



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

Submission Number: 41

(attachment)

Date Authorised for Publication: 26 September 2018

Date: 17 February 2016

To:

Building Regulatory Reforms
C/- Environment and Planning Directorate
GPO Box 158
CANBERRA, ACT 2601
By email to: constructionpolicy@act.gov.au

Re: Australian Institute of Building's submission to the ACT Government's discussion paper on the 'Improving the ACT Building Regulatory System'.

Dear Madam / Sir

The Australian Institute of Building (AIB) welcomes the opportunity to respond to the ACT Government's discussion paper on '**Improving the ACT Building Regulatory System**' which is enclosed for your perusal.

The AIB welcomes the opportunity to engage with the ACT Government and discuss any aspects of this submission in more detail for further development of policy, legislation and regulation which may arise. The AIB is able to offer ongoing support and advice to the ACT Government in respect to this matter and believe we are well placed and qualified to do so.

Thank you for the consideration of this submission.

Yours Faithfully



Chair, Submission sub-committee,
Improving the ACT Building Regulatory System
AIB. ACT Chapter

CC: *Mr Mick Gentleman, MLA*





Table of Contents

Executive Summary:	3
AIB'S HISTORY AND ROLE AS A PROFESSIONAL BODY	5
The role of AIB	5
AIB objectives	5
Continuing Professional Development	6
Up-skilling and Transition to New Professions	6
Response to Discussion Paper:	7
1. Design and documentation	7
2. Stage inspections and on-site supervision	8
3. Builders and Surveyors Licencing	8
4. Contracts.....	11
5. Project funding, payment claims and retentions	11
6. Alternative dispute resolution – residential work.....	12



Executive Summary:

The Australian Institute of Building (AIB) welcomes the opportunity to respond to the ACT Government's discussion paper on '**Improving the ACT Building Regulatory System**' (discussion paper). As an industry body representing the individual building professional, this topic is of particular importance to our members.

The AIB generally supports the ACT Governments initiative in preparing this paper and many of the recommendations throughout. The AIB remains keen to work with the ACT Government on the implementation of actions which arise as a result of this paper. Many of the initiatives in this discussion paper support AIB's position of continued education and professionalism as drivers for improving quality on building sites locally and nationally.

While we note this paper is based largely on the residential context, we also believe many of the issues apply equally to commercial construction given the increasingly blurred line between residential and commercial context as Canberra moves to multi-storey and mixed-use medium and high density living.

The AIB refers the ACT Government to our previous submission dated 28 February 2014 in response to the ACT Governments discussion paper on 'Regulation of design and inspection practitioners in the construction industry' where many reforms which are relevant to this discussion were discussed. We note that we have not received any feedback on our submission and request that its content is considered by the ACT Government.

We believe that there are improvements to the current building regulatory systems in the ACT that can be made and we have referenced this in this submission paper. Some of these include getting the builders licencing requirements right and mandating Continued Professional Development (CPD). As raised in the discussion paper, the AIB has a professional registration system, the National Building Professionals Register (NBPR) which incorporates CPD which we would be very keen to discuss further with ACT Government as being part of the solution.

The NBPR is a nationally registered accreditation register reserved for building practitioners with appropriate levels of academic qualifications and experience and a commitment to a program of Continued Professional Development.

This submission has been prepared by a sub-committee of the AIB, ACT Chapter who have provided a response to all key elements in the discussion paper as articulated below.



AIB acknowledges the contribution of the following ACT chapter members to this submission:

- Andrew Kemp FAIB, AIB submission subcommittee chairperson, Manteena Security (Aust) Pty Ltd
- Mr Roger Poels FAIB, General Manager, Shaw Building Group
- Gesa Ruge FAIB, Assistant Professor, Building & Construction Management, University of Canberra
- Peter Henden FAIB, Project Manager, CERCOL Construction Services
- Mr Robert Whittaker, FAIB, Immediate Past National President, Australian Institute of Building.



AIB'S HISTORY AND ROLE AS A PROFESSIONAL BODY

The role of AIB

Founded in 1951, the Australian Institute of Building (AIB) is the peak body for building and construction professionals, acknowledged for its ability to bring individuals together who share a common interest in improving the standing of the building profession and their career within Australia and overseas. The AIB is incorporated by a Royal Charter and is the pre-eminent professional body for building professionals in Australia and the Asia-Pacific region.

The AIB is recognised as the accrediting body for building and construction degrees at educational institutions. It accredits building & construction management and related degrees in 11 universities. It has a long and proud history of supporting and servicing the building profession. For more than sixty years, the Institute has worked with the building and construction industry, government, universities and allied stakeholders to promote the building profession, support the development of university courses in building and construction whilst promoting the use of innovative building techniques and a best-practice regulatory environment.

AIB objectives

The objectives of the AIB are as follows:

- To promote excellence in the construction of buildings and just and honourable practices in the conduct of business.
- To advance the study of Building and all kindred matters, arts and sciences.
- To encourage the friendly exchange between members of knowledge in practical, technical and ethical subjects.
- To uphold the dignity of the profession of Building and status of the Institute.

For further information on the Australian Institute of Building, please go to www.aib.org.au



Continuing Professional Development

AIB supports mandatory continuing professional development (CPD) for all construction-related professionals and believes that this is an issue that local governments as well as the Australian Building & Construction Board (ABCB), the Federal Government and the Council of Australian Governments (COAG) should advance proactively.

CPD is crucial to raise and maintain standards, and has a whole host of benefits for the industry and the community, including safety for workers and buildings, financial dispute resolution, and better environmental outcomes, to name a few.

Up-skilling and Transition to New Professions

New professions are rapidly being created in the construction industry. Examples are Building Information Modelling (BIM) Managers, Energy Efficiency Practitioners, Facade design Practitioners Safety in Design Practitioners etc. It is important that the industry is prepared for the new professions being created, and that these professions and professionals are becoming part of and enhancing the expected standards of practice to ensure safety, highest quality and long term sustainability of building and construction.



Response to Discussion Paper:

We have responded to the ACT Governments discussion paper by order of topics raised. We have utilised the same numbering for ease of reference. We have not addressed every element of the discussion paper, only those for which we have comment or are relevant to our remit as an industry professional body.

1. Design and documentation

Currently, documentation approved by private certifiers is required to be at a level that can be built by a 'competent builder'¹. We believe this is open to significant subjectivity on the private certifier's behalf and the industry sees significant variation in interpretation of this requirement. Improved documentation control and recorded review by certifiers is important to reduce and avoid potential defects.

The AIB supports minimum standards of documentation and would recommend that ACT Government could lead by mandating minimum documentation standards for public funded projects.

We also believe that legislative minimum standards could be set to ensure key high risk building elements such as façade detailing and waterproofing are documented adequately as occurs in other national jurisdictions.

In addition, we note that some defect issues are the result of poor quality documentation and we have addressed this issue in our response to the ACT Government's paper on regulation of design practitioners dated December 2013. Some of our key comments from this paper include:

1. The role, educational background and relevant professional building expertise of building inspectors in the ACT is highly variable. There is an urgent need to define and set minimum benchmarks via legislation and regulation via licensing and continuous professional development. Building inspectors should be required to seek membership with a key professional institute such as the AIB to commit to an established code of practice and professional standard.

¹ Improving the ACT Building Regulatory System – November 2015 – Page 9

2. There is a particular lack of clear minimum design documentation and specification standards defined for roles and/or delivery milestones. These responsibilities for certain roles or activities should be embedded via legislation, regulation and ongoing professional development to maintain and improve professional standards in this area.

We would be happy to work with the ACT Government in developing this further.

2. Stage inspections and on-site supervision

We understand the NSW regulatory system requires more hold points during construction than the ACT. We believe that more key inspection points in the construction process are required and should include façade, waterproofing and other key risk areas to bring us in line with other jurisdictions.

Other jurisdictions also have more stringent requirements around trade licencing which we believe should be considered for the ACT. This could extend to minimum standards for supervisor training and certification. This is something AIB could assist with managing via its National Building Professionals Register (NBPR) process. While a whole subject itself and to same degree outside the scope of ‘critical stages’ we believe this is something that needs further consideration.

Generally we support the Government’s initiative of audit and inspections on a risk based approach. The definition of high risk would need to be better defined and close scrutiny would need to be applied to the implementation of such a program. We believe that audits should be occurring on both builders and certifiers to ensure all parties are performing their regulatory roles.

3. Builders and Surveyors Licencing

The AIB believes that the current ACT building licencing framework as it exists is suitable and sufficient. The system of A-D class licences with both corporations and nominees has value. We comment on the two key elements of prequalification for an individual building licence as follows:

1. Qualifications – we generally support these requirements and believe the ACT Government has these settings correct with the following qualification:

- a. The AIB does not support architectural or engineering degrees as an appropriate qualification for any level of building licence. In reviewing architectural and engineering course structures there is little to no connection to building, building surveying or construction management. We have a strongly formed position with a wealth of information on this topic we would be happy to share on request.
 - b. We are concerned a draftsman is able to gain a B or C class licence in the ACT without the relevant practical experience.
2. Experience – we have seen over a number of years a declining focus on relevant industry experience being required before issuing building licences. Of most concern are A-class licences. There are documented cases in recent years of recently qualified practitioners being issued licences without almost any “full time” industry experience.

Over the past 12-24 months the industry has seen a shift in approach from the ACT Government to tighten practical experience requirement. The AIB now believes that this has gone too far and that the definition of practical experience is being incorrectly applied. We have several examples of members who have been denied licences in the ACT despite having run multimillion dollar projects in their own right and have been practicing full time for 10+ years. The current interpretation appear to be that their experience must be onsite, standing next to tradesmen all days and not being based as a project manager in the office. We dispute this interpretation and believe it requires a rethink by the regulators.

The AIB acknowledges that years of experience does not necessarily guarantee ethical or quality building and as such, believe that a system of professional registration and recognition is important. To this end, we put up for consideration AIB’s NBPR as a system to register, control and validate not only an individual’s professional standing, but also their experience and continued professional development which is important to a builders understanding of contemporary building issues. This discussion paper touches on this approach on page 16. As mentioned in the discussion paper, this approach would be similar to the Engineers Australia registration which is held in high regard.

The AIB does not support a ‘use it or lose it’ approach to licencing as many builders in Canberra operate under a company directors nominee licence where they are using their skills if not their licence. We believe the NBPR approach discussed above deals with the issue of relevant and current industry experience without the need for a ‘use it or lose it’ approach.

The AIB supports a minimum 3 year full time (or equivalent) post graduate relevant experience prior to being issued an A class licence. We believe this allows time for a professional to gain the relevant industry experience prior to operating in their own right. It doesn't not restrict their ability to practice as many will operate under a company director's licence while being monitored and mentored in the process.

We acknowledge the problem with sharing licences/ghosting and phoenixing which occurs in the industry, especially the residential sector. We believe this issue is more about enforcement than change of policy and support the ACT Governments identification of the issue and willingness to crack down on the process.

The AIB supports the ACT Government's approach of public notification of penalties. This is similar to the system implemented by ACT Health for food businesses in the ACT. We believe this acts as a deterrent while informing the public who may wish to avoid those builders or nominees with penalties against their names.

Certifiers:

In specific reference to certifiers, we see a number of issues which require addressing as follows:

1. There currently exists a conflict of interest in respect to certifiers. While formally engaged by the building/land owner, in reality it is often the builder who procures the services of the certifier with the owner only proving signoff. The certifier who can make the builders life as easy as possible while also keeping their own cost down will likely win repeat work. This market force needs to be addressed and AIB provide the following options for consideration:
 - a. ACT Government consider taking building certification back into Government. While aspirational, this would produce better consistency, control and would assist is dealing with building quality issues we are seeing in the ACT.
 - b. Noting that there may be no appetite for point (a) above, we offer the following which will help provide some consistency across private certifiers and remove the ability for them to act subjectively in their approach to the role:
 - i. Legislative minimum documentation standards for building plans
 - ii. Mandate trade licensing
 - iii. Undertake more government audits/inspections
 - iv. Mandate more hold points for certifiers in the construction process (i.e. waterproofing)
 - v. Mandate more certifications at completion and handover

2. We also believe that the ACT Government should look at professional qualifications and CPD for certifiers as we believe there remains large issues here which need to be addressed. Again, we are happy to work with the ACT Government in addressing some of these issues.
3. We also believe that a qualified engineer can become building surveyor, however a qualified builder or construction manager cannot. We question both the theory and logic of this application which by natural conclusion dictates that engineers are somewhat more qualified and capable in construction compliance issues than builders.

The discussion paper also raises the issue of builders requiring professional indemnity insurance. The AIB believes that the ACT Government's position on this has merit if an appropriate cost effective market can be established. While professional indemnity insurance is common for commercial construction companies, it would be a cost burden to residential builders with any significant cost passed onto homeowners.

4. Contracts

The AIB agrees with the ACT Government's recommendation for standard contracts or contract provisions to ensure the fair distribution of risk and reward in residential building contracts due to a common in-balance of power in these relationships.

While the MBA and HIA have standard industry contracts, the ACT Government should review these and consider mandating at least minimum or fairness conditions on building works within the ACT.

We would be happy to work with the ACT Government on such an approach and believe we would offer significant value here.

5. Project funding, payment claims and retentions

The AIB does not support either option 1, 2 or 3 proposed by the ACT Government in respect to retentions outlined in the discussion paper.

We believe that while builders hold retentions on subcontractors, the owner or client generally holds similar retention monies on the builder meaning that the builder in real terms is not holding excess funds. If this was to be enacted, then projects funds from clients should

be guaranteed by options such as funds in a separate trust account and administered by a third party. This starts to get very messy.

We see the options proposed by ACT Government as being costly, open to abuse and not providing the desired results. As such we would offer the following as potential solutions to the problem:

1. **SOPA:** Continued education as to the SOPA process for non-residential work would help subcontractors deal with the issue of non-payment. Mandating all invoices fall under SOPA (as per the NSW model) would avoid the issues faced in small community such as the ACT where a subcontractor submitting under SOPA is seen by the builder as questioning their ethics as a business operator.
2. **Legal Mechanisms:** The ACT Government could consider legal mechanisms where in the event of a builder insolvency that all retentions owed by the owner to the builder must be passed onto subcontractors as proof of entitlement is shown.

In respect to SOPA, the AIB would recommend that the ACT Government consider bringing SOPA into line with some of the recent changes made by NSW. This includes having all payment claims (regardless of wording) to fall under SOPA.

In addition, the AIB would like to see that Governments are not excluded from SOPA and we are yet to see a good argument for their current exemption.

6. Alternative dispute resolution – residential work

In respect to alternative dispute resolution, the AIB supports the ACT Governments development of an increased framework in this space. Some of the key recommendations AIB would propose include:

1. Mandating alternative dispute resolution clauses for all building works contracts in the ACT.
2. Reviewing the existing systems for dispute resolution that exist and ensuring they are as efficient as possible and that the general public and industry participants understand the options available to them for dispute resolution.