



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
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Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

Inquiry into Building Quality in the ACT

**Submission Number: 69**

**Date Authorised for Publication: 5 December 2018**



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Obj # 18/17796

The Committee Secretary  
Standing Committee on Economic Development  
and Tourism, Legislative Assembly for the ACT  
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Dear Committee Secretary

As the Minister for Building Quality Improvement and on behalf of the ACT Government, I am pleased to make a submission to the Inquiry into Building Quality in the ACT.

Should the Standing Committee on Economic Development and Tourism require, I would be happy to make officials available to brief members or answer any questions they may have.

Yours sincerely

A handwritten signature in black ink, appearing to read "Gordon Ramsay".

Gordon Ramsay MLA  
28 NOV 2018

ENCL: ACT Government Submission to the Standing Committee on Economic Development and Tourism Inquiry into building quality in the ACT

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Submission to the  
Standing Committee on  
Economic Development  
and Tourism

Inquiry into building  
quality in the ACT

September 2018

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# INTRODUCTION

The ACT Government is pleased to make a submission to the Standing Committee on Economic Development and Tourism (the Committee) inquiry into the quality of new buildings in the ACT.

The Government welcomes the opportunity to assist the Committee's inquiry by providing information on existing statutory processes, Government policies and initiatives. To date, the Government has carried out a series of legislative and administrative reforms as a result of a full review (the Review) of ACT building and construction licensing Acts and the associated regulatory and administrative systems. The Review, which was completed in 2015, found there have been extensive changes in construction practices, market conditions, technology, design, the built form, policy and administrative settings and community expectation since the ACT's building legislation was first developed. It found reforms are needed for the regulatory system to achieve better and consistent outcomes for the public and to remain current and relevant for industry, landowners and building occupants.

Reforms have been progressively introduced in response to the findings of the Review. Over 2013 and 2014, legislative reforms were introduced in three Acts to amend construction legislation. The Legislative Assembly passed the Construction and Energy Efficiency Legislation Amendment Acts [2013](#), [2014 \(No 1\)](#) and [2014 \(No 2\)](#). Reforms in those Acts include:

- giving the Construction Occupations Registrar (Registrar) new powers to: refuse to grant or renew a licence if it is necessary or desirable to protect the public; to request a skills assessment from a licensee or applicant to find out if they have the skills and knowledge to carry out work competently; and to improve the Registrar's ability to investigate and act on complaints and breaches of construction legislation,
- major revisions to, and increased penalties for, four major offences in the *Building Act 2004* and *Construction Occupations (Licensing) Act 2004* for not complying with the building code, requirements for carrying out building work and failing to comply with a rectification order,
- introducing legislation for a system of directed training for licensed construction practitioners to address identified skills and knowledge problems or emerging issues, and
- creating a public register of information about construction licensees to allow potential clients to more easily locate detailed information on builders and other licensees – including what a builder is licensed to build, past regulatory actions they have been subject to, and any conditions currently restricting how the builder's licence can be used.

Other work included releasing a new guide to building and buying in the ACT and the pilot of an examination for class C building licence applicants.

In 2015, the Minister for Planning and Land Management consulted on further reform options for some of the most common issues about building quality and compliance raised during the Review, as well as concerns about payment arrangements between contractors.

Following consultation, the Government released the *Improving the ACT Building Regulatory System* reform program, which includes reforms throughout the design and construction process targeted at:

- creating more effective protections for residential building owners and improving dispute resolution processes for residential building work
- responding to the challenges and issues relating to multi-unit residential buildings
- improving documentation for building projects
- enhancing on-site supervision and verification of work at critical stages
- strengthening the builders' and building surveyors' licensing systems
- improving administrative and compliance actions to better prevent the occurrence and severity of defects
- reducing the impact of insolvencies, bankruptcies and financial management issues and improving security of payments.

Further details of the review, consultation documents and reform program can be found at [http://www.planning.act.gov.au/topics/current\\_projects/act\\_building\\_regulatory\\_system\\_review](http://www.planning.act.gov.au/topics/current_projects/act_building_regulatory_system_review).

The first work under the reform program is to make clear the roles, expectations, rights and obligations for different parties. The amendments in the *Building and Construction Legislation Amendment Act 2016* also included new powers to enable further reforms.

The Government's November 2015 consultation paper focused on specific issues and did not cover all of the issues considered in the Review. Therefore, the reform program includes further consultation on issues not canvassed in the consultation paper including the residential building insurance scheme, regulation of people designing buildings, broader contractual issues and the categories and scopes of work under the construction licensing system.

While the term 'building quality' is often used in relation to compliance issues, as the Committee's discussion paper notes, there is a difference between compliance with standards or building compliance, and the quality of the design and eventual construction. Although compliance with minimum building standards can be considered as an integral part of quality, it is not the only component. A compliant building may not be of a quality the owner or purchaser has contracted for. One way to consider this would be that building compliance is a comparison of the building with a minimum benchmark, whereas building quality is the degree of excellence measured against other buildings of the same kind.

The Government's reform program includes reforms to improve building compliance and to support the construction of buildings that meet the level of quality represented by builders or sellers, or agreed between parties to a contract.

This submission is structured to respond to the Committee's terms of reference.

# 1. The certification regime for the building and construction industry

Building certification is an important part of the building regulatory system. Building certification under the Building Act is the:

- assessment of building approval applications,
- assessment of commencement notice applications, and
- inspection and documentation of building work at prescribed stages, including final inspection.

Certificates of occupancy and use given by the Construction Occupations Registrar are also a form of certification; however, the certificates relate to the fitness of the building to occupy rather than certifying compliance with all aspects of the Building Act or other Territory laws.

Compliance and enforcement, government inspection and audit functions in the building regulatory system do not include certifying building work and are not part of building certification as such.

## Review by certifiers of the initial building plans

Two issues often arise in relation to the initial building plans: the level and quality of documentation required as part of the approval; and the scrutiny of the documentation by the building certifier.

On the first issue, the review found that although the Building Act is designed to require detailed plans and specifications, the documentation for similar projects varies widely. The certifier has discretion within the bounds of the Act to determine what is adequate for a building based on its complexity and use. Auditing has shown a difference in the application of standards among certifiers and a mismatch in the expectations between certifiers, designers and regulatory officers about the required level of documentation for particular types of building or building elements.

While it is not possible to prescribe every requirement for every building, a fair and effective approval system must be clear on what level and type of information is required as a minimum; and this must be understood by applicants, certifiers, designers and regulators. To address this, a new enforceable guideline for building approval applicants is currently in development (Reform 1) to provide the baseline for building approvals for apartment and other complex buildings. The guideline will support building certifiers in their discussions with applicants, by establishing expectations for building approval documentation. It also establishes a starting point for auditing approvals and indicates what the builder and owner can expect to be provided. It will be integrated with mandatory codes of practice (Reform 4), and new training required to hold a building surveyors licence (Reforms 16 and 33).

In relation to the scrutiny of documentation, there are diverse practices amongst certifiers. In some cases the level of documentation is based on assumptions by the certifier about what can be determined by the builder during the project as opposed to specified in the approval. However, an approval is not issued in relation to a particular builder.

It is not expected that a certifier can or will peer review all aspects of a building design, but will confirm within reason that the building as a whole meets all relevant standards. In general, it is understood that more scrutiny is given to elements that may pose a risk to life safety and give rise to expensive insurance claims, such as structural soundness and fire safety. However, different certifiers may consider risks differently. One certifier may engage an engineer to review a complex performance solution, while another may not.

The Building Act does not give guidance to certifiers about what should be confirmed at a minimum. The code of practice and training mentioned above will include this guidance.

## **Compliance by builders with the building's approved construction plans**

The approved plans express what an owner has proposed to build and wants as the eventual product. Even minor departures from the approved plans can significantly affect the end result. A licensed builder must build in accordance with approved plans. They cannot remove this obligation contractually.

Failure to comply with the approved plans can be a result of many different circumstances. In some cases, the approval documentation is unclear, which relates to reforms described above. In others, the client or designer asks for changes but has not sought approval, the builder decides to build in a way other than what is approved, or there is a lack of supervision leading to departures from building plans.

Although some builders mitigate on-site problems, the Review has identified there would be benefit in improving supervision, quality assurance of work and regulatory oversight throughout the construction process. Reforms targeting each of these circumstances are outlined in the *Improving the ACT Building Regulatory System* reform program, including a new code of practice for builders outlining critical hold points in the construction and increased oversight from the regulator.

## **The adequacy of regulatory mechanisms to ensure compliance with approved construction plans, and the role of inspections and audits in the regulatory process**

The current regulatory mechanisms that apply during construction include requiring licensed builders to supervise building work and the statutory stage inspections. While these mechanisms have been effective in managing some problems, the Government has acknowledged that overall, these mechanisms have not been operating to adequately prevent serious non-compliance with building laws and approvals. Reforms in progress under the Government's building regulatory reform program are intended to improve the operation and understanding of the stage inspection process, increase competency and supervision of building practitioners and provide additional regulatory oversight with more auditing and inspection during construction.

It is important to recognise that building certifiers and inspectors are not responsible for the day-to-day supervision or quality assurance of building work, and there is a limit to what can reasonably be detected at mandatory and random point-in-time inspections. Increased inspections are not intended to shift the builder's responsibilities to supervise and quality assure work to statutory inspectors.

The description of the operation of the demerit point system in the Committee's discussion paper may need clarification. The disciplinary system includes the power to condition a licence and restrict the work a licensee can do. Accumulating demerit points may result in an action against the licence but adding check points for building inspections is not a feature of the demerit point scheme.

## **The appropriateness of current practices for appointing certifiers, including addressing the potential for conflicts of interest**

Under the Building Act, the owner of the land where building work will be carried out must appoint the certifier.

In recognition that people undertaking regulatory functions can be subject to a conflict of interest, the Building Act creates the role of the building certifier as an independent person who must not have an interest in the building work. This includes that they, or a person related to them, must not have:

- a legal or equitable interest in the land where the building work is, or is to be, carried out,
- prepared, or intends to prepare, drawings intended to be used in relation to the construction of the building work,
- carried out, or intends to carry out, any of the building work, or
- a financial interest in the construction or completion of the building work.

A person is related if they have a personal, professional, commercial or financial relationship with the licensee, is an employer or employee of the licensee, or a company of which the licensee is a director or in which the practitioner holds a share.

Although there is a perception that the building certifier 'works for' the person who appointed them or paid them, and acts in their interests, the role of the building certifier is not to act in the interests of any particular party but to independently carry out their functions. The payment of the fee does not create an obligation on the person who assesses the application to make a decision favourable to the applicant. Although in principle this is no different to an applicant paying a fee to the planning and land authority for the assessment of a development approval application, the Government recognises that unlike people undertaking regulatory roles in the public sector, private sector building certifiers work directly in the building industry, are subject to different conditions and compete with each other for appointments.

The Government understands that while certain systems are being considered in other jurisdictions, there is no current statewide system where private certifiers are appointed randomly by government regulators. Certifiers employed or contracted by government agencies may be directly assigned to work but are generally not appointed randomly, with the most appropriate available certifier chosen for the particular job.

The Committee may wish to consider that if the public sector offers certification services in competition with the private sector, they must be provided in accordance with the principle of competitive neutrality – which means that state-owned and private businesses compete on a level playing field. This would require separation of certification functions from other regulatory functions so they could be priced accordingly, and to avoid the conflict of public sector certifiers regulating people they are competing with.

The Government is considering the most appropriate model for certification in the long term. While this is being considered, the reforms will support building certifiers to carry out their functions by improving building approval applications, providing clearer expectations for certification and stage inspections and improving the skills and competencies of people designing and constructing buildings in the Territory.

## 2. The merits of standard contracts or statutory requirements in contracts covering build quality

There are a range of existing statutory requirements and protections for buildings, building materials and products, and consumer goods that may be included in a building or under a building contract.

### Building code and requirements for building work

The building code prescribes minimum standards for new building work. Section 42 of the Building Act further outlines requirements for carrying out building work, which include that:

- the materials used in the building work must comply with the standards under the building code for the materials in buildings of the kind being built or altered,
- the way the materials are used in the building work must comply with their acceptable use under the building code for buildings of the kind being built or altered,
- the building work must be carried out in a proper and skilful way,
- building work must be carried out in accordance with approved plans, and
- for building work required to be done only by a licensed builder, the building work must be carried out by or under the supervision of the builder mentioned in the building commencement notice and the builder's licence must authorise the type of building work being undertaken.

Further material and work standards and construction tolerances to help determine whether building work is undertaken properly and skilfully are outlined in the *Building (General) Regulation 2008*. These include whether a product or system is being used in accordance with instruction and guidelines; whether the way a product or system is being used would cause more instability, or affect the durability or soundness of the product or system or building work than if the product or system were used appropriately; and whether work meets or exceeds standards in the approved plans or standard tolerances.

The Building Act also gives a statutory warranty for residential buildings. Previously, the warranty applied only to residential buildings of three storeys or below. From 19 August 2017 the warranty applies to all residential buildings regardless of height (Reform 19).

In relation to materials and workmanship, the builder warrants:

- that the work has been or will be carried out in accordance with the Building Act,
- that the work has been or will be carried out in a proper and skilful way and in accordance with the approved plans,
- that good and proper materials for the work have been or will be used in carrying out the work, and
- if the owner of the land where the work is being or is to be carried out is not the builder, and the owner expressly makes known to the builder, or an employee or agent of the builder, the particular purpose for which the work is required, or the result that the owner desires to be achieved by the work, so as to show that the owner is relying on the builder's skill and judgment—that the work and any material used in carrying out the work is or will be reasonably fit for the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.

The warranty is two years for non-structural elements of the building work and six years for structural elements. Structural elements include components forming part of the external walls or roof of the building, including weatherproofing. The Building Act does not limit the liability a builder would have to anyone apart from that Act.

## Product certification schemes

The ACT's electricity, gas and plumbing laws include mandatory product certification schemes for certain electrical and gas appliances and equipment and plumbing products.

Other products may be subject to certification and labelling requirements such as those under the Water Efficiency Labelling and Standards (WELS) Scheme and the Minimum Energy Performance Standards (MEPS) for electrical and gas using products.

Under the Building Ministers' Forum, jurisdictions are also investigating potential certification and labelling schemes for high risk building products, including façade cladding products.

## Consumer guarantees

Since 1 January 2011, the following consumer guarantees on products and services apply under the Australian Consumer Law.

Products must be of acceptable quality, that is:

- safe, lasting, with no faults
- look acceptable
- do all the things someone would normally expect them to do.

Products must also:

- match descriptions made by the salesperson, on packaging and labels, and in promotions or advertising
- match any demonstration model or sample you asked for
- be fit for the purpose the business told you it would be fit for and for any purpose that you made known to the business before purchasing
- come with full title and ownership
- not carry any hidden debts or extra charges
- come with undisturbed possession, so no one has a right to take the goods away or prevent you from using them
- meet any extra promises made about performance, condition and quality, such as life time guarantees and money back offers
- have spare parts and repair facilities available for a reasonable time after purchase unless you were told otherwise.

Services must:

- be provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage
- be fit for the purpose or give the results that you and the business had agreed to
- be delivered within a reasonable time when there is no agreed end date.

These guarantees may apply to items included in off-the-plan sales, where the purchaser is not the owner at the time of construction, and items included in a contract that are not regulated under the Building Act, such as fittings, paving and landscaping. However, guarantees do not apply in certain circumstances such as where the purchaser asked for a service to be done in a certain way against the advice of the business.

## Standard contracts and contract provisions

The laws described above generally do not specify or prescribe the level of quality a product must meet. Under consumer law, acceptable quality takes into account what would normally be expected for the type of product and cost. Similarly, building laws take into account the purpose of the product or system and the type of building work it will be used for.

Quality is subjective and desired quality is influenced by personal feelings, tastes, opinions and budget. What one person may consider acceptable, another person may not. Some people may have greater interest in the quality of finishes and fittings, while others may prioritise higher quality design or performance, such as the layout or amenity of the building or greater energy efficiency.

As such, it needs to be considered whether it is practical or desirable to further regulate or prescribe a specific quality requirement for some or all individual components of a building. If standards cover the same products and building components already regulated under existing scheme, it would also need to be considered whether any additional requirements should be prescribed separately in contractual provisions, or integrated with the relevant laws.

In jurisdictions that have more detailed regulation of building contracts, additional quality standards are not necessarily included. In NSW, building work over \$20,000 requires what is described as “an extensive home building contract”<sup>1</sup>. However, even under the detailed requirements prescribed in the NSW *Home Building Act 1989* the 'quality of construction' clause states only that the work will comply with:

1. the Building Code of Australia, to the extent required under the Environmental Planning and Assessment Act 1979
2. all other relevant codes, standards and specifications that the work is required to comply with under any law
3. the conditions of any relevant development consent or complying development certificate.

In other words, the standards and requirements that the contractor is already required to comply with, but not with an additional quality standard. Purchasers are advised they will need to choose fittings and appliances before they sign a contract, and to give specific details about products they want, including where possible, brand names and models of all fittings, tiles, appliances, etc.

Until recently, there were only two provisions in the Building Act for building contracts. Section 25 does not allow people to contract out of their obligations in relation to approvals, commencements, stage inspections and requirements for carrying out work. Section 88 provides that certain residential contracts include the statutory warranty.

The Review found that many complaints about building work include a contractual component. However, this usually related to work not meeting existing prescribed standards or not being completed when expected. It also found that contracts for building work or sales may be confusing to consumers or be unclear on the obligations of all parties, including in relation to changes made to the building after the contract was entered into.

As part of the Government’s reforms, the *Building and Construction Legislation Amendment Act 2016* created new powers to regulate standard conditions, prohibit conditions, prescribe the meaning of a term used in a residential building work contracts and to require particular information is included in a building contract (Reform 20 - see Division 6.2A of the Building Act).

Based on the Review and subsequent consultation the three specific areas for further reform in the program are:

- delineating agency agreements for the contractor to undertake actions and making decisions on the owners behalf from a building contract for certain residential building work (Reform 21)
- developing and consulting on standard terms and standard information for a building contract including explanations on common variation clauses and their meaning (Reform 22), and
- specific regulations for a progress payment model for certain residential building contracts based on payment only for work completed (Reform 23).

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<sup>1</sup> <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/contracts>

The reforms include improving information for buyers and new guides are currently under development to help people building and buying understand their obligations and rights and put them in a better position to discuss their needs and expectations with the person they are contracting with. This may have a flow on effect to the regulatory system as once specifications for parts of the building regulated under the Building Act are included in the building approval, they must be complied with.

The purpose of the reforms is to address common sources of disputes, with the intention to clarify what is meant by certain terms and clauses, rather than necessarily to restate existing obligations in the contract. As the reason for poor compliance is not the lack of a compliance clause in contracts, it is not expected that simply restating work must comply with existing standards in the contract will result in higher levels of compliance. The Government is not proposing to specify quality levels for individual components of the building in building contracts beyond what is required in other laws.

Real or perceived differences between the levels of quality represented in the contract or at the time of sale and the quality of the eventual building are often the basis for disputes. In public consultation the Government noted that there is no particular licensing or 'fit and proper' requirements for people offering to sell a residential building off the plan or enter into a contract for constructing and supplying a new building. The builder and the certifier are responsible for the compliance of the work and may be held accountable through a variety of legal mechanisms, but the person who made the contract for the work has far less accountability for decisions they make that affect the performance or quality of the building.

In the next year, the Government will be consulting further on the findings of the Review in relation to licensing, licensing categories and 'contracting' as a scope of work (Reform 35). This includes consultation on regulation and responsibilities of people contracting for supply of new residential buildings. We will also consult further on findings in relation to building contracts (Reform 39).

Other related reforms include:

- improving the documentation at building approval stage and throughout the building process, which will help inform eventual owners about what was approved for construction and installation (various reforms), and
- considering adoption of new standards and tolerances for building-related disputes and complaints, including contractual disputes (Reform 29).

### 3. Industry skills accreditation and ongoing professional development

The Government's building regulatory reform program includes 19 reforms on practitioner licensing ranging from changes to how a licence is obtained, to new training for licensees and potential changes to licence categories. These complement changes already made in reforms introduced since 2013.

#### The breadth of the occupational licensing regime in the ACT

The ACT currently requires licenses for certain scopes of:

- building work
- building surveying work, including acting as a building certifier under the Building Act
- residential building energy efficiency assessment work
- electrical wiring work
- sanitary drainage work
- sanitary plumbing work
- water supply plumbing work
- gasfitting work
- gas appliance work
- plumbing plan certification
- works assessment work (for unit titles assessment and exemption assessments under the Planning and Development Act)

Licensable building work incorporates structural and non-structural work on any component of a building regulated under the Building Act, unless otherwise exempt. For the purposes of the Building Act, certain building work does not require a licensed builder. For example, erecting a small fence may be excluded from requiring a licence but laying a concrete slab for the construction of a house is licensable building work. This means that although the work does not need a specific concreting licence, the work must be carried out either by, or under the supervision of, a licensed builder.

Three licensed occupational areas undertake statutory functions – building surveyors, plumbing plan certifiers and works assessors. Building energy efficiency assessors are licensed to produce reports and statements it is mandatory for building owners to provide. Other construction licences are based on the risks associated with the work. Licensable work within the occupation is also based on risk and not on the value of the work.

A builder is licensed to do or supervise building work and ensure it complies with the Building Act, building codes and other relevant laws. The prescribed qualifications for builders include managing construction projects and applying building codes, legal requirements and structural principles to building work. The mandatory qualifications for builders are prescribed in law and can be found at <http://www.legislation.act.gov.au/sl/2004-36/di.asp>.

It is not expected that a builder will physically carry out all the work on a building, but, that they would be able to provide adequate supervision of the work. As an example it is not expected a builder will necessarily construct a timber frame for a building personally, but it is expected that they would be able to engage a suitably competent person to do the work, determine if the work complies with the plans and specifications for the building, and, importantly, that the way the frame has been erected does not affect the compliance of another part of the building.

This is similar in principle to the role of a building certifier. It is not expected that a certifier could personally design each component of a building, but can reasonably determine whether the components comply and the building as a whole complies. Assessing the interactions between components and systems and determining the overall compliance of a building is not something specialised designers are trained to do.

The exceptions to this are for electrical, plumbing, drainage, gasfitting and gas appliance work associated with building work. These are fields that are subject to different technical standards and training. While a builder is responsible for ensuring these installations meet relevant building standards, it is not expected that a builder could determine, for example, whether electrical installations also comply with electrical standards.

During the Review, many practitioners noted that some builders do not check the skills and experience of people working on their projects, and that industry practices have led to fewer people completing their full training. The Review also found that results from the training system are varied and may not necessarily be relied on to produce a person with sufficient competency. This is why the Government's reforms include introducing licence examination and assessments for both building licences and building surveyor licences.

ACT construction licences are not 'contractor' licences, they are practitioner or technical licences. People are not licensed to contract, they are licensed to do or supervise construction work. This is why the threshold for a licence is the risk of the work. The cost may not be proportionate to the risk of the work, or the potential losses that could be suffered as a result of defective work.

Differences in licence scopes mean that the licensing systems in some other jurisdictions are not directly comparable. In the jurisdictions that do licence 'contractors', there are different approaches, potentially designed to address different objectives. Some licences are only required if a person is contracting directly with the public (that is sub-contractors and direct employees do not require a licence), and others for contracting with the public, consumers and with other construction contractors (only employees do not require a licence). In the ACT, the incidences of consumer complaints and enquiries related to construction work undertaken outside of a building contract are low.

While the Government is currently considering revisions to building licence categories appropriate to the ACT (reforms 35 and 36), based on reviews undertaken in other jurisdictions there does not seem to be a correlation between licensing additional sub-scopes of building work and a lower incidence of related defects or compliance problems. For example, in some jurisdictions that separately licence water-proofers (for both internal waterproofing and external weatherproofing), and may require additional waterproofing inspections, waterproofing defects are still reported as prevalent.

An important consideration in any model with multiple licences for the same scope of work is the responsibility of each licensee for the work and the interaction between the licences in the regulatory system. In a 2018 report commissioned by the Building Ministers' Forum, sub-categories of building licence were not recommended and in relation to contractor licences the following was noted:

"In some jurisdictions, various trade contractors are required to hold registration when contracting directly with owners. These trade contractors do not require registration if they are sub-contracting to a builder. We have not made recommendations for a nationally consistent approach to registration of trade contractors as this is likely to impose a significant regulatory burden on the building and construction industry and on regulators nationally, particularly in smaller jurisdictions. We have been unable to conclude with certainty that such a burden would be warranted. Jurisdictions that do choose to require trade contractor registration as part of their warranty or consumer protection regimes should work together to harmonise the categories of trade contractors they register.

When a builder contracts directly with an owner, it is the role of the builder to undertake building work using employees and subcontractors. It is recommended that the builder remains the primary person accountable for the proper construction of building work. Where necessary, this role should be set out in legislation."<sup>2</sup>

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<sup>2</sup> Pg 16-17 Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia  
[https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

The only exception considered by the report's authors were for certain specialist fire safety system installers.

The Committee's discussion paper suggests in the context of additional licence categories that the current builder licence model may be under pressure from 'phoenixing'. This appears to imply that if other people are licensed the liability could be spread amongst other licensees and those licensees would assume the builder's liabilities if the builder was no longer available. It should be noted that civil building actions are based on proportionate liability, and are not restricted to actions against licensees. A person found to be liable for a proportionate part of damages in a building action is not liable to contribute to the damages apportioned to anyone else in the action or to indemnify any other person in relation to the damages.

If a builder is no longer in business, the proportion of liability that attaches to the builder does not shift to the building certifier or other parties, regardless of whether they are licensed or not. The reforms include further work on addressing the effects of businesses winding up shortly after construction, and accountability of other parties under the system to meet their own liabilities, but do not include reforms that would allow builders to shift their proportion of liability to other licensees or parties.

## Designers

There is a voluntary registration process for architects under the *Architects Act 2004*. The registration process includes assessment of qualifications and experience and an examination but does not include an assessment to confirm people can design buildings that are compliant with building laws. While building design is not restricted to registered people, only registered architects can use the title of 'architect'.

The Review did find there could be merit in direct regulation of people undertaking some scopes of design work. The Government undertook initial consultation on regulatory models in 2014-15, and will be undertaking further consultation in the 2018-19 financial year (reforms 35 and 36). Reforms to establish benchmarks against which practitioners can be assessed (including reforms 1 and 30) are also underway, noting that licensing or registration alone will not be effective without other supporting mechanisms.

## 4. The suitability of ongoing skills education and practices within the industry

Ongoing skills development and education is important for licensees to remain competent as legislation, standards, practices and materials change. A person that gains a qualification will need to undertake further training to respond to such changes and carry out a construction service throughout his or her career. New skills and knowledge are not gained only in formal training, but may be gained by self-directed learning or involvement in projects using new methods, materials or systems.

As with any industry, there are practitioners who continue to undertake extensive skills development throughout their careers voluntarily and those who do not. Many practitioners participate in industry continuing professional development (CPD) schemes, which may be a condition of membership or accreditation. However, while there is also a considerable selection of training courses and development options available in industry, some available training is not relevant to a practitioner's work or of a low quality.

There are many options for ongoing skills maintenance and professional development, including requirements to earn minimum points over the period of the licence, or disincentives such as higher licensing fees and additional auditing for practitioners that do not undertake voluntary training. Such systems can be administratively burdensome and have not necessarily been successful where the training is generic and not aimed at addressing a particular skill or knowledge required to undertake the work authorised by the licence.

The authors of recent assessment of building compliance and enforcement systems commissioned by the national Building Ministers' Forum noted:

"Some of those consulted have been critical of CPD. Reservations have been expressed that CPD schemes can leave the content of training up to the discretion of participants which reduces the relevance and effectiveness of learning. Compulsory CPD schemes should provide for targeted learning on topics of genuine relevance to improve the competence of practitioners."<sup>3</sup>

### Directed training model – Construction Occupations (Licensing) Act 2004

The *Construction and Energy Efficiency Legislation Amendment Act 2013* established the legislative framework for a system of directed training for construction licensees. Under the framework, the Construction Occupations Registrar can determine a course of training for a construction occupation or occupation class if the Registrar is satisfied on reasonable grounds that the training is necessary for the development or enhancement of the skills or knowledge of licensees in that construction occupation or class. This model was chosen after consideration and analysis of the different options for ongoing training and education.

The Registrar can target training appropriate for each occupation as a result of identified deficiencies, or because it is needed for licensees to competently offer a particular construction service. A training requirement can be applied to selected occupations, occupation classes or all licensees as needed. Failing to satisfactorily complete required training may result in a refusal for the licence to be renewed or in occupational discipline. The directed training model does not replace the ability to direct an individual to undertake training based on their personal compliance history, but is intended to focus on occupation-wide issues. It is designed to operate alongside existing industry CPD/skills and knowledge maintenance schemes.

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<sup>3</sup> Pg 19 *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*  
[https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

As an example of targeted training, when major amendments to the Building Act are made, or major changes are made to the building code, builders and building surveyors will need to understand these amendments and any changes in their obligations. The directed training in this case may be compulsory attendance at a training session run by a government agency. In other cases, existing competencies from courses accredited under the Australian Qualifications Framework could be used as training modules and external training providers could be authorised to offer the training. Some training courses under development as part of the building regulatory reforms are intended for use under the directed training model.

## 5. Processes and practices for the identification and rectification of defects

### Current mechanisms available for defect identification and redress

The purpose of the builder licensing system is to ensure that certain building work is supervised by a competent person, so that any compliance problems are reasonably identified and corrected during the construction of the building. The Government's reforms include improving supervision, including developing a new code of practice for builders on supervision and verification of compliance at critical hold points in the project.

Reforms to date have widened the range of options available to the regulator and ACAT, and Access Canberra has also been exploring informal mechanisms, such as facilitating negotiations between parties, and administrative changes to identify which issues require further investigation within a short time of a compliant being lodged.

Regulatory mechanisms for either identifying or addressing defects in building work covered by the Building Act include stage inspections, stop notices, rectification orders, warranties, residential building insurance, complaints, disciplinary action such as licence conditions, civil building actions and other legal actions. To clarify the operation of builder licence renewals, compliance history for the purposes of licence renewal is compliance with relevant building and licensing laws and does not include consumer, regulatory and contract issues that fall outside the scope of work authorised under the builder's licence.

For other items there is a contractual defect period and acceptance processes under the relevant contract, conciliation processes under consumer law and civil remedies, including claims against consumer guarantees. Under consumer law, government officials can conciliate a matter but do not have the power to make a binding decision.

### The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met

All of the mechanisms have the capacity to be effective, and, when used, have resulted in, bringing about rectification of work. The extent to which they are, or have been effective in individual cases, depends largely on the willingness of parties to agree on the nature of the problem or fix it. In some cases an informal discussion facilitated by the regulator, or an indication a regulatory action could be taken, is sufficient to have the matter resolved. In others, a formal order will still not result in rectification. This is one reason the law includes mechanisms with consequences of increasing severity. The reform program also includes consideration of ways to resolve problems when the responsible licensee will not engage or is no longer available.

As it is preferable to not have buildings with major defects, the reform program has a strong focus on prevention as well as rectifying non-compliant work.

### The adequacy and accessibility of those mechanisms especially for individuals or body corporates

Statutory and civil mechanisms are open to all relevant parties and there is no fee for lodging a complaint under either construction licensing or consumer laws. While there are avenues open to parties for contractual disputes, the cost of initiating any legal action may be prohibitive. In the case of owners' corporations, the barrier to lodging a complaint is not necessarily the cost of lodgement but the difficulty in bringing the owners together to identify problems and determine how to address them.

The Government is revising and developing guidance material for owners' corporations to help them understand their rights and obligations and decision-making processes under the *Unit Titles (Management) Act 2011*. Alternative dispute resolution is discussed in section 6.

## **The effectiveness of efforts to address “phoenixing” – the transfer of assets from an indebted building company to a new one to avoid paying its liabilities**

The Australian Government is responsible for registering and regulating corporations and their conduct. ACT regulatory agencies cannot prevent the registration of new corporations or people shifting operations between corporations. However, ACT legislation can determine who can hold a builders licence in the Territory. Under the current reform program some of the first actions (Reforms 24 and 25) were to build on amendments already made in 2013 and 2014 to the *Construction Occupations (Licensing) Act 2004* to further reduce phoenixing across licenses. The reforms:

- expanded the capacity for the Registrar to consider an applicant or licensee's history, including the history of directors, partners and nominees, under other licences;
- introduced the ability for the Registrar and ACAT to consider whether a breach is relevant to multiple associated licences and take appropriate action in relation to those licences as well; and
- increased reporting requirements for automatic suspension grounds, including insolvency and introduced an offence for failing to report.

The incidences of genuine or proven illegal phoenixing are relatively few but can result in substantial losses for those affected. The new provisions have been in operation since August 2016 and have been used to prevent a newly created corporation starting any projects before major rectification work on a project under a related licence is complete.

The government is also considering models for managing progress payments and retentions to protect them in the case of insolvency (particularly reforms 26, 27, 38 and 40). Reform 35 also includes consideration of mechanisms to prevent builders ‘phoenixing’ as developers, while still exerting a high degree of control over the building work and other factors influencing the eventual product.

## **6. The cost effectiveness of current building compliance and defect rectification practices for industry, government, individuals or body corporates and the potential for the introduction of alternative dispute resolution mechanisms**

The Government has committed to introduce an alternative dispute resolution (ADR) mechanism for building disputes (reforms 28 and 43), and refers the Committee to the discussion of this matter on pages 29-31 in the Government's consultation paper. The work was postponed pending the outcomes of the national review into security of payments, which had implications for payment disputes on residential projects. However, work on the development and initial implementation of this mechanism is funded as part of the Government's reform package.

ADR mechanisms could help resolve many issues that are not likely to be resolved, or able to be considered, through the construction complaints system or other more informal mechanisms. They could relieve the pressure on the existing complaints system and courts and tribunals while acting as a bridge between a more informal negotiation and conciliation process and a formal action such as litigation or a regulatory order.

However, no single resolution process will be appropriate for all issues. There is a role for each of the current building compliance and defect rectification pathways. ADR mechanisms will not be appropriate for every type of dispute; for example highly complex disputes, problems that pose an imminent threat to life or property and compensation claims may be best handled under regulatory, tribunal or court processes. Some disputes may also need to be escalated to a court or tribunal if parties do not comply with a binding resolution. Some parties to a dispute may consider it more cost effective for them not to engage in any available mechanism to resolve the matters, which is where other mechanisms may be required.

Any ADR process would need to work alongside the existing disciplinary and other systems. It is not intended that an ADR process be used to negotiate owners out of rectifying serious issues, particularly those that affect the integrity of the building. If the consequences of the defect are severe or a licensee is regularly involved with defective buildings the regulator may need to take an action regardless of the outcome under ADR, or the issue may involve interpretation issues relevant to the fundamental operation of the law that need to be clarified by a court. For this reason, cost effectiveness is not only about the resolution of an individual problem, but the effect of the action on future compliance problems.

## 7. The role of Access Canberra

Access Canberra provides a central place for ACT Government customer and regulatory services. Access Canberra is designed to make access to government services for the community and business easier and simpler, by providing an effective service hub through shopfronts, the contact centre and online services.

Access Canberra includes the statutory office of the Construction Occupations Registrar, Commissioner for Fair Trading and Registrar of Architects. Through the Construction Occupations Registrar, Access Canberra maintains the register of construction occupations licensees and associated disciplinary register, and provides a number of regulatory services to the ACT community, including: assessing and issuing construction occupation licences; auditing and inspecting building work; providing advice on consumer rights; issuing certificates of occupancy and use for buildings on advice from private building certifiers; complaint assessment and investigation; and regulatory action against construction licensees.

Access Canberra has delivered and facilitated the availability of information online, which is accessible through:

- a fair trading portal that provides a single place for consumers and businesses to access fair trading information. The portal offers a quick and easy way for the community to lodge a complaint. It also brings together resources and tools in the one place, saving time, and supporting businesses to understand their rights and responsibilities.
- new digital public registers for construction occupations licensees and an occupational discipline register.

The Construction Occupations Registrar uses three key inspectorates to audit activities within the construction industry - the Construction Audit team, the Electrical Inspectorate and the Plumbing/Gasfitting Inspectorate. The teams focus on compliance of each of the licensed occupations within the construction industry, and the auditing and inspection of the works of licensees, specifically around the life safety aspects of compliance of their work and installations.

In addition, Access Canberra has established a Complaints Management Team that assess and categorise all incoming complaints. There is also a separate team responsible for undertaking compliance and investigative functions specifically for building and planning related complaints.

Responsibilities rely on effective carriage and operation under a range of construction industry laws including the *Building Act 2004*, the *Construction Occupations (Licensing) Act 2004* (COLA), the *Electricity Safety Act 1971*, the *Gas Safety Act 2000*, the *Water and Sewerage Act 2000* and various regulations and instruments.

The Construction Audit team conducts audits and site inspections of the work of building certifiers, builders and building assessors, predominantly within the housing and residential apartment sectors.

The Electrical Inspectorate conducts mandatory inspections on all new electrical installations in relation to electrical safety compliance with the *Electricity Safety Act 1971* and all associated Australian Standards. It assists with investigation of complaints about electrical wiring work, and with disciplinary and other actions under electrical safety and construction licensing legislation, where required.

The Plumbing and Gasfitting Inspectorate, inspects plumbing, drainage and gasfitting work undertaken by licensed plumbers, drainers and gasfitters. The inspectorate validates submissions for the installation of Type B (non-standard) gas appliances in domestic and commercial applications. It also assists with investigation of complaints about plumbing, gasfitting and gas appliance work, and with disciplinary and other actions under the *Water and Sewerage Act 2000* and construction licensing legislation, where necessary.

The Construction Occupations Registrar applies a risk-based compliance approach to ensure resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening the capacity to take action where the community, the public and the environment are most at risk. This regulatory approach uses an engage and educate model which builds an understanding of regulatory obligations within the community and encourages compliance with various pieces of legislation. Where it is proportionate and appropriate to do so, such as with repeat offenders or serious breaches, enforcement action is taken to make sure compliance is achieved. This approach is articulated in Access Canberra's accountability commitment and compliance framework, which is published on the Access Canberra Website.

There are three strategic objectives central to the role of regulating the building and construction industry:

Protection - through its actions Access Canberra seeks to protect the community from harm. Access Canberra acts to minimise risks to safety, health, sustainability and amenity and minimise financial loss from unlawful conduct.

Prevention - Access Canberra aims to limit and prevent harm, damage or economic loss by promoting compliance with the suite of construction legislation administered by the Construction Occupations Registrar.

Rectification - Access Canberra may require people who have not complied with their obligations to rectify or remedy identified issues.

Access Canberra uses available data to inform its proactive compliance programs and has an annual plan targeting particular areas of compliance. The aim is to achieve compliance by using the three fundamental steps of engage, educate and enforce.

*Compliance* is encouraged through education but escalating enforcement actions are applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.

*Engage* means ensuring that there is a positive working relationship with stakeholders and members of the community.

*Educate* means taking reasonable steps to ensure people know how to comply. We provide information to the industry and community to promote understanding and to encourage voluntary compliance. The Access Canberra website provides links to a number of publications and facts sheets which includes information relating to particular areas of the construction processes and legislative obligations. Education has a key role to play in maximising compliance by ensuring lack of information is not a contributing factor to non-compliance

*Enforce* means taking action when non-compliance occurs proportional to the harm caused by the conduct. Like any regulatory regime, the optimal outcome is voluntary compliance.

Since 1 July 2018 Access Canberra has initiated a rapid regulatory response approach for all new building and planning related complaints. This approach places an emphasis on undertaking an immediate assessment of the matter and attendance on site. There is insufficient data at this very early stage to determine how successful the approach is in resolving complaints; however, initial indications are that the early engagement and follow-up is welcomed by citizens.

The Commissioner for Fair Trading is responsible for enforcing the Australian Consumer Law in the ACT. Issues regarding unfair contract terms, or misleading advertising, may be addressed under the Australian Consumer Law. Access Canberra encourages consumers to attempt to resolve issues, including when these relate to residential building contracts. As with building regulation, Access Canberra works to its accountability commitment and compliance frameworks for consumer law matters and applies a risk and harm based approach to consumer regulation. For low risk matters, the consumer may need to use the civil and contractual mechanisms available to them to resolve the matter. Regulatory options for building and planning complaints may include elements under both building and consumer legislation.

## 8. The regulatory setting or practices in other jurisdictions that could inform consideration of any of the above

The Committee's discussion paper suggests that consideration could be given to how systems in other jurisdictions work, and whether they have been able to address some of the issues being faced in the ACT. As part of the Review, consideration was given to systems and requirements in other Australian jurisdictions as well as New Zealand and other overseas jurisdictions.

The Review found that no single factor or change will address all building defects. Building regulation is a system, and issues at each stage of the construction process contribute to whether a building may have serious defects requiring rectification and rework. Each of the reforms the government has undertaken and included in the reform program is designed to work together with other reforms and within the ACT regulatory system.

The most important consideration is not whether other jurisdictions have different approaches, but whether those approaches are effective and why. The Committee may wish to note that many systems in other Australian states, and the effectiveness of some of the features of those systems mentioned in the discussion paper, are either currently under review or were being reviewed at the time of the ACT's Review. There are extensive reform programs underway or planned in many states, and the Building Ministers' Forum is also considering recommendations on building compliance and enforcement issues affecting all states and territories. This indicates that the systems in other Australian jurisdictions, and specific components in those systems, may have limited effectiveness in addressing problems in the ACT.

Many of the components mentioned in the discussion paper are single aspects or sub-systems of a broader scheme, or separate to the building regulatory system. Any aspects of a regulatory system need to be considered in the context of the system and the market they are in. Where a jurisdiction is having fewer problems, it can't necessarily be concluded that it is because of one aspect of the system. As an example, one jurisdiction may have fewer issues with particular building types but this may be because there are fewer construction projects including those building types, or they are constructed in a different way.

Even where it can be shown that something contributes to better outcomes, it needs to be considered whether isolating individual elements and introducing them into a different system will have the same effect. As an example, the ACT has an electrical regulatory system that is effective in preventing and resolving compliance and competency problems. If another jurisdiction was to adopt aspects of the ACT's licensing regulation, such as licence categories or the demerit point scheme, without the accompanying independent inspection requirements it is unlikely they will get the same result.

While systems in place elsewhere have been and will be considered, in some cases the best approach may be to create a unique response. The ACT's system includes things that do not exist in other jurisdictions, developed after considering the effectiveness of alternative schemes. The ACT was the first jurisdiction to adopt a demerit point system for construction licensees and has a framework for directed training that does not have a parallel in other states and territories.

## 9. Any other relevant matter

The Committee's terms of reference includes reporting on potential and actual causes of poor building quality in the ACT. During the Review a wide range of potential causes were identified and assessed. Some things reported or suggested as causes of building defects were not found to be contributing factors on investigation, or were not the primary reason for problems. It is important to identify actual causes to reduce the chance of introducing reforms that do not address the source of the problem or create perverse outcomes.

Although the Government's recent reform program was developed in response to community concerns about compliance with building standards in apartment buildings, the broader review is to ensure the regulatory system remains effective over time and keeps pace with changes in industry and community expectations for the built environment across all types of buildings.

The Government will continue to improve the building regulatory system to increase compliance with standards over the next few years. Our reforms will also support good quality buildings, but it will not necessarily be reasonable to specify or control all aspects of quality under the building regulatory system.

The Review considered matters outlined in this paper and additional issues such as the contribution of financial and payment issues to building problems in detail. The ACT Government encourages the Committee to consider the finding of the Review, the discussion of issues in the Government's consultation paper and the existing comprehensive reform program. The Government also reiterates its previous offer to arrange for a briefing for the Committee on the Review and current reform work.

## Attachment A – Summary of reforms corresponding to Inquiry Terms of Reference

<b>Issue</b>	<b>Associated reforms (Numbered reforms are from the Improving the ACT Building Regulatory System program)</b>
<p>The certification regime for the building and construction industry including:</p> <ul style="list-style-type: none"> <li>a. Review by certifiers of the initial building plans</li> <li>b. Compliance by builders with the building’s approved construction plans</li> <li>c. The adequacy of regulatory mechanisms to ensure compliance with approved construction plans</li> <li>d. The role of inspections and audits in the regulatory process</li> <li>e. The appropriateness of current practices for appointing certifiers, including addressing the potential for conflicts of interest.</li> </ul>	<p>Reform 1 – minimum documentation requirements for building approval applicants                      Reform 2 – advice on high-risk building elements provided as part of the pre-development approval process.                      Reform 3 – new code of practice for licensed builder covering supervision and critical hold points in a building project                      Reform 4 – new code of practice for licensed building surveyors                      Reform 5 – lodgement of stage inspection information after the inspection is complete                      Reform 15 – new pre-licence application assessment for building surveyor licence applicants                      Reforms 16 and 33 – online course for building surveyors                      Reform 21 – regulations to delineate agency agreements (including those for appointing certifiers) from building contracts                      Reform 22 – standard terms and information for residential contracts (off-the-plan sale and building contracts)                      Reform 30 – new risk-based auditing system for building certification and building work                      Reform 42 – further consultation on the findings of the review.</p>
<p>The merits of standard contracts or statutory requirements in contracts covering build quality</p>	<p>Reform 1 – minimum documentation requirements for building approval applicants                      Reform 2 – advice on high-risk building elements provided as part of the pre-development approval process.                      Reform 19 – expansion of statutory warranties to all private residential buildings                      Reform 20 – Amend Building Act to allow regulations to prescribe requirements for contracts for residential building work</p>

	<p>Reform 22 – standard terms and information for residential contracts (off-the-plan sale and building contracts)</p> <p>Reform 29 – consider adoption of new standards and tolerance for building-related disputes and complaints, including contractual disputes</p> <p>Reform 35 – consult on the findings of the review in relation to licensing and ‘contracting’ as a scope of work, including people contracting for the supply of new residential buildings</p> <p>Reform 39 – consult on the findings of the review in relation to building contracts and the residential building insurance system</p>
<p>Industry skills accreditation and ongoing professional development including</p> <ul style="list-style-type: none"> <li>a. The breadth of the occupational licensing regime in the ACT</li> <li>b. The suitability of ongoing skills education and practices within the industry</li> </ul>	<p>Introduced directed training model and ability to assess the skills of current licensees if there are disciplinary grounds, and new applicants</p> <p>Reform 3 – new code of practice for licensed builder covering supervision and critical hold points in a building project</p> <p>Reform 4 – new code of practice for licensed building surveyors</p> <p>Reform 6 – removal of architectural and engineering qualification pathways to building licence</p> <p>Reform 7 – conditioning system for applicants with insufficient experience on residential buildings and requiring additional evidence of experience</p> <p>Reform 8 – revision to mandatory qualifications to exclude experience with certain practitioners or defective work</p> <p>Reform 9 – expended written assessment for class C builder licence applicants and new assessments for class A and B builder licence applicants</p> <p>Reform 10 – interviews for applicants in specific circumstances</p> <p>Reform 15 – new pre-licence application assessment for building surveyor licence applicants</p> <p>Reforms 16 and 33 – online course for building surveyors</p> <p>Reform 31 – consideration of non-written forms of licence assessment for building licence applicants after review of written assessments</p> <p>Reform 34 – expand licence renewal assessments to include rechecking of eligibility and compliance history</p> <p>Reform 35 – consult on the findings of the review in relation to licensing, licensing categories and ‘contracting’ as a scope of work</p> <p>Reform 36 – consult on the findings of the review in relation to insurance and practitioner accountability</p>

<p>Processes and practices for the identification and rectification of defects including;</p> <ul style="list-style-type: none"> <li>a. Current mechanisms available for defect identification and redress;</li> <li>b. The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met;</li> <li>c. The adequacy and accessibility of those mechanisms especially for individuals or body corporates; and</li> <li>d. The effectiveness of efforts to address “phoenixing” – the transfer of assets from an indebted building company to a new one to avoid paying its liabilities.</li> </ul>	<p>Introduced new grounds for disciplinary action and expanded range of options for action depending on the seriousness of a breach (Construction and Energy Efficiency Legislation Amendment Acts 2013, 2014 (No 1) and 2014 (No 2).</p> <p>Reform 3 – new code of practice for licensed builder covering supervision and critical hold points in a building project  Reform 4 – new code of practice for licensed building surveyors  Reform 5 – lodgement of stage inspection information after the inspection is complete  Reform 24 – legislative amendments to assist reduction in phoenixing, including changes to licensing and consideration of compliance history of associated entities, increased reporting requirements for automatic suspension grounds  Reform 25 – increased reporting in relation to insolvency  Reform 30 – new risk-based auditing system for building certification and building work  Reform 36 – consult on the findings of the review in relation to insurance and practitioner accountability  Reform 37 – consider expansion or rectification and other relevant powers to allow orders to be issued to people closely associated with an insolvent or ‘disappeared’ corporate licence.  Reforms 27, 38 and 40 – for protection of certain payments in the event of insolvency</p>
<p>The cost effectiveness of current building compliance and defect rectification practices for industry, government, individuals or body corporates and the potential for the introduction of alternative dispute resolution mechanisms.</p>	<p>Reforms 28 and 42 – implement new alternative dispute resolution  Reform 36 – consult on the findings of the review in relation to insurance and practitioner accountability  Reform 37 – consider expansion or rectification and other relevant powers to allow orders to be issued to people closely associated with an insolvent or ‘disappeared’ corporate licence.</p>

The regulatory setting or practices in other jurisdictions that could inform consideration of any of the above.	Effective settings and practices in other jurisdictions have been and will be considered in developing and completing the reforms.
Other matters	See <a href="#">Improving the ACT Building Regulatory System Reforms</a>



September 2018