

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

Organisation: Australian Institute of Building Surveyors
Date Received: 30 July 2019



30 July 2019

Ms Monica Loftus
Senior Council Officer
Upper House Committees
Legislative Council
Parliament of NSW
Parliament House
Macquarie Street
SYDNEY NSW 2000
Via email: Public.Accountability@parliament.nsw.gov.au

Dear Ms Loftus

RE: INQUIRY INTO THE REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES

The Australian Institute of Building Surveyors (AIBS), thanks the committee for their Inquiry into the regulation of building standards, building quality and building disputes. AIBS has a policy: *Building Regulatory Reform in Australia*, which sets out our position in relation to matters within the Terms of Reference for the inquiry.

Additionally, AIBS has responded in detail to the:

- 2019 NSW Discussion paper 'Building Stronger Foundations';
- Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia by Professor Peter Shergold and Ms Bronwyn Weir commissioned by the Building Ministers' Forum (BMF) (2018 submission);
- The independent review of the Building Professionals Act 2005 by Michael Lambert in 2015.

Each of these documents has relevance to the inquiry terms of reference and copies have been attached herewith. We would be happy to provide further information related to our views on the terms of reference at your earliest convenience

Yours faithfully
AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS

Brett Mace
Chief Executive Officer

Encl.

- 2019 07 24 *Building Stronger Foundations – AIBS Submission*
- 2018 07 27 *Shergold Weir Report – AIBS Response*
- 2015 06 11 *Michael Lambert – Report Feedback*

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Submission

NSW Discussion Paper response
Building Stronger Foundations

24 July 2019



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Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can be best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Australian Institute of Building Surveyors – Submission Principal Contacts

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Preparation

This submission has been prepared in response to the *Building Stronger Foundations Discussion Paper* as released by the Department of Finance, Services and Innovation for comment on 26th June 2019.

Executive summary

A building surveyor is only one player in the process of compliance achievement. If all or any of the other players; the owner, developer, project manager, design practitioners, product and material suppliers and the building construction practitioners; do not properly perform their roles, the job of a building surveyor to deliver on the community's expectations becomes impossible. A regulatory system should do all it can to ensure there are as many people as possible in the process with a vested interest in compliance. The role of the building surveyor is limited by legislative provisions so that changes to legislation strengthening this role and the responsibility of other practitioners will add the most value giving the industry the ability to become more capable of delivering the standards that the community expects from its buildings.

In the view of AIBS, regulatory reform must be approached holistically. It should never be attempted in a piecemeal fashion. AIBS is concerned that the current discussion paper appears not to be taking a holistic approach to regulatory reform as it does not reference any overarching or guiding principle behind a holistic reform agenda. It is not clear what the overarching objective in this reform is or how it will fit within a wider reform agenda.

There are reform agendas available such as the national review and recommendations undertaken by Professor Peter Shergold and Bronwyn Weir on behalf of the Building Minister's Forum; and the Lambert report commissioned by the NSW Parliament in 2015. We note also the Campbell report from 2002 which also discussed the need for regulatory reform in NSW. The discussion paper simply fails to include points to explain how it relates to any of these including the 24 recommendation of Shergold and Weir in the BMF commissioned 'building confidence' report nor any of the reforms identified in the Lambert or Campbell reports.

AIBS is concerned that the proposed reforms may be based on a reform plan that has not been revealed publicly.

The AIBS Policy: *Building Regulatory Reform in Australia* sets out AIBS's views on the elements of a regulatory system essential to success. The discussion paper does not relate to or reference this policy either.

AIBS is concerned that there may be an absence of evidence confirming a need for the specific reforms identified in the discussion paper. Whilst the discussion paper identifies a range of reform options and explains how these might operate, it does not provide data or other evidence which confirms that there is a need for the specific reforms described.

Premier Berejiklian has said that self-certification has failed or as referenced in the recent statement 'self-regulation'. Having heard the Premier's pronouncement about self-certification, AIBS is confused by the apparent basis of the discussion paper which seems to propose an expansion of self-certification in NSW. Without data demonstrating the reason for the apparent failure of the current system, it is very difficult to understand how expanding self-certification will address the reasons for failure of this system.

In order to better understand the proposals outlined in the discussion paper, AIBS seeks to know how design professionals are to be able to satisfy themselves that a design will comply? Also, how would a difference of view about compliance between a building surveyor, in a statutory role, and a certifying design practitioner be resolved? Further, how will views within the community that design certificates are nothing more than self-certification be overcome, so that the community can be confident in the proposed system? And further still, what impact would the proposed changes have on the role of the statutory building surveyor in this scenario?

AIBS believes there are other options that could be considered that provide 'buy in' from the design sector. For example, it may be enough to require design practitioners to certify that they have provided enough information to allow compliance to be verified, be that by a statutory building surveyor or an auditor or some other entity that might need to do so in the future.

AIBS understands the need for reform in a range of areas. In NSW, AIBS believes there is a need to reform registration and licensing requirements so that a far wider range of practitioners critical to the quality of building outcomes are able to be effectively monitored in respect of their overall performance, and where necessary, managed.

AIBS believes there is an opportunity arising from establishing the Building Commissioner role, inclusive of a power to licence / register and audit all practitioners including auditing of inspectorial work by building surveyors. Such an authority would be highly influential in strengthening an appropriate culture within the industry as well as in providing an important public confidence feature to the system.

Licensing and registration of all practitioners is necessary to ensure appropriate outcomes are achieved in all but rare instances so that limiting a need to become licensed or registered to matters unrelated to the involvement in the industry such as only to those responsible for making declarations about compliance is inferior and not supported.

Providing the role is properly structured, empowered and has the capacity to deliver clarity of purpose and is interactive across the industry, AIBS welcomes the establishment of a Building Commissioner role.

AIBS also welcomes the opportunity presented by the discussion paper but believes full and frank dialogue on the issues faced by the building and construction industry and indeed the community is required to achieve an understanding of how to deliver safe, compliant and reliable buildings worthy of the substantial investments made by individual owners in them.

Discussion

In response to the key reform areas identified in the discussion paper, AIBS makes the following observations.

In section 2.1, the first of four key reform proposals is described; being a proposal for imposing responsibility on design professionals for producing compliant design documentation. AIBS is unable to comment on the merits of this proposal, particularly in respect of the problem that it is intended to address, as there isn't sufficient information in the discussion paper to demonstrate the scope or extent of the issue.

We note that where the reforms oblige a declaration to be made by design professionals. The paper doesn't address the current role played by building surveyors and the value added to the process by the building surveyor's assessment of design documentation. This includes an essential review of the coordination of the various design documents which, in addition to verification of conformity of the design information, can also ensure design compatibility and integration. The fragmented nature of current design management and the specialised nature of design often provides poorly controlled design outcomes, particularly with design and construct type delivery methods.

It is also easy to see a situation where a quarrel could arise where a declaration has been made that compliance has been achieved, which is subsequently not accepted by a building surveyor who believes that compliance has not been achieved. The core knowledge of the building surveyor will always exceed the complementary knowledge of the designer about compliance matters.

The proposed reform is not consistent with recommendation 1 of the Shergold & Weir Building Confidence (BC) report. As per the recent BMF agreement the BC report is to be implemented consistently across each jurisdiction.

It is important that recognition is given of design documentation as a communication tool. Compliance information is only part of the information that must be communicated via design documentation and there are in fact several audiences for design documentation, pre, during and post construction. Design is difficult and requires specialist skills, often requiring designers to concentrate their knowledge of technical requirements to only those areas of design in which they specialise. It is unreasonable then to expect that all design professionals will have sufficient knowledge of technical requirements beyond their discipline to make declarations of complete compliance.

Any requirement that compels design compliance within documentation will drive designers to engage consultant building surveyors to provide compliance advice. If a designer must declare compliance is achieved, would they employ a building surveyor to advise them of this before making such a declaration?

The second part of the recommendation relates to performance and should be adequately addressed in a nationally consistent fashion through the proposed mandating of a performance approach within the National Construction Code for the 2022 edition. AIBS supports NSW participating in achieving a national approach to this matter.

The third part of this recommendation relates to construction compliance verification and is crucial. There are already jurisdictions in Australia where there is an obligation on the builder to make a declaration that all they have done, conforms. In one jurisdiction, the declaration is that the work conforms with the contract documentation which is paired with a declaration from the owner that the contract documentation conforms with approval documentation so that the relevant authority can be satisfied that compliant construction has been assured.

This declaration is never taken to mean that there is no need for inspections to be undertaken. At the end of the day, there is significant risk that a builder will sign such a declaration because they cannot be paid until they do. What is most important in such a regime is that there are consequences for providing declarations of compliant construction where the work is subsequently found not to comply in some respect.

The other important point to note here is that by requiring a builder to declare conformity with contract documents, issues related to building quality in addition to issues related to building compliance are clearly the responsibility of the builder.

AIBS may be in a position to support the measures in key reform one once the wider reform agenda has been disclosed and once a fuller understanding of the reasons for the proposed reforms has been provided.

AIBS would like to see NSW participating in a process aimed at achieving a national approach to this area of reform.

Key reform two relates to the extent to which persons involved in the design and construction process must be licensed or registered. AIBS wonders how many people involved in the process will not be required to be licensed or registered if they are not obliged to provide a certificate for their work? By linking the need to be licensed or registered only to persons making a declaration, there will remain a large pool of practitioners without registration participating in the industry.

Will the requirement to provide a certificate apply only to individual practitioners or could it apply to a team or collective of design practitioners? How will a practitioner fare if they are required to provide a certificate for one job and in the next they are not because they are part of a team or similar?

AIBS believes that it is necessary that all practitioners be registered or licensed for their role before they can participate in the industry. In this way, it will become possible to track who has done which elements of work in all projects making poor workmanship traceable to the individual practitioner who can then be subjected to audit, reformatory or disciplinary actions.

AIBS is unable to support the approach adopted in key reform two.

In key reform three, AIBS understands that it is proposed to address a lack of legal relationship between the eventual owners of individual allotments within a completed building, and the design professionals and building practitioners involved in the design and construction of the total building.

There is a significant disparity in the level of knowledge between the eventual owners and the role of those involved in the design and construction of the building so that there is a high potential for moral hazard conditions to arise. There needs to be powerful oversight of this relationship, as provided by the building surveyor, to even out the playing field, so that the eventual owner is not ever placed at a disadvantage due to their lack of knowledge.

The government cannot create common law. It makes statute law. It is therefore hard to understand what is intended by the way the reform approach is phrased. AIBS believes it is possible and appropriate that a statutory duty is established so that design and construction practitioners are accountable for their work and that the eventual owners of the buildings they have worked on can exercise rights against that accountability.

AIBS believes that, subject to the provision of further evidence of the need for the reform and the suitability of the reform approach, it may be able to support the establishment of a legal relationship via a statutory duty on building design and construction practitioners in respect of eventual owners of the buildings they work on.

The reform to introduce a Building Commissioner is the fourth key reform. AIBS supports in principle the creation of the position of Building Commissioner. The position will need to encompass powers and therefore obligations that currently do not adequately exist to ensure that real change will be affected by the creation of this position.

Currently, audit powers exist but it is unclear the circumstances and extent to which they are exercised, and the consumer protection outcomes derived from actions taken. There is no public reporting of the activities of the Building Professionals Board (BPB). Only the disciplinary actions taken are reported publicly.

AIBS looks forward to the Building Commissioner providing a means of motivating the compliance measures and enforcement actions of the licensing and registration bodies. Additionally, there should be a mechanism to ensure that the auditing actions of the licensing and registration authorities are taken in the public interest.

AIBS welcomes the establishment of the role of Building Commissioner and urges the government to ensure that the building commissioner's powers address the need to take action in the public interest.

In relation to appendix 4; AIBS notes that the government has indicated that it has made significant progress or has already addressed the majority of the Shergold and Weir recommendations. Our view is that there is a need for clearer additional reform.

2.2 Complementary reforms to the building and construction sector

Reforms within the Environmental Planning and Assessment Act 1979, which combined legislation related to planning and building assessment, creates a real risk of diminishment of the importance of building controls. AIBS firmly believes that it is necessary for building regulatory administration to be conducted by a department which reports to a Building Minister, and that both are distinct from any planning administration or ministry. Consolidation of the portfolio and agency responsibilities for building regulation must ensure that there is no diminishment of the importance of these functions within government.

2.3 Implementation of the reforms

AIBS believes that reform is needed urgently to address the issues which are leading to the reluctance of participation from the insurance industry in the professional indemnity insurance market for building practitioners. An initial phase of regulatory reforms aimed at addressing immediate

needs in this respect should be prioritised with further reforms slated to be identified in concert with a newly appointed Building Commissioner so that this role can become suitably effectual in developing an appropriate shift in the culture of the construction industry.

A range of issues with the points made in the discussion paper have been identified which give rise to the concerns expressed in the executive summary above, and AIBS is willing to collaborate with government in a forum where best use of the available knowledge can be made.

What follows is AIBS's response to the specific questions raised within the discussion paper. Whilst these responses lack detailed explanation, we are happy to provide more information in support of our position if required.

AIBS responds as follows:

1. What kinds of plans should be signed off and declared by a statutory declaration?

AIBS believes there are no kinds of plans where this would be appropriate. AIBS is unsure how self-certification of design documents would provide greater consumer protection. Documentation, prepared by appropriate categories of registered practitioners should demonstrate that the proposed construction will conform.

2. Could plans be statutorily declared at the CC/CDC stages? If not, why not?

No; for the reasons stated above. There is a current expectation that plans approved at the CC/CDC stage are the documents used for construction.

AIBS seeks to understand the value in requiring design practitioners to issue certificates of technical compliance at any stage of the process. It could and likely will lead to a litany of design practitioners being accused and found to have erred in issuing design certificates or to have done so deliberately, disputation between building surveyors and design practitioners and confusion for the consumer. The extent to which buy in by design practitioners benefits in delivering compliant designs is not clear.

3. To what extent should changes to plans be submitted to the regulator?

The regulator is not defined in the context of this question. There are a number of bodies that this question could relate to and a response would differ depending on the body.

AIBS has called for documentation related to building work to be held within a central repository which would include all amendments to approvals.

4. Should a statutory declaration accompany all variations to plans or only major variations?

Refer to response in question 1 above. A proper process of review by a building surveyor of all variations is appropriate and necessary to ensure that seemingly immaterial changes do not become sources of risk of considerable harm.

5. Are there any obstacles that would prevent a person from submitting a statutory declaration for variations? If so, what are those obstacles?

Refer to response to question 1 above.

Would signing a statutory declaration that declares compliance for something that actually doesn't comply create an offence for issuing a false declaration which is in the criminal jurisdiction? It is not clear which authority would have responsibility for prosecuting practitioners where they are found to have given a false statement. Is there an authority that is authorised, resourced and would be willing to do this work?

6. What other options could be workable if there are variations to plans?

Regulation of the turnaround times that must be achieved by authorities involved in the process will improve response rates and minimise the impact of the process on progress of construction work where a variation has become necessary.

7. How could the modifications process be made simpler and more robust?

AIBS is unsure how this question relates to the overall reform objectives. We are happy to enter further dialogue on this point.

8. How should plans be provided to, or accessed by, the Building Commissioner?

Electronically. AIBS has called for documentation related to building work to be held within a central repository which would include all amendments to approvals. The Building Commissioner should be able to access all details of all applications within the same source of truth about each project.

9. What types of documents should 'building designers' provide to the Building Commissioner?

Information pertaining to a matter over which a practitioner's conduct might be audited and that would not normally be part of the approval documentation held within a central repository, and may need to be provided direct to the Building Commissioner on an as needs basis.

10. In what circumstances would it be difficult to document performance solutions and their compliance with the BCA?

Documentation of performance solutions is difficult only in circumstances where the applicant and any person they have employed to provide design documentation are inexperienced or lack necessary education related to the documentation of performance solutions. There are no forms of development where documentation of a performance solution would be onerous, provided that the building surveyor retains the ability to determine what constitutes appropriate documentation of performance.

11. Would a performance solution report be valuable as part of this process? If not, why not?

If it matches the Performance Based Design Brief and Performance Based Design Report criteria for the NCC BCA, a performance solution report would be valuable.

12. Are there any other methods of documenting performance solutions and their compliance that should be considered?

The International Fire Engineering Guidelines 2005 sets out a process that AIBS understands continues to be consistent with worlds best practice and is the basis of the proposed NCC BCA provisions.

13. What would the process for declaring that a building complies with its plans look like?

There are examples nationally where builders are obliged to make declarations about their work. AIBS believes that it is appropriate that NSW participates in development of a national approach to this area of reform.

14. What kind of role should builders play in declaring final building work?

See response to question 13 above.

15. Which builders involved in building work should be responsible for signing off on buildings?

The AIBS position related to this principle is that all practitioners should be registered or licensed and held to account for their work and subject to an auditing scheme.

16. Are there any circumstances which would make it difficult for builders to declare that buildings are constructed in accordance with their plans? If so, what are those circumstances?

Yes. The points made by Shergold and Weir related to the implementation of recommendation 1 of their Building Confidence report identifies that complex fire engineering systems make it likely that it is unreasonable to oblige builders to take responsibility for that work. They identify therefore a need for specialist fire safety systems to be addressed separately and made a separate recommendation about this, being recommendation 19.

AIBS believes that where a project involves work that is outside of the technical capability of a builder to properly supervise that work, the builder should not be permitted to engage in that work.

In this way, the concerns expressed in the Building Confidence report as described above should not arise. At all times, a builder must be accountable for the work they undertake or manage. The involvement of an expert in fire safety during the construction process would be to give further assurances to the client about the builder's level of conformity and may also assist the building surveyor to properly evaluate the suitability of the building for occupation at the completion of the work.

17. Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?

The existing licensing and registration scheme verify qualifications and capability at entry, but little if any attention is paid to ongoing capability at each renewal period. There is no driver within the licensing and registration process for most practitioners to ensure that they are maintaining their knowledge and skills.

AIBS believes therefore that without further changes being made to the existing licensing and registration processes, these alone would not be suitable for the purposes of identification of persons competent to practice within the industry.

18. What occupations or specific activities are involved in 'building design' and should be in scope for the registration scheme?

Practitioners providing any form of design input including project managers, engineers, architects, fire engineers, geotechnical engineers, energy assessors, designers, soil classifiers and draftspersons have been identified by AIBS as practitioners that should be registered or licensed as a pre-requisite to participation in the industry.

19. What should be the minimum requirements for a registration scheme?

In addition to the points raised in the discussion paper, any registration scheme applied to design practitioners should ensure design qualifications cover basic concepts of design as a communication tool, specialised technical knowledge relevant to the relevant design discipline and the legislative environment within which they must operate.

20. What form of insurance should be mandatory for 'building designers'? Why?

Professional Indemnity Insurance, indemnifying for claims arising related to design practice.

21. What kinds of minimum requirements should be prescribed for the insurance policy (for example, value, length of cover, etc.)?

Insurance cover should at least be for a period not less than the statutory period of liability arising for any other professional involved in the work and be reflective of the actuarial context of the practice involved, or otherwise as may be prescribed in relation to insurance requirements for building surveyors. AIBS believes it is important that there are no differences in the cover available amongst all practitioners so that claims made appropriately reflect the likely responsibility for the loss rather than a strategy to obtain the optimal result for the client from those with the best cover.

22. What skills should be mandatory for 'building designers'?

Qualification in another field within the building and construction industry should not provide an as of right pathway for practice or registration for building design practice. Design is an important means of communication which must be properly understood by design practitioners in order that appropriate documentation is produced.

23. Should specific qualification(s) be required?

Yes.

24. Should there be other pre-requisites for registration?

AIBS notes that various jurisdictions have established benchmarks for registration of many design practitioner categories. It would be useful if there was a nationally consistent approach to demonstration of competency with pre-requisites for registration applied consistently also.

25. What powers should be provided to the regulator to support and enforce compliance by registered 'building designers'?

A full suite of powers commensurate with those available in respect of the BPB's ability to investigate and audit the conduct of building surveyors should also apply to all registered and licensed practitioners, design or construction.

26. Which categories of building practitioners should owe a duty of care?

All practitioners required to be registered or licensed to participate in the industry should owe a duty of care to the community.

27. What should be the scope of the duty of care? Should it apply to all or certain types of work? If so, which work?

AIBS believes that all work, design and construction, irrespective of value should carry with it a duty of care to eventual consumers.

28. How will the duty of care operate across the contract chain?

Any person who has performed any work on any part of a building will be accountable to the registration authority for their performance of that work, and be subject to a duty of care, irrespective of their contractual relationships for the project.

29. What types of consumers should be owed a duty of care?

Any building owner, initial or subsequent within a nationally consistent defects liability period post completion of construction should enjoy a duty of care from all practitioners involved.

30. On what basis should a particular consumer be afforded the protection?

At least on the basis that technical and regulatory compliance has not been achieved.

AIBS notes that to make it any other way, there will be a portion of the practitioners in the market who would not be subject to sanction for poor work.

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

We look forward to an opportunity to provide further information that may assist.



Australian Institute of Building Surveyors

Response to the report

Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia

by

Professor Peter Shergold and Ms Bronwyn Weir
commissioned by the Building Ministers' Forum (BMF)

27 July 2018

27 July 2018

Building Ministers' Forum
GPO Box 2013
CANBERRA ACT 2601

Dear Building Ministers

The Australian Institute of Building Surveyors (AIBS) are pleased to present this response and comment on the report by Professor Peter Shergold and Ms Bronwyn Weir.

We look forward to your considered response in due course.

Yours faithfully
AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS

Brett Mace
Chief Executive Officer

Tim Tuxford 
National President

Overview

The Australian Institute of Building Surveyors (AIBS) welcomes the report to the Building Minister's Forum (BMF) by Professor Peter Shergold and Ms Bronwyn Weir.

AIBS believes the report, *'Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building & construction industry across Australia'* presents a long overdue guide to much-needed reform of Australia's building regulatory system. Modernisation of the system is crucial if the Australian public is to retain confidence that the built environment in which they live, work and play is safe and compliant with standards all Australians are entitled to expect.

AIBS has advocated for major reform in this area. We set-out how this reform could be achieved in the *'AIBS Policy – Building Regulatory Reform in Australia'* which was published in September 2017.

The AIBS policy advocates for a consistent, national approach to building regulation in place of the piecemeal jurisdictional approach currently in place. It is particularly noteworthy that the BMF, in commissioning the Shergold Weir Report, has taken a national approach to examining Australia's building regulation system rather than previous approaches which have focussed on individual jurisdictions. The BMF is to be applauded and supported for taking this approach.

This document provides AIBS' response to the findings and recommendations of the Shergold Weir Report. This response has been developed after meeting with report co-author Ms Bronwyn Weir to obtain more understanding of the rationale for some of the recommendations together with consultation with AIBS members across all jurisdictions.

Overall, AIBS considers the Shergold Weir Report is a forthright assessment of the state of compliance in Australia. Generally, the Report is a significant step forward in reform of the building regulatory system, but it is simply the first step. AIBS urges the BMF to work closely with industry to ensure the majority of the recommendations contained in the report are implemented, albeit with some modifications, to achieve genuine regulatory reform.

Building Surveying

The Shergold Weir Report contains significant criticism of the building surveying profession. AIBS acknowledges that the terms of reference provided to Shergold and Weir by the BMF included a request to examine perceptions of conflict of interest within the private building surveying profession. AIBS also acknowledges criticisms of building surveyors within the Report while, at the same time, we are greatly encouraged by recognition in the Report that the profession of building surveying is crucial to the future viability of compliance in the Australian building industry.

Importantly, the criticisms levelled at the performance of the building surveying profession relate to known issues which AIBS is already working to address by increasing professionalism and other efforts which have, in part, been acknowledged within the Shergold Weir Report. While some members of the profession will be unhappy with some of the recommendations and findings in relation to the profession, AIBS believes that implementation of the majority of the recommendations will serve to strengthen the role of building surveyors within the industry including enhancement of the reputation of the profession with industry and the general public.

AIBS is also encouraged to note a considerable number of the recommendations in the report align with the building regulatory system reforms contained in *'AIBS Policy-Building Regulatory Reform in Australia'*.

NOTE: The Shergold Weir Report uses the term ‘private building surveyor’ which AIBS believes incorrectly delineates between private and public building surveyors undertaking the same statutory assessment and inspectorial functions. AIBS believes that many of the suggested improvements would equally apply to any building surveyor undertaking such functions. Accordingly, it is recommended that the term ‘statutory building surveyor’ be adopted by the BMF and all jurisdictions to better emphasise the statutory nature of the role and to recognise that the same or similar pressures exist for building surveyors undertaking statutory roles in public settings.

Executive Summary

1. AIBS makes the following overall observations about the contents and recommendations within the Report:
 - Performance of private participation within the regulatory system is not serving the community adequately
 - The majority of the Shergold Weir recommendations were related to commercial buildings rather than the residential sector
 - There has been a lack of performance by regulators
 - The role of the building surveyor is crucial to the system
 - There is a requirement for whole of industry and government solutions to the issues raised
 - There is a need to adopt the universal use of the term ‘building surveyor’ across all jurisdictions
 - The role of building surveyors as co-regulators could be more widely recognised within the community, some parts of industry and in some government agencies
 - Nationally consistent accreditation and qualification standards are needed
 - Private engagement of statutory building surveyors should be robust, reflecting the co-regulatory role that these professionals perform on behalf of the community
2. Key priorities for reform: - AIBS has identified the following recommendations from the Report that we believe should be prioritised for implementation to improve the standard of compliance within the Australian building industry:
 - Recommendation 9 which related to improving the integrity of building surveying practice;
 - Recommendation 18 which related to introducing mandatory inspections with amendments;
 - Recommendation 21 which related to establishing a system for building product safety with amendments; and
 - Recommendations 1,2 and 3 together which relate to the establishment of a nationally consistent practitioner registration scheme with associated mandatory continuing professional development (CPD) requirements.
3. Whilst AIBS supports the majority of the recommendations in the Shergold Weir Report, there are some areas in which AIBS has a differing understanding of the background which appears to have led to some recommendations. For these reasons, AIBS does not necessarily agree with certain recommendations of the report. These are:
 - Recommendation 14 which relates to documentation of performance solutions;
 - Recommendation 15 which is related to post construction approvals using performance solutions;
 - Recommendation 17 which is related to independent third-party reviews of performance proposals; and
 - Recommendation 19 related to inspection and certification of fire safety system installations.

AIBS also considers that recommendations 7, 8, 10, 18 and 21 have merit but remains cautious about aspects of the recommended approach.

4. AIBS raises the following queries arising from the Shergold Weir Report:

- Why didn't the report consider the impact of increasing use of performance solutions on the ability of the community and practitioners to achieve or drive high levels of voluntary compliance?
- Considering compliance motivation theories, how does the Australian legislative landscape compare with the latest available knowledge around achieving compliant behaviours?
- Why does the report not advise on the suitability of the various proposed controls on how building surveyors are engaged to undertake assessment and other functions?
- Why is the moral hazard of builders not raised in the discussion on page 13 or elsewhere in the report, given the existence of moral hazard represents a significant risk factor to be mitigated by any compliance and enforcement system?
- How has a view arisen that approvals processes across Australia generally provide for a very high level of self-certification of the design and construction of commercial buildings?

Part 1 - AIBS Commentary on the report

1. **What drives compliance:** The report contains discussion about two fundamental requirements needed in order to derive maximum benefit from a performance based regulatory system; practitioner competence and statutory building surveying involvement. AIBS raises an important third point about how compliance is most often achieved is missing. That is, voluntary compliance with requirements.

AIBS believes it is appropriate that the BMF be informed regarding the role of voluntary compliance in the setting of regulatory schemes to address compliance levels.

2. **Regulatory reform process:** Our view is that regulatory reform is an issue that cannot be dealt with 'one Band-Aid at a time' but must be approached holistically and involve all stakeholders in the process.
3. **Public confidence in the system:** AIBS supports open decision making during design and construction as a means of fostering greater levels of voluntary compliance. We also note that there is currently no way for the community to understand decisions taken by enforcement bodies, be they statutory building surveyors, local government, state or territory governments. Greater transparency in this regard could ensure entities with enforcement responsibility might be held to account for their decisions.
4. **Clarity of requirements and what to do about it:** Shergold and Weir have identified that clarity of requirements is important, and that this element of the bigger picture was outside the terms of reference of their engagement so has not been investigated.

AIBS believes clarity of technical requirements is paramount to efficient and consistent application of requirements and also to the degree with which compliance is likely to be achieved. Not only must the approach to design be clear, there must also be clarity in the performance approach.

4.1 *The National Construction Code*

AIBS believes that the deemed to satisfy provisions of the National Construction Code Building Code of Australia (NCC BCA) are in need of improvement regarding clarity, particularly in relation to the complexity generated by the sheer number of referenced standards – there are well over 3,000 documents that must be referred to in order to understand what is required. Fees are charged for access to these documents which further hinders widespread comprehension and conformity.

4.2 *Quantification of Performance*

The performance requirements in the NCC should act as a yardstick against which to measure the benchmarks determined in any Performance Based Design Brief process. This would prevent designers and statutory building surveyors having to establish what they believe are appropriate performance benchmarks for each project, which, aside from the diligence of the statutory building surveyor to their public duty, occurs outside of community involvement.

Each of the above points underscores the need for clarity of requirements as part of an approach to management of performance design, a high-risk element of industry, where judicious application of inspectorial resources is vital to ensure adequate levels of compliance are commonplace which, in turn, supports public confidence in the system.

5. **Where AIBS disagrees with the discussion:**

5.1 *Role of the building surveyor*

There is a comment about purchasers having to rely on the regulatory controls and competence of practitioners to deliver a complaint, safe building. This suggests that the role of building surveyors in this process is viewed as ineffectual.

It is disappointing that this passage does not make clear why the authors believe purchasers are having to rely on the regulatory controls and competence of practitioners. Is it due to a lack of diligence of building surveyors or is it a function of the legislative systems in place that effectively inhibits the ability of a building surveyor to be influential in achieving a compliant outcome?

AIBS believes it is more often the latter and calls for a more rigorous auditing regime of all in the building supply chain to mitigate the risk of the former. If all practitioners are held equally accountable, this can only serve to strengthen the building regulatory system.

5.2 *Collaboration*

There are concluding remarks in the executive summary (page 4) which give a sense that the lot of purchasers is due to a combination of both the regulatory controls and the input of statutory building surveyors, in combination with an industry that is ill-prepared to deliver compliant buildings in the first place. The lack of direct discussion on this point is disappointing given that the terms of reference were primarily about investigation of the efficacy of compliance and enforcement systems in Australia.

AIBS believes more could have been made of this issue so that it is clearer what needs to be done to support end users of buildings to have confidence in the built environment.

5.3 *The role of local government*

There appears to be a lack of recognition that municipal building surveyors too are subject to influence, not only from the clients but also from elected representatives who might seek to have particular policy positions prevail at the expense of the integrity of the process.

Whatever the system, there needs to be transparency brought to bear at least from the oversight of a regulator, and potentially in relation to the actions or inaction of regulators themselves.

5.4 *Regulatory failure*

There is expression of an idea that all the problems associated with the building and construction industry is the result of the practices of building surveyors. Such a view is significantly flawed and ignores:

- the roles of others in bringing about defective work and failing to have quality assurance programs in place;
- the inadequacy of the regulatory environment to ensure that adequate resourcing is available to ensure building surveyors have the capacity to undertake their responsibilities fully; and
- the influence of regulatory requirements which dictate what should be inspected and when, and how this takes away from the ability of a building surveyor to apply risk management principles to this aspect of building control so that the whole system is inherently inefficient at delivering compliance.

This is far more a regulatory failure issue than an issue of building surveyors failing to uphold their responsibilities. AIBS suggests it is the system and its capacity to support sound decision making that needs to be examined. Blaming building surveyors is analogous to blaming parking inspectors for the

number of drivers that overstay the time limits outside a hospital. In the latter situation, who has made the decision to park for longer than permitted?

6. The responsibility of builders:

6.1 *Moral Hazard*

It is the view of AIBS that a proper understanding of the moral hazard position of builders is necessary to ensure that the regulatory environment is properly able to support compliance. The report has not done this.

6.2 *Documentation*

The regulatory system does not fit with modern design and construction procurement methodologies with their attendant commercial imperatives behind construction scheduling and decision-making processes. Submission and assessment processes for variation documentation will be better supported by systems that work with rather than against the procurement systems in place. This has not been examined in the report.

6.3 *Responsibility shedding*

Builders work hard to ensure that they cannot be held responsible for anything that goes wrong, mostly because they can pass responsibility to a sub-contractor or supplier. There are structural mechanisms that also ensure this; they are not obliged to carry insurance, so any claim will often cause the builder to fold and disappear without apparent consequence for those who controlled the building company. AIBS believes more investigation of this issue is required.

6.4 *Relationships*

AIBS believes the passage *“It is imperative that builders play their part in helping to redefine the role of private building surveyors. Builders need to recognise that inappropriate relationships with private building surveyors undermine the whole system.”* May have been expressed in a way that does not convey what was truly intended.

Clearly, the role of statutory building surveyors is a matter for regulators, not builders. Building surveyors should rightfully expect that their statutory roles will and should be defined by regulators, and appropriately in consultation with building surveyors, and particularly ahead of any consultation with builders.

What is less clear, and presumably was the true intention behind this passage from the Report is that, by the relationships that builders seek to establish with statutory building surveyors, they can influence the efficacy of those people to perform a co-regulatory role. Builders should consider carefully how they seek to work with statutory building surveyors so that they do not compromise, or even give an impression of potential for compromise of their role.

7. Creating a more harmonised national system:

AIBS would like to see an analysis of the powers that might enable the Commonwealth to establish legislation applying to the building industry.

Already, legislation relating to insurance is a matter for the Commonwealth and there are other aspects of commerce over which the Commonwealth should legislate. AIBS believes there may be other areas in which the Australian Constitution could provide relevant power or powers which, if utilised, could create a pathway for nationalisation and therefore harmonisation of compliance and enforcement systems within the Australian building industry.

Part 2 – AIBS Commentary on Shergold and Weir’s Recommendations

This section addresses each of the recommendations from the Shergold Weir Report.

Recommendation 1 – Registration of building practitioners

AIBS **supports** this recommendation and makes the following points:

- The proposal for each jurisdiction to require registration of certain categories of building practitioners is largely consistent with the position taken by AIBS in the *Policy for Building Regulatory Reform in Australia*. The differences are that AIBS calls for all practitioners to be registered and if that were the case, there is no need to identify limitations on who can be involved in performance solution preparation.
- The list of practitioners should be considered to be a minimum number, or core group, of practitioners. AIBS supports this approach as part of a pathway towards widespread licensing and registration of practitioners.
- Shergold and Weir also say they believe sub-categories of registration should apply, defining an individual’s capacity to work on different classes of building of differing scale and also on specific disciplines within different professional categories. This differs from our policy position.
- AIBS believes it is critical that building surveyors and builders are appropriately categorised, so they do not work beyond their levels of competency. AIBS has considered how this recommendation can best be implemented. A review of the National Accreditation Framework is underway and, at the same time, AIBS is examining similar considerations as part of preparing a proposal to establish a Professional Standards Scheme. These deliberations will also examine the need for levels of practitioner including in respect of any limitation as to who can participate in performance solution preparation which may be appropriate.

Recommendation 2 – Consistent requirements for registration

AIBS **supports** the recommendation and makes the following points:

- The AIBS policy position at A8 calls for all practitioners to carry Professional Indemnity (PI) insurance as a pre-requisite for registration.
- The benefit of nationally uniform registration requirements based upon nationally uniform recognised qualifications maintained through national training programs is identified. There is currently considerable variation of registration requirements not with the types of training provided but also variation of the types of training that governments accept as relevant to skills maintenance. Undertaking a first aid course is accepted in at least one jurisdiction as relevant for building surveyors implementing the requirements of the NCC.
- AIBS believes that consideration should be given to how jurisdictions can support development of training relevant to CPD on applying the NCC changes.
- Shergold and Weir note that industry bodies are capable of verification of credentials for registration and collaborating with regulators on the discipline of practitioners (page 18). This supports the AIBS policy position related to Professional Standards Schemes.

Recommendation 3 – Continuing Professional Development

AIBS **supports** the recommendation and makes the following point:

- The recommendation is consistent with the AIBS position related to CPD. There is a suggestion that governments give consideration to the subsidisation of compulsory CPD training which AIBS supports (page 19). AIBS has also made comment on the training aspects of registration under recommendation 2.

Recommendation 4 – Career paths for building surveyors

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir contend there may not be an adequate supply of building surveyors to meet future needs (page 19). Also, from similar references, they state that the average age of building surveyors is now over 50.
- These points are understood to have been raised in various referenced reports prepared within different States and Territories and published within the last 15 years.
- AIBS queries the accuracy of the above statements because we believe there may not be any single organisation that would have access to the relevant data. The studies referenced were undertaken in single jurisdictions and in some instances are outdated considering the rate of change observed within industry over the last 10 years. AIBS urges caution on making important industry decisions based on statements that may not be accurate.
- The report also suggests that the aging demographic of building surveyors may be a result of building surveying as a second or third career choice for older tradespeople who join the industry when they can no longer continue in their trade. AIBS believes this may not be an accurate characterisation of the profession and may be based on outdated data. Those “coming off the tools” have a role to play but new entrants of this background typically do not have the skillset to cover the shortfall in practitioners available to assess and approve commercial buildings. Greater focus and recognition needs to be applied to younger industry participants who can more easily keep pace with changing technology.
- AIBS has also identified a need for the establishment of a supervised career pathway supporting entry into the building surveying profession. Establishment of a nationally consistent pathway of this nature would likely assist in changing the demographics of the building surveying profession. The AIBS accreditation scheme and the National Accreditation Framework identify the minimum qualification benchmarks applicable and the courses that meet the qualification standards so that consistency of curriculum and education providers is already available.
- The establishment of a supervision scheme could, in conjunction with study, assist with the attainment of adequate industrial experience and also in gaining post qualification experience which would assist individuals to achieve and improve accreditation.

Recommendation 5 – Improving collaboration between regulators

AIBS **supports** the recommendation and makes the following points:

- Sharing of compliance and enforcement information is encouraged via consideration of this recommendation. AIBS supports a coordinated approach to enforcement.
- Shergold and Weir identify a need for terms of reference for an oversight body inclusive of information sharing agreements dealing with, among other things, risk assessment practices. AIBS calls for a regulatory risk differentiation model to guide those with enforcement responsibility.

- Shergold and Weir point out that the oversight body should also be capable of identifying and reporting deficiencies in the legislative system which AIBS supports.

Recommendation 6 – Effective regulatory powers

AIBS **supports** the recommendation and makes the following points:

- The AIBS policy does not mention the powers of enforcement bodies so that this recommendation represents a welcome development beyond the AIBS current position.
- AIBS has advocated for building products and materials to be subject to recall powers similar to consumer products.

Recommendation 7 – Strategy for the proactive regulation of commercial buildings

AIBS is **cautious in support** for the recommendation and makes the following points:

- Shergold and Weir say that “approvals processes across Australia generally provide for a very high level of self-certification of the design and construction of Commercial buildings” (page 21). This statement is not referenced and therefore cannot be verified with respect to accuracy. AIBS does not have data that could confirm or refute this claim. It does appear inconsistent with the involvement of building surveyors in the process however so on that basis there is cause for concern. It suggests building surveyors are either being sidelined in the assessment process related to commercial buildings or are deliberately accepting design documents without assessing them. Either way, the shadow that this statement casts on the role of building surveyors involved in commercial projects is significant, particularly as Shergold and Weir are using this statement as part of the justification for a compliance strategy, directed particularly at building surveyors, to be established by each jurisdiction.
- The quotation of Tony Enright, Enright Consulting about the creation of moral hazard from weak enforcement being especially associated with building surveyors is similarly concerning (page 22). Mr Enright, who we note is not a building surveyor and his expertise in this area is therefore unclear, has lumped building surveyors in with builders and fire engineers. AIBS rejects the comments made by Mr Enright. Building surveyors do not gain from weak enforcement therefore their role cannot give rise to moral hazard in this respect. Other corrupting influences must come into play in order for building surveyors to become involved in moral hazard situations, such as a client, fire engineer, developer or builder seeking to induce a building surveyor to make compromises.
- Further concern arises from the creation of statutory powers to allow directions to be given to building surveyors while there is no mention of an expression of a similar power related to other practitioners. This gives an impression that building surveyors are the main cause for the concern that gives rise to the need for controls to be introduced, apparently ignoring the involvement of the other practitioners referenced in the Enright quotation. Statutory building surveyors must be subordinate to regulators in relation to the carrying out of regulatory functions. It is vital that the subordination mechanisms do not diminish the authority of statutory building surveyors as co-regulators.
- A further difference between the positions of AIBS and Shergold and Weir in relation to auditing is that Shergold and Weir believe that this should be rolled out in relation to commercial buildings as distinct from domestic scale residential buildings. However, AIBS believes auditing should apply to those involved in all forms of building work. This is particularly important considering the contribution low rise domestic dwelling construction represents to economic activity in Australia.
- The response time of State and Territory Regulators to reports of unsatisfactory conduct historically has been poor, with individual investigations taking months, sometimes years. A significant injection of resources would be required, especially in larger areas such as Melbourne and Sydney.

Recommendation 8 – Collaboration with fire authorities in the development of fire safety design

AIBS is **cautious in support** for the recommendation and makes the following points:

- The lack of uniformity of involvement of fire authorities in the assessment process is identified by Shergold and Weir (page 23). Shergold and Weir also say that there is “consensus that, at a minimum, fire authorities should provide comment on, or consent to, performance solutions that involve fire performance requirements that relate to fire brigade intervention.”
- AIBS supports fire authorities having a comment role but not a consent role so that the consensus to which Shergold and Weir refer is not accurate. AIBS supports the view expressed by Shergold and Weir that fire authorities should provide comment, particularly in relation to performance-based proposals affecting firefighting operations.
- With respect to the use of the International Fire Engineering Guidelines, AIBS participated in the development of the document and therefore AIBS supports the use of the approach outlined within it.
- Shergold and Weir state that “A failure to comply with the code would establish a ground for disciplinary inquiry” (page 23) which AIBS does not support. Adoption of alternative approaches without adequate justification would represent a failure which would establish a ground for disciplinary inquiry.
- In most Australian jurisdictions, fire authorities are often involved in evaluation of performance proposals against the provisions of the NCC which takes them away from their core responsibility as a fire authority and also duplicates the role of the statutory building surveyor on these projects. It is likely that where this occurs, reduction of the role to the core issue of operational needs of the authority / brigade will not require any additional resources than currently provided. In some locations though, additional resourcing of the fire authority’s capacity to provide comment may be needed.

Recommendation 9 – Integrity of private building surveyors

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir state that legislation should ensure engagement of building surveyors is undertaken by owners and for information to be consistently provided to the owner by the building surveyor throughout the period of engagement.
- AIBS does not support this approach, particularly as it will not overcome many issues with commercial construction or the development of apartment buildings where the eventual owner is not typically the owner at the time of assessment and construction, which means that such controls will be ineffective. AIBS prefers to see other means of controlling potential for conflict of interest utilised.
- For example, disengagement controls are recommended consistent with the AIBS policy. Otherwise, Shergold and Weir have identified standard conflict of interest clauses that should be legislated to prevent statutory building surveyors accepting engagements where such circumstances apply.

Recommendation 10 – Codes of conduct for building surveyors

AIBS offers **cautious support** for the recommendation and makes the following points:

- Shergold and Weir state: “We found only two jurisdictions in which the licensing bodies had suspended or cancelled the registration of private building surveyors. This suggests that the regulatory oversight of building surveyors across Australia has been limited and ineffective” (page 25). AIBS states that relative to the number of decisions made, there are actually very few instances of building surveyors failing to uphold their responsibilities.

- This issue is raised to justify proposed content of a code of practice. Shergold and Weir suggest such codes should include a prohibition on building surveyors preparing performance solutions and participating in the development of design solutions. AIBS believes that wherever the building surveyor is to be engaged in a statutory assessment role, they should not provide design advice for the same project.

Recommendation 11 – Role of building surveyors in enforcement

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir assert that building surveyors undertaking site inspections will, by that activity, be scrutinising what is happening on site on a day-to-day basis (page 26). Inspections are generally undertaken at completion of specific stages of a project or on a random basis, rarely requiring attendance at a site on a daily basis, let alone with sufficient regularity to be able to claim day-to-day understanding of what is happening on a site. However, we acknowledge that Shergold and Weir may have been referring to building surveying activity in the broader sense that on any given day throughout the nation, there are building surveyors undertaking inspections on building sites.
- A reasonable estimation of the performance of building practitioners can be obtained using the frequency with which AIBS recommends building surveyors should inspect sites, provided adequate numbers of inspections actually take place. There is significant variation in the mandatory inspection requirements between Australian jurisdictions.
- The AIBS Policy advocates for the establishment of a linkage between the inspection processes and auditing and accreditation / licensing processes. The Shergold Weir Report takes this concept further and calls for mandatory referral requirements for the building surveyor to follow when adverse inspection results occur. AIBS states that building surveyors should be obligated to provide mandatory notification, with reports of any rogue or fraudulent practitioners of any discipline ideally being made to a State or Territory Regulator or a formal enforcement body established specifically to address such instances.
- AIBS supports enforcement bodies with appropriate resources and the capacity to act expeditiously, with a transparent oversight mechanism.

Recommendation 12 – Collecting and sharing data and intelligence

AIBS **supports** the recommendation and makes the following points:

- This recommendation is consistent with part A12 of the AIBS Policy.
- The justification for the creation of such a system of document collation and retention is an expansion of the reasons articulated by AIBS in the Policy document and is supported by AIBS.

Recommendation 13 – Responsibility of design practitioners

AIBS **supports** the recommendation without further comment.

Recommendation 14 – Adequate documentation for performance solutions

AIBS **opposes** the recommendation and makes the following points:

- Shergold and Weir state “Performance solutions require project stakeholders to collaborate and develop an agreed pathway. Each requires empirical analysis, modelling and/or testing” (page 30). Some performance solutions are adequately demonstrated to comply without modelling or testing so that this statement is misleading in that it is so absolute.
- AIBS does not support this recommendation as presented. It would be preferable that building surveyors participating in statutory roles in the performance solution process be able to identify the level of

documentation that is appropriate for performance solutions. At Section B2 of the AIBS Policy, we address the level of documentation required in support of a standard application.

- The NCC BCA 2016 Volumes One and Two set out what constitutes appropriate evidence of suitability which establishes an appropriate benchmark against which practitioners could expect to be audited with consequences for registration where there is a failure to act appropriately.

Recommendation 15 – Approval of performance solutions for constructed building work

AIBS **opposes** the recommendation and makes the following points:

- Shergold and Weir earlier advocate that building surveyors are to be engaged by owners. In this circumstance, it is hard to understand why an appeal right related to the assessment of a performance solution post construction might be necessary. Surely the owner will be aware and will determine if assessment fees are to be paid for such a service.
- Where the developer is the owner and future purchasers who are at this stage unknown might reasonably have an interest in post completion variations, there may need to be another process to provide greater certainty around the application of performance solution processes post construction.
- There is a suggestion that third party review of performance solutions that arise post construction is justified (page 31). The assessment process that is followed for performance-based proposals lodged prior to construction should not be any different from processes followed for applications lodged post construction. The motivation for lodgement of the proposals will differ but the assessment process, undertaken by a professional co-regulatory person, should not be any different.
- AIBS does not accept that simply the time at which the proposal is put could cause a complete change in approach regarding the assessment of a performance proposal.
- It is preferable that consideration be given to other accountability mechanisms ahead of regulating the assessment process in respect of existing buildings. Implementing audit provisions should provide ample control over the risks associated with this kind of work.

Recommendation 16 – Approval of documentation throughout the construction process

AIBS **supports** the recommendation and makes the following points:

- This recommendation is consistent with AIBS Policy part B5, in terms of the adequacy of design documentation, and B2 in relation to clarity of the approval system. AIBS therefore supports this recommendation.
- Shergold and Weir identify ‘notification points’ (page 31). AIBS agrees with the principles, as outlined above, and notes that there needs to be clear articulation as to who has responsibility for enforcement in the event of a failure to comply with ‘agreed notification points’.

Recommendation 17 – Independent third-party review

AIBS **opposes** the recommendation and makes the following points:

- AIBS does not accept the contention that building surveyors currently accept complex technical information from engineers without assessment (page 32). It is perhaps a part of the Shergold Weir Report where the expression does not match the intention. Shergold and Weir appear concerned that building surveyors should be able to rely on third-party reviews of design components. This is acceptable in respect of determining if a complex set of calculations or the like is appropriate, but not in lieu of oversight by a building surveyor.

- The integration of engineering and other specialist design into the wider design is crucial to the success of the building and only a building surveyor can ensure this occurs properly.
- A building surveyor provides oversight of independent third-party reviews and disparate design elements which is particularly important in respect of confirming that compliance is achieved within total design integration.
- The AIBS policy sets out what is appropriate regarding third-party reviews at part B1 of the policy whereby referral to a third-party or peer review panel for performance proposals should be at the discretion of the statutory building surveyor. Shergold and Weir contend that this should not be a discretionary matter and that legislation should prescribe what is referred and when. The basis used to justify this approach is not accepted by AIBS as it is an inaccurate reflection of the issue the recommendation seeks to manage.
- Additionally, creation of any statutory board or panel responsible for third-party reviews must be done with great care to ensure that there is no conflict of interest or pecuniary interests or loss of intellectual property. This is particularly important in places where the pool of persons sufficiently expert to fulfil the role of panellist is small and panellists remain involved in the industry to ensure appropriate skills are available.
- There is a risk of perceptions arising that competitive interests might colour the opinions of a panel for commercial advantage/reputational gain, thereby diminishing the standing of the process. Panels may need to be comprised of experts from outside the jurisdiction to avoid the potential for such conflicts but this may compromise the panel's ability to properly accommodate local conditions.
- Deferral of decision making authority to a panel could also add unnecessary complexity and delay to the process, particularly if the matter is well within the capabilities of the practitioners involved. In that case, the benefit of the referral is merely about perception or reputation of the system without actual benefit to the community or economy. The reputation of the system will not be enhanced if the community believes it is simply "red tape." Change should only be contemplated if it adds value and/or genuinely provides a better outcome for the community.

Recommendation 18 – Mandatory inspections

AIBS offers **cautious support** for the recommendation and makes the following points:

- The approach recommended by Shergold and Weir to setting of a core minimum of requirements to be inspected, together with the ability for the building surveyor to add further inspection requirements, is supported by the revised AIBS Policy at Part C2.
- Shergold and Weir also suggest that inspections can be carried out by appropriately registered engineers for prescribed types of work (page 34). AIBS cautions against support for this approach on account of an engineer being a specialist who is not ordinarily trained in the application of regulatory requirements or on identification of conflicts between components of a building that are not part of the engineering design which might otherwise be detected if a building surveyor inspected technical elements.
- It is therefore necessary that any inspections carried out by specialists be done so under the guidance, oversight and recommendation of a building surveyor.

Recommendation 19 – Inspection and certification of fire safety system installation

AIBS **opposes** the recommendation and makes the following points:

- AIBS understands that the recommendation is at odds with the AIBS position in its Policy only in that the Shergold and Weir recommendation is not properly expressed. Involvement of fire engineers and similarly qualified practitioners in the process should be at the direction of the building surveyor so that it is clear where the responsibility rests for verification of compliance.
- Breaking verification processes into separate packages risks the process becoming siloed so that gaps and errors can arise with potential for adverse safety outcomes.
- It is understood that involvement of other professionals in the construction verification process should be within and subject to the direction of a statutory building surveyor with responsibility for final verification.

Recommendation 20 – A building manual for commercial buildings

AIBS **supports** the recommendation and makes the following points:

- AIBS notes a need for discussion about how and by whom such documents are prepared. This is a rapidly changing environment with significant potential for digital technology to play a key role in how this occurs in practice.
- Responsibility for populating a data base should therefore not be vested with any specific part of the industry so that industry is not constrained by this in future.
- Instead, controls should provide that information is made available and set out what must be accessible by whom. Industry will then determine the most effectual and efficient means of achieving compliance, most likely as part of a service offered for a fee within a highly competitive and efficient market place.

Recommendation 21 – Building product safety

AIBS offers **cautious support** for the recommendation and makes the following points:

- This recommendation is similar to that contained at part A6 of the AIBS Policy however AIBS is calling for all product claims to be verified by an independent body. Shergold and Weir are suggesting a compulsory certification system applicable only to products deemed to be high-risk.
- The AIBS position is similar to the consumer products requirements whereby it is unlawful to make false or mis-leading claims about a consumer product. WE also note this is actively policed.
- Shergold and Weir are not proposing a scheme of anywhere near this level of involvement or rigour.

Recommendation 22 – Dictionary of terminology

AIBS **supports** the recommendation and makes the following points:

- The recommendation is consistent with the AIBS Policy set out in parts A1 and A3 without express statement. In other words, the concept of aligning legislative requirements nationally would by default involve developing a consistent set of terminology so that Shergold and Weir's recommendation goes to support part of AIBS' objective in this matter.

Recommendation 23 – Implementation of the recommendations

AIBS **supports** the recommendation and makes the following points:

- AIBS aims to seek progressive implementation of the Policy elements wherever and whenever the opportunity arises without assigning a timeframe to this. Shergold and Weir suggest a three-year period of reform. AIBS has no concerns about reform within three years provided reforms are not rushed or inadequately developed and industry is fully and effectively consulted.

Recommendation 24 – Implementation plan

AIBS **supports** the recommendation and makes the following points:

- AIBS would like to see COAG sign off on the reform recommendations, supporting Ministers to bring to their Parliaments the changes necessary for the implementation of the recommendations in each jurisdiction. Without COAG support, it is hard to see how individual Ministers could realistically achieve change let alone bring about greater national harmonisation of administrative requirements.

End

11 June 2015

Mr Michael Lambert
Building Professionals Act Review
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Dear Mr Lambert,

The Australian Institute of Building Surveyors (AIBS) welcomes the independent review of the BP Act and its consideration of whether or not there is a need to pursue other building regulation policy objectives.

Like Chapter 8 of the Planning Reform White Paper and the Maltabarrow Report it is heartening to see that a holistic approach is being taken. The focus should not just be on certification but the complete building regulation system including all of its regulatory processes and support measures. This is not only necessary to rebuild confidence in the safety and regulatory quality of what is built – but also in the continuing safety of what currently stands. Furthermore, it is necessary to reinvigorate the certification/building surveying profession.

Building regulation in NSW therefore does not need another suite of band aid fixes. It is long overdue for major overhaul.

AIBS offers the following comment for consideration in determining recommendations for improving building regulation in NSW.

Following this is a suite of answers to the questions asked in the Review Document.

Governance structure

AIBS supports the consolidation of building regulatory legislative provisions as much as possible. The current legislation is far too difficult to navigate. It is also difficult to read and interpret. Consolidation should preferably be under a separate and distinct Building Act (like Victoria, Queensland, Western Australia and New Zealand). That Act should have its own explicit statutory objectives so that all building controls that arise under it are consistent with those objectives. If a separate Act is not achievable then at the least there is a need to dedicate a distinct and separate Part of the EP&A Act to building control. This proposal has been on the table since the Campbell Inquiry held in 2002 and more recently the Collins Report.

AIBS also supports de-fragmentation of the current administrative arrangements. All building regulation functions (operational and policy) should be dealt with by a single agency and by Government. This single agency should also include in its structure the role currently carried out under the auspices of the BPB.

If a Building Commission is not proceeded with and the BPB remains a standalone entity then it should have greater control over its structure and budgetary process. This may include being able to employ its own staff etc.

More certainty is required and the development consent must take precedence over any certificate issued by a certifier. Development consents follow a thorough assessment process and include direct community consultation and input. Therefore, the actions of a certifier must never be able to inadvertently amend a development consent.

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The community expects that what was approved at the development consent stage is what will be built – no more nor less.

AIBS supports the combining of the roles of the certifying authority and principal certifying authority to maintain continuity and improve compliance coordination in the certification of a project.

Further AIBS supports replacing the not inconsistent test with “it is consistent” test with the development consent.

The role of the private certifier needs to be more clearly defined and needs to be promoted by the Government in the wider community. Simply the public need to know what they can expect from a private certifier.

Therefore AIBS supports clarification of enforcement responsibilities between councils and private certifiers. Although councils should be notified of all planning / environmental / public safety issues, who should be responsible for initial enforcement action requires careful consideration. The model adopted should best serve those who are affected by, or are concerned about, a development (the public).

In this regard factors to consider include:-

The council may not have intimate knowledge of the development underway and hence their effective and efficient involvement may be hindered;

Meaning the proposed on-site/off-site delineation may be confusing – particularly for members of the public. AIBS considers that the most appropriate model is one that makes the one authority (council or the private certifier) responsible for all initial enforcement action regarding both on-site and off-site issues.

Critical Stage Inspections

The nominated critical stage inspections need to be expanded to include all major stages of construction. While certifiers should be permitted to rely on certificates from suitably qualified professionals such as structural engineers and hydraulic engineers, they should still be required to undertake inspections at all stages of the development to ensure works are proceeding in accordance with the development consent.

With the current regime of critical stage inspections, departures from the development consent are not detected until it is too late and then the matter is handed to councils to try and remedy the problem.

Fire Safety at Design construction and Occupation

AIBS supports the reform of the fire protection system certification in particular the accreditation of fire protection contractors in the design and installation maintenance and future certification of fire safety systems.

It is imperative that building records be improved and in this regard the intent to also mandate submission of plans when relevant is also supported.

Furthermore AIBS supports the creation and maintenance of a building manual in a class 1b-9 building which would help identify alternative solutions (AS) many years after completion as at times reference to an alternate solution has been left off annual fire safety statements.

The building manual could be submitted as a required document at the Occupation Certificate stage (preferably in electronic form)

e-technology

AIBS supports maximising the use of e-technology in all aspects of building regulation and certification. It is considered particularly important that certifiers have ready on-line access to all information necessary to enable them to effectively fulfil their statutory functions.

Process

AIBS notes that the proposed process improvements in the discussion paper are not as comprehensive as those covered in Chapter 8 of the Planning Reform White Paper and it is not clear why. It is trusted that the full suite of Chapter 8 proposals will be the subject of discussion and consultation in the not too distant future as they contained a number of innovative proposals and indicated that matters which have been a concern for some time will be addressed. However, industry and others are yet to see the detail.

AIBS also notes a number of comments in the discussion paper about a certifier practice guide. That is certainly supported however, care needs to be taken to assure it is not overly lengthy or complex yet contains sufficient detail. Also, the Guide should not be the sole instrument for conveying what is expected of certifiers.

The guide is a good idea. However what is expected of a certifier and others with minimum regulatory responsibilities should be expressed in regulations. The practice guide can then elaborate on those minimum expectations, make recommendations on management of responsibilities, and delve into areas of practice that are complex and require more explanation and guidance on what is expected.

Accredited certifier supply and support

AIBS supports any moves to better help the current pool of accredited certifiers and building surveyors and make the profession more attractive to potential future participants. We therefore support expanding accreditation, improving building regulation process (so that what is expected as a minimum is clearly specified, and certifiers have a better understanding of their core responsibilities); the practice guide; decision support; better education and training.

Consideration should be given to IPART fixing minimum fees for Certification and Inspection work to ensure undercutting does not get pricing below what the cost of effective delivery should be.

In addition to providing the above general comments, please find attached responses to the specific questions raised in your review paper.

I am available should you wish to discuss this submission.

Yours faithfully,

Damian O'Shannassy,
NSW/ACT Chapter President
Australian Institute of Building Surveyors

Responses to questions raised in the 'Independent Review of the Building Professionals Act 2005' Discussion Paper May 2015

1. *Is there merit in consolidating the legislative framework for building sector regulation and control in one part of the EP&A Act, expressed in plain English, on a principles-based approach, with its own objectives, and incorporating any reforms approved by the Government?*

All legislation should be expressed in plain English so it is clear and unambiguous to all concerned. The current legislative regime has developed over a number of years and the building components are fragmented, difficult to locate and even more difficult to interpret.

There is definite merit in consolidating all building control matters in one part of the Act, or preferably in a new separate Act with corresponding consolidation of the regulations.

2. *Are there sufficient additional benefits involved to justify consolidating all building legislation in one Act, including the Home Building Act 1993?*

Rationalisation of the legislation is required to make it easier to find and easier understand. AIBS considers this would best be achieved by consolidation including the Home Building Act provisions.

3. *Are there sufficient benefits to justify the consolidation of building regulation administration?*

The benefit of a single building regulation administration structure was identified in the 2002 Campbell Enquiry – 'Report upon the Quality of Buildings' where it was recommended that a Home Building Compliance Commission be established "*forthwith*" to oversight home building regulation in New South Wales. There is no reason for this to be limited to the home building sector but should include all buildings.

With all licensing and accreditation functions in the one area it would be simpler for consumers and practitioners and would likely reduce duplication.

The building policy functions would benefit from obtaining more timely feedback from the regulatory and licensing areas thereby making more informed decisions. Similarly the regulatory and licensing functions would benefit in having a better understanding of the reasons for particular policy decisions.

While disadvantages of a Building Commission have been identified, including the potential loss of linkages between the building policy functions and the DPE and the potential for the commission to be a building industry advocate, it is considered that these could be overcome in the structural organisation of the new entity. Starting with a 'clean-slate' provides the opportunity to properly address all potential problems.

4. *Should the BP Act provide the BPB with the power to employ its own staff in addition to seconding staff?*

The BPB should not be a stand-alone authority and should be part of a larger entity, as discussed in question 3 above. If it is to stand alone it should have the power outlined in this section.

5. *Is there merit in the functions undertaken by BPB continuing to be undertaken by a statutory board?*

While there may be an opportunity for the accreditation of various professionals to be carried out by the professions' governing body, it is considered the investigation of consumer complaints, the initiation of disciplinary action and the routine auditing of accredited certifiers should remain the function of a statutory body. This will provide the community with more certainty and confidence.

6. *Would the framework of cooperation developed by the BPB Local Government Reference Group provide an effective approach for interaction between private certifiers and local government?*

The approach developed by the BPB Local Government Reference Group is supported as it would bring more certainty and clarity to the roles and assist in improving the frustrations that the general public have towards both private and Local Government Building Surveyors.

7. *Should certifiers be required to report all cases of building and planning noncompliance to councils?*

There would be many occasions where certifiers identify non-compliances through the course of a development, having the non-compliance remedied with minimal to no delay. Under these circumstances to require certifiers to report such non-compliances would add unnecessary red-tape with no conceivable benefit.

Furthermore, certifiers are responsible for ensuring compliance with development consents and complying development certificates. To require certifiers to report all non-compliances to council may also result in certifiers shifting their responsibility to take action to rectify the non-compliance.

Nevertheless, certifiers should have a statutory duty to report matters to Council that may be beyond the scope of the consent that they are responsible for including unauthorised work and unfenced swimming pools.

8. *Is there merit in a partnership model between the State and local government in the area of certification and building regulation enforcement?*

State and local government do not share responsibilities in the areas of certification and building regulation enforcement in the same way as they are shared with the NSW Food Authority.

Certification and building regulation responsibilities are shared between private certifiers and local councils and it is more important to have the roles of these entities more clearly defined rather than implementing a formal partnership model between State and local government.

9. *Would enhanced oversight of the certification process assist in addressing the problems experienced by owners of strata and community title developments?*

Introducing a 'defects bond' for all new strata schemes would provide greater consumer protection, however it is considered the bond should be held for a minimum of three (3) years with the required defects inspection being undertaken within 18 months of the completion of the building. This timing allows the building to be reviewed after it has been completed for a full 12 months.

10. *Would an electronic system for development applications, complying developments and building certification generate useful information for government and the industry and improve regulatory performance?*

The centralised and digital storage of all information would provide more accurate data for government and would permit information to be more readily available to all parties. This would be particularly useful during the life of the building such as when additions or alterations are proposed thus giving designers to the already built documentation including Alternative Solutions.

11. *Do you support the adoption of standard forms for development applications, CCs, CDCs and OCs?*

The standardisation of forms is supported.

12. *Do you support, as ways of improving the planning and approval stage:*

- *limiting development approval to a concept approval*
- *a standard set of development application conditions*
- *independent assessment of instances where a council seeks to impose higher building standards than the BCA*
- *improved information to the community on developments in their area?*

Section 79C of the EPA Act details the matters that must be considered before a consent authority can determine a development application and include the following;

- “(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development”*

At times, to be able to properly address the above matters detailed geotechnical, acoustic, traffic and stormwater details are required with the development application. Without such level of detail there is no certainty with regard to what is being consented to.

Having said that, anything that can assist to improve the development assessment process and the community's understanding of it would be beneficial. In that regard, the development of a standard set of development consent conditions is a good idea if applied to generic issues and provisions. Councils must be able to impose development specific conditions or conditions that align with a council's own development control plans that have been adopted in consultation with their community.

The standard conditions contained in the *State Environmental Planning Policy (Exempt & Complying Codes) 2008* that are applied to complying development certificates are a poor example of standard conditions, containing a number of inconsistencies and a lack of certainty.

Improving the information that is available to the community is also supported and the following options provided in the discussion paper should be further canvassed;

- a) more information on development site signs
- b) centralised state-wide electronic recording and tracking of development applications and complying development certificates.

13. *Will a significant improvement in the process of certification, to allow commencement of building work, be provided by:*

- *standardising the information to support the CC/ CDC*
- *standardising the report to support alternative solutions with content confirmed by the certifier*
- *replacing the not inconsistent test with the consistent test for both CCs/ CDCs and OCs?*

Each of the above items would improve the current construction certification process. However, simply replacing the current *“not inconsistent test”* with a *“consistent test”* would not on its own improve the level of certainty that the community expects.

A more robust test or process is required, that assures the community that what is approved at the development consent and complying development certificate stage is built and certified at the occupation certificate (or equivalent) stage.

The community needs to be assured that what is approved at the development consent and complying development certificate stage is what is built.

14. Do you support combining the roles of certifying authority and principal certifying authority?

There are significant benefits to be achieved by having the person who approves the construction documents (ie. the “*certifying authority*”) to also be responsible for following the development through physical construction to completion (ie. the “*PCA*”).

In addition, combining the roles reduces the opportunity for the ‘buck’ to be passed between the roles. Only one (1) party will be accountable.

15. For a CC or CDC, is there merit in separating the assessment of conformity with planning requirements, to be handled by the consent authority, from the assessment of building requirements?

Both development consents and the development standards for complying developments should be clear and unambiguous, readily and consistently interpreted by all. Neither should require a further planning assessment, which would only add an additional layer of red-tape, time delays and costs.

Accordingly, the focus should be to review the current controls to make them simpler.

If it is decided to require the consent authority to undertake a ‘planning assessment’ of construction and complying development certificates, councils must be given sufficient time to fulfil that task and must be able to fully recover the cost of providing that service. A lack of response by a council cannot be considered a tacit approval of the ‘planning assessment’ process.

16. Would the current problems with the building construction stage regulatory approach be addressed by:

- *ensuring the builder receives the certified plans and CC/ CDC*
- *documenting and requiring adherence to good certifier practice*
- *potential additional critical site inspections based on risk assessment*
- *replacing interim and final OCs with an OC and development completion certificate*
- *requiring projects with missed mandatory inspections, and unauthorised work, to obtain an OC*
- *effective financial sanctions for unauthorised work?*

The following responses are provided to each of the above parts of the question;

- It is critical that the builder not only receives the certified plans and associated documents, but a copy must be available on the construction site at all times. If on request the documents are not available the builder or principal contractor should be subject to receiving an infringement notice.
- A ‘Code of Practice’ or ‘Professional Standards Scheme’ should be developed for all classes of certifiers, with practitioners being held accountable for breaches of such a document.
- Critical stage inspections based on risk assessment provides too much discretion to the individual certifier and uncertainty for the community. It permits the under cutting of price to those who are willing to gamble on their potential risk.

The nominated critical stage inspections need to be expanded to include all major stages of construction. While certifiers should be permitted to rely on certificates from

suitably qualified professionals such as structural engineers and hydraulic engineers, they should still be required to undertake inspections at all stages of the development to ensure works are proceeding in accordance with the development consent.

With the current regime of critical stage inspections, departures from the development consent are not detected until it is too late and then the matter is handed to councils to try and remedy the problem.

Setting a minimum standard in line with industry best practice would lead to improved performance across the industry.

- The distinction between an “*occupation certificate*” and a “*completion certificate*” is logical, however there is a concern that buildings will be allowed to be occupied even if they do not comply with the development consent or complying development certificate. Significant departures should prevent a building from being occupied, because once a non-conforming building is occupied there is little incentive to remedy any departure.

Furthermore, certifying only health, safety and suitability for use does not address a multitude of planning issues that should be satisfied before any building is occupied, including parking, privacy controls and acoustic controls.

Providing a timeframe of up to 12 months to complete a building once it has been occupied is considered excessive. Introducing a ‘completion bond’ may provide greater incentive to have buildings completed in accordance with the development consent.

The final certificate required for a completed building, whatever it is called, must endorse that the development;

- a) has a development consent and construction certificate or a complying development certificate;
 - b) has been completed in accordance with the development consent and construction certificate or the complying development certificate;
 - c) has satisfied all development consent or complying development certificate conditions; and
 - d) complies with the Building Code of Australia (BCA) for the applicable classification.
- It is noted that Chapter 8 of the white paper also proposed improvements around the OC. These should also be aired for consultation. It is important that industry and others see the complete package of reform proposals.
 - An improved regime for dealing with missed mandatory inspections and unauthorised work is critical and should include the need to demonstrate compliance with the BCA.

Building certificates are not the best mechanism for regularising unauthorised work for the following reasons;

- a) There is no statutory requirement for a building certificate to be lodged for unauthorised work;
- b) A building certificate only lasts for seven (7) years after which time Council can serve Notices and Orders to have the unauthorised work removed;
- c) A building certificate does not follow the same statutory assessment process as a development application and is not required to be notified to neighbouring properties; and
- d) Conditions are unable to be imposed on a building certificate.

Consideration should be given to mandating the need to lodge retrospective development applications and construction certificates so all applications are assessed and determined in the same manner. Where such approvals are required, there should be an additional financial burden to ensure they are the mechanism of last resort, rather than the preferred option.

- Effective financial sanctions are a necessity to deter unauthorised work and to reduce the burden on the Local and Land & Environment Courts. The value of penalty infringement notices should be increased with multiple increasing infringements being possible for ongoing breaches.

Also, penalty infringement notices should be available when there is a failure to lodge a retrospective application.

17. Do you support the option of requiring the creation and maintenance of a Building Manual for all new Class 1b-9 buildings?

The creation and maintenance of a Building Manual for all new Class 1b-9 buildings is supported. It should be lodged at the time the occupation certificate is requested and preferably be in electronic form.

18. Do you support the reform of the fire protection system certification, including the proposed revised role for NSW Fire and Rescue?

Expanding the accreditation scheme to suitably qualified and experienced persons for specialist design, installation, commissioning and maintenance of fire safety services is supported. The current practice of building owners selecting whom they like is dangerous to the occupants and fire brigade personnel. They should be only able to select from accredited persons.

However, expanding the role of NSW Fire and Rescue may be problematic as NSW Fire and Rescue may have insufficient resources to provide the services identified in the discussion paper.

19. Would the options for change set out in this paper be helpful in improving the supply of qualified certifiers and making it a more attractive profession?

Expanding the scope of accreditation to all key players in the building construction industry is critical, as the current certifiers are not responsible for all elements of a development. More responsibility and statutory accountable needs to be placed on the builder and other key designers and installers.

The provision of improved support, including clear unambiguous codes of practise or practice guides would be beneficial.

It is considered the suggested changes would help retain more qualified certifiers in the profession. Unless the certainty for certifiers is improved and their risk even when operating professionally and ethically is reduced the number of operators will continue to decline.

Consideration should be given to IPART fixing minimum fees for Certification and Inspection work to ensure undercutting does not get pricing below what the cost of effective delivery should be.

20. *Is there an adequate pathway that allows a certifier to progress from the A4 category (building inspector) right through to A1 (building surveyor – grade 1), if desired?*

The progression of certifiers needs to be a combination of recognised training and competency assessment. The current pathways are too rigid.

The rigid numbers of buildings of different Classes a Certifier must have worked on is often impossible to maintain as some very large projects dealt with prohibit a spread across a number of other projects during that period. The criteria must be that they have been working at that level. If they have qualified to that level they must be capable of transferring their skills from one Class to another as the need arises.

As with all professionals, tertiary qualifications do not provide all the necessary skills to undertake this crucial community safety role.

21. *Would the proposed changes to the accreditation process address the main deficiencies in the current system?*

No comment provided

22. *Do you support the use of an evidence-based framework and guide for the review of the accreditation scheme?*

No comment provided

23. *Are the following sufficient to create a suitable level of accountability for certifiers in respect to their regulatory role:*

- *improved transparency of the performance of a certifier with a Practice Guide*
- *proactive investigations and audits*
- *increasing the awareness of the role of certifiers?*

The community lacks confidence in the current certification system and this, in part, is due to the inconsistent approach among certifiers. Certifiers need to have their roles and responsibilities clearly defined and documented and checks need to be implemented to ensure certifiers fulfil these roles and responsibilities.

Legally binding Practice Guides will help certifiers understand what is the minimum standard expected of them and will assist to educate the generally public.

24. *Does the establishment of certifier panels by councils have merit?*

AIBS does not believe this is the role of Councils to provide panels.

25. *Do you support an expanded program of proactive investigations and audits by the BPB and if so, how should they be conducted?*

With any well implemented system it is important to regularly check and adjust the system as required, rather than rely solely on complaints to identify necessary improvements. Therefore more proactive investigations and audits by the BPB would help to reduce the number of complaints and would assist to educate certifiers.

Proactive action should not be limited to desktop audits, but should include practical in-field investigations.

An alternative may be to encourage certifiers to implement their own independent audit program that verifies compliance with the BPB's adopted guidelines.

26. *Would introducing a demerits point system and issuing more penalty infringement notices provide a more timely mechanism for disciplining certifiers who have not performed to a required professional standard?*

Penalties should be the last resort and any proactive action should be aimed at educating and improving the performance of certifiers.

27. *Would you prefer an online system for the lodgement of complaints?*

The current complaints lodgement system appears to be designed to discourage complaints. Any system that allows all complaints to be captured would be a significant improvement. Therefore an online system is supported.

28. *Would the establishment of an education and training program to inquiries, complaints and audits together with a building services advisory hot line address the needs of certifiers for training and information support?*

A key role of the statutory body responsible for accrediting and investigating certifiers is to provide support and guidance to certifiers. Approved education and training programs and the provision of an advisory hotline would be beneficial.

29. *Is it possible to achieve full competitive neutrality without either councils ceasing to offer certification services, or private certifiers being abolished?*

Full competitive neutrality is an unnecessary goal that will never be achieved and there is little merit in expending further effort to that end.

30. *Would certifiers' insurance issues be addressed by expanding certification and accreditation to cover critical building elements and design, and by implementing an industry scheme to cover the gap in insurance cover from certifiers leaving the industry or where the certifier changes for a particular project? If not, what additional problems remain?*

The Australian Institute of Building Surveyors (AIBS) have suggested the following changes to better protect the community and address the identified certifier insurance issues;

- a) Only licensed builders and trade people should be able to undertake residential building works.
- b) Clearly define the statutory role of the certifier within legislation. The certifier is NOT a Clerk of Works, Project Manager or Supervisor for the works undertaken.
- c) Legislation should clarify that the builder is the person who is responsible for the quality of work and ensuring that building work is completed in accordance with the approved plans and specifications.
- d) There should be licensing of the various building trades and professionals who can then be held accountable by their respective licensing body.
- e) An insurance levy scheme could be applied to address the 'last man standing' type claims. This insurance could also cover the trades as they are unable to gain professional indemnity insurance and frequently set up businesses that can easily cease trading.
- f) An independent Ombudsman could be considered to assess disputes between certifiers and their insurers.
- g) Ensure builders' warranty insurance schemes are in place for all residential developments including multi-level apartment buildings that currently leave consumers exposed without remedy for defective building work.

31. *Do you agree that there is not a 'last person standing' problem arising from the different liability cover between builders and certifiers? If it does arise, please explain the problem created.*

AIBS believes there is a last man standing problem that leaves the Certifier as the only one in many cases with applicable insurance with many projects developed and constructed by "shelf companies". Current litigations are demonstrating this but AIBS is not privy to the details.

32. *Do you favour a simplification of the requirement for swimming pool fencing certification requirements, moving from three standards to one?*

The system implemented in Queensland where all swimming pool owners were provided a sufficient period of time (believed to be 5 years) within which to upgrade their swimming pool fencing to the latest applicable Australian Standard is considered a sensible approach.

The current approach of owners continuing to have to upgrade to new standards is almost unique to pools and should be a one off event as of now. Once this current upgrading is completed all future certification should be that the pool enclosure complies with either the Standard as currently being upgraded to or for newer pools the Standard that existed when the pool was constructed unless there is a trigger such as re configuring the pool or barrier that would result in having to comply with the current standards.

33. *Would setting charges for both councils and the State to recover processing costs for development applications and CDCs be the most equitable and efficient approach?*

Councils are being called on to undertake more and more functions and it is crucial that they are provided appropriate funding to ensure they have sufficient resources to meet their communities' expectations.

With regard to funding the regulatory role of councils in the building certification system it is considered a levy on every development application and complying development certificate application is the most equitable and efficient approach, being easy for the community to understand and easy to implement.