

Inquiry into the regulation of building standards, building quality and building disputes

Additional Evidence to NSW Legislative Council Public Accountability Committee

public.accountability@parliament.nsw.gov.au

September 2019



SUBMISSION BY

Australian Institute of Architects ABN 72 000 023 012 NSW Chapter *Tusculum*

PURPOSE

- This additional evidence is provided by the Australian Institute of Architects NSW Chapter (the Institute).
- At the time of this submission, the Chapter President of the Institute is Kathlyn Loseby.
- The State Manager is Kate Concannon.

INFORMATION

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 11,000 members across Australia and overseas. More than 3,000 of these are based in NSW.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

TABLE OF CONTENTS

1.	INTE	RODUCTION	1	
2.	ANS	WERS TO QUESTIONS ON NOTICE	1	
2.	1	Contract size and the use of a Clerk of Works	1	
2.	2	Certification and insurance protection	2	
2.	3	Licensing reform	3	
3.	ADD	DITIONAL EVIDENCE: RESULTS OF INSTITUTE NOVATION SURVEY	4	
APPENDIX A6				

1. INTRODUCTION

The Australian Institute of Architects (the Institute) is the peak body for the architectural profession in Australia, representing around 11,000 members, with around 3200 members residing in NSW. The Institute works to improve our built environment by promoting quality, responsible, sustainable design. Architecture influences all aspects of the built environment and brings together the arts, environmental awareness, sciences and technology. By combining creative design with technical knowledge, architects create the physical environment in which people live, which in turn, influences quality of life. Through its members, the Institute plays a major role in shaping Australia's future.

As a distinct profession, architects can and do offer services that directly impact on public health and safety issues and quality issues affecting buildings. The Institute's Code of Conduct expects architects to 'improve standards of health and safety for the protection and welfare of all members of the community.' This is an important distinction, beyond the basics of safety, and it is not just to serve interests of the client, the developer or the financial institution, but everyone.

The Institute welcomes the opportunity to provide additional evidence to the NSW Legislative Council Public Accountability Committee Inquiry into the regulation of building standards, building quality and building disputes.

2. ANSWERS TO QUESTIONS ON NOTICE

2.1 Contract size and the use of a Clerk of Works

Question: What level of contract size or dollar amount should require the use of a Clerk of Works?

The relevance of the client's site inspector (Clerk of Works) has significantly decreased in Australia since the 1980s, even though it remains a key project role in most other countries including the UK, USA, Hong Kong, Ireland, Spain and in developing countries such as Kenya.

The Institute has recommended the reinstatement of the role of an independent clerk of works in the construction process for large and complex projects. The definition of "large and complex" will require careful consideration, however as a default, the construction of all commercial and multi residential buildings over three stories would benefit from an on-site Clerk-of-Works.

Once a commonplace figure on site, the Clerk of Works is increasingly rare in construction projects in Australia today. There is a good argument to be made that many of the shortcomings of quality control in today's industry can be traced to the sidelining of this valuable role

The Institute recommends that the Committee consider the work already undertaken by the United Kingdom Institute of Clerks of Works & Construction Inspectorate (ICWCI) - the professional body that supports quality construction through inspection. As a membership organisation it provides a support network of meeting centres, technical advice, publications and events to help keep its members up to date with the ever changing construction industry. One key publication is the *Clerk of Works and Site Inspector Handbook*, 2018 edition. (<u>http://ribabookshops.com/item/clerk-of-works-and-site-inspector-handbook-2018-edition/40068/</u>)

The book explains the traditional site inspector/clerk of works role and their liabilities, as well as duties and responsibilities linked to contemporary construction settings. It explores the relationship between inspectors, architects and other construction professionals, while providing valuable insight into reporting and what to look for, check and test every step of the way.

The contracting process favoured in the United Kingdom – design and build – mirrors the "design and construct" process commonplace in Australia. The contemporary construction settings outlined in the ICWCI Handbook are directly applicable to the Australian setting, as are the benefits of using a Clerk of Works on large and complex projects.

where individuals are accredited by the Building Professionals Board.

Certification and insurance protection

The number of Certifiers accredited under these specialist categories is extremely low and is dwarfed in the "real world" by the number of people actually undertaking each type of work. For example, across NSW only three certifiers are accredited to undertake acoustics compliance, only 10 to undertake electrical service compliance, and only 159 for fire safety engineering compliance. Please see Appendix A, compiled from information publicly available on the Building Professionals Board website, for a comprehensive listing of the small number of professionals currently certified.

Question: Do you have any comments on the earlier evidence from Fair Trading on the current level of certification and insurance protection, and how this evidence relates to real-world

The evidence provided by Fair Trading outlines that beyond the principal certifying authority responsible for the entire development or building, specialist categories of certification also exist,

The Institute would also like to reconfirm our view that in order to promote quality and consumer protection, and rebuild confidence in the NSW building sector, a broad range of professionals must be required to be registered/licensed. This extends beyond the specialist categories currently captured by the Building Professionals Board, and most importantly an expanded regime should be mandatory, not voluntary.

As a minimum this list would include (but would not necessarily be limited to):

Architects¹

Project Manager •

2.2

practice?

- Quantity surveyor Structural engineer •
 - Electrical engineer²
- Hydraulic engineer² •
- Acoustic consultant²

Mechanical engineer²

- BCA consultant
- Landscape architect
- Fire services engineer ^{2 3}
- Façade engineer •
- Disability Discrimination Act ٠ Consultant

For residential (BCA Class 1, 10), all of the above plus:

- Building designer Draftsperson
- In terms of existing registration/licensing regimes being appropriate to be accepted as registration for building contractors and building designers, we believe that the current registration regime for Architects is robust. The Architect's Act 2003 and the Architects Regulation 2017 originated in 1921 with the first Architects Act and in the main, aligns with Architects Acts in other jurisdictions.

A similar system needs to be introduced for building designers, project managers, professional engineers and other building professionals based on assessing qualifications and experience against competency standards. Differing competencies should be tied to different types of work.

At present, the Architects Act protects the title architect, but does not reserve certain work for architects. To truly protect the consumer, certain work should be reserved to architects, engineers and building designers according to their competencies.

An Act for professional engineers, building designers and other building professionals could be modelled on the Architects Act, and could require:

- Civil engineer²
- Geo-tech engineer²
- Fire engineer ² ⁴
- Sustainability consultant/engineer
- Access consultant •
- Residential project manager

Planner

¹ Already registered - Architects Act in each State and Territory

² Covered/part covered by the Building Professionals Board.

³ Wet/hydraulic and dry/electrical.

⁴ Fire safety: modelling/evacuation of fire solutions, and performance of all materials in the modelling.

- Eligibility criteria based on assessment of accredited education and experience (mapped against competencies)
- Practical experience required before registration (nominally 2 years)
- Registration process (interview and documentation)
- Code of professional conduct
- Offences
- Publicly available register
- Annual CPD
- PI insurance
- Annual renewal of registration
- Disciplinary process

2.3 Licensing reform

Question: Do you have any comments on how far licensing reform should spread, particularly into the construction side of things?

The Institute believes that all building practitioners including project managers, building designers, and drafters need to be brought under a regulatory regime and level playing field where all are required to hold public liability and professional indemnity insurance and demonstrate appropriate skills for each building type and class.

For example, unregulated practitioners should not be able to take responsibility for the:

- design of multi-unit residential dwellings
- design certification of any parts of the construction works
- structural design of buildings, and
- water-tightness of buildings.

For higher risk buildings such as multi-unit residential buildings, mixed used buildings and speculative commercial buildings, we are of the view that only fully qualified and experienced professionals should be responsible for the delivery of design services and project management for these types of buildings.

As noted above, architects are regulated in NSW under the *Architects Act 2003*. All Australian architects are insured and are required to have ongoing registration with state and territory bodies, following five years of tertiary education, 2 years of practical experience and the completion of log books before taking a registration exam. This makes architects particularly well placed to ensure design quality throughout the construction process.

Further to the need to ensure the appropriate regulation of professionals, the Institute agrees with the Master Builders Association of NSW that a robust registration/licencing regime must be implemented for everybody involved in the building chain:

Master Builders fully supports the introduction of registration for all building practitioners involved in the building, construction and supply chain, including the design sector and engineers. We are of the view that the registration of all building practitioners will increase the accountability of all who play a critical role in the building design and construction process.⁵

In line with the Architects Act and registration of other building professionals, the licensing of construction trades must involve:

⁵ Master Builders Association of New South Wales response to the NSW Government's *Building Stronger Foundations* Discussion Paper

- Eligibility criteria based on assessment of accredited education and experience (mapped against competencies)
- Practical experience required before license (nominally 2 years)
- Licensing process (interview and documentation)
- Code of professional conduct
- Fit and proper person criteria (bankruptcy and pervious offences)
- Publicly available register
- Annual CPD
- Pl insurance
- Annual renewal of registration
- Disciplinary process

The auditing and monitoring of any expanded/new registration and licensing system for both building professionals and construction trades will be critically important and must be appropriately resourced. Disciplinary processes must be robust and administered to ensure timely responses to legitimate complaints and disputes.

Detailed consideration must also be given to issuing different classes of licence according to building class and size. Currently, anyone in Australia can procure and construct an apartment building. No evidence of any relevant education, expertise, capacity, or insurances held is required.

Most of the issues around defects are in the speculative multi-residential apartment sector. Where buildings are built by long term owners, these issues rarely arise. Regulatory interventions need to be directed at higher risk areas, and the Institute believes a graduated regulatory system is required. What is sufficient for class 1 and 10 buildings is not sufficient for complex midrise or multi storey buildings.

3. ADDITIONAL EVIDENCE: RESULTS OF INSTITUTE NOVATION SURVEY

A range of issues face the construction industry regarding safety, transparency and quality. It is a critical time to engage in improving the procurement process to improve outcomes. One of the most prominent procurement models being adopted is novation. Novation occurs when the contract between the architect and the principal is extinguished and is replaced by a contract with a new client (the building contractor) usually on the same terms, bringing about a transfer of contractual rights and obligations.

The Institute has undertaken a national survey of its members to provide an initial indication as to what the pitfalls and positive outcomes of this procurement method are. The Institute is interested in an approach where we are actively engaging with industry research to understand how we can make holistic improvements to ensure that we are providing safe and quality built outcomes for our communities and consumers. The intent of this initial survey is to assess where further research should be undertaken. This research would engage directly with industry partners including clients, contractors and consultants to achieve a broader understanding.

Novation can create a positive outcome and is supported by the architectural profession. Many benefits can be delivered around buildability, time and costs. However, the results of the survey, conducted in April 2019, identify some issues. At this time, only Victorian state-based results have been released, ahead of the broader national results. For Victoria the survey covered 71 architectural practices and 158 projects delivered between 2009 and 2019.

The following is a summary of the survey results:

Substitution of specified materials was more likely under a novated contract. 71% reported a
negative impact on finish and durability of projects and 63% on the use of locally sourced
materials. This is supported by reports that finishes and fixtures changed from the original tender
after novation between 26% to 50%. Safety for end users depends on products that are
adequately researched and crossed checked by other consultants.

- 2. In the value management process under a design and construct contract, there is a much lower commitment to the principles of ecologically sustainable design (ESD).
- Better outcomes for the project and for risk management are achieved if architects are involved in strategic decision-making processes at project control group meetings. Before novation, only 23% of respondents reported they were always included. After novation, 10% of respondents reporting they were always included, and 35% said they were never included.
- 4. Architects reported being denied access to the site to undertake inspections at certain stages of the building process. Building contractors taking shortcuts in procurement and certification of building components affects safety for end-users of buildings.
- 5. The responsibilities of the architect changes under novated contracts, where architects have increasing responsibilities for all aspects of construction yet have diminishing power to influence good design and constructability outcomes.
- 6. The point of novation in the design and documentation phase is critical, and there is no consistent practice. The point where novation procures better outcomes for the general public and end user will depend on the scale of project, project type, time constraints, and principal's expectations. The optimal point is at either 100% Design Development or after more than 51% of the Construction Documentation had been completed.
- 7. There was serious concern about the need to undertake significant re-negotiation of client contract conditions at novation. Clients are increasingly choosing to require novation, but let contractors propose their own contract. 67% of architects believed that contract negotiations impacted negatively on their ability to deliver quality outcomes for the general public and end user.
- 8. Providing information to architects at the beginning and through the project process can have enormous benefits, particularly on overall project program or timeline to completion of construction. Realistic fees can be set, and resources allocated to reflect the true scope of the project requirements. If not provided, architects may be forced to reduce their scope of work, thereby affecting project outcomes.
- 9. After being novated to the contractor, only 21% felt they were able to effectively protect the original principal's interests. It is noted that 45% of architects did not know if the monthly reports prepared for the clients were being passed onto the clients during novation.
- 10. Very often, the total construction cost at tender is higher than the original total construction cost. 59% reported that they were unable to increase their fees to suit the increased workload expected as a result of the increase. The inability to provide adequate resources to the project leads to adverse health and well-being outcomes for staff engaged on the project.
- 11. The creation of an industry-wide code of novation was favoured by 83% of respondents, who believed that would be beneficial in improving the quality of projects delivered through novation.

A copy of the survey can be download from:

https://www.architecture.com.au/wp-content/uploads/Australian-Institute-of-Architects Novation-Survey Victoria-2019.pdf

APPENDIX A

Specialist Categories	Description of work	Number certified
C1	private road and drainage design compliance	284
C2	private road and drainage construction compliance	100
C3	stormwater management facilities design compliance	104
C4	stormwater management facilities construction compliance	102
C5	subdivision works and building works (location of works as constructed) compliance	20
C6	subdivision road and drainage construction compliance	96
C7	structural engineering compliance	122
C8	electrical services compliance	10
C9	mechanical services compliance	29
C10	fire safety engineering compliance	159
C11	energy management compliance (Building Code of Australia classes 3, 5 to 9)	3
C12	geotechnical engineering compliance	69
C13	acoustics compliance	3
C14	building hydraulics compliance	29
C15	stormwater compliance	105
C16	speciality hydraulic services compliance	67

Data compiled from: <u>http://search.bpb.nsw.gov.au/bpb/BPB_Search.jsp</u>