



12 June 2015

Mr Michael Lambert  
Independent Review of the Building Professionals Act 2005

By email: [policy@bpb.nsw.gov.au](mailto:policy@bpb.nsw.gov.au)

Dear Mr Lambert,

**Re: Independent Review of the Building Professionals Act 2005**

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of sixteen municipal and city councils. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils cover a population of over 1.6 million, or one third of the population of Sydney.

In order to make this submission within the timeframe of the review, it has not been possible for it to be checked with councils or to be endorsed by the ROC. Please therefore consider this submission to be a draft, and I will get in touch if any issues arise as it is reviewed.

A major concern is that a Construction Certificate issued by a Private Certifier can be deemed valid despite it being inconsistent with the development consent. (This issue has arisen in Court of Appeal proceedings.) As a result, it is very hard for Council to enforce development consents. We therefore urge that a key outcome of the changes resulting from the review should be that private certifiers are more accountable under the Building Professionals Act.

*1. Is there merit in consolidating the legislative framework for building sector regulation and control in one part of the EP&A Act, expressed in plain English, on a principles-based approach, with its own objectives, and incorporating any reforms approved by the Government?*

Yes. Good regulation and control of building is essential to development processes, and therefore needs to be understood by all stakeholders. A consolidated legislative framework for the sector, that that can be expressed in plain English, is prerequisite to achieving that.

*2. Are there sufficient additional benefits involved to justify consolidating all building legislation in one Act, including the Home Building Act 1993?*

The existing regulatory framework is very complex, and lacks clarity, particularly for residents engaged in one-off developments of their own home for example. SSROC would prefer to see a single Act covering the construction and certification, and considers that the benefits of consolidation could be sufficient.

*3. Are there sufficient benefits to justify the consolidation of building regulation administration?*

Yes. The current division of responsible across different agencies would be much better if it were consumer-focused, aligned with the development process, and specifically designed to achieve efficiency and effectiveness. The process should be clearly defined and articulated, with clear

allocation of responsibility and accountability for each step. Performance could then be assessed based on the effectiveness of the process.

Establishing such an administration would require collaboration across all stakeholders, and would necessitate the establishment of mutual accountabilities. However, the benefits achievable through such collaboration would greatly outweigh the cost and difficulty of implementation.

*4. Should the BP Act provide the BPB with the power to employ its own staff in addition to seconding staff?*

This would depend upon the role of the BPB in any future administration, and should not be assumed at this stage.

*5. Is there merit in the functions undertaken by BPB continuing to be undertaken by a statutory board?*

Possibly. The certification of professional certifiers is a separate role from the certification of buildings and handling of complaints. The consumer-focused process should lead any complaints to the single consolidated building regulation administration, which would be responsible for the directing the complaint to the appropriate body, rather than requiring the consumer to make that decision.

The regulatory system and certification process would also be more effectively controlled through an amalgamated unit.

*6. Would the framework of cooperation developed by the BPB Local Government Reference Group provide an effective approach for interaction between private certifiers and local government?*

No comment.

*7. Should certifiers be required to report all cases of building and planning noncompliance to councils.*

Significant non-compliance should be reported on a standard form with enough information to enable it to be assessed and actions to be identified. Guidance would be required as to the nature of “significant” in this context.

Any minor variations, including justification of acceptance of the variation as minor, should be recorded and included in their lodgement with Council as part of the occupation certification process.

*8. Is there merit in a partnership model between the State and local government in the area of certification and building regulation enforcement?*

SSROC would be interested in the best practice model broadly outlined in the discussion model, and would be willing to consider the option further. However, the model would have to be applicable within the existing resources of councils.

*9. Would enhanced oversight of the certification process assist in addressing the problems experienced by owners of strata and community title developments?*

Enhanced oversight could be beneficial, although the accreditation and monitoring of professionals and contractors is probably more beneficial.

*10. Would an electronic system for development applications, complying developments and building certification generate useful information for government and the industry and improve regulatory performance?*

Yes, and it is critical that this system should be done well. Appropriate standards need to be adopted for the digital files to be lodged to ensure, for example, consistent version control, document metadata, and accurate rendering of drawings at high resolution.

*11. Do you support the adoption of standard forms for development applications, CCs, CDCs and OCs?*

Yes. Standard formats are essential for good records management whether records are digital or paper.

*12. Do you support, as ways of improving the planning and approval stage:*

- *limiting development approval to a concept approval* – only for major projects where it is unreasonable to expect full design approval, such as for development finance.
- *a standard set of development application conditions* – no, as this would exclude the approval at concept stage above. It would also be unlikely to be feasible for alterations to existing buildings. It might potentially be acceptable for new development.
- *independent assessment of instances where a council seeks to impose higher building standards than the BCA* – community values are constantly changing, and councils should be able to reflect those values through their planning controls.
- *improved information to the community on developments in their area?* – yes, good clear information on developments should be easily accessible to consumers, and while this should be directly communicated to locals, it should also be available easily to others (such as people who work in the area or are not always resident). Information should also cover the development and approval system, which is often misunderstood.

*13. Will a significant improvement in the process of certification, to allow commencement of building work, be provided by:*

- *standardising the information to support the CC/ CDC*
- *standardising the report to support alternative solutions with content confirmed by the certifier*
- *replacing the not inconsistent test with the consistent test for both CCs/ CDCs and OCs?*

In general the standardisation of information and reporting is likely to improve the process. However, it needs to be done very carefully, to allow for example,

- the extent of detail to be commensurate with the size and type of development,
- reference to be made to annotations on drawings,
- compliance to be easy.

*14. Do you support combining the roles of certifying authority and principal certifying authority?*

The definition of roles should be clearly specified when designing the process (see 3 above).

*15. For a CC or CDC, is there merit in separating the assessment of conformity with planning requirements, to be handled by the consent authority, from the assessment of building requirements?*

Potentially there could be some merit in separating these assessments. SSROC has noted the risks of inconsistent interpretation of planning laws, incorrect understanding of development consents, and conflicts of interest. The separation could help to address these concerns.

*16. Would the current problems with the building construction stage regulatory approach be addressed by:*

- *ensuring the builder receives the certified plans and CC/ CDC*

- *documenting and requiring adherence to good certifier practice.* Clear requirements for lodgement of documents (including by electronic means) would be beneficial.
- *potential additional critical site inspections based on risk assessment.* Yes.
- *replacing interim and final OCs with an OC and development completion certificate.* Benefit unclear.
- *requiring projects with missed mandatory inspections, and unauthorised work, to obtain an OC.* Yes.
- *effective financial sanctions for unauthorised work?* Yes, and commensurate with the nature of the unauthorised work. There should also be a requirement for compliance of the work to be demonstrated.

*17. Do you support the option of requiring the creation and maintenance of a Building Manual for all new Class 1b-9 buildings?*

Yes in general. However, issues around responsibility for the manual, its accuracy, and updates would need to be resolved.

*18. Do you support the reform of the fire protection system certification, including the proposed revised role for NSW Fire and Rescue?*

Yes.

*19. Would the options for change set out in this paper be helpful in improving the supply of qualified certifiers and making it a more attractive profession?*

No comment.

*20. Is there an adequate pathway that allows a certifier to progress from the A4 category (building inspector) right through to A1 (building surveyor – grade 1), if desired?*

No comment.

*21. Would the proposed changes to the accreditation process address the main deficiencies in the current system?*

No comment.

*22. Do you support the use of an evidence-based framework and guide for the review of the accreditation scheme?*

No comment.

*23. Are the following sufficient to create a suitable level of accountability for certifiers in respect to their regulatory role:*

- *improved transparency of the performance of a certifier with a Practice Guide*
- *proactive investigations and audits*
- *increasing the awareness of the role of certifiers?*

The roles and responsibilities of certifiers need to be made clear, as do those of councils. Proactive investigations and audits would also be helpful. Whether or not these measures are sufficient should be assessed after changes are implemented.

It is important to note and emphasise that accredited certifiers are public officials under the ICAC Act.

*24. Does the establishment of certifier panels by councils have merit?*

No, the certification of the individual should be sufficient.

*25. Do you support an expanded program of proactive investigations and audits by the BPB and if so, how should they be conducted?*

Yes. Review of the project information held by councils could be done, as could periodic random checks on site. The development of an audit methodology should be by the BPB (or its successor in a newly designed process).

*26. Would introducing a demerits point system and issuing more penalty infringement notices provide a more timely mechanism for disciplining certifiers who have not performed to a required professional standard?*

This could potentially provide a better system of discipline.

*27. Would you prefer an online system for the lodgement of complaints?*

Yes. An online system could be operated more efficiently and could be made more widely available. It could also allow for misdirected complaints to be redirected to the appropriate area for handling, rather than being rejected. The onerousness of the current system is a disincentive to complaining, risking failure to improve.

SSROC agrees that the level of information about building defects and inadequate workmanship is inadequate, and that consistent, reliable data collection is essential to enable effective performance measurement and management. A better system of complaints management could contribute to the collection of meaningful data.

*28. Would the establishment of an education and training program to inquiries, complaints and audits together with a building services advisory hot line address the needs of certifiers for training and information support?*

Potentially: this suggestion would need further development before its likely effectiveness could be assessed. It should also be developed with a monitoring and evaluation framework in order to judge its effectiveness once implemented or piloted.

*29. Is it possible to achieve full competitive neutrality without either councils ceasing to offer certification services, or private certifiers being abolished?*

No, since Council officers are subject to the Local Government Act as well as the BPA, are employees without the financial pressures of the private certifier, and they cannot refuse an appointment.

*30. Would certifiers' insurance issues be addressed by expanding certification and accreditation to cover critical building elements and design, and by implementing an industry scheme to cover the gap in insurance cover from certifiers leaving the industry or where the certifier changes for a particular project? If not, what additional problems remain?*

No comment.

*31. Do you agree that there is not a 'last person standing' problem arising from the different liability cover between builders and certifiers? If it does arise, please explain the problem created.*

No comment.

*32. Do you favour a simplification of the requirement for swimming pool fencing certification requirements, moving from three standards to one?*

This could be an improvement, as the current structure is complex and difficult. However, it is critical that there is no lowering of standards in the process.



33. *Would setting charges for both councils and the State to recover processing costs for development applications and CDCs be the most equitable and efficient approach?*

It is important that the current fees should be reviewed to ensure that councils can recover all costs associated with handling development applications. Improvements in the process and use of electronic transmissions should increase the efficiency of these processes.

Thank you for the opportunity to comment on the discussion paper. I look forward to the results of the review.

Yours sincerely,

A handwritten signature in black ink that reads 'H Sloan'.

Helen Sloan  
Program Manager  
Southern Sydney Regional Organisation of Councils

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