

- *four of the actions resulted in the demolition of unsafe and/or non-compliant building works.*

These enforcement actions account for 13% of the cases closed. The remainder were closed because the complaints were either dismissed, or certification was achieved.

130. DIPL has explained the administrative separation of functions. I consider that there is a tension in the same entity having overall responsibility for the two functions but acknowledge the likelihood that those with most expertise in the relevant areas are likely to be based in the same department. I note the issue has significantly abated with the split of these functions between DLPE and DLI with the recent change of government. However, it is important for the NTG to remain alive to the potential for conflict of interest and to ensure appropriate measures are maintained to address any potential conflict.

CHAPTER 5: MARRARA STADIUM

131. A site of particular interest in the context of this investigation is the Marrara (TIO) Stadium (the **Stadium**), which was completed in 1993. It is stated to have total capacity of 14,000 people, with the grandstand base building providing seating for 5,000.²⁹ It is a favourite venue for major sporting and entertainment events. As such, confidence in the quality, health and safety aspects of the grandstand is of vital importance to Territorians who work and enjoy themselves at such events.

132. A NT Government release dated 27 June 2022, regarding establishment of the BCT, included the following comments touching on the Stadium:

Northern Territory Government buildings are safe. The Territory Government undertakes regular repair and maintenance works or upgrades on our infrastructure assets, such as schools and hospitals. In Budget 2022 there is \$93 million allocated to repairs and maintenance.

The Northern Territory Government is extending the declaration exempting Marrara Stadium from the requirements of the Building Act 1993 past 30 June 2022.

Territorians have been safely using Marrara Stadium for 30 years and can be assured of the ongoing safety of the Territory's premier sporting facility.

The Territory Government has continued to invest in the stadium and has undertaken an extensive range of works in recent years including replacing the aging roof structure, upgrades to the fire safety services, improved accessibility for the public, renovations and upgrades to the public bathrooms, canteen and bar, as well as ongoing maintenance. Certification requirements have been met for these works.

A number of tests on the fire safety services have been undertaken over the past six months with all tests meeting current Australian standards.

²⁹ <https://nt.gov.au/leisure/sport/facilities-and-contacts/find-a-sports-facility/tio-stadium-marrara>.

The Territory Government will continue to maintain and manage the stadium to ensure it remains safe for all Territorians.

133. DIPL further advised my office:

Construction of the Stadium was approved however occupancy certification was not obtained on completion of the building. As the Stadium is used for public assembly, the only level of occupancy certification available under the [Act] is an occupancy permit.

The department engaged a contractor to obtain retrospective occupancy certification for the Stadium. The contractor advised that, in their opinion, they were unable to recommend the granting of an occupancy permit due to:

- the certifier not being able to verify the construction for the purpose of an occupancy certificate against the original design documentation*
- contractor insurance would not cover the retrospective certification*
- the limitations of section 66 of the Act as to what constitutes a certified building for the purpose of public assembly.*

On 26 June 2022, the Minister for Infrastructure, Planning and Logistics declared under section 65(1A)(a) that occupancy certification is not required As such, occupancy certification is not required.

The legislative reforms recommended by the Taskforce would create a pathway to enable occupancy certification to be achieved on the Stadium. If this does occur, and if occupancy certification is obtained, the declaration for exemption on the Stadium can be revoked.

134. Our investigations have established that there have been extensive and ongoing efforts to inspect and meet the requirements for certification of the Stadium base building. The fundamental issues with certifying NTG-owned base buildings discussed in Chapter 3 have played a significant part in complicating those efforts. Where issues have been identified by experts, they have been promptly remedied. Apart from some recently

completed works discussed below, I do not propose to go through the detailed history of those efforts.

135. As with other NTG-owned buildings, the Stadium is subject to extensive and ongoing inspection, maintenance and remediation. Given its size and status, the level of the preventive and remedial work that has been undertaken is unsurprisingly far greater than for the average building. In addition, specific work in relation to the Stadium was subject to the issue of more than 50 occupancy certificates by qualified certifiers in the period from 2010 to February 2023, in respect of additional works carried out at various times. It is therefore subject to substantial ongoing scrutiny.

HYDRANT SYSTEM

136. One issue that has been the subject of different views from different experts in the field has been the adequacy of the hydrant system, with regard to which DIPL has stated:

The hydrant system was upgraded in 2014 and an occupancy permit was granted for the system. A building inspection report was issued from NTFRS stating the Stadium complies with the recommendations of NTFRS at the time. Despite the report stating compliance, the system is now considered non-compliant due to NTFRS no longer accepting the performance solution for the low water pressure. The department is installing a booster pump and storage tank which will rectify this issue. All other fire safety systems at the Stadium have been deemed compliant.

137. DIPL advised in October 2023:

Based on the current maintenance routines and inspections, the department is comfortable that the current fire safety systems are adequate. The fire hydrant system pressure is being resolved which provides further assurances on the fire safety of the Stadium.

138. Pending resolution of this issue, NTFRS has provided additional support for major events.

With regard to any ongoing need for additional NTFRS measures in future, DIPL advised:

Once the issues concerning the insufficient water supply have been corrected, the NTFRS response would return to the normal pre-determined response for the class and type of building. The NTFRS would assess each major public event on its own risks, through the event emergency management planning process where we have been contacted by the event managers. If there were risks identified that required additional NTFRS resources to be pre-positioned at location, at the closest fire station or responded as a two station turnout, these would be enacted on a temporary basis for that specific major public event.

Until the concerns have been corrected and the NTFRS receives notification that the issues concerning the insufficient water supply have been corrected and meet the applicable standards, the NTFRS will continue to employ risk mitigation measures as detailed in the DCFO³⁰ statutory declaration.

This has been confirmed and agreed with the DCFO.

139. In the course of our investigation, queries were raised about whether the following additional measures were required in light of re-assessment of the floor area at over 5,000 sqm:

- a third outlet, in addition to the booster pump and storage tank; or
- installation of fire safety sprinklers.

140. DIPL advised:

A third outlet has been installed as part of the overall upgrade works. However, there is no requirement to install fire safety sprinklers, and as such have not been installed.

141. The additional remedial work has now been undertaken and certified. DIPL advised that a post occupancy review would be undertaken by NTFRS. DIPL stated that (for the various reasons discussed above) it is not able to obtain a retrospective occupancy permit for the base building under existing legislation.

³⁰ Deputy Chief Fire Officer.

142. I do not intend to express any view on technical aspects of the water pressure issues and hydrant system. This would be beyond the scope of my expertise and this investigation. I do however note that changes or differences of opinion from experts appear to have stemmed from variation over time in the water pressure supplied from the mains system, changes in building standards and reassessment of the floor area of the Stadium.
143. The public events that are hosted at the Stadium can be very large in size and attract men, women and children from across the whole spectrum of the Territory community. The events are frequently supported or sponsored by the NTG. The Stadium is owned by the NTG. It is important that the NTG be in a position to continue to assure the public with regard to safety and precautions in place to deal with any potential adverse incidents. I consider it is in the public interest that the NTG be able to assure the public that all reasonable steps have been taken to deal with identifiable risks.
144. The advent of a new Government and a new department provides an opportunity for the NTG to review safety aspects in relation to the Stadium base building and provide such public assurance. I suggest this could be done with input from the NTFRS, which is clearly well placed to advise on fire safety issues. I believe this should be undertaken quite apart from questions around building certification.
145. In saying this, I must stress that I do not suggest that there are issues with the safety of the Stadium. A huge amount of evidence has been provided with regard to numerous steps taken to ensure the safety of the Stadium over many years. However, I consider it would be an important step for the NTG to reaffirm public confidence and that the NTG has within its power the ability to engage with relevant expert assessments to provide such assurance. A review at this time would provide added weight to previous public statements.

Recommendation 4

NTG and DLI review and, if necessary, engage additional, expert advice, including advice from NTFRS, to put them in a position to provide public assurances as to the safety of the Marrara Stadium during major public events.

CHAPTER 6: OTHER CERTIFICATION ISSUES

146. I will briefly discuss two other issues raised in the course of our investigations.

POST-CERTIFICATION FIRE SAFETY INSPECTIONS

147. An issue was raised regarding the high proportion of buildings that require fire safety rectification post-certification. This was estimated by one official as very high (up to 80%). DLI advised that it could not verify a claim of 80% but did acknowledge that there were occasions where rectification works were required post the provision of an occupancy certificate. It also noted that in some cases, issues raised were outside the scope of the works being certified, which may inflate the percentage of cases requiring rectification.

148. It was noted that, prior to mid-2019, NTFRS fire safety inspections preceded certification, meaning rectification of any issues was required prior to certification and actual occupancy. From July 2019, a change in practice occurred (following receipt of legal advice) for NTFRS inspections to be undertaken post-certification.

149. It was acknowledged that the rectification rate was probably just as high pre-2019. However, it was submitted that post-certification inspection means:

- people are now often occupying buildings that are deficient, in at least some respects, from a fire safety perspective (sometimes issues may be relatively minor but, in some cases, the risks and ramifications may be major);
- inspecting occupied buildings is more complicated as inspectors have to work around furnished and populated spaces;
- disruption to newly entrenched occupants is caused by inspection and rectification works; and
- the impetus for immediate rectification action in order to achieve certification is absent post-certification.

150. Attention was drawn to other jurisdictions that have legislative requirements for pre-certification inspection. It was suggested that a pre-certification approach was more logical and should be legislated.

151. Clearly, there is an onus on private certifiers to identify and ensure rectification of any issues, including fire safety issues. However, the ongoing prevalence of issues identified post-certification suggests it is an issue that bears consideration.

REMOTE CERTIFICATION

152. There was also an issue raised regarding the suggestion that some private certifiers may be carrying out their work remotely.

153. The suggestion was that, as fire safety is an essential component of the built environment as a whole, it is one of the areas where reform is needed to achieve effective regulatory compliance in both building and industry practice. It was suggested that regulation of fire safety functions and practitioners ought to follow a thorough and consistent process, and that the legislation should require that independent certifiers inspect buildings in person prior to issuing certificates.

154. In that regard, DIPL stated:

The department generally agrees with this statement, however the changes in legislation for independent certifiers to inspect buildings in person needs to be considered further to understand how the independent certifiers are completing inspections and how the suggested failings are occurring to ensure that there are no unintended consequences.

Recommendation 5

NTG and DLPE consider issues relating to timing of NTFRS inspections and remote certification in any review of certification requirements.