



Australian
Institute of
Architects



Association of Consulting Architects
The Business of Architecture

Reforms to the approval process for commercial buildings in Western Australia

Submission to

Commercial.building@dmirs.wa.gov.au

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PURPOSE

This submission is made to the Policy and Legislation Branch, Building and Energy, Department of Mines, Industry Regulation and Safety to provide comments on the consultation regulatory impact statement *Reforms to the approval process for commercial buildings in Western Australia*.

The submission has been developed following consultation with members of Engineers Australia, Consult Australia, ACA, Accredited Certifiers Au (Building Surveyors) and the MBA.

SUBMISSION BY

This submission is jointly made by the Australian Institute of Architects, WA Chapter, and the Association of Consulting Architects.

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 11,000 members across Australia and overseas.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

The Association of Consulting Architects (ACA) is the national peak body representing the interests of employers in industrial matters. It now addresses the “business of architecture” more broadly, with industrial relations as a vital core of ACA activity.

The ACA helps architectural firms navigate the changing world of practice by providing regular advice and information on business and employment matters, by promoting awareness of and discussion about business issues, and by advocating for better business practices and legislative frameworks.

Through this leadership, support and advocacy, the ACA helps to ensure the long-term health and viability of the profession, and thereby supports the important contribution that architecture makes to our cities, environments, communities and cultures.

Contact

Beata Davey, Australian Institute of Architects

Email: beata.davey@architecture.com.au

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1. INTRODUCTION

We welcome the opportunity to provide comment on the consultation regulatory impact statement (CRIS) *Reforms to the approval process for commercial buildings in Western Australia*.

We believe that regulatory reform should be advancing the professions and industry to deliver the best possible outcomes for the community. There needs to be real changes to the industry, as opposed to creating 'perceived short-term' confidence through additional red tape/paperwork (particularly in respect to fire engineering requirements).

Consistency with reforms in other jurisdictions is needed to ensure that the recommendations of the Shergold Weir report are implemented in a nationally consistent manner.

In terms of the financial cost of proposed reforms, we support in general the additional cost where it is balanced by community/consumer protection. It is our view that the preliminary estimates of cost in Building commission's submission are under-estimated.

2. THE CURRENT SITUATION

There are recurring failures in building quality occurring across Australia. This is due to a range of issues, notably:

- (1) quality is not embedded into the value system of the design and construction process
- (2) the roles and accountabilities of those involved are not clearly defined and
- (3) there is a general lack of recognition of the value that good design, thorough documentation and construction oversight bring to the overall life cycle costs, maintenance and operations of buildings while meeting the functional needs and expectations of the end-users.

Current building practice must change from time and cost being put above quality and safety so that people's safety and economic security are not put in jeopardy. We believe that community well-being must be paramount.

To ensure community protection, all building practitioners need to be brought under a regulatory regime. Only regulated practitioners should be accountable for complex matters such as:

1. the design of multi-unit residential dwellings
2. the design certification of any parts of the construction works
3. the structural design of buildings, and
4. the water-tightness of buildings

With regards to higher risk buildings such as multi-unit residential buildings, mixed used buildings and speculative commercial buildings, only fully qualified, experienced and regulated professionals should be responsible for the delivery of design services and project management for these types of buildings. Further, different classes of licence should be issued according to building class and size.

The current market sees developers and building contractors fragmenting the design, documentation and site observation stage services of the professional team (architects and engineers). Instead of maintaining a consistent consultant team, building contractors can shop around the market mid project to change the team and reduce fees. This process undermines a cohesive process and the potential to achieve quality outcomes.

Architects are not always engaged to prepare documents for all stages of the design and documentation process and this lack of continuity is, in our opinion, one of the key contributors to problematic building quality issues.

For large and complex projects, continuous independent oversight and quality assurance is required throughout the design and construction stages, to mitigate errors and manage risk.

While there have been many contributing factors to the current crisis, a significant part of the problem has been the rise of a method of procuring building services called the design and construct, or D&C contract.

Whereas previously other building professionals, such as architects, would have maintained a direct relationship with the developer (client), today that is no longer the case under D&C contracts. The consequences are that it is more difficult to override, challenge or even effectively communicate concerns about decisions that can have an adverse impact on quality.

Proposals 14 and 26 do not appear to consider or are suitable for D&C contracts and conflict with the contractual obligations of the consultant team. We recommend for provisions and protections to ensure that the consultant team acts independently through-out certification roles.

Without quality controls in the building process, government and industry cannot restore public confidence in the building system when there are building failures.

The reforms in the CRIS provide a high level of detail and are a positive step to setting minimum standards across the state for the building and construction industry. We applaud the State Government for its commitment to implement the recommendations of the Shergold Weir Report, *Building Confidence*.

Our response to the questions raised in the CRIS are outlined below.

3. COST OF THE PROBLEM

The CRIS asks the question as to whether non-compliant building work is a problem. As we have seen across the country, and in WA, there are many examples of non-compliant building work imposing economic and social harm to the community. The most recent cases of Opal Tower in Sydney, the Lacrosse apartments in Melbourne and Westralia Square in Perth are most often cited.

Referencing the potential cost increases in third-party reviews of high risk designs and inspections during construction of 0.8% or \$33.5 million per year, as outlined in Appendix D of the CRIS, we are of the opinion that viewed in light of the associated cost-benefit analysis that indicates that avoiding rectification work to just 44 buildings per year would offset the 0.8% cost increase, this represents good value for increased safety and confidence within the industry.

However, the cost analysis, it appears to be underestimating the actual cost of third party reviews and inspections.

There is also potential for some of the recommended proposals to be costly and not fully considered. We would recommend further review of the proposals to investigate flow-on-costs and impacts on liabilities of all parties. Further review of impact on insurance is also required. Increased duty of care requirements and other accountability measures in proposed regulatory measures need to be insurable and not significantly increase the cost of insurance.

4. REGULATORS' MONITORING AND ENFORCEMENT POWERS

Proposal 1 and Proposal 2:

Amend the Code of Practice: Safe design of buildings and structures to address non-conforming and non-compliant building products.

Amend the Building Regulations to mandate the Code of Practice: Safe Design of Buildings and Structures as an applicable standard for all classes of building.

We agree with the proposal to amend the Code of Practice to deal with non-conforming and non-compliant building products and for its application to be mandated in building regulations. There must be strong legislative provisions to ensure that everyone in the supply chain can be held accountable, particularly suppliers and importers, not merely provide incentives for manufacturers, importers and suppliers to supervise the product compliance more closely. The best example of legislation is the *Queensland Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*. This establishes a chain of responsibility, placing duties on building supply chain participants (including designers, manufacturers, importers, suppliers and installers) to ensure building products used in Queensland are safe and fit for intended purpose and expands the compliance and enforcement powers of the Queensland Building and Construction Commission (QBCC), and the responsible minister

There is an urgent need for a national database of compliant materials with test results.

Proposal 3:

Amend the Building Services (Complaint Resolution and Administration) Act 2011 to empower the Building Commissioner to prescribe requirements on technical matters.

This proposal is supported in principle, however there needs to more detail provided. Depending on the type of requirements, there is potential to cause delays to projects by introducing unnecessary requirements. It is also unclear whether this power would apply to requirements only relating to the national construction code or whether this would provide professional technical advice more commonly provided by a consultant.

Consideration needs to be given to extending the proposal to include the provision of technical advice to practitioners from a State body such as the DMIRS on matters pertaining to the interpretation of NCC compliance to mitigate potential for misrepresentations/ambiguity.

It is our view that there may be the risk of adding cost to projects and the consultant team in responding to technical queries from the Building Commission. It is also not clear as to the nature of these queries, for instance, will they relate to a single project or be industry-wide updates?

Proposal 4:

Amend the Building Act and the BSCRA Act to empower the Building Commissioner's inspectors to enter and inspect any building site.

This proposal is supported on the assumption that due notice is given.

Proposal 5:

Amend the definition of dangerous situation in the BSCRA Act to empower the Building Commissioner to remedy any situation where there is a high risk to people, property or the environment from the carrying out of a building service.

This proposal is supported on the basis that it will align with practice in NSW and Victoria.

5. FIRE AUTHORITY CONSULTATION

Proposal 6:

Amend the Building Regulations to require that documentation of fire safety performance solutions must include a fire engineering brief and fire engineering report, in accordance with the International Fire Engineering Guidelines' process.

This proposal is supported and must apply to all aspects of the building. While there may be an initial cost to the client, this is offset by savings in construction and mitigation of future risk.

Proposal 7:

Amend the Building Regulations to provide that the FES Commissioner may issue a certificate at any time confirming that a building design meets operational requirements.

This proposal is supported in principle but needs some additional measures. The Institute believes that the FES Commissioner should be obliged to issue certificates. This will provide certainty and uniformity of certification. There are potential risks in instances where no certificate has been issued (and it should have been) that a perception may arise that the design is approved. Rules for response times and appeal mechanisms are also required.

There is concern about the resourcing levels of the DFES and their ability to respond in a timely fashion. We would recommend that the DFES regulation needs to change the timelines from “response will be provided within minimum 15 working days” to “maximum of 15 working days”.

Proposal 8:

Amend the Building Regulations to clarify that the FES Commissioner’s written advice must be considered and responded to no matter when it is provided.

This proposal is not supported unless there are time frames and appeal mechanisms in place as outlined above. The FES Commissioner’s advice must be given in a timely manner. If the project is at design documentation, for instance, the advice may cause major delays and be very costly to the project.

Proposal 9:

Amend the Building Regulations to clarify the information that must be included when responding to the FES Commissioner’s advice.

This proposal is supported on the basis that DFES will be more clear in advice giving and providing more rationale in their response.

6. BUILDING SURVEYORS’ CONFLICTS OF INTEREST

Proposal 10:

Amend the definition of ‘independent building surveyor’ in the Building Act to require that a building surveyor must be independent of anyone whose work they certify.

While this proposal would create greater confidence in the independence of the building surveyor, this proposal requires further detail before full support can be given. For instance, is it the intent that advisory and certification roles of building surveyors be separated? If this is the case, further detail is required. For instance, separating the advisory and certification roles seems to be about creating perceived Independent consultant v auditor doing verification work. This proposal requires further clarification.

Proposal 11:

Introduce a mandatory Code of Practice for registered building surveyors in WA.

This proposal is supported.

7. SUPERVISORY POWERS FOR BUILDING SURVEYORS

Proposal 12:

Amend the Building Act to require that a building surveying contractor's contract must extend for the duration of a construction project, must incorporate a prescribed scope of services, and may not be terminated early except in certain prescribed circumstances.

This proposal is in line with other States and Territory requirements and is supported. More detailed information is required with regard to the prescribed circumstances of termination and should also include lack of insurance coverage.

Proposal 13:

Amend the Building Act to require that a building surveyor must be paid for work undertaken, even if they are unable to issue a certificate of compliance because the building design or construction does not comply with the applicable standards.

This proposal is supported.

8. BUILDING DOCUMENTATION REQUIREMENTS

Design and documentation requirements to deliver a successful project on site are vastly different from project to project, builder to builder and client to client.

In the building process, architects are commissioned by owners to provide a service either as:

- full service – design, documentation and contract administration, or
- partial service – design & documentation to development approval only, or design and documentation to building approval stage

An example of full service would be a traditional design-build process where a building owner hires an architect to design a building and provide a complete set of design and construction documents (drawings); a general contractor is selected; the architect's set of stamped, completed and approved plans are handed to the contractor and these form part of the contract that binds the contractor to build the building exactly as shown in the drawings, approved plans and specifications.

Partial service can mean that the architect is only involved in the initial design and provides minimal documentation. Levels of detail differ between stages in the project and it is becoming common practice for developers to employ architects to prepare the initial documentation to development approval stage, and then hand on the task of more detailed documentation and product and material specification to other practitioners, such as building designers, who do not hold the same level of skills as that of an architect, and are not regulated in any way with regard to levels of education, experience or compliance with codes of ethics.

There is also a commonly held misconception that drawings for building approval (BA) are sufficiently detailed to inform construction. The level of documentation for BA is somewhat lower than what an architect would expect a project to need for construction. BA documents are not generally sufficiently detailed to resolve the complex junctions and interactions between parts of even the simplest building which may leak, fail fire separation requirements, and/or look unsightly. These documents will most certainly not provide detailed product and material specification.

Architects routinely separate the documentation tasks into two parts, BA documentation and construction documentation. The majority of details are prepared in the latter phase. Wall junctions, fire-rating details, waterproofing details, box-gutters, balcony details, thresholds, flashings, etc. form part of this work.

Construction detailing is perhaps one of the most crucial skills used in construction documentation. This is because the nature and quality of architectural detailing contributes to how the building is built, what it will look like, what it will cost, how long it may take to build and contribute ultimately to the quality of the building. For these reasons, practitioners involved in the documentation process must have a thorough understanding of the methods and techniques used in building construction. This includes knowing how various materials are connected or attached and how they interact when brought together. An understanding of how air, water, and other elements interact with buildings is also crucial to quality construction documentation.

Unless qualified design professionals such as architects are engaged for this phase of work (especially on multi-unit residential buildings) this construction information is missing from the process. Without construction detail drawings, including specifications, the quality of the building and the use of properly specified products and materials will depend on the builder, project manager and site trades.

The level of BA documentation does not impact building quality, whereas construction documentation does. To improve outcomes, there needs to be a focus on construction documentation, which is currently not regulated.

Proposal 14:

Amend the Building Regulations to require that supporting documents specified in a certificate of compliance must demonstrate how the building work will comply with each applicable building standard.

The proposal is supported in principle. The wording will need to be carefully crafted so that this is achievable in a practical sense and not create a strict liability for those preparing the documents. The test of reasonableness should be applied by allowing the supplier of the documents to take all reasonable steps to ensure that the documents demonstrate how the building work will comply with applicable building standards at appropriate stages throughout the building process. And we believe the wording in the regulation needs to focus on the level of detailing and thoroughness of the documentation.

Proposal 15:

Amend the Building Regulations to require that all supporting documents referenced in a certificate of compliance must state the author's name, and registration number if applicable.

This proposal is not supported in its current form.

The design of a building is a team effort, with many people contributing to a design. As well, companies carry insurance, not employees. This should only be a requirement where a registered or licensed person is required to sign off the documentation.

Proposal 16:

Amend the Building Regulations to prescribe the information that must be included in documents supporting a permit application.

This proposal is supported. The Institute expects that this provision will replace the current local authority requirements, which can vary from authority to authority.

We would expect that the following would be prescribed with regard to architectural documents.

A set of architectural construction drawings may include some or all of the following:

1. title sheet
2. site-locality plan

3. demolition plan
4. building set-out plan
5. floor plan
6. roof plan
7. reflected-ceiling plan (lighting and electrical plans)
8. elevations
9. sections
10. construction details (stair details, window and door details, wall type details, construction details)
11. internal elevations and sections
12. joinery details
13. door and window schedules
14. landscape drawings

The construction drawings are supported by the provision of a specification. This may be a separate document. Occasionally it is included in the drawing package. The specification describes the 'what' and the 'how'; drawings describe the where and how much and may include the following:

1. specification standards and quality
2. materials schedule
3. fittings and fixtures schedule
4. lighting schedule
5. door and window hardware schedule

Proposal 17:

Amend the Building Regulations to prescribe that when completing the CDC, building surveyors must include the revision number or date of the supporting documents.

This proposal is supported.

Proposal 18:

Amend the Building Regulations to prescribe that any occupancy or maintenance conditions that must be met, to ensure compliance over the life of a building, are stated on the certificates of design and construction compliance, and the occupancy permit.

This proposal is supported. The Institute expects that this provision will replace the current local authority requirements, which can vary from authority to authority.

Proposal 19:

Amend the Building Act to require that a builder's notice of completion is not required for building work that requires an occupancy permit.

If the result of this provision is to absolve builders' responsibility to certify that the building is constructed in accordance with the documentation and in accordance with the building code, then this proposal is not supported.

9. PERFORMANCE SOLUTIONS

Proposal 20:

Amend building legislation to prescribe documentation requirements for performance solutions.

This proposal is supported

10. RETROSPECTIVE BUILDING APPROVAL

Proposal 21:

Amend the Building Act to prescribe a process for retrospective approval of performance solutions.

This proposal is supported in principle, but more information is required.

Proposal 22:

Require certain types of unauthorised or non-compliant work to be reported to permit authorities and Building and Energy.

This proposal is supported in principle, but further information is required. For instance, would this provision also apply to other professionals such as engineers and architects, and would whistleblower protection be offered. If it is intended to apply to nonconforming building products as well as non-compliant work, this needs to be specified. Unauthorised or non-compliant work needs to be defined more clearly. For instance, the need to address health and safety issues is obvious, but would this also extend to waterproofing? Does it extend to completed projects?

Proposal 23:

Amend the Building Act to require a certificate of construction compliance to certify that the building meets applicable standards.

This proposal is supported in principle.

11. VARIATIONS DURING CONSTRUCTION

Proposal 24:

Amend the Building Act to provide a process to manage variations to the approved design during construction.

The Institute believes it is vital to have a process to handle variations, it must be carefully crafted to ensure there are no adverse outcomes such as sign off by a person who is not qualified to do so. It is also necessary to ensure that variations are treated holistically, and not in a piecemeal fashion as there may be variations that adversely impact on another aspect of the building if variations are considered in isolation.

Often under a D&C contract, limited documentation is prepared at the time building work commences, with documentation produced and developed throughout the project. 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.

The Shergold Weir report recommended that each jurisdiction provides for a building compliance process that 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.

Where a variation is identified, the contract needs to allow the designer sufficient time and resources to properly investigate the impact of the variation. Presently, 'time bar' restraints in D&C contracts are written to keep the contract moving, save additional money and reduce delivery time. However, this can be at odds with a proper due diligence and quality outcomes.

In situations where the builder, project manager or tradesperson initiates variations, and without the requirement for further assessment, the builder, project manager or tradesperson must take responsibility for that variation and its impacts.

12. THIRD-PARTY REVIEW

Proposal 25:

Amend the Building Act to require independent, third-party reviews for high-risk design elements.

This proposal is supported in principle. We can see the value of third party review of matters such as waterproofing/envelope detailing being a risk trigger for health issues associated with mould/water ingress; coordination issues between disciplines (e.g. beam deflection impact on services; basement egress via ramps, etc).

We note that further information is required to assess and comment on how this proposal will operate; including: initiation triggers, frequency, dispute resolution procedures, etc.

13. MANDATORY INSPECTIONS

Proposal 26:

Amend the Building Act and Regulations to mandate inspections for all class 2-9 buildings, via either Option A or Option B.

Option A: The certifying building surveyor identifies inspection requirements in accordance with legislation. Inspection requirements are noted on the CDC and building permit. The builder notifies the permit authority at stages identified on the building permit. The permit authority manages all inspections and issues the CCC.

Option B: The certifying building surveyor identifies inspection requirements in accordance with legislation. Inspection requirements are noted on the CDC and building permit. The builder notifies the building surveyor at the stages identified on the building permit. Inspections are done by the design engineers and building surveyor for the project. Details of all inspections must be attached to the CCC and accompany the occupancy permit application.

Option B is supported. The role of architects and design engineers needs to be articulated further, as the building surveyor relies on third party inspection reports for specific aspects of the works pertaining to a particular discipline for which he/she does not possess the specific expertise to assess.

Proposal 27:

Amend the Building Regulations to state that required inspections, as identified on the building permit, are 'notifiable stages' at which the builder may face disciplinary action if unreasonable and/or significant areas of non-compliance are found.

This proposal is supported. For large and complex projects, continuous independent oversight and quality assurance is required throughout the design and construction stages, to mitigate errors and manage risk.

14. BUILDING MANUAL FOR BUILDING DOCUMENTATION AND OPERATIONAL INFORMATION

Proposal 28:

Amend the Building Act to provide for digital building manuals for all buildings.

This proposal is supported provided proper protections are provided for the intellectual property of the designers.

We would strongly recommend that information be made available via an online portal through a centralised database held by the State Government.

15. OMISSIONS IN PROPOSED REFORMS – SHERGOLD WEIR REPORT RECOMMENDATIONS

Recommendations 1-3:

Registration of building practitioners:

We understand that the registration of building practitioners is going to be addressed in subsequent reviews.

Our position is that all building practitioners involved in work on complex buildings should be registered. This includes in professional and trade practitioners.

Recommendation 12:

Building information database:

Our position is that all lodged documentation for development approval (DA) and construction certificate / complying development certificate (CC/CDC) or Building Approval (BA) is lodged electronically in a central depository.

Recommendations 21:

Compulsory high-risk product certification system:

Chain of responsibility for all building products needs to be articulated. This could be a federal initiative that addresses importation of building materials as well as locally manufactured materials.

Recommendations 22:

National dictionary of terminology:

We support this recommendation and note that the Australian Building Codes Board (ABCB) project addressing this recommendation is underway.