

**Submission  
No 99**

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

**Name:** Mr Brett Bates

**Date Received:** 28 July 2019

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**TO:** Parliament of New South Wales – Legislative Council.  
**RE:** Inquiry into the regulation of building standards, building quality and building disputes.  
**ATTN:** Public Accountability Committee Chairperson - David Shoebridge.  
**CC:** Public Accountability Committee Members.  
Robert Borsak - Deputy Chair.  
Scott Farlow.  
John Graham.  
Courtney Houssos.  
Trevor Khan.  
Matthew Mason-Cox.  
**FROM:** Brett Bates.  
**DATE:** 28<sup>th</sup> July 2019.

**Terms of Reference: to inquire into and report on the regulation of building standards, building quality and building disputes by government agencies in New South Wales,**

- (a) the role of private certification in protecting building standards.
- (b) the adequacy of consumer protections for owners and purchasers of new apartments/dwellings, and limitations on building insurance and compensation schemes.
- (c) the role of strata committees in responding to building defects discovered in common property, including the protections offered for all strata owners in disputes that impact on only a minority of strata owners.
- (d) case studies related to flammable cladding on NSW buildings and the defects discovered in Mascot Towers and the Opal Tower.
- (e) the current status and degree of implementation of recommendations of reports into the building industry including the Lambert report 2016, the Shergold/Weir report 2018 and the Opal Tower investigation final report 2019.
- (f) any other related matter.

**Submission overview:**

The government announcement of its intention to appoint a 'Building Commissioner' to solve significant problems causing negative impacts on consumer confidence and degrading the credibility of the NSW building and construction industry is most welcome. However, if this represents the full extent of governments response, it will ironically be at risk of being viewed as the typical actions of a 'dodgy' builder who wants to disguise their mistakes. In reality, today's 'dodgy' builders have a vast array of sealants and gap fillers to choose from to camouflage their poor work quality. They are the modern equivalent to that old metaphor of simply 'papering over the cracks' to hide a problem. The situation now becoming evident in NSW and Australia can be traced back to several systemic issues currently plaguing the building construction industry. The 'Building Commissioner' role must be empowered to investigate all of the underlying causes related to this significant and overall decline in ability to properly construct modern buildings to acceptable quality standards. The causes will only be identified and best addressed by highly experienced persons, directly involved in and possessing substantive knowledge of past and present building construction practice and project delivery methods. If the 'Building Commissioner' only takes advice from industry groups, associations and developers whose primary function is to act as lobbyists for their own interests, then 'papering over the cracks' will be the expected result.

The current situation has been brought to light due to a modern multi-storey apartment block exhibiting evidence of structural failure due to excessive deflection of certain building elements prior to Christmas last year. This naturally drew great public attention when occupants of the building were evacuated. The reality is that defective construction works are being performed in most projects. It has become almost commonplace and is an unprecedented embarrassment in the history of our construction industry and our built environment.

The problem won't be resolved by focusing on creating a 'better' insurance scheme to fund the mountain of rectification works now necessary due to past poorly constructed buildings being found to be riddled with defects. Nor will it likely be solved by focusing on third party building certification system. Periodic certification inspections of works progress are not and never were meant to replace the detailed on-site supervision and management of an appropriately qualified builder. Regardless of whether that inspector is a council employed building surveyor or a private certifier, the role primarily constitutes conducting a 'paper based' audit of evidence of specific compliance carried out at various milestone stages of the building construction works program. In total, certifiers spend less than 1% of the total scheduled construction period on site as compared to the builder, site supervisor or building project manager whose attendance (or that of their delegate) is required constantly. It is impractical to contemplate the builder's role as being subordinate to that of the certifier in terms of the overall responsibility to ensure quality outcomes and standards are achieved in the building construction works being carried out. If insurance and certification are seen as being the remedies, then it would appear that the building construction industry has reached the point where it simply accepts that significant building defects have become the natural consequence of carrying out any building construction project. I would hate to think that NSW and Australia have allowed the industry to be degraded to that level of incompetence.

A proactive approach must seek to seriously mitigate the risks in the amount and types of significant errors and major defective works that are currently being carried out. If this were the primary objective of the 'Building Commissioner', then the first issue for consideration must be how we can develop much better trained and appropriately qualified builders and allied professionals than many of the operatives we currently have working in industry. Alignment of improved and rigorous training requirements and appropriate qualifications within a properly accredited incremental licensing scheme would provide a much higher level of confidence amongst consumers and represent a step forward for the reputational integrity of those who work within the building construction sector now and into the future.

### **Executive Summary:**

This submission is not formatted to independently address each of the five issues nominated 'a' to 'e' in the 'Terms of Reference'. Together with work colleagues and persons who have active roles within the industry and over the past several decades, I believe the issues have a common denominator with several being intrinsically linked. They will be best answered by addressing issue 'f' – 'any other related matter'. The committee should consider the following content in respect of this being an attempt to address 'any other related matter' whilst effectively addressing elements contained within the other five issues.

Commonality for an inquiry into the regulation of building standards, building quality and building disputes must commence with a review of our current training requirements and their associated links to professional accreditation and licensing standards across all occupational trades and building professional services involved in the construction sector. Individuals and the organisations they work for generally have mandatory responsibilities imposed by legislation. Unfortunately, the legislation appears inadequate and lacking in its ability to ensure that the types of defective failures clearly evident and continuing to occur in our building construction industry would have never happened in the first instance.

They will have failed if the desired objective was to ensure consumers would retain confidence in the governments regulatory control of 'builders' and the works they perform. They will have failed in that they have been shown to be totally inadequate in their ability to protect consumers from the delivery of significantly substandard outcomes in respect of the construction of critical elements of our buildings. In many cases, particularly as they relate to residential construction projects, they continue to fail the most basic requirements of the National Construction Code - Building Code of Australia (BCA).

The BCA's principle objective is that every type and class of building that is constructed within Australia must be designed and constructed so that it will:

## **‘Protect the health, safety and amenity of building occupants and users.’**

NCC’s BCA Volumes 1 & 2 nominate several hundred ‘Deemed to Satisfy’ (DTS) design and construction provisions to achieve compliance. Developed as a ‘performance based’ rather than a ‘prescriptive’ code, it does allow use of alternative ‘performance based solutions’ that can exist outside of the nominated ‘DTS’ provisions. The strategy is a forward looking approach which encourages the adoption of progressive design and construction techniques and use of new technology, materials and system components. When used by practitioners who are adequately equipped with a high degree of skill and knowledge in the various aspects of building and construction, it can be extremely beneficial. However, serious problems will inevitably arise when building practitioners, consultants and trade contractors do not possess the requisite levels of skill and knowledge. The ‘gap’ in their knowledge and capacity can and does create major problems. And a quick and easy ‘gap filler’ to fix a lack of knowledge and skill is not the solution!

Recent high profile examples of projects that have exhibited structural failures and the widespread use of highly combustible sandwich panel cladding materials have caused evacuation of occupants due to life safety concerns. This clearly illustrate some of the very worst types of design and construction failures that must not occur. These types of incidents are unfortunately far too common in third world nations. They generally result from the use of a largely unskilled workforce with little formal training and minimal expertise in the area of acceptable project and construction management skills. But these incidents have occurred in Australia, in some of our most populous and high profile city precincts. This must be of significant concern, not only for those unfortunate building owners and occupants, but also for government and the general public. The ability of Australia to lead the way in world’s best practice and deliver high quality building standards is a benchmark to measure our international reputation and status amongst other nations. It is vital to recognise that this current and continuing fiasco has the potential to be far more damaging than just hurting our local ‘apartment market’ where it has now (sensibly) become extremely difficult for any building developer to sell ‘off the plan’ apartments to owners or investors.

Answers as to how this unprecedented failure was allowed to occur must be fully investigated.

The most pertinent issue must be the role, capacity and responsibility of the ‘builder’ as the primary participant in the procurement on every type of construction project – small or large, residential or commercial. Builders involved in the residential works sector already have incumbent responsibility in terms of the NSW legislation applicable under the ‘Home Building Act’. In the broader context, builders, along with building designers and all other affiliated consultants, hold various levels of responsibilities under the ‘Environmental Planning and Assessment Act’ which nominates the National Construction Code ‘Building Code of Australia’ (BCA) as being the primary reference documents for all matters that concern building compliance standards.

As with all complex problems, solutions to resolve it are likely be similarly complex. Despite this, I firmly believe three main factors are currently impacting the building and construction industry in both NSW and Australia. If they remain unresolved, the current situation will likely worsen. They are as follows:

1. Lack of comprehensive uniform legislation covering all building practitioner licensing and accreditation requirements and qualification standards in Australia. Legislation should be designed to complement the National Construction Code’s Building Code of Australia descriptors for each building classification and building type. It should replace the highly porous ‘mutual recognition’ arrangements made between various state and territory regulatory authorities.
2. In NSW, the operation of a redundant, single class of building license, only applicable to residential building construction. It fails from the consumer perspective whilst it damages the reputational integrity of the industry. It completely fails to recognise the extensive variables that should be apparent amongst the many different types of building project. Construction complexity and difference will be generated on the basis of the project scale, building type and design and

construction methodologies. These factors should be considered and aligned with improved skill levels and higher qualifications required for all license holder categories.

3. Degradation of formal training delivery outcomes in respect of the reliability of course admissions and validity of assessment for appropriate levels of skills and knowledge essential to the delivery of appropriate qualifications that are deemed essential for licensing & other professional accreditation purposes allied to all building and construction sector roles.

#### **Item 1 – Commentary & Recommendation:**

Australia's continued failure to successfully adopt national legislation to comprehensively cover all building practitioner licensing and qualification standards is recognised as being beyond the specific scope and terms of reference of this inquiry. The NSW government cannot implement this strategy independently but it can take positive steps to influence this necessary change.

The NSW government should actively support the advancement of this proposal through participation in COAG and Building Ministers Forums. In the interim, it should work to establish major changes to its own legislation that could be adapted as Australia's quality benchmark for other states and territories in the transition to national building occupational licensing and appropriate accreditation standards.

#### **Item 2 – Commentary & Recommendation:**

Allied to Item 1, a review must be conducted to critically examine current systems of builder training, accreditation and licensing requirements in NSW. In current form, they fail to meet the needs and demands of today's building construction industry. It should be considered as a major contributing factor in the amount and severity of the defective building works associated with residential construction projects carried out over the past decade. The NSW Home Building Act and Regulation is compromised in respect of licensing requirements. Fair Trading lacks ability to analyse true capabilities of license applicants to determine if they are able to perform as 'professional' builders on behalf of clients.

The ability to accurately plan, organise, quantify, estimate, budget, schedule, coordinate, supervise and administer complex and legally binding contractual obligations in order to properly construct most building projects and to consistently achieve high quality outcomes is now being viewed as largely absent amongst the cohort of persons who refer to themselves as 'builders'. The number of hearings lodged at NSW Civil and Administrative Tribunal (NCAT) along with other jurisdictional courts concerning issues of contract breach, defective works, variation claims, incomplete work and a myriad of other claims and counter claims is absolutely appalling.

The NSW licensing scheme fails to recognise different residential building projects encompass a wide range of significant variables that will be vastly different in their levels of complexity. Complexity will introduce a greater risk of design, construction and contractual errors arising during the execution of the project works. Put simply, many of today's 'licensed' builders are effectively incapable of being aware if they are doing the right thing or the wrong thing! The risk of performing cumulative significant 'wrong' things increases exponentially wherever complex works and larger building construction projects are attempted. This fact has been made clear in respect of the reports of significant structural and fire safety defects involving many recently completed residential apartment projects.

The National Construction Code's Building Code of Australia clearly describes differentiation between Class 1 single storey residential detached houses and a Class 2 multi occupancy apartment buildings. However, the NSW licensing system ignores this fact. It retains a highly simplistic 1970's approach with a single class of building license aligned with the illusion that every type of building construction project is based on the level of skill and knowledge required to construct a single storey, 3-bedroom brick veneer house on a

quarter acre block. This has created a situation where NSW now has the lowest level of formal academic training qualifications required for builder licensing purposes.

Under current requirements, NSW Fair Trading considers a Certificate 3 level qualification - in either 'carpentry' or 'bricklaying' trades - together with a Certificate 4 level course qualification CPC40110 in building will provide the full extent and level of professional knowledge and associated intellectual acumen necessary to obtain a building contractor licence. The licence issued by Fair Trade legally enables the same builder to contract for the construction of a single storey weatherboard 'granny flat' or a 50 level reinforced concrete, post tensioned residential apartment tower. This is in addition to any other type and/or size of residential construction project that exists between these two extremes. In addition, NSW has chosen to have absolutely no licensing requirements to construct any other type or class of building if the building is to be constructed for commercial, retail or industrial purposes. This is unlike other, more advanced state governments, such as Queensland, where higher level formal qualifications are required for issuance of building licenses that will involve larger residential and non-residential projects and also to deliver 'Project Management' services on behalf of clients.

Fair Trading's logic would suggest the level of training that a builder needs to be professionally competent in order to properly construct a single level brick veneer cottage as being identical to that to properly construct modern townhouse complexes or residential apartment buildings. This is false logic which completely ignores the reality of the situation. To illustrate the gap between the required knowledge and required qualifications, it should be acknowledged that there is likely to be absolutely no structural carpentry or bricklaying trade skills utilised during the major construction stages of most modern apartment building projects. These two trade qualifications become wholly irrelevant for licensing purposes if the project the licence is used for involves no bricklaying or carpentry trade skills whatsoever.

In conjunction with this, there has been a devastating impact on the quality of both trade and post trade building graduates entering and servicing the construction sector. This has largely been the result of the deregulation of market operatives that deliver the necessary training and qualifications. The majority of 'private' registered training organisations (RTO's) leverage the dubious method of applying 'RPL' or 'recognition of prior learning' to their learner groups. This is essentially used to assure their customers that they will receive a 'fast track' qualification. Unfortunately, this delivery method ensures the qualifications are being 'bought' and not 'earned'. They are devoid of any value due to the absence of any valid or reliable assessment of the candidate's actual skills, retained knowledge or capacity to perform to an appropriate professional standard. A full review of the NSW builder licensing system and the qualifications it currently relies upon as being the most reliable and accurate system to establish evidence of builder capacity is required to address this very important issue.

To undertake this, NSW Fair Trading, NSW TAFE and the NSW universities that offer building and construction related qualifications should engage in a cooperative arrangement to jointly develop 'capstone' examination assessments for all identified high risk areas. The capstone assessment exams should be linked to professional accreditation within an incremental licence class scheme that caters to building construction projects of all types and sizes and not simply residential home building work. Linking of various licence classes for different types of building works should be mapped to appropriate AQF (Australian Qualification Framework) levels of formal qualifications. This should be used to form the basis for any discussion and development of the appropriate content and method of 'capstone' assessments.

The clear objective of implementing such a strategy would be to produce more highly trained 'builders' to perform and manage the types of building works of appropriate scale and complexity that will better match their respective qualifications and accreditation levels. This measure would enable consumers to be confident in and rely upon a cohort of appropriately accredited professional builders who would be responsible for managing the construction of their buildings. It would greatly assist new building graduates to reliably meet necessary code requirements and all specified quality standards contained under contract.

The proposed 'capstone' scheme should also be applied retrospectively to current license holders when applying for license renewal to achieve the greatest positive impact. The current method of 'mutual recognition' of builder licenses between the states and territories should be abandoned if NSW wishes to be recognised as delivering the best and most reliable licensed builders within Australia.

### **Item 3 – Commentary & Recommendation:**

Various educational delivery methods are used to gain qualifications that are necessary to work across a range of skilled building construction trades and within administrative, supervisory and management roles. The integrity of our Vocational Education and Training (VET) and Tertiary education sectors that deliver learning content and conduct assessment to provide qualifications to graduates are essential to the building and construction industry's success and reputation. They are also an essential component in the economic success of both NSW and Australia. Unfortunately, many of our educational delivery systems and their capacity to maintain their once, very high quality standards at skilled trade, supervisory and management levels sector have fallen behind. Current indicators show they will likely continue to decline and the reasons behind this are multifaceted.

Open funding of privately operated Registered Training Organisations (RTO's) that deliver VET course qualifications was shown to be worse than just a failure. The scheme was widely mismanaged and enabled the extortion of billions of taxpayer funded training dollars whilst providing many useless qualifications or no qualifications at all in many circumstances. The entire fiasco seems to have been conveniently forgotten with very few transgressors ever being prosecuted and merely being labelled as 'rogue operators' with little consequential actions ever taken. Whilst some deregistration of the very worst RTO's did occur, many disreputable private RTO's continue to tout for business. They seem to consistently promote a strategy of guaranteeing their customers a 'nationally recognised qualification' and particularly focus on selling their building trades and post trades building courses. They openly promote the concept that their customers will encounter no formal study or examination requirements and that full course completion can be achieved either 'on-line' or at worst, within a few days or possibly weeks of minimal face to face attendance. They replace any rigorous learning and testing of skills and formal assessment of retained knowledge by using the ubiquitous loophole of Recognition of Prior Learning or 'RPL'.

This is a highly contentious aspect of educational delivery when it is used to facilitate unrealistic course completions. 'RPL' methodologies are largely discredited unless there is evidence of a matching or superseded qualification. The 'evidence' of the attainment of relevant and necessary 'prior learning' components are otherwise easily manipulated by both the participant and the private RTO who delivers the course qualification. It remains a significant problem within the Vocational Education & Training sector as far as the issuance of building construction trade and post trade qualifications are concerned.

Whilst the VET sector has suffered a very serious reputational decline, the tertiary sector isn't totally immune from contributing to the larger problem. At the start of 2017 an investigative report by Fairfax titled: ***"NSW universities taking students with ATARs as low as 30"*** should have signaled a large red flag to federal and state government departments and agencies regulating higher education.

The data showed that:

***"at Western Sydney University, 99 per cent of the 251 students offered places in its Bachelor of Construction Management program did not make the cut-off of 85."***

To properly engage and participate in tertiary educational study and progress to be awarded a degree qualification in 'Construction Management' it seems quite reasonable to assume that participants have significant higher order problem solving capabilities. Although the reputational integrity of that particular WSU qualification is well known as being practically irrelevant among most within the building and construction industry, the voracious appetite for government guaranteed HECS funding at all of our universities makes it certain that Vice Chancellors employ diminution of entry standards to maximize their

avaricious 'bums on seats' strategies on most other campuses too. This is not limited to a specific 'Construction Management' course. It is becoming endemic across engineering, architecture, building surveying, fire engineering, quantity surveying and most other affiliated professional construction related qualifications that are offered. This is corrosive to the continued production of high quality building professionals which then leads to the increased risk of substandard defective building construction work and highly unsatisfactory project outcomes.

Prior to the federal government uncapping of the number of tertiary enrollments, most universities did not bother to even offer course qualifications below AQF level 5 - generally seen as a 'Diploma' qualification. Changes now allow access to government sponsored fee subsidies to deliver lower AQF level courses, such as 'Certificate IV' and 'Diploma' via college affiliated university business entities. These are forecast to attract the tertiary sector into what was once exclusively delivered by TAFE. With uncapped student placement numbers and the ability to openly access the limitless HECS debt scheme for their revenue growth, the university sector has developed a business model to deliver almost all aspects of 'post school' education and training apart from the trades. This growth strategy comes at a cost to the overall quality standards of many course qualifications and naturally the capabilities of the graduates that are and will be produced now and into the future. Problems occur when those qualifications are directly linked to regulatory licensing and professional accreditation and registration schemes. And that is what many qualifications associated with the building and construction industry are used for. Consumers using the services of licensed builders and any related accredited professional consulting services should be entitled to rely on this as evidence. But in many cases, they are being let down by these potential conflicting interests. NSW Fair Trading's current web page states the following:

***"Any work that is residential building work under the Home Building Act 1989 which involves construction of a dwelling, or alterations or additions to a dwelling. It also includes repairing, renovating, decorating or applying protective treatment to a dwelling. Any contract for general building work can include any specialist work that is integral to the overall work, but such work must be carried out by the holder of an endorsed contractor licence or qualified supervisor certificate in the relevant category of specialist work.***

***The current qualification and experience requirements, outlined below, commenced on 31 March 2017. 1. Certificate IV in Building and Construction (BCG40106 or CPC40108 Building or CPC40110 Building) or (BCG40206 or CPC40208 Contract Administration) or (BCG40306 or CPC40308 Estimating) or (BCG40506 or CPC40508 Site Management). This qualification is designed to meet the needs of builders and managers of small to medium-sized building businesses. The builder may also be the appropriately licensed person with responsibility under the relevant building licensing authority in the State or Territory. Builder licensing varies across States and Territories and additional requirements to attainment of this qualification may be required. Occupational titles may include Builder or Construction Manager. To find registered training organisations that are registered to deliver nationally recognised training to obtain qualifications for a building, trade or specialist licence or certificate, you can use the [training.gov.au](http://training.gov.au) website and search via the course code or name."***

The directive is to the website operated by the federal government Department of Education & Training. If you search for the 'Certificate IV' courses listed by Fair Trading as being the compulsory qualifications used to demonstrate capacity for a NSW building contractors licence, around 145 'Registered Training Organisations' (RTO's) appear listed as course providers. Apart from university and TAFE, the vast majority are all private training providers. Private RTO's should not be allowed to deliver any course or qualification that has direct links with licensing or professional accreditation.

Fair Trading should only accept formal qualifications for the purposes of licensing where evidence is obtained from a TAFE college or Australian university that provides legitimate evidence of their having delivered appropriate training to the respective AQF level and have implemented formal assessment protocols to prove validity of the graduate's capabilities. This should be finally verified by applicants who



wish to obtain accreditation, then undertaking an appropriate 'capstone' examination assessment developed in conjunction with NSW Fair Trading, NSW TAFE and the NSW universities as outlined in Item 2.

### **Personal Information, conclusion & attachments:**

I have worked in the building and construction sector across a broad range of capacities for 40 years. I have also developed and delivered content relating to building and project management courses within the NSW and Victorian vocational and tertiary educational sectors. I hold formal qualifications in 'Construction Management', 'Building' and 'Architectural Drafting' issued by Australian universities and TAFE's which I attended during the 1980's and 1990's. I hold a post graduate qualification in Vocational Education & Training. I am currently employed as a TAFE teacher of building studies (post-trade courses) and deliver units of study in courses CPC40110 (Certificate IV – Building) and CPC50210 (Diploma Building) contained in the CPC08 - Construction, Plumbing and Services National Training Package.

The content of this submission represents my personal views based on professional observation, experience and multiple discussions with my professional colleagues and many other industry participants. It is not intended as nor should it be interpreted as representing the official views or opinions of my current employer, NSW TAFE. Indeed, I am critical of many aspects of TAFE's poor management and partial involvement in the continued degradation of training standards in association with delivery of building and construction trade courses across some of their NSW colleges, utilising some teachers and a management executive that have little to no industry experience whatsoever within the building construction sector.

Over the past several years I have also contributed articles published online by Australian building and construction industry web based resource '*Sourceable*'. Many of the articles dealt with the topic and content related to this submission. I have included some that I consider may be of use as supplementary information (or at least just mildly entertaining!) that could help better inform the committee of the associated issues of building construction defects in Australia and the quality standards of some of the practitioners involved and educational systems involved in their training.

### **Article 1.**

It seems an appropriate time to reflect on the past year and make some resolutions for the new one so let's indulge in both. My contributions to 'Sourceable' have focused on the dysfunctional aspects of builder licensing across Australia. The push to make uniform building regulations and implement a 'National Construction Code' that is now freely available on-line is a good example of what can be achieved when we all work together. This is a fundamental reason for COAG to exist. Unfortunately, a uniform approach to develop builder licensing remains as dysfunctional as ever in 2015. Let's hope that an 'innovative' approach to our national governance recognises that uniformity of a national builder licensing scheme is a seamless and strategic link to the NCC's performance objectives and would be of great benefit to the building construction industry and its consumers. It is achievable and should be viewed as a significant catalyst in achieving better standards of building construction within the contemporary built environment. I also highlighted great concern about the diminishing quality standards within the Vocational Education and Training (VET) sector. VET is intrinsically linked to the qualifications recognised by our builder licensing regimes. Many would be aware of media reporting on the failure of government to properly regulate businesses operating as Registered Training Organisations (RTO's). The ACCC is only now moving to prosecute the most obvious predatory businesses that placed profits before quality educational outcomes. The deregulated environment has generated strong interest amongst private RTO's that offer building qualifications in construction trade and post trade courses from Certificate 3 through to Advanced Diploma levels. These are core qualifications for licensing in many states and territories. Clients of privately operated providers aren't drawn to enroll with them because of an offer of 'free' laptop computer. The highly motivating factor is the opportunity for clients to obtain 'fast tracked' qualifications, often in as little as 6 weeks of 'on-line training' with no rigorous assessment of their proficiency. The validity of their

training and assessment outcomes is seriously compromised. It is largely facilitated by 'Recognition of Prior Learning' or 'RPL' to rapidly progress students in their course of study. The motivation of persons making claims for 'RPL' and the subjective nature, reliance and judgements made as to the type of 'evidence' provided and the relevance of such evidence to establish 'prior learning' by assessors must be highly questionable. Whenever 'fast tracked' qualifications are associated with training organisations whose main objective is to 'sell' the qualification to their clients as quickly as possible, there exists a significant risk of a major conflict of interest. The ability of ASQA to regulate against this has been absent. Even where significant and highly dubious practices have occurred, ASQA has demonstrated that it cannot be relied upon to guarantee quality standards of any private RTO issued qualifications. When those qualifications are directly linked to the building licences granted by state and territory statutory authorities, the scenario exists for a corresponding increase in a growing cohort of poorly trained and technically unskilled but 'licensed' builders emerging onto the market. A correspondingly higher number of consumer complaints and an incremental rise in risk to the health, safety and amenity of all building owners, occupants and users should be expected. This contravenes the 'Performance Objectives' as stated in the NCC's 'Building Code of Australia – Vol. 1&2'. Let's hope the government acts rapidly to fix the entire VET system which was recently described by our PM as a 'shambles'. They must end market manipulations that have seriously damaged the quality standards of courses and qualifications operating under this highly flawed system. In the interim, a glimmer of hope has appeared that might create better standards for NSW licensed builders. The Minister for Innovation and Better Regulation, Victor Dominello MP, has established a review of the former 'Home Owner Warranty Insurance' scheme, rebadged as the 'Home Building Compensation Fund'. Older builders will remember the 'Building Services Corporation'. It ran the predecessor insurance scheme for until 1997. The scheme functioned so well that it accumulated tens of millions of dollars each year. The economists advising the government of the day decided to divert reserves into consolidated revenue and restructure the system by opening up the scheme to the market. Promises were made that insurance for building works would become cheaper through competition and the system would benefit consumers and the building industry as a whole. Most other states and territories followed suit. There's no point trawling over the disasters of FAI and HIH that subsequently infected the entire insurance scheme beyond stating that it became an increasingly expensive and practically useless insurance product for consumers and an impediment for most builders. It was initially a good money maker for the insurers as is any 'compulsory' product and it certainly lived up to its expectations and status as a 'last resort'! When government adopted strategies to allow consumers easier access to make claims, the few remaining insurers exited the market. State government had to re-enter a system they had left behind after an 18-year odyssey. But this time around the scheme isn't the profitable venture it once had been. Claims have skyrocketed and the HBCF in NSW is said to be 'unsustainable' in its current format. You would have to be very ignorant not to consider the causal link to the impact of a deregulated VET sector that delivers very low quality standards of training resulting in 'licensed' builders who are neither able to complete their contracted works or who are willing to walk away from the massive defect rectification lists that accumulate on their poorly managed projects.

There's a raft of proposals being put forward including abandoning compulsory insurance altogether. You can access a copy of the 'Reform of the Home Building Compensation Fund' Discussion Paper - December 2015 from [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

Minister Dominello states ***"You can comment on all of the topics or just those of particular interest to you. We are keen to hear your views and your feedback will assist us in dealing with the challenges ahead."***

Let's hope he pays particular attention to the problem identified under 'Part 8. - Reforms to the licensing system'. At long last, consideration is being given to the use of incremental classes of building licence that better recognise the differing scale and associated risks related to different building construction projects. The document then goes on;

***"Contractor licences for general building work in NSW allow builders to perform a range of building work. While there are some restrictions on these licences, such as those relating to specialist work, there are no limits on the type of dwelling the licensee can build or renovate. This approach does not place emphasis on the varying degrees of difficulty, skill and business acumen required for different types of***

***residential construction work. For example, there are significant differences between building a single level standalone dwelling compared to building a multi-unit, multi-storey housing complex.”***

It doesn't take the proverbial 'rocket scientist' to recognise that a 'one size fits all' approach to builder licensing is entirely inappropriate when it comes to the requisite levels of skill, knowledge and professional qualifications a person should hold to construct the more complex buildings of the 21st century. It goes on: ***“Queensland and the ACT are two examples of systems with tiered building licences. The tiers are based on the degree of complexity and risk of the work, and cover residential and commercial building. While Queensland's licence tiers are linked to National Construction Code building classes, the ACT has developed their own licence tier criteria.”***

NSW is at the bottom of the heap compared to Queensland and most other states. No wonder there are so many claims being made for incomplete and defective building work when NSW builders are simply not up to scratch because their licensing system doesn't require them to be appropriately trained and professionally qualified to manage construction of today's more complex and challenging building projects. And finally:

***“If NSW introduced a tiered licensing system, changes could also be made to licensing eligibility requirements. As the complexity of building increases, so do the risks associated with it. In order to reduce risk, financial management and building project management capabilities are important. A tiered system could require qualifications in financial management and building project management for licences for more complex building. Directors of companies holding contractor licences could also be required to hold these qualifications, whether or not they are the nominated qualified supervisor.”***

I encourage everyone with an interest in achieving a better, more professional building construction industry to send Minister Dominello the strongest possible message. An online survey is available or you can email your comments to [HBCFreform@finance.nsw.gov.au](mailto:HBCFreform@finance.nsw.gov.au). The closing date for submissions is Friday 12/02/16 so get cracking. My personal advice for Mr. Dominello would be to look to Queensland for some immediate guidance on a new licensing system. But before the next scheduled COAG meeting, tell Premier Baird to raise the stakes and put forward a logical, coherent and appropriately tiered set of qualification standards aligned to a nationally recognised builders licensing scheme. We are well into the twenty first century and we have an 'innovative' Prime Minister proactively seeking out good ideas for Australia's future. This would indisputably be a very good idea for our building construction sector to start in 2016.

## **Article 2.**

The governing body for world swimming requires that an 'Olympic' pool have eight lanes and be exactly 50 metres in length. But they also recognise pools that are only 25 metres long. Records set in 'short course' pools are kept separate from those set in official 50m pools because it may be advantageous for swimmers to have more or less turns in a race. This differentiates the swimmers qualification time obtained in long and short course pools. So what's all this got to do with the building and construction industry you might well ask? It's all about the importance of using reliable metrics to measure performance outcomes. In any business, be it sport, education or the construction industry, metrics means the use of reliable quantifiable measures to track and assess the status of a specific process.

There's a well-known derogatory put-down when describing a person who displays limited intellectual capacity within a particular field. It is to suggest they come from ***'the shallow end of the pool'***.

Unfortunately, Australia's educational system, institutions and government policy seem to have aligned over the last few years to make our pool very shallow and a lot shorter.

Last month I cited a report that revealed disturbing data showing that 99% of the 251 students admitted into the Bachelor of Construction Management degree program at Western Sydney University for 2016 had not achieved the required minimum ATAR cut off score of 85 points. WSU is not alone. Most universities were shown to have similarly ignored ATAR results in their scramble to sign up as many students as was possible. And it has occurred across most educational faculties although the construction sector affiliated courses in Building, Engineering and Architecture were amongst some of the worst offenders. But the picture gets worse within the Vocational Education and Training sector. Qualifications issued by VET providers generally range from the Certificate to Advanced Diploma levels. Some have incorporated undergraduate and even post graduate offerings but these are in the minority. The

reputation of VET qualifications has been ravaged right across Australia. This has been precipitated by the expanse of private training providers sourcing government funding to run courses. The model relies on maximising student numbers to generate more revenue. The quicker the churn of students being issued a qualification, the better the revenue flow. There have been several highly unscrupulous operators identified who use commission based agents or training brokers to sign up as many people as possible. Belated attempts to stop this practice are yet to have any substantial affect. The VET fee help debacle and accumulating debt burden is really a reflection on what our universities are doing in terms of offering uncapped student numbers and accumulating HECS debt, although there is a greater likelihood that graduates (in some disciplines more so than others) will likely gain employment and earn enough to actually pay back their study fees.

But back to metrics and measuring apples with apples. One of the major problems with our free market approach to education and training specifically aligned to the VET sector is the rampant use of 'Recognition of Prior Learning.' It is a sound theory to be able to grant 'exemptions' to persons who have acquired and can demonstrate sufficient levels skill and knowledge within a particular aspect of a formal training regime. But it is also very susceptible to become a highly subjective process and manipulation of positive outcomes for students easily facilitated if the training provider is inclined to do so. Have a look at some promotional materials associated with gaining a 'Certificate IV' level qualification in 'Building' and remember, this is the base qualification necessary for licensing purposes in NSW and other states.

***"One of our specialties is the assessment process for Recognition of Prior Learning (RPL). By providing an objective evaluation of your skills in action, we can produce an official certificate or diploma for your talents that will help you find meaningful employment, whether you're entering the workforce, changing careers, getting a promotion or applying for a work visa as a migrant to Australia. When you bring to us evidence of your skills and get recognition from them, you'll not only do yourself a favour, but a favour for your potential employers as well. Vital skills like plumbing and construction are always in demand, so with your participation, we'll help those employers fill positions in their businesses and close the skill gap among their workforce." Three easy steps to get you qualified.***

📄 **Step 1 – Online Registration**

📄 **Step 2 – Participate in Assessment**

📄 **Step 3 – Receive Result & Certification**

Or this one:

**1) Complete the 3-minute online registration form or register over the phone.**

**2) Participate in a 3-hour assessment (conversation and practice) with our assessor on site**

**3) Get certified within 2 weeks of successfully completing your assessment.**

The oversight and auditing of the Australian VET sector is supposed to be carried out by ASQA. They have demonstrated that they have been largely ineffectual in carrying out this duty. There is no evidence to suggest that any private training provider that is able to maintain registration as an RTO is inappropriately 'fast tracking' students through to a completed qualification based on accepted evidence of RPL. But if you Google 'Builders licensing course NSW' you will come up with around 470,000 hits. If you scroll through the number of private training providers that are specifically offering Certificate III trade and Certificate IV post trade building qualifications for licensing purposes that focus heavily on the application of an RPL process to award these qualifications, you might rightly consider this to be an area of extreme concern for government and its builder licensing agencies.

Back to swimming pools and perhaps the tenuous link of making sure properly 'qualified' builders (and politicians too) at least know how to read a tape measure! There's a great story from 2015 of the then Federal Treasurer, Joe Hockey, announcing \$4.5 millions of taxpayers' money to be spent on renovating an existing pool that was 500 mm too short of the Olympic standard. Or was that 30 centimeters too long? Mr. Hockey told reporters it was "**kind of extraordinary**" that the pool was only 49.5 metres long and that his government would bring it up to Olympic standard. Unfortunately for the ex-treasurer it soon became clear that the pool's problem might actually have been that it was too long! It was constructed in 1960 to the imperial measurements of 55-yards in length, the standard size of competitive swimming pools of that era. This meant that it was really 50.3 metres making it 300mm too long.

Joe was then quoted as saying;

***"I'm very pleased to be here with the elected representatives of City of Darwin to make a 50-metre pool, 50 metres. It's kind of extraordinary that it's 49.5 metres but of course, being a capital city you should have an Olympic approved pool, and that means that your swimmers have the chance to compete with the rest of the world."***

We are aware that 'Smokin' Joe' has since gone on to bigger and better things in public service as our ambassador in New York and we have a new leader and leadership team supposedly steering Australia. But if we really want to ***"...have the chance to compete with the rest of the world"*** then we need to stop the rampant shortening of the qualification standards pool and stop drawing our future building and construction industry graduates from the shallowest end of a very short pool.

### **Article 3.**

The 'big show' playing on the national stage centers on reintroducing the 'Australian Building and Construction Commission' (ABCC) with legislative powers to oversee conduct in the building construction sector. Proponents claim the ABCC plays a vital role in ensuring performance and productivity improvements to the construction industry. Detractors say it is a union busting 'overlord' focused on the CFMEU. Impartial observers say it appears to be a convenient means to trigger an early election and clean out minor party senate seat holders. Let's put the political game play and ideological debate to one side for the moment. If only there was as much enthusiasm to deal with a real danger that has serious negative consequences on performance and productivity outcomes in the building construction sector. The big problem is the alarming reduction in our educational and training outcomes. It should be of concern to every Australian and particularly those who would like to pursue vocational and professional career pathway within areas of building and construction. If left unchecked, we risk a generational loss of well trained and highly skilled personnel equipped to meet the challenges in delivering the building and infrastructure projects required in the 21st century. And the origins of the problem can sadly be found at our school gate.

Australia's decline in education and training has been highlighted as a danger to our national economic performance. The warning was sounded by the Organisation for Economic Co-operation and Development (OECD) education chief and honorary Professor of the University of Heidelberg, Andreas Schleicher, at a recent 'Global Education and Skills Forum' held in Dubai. Mr. Schleicher is a key member of the OECD Senior Management team and works in the Directorate for Education and Skills on the global stage. This includes the Programme for International Student Assessment (PISA), the Survey of Adult Skills (PIAAC), the Teaching and Learning International Survey (TALIS), and the development and analysis of benchmarks on the performance of education systems (INES). When a global 'think tank' with the status of the OECD announces that we have a significant problem in this area there should be a serious response. This concern is not being delivered in isolation. Recent reports by Australia's Grattan Institute reveal that 'learning gaps' of up to seven years can typically be found in Australian classrooms. In practical terms, this means kids sitting in Year 6 classes with appropriate reading ages for 12 year olds participating in a learning environment where classmates have the reading age of 5-year-old. This disparity in basic educational progression and outcome is amplified when, by Year twelve, students that must necessarily engage with complex text and numeracy instruction can be in a class cohort with other 17 and 18 year olds who would struggle to read a comic book or do simple arithmetic calculation.

I don't want to demean the increasing number of young people that get 'left behind' in their basic education. However, the majority of school leaver candidates who participate in post school educational training courses can now be expected to arrive with little evidence of being capable in applying basic learning skills that were until recently taken for granted as essential prerequisites for successful progression through technical, further and higher education. Computer skills have fallen behind targeted outcomes and far fewer secondary students choose to study math in high school than at any time before. These are problems that will have dire consequences. The steady decline in numeracy and literacy skills clearly undermines all subsequent facets of learning, particularly the learning skills sets that are essential in

producing first class tradespersons, building supervisors, estimators, construction planners, engineers, surveyors and construction managers.

Of particular concern is the evidence that rather than trying to lift standards, the metrics used to measure performance outcomes are simply manipulated to suit performance indicators. The Grattan Institute found students incapable of reaching benchmarks set by the Australian Curriculum, Assessment and Reporting Authority (ACARA). Yet the same Year 9 students were considered to be meeting NAPLAN minimum standards, even when they were actually achieving below levels of a typical year 5 student. The report's author, Peter Goss, was quoted as saying that **"Australia must raise its sights. The bar we are setting with the NAPLAN national minimum standard is just too low. If we set the bar too low, it is very hard to aim high."** Australia's PISA results have been in a steady decline since 2003. Computer literacy testing shows only 55 per cent of 10,000 students tested by ACARA were considered proficient. Most disturbing is that NAPLAN testing continues to indicate no improvement in reading and writing abilities of all Australian school students since 2008.

Nalini Joshi, a Professor in the School of Mathematics and Statistics at the University of Sydney and National Committee for Mathematical Sciences considers that compulsory mathematical subjects are essential to educational strategies. She says **"We are leaching out the mathematical skills from the majority of the population. We are not just talking about university entry anymore; we are taking about larger portions of the population who would find it difficult to work out something that isn't plugged into a calculator. Apprentices are becoming bricklayers who don't know how many bricks to order and students are becoming nurses who are unable to work out dosages."** Professor Joshi's reference to a 'qualified' bricklayer being unable to estimate the quantity of bricks to order may be a little obscure but her critique involving a nurse is based on fact. An incident widely reported last year involved a nurse accidentally administering a 79-year-old hospital patient dishwashing liquid instead of his normal medication. The nurse was unable to either read the label or distinguish the contents of the container despite having been awarded a degree at an Australian university and registered as a nurse by a state based licensing authority.

Andreas Schleicher believes that teacher quality and professionalism is at the heart of every successful education system and that Australia must do something to correct the downward trend to survive in a global economy. **"What I like is the image of a professional that is not just defined by delivering an established curriculum but people who see themselves as owners of professional standards. People who learn from and with their colleagues, where there is a greater degree of professional collaboration and professional autonomy."**

The vocational education and training sector from which Professor Joshi draws the exemplar of a 'qualified' bricklayer who can't count bricks, is currently in a total shamble. Since the VET Fee Help scheme debacle and the rapid increase in the numbers of privately run training providers, there is simply no guarantee that a graduate who obtains a qualification and associated licence will actually be capable in undertaking their role. Fairfax media reported that a private college that allegedly recruited illiterate and disabled students is being pursued by the Australian Competition and Consumer Commission in the Federal Court for \$210 million. The 'college' called itself the 'Australian Institute of Professional Education'. It received almost \$1 million in taxpayer funded fees for each student who managed to 'graduate'. The owners of AIPE were named as finalists in the NSW Premiers awards for business. AIPE started in a flat in Glebe in 2008. According to its website, it had pathway arrangements with six universities: The University of Technology Sydney, Western Sydney University, the University of Wollongong, the Australian Catholic University, Charles Sturt University and Central Queensland University. It had 8000 students in an 11-floor building in Sussex Street, in Sydney's CBD. It was one of hundreds of other 'private' training providers operating around Australia who call themselves 'colleges' and 'institutes' even if they operate out of the back of a 'training' ute to dole out a nationally recognised training qualification. Meanwhile, the Australian Technical and Further Education (TAFE) network, once held in high esteem to provide the bulk of construction trade and building graduates is crumbling under the strain of a contestable training market that is in danger of becoming a competitive race to the bottom. A strategy to replace TAFE 'teachers' with 'trainers' and 'assessors' makes sense as a cost saving measure. However, those new roles won't be filled by the 'professionals' that Mr. Schleicher believes to be essential as **"people who see themselves as**

**owners of professional standards**". Trainers and assessors would only require a generic 'Certificate IV' in Training and Assessment qualification. No one could reasonably propose this as a 'professional' level of qualification in either content or application. They would be paid half the pay of teachers and whilst that makes sense in terms of managing the 'bottom' line, it's not a particularly smart strategy. As the OECD warns us; such strategies will feed into the continued decline in delivering high quality educational outcomes which will subsequently impact on our economic performance.

Most people who have ever opted for the 'really cheap' quote when undertaking a building construction project quickly come to realise what compromises they have actually purchased. Smart and experienced builders know there is always a reason when a subcontractor prices works at far lower rate than any others have. The 'cheap' price is usually the one that has omitted some of the scope of works or that intends on taking some 'short cuts' to minimise their cost. We can't afford that sort of thing with our educational training and licence issuance anymore. As the building and construction sector is universally acknowledged as being vital to Australia's overall economic performance, perhaps we should be focusing on an 'Australian Education Commissioner' before we consider reinstating the office of Building Commissioner?

#### **Article 4.**

The flow chart shown above is just one of many websites promoting 'fast track' systems to obtain a builders licence. I used a 'Google' search with 'Builder', 'Licence', 'Course' and 'RPL'. It resulted in over 7,000 'matches' within 0.73 seconds all linking Australian training websites and articles attached to the search parameters. That is really fast. Hopefully this article might be added to that mix in the future! It's time for our legislators to stop to think if the 'fastest' way is always going to be the best way to deliver a 'winning' outcome for everyone. The promotional information being used by many Registered Training Organisations or RTO's that offer very fast training and quick qualifications to prospective builders has now become endemic. Radio, the internet and magazine advertising focus on the speed in which an 'experienced' but 'unqualified' person can miraculously become a professional builder within incredibly short time frames. The claims are facilitated by the RTO applying an extensive use of 'RPL' or 'Recognition of Prior Learning'. But this appears to have finally come to the attention of our slow to act authorities. Every RTO operates under the Australian Skills Quality Authority's (ASQA) regulatory requirements. Courses from 'Nationally Accredited Training Packages' may be delivered using 'RPL' processes to assess skill competencies that lead to qualifications. Obviously my 'Google' search demonstrates this to include several qualifications from the CPCPC Construction, Plumbing and Services Training Package. Certificate and Diploma level qualifications are commonly used as evidence of attainment of the academic requirements for the purpose of obtaining a builder license across the Australian states and territories. ASQA appears to be having second thoughts about the suitability of 'RPL' as a generic assessment tool for each and every course qualification. It recently announced that it would launch a national strategic review. ASQA stated that it will include:

***".. a review into the duration of training across the Australian vocational education and training sector, following considerable concerns being raised about very short courses."***

Speaking at the Australian Vocational Education and Training Research Association (AVETRA) annual conference, Chief Commissioner Christopher Robinson said short courses had been identified as a major issue in previous Strategic Reviews undertaken by the authority. ***"Very short courses prevent learners from gaining all the skills and competencies they should be getting from vocational education and training (VET) courses. The previous strategic reviews undertaken by ASQA have identified the issue of very short courses to be a persistent and pervasive concern across many industry sectors."*** The Australian newspaper reported this under the by-line ***'Fast-tracked VET courses targeted by skills authority'***. The article went on to say that training colleges that offer certificate and diploma level qualifications in a matter of days could not possibly teach students the skills that are needed at work. Mr. Robinson was quoted as saying ***"Some of the courses offered are ridiculously short. Cut-price and fast-tracked courses were driving down quality across the vocational education and training sector. Some of the courses offered are too short for people to gain the skills or to be assessed properly. Employers aren't getting the right skills and consumers aren't getting the skilled workforce they rely on."*** That last point is by far the most pertinent where the consumer is relying on the professional competency of a person who is granted

an occupational licence by a state or territory regulator. As it stands it is a massive problem for the bureaucratic mandarins and ministers who are paid to be the responsible regulators for home owner consumer protection and builder licensing in each state and territory. By default, the regulators have become wholly dependent upon a multitude of external training providers making absolutely certain that the highly complex and wide ranging set of skills, knowledge and professional training across all of the qualification content have been scrutinized and assessed properly using RPL. Everyone should understand that the 'prize' on offer isn't just the qualification being issued. ASQA will only investigate an RTO if a student of that training provider makes a complaint on such matters. The likelihood of that occurring is negligible as there would be very, very few persons inclined to make a complaint to ASQA on the basis that they had managed to get their trade and post trade certificates and diploma's from their training provider 'way too fast'! The primary objective is of course that a nationally recognised qualification enables them to obtain a contractor or builders licence. ASQA must focus on every course qualification linked to occupational licensing. And at the top of that list must be any qualification that is linked to building construction work and building contractor licences. Many consumers must be left wondering how this situation was ever allowed to eventuate. It shows a total lack of a basic risk management that we are entitled to expect from our government and its agencies. I would like to point out a major anomaly with the RPL concept as it is flawed in terms of its logic. Perhaps the Minister responsible could explain how it is that someone who wants their 'informal experience' that has provided such significant knowledge of building construction work, supervision and management, recognised although it was allegedly obtained as a result of having worked extensively without the prerequisite qualifications or licences that they should have legally held? In NSW for example, residential home building works over the value of \$1,000 in labour and materials has required a licence for over 20 years. So have the applicants that are lining up for 'RPL' been working 'illegally' for decades, totally unnoticed by Fair Trading? All of their illegal building works 'experience' that they have accrued is now being fully recognised to provide them with a quick qualification and licence? I suspect that there are many construction site labourer, traffic controllers and home 'handymen' gathering up a few photos, typing up testimonials and assembling other 'evidence' of their 'Prior Learning' are now 'fast tracking' it to their RTO to purchase a qualification before ASQA finally puts a stop to this rort. All I want to say is 'It's about bloody time'.

#### **Article 5.**

Our government agencies are always keen to show that they are up for a challenge when it comes to flexing statutory muscle. And there are few better headlines than this perennial favourite:

**'Fair Trading Hammers Dodgy Builders'**. Every reputable builder and anxious homeowner will be cheering them on. NSW Fair Trading claimed disciplinary action taken against 78 separate offenders of the Home Building Act 1989 had netted them just over \$421,583 in fines between January and March this year, up from \$275,244 in the previous quarter. It went on to quote the Fair Trading Commissioner, Rod Stowe as saying: **"Offences continuing to plague the home building industry include unlicensed contracting, demanding excessive deposits and failing to comply with rectification orders. While our investigators and complaint handling services can call dodgy builders to account, the best consumer defence is always thorough research. Check your builder's bona fides online before any contract is signed or any money changes hand"** was the advice from Mr. Stowe. **"I congratulate our investigators, lawyers and complaint handling staff for their hard work and dedication."**

Unfortunately, Fair Trading NSW and each one of the equivalent state and territory building licence regulators around Australia are fighting with one hand firmly tied behind their backs. At first glance the report would appear to be a good news story. If those quarterly figures are interpolated correctly we could expect the annual report to total 312 prosecutions and collect almost \$1.7m in fines for offences by the time we hit December 2016. Far too simplistic, I know. The story is meant to act as a deterrent and hence its strategic purpose is to attempt to reduce the incidence of future infringements. Just like capital punishment doesn't actually stop heinous crimes being committed, it is a wholly discredited strategy. Mr. Stowe's own view that **"Offences continue to plague the home building industry"** merely confirms that the system itself is comprehensively flawed. Persons who aren't trained or equipped with the necessary level of professional skills and requisite knowledge to manage complex building construction



work aren't going to be put off by the suggestion of a crackdown. But there is a far worse problem now embedded in the system. Just like a rusty piece of N16 reinforcing bar that is progressively weakening and eventually failing the concrete structure; the rapid growth now undermining all builder licensing regulations is the accelerated training schemes to obtain builder qualifications where the situation is almost out of control. If NSW Fair Trading is basing its performance on catching 'dodgy' builders who perform 'dodgy' building work then I would strongly recommend that Commissioner Stowe had better start hiring many more investigators, lawyers and complaint handling staff because there is an avalanche of work heading their way.

The implementation of a functionally unregulated and open training market within the Vocational Education and Training sector has facilitated an enormous increase in the number of training providers that can call themselves 'colleges' or 'institutes' or any other assorted educational jargon they choose. Many will offer 'fast track' training delivery to issue a nationally recognised industry qualification to participants within a few hours, days or weeks of having them signed up. The most virulent aspect of this particular market is the fact that the less time spent on delivering actual training and performing valid assessments, the more profitable it is for the business to operate. The logic would seem self-evident and is anchored as historical fact that in order to train and assess people properly, it will cost more and take more time in order to provide them with significant and reliable levels of skill and knowledge. But that type of logic doesn't fit with recent government thinking that has allowed such a systemic erosion of long held training standards to eventuate.

Unfortunately for Commissioner Stowe and every consumer of home building work in NSW, the building construction training sector is extremely well targeted in this respect. The rise of the 'quickie brickie', 'fast chippie' and 'instant builder' qualifications is now so entrenched and heavily promoted by so many private RTO's. That's because current regulations allow them to be conducted in this manner. The technical name given to the process is 'Recognition of Prior Learning' or 'RPL'. It basically means that any RTO can give you a qualification if you can convince their assessor that you have previously gained an acceptable level of 'competence' within the respective units or subject areas of the courses being offered. Put very simply, you pay them to 'assess' any previous 'work' experience. The ambiguities that currently exist within the national training package performance descriptors facilitate the acceptance of very low levels of demonstrated competency. This naturally generates a great potential for serious conflicts of interest to arise. If, for example, an RTO required a very high degree of 'evidence' to convince them of the legitimacy of an applicant's previous 'experience' combined with a stringent assessment which then resulted in say 9 out of every 10 applicants being rejected after having paid several thousand dollars in fees, I strongly suspect that type of training provider would not be operating as an RTO business for very long due to a serious lack of clientele. On the other hand, if the RTO's applicants were quickly awarded a qualification based merely on the evidence of a few suspicious testimonials from unreliable sources combined with some mock up photos of their work 'participation' and a lackluster short quiz or two to fill any 'gap' training requirements, I suspect that particular type of RTO would be likely doing a brisk business in its promotion and use of RPL. I have spoken with several people who are extremely reticent about how they obtained qualifications from private RTO's and have subsequently been issued a licence by NSW OFT. These people tell me they didn't actually learn anything relating to the qualifications they were issued. One told me their 'assessor' was a visiting overseas backpacker who worked for the RTO. The assessor was neither qualified nor experienced in building construction and had absolutely zero knowledge of the local construction industry or any of the significant regulations pertaining to it. He was merely employed to collect the applicants' fees and tick off the boxes on a standard form template to create a formal record that an RPL procedure had been carried out and that the assessment result had been determined with a 'competent' ticked in each related subject area. And that is indeed all that the national VET regulator, ASQA, will require. The big problem is that the VET system is structured to allow this to happen. That backpacker need only have a 'TAE40110 Certificate IV in Training and Assessment' qualification to perform the assessing task. He doesn't need to know anything about building! In another instance, a person who had completed a landscaping trade qualification wanted to obtain a builders licence. When he went to a private RTO advertising 'RPL' to rapidly get a builders licence, they asked if he had laid bricks in his work as a landscaper. He said he occasionally did brick surrounds to gardens and some brick paving. That was

apparently sufficient RPL 'evidence' for the RTO to tick off all competencies necessary for a Certificate III in Bricklaying qualification and over two thirds of the Certificate IV in Building qualification. It's important to note that these two qualifications are used to obtain a full builders licence in NSW. These guys obtained formal qualifications and subsequent licences within a ridiculously short period of time and without receiving any appropriate training. They are very much in the minority in terms of feeling that they should speak up. They know that they had simply paid for their qualifications issued to them. The overwhelming majority of allegedly 'experienced' building construction workers signing up to be processed through this flawed system will never be speaking out or making any complaints. It's not necessarily the cheapest way to get qualified and subsequently get a licence, however it is very, very quick and way too easy. It is also absurdly wrong and it should be stopped.

Agencies such as NSW Fair Trading rely on the evidence of the applicant's qualifications as demonstrating that they have been able to successfully complete an authentic course of training and pass an assessment within the vocational discipline in which they want to practice. They therefore depend on RTO's to only issue qualifications to persons who have actually 'learned' and 'earned' their qualification and not those that have simply 'paid' for theirs. The system is skewed to provide many applicants with the latter outcome. The issuance of an occupational licence is meant to be the most reliable indicator for consumer protection. With a deregulated training environment operating in such an unfettered manner, trade and post trade training within the building construction sector has fast become a joke. The objectives of major professional and industry bodies such as the Australian Institute of Building and the Master Builders Association to try to lift the image of 'building' and 'builders' into a well-respected and reliable occupational category populated by highly skilled and professional workers appears to have now been set back several decades. Commissioner Stowe's advice to consumers to **"Check your builder's bona fides"** is a total irrelevance when the qualifications that were used to obtain the builder's licence were as 'dodgy' as the construction works those builders will be delivering to the consumers that Fair Trading is meant to be protecting.

#### **Article 6.**

The popular BBC television series, 'Yes Minister', examined the often toxic yet symbiotic relationship between politicians heading ministerial portfolios and public servant mandarins who managed them. In many episodes the permanent secretary Sir Humphrey Appleby was the key protagonist to the various characters he would artfully manipulate. No doubt part of the show's success was the perception that the theme and narrative of each episode were much closer to reality than many might care to admit. One of Sir Humphrey's advisory 'golden rules' to the mere mortal politicians was to never hold any inquiry unless you knew in advance what the findings would be. They ignored this advice to their detriment.

On that note I have recently a copy of 'BN16/4889' addressed to the 'Clerk of the Parliaments and Legislative Councils' concerning the 'Inquiry into Vocational Education and Training in NSW'. I received it just as others would have if they had made submissions to the inquiry. Anyone who has read my previous 'Sourceable' articles would correctly guess that the central theme of my own submission focused on the concerns for the delivery of training and assessment in building and construction related VET courses, particularly when that qualification was intrinsically linked to obtaining an occupational licence.

The rampant deregulation of the vocational education and training sector over the past few years has spawned many businesses operating as private training providers. This result is linked more to the decisions of federal governments rather than the states. However, the deleterious impact and provision of taxpayer funding via state sponsored subsidies and federally funded fee loan schemes are now well documented for the abject failure it has become. PM Turnbull once described the VET system in Australia as a 'shambles'. You can expect that the coalition must consider that the origin of this 'shambles' have Labor fingerprints all over it. And they are correct in this respect. The Gillard government with the support of the unions thought the way to argue for an increase in wages was to link that demand to more people having a post school qualification. Good in theory but the consequences as we can see were ill conceived. The current government must also carry the blame for having done nothing to proactively rectify the 'shambles' and are in any case highly unlikely to depart from demands of private enterprise and free market ideologies. But here's something to think about when it comes to an apolitical view of how the

business operations of many private training providers deliver their particular products. Whilst highly effective at delivering the 'qualification' part, they are less than authentic in their delivery of any actual training and assessment.

Fairfax media carried the story of how a group of Chinese construction workers were flown to Australia under the China Australia Free Trade Agreement to work on a site in Melbourne. Visas can be approved within 24 hours provided they have a letter stating that the worker's employment conditions satisfy Australian workplace standards' and that the work activity won't have adverse impacts on any Australian workers. Australia's 'Work Health and Safety Regulations' (WH&S) require that every worker on construction sites undertake an approved course of training in general construction work safety induction. This is commonly referred to in industry as 'White Card' training. This qualification was issued to the seven Chinese workers by a private training provider three days after their visas were approved. The national standard of training for issuance of a 'White Card' that is recognised by our various state and territory safety authorities (such as WorkCover in NSW) is the AQF level 1 unit of competence titled 'CPCCOHS1001A Work safely in the construction industry'. WorkCover NSW does not allow the provision of on-line training for delivery of this qualification. Ironically, they do have an agreement on mutual recognition of this same unit even if it was completed by on-line training delivery in other states. Such is the 'dead hand' of our state bureaucracies and the shameful inability to extract meaningful collective actions from COAG when it comes to adopting national standards for occupational licensing!

Other construction workers on the building site considered the PPE items being used by the men looked like toys rather than being high quality, Australian Standards approved safety equipment. The non-English speaking Chinese workers had all managed to successfully undertake their online training course delivered in English. Enquiries to the training provider to help explain how a non-English speaking worker could understand the course content and then be able to successfully complete the assessment task revealed that there were many people who spoke Mandarin and that there was nothing to prevent other persons from assisting them. It was explained that someone who was bi-lingual could do the course, write down and hand out the correct answers to the assessment for the others to go online and complete their course. This really should come as no surprise to anyone. Nearly four years ago the Australian Skills Quality Authority (ASQA) pledged to undertake a strategic review specifically targeted at the entry level occupational health and safety training course required to work on construction sites in Australia, commonly known as the White Card. They were concerned with the extreme laxity that is inherent in the application and use of online learning and assessment tools and the subsequent lack of validity of any such qualification being issued that relies upon online assessment. Since 2012, nothing has really changed. Whilst the reliability of the issuance of a single AQF level 1 unit 'CPCCOHS1001A Work safely in the construction industry' leading to a 'White Card' occupational licence is a serious enough problem, imagine the ramifications where there are 15 or 30 separate 'Units of Competence' but they are at much higher AQF levels, being completed 'on-line' with the support of 'other persons'. That is precisely what is currently allowed to happen. And the qualifications being issued by many private training providers are for the Certificate 3, Certificate 4, Diploma and Advanced Diploma qualifications which facilitate the issuance of trade and full building contractor licences. It is a pathetic situation that our federal and state governments and their statutory agencies should be taking real action on, and not simply having ineffectual 'inquiries'.

Speaking of which, let's return to 'BN16/4889'. Two of the 25 recommendations and responses from that inquiry that touch on the above matters of the validity of online learning and assessment processes were:

***Recommendation 9.***

***That the NSW Government establish and enforce minimum face-to-face delivery hours for all courses subsidised under Smart and Skilled to ensure that there is adequate teaching time.***

***Response: Supported in principle.***

Delivery requirements are set by industry as part of the development of national Training Packages. Specifications relating to training delivery modes (including the number of face-to face hours) apply uniformly across states and territories. Delivery modes are considered as part of the NSW Government's quality assurance process.

***Recommendation10.***

***That the NSW Skills Board study the post-qualification outcomes of graduates of online courses, compared with graduates of face-to-face courses, to determine whether there is any variance in employment, income and participation in further vocational or tertiary education.***

***Response: Supported***

The NSW Skills Board is considering commissioning research to examine the post qualification outcomes of VET graduates, including those undertaking online courses in the context of its future research agenda. So let's get this straight. The outcomes are that there might be some 'in principle support' for minimum standard of face-to-face delivery, but only for subsidised courses and this may not include the 'face-to-face' delivery of the critical assessment component. The other response that 'support' is given to consider commissioning research of post-qualification outcomes of those who have used online courses to obtain their qualification. Talk about locking the door after the house is robbed!

It's all too little and too late as far as any courses that allow an individual or organisation to legally advertise and offer their services to consumers as a professional 'licensed' builder. It exposes consumers to an unprecedented level of risk. Disgruntled home building consumers should consider organising a class action against government agencies for allowing this risk to perpetuate.

This situation could be rectified by the development and implementation of a high quality standardised, externally prepared and audited examination process as the single pathway to obtaining acceptable building licence credentials. This would require meaningful and purposeful actions that would place powerful lobby groups and industry mouthpieces at odds with the governments that they fund.

We must recall Sir Humphrey's 'golden rule' in respect of running any inquiry. Never hold one unless you know what the results of the findings will be. It seems that advice was followed to the letter in respect of the recommendations emanating from the 'Inquiry into Vocational Education and Training in NSW'.

'Yes Minister' indeed.

#### **Article 7.**

One of Australia's largest urban renewal projects is set to take place over the next 30 years as part of the 'Parramatta Road Corridor Urban Transformation Strategy'. Like all major public sector initiatives (think 'BER') it would seem the perfect opportunity for the project to undergo the customary acronym substitution process. After 'brainstorming' ideas on their whiteboards the sharp suited executives in the marketing department probably didn't take too long to decide that using 'PRCUTS' as a working title for this project might have presented a risky subliminal message to their political paymasters. Instead, the promotional materials have simply abbreviated it to 'The Strategy' with the claim that it is a "vision of land use and transport principles to accommodate 27,000 new homes and 50,000 new jobs in a range of industries across the Corridor over the next 30 years." I guess we shall see. Whilst strategic planning for land use on this scale has been sadly lacking across Sydney and its greater surrounding regions, the ultimate proof of its success or failure will be measured by what is actually delivered in terms of the functionality of the planning and the quality of the built environment assets including the associated infrastructure works. As far as roads and public transport infrastructure components go, past evidence would suggest that they will inevitably be far more expensive than what is anticipated in any preliminary project estimates. Just ask the NSW Premier who is desperately trying to explain a \$549m cost blowout before any works had even commenced on the light rail project. However, the engineering construction works associated with the new infrastructure can confidently be predicted to be of a high quality standard. Fortunately, quality control has remained, and it must continue to remain, part of the expected outcome for all engineering infrastructure works carried out within NSW and Australia – albeit at a very high cost. It importantly defines us as having the status of a first world country.

So if we can be reasonably confident of that parcel of works, what of the quality standards of the 27,000 new homes that will become part of 'The Strategy'? Going by the evidence collected over the past decade, the people who will eventually own and occupy these new dwellings are likely going to get a raw deal. Whilst they will indeed pay prices that are 'world beating' in terms of the cost rate per square metre for their newly constructed homes and apartment buildings, the unpalatable truth is that many of those new homes will be riddled with both major and minor defects. And let's make no mistake. This unfortunate but entirely avoidable outcome will be directly attributable to the intentional inaction of the NSW government

and its lackadaisical approach to the ways in which it chooses to continue with its outdated requirements toward the licencing of building contractors in this state. I never thought I'd construct this sentence in anything other than a post-match analysis of rugby league but NSW could learn a lot from their Queensland counterparts! In Canberra earlier this week the House Economics Committee review met to quiz Australia's big four banking 'pillars' about their business operations. The CEO of Westpac was asked whether his bank had any concerns about risk in the property sector, in particular that of the residential apartment market. Mr. Brian Hartze offered an insight into what he and his bank thought by suggesting that there appeared to be many new low-quality apartments along Australia's eastern seaboard. He was quoted in the AFR's report as saying ***"What we are seeing is a number of those foreign buyers who put the money down to buy the apartments are now having trouble settling and that is creating a bit of a glut in supply which may or may not be what the local buyers want."*** He went on to suggest that owners may find it difficult to sell those types of apartments as local buyers would reject the lower quality units in favour of higher quality developments. Whilst it's fair to say that the Westpac chief's commentary was probably focused on the available floor space and size of the new residential apartments being built in his reference to 'low quality', he may actually be very surprised to learn that a bigger apartment with more bedrooms will not necessarily guarantee that the apartment block has been constructed free from any aspects of bad workmanship, non-compliant materials, defective fittings and poor services that will be detrimental in terms of rectification cost and resale value. This matter was raised in an article published last year by the consumer watchdog 'CHOICE'. They issued an unequivocal warning to prospective purchasers which stated:

***"To be clear, these defects aren't maintenance or repair issues. These are problems which wouldn't have arisen if it weren't for subpar construction, materials or design. Building defects, according to the UNSW study authors, may exist at the construction phase, but they can also arise later in the building's life, triggered by faults in the original construction or design."***

***The top ten faults found in the study related to:***

- 1. Internal water leaks***
- 2. Cracking to internal or external structures***
- 3. Water penetration from outside***
- 4. Guttering faults***
- 5. Defective roof coverings***
- 6. Defective plumbing***
- 7. Tiling problems***
- 8. Building movement***
- 9. Noise break-through***
- 10. Defective balcony balustrades***

CHOICE's article cited an expert who operates in the area of property construction, Dr. Jonathan Drane. He suggested the incidence of defective building works had probable links with regulatory settings including the rise of new and inexperienced entrants to the market. The article quoted him as stating:

***"Anyone can be a developer, for buildings over three stories, the barriers to entry are low – it's largely unregulated and a license isn't required."***

The problem seems to be inherent across most of Australia's cities. A feature article in 'The Age' newspaper by Clay Lucas focused on the poor standard of residential apartments constructed in and around Melbourne. The article was titled ***'Poor quality buildings will be a scourge for future generations'***. The author was drawn to conclude that ***"...so many hopeless builders get away with it over and over again, rebirthing their dodgy companies and causing the next unsuspecting customer untold grief"***. But before we wring our hands in despair perhaps there is some light at the end of the tunnel that could help address this issue. Evidence of this may be found by citing another academic from that same article who was quoted as saying: ***"Queensland has higher regulation of who is allowed on site, meaning only highly qualified tradesmen and women could get on-site to do the work. You can never police quality completely, but it means less crap gets built."***

That last sentence is very succinct and based on what I have personally witnessed in terms of carrying out pre-purchase building inspection and tribunal reports I could not have put it better myself although I don't

think I ever used quite the same words! So let's get back onto the 'Parramatta Road Corridor Urban Transformation Strategy'. Will it simply be more of the same reporting of **'Poor quality buildings will be a scourge for future generations'**? Or will the new Premier, Gladys Berejiklian instruct her Office of Fair Trade to take a serious look at how Queensland has adopted higher benchmarks and standards of educational training and formal building qualifications for the purpose of licensing their contractors? Queensland's system seeks to align building licences into incremental work categories that reflect higher order skill sets for more complex and challenging construction. If this simple adjustment helps deliver a better standard of residential building works in Queensland, then why shouldn't it work down here in NSW and indeed around Australia for that matter? The concept is not difficult to comprehend. Today's far more complex building designs actually require much higher order skill sets for a licenced builder to be able to ensure a satisfactory building construction project. The old 'one size fits all' NSW building licence should be consigned to the pages of history. It was based on a time when the construction of 'houses' generally meant knocking up a single storey framed and clad weatherboard cottage on a quarter acre block. I would respectfully suggest that the Premier take a quick look around Sydney and she will see that 'home building' is a very different beast than what it once was. It would certainly be a step on the path to help ensure that 'The Strategy' won't simply result in adding an additional 27,000 potential defective buildings to the current stockpile being constructed throughout Sydney.

### **Article 8.**

The fragility inherent to the governance of regulatory standards and the impact that it has on the validity of the training and accreditation of persons working in the building and construction sector was once again on display with the reporting of a case in NSW that involved industrial scale fraud to sell essential workplace credentials. In this instance, the training qualification related to the AQF level 1 course 'CPCCOHS1001A Work Safely in the Construction Industry'. Whilst the learning content and complexity of this single unit of study is fairly simplistic in nature, it is directly linked to the issuance of a 'White Card' or general 'Construction Induction Card' (CIC). The qualification and accreditation is required for all workers who want to carry out construction work. This requirement is part of the NSW Work Health & Safety Act and Regulation (2011) and is replicated by equivalent legislation that operates in most other states and territories albeit with the nomination of a different 'colour' for their cards! Another example of the absurdity of the abandonment of a simple COAG reform that could easily establish a uniform, single point process that would mark us down as a smart 'nation' rather than just a bunch of separate, and at times, disparate, states and territories happy to plod along within our own quirky jurisdictions. Safework NSW (formerly NSW Work Cover) is our authority on this matter and on their website they claim that:

People who need a white card include:

Site managers, supervisors, surveyors, labourers and tradespeople

People who access operational construction zones (unaccompanied or not directly supervised by an inducted person)

Workers whose employment causes them to routinely enter operational construction zones.

They probably thought they ran a pretty tight ship to ensure the validity of their system. The training and subsequent qualification must only be delivered by an 'approved RTO' to obtain the 'white card'. That all sounds pretty rigorous until you have a close look at just how many 'approved' RTO's that actually exist. It's not difficult to become an official 'Registered Training Provider' with ASQA but it does come with some financial cost. The vast majority of RTO's are SME's that must focus on issuing as many qualifications within the shortest periods of time to recoup their investment and keep all the wheels turning.

Here in NSW the training and assessment process for the CPCCOHS1001A qualification cannot be done via 'on-line' computer based delivery so there is some degree of 'face to face' training and assessment that must be done by the RTO to prove the person undergoing the training and assessment and being issued with the qualification and card is actually the same person. But there is a glaring loophole in the process. Here's how Safework NSW describes it on their website.

***"Construction workers can work in NSW using construction induction cards issued by other states and territories."***

Bingo! See what they just did? The wonders of such obvious inconsistency across multiple sets of bureaucracies is a constant source of amusement and also offers up occasional enterprising opportunities if you were so inclined. And both inclination and enterprise are what led Mr. Kelvin Fong to procure up to 400 'white card' qualifications, along with some other qualifications to obtain accreditation for high risk work categories such as 'working at height' and sell them to other unidentified persons.

On 20th March the Daily Telegraph's Sarah Crawford reported that:

***"Police fear hundreds of people with limited English are working illegally on building sites across the state using dodgy construction induction cards after paying a Sydney man to sit their tests for the certificates. Kelvin Fong, 37, was jailed for at least six months for procuring up to 400 construction induction cards — known as "white cards" — and Working at Heights Certifications for unqualified workers in what Magistrate Jennifer Giles described as a "breathhtakingly serious offence" that "filled her with dread". "You have armed people whose English is poor and who are entirely unqualified to be on building sites and you have armed them to be there with numerous of our families, relatives and friends working on those sites," she said last week. The court was told that authorities were unable to track down most of the card holders — meaning there could be hundreds of people still working."***

So how did the enterprising Mr. Fong manage to do this? Easy. He simply completed an online 'course' over 400 times using false names with an RTO that is based in Queensland where that type of 'training' delivery is permitted. He then relied on the Safework NSW 'loophole' to recognise qualifications from other states and sold them for between \$90 and \$140 a piece. That's a free enterprise system at work. Not that long ago, the vast majority of workers in the building construction sector that had managed to obtain authentic qualifications along with any associated accreditation and licencing that accompanied it could generally be relied upon. Most had studied hard, learnt lessons and were trained properly. They were frequently and rigorously examined by formal standardised testing that was almost impossible to cheat on. Government agencies could rely on the very high quality standards of publicly operated teaching and learning institutions delivered by our universities and TAFE colleges. They could do this with a high degree of certainty because they had the security of knowing that the institutions operated under the basic principle that has best served our society and economy over many decades. It meant that if a person was awarded a qualification from that institution then they really had actually 'learnt it' and had 'earned it'. There were no financial strings attached on institutions to 'process' and 'pass' as many paying customers as possible to support a profit focused business operation. Gross stupidity is probably too lenient a description to give the designers or rather the 'demolishers' of such a reliable system of training in Australia. But finger pointing and blame shifting will get us nowhere.

The type of behaviour exemplified by this single example has been exhibited repeatedly by both individuals and organisations that are out to make a quick buck. This basic malfeasance should have been highly anticipated when government and their affiliated agencies chose to effectively abrogate regulatory control of occupational licencing to private sector businesses. The best we can think of the wholesale destruction of a reliable training system is that it was an unintended consequence of bad policy and worse governance. The alternative is that it was a culpable and intentional plan. The share registries of all private RTO's could reveal who has benefited most to make money out of privatising the Australian training system.

All agencies who have responsibilities for issuing licences and other forms of worker accreditation across the broad range of building and construction sector should be immediately re-examining their alleged control mechanisms. Clearly, they aren't working. The basic tenants of 'Risk Management' are to 'plan', 'implement', 'check', 'review' and 'adjust' where necessary. It is past necessary. It is time to 'adjust'. Safework NSW and the NSW Office of Fair Trade should be setting up strategic talks with their peak, government controlled educational institutions with a goal to develop a reliable and high quality system of authenticating the training standards and alleged competencies for all persons who have 'acquired' their qualifications from any private RTO operating in NSW or elsewhere prior to issuance of all licences or other forms of worker accreditation. It would be a relatively simple and low cost process to ensure that qualification standards have actually been met by the person who is applying for a licence. A measure such as this would help restore confidence in the industry over time.

Former PM Paul Keating offered some advice that you should never risk getting caught between a state premier and a bucket of federally funded money at a COAG conference. Based on the evidence to date it is

an equally pertinent analogy to the rise of the privately operated, for profit 'Registered Training Organisations' that have been primarily focused on 'selling' off nationally recognised qualifications for the express purpose of occupational licensing and workplace accreditation. It can be stopped. It must be stopped. Premier Berejiklian has no choice but step up to this challenge for the sake of NSW's future.

### Article 9.

A media release was made earlier this year by the NSW opposition Shadow Minister for Skills, Prue Car MP. It highlighted the risks to potential students seeking to enroll in vocational education and training courses in NSW. It was an important message, but it needed to go much further. As unrelated as it might first appear, this issue should be ringing alarm bells in Minister for Better Regulation Matt Kean's office.

Unfortunately, he seems most concerned about real estate agents who underquote their price guide figures to potential purchasers. This is of course the well-known tactic ostensibly used to attract more numbers to participate in the 'bid it up' theatrics of a Sydney house auction. All the while risks are accruing in the building construction sector when it comes to regulatory licencing and consumer protection.

In an ABC news report, Minister Kean was quoted as saying he was ready to consider tougher penalties and giving inspectors greater powers to investigate real estate agents who were underquoting. "I think we should look at all options," Mr Kean said. ***"We want to make sure shonky real estate agents are weeded out of the market and consumers get a fair deal."*** Now that's a career challenge if ever one existed!

This may be worthy of the Minister's attention and Fair Trading has implemented measures to increase the level of training and qualifications required in licencing for the real estate sector. But the Minister, his office and the NSW government appear to be totally ignorant of the facts when dealing with the enormous consequential risks to the building construction industry and to home building consumers being generated by the disastrous outcomes of a massively deregulated vocational education and training market.

Prue Car's media message was titled 'BEREJKLIAN GOVERNMENT SECRECY JEOPARDISES THE FUTURE OF THOUSANDS OF VOCATIONAL EDUCATION STUDENTS'. It focused on the privately operated registered training organisations (RTO's) offering courses and issuing Nationally Recognised Training Certificates and Diplomas within various skills categories that have lost their access to taxpayer funding through the NSW government's 'Smart and Skilled' program. Some of the reasons given for the removal of the government funding from these private colleges and training providers were:

- failure to properly train and assess students with accordance with training package requirements
- failure to provide compliant Training and Assessment Strategies
- submitting training activity and receiving subsidies for learners where there was no evidence of commencement
- non-compliance with record keeping requirements
- failure to provide records and evidence upon request
- providing incorrect information in the application
- failure to meet Standards for RTOs

Despite finding sufficient evidence to discredit the integrity of these particular organisations ability to deliver reputable training and assessment, you should keep in mind that they can still legally operate to provide students with 'training' and issue them with a 'qualification' that must be recognised across Australia. The NSW government's actions simply result in the decision not to pay them to do this anymore! What's equally worrying is that there are many more private RTO's who have not been disqualified from accessing training funds but have merely been 'suspended'. But the government refuses to identify those ones. The media release described the situation by stating:

"The Berejiklian-Barilaro Government is jeopardising the future of thousands of students by refusing to name the vocational education providers that have had their funding suspended after misconduct and quality control failures. The Government's disdain for transparency has placed the thousands of people across NSW enrolling in new vocational education courses at risk of signing up to a course with a potentially dodgy provider. The Government is refusing to name the VET providers that have had their funding suspended and are under investigation. The refusal to name the providers comes after the Government fought vehemently against a NSW Labor campaign to reveal the names and the impact failed providers were having on students in NSW. Labor's campaign of freedom of information requests and



courtroom battles in the NSW Civil Administrative Tribunal (NCAT) finally forced the Government to reveal a list of the 11 terminated providers and the courses that were being targeted but was unable to force the release of the suspended providers.”

So what were the areas of training that were being delivered by the RTO’s disqualified from access to the taxpayer funded scheme? Interestingly enough, very few delivered qualifications linked to any occupational licencing. They included:

- Certificate III in Business Administration
- Certificate III in Hospitality
- Certificate III in Early Childhood Education and Care
- Certificate III in Warehousing Operations
- Certificate III in Driving Operations
- Certificate III in Aged Care
- Certificate III in Individual Support
- Certificate III in Retail Operations
- Certificate IV in Business
- Certificate II in Hospitality

So a few dodgy providers caught operating at the lower end of the skills scale in delivering AQF level 2 & 3 qualifications within ‘Hospitality’ are seen as a big risk? It may have the potential to ruin your day if you were given smashed avocado on burnt sourdough toast and your cold flat white was served by a highly ‘qualified’ but entirely unskilled barista at your local café. Despite personal sufferance, the world would still turn and you could just choose to switch to the café down the street for your next \$25 breakfast. The mediocre intervention to ensure high quality standards in terms of skills training and reliability of the qualifications issued to persons working to provide any type of service to consumers may be well intentioned. However, it really only plays at the margins of what is potentially a much greater and far more significant problem. The media release then goes on to state:

***“NSW Opposition Leader Luke Foley announced Labor’s Private Provider Investigation Unit policy to help weed out shonky providers during his budget reply speech. The investigation unit would investigate dodgy training providers and ensure that taxpayer money is only given to reputable providers.”***

I strongly encourage the government and the opposition take a pro-active approach on this matter. However, the focus should be placed squarely on formal qualifications currently linked to the issuance of an occupational licence. Most particularly, the focus should be on those qualifications linked to the issuance of building contractor and construction trades licencing. This is where those training providers that seek to compromise quality standards by implementation of various ‘fast track’ and ‘short cut’ systems to enable their participants to ‘get their qualification quickly’ must not just be restricted from receiving taxpayer training subsidies. They need to be stamped out entirely. And this can only be done by government licencing agencies openly declaring that they will not be recognising such qualifications as being a reliable form of evidence of an applicant’s attainment of the requisite skills and knowledge necessary to obtain a licence. The provision of a valid system of training and rigorous assessment standards by training providers are ultimately relied upon by our state agencies to authenticate a licence applicants’ skills and knowledge. The validity of those systems of training and the subsequent issuance of a nationally recognised qualification to persons who are seeking licenced accreditation within the building and construction sector must be the priority objective. By having done little to nothing on this matter, the government has effectively placed future consumers of home building works and other construction services at the severe risk of signing up a contract with a ‘licenced’ building contractor or tradesperson who will actually have little to no idea of how to undertake the desired scope of works satisfactorily, in accordance with contractual requirements and in a fully compliant manner. This disastrous consumer transaction won’t simply come with the risk of a disappointing \$25 snack. It will most likely involve tens if not hundreds of thousands of dollars in disputed contract value together with the subsequent time and cost of chasing resolution through a tribunal decision. The situation requires an immediate response from government to rectify the risks inherent to the building licencing regime.

**Article 10.**

At the start of the official inquiry into the London Grenfell building fire, a minute's silence was observed to honor those who had lost their lives. The number of victims is still unknown due to the extent of the devastation that occurred inside the building. The person appointed to head the inquiry, retired judge Martin Moore-Bick, said the inquiry would provide answers to the question of how a disaster of this kind could occur to a 21st century London building. He claimed the inquiry was not established for the purposes of punishing anyone or to award claims for compensation. He said the sole objective was to get to the truth. Let's hope he does that. A separate police investigation is also underway which might result in criminal charges being laid but so far no action has been taken.

The scope of the inquiry will involve examining the cause and spread of the fire, the design, construction and refurbishment works carried out on the building, whether fire regulations relating to high-rise buildings were adequate and whether they were being complied with. The actions of the regulatory authorities and the various response agencies will also be scrutinized. There would be many nervous individuals pondering their own professional roles and responsibilities in this matter. Let's hope that the scrutiny will go right to the top. Far too often, whether it be within the confines of public sector bureaucracies or private sector business enterprises, the senior executive, management, business owners and directors that sit within their respective organisational structures seem able to avoid serious accountability whilst happily collecting their generous pay checks and profits. Blame shifting is an inherent survival skill amongst many individuals occupying positions in the 'executive' level workforce. Let's hope that Martin Moore-Bick rejects any attempt to distance themselves from responsibility by use of a distal hierarchy excuse. There must be culpability attached to decisions and directions that were made and actions taken. In a perfect world the inquiry chairman would simply reject the use of words such as 'mistake', 'oversight', 'unaware' or 'assumed' as a form of defence. Ignorance is never an excuse. Nothing will rectify the enormous damage and loss of those directly impacted by this disaster. Every professional involved in the building design and construction industry sector will clearly understand that this was a disaster on a scale that should never have occurred. It has generated significant alarm here in Australia with a recent '4 Corners' program in which Sourceable's very own Phil Dwyer, gave valuable insights into non-conforming building products, construction practices and the inherent risks they present. He has also provided a submission to our government's Economics References Committee senate inquiry into non-conforming building products. So well done Phil and keep reminding our legislators that they need to act up and start making meaningful changes to our industry! Whilst the Australian government inquiry was not established to specifically investigate the Grenfell fire, it has naturally become a significant point of reference when releasing its interim report into the use of aluminium composite cladding materials in Australia's built environment. There are 100 pages in their report so I won't reproduce them here. You can download it from the Australian Parliamentary Office or email [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au) to obtain a document. Naturally much of the analysis tends to focus on the unsuitability of PE core sandwich panel materials as building claddings. Recommendations include mandatory third party certification, national supply chain registers, standardised test procedures and product auditing. Whilst the subject matter may have come as a surprise to those 'expert' politicians on the panel the only surprise to any 'expert' whose job directly involves the design, construction and commissioning of any substantive building construction project, was that it could ever be 'mismanaged' enough to fall through the gaps of the multiple checks and balances within our current regulatory control scheme and the quality assurance protocols that any highly trained and qualified construction professional would have surely insisted upon as part of their management plan. In my opinion, the primary focus of the report is found in the issues examined in Chapter 4 and titled 'Accountability and Enforcement.' This is what was summarised within that chapter:

#### **Greater coordination and a national approach to reform.**

Committee view 4.13 The committee believes consideration should also be given to an expanded national role for the Commonwealth government across all elements of the building and construction industry, starting with the Building Ministers' Forum.

#### **National licencing schemes.**

Committee view.

4.20 The committee considers that a national licencing scheme for all trades and professionals involved in the building and construction industry including: building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. A national licencing scheme, including requirements for continuing professional development would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.

4.21 The committee recommends that the Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

### **Need for greater on-site supervision and oversight.**

Committee view

4.39 The committee supports the implementation of nationally consistent mandatory on-site inspections throughout the construction process. Whether this is done through the reinstatement of the role of Clerk of Works or some other process is eventually a decision for governments. Either way, it is evident from the evidence received that there needs to be a central oversight role independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorses the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.

If you examine the submissions from the various professional institutes and associations that have obviously aided the committee's findings, you see consensus that our current inconsistent standards within our training and accreditation schemes for persons who wish to operate within the building construction sector is characterised by dysfunctional state based regulations. This can be summed up by the committee's view in Chapter 4:20: ***"The committee considers that a national licencing scheme for all trades and professionals involved in the building and construction industry including: building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. A national licencing scheme, including requirements for continuing professional development would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment."***

The frightening part of our current situation is that NSW, as Australia's most populous state which is vigorously engaged in constructing the greatest number of medium to high rise Class 2 apartment buildings, actually has the lowest level of regulatory controls on the educational and accreditation standards for the purposes of builder licensing. It is an antiquated 'one size fits all' approach that effectively assumes that the handy carpenter down the street is equipped with the professional skills and capabilities to properly construct a modern apartment tower block – perhaps even ones like the Grenfell Building. We deserve high quality, safe and compliant buildings. The pathway to this objective is a standardised, nationally regulated training and accreditation scheme that applies to everyone who wants to operate within various roles of the building and construction industry sector. The first step is to acknowledge that properly constructing a timber deck and pergola, whilst important, requires a far lower level of accountability, construction knowledge and building management skills than that required to construct a complex multilevel building structure. Hence, the formal training, qualification levels and corresponding work licence categories that can adequately reflect such obvious differences must be introduced immediately as a priority benchmark. The philosopher and novelist George Santayana is famous for his quote that: ***"Those who cannot remember the past are condemned to repeat it."*** It has generated many paraphrases and variants but in this particular situation, the most appropriate adjustment to that original quote would be that ***"Those who fail to learn from the mistakes of their predecessors are destined to repeat them."*** Members of the Building Ministers' Forum should have that very thought uppermost in their minds for their October meeting.

**Article 11.**

Australia is about to elect its next federal government. The broad platform of 'education' has been raised, as it is at every election. As a nation and a society we recognise how important formal education is. All political parties have made various policy commitments that they believe would improve educational outcomes. They involve everything from 'pre-school' through to 'post-school' university placement. I'd like to focus on Vocational Education and Training (VET) and Tertiary education and narrow that focus to courses, learning content and assessment mechanisms used to deliver qualifications to graduates vital to Australia's building and construction industry sector. Educational systems are used to gain the qualifications needed to work across a range of skilled trades, administrative, supervisory and management roles. It is an essential element to the success of Australia's future. Unfortunately, our educational systems and their capability to maintain high quality outcomes have never been in a worse position. All indicators show they will likely continue to decline. And no political party is talking about it. Reasons behind the decline are complex. We used to do education and training really well. The federally funded private RTO scheme to deliver VET course qualifications was subsequently shown to be worthless. It was mismanaged and extorted with billions of training dollars wasted. It now seems to have been conveniently forgotten. Many private RTO's continue to aggressively tout for business. They guarantee customers a 'nationally recognised qualification' in various building courses without need for formal study or exams and this can be achieved either 'on-line' or at worst, a few days. They replace rigorous learning and testing of skills and knowledge by using the 'loophole' of Recognition of Prior Learning or 'RPL'. This is a highly contentious and widely discredited aspect of formal educational delivery when used to facilitate unrealistic course completion. Documented 'evidence' of attainment of the relevant 'prior learning' is easily manipulated by both the participant and the RTO delivering – some would say 'selling' – the course qualification. The tertiary sector is not immune from contributing to the decline. At the start of 2017 an investigative report by Fairfax journalists Eryk Bagshaw and Inga Ting titled "NSW universities taking students with ATARs as low as 30" should have flagged a crisis in our tertiary institutions. Of particular interest was data showing that "at Western Sydney University, 99 per cent of the 251 students offered places in its Bachelor of Construction Management program did not make the cut-off of 85." Based on those metrics and using some positive rounding up to avoid a half student result, it meant that only 3 of the 251 student cohort managed to accumulate a relatively modest ATAR entry score of 85 from their year 11 and 12 assessment. ATAR values are highly contentious in their own right but for those of you like me who left their secondary education a few decades back, speak to a current high school teacher to determine how achievable a score of 85 actually is. Let me put it this way. If you turn up to school to have your name marked off on the roll book through years 11 and 12 but did little to no academic study you could probably scrape together an ATAR of 50. To participate in a proper tertiary course of study and be awarded a degree qualification in Construction Management it would seem reasonable to assume you need to have significantly greater higher order problem solving capabilities. I don't want to isolate WSU in this regard. It's happening elsewhere too. An ABC Four Corners program next Monday might provide insight into how our university sector operates in respect of their international student intake. It should make interesting viewing. If you attempt to sum up the decline with a single word, 'commoditisation' is a good one. Basically it means the process whereby differentiation is eroded by competition, leading to a commoditised market with price-based competition. Customers treat the offering as a commodity, selecting between vendors purely on price with no differentiating factors as the basis of competition. In the post-school world, we stopped enrolling 'students' years ago. We now have 'customers'. And like all customers, they shop around for the 'best deal'. When it comes to the types of qualifications linked to licensing and professional accreditation, the 'best deal' doesn't always mean the cheapest price. The main focus here is often the ease of access, the lack of assessment and the shortest time period in which the 'customer' can get their qualification.

Sometimes this is not relevant in terms of consequences. Should we care if a person gets a Certificate IV in floristry from a private RTO without participating in training? Would the situation be worse if a media studies degree is issued to someone simply because they were a full fee paying international student? End users of the 'qualified' person's services could finish up with a strange flower arrangement or an obscure opinion piece in a local paper. This is a simplistic example and the relative importance of different fields of

endeavor are subjective. I don't wish to offend any talented florists or journalists out there! I'm attempting to make an important point that should otherwise be fairly obvious.

What if the qualifications are highly significant in respect of their validity to assess whether the person who obtains them is actually skilled to perform the works associated with their qualifications? What if the status of the qualification is linked to national or state regulatory licensing or professional accreditation and registration scheme? That's exactly what most vocational and tertiary qualifications associated with the building and construction industry are being used for. Consumers of licensed building trades and related accredited professional services are entitled to rely on this evidence. But they are being let down.

Here's an example to help illustrate the potential problem. This is what NSW Fair Trading's web page says: "Any work that is residential building work under the Home Building Act 1989 which involves construction of a dwelling, or alterations or additions to a dwelling. It also includes repairing, renovating, decorating or applying protective treatment to a dwelling. Any contract for general building work can include any specialist work that is integral to the overall work, but such work must be carried out by the holder of an endorsed contractor licence or qualified supervisor certificate in the relevant category of specialist work. The current qualification and experience requirements, outlined below, commenced on 31 March 2017.

1. Certificate IV in Building and Construction (BCG40106 or CPC40108 Building or CPC40110 Building) or (BCG40206 or CPC40208 Contract Administration) or (BCG40306 or CPC40308 Estimating) or (BCG40506 or CPC40508 Site Management). This qualification is designed to meet the needs of builders and managers of small to medium-sized building businesses. The builder may also be the appropriately licensed person with responsibility under the relevant building licensing authority in the State or Territory. Builder licensing varies across States and Territories and additional requirements to attainment of this qualification may be required. Occupational titles may include Builder or Construction Manager. To find registered training organisations that are registered to deliver nationally recognised training to obtain qualifications for a building, trade or specialist licence or certificate, you can use the training.gov.au website and search via the course code or name."

The directive is to the website of the federal government Department of Education & Training. If you use the search function for the 'Certificate IV' courses listed by Fair Trading as the compulsory qualification used to demonstrate capacity for a NSW building contractors licence, you will find around 145 'Registered Training Organisations' (RTO's) the government lists as providers of this course across Australia.

Apart from university and TAFE providers, the majority are private sector providers. They are for profit businesses accredited by 'ASQA' – the 'Australian Skills Quality Authority' – which is the federal government agency established to oversee the VET sector. The equivalent bureaucracy for university course accreditation and compliance is the 'Tertiary Education Quality Standards Agency or 'TEQSA'.

Our banking and financial industry sector recently underwent close scrutiny. Commissioner Hayne was critical of the two main regulatory bodies APRA and ASIC in their failure to effectively control this sector. It is delusional to think ASQA or TEQSA are capable of carrying out their roles to properly regulate VET and Tertiary educational standards. It is equally delusional to think that our separate mix of state and territory statutory authorities can ensure adequate regulatory standards for licensing and registration of building trades and construction professionals. The end results of this situation for consumers of building and construction projects is self-evident and I'm not just referring to the fiasco of combustible ACP's.

Who would have possibly thought that in 2018 a newly completed 36 storey residential apartment building in Australia's biggest city would need to be evacuated due to design and construction defects?

Then I saw this today "***Nine multi-storey Darwin buildings found to be non-compliant after investigation into engineer.***" Our industry is in a real crisis. We need a Royal Commission. Now.

**END OF SUBMISSION CONTENT**