



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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

Submission Cover Sheet

Inquiry into Building Quality in the ACT

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The Committee Secretary
Standing Committee on Economic Development and Tourism
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

RE: INQUIRY INTO BUILDING QUALITY IN THE ACT

Dear Mr Finlay

The Australian Institute of Building (AIB) thanks you for the opportunity to respond to the Standing Committee's Inquiry into Building Quality in the ACT.

Attached is the Institute's submission addressing a number of the criteria identified as under investigation by the Committee. Also attached is a copy of a submission to the ACT Government made by the AIB in 2016 relating to improving the ACT Building Regulatory System which has some overlap with this inquiry.

Members of the AIB would be pleased to elaborate on these submissions and further explain our point of view at any hearings held by the Committee.

Yours sincerely

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AIB SUBMISSION TO THE ACT LEGISLATIVE ASSEMBLY STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM INQUIRY INTO BUILDING QUALITY IN THE ACT

AIB'S HISTORY AND ROLE AS A PROFESSIONAL BODY

The role of AIB

Founded in 1951, the Australian Institute of Building (AIB) is incorporated by a Royal Charter and is the pre-eminent professional body for building professionals in Australia and the Asia-Pacific region (see <https://www.aib.org.au/your-institute/>).

The AIB is recognised as the accrediting body for building and construction education at university level. It accredits building & construction management and related degrees in 14 university institutions throughout Australia (see <https://www.aib.org.au/education/higher-education-courses-accreditation/>). The AIB is proud of the standards it is helping to maintain with regard to university level education of our building professionals.

For more than sixty years, the Institute has worked with the building and construction industry, government, universities and allied stakeholders to promote the building profession, support the development of university courses in building and construction whilst promoting the use of innovative building techniques and a best-practice regulatory environment.

AIB objectives

The objectives of the AIB are as follows:

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

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

SUBMISSION

1. *The certification regime for the building and construction industry including:*
 - a. *Review by certifiers of the initial building plans;*
 - b. *Compliance by builders with the building's approved construction plans;*
 - c. *The adequacy of regulatory mechanisms to ensure compliance with approved construction plans;*
 - d. *The role of inspections and audits in the regulatory process; and*
 - e. *The appropriateness of current practices for appointing certifiers, including addressing the potential for conflicts of interest.*

Currently, documentation approved by private certifiers is required to be at a level that can be built by a 'competent builder'. This is open to interpretation. Improved documentation control and recorded review by certifiers is important to reduce and avoid potential defects.

The AIB supports minimum standards of documentation and would recommend that ACT Government mandate minimum documentation standards.

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

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

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

The AIB considers that there currently exists a conflict of interest in respect to certifiers. While formally engaged by the building/land owner, in reality it is often the builder who procures the services of the certifier with the owner only providing signoff. The incentive

for the certifier is to ensure their business is sustainable. They can make the builder's life as easy as possible while also keeping their own cost down and win repeat work. This market force distortion needs to be addressed and AIB provide the following options for consideration:

- a. ACT Government consider taking building certification back into Government. While aspirational, this would produce better consistency, control and would assist in dealing with building quality issues we are seeing in the ACT.
- b. Noting that there may be no appetite for point (a) above, we offer the following which will help provide some consistency across private certifiers and remove the ability for them to act subjectively in their approach to the role:
 - i. Legislate minimum documentation standards for building plans
 - ii. Mandate trade licensing
 - iii. Undertake more government audits/inspections
 - iv. Mandate more hold points for certifiers in the construction process (i.e. waterproofing)
 - v. Mandate more certifications at completion and handover
 - vi. Through licensing arrangements require higher standards of knowledge and experience for building certifiers including requirements for continuing professional development and
 - vii. Have a pool of government inspectors as an alternative.

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

The AIB supports standard contracts or contract provisions to ensure the fair distribution of risk and reward in residential building contracts and to ensure that the requirements of the National Construction Code are met.

While various standard industry contracts exist including those produced by Standards Australia, Master Builders and the Housing Industry Association, they rely on the meeting of various Australian standards where specified to guarantee quality in terms of build and materials. In addition, the contract relates to and encompasses the documentation and drawings. Where these are substandard or underdeveloped this can lead to argument and misunderstanding at best and lack of contractual support at worst.

AIB would argue that many builders are unaware of the breadth of standards that exist and tend to rely on experience to get them through certification rather than a detailed

knowledge of what is actually required under current standards or even in their contracts and documents. This is a failure of education generally at the trade level and of continuing professional development. ACT Government should review the various standard contracts in relation to their requirements to meet various standards and consider how to ensure that knowledge of these is covered in licensing and educational requirements for trades.

- 3. *Industry skills accreditation and ongoing professional development including:***
 - a. The breadth of the occupational licensing regime in the ACT;***
 - b. The suitability of ongoing skills education and practices within the industry.***

Other jurisdictions also have more stringent requirements around trade licensing which we believe should be considered for the ACT. The ACT Chapter also supports the broadening of occupational licensing in the ACT. This could also extend to minimum standards for site supervisor training and certification. This is something the AIB could assist with managing via its National Building Professionals Register (NBPR) process.

One of the major issues in the ACT has been the differing quality in trade training from various vocational educational providers in the ACT. The financial incentives for vocational education providers are driving some of this. The AIB supports minimum standards being set for various trades in terms of education and experience which are independently examined in the licensing process.

However, the AIB notes that investigations into a number of major building defects in the ACT have indicated that both registered and unregistered personnel have been involved. This indicates that licensing or registration alone does not prevent poor practice. There must be adequate and responsive disciplinary action associated with licensing and regulatory systems including requirements for ongoing training and professional development which is as appropriate for all trades as it is for management professionals.

- 4. *Processes and practices for the identification and rectification of defects including:***
 - a. Current mechanisms available for defect identification and redress;***
 - b. The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met;***
 - c. The adequacy and accessibility of those mechanisms especially for individuals or bodies corporate; and***

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.

The ability to address defects relies on various factors: documentation detail, contract requirements, the understanding of the builder of their obligations in relation to standards, the certifier's level of knowledge and commitment, the number of inspections and timing of these. Individual home owners and Bodies Corporate tend to be ill informed clients in relation to the complexity of building regulations and requirements let alone what might constitute a defect. They rely on regulatory action to provide a minimum standard that builders are required to meet in order to protect them.

The AIB acknowledges the problem with sharing licences/ghosting and phoenixing which occurs in the industry, especially the residential sector. We believe this issue is a matter of the enforcement of current policy and support the ACT Governments identification of the issue and willingness to crack down on the process. The ACT Government could consider legal mechanisms where in the event of a builder insolvency that all retentions owed by the owner to the builder must be passed onto subcontractors as proof of entitlement is shown.

5. The cost effectiveness of current building compliance and defect rectification practices for industry, government, individuals or bodies corporate and the potential for the introduction of alternative dispute resolution mechanisms.

The cost of any rectification works in buildings increases as building works proceeds to completion. The alternative of defect prevention through higher standards of documentation, more hold points, greater levels of training for trades and certifiers would undoubtedly be cost effective for all parties.

In respect to alternative dispute resolution, the AIB supports the development of an increased framework in this space, including for example mandating alternative dispute resolution clauses for all building works contracts in the ACT.

6. The role of Access Canberra

No comment

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

The AIB believes that the current ACT building licensing framework as it exists is suitable and sufficient. The system of A-D class licences with both corporations and nominees has value. However, the AIB does not support architectural or engineering degrees as an appropriate qualification for any level of building licence. In reviewing architectural and engineering course structures there is little to no connection to building, building surveying or construction management. We have a strongly formed position with a wealth of information on this topic we would be happy to share on request. We are also concerned a draftsman is able to gain a B or C class licence in the ACT without the relevant practical experience.

The AIB supports the consideration of a broader range of licensing of trades similar to the Queensland system. See <http://www.qbcc.qld.gov.au/when-you-need-licence/licence-classes> .

8. Personal experiences that could inform consideration of any of the above

No comment

9. Any other relevant matter

As a long standing independent professional body the AIB stands ready to assist in relation to lifting the standards of building in the ACT, including assisting with advice, continuing professional development, our register of professionals and through our accreditation experience and processes.