

**Submission  
No 93**

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

**Name:** Ms Bronwyn Weir and Professor Peter Shergold

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Mr David Shoebridge  
Chair, Public Accountability Committee  
Inquiry into the regulation of building standards, building quality and building disputes

Dear Mr Shoebridge

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

Thank you for request that I make a submission to the above inquiry dated 8 July 2019.

I am content for this submission to be published at the discretion of the Public Accountability Committee.

I was commissioned by the Building Ministers Forum (BMF) in August 2017 together with Professor Peter Shergold. Professor Shergold is aware of this response and it is made jointly from us both.

We were asked to:

1. undertake an assessment of state and territory laws;
2. undertake an assessment of relevant reports into the building sector;
3. consult with governments and industry; and
4. have regard to ten 'problems' as set out in our Terms of Reference.

Having regard to the above, we were asked to make recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the National Construction Code. (Our terms of Reference are in Attachment B to our report)

The assessment was commissioned in the wake of tragic the fire at Grenfell Tower in London and with the knowledge that many buildings in Australia may be clad in similar combustible products as the Grenfell Tower. However, at the time of the engagement, each state and territory had embarked on audits of buildings and therefore the report was not intended to address government's responses to concerns about cladding. Instead the report was to address concerns about systemic failures in the building regulatory systems around Australia.

In February 2018, we provided our final report entitled *Building Confidence: Improving the effectiveness of compliance and enforcement system for the building and construction industry across Australia*. (Building Confidence). The BMF published our report in April 2018.

Our submission is made by reference to the key matters set out in the terms of reference for your inquiry.



## Private certification

As the authors of the Building Confidence report we consider our report speaks for itself in relation to our observations and recommendations concerning the role of private certification. As noted above that the BMF asked us to undertake our assessment having regard to ten 'problems', one of which was the 'integrity of private certification'. Therefore, we did consider this issue in detail during our assessment.

In addition to our commentary on the role of the private building surveyor, commencing on page 11 of our report, we made recommendations 9, 10 and 11 which go directly to addressing the role of private building surveyors/certifiers and concerns over conflicts of interest.

In relation to inspections, we made recommendation 18, commencing on page 33.

We did not consider alternatives to private certification as our report was for all states and territories, some of which still provide for local government to issue permits or undertake other parts of the building approval process (see para 7 on page 12).

We noted that a number of states were considering alternative models for the role of private building surveyors. Professional indemnity insurance concerns had been emerging at the of our assessment. We said that the governance over private building surveyors needed to be recalibrated given the changes in the sector since these models were established in the 1990s.

## Consumer protection & role of strata committees

Our terms of reference were framed in such a way that the question for us was one of how governments should regulate to ensure buildings are built in accordance with the National Construction Code. Whilst this is linked to questions of how governments should regulate to protect consumers when they are not, it was not within our remit to explore these matters in detail.

## The status and degree of implementation of recommendations in the Building Confidence Report

The Building Confidence Report recommended implementation of the package of 24 recommendations progressively over 3 years (see rec 23). The report was provided to the Ministers in February 2018.

I set out below an overview of the status of implementation of our recommendations as far as I can ascertain from public documents.

Nature of recommendations	Recommendations	Status in NSW
Requiring legislative reform	1, 2, 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20	Partially meets some. Does not currently fully meet any. The Building Stronger Foundations discussion paper indicates an intention to implement in part or full recommendations 1, 2, 12, 13, 14, 15, 16 and 17.
Requiring regulatory practice development, guides	4, 5, 7, 10, 18	Partially meets some. Does not currently fully meet any. On 30 December 2018 the NSW government announced that there will be



Nature of recommendations	Recommendations	Status in NSW
or other non-legislative action		audits of 25-30% of buildings. The Building Stronger Foundations discussion paper says that the new Building Commissioner will address implementation of recommendations 5 and 7.
Requiring acknowledgement or collaboration between jurisdictions	2, 21, 22, 23, 24	Recommendations 2 and 21 have not yet been determined. Recommendation 22 is being progressed by the ABCB. The Building Stronger Foundations discussion paper says it expects to implement its reform commitments over the next three years (rec 23). The NSW government reported on its implementation plan in March 2019 (rec 24). On 18 July the BMF agreed to the establishment an implementation team as part of the ABCB which is consistent with recommendation 24.

Please contact me if you require any further information.

Yours faithfully  
**Weir Legal and Consulting Pty Ltd**

Bronwyn Weir  
Director