

# A TIME FOR ACTION

## Australian Institute of Architects

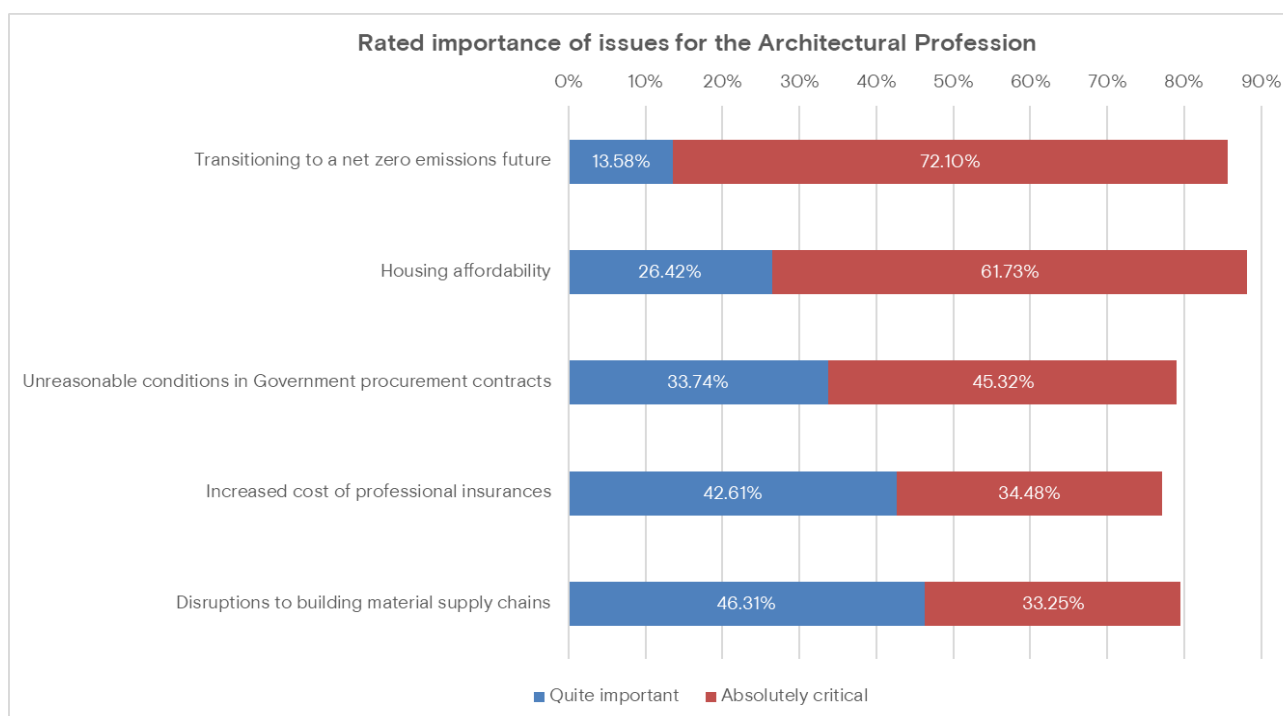
### 2022 Federal Election Policy Statement

#### PRIORITY 4 – BUILDING CONFIDENCE IN AND FOR THE AUSTRALIAN CONSTRUCTION INDUSTRY

#### WHAT OUR MEMBERS SAY

Results from the Institute's member survey show that among the top five issues for the profession on combined 'quite important' or 'absolutely critical' ratings were:

- Unreasonable conditions in Government procurement contracts
- Increased cost of professional insurances
- Disruptions to building material supply chains



#### The Institute calls for the next Australian Government to:

- Deliver a major national construction supply chain strategy to increase Australia's manufacturing capability for high quality sustainable building materials, components and fittings. It must support programs that will:
  - decarbonise materials such as concrete, steel and aluminium
  - develop and manufacture sustainable products in Australia that enable the construction of durable and high energy performance buildings when combined with effective design solutions
  - position Australia to reduce reliance on overseas sourced materials

- establish supply chain controls on any imported products or manufacturing inputs through national and state harmonised supply chain legislation, including requirements for testing and compulsory product certification and controls on substitution
- implement measures to address global problems of modern slavery, child labour, displacement of communities and perpetuation of structural drivers of poverty and inequality.
- Elevate Building Ministers' meetings of the National Cabinet to regular, ongoing meetings in order to:
  - track progress on the implementation of the recommendations of Building Confidence Report
  - advise on the recommended national construction supply chain strategy
  - review construction sector contract terms, and insurances which are creating risk exposure that will drive practitioners out of the sector.

### **Summary of why the Institute is calling for this**

The National Building Product Assurance Framework<sup>1</sup> represents a nationally agreed response to the Building Confidence Report's recommendation 21 on building product safety. However, the Framework acknowledges that manufacturers and suppliers of building products are largely outside any legislative controls.

Beyond the immediate issues of structural integrity and fire safety, there is also a need to provide much higher guarantees about product quality when carbon emissions, environmental, social and economic components of responsible sourcing are considered.

An important caveat is that satisfactory performance solutions still rely upon the right materials being brought together through adequate design and correct working, installation and finishing. To this end, the requirements for registration and competency of the various design, building and trades practitioners across Australia's construction workforce, is a matter that Building Ministers have sought to address through such initiatives as the National Registration Framework and Compulsory Professional Development on the National Construction Code.

Design and building practitioners are also being continually pressured to deliver cheaper buildings at a faster pace, while carrying disproportionate risk through unreasonable contract terms. Under these conditions, insurance premiums are climbing and there are increasing exclusions to cover. The viability of many businesses in Australia's building consultancy and construction industry is at risk.

### **DETAILED CONSIDERATION.**

The Institute is calling for the next Australian Government to deliver a major national construction supply chain strategy to increase Australia's manufacturing capability for high quality sustainable building materials, components and fittings.

#### **Building Confidence – addressing supply chain instability**

The design and constructions sectors' immediate supply chain concerns include shortages and consequent rise and fall issues with building contracts as well as the flow on effects of extension of time and cost claims associated with resulting construction project delays

The drivers have included:

- the Covid-19 pandemic. The pandemic has directly impacted supply owing to workforce shortages affecting local and overseas manufacturers and freight and logistics operations including sea shipping and ports operations.
- Covid -19 economic stimulus both in Australian and globally which has increased demand for construction materials, plant and fittings

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<sup>1</sup> ABCB 2021. Building product safety National Building Product Assurance Framework – BCR recommendation 21. See: <https://www.abcb.gov.au/sites/default/files/resources/2021/BCR-rec21-Building-product-safety.pdf>

- The 2020 bushfires and 2021 and 2022 flood events which all require post disaster remediation or rebuilding works.

In September 2021 the Institute highlighted some of these issues in a [supply chain report](#) that analysed lending, building approvals and construction and building materials costs indices.

### *Current government settings*

The Federal Government has set about to address supply chain issues – to improve sovereign capability and capacity – learning from the immediate impacts of the pandemic. The Australian Government Department of Industry, Science, Energy and Resources' Supply Chain Resilience Initiative (SCRI) and subsequent Sovereign Capability Manufacturing Plan (SCMP) for local manufacturing is setting out to safeguard Australia's access to critical products and build a more resilient supply chain<sup>2,3</sup>. Tranches 1 and 2 of SCRI funding have been made available to establish or scale a manufacturing capability or a related activity to address supply chain vulnerabilities for a critical product or input. However so far the SCMP and SCRI funding have only identified a highly select range of critical products eligible in relation to:

- biopharmaceuticals (medicines)
- agricultural production chemicals
- personal protective equipment (PPE)
- semiconductors
- water treatment chemicals
- telecommunications equipment.

The Institute therefore wish to see the establishment of a national supply chain strategy to bring stability into the supply chain for building materials, components and fittings making it more robust in the face of pandemics, disasters or conflicts anywhere in the world.

### **Building confidence – pursuing quality**

A strong focus for the strategy should be local manufacture. Not only is this important to increase the certainty of supply of building materials, components and fittings but also to exert greater control over their attributes such as fitness for purpose, safety, durability, and sustainability. The Shergold-Weir Building Confidence report recognised the problem of high risk building products with Recommendation 21 seeking that

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

Moreover, the Senate Economics Committee Inquiry into Non-Conforming Building Products<sup>4</sup> has a long history across two terms of government dating back to 2015. It examined the impact of non-conforming building products and possible improvements to regulatory frameworks. The government released its response to the inquiry's recommendations in April 2020. In relation to Recommendation 4

*that where an importer intends to import goods that have been deemed high-risk, the Australian Government require the importer, prior to the importation of the goods, to conduct sampling and testing by a NATA accredited authority (or a NATA equivalent testing authority in another country that is a signatory to a Mutual Recognition Arrangement)*

the Australian Government only noted but did not support the recommendation citing as a challenge the efficacy and efficiency of methods, cost and risk of trade barriers.

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<sup>2</sup> <https://www.industry.gov.au/data-and-publications/sovereign-manufacturing-capability-plan-tranche-1/building-supply-chain-resilience>

<sup>3</sup> <https://www.industry.gov.au/data-and-publications/sovereign-manufacturing-capability-plan-tranche-2>

<sup>4</sup> <https://www.industry.gov.au/data-and-publications/senate-inquiry-into-non-conforming-building-products#:~:text=The%20Senate%20Inquiry%20into%20non,tabled%20on%2023%20April%202020.>

However, the Australian Government did support Recommendation 5 of the Senate Inquiry's report to,

*... examine international approaches—including the European Union's regulations and processes—for testing of high-risk products prior to import and determine if they can be suitably adapted to benefit and enhance Australian requirements.*

as well as Recommendation 7 to,

*introduce a nationally consistent approach that increases accountability for participants across the supply chain. Specifically, the committee recommends that other states and territories pass legislation similar to Queensland's Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017.*

Local manufacture provides an opportunity to exert greater control but also requires local regulation.

Subsequent to Recommendation 21 of Shergold-Weir, the Australian Building Codes Board has formulated the National Building Product Assurance Framework<sup>5</sup> as a nationally agreed response to building product safety. However, the Framework acknowledges that manufacturers and suppliers of building products are largely outside any legislative controls.

Therefore a major national construction supply chain strategy should seek to ensure that it moves from voluntary guidelines and codes such as Codemark to legislated and more highly regulated regimes. For example, even though the NCC prohibits the installation of specified plumbing products that have not received compulsory certification under the WaterMark scheme, only Queensland's legislation prohibits the supply.

An overarching consideration recognised in both Shergold Weir and the Senate Inquiry is that safety and quality of products is not just about the products but also non-compliant use of building products, where products or materials have been used incorrectly and in a manner that does not comply with the requirements of the NCC.

The Institute recognises that the right materials must be brought together through adequate design and correct working, installation and finishing. There are many elements to this, which includes the competency of practitioners, and the control Architects and other consultants can bring to bear on design control throughout construction according to the limitations and strengths of different procurement methods.

### **Building confidence – for sustainability**

Beyond the immediate issues of safety, fitness for purpose including structural integrity and fire safety, there is also a need to provide much higher guarantees about product quality when carbon emissions, environmental, social and economic components of responsible sourcing are considered. Hence the Institute recommends that any supply chain strategy from the outset should support programs to decarbonise materials such as concrete, steel and aluminium. The strategy should also implement measures to address global problems of modern slavery, child labour, displacement of communities and perpetuation of structural drivers of poverty and inequality.

### **Building confidence – addressing industry risk**

Design and building practitioners are also being continually pressured to deliver cheaper buildings at a faster pace, while carrying disproportionate risk through unreasonable contract terms. Under these conditions, insurance premiums are climbing and there are increasing exclusions to cover.

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<sup>5</sup> ABCB 2021. Building product safety National Building Product Assurance Framework – BCR recommendation 21. See: <https://www.abcb.gov.au/sites/default/files/resources/2021/BCR-rec21-Building-product-safety.pdf>

The risk to viability of many businesses in Australia's building consultancy and construction industry has become manifest with the collapse of building firms. Supply chain issues both in terms of material and workforce have been identified as factors in these business collapses<sup>6,7,8</sup>

An inquiry process is needed to more fully appraise the short and longer term viability risks.

Government is also a larger procurer of buildings. In the December quarter 2021 alone, public sector work accounted for \$4 billion of economic activity or 13% of all building work done<sup>9</sup>. Its own contracts risks created through disproportionate liability clauses – such as proportionate liabilities exclusions and uncapped liability clauses can create a situation where businesses potentially walk away from these risks, thereby decreasing the competitive pool that government has bidding to undertake projects.

Similarly, contracts' requirements to undertake work excluded by insurance policies can have the same effect. Moreover, tender bidding requirements that mandate PI cover well in excess of any likely amounts of claims further increase the costs of doing business and ultimately the costs passed on to taxpayers. More favourable terms in government contracts with regard to risk and costs drivers can then also flow on to the private sector.

### **Building confidence – Federal Government working with the States and Territories**

The former COAG Building Ministers' Forum was replaced by the Building Ministers' Meeting under the new National Cabinet arrangements established as a result of the Conron Review of COAG Councils and Ministerial Forums<sup>10</sup> in late 2020. Whereas the previous Building Ministers' Forum was an ongoing meeting, the new Building Ministers' Meeting is now only convened for a maximum of 12 months, to deliver on specific priorities before disbanding. This creates a risk of not fully implementing all of the Building Confidence recommendations prior to the Building Ministers' meeting disbanding.

There is other ongoing work that also warrants oversight of the Australian Government with the Building Ministers of all States and Territories under Australia's federal model by which design and construction are regulated. There will remain an ongoing need into the foreseeable future for the Australian Government to regularly host Building Ministers' meetings and subordinate joint industry/government meetings. Therefore the Institute seeks the next Federal Parliament to elevate Building Ministers' meetings of the National Cabinet to regular, ongoing meetings in order to:

- track progress on the implementation of the recommendations of Building Confidence Report
- advise on the recommended national construction supply chain strategy
- review construction sector contract terms, and insurances which are creating risk exposure that will drive practitioners out of the sector.

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<sup>6</sup> <https://9now.nine.com.au/a-current-affair/aussie-families-left-without-homes-after-building-company-privium-group-collapse/06299530-85d8-48a0-96c2-965addddc5d6>

<sup>7</sup> <https://www.abc.net.au/news/2022-01-20/building-industry-crisis-as-major-firms-go-bust/100753440>

<sup>8</sup> <https://www.smartcompany.com.au/industries/construction-engineering/condev-probuild-collapse-construction-industry/>

<sup>9</sup> Australian Bureau of Statistics 8752.0 Building Activity, Australia TABLE 01. Value of Building Work Done by Sector, Australia – Chain Volume Measures. <https://www.abs.gov.au/statistics/industry/building-and-construction/building-activity-australia/dec-2021>

<sup>10</sup> <https://www.pmc.gov.au/sites/default/files/final-report-review-coag-councils-ministerial-forums.pdf>

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## *The Institute's six priorities for the next Australian Government*

1. Address inaction on climate change
2. Fix the supply of affordable and social housing
3. Become a leader for national design initiatives
4. Build confidence in and for the Australian construction industry
5. Address gender diversity and inequity in Australia's construction industry
6. Introduce greater integrity into government decision making

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