



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA, Ms Suzanne  
Orr MLA (Deputy Chair)

## Submission Cover Sheet

**Inquiry into Building Quality in the ACT**

**Submission Number: 49**

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# CFMEU

## CONSTRUCTION

28 September 2018

Mr Jeremy Hanson  
Chair, Standing Committee on Economic Development and Tourism  
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Dear Chair,

The CFMEU would like to thank the Economic, Development and Tourism (EDT) Committee and the ACT Government for the opportunity to provide a submission to the inquiry into building quality in the ACT. We hope that this submission will offer insight into Canberra's construction industry, and that our recommendations be implemented to promote improved building quality in our city.

The ACT branch of the CFMEU is one of the largest trade unions operating in Canberra, and represents over 2000 workers in the construction industry. The Union is dedicated to fighting for our members, which includes securing better pay and working conditions, and ensuring greater health and safety on sites.

The CFMEU hopes that through both this submission and the broader work of the Committee's inquiry, the ACT Government will implement substantive policy changes that will not only improve Canberra's building quality, but will promote the standing of the Territory's construction industry overall.

This submission will focus primarily on recommendations pertaining to the expansion of occupational licensing, establishing a public-based building certification system and the regulations surrounding defected works rectification. The Union hopes that our involvement and contribution to this inquiry will help the committee to make informed recommendations that will be effectuated in changes to Government policy.

### **1. Occupation licensing:**

The CFMEU takes the regulations surrounding occupational licensing to be one of the foremost reasons for poor building quality in the ACT. As stated in the *Discussion Paper* to this inquiry, several trades in the ACT do not currently require individuals to hold a license, and therefore that work can be completed by individuals without the suitable experience and expertise. This creates inherent problems for the quality of the job being completed, as it allows an individual without the necessary skills to complete building works which require a level of expertise that can only be developed through becoming licensed.

The table below details a brief comparison between licensing requirements in New South Wales, Queensland and Victoria. The trades in the table on the next page are those which currently require no licensing in the ACT.

a. Table of state-by-state comparison:

	NSW	QLD	VIC
<b>Architects</b>	<p>To be eligible for full registration as an architect in NSW, you must:</p> <ul style="list-style-type: none"> <li>• hold a Bachelor degree, Master's degree or other qualification in the discipline of architecture accredited by the Architects Accreditation Council of Australia</li> <li>• pass a competency examination arranged by the board if you do not hold the required qualifications</li> <li>• be of good fame and character</li> <li>• pass an exam in architectural practise set by the board</li> <li>• have an approved period of experience in architecture or a minimum 3,300 hours of logged work experience</li> <li>• have the appropriate professional indemnity insurance or an exemption from this requirement.</li> </ul>	<p>To be eligible for registration in Queensland, you must have:</p> <ul style="list-style-type: none"> <li>• a qualification recognised by the Architects Accreditation Council of Australia (AADA);</li> <li>• had at least two years' architectural work and practice (at least one of which must have been in Australia and one post entitlement to receive the relevant academic qualification;</li> <li>• passed the AACA Architectural practice examination.</li> </ul>	<p>To be eligible for individual registration as an architect in Victoria you must:</p> <ul style="list-style-type: none"> <li>• have an accredited academic qualification in architecture or a pass in the National Program of Assessment</li> <li>• have a minimum of two years' recent practical experience and knowledge of the competency-based standards</li> <li>• successfully complete the Architects Accreditation Council of Australia (AACA) Architectural Practice Examination (APE) including logbook submissions or successfully complete one of the alternative AACA pathways to registration.</li> <li>• make your application to the Board on the approved form, with accompanying documentation and the required fees.</li> </ul>

<b>Water proofers</b>	<p>In NSW, waterproofing must be carried out by a licensed waterproofer. Becoming a licensed waterproofer requires completion of one of the following qualifications:</p> <ul style="list-style-type: none"> <li>• CPC31411/ CPC31408 Certificate III in Construction Waterproofing; or</li> <li>• BCG31403 Certificate III in Waterproofing (General Construction); or</li> <li>• Qualification 90464 Certificate III in General Construction (Waterproofing) TAFE course #8126</li> </ul>	<p>In Queensland, waterproofing works must be carried out by a licensed waterproofer. To become a licensed waterproofer, completion of one of the following qualifications is required:</p> <ul style="list-style-type: none"> <li>• Certificate III in Construction Waterproofing CPC31411</li> <li>• a recognition certificate as a qualified waterproofer</li> <li>• successful completion of a course the commission considers equivalent to one of the courses above.</li> </ul>	<p>No specific requirement for this trade in Victoria.</p>
<b>Carpenters</b>	<p>In order to become a licensed carpenter in NSW, completion of any one of the following qualifications is required: Complete:</p> <ul style="list-style-type: none"> <li>• CPC30211/ CPC30208/ BCG30203 Certificate III in Carpentry; or</li> <li>• CPC32011/ CPC32008 Certificate III in Carpentry and Joinery; or</li> <li>• BCG30798 Certificate III in General Construction (Carpentry/Framework/Formwork/Finishing), TAFE course #7078; or</li> <li>• Qualification 10888 Certificate III in General Construction (Carpentry)- Housing — Trade TAFE Course #2192; or</li> </ul>	<p>In order to become a licensed carpenter in Queensland, completion of any of the following qualifications is required:</p> <ul style="list-style-type: none"> <li>• successful completion of either of the following courses: <ul style="list-style-type: none"> <li>• apprenticeship in carpentry</li> <li>• Certificate III in Carpentry – CPC30211</li> </ul> </li> <li>• successful completion of a course the commission considers is at least equivalent to one of the courses above</li> <li>• a recognition certificate as a qualified carpenter</li> </ul>	<p>In Victoria, the Building Practitioners Board (BPB) regulates that for general carpentry work, a carpenter will hold a DB-L-C registration card.</p> <ul style="list-style-type: none"> <li>• In many cases, a carpenter will hold a DB-L registration card that will list the skills their limited registration authorises them to carry out.</li> <li>• In most cases, a Certificate of Registration must be renewed every three years, but there are exceptions.</li> <li>• Your carpenter’s registration card will show the expiration date of their registration.</li> <li>• Also note that Building Practitioners in Victoria are required by law to carry domestic</li> </ul>

	<ul style="list-style-type: none"> <li>• Certificate III in Carpentry and Joinery Trade TAFE Course #2149; or</li> <li>• Certificate III in Carpentry and Joinery Trade TAFE Course #5158.</li> </ul> <p>In NSW, a licence is required for all building work valued at over \$1,000, including labour and materials. In addition, if the job you hire a carpenter to do requires structural work and/or requires the supervision of other trades, the carpenter may also need be required to hold builder's licence or work under the supervision of a licensed builder.</p>	<ul style="list-style-type: none"> <li>• a qualification or statement of attainment of required competency for the class of licence.</li> </ul>	<p>building insurance if the work they engage in exceeds \$12,000 in value.</p>
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<p><b>Painters</b></p>	<p>In NSW, a painter must be licensed if they contract, sub-contract or advertise to do exterior residential painting where the value of the building work exceeds \$5000.</p> <ul style="list-style-type: none"> <li>• A painter's licence is a class of contractor licence under the home building licensing scheme, and is awarded to individuals who hold sufficient qualifications or experience that prove they can operate safely.</li> </ul> <p>To qualify as a licensed painter in NSW, an individual must complete:</p> <ol style="list-style-type: none"> <li>1. CPC30611 Certificate III in Painting and Decorating; or</li> <li>2. BCG30498 Certificate III in General Construction (Painting &amp; Decorating) TAFE course #8063; or</li> <li>3. Qualification 11766 Certificate III in Painting and Decorating TAFE course #2155; or</li> <li>4. Certificate III in Painting and Decorating, Trade TAFE course #5129.</li> </ol>	<p>To become a licensed painter in Queensland, completion of any one of the following qualifications is required:</p> <ul style="list-style-type: none"> <li>• successful completion of either of the following: <ul style="list-style-type: none"> <li>▪ an apprenticeship in painting and decorating including the unit of competency Apply trowelled texture coat finishes CPCCSP3003A</li> <li>▪ Certificate III in Painting and Decorating CPC30611 including the unit of competency Apply trowelled texture coat finishes CPCCSP3003A</li> </ul> </li> <li>• successful completion of a course the commission considers equivalent to one of the courses above</li> <li>• a recognition certificate as a qualified painter and decorator including the unit of competency - Apply trowelled texture coat finishes CPCCSP3003A</li> </ul>	<p>No specific requirement for this trade in Victoria.</p>
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		<ul style="list-style-type: none"><li>• a qualification or statement of attainment of required competency for the class of licence.</li></ul>	
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<b>Concreters</b>	<p>In order to become a licensed concreter in NSW, completion of any one of the following qualifications is required:</p> <ol style="list-style-type: none"> <li>1. CPC30313/ CPC30311/ CPC30308/ BCG30303 Certificate III in Concreting; or</li> <li>2. CPC31511/ CP031508 Certificate III in Formwork/Falsework; or</li> <li>3. TAFE course 4428 Certificate III in Construction Carpentry; or</li> <li>4. Qualification 90203 Certificate III in Construction Carpentry Trade TAFE course #8044; or</li> <li>5. Qualification 11770 Certificate III in Construction Carpentry, Trade TAFE course #7906.</li> </ol>	<p>In order to become a licensed concreter in Queensland, completion of any one of the following qualifications is required:</p> <ul style="list-style-type: none"> <li>▪ successful completion of Certificate III in Concreting CPC30313</li> <li>▪ successful completion of a course the commission considers is at least equivalent to the one listed above</li> <li>▪ a recognition certificate as a qualified concrete worker</li> <li>▪ a qualification or statement of attainment of required competency issued by an approved authority for the class of licence.</li> </ul>	<p>No specific requirement for this trade in Victoria.</p>
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It is the position of the Union that the aforementioned trades should be required to be licensed in order to complete works in the ACT. As shown by the table, requiring a license to perform these occupations is compatible with the standards adhered to by most of the larger States, and would raise the ACT to a level of National adequacy. Failure to regulate for greater occupational licensing standards sets far too low a barrier of entry into the industry, and encourages rather than deters substandard building quality.

It is also too often the case that the license holder takes no active role in the construction process. It is the view of the Union that it should be mandatory for all licensed employers to oversee any work being carried out where an occupational license is required. It is not enough for the boss to merely hold a license – they must remain actively engaged in the work being completed for the entirety of the job. When licensed employers fail to take an active role in construction, they fundamentally undermine the role of occupational licensing as a regulatory mechanism. The Union further believes that occupational licensing should go beyond merely requiring bosses to hold the relevant license. Those working under the license holder must themselves be held to higher standards, and be required to attain certain qualifications before being allowed to complete works.

It also very clear that these currently unlicensed trades have been the cause of many of the major issues eroding building quality in the ACT. Waterproofing is of particular concern, as made clear in many of the recent submissions to the inquiry as well as several news articles.<sup>1</sup> These reports provide a clear example as to why licensing these occupations is an essential part of improving overall building quality in Canberra.

It is evident that developers in the ACT would rather cut costs than employ qualified individuals. As such, it is important that Canberra institutes a strong occupational licensing regime in order to prevent dodgy company's employing unqualified workers at a lower cost. By implementing these practices, it will help to ensure that construction companies are only employing qualified and licensed individuals to complete work, and cannot cut their costs through employing unqualified labour. It is relevant to further note that although employing unlicensed workers appears to be a cost-cutting measure in the short-term, the long-term expenses of repairing the faulty works caused by unqualified labour far outweighs these initial savings. It is therefore also in the interests of builders to ensure that their workers are licensed and fully qualified to undertake a trade in order to avoid these eventual costs.

Furthermore, increasing occupational licensing to encompass these trades will also help to increase the job security of individuals currently employed or looking to gain employment in the construction industry. The Government should be constantly looking for ways to secure jobs for local construction workers, and the CFMEU considers regulating for occupational licensing in these trades to be a significant means of achieving this.

It is also relevant to note that various sources of academic literature also argue in favour of regulating industries through the use of occupational licensing. Beth Redbird (2017) has argued that rather than being a burden on employment, occupational licensing increases the amount of entry into an occupation as well as the levels of competition in the industry.<sup>2</sup>

This is further discussed by Carl Shapiro (1986), who argues that licensing is a 'human capital investment' which raises the average quality in the market whilst also promoting the provision

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<sup>1</sup> <http://www.abc.net.au/news/2018-02-28/cracked-empire-ivan-bulum-canberra-developer-elara/9425510>.

<sup>2</sup> Redbird, B. (2017). The New Closed Shop? The Economic and Structural Effects of Occupational Licensure. *American Sociological Review*, 82(3).

of quality services.<sup>3</sup> Both these articles, as well as various other sources, help explain why licensure positively influences entry into the workforce, and helps to secure the provision of better quality service throughout the industry.

The Union also believes that builders of all licensing classes should be held subject to stricter rules and regulations that enforce a higher standard of building quality in the ACT. Current standards surrounding licensing classes in the ACT do not adequately hold builders accountable for their poor work, and fail to prevent dodgy builders from entering the construction industry.

The announcement from the ACT Government earlier this year that class A, B and C license holders will be forced to sit written exams in order to renew their license is an important step towards ensuring only builders of high standards are eligible to work in Canberra. Despite this being a move in the right direction, the Union remains concerned with builders in licensing classes B and C, who appear to receive the greatest number of complaints for poor quality building work. For these builders, we do not believe that examinations at the point of renewal is a substantive measure of their building quality. Builders who receive complaints against them must be held accountable for their work, and should have their licenses revoked where they repeatedly contravene building quality standards.

In many cases, competency is not the issue precluding these builders from working to the highest quality. When there is an option to cut costs, many builders will pursue this relentlessly, without concern for the wellbeing of workers on their site or the investment made by potential homeowners. When this is the case, examining these builders will only deter rather than prevent them from continually building at a substandard quality. The Union therefore believes that the ACT Government must introduce stricter licensing procedures to ensure that only the highest quality builders are permitted to work within Canberra's construction industry.

The CFMEU believes that through licensing for more trades and improving the standards surrounding occupational licensing, building works in the ACT will be completed at a greater quality. It is no secret that licensing improves skill, and this, in effect, improves the quality of the completed work and the productivity of the workers. The Union strongly encourages the Committee to recommend the ACT Government implement these changes to occupational licensing.

## **2. Building certifiers**

It is also the concern of the CFMEU that the current standards surrounding certification in the ACT are inadequate. Due to the private nature of the role of certifiers in Canberra, the transparency and accountability for the work they survey is relatively poor, and as such this has impacted on the quality of the finished service. It is the Unions belief that certifiers must be held accountable for the work they survey in order to prevent the continued endorsement of fundamentally flawed works.

One way the Union believes this can be achieved is through making certification a public service function that institutes a greater level of independence, accountability and transparency. Many of the failings apparent in the current certification system are caused by the private nature of the processes, which does not currently regulate certifiers or provide adequate checks and balances on the work they do.

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<sup>3</sup> Shapiro, C. (1986). Investment, Moral Hazard, and Occupational Licensing. *The Review of Economic Studies*, 53(5).

Alternatively, to the current system, the model currently employed in NSW, whereby certifiers are also publicly-employed as members of the city councils, provides a practical framework that could be similarly implemented in the ACT.

Furthermore, all accredited certifiers in NSW, whether private or public, are considered officials under the *Independent Commission Against Corruption (ICAC) Act 1988*, and as public authorities under the *Ombudsman Act 1974*, and are thereby subject to the requirements of each Act.<sup>4</sup> Holding certifiers liable to these provisions as public officers increases their accountability to the work they certify, and is an important means of achieving improved build quality standards.

It is also often the case that certifiers have conflicting interests and are not sufficiently independent from the builder or developer they are certifying for. The often compromised position of many certifiers has meant the work they have certified has not been held to a necessary level of scrutiny, and as such many defects that should be noticed in the early stages of construction are instead overlooked. This entrenches a system where defected building work is not dealt with promptly, and instead allowed to become a serious and expensive problem for consumers later on.

Again, the system implemented in NSW provides a good guideline for the ACT, as well as a strong disincentive for certifiers to breach provisions relating to conflicts of interest. Certifiers in NSW must not issue a development certificate to any individual they may have a conflict of interest with, and face fines of up to \$33,000 if found to have breached this requirement.<sup>5</sup> The CFMEU suggests implementing similar regulations on certifiers in the ACT in order to increase their accountability and limit their ability to certify work where they are clearly in breach of their conflict of interest obligations.

Lastly, the CFMEU encourages the Committee to consider implementing mandatory annual refresher training for ACT certifiers, in order to ensure they are up to date with developments in the industry and that their skills are at a standard of best-practice. Such a system is already employed in NSW, and is a requirement of all certifiers. It is the view of the Union that certifiers are professionals, and should be required to participate in ongoing personal development training, as is the standard in various other industries.

### **3. Defect rectification**

A further concern of the CFMEU is the manner with which defect rectification is dealt with in the ACT. As detailed in various news articles and other submissions to this inquiry, it is often the case that homeowners are left with defected works caused by poor building standards and a lack of adequate certification. When this occurs, it is very difficult for the homeowner to hold anyone to account in order to have the defects rectified, as builders and developers are often able to avoid this responsibility once they are no longer working on the project or have gone broke.

Furthermore, when homeowners take the matter up in court, they are often subjected to a long, arduous and costly process, where little is gained and no resolution is achieved. The Union believes that in matters relating to defect rectification, court proceedings should be avoided all together where possible, and only be used as a recourse of last resort.

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<sup>4</sup> <http://bpb.nsw.gov.au/certifiers-role/obligations-certifiers>.

<sup>5</sup> <http://bpb.nsw.gov.au/certifiers-role/conflicts-interest>.

Developers with deep pockets are often able to prolong a court battle and create a war of attrition where homeowners almost always come off second best. In these situations, developers abuse a system where they have a clear advantage in order to avoid being held responsible for their building defects. It should therefore be a priority of this committee that defect rectification be held the responsibility of the developer, and that no homeowners be dragged before a court for these matters.

The Union believes that measures must be implemented in order to avoid these issues reaching court, and to ensure that homeowners are able to have defected works rectified in a timely manner.

One such means of achieving this is through implementing a building bonds scheme similar to that which was introduced in New South Wales at the beginning of the year. The use of such a scheme would provide greater security to homeowners who would be able to access some money in order to repair defects without going through lengthy and costly court proceedings. Having readily available funds for this purpose allows any defects to be dealt with quickly, without the homeowner having to chase down builders and developers who are reluctant to fix the issue.

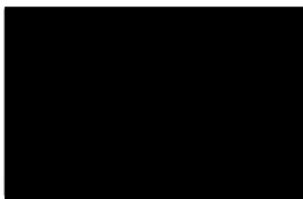
#### **4. Conclusion**

In concluding this submission, the CFMEU would like to once again reiterate the importance of instituting an improved occupational licensing regime, a public based certification system, and enhancing the regulations surrounding the rectification of defected building works.

Through the work of this inquiry, we hope the EDT committee is able to recommend these changes be implemented by the ACT Government in order to make buildings safer – both for homeowners and for those workers building them.

We would like to thank the committee for the opportunity to submit to this inquiry, and hope our involvement in this process is able to help the committee to make recommendations that will improve building quality in the ACT.

Kind Regards,



Jason O'Mara  
Divisional Branch Secretary  
CFMEU, Construction & General Division (ACT Branch)