

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

Organisation: Building Designers Association of Australia
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**BUILDING DESIGNERS
ASSOCIATION OF AUSTRALIA**

BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA'S RESPONSE

to the NSW Government's
*Building Stronger
Foundations*
Discussion Paper

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SUBMISSION BY

Building Designers Association of Australia

Head Office:

INFORMATION

Building Designers Association of Australia is a not-for-profit, peak industry Association representing Australian Designers involved in, or associated with the built environment nationally.

Our key role is to educate and raise awareness of designers within the industry, to build and sustain relations with the key stakeholders, and to provide services to our members.

International Award winning Designer Chris Knierim is the National President and leads the National Committee of committed skilled based volunteers whose focus is on the governance, strategic direction, education, membership growth, marketing and communications.

The BDAA has received feedback from members in states and territories across Australia, putting forward their reports regarding what is and isn't working in their states when it comes to registration and licensing. The BDAA is drawing upon this information to formulate solid recommendations to help resolve the current crisis in the NSW construction industry.

Executive Summary

As a national organisation, the Building Designers Association of Australia, as a leadership body for the building industry as a whole is passionate about our mission of building a better Australia. As such, we are determined to represent and advocate for industry professionals, communicating with a high and respected level of expertise regarding the current state of the construction industry.

This is a particular challenge in modern times, as the modern perception of the construction industry stands at its lowest level in many years, not surprising, given that so many flaws are being concealed behind cladding and plasterboard.

Given these circumstances, the BDAA is determined to ensure that building design professionals are held accountable for their work, including those in the design industry. By implementing mandatory registration for practitioners of all trades and services, all of these professionals will be held accountable for their actions thus ridding the industry of unscrupulous and unregulated operators. This, in turn, would provide the government and prospective homeowners with a level of security currently missing from the industry.

This all starts with the design process; and, to put it simply, what councils are now deeming as acceptable is quite simply unacceptable and, as we've seen recently, dangerous. As a leading industry association, we have developed our own (voluntary) accreditation process for our professional members, with an expectation that our members will adhere to this code. We also insist that they possess PI insurance and are required to carry out CPD, although this process is not mandatory in the region of NSW. Our accreditation program has been put into practice nationally, with great success. Non-members and architects from around Australia have recognised the importance of accreditation, and have become duly accredited with the BDAA. This process has been two decades in the making, and has culminated in the NSW Department of Planning and Infrastructure's recognition and acceptance of this model of BDAA Accreditation.

The BDAA has created a detailed registration program that is self-generating in nature, meaning minimal cost for the NSW Government.

The BDAA firmly believes that industry renewal will commence with the implementation of Recommendation 1 of the Shergold Weir Report, which states "that each jurisdiction requires the registration of the following categories of building practitioners in the design, construction and maintenance of buildings".

Those are the following:

• Builder • Site or Project Manager • Building Surveyor • Building Inspector • Architect • Engineer • Designer/ Draftsperson • Plumber • Fire Safety Practitioner

The concept of a stat dec proved popular at the recent industry round table discussion conducted in Sydney. The BDAA supports this concept, enhancing the dec with the inclusion of a portal. The BDAA would like to propose, in fact, the institution of an organised Building Portal to solidify, streamline and safeguard the building design process in NSW.

In our ongoing effort to build a better, safer, more sustainable Australia, BDAA would like to recommend the creation of a single comprehensive, government run and professionally maintained portal for the building industry; one that literally will lend more structure to the business of building structures along with a more organised and fundamentally solid approach to planning and constructing a safe and sustainable built environment in NSW.

Accountability is the key mission and purpose of this proposed portal, the maintenance of which would revolve around a basic, streamlined three-step process:

Step 1: Accredited Building Designers, as well as other industry practitioners that would include Licensed tradespeople, Registered Architects and Registered Engineers, all will upload their plans and documentation regarding any given project to the portal.

Step 2: Builders can access the portal to review the latest plan specifications and updates. If a change is proposed or made to the plans, they as a registered interested party in that project will be notified. And everyone involved will be able to access a log of dates and times, so that everyone will be kept apprised as to the particulars of project progress, including who has seen and done what, and when.

Step 3: Also granted access will be a private certifier (PCA) or independent assessor, who will review the information submitted. The portal's streamlined flow of process will ensure that all submitted documentation is up-to-date, and that all work is being completed in adherence with all building regulations, and with all minimum requirements that must be met before the project is certified.

This portal, if implemented, could prove highly beneficial for the NSW building industry. These benefits include:

- All of those who register during step one will have to enter their professional registration number, ensuring that only licensed or registered practitioners are involved in each project.
- The portal will create an online archive of each building project, from initial planning through completion and with a complete, step by step record of the project.
- The portal will guarantee total accountability for each building project, as each project participant and their specific role and activities will be highly visible and outlined in full eliminating the possibility of doubt and guaranteeing a better build.

For the past 15 years, the BDAA has conducted its own, highly successful accreditation scheme. The BDAA accreditation scheme could be cost effectively implemented for use by other industry associations; a subject that the BDAA is pleased to discuss further with association and government representatives.

The BDAA also recommends that both owner builders and developers should be held accountable for their professional activities and contributions to each project, and that both must bear a statutory duty of care to the end consumer. Both should hold relevant insurances, and offer a form of personal guarantee to protect the consumer at the time of purchase and, moving forward, for a minimum set period of time once the deed of sale is processed. The BDAA also believes that developers and owner builders need to have some form of responsibility toward and a statutory duty care to the end consumer. Both the developer and owner builder could be registered to the portal, to ensure their successful execution of their duty of care.

Our aim is for NSW to lead the way in the successful reform of this crucial industry, all the while supporting the development of a national model that will deliver consistent regulation and reinforcement across all jurisdictions.

All elements of Australia's property market bear a substantial impact on the life of a citizen. So at the very least, we should expect security, quality and excellence in our bricks and mortar and, more broadly, in "The Great Australian Dream" of home ownership.

The following, is our Submission.



BUILDING DESIGNERS ASSOCIATION'S RESPONSE

to the NSW Government's Building
Stronger Foundations Discussion Paper

30 Questions and Answers

Introducing ‘-building designers-’ into NSW legislation

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

- All construction plans should be signed off by the designer along with a statutory declaration of compliance with the BCA and relevant Australian Standards.
- This provision would also include the designer/author of ‘Deemed to Satisfy’ and ‘Performance Solutions’ reports.
- This would require that each building designer involved in the planning phase of construction would be responsible for their portion of work.
- The only exception to this provision would be for ‘exempt development’ structures (i.e. – garden sheds, gazebos etc).

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

Yes, Plans should be statutorily declared at the CC/CDC document stage as DA documents do not require detailed compliance with the BCA or Standards, rather compliance with local Council planning instruments.

The statutory declaration should be completed online through the digital portal.

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

- Changes to plans that incur a Section 4.55 application would be the trigger for plans to be submitted to the Regulator. These normally would contain spatial design changes to the development and/or structural changes to the building.
- Section 4.55 applications usually are an amended DA but these changes could affect the CC documentation as a consequence and would require the designer to ‘sign off’ and submit to the PCA and Regulator.
- Tracking of these changes would be an important Contract Administration process.

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

Yes, variations that require an amended CC/CDC approval would be the trigger and /or additional construction documentation prepared by building designer ie: structural engineer, hydraulic consultant, etc.

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

Yes, the following circumstances could be an obstacle:

- When a designer has been removed/replaced from the project, or
- When a designer is not involved in the ongoing contract administration
- If the builder / developer does not inform the building designer of any variations
- When an owner builder/developer solely manages the project, there is insufficient oversight and/or a conflict of interest.

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

The Principal Certifying Authority (PCA) should manage the submission of variations as they are responsible for the approval of the variation.

Variations to be placed in digital portal by author of variations.

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

A standard template of notification should be employed with each variation sent to the PCA and also being registered by the Regulator through a digital portal.

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

The plans should be provided in electronic submission via the digital portal.

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

The following documentation should be provided;

- Final CDC / CC documentation
- Relevant documentation of any specified proprietary brand product with compliance certificates.
- The building specification and general notes
- Building Contract
- All consultants reports, structural and services documentation
- Builders, contractors reports and certifications

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

- Performance based solutions should only be completed by a registered practitioner who specialises in the relevant occupation regarding the performance solution.
- The registered practitioner should be adept at describing, detailing and documenting the performance solution in a way that the trades who have to implement the performance-based solution can understand.

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

Yes, performance solution reports are a key component of this process.

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

Yes, all documentation should be signed off by ALL relevant parties.

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

Before an Occupation Certificate is issued the PCA would need to ensure that they have all relevant DA and CC plans that carry current approvals - including all variations that require approval.

- All 'As Built' drawings to be submitted that carry all the relevant drawing issues noted. Each sub-consultant drawing set would be included in this requirement.
- Each building sub-contractor would issue a certificate that states that their component of the works was built to the approved plans and specifications.
- As built documentation signed off by the registered builder and counter signed by the designer & developer / owner through digital portal.
- Documentation could be verified by PCA referral to digital portal that all documentation within portal is consistent with approved DA / CC or CDC consent

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

The registered builder's role would be the gathering of the various sub-contractor certifications

And / or

- The registered builder would ensure that all subcontractors have lodged required certifications to verify compliance with conditions and standards for a project into the digital portal
- The Builder would validate that they have verified the sub-contractors required certifications for compliance with conditions and standards into the digital portal

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

- All licensed builders with the appropriate qualifications for the building works undertaken should be responsible for the works
- Builders of projects where licences are not required but who take on the role of directing and overseeing building works
- Owner Builders who take on the responsibility of directing and overseeing of building works

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, where a builder has been removed from the job and a replacement builder has been engaged.

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

Yes.

- Non-architect building designers have a NSW Government recognised Accreditation Scheme administered by Building Designers Accreditation & Training (BDA&T) Committee as part of Building Designers Association Australia (BDAA) that could be adopted to register building designers in NSW.
- Building designers in three other states (Tasmania, Victoria and Queensland) are currently registered/licensed under their State registration systems

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

Building Designers of all Types and Classes of buildings that require DA, CC or CDC approval.

- Engineers allied to the building industry
- Service engineers/designers
- Building Designers and Draftpersons who prepared plans for CC or CDC projects in their own names
- Licensed builders who prepare their own plans

The BDAA believes that the term 'Building Designer' should have the same protection as the term 'Architect' to prevent non-registered persons referring to themselves as building designers.

The registration of architects should remain the domain of the NSW Architects Registration Board.

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

- Building designers responsible for the preparation of building plans in NSW to be registered under the BDAA Accreditation Scheme
- Engineers and architects and other disciplines to be registered by their individual industry registration schemes.

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

- Professional Indemnity Insurance (PI)
- For Consumer protection

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

- PI insurance should be commensurate to the value of works
- The length of cover is generally dictated by the insurer

22. What skills should be mandatory for ‘building designers’?

- For building designers in NSW, the BDAA Accreditation Scheme includes a range of skills and minimum competency standards that indicates the minimum requirements to undertake building designs of a range of building types and sizes.
- Mandatory skills and competencies standards can be obtained through TAFE colleges and Universities throughout Australia.

The BDAA Accreditation Scheme has the following minimum levels:

Low Rise – Diploma of Building Design (AQF 5)

This is a qualification for practitioners seeking a licence to work as a building designer, engaging directly with the public and builders to design, draft and document plans, specifications and documentation for buildings of all classifications excluding those of Type A construction as defined in the National Construction Code (NCC).

Medium Rise – Advanced Diploma of Building Design (AQF 6)

This is a qualification for practitioners and building designers who are seeking to expand into more complex building design projects. Building designers at this level work without supervision to design, draft and document plans, specifications and documentation for building design projects on all classes of buildings including those of Type A construction as defined by the National Construction Code (NCC).

Open – Graduate Diploma of Building Design (AQF 8)

This is a qualification for experienced building designers seeking to expand into a senior building designer role. Senior building designers are typically responsible for managing a building design practice and undertake building design projects covered by the National Construction Code (NCC) including the design of both Type A and Type B constructions. They may specialise in the full range of residential, commercial, public or industrial projects, including new buildings and renovations.

Engineers, architects and other practitioners to be registered by their individual industry registration schemes.

23. Should specific qualification(s) be required?

- Yes, specific qualifications and competency skills, as included in the BDAA Accreditation Scheme, are applicable for the registration of building designers in NSW.
- A Recognition of Prior Learning (RPL) pathway is acceptable for designers who do not hold the appropriate academic qualification.
- The BDAA Accreditation Program is designed to facilitate the assessment of the skills of a designer that have been gained over many years in the profession.

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

The main requisites for registration are:

- Assessment of competence for the type of projects that are to be undertaken
- Appropriate Professional Indemnity Insurance for the level of registration
- An undertaking to participate in Continuing Professional Development.

The BDAA Accreditation program includes these requirements

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

The Regulator should have the powers to:

- Audit building designers', competence and make orders for building designers to upskill their competence level.
- Make recommendations for restitution to aggrieved clients
- Impose penalties on building designers for false or misleading conduct
- Impose penalties on building designers for negligence
- Impose disciplinary action on errant building designers
- De-register repeat offending building designers
- Make orders on those purporting to be building designers but who aren't registered

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

All building practitioners, from design through to construction, should owe a duty of care to the ultimate owner/occupier of a building.

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?

Duty of care should ensure that all buildings are constructed to the BCA requirements and relevant Australian Standards and ensure the safety and wellbeing of the occupants.

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

Each individual contractor/design professional would be responsible for their own component of the work.

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

All consumers.

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

- When any construction work is being undertaken.
- Home Owner Warranty (HOW) should apply to all residential projects regardless of size and cost including multi storey residential developments.

The consumer who is paying for any built outcome requires the certainty that the built outcome is consistent with the original approval and has been built to comply with consent conditions, NCC requirements and Australian Standards.

Home warranty insurance should apply to all residential projects and / or all projects with a residential component.

The 'Great Australian Dream' of owning your own home is often shattered by the mistaken belief that all residential developments are covered by HOW, when in fact, this is not the case.

Unit owners, in particular, are vulnerable to 'catastrophic loss' when major structural defects are found in a multi storey building.

Quite often, the unit owner is oblivious to the problem when first making their purchase and are not prepared for the costly 'repair levy' that has to be subsequently imposed by the Body Corporate.

Portal

In our ongoing effort to build a better, safer, more sustainable Australia, BDAA would like to recommend the creation of a single comprehensive, government run and professionally maintained portal for the building industry; one that literally will lend more structure to the business of building structures along with a more organised and fundamentally solid approach to planning and constructing a safe and sustainable built environment in NSW.

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BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA RESPONSE

to the *Building Stronger Foundations*
Discussion Paper

Regulator Governance Proposal

Introduction

The Building Designers Association (BDAA) agrees with the ‘-Building Stronger Foundations-’ Discussion Paper’s aim to have a fully functional and practical building certification system via the improvement of consumer protection, building work compliance and accountability for all practitioners involved in the system.

The BDAA already has an accreditation scheme in place that has been running successfully for over 15 years. This accreditation scheme could be expanded to capture the registration of all practitioners and consultants. Making it a requirement that all practitioners involved in supervision or certification work, become accredited.

This registration of practitioners will ensure that all certified practitioners are appropriately qualified, insured and ultimately accountable for their own work. In addition, these practitioners would be required to meet continuing professional development (CPD) requirements and carry appropriate Professional Indemnity (PI) insurance. This would provide for proportionate liability of all parties involved in the building process.

Accreditation of practitioners would provide a number of benefits for the New South Wales Government, the building industry and most importantly, consumers. All practitioners would be controlled by, and accountable to, the proposed Building Commissioner (Regulator). Accreditation for all practitioners would raise the quality of buildings and increase transparency within the industry.

The most significant outcome however, would be that the accredited person would become totally responsible for his or her design, and provide compliance certification for his or her part of the works constructed. Currently sole responsibility falls on the Principal Certifying Authority (PCA) and without compulsory accreditation of practitioners, design and installation work is unchecked. The PCA only carries out mandatory inspections and is not involved in the design, which limits the PCA’s control on a project for specialist services such as fire services, mechanical, ventilation, lift or hydraulic installations.

The BDAA supports the introduction of a registration scheme for a range of practitioners that requires their work to be in compliance with the BCA and /or Australian Standards.

Key Professionals (designers)

- Fire services engineers/designers, hydraulic, smoke exhaust, sprinklers, fire hose reels, etc.
- Access consultants
- Mechanical engineers, including designers of smoke hazard systems
- Building Designers
- BCA Consultants

Key Contractors (installers)

- Fire service contractors
- Mechanical contractors
- Hydraulic contractors
- Water proofers
- Glaziers
- Tilers
- Plumbing contractors that install wet fire services
- Builders and Electricians
- Gyprockers & wall system installers [cladding systems]

Proposed Accreditation Governance Committee

To assist the Regulator in managing the accreditation of a disparate range of design and building professionals, the BDAA proffers the outline of a governance committee to overview the role, structure and obligations of nominated professional bodies that will have the responsibility for undertaking specified roles in relation to the accreditation of persons required to undertake building design work.

Background

The introduction of a Building Commissioner would be for, amongst other things, ‘the promotion and maintenance of standards of building and design certification in New South Wales,’

In order to achieve this function, the Regulator must ensure that relevant PCA’s have the necessary tools, and the ability, to ensure buildings are appropriately constructed to satisfy legislative obligations and provide consumers with an acceptable end product.

One of the areas identified for the introduction of a Regulator is to ensure suitably qualified people certify compliance of certain design and construction work against relevant building regulations to achieve a more consistent certification system, improve building compliance and safety, and improve accountability.

This would require broadening the professions required to issue Part 4A certificates and complying development certificates. Non-architect building designers have been identified as one such group who can play an integral role in the provision of component certification and assessment.

To achieve this, it will be necessary to develop an accreditation scheme and accreditation statement for this purpose and develop a mechanism by which the BDAA and other professional bodies can assist the Regulator in the implementation of this strategy.

Proposal

This report contains an outline of a proposal for the purposes of implementing an accreditation assessment process that includes input by professional bodies and the Regulator. The key elements outlined in this report will form the basis for the development of a governance committee which oversees the accreditation process and in turn provide a necessary component for the expansion of the building certification system in NSW.

It will be the responsibility of each nominated professional body or industry association to undertake the assessment of the key elements associated with the accreditation of a person within their industry group. It is not proposed that a person can seek accreditation from any disparate group, rather, a person can only be assessed by their industry body if they satisfy the relevant qualifications and experience criteria specified for that profession or association. For example, building designers wishing to be accredited as a building designer may only be assessed by the BDAA.

Registration of individuals will still be administered by the Regulator and applicants will need to demonstrate competencies in specified areas administered by the Regulator (i.e. knowledge of relevant legislation, ethics, etc.).

It is proposed that merely because a professional body or association recommends registration, the Regulator will make the final decision as to whether registration or re-registration should be granted and if necessary, specify any conditions or additional training/qualifications/experience that may need to be imposed or required.

To ensure that transparency, competency and the appropriate rigour is being applied by each accreditation assessment body, it is proposed that the Regulator establish an industry based Governance Committee to oversee this process.

Proposed Committee Functions

It is proposed that the committee will have the following functions:

- Reviewing some, but not all, assessments undertaken by professional bodies or associations
- Undertaking auditing functions associated with the assessment procedures that apply to accreditation and re-accreditations
- Establishing the minimum criteria required for accreditation in relation to:
 - Qualifications
 - Experience
 - CPD, and
 - Professional Indemnity insurance
- Assessing applications that do not satisfy minimum academic standards but require assessment of known competencies
- Undertaking peer review of applications where requested by the relevant professional body or association, the Regulator or the accreditation committee
- Assisting the complaints investigation committee where complaints relate to an exclusive function undertaken by persons accredited by a specific professional body or association
- Assisting in the development of CPD programs specific to a professional body or association
- The ability to establish sub-committees, management panels or working groups to undertake any of the functions above or undertake on-going research into the development and refinement of the accreditation system

Refer to figure 1 for a diagrammatic template.

A reporting mechanism will need to be implemented which requires professional bodies or associations undertaking assessment to provide details to the Governance Committee of assessments undertaken, recommendations and associated follow up work carried out to ensure all relevant matters have been addressed prior to an accreditation assessment being completed. Such reports will need to be submitted at a frequency as determined by the Regulator. In turn, the Governance Committee will be required to provide a report to the Regulator as to any findings or recommendations arising from the evaluation of these reports. This will form part of the auditing process and allow for the on-going refinement and upgrading of the accreditation scheme and process where required.

The Governance Committee will work with the professional bodies or associations to identify any issues, implement changes and provide a conduit between the Regulator and these organisations which may incorporate the ability to be used as a reference group for legislative issues associated with accreditation functions, CPD, work practices that impact on accreditation, standards and ethics.

The cost of establishing and running the Governance Committee would be negligible as each association representative on the Governance Committee would be funded by his/her own Association. The Regulator may provide an 'attendance honorarium' but all other cost of the representatives would be borne their associations.

Figure 1

Accreditation Governance Committee

- Review assessments
- Undertake auditing functions
- Establish minimum accreditation criteria
- Assessment of specified applications
- Undertaking peer review of applications
- Assisting the complaints investigation committee
- Assisting in the development of CPD programs
- Undertake on-going research into the development and refinement of the accreditation system
- Provide a conduit between the Regulator and professional bodies or associations

Criteria Applicable to Professional Body or Association's Accreditation Committee Members

Essential Criteria

- Must be representative of a profession or practitioner identified as an accredited certifier

Core Criteria

- Must be located in NSW
- Access to a recognised RPL assessment procedures relevant to their profession or practice
- Demonstrated structure and capacity to undertake assessments
- Must have key personnel who have experience, competencies and qualifications to undertake assessment

Responsibility of Professional Body or Association

- Ability to undertake assessments of applications for accreditation within their industry group
- Submission of reports to the Regulator's Accreditation Governance Committee (AGC)
- Ability to maintain confidentiality in all matters associated with the AGC
- Ability to implement directions given by the Regulator or the AGC

Functions of the Accreditation Governance Committee

- Undertake assessments and make recommendations for applications for accreditation
- Undertake assessments and make recommendations for renewal of accreditation
- Preparation of reports to the AGC in relation to their accreditation activities
- Preliminary audit or complaint investigation assessments
- Assist in the development of CPD programs, regulatory changes etc. as or when required

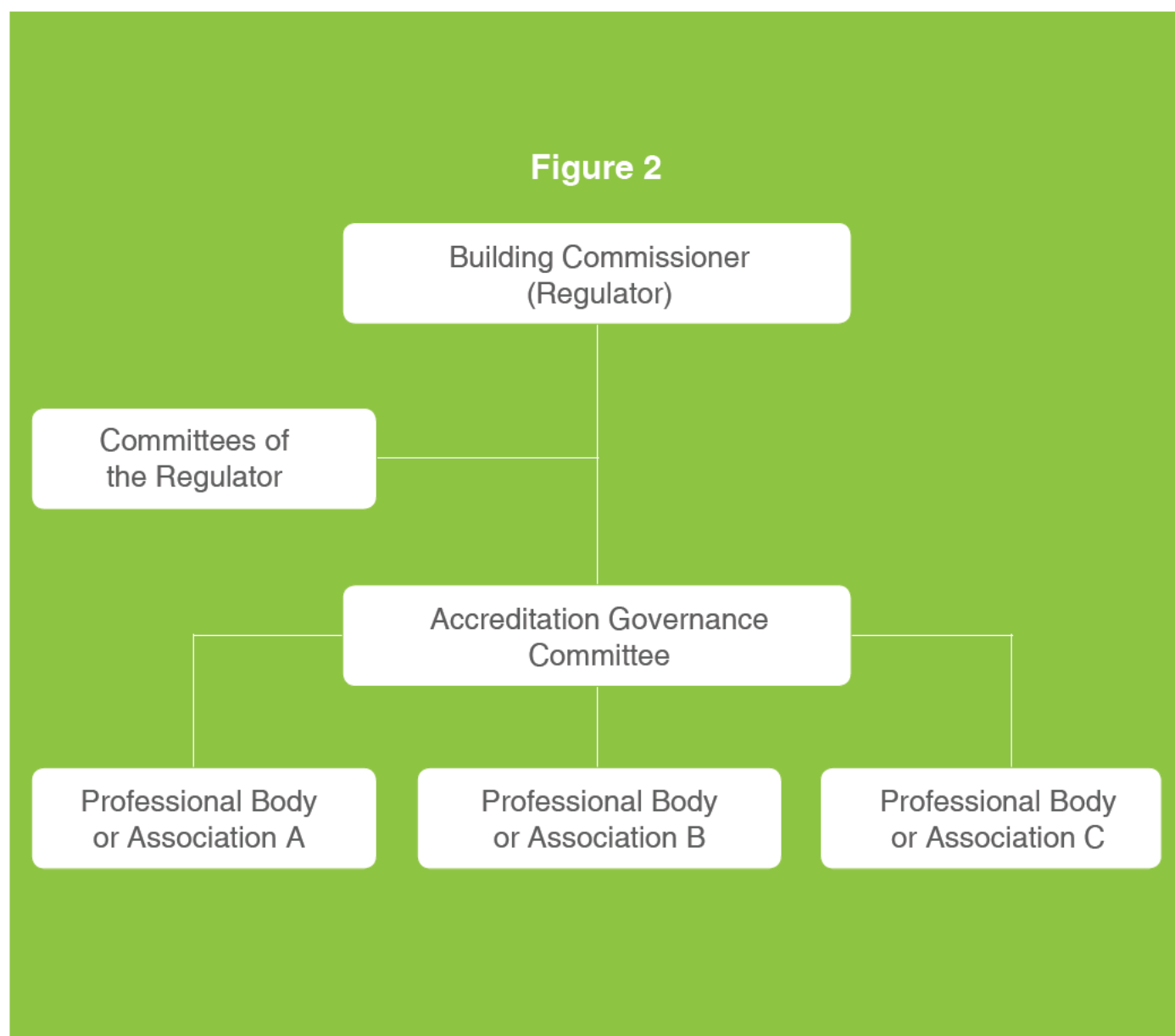
Types of Professional Body or Association based Accreditation Committees

- Access and Mobility Consultants
- Builders
- Building Surveyors
- Building Designers
- Energy efficiency Consultants
- Engineers
- Fire Safety Designers & Installers
- Sound Insulation Engineers
- BCA Consultants
- Trade Practitioners
- Hydraulic Engineers
- Electrical Engineers
- Mechanical Engineers
- Water Proofers

The key elements in relation to the establishment of this committee are as follows:

- Establishment of a committee under the EP&A Act
- Providing the Regulator with an opportunity to streamline the accreditation process and the ability to manage the number of persons who will be required to be accredited
- Establishing a benchmark for the accreditation of persons
- Providing a mechanism by which the accreditation of persons can be managed by reducing the Regulator's input but not its control
- Members of the committee should be representative of the various professional bodies or industry associations representing the key groups identified as needing accreditation
- Membership of the committee will be by way of ministerial appointment
- Representatives of the Regulator would also be appointed to the committee
- Consideration being given to the inclusion of a person having relevant experience in consumer protection

An example of the committee structure and its relationship with the Regulator is shown in Figure 2.



Summary

This proposal recommends the establishment of a Governance Committee to undertake an oversight role of the professional bodies or associations that are proposed to undertake accreditation assessments of individuals within their industry. The Governance Committee will also provide an established and managed conduit between these organisations and the Regulator. The Governance Committee can also assist in research and investigation work associated with accreditation issues and the development and refinement of the accreditation system.

The Governance Committee will enable the Regulator to reduce its input and management of specified accreditation assessments having regard to the proposed number of additional professions or trades that may be included in the accreditation process. It will also mean that the introduction of additional categories of accreditation can be implemented on a needs basis or at a time when a nominated professional body or organisation has completed the development and gained approval for the implementation of their appropriate accreditation category and statements. This provides the Regulator with the flexibility to properly implement its changes and manage the introduction of additional categories of accreditation.

The Regulator will, at all times, have the responsibility for the issuing, and overall management, of registration.



BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA RESPONSE

to the Building Stronger Foundations
Discussion Paper

Building Designers Registration Proposal

The Consistency of Building Designer Competency Standards and Accreditation

The planning system in NSW, governed by the Planning and Assessment Act 1979 and subsequent legislation, provides the framework for development within NSW. The implementation of Local Environmental Plans and Development Control Plans within Local Councils, together with the newly implemented NSW Exempt Complying Development Housing Code, the NSW Low Rise Medium Density Complying Development Code and the NSW Exempt Complying Development Commercial / Industrial Code, creates the paths by which development within NSW can be carried out.

Critical to all development is a requirement for clarity in both legislation and certification as to what is permissible under relevant legislation for the development sought. With the exception of exempt development, documentation is required to allow assessment of a proposed development by the relevant approval authority or Principal Certifying Authority (PCA). If the submitted documentation does not provide the clarity necessary for assessment and approval by the relevant authority or principal certifying authority, it hinders the approval process.

This situation has existed for many years, and even though there have been steps introduced to improve the design of buildings – SEPP 65 and the Residential Flat Design Code – there has been no coordinated approach to improve the quality of documentation, or to address the competency of those involved in building design. The Building Designers Association of Australia (BDAA) has instituted mandatory Continuing Professional Development CPD in an attempt to close this gap, but without Government recognition and coordination, it has remained only a partial solution.

To address this deficiency, it became apparent to the BDAA that a basis was needed on which the skills of non-architect building designers could be assessed and understood. The Accreditation process allows any building designer's competency to be assessed against a rational framework of rigorous criteria that test their design ability and competence in preparation of documentation for Low rise, Medium Rise and Open (Unrestricted) developments.

The accreditation process is administered by 'Building Designers Accreditation and Training', the training arm of the BDAA. The competencies and processes of the different levels of accreditation is listed below under Section 4. The Structure of Accreditation.

Although the accreditation process was developed by the Association for BDAA members, it has been opened up to all building designers - particularly after recognition of the process by the NSW Department of Community Services (DoCS) for the design of Child Care Centres in 2004 and the Department of State Planning & Infrastructure for designs under the Low Rise Medium Density Complying Development Code in 2018.

In 2004 when the "Children's Service's Regulation" was being drafted, "accredited building designers" was included. This is now documented in Section 16 (1) (c) (v) which states – "that where documents i.e. plans, are required for a license for a centre based children's service, they must be drawn by an architect or a building designer who is accredited by the Building Designers Association in relation to the design of the class of buildings concerned". With this in place the Accreditation process regularly welcomed applicants who were not members of BDAA.

In 2018, when the Low Rise Medium Density Complying Development Code was introduced it included a requirement that designs for these types of development have to be prepared by either a registered architect or a building designer accredited by the Building Designers Association of Australia.'

Again, when this requirement was introduced, the BDAA was inundated with requests for accreditation from building designers – both BDAA members and non-members. Each applicant is treated equally.

The BDAA would like to see the introduction of mandatory assessed competency standards, and the licensing/registration of all non-architect building designers in NSW to bring us into line with the other eastern States. At present, anyone can call themselves a building designer – regardless of any qualification or competency assessment – and prepare documentation that is often inadequate for the purpose and can lead to costly variations and extras and, potentially, costly litigation.

This BDAA Accreditation Program has won acceptance within the insurance industry, with many insurers now insisting upon accreditation as a pre-requisite to the provision of PI insurance to building designers. In light of this, it concerns this BDAA that there is no requirement for any ‘non-architect building designer’ to have any PI insurance, and by inference, that they provide no duty of care to their clients.

Under the BDAA Accreditation Program, building designers are required to carry PI insurance and undertake CPD as condition of membership.

The BDAA has a Code of Conduct that its members are required to adopt and abide by. Observance of this Code of Conduct is also a requisite for the BDAA Accreditation Scheme.

The BDAA Professional Development Program has been running for more than 15 years and in that time has evolved into an efficient, and highly respected method of assessment. Many accredited building designers have used the program to undergo Recognition of Prior Learning (RPL) with TAFE NSW for the issuance of a formal qualification. The BDAA has engaged in Memorandums of Understanding (MoU’s) with several State TAFE entities – (NSW and Tasmania) and Central Queensland University. This has allowed many building designers to undertake Recognition of Prior Learning (RPL) assessments using BDAA Accreditation Scheme as a base and the gaining of formal qualifications.

In earlier discussions with the Building Professionals Board (BPB) representatives, they commented that if they were to introduce a licensing process, they would favour working with industry instead of having to develop a system of their own. The BDAA accreditation program criteria is also consistent with the Queensland and Tasmanian tiered licensing systems.

The BDAA Accreditation Program is established, has government recognition through DoCS and State Planning and Infrastructure and is open to the whole of industry. We argue that this accreditation scheme should be used as the basis for registration/licensing of non-architect building designers in NSW and run by the BDAA as an agent for the proposed Building Commissioner (Regulator).

The BDAA’s administration of the Accreditation Program on behalf of the Regulator would be a cost-effective method of implementing the scheme, and the BDAA would welcome to its Board a representative of the Regulator to provide oversight and governance.

The Benefits of Accreditation

Consumer Benefits Resulting from Accreditation/Registration of Building Designers in NSW

1

The Consumer Will Have Surety:

- Accreditation will mean attested and demonstrated competencies;
- Accreditation will provide a certified level of competence;
- Accreditation will clearly define a Building Designer's level of competence;
- An Accreditation Level will clearly delineate the scope of building design and types within each level.

2

The Consumer Will Have Knowledge:

- Accreditation will certify a demonstrable level of skill sets;
- Accreditation Levels will permit an easier choice of Building Designer appropriate to the project;
- Accreditation will require a Building Designer to prepare quality documentation, and maintain both CPD and Professional Indemnity Insurance;
- Compulsory CPD will ensure a currency of industry, legislative and regulatory skills capacity is maintained by a Building Designer.

3

The Consumer Will Have Assurance:

- Accreditation Levels will ensure a Building Designer works only in the areas of proven and demonstrable expertise;
- Accreditation Levels will ensure a higher quality of design;
- Accreditation Levels will provide buildings of higher standards of Environmentally Sustainable Design (ESD);
- Regular auditing of a Building Designer's work will reinforce the provision of higher quality documentation;
- Compulsory Professional Indemnity Insurance will provide the comfort of protection in the unforeseen event of a problem.

4

The Consumer Will Benefit from Better Value for Money:

- Accreditation will ensure that the higher quality buildings produced will represent better value for the money spent;
- Accreditation will ensure that the higher quality buildings produced will be a better long-term consumer investment;
- Accreditation will provide that higher standards of ESD performance will result in much reduced on-going running costs of the building.

5

The Consumer Will from Benefit Financially:

- Accreditation Levels will ensure that the resultant designs are more cost effective for consumers;
- Clear and concise documentation will reduce time spent in the Approvals Assessment process (i.e. save time = save money);
- Quality documentation will permit a builder to price more accurately and competitively;
- Clearly detailed documentation will remove the need for a builder to “pad” the price to cover “the unknown”;
- Competently prepared documentation will reduce the possibility of expensive variations to the contract price;
- Quality documentation will assist the project to proceed both more quickly and without undue interruption (i.e. save time = save money);
- Clearly detailed documentation will assist in preventing mistakes during construction;
- A competently designed building will produce far less costly waste material during construction.

6

The Consumer Will Benefit Environmentally:

- Buildings possessing higher standards of ESD design will reduce energy consumption, thereby lowering Greenhouse gas emissions;
- Site appropriate building designs will result in less impact and disturbance on the immediate environment (e.g. preserving topography, flora, local views, etc.);
- Quality building designs will result in reduced levels building waste - minimising both the strain on land-fill sites during construction and positively contributing to a reduction in levels of embodied energy;
- Site appropriate building designs will place minimal continuing impact on existing local infrastructure (e.g. storm-water systems);
- Quality building designs will provide a positive platform for consumer comfort, on-going general well-being and happiness.

7

The Consumer Will Benefit from Designer Accountability:

- Registration will ensure that a Building Designer is legally responsible for the works produced by the Designer;
- Registration will establish a simple and accessible avenue for dispute resolution;
- Registration will ensure that a Consumer will have access to adequate compensation via a compulsory Professional Indemnity Insurance coverage requirement for Designers;
- Registration will provide the ability to prevent any incompetent Building Designer from continuing to practice.

Industry Benefits of Accreditation of Building Designers In NSW

An area that has concerned the BDAA is the issue of how to deal with consumer complaints against building designers for incompetent or unethical practices.

Architects are governed by the Architects Act that is administered by the NSW Board of Architects who can take punitive action against miscreant architects. No such system exists for building designers and, even though the BDAA can expel a member for unethical practice, that person is still allowed to practice as a building designer. This situation must be addressed and the introduction of mandatory registration, coupled with an effective complaints process would certainly solve this problem.

Complaints against building designers by consumers would be first registered with the Industry Governance Committee. The committee would consider the complaint and make recommendations to the Regulator as to what action should be taken. This could include financial restitution to the consumer, a fine for the building designer or even deregistration, depending on the severity and circumstances of the complaint.

Registration could carry a 'points system' where specific criteria and points penalties relating to each transgression could apply. The aforementioned Governance Committee would monitor the offence and scale the point penalty to suit the offence. Once a designer loses a certain amount of points they could be suspended from practice for a period of time and be required to partake of particular training or counselling to mitigate the problem areas. For major offences they could be deregistered for a set period of time or for life. Financial penalties could also be imposed by the Regulator in certain circumstances.

Building companies that employ 'in-house' designers should be required to carry appropriate PI insurance. They would be required to have a 'nominated designer' – similar to the 'nominated architect' provisions of the Architects Act – who takes responsibility for the design functions of the company.

The Structure of Accreditation

BDAA strongly supports a 3-tiered system of accreditation. This would encompass the following levels of license with an appropriate level of qualification and/or competence. This mirrors both the Queensland and Tasmanian licensing systems and adoption of this would enhance the cross border mutual recognition of licensing standards espoused by the Building Ministers Forum of COAG.

Low Rise Licence

Scope of Work

1. Prepare plans and specifications for BCA Class 1 and Class 10 buildings.
2. Prepare plans and specifications for BCA Class 2 - 9 buildings with GFA of not more than 2000 sq. m. but not including Type A and Type B construction.
3. (a) Contract administration in relation to building work designed by the Building Designer.

Technical Qualifications

Any 1 of the following:

- a. successful completion of the Diploma of Building Design or a Diploma in Architectural Technology;
- b. successful completion of a course or modules of a course that is considered equivalent to a course mentioned in paragraph a);
- c. a recognition certificate as a building designer qualified to carry out the scope of work for the class;
- d. Or another prerequisite deemed acceptable to the Regulator

Experience Requirements

Three years minimum experience, which includes experience gained during an apprenticeship or other formal training, in –

- a. The scope of work for the class; or
 - b. Other work, if the Regulator considers experience in the other work is at least equivalent to experience in the scope of work for the class.
- c. Compulsory Professional Development

Financial Requirements

Professional Indemnity Insurance to a value appropriate to the class

Medium Rise Licence

Scope of Work

1. Prepare plans and specifications for BCA Class 1 and Class 10 buildings.
2. Prepare plans and specifications to a maximum of 3 storeys above a storey used for the parking of vehicles, but not including BCA Type A construction other than for BCA Class 2, 3 or 9 buildings.
3. Contract administration in relation to building work designed by the Building Designer.

Technical Qualifications

Any 1 of the following:

- a. successful completion of any of the following courses -
 - i. Advanced Diploma in Building Design
 - ii. Advanced Diploma in Architectural Technology
- b. successful completion of a course or modules of a course the Regulator considers is at least equivalent to a course mentioned in paragraph a);
- c. a recognition certificate as a building designer qualifies to carry out the scope of work for the class;
- d. a qualification or statement of attainment of required competency issued by an approved authority for the class of license.

Experience Requirements

Five years minimum experience, which includes experience gained during an apprenticeship or other formal training, in –

- a. The scope of work for the class; or
- b. Other work, if the Board considers experience in the other work is at least equivalent to experience in the scope of work for the class.
- c. Compulsory Professional Development

Financial Requirements

Professional Indemnity Insurance to a value appropriate to the class

Open Licence

Scope of Work

1. Prepare plans and specifications for buildings in all BCA Classes and Construction Types of any height or floor area.
2. Contract administration in relation to building work designed by the Building Designer.

Technical Qualifications

Any 1 of the following:

successful completion of any of the following courses -

- a. Graduate Diploma of Building design
- b. Bachelor of Science – Architectural
- c. Bachelor of Built Building Design
- d. successful completion of a course or modules of a course the Regulator considers is at least equivalent to a course mentioned in paragraph a);
- e. a recognition certificate as a building designer qualifies to carry out the scope of work for the class;
- f. a qualification or statement of attainment of required competency issued by an approved authority for the class of license.

Experience Requirements

Seven years minimum experience, which includes experience gained during an apprenticeship or other formal training, in –

- a. The scope of work for the class; or
- b. Other work, if the Board considers experience in the other work is at least equivalent to experience in the scope of work for the class.
- c. Compulsory Professional Development

Financial Requirements

Professional Indemnity Insurance to a value appropriate to the class

The Introduction of Regulation for Building Designers

Registration for non-architect building designers has already been introduced into Queensland, Tasmania and Victoria and the following is a précis of how each of these States handled this.

Each of the States provided a 'grandfather' provision that allowed any person who was practicing as a builder designer prior to the start date of licensing provisions to be licensed, regardless of any qualification and/or competency standard. The rationale behind this was that because someone was doing this work without restriction prior to licensing, it was unfair to deny them that ability just because licensing was now mandatory. They had to comply with Professional Indemnity (PI) insurance requirements. In Queensland, which has a 3-tiered licensing system, the 'grandfather' provision allowed automatic registration for everyone at the lowest level (generally single residential and small commercial). It was possible for someone to apply for the higher levels at that time, however this required them to be assessed in accordance with the requirements for the level they were aspiring to.

Following this 'phase-in period', for any new applicant in Queensland, they choose the level they wish to attain and are assessed accordingly.

In Tasmania, the introduction followed the Queensland model fairly closely although the Tasmanian licensing categories are slightly different.

In Victoria, which only has one level of licence – similar to the highest, or 'open' licence in Queensland – they had a similar 'grandfather' entry for anyone working in the industry regardless of qualification, experience or level of competence. Currently, any new applicant for a licence must reach the one (high level) category. The difficulty the BDAA has with this is that although new applicants are assessed at the higher level, there are still many current building designers who, although lacking the skills and competence to do this high-level work, have a licence to do so because of the 'grandfather' entry provisions.

It is for this reason that BDAA supports the introduction of a 3-tiered system similar to that in Queensland and Tasmania and accommodated by our own Accreditation Scheme which we have previously discussed with ongoing assessment and auditing.

Introducing Registration into NSW

When registration is introduced in NSW, all existing building designers, who have been practicing for at least three (3) years, would be granted an 'interim' registration at the Low Rise level. This registration would be for a period of 12 months only. During this time the building designer would be required to undergo assessment under the BDAA Accreditation Program before the registration could be renewed for a further 12 months. From that point there would be an annual re-registration.

If a building designer, who has received their interim registration, wanted to upgrade their registration to a higher level – Medium Rise or Open - they would be able to apply for an upgrade at any time during the 12-month 'interim' period and undergo assessment under the BDAA Accreditation Program for the level being applied for.

This '12-month interim-' introduction method allows all current builders designers to continue working without penalty but also requires them to provide evidence of their competence by undergoing an assessment under the BDAA Accreditation Program before they can be re-registered.

Should a building designer 'fail' the assessment then they would be given the opportunity to 'upskill', by either undertaking some gap training with a recognised RTO – such as TAFE and Universities – or provide additional evidence of competence for assessment.

The BDAA Accreditation Program has a built-in audit provision that requires each accredited building designer to undergo random mandatory audits every three (3) years to ensure the building designer is maintaining an acceptable standard of professionalism.

On application for the annual re-accreditation, each building designer is required to provide evidence of their current PI insurance and CPD activity compliance.

National Cross Border Recognition

For every State and Territory that uses the national Building Design Training Package as its accreditation model for competency standards would mean that all building designer training throughout Australia would be consistent and that cross border recognition of skills and competence becomes a reality, opening the possibility that being licensed in one State would be sufficient to work in any State where licensing is in place, and opening up the possibility of a common licensing system that encompasses all States and Territories.

The BDAA has consulted with building designers in other States and territories in preparing this paper. The general consensus of those consulted is for a nationally recognised registration scheme that allows cross border recognition of building designer qualifications.

The Cost of Accreditation

What Will It Cost to Introduce Accreditation/Registration of Building Designers In NSW?

The introduction of the scheme should be cost effective, pay for itself and not be a drain on State finances. Initially, the scheme would be funded by application and licensing fees and over the long term would be financed from re-licensing fees. This is consistent with the schemes in place in other States.

Timing for the Introduction of Regulation for Building Designers.

When introduced during 2020 with a 12-month 'grace' period, this would allow the accreditation system to be operational during this period.

In addition, this would allow time to introduce a 'complaints process' – similar to that for building surveyors – and for it to be operational by the time of registration.

Conclusion

The BDAA Accreditation Scheme has been successfully running for a period of 15 years. The Scheme assesses building designers from all States and Territories. The Scheme has recognition by the NSW Department of Planning and Infrastructure under the Low-Rise Medium Density Complying Development Code legislation.

The BDAA currently has in place qualified assessors for the scheme, along with the administrative resources to cater for the increase in applications that the introduction of registration will require.

The BDAA stands ready to assist the Government in putting this process of accreditation in place and members of our Management Committee are available to further discuss the issues we have raised in this paper and demonstrate the practicability of the BDAA Accreditation Scheme for the registration of building designers.



Building Designers Association of Australia

