

**Submission
No 75**

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Organisation: Pro Cert Group Pty Ltd

Date Received: 28 July 2019



28 July 2019

Dear Public Accountability Committee,

RE: Submission to the Inquiry into the regulation of building standards, building quality and building disputes

I have read the Terms of Reference for the Inquiry into the regulation of building standards, building quality and building disputes and I thank you for the opportunity to make a submission to this Inquiry.

Background

Our business, Pro Cert Group Pty Ltd, has been in operation in Regional NSW since 2005 and in that time we have grown from a single person operation to an organisation that employs seven accredited certifiers at various accreditation levels, one cadet accredited certifier and three support administration staff across three regional locations.

Being based in regional NSW we not only carry out work as private accredited certifiers but also currently provide services to four regional Council's for accredited certifier services where the Council either does not have the resource capacity or appropriately qualified and accredited staff to provide these services.

In the time that we have been operating our business we have seen, and provided input to, numerous inquiries and reviews into the certification and building industry, the most recent of these being the 2016 Lambert Review *Strengthening Certification in NSW* and the 2018 Shergold Weir Report *Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, with each of these being accompanied by recommendations to the NSW Government for improvements to various parts of the certification and building sector.

Our certification staff and management are also active members within professional bodies such as the Environmental Development and Allied Professionals association, the Association of Accredited Certifiers and the Australian Institute of Building Surveyors.

Issues

As private certifiers in Regional NSW some of the key issues that need to be addressed in the NSW certification and building industry include:

- Lack of qualified and experienced accredited certifiers / building surveyors

A resourcing crisis for building certification in Regional NSW is developing where there is a small pool of certifiers across the private and government sectors. The number of certifiers in the industry are reducing due to practitioners retiring either through planned retirement or due to the professional indemnity insurance crisis bringing forward those plans. Local Councils, particularly in smaller towns, are unable to fill job vacancies in the accredited certifier/building surveyor roles when their incumbent staff either leave for another Council or retire as they compete for a limited pool of certifiers with Councils in larger centres or other areas of the state.

In Regional NSW there is a significant proportion of both private and local government certifiers who are close to retirement age and there is a lack of younger certifiers coming through to fill those positions.

We are seeing this effect directly through an increase in the level of enquiry for locum/relief accredited certifier/building surveying services coming from local government organisations who are either unable to fill positions or where they have low staff numbers and need assistance in meeting their statutory obligations when Council staff go on leave.

This resourcing issue will ultimately result in delays to development approval times and construction programs as availability for inspections during construction becomes stretched across less and less certifiers.

- Access to Professional Indemnity (PI) Insurance

Over the last three years our PI insurance premiums have increased by 400% which is not attributable to any claim on the policy or a disciplinary action from the BPB. This increase is a direct result of the reduction in number of insurers in the market as a whole and a reduction in the number of those insurers in the market who are prepared to offer compliant cover.

This increase in costs has resulted in the rates which we work to for certification work for both private and local government customers having to increase.

Based on discussions with our insurance broker it is evident that the reduction in number of insurers has been caused by insurers being exposed to untenable risk conditions due to certifiers being left as the last man standing for developments. These risk conditions are being caused by certifiers being required to maintain PI insurance cover for projects for a period of 10 years where no other entity in the construction process shares this requirement, not even the builder. Being the last man standing the certifier is the prime target for litigation in relation to building projects and as a result claims against certifiers quickly exhaust the PI insurance premium pool and result in the profession becoming uninsurable.

- Disproportionate liability issues confronting Accredited Certifiers

There are numerous instances of case law which acknowledge that as a certifier we are a generalist and are not expected to have a detailed knowledge of all aspects of building design.

However the legislation focuses on the liability of the certifier in relation to building projects and there is no commensurate recognition in legislation as to the importance of other design professionals, builders, developers, tradespeople etc in the construction and delivery of developments.

This results in an expectation in the media, public and elected representatives that certifiers are completely responsible for building quality with every new news story regarding a building defect being laid at the feet of the certifier.

It is at this point that we feel it also necessary and important to point out that building defects occur in buildings that are certified both by private and local government certifiers and that issues relating to disproportionate liability face both sectors of the profession.

As certifiers we are not the project manager or builder who spend, at least should be spending, the majority of their time on the building site and supervising building works for which they are responsible for delivering. By comparison where a project manager or builders time on site can be measured in a number of weeks or months, a certifiers time on site can be measured in hours or at the very most days.

It is also not realistic that the certifier be expected to replace the role of the project manager or builder and as a poor analogy to this is that we do not expect the police officer to sit in the car next to you when you are driving and catch you out every time you break a traffic law. Similarly that whilst the certifier is there to act as a check and balance and to ensure works are compliant a certifier simply cannot be on a job 100% of the time and hence cannot verify that all works are 100% compliant.

Similarly unlike a design professional such as a structural engineer, electrical engineer, mechanical engineer etc or even tradespeople such as plumbers, concretors, electricians etc who spend their entire career dedicated to one or two specialised areas of the building industry

as certifiers our knowledge relates to the content of the National Construction Code which ranges the breadth and depth of building design and construction. To expect one single person who is a generalist to know as much as a specialist in one specific element of building design and construction is unrealistic and unachievable.

The liability that certifiers are exposed to must be reflective of the fact that we are not on site to the degree that the project manager or builder should be and who should also be suitably qualified and experienced for the type of project they are undertaking, and that we do not know specialist design and installation requirements of Australian Standards and should be able to rely on the design work undertaken by the specialists in determining whether something is compliant.

- Certifiers being misled

In undertaking certification work it has occurred on projects that we have been involved with and on projects that other associates of our have been involved with there have been instances where building designs, structural designs, product specifications and the like are changed without consultation with the certifier.

In some of these instances the lack of communication with the certifier is not intentional nor meant to try and mislead the certifier however there have been instances where the design changes or product specification changes have not been advised to the certifier as there was some knowledge that what was being changed was not compliant and there being a hope that the certifier would not notice the change.

When these changes are being undertaken without the knowledge of the certifier they can result in non-compliant building work occurring or products being used. If the certifier is able to pick up on the change then appropriate steps can be taken to address the issue however if the certifier cannot identify the issue and the job reaches completion with final certification issued and no notification the certifier has, unbeknownst to them, certified a non-compliant building.

Certifiers not being able to identify such changes can occur where a product specification is changed from a compliant product to a non-compliant product which for all intents and purposes is either visually identical or at least very similar to the specified compliant product or where design works for a building service are changed either after the certifier has inspected the building or where the works are concealed before the certifier next inspects the building.

Since the certifier is the last man standing in liability terms they, even though through no fault of their own, have certified a non-compliant building and should there be any ramifications occur from this design change they will be the ones held to account, not the person or persons who were responsible for the change.

This is another reason why responsibility and liability needs to be allocated to individuals throughout the design and construction chain which is supported by an insurance framework that can be relied on in perpetuity.

Solutions

There are a number of potential solutions that could be introduced in NSW to address the issues raised above, including:

- Government Training Support

In order to bolster the numbers of certifiers in NSW the liability conditions facing the profession need to be addressed and there needs to be government support provided to enhancing the current qualification framework and accreditation requirements.

The current method for transitioning to higher levels of accreditation is not simple and, particularly for certifiers in regional NSW, there are no alternative pathways available to gain experience necessary to satisfy accreditation requirements for higher levels other than trying to work for a metropolitan Council or certifier.

If not addressed this will lead to a significant worsening of the skills shortage in regional NSW for certification professionals which is already occurring.

- Expansion to Accreditation & Insurance

All professionals involved in the design, installation and approvals process of delivering a development must be accredited and insured with liability run-off periods for this insurance to be legislated to be a standard length across the industry for all parties.

Similarly all key personnel in the process who are not accredited, such as tradespeople, must be licensed and be required to prove their competency at regular intervals.

As part of the accreditation and licensing process all professionals and tradespeople must have mandatory minimum Continuing Professional Development (CPD) requirements to ensure that their knowledge remains current. Further to this the CPD undertaken by that person must be specific to their area of expertise.

- Increase support to Certifiers

Currently certifiers are forced to rely on a mixed bag of documents provided to them at the design stage and at completion of a development to validate compliance and unlike Queensland there is no standard format for these documents which leads to errors and misleading information being provided.

By having a legislated standard format for certification documents for all documents related to a building to be developed by both Government and industry a certifier can rely with more confidence on the information that is being provided to them to validate compliance has been achieved.

It must then be mandated that all persons involved in the certification of any engineering design or any technical aspect of construction work must issue a certificate of compliance on a standard form.

- Auditing of Certifiers, Professionals & Tradespeople

Processes be put in place for the comprehensive regular auditing of all accredited or licensed persons involved in the development industry in addition to the current adhoc auditing of certifiers.

This would lead to an increase in professionalism across the industry and to an increase in consumer confidence which has been eroded of late.

- Supplier Accountability

The substitution of building products with non-compliant products is an area that requires urgent reform and all parties involved in the building product supply chain need to be accountable for the products they prescribe, specify, purchase and use.

This may also necessitate a registration system for approved suppliers or manufacturers with associated insurance requirements to ensure that they can be held accountable for the products that they recommend and supply to developments.

- Government Portfolio Establishment

The Building Professionals Board has recently migrated from the Department of Planning to Department of Finance, Services and Innovation under NSW Fair Trading.

The administration of building regulation in NSW needs to be strengthened by bringing building regulations and control functions into one portfolio, reporting to one Minister. As certifiers interface with development control in the issue of Construction Certificates and Occupation Certificates under development consents and in the issue of Complying Development

Certificates under State Environmental Planning Policies it is not appropriate that the planning and building industry portfolios be separate as they are intertwined.

Conclusion

We commend the NSW Government for taking action in relation to this important issue and welcome the opportunity to have our input into this inquiry however we consider it very important that any action taken be very well considered in relation to its impact and that due consideration be given to the recommendations made by the inquiries and reviews which have preceded this one.

It is inevitable that there will be calls for the scrapping of private certification and that everything would be fixed if all certification was carried out by local government. We do not believe that this is a practical or sensible solution and will do nothing to address the root causes of the issues in the certification and building industry some of which were identified in our submission.

Yours sincerely,

Neil Diamond
DIRECTOR

Travis Stewart
DIRECTOR

Kellie Woods
DIRECTOR

Spiro Sarantzouklis
DIRECTOR