



Australian Institute of Architects

SUMMARY OF THE SHERGOLD/WEIR REPORT AND THE IMPACT OF THE RECOMMENDATIONS ON ARCHITECTS

A. BACKGROUND

In mid-2017, the Building Ministers' Forum requested Professor Peter Shergold and Ms. Bronwyn Weir to undertake an assessment of the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. Their report, *Building Confidence*, was considered at the Building Ministers Forum in late April 2018. The report focusses on shortcomings in the implementation of the National Construction Code (NCC) and relates to compliance and enforcement systems for building and construction standards.

Key issues include:

- Serious compliance failures (NCBPs, water ingress, fire safety, structural issues)
- Inadequacy of documentation with consequential results on building quality and ongoing maintenance
- Weak oversight by licensing bodies due to lack of funding/skills/experience
- Past lack of oversight of commercial building industry
- Independence of building certifiers

B. GENERAL FINDINGS

Specific recommendations are addressed in section C. General findings of the report are as follows:

- Each jurisdiction may have some solutions for these issues, but all jurisdictions have work to do
- There is a need to shift industry culture and improve regulatory focus
- There were positives with the performance-based approach to the NCC as it allows for new techniques, products and technologies to be introduced and new and creative architectural design, but this must be accompanied by an effective disclosure regime
- Decisions made during design and construction need to be visible and those making decisions need to be identifiable and be held accountable
- Products used must be appropriate and applied correctly and to an appropriate standard
- Those certifying standards need to be adequately trained/qualified and need to be independent
- There has been significant change in the contractual arrangements for multi-storey residential projects, with consultants such as architects and engineers becoming subcontractors to builders, who becomes responsible for the design and construction of the building
- Most jurisdictions have staged building approvals, but there is often a significant difference between the as-designed documentation and the as built building
- The governance of private building surveyors needs recalibration
- There is a need to strengthen the competency of builders
- The quality of documentation needs to improve, and increased controls are needed over design and construct approaches to building
- Builders must resist proceeding with work beyond the approved design
- Greater harmonisation in compliance and enforcement systems is needed across jurisdictions

C. REPORT RECOMMENDATIONS AND PROPOSED INSTITUTE RESPONSE

Overall, the Institute supports the findings of the review and would urge Building Ministers to implement the recommendations in collaboration with Industry. The Institute fully supports a national approach to the administration and enforcement of the NCC. Some issues require further discussion as detailed proposals emerge, but this should not delay Building Ministers agreeing to implement all 24 recommendations.

1. Registration of building practitioners

Each jurisdiction has different categories of practitioner that require registration/licensing, which affects mobility and creates complexity for mutual recognition, and there are gaps in accountability of practitioners with key responsibilities for compliance with the NCC

Recommendation 1: That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:

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

It is intended that only registered practitioners can perform the work for which they hold registration, and only appropriately qualified and registered practitioners can prepare performance solutions. There is a suggestion that legislation regulating architects should provide the introduction of sub-categories which limit the scope of work that can be performed by architects by reference to classifications or types of buildings. There are other recommendations relating to architects which are addressed separately below.

The Institute supports this recommendation as a general principle. Architects are already required to be registered, to hold insurance, and in some jurisdictions, have mandatory CPD requirements. The registration of project managers and building designers has been a position of the Institute for some time to level the playing field. We support this recommendation, particularly restricting performance solutions to appropriately qualified and registered practitioners. In our view it is essential to clearly articulate the role and responsibility of each practitioner, with particular differentiation between architects and other designers areas of skill. What we would not like to see is a compartmentalisation of architects into “domestic” and “commercial” architects, but rather, continue to allow architects to engage across a range of projects.

2. Consistent requirements for registration

There are different requirements across the country for registration/licensing of building practitioners.

Recommendation 2: That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:

- *certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;*
- *additional competency and experience requirements;*

- *where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.*

The Institute supports this recommendation. We have advocated for a national registration system for architects for some time, and this assists with closing the gap between jurisdictional requirements. Many of these provisions already exist for Architects. The additional requirement for compulsory training on the operation and use of the NCC is a sensible recommendation and could be addressed for future architects through the education system.

3. Continuing professional development

The report recognises the need for CPD for all building practitioners on the NCC to ensure they remain up to date.

Recommendation 3: That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.

The Institute supports this recommendation.

4. Building surveyor career paths and collaboration between regulators

Recommendation 4: That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.

Recommendation 5: That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).

The Institute supports the recommendations.

5. Effective regulatory powers

The report found that audits of cladding on high rise buildings raised issues around the adequacy of regulatory powers for investigation and to require rectification.

Recommendation 6: That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.

Coupled with this recommendation is a list of proposed powers, including production of documents, powers of entry, imposition of orders to evacuate, or stop works, etc. As well, there is a call to allow for performance audit powers of all registered practitioners, including architects.

Overall, the Institute supports the recommendation, but more detail is required about what the audit may involve. It is expected that this would only occur when a major issue has arisen.

6. Proactive regulation of commercial buildings

Building approval processes generally only provide for high level self-certification of design and construction of commercial buildings. An auditing regime is proposed.

Recommendation 7: That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.

There is also a suggestion that there should be targeted audits of documentation and quality of decision making.

The Institute supports the recommendation.

7. Fire engineering: integrity of, codes of conduct for, and role in enforcement for building surveyors

Recommendation 8: That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.

Recommendation 9: That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.

Recommendation 10: That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.

Recommendation 11: That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.

The Institute supports the recommendations.

8. Collecting and sharing data

Key information is not always readily available about buildings. The intention is to have the same key data points across jurisdictions.

Recommendation 12: That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.

The Institute supports this recommendation. This data will be invaluable to architects undertaking renovation and re-use projects.

9. Documentation - Responsibility and roles of design practitioners

The issue revolves around the adequacy of documentation in the building approval process, based on owners and developers seeking to cut costs. As well, there is no nationally consistent registration of design professionals and no restriction on who can prepare performance solutions. There is also no requirement for designers to prepare documentation to demonstrate that the building will comply with the NCC.

Recommendation 13: That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.

This is an issue of concern to the profession and has been for some time. This requirement should stop the practice of handing on the documentation task to others after the architect completes the design and will make better use of an architect's overall skill set. This recommendation is supported.

10. Performance solutions

Recommendation 14: That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have been used and for what purpose.

Recommendation 15: That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.

The Institute supports the recommendations.

11. Approval of documentation throughout construction

Under a design-and-construct contract, limited documentation is prepared at the time building work commences, with documentation produced and developed throughout the project. This also applies for Domestic building work, where variations may occur as decisions are made during construction, particularly for renovations. Often the design will contain assumptions or will be qualified. Later, when products are specified, the original designer may not be consulted to consider their effect.

Recommendation 16: That each jurisdiction provides for a building compliance process which incorporates clear obligations for the ongoing approval of amended documentation by the appointed building surveyor throughout a project.

While supporting this recommendation, we would argue that the original designer, if not continuing as part of the project, be consulted and their advice recorded. This will more clearly delineate who is the decision maker.

12. Independent third-party review, mandatory inspections, and fire safety systems

Recommendation 17: That each jurisdiction requires genuine independent third-party review for specified components of designs and/ or certain types of buildings.

Recommendation 18: That each jurisdiction requires on-site inspections of building work at identified notification stages.

Recommendation 19: That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.

Supported.

13. Building manual, building product safety and dictionary of terminology

Recommendation 20: That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.

Recommendation 21: That the Building Ministers' Forum agree its position on the establishment of a compulsory product certification system for high-risk building products.

Recommendation 22: That the Building Ministers' Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.

Supported

14. Implementation of recommendations

Recommendation 23: That the Building Ministers' Forum acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.

Recommendation 24: That the Building Ministers' Forum prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.

Fully supported

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