

Complete Flying Minute - Submission on the Proposed Reforms to the Approval Process for Commercial Buildings (05-015-02-0005 VJ)

Vanessa Jackson, Policy Manager, Planning and Improvement

That the submission to the Department of Mines, Industry Regulation and Safety, on the proposed reforms to the approval process for commercial buildings be endorsed.

RESOLUTION 43.FM/2020

CARRIED

Executive Summary

- In December 2019, the State Government prepared a Consultation Regulatory Impact Statement (CRIS) for improvements to the commercial building approvals processes.
- The Department of Mines, Industry Regulation and Safety's CRIS proposes 28 improvements, ranging from documentation requirements; performance solutions; fire authority consultation; engagement of building surveyors; third-party review of high-risk designs; variations to the design during construction; inspections of building work; material compliance; and the Building Commissioner's powers.
- The submission is due by 3 April 2020, consequently, the submission will be processed through WALGA's interim submission process, and endorsed by State Council by Flying Minute.

Attachments

Consultation Regulatory Impact Statement (CRIS)

WALGA Submission - proposed reforms to the approval process for commercial buildings.

Attachment 1

Background

The Department of Mines, Industry Regulation and Safety (DMIRS) has prepared a Consultation Regulatory Impact Statement (CRIS), as a step to fulfill the McGowan Government's commitment to improve processes to enhance the quality and standard of commercial and apartment buildings in WA. This is in response to the recommendations contained in the National Building Confidence report.

The *Building Confidence* report concluded that there are a number of significant systematic deficiencies with Australia's building industry culture and Australia's governance arrangements and made 24 principle-based recommendations for reform, ranging from reviewing the registration requirements for building practitioners, powers of regulators and strategies for the proactive regulation of building design and construction.

The State's CRIS proposes 28 reforms to improve building compliance for class 2-9 buildings in WA. The reform proposals are wide-ranging and seek to address issues identified in the Building Confidence report, such as documentation requirements; performance solutions; fire authority consultation; engagement of building surveyors; third-party review of high-risk designs; variations to the design during construction; inspections of building work; material compliance; and the Building Commissioner's powers.

Comment

Support or qualified support is provided for 25 of the 28 proposals, as they have the potential to improve the building assessment and construction process for Class 2-9 buildings.



Three of the proposals are not supported, as follows:

1. Proposal 8 – DFES can provide their advice at any stage, which could occur after a Building Permit has been issued. This would be difficult for the Building Surveyor to respond to, as all paperwork has been submitted to the Permit Authority. It would also be an administrative nightmare for Local Government if the advice is received after the building permit had been issued. DFES advice should be included into the application for a Building Permit to make it a 'complete application' rather than after, as the advice could affect the building design.
2. Proposal 19 – Removing the need for a Notice of Completion (BA7 form from the Builder) when an Occupancy Permit is being sought (by the building surveyor). The builder should be accountable for the submission of the Notice of Completion to state that all works have been completed in accordance with the National Construction Code and the Building Permit issued, the Occupancy Permit covers a different range of issues to ensure that the building is suitable to be occupied. Due to the processes covering different aspects of the building, i.e building product compliance versus the building's function, removing the BA7 requirement is not supported.
3. Proposal 26 - Inspections: The discussion paper proposes a new inspection regime, with Mandatory inspections for all construction work, either by permit authorities (Option A); or private sector inspectors (Option B). Option A is not supported, as the full responsibility of Class 2-9 inspections would be placed on the Local Government sector, which is contrary to existing WALGA policy positions. Option B is therefore supported, subject to the Independent Building Surveyor who signed the Certificate of Design Compliance being responsible for undertaking the inspections. Therefore, Local Government would only be responsible for follow up inspections if they signed the CDC, other inspections would be the responsibility of the building surveyor who certified the building as part of the permit application process.

Feedback from the sector to date: -

- 35 officers attended a workshop session held on the 13 February 2020 (representing 21 Local Governments) including the Cities of Bayswater, Bunbury, Canning, Cockburn, Fremantle, Greater Geraldton, Joondalup, Kalamunda, Mandurah, Melville, Perth, Rockingham, South Perth, Stirling, Subiaco, Vincent, Town of Cottesloe and Shires of Augusta Margaret River, Collie, Dandaragan and Serpentine Jarrahdale. The workshop collated the thoughts and comments of these technical practitioners, in order to prepare the attached submission.

The submission has been reviewed and supported by the People and Place Policy Team on the 24 March 2020.

FLYING MINUTE OUTCOMES

Total Invited to Survey: 23

Total Finished Survey: 15

That the submission to the Department of Mines, Industry Regulation and Safety, on the proposed reforms to the approval process for commercial buildings be endorsed.

Signature Page

First Name	Last Name	Completed Date
Phillip	Blight	31/03/2020 at 21:15
Jenna	Ledgerwood	31/03/2020 at 12:17
Paul	Kelly	25/03/2020 at 22:18
Malcolm	Cullen	31/03/2020 at 15:10
Cheryl	Cowell	30/03/2020 at 13:35
Stephen	Strange	01/04/2020 at 14:27
Chris	Mitchell JP	30/03/2020 at 13:56
Les	Price	26/03/2020 at 16:52
Russ	Fishwick JP	Not Completed
Karen	Chappel	01/04/2020 at 11:28
Michelle	Rich	01/04/2020 at 15:21
Julie	Brown	Not Completed
Doug	Thompson	30/03/2020 at 14:11
Carol	Adams OAM	Not Completed
Logan	Howlett JP	30/03/2020 at 16:18
Tony	Dean	25/03/2020 at 15:08
Ken	Seymour	Not Completed
Peter	Long	Not Completed
Ronnie	Fleay	Declared an interest
Catherine	Ehrhardt	Not Completed
Cate	McCullough	Not Completed
Mark	Irwin	01/04/2020 at 10:20
Ruth	Butterfield	01/04/2020 at 11:42

RESPONES

Created: 25/03/2020 at 11:11 Results Exported: 02/04/2020 at 2:20
 (13) Endorse Recommendation

Phillip Blight (on: 31/03/2020 at 21:15), Paul Kelly (on: 25/03/2020 at 22:18), Malcolm Cullen (on: 31/03/2020 at 15:10), Cheryl Cowell (on: 30/03/2020 at 13:35), Stephen Strange (on: 01/04/2020 at 14:27), Chris Mitchell JP (on: 30/03/2020 at 13:56), Les Price (on: 26/03/2020 at 16:52), Karen Chappel (on: 01/04/2020 at 11:28), Michelle Rich (on: 01/04/2020 at 15:21),



WALGA

Doug Thompson (on: 30/03/2020 at 14:11), Tony Dean (on: 25/03/2020 at 15:08), Mark Irwin (on: 01/04/2020 at 10:20), Ruth Butterfield (on: 01/04/2020 at 11:42)

(2) Endorse Recommendation subject to comment below

Jenna Ledgerwood (on: 31/03/2020 at 12:17), Logan Howlett JP (on: 30/03/2020 at 16:18)

(0) Oppose Recommendation

Cr Ronnie Fleay declared an interest as a member of the WAPC.

COMMENTS

Logan Howlett JP on 30/03/2020 at 16:18

Typos Page 4 of 15 If this section of the BSCRA Act is amended, then s.111 of the Building Act 2011 should also be amended as it currently states the exact same wording in the issuing of a 'Notice of proposed building order other than building order (emergency)': dangerous situation means a situation where there is an imminent and high risk to people, property or the environment from the carrying out of a building service. It should be mandatory that the response letter from DFES is attached in the Building Permit application, rather than submitting an application without the DFES advice (see the concerns raised in Proposal 8). Page 11 of 15.

It would also be important to check the use of the word 'retrospective' and how it is applied under the provisions of the Building Act. A recent Supreme Court ruling determined that there is no longer a 'retrospective planning approvals' process just that the approval is issued from the date of decision of the approval being granted (retrospective-planning-approval). Page 12 of 15. This is a major failing of the Building Act and despite numerous requests since the Act was gazetted, the lack of a process is causing confusion for Industry and Local Government.

Improvements to the 'amended plans' process would therefore be supported for all applications, not just those in Class 2-9.

SECRETARIAT COMMENT

All spelling errors and grammar amended.

Jenna Ledgerwood on 31/03/2020 at 12:17

Point 3 which states, Option B is therefore supported, subject to the Independent Building Surveyor who signed the Certificate of Design Compliance being responsible for undertaking the inspections. This needs to be strengthened given the problems in NSW with independent inspections and the wave of disasters that followed with some buildings.

The problem with Government no longer wishing to govern and do the inspections themselves has created issues with a small portion of the private sector who are always self-managed, not following the rules and putting profit before good governance.

SECRETARIAT COMMENT

A new paragraph has been added, as follows: -

Given the problems in NSW with independent inspections and the wave of disasters that followed for a number of buildings, greater oversight and control will be needed if an inspection regime is established in WA. The problem in NSW has been exacerbated with Government no longer wishing to govern and do the inspections, which has created issues with a small portion of the private sector who are always self-managed, not adhering to the rules and placing their profit before good governance.

WALGA Submission



Proposed reforms to the approval process for commercial buildings

INTRODUCTION

The Western Australian Local Government Association (the Association) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for 1,222 Elected Members and approximately 15,000 Local Government employees as well as over two million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

COMMENTS

WALGA has reviewed the Consultation Regulatory Impact Statement (CRIS) for the proposed reforms to the approval process for commercial buildings, and provides the following comments to the Department of Mines, Industry Regulation and Safety (DMIRS) on the 28 proposals.

The CRIS report assumes that all of the Building Surveyors undertaking work on Class 2-9 Buildings are all private operators. Some Local Governments have set up a separate certification business unit to provide this service. The CRIS fails to comment on whether the current restrictions around Local Government undertaking certification services for Class 2-9 buildings will be reviewed, which needs to be addressed in the consideration of any improvements to the commercial building approvals process. The introduction of the Building Act has impacted on career progression and skills retention in the Local Government sector, due to the loss of assessment of Class 2-9 buildings. If reforms are being proposed, then there needs to be a level playing field to enable those Local Governments who wish to provide certification of Class 2-9 buildings the opportunity to do so, rather than the current process of establishing a separate Business Unit to undertake this function.

Throughout this CRIS document, there are many questions are asked about whether costs may be increased with the introduction of the reform. As stated in the reforms for single residential buildings, the full cost analysis of all reforms needs to be undertaken before implementation of any reforms, which must be discussed with the both Industry and the Local Government sector.

Figures 1 and 2 on Page 21 needs to be amended, it states that the Permit Authority checks R-Code and Planning Compliance, however, this is not the only aspect that is checked. Further, according to the current Building Act, this information should be checked by the applicant prior to submission of the Building Permit to the Permit Authority. The Figures therefore need to acknowledge that R-Code and Planning Compliance, Health, Engineering and Local Law requirements must be checked by the applicant/builder/surveyor, prior to submitting the application to the Permit Authority.

Regulators' monitoring and enforcement powers

Proposal 1: Amend the Code of Practice: Safe design of buildings and structures to address non-conforming and non-compliant building products.

Support amending the Code of Practice to ensure that the building products used are compliant with Australian requirements. Whether this is also achieved via improvements to the CodeMark process or through additional details in the Australian Standards, any improvements to non-conforming and non-compliant building products will only be effective if there is a clear auditing, monitoring and enforcement process. Is it proposed that the enforcement will include field testing to ensure compliance, or will it rely on the Builder confirming compliance with the Code?

Improvements to the CodeMark is a great idea, but it is unclear on the proposed implementation of these improvements. Is it anticipated that Builders will be made more accountable for the products they use? Will additional training be undertaken with the manufacturers, suppliers, builders, building surveyors and engineers, to ensure that all products are used appropriately and information about their appropriate use and limitations is easily accessible? The marketing of products also needs to be considered to ensure correct information is provided to the consumers of the product. Or would it be possible for conforming products to be listed by the Building Commissioner for each specific classification each year? And if the conforming products are used in the correct class of building then they are compliant.

As requested in the CRIS, examples of problems that have occurred in the last 10 years include the importation of numerous materials that do not meet Australian requirements, for example, non-compliant combustible cladding, exploding glass and glazing products, non-compliant reinforcement used in concrete slabs, roof covering cladding (e.g Bondor), 'fire rated' cladding on portable buildings constructed overseas, various products in the QE2 hospital project, lead contamination in Water Corporation's non-compliant meters, and flaws in steel products from overseas manufacturers.

Proposal 2: 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.

Support amending the Building Regulations to mandate the Code of Practice, however, as stated in Proposal 1, any improvements will only be effective if there is a clear auditing, monitoring and enforcement process. How will manufacturers comply? Will training be provided? How will the new Code of Practice be communicated to all involved in the industry? What would be the penalties for non-compliance? There are potentially tens of thousands of products that are used in Class 2-9 Buildings, therefore, will greater responsibility be placed on the builders, designers and individual contractors sourcing the materials, rather than trying to contact all of the manufacturers? The use of the Code of Practice would provide greater ability for changes to products, rather than waiting for amendments to the Act or Regulations, therefore, it could be more responsive to changes in products that should be included or removed from the Code.

Proposal 3: Amend the Building Services (Complaint Resolution and Administration) Act 2011 to empower the Building Commissioner to prescribe requirements on technical matters.

Support in principle.

It is unclear in the discussion paper if it is for any 'technical matters' or just the ones that have been outlined in this discussion paper. It is also unclear whether this will result in more WA variations to the National Construction Code, or is it just to provide greater clarity in the application of the Building Act in WA. It is assumed that the current practice of issuing 'Industry

Bulletins' would be more formalised by these new powers of the Building Commissioner, being able to 'officially' prescribe new requirements.

There are currently 124 Industry Bulletins for a variety of updates and technical issues, therefore, the current list would need to be reviewed and streamlined to ensure that new 'prescribed requirements' and the current Industry Bulletins are not cumbersome and difficult to find the relevant information.

In 'prescribing requirements' it is also unclear whether this can be used by the Local Government sector as a 'legal advice' or 'legal opinion'. One of the current failings in the implementation of the Building Act is the hesitancy of DMIRS to provide clear guidance in how to apply the provisions of the Act and Regulations. Providing updates following State Administrative Tribunal decisions is also supported, however, some of the DMIRS updates have created more confusion rather than clarifying an issue.

Providing any of the new prescribed matters are discussed with the Local Government sector prior to the publication of the information, or other technical specialists, empowering the Building Commissioner to prescribe specific requirements on technical matters would be supported.

Proposal 4: Amend the Building Act and the BSCRA Act to empower the Building Commissioner's inspectors to enter and inspect any building site.

Support this change to the Building Commissioner's Inspectors powers of entry to inspect a building site without the need for an entry warrant. However, any proposed change to the powers for the Building Commissioner's Staff must also consider the powers of entry for all other 'Authorised Officers' i.e. the Local Government Permit Authority officers who are also authorised to inspect building work for compliance purposes.

For example, under Section 100 of the Building Act 2011, the Local Government authorised officer has the following entry powers; the authorised officer is not entitled to enter a part of a place in use as a residence except, with the consent of an adult occupier OR under the authority of an entry warrant OR to action an Building Order (in an emergency).

As part of the review of the Building Commissioners Inspectors powers, if the powers of entry are also aligned and improved for the Local Government officer, then this change is supported.

The Clause reference in the discussion paper (*Builders Registration Act 1939*) is supported, as it clearly outlines that the owner/builder needs to permit access to the inspector: -

20A. Right of entry and inspection

- 1) Any member of the Board, or person authorised in writing in that behalf by the chairperson of the Board, may at any time enter upon any land on which any building work is being carried out and inspect the building work.
- 2) A person who in any way resists, obstructs, impedes or delays a member of the Board or other person authorised under subsection (1), in the exercise of his powers conferred by that subsection commits an offence.

If the Building Commissioner's Inspectors are able to inspect building work, then they must also be able to undertaken the enforcement action, rather than just hand the issue over to Local Government to try to resolve. Local Government can be advised of the inspections being undertaken in their locality, and can work with the Inspectors (if appropriate), but the enforcement actions following the Building Commissioner's auditing function, should be followed up by DMIRS Inspectors.

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.

The removal of the word “imminent’ in the following clause (s.76), is supported.

dangerous situation means a situation where there is an imminent and high risk to people, property or the environment from the carrying out of a building service.

Rather than having to justify taking action based on whether the danger is ‘imminent’, particularly when it is clear that the building work is going to fail, it is more appropriate to just base ‘dangerous’ on the level of risk. Both the BSCRA Act and the *Building Act 2011* do not currently define what is considered a ‘high risk’, however, it is assumed that there are other Acts that can be referred to for this guidance?

If this section of the BSCRA Act is amended, then s.111 of the *Building Act 2011* should also be amended as it currently states the exact same wording in the issuing of a ‘Notice of proposed building order other than building order (emergency)’:

dangerous situation means a situation where there is an imminent and high risk to people, property or the environment from the carrying out of a building service.

As stated in Proposal 5, if the Building Commissioner’s Inspectors are able to inspect dangerous building work, then they must also be able to undertake any subsequent enforcement actions.

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.

Support of this Proposal is contingent on registration of the fire engineering professionals, which is understood to be the next discussion paper coming from DMIRS.

In regards to the specific proposal of connecting the fire safety reports to the International Guidelines, the following comments are provided: -

- Support that the process needs to be standardised so that all involved and the various fire experts are able to submit reports that are easy to read and endorse.
- To reduce tension between the fire safety engineers and DFES, the Regulations should be specific about which matters DFES is expected to comment on, without limiting DFES’s ability to provide general comments relating to fire safety.
- It should be mandatory that the response letter from DFES is attached in the Building Permit application, rather than submitting an application without the DFES advice (see the concerns raised in Proposal 8).
- Currently the Building Regulations only require a Certificate of Design Compliance (CDC) to be referred to DFES for comment. To be consistent and also to keep DFES informed, the Regulations should be changed to also require a Certificate of Built Compliance (CBC) or even Certificate of Construction Compliance (CCC) which involves a new Fire Safety Report to also be referred to DFES.
- The submission process for the Fire Engineering Report process is only 15 days, what will be the submission timeframe for the Fire Engineering Brief?

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.

Proposal 7 is supported, in principle, as it is important that DFES are involved in the design stages of a building. Providing a certificate to indicate operational compliance could also streamline the pre-building permit process. The following questions and comments are made in regard to this Proposal: -

- The title of this Proposal states that DFES can 'issue a certificate at any time', which is confusing as the discussion in this section, refers only to a pre-Building Permit process. It is assumed that there will be a new pre-Building Permit process rather than just having to rely on the current formal assessment timeframe of 15 days?
- If DFES is still only providing an Advisory role, how can they issue a 'Certificate' that carries any legislative weight?
- As soon as this process is included in Regulations, does it automatically change the advisory nature of the DFES advice to more of an approval?
- What happens if there are changes to the plans after the Certificate is issued, prior to lodging the Building Permit Application? Assuming that the responsibility is with the Independent Building Surveyor to ensure the Certificate refers to the correct set of plans and revisions, or a new Certificate will need to be sought.
- Any Certificate needs to clearly state the date of the plans assessed by DFES, the approval date of DFES and/or the expiry date of the Certificate, for ease of processing during the Building Permit application process.
- Should there be a maximum timeframe for the Certificate to be valid? 30 days seems reasonable, however, a longer timeframe may be possible if nothing changes in the building design. This would need to be clear in the Building Permit application process that the Certificate provided with the CDC is 'current'.
- This process will only be possible if the monitoring and enforcement is provided by DMIRS.

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.

Do not support Proposal 8, specifically the comment that the written advice must be considered and responded to no matter when it is provided. Permit Authorities have legislative timeframes to meet (10 and 25 days) and would be an administrative nightmare, if the advice is received after the application for a Building Permit is submitted or the Building permit issued.

Once the Building Permit is issued, it cannot be revoked. And if waiting for the DFES advice holds up the issuing of a Building Permit within the statutory timeframes, the Permit Authority is required to refund fees, a negative consequence for a Local Government when the delay is not within their control. If the DFES advice requires an amendment to the design, and as there is no formal 'amended plans' process, the applicant would potentially need to submit a new building permit application, which is overly onerous for the Industry.

It would be much simpler if DFES are provided a legislative timeframe within which to provide their advice to the Building Surveyor, and therefore the advice from DFES would be included into the design and the CDC, and then the application is submitted to the Permit Authority as a complete application. This approach would be similar to the referral agency process provided in the Australian Capital Territory, through their *Building Act 2004*, the CDC cannot be issued without having incorporated the referral 'entities' advice on the proposed build.

It may therefore be more appropriate to amend the Building Regulations to specify that DFES advice, if required, must be submitted as part of the information required under S.16 of the Act (information required to make an application).

The discussion paper doesn't mention anything that the DFES written advice must be considered and responded to, as part of the Occupancy Permit process, therefore, this needs to be included in any review of this process.

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, as the current system of DFES assessment under the Building Act can be problematic, i.e. if DFES have an issue with the Fire Safety Report or documents referred to them, the certifying building surveyor is only obligated to provide a response to the DFES comments, regardless of the nature of the comments. Providing greater clarity in how a building surveyor responds to DFES, clarifying the exact type of response to the advice, which is then all documented on the CDC form (BA3 form), is supported.

As stated in Proposal 6, the Regulations should be specific about which matters DFES is expected to comment on, without limiting DFES's ability to provide general comments relating to fire safety.

There also needs to be a conversation about the occasional misalignment of the Building Surveyors assessment of the design under the National Construction Code versus the DFES operational requirements. In this regard, there may be an additional role for DMIRS in this process. If the DFES advice, which raises safety or operational issues, are not being incorporated by the building surveyor, then it could be referred to the Building Commissioner to monitor, in order to make improvements to the process.

The Building Commissioner could step in and arbitrate between the parties if it is a significant concern to DFES or an applicant, and also initiate any changes to the process if there are common issues being raised.

Building surveyors' conflicts of interest

Within the background section for this proposal, there is the comment: *However, a building surveyor may be employed by the same entity as any member of the design team. Indeed, there is nothing to prevent a person with dual qualifications from designing a building and then certifying their own design.*

The proposed improvements seem to be based on the Victorian model of defining the building surveyor as 'independent', which does not allow the building surveyor to be an employee, contractor or financial beneficiary of whomever prepared the design. It is difficult to see how this 'improvement' to the system would work in practice, as there are many larger firms who can offer a full design and certification service. Does this mean that all disciplines, i.e. architects, designers, engineers and building surveyors, would need to be separate business entities, so that they are not seem to be 'in conflict' with each other?

Surely the proposed Code of Conduct and upcoming registration of other professions would reduce the need to be this specific? Would suggest that this must be thought through in more detail, as the Victorian definition may not be the most suitable. Feedback from this jurisdiction as to its actual effectiveness should be sought.

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.

Support this proposal, as this was always the intent of the Building Act to ensure that the building surveyor does not have any potential conflict of interest with a builder.

The word 'independent' needs to be clearly defined. Currently s.20 (d) (ii) Building Act 2011 requires the Permit Authority to be satisfied (prior to issuing a building permit) that –

- (d) that the building surveyor who signed the certificate of design compliance —
- i) is entitled under the Registration Act to sign certificates of design compliance for buildings or incidental structures of the kind that is the subject of the application; and
 - ii) is an independent building surveyor in relation to the application;

If this part of the Act doesn't change, the Permit Authority will be required to check the building surveyor's 'independence', which would cause difficulty for Permit Authority as the current definition is not clearly defined. The discussion paper outlines the issues and the pros and cons of the approach, but there is no detail on how it might be applied in WA.

The Building Surveyor registration process should be reliant on declaration of conflicts of interest, or any potential conflict of interests to be provided to DMIRS in order to renew a registration. The current requirements of the *Local Government Act 1995* may be an appropriate place to start, as this requires an annual statement as to any declarations of conflict of interest and any gifts received during the previous 12 month period. This would ensure that DMIRS are provided with a statement to assist in assessing any actual, potential or perceived conflicts of interest for each building surveyor, keep a record whether a conflict of interest exists or not, and can maintain the record of the building surveyors decisions and actions taken to manage any conflict of interest.

Any improvements to this process would need to clearly outline how complaints can be lodged, or how DMIRS would initiate any actions against a builder or building surveyor for failure to lodge and actual conflict of interest concerns.

Members have provide additional comments on this proposal: -

- Would it be more appropriate for the owner to engage the building surveyor, rather than the developer or builder? The contract is then with the owner, and the building surveyor is acting in the best interest of the owner of the property.
- The conflict of interest line may be blurry when a building surveyor provides certification services to only one builder or building company, even when they are not an employee.
- Is this only for Class 2 – 9 developments? Or will the changes in this paper, also apply for all other building classes?
- Will building surveyors be restricted from doing their own performance solutions e.g access or fire alternative solutions?
- How is the term 'independent' referred to in law?
- Assume that initial and ongoing training would be offered to ensure consistency in the conflict of interest reporting process?

Proposal 11: Introduce a mandatory Code of Practice for registered building surveyors in WA.

Support Proposal 11 as a Code of Conduct is already in place for those building surveyors who are also members of the Australian Institute of Building Surveyors (AIBS), so it is logical to extend something similar to all building surveying practitioners. Any improvements will only be effective, however, if there is a clear auditing, monitoring and enforcement process.

Of the 15 specific examples of what the Code may include, there needs to be examples provided to clarify what is meant and what evidence is needed to achieve the Code i.e. items 13 and 15 need more information to enable more feedback to be provided.

However, as the National Model Code of Conduct for Building Surveyors was released on 11 March 2020, then it may be more appropriate to wait for the finalisation of this National Code, otherwise WA could end up duplicating this work. For example, the Victorian Code of Conduct is currently out for public comment, proposing to finalise it by June 2020 <https://engage.vic.gov.au/draft-code-conduct-building-surveyors>, but the public comment period on the National Code closes on the 24 April 2020.

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.

Support this proposal as it will enable a building surveyor to make an unbiased determination on compliance with the NCC throughout the entire project build, without fear of financial loss. The scope of services may need to be prescribed and not negotiable by the builder and/or owner.

What happens if an additional Building Permit is lodged while the works are commencing? Should there be a method of controlling one building surveyor dealing with the works if the projects overlap i.e. should the first building surveyor automatically be required to provide the building permit application for the second project? Or could multiple works have several building surveyors employed at the same time?

This section does not outline any dispute resolution process, just that a contract may be terminated if a court order has been made to remove the building surveyor. There would need to be a mechanism under this section for the Building Commissioner or an independent body to provide an arbitration role when two parties are in dispute. It is also unclear how long the court order process takes in order to end the contract of an incompetent building surveyor, as this may affect the proposed inspection process and may affect the timeframe for the build? If a contract is terminated, who is notified? The Building Commissioner? DMIRS? The Local Government?

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.

Support this proposal, however, unsure if it is needed specifically within the Building Act process, wouldn't this already be covered under Contract Law? Agree in principle, but how will it be administered? May need to check with Victoria and Queensland as to how effective their provisions are.

Building documentation requirements

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.

Support this proposal in principle, however, it is not clear if this means every single element of a build complies with the NCC, or just the main factors need to be covered. A minimum standard of document is definitely required, which would reduce poor workmanship errors due to poor plans.

It is unclear whether this means that the building surveyor would then lodge all of the additional information into the Permit Authority, or should it just remain a record for the building surveyor as part of their registration and future auditing requirements? If too many documents are submitted with the application for a Building Permit it has the potential to be overly cumbersome for the Local Government, in keeping a record that they don't actually need.

Compliance with any improvements to documentation would also be reliant on easier access to the Australian Standards that are referenced within the CDC.

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.

Support this proposal as it should be incredibly clear who has certified the plans. If no registration number is available, i.e. drafters and engineers are not currently registered, then the author's name, qualifications or affiliations and company name/number would be appropriate to include. It would also be beneficial for multiple plans to have page numbers and how many pages are submitted as part of the CDC.

A concern that has been raised by members is the difficulty in identifying the plans lodged, as they have not been numbered, plans are missing, or it is unclear in the covering transmittal sheet whether the documents have been attached. This can result in significant amount of time in checking which plans have been submitted, as all certifiers use a different system for recording and lodging their plans.

A solution that WALGA has presented to DMIRS, AIBS, HIA and MBA is the requirement for plans to be 'stamped' in a consistent manner, which will provide great streamlining in the checking process for the Local Government sector. The CDC may make reference to a transmittal document, which is then used to check the plans off against. It could be a good idea if a cover letter was provided from the certifier that the transmittal documents represents the documents the building surveyor has relied upon to determine compliance and that the plans identified in the Transmittal document sheet No: XYZ must be stamped [City/Shire/Town] date stamped: 15/3/2019. In this process, the building surveyors date stamp would take president over all other dates.

Red tape reduction and process improvements should also be encouraged to assist the Local Government sector and so that time is not wasted in trying to cross reference the plans with the transmittal document. An example of a possible 'Stamping of plans' protocol, is provide at the end of this submission.

Proposal 16: Amend the Building Regulations to prescribe the information that must be included in documents supporting a permit application.

Support this in principle, however the example provided from Singapore is 9 pages long, which seems a bit onerous for the certifier. The development patterns in Singapore are also significantly different to the majority of the Class 2-9 applications submitted in WA, therefore, the complexity of the applications and hence the information required for them, would require 9 pages.

It is also unclear whether in the example provided, are they all mandatory fields, or can it be scaled and some of the fields are just optional? A larger complex project may need all of the information contained in the 9 pages, but for a smaller development it is unlikely that all of the 'information' is actually needed or is relevant.

It might be more appropriate for this to be just a guideline or a best practice process, otherwise, if it is seen as mandatory and one of the items is not provided, it could be rejected as an incomplete application?

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, as the multitude of revised plans can cause confusion if not clearly referenced. The stamping of plans concept outlined in Proposal 15 would also reduce the confusion in regards to the submission of revised plans.

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.

Support this proposal, the list of conditions should be shown on the CDC or CCC, as not all buildings need to be issued with an Occupancy Permit.

The CDC should ensure that the building meets its design life, by listing the inspections or maintenance items that are required to be undertaken to maintain the building, including the timeframes for each item. Maintenance of essential services equipment, management of emergency egress, specific fire engineering requirements and any special requirements of any performance solutions could then be captured as part of the building permit.

The Occupancy Permit should include all of the necessary information for the operation of the building i.e. maintenance, conditions, performance solutions. This reform could also consider the maximum accommodation numbers being migrated from the health legislation and included into the Occupancy Permit process, otherwise there are two separate pieces of legislation that are being issued. The process for issuing an Occupancy Permit also needs to be reviewed, as an Occupancy Permit can currently be issued for a non-compliant building, because of the wording of the Certificate of Construction Compliance.

Members have provide some additional queries on this proposal:

- What happens where a building does not need an Occupancy Permit?
- Who enforces the condition 10, or 20 years down the track?
- Will this be connected to the proposed reforms to the management arrangements under the Strata Titling Act or within the existing regulation 48A which requires the owner to be responsible?

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.

Do not support this proposal as the Notice of Completion is for the builder to state that the works have been completed in accordance with the Building Permit, the Occupancy Permit is separate to this process and considers different criteria for the build. Without this, the Builder is less accountable for the works completed. It is also unclear how this would relate to the disputes and resolution process for the 'completion date' and complaints within the 6 year warranty period?

Performance solutions

Proposal 20: Amend building legislation to prescribe documentation requirements for performance solutions.

Support this proposal.

The documentation and recording of Performance solutions is already provided for by Australian Building Code Board's (ABCB) processes and the IFEG Guidelines already provide a template for fire related performance solutions. It may be simpler to just refer to existing processes and templates in the Regulations rather than create another set of criteria and provisions. Not all projects would need to undergo a third party review process, possible only the larger projects would benefit from a peer review of performance solutions.

Retrospective building approval

Proposal 21: Amend the Building Act to prescribe a process for retrospective approval of performance solutions.

Support this proposal providing it aligns with the ABCB requirements and for the larger complex proposals there may be a need for third party review. Things do change on a building site, so providing that this process is not used to justify unauthorised works, then there could be a benefit in providing a process to capture changes. If the building surveyors has a good inspection program and the builder is competent, then changes should be designed in as the construction progresses, rather than as a retrospective process after the works have been completed.

Retrospective fire performance solutions should be referred to DFES as a compulsory requirement.

It would also be important to check the use of the word 'retrospective' and how it is applied under the provisions of the Building Act. A recent Supreme Court ruling determined that there is no longer a 'retrospective planning approvals' process, just that the approval is issued from the date of decision of the approval being granted ([retrospective-planning-approval](#)).

Proposal 22: Require certain types of unauthorised or non-compliant work to be reported to permit authorities and Building and Energy.

Supported in principle. The 'circumstances' for the reporting would have to be clearly defined, but shouldn't all non-compliant works be reported, not just the ones considered high risk? The reporting of the non-compliant work should only be to one organisation, and given the Building Commissioner is tasked with monitoring the operation of the Act and the registration of the Builders, it would be more appropriate for the non-compliant work to be submitted to the Auditing team. The Auditing team could then investigate the 'high risk' ones, and note the other non-compliant issues as part of the registration process, to determine whether a pattern of non-compliance is occurring. The resourcing of any 'reporting' process would need to be factored in, particularly if it is proposed to send the complaints to the Local Government sector, as the fee structure does not currently support the enforcement and compliance function of a Local Government.

Proposal 23: Amend the Building Act to require a certificate of construction compliance to certify that the building meets applicable standards.

Support this clarification of the process, however, it is not clear how this would be legislated. Would it be better to issue a Certificate of Construction Compliance 'as built' rather than what was proposed on the approved plans. Given the other reforms proposed allows variations and

retrospective approvals processes, would might assist in connecting the other reforms into the final Certificate of Construction Compliance.

Variations during construction

Proposal 24: Amend the Building Act to provide a process to manage variations to the approved design during construction.

Support the establishment of a proper amended plans process to capture variations that do occur during the construction process. The five steps proposed should enable the building surveyor, builder and engineer a much smoother process in which to capture any variations and obtain the necessary approvals.

The fifth step states that the builder would then obtain 'an amended building permit from the relevant permit authority'. This is supported, in theory, however, the current BA19 process, submission of revised plans and the informal 'amended building permit' process is very confusing as it is not actually defined within the Act or Regulations.

This is a major failing of the Building Act and despite numerous requests since the Act was gazetted, the lack of a process is causing confusion for Industry and Local Government. Improvements to the 'amended plans' process would therefore be supported for all applications, not just those in Class 2-9.

Third-party review

Proposal 25: Amend the Building Act to require independent, third-party reviews for high-risk design elements.

Support Proposal 25 in principle, particularly for complex projects, however, if ACBC are preparing a third party review system, then it would be preferable to follow a national system rather than prepare a specific WA model.

In regard to the specific details proposed in the CRIS, the following comments are made: -

- Supported if the peer review is undertaken prior to the submission of the application for a Building Permit.
- Is there a timeframe for the third party review to be completed within?
- This proposal conflicts with Proposal 10, as it would not enable a peer review to be undertaken within the same design team, it would require a fully external reviewer?
- The items listed for peer review in Table 2 need to be provided greater rationale; are these the areas the Commission has audited and are most common for failing, or just that these items are considered involving the most 'complex' scenarios?
- Within Table 2, it includes 'Work affecting other land' applications and 'large isolated buildings' which would encompass a significant number of applications, therefore, the level of risk and complexity of the project would need to be included as part of the assessment criteria.
- Table 2 also includes review of BAL assessments, which is supported but only if the registration process for BAL assessments are improved by the State.
- Would the details of the peer review be included on the CDC?
- Is this proposal counter intuitive to the constant push for fast tracking of building approvals and improving the quality of the approvals issued?
- For the complex applications would a third party review panel be cheaper, more transparent and independent in their review, rather than just referring the plans to an industry colleague?

Mandatory inspections

Currently, WALGA has a policy position that supports mandatory inspections, undertaken by properly qualified and independent personnel, to specifically include inspections at the following stages of the Class 1 building construction process:

1. Foundations and footings
2. Slab/reinforcement of bearers/joists
3. Waterproofing
4. Roof, and
5. Occupancy or final completion

This policy position also states that Local Government should not be solely responsible for the inspection process, as it should be the building surveyor who signed the CDC being responsible for any inspection regime.

In regards to Class 2-9 buildings, the following additional comments are made:

- Mandatory Inspections should be carried out by a suitably qualified person and these inspectors should be registered and independent of the builder, and
- mandatory yearly inspections and certification of essential services (such as fire safety services) must be considered.

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.

Currently a large portion of building surveyors who are able to prepare CDC's for Class 2-9's, are employed in the private industry with relatively few remaining as employees in Local Governments. This aligns with comments made at the beginning of this submission, there is no mention on whether the restrictions around Local Government undertaking certification services for Class 2-9 buildings will be reviewed.

Therefore it is difficult to understand how DMIRS expects the Local Government sector to take on this inspection regime, when they are currently restricted in how they can undertake CDC's for Class 2-9 buildings.

However, there are more significant concerns with Option A: -

- The imposition of the inspection regime will result in significant additional costs for the Local Government sector, which may not be recovered from any associated additional fees. There isn't enough clarity in the discussion paper as to whether the sector will be

able to apply a true 'fee for service' costing model, or if the fees will be formally capped through Regulations and be lower than the true cost of the service. Any additional functions imposed on the sector, without adequate additional income streams, results in the general revenue being accessed in order to fulfil legislative functions. In effect, the ratepayers end up subsidising the private markets inspection regime, which is not fair nor equitable for local residents.

- Where does the money come from for all these extra inspections?
- Current application fees and charges are woefully inadequate and currently do not cover the basic application approval processes let alone any inspection nor enforcement related activity.
- There is a significant increase in liability for the Local Government sector under this proposal, signing off on another building surveyor's work, particularly if there is a performance solution proposed.
- How would it be undertaken in rural and remote areas where building surveyors may not be employed at a Local Government, does a Private Certifier get flown in?
- If Local Government undertakes the inspections and then is required to undertake enforcement actions, this is a major increase in liability exposure for the sector and a blurring of the roles.

Given the problems in NSW with independent inspections and the wave of disasters that followed for a number of buildings, greater oversight and control will be needed if an inspection regime is established in WA. The problem in NSW has been exacerbated with Government no longer wishing to govern and do the inspections, which has created issues with a small portion of the private sector who are always self-managed, not adhering to the rules and placing their profit before good governance.

The discussion paper fails to mention the role and responsibilities of the Builder within this entire process. The Builder's registration process should be strengthened, requiring the builder to ensure that the final build is compliant, through the use of the independent technical experts. It would therefore be more appropriate for the inspections to be undertaken by the Private Certifier who signed off on the CDC, or have an owner pay for a Building Inspector to inspect and then send in a final report with the BA7 process?

Therefore, **Option B** is supported, subject to the Independent Building Surveyor who signed the Certificate of Design Compliance being responsible for undertaking the inspections. Therefore, Local Government would only be responsible for follow up inspections if they signed the CDC.

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.

Support this proposal, as it will make the builder more accountable.

It is unclear in the CRIS how this will be enforced and no discussion on what are the consequences if a builder proceeds with the work before the notifiable inspection is undertaken.

Building manual for building documentation and operational information

Proposal 28: Amend the Building Act to provide for digital building manuals for all buildings.

Support this proposal.

Requires thought as to who is responsible for the creation and maintenance of the manual, how it is connected to the building, ie through the strata titling requirements, or connected to the CCC or Occupancy Permit, and how will it be amended if new works are approved.

EXAMPLE - Possible stamping of plans Protocol – for the Statutory (certifying) Building Surveyor to Stamp

Where there is a consecutive sequence of plans –

Sheets 1 – 5 all rev A dated 15/3/2017, Drawn: Vangoch Drafting, job No: 123435, [City/Shire/Town] date stamped: 15/3/2018

In the above instance the building surveyors date is the date the LG would rely on... In a circumstance where there are variations in the documents being relied upon you could possibly have

Sheets 1 – 2 all rev A dated 15/3/2017, Drawn: Vangoch Drafting, job No: 123435, [City/Shire/Town] date stamped: 15/3/2018
Sheets 3 - 5 all rev b dated 15/4/2017, Drawn: Vangoch Drafting, job No: 123435, [City/Shire/Town] date stamped: 15/3/2018

In circumstances where it is not possible to electronically stamp a plan because of security placed on documents by other professionals you could expect ...

Engineering - sheets S1 – S5 all rev A dated 15/3/2017, Certified: A Smith Aust Eng No 5678, job No: 123435

Specifications could be identified as

General Specifications (15 x sheets), [City/Shire/Town] date stamped: 15/3/2018

However, if there is sufficient information on the architectural plans or engineers details it could read.....

As per engineers details

Energy efficiency certification is a bit more problematicit is not always possible to stamp these docs because they are often locked.

Energy Efficiency – Action summary, Compliance report, Final Building Specification, glazing, services, Assessment calculations, Appendix A – E, BCA Energy and Water Efficiency Verification declaration, Artificial lighting Calculations, 4 x stamped plans, Certified by the big Econ, Certifiers Reg No: 890, job No: 5678

Single documents could be identified as ...

Termite treatment – Cover letter, Kill'em dead Pest control, dated: 12/4/2017, [City/Shire/Town] date stamped: 15/3/2018

WALGA Submission