GOVERNMENT OF WESTERN AUSTRALIA

Building and Energy Western Australia

Decision Regulatory Impact Statement

Building Better: Reforms to WA's Building Regulatory Framework

Volume 1

Produced by:

The Department of Mines, Industry Regulation and Safety

Building and Energy Division

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Disclaimer:

This Decision Regulatory Impact Statement (DRIS) has been prepared in compliance with the WA Department of Treasury's Better Regulation Program.

The purpose of this DRIS is to recommend reforms to building regulation to ensure safe and high quality housing and commercial building in WA.

Every care has been taken to ensure accuracy in the preparation of this document. The contents do not constitute legal advice or legal information. This document should not be used as a substitute for a related Act or professional advice.

For access to legislation in force in WA go to the official Parliamentary Counsel's website at: legislation.wa.gov.au

Important Note on Volumes:

This DRIS comprises of two volumes. This document is Volume 1 and contains the outcome of the review and recommendations for reform.

Volume 2 contains a number of important Attachments that support the recommendations for reform. The Attachments in Volume 2 should (where appropriate) be read in conjunction with the relevant sections in Volume 1.

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Glossary

The table below lists terms and acronyms frequently used in this DRIS. Unless indicated otherwise, the definition given to the terms and acronyms listed applies.

ABCB	Australian Building Codes Board
AFEG	Australian Fire Engineering Guidelines 2021, formerly International Fire Engineering Guidelines 2005 (IFEG)
AIB	Australian Institute of Building – WA Chapter
AIBS	Australian Institute of Building Surveyors
applicable building standard(s) or building standard(s)	Has the meaning given in section 3 of the Building Act, being a standard that is prescribed by the Building Regulations as an applicable building standard for the purposes of the particular building, incidental structure, building or demolition permit or application to which it relates; the term includes the NCC.
Architects Act	*Architects Act 2004* (WA)
BCA	Building Code of Australia, being volumes 1 and 2 of the NCC
BMM	Building Ministers' Meeting (formerly the Building Ministers' Forum)
BSB	Building Services Board established under section 65 of the Registration Act
BSCRA Act	*Building Services (Complaint Resolution and Administration) Act 2011 (WA)*
builder	A person (natural or body corporate) registered under the Registration Act to contract for the carrying out of builder work
Building Act	*Building Act 2011 (WA)*
Building and Energy	Department of Mines, Industry Regulation and Safety – Building and Energy Division
Building Commissioner	Statutory office created under section 85 of the ***BSCRA Act***
Building Confidence Report	Professor Peter Shergold AC and Ms Bronwyn Weir, 'Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia' (February 2018)
building legislation	A term used in Volume 1 of this DRIS to refer collectively to the Building Act and Building Regulations.
building permit	A permit granted under section 20 of the Building Act that is required before any building work can be carried out
Building Regulations	Building Regulations 2012 (WA)
building regulatory framework	A term used in Volume 1 of this DRIS to refer collectively to the building legislation, Registration Act, Registration Regulations and BSCRA Act.
building surveyor	A person (natural or body corporate) registered under the Registration Act to contract to carry out building surveying work

CBA	Cost Benefit Analysis prepared by CIE and contained in Volume 2 of this DRIS
CCC	Certificate of Construction Compliance
CDC	Certificate of Design Compliance
CI Act	***Criminal Investigation Act 2006*** (WA)
CIE	The Centre for International Economics
commercial building	Classes 2 to 9 buildings (refer to the next table)
CPD	Continuing professional development
CRIS Commercial	Consultation Regulatory Impact Statement – Reforms to the approval process for commercial buildings in WA (December 2019)
CRIS Registration	Consultation Regulatory Impact Statement - Registration of Builders (and related occupations) Reforms (October 2020)
CRIS Residential	Consultation Regulatory Impact Statement – Reforms to the building approval process for single residential buildings in WA (September 2019)
CRISs	Refers collectively to CRIS Registration, CRIS Commercial and CRIS Residential
DFES	Department of Fire and Emergency Services
Direction, or Building Commissioner's Direction	A term used in the DRIS to refer to a proposed expanded power for the Building Commissioner to issue directions or standard on the performance of technical requirements under the building legislation.
DMIRS	Department of Mines, Industry Regulation and Safety
DPLH	Department of Planning, Lands and Heritage
DRIS	Decision Regulatory Impact Statement: Building Better – Reforming WA's Building Regulatory Framework, Volumes 1 and 2
DtS	Deemed-to-satisfy solution, as defined in the NCC
FES Commissioner	Fire and Emergency Services Commissioner as defined in the ***Fire and Emergency Services Act 1998*** (WA)
HIA	Housing Industry Association of Western Australia
Government	The Government of Western Australia
Institute of Architects	Australian Institute of Architects
MBA	Master Builders Association of Western Australia
national model	Refers to a best-practice model guidance developed and published by the ABCB for the implementation of a specific Building Confidence Report recommendation
NCC	National Construction Code, being volumes 1 and 2 (BCA) and volume 3 (Plumbing Code of Australia)
NoC	Notice of Completion
PBDB	Performance-based design brief, as defined in the NCC
performance requirement	Requirements set out in the NCC which state the level of performance which a performance solution or deemed-to-satisfy solution must meet
performance solution	A method of complying with the performance requirements other than by satisfying the deemed-to-satisfy solution of the NCC
permit authority	A permit authority for a building or incidental structure as defined in section 6 of the Building Act, including all local government authorities and designated state government authorities.
PII	Professional indemnity insurance
Property Council	Property Council of Australia – WA Chapter
Registration Act	***Building Services (Registration) Act 2011 (WA)***
Registration Regulations	Building Services (Registration) Regulations 2011 (WA)
residential building	Class 1 building (refer to the next table)
R-Codes	Residential Design Codes, published by the WA Planning Commission as a State Planning Policy, to control the design of most residential development throughout WA
review	This stage of the review of the WA building regulatory framework
SBS	The statutory building surveyor contractor who issues the CDC, or is otherwise named on the building permit, and includes private building surveyor or local government
stakeholder(s)	Refers to a person(s) or organisation that provided feedback on the CRISs
WA	Western Australia
WALGA	Western Australian Local Government Association
$	Australian dollars

NCC Building Classifications

The table below is a summary of the different building classifications in the NCC.

Residential building	
1a	A single dwelling including the following: a) A detached house. b) One of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.
1b	a) A boarding house, guest house, hostel or the like that— 1. would ordinarily accommodate not more than 12 people; and 2. have a total area of all floors not more than 300 m^2 (measured over the enclosing walls of the building or buildings); or b) four or more single dwellings located on one allotment and used for short-term holiday accommodation.
Commercial building	
2	A building containing two or more separate sole-occupancy units.
3	A residential building providing long-term or transient accommodation for a number of unrelated persons, including: a) A boarding house, guest house, hostel, lodging house or backpacker accommodation. b) A residential part of a hotel or motel. c) A residential part of a school. d) Accommodation for the aged, children, or people with disability. e) A residential part of a health-care building which accommodates members of staff. f) A residential part of a detention centre. g) A residential care building.
4	A single dwelling in a Class 5, 6, 7, 8 or 9 building.
5	An office building used for professional or commercial purposes.
6	A shop or other building used for the sale of goods by retail or the supply of services direct to the public, including— a) an eating room, café, restaurant, milk or soft-drink bar; or b) a dining room, bar area that is not an assembly building, shop or kiosk part of a hotel or motel; or c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or d) a market or sale room, showroom, or service station.
7a	A carpark.
7b	A building that is used for storage, or display of goods or produce for sale by wholesale.
8	A process-type building that includes the following: a) A laboratory; b) A building in which the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce for sale takes place.
9a	A health-care building including any parts of the building set aside as laboratories, and includes a healthcare building used as a residential care building.
9b	A public assembly building, including a library, theatre, public hall or place of worship, school, nightclub, bar, cinema, stadium, or public transport station.
9c	A residential care building.
Class 10 buildings	
10a	A non-habitable building including a private garage, carport, shed or the like.
10b	A structure that is a fence, mast, antenna, retaining wall or free-standing wall or swimming pool or the like.
10c	A private bushfire shelter.

List of Building Confidence Report Recommendations

The table below sets out (in order) the recommendations from the Building Confidence Report.

No.	Recommendation
1	That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings: ⇨ Builder; ⇨ Site or project manager; ⇨ Building surveyor; ⇨ Building inspector; ⇨ Architect ⇨ Engineer; ⇨ Designer/Draftsperson; ⇨ Plumber; and ⇨ Fire Safety Practitioner.
2	That each jurisdiction prescribes consistent requirements for the registration of building practitioners, including: ⇨ Certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration; ⇨ Additional competency and experience requirements; ⇨ Where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and ⇨ Evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.
3	That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.
4	That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.
5	That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).
6	That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.
7	That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.
8	That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.
9	That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.
10	That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.
11	That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.
12	That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.
13	That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.
14	That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have used and for what purpose.
15	That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.
16	That each jurisdiction provides for a building compliance process which incorporates clear obligations for the approval of amended documentation by the appointed surveyor throughout a project.
17	That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.
18	That each jurisdiction requires on-site inspections of building work at identified notification stages.
19	That each jurisdiction requires registered building practitioners to design, install and certify the fire safety systems necessary in Commercial buildings
20	That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.
21	That the Building Ministers' Forum agrees its position on the establishment of a compulsory product certification system for high-risk building products.
22	That the Building Ministers' Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.
23	That the Building Ministers' Forum acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.
24	That the Building Ministers' Forum prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.

Attachments in Volume 2

The following documents are referred to in Volume 1 of this DRIS. All listed documents can be found in Volume 2.

Attachment A	Cost-benefit analysis report by CIE for WA (16 June 2022)
Attachment B	Draft Building Commissioner's Direction for design documentation for residential buildings
Attachment C	Draft Building Commissioner's Direction for notifiable inspections of residential buildings
Attachment D	Report by DevCert Building Surveyors on estimated costs of inspections for Classes 2 to 9 buildings
Attachment E	Western Australia Building Surveyor's Code of Conduct 2022
Attachment F	Overview of buildings and structures that can be built under the two-tiered builder registration model
Attachment G	Local Government districts within or immediately adjacent to South West Land Division.

Coding of stakeholder feedback data

Volume 1 of the DRIS contains graphs that categorise the stakeholder feedback received during the review.

Stakeholder feedback has been interpreted and coded into 4 main categories, each described in the table below. Where it has not been possible to confidently code stakeholder feedback, it has been counted in the category of 'No comment'.

Only stakeholder feedback to the CRIS Commercial and CRIS Registration has been coded into a category of 'conditionally supported'. This was due to the nature of the reform proposals, questions put to stakeholders and the feedback received.

Supported	Stakeholder indicated support for a reform proposal or regulatory change.
Conditionally supported	Stakeholder generally supported a reform proposal, but proposed additional changes and/or clarifications.
Not supported	Stakeholder indicated they did not support or were opposed to a particular reform proposal or regulatory change.
No comment	Stakeholder made no comment on a reform proposal, or comment could not confidently be coded against one of the above listed categories.

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1. Executive Summary

Introduction

This document represents the final stage (DRIS) of a review into the parts of WA's building regulatory framework covering the approval and construction of residential and commercial buildings, regulation of builders and other related matters.

This review forms part of the WA response to the Building Confidence Report, which was commissioned by the BMF (now BMM) and released in 2018.

The Building Confidence Report made 24 principle-based recommendations for all Australian states and territories to consider in improving their building regulatory frameworks and enhancing the compliance and enforcement of the NCC.

This DRIS provides an overview of stakeholder feedback received during the review, an analysis of the impact of reform options, and recommendations for Government's consideration.

The DRIS recommends ambitious reforms are made to the building regulatory framework if WA is to implement many of the recommendations of the Building Confidence Report. Not all reforms have universal support of stakeholders, but are considered necessary if Government is to improve compliance with building standards, promote confidence in the built environment, and move away from what is often described as the 'lightest touch' regulatory framework in Australia.

Following acceptance of the recommended reforms by Government, further consultation will be undertaken by Building and Energy where necessary on the detailed requirements to be included in the amending legislation, which will comprise amendments to primary Acts and supporting regulations.

The DRIS is presented in two volumes. Volume 1 (this document) contains the outcome of the review and Building and Energy's recommendations for reform. Volume 2 contains a number of attachments referred to in Volume 1.

The cost benefit analysis (CBA) prepared by CIE which has analysed the overall economic impact of the reforms, is included in Volume 2.

The Government is committed to a regulatory impact assessment process aimed at ensuring good regulatory design to achieve effective outcomes and deliver maximum net benefits to the WA community. In developing and reviewing legislation, the potential costs of regulation are considered and weighed against the potential benefits.

The reforms have been analysed by the CIE as a package, consistent with the recommendations of the Building Confidence Report. The analysis has not considered the economic impact of each reform in isolation.

The CBA estimates that the reforms will, over a 10 year analysis period, present a net economic benefit to the WA community of $453 million. The net economic benefit will be the result of avoided major defects and non-compliance across all building classes.

Background to this review

The building industry is a major contributor to the WA economy and plays an important role in everyday life by providing housing, employment, liveable communities, infrastructure and productive businesses. Last financial year, the building industry contributed an estimated $13.6 billion to the WA economy, or 4.3 percent of the WA gross state product.

However, over the last decade, weaknesses in the building regulatory systems, both in Australia and overseas, have become increasingly apparent. High profile failures include:

- ⇨ the Grenfell Tower fire in London, in which 72 residents lost their lives due to the spread of fire from the use of combustible cladding;

- fires in the Lacrosse and Neo200 apartment buildings in Melbourne, linked to the use of combustible cladding; and
- major structural defects in various apartment buildings in Sydney, including the Opal and Mascot Towers.

In WA, a number of issues with large apartment buildings in the Perth metropolitan area have been reported to Building and Energy, including poor waterproofing, non-compliant windows and water ingress. Owners of these buildings have been left with substantial repair and rectification costs. Building and Energy's compliance audits of residential buildings over the five years from 2015-2020 found a large amount of non-compliance across 22 building elements inspection. Building and Energy's audit of apartment buildings over three storeys also identified 52 buildings considered to be of high or moderate risk due to the use of combustible cladding.[1]

Combined, these incidents and audit findings indicate that the building regulatory system across Australia has not kept pace with the changes in housing demand and construction practices. Changes include the rise of apartment living, the introduction of a performance-based building code, the availability and use of new building products and technology, and the increased use of design and construct procurement methods.

In response, the BMM commissioned Professor Peter Shergold AC and Ms Bronwyn Weir to examine compliance and enforcement shortfalls in Australia's building and construction regulatory systems.

The resulting Building Confidence Report made 24 recommendations for a national best-practice model for all states and territories to improve compliance with the NCC. These recommendations were endorsed in principle by all Australian Building Ministers.

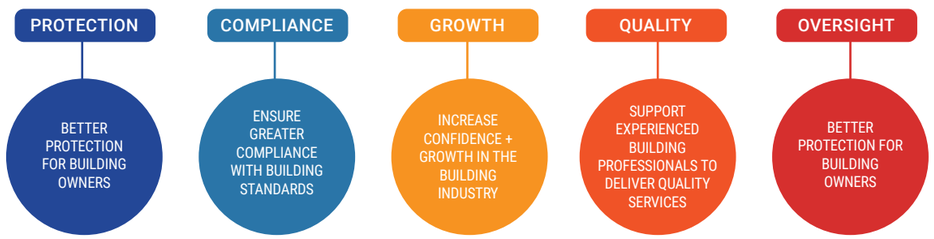
Consultation Regulatory Impact Statement (CRIS)

Following the Building Confidence Report, Building and Energy released a series of CRISs to seek stakeholder feedback on reforms to implement many of the report's recommendations and work through the technical and practical issues raised. Stakeholders include peak industry associations, building practitioners, homeowners and local governments.

While the Building Confidence Report identified the need for ambitious reform by Governments across Australia, implementing the Building Confidence Report recommendations requires states and territories to take time and care in properly considering and developing the reforms with stakeholders to make sure they are fit for local purpose.

The CRISs released in WA focused on reforms to the design and approval processes for residential and commercial buildings and the regulatory framework for registered builders, but acknowledged that further reforms may need to be considered at a later date to implement other recommendations of the Building Confidence Report.

Combined, the proposed reforms in the CRISs focus on 5 key policy areas for improvement, being:



Each CRIS was released separately during 2019 and 2020 to allow sufficient time for consideration and feedback:

1 DMIRS, 'Building and Energy', 'State-wide cladding audit: an audit of combustible cladding on high-rise, high risk private and public buildings' (2020).

CRIS Residential (September 2019) (RG1730)[2]

- 6 major reforms proposed to the design, approval and certification processes for residential buildings (including consideration of full privatisation of building approvals)
- 72 submissions received

CRIS Commercial (September 2019) (RG1740)[3]

- 28 reforms proposed to the design, approval and certification process for commercial buildings
- 30 submissions received

CRIS Registration (October 2020) (RG1729)[4]

- various reforms proposed to the registration framework for builders and other occupations
- 38 submissions received

Presentations and meetings with industry participants were also held before and after the release of the CRISs to discuss the details of the reforms proposed.

Stakeholder feedback

Stakeholders generally responded well to the CRISs. It is clear many stakeholders support the recommendations in the Building Confidence Report to improve building compliance and enforcement of the NCC in WA.

Key themes raised by stakeholders include:

- Where possible, the Building Confidence Report recommendations should be implemented consistently across Australia. While some local variations are to be expected, stakeholders considered that confidence across the building industry will only be restored if states and territories agree best practice approaches to be adopted.
- A 'chain of responsibility' needs to be established to incorporate those professionals involved in the design of buildings.
- 80 percent of industry professionals are already doing the 'right thing' and have little to fear from the reforms, but 20 percent 'don't do the right thing', and currently receive a competitive advantage.
- Staged implementation of the reforms is needed to allow the industry time to adjust and account for the unique challenges experienced in regional and remote areas of WA.
- Delays associated with the grant of planning approvals (not the grant of a building permit) often delay the commencement of building.
- The role of local governments in the building approval process should remain, particularly given challenges faced by private building surveyors obtaining commercially sustainable PII policies, the long documented issues with fully privatised building approvals in other states and territories and the limited number of building surveyors available in WA.

In respect of the building approval process, the majority of stakeholders, particularly building owners and consumers, wish to see a scheme of inspections of building work carried out at critical or 'notifiable' stages of the building process.

On reform to the registration framework for builders, stakeholders generally support a more narrow approach focusing on tiered registration requirements with grandfathering provisions, mandatory CPD and administrative changes.

2 Department of Treasury – Better Regulation Unit assessment number
3 Ibid.
4 Ibid.

Major developments

Following the release of the CRISs, a number of major developments occurred which have shaped the recommendations for reform.

National best practice models

The BMM requested the ABCB develop national best practice models, to assist states and territories to implement the Building Confidence Report recommendations consistently.

After a very extensive national consultation process, including with stakeholders in WA, the ABCB released 18 best practice models to implement the Building Confidence Report recommendations in December 2021. These models cover the majority of the report's recommendations and contain a number of general principles.

While the national models provide useful guidance for governments to draw upon, they are not mandatory, nor do they provide a fully detailed solution. A key challenge for governments is to account for the variances in state and territory building regulatory frameworks, local conditions or the extent of the problem to be addressed.

In comparison to jurisdictions such as New South Wales, Victoria and Queensland, WA has a smaller building industry. It is important the reforms implemented in WA focus on the known gaps in the building regulatory framework. A central area of focus will be on high-risk construction types, such as Class 2 apartment buildings.

The national models have, where appropriate, been considered in formulating the recommendations in the DRIS. Where recommendations in this DRIS draw on the national models, this is noted.

Challenging conditions in the building industry

Since at least 2020 (with the outbreak of the coronavirus) the building industry in WA (like elsewhere across Australia) has been facing challenging economic conditions. Many business have struggled under substantial material and labour shortages, delays in freight, and unforeseen price increases. This has had a significant effect on the time and cost of building projects and the on-going profitability of building businesses. Unfortunately, some businesses have had to cease trading due to the conditions.

To avoid exacerbating the challenges facing the industry, a phased approach to implementing the recommended reforms is necessary.

Subject to the Government's legislative drafting resources and priorities, many of the reforms recommended in this DRIS should not start commencing until at least the end of 2025 (if not later), and then, in some instances, be phased in over a number of years.

By this time it can be expected that many of the challenging economic conditions will have subsided, allowing industry and government to adapt more readily to the reforms.

A high-level Implementation Roadmap can be found at the end of this Volume of the DRIS, which suggests how the recommended reforms could be staged to commence operation.

A more detailed Action Plan is proposed by Building and Energy to be released for public comment once a draft of the amendments to primary legislation is also available to be released. This will ensure that the details of the reforms and anticipated timeframe for commencement are understood.

Reforms in other jurisdictions

Following the release of the Building Confidence Report, a number of other states and territories have reviewed and reformed parts of their building regulatory frameworks.

In New South Wales a suite of new legislation has been introduced to improve the regulation of the design, approval and construction of Class 2 apartment buildings.[5] This reflected the need to ensure regulatory frameworks keep pace with the increase in apartment living and the unique risk profile associated with these buildings, including the design and procurement methods used and on-going fire and structural safety.

In the Northern Territory, new legislation has been introduced to improve the structural design of complex buildings, including Class 2 apartment buildings over 25 metres high.[6] The engineering designs for these buildings must now undergo an independent review before the grant of a building approval.

In Queensland, a program of legislative reform has commenced to enhance the private certification framework by increasing a certifier's independence, improving professional standards and compliance, and enhancing regulatory oversight. In addition, a 'Safer Buildings Taskforce' has been established to deliver the necessary policy and practice to ensure that the safety of Queensland's building infrastructure is maintained.[7]

The Australian Capital Territory has made a number of legislative reforms, including amendments to the regulator's powers, registration requirements and disciplinary provisions, and minimum documentation guidance.[8]

The reforms implemented across Australia highlight the importance of enhancing the regulation of the design, approval and construction of high-risk structures (including apartment buildings) in WA to ensure the State maintains a modern and responsive building regulatory framework.

5 See generally, *Design and Building Practitioners Act 2020* (NSW) and *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).
6 See generally, r. 15AA, 15AB and 15AC of the Building Regulations 1993 (NT).
7 Building Confidence Report: Jurisdictional update (Dec 2019). Available at: https://www.industry.gov.au/sites/default/files/2020-03/building-confidence-report-jurisdictional-update-2019.pdf
8 Ibid.

Summary of recommended reforms

Based on the industry and community response to the review, Building and Energy recommends substantial amendments are made to the WA's building regulatory framework to improve compliance with and enforcement of building standards.

Reform should occur across a number of areas:

Building Design

- Prescribed requirements for plans and specifications for building approval
- Independent third-party review of structural and fire safety designs for Class 2 buildings over 25m high
- Registration of general building design contractors and practitioners
- Certificates to be signed by building designers declaring plans and specifications prepared will comply with building standards, initially to apply to building work for Class 2 buildings and then be extended

Building surveyor engagement

- A statutory building surveyor (SBS) must be engaged for the duration of a building permit
- The SBS must be engaged by the building owner
- The SBS must act in the public interest
- The SBS's payment may not be conditional on a certificate of compliance or permit
- Code of practice for building surveyors

Fire authority consultation

- The FES Commissioner's advice may be provided early
- The FES Commissioner's advice must be responded to regardless of when it is received

Inspections

- Mandatory inspections at prescribed notifiable stages for new Class 2-9 buildings, with stages and requirements to be phased in over time, following which consideration is then given to applying the requirements to new residential buildings (Class 1).
- The SBS named on the building permit will oversee and manage inspections
- The SBS can nominate a competent person to undertake specific inspection work

Variations

- Defined process to document and approve major and minor variations during construction

Building manuals

- Building manuals to be provided for new high-risk Class 2 buildings

Completion

- Occupancy permits to state any occupancy or maintenance conditions relating to performance solutions
- Occupancy permits to be required for new Class 1b buildings
- Builder's NoC amended to declare that construction work complies with the approved plans and specifications and applicable standards
- Building surveyor's CCC amended to state that construction work complies with the applicable building standards

Regulatory powers

- Building Commissioner to be empowered to:
  - issue Directions on prescribed technical matters
  - enter any construction site
  - notify the permit authority and building owner of seriously non-compliant building work
- Registered engineers empowered to issue technical certificates
- Entry warrants amended to exclude the name of the issuing Justice of the Peace
- Permit authorities to be empowered to report prescribed information to the FES Commissioner and accreditation bodies
- Building permits to be required for prescribed structures, including swimming pools, retaining walls, viewing platforms, masts and antennae
- Building Commissioner and permit authorities empowered to serve infringement notices within 12 months of an offence occurring
- Removal of most building permit exemptions for Class 10c private bushfire shelters

Registration

- Introduction of tiered registration for builders:
  - Level 1 – Open Builder
  - Level 2 – Low rise Builder
- Grandfathering provisions for current registrants
- Amendments to registration pathways for building practitioners
- Amendments to thresholds and exemptions for building contractor registration requirements
- Extension of builders' registration to regional areas in entire of southwest WA
- Some registered building service practitioners to undertake mandatory CPD on the NCC
- Increase in penalties and other amendments to disciplinary provisions for registered building service providers

Implementation

- Implementation will be staged, with the initial focus being on high-risk Class 2 buildings.
- Mandatory notifiable stage inspections to apply to new Class 2-9 buildings initially, followed by new Class 1 buildings at a later stage.

Economic Impact Assessment

Consistent with the Government's Better Regulation Program for economically significant regulatory proposals, the CIE was engaged by Building and Energy to complete a CBA on recommended reforms. The CBA estimated the economic impact of the recommended reforms in this DRIS.

The CBA builds upon earlier analysis by the CIE for the ABCB of the expected economic impact to implement the Building Confidence Report recommendations across all Australian states and territories, including WA.[9]

The CIE determined that over a 10-year analysis period commencing from 2025, the recommended reforms in the DRIS are expected to have a net positive economic benefit to WA society of **$453 million** across all classes of buildings.

The table below provides a summary of the CIE's findings on the central case for reform. The CIE also conducted sensitivity analysis on 12 other scenarios, which confirms an overall net positive benefit to society.

	Class 1	Class 2	Class 3-9	All new buildings
Benefit ($m)				
Avoided rectification cost	844	161	419	1 424
Other benefits	73	12	5	90
Total benefit	916	173	424	1 514
Cost ($m)				
Inspection	220	86	161	468
Documentation	139	19	139	297
Construction	111	20	74	206
Delay	25	3	9	36
Other	23	7	24	54
Total cost	519	135	408	1 061
Net benefit ($m)	**398**	**39**	**17**	**453**
Benefit Cost Ratio (ratio)	**1.77**	**1.29**	**1.04**	**1.43**

The full CBA is contained in Volume 2 at Attachment A.

Part of the economic impact of the recommended reforms in this DRIS will involve additional costs for Government to implement and enforce new requirements. This will require new staff and systems for Building and Energy.

The CIE has conservatively estimated new implementation costs to be $1.1 million.
New staffing costs have also been conservatively estimated at $1.9 million per annum, which has been incorporated into broader annual costs of each of the reforms analysed in the CBA.

Building and Energy will work with Government to determine how these new costs are to be met. The CBA notes that an increase to the Building Services Levy (BSL) may be the preferable method.

Increased costs for local governments have been factored into the CBA through the charging of existing or new fees.

9 Centre for International Economics, ***Building Confidence Report: A case for intervention*** (July 2021), available at https://www.abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf abcb.gov.au/sites/default/files/resources/2021/Building-Confidence-Report-A-Case-for-intervention.pdf

Assessment against Building Confidence Report recommendations

Subject to Government's acceptance, the recommended reforms in this DRIS will fully or partially implement a number of the recommendations from the Building Confidence Report.

The table below provides a checklist of the recommendations which are fully or partially addressed by the reforms.

Other recommendations from the Building Confidence Report have already been addressed through work completed by Building and Energy or the ABCB, the outcomes of earlier reviews, or were outside the scope of this stage of the review.

Recommendation No.	Partially	Fully	
1	✓		Will be addressed through reforms to builder registration and recommendation to extend registration to building designers.
2	✓		Will be addressed through reforms to builder registration and recommendation to extend registration to building designers.
3	✓		Addressed for existing registered persons. NCC CPD to be extended as decision is made to other registered categories.
6		✓	
8	✓		
9		✓	Full independence is not recommended at this time. The Code of Conduct defines boundaries on the role of the SBS in design.
10	✓		
11		✓	Private building surveyors will not have stop-work powers. However permit authorities, as the main enforcer of building compliance, do.
13	✓		Subject to further review into the details of registration scheme for building designers.
14		✓	Occupancy permits will only state occupancy and maintenance conditions relating to performance solutions. The CDC will list all performance solutions.
15		✓	
16		✓	
17		✓	
18		✓	
20	✓		Will apply to certain Class 2 apartment buildings. Scope for other classes of commercial buildings to be considered at later date.

2. Introduction

WA's building regulatory framework

WA's current building legislation has been in force since April 2012 and provides the basis for building control, to ensure buildings meet minimum requirements for health, safety, amenity and sustainability, as well as a framework to resolve disputes and register builders, building surveyors and painters who carry out 'regulated building services'.

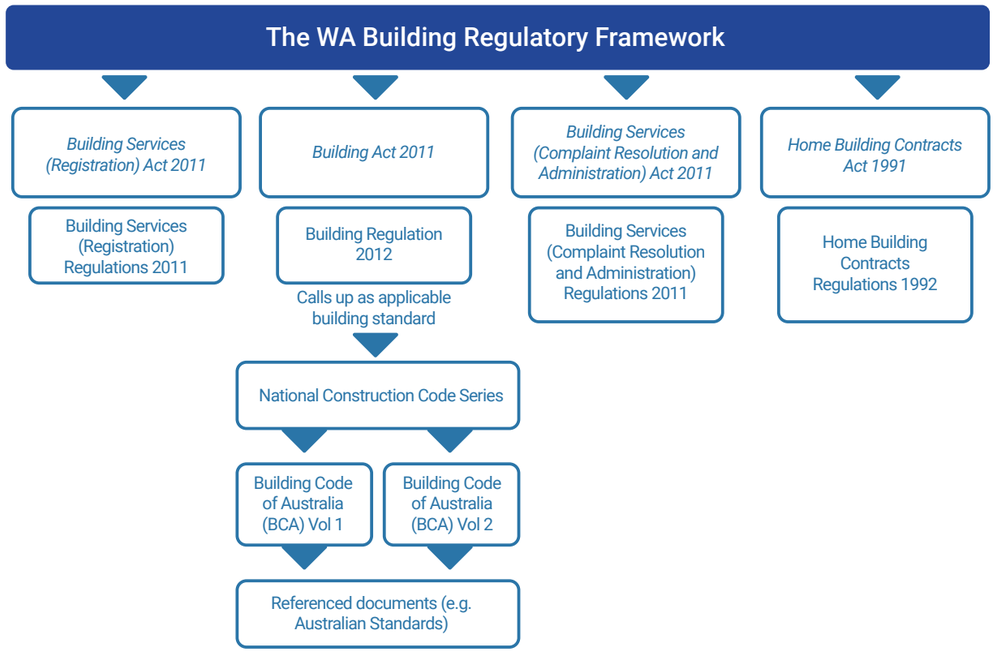
The building legislation assigns different responsibilities to different parties during the approval, construction and completion processes. These responsibilities are summarised in the diagram, below.

In some cases, the roles differ depending upon whether it is residential or commercial building work. Under WA's current building legislation, there is no specific responsibility placed on those professionals responsible for preparing building designs, such as engineers and building designers. However, any person carrying out the practice of architecture under the title 'architect' must be registered under the Architects Act.

Building Surveyor (private or local government)	⇨ Contractor and practitioner registration required (for private works). Practitioner registration required (for local government work only). ⇨ Assess building plans and specifications for compliance with applicable building standards and issue a certificate of design compliance (CDC) for building approval of residential and commercial buildings. ⇨ Once construction of a commercial building is complete, assess the building's compliance with the approved plans and specifications and issue a certificate of construction compliance (CCC).
Permit authority	⇨ Issues building approvals (by granting building permits) and has powers to enforce applicable building standards, both during and after construction. All local governments in WA are permit authorities. ⇨ Responsible for granting other approvals necessary before building approval is given, including planning approval and compliance with health and local government laws. ⇨ Once construction is complete, receives the builder's notice of completion (NoC) and issues occupancy permits for commercial buildings.
Builder	⇨ Contractor and practitioner registrations required. ⇨ Responsible for ensuring buildings are constructed in accordance with the applicable building standards and the approved design. Issues the NoC to the permit authority once construction is complete. The builder is named on the building permit. ⇨ Often acts on the owner's behalf in applying for building and occupancy permits.

Building Commissioner	⇨ Statutory role within DMIRS – Building and Energy, created under the BSCRA Act. ⇨ Responsible for general inspections of regulated building services and investigating complaints, including about the work of a builder or building surveyor, and breaches of home building contracts. ⇨ Provides a dispute resolution function for consumers and builders with powers to make building remedy orders. ⇨ Does not have oversight of building control or the regulation of permit authorities.
Building Services Board (BSB)	⇨ Statutory board created under the Registration Act. ⇨ Made up of representatives of registered building service provider occupation groups. ⇨ Responsible for registering building service providers, including builders, building surveyors and painters. ⇨ Has powers to discipline or take action against building service providers.

Building work in WA that is within the scope of the Building Act must comply with the NCC (as an applicable building standard), as well as some of the specific legislative requirements in the other statutes that form part of the regulatory framework:



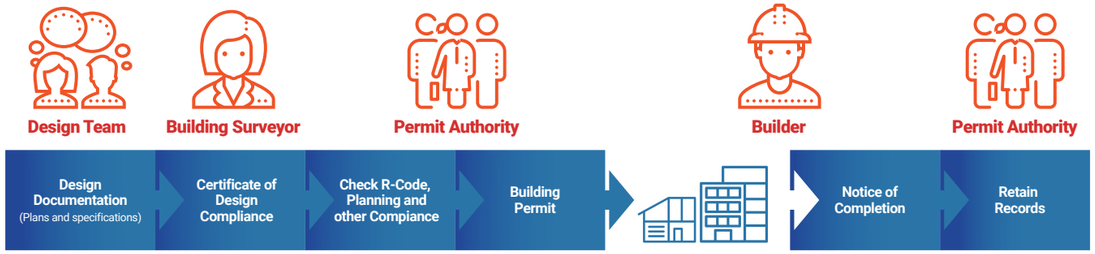
The NCC, which comprises the BCA and the Plumbing Code of Australia, is a performance-based code, built around a hierarchy of guidance and compliance levels. It sets various performance requirements that buildings must meet in order to comply.

The performance requirements can be met using either a performance solution or a Deemed to Satisfy (DtS) solution. A performance solution is unique to the particular circumstances of the building and affords flexibility to achieve the performance outcomes. Conversely, a DtS solution prescribes what, when and how to do something. A DtS solution usually requires compliance with an Australian Standard or other referenced document.

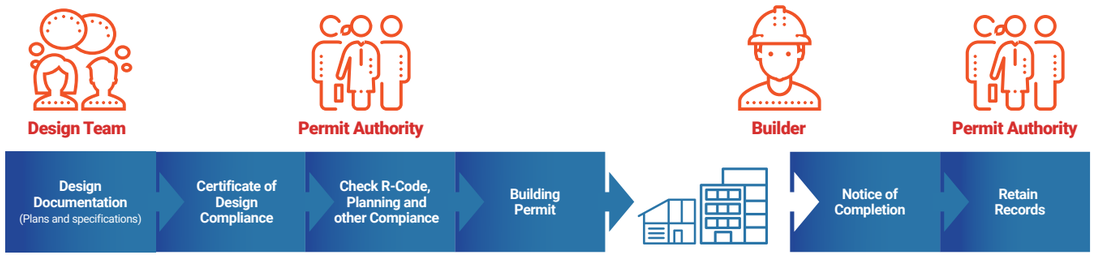
Building approval process

The building legislation governs the process of approving the construction and occupation of new buildings, and the renovation, extension or repair of existing buildings in WA. The processes differ slightly depending on whether the building is a residential or commercial building. Broadly, there are two approval paths – certified or uncertified.

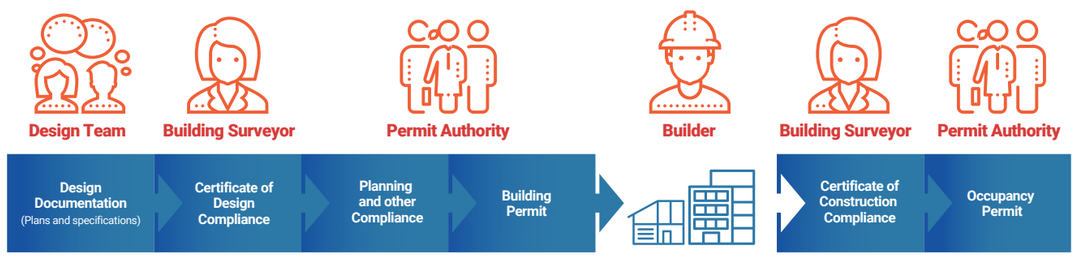
The certified path is where a private building surveyor assesses and certifies that the building design meets the applicable building standards. The uncertified path is where the building design is submitted to the permit authority, and a building surveyor engaged by the permit authority assesses and certifies that the design meets the applicable building standards. For Classes 1b and 2 to 9 buildings, only the certified path is available. For Classes 1a and 10 buildings, either the certified or uncertified path can be used.



Certified pathway (Residential Class 1a or 10 only)



Uncertified pathway (Residential Class 1a and 10 only)



Certified pathway (Commercial Classes 2 to 9 and Residential Class 1b)

Need to review WA's building regulatory framework

Weaknesses in building regulation identified across Australia

Over the past decade, there has emerged a widespread perception and growing body of evidence, both within Australia and overseas, of weaknesses in building regulatory frameworks and non-compliance with building standards.

This has included:

- A series of reviews by the Commonwealth and other States highlighting current problems in building regulation, including:
  - Campbell Report on the Quality of Buildings, conducted by a committee of the New South Wales Parliament (2002);
  - Victorian Auditor General's reports into compliance with building standards (2011, 2015 and 2020);
  - Review of the ***Building Act 1975*** and building certification in Queensland by Andrew Wallace (2014);
  - Independent review of the ***Building Professionals Act 2005*** in New South Wales by Michael Lambert (2015);

Building Confidence Report (2018);

  - New South Wales Parliamentary committee inquiry into the regulation of building standards, building quality and building disputes (2019);
  - Standing Committee on Economic Development and Tourism Inquiry into Building Quality in the ACT (2020); and
  - Senate Standing Committee on Economics inquiry into non-conforming building products (2020).
- The use of combustible cladding on a significant number of high-rise buildings across Australia, including in WA, has led to high rectification costs and exposed owners and users to safety risks. The need to address combustible cladding became evident following high-profile fires linked to the products' use, for example:
  - fires at the Lacrosse (2014) and Neo200 (2019) buildings in Melbourne; and
  - the Grenfell Tower fire in London (2017) in which 72 residents lost their lives.
- Growing evidence on the prevalence of building defects across Australia, including:
  - a study by researchers at Deakin and Griffith Universities into building defects in residential multi-owned properties in New South Wales, Queensland and Victoria found an average rate of 14 defects in each building sampled;[10]
  - a survey by researchers at the University of New South Wales into building defects in newly built high-rise residential apartments found that 72 percent to 85 percent of owners' corporations managing apartment buildings reported major defects;
  - a study by the New South Wales Building Commissioner and Strata Community Association found that 39 percent of sampled strata buildings had experienced serious defects in common property;[11]
  - a survey of apartment owners in WA, New South Wales and Victoria found that 60 percent of owners (with 70 percent from WA) had defects in their apartment, most commonly water penetration, poor waterproofing and structural cracking;[12] and
  - Major structural defects reported in a number of apartment buildings in Sydney, including Opal Tower (2018) and Mascot Tower (2019), resulting in substantial, unresolved defects.

Non-compliance with building standards can cause a number of problems for building owners, tenants, occupants and subsequent purchasers, including:

- increased safety risks;
- loss of accommodation (temporary or permanent) and costs associated with building evacuations;
- high and unexpected rectification costs, including legal costs to pursue responsible parties;
- diminished value of affected buildings, including lost commercial use and loss of investment for owners;
- higher insurance premiums for both building owners and building professionals;
- reduced thermal and energy efficiency of buildings resulting in higher costs to building owners, users and the environment;
- increased maintenance costs and reduced building life-span; and
- loss of confidence in the construction and property industries.

Building and Energy audits

In WA, Building and Energy has conducted compliance audits and general inspections into a range of building issues, including wall and roof framing on residential buildings, CDCs for residential buildings and bushfire construction requirements. These audits have found lower than expected levels of compliance with applicable building standards.

10 Nicole Johnston and Sacha Reid, An examination of building defects in residential multi-owned properties (June 2019).
11 Construct NSW, Research report on serious defects in recently completed strata buildings across New South Wales (September 2021).
12 Australian Apartment Advocacy, Apartment Defects Survey: National Report (2019).

Compliance audits of residential buildings over the five years from 2015-2020 have found a large amount of unsatisfactory inspection points (i.e. work that did not comply with approved plans or standards) across 22 building elements, as shown in the graph below:

General inspections into specific building issues have also found lower than expected levels of compliance. These findings have been publicly reported and include:

- ⇨ very low rates (33 percent) of satisfactory compliance for sheet metal clad timber framed roofs in residential buildings;[13]
- ⇨ low rates of satisfactory Bushfire Attack Level (BAL) assessments for residential buildings in bush-fire prone areas (44 percent) and compliance with bushfire construction requirements (59 percent);[14]
- ⇨ a large number of instances (51) where incorrect or absent wind classification documentation has been relied upon in providing a CDC for residential buildings;[15]
- ⇨ problems with metal sheet replacement roofs on buildings in high wind areas of State; and[16]
- ⇨ issues with waterproofing in Class 1a and Class 2 buildings, including insufficient plans and specifications, inadequate falls in shower recess floors and poor rendering on walls to support waterproof membranes.[17]

13 Building Commission, 'General Inspection Report One: A general inspection into metal roof construction in Western Australia' (April 2016).
14 Building and Energy, 'General Inspection Report Three: Bushfire requirements in Western Australia' (March 2020).
15 Building and Energy, 'General Inspection (Snapshot) Report Four: Wind classification compliance for Western Australian houses' (November 2020).
16 Building and Energy, 'General Inspection Report Five: Investigation into re-roofing of buildings' (April 2021).
17 Building Commission, 'General Inspection Report Six Snapshot: Waterproofing systems for wet areas (December 2021).

Changing industry practices

The last decade has seen continual changes to the way buildings are procured, designed and constructed, in particular commercial and apartment buildings. Changes include:

- ⇨ greater use of design-and-construct procurement for commercial buildings, whereby up-front design work is minimised to commence construction work earlier and responsibility for design and construction is largely transferred from the owner to the builder, who then contracts specialist designers and consultants;
- ⇨ increased use of NCC performance solutions, particularly in increasingly complex commercial buildings;
- ⇨ greater use of 'prefabrication', whereby components for a building are manufactured off-site (sometimes overseas) and then incorporated on-site into the building; and
- ⇨ availability of new building materials, including different types of cladding, insulation and glass, and the increasingly reported use of non-complying or non-conforming products.

Likewise, the type of buildings being constructed has changed. While the construction of new single residential buildings has remained stable, demand for apartment (Class 2) buildings has been steadily increasing.

The 2016 Census of Population and Housing reported that over the last 25 years, the number of occupied residential apartments in Australia increased by 78 percent to 1,214,373 dwellings. An estimated 4 percent of the WA population (90,795 persons) or 6 percent of households (52,463) live in apartments.[18] This increased demand is attributable to a number of factors, including government targets and incentives for urban infill and land-use planning decisions around major public transport centres.

The manner in which apartment buildings are designed, constructed and sold differs substantially from detached residential buildings or commercial buildings. Commonly, a developer will engage a builder to undertake the design and construction of the apartment building. The developer will be responsible for arranging 'off-the-plan' sales to individual owners to fund the project. Whilst the developer might engage architects and engineers to prepare preliminary plans and specifications to obtain building and planning approval, the consultants' contracts are then novated to the builder.

The builder is responsible for the delivery of the completed building at the agreed price. As the price is often agreed well in advance of construction commencing, the builder will work to reduce their risk and find efficiencies and cost savings in the design and construction of the building.

Once the building is complete, the strata titles are released to the owners. The body corporate (or strata company) will be established to manage the interests in the common property.

This development model presents unique challenges and risks to subsequent owners in terms of the oversight of the build, quality received and the rectification of defects. It also means owners are reliant upon regulatory controls and the competence of building practitioners to deliver a compliant and safe building.

As Barbaro and Marfarra (2019)[19] explained in their article on regulatory reforms to improve safety and compliance in Australian apartment buildings:

> "Office buildings normally entail a development model that aims to provide rentability over medium to long term, even in the most speculative cases. This development model tends to induce the production of a market-driven desire for spatial and built quality both from an architectural and real-estate point of view. In contrast, at present, the prevailing model is high-rise and high density development, often speculative residential apartments purchased "off-the-plan" for investment purposes. Unlike the case of office buildings, the market drivers in the present market are not necessarily linked with the product of quality or space. There is

18 Hazel Easthope, Sian Thompson and Alistair Sisson, Australasian Strata Insights 2020 (2020), City Futures Research Centre – University of New South Wales.
19 Jeanette Barbaro and Dr Giorgio Marfella, Back to the Past: Future Challenges for Better, Safer, Building Design and Construction, (2019) 34 Building and Construction Law Journal 362.

> hardly any market-driven incentive for developers of tall apartment towers to provide long-term built quality as a condition of economic success for their projects."
>
> ***Back to the Past – Future Challenges for Better, Safer Building Design and Construction***

These changing industry practices and consumer tastes have highlighted gaps in building regulatory frameworks and the need to ensure adequate safeguards are put in place now and into the future.

Building Confidence Report and the review of WA's building regulatory framework

In response to community and industry concerns about weaknesses in building regulation across Australia, the BMM commissioned Professor Peter Shergold AC and Ms Bronwyn Weir to examine compliance and enforcement systems for building.

The resulting Building Confidence Report, released in February 2018, made 24 recommendations aimed at improving state and territory compliance and enforcement systems. The overarching goal of the report's recommendations is to enhance community trust and confidence in the built environment by strengthening compliance with building standards:

> "..deriving the maximum benefit from a performance-based approach to building regulation depends on two fundamental requirements. First, there needs to be a high level of awareness and understanding across the building and construction industry of how compliance can be achieved by incorporating the performance requirements within the design process. Second, there needs to be strong public trust that the performance requirements are being met and, in particular, that health and safety is assured. At present, as this report elaborates, neither of these requirements are being fully met."
>
> ***Building Confidence Report p 9***

A similar recommendation was made in the final investigation report into the Opal Towers incident in Sydney (one of the key driver behind the commissioning of the Building Confidence Report). That report was emphatic in its recommendations that to avoid similar failure in the future:

> "All engineering designs for major projects should require checking and certification by a Registered Engineer. For identified critical elements of a design, certification should be by a third party Registered Engineer, fully independent from the original designer."
>
> ***Opal Tower Investigation Final Report: Independent Advice to NSW Minister for Planning and Housing***

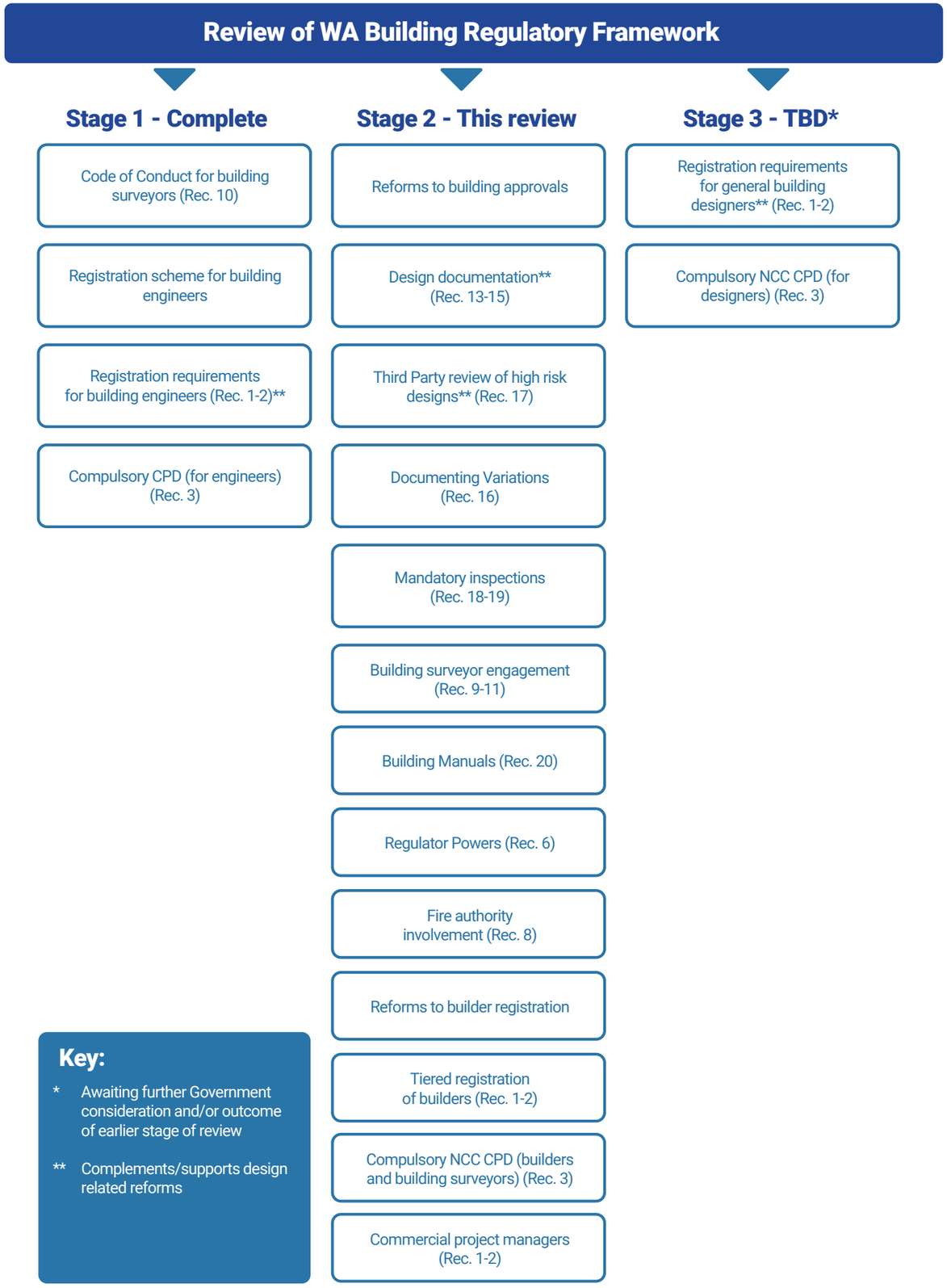
In December 2019, the WA Government, along with all other Australian state and territory governments, formally committed to strengthen the building sector by reviewing the State's building regulatory framework to determine how best to implement the report's recommendations.

As the diagram below explains, the review comprises three major stages – some complementing or supporting the next – but each dealing with key recommendations of the Building Confidence Report and other related matters.

Stage 1 comprised the enactment of the WA Building Surveyors' Code of Conduct to clarify key expectations for building surveyors in WA and a review into registration of building engineers. This stage is already complete, with recommendations made to expand the operation of the Registration Act, to incorporate professionals undertaking technical and engineering design work on buildings.[20]

This DRIS is the outcome of Stage 2 of the review, recommending reforms to the legislation governing building control, approvals of residential and commercial buildings, improvements to regulator powers and builders' registration.

20 Building and Energy, 'DRIS: Registration of Building Engineers in Western Australia', (January 2022)



Stage 3 should commence at an appropriate time after consideration of the recommendations from Stage 2. The priority for Stage 3 should be a registration scheme for general building designers to support the recommendations from this stage to enhance design documentation.

Some of the recommendations in this DRIS, particularly those related to building designs and third party review, are intended to complement a broader registration scheme for building engineers and general designers.

Methodology for the current review (Stage 2)

Due to the size and scope of the reforms recommended in the Building Confidence Report, this review has been undertaken in 4 phases.

Phase 1 – CRIS Residential

The first phase focused on proposed reforms related to single residential buildings (Class 1a) and commenced with the release of the CRIS Residential in September 2019.

The CRIS Residential proposed 5 major reforms to the approval and construction processes, including:

- full privatisation of building approvals;
- mandatory critical stage inspections;
- minimum design documentation requirements;
- clearer processes for approving and notifying variations to designs made during construction; and
- improved documentation for performance solutions.

Included within the reform to the role of the building surveyor was a consideration of the 'partially-privatised' model for building approvals in WA, and whether 'full privatisation' should be introduced to allow building approvals to be granted by private building surveyors.

Phase 2 – CRIS Commercial

The second phase of the current review sought feedback on reforms specific to commercial buildings (Classes 2 to 9). It commenced in December 2019 with the release of the CRIS Commercial, which proposed 28 reforms on a range of matters, including:

- greater powers for the Building Commissioner;
- improvements to building surveyor engagement;
- introduction of a building surveyor code of conduct (implemented in Stage 1);
- minimum design documentation requirements;
- improved documentation of performance solutions;
- mandatory critical stage inspections;
- mandatory third-party review of high risk structural and fire safety design elements;
- clearer processes for approving and notifying variations to designs made during construction; and
- requirements for the creation and maintenance of building manuals.

Phase 3 – CRIS Registration

The third phase commenced in October 2020 with the release of the CRIS Registration which sought feedback on 16 reforms to improve the registration framework for builders, predominantly under the Registration Act and associated regulations.

The major reforms proposed in the CRIS Registration, included:

- tiered registration for builders;
- extension of builder registration requirements to exempt areas of WA;
- mandatory Continuing Professional Development on the NCC for building surveyors and builders; and
- strengthening of disciplinary requirements in the Registration Act.

Feedback on Phases 1 to 3

Industry and community responses to Phases 1, 2 and 3 of the review were positive. Many stakeholders supported reform to the WA building regulatory framework to address existing weaknesses and improve confidence in the quality of building and construction.

140 written submissions received:

- 72 submissions on CRIS Residential
- 30 submissions on CRIS Commercial
- 38 submissions on CRIS Registration

Groups represented:

- Peak industry bodies
- Local Governments
- State Government
- Building professionals
- Homeowners

352 responses received in a Facebook poll on mandatory inspections for residential buildings

Phase 4 – CBA and national models

The final phase of this review involved consideration of both a CBA prepared by CIE on the reforms and the national models developed by the ABCB on the Building Confidence Report recommendations.

A central principle of the Government's Better Regulation Program is to ensure that new regulation is designed to support policy objectives and deliver maximum net benefits to the WA community.

Consistent with this principle, the CIE was engaged to complete a CBA of the recommended reforms in this document. The use of a CBA is an important tool to assess regulatory proposals. The rationale for using a CBA to support government decision-making is strong, given that public funds come at a significant cost to the economy, through taxes collected by local, state and Commonwealth governments.

CIE's analysis found that the recommendations in this review will bring a net benefit to WA of $453 million over the 10-year analysis period from 2023 to 2034. This equates to a Benefit-Cost-Ratio of 1.43, or put another way, for every $1 of cost, the reforms are estimated to create $1.43 of benefit to society.

The full CBA is can be found at Attachment A in Volume 2 of this DRIS.

In finalising the recommendations in this review, due regard has also been given to the national best practice models developed and published by the ABCB in December 2021.

Next steps

This DRIS completes Building and Energy's work on Stage 2 of the review and the regulatory impact assessment.

Subject to Government's acceptance of the recommendations, drafting of amending legislation and its passage through the Parliament will need to take place. This will be subject to the Government's broader legislative reform program.

The release of a consultation draft of the amending legislation prior to consideration by the Parliament will also provide industry with further opportunity to consider the technical details of the recommended reforms. An ***Action Plan*** for implementation will also be prepared to assist industry, local government and consumers prepare for the changes.

In some instances, subsidiary legislation will also need to be developed and prepared to support the amendments to the Building Act, Registration Act and BSCRA Act. This will take place at a later date.

Structure of the DRIS

The DRIS comprises two volumes. Volume 1 (this document) contains the outcome of the review and Building and Energy's recommendations for reform. Volume 2 contains a number of supporting attachments, including the CBA.

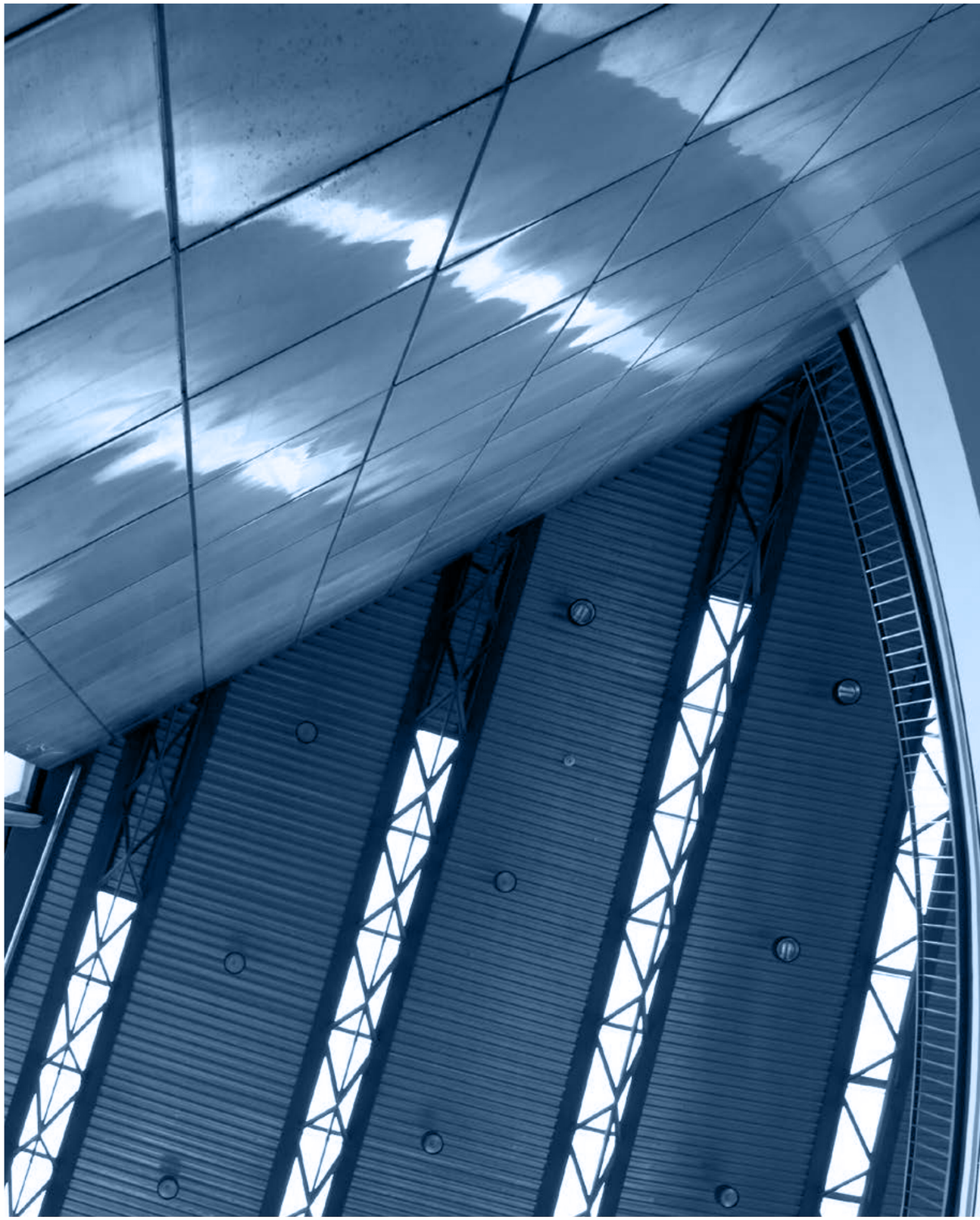
Volume 1 of the DRIS comprises 12 chapters. Some chapters contain multiple recommendations related to a common theme of reform.

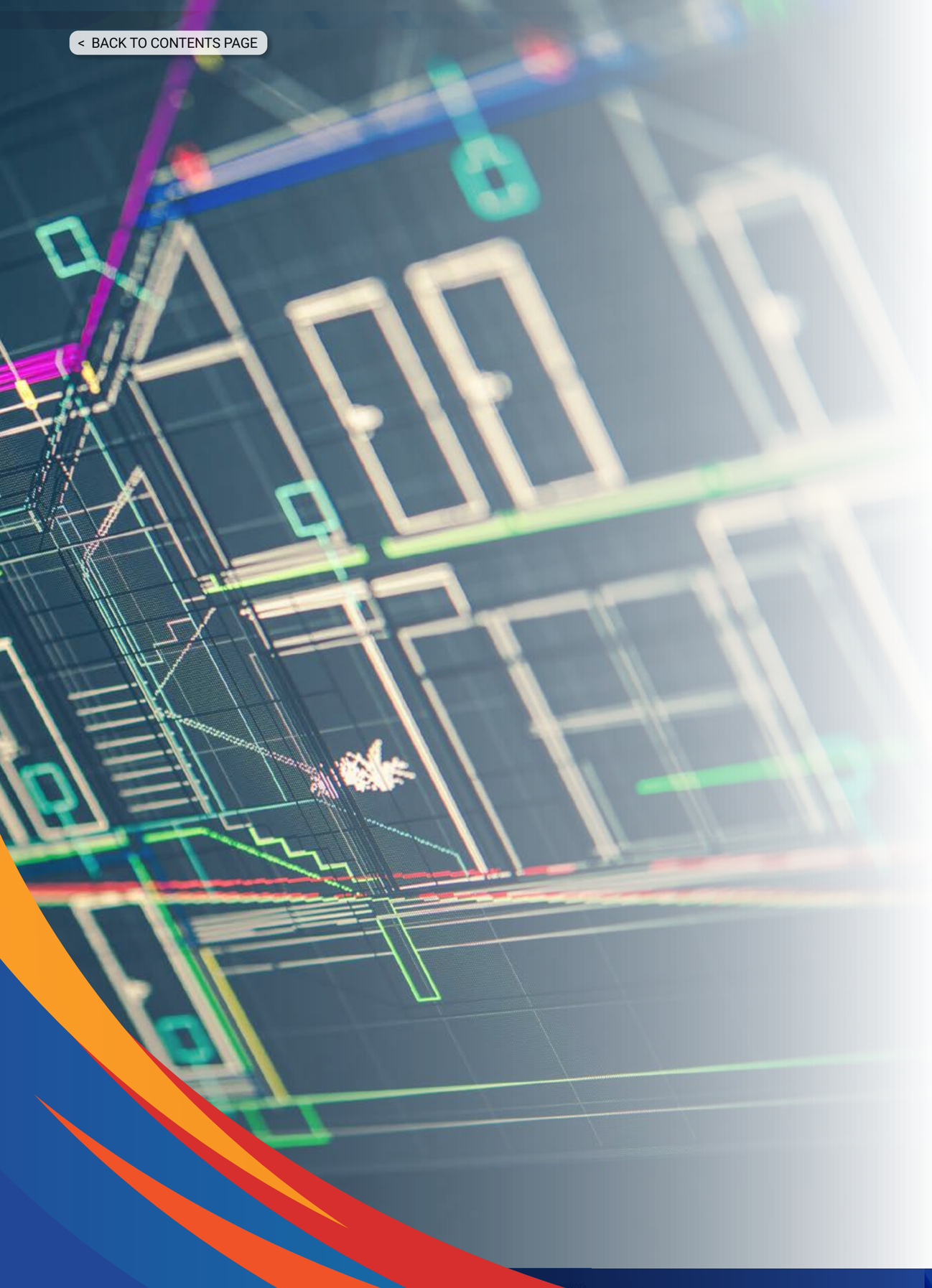
Chapters 3 to 9 recommend changes to improve the compliance and enforcement of building standards across the building approval process, from design documentation and certification to construction and occupation.

Chapter 10 deals with other miscellaneous changes that were identified during the review process or have been longstanding issues of concern. These include additional powers for the Building Commissioner and administrative amendments to ensure that the legislation remains contemporary and responds to recent developments, such as the COVID-19 pandemic.

Chapter 11 focuses on reforms related to the Registration Act, including the introduction of tiered registration of builders, compulsory CPD on the NCC for building surveyors and builders, extension of registration requirements to some excluded parts of WA, and the registration of Project Managers.

Chapter 12 provides an overview of the plan to implement and review the recommended reforms.





3. Building Design Documentation

Background

Proper design and documentation of a proposed building is critical to ensuring compliance with applicable building standards. Put simply, if a building is not designed to demonstrate compliance with the applicable building standards, there is little chance that it will be constructed to the required standards.

Equally, inadequate and incomplete design documentation for buildings can lead to poor outcomes. These include:

- ⇨ increased risks and pressures on building surveyors to assess incomplete or inadequate plans for compliance with applicable building standards;
- ⇨ increased risks and pressures on permit authorities to grant building approvals based on inadequate plans and specifications;
- ⇨ builders improvising on site or making decisions which may not comply with applicable building standards;
- ⇨ major deficiencies in critical building elements, such as fire safety systems, roofs, cladding and façade construction;
- ⇨ project disputation, delays and increased costs due to variations;
- ⇨ difficulties with building maintenance and up-keep for ongoing compliance; and
- ⇨ substantial rectification costs for building owners.

Unlike other Australian states and territories, WA currently has limited legislative requirements for design documentation. Building plans and specifications are not required to be prepared by a registered professional, such as an architect, building designer or engineer.

In fact, persons holding themselves out as building designers and engineers are not required to be registered. Neither is the person who prepares plans and specifications submitted for the building approval required to demonstrate compliance with building standards, including any statement or declaration of compliance.

Consequently, responsibility for ensuring building plans and specifications demonstrate compliance with applicable building standards often falls wholly upon the building surveyor, who may have been involved in preparing the designs they are assessing.

The building legislation requires the SBS, who issues the CDC needed for the building approval, to state that a proposed building, if completed in accordance with the plans and specifications, will comply with each applicable building standard.

While the Building Regulations prescribe certain information to be contained in the CDC, there is no minimum list prescribed for the plans and specifications needed by the SBS to assess compliance with applicable building standards.

This approach allows for the exercise of professional judgement, but equally it often places substantial pressure, and ultimately risk, on building surveyors to assess compliance against limited building plans and specifications, particularly where clients wish to minimise the cost of building design work.

Moreover, it can allow a ‘buck-passing’ or ‘blame-shifting’ culture to develop where each party involved in the design, approval and construction process believes others are responsible for ensuring compliance with applicable building standards.

The dangers of this type of culture were recently highlighted in evidence before the Grenfell Tower Inquiry in the UK. Each of the parties involved in the design and construction of the tower thought others were responsible for assessing compliance of the aluminium cladding used (which, ultimately, led to the rapid spread of the fire) against the relevant building regulations.

Stephanie Barwick, the counsel representing the victims and survivors of the fire, aptly summed this up in her closing evidence to the Inquiry, stating:

> "...[UK] Building Regulations are primarily concerned with life safety, and the failure of Grenfell's designers and contractors to familiarise themselves adequately or at all with regulations, coupled with their deliberate incuriosity as to products, is tantamount to a total neglect of safety. Grenfell demonstrates the existence of a culture of non-compliance within certain sectors of the construction industry. Put bluntly, there is a kind of recklessness as to whether or not compliance is achieved."
>
> ***Closing statement to Grenfell Tower Inquiry 13 September 2021***

While a tragedy on the scale of the Grenfell Tower fire has thankfully not been experienced in WA, or Australia, the Building Confidence Report found similar cultural issues besetting building design in Australia.

The report recommended that improvements be made to the standard of design documentation and a greater responsibility be placed on designers to ensure compliance with building standards, particularly for commercial buildings:

> "Legislation should expressly state that design documentation presented for building approval must: adequately demonstrate compliance with the NCC; include any relevant certificates of conformity, accreditations and other prescribed materials; and require a declaration by each registered practitioner responsible that he/she reasonably believes that documentation demonstrates compliance with the NCC."
>
> ***Building Confidence Report, p 29***

Review proposals

Reforms to improve the quality of design documentation in WA, consistent with the Building Confidence Report, were proposed in both the CRIS Residential and CRIS Commercial.

For residential buildings, it was proposed the Building Act prescribe a minimum standard or list of design documentation required for the issue of a CDC and/or building permit. The prescribed minimum would be modelled on the requirements under the Tasmanian building legislation, including a published and enforceable determination/guideline issued by the Building Commissioner.

For commercial buildings, similar, but more prescriptive, reforms were proposed, including:

- requiring building plans and specifications relied upon for building approvals to clearly demonstrate how the proposed building will comply with applicable building standards;
- requiring building plans and specifications to state the name and registration number (if applicable) of the professional who prepared the document;
- requiring the CDC to include the revision number and date of the building plans and specifications approved;
- prescribing a minimum list of design documents that must be included as part of the building approval, modelled on similar requirements elsewhere in Australia and overseas (e.g. Singapore); and
- requiring the CDC, CCC and occupancy permit to state any occupancy and maintenance conditions.

The CRIS Commercial also proposed the removal of a NoC for commercial buildings that require an occupancy permit, and third-party review of plans and specifications for high-risk buildings.

These proposals align with the national model on design acceptance,[21] which recommended:

21 See generally, ABCB, Design Acceptance: Model guidance on BCR recommendations 13-16 (2021).

- prescribed minimum requirements for design documentation;
- registration of all design professionals (including engineers, architects and building designers);
- a requirement for declarations of design compliance to be provided by those responsible for preparing building designs; and
- the creation of a Project Product Register to log and detail products used in the fire and structural elements of the building.

Plans and specifications to demonstrate compliance and meet minimum requirements in Directions

Stakeholder feedback as part of the review showed that poor design documentation leads to embedded recurring failures in building quality:

- quality is not embedded into the value system of the design and construction process;
- the roles and accountabilities of those involved are not clearly defined; and
- there is a lack of recognition of the value of good design, thorough documentation and construction oversight to a building's life cycle and the functional needs and expectations of end users.

The majority of stakeholders supported reform to ensure design documentation (i.e. plans and specifications) demonstrates compliance with building standards and meets some minimum requirements.

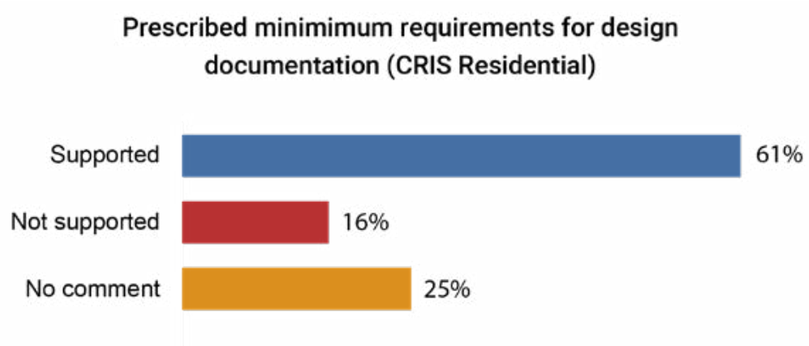
A number of stakeholders acknowledged that having minimum requirements would improve consistency and reduce the uncertainty currently experienced by building surveyors and permit authorities, and also ensure there are sufficient details for builders:

> "...the quality of documentation submitted varies widely, applications are missing significant details or are submitted with incorrect information, and therefore minimum standards for documentation would improve consistency and remove uncertainty."
>
> ***WALGA response to CRIS Residential***

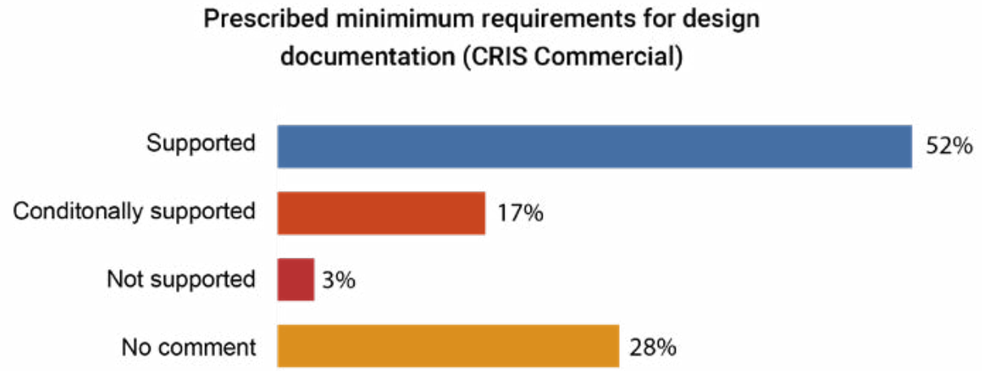
> "...having minimum standards for documentation will improve both consistency and importantly vastly reduce uncertainty leading to interpretative differences."
>
> ***MBA response to CRIS Residential***

> "Currently there are no documentation requirements and the industry simply functions with no rules. There is a wide range of levels of supporting documentation."
>
> ***JMG Building Surveyors, response to CRIS Commercial***

Over 60 percent of those who responded to the CRIS Residential supported prescribed minimum design documentation requirements for building approvals for residential buildings, modelled on similar requirements under the Tasmanian building legislation.



Feedback on the CRIS Commercial was more mixed on the issue of prescribing minimum requirements for design documentation. A number of stakeholders supported the concept in principle, but there was some trepidation about the practicality given the diversity and complexity of commercial buildings. Most stakeholders were of the view that only a broad list of prescribed requirements was practical and that further industry consultation should be undertaken to develop the appropriate parameters.



The status quo, placing the obligation on the SBS to assess whether the plans and specifications comply with each applicable building standard, and then issue the CDC, does not create a chain of responsibility among those involved in the design, approval and construction of buildings. Instead, the SBS is often placed under commercial pressure to assess compliance based on limited documentation and/or under extreme time pressures.

For residential buildings, the minimum levels of documentation provided at the approval stage is the product of the contractual relationship between the builder and the homeowner, and the associated business model. Often, the builder may not be entitled to its first major progress payment until the building permit is received. The homeowner also has more flexibility to terminate the contract up to that point. Consequently, there is a substantial incentive to keep the costs of preparing plans and specifications low through the use of standard building plans and specifications and reducing design and documentation work.

For commercial buildings, the increasing use of 'design and construct' procurement has had a major impact on the quality of plans and specifications prepared for building approval. The aim of 'design and construct' is to reduce the level of up-front design work and start on-site construction earlier. The heavier reliance on design assumptions and broad specifications also allows the builder to 'value engineer' changes to the design and substitute materials as the project progresses.

Under design and construct procurement, the owner will often engage an architect or building designer to prepare the 'schematic' plans and specifications needed for planning approval. Engineers may also be engaged by the architect or owner. Once the main contract is tendered, responsibility for completing both the detailed design work and the construction shifts to the builder. The contracts between the owner and the design team will be novated to the builder as sub-consultancies.

The challenges associated with design and construct procurement were highlighted in some of the stakeholder feedback:

> "...Building surveyors, in both public and private practice, are pressured to accept poor quality documentation. This pressure arises when applicants and designers argue that the documents demonstrate compliance is or is likely to be achieved, and resist providing revised documents that are clearer because of the cost. Local Government building surveyors are often accused of being obstructionist when they raise concerns about documentation quality. Private practitioners are often told that they will get an adverse industry reputation if they persist in asking for better quality documents. Both public and private building surveyors are often told that they won't get further work from clients or designers if they insist on amended documents.
>
> ***AIBS response to CRIS Commercial***

> "...It needs to be understood that currently, commercial pressures in the building sector mean that the documentation provided to support a permit application are essentially shell documents. There is little to no incentive for developers to invest time on up-front design work. The majority of building work is delivered through design and construct (D&C) contracts where the developer/contractor takes the lead on all matters, including design, which is subcontracted to a consulting business."
>
> ***Consult Australia response to CRIS Commercial***

There is merit in seeking to address this issue by requiring design documentation that supports a CDC for a new building to clearly demonstrate compliance with applicable building standards and with an enforceable direction issued by the Building Commissioner for buildings of that type.

Further industry consultation is necessary to determine the requirements in the Commissioner's Direction, however, initially, the Direction should apply to Class 1a and Class 2 apartment buildings. Extending the minimum documentation requirements to other classes of buildings can be considered at a later stage.

For Class 1a residential buildings, a draft direction setting out the documentation requirements has been developed by Building and Energy based on stakeholder support for a similar Tasmanian guideline. Adjustments were made to meet WA's circumstances, and sample plans and specifications have been prepared. See **Attachment B** in Volume 2 for further details.

For Class 2 apartment buildings, the minimum requirement proposed in the national model is considered to be an appropriate starting point. It will be refined and adjusted through further industry consultation, before being implemented. This responds to stakeholder feedback that consultation on the specific details is desirable to ensure the building industry has a clear understanding of the requirements.

For buildings that are built using 'design and construct' procurement, the minimum requirement will incorporate a staged building approval schedule, which will form part of the permit application for the first stage. The schedule will detail: how many stages the work is being divided into, the scope of work for each stage, an indicative timeframe that each subsequent approval will be sought within, and the minimum design information that must be provided for each stage of the building. The minimum documentation for staged works will require a CDC and building permit for each stage, before the work for that stage commences.

Recommendation 1

The building legislation is amended to provide that design documentation (including plans and specifications) that supports a CDC for any class of building must –

- demonstrate compliance with applicable building standards and include sufficient information for assessment by the SBS;
- state a revision number, date and author; and
- comply with any directions on minimum form and content, issued by the Building Commissioner for buildings of that type or class.

Further industry consultation is undertaken on the directions for minimum documentation before they are finalised, but the initial focus will be on directions for Class 2 apartment buildings, followed by Class 3-9 commercial buildings and finally Class 1a residential buildings.

Plans and specifications for prescribed classes of buildings to be prepared by registered building designers and include declarations of compliance

The increase in design and construct procurement, performance solutions and design complexity has meant engineers and building designers preparing technical building plans and specifications have an increasingly important role in ensuring compliance with building standards.

Yet, the building legislation does not currently require persons involved in building design to be registered or to make any statements about compliance of their work with applicable building standards.

Currently in WA, architects are the only class of building design practitioner required to be registered, but this registration is aimed at restricting the use of the title 'architect'.[22]

The scheme's focus is also on the quality of architectural designs and works, rather than technical building or regulatory compliance. There is no legislative requirement for building plans and specifications to be prepared, or reviewed by an architect for building compliance.

Equally, the current registration scheme for architects does not focus on ensuring compliance with building standards, or provide an adequate means for redress by parties affected by inadequate building design work. Even where an architect is involved as the lead consultant in a building's design, other parties will be engaged as sub-consultants to prepare the technical designs for various elements, including engineers and building designers.

There are currently no registration requirements for general building designers, but amendments are currently being made to the Registration Regulations to register certain classes of building engineers involved in design work.[23]

The lack of registration requirements for building designers, particularly those working on commercial buildings, means there is no clear chain of responsibility linking professionals involved in the design, approval and construction stages of the building.

Consequently, the SBS is often left as the main professional statutorily responsible for ensuring that plans and specifications comply with the applicable building standards, despite the fact they may be relying upon statements given by various, non-registered, specialist designers.

Lack of registration for design professionals can lead to reduced accountability for building designers. It can also contribute to builders:

- acting as designers on site by making incremental design changes to the building being constructed;
- improvising or making poor decisions in the absence of specialist advice provided at the right point in the design-and-construct process; and
- outsourcing design work to overseas companies who may not have an understanding of applicable building standards.

The Building Confidence Report recommended extending responsibility for building compliance to all members of the design team:

> "...The tendency for inadequate documentation to be prepared and accepted by building surveyors at the building approvals stage has increased, in part because owners and developers endeavouring to minimise costs on documentation. This issue needs to be addressed as a matter of priority.
>
> Documentation to support applications for building approvals is prepared by various practitioners including architects, designers/draftspersons, engineers, builders and owner-builders. There is no nationally consistent registration of design professionals. …

22 See *Architects Act 2004* (WA).
23 WA Government, Western Australian steps closer to registration of building engineers, (18 July 2022)

> Very few jurisdictions expressly state in their legislation that the duty of the designer is to prepare documentation that demonstrates that the proposed building will comply with the NCC. Schemes regulating architects do not expressly require architects to prepare documentation which demonstrates that the proposed building will comply with the NCC."
>
> ***Building Confidence Report, p 28***

Some of the stakeholders who responded to the review agreed that addressing this issue should be a priority. Although registration for those who prepare plans and specifications was not proposed in the CRIS Residential or CRIS Commercial, stakeholders considered this to be a shortfall in the efficacy of the proposed reforms.

> "…Largely, design practitioners are not obliged or paid to produce quality via the terms of engagement with their clients, but they are obliged to provide documents which meet the bare minimum of requirements. That being, documents which are just enough to get approvals and allow the client to contract a builder in sufficient clarity and get delivery of the project they desire, nothing more…
>
> It should be a requirement that a design practitioner must be properly qualified and experienced to accept a project engagement…there should be consequences for design practitioners who fail to provide documentation that is of an acceptable standard."
>
> ***AIBS response to CRIS Commercial***

> "To ensure community protection, all building practitioners need to be brought under a regulatory regime. Only regulated practitioners should be accountable for complex matters…
>
> With regards to higher risk buildings such as multi-unit residential buildings, mixed use 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."
>
> ***Institute of Architects response to CRIS Commercial***

The changes in the building process to include more design-and-construct procurement means there are also more practitioners involved in the design of a building.

It is no longer the case that one lead architect is appointed by the building owner to prepare plans and specifications and manage the delivery of a commercial building project from beginning-to-end.

Instead, only limited documentation is prepared at the time construction commences, with most documentation developed throughout the project, often by other building designers engaged by the builder or specialist subcontractors. The detailed documentation may even never be developed beyond the initial stage.

It is for these reasons that peak industry bodies, such as Design Matters National, have recommended a comprehensive registration scheme for all building design professionals in WA:

> "…Design Matters National are advocates for the introduction of a registration system for building designers in Western Australia (and nationally), as we view registration as a key means to regulate the industry and protect those practitioners who already operate ethically…Similarly, we are also supportive of mandatory CPD for building designers which we believe should be in place…Mandatory CPD helps to ensure that practitioners maintain and develop their competence in building design through their professional career."
>
> ***Design Matters National submission to Government***

Registration of building designers

While registration for all design practitioners was not within the scope of the first and second phase of this review, stakeholder feedback and the recommendations of the Building Confidence Report support the requirement.

Amendments to the building legislation are therefore considered desirable to support the extension of registration to building engineers (already underway)[24] and building designers.

The amendments should establish broad requirements in the Building Act that plans and specifications are to be prepared by registered design professionals to be prescribed under the Registration Act. This would include building engineers in the prescribed classes and building designers.

Consultation will be undertaken with industry about the following specific aspects:

- ⇨ the levels of building designer registration to be prescribed;
- ⇨ the qualifications, experience, fit and proper, financial, insurance (i.e. PII) and CPD requirements for each level;
- ⇨ the 'grandfathering' and/or deeming of registration of persons as registered design practitioners; and
- ⇨ requirements for declarations of design compliance (to be in the form of a technical certificate (see further below)).

The levels of building designer registration will, where practicable, follow the ABCB national model – often referred to as the ***National Registration Framework*** or NRF.[25]

The focus of these reforms should, initially, be on the construction of new residential apartment buildings (Class 2 buildings or mixed-use buildings that contain a Class 2 part), where the use of complex designs, performance solutions (particularly for fire safety elements) and design and construct procurement can present unique risks to building owners.

These types of buildings also have more complex construction patterns and require more controls to manage the safety risks from non-compliant designs.

Requiring registration of building designers will:

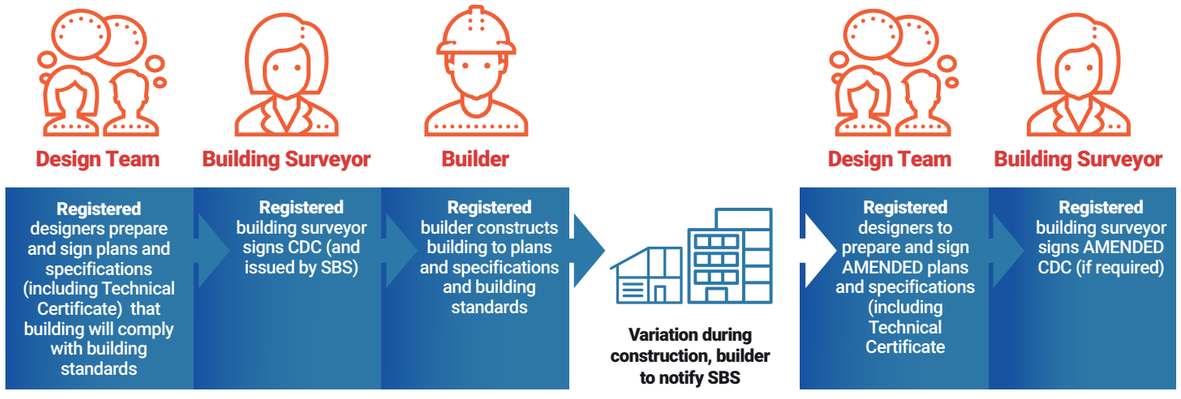
- ⇨ ensure work is completed by competent, qualified and skilled persons:
- ⇨ provide greater accountability, by allowing complaints to be investigated and disciplinary action to be taken against those found to be negligent or incompetent in carrying out their work; and
- ⇨ complement reforms already being made to register building engineers.

24 Building and Energy, DRIS – Registration of Building Engineers in Western Australia, (January 2022).
25 See generally, ABCB, National Registration Framework for building practitioners: Model guidance on BCR recommendations 1 and 2 p, 36.

The following reforms to the building legislation are recommended:

- Plans and specifications for certain types of building work (or classes of buildings or incidental structures), including variations to plans and specifications, and one or more specified technical aspects of building work, that accompany an application for a building permit are:
  - to be signed by a person registered under the Registration Act in the appropriate class who prepared them; and
  - state the name of the person, revision number and date.
- This requirement should be phased in, focusing initially on higher risk building work, such as Class 2 or mixed used developments, and then extended to other classes of buildings.
- The classes of persons registered under the Registration Act for this purpose are to include to include building engineers (already to be registered under approved amendments to Registration Regulations) and new classes of building designer.

Enhanced chain of responsibility for design and construction



Technical certificates for design compliance

Requiring design professionals (engineering and general building designers) to be registered only goes part way to addressing the issues identified by the Building Confidence Report.

Those who prepare plans and specifications for prescribed classes of building work must also be made accountable for ensuring their designs comply with applicable building standards.

To achieve this, the building legislation should be amended to require registered persons to issue technical certificates (Certificates) for the plans and specifications prepared and issued for building elements of a prescribed class of building work, or a performance solution for a prescribed class of building work, declaring compliance with applicable building standards.

While the SBS will still retain responsibility for conducting a holistic assessment of design compliance and issuing a CDC, each registered person will also issue a Certificate stating that they reasonably believe the documentation or design for the particular prescribed building element they prepared complies with the applicable building standards and integrates with the design of other relevant prescribed building elements (if applicable).

The SBS will have full discretion on whether to accept the Certificate, or not, but must not issue a CDC without having the necessary Certificates for the relevant prescribed building elements where relied upon.

The following reforms to the building legislation are recommended:

- Plans or specifications for a building element of a prescribed class of building work, or a performance solution for a prescribed class of building work, must (if applicable), include a Certificate issued by a person registered under the Registration Act in the appropriate class declaring that the design complies with applicable building standards.
- The Certificate must be in the approved form and state that the design (including any performance solution) to which it applies demonstrates compliance with applicable building standards and any conditions stated therein, and integrates with the design of other relevant prescribed building elements (if applicable).
- The Certificate must be signed/endorsed by the registered contractor and include the name of the registered practitioner who prepared or is responsible for the design.
- The registered contractor must not sign/endorse a Certificate for a plan or specification if:
  - they are not registered, or not registered in the appropriate class for the work in respect to the prescribed building element; or
  - they know, or should reasonably know, the Certificate is false or misleading in a material manner.
- The Certificate can be issued prior to the plans and specifications being provided to DFES under the requirements in the Building Regulations.
- If changes are made to the plans and specifications subsequent to the Certificate being issued, an amended Certificate must be issued for the amended aspects of the document or design.
- The SBS must specify in a CDC the Certificates relied upon in determining design compliance and copies must be attached to the permit application.
- Where a prescribed building element or performance solution in connection with a prescribed building element is varied and is required to be documented as a major/minor variation (see other recommendation of this review), a new Certificate must be provided.

As extending registration requirements to general building designers will be subject to further industry consultation, the CIE's analysis (at **Attachment A in Volume 2**) does not estimate the full costs of the reforms.

However, registration of building designers was included in the national economic analysis by the CIE for the ABCB (as part of the work on the relevant national model).

Based on WA specific data, CIE estimated the initial cost to society to be $6.7 million, with a renewal cost of $0.4 million, based on a 3-year-renewal period. This estimated cost includes registration fees and the opportunity cost of the time for study and preparing registration documents.[26]

The benefits to WA society from the registration scheme are not individually quantified, rather they are estimated as part of the full package of reforms with a positive net benefit of $480 million over the 10-year analysis period.

In addition, break-even analysis by Deloitte Access Economics for Building and Energy has already estimated that the benefits of registering building engineers in the classes recommended in the ***DRIS: Registration of Building Engineers***[27] is expected to outweigh, or at least match, the anticipated costs.[28]

Extending registration to other types of general building designers is anticipated to produce a similar net benefit. Adjustments may also be needed to the current regulatory framework for architects.

Recommendation 2

The building regulatory framework is amended to:

- require plans and specifications for certain types of building work to be signed by registered persons in the appropriate class responsible for their preparation;
- require a Certificate to be signed by the registered person in respect to the plans and specifications (or parts thereof) they prepared;
- establish a new class of building service and building service provider – being a building designer – including applicable qualifications, experience, insurance/financial requirements and deeming or grandfathering provisions.

Further consultation is undertaken with industry to refine the technical details of the registration requirements for building designers (non-engineers). Amendments to the existing regulatory framework for architects will be needed to facilitate pathways to entry and reduce administrative duplication (as far as practicable).

26 The CIE, Building Confidence Report: A case for intervention, July 2021 p 74.
27 Building and Energy, 'DRIS: Registration of Building Engineers in Western Australia', (January 2022)
28 Deloitte Access Economics, 'Registration of Building Engineers in Western Australia: Economic analysis: Department of Mines, Industry Regulation and Safety (December 2021), p 27-31.

Documenting performance solutions in the CDC

The NCC is adopted through the Building Regulations. It is a performance based code which sets out the performance requirements a building must meet for health, safety and amenity.

The NCC provides two paths for a building element to demonstrate compliance with the performance requirements: either through compliance with a prescriptive DtS standard, or through a performance solution.

Performance solutions are a common way of meeting the requirements of the NCC for commercial buildings given their variety, complexity and the inclusion of unique designs and innovative construction materials. Conversely, performance solutions are not as frequently used on residential buildings due to the general use of standard designs, materials and features.

A performance solution is developed by a building design professional, often an engineer, and supported by expert analysis, judgement and calculations. Under the Building Act, the SBS must be satisfied that the performance solution meets the relevant performance requirements before they sign the CDC.

While the use of a performance based code for building regulation is widely considered good public policy that allows for innovative building design, two recommendations in the Building Confidence Report singled out performance solutions, suggesting that there is:

- a lack of clarity in the expectations for people developing a performance solution, including defining the decision making process at assessment; and
- a lack of transparency in the documentation of performance solutions.

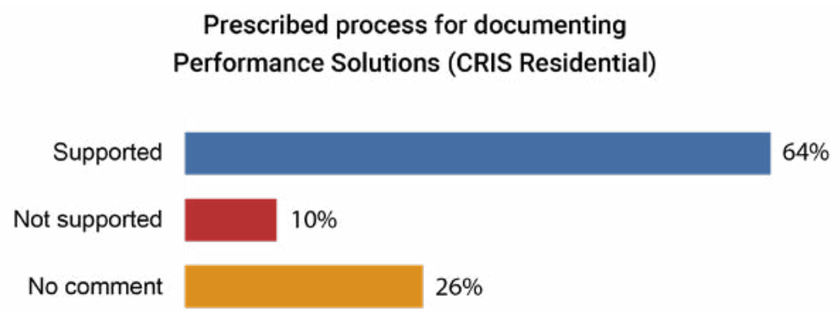
The report stated that confidence in outcomes can only be achieved where there is an effective disclosure regime:

> "It is widely reported that the standard of documentation supporting performance solutions is poor. There is a lack of basic information on matters such as the relevant performance requirements and the assessment methods applied."
>
> ***Building Confidence Report***

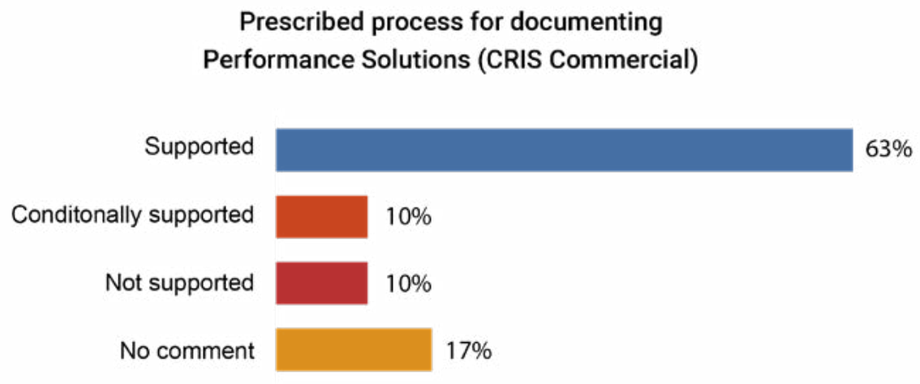
The CRIS Commercial and CRIS Residential sought feedback on whether amendments should be made to the building legislation to prescribe a process to document and approve performance solutions.

Existing requirements in Queensland[29] and Victoria[30] were identified as potential models, although for commercial buildings it was also proposed that a consent or acknowledgement of the performance solution by the building owner would be required.

The majority of stakeholders supported provisions in the building legislation prescribing documentation requirements for performance solutions, noting the need to improve transparency in the assessment process to determine compliance:



29 See ***Building Act 1975*** (Qld) s.26 and s.68A.
30 See Building Regulations 2018 (Vic) r.38 and r.124.



However, a number of stakeholders who responded to the CRIS Commercial argued that provisions in the building legislation would be unnecessary given recent amendments to the NCC introducing the requirement for Performance-Based Design Briefs (PBDBs), a direct response to the Building Confidence Report recommendations:

> "We note the ABCB announcement of 22 May 2020 that the NCC will be amended to include a new provision for the process to document performance solutions. This new provision comes into effect from 1 July 2021. We support this proposal so long as the amendment to the WA building legislation is consistent with the NCC amendment."
>
> ***Consult Australia response to CRIS Commercial***

> "As part of the NCC 2019 'out of cycle amendment' new requirements for documenting and developing performance solutions have been adopted in the NCC."
>
> ***HIA response to CRIS Commercial***

Following extensive national consultation, amendments were made to Part A2.2 in Volumes 1 and 2 of the NCC to define the process to develop PBDBs for performance solutions. The amendments took effect in WA from 1 July 2021 and provide that where a performance requirement is proposed to be satisfied by a performance solution, the following steps must be undertaken:

- Prepare a PBDB in consultation with relevant stakeholders;
- Carry out analysis, including modelling and/or testing, as proposed by the PBDB;
- Collate and evaluate results from that analysis against the acceptance criteria in the PBDB; and
- Prepare a final report that includes:
  - all performance solutions and/or DtS provisions identified through A2.2(3) or A2.4(3) of the NCC as applicable;
  - identification of all assessment methods used;
  - details of the steps in the preparation, analysis and evaluation in the PBDB; and
  - confirmation that the performance requirement has been met, and details of any conditions or limitations.

As a consequence of these amendments to the NCC, the final report must now be included as part of the CDC issued by the SBS for building approval. The Guidance Document on the performance solution process prepared by the ABCB[31] also makes clear that relevant stakeholders to be consulted when developing a performance solution include the building owner or owner's representative.

Given the recent changes to the NCC, legislative amendments to prescribe a process for documenting performance solutions are not needed anymore and would risk creating duplication or inconsistency.

Accountability around the use of performance solutions will be further tightened as a result of other recommendations proposed in this document, including:

- requiring the registration of building designers (and engineers), and the issuing of a Declaration of Design Compliance (which would also cover performance solutions); and
- requiring that any occupancy or maintenance conditions that must be met, in respect to a performance solution, are stated on the occupancy permit, and the display of that permit.

In addition, the Building Regulations require each performance solution for class 2-9 buildings to be listed on the CDC, along with details of the assessment method(s) used to establish compliance with the building standard. It is recommended that this requirement be extended to include CDCs for class 1 buildings, too.

Recommendation 3

The building legislation:

- is *not* amended to prescribe a process for documenting performance solutions in the CDC, as this issue has already been addressed in the NCC and other recommendations.
- is amended to require that CDCs for class 1 buildings must list performance solutions and assessment methods.

31 ABCB, Performance Solution Process: Guidance document (May 2022).

Third-party review of high risk structural and fire safety designs

The Building Confidence Report noted that building surveyors do not always hold specialist expertise in all aspects of building design. For this reason, they may not be competent to confirm compliance of all aspects of building plans and specifications, particularly for complex and high risk fire safety and structural designs, including performance solutions.

Instead, an SBS would tend to rely upon the competence and self-certification by specialist designers that their work complies, without any review. The Report considered that this presents a risk, not only in terms of liability for negligent design, but also of serious non-compliance that will adversely affect owners and occupiers of the building:

> "Building surveyors do not hold expertise in all aspects of building design. They often rely on engineers or other experts to design components of work. Where this occurs, the building surveyor will rely on the work of the engineer or expert as being compliant and no substantive review will be undertaken…In many cases, self-certification is accepted, which means that large parts of the design are not substantially reviewed by another qualified practitioner…many jurisdictions do not require a third party reviewer and the designer to be independent. This does not pass the public interest test."
>
> ***Building Confidence Report***

To better meet public interest expectations, a genuine independent third party review was recommended for components of designs of certain classes of buildings. However, no details were specified in the Building Confidence Report as to which components of the design, or which classes of buildings, should be subject to this requirement.

In WA, the building legislation neither requires nor prevents a third party review of plans and specifications. There is discretion to require a review of the whole or parts of the building design, but this would need to be agreed with the builder or developer. As builders and developers typically seek to minimise design costs, few, if any, reviews are understood to be carried out.

The CRIS Commercial sought stakeholder feedback on a requirement for third party review of designs. Two types of 'trigger' options for the requirement were identified:

The first option was a prescriptive approach, where review requirements would be prescribed based on the inherent risks associated with certain situations, such as Classes 2 to 9 commercial buildings of Type A construction, Class 2 buildings located in bush-fire prone areas, and buildings located in wind regions C or D.

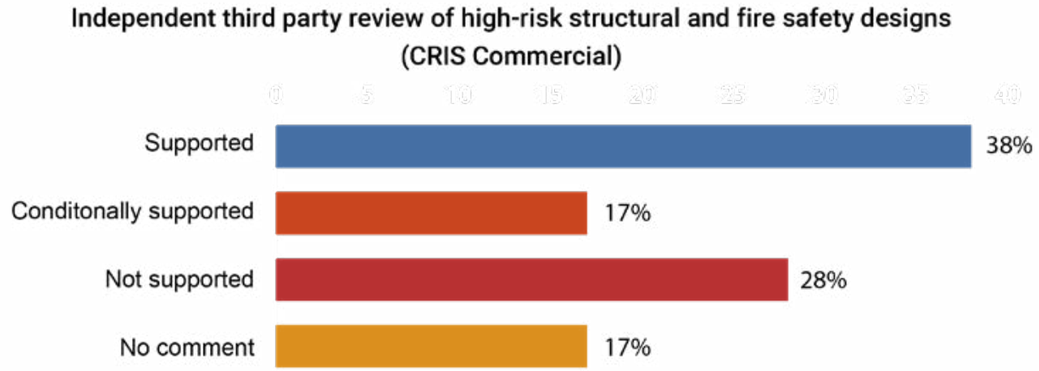
The second option was a risk-based approach, where the SBS, in consultation with the design team, would determine which components of a specific building design should be subject to a third-party review. This assessment would be based on directions and a risk assessment tool prepared by the Building Commissioner.

Irrespective of the preferred option, the CRIS Commercial suggested that any requirement for third party review of designs should be informed by the national model (which had not been developed at the time the CRIS was released).

A third party review requirement was not proposed for Class 1 buildings given the lower-risk profile of this type of construction.

Stakeholder feedback on the proposal for third party review was mixed. Less than half (38 percent) supported the requirement. Stakeholders who supported third party review of designs suggested the details needed refinement and should align, as much as practicable, with the national model.[32]

32 ABCB, Independent third party review - Model guidance on BCR recommendation 17 (Dec 2021)



> "…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.)."
>
> ***Institute of Architects and Association of Consulting Architects, response to CRIS Commercial***

> "Proposal 25 [third party review] ensures increased oversight of the design side of construction work. The key to its success in delivering increased building compliance will be ensuring that after the third-party review of high risk design elements have been completed, no variations are made during construction that undermine that review."
>
> ***Consult Australia response to CRIS Commercial***

Stakeholders who did not support third party review felt it would add unnecessary cost and delay to the design process, and focus should instead be placed on enhancing the chain of responsibility in the design process through registration requirements, before a third party review process could reasonably operate:

> "…This issue also needs to be considered in light of other proposed reforms looking at registration of key practitioners such as design professionals and engineers. Whilst the building surveyor may not be the expert on specific matters they should be able to rely on detailed design reports prepared by design professionals such as engineers with confidence. If it turns out that the design does not perform as expected then that design professional responsible for that element should be accountable for their designs compliance.
>
> ***HIA response to CRIS Commercial***

> "Master Builders is opposed to mandatory third-party review. This is the responsibility of the certifier [SBS] and should be left to their professional judgement. A better response would be to strengthen and improve the chain of responsibility rather than add mandatory review into the surveyor certification process…Further, this process could only be initiated where reviewers are regulated (i.e. registered) and subject to Codes of Conduct."
>
> ***MBA response to CRIS Commercial***

To date, the only jurisdiction in Australia to have implemented a requirement for third party review of designs is the Northern Territory. The Building Regulations 1993 (NT) require that an independent review of the structural elements of the design for a 'significant and complex' building or building work be undertaken before a building approval is granted.

The definition of 'significant and complex' building includes (among other things) Class 2 buildings over 3 storeys in height, healthcare buildings and buildings over 25 metres in height that have performance solutions for fire safety or structural performance requirements.[33] The person carrying out the review, the 'independent review engineer', must be registered under the relevant legislation and possess additional qualifications and experience.[34]

The changes made to the Northern Territory building regulations followed a 2019 review by the Northern Territory Government of a number of Class 2 buildings in Darwin, which identified serious levels of non-compliance with the NCC. The non-compliance was related to designs of structural elements that were prepared by registered structural engineers.

Requiring third party review in WA

Requiring third party review of structural and fire safety elements of a building design does have merit. It can reduce non-compliance or design error in the structural and fire safety design of buildings, particularly buildings with a high risk profile such as Class 2 buildings over 25 metres.

The requirement could also reduce liability for the SBS by ensuring that important, often complex, elements of a building design are not only designed by registered design professionals but assessed for compliance by an independent party who assumes some liability for loss caused by errors or omissions in their advice.

However, implementing third party review in WA is dependent on some pre-conditions:

First and foremost, a scheme to register building engineers must be in place under the Registration Act, so that classes of registered engineer may be prescribed to both undertake reviews and issue technical certificates. Building and Energy will consult further with industry to define the competencies required to undertake engineering review work. It is likely that review work will require additional competencies, beyond the minimum benchmark of qualifications and experience defined for registration. This may be incorporated into an engineer's registration through an endorsement.

Secondly, relevant building engineers are able to readily access and are obliged to hold adequate levels of PII. Without this condition, the SBS cannot be indemnified for loss resulting from reliance upon the advice or report provided by the party engaged to carry out the third party review.

Thirdly, that there are a sufficient number of adequately qualified building engineers in WA (or interstate) willing to act as third party reviewers.

Finally, that adjustments are made to accommodate the slightly different requirements under the building legislation. For example, third party review would likely need to occur after the plans and specifications are provided to DFES (a requirement under the Building Regulations) but prior to the issue of the CDC.

Therefore, it is recommended that the building legislation is be amended to require third party review of the plans and specifications for structural and fire safety building elements for prescribed classes of buildings.

Given the pre-conditions mentioned above and the stakeholder feedback on the need to enhance the chain of responsibility, the requirement for third party review should commence only after the reforms to register building engineers have been implemented and are operating.

The prescribed classes of buildings would initially be Class 2 buildings with an effective height of over 25 metres, or a building which includes a Class 2 part with an effective height of over 25 metres. These buildings have a higher risk profile in terms of fire safety design, particularly as performance solutions are commonly used in them. Other classes of buildings could be prescribed at a later date based on the definition of building complexity in the NCC.

Third party review would need to take place before the plans and specifications are submitted to the FES Commissioner in accordance with the Building Regulations 18B(1). The fire safety reviewer's report, including a Certificate, and any required response from the original designer, would then form part of the submission to the FES Commissioner.

All required review reports, Certificates and responses will then accompany the CDC as part of the building permit application. Where the reviewer identifies the need for a change to the plans and specifications to achieve compliance with applicable building standard, this will be referred back to the original designer for consideration/comment, and, if agree, the issue of an amended plans and specifications and relevant Certificate.

Rather than being required to resolve any dispute or difference in opinion about design compliance between the designer and the reviewer (a problem the CRIS Commercial identified), the reviewer's role will be advisory.

The reviewer's advice will be documented in a report, and the original designer will be required to respond to each point of advice by either amending the original design to incorporate the reviewer's suggestion or by documenting justification of how compliance has already been achieved. The reviewer's report and the designer's response will both be attached as documents supporting the CDC.

The definition of who can act as a reviewer will need to be further refined. However, broadly, it is recommended that:

- ⇨ they must be registered under the Registration Act as a building engineer in the appropriate class for the particular building (i.e. structural and/or fire safety at professional level);
- ⇨ they must not have been involved in the design or be employed by the same contractor who issues the design; and
- ⇨ the practitioner who carries out the review must have a sufficient level of experience (e.g. 10 or more years' experience as a structural or fire engineer); and the contractor must hold adequate PII insurance.

Finally, the builder or owner (if they are the applicant for the building permit) should be responsible for engagement/payment of the third party reviewer.

Recommendation 4

The building legislation is amended to include appropriate powers to require independent third party review of structural and fire safety elements of the design for prescribed classes of significant or complex buildings (initially Class 2 apartment buildings with an effective height greater than 25 metres).

The requirement will apply only after the registration of building engineers under the Registration Act has been fully implemented.

33 See new regulations 15AA and 15AB of the Building Regulations 1993 (NT) (amended by the Building Amendment Regulations 2021 (NT)).
34 See new regulation 15AC of the Building Regulations 1993 (NT).

4. Building surveyor engagement and powers

Background

WA is among the few jurisdictions, including South Australia and Tasmania, that has retained a partially privatised model for building approvals where private registered building surveyors assess building compliance and issue CDCs, but local governments are responsible for granting approval for construction (e.g. a building permit).

Following the macro-economic reforms of the 1990s, including the development of the 1991 national Model Building Act, other Australian jurisdictions introduced, in one form or another, a model of 'full privatisation' in building regulation.

The Model Building Act was commissioned by the then Australian Building Regulations Coordinating Council (a predecessor to the ABCB) as template legislation to be adopted by all states and territories to facilitate best practice regulation.

The Model Building Act sought to promote national consistency in building regulation, and economic reform by allowing private sector involvement in granting building approvals. The aim was to replace what had been a monopoly of local government building officials, and create competition between private building surveyors and municipal building surveyors.

The premise underlying the Model Building Act was 'de-regulation with safeguards'. The safeguards were to protect against potential abuse and included:

- ⇨ regimes to register and police private building surveyors;
- ⇨ mandatory inspections at critical stages of construction;
- ⇨ PII requirements for building surveyors; and
- ⇨ 'professionalisation' of the building industry through registration or licensing of inspectors, engineers, designers, and residential and commercial builders.

In New South Wales, Victoria, Queensland, Northern Territory and the Australian Capital Territory, the thrust of the Model Building Act was adopted to allow both private building surveyors (sometimes referred to as building certifiers) and local governments to issue building approvals. But planning and development consent (also needed before construction) remained with the relevant local governments.

In WA, the building legislation preserves the role of local governments as permit authorities responsible for granting building approvals and enforcing building standards. However, a person wishing to carry out building work for Class 1a and Class 10 residential buildings may use the services of either a private building surveyor or a building surveyor employed or engaged by the local government (referred to as the SBS) to assess building compliance and to issue a CDC.

For all other classes (Class 1b and commercial buildings), a private building surveyor must be engaged as the SBS to assess building compliance and issue a CDC or, in the case of approval to occupy the completed building, the CCC. For these types of buildings, the relevant local government is then responsible for issuing the building permit authorising construction, and the occupancy permit needed to occupy a commercial building.

Where a private building surveyor has performed the SBS role, the local government is not required to review design compliance but is responsible for ensuring other requirements have been met. This includes compliance with planning, health, engineering requirements, payment of relevant levies, valid registration of the builder, applicable insurances and any landowner consents that may be required.

The building legislation enables the local government to assess compliance even where a private building surveyor has issued the CDC or CCC, and there are powers for building approvals to be refused where omissions or errors are identified with the certification.[35] However, it is understood that this does not often occur.

35 See section 22 of the Building Act, and the decision in *Miller v City of Melville* [2012] WASAT 156.

Building Confidence Report

The Building Confidence Report did not identify a preferred model for granting building approvals. Instead, the report noted that a building regulatory model that includes private certification carries an inherent potential for conflict of interest, but the allocation of roles between government and the private sector was a matter for each jurisdiction to determine, and all the recommendations in the report can be implemented irrespective of the preferred approach.[36]

The Report included recommendations to reduce the conflict of interest between the statutory function of the building surveyor to assess building compliance and their commercial relationship with the person who has engaged their services, normally the builder. Specifically, it recommended that all jurisdictions introduce:

- minimum statutory controls over the engagement and responsibilities of private building surveyors, such as a requirement to be engaged by building owners (not builders), and be independent of the design process, processes to deal with termination of engagement, and how functions are to be performed;
- a code of conduct for building surveyors; and
- enhanced powers and reporting obligations for building surveyors.

Review proposals

Despite the view in the Building Confidence Report on privatised building approvals processes, feedback was sought in the CRIS Residential on whether WA should adopt a fully privatised model, similar to New South Wales, Victoria and Queensland.

This would allow building permits for Class 1a buildings to be granted by both local governments and private building surveyors. Local governments could then choose to either compete with private building surveyors or opt out, but they would still retain responsibility for enforcing applicable standards after completion of the build.

The CRIS Commercial sought feedback only on proposals to address the conflict of interest issues. Specifically:

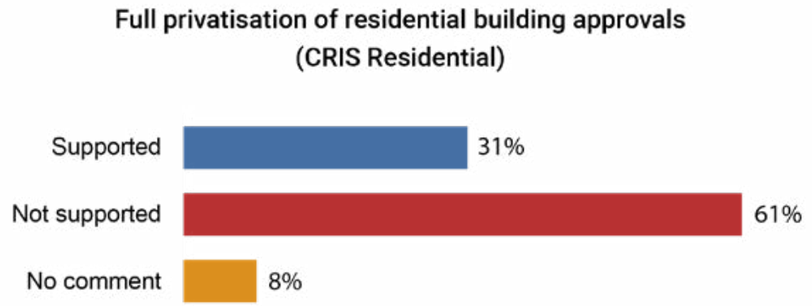
- requiring the SBS to be truly independent of anyone who's work they certify;
- introducing a mandatory code of conduct for building surveyors;
- requiring the engagement of the same SBS for the duration of the building project and limiting the circumstances where the engagement may be terminated early; and
- creating clear statutory entitlements to payment for the SBS.

The CRIS Commercial did not propose to allow building surveyors to issue building approvals for commercial buildings. Feedback on this proposal was sought in the CRIS Residential, to fulfil the Government's 2017 pre-election commitment to consider the issue.

Privatising building approvals for residential buildings

Stakeholders expressed mixed views about fully privatising residential building approvals (sometimes referred to as full private certification), with the majority not supporting the change and preferring the current, partially privatised model.

36 Building Confidence Report, p 11



Stakeholder feedback

Peak associations

Some peak associations and building professionals supported the introduction of a full private model, and some did not.

The HIA was the major proponent for a full private model, arguing that this should be introduced without implementing any of the regulatory safeguards recommended by the Building Confidence Report, until the national models were developed and agreed. The HIA also considered that the full privatisation model should empower a building surveyor to assess and grant planning approval (i.e. not just assess building compliance, but also compliance with applicable local planning schemes). In its view this would be the only way to improve efficiency in the approval process:

> "[the HIA] would seek the introduction of full private certification where the building surveyor is solely responsible for prescriptive R-code compliance and that no other planning matters be permitted by local government."
>
> ***HIA response to CRIS Residential***

The AIBS supported further privatisation to allow private building surveyors to issue the building approval (not planning approval), but with several proposals to ensure the impartiality of building surveyors and enhance the auditing functions and obligations of local governments. However, no suggestions were offered as to how these increased auditing functions would be funded following removal of the majority of the fees collected by local governments as part of the grant of building permits.

> "AIBS proposes a hybrid…whereby in conjunction with the efficiency improvements that could arise from allowing private practitioners to issue the final authorisation for the commencement of construction, there will also be benefits derived from local government having an active compliance inspection role, supported by an ongoing ability to provide construction authorisations, which could provide a better outcome in the built form.
>
> …Councils would be auditing aspects of the work relevant to community protection and legislative compliance matters."
>
> ***AIBS response to CRIS Residential***

The MBA opposed full privatisation. It stressed its policy position that local governments should be retained as the permit authority to grant building permits. The MBA also identified that the issues pertaining to conflict of interest in a fully privatised model were significant, and that the current hybrid model reduces the potential for conflicts of interest:

> "It is the view of Master Builders that, it is not in the interests collective of our membership, industry and most importantly that of the public, to pursue a model that exists elsewhere demonstrated to result in reviews of government departments, loss of faith from the public and potentially open the floodgates for litigious matters…It would be in our view, a waste of taxpayer's money, not deliver the best outcomes and not deliver on the public interest test."
>
> ***MBA response to CRIS Residential***

The MBA also noted that very few private building surveyors in WA had supported privatising building approvals, given the impact of recent events on the cost and availability of PII, and that the model therefore presented a high risk for disruption in the private sector. It added that insurers are far less willing to provide PII coverage, and where coverage is given, premiums have increased by margins in some respects untenable, with some businesses reviewing their commercial viability. A building approvals model that is entirely reliant upon the ongoing availability of private building surveyors, in its view, would carry substantial risk of collapse.

InspectWA was another association that supported retaining the current partially privatised model, with various improvements. It raised concerns that adopting full private certification will remove the review of documents and checks undertaken by local governments, which currently benefit consumers rather than builders or developers.

Local government sector

Nineteen responses to the CRIS Residential were received from stakeholders in the local government sector.

All of these submissions were opposed to full privatisation, with many noting the other statutory functions performed by local governments (particularly checking planning compliance) that could not be done by private building surveyors in WA.

> "In the experience of the Town…a large number of the perceived delays in the approvals process [for buildings] result from existing gaps in the Building Act 2011, the lack of sufficient information being provided for assessment and over-promising of builders in regards to timelines. The full private certification model does not address these underlying issues, but instead serves only to shift the problem."
>
> ***Town of Port Headland employee response to CRIS Residential***

WALGA, on behalf of its local government members, overwhelmingly opposed adopting full privatisation and supported reinforcing the existing partially privatised model.

WALGA held workshops with its members to consider the three options proposed in the CRIS Residential. 62 attendees from 37 local governments provided feedback. Ninety-eight percent of attendees supported retaining the existing, partially privatised model. The retention of local governments as the permit authority was considered the strength of this option, keeping impartiality in the building approvals process and ensuring that planning, health and engineering requirements are met and not excluded from the process:

> "In recent years and following high profile building failures of the building system in the eastern states there is strong evidence that the building regulation systems in those states are failing. These failures are likely to result in a loss of confidence in the building industry… The Commonwealth Government's Building Ministers Forum and the independent Shergold & Weir Report [Building Confidence Report], has highlighted systemic failings of the building and construction industry, and regulator responses such as the introduction of full private certification systems."
>
> ***WALGA response to CRIS Residential***

WALGA (similar to the MBA) found it difficult to identify any benefits of a fully privatised model, instead indicating it would raise many negatives, including:

- ⇨ local governments would be left to rectify failures, possibly at a significant cost;
- ⇨ potential for an increase in conflicts of interest between the private building surveyor and the builder;
- ⇨ potential for more certifier shopping within the industry;
- ⇨ consumers will pay for the cost of the new model not the industry;
- ⇨ difficulties in ensuring compliance with planning, health and engineering requirements, particularly if issues are only noticed on building completion;
- ⇨ expensive and difficult to rectify non-compliance;
- ⇨ builders could potentially dictate the level of compliance achieved;
- ⇨ increased amount of auditing and compliance required to ensure system works;
- ⇨ likely significant increase in the costs of PII for private building surveyors; and
- ⇨ it could be a catastrophic disaster for the industry, as it is a major change to the current system and there are too many unknowns which have not been considered.

Consumers

Very few consumer stakeholders, who responded to the CRIS Residential, appreciated the distinction between a fully privatised and the current partially privatised model. But those consumers that did understand the distinction opposed the shift:

> "No to the use of private certifiers. This leaves the process open to abuse and corruption, The LGA [local government authority] must be the responsible party for certification."
>
> ***A consumer response to CRIS Residential***

Reported challenges with fully privatised models in other jurisdictions

Since the introduction of fully privatised models in other Australian jurisdictions nearly thirty years ago, there have been numerous reports and inquiries that have identified significant issues with the approach. Each of these reports provides a useful case-study into the challenges that privatisation has created and its overall efficacy.

The overarching conclusion appears to be that full privatisation of building regulation has led to significant problems with the enforcement of building standards, predominantly caused by the inherent conflict between the building surveyor's role in assessing building compliance and their engagement by the builder or developer.

While conflict of interest issues can affect the partially privatised model in WA, the level of documented concerns in other jurisdictions suggests the issue is far more pronounced under a fully privatised model.

A number of these reports and inquiries are discussed below.

2011: Compliance with building permits: Victorian Auditor-General's Report

In 2011, the Victorian Auditor General reviewed the effectiveness of Victoria's building permit system in assuring works met building standards, and the effectiveness of the then building regulator, the Victorian Building Commission, in regulating the activities of local government and private building surveyors.

Victoria, like Queensland and New South Wales, has a fully privatised model for building approvals. Privatisation was introduced in 1994 under the ***Building Act 1993*** (Vic), and by the time of the Auditor General's review, private building surveyors were issuing around 85 percent of building permits in Victoria.

The Auditor General uncovered major deficiencies in the state's building permit system, with 96 percent of building permits examined not complying with minimum statutory building and safety standards. The final report was particularly critical of the conflict of interest inherent in the Victorian system:

> "…Although the 'owner' technically engages the private surveyor, it is widely acknowledged that in practice this is usually arranged by the builder who may also have a longstanding arrangement with the surveyor. This situation introduces the potential for a conflict of interest to arise. The desire to achieve repeat business with builders, particularly large builders, may reduce the incentive for the surveyor to strictly enforce the requirements of the Act and accurately estimate the value of building works."
>
> ***Victorian Auditor General's Report***[37]

2014: Review of the Building Act 1975 and building certification in Queensland

Queensland, similar to Victoria and New South Wales, adopted a fully privatised model in 1998. In Queensland private building certifiers and local councils can issue building approvals, but private building certifiers are also empowered to assess compliance with relevant local planning/development schemes. Building certifiers are required to undertake specialist, university-level training to perform this function.

Following a number of complaints about substandard building work, in 2014 the Queensland Government conducted an holistic review of the State's building legislation and certification model.

The conflict of interest created between the statutory role of the building certifier in assessing compliance and the commercial pressures of their engagement was discussed in detail in the final report of the review. The report eventually ruled out trying to revert all building approvals back to local councils in favour of more practical integrity reforms:

> "If one were to conduct a risk benefit analysis of the system of private certification from the vacuum of a legal perspective, the risks associated with conflicts of interest are significant. Through no fault of building certifiers, the Legislature saw fit in 1998 to dramatically alter the way in which building control was regulated in this State. …
>
> Private certifiers are without doubt placed in a potential conflict of interest every time they are engaged by a builder or building owner. …
>
> Whilst from a purely legal perspective, local government directed building control has significant attraction in ameliorating the possibility of conflicts of interest, the Review is not satisfied that the industry or the community would be best served by returning to this model."
>
> ***Review of the Building Act 1975 and building certification in Queensland***[38]

2015: Independent Review of the Building Professionals Act (NSW)

In 2015, the New South Wales Government engaged independent reviewer, Mr Michael Lambert, to inquire into the effectiveness of the State's building regulation.

The review was commissioned following a number of high profile building failures that resulted in the loss of life, including the 2012 fire at a high-rise apartment block in Bankstown and a balcony collapse at a Lane Cove property in 2013.

Similar to the findings presented the year before to the Queensland Government, the issue of the conflict of interest created by a fully privatised model for building approvals was a focal point in Mr Lambert's report:

> "There is an inherent conflict in the regulatory role undertaken by the certifier [building surveyor], and the commercial driver of securing appointment from the builder/developer whose interest may not coincide with regulatory requirements. This conflict, while still present with certifiers employed by councils, is less pronounced than for private certifiers. Council certifiers are employees of the council which is normally the consent authority for developments. Thus, while the certifier may have a professional and commercial interest in securing appointments, there is a clear accountability to the council as the consent authority. For a private certifier there is no such mitigation of the private, commercial interest."
>
> ***Independent Review of the Building Professionals Act 2005***[39]

While the final report considered reverting building approval back to local councils, the substantial change required, after more than a decade of full privatisation, meant this was ultimately dismissed as the least viable option. Instead, a number of piecemeal changes to the New South Wales planning and building legislation were recommended to improve the integrity and accountability of private certifiers:

> "…The most radical approach would be to revert to council certifiers only. This approach has been followed in New Zealand following the "leaky building crisis" of 2004. This does not appear to be a realistic option for NSW, at least in the short term, where the current system is heavily reliant on private certifiers, particularly in major metropolitan areas, and most councils would not have the resources to take up the full function. This approach also ignores the various problems which are experiences when the system relied exclusively on council certifiers which included delays in obtaining building approvals. Nevertheless, this option may need to be revisited in the future if actions proposed…to improve the accountability, performance and professionalism of certifiers are not successful."
>
> ***Independent Review of the Building Professionals Act 2005***[40]

2018: Building a Safer Future: independent review of building regulations and fire safety (UK)

In the United Kingdom, full privatisation, similar to New South Wales, Victoria and Queensland, was adopted in the 1980s through the ***Building Act*** (UK).

Under the UK model, the proponent for a new building can choose to engage either the equivalent of a local government, referred to as a Local Authority Building Control (LABC), or a private Approved Inspector (AI). The LABC or AI assess a building's design compliance with the building standards, grant approval and maintain oversight of the building process, including through inspections.

Following the Grenfell Tower fire tragedy in London in 2017, which claimed 72 lives, the UK Government announced a major independent review of the country's building regulation and legislative framework.

Among the many weaknesses the independent reviewer, Dame Judith Hackett, found with the UK's legislative framework was the lack of government oversight and conflicts of interest caused by private sector involvement in the assessment of building compliance and construction approval. The final report stated:

> "The interim report identifies a number of key concerns about the current ability of contractors, etc. to choose between LABC and AIs to provide regulatory oversight of the building process…the part privatisation of this regulatory function has also led to many serious concerns about oversight of buildings. For example: there are incentives for building control competitors to attract business by offering minimal interventions or supportive interpretations for contractors; many building control inspectors work in such an integrated fashion with design and construction teams that there can be a confusion

37 Compliance with building permits: Victorian Auditor-General's Report (December 2011) p 14 Author: Victorian Auditor-General's Office.
38 Review of the Building Act 1975 and building certification in Queensland: final report of discussion paper (October 2014) p 60-63 Author: QBCC
39 Independent Review of the Building Professionals Act 2005 (NSW): Final Report (October 2015) p 261 Author: Mr Michael Lambert.
40 Ibid, p 262.

> and a potential conflict of interest between a government regulator role and a third-party verification role."
>
> ***Independent Review of Building Regulations and Fire Safety***[41]

To address this issue, the final report recommended that the UK Government revert responsibility for building approval and oversight back to LABCs for 'high risk residential buildings', being apartment buildings above 10 storeys.

2020/2022: NSW Legislative Council Public Accountability Committee's Inquiries

Following the high-profile failures of Opal and Mascot Towers in Sydney, in late 2019 the New South Wales Legislative Council Public Accountability Committee (the Committee) established an inquiry into the regulation of building standards and the quality of buildings in that State. Included within the Committee's terms of reference was the role of "private certification in protecting building standards".

The Committee received multiple submissions and evidence from professionals and others within the building industry about the failures of the fully privatised model in that State, including the conflict of interest between the role of building surveyors (referred to as certifiers in New South Wales) in assessing building compliance and their commercial relationship with the builder or developer.

The weight of evidence received by the Committee led the chair, Mr David Shoebridge MLC, to provide the following statement in the first report presented to the New South Wales Parliament:

> "It has been a two decade-long experiment with privatisation, deregulation and industry self-regulation...Regulators have failed to regulate in New South Wales and it is homeowners who are paying the cost…The magnitude of defects we are seeing today is just the tip of the iceberg."
>
> ***Public Accountability Committee (New South Wales) First Report (2019)***[42]

While the Committee stopped short of recommending a complete overhaul of building approvals, it found that a return to local government involvement may be preferable, but challenging given the elapse of time:

> "The committee seriously considered a recommendation strengthening public control of certification, such as returning all certification to local councils. In examining that specific proposition the committee has noted the concerns that currently local councils do not have the resourcing to implement the change…Whilst not ruling out such a future recommendation, the committee does not do at this time. This matter will be further considered as part of the committee's foreshadowed inquiry in the NSW Government's reforms."
>
> ***Public Accountability Committee (New South Wales) Final Report (2020)***[43]

In 2021, the Committee commenced another inquiry[44] into the regulation of building standards in New South Wales, following the emergence of serious defects in several other residential complexes (such as the Riviera apartments in Parramatta and the Skyview Towers development at Castle Hill). It further explored concerns relating to the fully privatised model.

In the inquiry's final report, the Committee concluded again that broader systemic reforms are required for the protection of those at risk and to prevent further building failures:

41 Independent Review of Building Regulations and Fire Safety: Final Report p 41. Author: Dame Judith Hacket DBE Freng

42 NSW Parliament, Public Accountability Committee, Regulation of building standards, building quality and building disputes, First Report (November 2019) p ix

43 NSW Parliament, Public Accountability Committee, Regulation of building standards, building quality and building disputes, Final Report (April 2020) p 103

44 NSW Parliament, Public Accountability Committee, Further inquiry into the regulation of building standards, Final Report (February 2022)

> "The committee's strong concerns about private certification were reflected in the recommendations of our previous inquiry, but there is little evidence before us in this second inquiry that our concerns have been addressed".

> "The committee agrees that there is an inherent conflict of interest arising from the relationship between private certifiers and the developer that engages them. We are satisfied by the evidence before us that this conflict plays out in very real ways, and that the operation of market principles is entirely inappropriate in this field."
>
> ***Public Accountability Committee (New South Wales) Final Report (2022)***

Challenges with full privatisation in WA

Aside from the reported issues in other jurisdictions that have fully privatised models, there are a number of challenges to introducing such a reform in WA, including:

- ⇨ the need to reform other approvals processes undertaken as part of the building approval process, particularly planning approvals;
- ⇨ limited evidence to suggest that delays in commencing construction are caused by granting of the building permit; and
- ⇨ the current lack of regulatory safeguards in WA to ensure building compliance.

This review has indicated that these challenges would substantially undermine any perceived benefits full privatisation might offer. While WA's existing framework does require reform to improve its rigor, as recommended elsewhere in this DRIS, full privatisation of building approvals is not likely to achieve this end. Nor is it likely to achieve the efficiency outcomes sought by its proponents, while planning and other required approvals remain within the purview of local government.

Each challenge is discussed further below.

Interaction with other approval requirements

Under the Building Act, a permit authority must not grant a building permit unless satisfied that, among other things, the applicant for the building permit has complied or is complying with each provision of a local government policy or requirement.[45]

The effect of this requirement is two-fold:

Firstly, it means a building permit cannot be granted unless other local government approvals relevant to the construction of a new building have been satisfied. Critically, this includes compliance with the relevant local planning scheme (either through the grant of a Development Approval or by satisfying the R-Codes), as well as relevant health and engineering requirements, including storm water drainage, drive-way crossovers, sewerage, and laundry and bathroom regulations.

Secondly, it means the building permit application is, in most cases, the 'gateway' or 'checkpoint' for the assessment of the other local government approvals. That is, rather than make a separate application to assess compliance with planning, health and engineering requirements, builders will almost always submit the building permit application together with the development (planning) application. Once the application for the building permit is received by the permit authority, the assessment of the other requirements, based upon the plans and specifications for the building, will then be concurrently undertaken.

For example, if it is determined the building does not satisfy the R-Codes or other local planning policy, the building permit will not be granted until the proposed building has obtained development approval under the relevant local planning scheme.

Removing local government from the building approval process for residential buildings and shifting it wholly to private building surveyors would essentially dismantle this checkpoint for planning and other

45 *Building Act, s.20(1)(q)* WA

requirements, increase the possibility of non-compliance, and potentially lead to costly and time consuming rectification works (including the possibility of a complete demolition of the building).

Reforms to WA's planning laws in 2015 removed the requirement for development approval for single residential dwellings that meet the deemed-to-comply requirements of the R-Codes. This has resulted in a large proportion of residential building permit applications being made with no certainty about whether the local government agrees that the building design complies with the R-Codes. Consequently, the need to obtain a development approval may not be identified until the building permit application is assessed by the permit authority.

In its response to the CRIS Residential, the HIA suggested this problem could be overcome by adopting a similar approach to New South Wales, where private building surveyors have the authority to make an assessment on compliance with local planning requirements through the 'complying development certificate' pathway under the ***Environmental Planning and Assessment Act 1979*** (NSW):

> "…the WA Government should look at both the NSW complying development certificate arrangements and the Victorian building permit arrangements where a private building surveyor has the authority to make an assessment of this nature, against prescriptive requirements, and no checking of authorisation is required by the local government authority."
>
> ***HIA response to CRIS Residential***

However, other stakeholders did not support private building surveyors undertaking other local government approvals, particularly checking planning compliance.

These stakeholders pointed out that building surveyors in WA, unlike in New South Wales and Queensland, do not have the experience or training necessary to interpret and apply the various local planning schemes, including R-Code compliance. For example, the AIBS stated:

> "…AIBS supports an approach which ensures that all other consents, referrals and planning processes are completed prior to the finalisation of the building surveyor's assessment of the proposal, including with respect to evidence of planning compliance from the relevant planning authority."
>
> ***AIBS response to CRIS Residential***

Similarly, the MBA noted that:

> "…there could be difficulties with ensuring compliance for planning, health and engineering/ technical requirements. It could be that any such identified issues could end up being expensive and costly to rectify."
>
> ***MBA response to CRIS Residential***

The DPLH also agreed that having private building surveyors assess planning compliance in WA will not work as they do not have the same training as their east-coast counterparts in local planning schemes and, in any event, this would require reforms to the State's planning legislation:

> "While the HIA has cited examples from Victorian and New South Wales (NSW), the role of a registered building surveyor in those states is limited to specific assessment streams. In Western Australia, the majority of development that would be eligible under those streams is either currently exempt from requiring planning approval or will become exempt following the finalisation of changes to the Regulation [Planning and Development (Local Planning Scheme) Regulations 2015]. The residential development, the 'complying development' stream in NSW, has many similarities with the 'deemed-to-comply' pathway of the Residential Design Codes.
>
> Whilst the building surveying industry certainly has an understanding of the operation of the planning system, without significant education and additional training in planning assessment, building surveyors are unlikely to have the same skills and experience required of local government planning officers."
>
> ***DPLH letter to DMIRS (November 2020)***

Therefore, the only way to address this challenge would be to either:

- reform the State's planning legislation to allow adequately trained private building surveyors to assess compliance with local planning schemes (in jurisdictions where this has occurred, training requirements have been phased in over many years and at substantial cost in money and time to participants[46]);
- reform both the building and planning legislation to require an applicant to first obtain a development approval, demonstrating compliance with planning requirements, before applying to a private building surveyor for a building permit; or
- reform the building legislation to create a referral system between private building surveyors and local governments that can confirm compliance with planning requirements before the grant of a building permit.

However, each of these options present their own problems, including (but not limited to):

- the significant cost and time required to implement the reform;
- the potential for on-going disruption to the building approval process, which will delay the commencement of residential buildings;
- the need for builders to undertake two separate approvals processes, one for planning and one for building;
- that other approvals required under the State's health and local government legislation for residential buildings would still need to be carried out by local governments, or be referred by private building surveyors for approval; and
- in the case of the State's planning legislation, that the reform required may undermine substantial changes the Government has already committed to make.

Limited evidence of delay in the grant of the building permit for residential buildings

One of the benefits outlined in the CRIS Residential for moving to a fully privatised model was the potential to improve the 'efficiency' of the building approval process by reducing delays.

A criticism of the current, partially privatised model is the perceived delays caused by local governments acting as the permit authority. This is despite the legislated timeframes in the Building Act for granting a building permit – being 10 business days for a certified application and 25 business days for an uncertified application.

However, it was evident from stakeholder feedback that delays in granting building permits do not necessarily relate to the functions performed by local government under the Building Act. Instead, delays are mainly caused by the planning and other (health, engineering etc.) approvals required before the building permit can be granted and construction can commence:

46 See for example: Assenttecs - building certifier training.

> "...With specific regard to delays in the granting of building permits, various analysis over a sustained period have detailed that for WA, the vast majority of issues associated with delays experienced with building permit applications related to statutory planning issues, not compliance with building standards. Consensus was that the current building regulatory environment was working reasonably well, the vast majority of delays and frustrations stemmed from the current planning regulatory environment…Where reforms are truly needed, from an approvals perspective and beyond is with Planning."
>
> ***MBA response to CRIS Residential***

> "Planning has always been the main delay and should not be used in the debate around building permit processing as it is a separate approval process and should be treated as such."
>
> ***Shire of Menzies' employee, response to CRIS Residential***

Of the stakeholders who responded to a question in the CRIS Residential on the delays in the grant of a building permit, 35 percent agreed that planning approval was the major cause of the delay:

There is also no empirical evidence to support the perception of delays in the grant of building approvals. In fact, the figures show quite the opposite.

For example, of 27 local governments surveyed several years ago, WALGA reported that 100 percent assessed building permit applications (certified or uncertified) within the legislated timeframes. The major causes of delays identified by survey respondents were incomplete building permit applications and non-compliance with R-Codes:

> "The information received in the survey demonstrates that Local Government considered a significant volume of applications during the 2014/15 financial year and all (100%) were assessed within the timeframe required by the Building Act 2011. Based on the survey results, a majority of the issues associated with delays experienced for building permit applications relate to the proposal requiring planning approval due to non-compliance with the R-Codes and relevant Local Government policies."
>
> ***WALGA, Review of Building Permit Survey Responses: Independent Analysis***

Similarly, a 2019 report by the WA Auditor General on local government building approvals found that although the four local governments audited "had different approaches to when they started, paused and stopped the clock" on the application assessment, they had:

- ⇨ adequately assessed applications and issued nearly all permits within legislated timeframes in the period July 2016 to July 2018; and
- ⇨ improved the timelines of approvals over the four financial years from 2014-15 to 2017-18.[47]

It is evident therefore that improvement to the 'efficiency' of the building approvals process will not be gained through a fully privatised model. Instead, as stakeholders have noted, there is a need to improve the other approval processes, particularly planning, that sit outside (but are connected) to the building approval process.

Major changes to the State's planning legislation have already been progressed under the Government's State Economic Recovery Plan.

47 Office of the Auditor General Western Australia, Local Government Building Approvals: Report 28 (June 2018-19), p 8.

In late 2020, Phase 1 amendments to the ***Planning and Development (Local Planning Schemes) Regulations 2015*** were introduced to make various improvements to local planning processes by including, among other matters, a broader range of exemptions for small development proposals (such as extensions and patios) allowing them to progress straight to the building permit stage. Those amendments reinforce the role of local governments in determining the requirement for development approval for alterations or additions to single houses.

A second larger phase (Phase 2) has also commenced and includes additional proposals to reduce red tape for users of the planning system. This includes a streamlined model for pre-lodgement of development applications, reduced statutory timeframes and greater flexibility in permitted variations to the R-Codes to reduce the need for development applications, particularly for residential buildings. DPLH believes these reforms, once implemented, will address many of the delays in commencing residential construction.

Current lack of regulatory 'safeguards'

The premise underlying the fully privatised model proposed as part of the Model Building Act (in 1991) was 'deregulation with safeguards'. That is, granting regulatory functions, otherwise reserved for government bodies, to private building surveyors but coupled with requirements to protect public safety and building quality.

Recommended safeguards included mandatory inspections at critical stages of construction, annual auditing of private building surveyors, liability reform, and registration of other building professionals, including engineers and building designers.

For the most part, the Australian states and territories that have adopted a fully privatised model have included the regulatory safeguards from the Model Building Act. Although many of these jurisdictions have, since the Building Confidence Report, sought to tighten or increase the breadth and efficacy of the safeguards.

In WA, many of the safeguards are not yet in place, and it will likely be several years before all safeguards are implemented. Many of them are recommended as part of this review, and the remainder will be considered for implementation subsequent to the changes recommended in this document.

To adopt a fully privatised model, before these safeguards are operating effectively, is counterintuitive and may jeopardise public safety and confidence in the built environment. Further, it could lead to WA's building legislation operating in a state of 'catch-up', whereby the necessary safeguards are not introduced at the same time as complete privatisation of building regulation.

Allowing for full privatisation would involve a major overhaul of the current building approval process for residential buildings in WA. While local governments would be empowered to continue to perform a statutory role, the experience in other Australian jurisdictions suggests that many may choose not to do so, particularly in regional and remote areas. The removal of local governments from the role of granting building approvals could result in some disruption and delay for the industry, at least initially, as roles and responsibilities are being reorganised.

In addition, the increase in PII premiums may deter building surveyors from entering the market, leading to a possible shortage of private building surveyors and negative impacts on the building approval process. These issues will be compounded in regional areas, which already experience significant difficulties in attracting building professionals.

Adopting all of the recommendations of the Building Confidence Report might mitigate some of the conflicts of interest that inherently occur in full privatised model, but it cannot fully extinguish them.

The potential for private gain to be prioritised over public good cannot be entirely avoided when imposing a statutory duty on private entities with commercial interests. Most stakeholders who support full privatisation in their feedback to the CRIS Residential did not explain how the conflicts of interest, where the provider of the CDC also issues a building permit and undertakes inspections, would be appropriately mitigated. The widespread reports of this issue from other jurisdictions suggest such a change will have major challenges and risks.

Recommendation 5

Given the litany of reports from other jurisdictions and the challenges identified, the building legislation is not amended to allow private building surveyors to issue building permits for residential buildings.

Appointment of SBS by the owner

The building legislation does not specify who is responsible for engaging the building surveyor to issue the CDC, or the CCC in the case of commercial buildings. The only requirement is that the building surveyor cannot be the owner of the land, or an employee of the owner of the land on which the proposed building is to be built, or the builder named on the building permit or an employee of the builder.

For certified applications, often the builder engages a private building surveyor, as part of the team of consultants contracted for a building project, including designers and engineers. But this can create a conflict of interest. The building surveyor's statutory role to check compliance with the building standards on behalf of the building owner and wider community, conflicts with the commercial relationship they have with their client, being the builder.

As the Building Confidence Report noted:

> "…in all jurisdictions, private building surveyors have a direct commercial relationship with designers, owners and builders. They depend on them for their financial viability. This makes them susceptible to the interest of their client in ways which may not always align with the public interest…"
>
> ***Building Confidence Report p 24***

To address this issue, both the CRIS Residential and the CRIS Commercial proposed reforms to the appointment process for private building surveyors to improve their independence.

In the CRIS Residential, a requirement that a private building surveyor must be engaged by the owner was proposed as an option. While a builder could still act as the owner's agent, the commercial relationship would be between the building surveyor and the owner, not the builder.

No specific comments on this matter were made by stakeholders.

In the CRIS Commercial, one of the proposals was to expand the independence requirements in the Building Act to provide that a building surveyor issuing a certificate must be independent of anyone whose work they certify. In other words, they cannot be employed or engaged by anyone who prepared the building design or elements of the building design.

Thirty-five percent of stakeholders who responded to this proposal supported expanding the independence requirements in the Building Act to effectively prohibit businesses from offering both building design and certification services. A further 24 percent support it conditionally, and 17 percent do not support it.

Expand building surveyor independence requirements in the Building Act (CRIS Commercial)

However, a number of stakeholders questioned how the proposal would operate given the small market in WA for building surveyors and designers, and how local government permit authorities would check whether there was genuine independence between the building surveyor and the design team.

> "…this change would prevent firms that offer full design and certification services from being contracted to do the design on a project as well as certify that project. This will likely increase design and/or certification costs…we are concerned that there is insufficient capacity in the market to deliver this complete separation in roles."
>
> ***Consult Australia response to CRIS Commercial***

> "Without being clearly set out, it is understood that a permit authority will have to be satisfied of the building surveyors' independence. How it is practical for a permit authority to be satisfied (check) a building surveyor has not been involved in the design of the building? This is impractical in many respects."
>
> ***MBA response to CRIS Commercial***

Some stakeholders identified that there are benefits to building surveyors being engaged early during the building design on compliance, as they are best placed to provide this advice:

> "Currently in WA practitioners are actively involved from the commencement of the design stage and take great care to ensure that involvement at that stage does not compromise independence with respect of the ability to undertake regulatory roles in relation to the project. This is quite unique in Australia with many building surveyors from other jurisdictions working hard to obtain the kind of early engagement enjoyed by building surveyors in WA."
>
> ***AIBS response to CRIS Commercial***

The intent of this proposal is to mitigate conflicts of interest to which the building surveyor is subjected. Conflicts of interest include both the actual conflict of certifying plans and specifications which the building surveyor has been involved in designing, and the perceived or potential conflict of certifying plans and specifications produced by designers with whom the building surveyor works closely.

Instead of amending the Building Act to expand the independence requirements for building approvals, stakeholders identified two alternative options to address these conflicts of interest:

- requiring private building surveyors to be engaged directly by the owner rather than the builder (similar to the proposal in the CRIS Residential); and
- having a Code of Conduct for building surveyors which defines their involvement during the design stage (this reform is discussed further in this Chapter and has already been implemented).

Requiring the building surveyor to be engaged by the owner addresses the potential conflict of interest caused by the building surveyor having a direct commercial relationship with the designer or builder, whose work they are responsible for checking and certifying. The owner of a building has a much stronger interest in ensuring that the building meets the applicable building standards. While the builder may suffer reputational and/or commercial damage from non-compliant building work, it is often the owner who bears the costs of rectification works or pursuing the builder for rectification costs.

> "Any proposed contract should be between the certifier [building surveyor] and the owner, not a member of the design team…This resolves the alleged "conflict of interest".
>
> ***JMG Building Surveyors response to CRIS Commercial***

> "In other jurisdictions (both in Australia and overseas), the property owner is the entity that engages the building surveyor. The builder still has the right to coordinate the building surveyor for the building works undertaken…the building surveyor then operates in the best interest of the property owner.
>
> ***MBA response to CRIS Commercial***

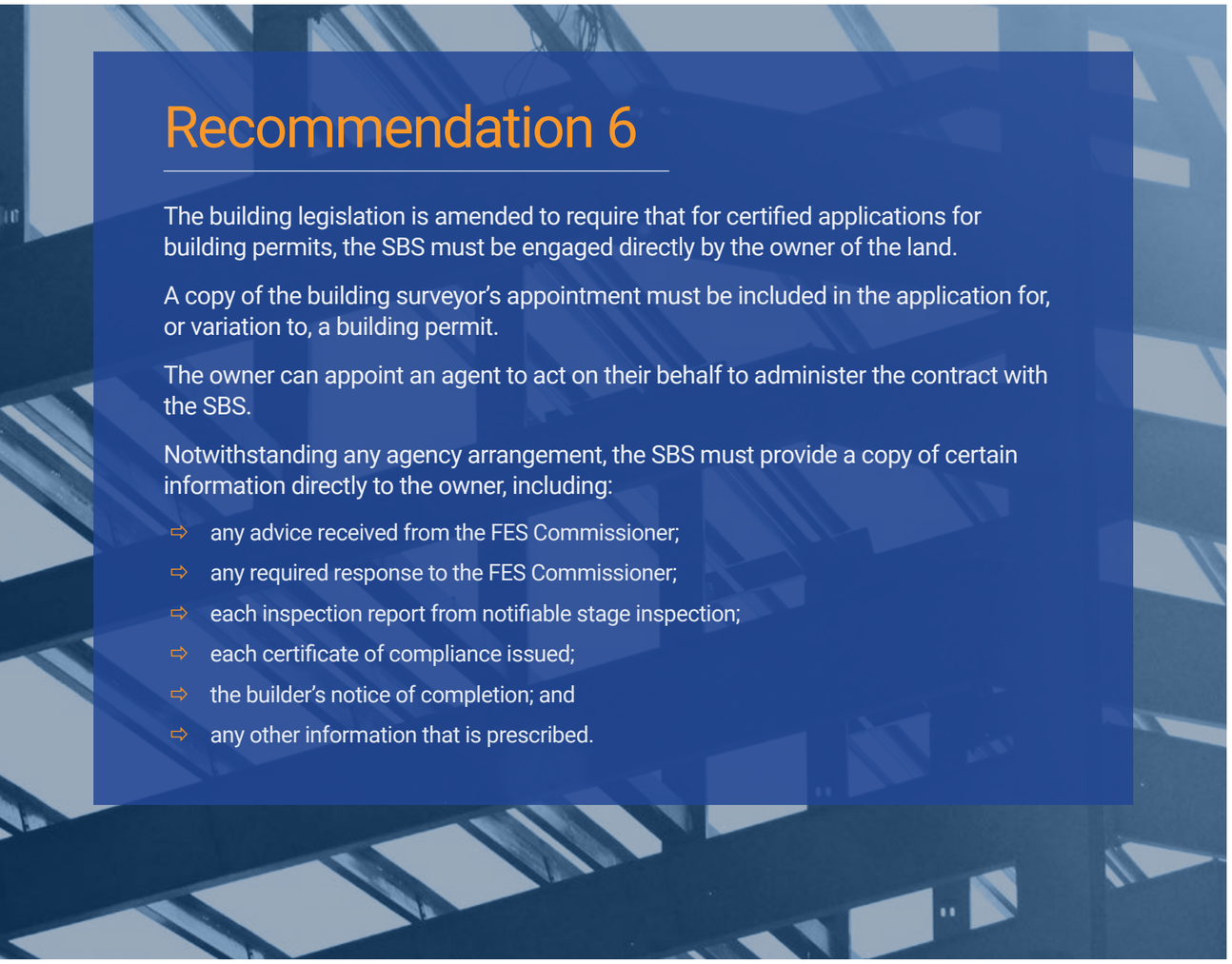
Defining the building surveyor's role in the design process through a code of conduct addresses the actual conflict of interest which occurs where a building surveyor is not sufficiently independent of the development of the designs they certify. A code of conduct appears to be the most appropriate instrument to define and govern the building surveyor's role the design process for the projects they certify. It is more flexible than a legislated provision, while still providing a defined boundary for the industry to operate within.

In addition, it acknowledges the relatively small market of building surveying contractors in WA where it is impractical to require each project to have separate advisory and certifying building surveyors.

It is therefore recommended that the building legislation should be amended to require that:

- For certified permit applications, the building surveying contractor who issues the certificate of compliance or inspection report/s (see further details in Chapter 6), known as the SBS, must be contracted directly by the owner of the land on which the building is to be constructed.
- A copy of the owner's appointment set out in a prescribed form must be provided as part of the application for a building permit.
- The contract between the owner and the building surveying contractor must not be novated or otherwise assigned to another party for the duration of the appointment, unless one of the parties becomes insolvent.
- The owner may appoint an agent (e.g. the builder) to administer the contract on their behalf in relation to instructions to the building surveyor (i.e. arranging inspections, acting on directions given, assessing variations etc.).
- Despite any agency arrangement:
  - a copy of certain prescribed information must be provided to the building owner, including any advice from, and response to, the FES Commissioner (see further below) and inspection reports; and
  - the agent may not terminate the contract on the owner's behalf.

In addition, the building legislation should require minimum terms in all contracts between owners and building surveyors, and for certain harsh or unfair terms to be prohibited to ensure owners, particularly residential homeowners, are protected from predatory practices. The Building Commissioner will publish suggested contract templates to guide building surveyors engaging with residential homeowners.



Recommendation 6

The building legislation is amended to require that for certified applications for building permits, the SBS must be engaged directly by the owner of the land.

A copy of the building surveyor's appointment must be included in the application for, or variation to, a building permit.

The owner can appoint an agent to act on their behalf to administer the contract with the SBS.

Notwithstanding any agency arrangement, the SBS must provide a copy of certain information directly to the owner, including:

- any advice received from the FES Commissioner;
- any required response to the FES Commissioner;
- each inspection report from notifiable stage inspection;
- each certificate of compliance issued;
- the builder's notice of completion; and
- any other information that is prescribed.

Building surveyor code of conduct and practice

The Building Confidence Report recommended that all Australian states and territories have a code of conduct for building surveyors, covering those working for local governments and acting as private building surveyors.

The code of conduct would define the standard of behaviour required when performing the role of an SBS. Conduct that falls below this standard would constitute unprofessional conduct and be sanctioned by the regulator.

> Codes of conduct can be an effective means of documenting the clear standards of behaviour expected of professional who have statutory responsibilities. They also provide a reference against which auditing can be carried out and disciplinary action taken where the code is not met…Without a clear code of conduct, it is sometimes difficult for regulators to question the behaviour of private building surveyors. As a result, oversight and disciplinary action can be challenging
>
> ***Building Confidence Report, p 25***

Section 96 of the BSCRA Act empowers the Building Commissioner to develop and issue codes in respect to the carrying out of ***registered building services*** and the conduct of ***registered building service providers***, which include building surveyors.

A breach of a code issued by the Building Commissioner does not itself constitute a disciplinary matter under the Registration Act, but may be used as evidence or asserted as the basis for a disciplinary matter, such as negligent or incompetent conduct.

Both the CRIS Commercial and CRIS Residential proposed that a code of conduct be introduced for registered building surveyors to implement the Building Confidence Report recommendation.

The majority of stakeholders who responded to the CRIS Commercial supported a code of conduct for registered building surveyors. No feedback was received on this proposal from responses to the CRIS Residential.

Stakeholders noted that the introduction of a code of conduct for building surveyors would clarify the SBS' responsibilities to their client, community and profession, and improve confidence:

> "The introduction of a Code of Conduct for building surveyors is long overdue."
>
> ***Schwanke Consulting response to CRIS Commercial***

> "The primary benefit [of a code of conduct] is for building surveyors to have their responsibilities to clients and the general public clearly identified, assisting in increasing confidence in the sector."
>
> ***MBA response to CRIS Commercial***

> "AIBS recommends that a code of conduct for building surveyors…with national application is recognised."
>
> ***AIBS response to CRIS Commercial***

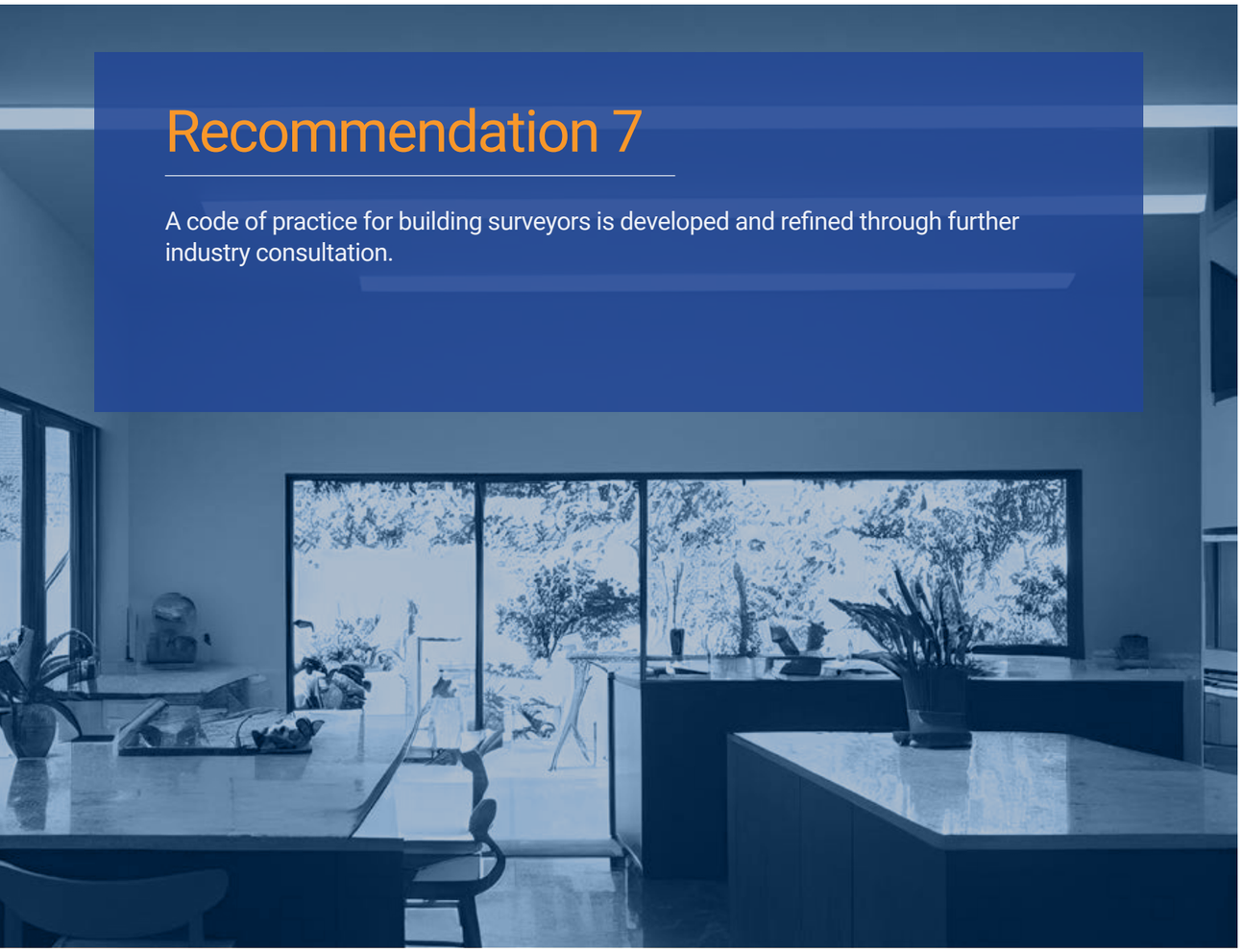
Given the high level of stakeholder support for a code of conduct for building surveyors, as part of Stage 1 of the regulatory reforms, Building and Energy has implemented a code (issued in April 2022). After a 12-month transition period, it will become mandatory from early April 2023. The code was subject to substantial consultation and refinement with industry stakeholders. It was based on the ABCB's national model code[48] and aligns with the role performed by building surveyors in WA. A copy of the code of conduct can be found on the Building and Energy website.[49]

In addition to the code of conduct, it is recommended that a code of practice for building surveyors be developed and issued under section 96 BSCRA Act. The code of conduct sets a minimum benchmark for building surveyors' conduct, while the code of practice will provide more specific details for building surveyors in WA, for example in relation to inspections for particular building classes and construction types, or compliance issues specific to certain site factors such as bushfire or wind regions.

A code of practice, distinct from a code of conduct, will set out how building surveying work is to be carried out in a professional and competent manner under WA's legislative framework.

Building and Energy has commenced development of the code of practice.

48 See generally; ABCB, Code of Conduct for building surveyors: Model guidance on BCR recommendation 10 (December 2021).
49 Available at: https://www.commerce.wa.gov.au/publications/western-australia-building-surveyors-code-conduct-2022



Recommendation 7

A code of practice for building surveyors is developed and refined through further industry consultation.

Changes to appointment of the SBS

The building legislation does not currently control the appointment of a building surveyor to carry out statutory functions, including issuing certificates of compliance (CDCs and CCCs). It is possible for a different building surveyor to be engaged for each of the various statutory functions performed during the project.

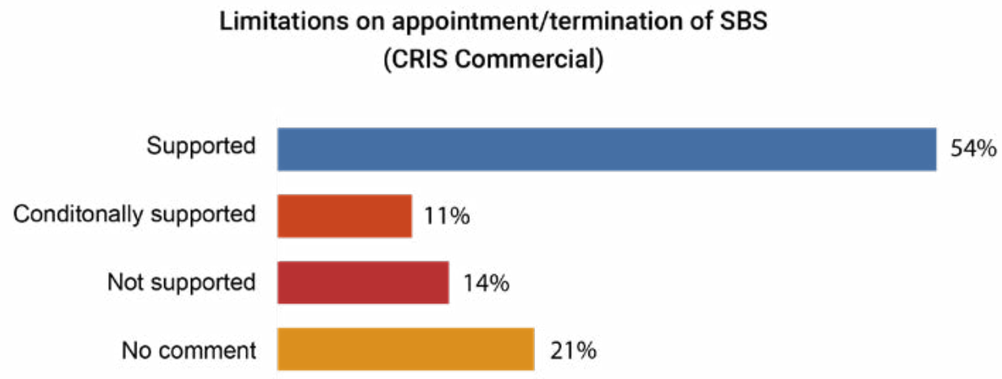
Not only does this affect continuity in checking compliance with building standards, it also amplifies the likelihood of conflicts of interest occurring by allowing for 'opinion shopping'. Where a builder is unsatisfied with the view held by a building surveyor on a particular compliance matter, they could engage another building surveyor who they believe will give a more favourable opinion and issue the relevant certification.

To address this concern, the CRIS Commercial proposed that statutory controls be introduced to govern the appointment of private building surveyors. Specifically, that a building surveying contractor must be engaged for the duration of the building project as the SBS and that the contract of engagement may only be terminated under certain conditions. These conditions include termination:

- ⇨ by mutual written consent;
- ⇨ by court order; or
- ⇨ due to death, disappearance, bankruptcy or de-registration of the building surveyor.

This would implement the recommendation from the Building Confidence Report that the building legislation should require the engagement of a building surveyor to be documented and that termination must not occur without regulatory approval or a mandatory process.

Stakeholders who responded to the CRIS Commercial generally supported the proposal to place controls around the appointment and termination of the SBS:



Some stakeholders noted that statutory limitations on terminating a building surveyor's engagement would support the other proposed reform in this document to undertake mandatory inspections at notifiable stages:

> "…a building surveyor needs to be enable to operate without fear or favour, unbiased in the determination of a building project compliance with the National Construction Code."
>
> ***MBA Response to CRIS Commercial***

> "…anything that stops a builder or developer 'certifier shopping' to find a less competent surveyor is a good thing."
>
> ***MODUS Design response to CRIS Commercial***

However, other stakeholders raised concerns about the practicality of the proposal, particularly where the building surveyor is not performing their duties competently.

Questions were also posed as to the extent of the problem of 'opinion shopping' in WA, given that the grant of the building approval, unlike in other jurisdictions, rests with the permit authority (usually the local government):

> "…we are concerned this proposal will…lead to additional undue pressure on the building surveyor and increase disputes."
>
> ***Consult Australia response to CRIS Commercial***

> "Our members have provided examples to us where this proposal would prevent them from taking swift and effective action on poor building surveying work conducted on projects under construction."
>
> ***Property Council response to CRIS Commercial***

There is currently no data available on the number of instances in WA where a building surveyor's engagement is terminated early. Anecdotal evidence provided by stakeholders suggests the more common occurrence is where termination is threatened, rather than acted on.

Without quantitative evidence on the scope of the problem, there is a risk that curtailing people's freedom to contract will inadvertently lead to poor outcomes and disputes.

Instead, the recommended approach is to tie the function of building surveying to the duration of a building permit, rather than the engagement of one particular building surveying contractor, and require that any change in appointment is notified to both the permit authority, via an amendment to the building permit, and a separate notification to the Building Commissioner.

This will provide Building and Energy with better regulatory oversight of the appointment and termination of private building surveyors and support the other reform measures recommended in this review, including: appointment of the SBS by the land owner; public interest obligations; and mandatory inspections at notifiable stages.

The building legislation should be amended to require the following:

- ⇨ For a certified application, only one building surveying contractor must be named as the SBS on the building permit for the duration of the permit.
- ⇨ A building surveying contractor must not accept an appointment as the SBS where another SBS has already been appointed.
- ⇨ It shall be an offence to appoint more than one building surveying contractor as the SBS for a project.
- ⇨ If there is a change to the SBS, a notice of cessation must be given to the permit authority, specifying both the reason(s) for the termination, and the new SBS to be named on the permit. An amended building permit must then be issued, naming the new SBS.
- ⇨ The previous SBS must take all reasonable measures to cooperate with the owner, including providing all relevant documents, certificates or reports to the new SBS named on the building permit. Failing to cooperate will be a disciplinary matter.
- ⇨ Notices in a prescribed form must also be given to the Building Commissioner by both the owner (or owner's agent) and the building surveying contractor, specifying the reasons for the termination of the engagement. The notices must be given to the Building Commissioner within a defined time period (i.e. 7 days) after submitting the notice of cessation to the permit authority. Failing to give the notice will be an offence and attract a penalty.
- ⇨ A person subsequently named as the SBS on the building permit may, in performing building surveying work, accept and, without further checking, rely and act on any certification and inspection documentation given by the person(s) previously named as the SBS on the building permit.

Building and Energy will monitor the impact of these changes to determine if there is evidence to support the need for further reform to place greater statutory limits on when, and in what circumstances, the appointment of an SBS can be terminated.

Recommendation 8

The building legislation is amended to require the appointment of one building surveying contractor at any time, to be named on the building permit as the SBS for the duration of the permit.

Where there is a change to the person named on the permit as the SBS, a notice of cessation (in the prescribed form) must be given to the permit authority specifying the new building surveying contractor to be named as the SBS and the reason for the termination. The building permit must be amended to state the name of the new SBS.

A notice of cessation must also be given by both the owner and building surveying contractor to the Building Commissioner, setting out the reasons for terminating the engagement. These notices are to be monitored by Building and Energy to determine if there is evidence to support further limitations on terminating appointments.

Building surveyor must act in the public interest and be paid for work

Building surveyors perform a statutory function in checking building compliance with applicable standards. This role is not only for the benefit of their client but for the health, wellbeing and general amenity of the building's subsequent owners, tenants, occupants, neighbours and the community.

Decisions made by a building surveyor can impact a range of people during the life of a building. These impacts range from threatening life and property (e.g. where non-compliance results in the collapse of a building or the spread of fire within it) to the reduction of a neighbour's amenity (e.g. where non-compliance results in a loss of privacy).

It is important therefore that when carrying out statutory functions, building surveyors do not allow the private interests of clients to override the public interest. The public interest in this sense includes meeting minimum building standards relevant to the health, safety and amenity of current and subsequent building owners, occupants, tenants, visitors, neighbours and the community.

The building legislation does not currently require building surveyors to carry out statutory functions whilst taking the public interest into consideration.

Equally, there is no payment protection for building surveyors where they refuse to perform specific statutory building surveying work (i.e. refuse to issue a certificate of compliance) that conflicts with the broader public interest.

While WA currently has 'security of payment laws' for those contracting in the building and construction industry (including building surveying contractors),[50] right to payment under these laws is linked to the contract between the parties and the value of the work undertaken. Where there is a contractual pre-condition to payment, for example the issue of a certificate or the grant of a building approval, the security of payment laws do not provide protection if the pre-condition is not met because of broader public interest concerns.

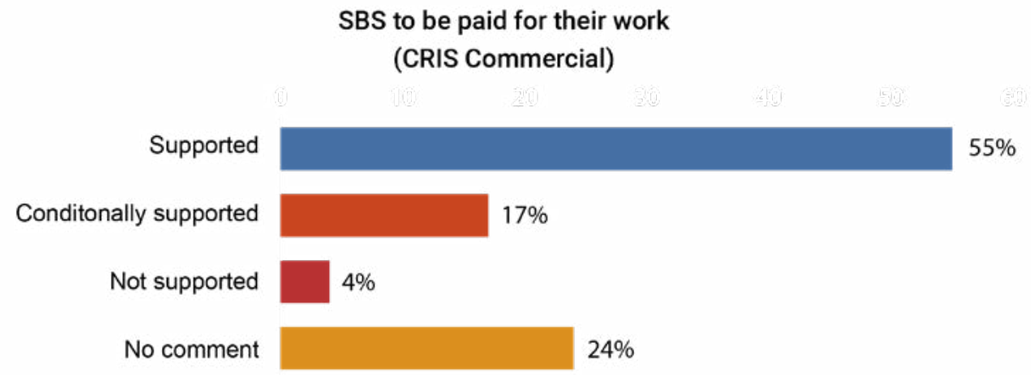
In the absence of effective statutory measures, there is a risk that the 'paymaster' relationship between the

50 See for example: *Construction Contracts Act 2004, and Building and Construction Industry (Security of Payment) Act 2021.*

private building surveyor and the client can lead to the private interests of the client, by virtue of commercial pressure, being preferred over any broader public interest considerations.

To address the risk, the CRIS Commercial proposed that the Building Act is amended to provide that a building surveying contractor undertaking statutory building surveying work (i.e. the SBS) 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 building standards. The proposal was not included in the CRIS Residential.

The majority of stakeholders who responded to the CRIS Commercial supported the proposal. Stakeholders agreed that the building surveyor's payment for statutory building surveying work should not be withheld due to lack of completion, inadequacy or non-compliance of work carried out by others on the project:



Some stakeholders commented that a building surveyor's contract terms often link payment to the issuance of certificates or even permits, and private interests commonly override public interest:

> "Approximately 60% of our projects are paid after the CDCs and CCCs are issued…certifiers don't actually get paid until the piece of paper is issued even though months of work have been undertaken without payment."
>
> ***JMG Building Surveyors response to CRIS Commercial***

> "In my dealings with private certifying building surveyors I gained the strong impression that the interests of their client took priority over the interests of the public. I suppose that is not unexpected as the client provides them with a financial future where the interests of the general public are ill defined and only provide them with a warm fuzzy feeling."
>
> ***Barry Bennett, building surveyor (formerly working for City of Perth), response to CRIS Commercial***

The AIBS suggested that instead of limiting when payment must be made to a building surveyor, the Building Act could instead make it an offence for a person not to make payment to the building surveyor in accordance with the contract:

> "It should be an offence to fail to remit to the practitioner the required fee with an ability for the practitioner to raise a complaint to an appropriately resourced authority to ensure that the client is made to remit the required fee and incur a penalty for failing to pay as per the engagement agreement."
>
> ***AIBS response to CRIS Commercial***

However, this approach could be problematic for two reasons. Firstly, it does not address the problem of contractual terms that make the building surveyor's payment conditional upon issuance of a certificate or a permit. Secondly, it would effectively require establishing a government regulator, possibly the Building Commissioner, effectively as a 'statutory debt collector', responsible for adjudicating on and collecting unpaid fees for businesses.

Therefore, it is recommended that the Building Act is amended to provide that:

- A building surveyor must act in the public interest whilst performing statutory building surveying work.
- 'Statutory building surveying work' includes:
  - checking, verifying and peer-reviewing building designs, and inspecting and testing installation and construction work, to determine whether it meets the applicable building standards; and
  - forming an opinion or issuing a report, document, certificate or permit required under the building legislation.
- A building surveyor will not be considered as acting in the public interest where they:
  - seek or accept a benefit (either for themselves or someone else's) as a reward for acting, or inducement to act, other than in accordance with building legislation;
  - act in a manner contrary to their functions under the building legislation; or
  - contravene certain requirements of the code of conduct or practice issued by the Building Commissioner under the BSCRA Act.
- Despite any contractual term or other arrangement, a building surveying contractor's payment for undertaking statutory building surveying work is not conditional upon the issuance of any report, document, certificate or permit that is required to be issued under building legislation.

In addition, the Registration Act should be amended to make it a disciplinary matter where a building surveyor is found to have not acted in the public interest whilst performing statutory building surveying work.

Recommendation 9

The building legislation is amended to:

- require a building surveyor to act in the public interest when performing statutory building surveying work; and
- void and render unenforceable any contractual provisions that make payment to a building surveying contractor conditional upon issuance of a report, document, certificate or permit required under building legislation.

5. Fire authority consultation during design

Background

Commercial buildings in WA must be designed and constructed in a way that enables firefighters to act safely and effectively in the event of an emergency, taking into account the limitations of protective clothing and equipment, crew resourcing, training and procedures, and distance from fire stations.

Under the Building Regulations, at least 15 business days before signing the CDC for most commercial buildings, the SBS must submit the plans and specifications to the FES Commissioner for assessment of compliance with DFES operational requirements.

The FES Commissioner's advice on the plans and specifications must then be attached to the CDC, which will accompany the application for a building permit.

In addition, within 10 days of receiving the FES Commissioner's advice, the SBS must respond, stating which advice has not been incorporated into the plans and specifications and the reasons for not doing so. This ensures consideration of the building's design relative to DFES operational requirements in an emergency (e.g. a structural fire). For example, ensuring that the building has sufficient hydrants and boosters to allow for the supply and movement of fire hoses, and access to allow for safe movement of crews.

Once the building is completed, the permit authority gives the FES Commissioner a copy of the occupancy permit. If it is then determined that the building may endanger people's safety, the FES Commissioner has powers under section 33 of the ***Fire Brigades Act 1942*** to require the installation of certain fire appliances or direct a fire risk to be alleviated.

Following the Grenfell Tower fire in London, and the Lacrosse and Neo apartment building fires in Melbourne, the importance of compliance with the fire safety requirements in the NCC and DFES operational requirements cannot be overstated.

The Building Confidence Report noted that fire authorities lacked confidence that buildings comply with the minimum fire safety requirements of the NCC, particularly following the identification of non-compliant combustible cladding. The Building Confidence Report recommended that all jurisdictions' building legislation should require engagement with relevant fire authorities as part of the design and building approval process:

> "There is consensus that, at a minimum, fire authorities should provide comment on, or consent to, performance solutions that involve fire performance requirements that relate to fire brigade intervention."
>
> ***Building Confidence Report p 23***

Review proposals

The CRIS Commercial proposed to improve the requirements in the Building Regulations for engagement with DFES prior to the issue of a CDC. This included:

- requiring the preparation of a fire engineering brief and fire engineering report, in accordance with the AFEG, for all fire safety performance solutions to be used in a building's design;
- empowering the FES Commissioner to issue a certificate at any time confirming that plans and specifications meet DFES operational requirements;
- clarifying that the FES Commissioner's written advice must be considered and responded to by the SBS no matter when it is provided; and
- prescribing information that must be provided to the FES Commissioner in response to the advice given on the plans and specifications.

Fire safety performance solutions

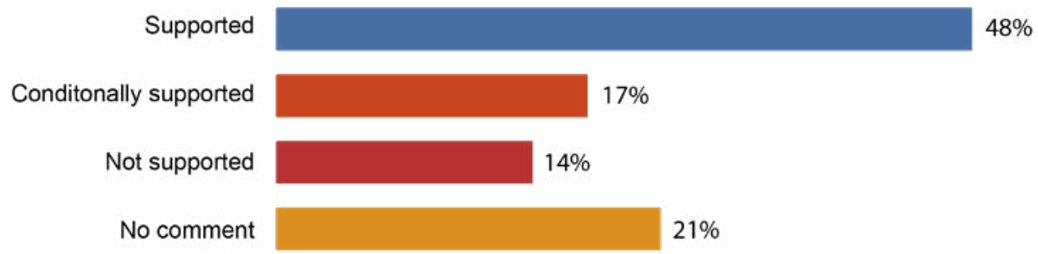
Increased design complexity and use of innovative materials has led to a greater use of performance solutions to satisfy the performance requirements of the NCC. However, the assessment and documentation of performance solutions for fire safety elements of commercial buildings are not always consistent or rigorous.

The Building Confidence Report observed that there would be merit in building legislation requiring performance solutions for fire safety elements of a building to be documented in accordance with the AFEG, which requires detailed assessment and documentation of performance solutions:

> "[AFEG] contains best practice for the development of fire engineering designs and includes an obligation to engage with fire authorities as part of the design process. It has been reported to us that if the IFEG was closely followed, the quality of fire engineering designs would improve and fire authorities would be consulted early on all designs involving performance solutions as part of the fire engineering design process."
>
> ***Building Confidence Report p 23***

To address this issue, the CRIS Commercial proposed that the Building Regulations be amended to require that documentation of fire safety performance solutions must include a fire engineering brief and fire engineering report prepared in accordance with the AFEG process.

Fire safety performance solutions must be prepared and documented in accordance with AFEG (CRIS Commerial)



Generally, stakeholders were supportive of the proposal but observed that since the release of the CRIS Commercial, the changes made to Part A2.2 in Volumes 1 and 2 of the NCC to mandate the use of PBDBs for all performance solutions have already addressed this issue.

In addition, the ABCB guideline for the development of PBDBs recommends consultation with fire authorities as a stakeholder.[51] Referring to the AFEG in the Building Regulations is therefore unnecessary and potentially confusing.

Several stakeholders also commented that the FES Commissioner (or DFES) does not generally support fire safety performance solutions, and that advice received from the FES Commissioner is often based on the NCC's DtS requirements, rather than the performance requirements:

> "DFES comments are often reflective of Deemed to Satisfy provisions. It should be part of the consultation process that DFES provides comment on performance solutions that align with performance criteria and do not return feedback on Deemed to Satisfy compliance requirements."
>
> ***MBA response to CRIS Commercial***

The FES Commissioner's Operational Requirements Guidelines can assist the building industry to understand both the design and submission requirements to facilitate fire brigade operations.

For example, several stakeholders stated that there are "well-worn" fire safety performance solutions in common use, for which a fire engineering brief consultation is redundant, such as a third fire hose length coverage.[52] However, the relevant Operational Requirement Guideline[53] specifically addresses the third hose length coverage, because it ***is*** a common fire engineering performance solution. The guideline explains that the increased hose length adversely affects firefighting operations by reducing water flow and pressure, which restricts firefighters' ability to safely move through a building to conduct search and rescue operations and suppress the fire. The Guideline goes on to state:

> "Furthermore, a charged (with water) 30m length of 64mm hose is heavy, (weighing more than 110kg); is inflexible; and difficult to manoeuvre. When conducting internal firefighting, a charged hose will get stuck on doorways, corners and any obstructions, therefore requiring advancing firefighters to stop and re-lay the hose or request another firefighting crew to assist. The longer the hose length, the greater the issue, with the resulting delays allowing a fire to grow in size and potentially expose trapped occupants to fatal conditions within the structure."

Stakeholder feedback did indicate that there is merit in amending the building legislation to better ensure the building owner is included in, and informed of, any fire safety performance solutions. Specifically, there should be a requirement to inform building owners of the FES Commissioner's advice and any response given by the building surveyor to that advice. This will enable a building owner to make a better-informed decision about the building's fire safety features during the design stage when it is more economical to make amendments.

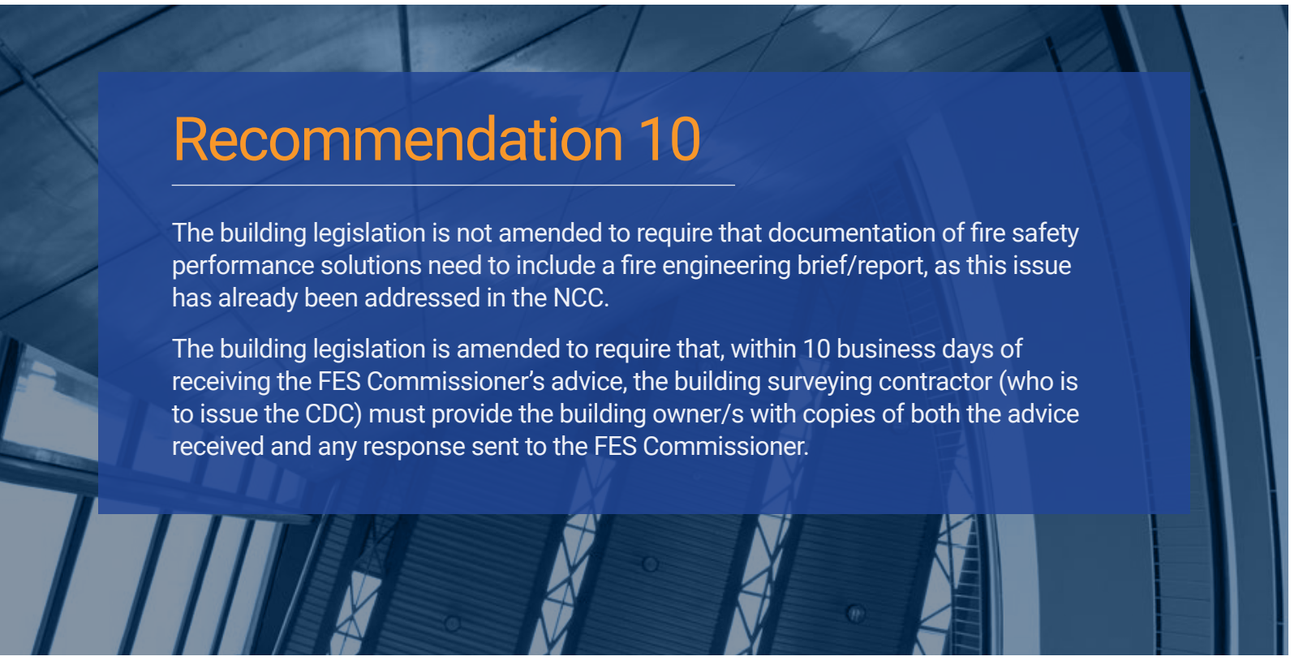
Separately, there is a broader Government policy commitment to create a consolidated fire and emergency services regulatory framework.

Such a framework may result in the transfer of the legislative provisions in the Building Regulations governing the advisory role of the FES Commissioner to consolidated fire and emergency services legislation. This will provide an opportunity to consider whether further changes are needed, including the application of penalties for not responding to the FES Commissioner's advice, and whether the FES Commissioner should be made an 'approval authority' for building approvals, similar to fire authorities in other Australian states and territories and as recommended in the national model. These changes would require policy decisions which must be determined by DFES.

51 ABCB, Performance Solution Process: Guidance Document (latest version was published in May 2022).

52 Fire hoses are 30m long. The NCC DtS provision for hydrant location allows for two hoses to be joined together, giving a radius of 70m coverage around each hydrant (60m hose length plus 10m hose stream) (see NCC Vol 1, part E1.3, and AS 2419.1, section 3). A common performance solution is to require that three hoses be joined, giving a radius of 100m coverage for each hydrant (90m hose length, plus 10m hose stream). This results in fewer hydrants being installed, which significantly affects fire brigade operations.

53 DFES, Fire and Emergency Services Commissioner's Operational Requirement Guideline: ORG 5 Hydrants and hose length.



Recommendation 10

The building legislation is not amended to require that documentation of fire safety performance solutions need to include a fire engineering brief/report, as this issue has already been addressed in the NCC.

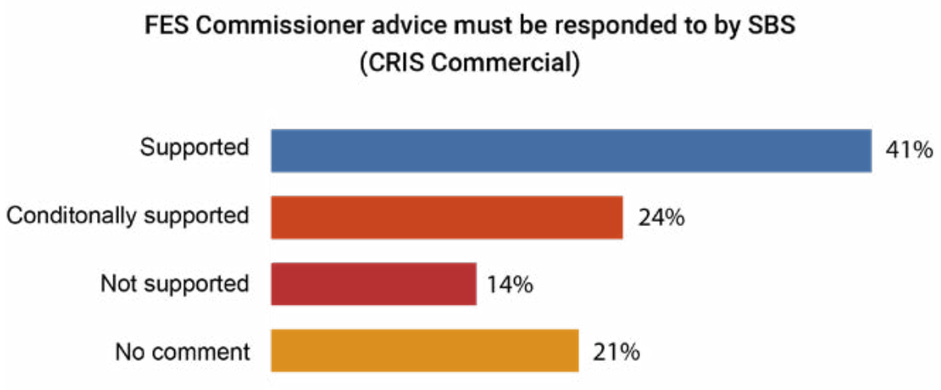
The building legislation is amended to require that, within 10 business days of receiving the FES Commissioner's advice, the building surveying contractor (who is to issue the CDC) must provide the building owner/s with copies of both the advice received and any response sent to the FES Commissioner.

FES Commissioner's advice can be sought early

The Building Regulations require that plans and specifications for most commercial buildings are to be submitted to the FES Commissioner (or DFES) at the end of the design stage for a period of not less than 15 business days before the CDC is issued by the SBS.

To encourage consultation with the FES Commissioner earlier in the design stage, the CRIS Commercial proposed to allow the FES Commissioner to issue, at any time, a certificate confirming that a building design meets operational requirements. This early engagement could exempt the design from needing to go through the required 15 business day period assessment by DFES.

Stakeholder feedback to the proposal was mixed:



Some stakeholders expressed uncertainty regarding the permitted timeframe for a building design to be submitted to DFES. However, no specific limiting timeframe was proposed, as building designers/surveyors/owners have always been encouraged to consult with DFES as early as possible during the design stage, particularly if plans and specifications are to incorporate performance solutions for fire safety elements.

If the early consultation satisfies the FES Commissioner that operational requirements will be met, then DFES may consider further consultation prior to the issue of the CDC to be redundant and not required.

Several stakeholders also raised a concern about the legal standing of any certificate issued by the FES Commissioner confirming compliance with operational requirements. They pointed out that the FES Commissioner is an advisory body, and not an approval authority, for fire safety elements in a building. Building and Energy agrees that the issue of a certificate by the FES Commissioner is not the most appropriate mechanism to be used in these circumstances.

The CRIS Commercial also posed a question for stakeholders on what, if any, time limit should be placed on early advice given by the FES Commissioner to ensure it remains current. Stakeholders pointed out that the validity of the advice is tied to the currency of the proposed firefighting equipment to be used in the building and the amendment cycle of the NCC:

> "…it is understood that equipment upgrades are reverse compatible so that existing buildings are still able to be serviced using new equipment. Any change in operational needs usually involves creating additional capacity that might reduce the provisions needed in buildings rather than the other way around. It is rare that additional protection needs are identified. In this way, the FES Commissioner's comments could be considered to be current indefinitely."
>
> ***AIBS response to CRIS Commercial***

> "…if the NCC edition used to determine the documentation compliance for the CDC is the same for the submission for DFES comments, there should not be any limit set."
>
> ***MBA response to CRIS Commercial***

To accommodate the feedback received from stakeholders on the proposal in the CRIS Commercial and encourage consultation with the FES Commissioner early in the process, the building legislation should be amended to provide that:

- If, at any point in the design process, the FES Commissioner provides written advice that the plans and specifications for the proposed commercial building meets operational requirements, no further information is required to be submitted to the FES Commissioner, unless changes are subsequently made to the plans or specifications that affect the way the building will comply with one or more of the prescribed fire safety performance requirements, being:
  - CP1 structural stability during a fire;
  - CP2 Spread of fire;
  - CP3 Spread of fire and smoke in health and residential care buildings;
  - CP5 Fire protection of service equipment;
  - CP7 Fire protection of emergency equipment;
  - CP8 Fire protection of openings and penetrations;
  - CP9 Fire brigade access;
  - DP4 Exits;
  - DP5 Fire-isolated exist;
  - DP6 Paths and travel to exist;
  - DP7 Evacuation lifts;

- EP1.3 Fire hydrants;
- EP 1.4 Automatic fire suppression systems;
- EP1.5 Fire-fighting services for buildings under construction;
- EP1.6 Fire control centres;
- EP2.1 Automatic warning for sleeping occupants;
- EP2.2 Safe evacuation routes;
- EP3.1 Stretcher facilities;
- EP4.1 Visibility in an emergency; and
- EP4.3 Emergency warning and intercom systems.

⇨ Written advice provided by the FES Commissioner must state:

- that the plans and specifications meet the fire brigade operational requirements;
- any conditions upon which the advice is given, being the fire safety elements that are incorporated into the building design at the time of giving the advice;
- that the plans and specifications are exempted from any further assessment otherwise required under regulation 18B(1), unless changes are subsequently made to the plans and specifications that affect one or more of the fire safety performance requirements; and
- the date the advice was given.

Recommendation 11

The building legislation is amended to empower the FES Commissioner to provide written advice on compliance with operational requirements, exempting any further consultation.

Early advice given by the FES Commissioner should exempt further assessment of plans and specifications required under regulation 18B(1), unless changes are made to the design which affect compliance with one or more fire safety performance requirements.

Response to FES Commissioner's advice

The Building Regulations require plans and specifications for certain types of commercial buildings to be submitted to the FES Commissioner at least 15 business days before the issue of the CDC, to allow for assessment of compliance with fire safety operational requirements.

The FES Commissioner is an advisory body, not an approval authority, and comments provided need not necessarily be incorporated. However failure to do so, depending on the circumstances, could have future implications for occupiers of the building. For example, when setting premiums for a new building, an insurance company will usually consult with DFES on the fire risk posed by the building. Buildings that omit certain fire safety features can therefore be subjected to higher insurance premiums.

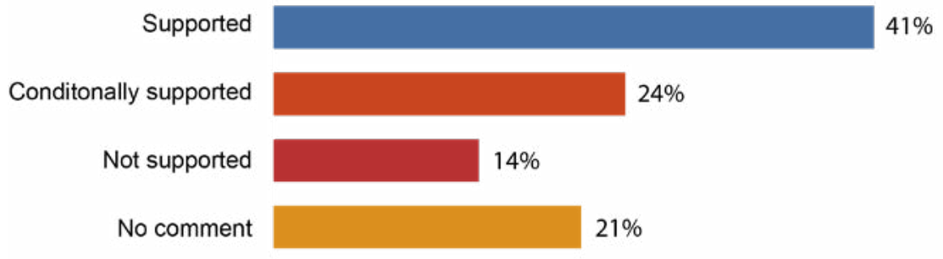
To better clarify the role of the FES Commissioner and ensure comments provided are considered by the building surveyor (and, where necessary, the broader design team, builder or building owner), the CRIS Commercial proposed two reforms to the Building Regulations:

- ⇨ to clarify that the FES Commissioner's written advice must be considered and responded to by the SBS, no matter when it is provided; and
- ⇨ to clarify the information that must be included in that response.

Many stakeholders who commented on the proposals were supportive of them, however it was evident that there were also many who misunderstood the purpose of the reforms:

FES Commissioner advice must be responded to by SBS (CRIS Commercial)

Prescribed information to be included in response to FES Commissioner (CRIS Commercial)



In particular, a number of stakeholders expressed concern that the FES Commissioner's advice is not usually being provided within 15 business days as required, and therefore the proposal could extend that timeframe indefinitely:

> "Whilst most building surveyors are responding to DFES advice after issuing the CDC, some building surveyors are not doing this as the Building Regulations are not clear on whether this is required. The proposal will clarify this. However, my concern is DFES will ignore the 15 business day requirement and provide advice whenever they like knowing DFES advice must be responded to."
>
> ***Schwanke Consulting response to CRIS Commercial***

> "Where DFES advice or guidance comes after construction has substantially commenced, there will be circumstances where it will be too late for builders to respond or remedy certain aspects of a project…accountability works both ways. Developers and builders are rightly called to account for their practices, but this accountability and limits to power must extend to government agencies so that fair, consistent and predictable regulatory practices can occur."
>
> ***Property Council response to CRIS Commercial***

> "There are statutory timeframes that need to be adhered to so there should be a legislated timeframe of when DFES provide their response prior to the submission of the building permit application."
>
> ***City of Joondalup response to CRIS Commercial***

The intent of the proposal in the CRIS Commercial was not to expand the 15 business day timeframe. Rather, its purpose would be to clarify that, if the FES Commissioner's advice arrives after the timeframe, the fact it is late cannot be cited as the only reason for it not to be considered or responded to by the SBS.

Anecdotal evidence suggests building surveyors have stated in their responses to FES Commissioner's advice that the reason it is not being followed is it was provided outside the 15 business day timeframe. This, of itself, is not considered to be a legitimate reason for disregarding advice on compliance with fire safety operational requirements. The proposal would seek to prevent this practice from occurring and encourage responses based on building standards compliance issues.

In respect of the second proposal, to prescribe the information to be included in a response by the SBS, stakeholders indicated concerns with the FES Commissioner's lack of clarity of operational requirements (noting that at the time of release of the CRIS Commercial, DFES had not published its guidelines on operational requirements).

> "It is difficult to address DFES's operational requirements when building surveyors and fire safety engineers do not know what they are as DFES will not divulge them."
>
> ***Schwanke Consulting response to CRIS Commercial***

> "Industry is currently faced with a lack of transparency with the FES Commissioner's operational requirements."
>
> ***HIA response to CRIS Commercial***

Given that the FES Commissioner has since published guidelines on fire safety operation requirements, this should make both consultation and the information to be included in any response clearer.

Based on the stakeholder feedback received, it is recommended that both proposals should be implemented. Had the intent been better understood, it is likely more stakeholders would have supported the changes.

The building legislation should therefore be amended to provide that:

- ⇨ Within 10 business days of receiving the FES Commissioner's advice in respect to plans and specification provided under Building Regulation 18B(1), the building surveyor must notify the FES Commissioner in writing of any part of the advice that is not incorporated in the plans and specifications that are specified in the CDC for the building;
- ⇨ If the FES Commissioner's advice is received before the CDC is issued, the SBS's response must detail whether each stated fire safety operational requirement is not applicable to the building or being addressed through other means (and provide details of those means); and
- ⇨ Alternatively, if the FES Commissioner's advice is received after the CDC is issued, the SBS's response must indicate the reasons for not incorporating that advice. That the advice was received after the 15 business day timeframe will not, of itself, be considered a legitimate reason.

Recommendation 12

The building legislation is amended to clarify that the FES Commissioner's advice must be considered and responded to within 10 business days of it being received, even if it is received after the CDC has been issued.

Receiving the advice after the CDC has been issued cannot be cited as a reason for not considering it.

6. Mandatory notifiable stage building inspections

Background

WA has fewer requirements than any other jurisdiction in Australia to inspect construction work for compliance with building standards. Currently, inspections are only required for swimming pool safety barriers and fire safety systems in commercial buildings. By comparison, all other Australian states and territories mandate critical stage inspections for residential buildings and, in some cases, commercial buildings.

That is not to say inspections of building work do not take place in WA. Often building owners (particularly for commercial buildings) require inspection and certification of work as a pre-condition of payment. As the building legislation does not prescribe who should undertake the inspections, these may be carried out by the project architect, contract superintendent, or other professionals.

Also, as part of issuing a CCC for a commercial building, a building surveyor is likely to require inspections to be carried out to be satisfied that the constructed building complies with the applicable standards and approved plans.

For residential buildings, a few local governments inspect components of the new build, notably concrete slabs and wall framing.

While these inspections provide some oversight, their application is inconsistent. Also, as they are often contractually-based (not independent) inspections, they are focused on ensuring contractual conditions are met, rather than compliance with building standards.

This allows for non-compliance to be undetected until the building is complete, when owners are then left to remedy NCC defects through dispute resolution mechanisms, such as through Building and Energy's complaints process or the courts.

Inspections at critical stages of the building process ensures a level of independent oversight of building compliance, reduces the risks to owners and builders of costly rectification works and safeguards the health and safety of all building users.

The Building Confidence Report cited evidence of serious building failures in recently constructed buildings caused by a lack of oversight during the building process to detect non-compliance, lack of practitioner competence and inadequate understanding and enforcement of the NCC. The report recommended that all jurisdictions mandate inspections at defined 'notifiable' stages of the building work proportionate to risk and building type, and provide statutory-based guidance on how inspections are to be carried out:

> "Inspection stages need to be proportionate to risk. They should be aligned to checks of work involving structural elements and safety. They should also cover work which would be difficult to view at a later stage, such as in situ reinforcement in footings and framework.
>
> All on-site inspections should be carried out by, or under the supervision of, registered building surveyors or inspectors or by, or under the supervision of, registered engineers for prescribed types of work."
>
> ***Building Confidence Report p 34***

Review proposals

Both the CRIS Residential and CRIS Commercial proposed amending the Building Act to mandate notifiable stage inspections for new buildings.

Feedback was sought on both:

- ⇨ the inspection points to be prescribed for the different classes of buildings; and
- ⇨ whether inspections should be managed by the permit authority or private building surveyors.

Mandatory inspections at notifiable stages of the building process

The overwhelming majority of stakeholder feedback received for both the CRIS Residential and CRIS Commercial supported introducing mandatory notifiable stage inspections for new buildings. It is almost universally acknowledged that inspecting building work is an effective means of improving compliance and lifting industry standards of work:

> "The inclusion of mandatory inspections is supported…It is likely this option [inspections to be carried out by building surveyor who signed CDC] can ensure greater accountability of all parties involved in the process and further, very likely to improve consumer confidence by aligning the process and practices with the public expectations of them"
>
> ***MBA response to CRIS Residential***

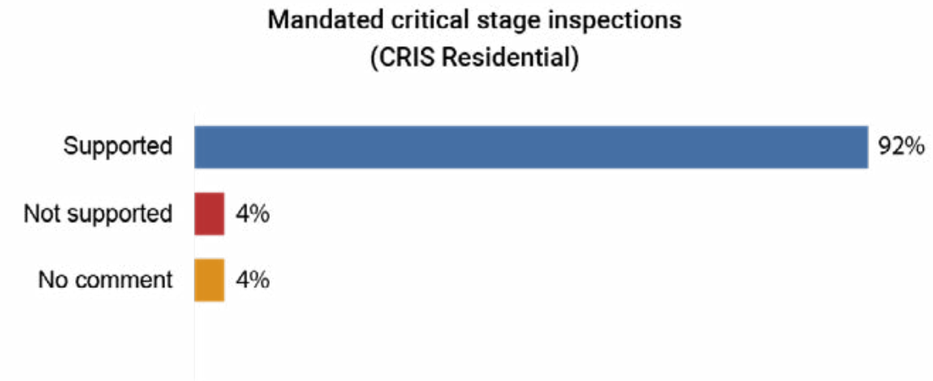
> "…Unless there are mandatory inspections and enforcement roles provided in the Regulations, then simply put, the cheapest building certifier will be engaged by the project manager and with full recognition that the certifier has no powers of enforcement…This is exactly what currently occurs where non mandatory inspections or site inspections are removed to reduce costs in order to win the project…To achieve quality compliance buildings will require stronger legislation to compel registered certification contractors to undertake minimum inspections."
>
> ***JMG Building Surveyors response to CRIS Commercial***

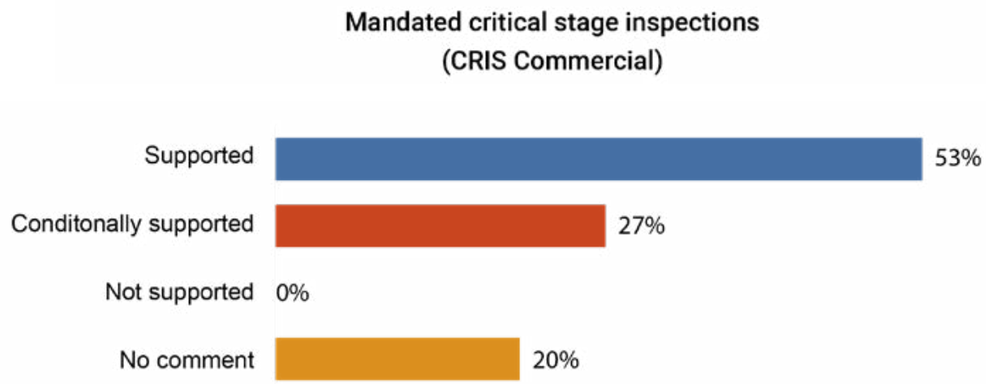
Over 90 percent of stakeholders who responded to the CRIS Residential supported inspections at notifiable stages of the building process, with many nominating four stages, with the ability for the building permit to specify more.

Comparatively, 53 percent of stakeholders who responded to the CRIS Commercial supported inspections outright. No stakeholder opposed inspections for commercial buildings.

The higher level of support for inspections of residential buildings is not surprising given a number of the stakeholders who responded to the CRIS Residential were consumers who had experienced building a house. For most owners, building a house is the most complex investment they will make in their lifetime and they are likely to have a greater interest in the compliance of the work and the building's longevity, than perhaps a developer of a commercial building.

The high level of outright support for inspection of residential construction work is also indicative of the comparatively straightforward, uniform nature of Class 1a single residential buildings and their inspections. Single residential buildings are all broadly similar, and the critical points for inspection are the same in every house. Commercial buildings, on the other hand, vary hugely and their inspections are equally diverse, therefore subject to a much greater degree of debate. This was reflected in the stakeholder feedback received, including the level of conditional support.





Consumer feedback on inspections for residential buildings was also sought through social media. Building and Energy received over 350 responses to a poll on the Consumer Protection Facebook page, with the vast majority supporting inspections. Over half of respondents (mistakenly) thought that inspections by local governments were already required under the building legislation.

Based on the stakeholder feedback, the introduction of mandatory notifiable stage inspections is recommended for all new residential and commercial buildings in WA.

This change will aim to:

- ⇨ ensure buildings are constructed in accordance with the relevant approvals, plans, specifications and applicable building standards, and are suitable for occupation and use;
- ⇨ detect non-compliance and rectify defects during construction, resulting in lower rectification costs for buildings owners; and
- ⇨ focus on NCC compliance, with broader contractual issues of quality of workmanship and contractual compliance being out-of-scope.

The requirement for mandatory notifiable stage inspections should not apply to renovations, alterations or extensions of residential and commercial buildings. This could be considered at a later date once the system of inspections is in place and well understood. Class 10 buildings will also not be included in the initial reform.

Further, as set out Recommendation 18 (see further below), the requirement for notifiable stage inspection should be phased in over time to allow industry and local government to adapt. Focus should be placed on high-risk buildings, including apartment and commercial buildings, before further consideration is given to applying the requirements to new residential buildings.

Recommendation 13

The building legislation is amended to mandate inspections, overseen by the SBS, at critical notifiable stages of construction for new buildings in WA.

The requirement should not apply to alterations, additions and repairs, or new Class 10 buildings.

Oversight and management of inspections by the SBS

As previously explained, for residential buildings (excluding Class 1b buildings), the building legislation provides two pathways to obtain a building permit – certified or uncertified.

The major difference between the certified and uncertified pathways is that, for a certified application, a private building surveying contractor engaged by the builder or the owner assesses the building plans and specifications for compliance with the applicable building standards and issues the CDC. The CDC then forms part of the application for the building permit to the permit authority.

For an uncertified application, the permit authority must arrange for a building surveyor to assess the building plans and specifications for compliance with the applicable standards and issue the CDC.

Class 1b buildings and commercial buildings must be privately certified. Once construction of a commercial building is complete, a building surveyor (engaged by the builder or owner) must then issue a CCC before an application for an occupancy permit authorising the use of the building is made to the permit authority.

Local governments may offer a private certification service for commercial buildings.

Given this partially privatised model for the grant of building approvals – part private sector, part local government – both the CRIS Residential and CRIS Commercial sought feedback on options for inspections to be overseen by:

- ⇨ only a building surveyor engaged by the permit authority (local government) on their behalf; or
- ⇨ the building surveying contractor who issued the CDC, the building surveying contractor named on the building permit or the building surveyor engaged by the permit authority if an uncertified application (the SBS).

Both CRISs identified the potential for conflicts of interest to be reduced by requiring the permit authority (local government) to oversee the notifiable stage inspections.

While some stakeholders supported having the building surveyor engaged by the permit authority overseeing the inspections to reduce perceived conflicts of interest, others identified major disadvantages to this option. These included:

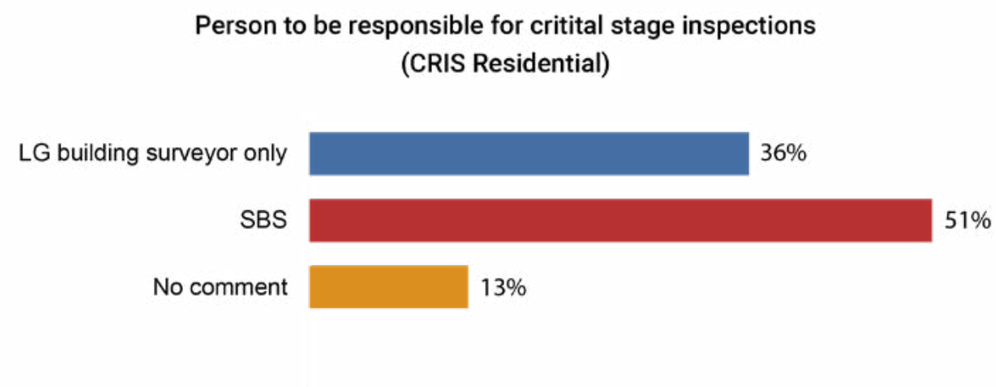
- ⇨ limited capacity within local governments, particularly in regional areas, to perform all inspections, resulting in substantial construction delays;
- ⇨ lack of familiarity with the building work and design, if the building surveyor who carries out or manages the inspections is not the SBS; and
- ⇨ the potential for inconsistencies to arise in the process and manner of inspections across various permit authorities.

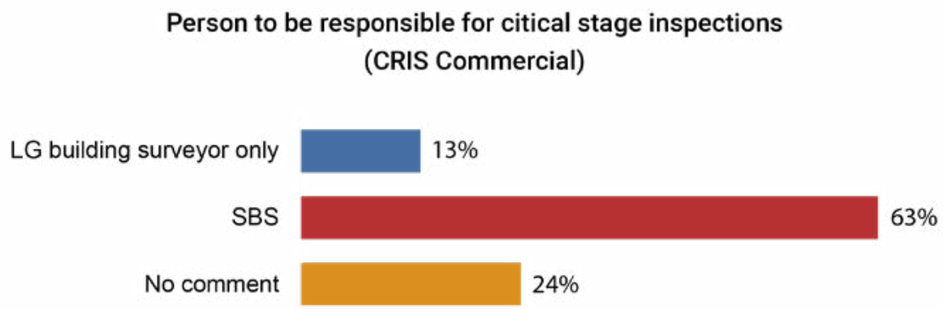
> "…It is considered that the registered building surveyor who signed the Certificate of Design Compliance (CDC) be the responsible person undertaking the inspections during the build project…this option can ensure greater accountability for all parties involved in the process."
>
> ***MBWA response to CRIS Residential***

> "…The building certifier signing the CDC should be provided with the discretion to either carry out the inspections themselves or subcontract to a third party (which could include the LGA [local government]. I am not convinced that all LGA building surveyors have retained appropriate skills to carry out inspections."
>
> ***Milestone Certifiers response to CRIS Residential***

> "…If it [inspections by private building surveyor] is administered correctly the risks associated with conflict of interest can be mitigated. It will improve the level of compliance within commercial buildings, and should have less of a negative impact on the construction timeframes."
>
> ***City of Perth response to CRIS Commercial***

As such, stakeholder feedback, particularly on the CRIS Commercial, expressed a preference for the SBS to be responsible for managing the carrying out of notifiable stage inspections:





The preference was also expressed by some local government sector stakeholders, including WALGA, City of Joondalup and the City of Vincent.

These stakeholders acknowledged that following the commencement of the building legislation in 2012, many building surveying practitioners left local governments to work in the private sector. As such, permit authorities would likely struggle to regain skilled staff to take on responsibility for all inspections.

While it is possible the capacity could be regained through charging adequate fees to cover the anticipated costs of inspections, given there are 139 local governments in WA, it is likely to take considerable time. Where capacity issues cannot be overcome, this will inevitably lead to delays in carrying out critical stage inspections and potentially lead to increased construction costs.

> "..The Independent Building Surveyor who signed the CDC should be responsible for undertaking the inspections, therefore Local Government would not be solely responsible for the mandatory inspections."
>
> ***WALGA response to CRIS Residential***

> "..The responsibility for inspections should rest with the building surveyor, company or LGA [local government authority] that issued the relevant CDC. This will essentially share the load [across] both LGAs and private industry and offer private building surveyors an additional income source from inspections and surety that what they have certified is built how they certified."
>
> ***Shire of Manjimup response to CRIS Residential***

Accordingly, the building legislation should be amended to provide that the SBS is responsible for overseeing the carrying out of critical stage inspections.

For residential buildings, the SBS is either the building surveying contractor named on the building permit or the local government permit authority that issued the CDC.

The local government permit authority must employ a competent, authorised person to oversee the critical stage inspection on their behalf, or subcontract appropriately qualified people.

For commercial buildings, the SBS is the building surveying contractor named on the building permit.

The SBS must ensure inspections are carried out by either a building surveying practitioner of the appropriate level and/or a 'competent person' (see below) who has undertaken a course approved by the Building Commissioner.

Given the limited experience of local building industry participants in performing inspections, training will be developed for all practitioners.

The SBS being responsible for carrying out inspections has a number of other advantages, including:

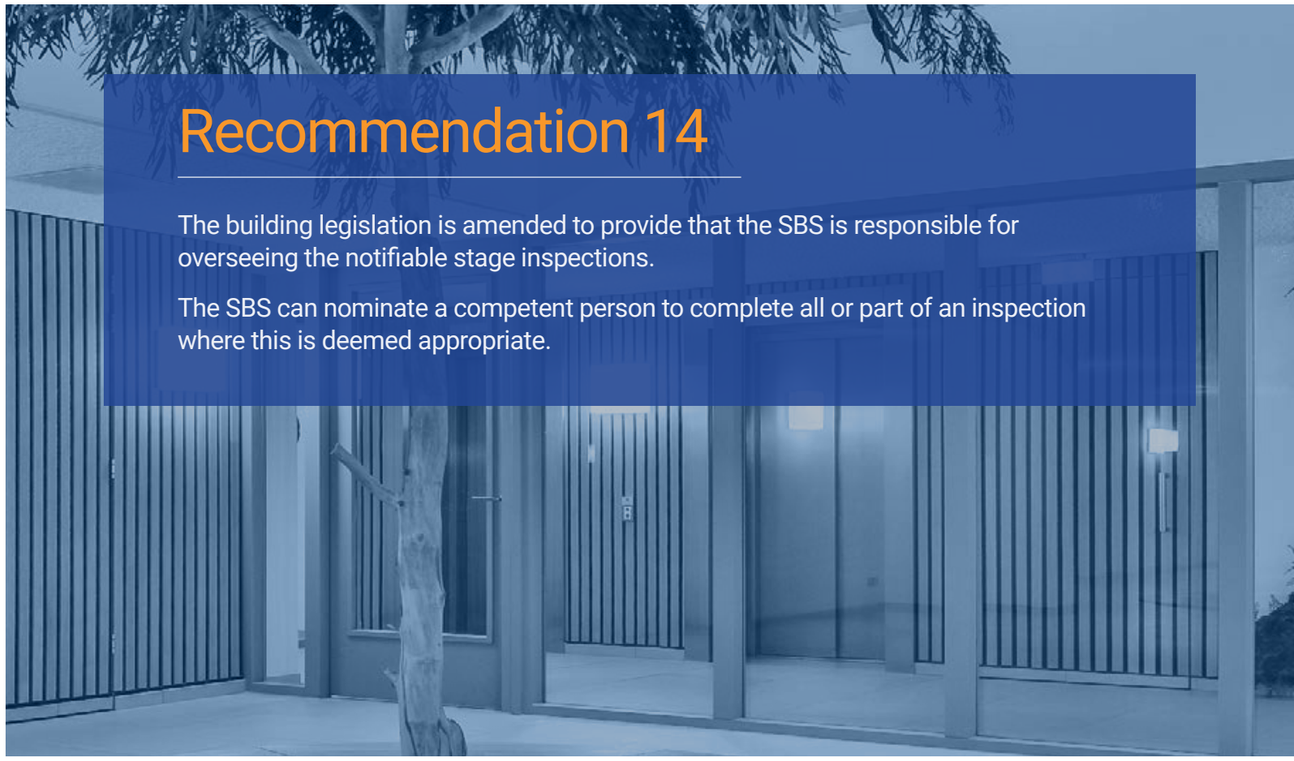
- ⇨ aligning more closely with partially privatised model for building approvals, so the administrative burden, regulatory compliance costs and disruption to construction timeframes is minimised;
- ⇨ aligning with the ABCB's national model for implementing the Building Confidence Report recommendation;[54] and
- ⇨ inspections are being overseen by the building surveyor (and other competent persons) most familiar with the approved plans and specifications.

To safeguard against actual or perceived conflicts of interest, other recommended reforms in this DRIS will need to be implemented, including:

- ⇨ requiring the SBS to be engaged by the building owner and named on the building permit (refer to Chapter 4 of this DRIS);
- ⇨ prescribing a code of conduct, and introducing a code of practice, that building surveyors must comply with when performing building surveying work (refer to Chapter 4); and
- ⇨ requiring notifiable stage inspections to be carried out in accordance with Commissioner's Directions and overarching public interest obligations (refer to sections 4 and 10 of this DRIS).

The ability for permit authorities to manage notifiable stage inspections for uncertified applications will also need to be supported by authorising inspection fees to be charged at the time of the application for the building permit, at a rate commensurate with the reasonable costs of the permit authority.

Permit authorities will also be empowered to subcontract the responsibility for inspections to a private building surveyor or other 'competent person'. This is particularly important given the challenges faced by regional local government permit authorities in attracting and retaining suitably skilled staff, and to enable smaller permit authorities to manage staffing requirements around more irregular work flows.



Recommendation 14

The building legislation is amended to provide that the SBS is responsible for overseeing the notifiable stage inspections.

The SBS can nominate a competent person to complete all or part of an inspection where this is deemed appropriate.

54 See generally; ABCB, Mandatory inspections: Model guidance on BCR recommendation 18 (December 2021).

Critical notifiable stages and processes to document and re-inspect works

Most other Australian states and territories prescribe when building work is to be inspected by a building surveyor, known as 'notifiable stages', and processes for how inspections are to be performed and documented.

Only WA and South Australia do not currently prescribe notifiable stage inspections. In South Australia, local governments inspect a list of minimum building elements for new residential and commercial buildings at stipulated sampling rates. The minimum sampling rates are 66 percent of new residential buildings and 90 percent of new commercial buildings. As there are no prescribed notifiable stages ***per se***, inspections of the minimum building elements may be carried out once or at various points during the construction process.

The CRIS Residential and CRIS Commercial both sought stakeholder feedback on the minimum number and type of notifiable stages for residential and commercial buildings.

As buildings vary in the way they are designed and constructed, prescribing a minimum number of notifiable stages based on the building elements and the construction process will ensure a risk-based approach is taken.

Residential buildings – notifiable stages

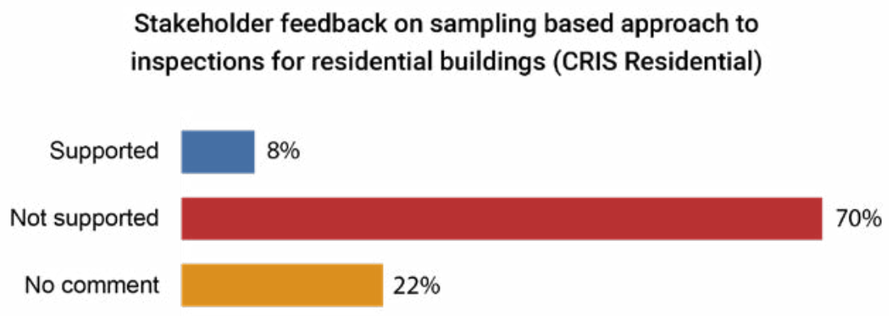
The CRIS Residential proposed four notifiable stages for each residential building, based on the four stages identified in the Building Confidence Report. Once the relevant stage is reached, the builder would notify the SBS so that they can carry out or make arrangements for the inspection to occur.

The majority of stakeholders supported prescribing four notifiable stages, with some suggesting various other stages. A number of stakeholders commented that a notifiable stage for fire separation walls (as recommended in the Building Confidence Report) was not appropriate for single residential buildings in WA (BCA Class 1a).

Some stakeholders also identified a need for a process prescribing how inspections at notifiable stages would work. This is important because, unlike commercial buildings, residential buildings do not require an occupancy permit once practical completion and hand-over is reached. A prescribed process would ensure that notifiable stages are not missed, builders and the SBS are clear on their duties, and building owners can have confidence that the required inspections had been completed:

> "Implementation of mandatory inspections should be undertaken by properly qualified and independent personnel, at the following stages of the construction process: (1) Foundations and footings; (2) Slab/reinforcement of bearers/joists; (3) Waterproofing; (4) Roof; and (5) Occupancy or Final completion."
>
> ***WALGA response to CRIS Residential***

Feedback was also sought on whether stakeholders support a 'sampling' based approach to inspections (similar to South Australia). The vast majority of stakeholders did not support it:



Only the HIA was particularly supportive of other methods of inspection such as 'sampling' or a 'risk-based' approach being considered:

> "...there are a range of alternative models for the proposed mandatory inspections such as: (1) Risk based approach, targeted to a quota of buildings... (2) Mandatory notification stage approach...(3) A percentage of work approach, linked to mandatory notification as opposed to 100% of new work...(4) Targeted approach for inspections of known elements where there are reported instances of failure..."
>
> ***HIA response to CRIS Residential***

While the methods identified by the HIA would reduce the number of inspections required and, by extension, the costs to building owners, the ability actually detect non-compliance with applicable standards and plans/specifications and therefore avoid costly rectification works would be greatly diminished.

Further, few owners would see value in paying for inspections only for the building surveyor to decide (based on past knowledge of the particular builder) the building stages to be inspected, if any. It is equally unlikely that building surveyors would have the necessary 'bird's eye view' of the industry to be able to correctly identify which builders, projects and stages to target for inspection. Such approaches are only viable where, like in South Australia, local governments are responsible for carrying out all inspections in their geographic area.

It would also result in shifting the focus of an inspection from auditing the compliance of the building work at a specific point of the construction process, to auditing the compliance of the person undertaking the work (i.e. the builder). This is not the role of the SBS.

Carrying out general and specific sampling audits of builders is a function that is already and will continue to be performed by Building and Energy. Local Governments will also retain the discretion to perform their own sampling audits to target specific areas of concern that are over and above inspections by the SBS.

In light of the stakeholder feedback received, it is recommended that the building legislation is amended to prescribe four notifiable stages for all new residential buildings.

These are:

- ⇨ footings stage – after the excavation of the foundation material but before footings are poured;
- ⇨ slab stage – after the placement of the formwork and reinforcing but before the concrete slab is poured;
- ⇨ framing stage – for timber or metal construction, after completion of the wall and roof framing but before the structure is covered up by cladding or linings, and for masonry construction (if the wall cavities are to be filled) before the wall cavities are filled; and
- ⇨ final stage – once the building work is complete (including bushfire compliance where applicable) but before the notice of completion is submitted.

The specific elements to be inspected as part of each notifiable stage are to be dealt with through enforceable directions issued by the Building Commissioner (discussed further below). Notably, there must be flexibility for some construction elements (e.g. waterproofing of wet areas) to be inspected by other competent persons on behalf of the SBS.

A prescribed process for inspections, including the necessary documentation, will be required to ensure clarity for the SBS, builders and permit authorities. The major form of documentation will be an 'inspection report' issued by the SBS after the inspection at each notifiable stage.

Where non-compliance of a particular inspection element is detected by the SBS, the inspection report will include a certification of the compliant elements and directions as to the process for the non-compliant elements to be made compliant.

The process for recording inspections will be largely consistent for both residential and commercial buildings, being that:

- ⇨ for Class 1a residential buildings, inspection reports will need to accompany the NoC;
- ⇨ for Class 1b residential buildings and all commercial buildings, copies of the inspection reports will need to be included in the occupancy permit application submitted to the permit authority, and the CCC will need to include a statement that an inspection report for each notifiable stage, indicating compliance, has been achieved.

Details of the proposed process is set out further below.

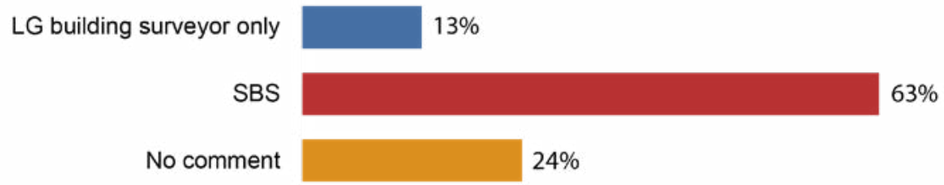
Commercial buildings – notifiable stages

The CRIS Commercial also sought feedback on the preferred approach to inspections for commercial buildings.

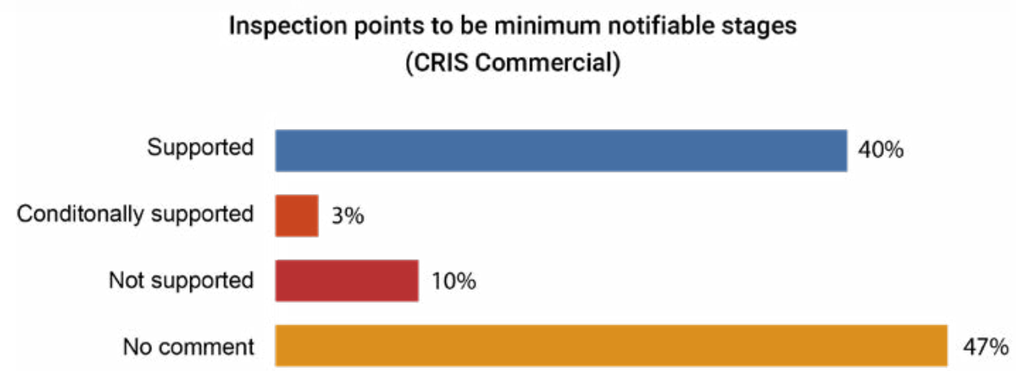
Two potential models were proposed: having inspections undertaken by the permit authority or by a private building surveyor (as the SBS) and design engineers. Both options incorporated prescribed notifiable inspection stages, including sample sizes for each element to be inspected in each building, supplemented by project-specific, risk-based inspections to be identified by the SBS.

Most stakeholders supported a hybrid approach to identify inspection points, where minimum notifiable stages of sampled elements would be prescribed, but the SBS would, in consultation with the design team, have the ability to specify other notifiable stages based on particular design risk. Few stakeholders supported this role being performed by the permit authority only.

Person to be responsible for citical stage inspections (CRIS Commercial)



Inspection points to be minimum notifiable stages (CRIS Commercial)



Stakeholder comments included:

> "...there should be a regulated core of mandatory inspections that the assessing building surveyor will be expected to augment with additional mandatory inspections."
>
> ***AIBS response to CRIS Commercial***

> "...the number and type of inspections should be prescribed to ensure a level playing field prior to engagement."
>
> ***MODUS Design response to CRIS Commercial***

> "...Inspections must be made of any of the prescribed aspects of construction plus any other which a building surveyor determines are appropriate for a particular project."
>
> ***Confidential response to CRIS Commercial***

The hybrid approach supported by stakeholders aligns with the national model for inspections[55], whereby minimum notifiable stages are to be prescribed, but the SBS can specify additional notifiable stages, depending on a building's complexity.

Based on this feedback, it is recommended that the building legislation is amended to prescribe notifiable stages for inspections of commercial buildings. The SBS will be empowered to specify on the CDC additional notifiable stages and inspection elements, as well as new sampling conditions for each additional stage, including larger sample sizes.

Additional notifiable stages and sampling conditions would be based on a risk assessment of building complexity and are expected to be developed in consultation with the design team (particularly the design engineers) and the building owner (NB: registered engineers will be empowered to issue technical certificates and may, as a condition on a technical certificate, specify inspection stages for their design).

All notifiable inspection stages, including any sampling conditions, would also be required to be listed on the CDC and building permit.

The following mandatory notifiable stages are to be prescribed in the building legislation for commercial buildings:

- ⇨ For all commercial buildings:
  - ↳ after the commencement of the excavation, but prior the placement of any membranes or concrete for any footing;
  - ↳ after installation of 30 percent of reinforcing steelwork for footings/slabs and other structural elements, and prior to pouring of concrete;
  - ↳ after installation of 30 percent of each type of structural framework or structural joint, but prior to enclosing, covering or otherwise concealing from inspection;
  - ↳ fire protection at service penetrations and openings to building elements that are required to resist fire or smoke spread at least one of each type of protection method for each type of service per storey of the building;
  - ↳ prior to covering any underground service connections (e.g. stormwater drainage, sewer etc.);
  - ↳ post completion of all building work, but prior to issuing any NoC or CCC; and
  - ↳ fire safety system testing (as per existing requirement in the Building Regulations).
- ⇨ Over time additional notifiable stages for commercial buildings would be prescribed to include
  - ↳ For Classes 2, 3 or 4 commercial buildings:
    - Prior to enclosing, covering or otherwise concealing, the junction of any internal fire-resisting construction that forms part of the construction bounding a sole occupancy unit, the fire rated elements of 20 percent of sole occupancy units on each storey of the building;

55 ABCB, Mandatory inspections: Model guidance on BCR recommendation 18 (December 2021)

- Prior to enclosing, covering or otherwise concealing, 20 percent of external waterproof membranes, flashings, sarkings or like materials forming part of the weatherproofing elements of the building; and
- Prior to enclosing, covering or otherwise concealing, 20 percent of rooms with sanitary fixtures requiring waterproofing membranes and water resistant substrates on each storey of the building.

For Classes 5, 6, 7, 8 or 9 commercial buildings:

- Prior to enclosing, covering or otherwise concealing, the junction of any internal fire-resisting construction that forms part of the construction bounding a sole occupancy unit, the fire rated elements of 20 percent of sole occupancy units on each storey of the building.

Subject to an assessment of the risk and complexity of the commercial building (including certain design features), the SBS should also have the discretion to specify additional notifiable stages on the CDC. This decision would be made in accordance with a Direction issued by the Building Commissioner and in consultation with the building owner and builder's design team, but could include inspection of:

- basement foundations, slabs, columns and walls;
- lift pits;
- complex mechanical ventilation systems;
- on-site installation of off-site manufactured or prefabricated components; and
- installation of external cladding to the façade.

Process for notifiable stage inspections

To ensure there is clear process and delineation of the responsibilities of various parties, the building legislation should be amended to incorporate the following process for notifiable stage inspections:

- The SBS is to specify in the CDC the notifiable stage inspections that are to be carried out as prescribed by the building legislation, or as otherwise specified.
- For commercial buildings only, the SBS may specify additional notifiable stage inspections based on consultation with the design team, or based on a risk assessment performed in accordance with the Building Commissioner's direction.
- For residential buildings, the Building Commissioner will issue a Direction identifying high-risk features that will require additional inspection points if present in a Class 1 building (e.g. a lift).
- The building permit is then to be issued with the condition that inspections be carried out as specified by the SBS in the CDC. The builder named on the building permit is responsible for coordinating and ensuring the SBS is notified at each stage and can access the site during construction.
- When the notifiable stage is reached, the builder named on the building permit (including where that person is an owner-builder) is responsible for giving the SBS a Notice for Inspection. The Notice for Inspection must be in writing or oral (if agreed between the SBS and builder).
- Within two business days of receiving the Notice of Inspection, or such greater period agreed with the builder, the SBS must arrange for an inspection to be carried out.
- Failure to carry out an inspection within the regulated period will be an offence and attract a penalty.
- If the SBS does not arrange for an inspection to be carried out within the required, or agreed, timeframe, then:
  - The builder must notify the Building Commissioner, via the approved form; and
  - The owner will be entitled to recover any fees paid up-front for the inspection from the SBS.
- The SBS must arrange for a building surveying practitioner of the appropriate level to carry out the inspection or otherwise engage a 'competent person' to conduct all or part of the inspection.
- The SBS (or practitioner/competent person on their behalf) can request any relevant documents be supplied either before, during or after the inspection (e.g. detailed design documentation, shop drawings, material or product datasheets, certificates or reports).
- The builder must not carry out further construction work to the next notifiable stage once the Notice of Inspection has been given and until directed to continue construction by the SBS.
- The SBS is not precluded from inspecting other elements of the building work during any particular notifiable stage.
- The SBS must ensure the inspection is carried out in accordance with Building Commissioner's directions and prepare and sign a written inspection report within 5 business days of the inspection (unless a longer time is agreed with the builder), with copies given to the builder and the owner for retaining.
- If the work inspected is determined to be satisfactory, the inspection report must be signed and detail –
  - the date of the inspection;
  - who completed the inspection;
  - details of the site (address) and relevant building permit;
  - the notifiable stage;
  - the elements inspected;
  - the compliance of the elements inspected with the approved plans and specifications and applicable building standards;
  - any detailed design documentation, material or product datasheets, test certificates, technical certificates, reports, information or Certificates of Compliance that were sourced and relied upon; and
  - directions to proceed to the next notifiable stage.
- The work will be satisfactory where, in the opinion of the SBS, the elements inspected comply with the building permit (and the plans and specifications) and applicable building standards.
- The SBS must give a verbal direction for work to proceed to the next notifiable stage prior to the issue of the written inspection report.
- If the work inspected is determined to be unsatisfactory, the report should include the following information:
  - the elements inspected that do not comply;
  - the work required to ensure the elements comply;
  - the timeframe(s) within which this work must be completed; and
  - directions in respect of the specific notifiable stage, including if:
    - a re-inspection is required before construction can progress any further;
    - further documentation is required to demonstrate compliance of any specific element (e.g. material or product datasheets, test certificates, technical certificates);

- a formal variation to the building permit and approved plans/specifications is required to be documented and/or approved;
- construction work can proceed subject to any conditions (e.g. a particular element needs to be rectified).

⇨ The work will be unsatisfactory where, in the opinion of the SBS:

↳ the elements in the notifiable stage are incomplete or unable to be inspected at the time of the inspection but they will be covered and unable to be inspected at a later notifiable stage;

↳ there is substantial non-compliance with the approved plans and specifications; or

↳ there is non-compliance with the applicable standards that, if not rectified, will adversely affect the health, safety or amenity of the occupants of the building.

⇨ The builder must comply with the directions contained in the inspection report, and where a re-inspection of elements of the building work is required, notify the SBS to arrange the re-inspection. The builder is to be liable for any additional costs (and is to be precluded from recovering these costs from the owner).

⇨ Where the SBS becomes aware the builder has failed to comply with the directions within the timeframe stated in the inspection report, and no extension period has been agreed upon, they must refer the matter to the permit authority for consideration of a building order.

⇨ Failure to issue the Notice for Inspection to the SBS will be an offence and attract a penalty.

⇨ If the builder fails to issue a Notice for Inspection to the SBS for a notifiable stage and continues building work to the next notifiable stage:

↳ The SBS may inspect the particular element(s) as part of the next notifiable stage and/or direct the builder to test, cut open, obtain a report or otherwise uncover the element(s) in order for the element to be inspected. If this is not possible, the SBS may direct the builder to provide evidence that the element of building work that was to be inspected complies (e.g. via photos, expert reports or statements).

↳ The SBS must notify the Building Commissioner, via an approved form, of the builder's failure to issue a Notice for Inspection.

↳ The CCC and NoC must state which inspection(s) were missed.

⇨ For a residential building, the builder must include all satisfactory inspection reports with the NoC when it is submitted to the permit authority. The builder will be required to declare in the NoC that a satisfactory inspection report for each notifiable stage has been received.

⇨ For a commercial building, the CCC will be required to include a statement that an inspection report for each notifiable stage indicating compliance has been received and a copy of all inspection reports must be included in the occupancy permit application submitted to the permit authority.

In addition to this process, the building legislation should be amended to:

⇨ impose substantial fine penalties (including daily penalties) for not giving an NoC to a permit authority, to remove any financial incentive for ignoring the requirement for notifiable stage inspections; and

⇨ make clear that an inspection report cannot be used to indicate that the whole of the building or specific building elements comply with the approved plans/specification and applicable standards.

Notifiable stage inspections are an audit of building work at a particular point of the construction process. It is not possible or appropriate for an inspection report to be relied upon by an owner as a statement of compliance of all building work, nor will the inspection reports address contractual standards of workmanship.

Recommendation 15

The building legislation is amended to strengthen compliance with building standards by prescribing:

⇨ Mandatory notifiable stages to inspect building work of new residential and commercial buildings and a detailed process for notification, inspection, documentation and, if necessary, reinspection.

⇨ For residential buildings, four mandatory notifiable stages are to be prescribed, with additional inspections for high-risk features, such as lifts, to be undertaken in accordance with the Building Commissioner's Direction.

⇨ For commercial buildings, several mandatory notifiable stages are to be prescribed with some to be performed using a sampling approach and the SBS to have discretion to specify additional notifiable stages based upon a risk assessment.

Ability for the SBS to nominate a 'competent person'

In response to both the CRIS Residential and CRIS Commercial, a number of stakeholders suggested that the SBS, including its building surveying practitioner employees or supervisors, will not have the necessary competence and training to inspect all elements of a notifiable stage (e.g. complex structural framework, floating slabs or façade cladding), and also that construction of certain building elements may occur between the prescribed minimum notifiable stages (e.g. waterproofing of wet areas in residential buildings).

It was suggested that the SBS be allowed to nominate other competent professionals to support them.

The competent persons would be responsible for inspecting some or all elements in a notifiable stage. For commercial buildings, this would likely include the engineers responsible for preparing the plans and specifications, who are best-placed to inspect critical design aspects and review any variations to the design.

> "Whilst all inspections must be undertaken by the assessing building surveyor, for complex work or in circumstances where personal attendance is inefficient, persons who the assessing building surveyor believes are competent and appropriately capable of assisting the building surveyor may also undertake mandatory inspections at the direction of the building surveyor."
>
> ***AIBS response to CRIS Commercial***

> "We maintain our concern that the effectiveness of inspections is synonymous with the skills, expertise and knowledge of the inspector...not all current building surveyors will have the right skills, expertise and knowledge to inspect all relevant high-risk design elements. However, there will be design practitioners who do have that experience"
>
> ***Consult Australia response to CRIS Commercial***

> "…Building surveyors are generalists who may not possess specialised expertise required to assess all products, designs or building areas during inspection."
>
> ***Lighting Council Australia response to CRIS Commercial***

> "…HIA considers that if the inspections are introduced, or an alternative inspection model is chosen…the inspections should be able to [be] undertaken by a 'competent person', such as the building surveyor, an engineer, or other appropriately skilled person, including a builder or installer."
>
> ***HIA response to CRIS Residential***

The feedback received from stakeholders is well-founded and valid. While the SBS is best placed to oversee and manage notifiable stage inspections, often they will need the expertise of other professionals to be satisfied that some or all of the inspected elements of a notifiable stage comply with approved plans and applicable standards.

It follows that, when receiving this advice, the SBS should have the confidence that the professional is appropriately skilled, registered (if applicable), and accountable for any errors. As the MBA stated:

> "…Clear minimum competencies must be established."
>
> ***MBAWA response to CRIS Residential***

In regional areas the ability to engage competent persons, particularly where the SBS is acting for the permit authority, will be critical.

The geographic size of local government areas in regional WA and the difficulties associated with attracting appropriately qualified professionals, means competent persons will be required to ensure there are enough people available to complete notifiable stage inspections.

Accordingly, it is recommended the building legislation is amended to provide that:

- The SBS contractor must not undertake to carry out inspections if not reasonably satisfied that its building surveying practitioners are competent to do so.
- The SBS may nominate a person, or class of person, as competent for the purposes of assisting in the carrying out of a notifiable stage inspection. The SBS would not be responsible for the payment of the competent person. Rather, the person nominated would either be part of the builder/owner's design team, or otherwise engaged separately by the builder/owner.
- A competent person may be engaged to inspect all of the elements of the notifiable stage or only particular elements of the notifiable stage.
- A competent person, or class of person, can only be nominated by the SBS prior to the inspection (i.e. they cannot be retrospectively nominated, and then be determined as competent).
- A competent person is a person who:
  - is assessed by the SBS as being competent, having regard to the person's experience, qualifications, skills and in accordance with Building Commissioner's Directions (if any);
  - if required, is registered in the appropriate class and level; or
  - is accredited under an approved accreditation scheme.
- A competent person can include an officer employed or subcontracted by a permit authority. For example, if the SBS is a private building surveying contractor they can nominate an authorised person employed by a local government as a competent person.
- A competent class of person is a registered class of person that:
  - Is defined by a class and/or level of registration under the Registration Act; and
  - Is assessed by the SBS as being competent to undertake the specific inspection, or element of an inspection, in accordance with the Building Commissioner's Directions (if any).
- Only a registered building engineering practitioner, structural (a reform being progressed under Stage 1 of the review of the building regulatory framework) can be nominated to inspect structural reinforcement and structural framework in commercial buildings.
- A competent person must be independent of the construction work (i.e. they cannot be the building contractor who carried out the building work for the particular notifiable stage or element to be inspected, or an employee). The only exception is for the inspection of waterproofing in wet areas prior to covering in Class 1 residential buildings, which may be carried out by the builder and/or nominated supervisor. In some regional areas, the Building Commissioner's Directions will allow the builder to assist the SBS carry out the inspection through the taking of photographs or video evidence of the elements to be inspected.
- Where a competent person has been nominated by the SBS, that person must seek and obtain instructions before carrying out the inspection.
- Except for local government officers, a competent person cannot delegate their responsibilities to another person. If another competent person is required for a particular notifiable stage or element to be inspected, the SBS must nominate that person.

- The SBS must ensure the competent person carries out the inspection in accordance with any Directions issued by the Building Commissioner (see further below).
- The competent person may (if authorised) give a verbal direction on behalf of the SBS for work to proceed beyond the element(s) inspected prior to the issue of the written technical certificate and inspection report.
- Once the competent person has carried out the inspection, they must give the SBS an inspection certificate in the prescribed form. The inspection certificate must be in writing and –
  - be signed by the competent person;
  - indicate whether the elements or aspect inspected complies and are satisfactory; and
  - if satisfactory, provide details about the inspection, including any test, specifications, technical certificate, standards, codes or reports relied upon in reaching that opinion; or
  - If unsatisfactory, provide reasons and the details of any test, specifications, technical certificate, standards, codes or reports relied upon in reaching that opinion.
- The competent person must not give an inspection certificate they know (or reasonably believe) is false or misleading.
- The SBS must retain a copy of the inspection certificate and include in any inspection report given for the notifiable stage.
- The SBS may accept and rely in good faith upon the inspection certificate in performing its functions.

The ability to nominate a competent person is not intended to preclude the SBS from obtaining technical certificates in respect to certain elements or aspect of a notifiable stage. If the SBS considers the building surveying practitioner they have engaged or employed to be competent, they can still use technical certificates as part of assessing whether the element or aspect of the notifiable stage is satisfactory.

Building Commissioner Directions for notifiable stage inspections

As the building legislation does not currently prescribe notifiable stage inspections, the capacity and expertise to inspect will need to be developed within the industry, particularly among building surveyors.

To improve the rigor with which inspections are undertaken, it is recommended the building legislation is amended to provide that:

- notifiable stage inspections be carried out in accordance with Directions prepared and published by the Building Commissioner; and
- in determining notifiable stages for commercial buildings and assessing whether a person is a competent person, the SBS must have due regard to Directions issued by the Building Commissioner.

A similar requirement applies in Queensland under the ***Building Act 1975***, section 258 of which allows the CEO of the Queensland Building and Construction Commission to make guidelines for a range of matters, including inspections.[56]

Details of the Directions will be developed and refined through further consultation before they commence. The initial focus will be on Directions for Class 2 apartment buildings.

Attachment D in Volume 2 contains a draft Direction on the elements to be inspected for the prescribed notifiable stages for Class 1a residential buildings. Further consultation on the Direction will be undertaken, prior to the decision to extend mandatory notifiable stage inspections to new residential buildings. At this time, the attachment is for illustrative purposes..

The Directions will, in appropriate circumstances, specify that the SBS can rely upon photographic or video evidence of building elements in completing the inspection.

56 See generally, Queensland Government, Department of Energy and Public Works, Inspection of single detached Class 1a or Class 10 buildings or structures (October 2020); and Guidelines for inspection of Class 2 to 9 buildings (October 2020).

Recommendation 16

The building legislation is amended to allow the SBS the discretion to nominate a 'competent person' to carry out part or all of a notifiable stage inspection and, where appropriate, to issue an inspection certificate in the approved form that may be relied upon in issuing the inspection report.

Recommendation 17

The building legislation is amended to allow the Building Commissioner to issue Directions in respect of the carrying out of notifiable stage inspections and determining persons to be competent persons.

The SBS and competent persons must follow the Directions when preforming their functions.

Staged commencement of mandatory notifiable stage inspections

A number of stakeholders suggested that industry participants, particularly building surveyors and builders, will need time to adjust to notifiable stage inspections and the package of reforms contained in this document:

> "I am also not convinced that private sector building surveyors generally are appropriately skilled in inspections for residential dwellings…with this in mind I would recommend that any move towards the introduction of mandatory inspections (which I support) should be well-planned in terms of providing opportunities for up-skilling/refresher courses"
>
> ***Milestone Certifiers response to CRIS Residential***

> "..Compulsory inspections – I fully support the implementation of this and recognise it as an important addition to address the national concern before us, namely that there is inadequate oversight currently in place leading to compliance problems. However, I am concerned about how this will be resourced. I doubt many Local Governments have the capacity to add this to their current workloads, I suspect many private certifiers [building surveyors] will be similarly placed. This needs to be carefully implemented in a way to make sure the industry can cope with it."
>
> ***Kallan Short response to CRIS Residential***

> "From an industry perspective, the significance of many of the proposed changes cannot be overstated…Succession planning for the reforms is vital. It is essential that the proposed reforms adequately address increases in sector activity and the building approvals process is not adversely affected due to possible diminishing skill sets and suitable qualified and experienced persons. A key focus must be training, linked into other recommendations within the Building Confidence Report, particularly for the building surveying profession."
>
> ***MBA response to CRIS Commercial***

Determining when notifiable stage inspections should commence is therefore difficult.

On the one hand, there is a need to ensure building owners have confidence that their buildings comply with building standards and they will avoid costly rectification works. Many stakeholders (particularly consumers) see inspections as the lynchpin in the reforms needed to achieve this outcome.

On the other hand, the unprecedented challenges the WA industry faces cannot be ignored, which includes:

- ⇨ the need for building surveyors, builders, engineers and other professions to upskill and understand the process for carrying out inspections;
- ⇨ the need to avoid exacerbating current market conditions caused by COVID-19, including labour and material shortages, construction delays and large increases to construction costs;
- ⇨ the challenges faced in regional areas of WA to access skilled professionals and the higher travel costs; and
- ⇨ the timing of other complementary reforms, including those recommended in this DRIS.

To balance the competing policy considerations, a staged approach is recommended to implement notifiable stage inspections for all new buildings.

The first stage should focus on new Class 2 apartment buildings four storeys and more and Class 3-9 commercial buildings. Class 2 apartment buildings four storey and more are currently not covered by the home indemnity insurance scheme under the *Home Building Contracts Act 1991* WA (HBC Act). Given the complexity in the design and potential for costly defects, these types of buildings should be the initial focus.

The notifiable stages initially should be those identified on page 105 for all commercial buildings and the discretion for the SBS to specify more on the CDC. The additional notifiable stages can then prescribed at a later date once the process is well understood.

Thereafter, mandatory notifiable stage inspections should be extended to new Class 2 apartment buildings below 4 storeys.

Subject to consideration/review of the effectiveness of mandatory notifiable stage inspections on new Class 2-9 buildings, extending the requirement to new residential buildings (Class 1) can occur.

The initial focus on new Class 2-9 buildings recognises several factors, including:

- ⇨ Class 2-9 buildings are currently inspected to a greater degree than Class 1 buildings. It is estimated that 71.9 percent of the recommended inspections are undertaken already for Class 2 buildings, and 63.6 percent for class 3-9 buildings, compared to 49.1 percent for Class 1.[57] So starting mandatory inspections with these buildings best reflects current industry practice.
- ⇨ Class 2-9 buildings represent the smallest proportion of new building work each year, with fewer than 3,600 new Class 2-9 buildings per year in WA, compared with more than 20,000 new Class 1 buildings per year. [58]

Given the smaller number of buildings and the existing, voluntary inspection rate, commencing inspections for Class 2-9 buildings is anticipated to cause least disruption to the industry. Class 2 apartments have also experienced high-profile building failures that have received substantial public attention in recent years.

Alterations, repairs and additions to existing buildings should not be subject to notifiable stage inspections until the requirement can be judged as operating effectively for new buildings. This may take considerable time.

The details of the stage approach will be developed by Building and Energy as part of the Action Plan proposed in Chapter 12 of this DRIS.

Recommendation 18

The implementation and commencement of mandatory notifiable stage inspections should be staged to allow industry and local governments sufficient time to adapt, upskill and build capacity.

The first stage should focus on new Class 2 apartment buildings four storeys and more and Class 3-9 commercial buildings.

Mandatory notifiable stage inspections should then be extended to new Class 2 apartment buildings below 4 storeys.

Subject to consideration/review of the effectiveness of mandatory notifiable stage inspections on new Class 2-9 buildings, the requirements can then be extended in a fourth stage to new residential buildings (Class 1 buildings).

A sufficient period of time (e.g. 6-12 months) should lapse between each stage of implementation. The notifiable stages for Class 2-9 buildings should also be progressively expanded as industry adapts to the process and there is a sufficient workforce to meet the requirements.

57 Attachment A, p 60
58 Attachment A, pp 14-15, assuming an average of 40 dwelling units per apartment building.

7. Variations during construction

Variations to an approved building design are common during construction. Some stakeholders pointed out that variations are more than just common, they are accepted standard practice:

> "Variations are not just common, they are the principle method of operation to commence and progress construction over medium to long term project construction periods."
>
> ***JMG Building Surveyors response to CRIS Commercial***

> "…the current BA19 process, submission of revised plans and the informal 'amended building permit' process, is very confusing as it is not actually defined with the Act or Regulations. This is a major failing of the Act and despite numerous requests since the Act was gazetted, the lack of a process is causing confusion for industry and Local Government."
>
> ***WALGA response to CRIS Commercial***

WA building legislation does not currently contain a clear process to manage variations. It requires only that a building permit must be in place before building work may be undertaken. The implication is that if the approved building work is varied, then a new or amended permit must be issued before the work that is the subject of the variation commences. However, the process to vary a permit is unclear, resulting in confusion regarding what is required and how to apply the process.

> "The amending of plans and the process (or distinct lack thereof) within the Building Act 2011 has long been an issue advocated for addressing … This has caused confusion for builders [and] industry personnel."
>
> ***MBA response to CRIS Residential***

There is no timeframe or fee prescribed for permit authorities to amend permits, and permit authorities interpret and apply the legislation inconsistently.

Ad-hoc arrangements are currently applied, with different permit authorities using different processes and charging different fees to approve and record variations to plans and specifications, CDCs and building permits. For example, some permit authorities require a new building permit to be granted, some simply accept amended approval documentation, and some require a staged process with building permits issued at various stages of the build.

Having no formal process defined also means that builders do not always apply for approval, even when significant variations occur during construction. Consequently building owners may be unaware of variations being made on site to the approved plans and specifications. And the as-built construction is less likely to reflect the building records retained by the permit authority, compromising the integrity of the records.

It is apparent that the process for making and documenting variations during construction need to be explicitly addressed in legislation. This will provide multiple benefits, beyond improving building compliance. A clearly defined process to document and approve variations will provide greater consistency and certainty for the industry. It will also better support permit authorities to enforce the legislation.

A clearly defined process will also assist to ensure that the compliance of variations is considered holistically, and not in a piecemeal fashion. If variations are considered in isolation, they may adversely affect the NCC compliance of another aspect of the building, particularly where performance solutions are involved. For example, a variation to one feature of the building may have a significant impact on another feature and result in a performance solution that is relied on for either feature not being appropriate or failing. A process requiring each variation to be considered by the building surveyor, as well as any appropriate members of the design team, will improve the level of building compliance.

The Building Confidence Report noted that variations are mainly an issue in commercial buildings, particularly where design and construct procurement methods are used:

> It is common for Commercial buildings to be constructed under a design-and-construct contract which means that limited documentation is prepared at the time building work commences. Documentation is produced and developed throughout the project, allowing for innovation and flexibility and avoiding the need to amend detailed design documentation as decisions are made during the project. Even for Domestic building work, variations may occur as decisions are made during construction, particularly for renovations.
>
> ***Building Confidence Report, p 31***

The report recommended that all variations, including product substitutions, should be documented and approved prior to the associated work being carried out. The report also states that there should be offence provisions for builders who do not comply with the requirement to notify the building surveyor or provide the necessary documentation in advance of the building work progressing. However, it is noted that ABCB's national model for this recommendation stops short of recommending the creation of such an offence.[59]

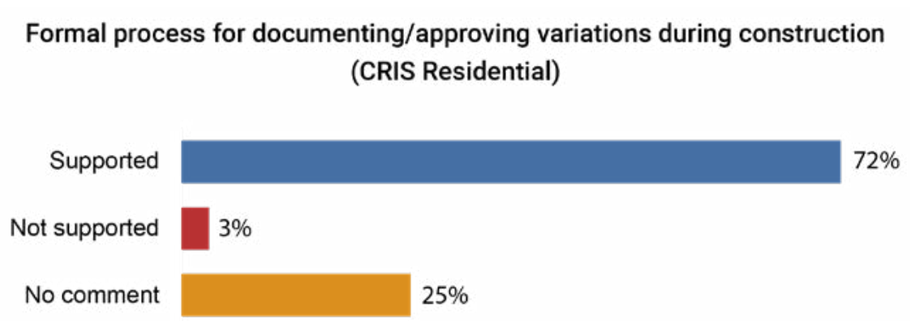
Implementing this recommendation requires a cultural shift in the building industry. Current practice is for construction of variations to occur prior to, or at best concurrently with, the design being documented and approved. The Building Confidence Report rightly observes that:

> Implementation of this recommendation will be challenging. It requires designers, building surveyors and builders to work to properly documented design and construction specifications. This is the lynchpin of a best practice building approvals system and considerable effort will be required to effectively bring about systemic change in this area.
>
> ***Building Confidence Report, p 32***

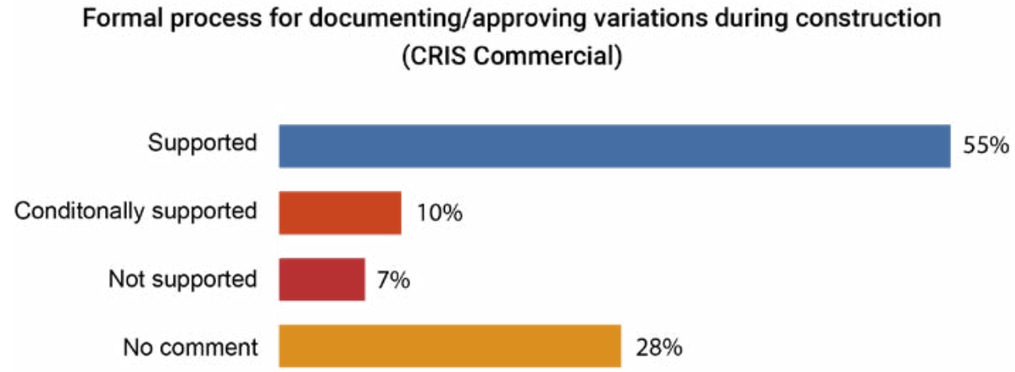
Both the CRIS Residential and CRIS Commercial proposed reforms to clarify and define the process to approve variations during construction, according with the Building Confidence Report.

Approving variations to the design during construction

The majority of stakeholders support the introduction of a process to manage variations to the approved design during construction. Reasons for this support include improved building compliance, reduced confusion and greater certainty for all participants in the building industry.



59 ABCB, Design acceptance, model guidance on BCR recommendations 13-16 (2021) pp 17-19.



In general, stakeholders who did not support the proposals expressed concern that the time required to obtain approvals would delay construction work:

> "Building progress will be at a standstill if the full proposal is implemented. It will create significant delays without providing any advantage."
>
> ***JMG Building Surveyors response to CRIS Commercial***

> "This will almost certainly cause projects to be unreasonably delayed and increase costs … builders may decide to take a risk averse approach by waiting for approval before proceeding with the variation."
>
> ***Property Council of Australia response to CRIS Commercial***

However, several stakeholders noted that before any variation can be constructed, there are already contractual requirements to define the design change and get any associated cost variations approved by the building owner. An approval process should not therefore cause significant additional delay because it can be managed in parallel with contractual requirements. In addition, improved documentation (as per recommendation 1, above) should reduce the number of variations that are made to approved designs.

One stakeholder opposed the proposal on the grounds that variation validation is wholly a contractual requirement, rather than a legislative matter. However, variations during construction can adversely affect building compliance, and therefore have both legislative and contractual implications, and need to be managed to address both of these outcomes. It is already an offence under the Building Act to do building work without a building permit, the requirement to obtain approval for variations is therefore not new. This proposal merely establishes a formal process to manage such approvals.

Some stakeholders who support the introduction of a process to manage variations, expressed concern that 'time bar' constraints, particularly in design and construct projects, can currently be at odds with proper due diligence and quality outcomes. It is anticipated, however, that a legislative process governing the documentation and approval of variations would go some way towards creating a commercial culture that supports the involvement of consultants in documenting variations.

Stakeholder feedback on the process proposed in the CRIS Commercial indicated that the details required further consultation and development. In particular, stakeholders observed that any process to approve variations must distinguish between major and minor variations:

> "A pathway for approving under-construction variations requires a framework that defines the differences between a major and minor variation (and their thresholds), along with the approvals required for each type. Industry concern is that the proposal could see all variations, no matter how small or large, as equal."
>
> ***HIA response to CRIS Commercial***

Stakeholders suggested that distinguishing between minor and major variations will enable a streamlined process to document minor variations while construction continues. This will alleviate the concerns expressed, above, that a requirement to halt work to approve variations will unduly delay construction projects.

It was evident from the initial feedback that it is impracticable to pause construction to document and approve every variation that arises. A revised proposal was developed to require that:

- major variations must be documented and approved ***before*** construction;
- minor variations may be documented during construction, and approved before, or at, completion of the work; and
- variations that introduce new performance solutions must be documented in accordance with the PBDB process, before the building surveyor can determine whether the variation is major or minor.

A process to manage approvals separately for major and minor variations will enable construction work to be undertaken as expeditiously as possible, while still resulting in improved building compliance.

In early 2022, the proposed process for major and minor variations was provided to a number of peak industry associations for feedback. Generally, those who commented support the proposal.

The AIBS supports the practicality of separate processes to govern major and minor variations, so long as the determination of whether a variation is major or minor ultimately rests with the SBS, that is, a person who is obliged to act in the public interest in determining compliance:

> "It is essential that only those who are obliged to act in the public interest are involved in making decisions about design compliance. … AIBS believes that a different process can apply for minor vs major variations, provided that the decision about which applies is not one made by those with self or vested interests."
>
> ***AIBS submission to DMIRS (24 March 2022)***

The HIA acknowledges the necessity for variations to be approved and supports a streamlined approach for minor variations:

> "A process and thresholds for notification of changes is widely understood to be a necessary process, and despite the additional administration requirements, may assist with any audit or building complaints processes that may arise."
>
> ***HIA submission to DMIRS (17 February 2022)***

The Institute of Architects and the Association of Consulting Architects also support a separate process for minor variations to reduce construction delays, and recommend additional guidance be developed to clarify major and minor variations based on risk:

> The identification of different processes for minor and major variations is supported. Separate processes are necessary to minimise time delay impacts for projects in construction. …
>
> Further articulation of what are major or minor variations based on a risk assessment should be considered. … Further, articulated definition will alleviate reliance on discretionary judgement of building surveyors, which will greatly benefit the profession's insurability.
>
> ***Architects Institute of Australia and Association of Consulting Architects submission to DMIRS (4 March 2022)***

WALGA supports the proposed process to approve variations because it clarifies local government's role and will introduce greater consistency across the state:

> A clear process to deal with amendments will enable Local Government surveyors to be more efficient and reduce the need to stop-the-clock or reject applications. This reform will support mandatory inspections by standardising the documentation on-site.
>
> ***WALGA submission to DMIRS (9 May 2022)***

Engineers Australia supports a separate process for minor variations, but observed that the proposed process, requiring the builder to go through the building surveyor for ***every*** variation, is administratively cumbersome for minor variations involving engineering matters:

> The process is too complicated, especially for minor variations involving engineering matters only, such as structural member substitutions, mechanical equipment substitutions and the like.
>
> ***Engineers Australia submission to DMIRS (31 March 2022)***

Instead, Engineers Australia recommends that:

> When minor variations are scheduled or defined as proposed in the consultation paper … The schedules could be structured to prescribe the relevant expert for each type of minor variation.
>
> ***Engineers Australia submission to DMIRS (31 March 2022)***

Building and Energy will work with industry to further define the boundaries of 'minor' variations. The SBS will be the default arbiter on the compliance of all variations, however it may be possible for the regulations to define some specific, minor variations, and prescribe relevant expert(s) for the builder to consult to determine their compliance.

This would be similar to existing exemptions allowed under schedule 4 of the Building Regulations, which defines, for example, that a building permit is not required for a Class 10a building with a floor area not more than 10m^2, a height not more than 2.4m, and not located in wind regions C or D. Any type of minor variation outside of those exemptions specifically regulated would be referred to the SBS in the first instance. All major variations would be determined by the SBS. The building legislation would require that the SBS must be informed of ***all*** variations.

It is evident that if changes are to be implemented, the industry will require guidelines to support the definitions of major and minor variations, to assist in determining which variations must be documented and approved before construction commences and assist industry practitioners to interpret and apply the definitions of major and minor variations.

Inevitably there will be situations that do not fit clearly within prescribed defining criteria or guidelines. Building surveyors will need to consider the risk presented by each specific variation, and the level of documentation required to be confident that the variation complies with all requirements, to determine whether it is warranted for the work to be documented and approved before being constructed. The SBS may need to consult with other members of the design team, particularly the structural and fire engineers, in determining whether variations are major or minor.

There are additional criteria that the SBS must consider when assessing variations, which are more appropriately addressed through guidelines rather than legislation, including:

- Performance solutions – with the use of performance solutions, a variation to one feature of the building may have a significant impact on another and result in a performance solution that is relied on for the former no longer being appropriate.

- Planning – the building surveyor should consider whether the variation affects any planning requirements and/or whether an amended development approval is required.
- Heritage requirements – variations to approved designs that affect a heritage-listed building may need to be referred to the Heritage Council.

Using legislation in conjunction with guidelines to govern the approval of variations should provide sufficient flexibility to capture the variety of situations that are likely to arise. It will also enable construction work to continue as far as practical through the approval process.

Broadly, the building legislation should be amended to provide that:

- Any variation to approved plans and specifications that form part of a permit must be documented and approved by, or notified to, the permit authority as prescribed.
- Except as prescribed for ***minor engineering variations***, when any variation is made to the approved plans and specifications, the builder is responsible for ensuring that the SBS named on the building permit is notified. The SBS will generally be the building surveying contractor who issued the certificate of design compliance, unless they have been replaced. An offence will apply for failing to notify the SBS, without a reasonable excuse.
- Where a variation involves a product substitution, the builder must provide evidence of suitability (as required under the NCC) to the SBS when notifying the SBS of the variation.
- The SBS will be responsible for determining if the variation is major or minor. In making the determination the SBS is to have due regard to the prescribed defining criteria and any guidelines issued by the Building Commissioner.
- Where a variation introduces a new performance solution to the building, the performance solution must be documented in accordance with the requirements of NCC Part A2.2 to verify compliance. The building surveyor will ***then*** determine if the variation is major or minor, as per the definitions below, and proceed accordingly.
- The applicable building standard, for assessing the compliance of a variation to an approved design is the edition of the NCC that is stated on the CDC.
- The NoC shall be amended to require the builder to:
  - state each minor variation that was made to the approved design;
  - state that documentation verifying the compliance of each minor variation is attached;
  - declare that the information provided and attached is true, complete and correct.
- A ***minor variation*** is to be prescribed as a variation that:
  - does not alter the floor area or height of the building;
  - does not require significant redesign of any of the building's structural elements;
  - does not change the use or classification of the building;
  - does not affect other land; or
  - involves material substitutions, where the substituted material is commonly used for the same purpose as the material originally specified.
- A ***major variation*** is to be prescribed as a variation that results in:
  - an increase or decrease to the building's floor area or height;
  - redesign of structural elements of the building;
  - alterations affecting the building's active or passive fire safety performance. (NB: this will likely also affect fire brigade operations, in which case revised documentation must be submitted to the FES Commissioner in accordance with the Building Regulations);
  - a change in the building's classification or use; or
  - a change in the way the building affects other land.
- The process to manage **minor** variations is:
  - construction work continues on all aspects of the building, including the variation; and
  - The variation must be documented and submitted to the permit authority for its record, as follows:
    - Certified applications (Classes 2 to 9)

      The SBS will collect and manage documentation for minor variations throughout construction and attach any amended plans and specifications and any supporting documentation to the CCC. The amended plans and specifications and supporting documentation will then form part of the application for an occupancy permit.
    - Certified applications (Class 1)

      The person responsible for collecting the inspection documentation (the SBS) will collect and manage documentation for minor variations throughout construction. The amended plans and specifications and any supporting documentation will be attached to the NoC submitted to the permit authority.
    - Uncertified applications:

      The builder will collect and manage documentation for minor variations throughout construction and attach any amended plans and specifications and any supporting documentation to the NoC.
- The process to manage **major** variations is:
  - Construction of work that constitutes a major variation may not commence until the variation is documented, certified and an amended permit issued. However, the existing building permit still applies, therefore construction work may continue on all aspects of the original building design that are unaffected by the variation, under the existing permit.
  - The variation must be documented, including how it meets each applicable building standard;
  - If the variation affects an aspect of the design that initially required a technical certificate, or declaration of design compliance, an amended certificate or declaration must be issued to cover the amended plans and specifications;
  - If the variation affects an aspect of the design that was initially subjected to a required independent third-party review, the amended plans and specifications must be reviewed in accordance with the requirements of the initial review;
  - Amended plans and specifications and any supporting documentation must be submitted to the FES Commissioner for comment, if applicable, and if the variation affects one or more required fire safety systems;
  - Any applicable PBDB, Declaration, or third party review report would need to be updated;
  - An amended CDC must be issued for the amended plans and specifications by either a private SBS or the relevant permit authority (if uncertified). The amended certification will include consideration of how the variation affects compliance of the whole building to ensure that the building, as amended, is still compliant overall;

- A permit amendment application must be submitted to the relevant permit authority, including the amended plans and specifications and any supporting documentation, CDC if applicable, and any response to the FES Commissioner's advice if applicable;
- An amended building permit must be issued for the work.
- Construction of the work that is the subject of the variation may not commence until after each item above has occurred.
- A permit authority which receives a certified permit amendment application has 10 business days to issue the permit.
- A permit authority which receives an uncertified permit amendment application has 25 business days to issue a permit.
- The permit authority will be entitled to charge a fee based on the existing rates in the Building Regulations but applied only to the estimated cost of the building work which is the subject of the variation (i.e. the rate applied must be to the estimated cost of the varied building work).

⇨ For ***minor engineering variations***:

- The builder may notify a relevant engineer of the variation, instead of the SBS.
- The relevant engineer will determine whether or not the variation is a minor engineering variation.
- If the relevant engineer advises that the variation is not a minor engineering variation, the builder shall notify the SBS and proceed as above.
- If the variation is a minor engineering variation, construction can continue and the relevant engineer shall document the variation, including issuing a technical certificate.
- The technical certificate must state:
  - The building, the building system and the building element to which it applies;
  - The variation to which it applies;
  - The applicable building standard or standards that apply to the building element;
  - That the building element and the building system, as varied, complies with the applicable building standards;
  - The name and registration number of the engineering practitioner and contractor giving the certificate;
  - The date and place where the certificate was given.
- The SBS must be notified of the minor engineering variation within 5 business days or before the next notifiable stage inspection, whichever is sooner.
- The builder must provide a copy of all documentation associated with the minor engineering variation to the SBS within 5 business days of receiving it.

⇨ ***Minor engineering variations*** are those that:

- Change elements of an engineering system that determines the way the building complies with the applicable building standards from the way they are shown in the plans and specifications specified in the relevant certificate of design compliance; and
- Do not have a material effect on the performance or durability of the relevant engineering system detailed in the plans and specifications in the relevant CDC; and
- Do not affect compliance or performance of other building elements and systems; and
- Do not justify a new building permit to authorise the change.

⇨ ***Relevant engineer*** means an engineer registered under the Registration Act in the appropriate class and level.

⇨ ***Minor engineering variations*** are to be detailed in a schedule to the Building Regulations, as follows:

Structural

- Substitution of a structural element within a structural system where the replacement element:
  - is of the same material;
  - has the equivalent or better grade; and
  - has the equivalent or better sectional properties;

  as the original element.
- Substitution of a structural element within a structural system where the replacement element:
  - is of a different material;
  - has the equivalent or better strength to resist the assessed loads;
  - has the equivalent or better stiffness to resist the assessed deflections; and
  - has the equivalent or better resistance to corrosion or wear;

  as the original element.
- Substitution or alteration of the connections of a structural element to a structural system where the new or altered connection:
  - has the equivalent or better strength to resist the assessed loads;
  - has the equivalent or better stiffness to resist the assessed deflections; and
  - has the equivalent or better resistance to corrosion or wear;

  as the original connection.
- Change in the position of a load-bearing wall where the new position:
  - is 500mm or less from the original position of the wall;
  - does not increase the loads to be supported or resisted by the wall;
  - does not increase the span or length of structural elements supported by the wall; and
  - does not increase the load or deflection of structural elements supporting the wall;
- ***Structural element*** means a beam, column, tie or prop that carries loads or is required for the stability of the structure but does not include a slab, sheet or membrane.
- ***Structural system*** means an assembly of structural elements that resists loads on a building or that provides the stability of a building.
- ***Grade*** means the tensile or compressive strength, modulus of elasticity or resistance to corrosion or wear of the material of which a structural element is comprised.
- ***Sectional properties*** means the area, second moment of area and radius of gyration of a structural element.

Mechanical

- Substitution of a mechanical element within a mechanical system where the replacement element:
  - is of the same materials and configuration;
  - uses the same power supply;
  - has the equivalent or better rating and performance; and
  - has the equivalent or better durability and life expectancy;

  as the original element.
- Substitution of a stand-alone mechanical element where the replacement element:
  - is of similar materials and configuration;
  - uses the same power supply;
  - has the equivalent or better rating and performance; and
  - has the equivalent or better durability or life expectancy;
  - as the original element.
- Change in the location of supply or return air vents where the new position:
  - is 1m or less from the original position of the vent;
  - does not decrease the supply of air to the room or conditioned space;
  - does not increase the length or resistance to flow of the ductwork connected to the vent; and
  - does not impact on any fire safety requirement;
- Substitution of a mechanical element within the building envelope where the replacement element:
  - has the equivalent or better thermal insulation rating and performance; and
  - has the same or better air permeability rating and performance;

  as the original element.
- ***Mechanical element*** means a fan, chiller, boiler, water heater, fan-coil unit, package or split system air conditioner, ductwork or vent.
- ***Mechanical system*** means an assembly of mechanical elements that provides heating, cooling, ventilation or air conditioning to a building.
- ***Rating and performance*** means the power consumption, power output, heating capacity, cooling capacity and air handling capacity of a mechanical element or system.

⇨ Examples of major and minor variations, to be documented in guidelines supporting the legislation, will include:

- Moving windows and doors is likely to be a minor variation, so long as no redesign of load-bearing walls, footings or roof structure is required. The SBS may need to consult the structural engineer to confirm that no redesign is required. The SBS will also need to ensure that any such change does not adversely affect the building's compliance with all other requirements, including lighting, ventilation, energy efficiency, access and egress, exit travel distances, fire and smoke resistance, and planning requirements.
- Moving an external wall is a major variation, because it will alter the building's total floor area. It will also require significant redesign of structural elements, including the foundations and roof. Regardless of whether it is loadbearing or not, moving an external wall will require recalculation of the wind loads and is likely to require a new development approval, and construction should not commence until this is issued.
- Moving an internal wall may be a minor variation. The SBS will need to determine whether an engineer has signed off on the variation and also be confident that all other compliance requirements are met – access and egress, exit travel distances, fire and smoke resistance, fire compartment sizes, daylighting and ventilation etc. The scale of the variation should also be considered. For example, a small variation to a single wall may be a minor variation, because the SBS can be confident that all compliance requirements are still met and compliance can be demonstrated based on minimal additional documentation. Wider-spread redesign of multiple internal walls is more likely to be a major variation that needs to be documented before construction commences, to ensure the building complies with all requirements.

These amendments would be largely consistent with recommendation 16 of the Building Confidence Report.[60]

Recommendation 19

The building legislation is amended to define major and minor variations, and prescribe risk based regulatory processes to approve variations made during construction of a new building.

Guidelines will be developed, in consultation with industry stakeholders, to support and clarify the legislative definitions and processes. The SBS will be required to have due regard to the Guidelines in assessing the variations notified by the builder.

60 See generally; ABCB, Design acceptance: Model guidance on BCR recommendations 13-16, (December 2021) pp17-19.

8. Building manuals

Commercial buildings can contain many complex features and systems that can require precise operation and maintenance to ensure compliance over the life of the building. A building manual can assist the building owner to operate and maintain the building as intended to meet the design intent. Building manuals are also a valuable source of information for subsequent owners over the life of the building, as well as building managers, tenants, occupants, regulators and emergency services personnel.

In the early years post construction, access to project documentation can also assist building owners to trace building defects back to problems in the design and construction. This enables building owners to seek rectification from a developer or builder, and reduces the likelihood of the owner bearing the cost of rectification.

It is important that information relating to a building's design, approval and maintenance is complete and accurate, and stored in a way that it is accessible to future building owners, those responsible for maintenance and relevant government agencies. The information can otherwise be lost after the completion and handover of a building, or progressively over time as building managers and owners change.

A building manual consists of documentation that is created as a building is designed and constructed. It includes documentation that must be provided as part of the building approval process, as well as warranty documents and installation and operational manuals for various products, equipment and systems installed in the building.

Building manuals are often required contractually as part of the construction of new commercial buildings. Owners have reported that the information included in building manuals is often inaccurate or incomplete because it is provided under time pressure to meet contractual requirements. Information may also be collated after the completion of construction, rather than during the project, affecting the quality and accuracy of the information. Over time this information is often lost, misplaced or becomes outdated and may not be available to future owners of a building.

The Building Confidence Report identified the issue as follows:

> "A full set of final documents for a Commercial building which includes all relevant documents for the ongoing management of the building is not usually collated and passed on to the owner or subsequent purchaser. This makes it difficult for owners to verify how decisions were made and to adequately ensure that safety systems are properly maintained over the life of the building."
>
> ***Building Confidence Report, p 35***

The report recommended that each jurisdiction requires that there be a comprehensive building manual for commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.

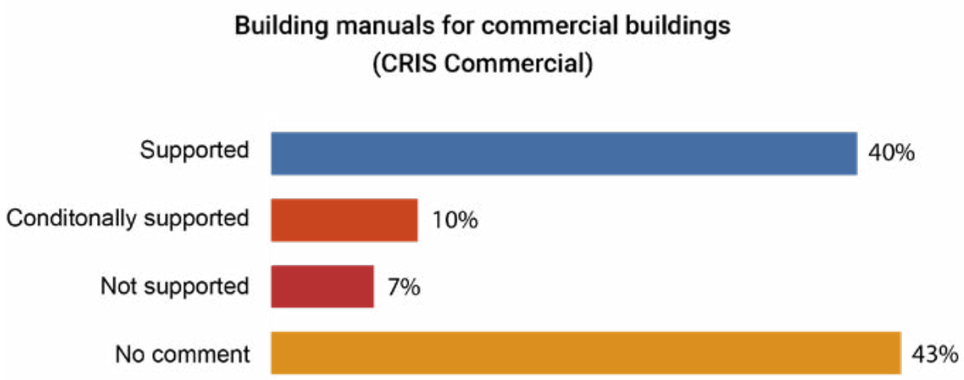
Review proposals

The CRIS Commercial proposed that the building legislation be amended to provide for digital building manuals for commercial buildings. The CRIS Residential did not address building manuals, as they are not relevant for Class 1 buildings.

Building manuals for commercial buildings

Most stakeholders who responded to the CRIS Commercial either supported building manuals or made no comment.

This proposal was supported by 40 percent of stakeholders who commented, conditionally supported by 10 percent and not supported by 7 percent.



Stakeholders who support the proposal noted that a building manual would provide a valuable record for owners over the life of the building. Comments include:

> This will provide critical information to the building owners who often have no role in the building design or construction stages but are likely most at risk both from a financial and safety perspective.
>
> ***DFES response to CRIS Commercial***

> Support comprehensive building manuals being provided to the owner at the end of the project. This would be a more effective mechanism for ensuring a safe building for occupants than providing piecemeal information throughout the construction process.
>
> ***Master Builders Australia response to CRIS Commercial***

Conditional support came from stakeholders concerned about protection for designers' intellectual property. This can be addressed by requiring each document in the building manual to state the author's name, being the individual or the company that produced it, and any associated restrictions on use.

One stakeholder was concerned that building manuals would benefit insurers more than owners:

> I am not sure how this will be of any benefit to owners. This would appear to be a benefit to insurers of buildings and will give them reason not to insure or to increase policy pricing.
>
> ***Today's Building Services Pty Ltd response to CRIS Commercial***

However, a building manual, as recommended by the Building Confidence Report, will provide a valuable record of the completed building for the building owner(s) and users over the life of a building. If the owner allows their insurer to access the manual, then the information could enable insurers to more accurately assess the risk posed by a building. Insurers of commercial buildings already obtain information about a building's risk from the FES Commissioner. Obtaining information from a building manual is considered to be reasonable and consistent with this practice.

One stakeholder opposed the proposal to mandate building manuals as being legislatively cumbersome and too long to implement:

> We do not support [the] proposal in its current form. Amending the Building Act to include provision for Building Manuals will unnecessarily delay the reform process.
>
> ***WebFM Pty Ltd response to CRIS Commercial***

Instead, WebFM suggested implementing mandatory building manuals through the ***Occupational Safety and Health Act 1984***. Under the OSH Act, the ***Code of practice: safe design of buildings and structures*** already requires the creation of an OSH file for new buildings.[61] This OSH file is referenced by the ***Australian building manual guideline***,[62] and forms part of the recommended contents of a building manual.

WebFM suggests that the ***Code of practice: safe design of buildings and structures*** could be amended to require that the OSH file must be included in the building manual. A new code could then be created under the OSH Act requiring that building manuals be created for new buildings, referencing the ***Australian building manual guideline*** as the required standard for building manuals.

WebFM stated that the building manual would be provided to the building owner, who will be responsible for holding and managing the manual over the life of the building:

> The building owner must be responsible for storage and ongoing accessibility to suit their needs and obligations. … Access is made available by the owner to those who have a statutory need to do so.
>
> ***WebFM Pty Ltd response to CRIS Commercial***

However, this suggestion does not align with either the Building Confidence Report or the national model for building manuals developed by the ABCB, which emphasise the importance for building manual information to be "stored in a way that it is accessible to future building owners".[63] Specifically, the ABCB's national model on building manuals recommends that legislation provide:

- ⇨ the relevant government (in WA, the permit authority) should keep records that comprise the building manual information;
- ⇨ building owners have access to all building manual information relevant to their building; and
- ⇨ governments should have adequate information sharing provisions and policies to enable sharing of the building manual information between relevant state government agencies, local government and relevant fire authorities.[64]

There appears to be merit in building owners ensuring a record of building manual information is retained, with the information held and updated by them and made accessible for the life of the building.

Compiling the building manual information at the end of the project will have some cost. The CBA estimates the costs to industry as $5.6 million over the analysis period.

It is considered that the requirement should only apply to certain classes of commercial buildings (at least initially).

61 Commission for Occupational Safety and Health, Code of practice: safe design of buildings and structures (2008) p 20
62 Strata Community Association, WebFM and Engineers Australia, Australian building manual guideline (version 1.2, 2020) p 6-7
63 ABCB, Building manuals – model guidance on BCR recommendation 20 (2021) p 1
64 Ibid, pp 19-20

Classes 3 to 9 buildings are often built under a different procurement model whereby the owner has a longer term investment in the life and operation of the building as a going concern. Owners will often insist on the preparation of detailed building information, which will be retained and referred to throughout the life of the building. As part of any sale of the building, the information will then be transferred to the next purchaser.

Class 2 residential apartment buildings have a different and more complex risk profile. Often strata corporations will not have access to a sufficient level of information about the building and its various systems. This can create information asymmetries and challenges when defects and other issues arise with the building.

As such, it is recommended the building legislation is amended to require that:

- ⇨ For certain classes of buildings, a building manual containing prescribed information must be prepared by the builder named on the building permit and approved by the SBS.
- ⇨ A permit authority must refuse to grant an occupancy permit for certain classes of building unless satisfied that a building manual has been prepared, approved by the SBS (include a required statement of completeness), and will be given to the building owner or strata corporation.
- ⇨ The building manual must be given to the building owner or strata corporation in a format that is readily searchable and can be stored electronically.
- ⇨ Failure to provide the building manual to the building owner or strata corporation will be an offence.
- ⇨ A building owner must provide a copy to any subsequent purchaser.
- ⇨ The building owner or strata corporation that is given the building manual is responsible for safely keeping and updating the manual in accordance with any prescribed requirements.
- ⇨ The class of building will initially be prescribed as Class 2 residential apartment buildings over 3 storeys in height, or a building that includes a Class 2 residential apartment building over that height. The requirement could then be extended to other classes of buildings at a later time if it is considered appropriate.
- ⇨ The prescribed information to be included in the building manuals is to be (where applicable):
  - ↳ A prescribed form, detailing:
    - an explanation of the purpose of the building manual information;
    - an explanation of how to use the building manual information;
    - a statement of the building owner's legal obligations to maintain and operate the building; and
    - who to contact or where to seek further help to understand the building manual information and owner obligations.
  - ↳ Building and site details, including:
    - site address;
    - site survey plan, including area;
    - building NCC details, including the applicable edition of the NCC, building class, type, importance level, floor area, rise in storeys and effective height;
    - number of occupants and sole occupancy units;
    - any special conditions, e.g. use limitations;
    - fire safety strategy details, including:
      - » assumptions of fire safety design;
      - » evacuation strategy;
      - » summary of structural framing system; and
      - » external façade, wall and cladding details.
  - ↳ Site information, including:
    - environmental details, for example;
      - » contamination issues;
      - » protection or conservation requirements;
      - » flooding or inundation likelihood;
      - » erosion or subsidence prone; and
      - » soil type.
    - Bushfire Attack Level (if applicable);
    - wind region;
    - termite risk area;
    - any local government decision notice or other referral body that conditions the site; and
    - planning constraints, e.g. easements.
  - ↳ Developer and practitioner details, including:
    - building surveyor's name and registration number;
    - builder's name and registration number; and
    - developer's details, including name of director if a registered entity.
  - ↳ Maintenance and operation details, including:
    - summary information on services and utilities;
    - termite protection system and maintenance requirements;
    - testing and maintenance schedule for all fire safety systems requiring maintenance and/or inspection;
    - testing and maintenance schedule for any other features requiring maintenance and/or inspection; and
    - warranties and instruction manuals for any systems or equipment installed in the building.

- Building design details, including:
  - as constructed drawings, dimensioned and to a suitable scale;
  - any required, CDC, CCC, Inspection Reports or technical certificates;
  - the final report, in accordance with NCC A2.2(4)(d), for each performance solution; and
  - fire safety details, including:
    - » details of each active fire safety system;
    - » which building elements are fire resisting, the level of fire resistance and fire compartmentation, sealing and separation details; and
    - » copies of the FES Commissioner's advice and any response.
- Compliance details, including:
  - NCC performance requirement checklist; and
  - copies of all building approvals, including demolition, building and occupancy permits issued for the site.
- Commissioning data and reports.

⇨ Building manual information can be compiled by the builder (or SBS on behalf of the builder), but must be approved for completeness by the SBS. The SBS must complete a statement in the prescribed form that he/she reasonably believes the building manual contains the prescribed information.

⇨ Each document that forms part of the building manual must state the author's name and, if applicable, registration number.

⇨ The building owner or strata corporation must make the building manual available for inspection upon request by an authorised officer, which would include an officer of the permit authority, Building and Energy or DFES. Failure to do so will be an offence.

Recommendation 20

The building legislation is amended to require building manuals for certain prescribed classes of new buildings, initially Class 2 apartment buildings 25m or more in effective height.

The building manual should contain prescribed information, be compiled by the builder and certified as complete and approved by the SBS, and be provided to building owners/strata corporations and any subsequent purchasers.

A permit authority must not grant an occupancy permit unless satisfied that a building manual required has been prepared, approved and given to the building owner.

Building owners and strata corporations are to be responsible for safely keeping and updating the building manual in accordance with any prescribed requirements.

9. Occupancy permits, CCCs and NoCs

Under the building legislation, once a building has reached completion, a prescribed process must be followed.

For residential buildings, the builder is required to give a NoC to the relevant permit authority within 7 days of completion for record-keeping. The NoC informs the permit authority that the building work is complete and the building permit is at an end. The NoC is required irrespective of whether the building permit application was certified or uncertified.

For the builder, the issue of the NoC means they are no longer responsible for the building – responsibility has passed to the owner. Often the issue of the NoC occurs directly after 'hand-over' of the building and payment of the final progress payment by the owner.

A more detailed process applies once a commercial building is complete and before it can be occupied.

Firstly, a building surveyor (often the building surveyor who issued the CDC) must issue a CCC certifying, among other things, that the building complies with the approved plans and specifications in the CDC and is suitable for the proposed use. Secondly, an application for an occupancy permit must be made and be granted by the permit authority.

A commercial building cannot lawfully be occupied without the issue of an occupancy permit. Often practical completion under the contract between the builder and owner is tied to the issue of the occupancy permit, although this is not required under building legislation. Finally, the builder must also issue a NoC to the permit authority.

Review proposals

The CRIS Commercial proposed a number of reforms to improve the rigour and content of occupancy permits, CCCs and NoCs, including requiring:

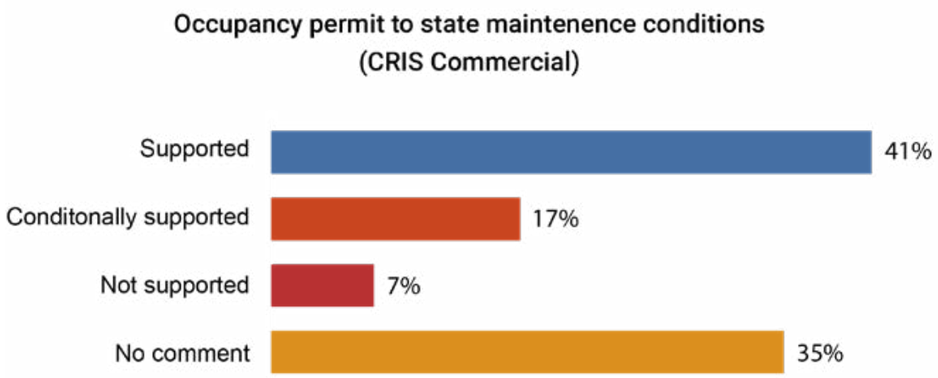
- ⇨ an occupancy permit and CCC is to state any maintenance conditions that must be met over the life of the building;
- ⇨ an occupancy permit for Class 1b residential buildings;
- ⇨ a CCC to certify that the building meets applicable standards; and
- ⇨ a NoC to expressly state that the work complies with the approved plans and specifications.

While reforms to requirements for NoCs was not discussed in the CRIS Residential, they are applicable to residential buildings. This will ensure consistency and rigour in the requirements regardless of the class of building.

Occupancy permit to state any maintenance conditions that must be met over the life of the building

Stakeholders were generally supportive of a requirement for maintenance conditions for the building to be recorded on the occupancy permit and CCC.

More than 40 percent of stakeholders supported the proposal, generally noting that the requirement would improve compliance of buildings over time and provide information to guide maintenance, alterations and additions.



Some stakeholders who supported the requirements also noted:

> "Too many building owners and managers have absolutely no idea how their building complies. They hold no records of permits etc. and are often unaware if there are performance solutions on the buildings
>
> ***Building Surveying Solutions and WABC Group response to CRIS Commercial***

> "…there is a significant risk that the owners and occupiers of buildings are unaware of conditions that need to be met to ensure safety during a fire incident. This proposal will ensure that critical information is available which will improve the overall safety of a building."
>
> ***DFES response to CRIS Commercial***

> "Making this requirement mandatory will ensure the required information is being provided to the end user."
>
> ***Schwanke Consulting, Fire Safety Solutions Pty Ltd response to CRIS Commercial***

Stakeholders who did not support the requirement, or expressed conditional support, argued that the majority of maintenance conditions stipulated on the occupancy permit may be of little value to building owners, or need to be supported by other requirements.

> "In principle JMG agrees with this proposal. The problem here is that it often becomes a waste of time and resources, unless there are legislated maintenance criteria and formal requirements for document transfer to subsequent owners."
>
> ***JMG Building Surveyors response to CRIS Commercial***

> "I believe it would be of little value. Twenty years later, who would know?"
>
> ***Airey Taylor Engineers response to CRIS Commercial***

The views expressed by stakeholders have merit. There is little value in including a range of conditions on an occupancy permit that have limited value to building owners, or in some cases 'go without saying'. For example, making the condition that requires exit pathways be free of obstacles.

Equally, the requirement for maintenance conditions needs to be supported by the availability of documentation to owners which sets out what is required for a particular building system or element. If this information is not available, the condition would be difficult to comply with.

However, given the recommendations made in the previous Chapter to require building manuals, the necessary maintenance information will be available to owners and any subsequent owners. The building manual will need to include, among other things, maintenance and operation details, which will ensure adequate information is available to comply with any maintenance conditions over the life of the building.

To ensure the conditions included are meaningful and avoid unnecessary regulation, they should be tailored towards those elements of the building that may, absent proper maintenance, present a high risk to building occupants. In this respect maintenance conditions associated with performance solutions and fire safety systems used in buildings are considered to be highly relevant for building owners.

It is recommended that the building legislation should be amended to require that any occupancy or maintenance conditions that must be met to ensure ongoing compliance of a performance solution or fire safety system must be included by the SBS on the CCC and then stated on the occupancy permit. The occupancy permit details must be displayed at or near the principal entrance to each part of the building to which the permit relates.

Recommendation 21

The building legislation should be amended to require a CCC and occupancy permit to state any occupancy or maintenance conditions that must be met to ensure ongoing compliance of a performance solution or fire safety system of the building.

Occupancy permits for Class 1b residential buildings

Class 1b residential buildings include:

- ⇨ boarding houses, hostels, guest houses or similar buildings that accommodate no more than 12 people and have a floor area not more than 300m^2, or
- ⇨ four or more single dwellings on one allotment used for short-term holiday accommodation, such as cabins in caravan parks, tourist parks, farm stay and holiday resorts.

Generally, these buildings are for short term accommodation but can also be used for group homes in appropriate aged and disability care settings or as short term accommodation in educational settings (e.g. school boarding houses).

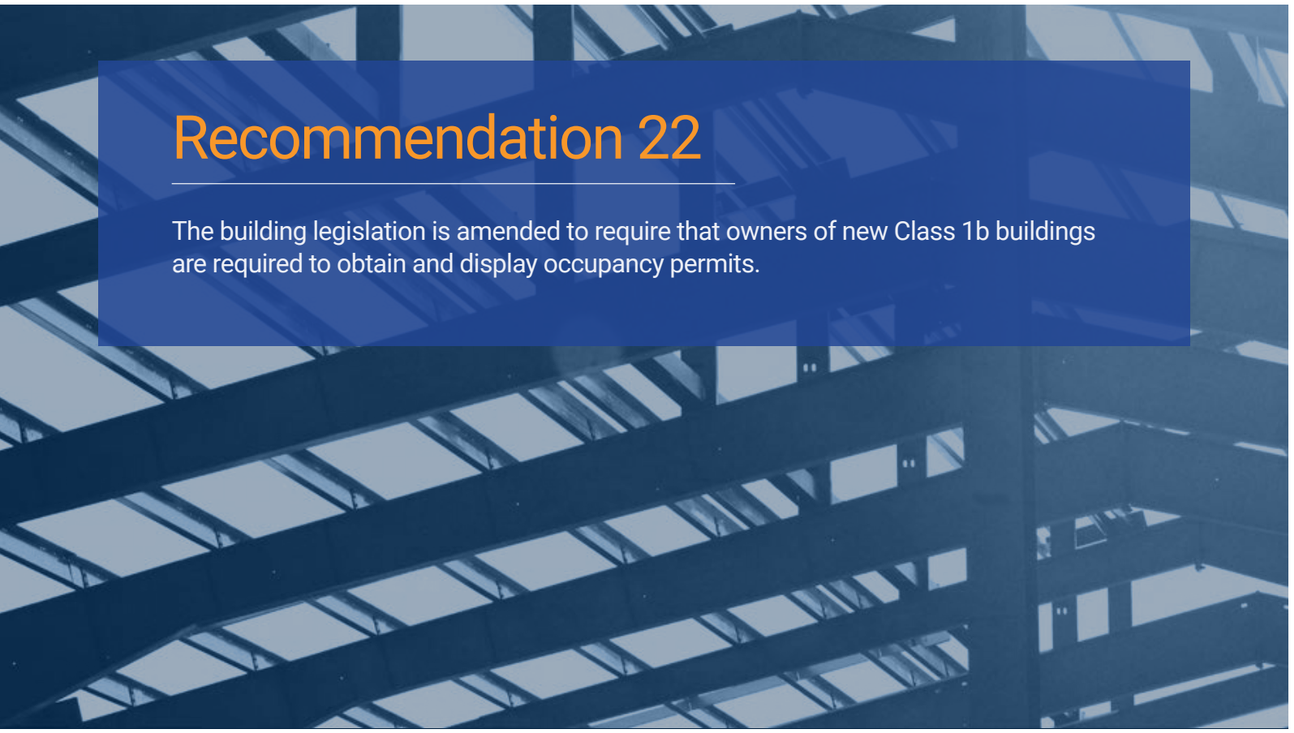
A CCC and occupancy permit is not currently required for a Class 1b residential building. The builder is only required to give a NoC to the permit authority.

However, the use of Class 1b residential buildings for group homes or in schools means non-compliant work can present a heightened risk to vulnerable occupants.

Under the NCC these types of buildings are required to comply with stricter requirements than Class 1a buildings, including increased fire safety standards for the provision and placement of smoke detectors, emergency lighting requirements and access requirements for people with disabilities.

The combination of increased NCC requirements, the short-term, public nature of their use, and use by vulnerable occupants appears to warrant requiring owners of Class 1b buildings to obtain and display occupancy permits. Requiring occupancy permits for these buildings will improve both building compliance by requiring a building surveyor to issue a CCC, and accountability and public awareness through requiring the building owner to display occupancy permit details.

It is therefore recommended that the Building Regulations be amended to prescribe that buildings for which an occupancy permit is not required include only Class 1a and Class 10 buildings.



Recommendation 22

The building legislation is amended to require that owners of new Class 1b buildings are required to obtain and display occupancy permits.

NoC to state work complies with approved plans and specifications and standards

At the completion of any work for which a building permit was granted, a builder is required to issue a NoC to the relevant permit authority. This serves to notify the permit authority that the work is complete and the permit has effectively expired. The builder's obligation under the Building Act includes ensuring, on completion of the building or incidental structure to which a building permit applies, that the building or incidental structure complies with each applicable building standard.

For commercial buildings, which require an occupancy permit, the CCC and the subsequent occupancy permit application fulfil this purpose, potentially making a NoC unnecessary.

The CRIS Commercial therefore proposed to amend the Building Act to require that a builder's NoC is not required for building work that requires an occupancy permit.

Stakeholder opinions on this proposal were evenly divided, with the stakeholder arguments against the proposal tending to be more compelling than the arguments in favour.

Requirement for NoC to be removed for commercial buildings (CRIS Commercial)

Stakeholders stated that the notice of completion was necessary both to make the builder accountable for the building work, and also to mark the conclusion of construction and the beginning of the contractual defects liability and warranty periods.

Feedback from stakeholders included:

> "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."
>
> ***Institute of Architects and Association of Consulting Architects response to CRIS Commercial***

> "This is the Builder's opportunity to sign and warrant the work he has completed, as well as documenting the certificates he has relied on to sign off the Class 2-9 building. "
>
> ***Town of Cambridge response to CRIS Commercial***

> "…the major concern is with the disputes and complaints resolution process and the current statutory 6-year warranty period. It is plausible there can be a difference in timelines between practical completion and the occupancy permit granting."
>
> ***MBA response to CRIS Commercial***

Several stakeholders suggested that the NoC should include a declaration that the work is completed in accordance with the approved documents and/or the building standards:

> "…a notice of completion could be enhanced to serve the purpose of collecting, from the builder, a statement that they have satisfied themselves that the building conforms with the contractual documents. This creates an important accountability point that:
>
> - can be referenced by a building surveyor as part of the documentation in support of an application for a certificate of occupancy;
> - can be referenced by an auditor when contemplating who is responsible for undertaking certain work and when this occurred; and
> - can assist owners who want to see a written assurance that they are getting what they paid for."
>
> ***AIBS response to CRIS Commercial***

> "…the builder is responsible for ensuring the building or incidental structure is completed in accordance with the plans and specifications detailed in the certificate of design compliance and that the building complies with each applicable building standard. … a registered builder should still be expected to provide a statement that their role has been fulfilled … This declaration use to be included on the BA7 as a notification, but this was removed several years ago. It is our understanding that DMIRS felt that building surveyors had become dependent on it and may have been neglecting some of their duties, but we think it has its place in the building approval process and that it should be reinstated. "
>
> ***City of Perth response to CRIS Commercial***

Building and Energy has amended the original proposal to accommodate this feedback.

JMG Building Surveyors suggested that the NoC should be amended to state whether an occupancy permit is required or not:

> "…currently there is no "trigger mechanism" for an occupancy permit to be applied for. For example, neither the CCC nor the builder's "notice of completion" state an occupancy permit needs to be applied for. Most owners or managers, have no expertise in the Act or Regulations and they therefore assume (incorrectly) that the CCC and the builder's notice of completion is all that is required. This is a very real issue. "
>
> ***JMG Building Surveyors response to CRIS Commercial***

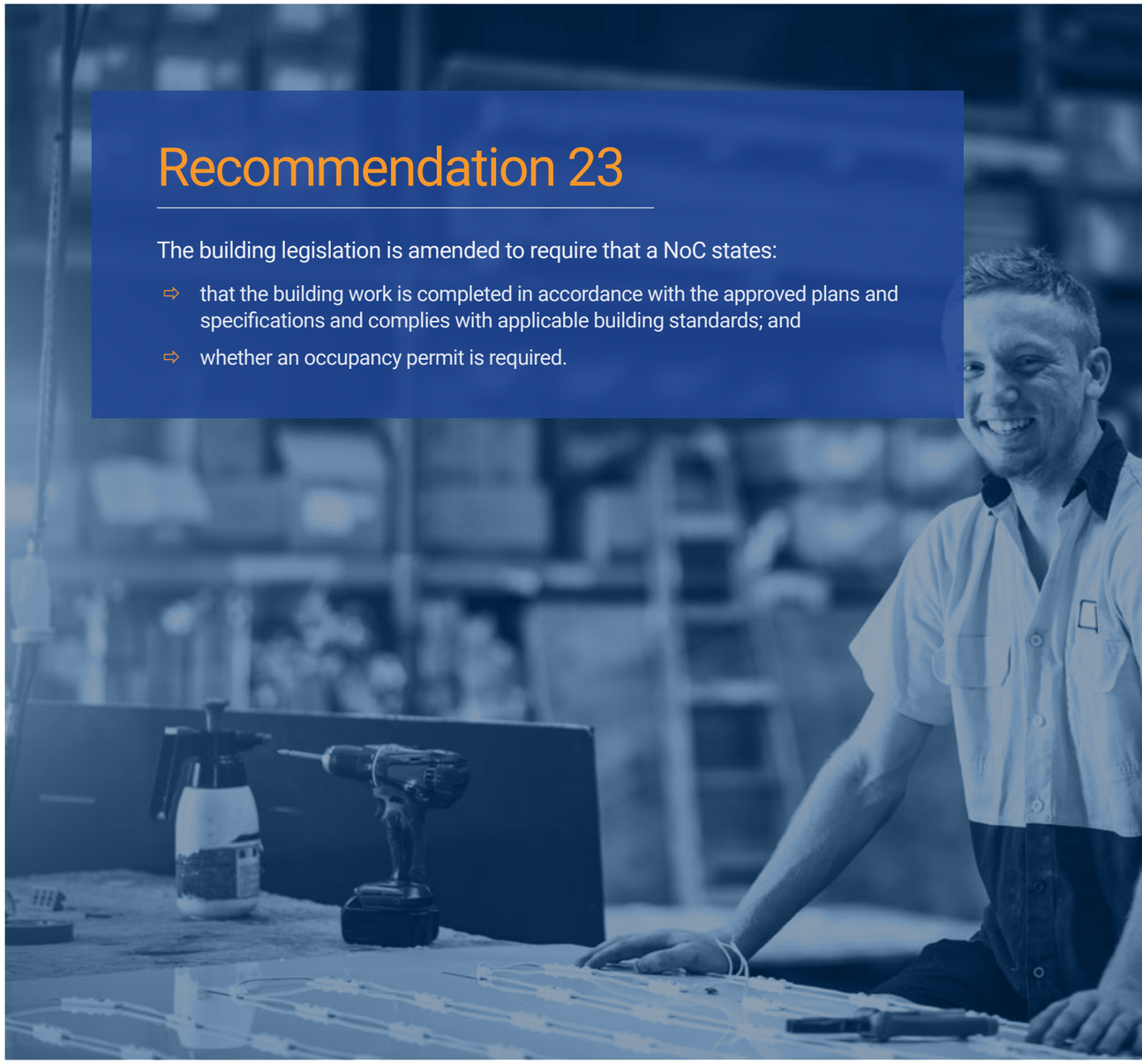
This issue will be addressed in part by having the SBS engaged for the duration of a building permit to oversee notifiable stage inspections, including the final inspection. The building surveyor will be able to advise the owner of the need for an occupancy permit. However, a written record is also valuable for both the building owner and the permit authority.

As a result of stakeholder feedback, Building and Energy recommends retaining the NoC, and amending it to include both a declaration that the work has been completed in accordance with the approved plans and specifications, and a statement as to whether the work requires an occupancy permit.

It is recommended that:

- ⇨ The requirement for the builder to issue a NoC for a commercial building that requires a building permit be retained.
- ⇨ The Building Regulations be amended to require that the NoC must include a declaration by the builder that:
  - the building or incidental structure has been completed in accordance with the approved plans and specifications;
  - complies with applicable building standards; and
  - indicates whether or not the work requires an occupancy permit.

This recommendation is complemented by a recommendation that the building surveyor's CCC be amended to state that the work reasonably complies with the applicable standards, instead of the approved plans and specifications.



Recommendation 23

The building legislation is amended to require that a NoC states:

- ⇨ that the building work is completed in accordance with the approved plans and specifications and complies with applicable building standards; and
- ⇨ whether an occupancy permit is required.

CCC to state work complies with applicable standards

A building surveyor is currently required to state on a CCC that "the building has been completed in accordance with the plans and specifications that are specified in the applicable CDC".[65]

The CRIS Commercial proposed to amend the building legislation to require a CCC to instead certify that the building meets applicable standards.

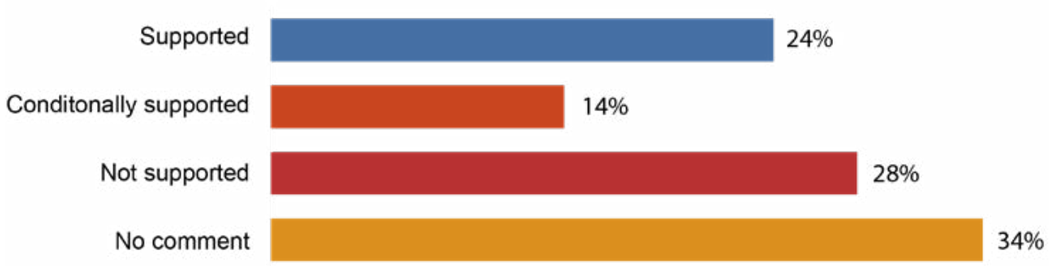
This proposal was in response to feedback from local governments, which identified that, where a building permit is mistakenly issued for a non-compliant building design, the wording allows a CCC to be issued for a non-compliant building, without requiring any rectification of the non-compliance, so long as the completed building complies with the (mistakenly) approved plans and specifications. While not common, this practice contravenes the intent of the Building Act.

In addition, anecdotal feedback from building surveyors is that the wording of the CCC, certifying compliance with the approved plans and specifications, has led to building owners complaining in the first instance to the building surveyor about all cases of non-compliance with the plans. This includes issues that are the builder's contractual responsibility, and that do not affect overall building compliance, such as finishes of a different colour to that specified, or a mirror not installed in the bathroom.

The proposed amendment, for the CCC to certify that the building complies with applicable standards, is intended to better reflect the building surveyor's responsibility.

Stakeholder feedback on the proposal was mixed, with marginally more stakeholders opposing the proposed reform.

CCC to state compliance with applicable building standards (CRIS Commercial)



Some stakeholders who support the proposal noted that it will address a loophole in the building legislation, although it will require additional inspections. Comments included:

> The proposal addresses a flaw in the system where a building surveyor can issue a CCC even though there are non-compliances found with the CDC approval drawings. The current wording on the CCC allows a CCC to be issued if the building has been constructed in accordance with the approved drawings, even though there is a non-compliance, although the majority of building surveyors would require the non-compliance be rectified before issuing a CCC. The proposal rectifies this flaw.
>
> ***Schwanke Consulting, Fire Safety Solutions Pty Ltd response to CRIS Commercial***

> It is warranted to have the Building Act clear on a certificate of construction compliance detailing the building complies with all applicable standards. …
>
> This proposal would require the building surveyor to have extensively inspected the building … This would come at a significant cost with increased inspections required to verify compliance of the building with all applicable building standards.
>
> ***MBA response to CRIS Commercial***

Notifiable stage inspections are recommended earlier in this document and must be implemented before this reform could take place.

The AIBS opposed this proposal because it sets a lower benchmark for compliance certification, to the potential detriment of consumers:

> The proposed reforms are a lower benchmark than achieving consistency with the approved plans … The design may contain elements that substantially exceed the minimum technical requirements, driven by the client and the contractual negotiations with the designers and the builder. If the CCC no longer provides an assurance that the work has been performed in accord with the approval documents, how would a consumer satisfy themselves that this has been achieved?
>
> ***AIBS response to CRIS Commercial***

However, the AIBS' concern is addressed by earlier recommendations for the builder's NoC to state that the work is completed in accordance with the approved plans and specifications and also meets applicable standards. This more clearly defines the respective responsibilities of the builder and building surveyor, and will assist consumers in understanding the delineation of responsibility.

Other stakeholders opposed this proposal out of concern that the CCC places too much liability on building surveyors. Comments include:

> No. Because then the latest CCC issuer would be responsible for all works that have been carried out in the past which do not relate to the original certification which they issued.
>
> ***Building Surveying Solutions and WABCA Group response to CRIS Commercial***

> …no other profession would "sign" the existing CCC document, because it creates an unacceptable liability that joins the certifier in EVERY element of a building's construction. … This, in my opinion is unnecessary and overkill.
>
> ***JMG Building Surveyors response to CRIS Commercial***

It is not the intent of this proposal to make the building surveyor responsible for work beyond the scope of the building permit. Accordingly, the wording of the proposal has been amended to clarify that the CCC applies only to the building work that was the subject of the associated building permit(s).

Several stakeholders also suggested that a CCC for an incomplete building should state what work is required to complete the building. Currently, a CCC for an incomplete building must only state that occupying the building would not adversely affect the safety and health of the occupants, and that the building is suitable to be use in its current state.[66] It can be difficult for permit authorities to ascertain what work is yet to be completed, and therefore to determine whether to grant a temporary occupancy permit, or what conditions (if any) should be made on the permit.

65 *Building Act 2011* (WA) s56(2)(a)

66 Building Act 2011 (WA) s56(3)

An example provided by a stakeholder was a certified, temporary occupancy permit application for an incomplete aged-care facility. The building was wholly completed, except that the fire alarm system was yet to be connected. This has the potential to significantly affect the health and safety of the building's occupants and is information that is required for the permit authority to make an informed decision in granting a temporary occupancy permit. The reform can incorporate this feedback by requiring that a CCC for an incomplete building must state what element(s) of the work is yet to be completed.

Specifically, it is recommended that the building legislation be amended to require that:

- A CCC for a completed building shall no longer state that work is completed in accordance with the approved plans and specifications, but shall instead state that the building work that was the subject of the associated building permit(s) has been completed in accordance with the applicable building standards; and
- A CCC for an incomplete building must state what work is required to be undertaken to complete the building work.

Recommendation 24

The building legislation is amended to require that the CCC must state:

- That, in the opinion of the building surveyor, the building work is completed in accordance with the applicable building standards; and
- for an incomplete building, the work that is required to complete the building.

10. Improved regulatory powers, penalties and other administrative changes

The CRIS Commercial proposed reforms to the building legislation relating to materials compliance and entry to building sites to address both a recommendation of Building Confidence Report and existing regulatory gaps.

Specifically, the Building Confidence Report recommended:

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

The report went on to state that:

> …it is envisaged that all jurisdictions will need to have a minimum range of legislated powers, including:
>
> - powers of entry for monitoring compliance;
> - powers of entry where there is a reasonable belief of the commission of an offence or grounds for disciplinary inquiry;
> - powers to require the production of documents or information;
> - powers to investigate following a complaint or proactively;
> - powers to seize documents and test and seize materials;
> - powers to evacuate, make all necessary orders, or stop works;
> - powers to negotiate voluntary undertakings;
> - powers to undertake disciplinary processes;
> - performance audit powers over all registered practitioners (including architects); and
> - infringement notice and prosecution powers.
>
> ***Building Confidence Report, p 21***

Review proposals

To address the recommendations, the CRIS Commercial proposed reforms including:

- ⇨ empowering the Building Commissioner to issue directions on prescribed technical matters;
- ⇨ amending the Building Commissioner's power to enter and inspect construction sites; and
- ⇨ amending the Building Commissioner's power to remedy dangerous situations.

In addition, since the release of the CRIS Commercial (and CRIS Residential), the impacts of the COVID-19 pandemic and the operation of the building legislation over the last decade has served to highlight a number of weaknesses and gaps in existing provisions, including:

- ⇨ the lack of regulation around certain high-risk structures, such as retaining walls;
- ⇨ the limited deterrent effect of the existing penalties and infringement notice regime; and
- ⇨ the need to clarify the ability for certain registered persons to issue technical certificates.

While these gaps were not directly considered in the CRISs, it is considered that amendments are needed to modernise the building legislation to ensure it remains responsive to changing industry practices and safeguards the health and safety of building owners and users, and the community.

Building Commissioner's enforceable directions

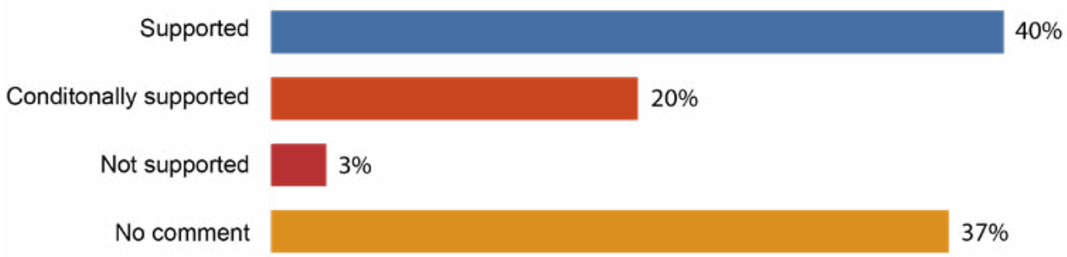
The CRIS Commercial proposed to amend the building legislation to empower the Building Commissioner to prescribe requirements on certain technical matters. This would enable technical requirements to be made and amended more promptly in response to industry needs and feedback.

This regulatory power is consistent with those in other Australian jurisdictions:

- In South Australia the State Planning Commission is empowered to issue practice directions to specify procedural requirements under s.42 of the ***Planning, Development and Infrastructure Act 2016*** (SA). Such practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, this Act requires a particular matter to be addressed by a practice direction.[67]
- Tasmanian legislation empowers the Director of Building Control to issue director's determinations on a variety of matters, for example high-risk building products, time periods under the Act and qualifications of people performing maintenance work.[68]
- Section 258 of the ***Building Act 1975*** (Qld) empowers the CEO of the Queensland Building and Construction Commission to "make guidelines for matters within the scope of this Act to help compliance with this Act."

All but one of the stakeholders who commented on this proposal supported it wholly or conditionally.

Powers for the Building Commissioner to issue enforceable Directions (CRIS Commercial)



Stakeholder comments included:

> We support Proposal 3, as we see the benefit in making building regulations more responsive to industry feedback
>
> ***City of Perth response to CRIS Commercial***

67 State Planning Commission, Practice Direction 7: Out of council areas inspection policy (1 July 2019)
68 ***Building Act 2016*** (Tas) s 20(1) and Building Regulations 2016 (Tas) r 8.

> Yes. It is important that our certification system is responsive.
>
> ***MODUS Compliance Pty Ltd, and MODUS Design Pty Ltd response to CRIS Commercial***

Several stakeholders noted that, while they support the proposal in principle, the Building Commissioner should only prescribe new requirements after sufficient industry consultation and regulatory impact analysis:

> "Building policy reform measures should be far more responsive to industry feedback. It is imperative that any and all prescribed matters have full consultation with industry prior to implementation. "
>
> ***MBA response to CRIS Commercial***

> "HIA would not want to see this process replace proper regulatory policy setting arrangements including industry consultation, impact assessment processes and the like, for the making of new regulations. … it would be important to put a framework around this proposal about what types of matters could be prescribed and ensuring not to provide a mechanism to circumvent proper regulatory policy setting arrangements."
>
> ***HIA response to CRIS Commercial***

> "…needs to be an adequate level of checks and balances in place to ensure that the Building Commissioner does not make decisions without due regard to the impact of those decisions on the cost of development."
>
> ***AIBS response to CRIS Commercial***

There was some confusion among stakeholders over what issues the Building Commissioner might prescribe, for example, would the Building Commissioner only provide commentary on technical NCC matters, or would policy and Building Act interpretation form part of the Building Commissioner's scope? To alleviate this confusion, the scope of this power has been clarified in the recommendation, below.

The legality of the advice or information was also questioned, mainly focusing on whether Commissioner's directions would over-ride the opinion of a building surveyor or a permit authority. For example:

> "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."
>
> ***Australian Institute of Architects and Association of Consulting Architects response to CRIS Commercial***

Only one stakeholder opposed this proposal, expressing doubt that the Building Commissioner is capable of prescribing requirements on technical matters:

> "…the Building Commissioner does not have the technical literacy required to investigate technical matters. The inspectors employed by the Building Commissioner are also not technically literate at the standard required to ensure that adequacy of structure is achieved."
>
> ***Airey Taylor Engineers response to CRIS Commercial***

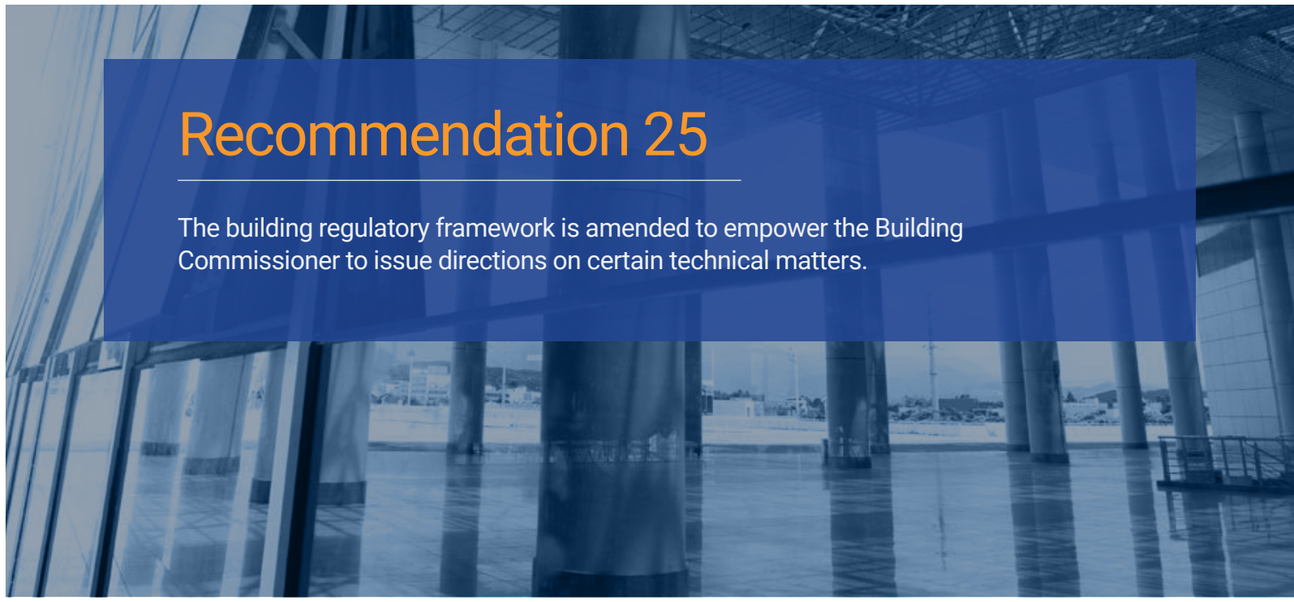
However, the Building Commissioner would only prescribe requirements after sufficient consultation with industry and consideration of any impacts, which should address these concerns.

It is recommended that the BSCRA Act is amended to expand the powers of the Building Commissioner to issue Directions, or standards, in respect to the performance of functions or requirements under the building legislation, including:

- the inspecting of building work during and after construction and any documents, reports, or other things that are to be given before, during or after the inspection of building work;
- the preparation, content, documents and reports to be included in plans and specifications and building manuals required in respect to building work or demolition work;
- the review of plans and specifications in respect to a building, including the contents of a review report and Certificates declaring compliance.

The amendments should also provide that:

- a breach of a Commissioner's Direction (or standard) by a registered building service provider does not of itself constitute a disciplinary matter under the Registration Act but such a breach may be asserted in a disciplinary complaint and may be taken into account in dealing with that complaint;
- The Building Commissioner must ensure that a Direction (or standard):
  - Is issued before it comes into effect;
  - Specifies the commencement date and any transitional period which will apply, and different dates may apply for different requirements;
  - Specifies the period in which the direction is in effect, or that it remains in effect indefinitely until revoked;
  - Identifies if the direction amends or replaces wholly or in part a previous direction; and
  - Is published on an appropriate website.



Recommendation 25

The building regulatory framework is amended to empower the Building Commissioner to issue directions on certain technical matters.

Building Commissioner's power to inspect

The CRIS Commercial proposed to amend the building legislation to empower Building and Energy inspectors to enter and inspect any building site.

Currently, the BSCRA Act empowers the Building Commissioner to authorise inspectors to inspect building sites for compliance purposes. However, the inspector may only enter with the occupier's consent.[69] If the occupier refuses consent, the inspector must obtain an entry warrant from a Justice of the Peace in accordance with the ***Criminal Investigation Act 2006*** (CI Act).[70]

The CRIS Commercial proposed to remove the requirement to obtain the occupier's consent to inspect construction sites. This proposal is in accordance with the ABCB's national model regulatory powers,[71] which states that:

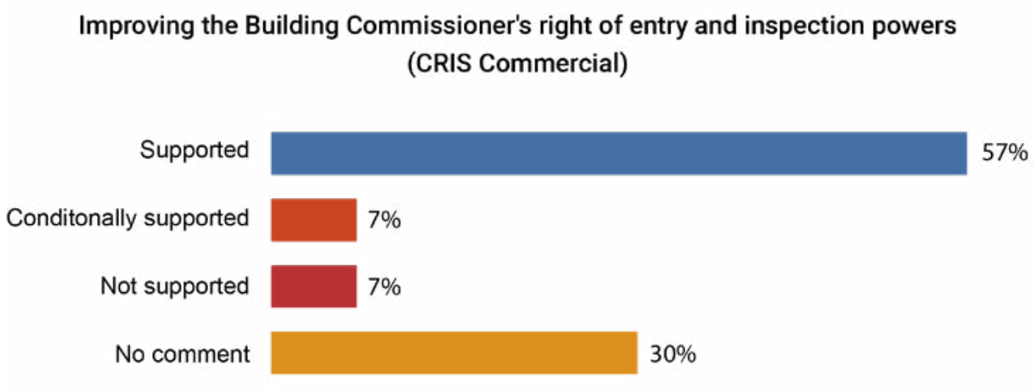
> "Regulators should have a general power to enter construction sites without the consent of occupants for the purpose of monitoring compliance. This recognises that constructions sites are a specific premises in which there is a strong public interest in allowing industry regulators unfettered access to.
>
> When present on a construction site, regulators should follow all reasonable directions from site managers, personnel responsible for safety and other occupants to ensure their and other peoples' safety."[72]
>
> ***ABCB national model***

This proposal is also consistent with the power currently granted to permit authority inspectors to enter any construction site without the consent of occupants or a warrant, apart from a place that is in use as a residence.[73]

69 *Building Services (Complaint Resolution and Administration) Act 2011* (WA) s 66(2)
70 *Building Services (Complaint Resolution and Administration) Act 2011* (WA) s 72, *Criminal Investigation Act 2006* (WA) s 13.
71 ABCB, Building regulator powers: model guidance on BCR recommendation 6 (2021) p 1
72 ABCB, Minimum Regulatory Model Powers - Draft Discussion Paper (Aug 2020) p 3
73 *Building Act 2011* (WA) s 100(1)(a)

This power would **only** apply to facilitate the Building Commissioner's compliance inspections of building services being undertaken on construction sites, in accordance with s.64 of the BSCRA Act. There will be no change to permit authority inspectors' roles or rights, nor any change to entry into occupied buildings or how Home Building Work Contract (HBWC) remedy orders are dealt with under the BSCRA Act.

Generally, stakeholders agreed that empowering the Building and Energy inspectors to enter and inspect construction sites is critical to effective regulation and enforcement.



Some stakeholders observed that this proposal appears to enable inspections to be carried out at shorter notice than under the current system. Comments included:

> "There should be no reason why the building commission cannot enter a construction site."
>
> ***MODUS Compliance Pty Ltd and MODUS Design Pty Ltd response to CRIS Commercial***

> "…it is essential that the regulator (Building Commissioner) have unfettered access to building sites to undertake audit inspections … There is a significant compliance efficiency bonus derived from a building industry practitioner who understands that at any moment, an authority can review their work."
>
> ***AIBS response to CRIS Commercial***

Many stakeholders were positive about the change, foreseeing a reduction in costs as more issues can be found early, resulting in reduced rectification costs. This proposal will also improve the ability for urgent inspections to be done. Currently only emergency situations are covered by legislation.

The HIA pointed out that this proposal would need to be implemented with some boundaries placed on inspectors' right of entry, including requirements for inspectors to notify the builder of their intent to inspect, and their arrival on site:

> This proposal first needs to establish what threshold/checks-and-balances would be applicable for when the commissioner or their inspectors could enter a site. … key criteria would be on appropriate notification periods to the builder, and that inspectors be accompanied by site supervisor/builder as opposed to just being able to enter sites unannounced, etc.
>
> ***HIA response to CRIS Commercial***

A number of stakeholders questioned what effect this change would have on the role of permit authority (local government) inspectors. It is not proposed that permit authorities' inspection powers be altered.

Permit authorities are empowered to inspect buildings under the Building Act;[74] the Building Commissioner is empowered to inspect buildings under the BSCRA Act.[75] The permit authorities' powers are broader than the Building Commissioner's – permit authorities are only required to obtain the occupier's consent, or a warrant, to enter a place that is in use as a residence.[76] The Building Commissioner requires the occupier's consent or a warrant to enter any place that is not a public place.[77] This restriction will remain in place for the Building Commissioner, with the sole exception of places, or parts of places, that are building sites where building services are being carried out.

Another concern raised by stakeholders was about how the entry powers to residences might be affected. The proposal will have no impact on residences, as the proposal will not apply to occupied buildings, or parts of buildings, only to construction sites.

A third concern raised was enforcement actions, and whether it would be the Building Commissioner or the permit authority that would undertake enforcement proceedings. No change is being proposed to the existing enforcement provisions. The current division of enforcement – being generally that the Building Commissioner is responsible for managing registered people and building service complaints, while the permit authority is responsible for building compliance through the building control process – will remain in place.

Stakeholders opposed to this proposal cited the occupational health and safety risk posed by construction sites:

> "No, because builders have a duty of care for Public Liability. If inspectors visit sites without the builder's knowledge and injure themselves, that is a problem."
>
> ***Today's Building Services Pty Ltd response to CRIS Commercial***

The proposal has been amended to clarify that, while inspectors are not obliged to obtain the occupier's consent to inspect a construction site, an inspector must still provide reasonable notice of their intention to inspect, and identify themselves to the occupier on arrival at a construction site. In addition, authorised persons inspecting construction sites are, and will continue to be, bound by the ***Work Health and Safety Act 2020*** and any other applicable legislation.

It is recommended that the building legislation should be amended to require that:

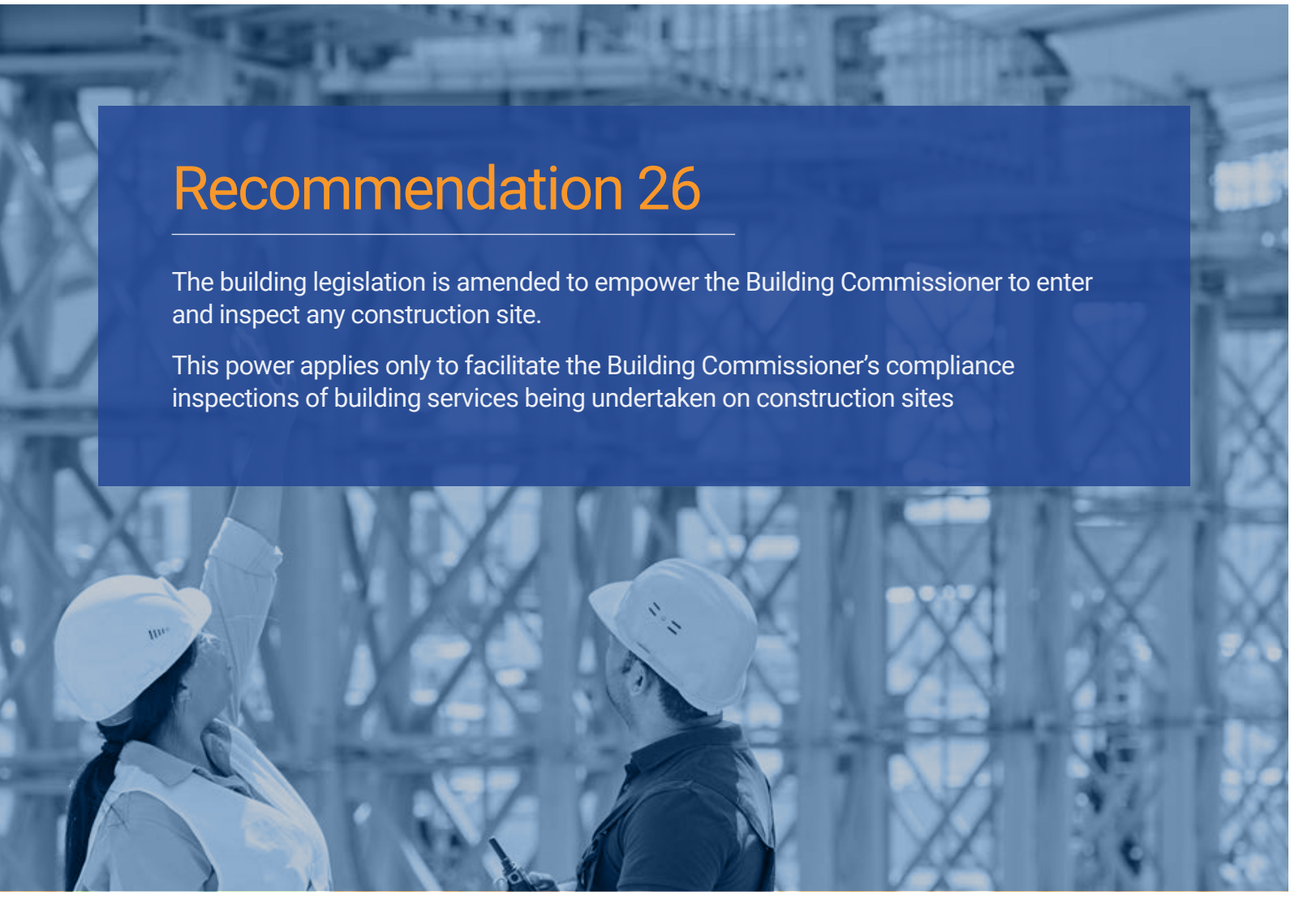
- A person authorised by the Building Commissioner may, for a compliance purpose, enter a place if—
  - an occupier at the place consents to the entry; or
  - it is a public place and the entry is made when the place is open to the public; or
  - the entry is authorised under a warrant; or
  - it is a place of business of a registered building service provider and is—
    - open for carrying on the business; or
    - otherwise open for entry; or
  - it is a building site and building work is being carried out on the site.
- A place of business should not include a part of the place where a person resides; and
- A building site should include any place where a building or demolition permit is in force, but does not include a part of the place where a person resides.

74 ***Building Act 2011*** (WA), part 8, division 3.
75 Building Services (Complaint Resolution and Administration) Act 2011 (WA) part 4, division 3.
76 Building Act 2011 (WA), s100(2)
77 Building Services (Complaint Resolution and Administration) Act 2011 (WA), s66(2)

- Before entering a building or land an authorised person must do, or make a reasonable attempt to do, the following—
  - give an occupier or, if there is no occupier, the owner, reasonable notice of the entry;
  - on arriving at the building or land, identify himself or herself to a person present who is an occupier of the building or land by producing a copy of the authorisation and evidence that the person is the person authorised;
  - give the person present a copy of the authorisation; and
  - tell the person present the authorised person is permitted to enter the building or land.
- In exercising a power, an authorised person must:
  - take all reasonable steps to cause as little inconvenience, and do as little damage, as possible; and
  - comply with all legislative work health and safety requirements that apply to the site.

This reform would replace the existing section 66(2) of the BSCRA Act. Other legislation is not anticipated to be changed, unless required to support the proposed changes above.

This recommendation is based on the provisions of the ***Queensland Building and Construction Commission Act 1991*** (Qld), part 9.



Recommendation 26

The building legislation is amended to empower the Building Commissioner to enter and inspect any construction site.

This power applies only to facilitate the Building Commissioner's compliance inspections of building services being undertaken on construction sites

Regulator's power to remedy serious non-compliance

The CRIS Commercial proposed to 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 or serious non-compliance with applicable building standards.

The current definition in the BSCRA Act only states that the Building Commissioner may remedy any situation where there is an ***imminent*** risk to people, property or the environment.

This proposal was generally supported by stakeholders who provided comment.

Increased powers for Building Commissioner to order remedy of dangerous situations (CRIS Commercial)

The main reason given by stakeholders for supporting this proposal is that it would enable a higher degree of consistency in managing State-wide non-compliance issues:

> "…broadening the building commissioner's powers could assist permit authorities in undertaking stronger compliance and enforcement action. …
>
> This proposal would have been valuable when acting on the findings of the State-wide cladding audit. Under the current legislation, permit authorities are empowered with undertaking enforcement, but these actions can vary throughout the jurisdictions, depending on their interpretations of the powers, roles, and responsibilities, and because the risk associated with combustible cladding was a national issue, it could have benefited from a more consolidated approach that was directed by DMIRS. "
>
> ***City of Perth response to CRIS Commercial***

In general stakeholders supported this measure with few conditions or queries. However, there were some concerns about how 'high risk' might be defined, and whether the scope of the measure could be too broad.

> "The removal of the word "imminent' is supported. Clarification is required on the defined risk element and dangerous situation."
>
> ***MBA response to CRIS Commercial***

This proposal has been amended and refined to accommodate stakeholder feedback received.

Rather than broaden the Building Commissioner's power to issue building orders for non-compliant work, the reform should empower the Building Commissioner to notify the building owner and the permit authority of serious non-compliant work, and to require the permit authority to provide a written response to the

Building Commissioner detailing what, if any, action was taken. The response should be sent to the Building Commissioner and building owner within 90 days of receiving the notice from the Building Commissioner. As part of DMIRS' Annual Report, the Building Commissioner may include details of the number of notices issued and responses received.

This amendment more clearly reflects the division of responsibility between permit authorities and the Building Commissioner, being that the Building Commissioner regulates registered people working in the building industry and building service complaints while permit authorities are responsible for the compliance of building work. It also introduces a feedback requirement so that the Building Commissioner is informed of the outcome of any notice issued.

It is not possible to accurately estimate the likely number of notices issued to permit authorities under this reform, however it is unlikely to be many. The CBA, prepared by CIE, estimates the number of notices issued by the Building Commissioner to be 421 per year. This figure is deliberately high to ensure the upper limits of the potential costs are considered. It's based on 30,597 new buildings per year, with a 69 percent rate of non-compliance and a 2 percent rate of non-rectification.

However, Building and Energy does not inspect every new building in any year. In the 2021-22 financial year, Building and Energy carried out 559 building and building surveying compliance inspections. Based on estimated rates of 69 percent non-compliance and 2 percent non-rectification, this extrapolates to a lower estimate of **8 permit authority notifications per year**. It is not considered, nor intended, to be a burdensome requirement for permit authorities to respond to these notifications.

It is therefore recommended that the building legislation is amended to require that:

- Where a person authorised by the Building Commissioner considers:
  - that an area of the building work is seriously non-compliant, such that it is likely to adversely affect the health safety and amenity of the building users; and
  - the builder refuses to rectify it,

  the authorised person may issue a notice to the permit authority, the building owner and any other interested party, notifying them of the non-compliant building work. For the purposes of this section, 'interested party' includes the owners of any adjoining property which is affected by the non-compliant work.
- A permit authority which receives such a notice is required to respond in writing within 90 days, to notify both the building owner and the Building Commissioner of what action they took, or reason(s) why they did not act.
- The Building Commissioner may report on the number of notices issued to permit authorities and responses received each year and publish results of any inspections, notifications and responses.

Recommendation 27

The building legislation is amended to empower the Building Commissioner to notify the permit authority and building owner of seriously non-compliant building work, require the permit authority to respond within 90 days regarding is actions, allow the information to be disclosed to the owner, and empower the Building Commissioner to report on certain matters.

Empower specialists to issue technical certificates and attach public interest obligations

The Building Act provides for classes of persons to be prescribed as specialists who can sign technical certificates for certain purposes of the Act. No classes of persons have yet been prescribed to sign technical certificates.

With the introduction of registration for certain classes of building engineers, it is recommended to prescribe that building engineers, registered under the Registration Act, can sign technical certificates.

This will support several of the other recommended reforms from this review, including documentation requirements, particularly for variations during construction, and mandatory notifiable stage inspections. It will empower engineers to certify the compliance of their designs, and also to specify any conditions on the certification, such as any points at which the work must be inspected during construction.

A technical certificate's scope of compliance is limited to the field of competence of the specialist that issues it. It will be the SBS's responsibility to consider the overall compliance of the building. For example, an engineer might attest that the design for a structural frame complies structurally, but to ensure the overall compliance of the building the building surveyor will need to ensure that the structure also complies with requirements for fire resistance and separation, access, weatherproofing, light and ventilation, acoustics, energy efficiency, etc.

As a technical certificate can be relied upon by the SBS for compliance certification, it is also important that the specialist undertakes that certification not only in line with their client's interest, but also in the public interest. This aligns with the recommended requirement for a building surveyor in section 4.6.

Statutory decisions made by a specialist can affect a range of built outcomes, from minor non-compliance to life-threatening risks, such as structural and fire safety. Therefore it is recommended that the building legislation be amended to require that, notwithstanding any contractual provision to the contrary, specialists must take into account public interest concerns when issuing technical certificates. The public interest in this sense includes the health, safety and amenity of current and subsequent building owners, occupiers, tenants, visitors, neighbours and the community.

Recommendation 28

The building legislation is amended to prescribe that building engineers, registered under the Registration Act in the appropriate class, may issue technical certificates and that, in doing so, they must act in the public interest.

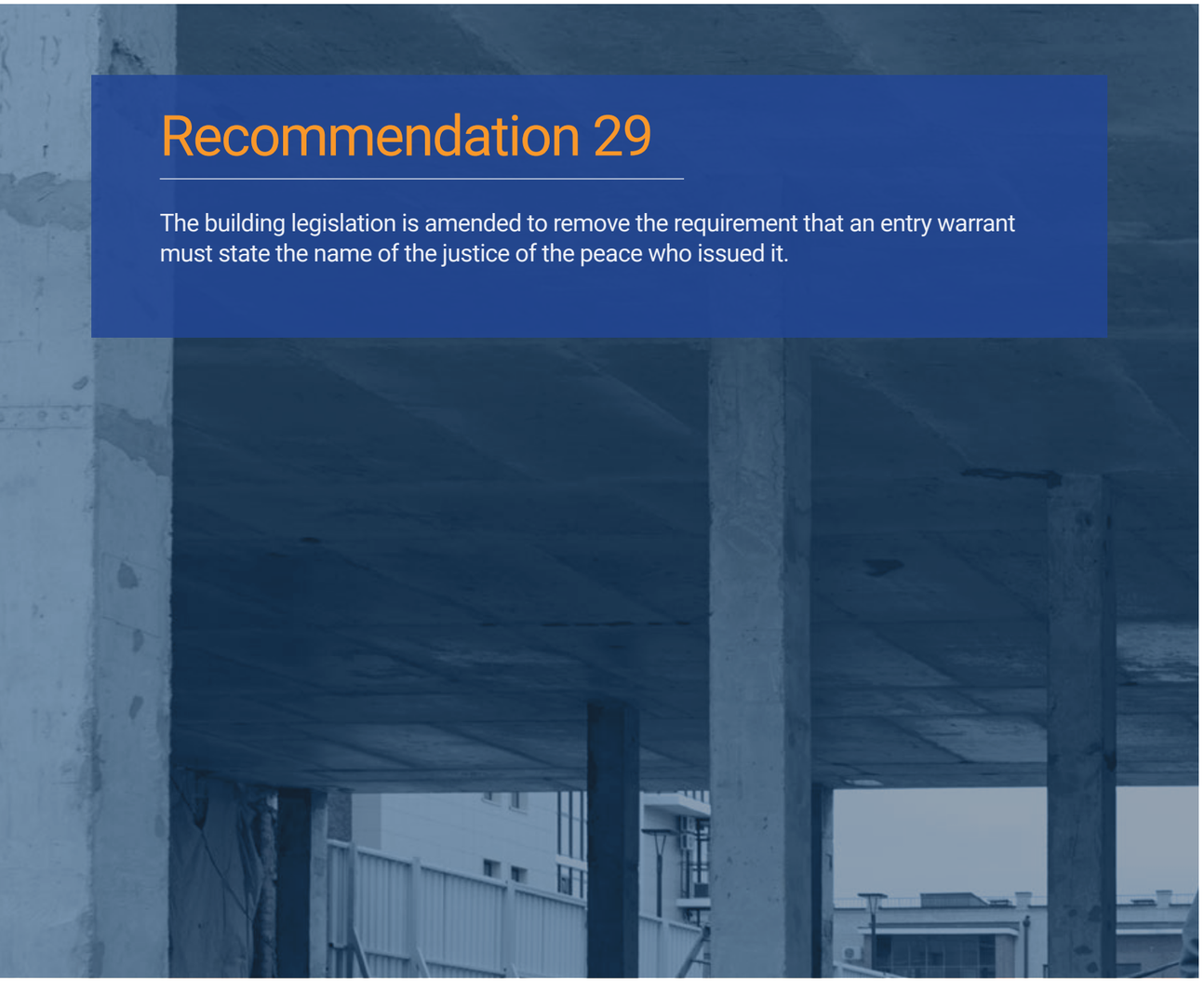
Entry warrant details

The Building Act requires that an entry warrant, authorising the entry of a place for a compliance purpose, must state the name of the Justice of the Peace (JP) who issued it.[78] An authorised person may apply to a JP for an entry warrant, the application must be made in accordance with the CI Act.

However, the requirement to name the issuing JP in the copy of the warrant provided to the occupier of a place being entered is inconsistent with the CI Act. The CI Act instead provides that a copy of the search warrant given to an occupier, or left at an unoccupied place, "must omit the name of the judicial officer who issued it."[79]

This inconsistency was revealed after a JP, who issued an entry warrant under the Building Act, was contacted and verbally harassed by the occupier who was served with the warrant.

It is therefore recommended that the requirement for an entry warrant to state the name of the issuing JP be removed, to maintain the confidentiality of the issuing JP.



Recommendation 29

The building legislation is amended to remove the requirement that an entry warrant must state the name of the justice of the peace who issued it.

78 *Building Act 2011* (WA) s107(2)(d)
79 *Criminal Investigations Act 2006* s31(6) WA

Require permit authorities to report certain information

The CRIS Commercial proposed that certain types of unauthorised or non-compliant building work must be reported to permit authorities and Building and Energy. Feedback from stakeholders indicated that it is also necessary to empower permit authorities to report certain information. For example, DFES suggested that permit authorities should report relevant information about unauthorised or non-compliant building work to emergency services, because it:

> "…can have a significant impact on the fire safety of buildings, its occupants and also fire fighters and the risks associated with firefighting. The FES Commissioner has powers under the Fire Brigades Act 1942 to remove fire risks in buildings and it may be appropriate and necessary for these powers to be exercised in cases of some non-compliant works."
>
> ***DFES response to CRIS Commercial***

The Building Act already allows interested persons to access copies of building records, and the Building Regulations define "interested persons" to include the fire authority.[80] However, while this empowers the FES Commissioner to request plans, it does not necessarily empower permit authorities to report information.

DPLH also suggested permit authorities be empowered to share information with organisations that accredit building industry practitioners:

> "…the confidentiality provisions of the Building Act restricts the ability for permit authorities to provide accrediting bodies with information/documentation that is supplied as part of a building permit.
>
> This restriction is hindering the ability of permit authorities to register a complaint to an accrediting body when questionable work by an accredited practitioner is provided as part of a building permit. For example, DMIRS, DPLH and Department of Fire and Emergency Services (DFES) have recognised the FPAA [Fire Protection Association Australia] as an accrediting body within the Western Australian building and planning framework, yet a local government that receives an inaccurate Bushfire Attack Level (BAL) assessment or Bushfire Management Plan from a FPAA accredited practitioner for a building permit cannot lodge a complaint or share any documentation with the FPAA."
>
> ***DPLH response to CRIS Commercial***

It makes sense to empower permit authorities to report the activities of accredited people to the relevant accrediting organisation, and also to report building information to DFES. It is therefore recommended to amend the Building Act to empower permit authorities to:

- ⇨ report the activities of accredited practitioners to the relevant accrediting body, including providing copies of relevant documents to support the report;
- ⇨ require accreditation bodies that receive such reports to maintain the information confidentially; and
- ⇨ report relevant information to the FES Commissioner regarding Classes 2 to 9 buildings, including unauthorised and non-compliant building work, and variations during construction, that affect a building's active or passive fire safety performance, or fire brigade operations.

80 *Building Act 2011* (WA) s131; Building Regulations 2012 (WA) r13.

The original CRIS proposal, that certain types of unauthorised or non-compliant building work must be reported to permit authorities and Building and Energy, was addressed above, as part of the recommendation to empower the Building Commissioner to make directions on certain prescribed matters.

Recommendation 30

The building legislation is amended to empower permit authorities to report building information to the FES Commissioner, and the behaviour of accredited people to the relevant accreditation body.

Building permits for prescribed structures

Under the Building Act, structures that are not incidental to a building are not classed as 'building work', and therefore do not require a building permit.

This has resulted in a variety of structures being constructed on vacant land which is zoned for development, including retaining walls and swimming pools, without permits. Other structures, such as viewing platforms and masts, including telecommunication towers, are often not incidental to a building and therefore do not require permits, but still pose a risk to the community where structures are non-compliant.

The absence of a clear requirement to obtain a building permit for these structures has led to different local governments applying different approval requirements and processes, and in many cases, charging different fees. A clear requirement for a building permit for these structures would provide consistency and certainty, both for industry and local governments.

It is therefore recommended that the building legislation is amended to:

- provide that building permits must be obtained for prescribed structures that do not meet the definition of a building or incidental structure; and
- prescribe that, unless excluded under Part 5 of the Building Act or schedule 4 of the Building Regulations, building permits must be obtained for the following structures:
  - retaining walls;
  - swimming pools;
  - viewing platforms; and
  - masts and antennae.
- An occupancy permit and NoC is not required for a prescribed structure, but a technical certificate may be required if appropriate.

Recommendation 31

The building legislation is amended to require that building permits shall be obtained for prescribed structures.

Changes to the powers to issue infringement notices and modified penalties

The Building Regulations currently empower authorised officers of permit authorities to issue infringement notices under the ***Criminal Procedure Act 2004*** (CP Act) for certain prescribed offences against the building legislation.

In 2019, the Building Regulations were amended to prescribe a list of 10 offences for which an infringement notice under the CP Act can be issued, and applicable modified penalties.[81]

While the ability to use infringement notices, as an alternative to court prosecutions, was supported by local governments, the time limitations in Part 2 of the CP Act have substantially restricted their utility as an enforcement tool for building control.

Under the CP Act, an infringement notice must be issued by an authorised officer within 21 days of the date in which the alleged offence is believed to have been committed.

This limitation is effective in the context of the majority of offences for which infringement notices are issued under the CP Act, including road traffic offences, parking violations, minor criminal stealing and property damage. In these cases, the authorised officer issuing the infringement notice often has the benefit of witnessing the offence and can immediately deal with the alleged offender, or evidence of the offence is captured by a specialist device (e.g. speed camera or speed measuring device).

For offences under the building legislation it is rarely, if ever, the case that the authorised officer of a permit authority witnesses the offence being committed. Instead, these types of offences are often detected as a result of complaints or other circumstances.

Consequently, by the time the matter has been identified and investigated and the authorised officer is satisfied that a prima facie case exists, the 21 day limit will almost always have elapsed.

Anecdotally, local governments report the only option available to them is costly court proceedings, which results in some industry participants choosing to operate outside the requirements of the building legislation in the belief that they will rarely, if ever, be prosecuted.

This does not ensure proper compliance and enforcement of building standards or safeguard the health, safety and amenity of building users.

81 See generally, Commerce Regulations Amendment (Infringement Notices) Regulations 2019.

Prior to the enactment of the building legislation, local governments had the power to apply daily modified penalties for breaches of building requirements. While the quantum of the modified penalty was relatively low, its application at a daily rate is understood to have encouraged greater compliance with notice requirements due to the ability for it to quickly accumulate.

The limitations inherent in the infringement regime under the CP Act is one of the reasons why a number of other enactments in WA contain their own provisions for regulatory offences. For example, WA's plumbing legislation allows for infringement notices to be issued within 12 months of the date of the commission of the offence. Similarly, the recently enacted ***Ticket Scalping Act 2021*** allows for infringement notices for various offences to be issued within six months of the date of the commission of the offence.

To improve regulatory enforcement, the building legislation should be amended to modify the operation of the CP Act to:

- ⇨ allow for infringement notices to be issued within 12 months after the day on which the alleged offence is believed to have been committed; and
- ⇨ impose a daily modified penalty for certain offences, including the failure to give a NoC, to support effective enforcement of the reforms recommended for notifiable stage inspections.

The same increase to the limitation period should also apply to infringement notices issued by the Building Commissioner for the offences prescribed under the Registration Act.

Recommendation 32

The building legislation and Registration Act is amended to allow for the service of infringement notices for certain prescribed offences within 12 months of the date of the alleged offence.

A daily modified penalty is introduced for certain offences under the building legislation, including failing to give a NoC.

11. Reforms to the Registration Act and Registration Regulations

The Registration Act commenced operation in 2012 and forms a critical component of the WA building regulatory framework.

The Registration Act ensures those persons registered to carry out prescribed building services, such as builders, building surveyors and painters (and shortly building engineers) have the right level of qualifications and experience and carry out their services in a proficient and proper manner.

Registration under this Act is an important protection to give consumers confidence that when they contract with a registered person, both the services provided and the commercial conduct of that person meets a required standard.

The Building Confidence Report observed, in the context of builders:

> The quality of buildings depends heavily on the competency and integrity of builders. There are many builders that have high standards of competency and integrity. However, the rates of disputes, alleged defects and reports of high levels of illegal phoenix activity are evidence that there are shortcomings in the performance of some builders. These need to be addressed.
>
> ***Building Confidence Report, p 13***

Given the issues that have emerged with defective buildings and building regulation over the last decade, and recommendations of the Building Confidence Report, the Registration Act needs to be reformed to improve the competency and integrity of builders and ***any*** building service provider who is registered under the framework.

Review proposals

The CRIS Registration sought stakeholder feedback on a number of proposed reforms to the Registration Act to address existing gaps and improve competencies of registered persons, including:

- ⇨ tiered registration of builders;
- ⇨ changes to building practitioner registration qualification requirements and contractor thresholds;
- ⇨ extension of registration requirements to exempted parts of WA;
- ⇨ mandatory CPD on the NCC for building surveyors and building practitioners;
- ⇨ reforms to disciplinary and enforcement powers; and
- ⇨ registration of project managers working on commercial buildings.

Tiered registration of builders

All Australian states and territories recognise the high risk nature of building and have mandatory builder registration requirements in place.

Common elements of these requirements include:

- ⇨ character (fit and proper) checks for applicants for builder registration;
- ⇨ mandatory qualifications and experience requirements relevant to the occupation;
- ⇨ maintenance of a builder registration register for the public record and compliance purposes; and
- ⇨ a scheme for the relevant government agency to take compliance and disciplinary action against registered persons where appropriate.

The registration regimes for builders across Australia vary widely. However, WA's builder registration requirements under the Registration Act are unusual in having only a single Open class of builder registration, which enables the holder to undertake any type of residential and commercial building work.

That is to say, once registered, a builder in WA can build anything from a small backyard granny flat up to a multi-storey city office tower. In all other states and territories, builders are registered in tiers of categories or classes, which then limit the types and size of buildings they can build.

Implementation of a tiered registration (more than one class of registration) model in WA will better align the qualifications and experience requirements of the registered practitioner responsible for the management and supervision of the business with the type and complexity of building work undertaken. This is particularly important as WA transitions towards higher density living that could result in builders that have typically worked on residential buildings trying to build more complex commercial or apartment buildings driven by the desire to maintain a share of residential construction.

Another strong reason for reform to WA builder registration requirements is that major adjustments have been made to the vocational education and training qualifications available to builders.

As a result of the Building Confidence Report recommendations, the national Vocational Education and Training qualifications for builders have undergone significant reform. The most common registration pathway in WA for applicants for building practitioner registration relies on the Diploma of Building and Construction (Building) and 7 years' experience. The Diploma has been substantially revised under the national vocational education and training system to increase in size and contain more NCC content. The shift towards a more tiered system identifying the work of a low rise builder would enable a more appropriate qualification to be adopted resulting in a reduced education cost for applicants.

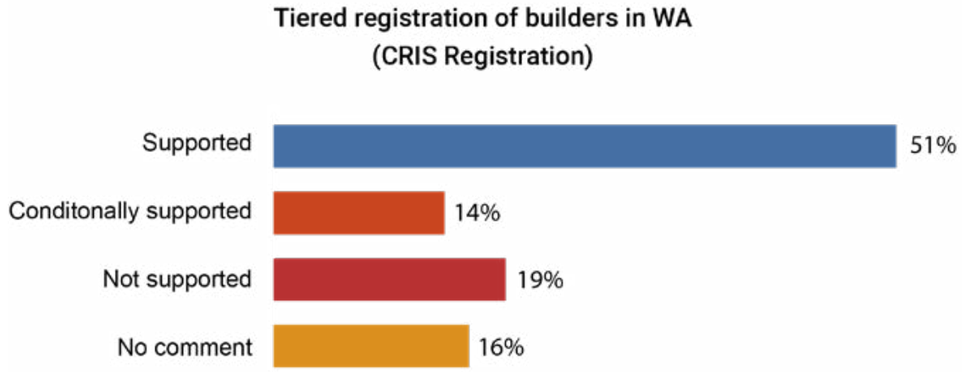
The CRIS Registration proposed three key reforms to builder registration requirements for stakeholder feedback. Specifically:

- ⇨ introducing 3 tiers of building practitioner and contractor registration set by reference to the classification, size and type of buildings in the NCC – low rise, medium rise and open (unrestricted);
- ⇨ adjusting the current qualification and experience requirements for new applicants for building practitioner registration to align with the prosed 3 tiers; and
- ⇨ transitioning/grandfathering existing holders of builder's registration into the open (unrestricted) tier.

The proposal to introduce three tiers of building practitioner and contractor registration linked to the classification, size and type of buildings was designed to align with the national model or NRF.[82]

Generally, stakeholders were supportive of the introduction of tiered registration for building practitioners and contractors, but many did not support the three tiers proposed in the CRIS Registration.

82 See generally, ABCB, National Registration Framework for building practitioners: Model guidance on BCR recommendations 1 and 2 pp 131-139.



Stakeholders who supported a tiered registration considered the greatest benefit of the reform would be to ensure the builder has the appropriate expertise when shifting from low-rise residential buildings to medium-rise or high-rise commercial buildings. Comments included:

> "Tiered registration is essential to ensure those registered are not practising outside their technical management ability."
>
> ***Graham Teede response to CRIS Registration***

> "Medium rise and high rise construction is more complex than low rise construction. Commercial class construction is more complex in nature than Class 10 and previous experience has indicated some builders are not fully conversant with the requirements for construction of commercial premises (i.e. accessibility and fire rating)."
>
> ***Employee, Shire of Wyndham response to CRIS Registration***

> As a registered builder completing a project in both residential and commercial we have been engaged to complete remedial works where a registered builder with no experience in commercial building has left the owner with a building where an Occupancy Permit could not be granted due to the non-compliance. Over the last three years we have been engaged twice to complete these types of work. To increase the professionalism of the industry and decrease the amount of defects and faulty workmanship, I would support tiered registration.
>
> ***Ryan Dixon response to CRIS Registration***

Stakeholders who did not support the three tiers proposed in the CRIS Registration did so for various reasons. Some stakeholders wanted additional tiers to capture Class 10 buildings (i.e. sheds, patios, carport etc.), others considered the 3 tiers unworkable and wanted only two tiers and for the value thresholds to be adjusted.

For example, one stakeholder requested:

> "…consideration of a two tiered approach providing one tier for builders working on all classes of buildings (all sizes and types) and a second tier for those working on Class 1 and 10 buildings and other classes up to 3 stories or 2,000m² (i.e. Classes 2-9 buildings that are Type C construction).

> This two-tiered approach would fit neatly with construction requirements and the reality that additional fire safety provisions are triggered and also aligns with current AQF (Australian Qualifications Framework) learning packages for training and the approach used in a number of jurisdictions to license these practitioners today."
>
> ***HIA response to CRIS Registration***

Other stakeholders observed that three tiers would make it difficult, particularly for practitioners, to obtain sufficient levels of experience to move to an open (unrestricted) class.

> "How can a tier 2 or 3 builder move up to tier 1 if he can't be given a chance to supervise or construct structures that only tier 1 builders can do? This creates discrimination and division amongst builders that jeopardise the harmony in our industry."
>
> ***Rowena Cataleni response to CRIS Registration***

Two workshops were held with builders and other industry participants as part of the consultation process for the CRIS Registration. Participants expressed concerns about the restriction on business flexibility and lost economic opportunities in a three tiered model. There was concern expressed that a complex registration regime would be more time consuming for local governments, and more costly for Building and Energy diverting regulators' efforts from direct building control and disciplinary action on NCC compliance.

The three tier model proposed a medium rise tier of building practitioner and contractor registration which would restrict builders to medium rise buildings only. WA has a relatively low number of commercial building approvals compared to the more populous states of Victoria and New South Wales. The medium rise category represents a very narrow scope of work for a contractor and is unlikely to be economically viable for many builders in WA, particularly during economic downturns.

On balance, there appears to be substantial merit to having only two tiers of builders' registration in WA, not three. It is therefore recommended that WA differs from the national model in this respect.

This would align much more closely with changes to vocational education qualifications for builders, improve requirements for commercial building expertise in the open tier; and strengthen consistency with registration requirements that apply elsewhere.

A two tiered registration regime, and the proposed ongoing CPD for building practitioners (refer to Chapter 11 of this DRIS), will support building expertise in WA without undue restriction on the economic flexibility of business or cost impacts on government.

It is recommended the Registration Regulations are amended to implement a two-tier 'Low-rise' and 'Open' registration model in WA.

The table below describes how the two-tier registration model will operate. **Attachment F** in Volume 2 contains more details on recommended scopes of work.

Registration Tier	Scope of Work (See Attachment F in Volume 2 for full details)	Eligible nominated supervisors
Level 1 Registered Builder – Open	⇨ All residential and commercial buildings of any size (i.e. all Classes)	Must be a registered building practitioner Level 1
Level 2 Registered Builder – Low rise	⇨ All residential buildings (Classes 1 and 10) of any size ⇨ Only commercial buildings (Classes 2 to 9) with a gross floor area of not more than 2,000m² but not including Type A or B construction	Must be a registered building practitioner

Note: Current exemptions for builder registration will continue to apply under the Registration Regulations.

The introduction of a streamlined two, rather than three, tiered registration model will also reduce impacts and provide consistency. An appropriate lead-in time for the introduction of minimum commercial building experience for the Open building practitioner requirements will be determined following further industry consultation. A pathway will be made available for applicants that attain Low rise practitioner registration under the new registration regime and later seek Open builder registration. Opportunities for commercial building experience will be clarified and may include, smaller commercial building experience included under the low rise scope of work; or work as a subcontractor or an employee (excluding a nominated supervisor) of a registered Open building contractor.

In addition, to minimise costs and confusion, current registration numbers will be maintained for current practitioners and contractors. The relevant tier of registration will be listed on the Register of Builders maintained by Building and Energy. Building and Energy will liaise with key stakeholders in the building and construction sector to manage impacts of transition to a new registration regime.

Although the introduction of a new registration category for Class 10 non-habitable buildings and structures was proposed in some submissions, the Building Confidence Report did not propose a separate registration category for Class 10 builders.

If consumers experience problems with businesses that are not registered building contractors and build Class 10 buildings and structures only, assistance is available under current laws, including:

- ⇨ the complaints process under the BSCRA Act; and
- ⇨ complaints about breaches of the Australian Consumer Law to Consumer Protection.

Transitional and grandfathering arrangements

Appropriate transitional and grandfathering provisions are required to ensure existing holders of builder registration are not unduly prejudiced or incur substantial costs in re-training caused by the change from a single to a two-tiered model.

The CRIS Registration sought feedback on the need for transitional/grandfathering arrangements. Stakeholder feedback strongly supporting such arrangements.

Comments included:

> "…those who currently hold a Building License [builder registration] in either contractor or practitioner should be considered for grandfathering as a Tier 1 [Level 1] if applied by the applicant. Consideration needs to be given to existing registered builders and the proposal that they may lose the existing right to perform proposed Level 1 or Open registration. In effect they will be expected to forfeit this right unless they are to undertake a dramatic commitment to achieve an outcome of qualifications(s) and experience which is an impost"
>
> ***AIB response to CRIS Registration***

> "The difficulty that current practitioners and contractors would have to adequately obtain supportive documentation related to experience (type of construction) to meet the proposed new levels or tiers would be overly arduous. The further a practitioner must reach back in time the harder it is achieving supporting documentation. The ability both mentally and economically to have to attend and satisfactorily complete new studies could be a huge cost and impost."
>
> ***John Vagg response to CRIS Registration***

A fine balance needs to be struck when putting in place transitional/grandfathering arrangements. On the one hand, arrangements need to support the policy change and not undermine the purpose of tiered registration. On the other hand, they need to support existing practitioners and contractors who, under the existing requirements, are or have been permitted to undertake all levels of builder work.

To achieve an appropriate balance, it is recommended that all building contractors and practitioners registered up to the point of changes to the Registration Regulations are grandfathered into the Level 1 Open Builder tier, subject to any existing restrictive conditions on their registration which may apply.

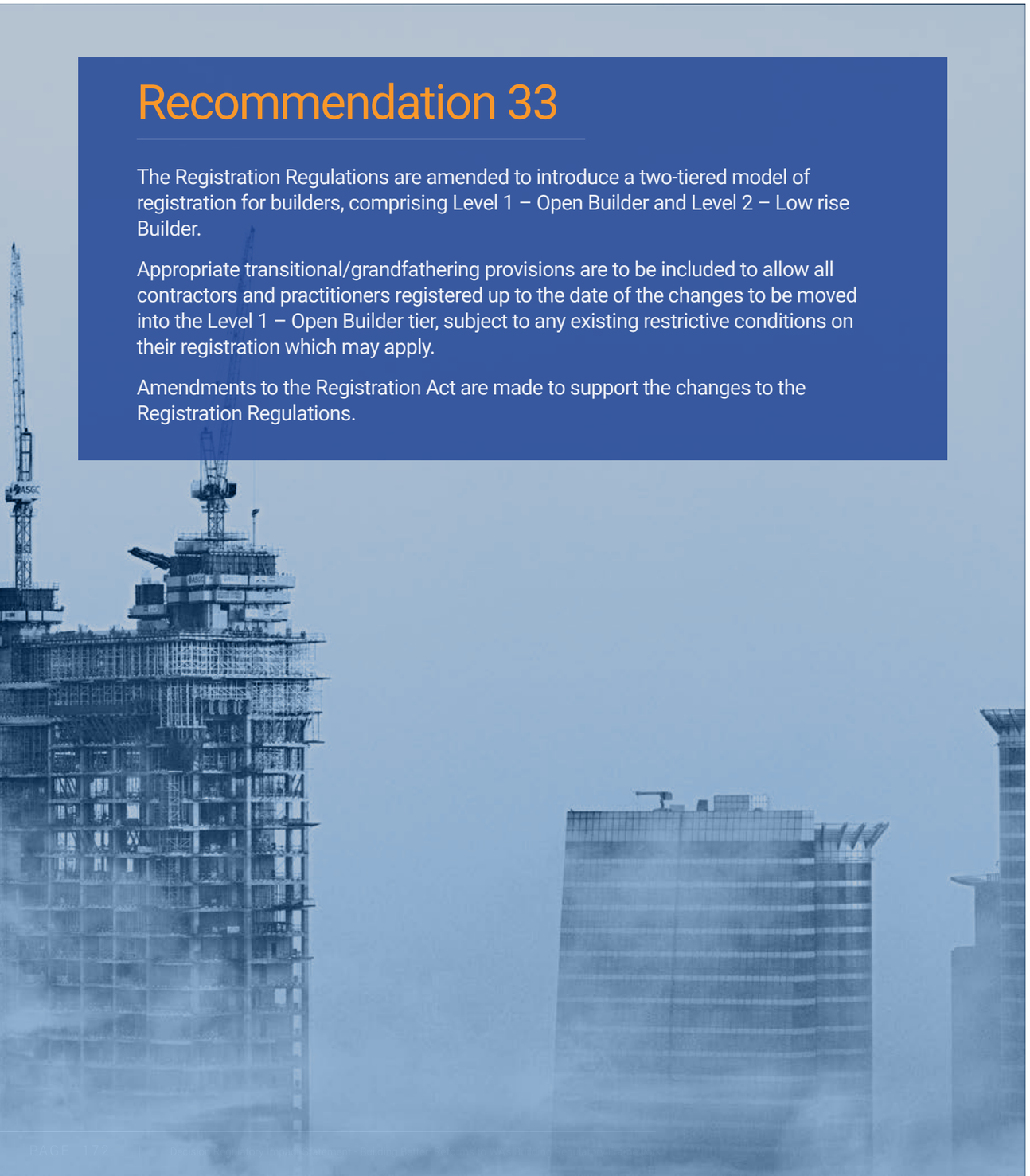
As outlined above, the introduction of a two, rather than three, tiered registration regime will be important in reducing impacts and provide consistency for current businesses.

Recommendation 33

The Registration Regulations are amended to introduce a two-tiered model of registration for builders, comprising Level 1 – Open Builder and Level 2 – Low rise Builder.

Appropriate transitional/grandfathering provisions are to be included to allow all contractors and practitioners registered up to the date of the changes to be moved into the Level 1 – Open Builder tier, subject to any existing restrictive conditions on their registration which may apply.

Amendments to the Registration Act are made to support the changes to the Registration Regulations.



Changes to building practitioner pathways for new applicants

The Registration Act and Registration Regulations provide for mandatory qualifications and experience requirements for new applicants for building practitioner registration.

The CRIS Registration had sought stakeholder feedback on:

- ⇨ the proposed core registration pathways under a three tiered registration model (see above); and
- ⇨ removal of current registration pathways that do not include a mandatory building qualification, such as those for architects, engineers, members and fellows of the AIB and applicants that have successfully completed BSB examinations.

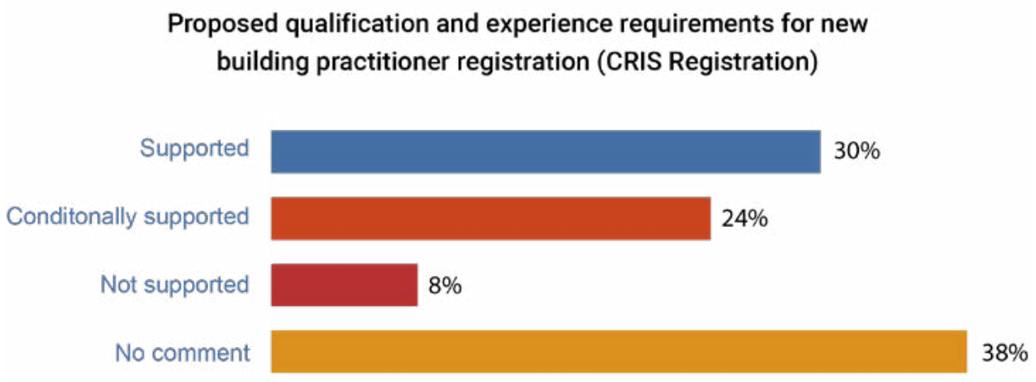
Stakeholder feedback was also sought on administrative requirements for registration to assist in the implementation phase of the reforms.

The tables below describe the reforms that were proposed in the CRIS Registration to the pathways in the three tired registration model, not the two-tiered model that is now recommended.

Qualifications	Experience
Level 1 Open Building Practitioner	
Set 1- Degree in construction management as endorsed by a building industry accredited scheme, such as the Australian Institute of Building's (AIB's) Higher Education Course accreditation scheme. Set 2- CPC60219 Advanced Diploma of Building and Construction (Management) plus key prescribed units from the Diploma of Building and Construction (Building). Set 3- CPC50210/CPC50220 Diploma of Building and Construction (Building).	Set 1 – A minimum of three years' experience under the direct supervision of a nominated supervisor/ practitioner in this tier. Set 2 - A minimum of five years' experience under the direct supervision of a nominated supervisor/ practitioner in this tier. Set 3 - A minimum of seven years' experience under the direct supervision of a nominated supervisor/ practitioner in this tier.
Level 2 – Medium-rise Building Practitioner	
CPC50210/CPC50220 Diploma of Building and Construction (Building).	A minimum of three years' experience relevant to this tier under the supervision of a nominated supervisor/ registered practitioner.
Level 3 – Low rise Building Practitioner	
CPC40110/CPC40119 Certificate IV of Building and Construction (the Certificate IV) plus relevant building technical and NCC units from the Diploma of Building and Construction (Building).	A minimum of three years' experience relevant to this tier under the supervision of a nominated supervisor/ registered practitioner.

Stakeholder feedback on the reform to the pathways was mixed. The proposed qualifications in each tier were generally supported but many stakeholders did not support the experience requirements.

A key source of concern for stakeholders was the impact on current registered building practitioners. However, the proposals in the CRIS Registration will not impact practitioners that have already attained registration and are seeking renewal of registration, unless their registration has lapsed for more than three years. In response to concerns, the DRIS proposal has extended this period to five years. The grandfathering of practitioners and streamlining of registration tiers will further address this concern and limit impacts on current practitioners and businesses (refer to recommendations above).



A significant number of stakeholders considered three years of experience was insufficient. In the reform proposal, three years' experience was proposed for the Open builder registration pathway for applicants with a construction degree, and Low rise builder registration pathway for applicants with the Certificate IV Building and Construction (Building) and additional units from the Diploma.

Some stakeholders observed:

> "A minimum experience for levels 1, 2 and 3 should be 5 years and not 3 years as proposed."
>
> ***ABN Group response to CRIS Registration***

> "In my view, as an example, Level 1 tier under construction management, three years' experience isn't enough. At best, the individual would have only just scratched the surface of the basic contract administration elements and would not have gained sufficient experience in all aspects of construction/trades/tendering/costs etc. As a mid-tier builder, we have over time come to understand that it takes 7-to-10 years to become competent in all aspects of building works, which include estimating, administration, supervision and financial/contractual management on top of technical understanding."
>
> ***Jerry Mazaryk response to CRIS Registration***

> "…the minimum experience for levels 1, 2 and 3 should be five years not three as proposed."
>
> ***Anthony Lumbaca response to CRIS Registration***

Currently under the Registration Regulations, either five or seven years' experience is needed for building practitioner registration depending on the pathway. Stakeholders concern about a reduction to three years is therefore well-founded as it would represent a significant drop in minimum experience requirements.

The increasing complexity of the NCC, and the findings of Building and Energy's audits which continue to identify deficiencies in NCC compliance in WA, provide further support for providing for five years' minimum experience, rather than the three years proposed in the CRIS Registration.

The recommendation made earlier to introduce a two tiered model of registration, which includes a Level 1 – Open Class, means the minimum experience requirements for practitioners in this class will need to include a component of experience with commercial building (Classes 2 to 9). Simply having experience in the construction of residential buildings cannot be considered sufficient for this class of registration.

Consideration stakeholder feedback and assuming acceptance of the recommendation made earlier on a two tiered registration model, it is recommended that the Registration Regulations be amended to reform the core pathways for building practitioner registration in accordance with the table below.

Amendments to the Registration Act will be required to support the changes, which should only apply to new applicants after they take effect.

A transition period will be applied to the removal of current registration pathways (refer below). A lead-in time for the introduction of minimum commercial building experience for the Open building practitioner requirements will be applied.

In response to practical concerns raised in submissions, a Set 3 pathway for applicants with substantial experience as a registered low rise practitioner shifting to the open builder registration class is also proposed. The Certificate IV of Building and Construction comprises part of the Diploma of Building and Construction, so forms a qualifications pathway from low rise to open practitioner.

Qualifications	Experience
Level 1 Open Building Practitioner	
Set 1- CPC50220 Diploma of Building and Construction (Building) and CPC50210 Diploma of Building and Construction (Building) and current prescribed units; or other Set 1 qualifications prescribed in Registration Regulation (r.16) or equivalent qualification as determined by the BSB.	Set 1- A minimum of seven years' experience at least 3 years of which are experience with commercial buildings (Classes 2 to 9).
Set 2- Degree in construction management as endorsed by a building industry accredited scheme, such as the Australian Institute of Building's (AIB's) Higher Education Course accreditation scheme.	Set 2 - A minimum of five years' experience at least 2 years of which are experience with commercial buildings (Classes 2 to 9).
Set 3- Set 1- CPC50220 Diploma of Building and Construction (Building) and CPC50210 Diploma of Building and Construction (Building) and current prescribed units; or other Set 1 qualifications prescribed in Registration Regulation (r.16) or equivalent qualification as determined by the BSB.	Set 3- Registration as a low rise building practitioner for at least two years and two years' experience with commercial buildings (Classes 2 to 9).
Level 2 – Low rise Building Practitioner	
CPC40119 Certificate IV of Building and Construction (the Certificate IV) plus relevant prescribed units of competency from the Diploma of Building and Construction (Building); or current Set 1 registration qualifications prescribed in Registration Regulation (r.16); or An equivalent qualification as determined by the BSB.	A minimum of five years' experience.

Removal of current Engineers and Architects registration pathway (Set 2)

Consistent with the changes to the building practitioner registration pathways and the two tiered model, the CRIS Registration sought feedback on removing the current Set 2 pathway in regulation 16 of the Registration Regulations.

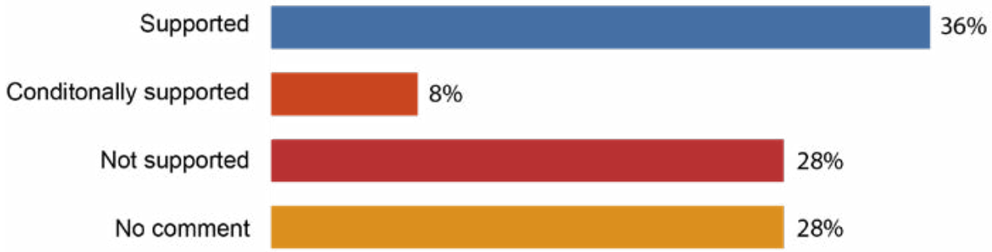
Under the Set 2 registration pathway, the qualification requirements include:

- Level 1 or 2 membership of the Australian Institute of Architects;
- registration under the *Architects Act 2011 (WA);*
- *Membership as a Professional Engineer of Engineers Australia; or*
- *Membership as Fellow or member of the Australasian Institute of Mining and Metallurgy (AIMM) comprises the qualifications component.*

An applicant must also have experience supervising building construction for periods totalling at least the equivalent of 5 years full-time.

Stakeholders generally supported removal of this registration pathway, with many noting that it did not provide an applicant for registration with sufficient exposure to the work of a builder, including NCC compliance, site supervision and management, estimating and scheduling, procurement, financial management for building contractors, and supervision of a range of building trades.

Remove current Set 2 registration pathway for architects and engineers (CRIS Registration)



Comments from stakeholders who supported the removal of the Set 2 registration pathway included:

> "Yes it should be removed, most of these professionals haven't a clue of the building process or NCC requirement."
>
> ***Town of Victoria Park response to CRIS Registration***

> "Definitely – most architects have no understanding of simple building concepts – this is a loophole."
>
> ***Anthony Mayor response to CRIS Registration***

> "…an engineer does not have the appropriate breadth of knowledge and training as it applies to the construction of buildings."
>
> ***Anthony Mayor response to CRIS Registration***

Conversely, Engineers Australia opposed removing the Set 2 pathway on the basis that:

> "…the engineering qualification provides a broad range of skills including how to understand and interpret standards."
>
> ***Engineers Australia response to CRIS Registration***

Engineers Australia instead suggested that the wording used in the Set 2 pathway is amended to mandate "a relevant engineering qualification and registration on the Engineers Australia National Engineering Register and/or are a Chartered Professional Engineer, Chartered Technologist Engineer or Chartered Associate Engineer in a relevant area of practice."

Although engineering (and architectural) qualifications are set at a high level, the absence of mandated and applied building and construction content in the qualifications is inconsistent with the national model developed by the ABCB, which mandates building and construction qualifications and experience.

Further, the wide range of engineering disciplines and diverse university qualifications make it difficult to identify, as proposed by Engineers Australia, the 'relevant engineering qualifications and registration' and 'relevant area of practice' to deliver satisfactory applied building content for the grant of registration as a Low rise or Open building practitioner.

Only 13 applicants applied under this Set 2 pathway in 2019/2020, and 21 applicants applied in 2020/2021. For architects and engineers applying to enter this pathway, it is often not possible for applicants to prove they hold the required five years' experience in managing and supervising construction, as this is the role of the building contractor. Although the architect, for example, may represent the client on the project their general focus is on design and project management not on procurement or engagement of trades.

To limit impacts on industry participants finalising their qualifications and experience with the intention to apply for practitioner registration, it is recommended that the current Set 2 pathway is removed after a two year phase out period.

Following removal of the registration pathway, these applicants may still apply for building practitioner registration under the 'core' registration pathways outlined above. For the qualifications requirements, they may utilise a registered training organisation to assess if they meet the prescribed qualifications from their existing skills, knowledge and experience or need to complete additional units of competency.

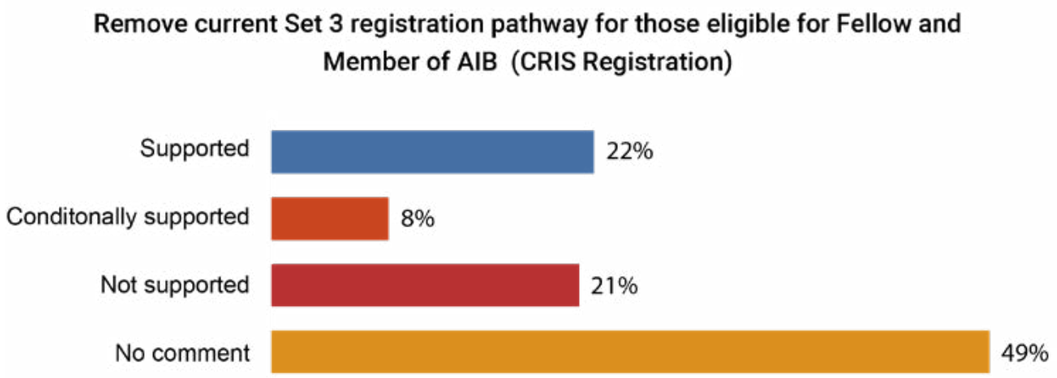
Removal of current AIB registration pathway (Set 3)

Under the current Set 3 registration pathway in the Registration Regulations, an applicant for registration as a building practitioner must:

- hold membership as a Fellow or Member of the AIB; and
- have experience in carrying out, supervising or managing building construction for periods totalling at least the equivalent of 5 years full-time.

The AIB is a peak building and construction body. Relatively few applicants however apply under this pathway with 10 applying in 2019/2020 and 18 applying in 2020/2021.

The CRIS Registration proposed to remove this pathway in favour of the reform to create a tiered registration model. The small number of stakeholders who responded to this proposal supported removing it.



The AIB was the major stakeholder who opposed removal of the pathway on the basis the requirements for membership is of a standard in excess of that currently proposed for registration. The AIB noted entry requirements include:

- ⇨ completion of a four year AIB accredited degree in construction management (or recognition of prior learning equivalent);
- ⇨ three years demonstrated postgraduate professional level experience; and
- ⇨ assessment of good standing and ethical behaviour.

The key objection raised about this registration pathway was the possibility that a Member or Fellow may not hold a building and construction degree.

However, as the AIB has since confirmed that its members have completed a degree in construction management accredited by them, the proposed core Set 2 registration pathway identified in the two tiered registration model recommended above should cover these applicants. The Set 3 pathway in the Registration Regulations should therefore be removed.

To limit impacts on industry participants finalising their qualifications and experience with the intention to apply for practitioner registration, the current registration pathway should be removed only after a two year phase out period.

Removal of BSB exam registration pathway (Set 4)

Under the current Set 4 registration pathway in the Registration Regulations, an applicant for registration as a building practitioner must:

- ⇨ successfully complete a BSB exam which is based on the CPC50210 Diploma of Building and Construction (Building) and has a maximum of three years to complete the examination process; and
- ⇨ have experience in carrying out, supervising or managing building construction for periods totalling at least the equivalent of five years full-time.

The BSB has expressed concerns that the exam contains a relatively limited scope of assessment of knowledge compared to those units of competency covered by the Diploma of Building and Construction (Building). In addition, the recent national VET review resulted in the CPC50220 Diploma of Building and Construction (Building) being substantially revised to include more units of competency.

In 2020/21, 36 applicants applied under this registration pathway (Set 4). However, only one candidate of the eight candidates who sat the examinations successfully attained registration. In 2019/2020, 38 candidates applied, of these only nine chose to sit an examination in that financial year, and five became registered. As the BSB exams are undertaken in five parts with up to three years to complete all of them, it is possible that applicants in one financial year will later become registered. However, the rate of successful applicants is low.

The low success rate suggests that the BSB exam pathway does not provide sufficient support for applicants to learn necessary content, and completion of a qualification would be a more appropriate pathway. The registration pathway is administratively burdensome and does not represent efficient use of resources.

Given the content of the Board exams has now been superseded, and the low number of successful applicants, it is recommended that the current Set 4 registration pathway is phased out soon. Building and Energy will liaise with applicants to limit impacts on persons applying under this registration pathway.

Removal of BSB exam registration pathway (Set 5)

The removal of the Set 5 registration pathway was not subject to consultation as it was introduced for transitional purposes on the introduction of the Registration Act and Registration Regulations and is no longer used for new applications for registration. This pathway will also be removed.

Renewal of registration and lapsed registration

It is not intended that individuals that have attained registration through current registration pathways and renew their registration will be impacted by these reforms.

Practitioners that have let their registration lapse for up to three years may currently re-apply for up to three years by using proof of registration as evidence of qualifications and experience. To further ease the transition to the new registration regime and minimise red tape, this three year "grace period" will be extended to five years.

Recommendation 34

The Registration Act and Registration Regulations are amended to:

- ⇨ prescribe qualification and experience pathways for new applicants for registration as Level 1 Open and Level 2 Low rise building practitioner;
- ⇨ remove the current Set 2, 3, 4 and 5 registration pathways; and
- ⇨ ensure currently registered practitioners that continue to hold registration are not adversely affected on renewal.

To support these amendments, Sets 2 and 3 should be phased-out over a two year period from commencement, and Sets 4 and 5 phased out following release of this DRIS.

To minimise red tape, former registered practitioners who are eligible persons and whose registration has lapsed may use proof of prior registration for new applications for a five year 'grace period'.

Building contractor registration thresholds and exemptions

The Registration Act and Registration Regulations establish the circumstances requiring building contractor registration in WA.

A person or entity that carries out 'builder work' in WA for any other person must be registered as a building contractor and entitled to carry out that building service. However, employees and subcontractors of registered building contractors are not required to be a registered contractor.

The Registration Regulations define 'builder work' as building work:

- ⇨ for which a building permit is required;
- ⇨ with a value of $20,000 or more (referred to in this DRIS as the builder registration threshold); and
- ⇨ carried out in an area of the State set out in Schedule 3 of the Registration Regulations.

A key element of the requirement for a contractor to hold builder registration is that it must be work that requires a building permit. The Building Act and Building Regulations take a risk-based approach to the requirement for building permits by excluding some lower risk building work from the requirement to have a building permit. Where further clarity is required, the Registration Regulations also specifically exempt some types of lower risk work from the requirement to use a registered builder.

Increasing the value threshold for builder work

The primary purpose of the monetary registration threshold of $20,000 in the Registration Regulations is to exempt persons and businesses carrying out relatively low value work, such as smaller sheds and patios, fences, and other relatively low cost building work.

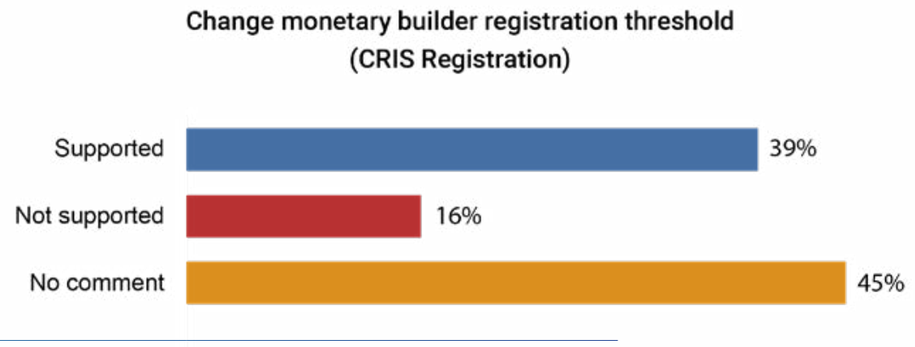
From time to time, small businesses operating below the monetary builder registration threshold have raised concerns that the increased cost of building products and labour over the past decade or so, increasingly means they exceed the threshold, with no change to the type and complexity of the work they do. This effectively requiring them to upskill as a builder or become subcontractor for a registered builder. These types of businesses have tended to include shed or patio companies.

A monetary builder registration threshold imposes several challenges in practice. A key concern with a monetary builder registration threshold is that some building work may be low risk in terms of financial value but impose a building safety risk to occupants or site workers if not constructed appropriately.

It is challenging to find an appropriate balance of settings for the monetary builder registration threshold as the value of building work including materials and labour costs differ throughout WA. A shed builder in Greater Perth can build larger structures for $20,000 than a shed builder in the Shire of Collie or Pilbara, due to higher transport and labour costs.

The CRIS Registration sought stakeholder feedback on whether changes should be made to the monetary builder registration threshold to address changes in the cost of building work that have occurred since the legislation commenced operation.

No particular threshold was proposed, rather feedback was sought on whether it should be increased, reduced or removed entirely.



Stakeholder feedback on altering the threshold was mixed. Stakeholders who did not support a change to the threshold cited safety risks and other policy considerations:

> "The current level of $20,000 is considered appropriate. If the restricted registration proposal is adopted this would further reduce the extent of unregistered work that would be performed in the below $20,000 category."
>
> ***AIB response to CRIS Registration***

> "I believe that keeping with inflation over that time a $35,000 to $40,000 value wouldn't be unreasonable. However, this would then capture a lot of the renovation type works in private residences where structural modifications are commonly undertaken and not always with input from a Structural Engineer etc. hence, as some aren't probably handled, it helps the argument to maintain $20,000 as is."
>
> ***Jerry Mazaryk response to CRIS Registration***

> "HIA supports a monetary threshold for builder registration, above which registration is required. Where there is a high monetary threshold for licensing, a greater range of building work will not require a licensed practitioner. This might have the consequence of increasing competition amongst non-licensed practitioners at the lower-end of the market, but in turn could have the potential to expose consumers to increased risk from non-licensed practitioners…It is the HIA's position that the nominated monetary threshold for registration should align with the threshold for Home Indemnity Insurance (HII), which at this time is $20,000."
>
> ***HIA response to CRIS Registration***

Conversely, stakeholders who did support a change to the threshold acknowledged the cost of building works has substantially increased and a higher threshold, specifically in regional areas of the State, may be appropriate:

> "Master Builders recommends (subject to further consultation) an appropriate threshold value would be in the vicinity of $50,000. Master Builders points out that understanding the proposal for extending builder registration to regional and remote WA is a key component of this measure and should be a focus of the Department."
>
> ***MBA response to CRIS Registration***

A broad increase to the builder registration monetary threshold is likely to present safety issues and is not consistent with ensuring appropriate standards of building safety. Builder work could, for example, include re-roofing in metropolitan areas of the State for which an understanding of roof tie downs and wind load is important, or the removal of an internal wall requiring wall bracing.

In addition, to remove builder registration potentially reduces the powers of Building and Energy to audit, investigate complaints, and take disciplinary action against businesses carrying out the works under the threshold.

However, there is clearly a need to ensure the regulatory framework is risk-based and responsive to changing industry practices, particularly as they relate to the increased costs of building work. In this respect, in 2021 to support the recovery efforts in areas affected by the Wooroloo bush fire and Severe Tropical Cyclone Seroja amendments were made to the Registration Regulations to raise the builder registration monetary threshold for certain types of structures in specific locations.

The Registration Regulations currently contain a limited exemption for builder registration for the construction of a shed that is a non-habitable building:

- for which an application for a building permit was made on or before 1 October 2024;
- with a value of less than $40,000; and
- carried out in the Local Government districts of Chapman Valley, Greater Geraldton, Mundaring, Northampton or Swan.

This limited exemption has proved positive for areas affected by the natural disasters by assisting owners to build sheds to store farm and other equipment while rebuilding their homes. The substantial increase in building costs over the last 2 years combined with an acute shortage of available builders, meant many of these owners would not have been able, or would have experienced significant delays, in building these types of structures.

Moreover the amendments to the Registration Regulations have demonstrated there is a case for a targeted reform to the builder registration monetary threshold for certain low-risk structures.

It is therefore proposed to amend the Registration Regulations to exempt freestanding non-habitable Class 10a buildings, such as private garages, carports and sheds, with a value of less than $40,000 from the requirement to be built by a registered building contractor, irrespective of the location. 'Private garages' are defined in the NCC as:

- a garage associated with a Class 1 building;
- a single storey of a building containing not more than 3 vehicle spaces (limited to only one storey within a building); or
- any separate single storey garage associated with another building that contains no more than 3 vehicles.

Freestanding non-habitable Class 10a buildings are relatively low risk. These buildings are not complex constructions, are often in a kit form and include systems that are repeated. If errors in construction are made, the only structure that is affected is the building itself rather than the dwelling, limiting the impacts on homeowners. In contrast, Class 10a buildings attached to another building may adversely impact the main building by increasing the structural load on the dwelling, result in increased wind uplift and the loss of the roof or part of the roof, or water ingress.

A greater knowledge of acceptable construction practices and building standards is needed for Class 10a buildings, patios or verandas that form part of another building or are attached to a building, such as an understanding of residential timber framed construction. The recommended reforms to introduce a low rise building practitioner registration pathway will reduce some barriers to entry for individuals seeking registration.

Importantly, protections will remain under other laws. The buildings will continue to be subject to building control requirements under the Building Act, and current building permit obligations will continue to apply, ensuring that, in most cases, the design is supported by documentation which demonstrates compliance with the NCC.

Further, the person named as the builder on the building permit whether registered or not will need to build in accordance with the approved details and documentation. The permit authority may issue a notice to rectify. Current financial protections will also continue to apply under the ***Home Building Contracts Act 1991***, limiting the deposit to 6.5% home building work for work between $7,500 and $500,000.

Other registration exemptions

In addition to the monetary builder registration threshold, the Registration Regulations exempt certain types of buildings and structures, irrespective of the value of the building work, from needing to be carried out by a registered building contractor.

The exemptions provide additional clarity about which occupations are required to be registered and which are not. The exemptions were incorporated when the Registration Act was implemented in 2011 to provide consistency with the former legislation and avoid unintended impacts on occupations that did not previously require builder registration.

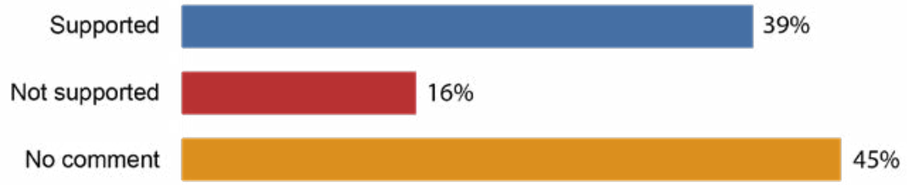
The following types of building and structures are currently exempted through the Registration Regulations:

- construction of a farm building;
- production of a prefabricated or transportable building in a manufacturing yard;
- formation of a parking area;
- formation of outdoor sporting surfaces including associated fencing and lighting;
- construction of walkways, viewing and gathering platforms that do not form part of another building;
- construction of a water tank that is not incorporated into the structure of another building;
- construction of an incidental structure as defined in the Building Act section 3- ('incidental structure' means a structure attached to or incidental to a building and includes but is not limited to a chimney, mast, swimming pool, fence, free-standing wall, retaining wall or permanent protection structure; and a part of a structure.);
- installation of fire sprinklers, free standing partitioning, safety systems, timber decking or glazing;
- cabinet making and installation; and
- joinery (2nd fixing) work.

The CRIS Registration sought feedback on whether exemptions for any of the above types of work should be removed on the basis of community safety. The removal of any exemptions would mean businesses would either need to be the principal builder or a subcontractor for that type of building work.

In addition, Schedule 4, clause 2, Building Regulations also identifies a range of building work considered low risk for which a building permit is not required, and which therefore does not require the use of a registered building contractor.

Removing exempted work in the Registration Regulations on the basis of community safety (CRIS Registration)



Stakeholders who responded to the question had mixed views, however the removal of the exemption for the construction of following types of building and structures was proposed by some stakeholders:

- farm buildings;
- retaining walls; and
- bushfire shelters.

Construction of farm buildings

Farm building means any building of a permanent nature, other than a building used or intended to be used for residential purposes, that is-

- ⇨ constructed or to be constructed, on land used primarily for agricultural purposes; and
- ⇨ itself used or intended to be used for agricultural purposes.

The broad framing of farm building in the Building Regulations was intended to provide flexibility in regional areas of the State and ensure consistency with previous exemptions so that businesses were not impacted.

Four stakeholders who responded to the CRIS Registration proposed mandating that farm buildings should be built by registered builders. However, three of these submissions considered the creation of a specific Class 10 builder registration category was a more appropriate requirement.

The introduction of new licensing categories is complex and involves considerable adjustments by local businesses and significant government resources. Local governments would need to have a role in the building permit approval process. Further, Building and Energy would need to establish audit systems to review the work of these types of builders, and appropriate registration policy, IT and administrative settings.

As reforms are proposed further below to an extend builder registration requirements into more areas of regional WA, a regional farm exemption may be needed so change at this time is not recommended.

High risk retaining walls

A retaining wall is a structure that holds or retains soil behind it. The property owner who changes the level of the land, either by excavating or filling, is generally responsible for the cost of construction and maintenance of the retaining wall.

As discussed earlier in this document, some low retaining walls are exempt from the requirement for a building permit if they retain ground no more than 0.5m in height and are not associated with other building work or the protection of land adjoining the land on which the retaining wall is located. The Building Act does not currently require building permits for retaining walls for subdivisions on vacant land and reforms are recommended above to ensure people constructing retaining walls on vacant land zoned for development shall obtain building permits.

The NCC outlines requirements for retaining walls over 800mm and mandates Australian Standard 4678. Given the safety risks of a collapse of larger retaining walls, mandatory use of a building contractor is considered appropriate for high risk retaining walls. These types of structures should be removed from the exemptions in the Registration Regulations.

Private bushfire shelters

A private bushfire shelter is an NCC Class 10c non-habitable building or structure that can provide a temporary and last resort place of refuge from bushfires on private properties.

The Department of Planning, Lands and Heritage (DPLH) proposed changes to the building permit and builder registration requirements for bushfire shelters:

> "Given the importance of having a private bushfire shelter installed and built correctly, it may be appropriate that all exemptions, being monetary value, or being exempt due to where it is going to be located be removed for Class 10c buildings."
>
> ***DPLH response to CRIS Registration***

A building permit for bushfire shelters is currently required apart from very low population areas where building permits are not required for any buildings, and areas where a building permit is not required for Class 10 buildings or incidental structures.

Column 2, Schedule 4 in the Building Regulations 'Building work that does not require a building permit,' identifies some areas that do not require Class 10 buildings or structures to have a building permit.

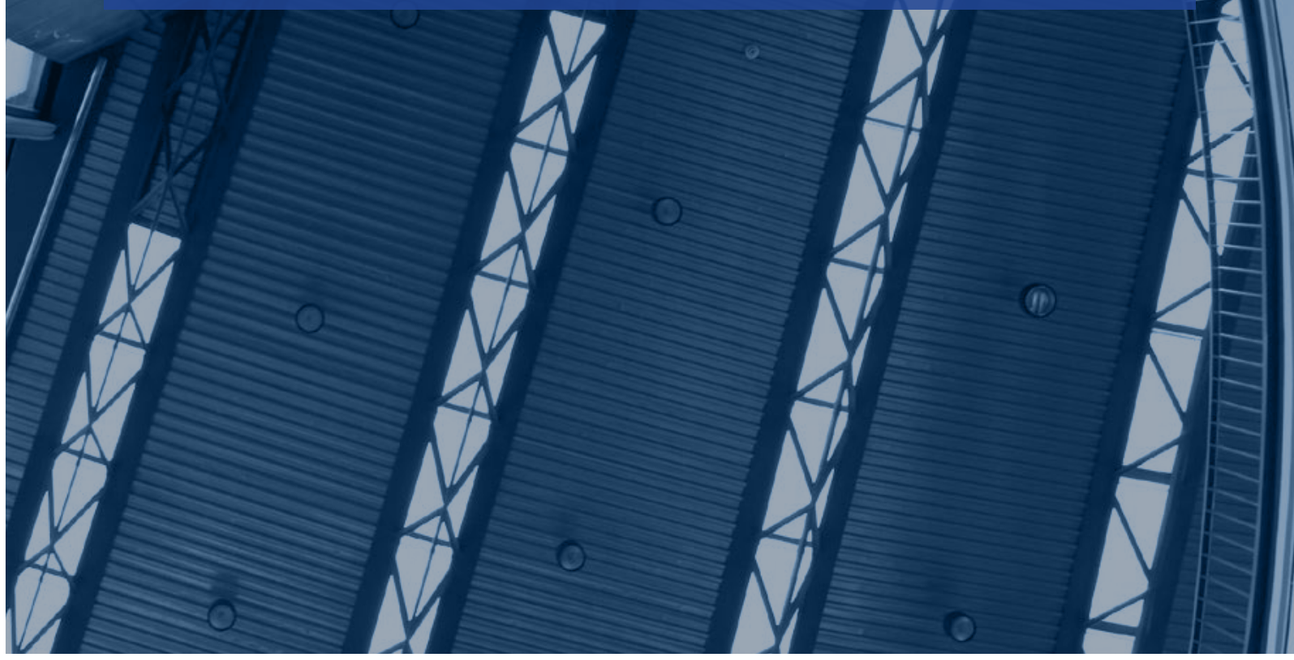
There appears merit in amending this schedule to exclude Class 10c bushfire shelters from the exemption. The removal of the exclusion in these areas will ensure local governments are made aware of the location of bushfire shelters, and a registered building surveyor certifies the design meets performance requirements set out in the NCC.

Recommendation 35

The Registration Regulations are amended to:

- ⇨ exempt building work for the construction of freestanding non-habitable Class 10a buildings, such as a private garage, shed or carport, with a value of less than $40,000 from the requirement to be constructed by a registered building contractor; and
- ⇨ require high-risk retaining walls to be built by a registered building contractor following the amendments to the Building Regulations suggested earlier.

The Building Regulations should also be amended to remove the exemption for building permits for Class 10c private bushfire shelters, except in those remote areas where a building permit is not required for any buildings.



Extension of registration requirements to exempted parts of WA

As discussed in the above Chapter, a key determinant as to when registration as a building contractor is required, is that the builder work is being carried out in an area of WA set out in Schedule 3 of the Registration Regulations.

That is, in addition to the monetary value threshold, there are also geographic parameters that apply for when a person must be registered to contract for builder work. This geographic threshold is unique to WA and applies to no other regulated profession in the building industry (e.g. building surveyors, painters, plumbers or electricians).

The threshold was carried over into the Registration Act from the former ***Builders' Registration Act 1939*** (WA), and has now been in place since the early 1930's, when large parts of the State were sparsely populated and building activity was minimal.

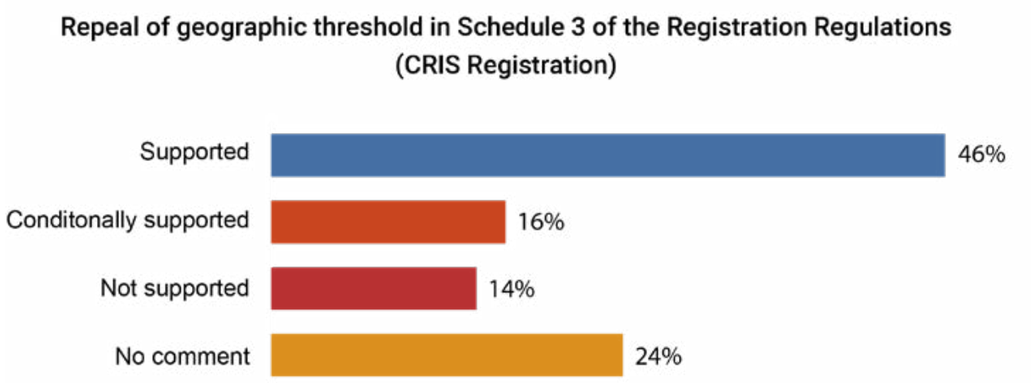
Currently, schedule 3 of the Registration Regulations applies the requirement for registration to only the areas of the South West Land Division (South West Division), apart from the local government districts in Mount Marshall, Mukinbudin and Narembeen, and most town sites in the rest of WA. The local government districts of Greater Geraldton, Chapman Valley and Northampton are also included.

Following the commencement of the Registration Act in 2012, a commitment was made by the Government at the time to review the geographic threshold to uniformly apply the laws across the State.

The CRIS Registration sought stakeholder feedback on repealing Schedule 3 of the Registration Regulations. As builder registration is only required when a building permit is required, the effect of the proposed reform would be that building registration is not required in those very limited areas of WA where a building permit is not required.

To allow for a transition, the CRIS Registration had proposed that the repeal of the geographic threshold should take place after the establishment of a tiered registration model for builders to limit impacts on business and local governments in the areas currently excluded, as they would need to start confirming registration when granting a building permit.

Stakeholders were generally supportive of the repeal of Schedule 3 of the Registration Regulations and the geographic threshold, citing registration as an important means of ensuring buildings comply with applicable building standards:



Some stakeholders who supported the reform stated:

> "Suitably qualified builders are able to mobilise now more than ever before. It makes perfect sense for a high level of quality and compliance, as well as safe practices to be conducted state-wide."
>
> ***Anthony Lumbaca response to CRIS Registration***

> "Location should not be a precursor for the skills and qualifications required within the same state."
>
> ***Mark Boehm response to CRIS Registration***

> "…as a rural builder I have unfortunately been involved in many projects where remedial work has been required due to non-compliance, in some instances the projects we have attended if not rectified could have caused serious harm or death."
>
> ***Ryan Dixon response to CRIS Registration***

However, a number of stakeholders note practical limitations may arise if Schedule 3 of the Registration Regulations is repealed, in particular the availability of registered building contractors (and, by extension practitioners) to service the other geographically large and often remote areas of WA. The current acute skills shortage facing the industry was raised to demonstrate and support these concerns:

> "Consumers in all areas of WA should be afforded the protection that utilising a registered builder provides. This goes further to protect the health, reputation and viability of building industry participants. However, a key consideration is maintaining the provision of building services in remote and regional areas of WA."
>
> ***HIA response to CRIS Registration***

> "…I am the building surveyor for 7 local governments and one of the biggest issues is to find suitably qualified people to undertake work (builders, engineers, trades etc.)."
>
> ***Gary Bruhn response to CRIS Registration***

To address concerns about access to building services in remote areas of WA, one stakeholder, the ABN Group, supported the concept in the CRIS Registration of a 'special remote' registration pathway. A registration pathway of this kind would potentially have lower entry requirements, and significantly higher monetary builder registration threshold and geographic restrictions.

The MBA however considered this approach challenging:

> "[MBA] is of the view this is unnecessary and overly complicated. The reverse holds… under the existing legislation unregistered entities have held a distinct unfair competitive advantage over registered practitioner, often also at the expense of the consumer from quality of work/building standards through to complaint/dispute resolution."
>
> ***MBA response to CRIS Registration***

A 'special remote' registration class with a higher monetary registration threshold would conflict with the monetary settings for home indemnity insurance (HII) under the HBC Act and establish a lower entry bar for registration. Practical difficulties are also likely to arise for the business, and for BSB and Building and Energy, by constraining a 'special remote' contractor or practitioner to work within a particular geographic location.

As a result, where possible, a phased-in approach and consistent registration requirements across WA should be preferred. If urgent areas of concern arise, these may potentially be addressed through a retention of limited geographic restrictions, or further defined exclusions for low risk builder work in the Registration Regulations.

It is currently unknown how many unregistered building companies are operating in regional WA. There are several factors suggesting numbers may be very low. The current registration requirements under the Registration Regulations apply to most regional town sites, where most building activity is located, suggesting commercial viability would often be difficult unless a building business is registered.

In addition, under the HBC Act, a person or persons carrying on a business including home building work exceeding $20,000 in value anywhere in WA must obtain HII in the name of the owner before accepting payment or commencing work. The provider of HII in WA requires proof of building contractor registration before approving a Certificate of Insurance as a risk mitigation measure.

It is recommended that a measured repeal of the geographic threshold occurs by amending Schedule 3 to extend registration throughout the south of WA. Information from this process is likely to show little impact and can guide further winding back of the threshold at a later date (possibly in stages).

Before this process is undertaken however, the recommendations concerning a two-tiered model of builder registration and increasing the monetary threshold for freestanding Class 10 buildings should be introduced. These adjustments will reduce impacts for affected businesses and individuals by providing a low rise practitioner registration pathway for applicants that need to upskill to attain registration, and limit impacts on builders of Class 10 buildings.

Accordingly, it is recommended that Schedule 3 of the Registration Regulations is amended, subject to consultation with affected local governments, as follows:

- ⇨ replace the reference to the South West Division with the names of the relevant local government districts to improve consistency of requirements within districts that cross over the boundary of the South West Division;
- ⇨ make reference to the local government districts of Mukinbudin, Mt Marshall and Narembeen, which are currently excluded; and
- ⇨ prescribe the local government districts directly next to the boundary of the South West Division (meaning the geographic threshold for these areas would be removed).

A targeted education campaign for affected local governments, businesses and communities will be provided by Building and Energy. The commencement date for the amendments to Schedule 3 be set at 2 years from the date of publishing to allow for the campaign to occur.

Attachment G in Volume 2 depicts the local government districts that cross over the boundary of the South West Division or are directly adjacent.

Recommendation 36

The Registration Regulations are amended to commence extending building contractor registration requirements to the entire South West Division and local government districts adjacent to the boundary. Subject to consultation with local governments, the amendment regulations would provide consistency within the local government districts of Perenjori, Yalgoo, Merredin, Kondinin, Lake Grace and Ravensthorpe; and extend requirements to Shark Bay, Murchison, Mount Marshall, Mukinbudin, Westonia, Narembeen and Yilgarn.

The amendments should commence after reforms to introduce a two-tiered registration model.

A targeted education campaign should take place to support affected local governments, businesses and communities.

Mandatory CPD on the NCC for building surveyors and building practitioners

For many regulated professions the requirements for on-going Continuing Professional Development (CPD) ensures practitioners remain up-to-date with industry developments, changes to laws/regulations and technical requirements.

Mandatory CPD requirements for regulated profession is therefore often seen as a tool to maintain the professional standards the community is entitled to expect when engaging a person held out to be registered or regulated in some manner.

However, this is not the case in respect of building service practitioners, as there are currently no requirements under the Registration Act to complete CPD. Some practitioners, particularly building surveyors, may complete CPD annually as part of maintaining their membership with professional associations (e.g. the AIBS), but, there is no statutory obligation for them to do so.

Likewise, some building practitioners attend courses offered through industry associations on the NCC, but there is no statutory requirement to complete CPD, and attendance tends to be on an ad-hoc basis rather than part of an established program.

The lack of CPD requirement for building professionals was identified in the Building Confidence Report as a significant impediment to compliance with the NCC.

As a performance-based code, the NCC is regularly updated to reflect changes in building practices, standards and the availability of new and innovative materials. If professionals responsible for ensuring building work complies with the NCC are not regularly keeping up to date with the changes and developing a good understanding of its various requirements, the likelihood of non-compliant and substandard work increases.

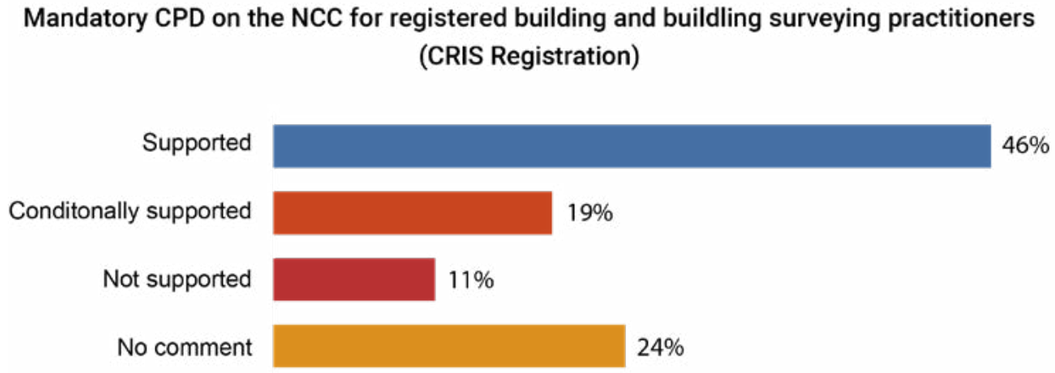
The Building Confidence Report recommended each jurisdiction requires registered building practitioners to undertake compulsory CPD on the NCC. This ensures an ongoing process to maintain and improve practitioner competency in understanding and applying the NCC. It will allow practitioners to:

- ⇨ better interpret and apply the NCC;
- ⇨ identify non-compliance quickly and to rectify it;
- ⇨ have confidence in the decisions they make in constructing and/or inspecting buildings for compliance; and
- ⇨ justify their construction decisions to other practitioners.

The national model suggests building surveyors should complete 7 hours of CPD on the NCC each year, and building practitioners 3 hours.

The CRIS Registration sought feedback on whether new online training on the NCC should be made mandatory for registered building practitioners and building surveying practitioners, and whether online training modules are the best way to provide this type of training.

There was strong support from stakeholders for introducing CPD for builders and building surveyors. In addition, the majority of stakeholders commented that online training can be beneficial in some circumstances (particularly for practitioners in remote areas), but it should not be the only method of training; there are benefits in conducting face-to-face training.



Stakeholder comments included:

> "Definitely supported – NCC compliance requirements and the Australian Standards are subject to frequent change and both builders and building surveyor practitioners should demonstrate that they keep abreast of the continual changes to compliance requirements and legislation pertaining to their trade."
>
> ***Shire of Wyndham response to CRIS Registration***

> "Yes, it's important there is a control measure in place ensuring those responsible are obliged to be aware of changes associated with the National Construction Code."
>
> ***AIBS response to CRIS Registration***

> "…to be best support practitioners in carrying out their CPD requirements a range of different formats would be reasonable. This is especially appropriate given that the current modules offered within the Training and Assessment Certificate recognise and require an assessor to adapt to the different learning styles of many individuals."
>
> ***HIA response to CRIS Registration***

Since mid-2019, the ABCB has developed and delivered a suite of NCC-focused CPD courses for practitioners with a policy objective to improve practitioner understanding and practical application of the NCC.

Based on feedback received, an evaluation of those courses concluded that NCC CPD courses are beneficial in dealing with the problem of having practitioners involved in the design, construction and certification of buildings without the necessary competence and capability to understand and apply the NCC correctly.

To avoid an overburden, the Registration Act and Registration Regulations should be amended to require building surveying practitioners to complete a minimum level of recognised CPD to gain renewal. Thereafter, subject to the success of this requirement, consideration can be given to extending mandatory CPD to building practitioners.

Broadly, the legislation should be amended to provide:

- ⇨ The BSB must not renew the registration of a prescribed class of building service practitioner unless satisfied the applicant has completed the CPD requirements prescribed by regulations.

- The BSB may, however, renew the registration of a practitioner by a period of up to 12 months if satisfied that at the time of making the application, the applicant has not completed the CPD requirements but will do so within that period. In these circumstances, the applicant is to pay a modified fee for the shorter renewal period and then the full fee for the renewal after that period.
- Registered building surveying practitioners must undertake 7 hours of recognised CPD on the NCC each year.
- Continued professional development requirements is to be recognised by the Building Commissioner and conducted in accordance with an approval granted by the Building Commissioner.
- The regulations may prescribe that for certain classes of registered building service practitioners, membership of an approved industry association or professional standards scheme that requires the completion of CPD is to be taken to meet the minimum CPD requirements.
- Approval will only be granted where the Building Commissioner is satisfied it meets minimum standards for content development and delivery, including:
  - the method of delivery can only include structured/formal activities, such as a university education, vocational education, seminar/webinar, conference/workshop and industry or government education;
  - the CPD needs to have a clearly stated purpose and ideally be targeted at a specific practitioner discipline(s); and
  - the CPD is developed to mitigate known risks and uses up-to-date (or forthcoming) NCC content and terminology.
- The Building Commissioner may charge a fee for recognising/approving a CPD course as meeting the prescribed requirements.
- An applicant for renewal of registration as a building service practitioner must make a declaration that they have complied with the prescribed CPD requirements.
- Practitioners are to be required to retain records of completion of CPD requirements for a minimum of 5 years. The records must be provided to the BSB or to an officer authorised by the Building Commissioner in a certain manner or format if requested.

Recommendation 37

The Registration Act and Registration Regulations are amended to introduce mandatory CPD requirements on the NCC for certain building service practitioners.

Building surveying practitioners should be required to undertake a minimum of 7 hours of CPD annually on the NCC.

Subject to the success of the requirements, consideration can then be given to whether mandatory CPD should apply to building practitioners or other newly prescribed classes of building service practitioners, such as building designers.

Registration of Project Managers working on commercial buildings

The Building Confidence Report recognised that the registration of building professionals is a regulatory mechanism for providing public accountability, and that there are currently gaps in the accountability of practitioners with key responsibilities for compliance with the NCC across Australia.

To this end, the report suggested that all states and territories extend registration requirements to those described as Project Managers on commercial buildings.

Whilst it was not specifically mentioned in the report, the policy rationale for registration is that Project Managers can have an influence in the day-to-day decision making on construction projects, including building design, scheduling, material substitutions and sequencing of works. By allowing unregistered people to take on these roles there is a risk that they might be undertaken by people who might not be fully competent.

This rationale is confirmed in the ABCB's national model, which defines a Project Manager as a coordination role for an entire building project, which would involve planning, organising, directing, controlling and coordinating design or construction of buildings. In addition, it suggested individuals (who are not registered architects or builders) would need to be registered as a Project Manager in order to be appointed as an 'owner's representative', who could be defined as the person who engages or manages the contract with registered designers, building surveyors and builders on behalf of the owner.

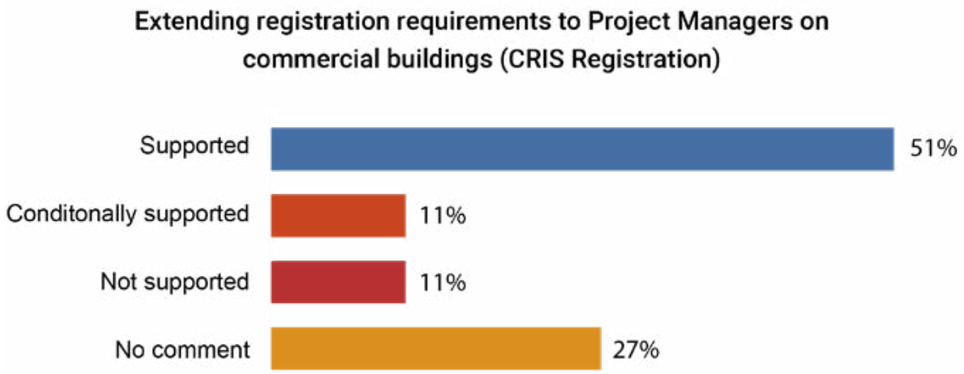
Project Manager (including the role of owner's representative) is not an occupation currently registered as a building service provider under the Registration Act. The CRIS Registration sought preliminary feedback on a proposal to amend the legislation to do so.

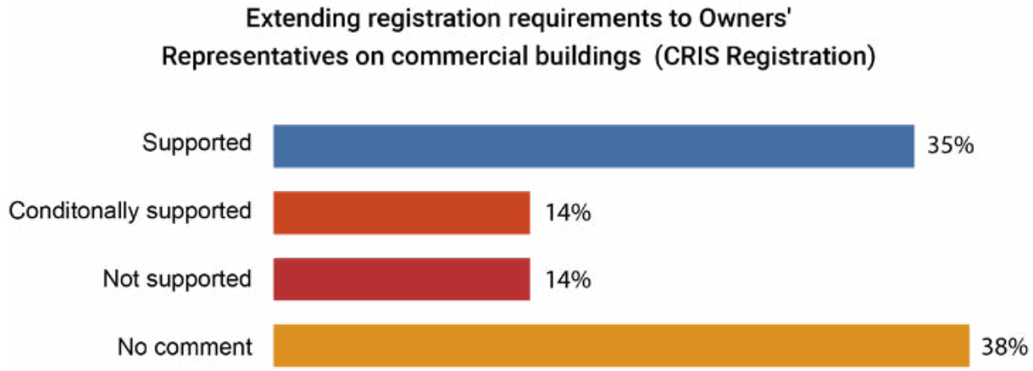
It is important to note however that, because of the timing of the release of the CRIS Residential, the reform proposal put to stakeholders was only based on a discussion paper released by the ABCB in 2020, and not the published national model which substantially revised the requirements.

Overall, stakeholders tended to support registration of Project Managers (including owners' representatives) on commercial buildings.

Nonetheless, stakeholders tended to either:

- ⇨ condition their support on receiving further information and understanding the current risks and implications of registering Project Managers (i.e. what is the problem were trying to solve); or
- ⇨ supported the proposal, but expressed conflicting views on the statutory role performed by the Project Manager and how it differed from nominated supervisors or engineers registered (soon to be registered) under the Registration Act.





Stakeholder comments included:

> "Presently there is limited regulatory control of project managers in WA in relation to quality of advice, service standards, business conduct and discipline, however the requirement for licensing should be assessed against the risk involved. If licensing is justified, an important task is to identify those risks that require regulation."
>
> ***HIA response to CRIS Registration***

> "The principal responsibilities of project managers are the schedules and deliverables of the project, according to the contract and establishing/tracking the budget. In many cases they will not provide any detailed specific contribution in respect of the National Construction Code. With matters pertaining to project budgets however, project managers may have responsibility for certain design work/s, which they will supervise and need to be compliant with the National Construction Code to ensure no problems are embedded in the project."
>
> ***MBA response to CRIS Registration***

> "Project managers have extensive knowledge in their field and that's how they've earned their title. It is up to the clients who they choose to engage as Project Managers. Most clients choose Project Managers according to their qualifications and work experiences and most importantly who they feel comfortable or trustworthy to work with. Having registration will undermine the system."
>
> ***Registered builder response to CRIS Registration***

Both the Building Confidence Report and the national model did not provide detailed justification on the need to register Project Managers (including owners' representatives). No specific problems were cited and no examples were provided. The proposed definitions were very broad and would also capture Project Managers that do not necessarily deal with the design aspects of the building project, but mainly manage budgets and undertake various coordination tasks, or provide targeted services as a consultant.

Despite the overall supportive feedback received from stakeholders that responded to the CRIS Registration, the feedback indicated challenges with understanding the real problem to be address through the registration of Project Managers in WA.

Stakeholders had diverse views on the fundamentals such as the desired scope of the role (with regard to various types of building projects), the severity of any specific problems experienced, implications of registering all Project Managers, and the interaction and any overlap with the role of nominated supervisor. Similar issues have been identified with the role of an owner's representative.

The CBA prepared by CIE tested the impact of extending registration to Project Managers. The analysis indicates that a very marginal increase to the overall CBR can be expected, but there would be substantial costs on Government to implement and administer the registration scheme.

In addition, the possible benefits of registering Project Managers are likely to be reduced in light of the recommendation in this DRIS to require building designs for prescribed classes of building elements to be prepared by registered building designers.

This reform would ensure that any involvement of Project Manager in the design of buildings, which seemed to be the main concern raised during consultation, will be significantly limited compared to current practices (as all registered design contractors (engineers and general) will be required to issue Certificates in respect to some or all of the prescribed elements of the plans and specifications for which they prepared).

For these reasons, it is not recommended to proceed with reforms to the Registration Regulations to extend registration requirements to Project Managers in WA at this time.

Recommendation 38

No reforms are made at this time to the Registration Regulations to extend registration requirements to Project Managers working on new commercial buildings.

This could be revisited at a future date if substantial issues emerge following implementation of the other recommended reforms.

Reforms to disciplinary matters and regulator's powers

The Building Confidence Report identified the need for state and territory building regulators to have a broad suite of powers to monitor buildings, building work and building professionals and, where necessary, take strong compliance and enforcement action.

Currently, the Registration Act contains a number of powers for the Building Commissioner, the BSB and the State Administrative Tribunal (SAT) to investigate the conduct of registered building service providers, including registered practitioners and contractors, and take enforcement action, including prosecution, impose fines and suspend or cancel a person's registration.

Building and Energy, on behalf of the Building Commissioner, is responsible for receiving and investigating disciplinary complaints about the conduct of registered building service providers and providing recommendations for action to the BSB. Building and Energy may also prosecute persons for various offences against the Registration Act, BSCRA Act or HBC Act.

Under the Registration Act, where the provider consents the BSB may deal directly with more minor disciplinary complaints and (among other things) caution or reprimand the provider, impose a condition on registration, require the provider to give an undertaking about future conduct, or impose a fine not exceeding $5,000.

Where the complaint is serious and the provider does not consent, the BSB may instead refer the matter to SAT for decision. If satisfied of the complaint, the SAT may, among other things, order the provider's registration to be suspended or cancelled, declare an officer of a company to be an ineligible person, or impose a fine not exceeding $25,000.

Building and Energy's compliance and enforcement policy establishes a measured, risk-based approach to enforcement. Sometimes education, a warning, or monitoring may be more appropriate than taking disciplinary or prosecution action against a building service provider. However, it is important for community safety and consumer confidence that strong disciplinary powers are available under the Registration Act to enable prosecution and enforcement action to be taken where appropriate.

The CRIS Registration sought stakeholder feedback on a number of reforms to the Registration Act to improve the compliance and enforcement tools available.

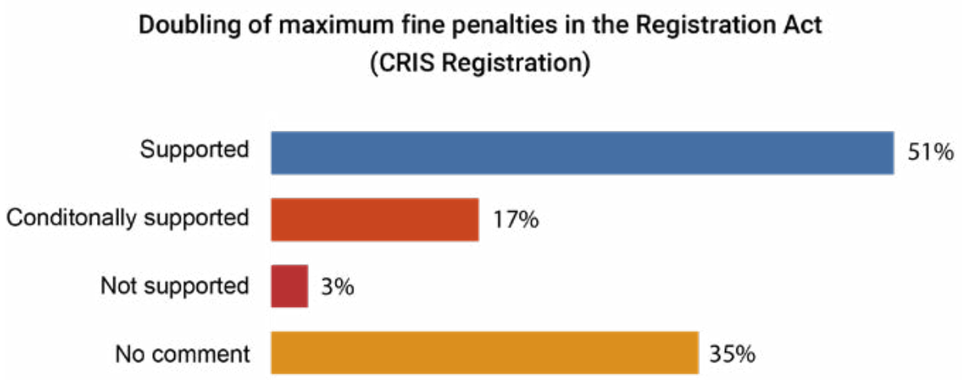
Stakeholders were generally supportive of some of the reforms, but not others.

Where reforms were not generally supported, a number of valid policy considerations were raised that would limit efficacy or merit. For this reason, set out below are the reforms to the Registration Act (and, where appropriate, BSCRA Act) that Building and Energy considers should proceed at this time. Reforms that were discussed in the CRIS Registration, but for which no recommendations are made below, should not proceed.

Doubling maximum fine penalties

The current maximum penalty provisions in the Registration Act are low, have not kept pace with changes to penalties in other Australian jurisdictions and do not provide a significant deterrence for building services (including building work, building surveying work and painting work) that is carried out incorrectly or negligently.

To address this deficiency, the CRIS Registration sought stakeholder feedback on doubling all maximum fine penalties available under the Registration Act. Stakeholders, including the MBA and AIB, were generally supportive of this change.



Stakeholder comments included:

> "Yes, and some. If a person knowingly does the wrong things throw the book at them."
>
> ***Gary Bruhn response to CRIS Registration***

> "Current fines are grossly inadequate…serve little to deter poor building work. Penalties should reflect the level of severity of breaches with maximum penalty amount based on the total building work costs."
>
> ***John Vagg response to CRIS Registration***

The HIA indicated they did not support doubling the penalties where the work carried out is on residential buildings or Class 10 buildings. In its view, penalties should be aligned to the risk and scale of the work performed.

However, as indicated above, Building and Energy already undertakes a risk based compliance and enforcement policy. Further, in determining penalties, the SAT and the BSB consider the full details of the case including financial costs involved, and take into consideration mitigating factors, such as co-operation of the respondent, rectification, court outcomes and absence of previous sanctions.

For consistency with other provisions in the Registration Act, and to further strengthen deterrents given the life safety and financial risks of negligent services, it is recommended that all maximum fine penalties in the Registration Act are doubled. Specifically, this would mean that:

- ⇨ fine penalties currently set at $25,000 are increased to $50,000;
- ⇨ fine penalties currently set at $10,000 are increased to $20,000; and
- ⇨ fine penalties currently set at $5,000 are increased to $10,000.

Any applicable modified penalties should also be adjusted to ensure they are commensurate with 20% of the new maximum fine penalty.

Improving the power of the SAT to declare an 'ineligible person'

Under section 60 of the Registration Act, the SAT may make an order declaring that an officer of a building services contractor is an 'ineligible person' for a period not exceeding three years for particularly serious disciplinary complaints that have resulted in cancellation or suspension of the contractor registration.

The BSB must not register, or renew, the registration of a building services contractor if SAT has made an ineligible person declaration and that person is an officer of the contractor.

The 'ineligible person' provision is intended to ensure officers of registered building service contractors, such as directors and partners, are ineligible for future management of a company if SAT has found that major misconduct has occurred.

The CRIS Registration proposed to amend section 60 of the Registration Act to address the current practical limitation that, in order for SAT to declare the officer ineligible, a proceeding has been taken against the relevant building service contractor that results in the contractor's registration being cancelled. But, this is not possible in circumstances where the contractor has not renewed its registration or become insolvent.

Currently, in the event of liquidation of the company, the BSB may still undertake proceedings against the contractor under certain circumstances. However, if the contractor no longer holds registration on renewal then proceedings under section 60 cannot be commenced. Importantly, proceedings take place against both contractor and officer/s, and principles of natural justice apply with all parties having the opportunity to provide evidence. The officer's key role in the decision making and errors of the contractor must also be established.

The majority of stakeholders who responded welcomed reform to section 60 of the Registration Act to improve the ability for the SAT to declare an officer to be an ineligible person, even where the proceeding against the contractor has been discontinued because they no longer renew registration or become insolvent.

Some stakeholders commented:

> "Yes, the person should not have to be a registered practitioner."
>
> ***Mark Boehm response to CRIS Registration***

> "Yes, other than consistency, it also eliminates any deflection of the offending party causing the issue subject of a disciplinary action, being a decision maker, but not a building practitioner."
>
> ***Jerry Masaryk response to CRIS Registration***

The HIA opposed reform on the basis that the ***Building and Construction Industry (Security of Payment) Act 2021*** (WA) (SoP Act) contains amendments to the Registration Act to sufficiently deal with company officers with a history of management in insolvent contractor companies.

However, the amendments in the SoP Act, which will commence operation on 1 February 2023, have a very narrow focus, only providing powers to exclude contractors from registration where an officer has a history of being involved in construction companies that have become insolvent. It does not extend to officers of contractors who have committed other serious disciplinary matters under the Registration Act, which are much broader than insolvency.

Therefore, amendments to the Registration Act are considered necessary to expand the powers of the SAT to declare an officer of the contractor an 'ineligible person' in circumstances where the contractor no longer holds registration but the tribunal is reasonably satisfied the disciplinary matter has likely been committed and there would be grounds to suspend or cancel the contractor's registration.

Removing the requirement for consent of the building service provider for the BSB to deal with disciplinary complaints

The Registration Act currently gives the BSB the power to deal with and make certain orders in respect to minor disciplinary complaints against registered building service providers. However, the BSB cannot make any orders unless the provider consents. If the provider does not consent, the complaint must be referred to the SAT for consideration and orders.

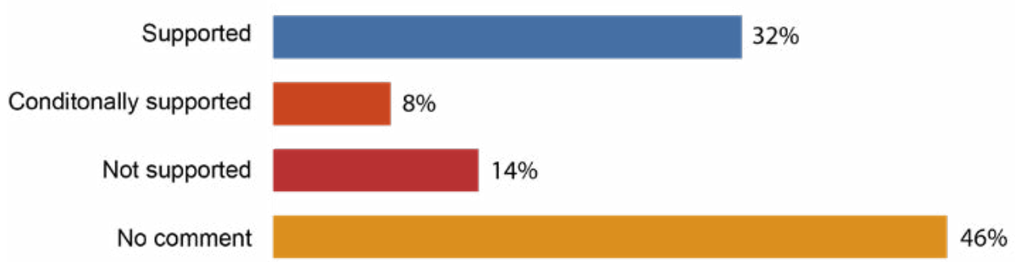
The requirement for consent significantly weakens the role of the BSB as disciplinary regulator. A registered building service provider can block rapid decision making by the BSB with the effect of delaying an outcome and increasing resource demands for Building and Energy and the SAT.

The CRIS Registration proposed to remove this limitation on the BSB's powers to deal with disciplinary complaints and expand the orders that may be made to include that a provider completes a specified training unit or course.

Only the SAT can currently make this type of order, which is incongruent given the Registration Act contemplates serious disciplinary complaints being referred to the SAT where this type of limited order would not generally be proportionate in the circumstances.

The majority of stakeholders who responded to this proposal in the CRIS Registration supported or conditionally supported the reform.

Remove requirement for consent of the provider to deal with and make orders for minor disciplinary complaints (CRIS Registration)



Comments from stakeholders included:

> "The State at the moment is weak with disciplinary matters and allows unregistered builders and not suitable persons get away with a slap on the wrists. Anything to improve the situation would be beneficial to the public"
>
> ***Gary Bruhn response to CRIS Registration***

> "Yes, [this] continually frustrates the Building Services Board."
>
> ***Graham Teede response to CRIS Registration***

> "The requirement for a provider to consent to the investigation of a complaint against them appears at odds with the intent of the provision. For this reason, HIA does not oppose the proposed removal of the need to obtain the provider's consent for the BSB to consider minor complaints, provided the penalties available remain significantly lower than those available via the SAT and that an avenue of appeal is available."
>
> ***HIA response to CRIS Registration***

Stakeholders who did not support the proposed reform considered there was greater impartiality by having disciplinary complaints referred to the SAT and the potential therefore to see an increase in unjust complaints being made.

However, this concern is difficult to reconcile with other occupational licensing laws that provide administrative boards with power to deal directly with minor disciplinary complaints. For example, the Plumber's Licensing Board does not require the consent of a licensed plumber to deal with minor disciplinary complaints, and this system has operated effectively for many years.

It is recommended that the Registration Act is amended to remove the requirement for the provider to consent for the BSB to deal with and make orders in respect of minor disciplinary complaints and expand the orders that may be made to include undertaking a specified further course of education.

Extending the scope of an interim disciplinary order

Under the Registration Act, the BSB may require the Building Commissioner to make an interim disciplinary order for a registered building service provider pending the disciplinary matter being determined by the SAT.

An interim disciplinary order is applied in high risk circumstances, and may suspend the registered building service provider's registration either generally or in relation to any circumstances specified. The order may remain in force for a maximum of 28 days unless the matter is referred to the SAT, or it is otherwise revoked.

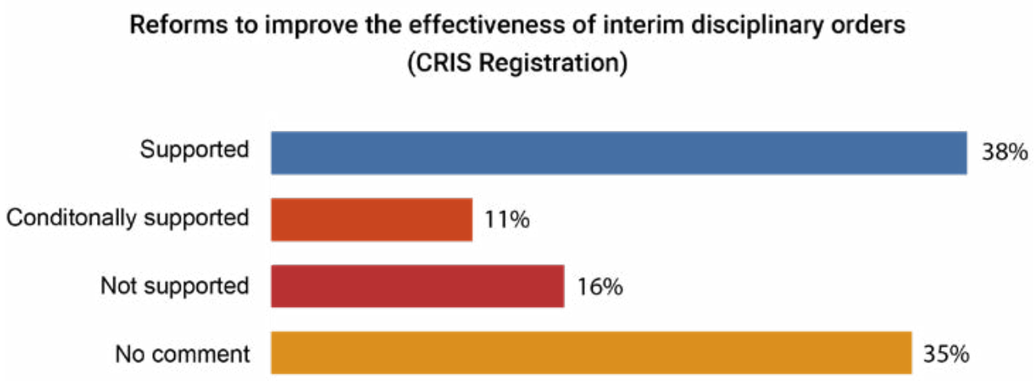
The BSCRA Act establishes further obligations for the Building Commissioner, time frames, and content of interim building service orders. The Building Commissioner has a similar power to make an interim building service order pending determination of a building service complaint in SAT proceedings.

However, the current provisions for interim orders make it impractical to use effectively. This includes legal ambiguities in the provisions that, for example, mean the BSB could not seek an interim disciplinary order to prevent a building contractor entering into new building contracts and permits after the contractor had built several buildings with major defects and could not be contacted. The maximum 28 day limit on interim orders is also often far too short for Building and Energy to finalise what are often complex investigations and commence the proceedings in the SAT.

To address these shortfalls, the CRIS Residential sought stakeholder feedback on two reforms to the Registration Act to improve the effectiveness of interim disciplinary orders, specifically:

- ⇨ allowing an interim disciplinary order to be made if a registered building service provider has engaged in conduct that is likely to result in suspension or cancellation of registration, and there is significant risk a person may suffer significant loss or damage as a result; and
- ⇨ extending time to take an allegation to the SAT, from a maximum of 28 days to 90 days (three months).

Stakeholders who responded to the proposed reforms were supportive, but a number considered a 90 day timeframe (three months) to be too long given the potential impact on a building service provider's business, should the matter not proceed or be subsequently found lacking by the SAT.



Stakeholder comments on the 90 day timeframe, included:

> "Given the reputational and financial consequences that flow from an interim order this power must be restricted to the most serious of breaches as currently set out in the Act. Likewise, time is of the essence. It is considered that if the matter requires up to three months to investigate it is not a matter of such seriousness that requires immediate action. The intent of the current Act is to provide a circuit breaker for breaches that are so obvious and clear cut."
>
> ***AIB response to CRIS Registration***

> "[This is] extremely onerous and the restriction on trade could place any builder in a position of financial hardship, potentially resulting in insolvency or bankruptcy."
>
> ***HIA response to CRIS Registration***

The MBA who supported reforms to the interim disciplinary provisions also considered a move to a 90 day timeframe was something that had to be considered further.

Despite stakeholder feedback, it is important to note that irrespective of the reform to the timeframe, there remains a high bar for an interim disciplinary order. The application will continue to require evidence of such serious breaches of the provider's obligations that it is likely to result in the suspension or cancellation of the provider's registration, and there will need to be a significant risk that a person or persons will suffer significant loss or damage as a result of the conduct of the provider.

There is keen awareness of the potential for an interim disciplinary order to have serious financial impacts on a provider, which is why it would be (and is) only applied in relation to very serious breaches of conduct and concerns about building safety and/or major financial losses for homeowners. Building and Energy's experienced general investigations and financial compliance team, together with legal advice, will assist the BSB and the Building Commissioner in these complex matters.

However, in light of concerns raised by stakeholders with extending the maximum time period for an interim disciplinary order, a balance may be struck by only extending the timeframe to 60 days. This will still make the provisions more administratively practical.

In addition, Section 30 of the BSCRA Act provides powers for the Building Commissioner to issue an interim building service order in relation to building services complaints. For consistency, it is appropriate to reflect the same provisions as the BSB interim disciplinary order.

A reform of this kind will then make the interim building services order more administratively viable on rare occasions where such a level of intervention is appropriate.

Accordingly, it is recommended that the Registration Act and BSCRA Act be amended to:

- ⇨ Apply section 55(a) of the Registration Act to a provider that has engaged in conduct that is likely to result in suspension or cancellation of registration.
- ⇨ Repeal section 55(b) of the Registration Act.
- ⇨ Remove the reference in section 55(c) of the Registration Act to 'immediate action'.
- ⇨ Repeal section 30(1)(b) of the BSCRA Act and remove reference to 'immediate action' in section 30(1)(c).
- ⇨ Extend the timeframe in section 31(3)(b) of the BSCRA Act for which an interim disciplinary order is in force from 28 days to 60 business days.

Improving provisions around false claims of experience

The Registration Act and Registration Regulations prescribe minimum qualifications and experience requirements for building service practitioners. The BSB must register an applicant if satisfied the applicant has, amongst other requirements, the qualifications and experience prescribed for that class of building service practitioner.

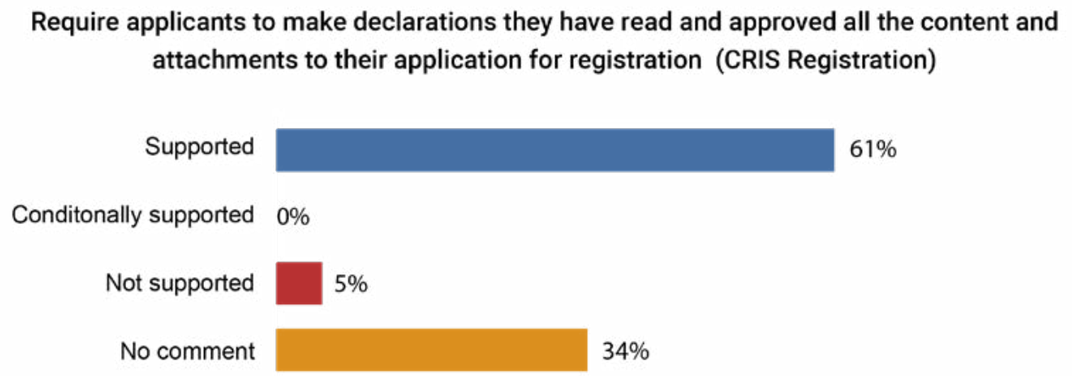
An applicant who knowingly provides false or misleading information in respect of their application for registration commits and offence, and the SAT may order that the registration be cancelled.

While these provisions are generally considered satisfactory, the CRIS Registration sought feedback on two reforms to strengthen the requirement for applicants to declare that they have read and approved all the content in their application and for the Board to undertake referee checks.

The first of these proposed reforms responds to the increased use of third party companies preparing applications for registration on behalf of others. While the use of third party companies to assist applicants to finalise their building practitioner application is considered reasonable, practical concerns have arisen when information about the applicant's builder work experience is substantially falsified by the third party to obtain building practitioner registration. Recent examples have occurred where, upon the discovery of the falsification, applicants have sought to avoid liability on the basis that the third party company was solely responsible for the falsification, despite acting as an agent.

The second proposed reform addresses concerns raised in SAT proceedings about the existing powers of the BSB in the Registration Act to require referee reports, particularly for applicants that are sole traders.

Stakeholders who responded to CRIS Registration, strongly supported both proposed reforms, with many acknowledging both reforms are largely administrative in nature:



Clarify BSB's powers to seek written verification of experience (referee checks) from an applicant for practitioner registration (CRIS Registration)

Since the release of the CRIS Registration it has also come to Building and Energy's attention that an administrative reform is needed to section 17 of the Registration Act to expressly permit the BSB to register a person as a building service practitioner where, among other things, they are satisfied the person has an equivalent qualification to the minimum qualification specific in the Registration Regulations.

This reform will support the BSB in circumstances where a person's qualifications do not meet those expressly stipulated by the Registration Regulations, but are nonetheless considered equivalent in nature.

Recommendation 39

The Registration Act, Registration Regulations and, where appropriate, the BSCRA Act are amended to:

- Double maximum fine penalties for the various offences under the legislation.
- Expand the powers of the SAT to declare an officer of a building services contractor to be an 'ineligible person'.
- Remove the requirement for a building service provider to consent for the BSB to deal with minor disciplinary matters.
- Improve the operation of interim orders, including extending the applicable timeframe for commencing proceedings in the SAT to 60 days.
- Clarify the powers of the BSB around assessing qualifications and experience of applicants for registration as a building service practitioner, and making applicants accountable for false or misleading information prepared and submitted by other parties on their behalf.

12. Implementation and Review

Many of the recommendations detailed in this DRIS will require substantial amendments to the State's building regulatory framework, including the Building Act, Registration Act and BSCRA Act. Amendments to supporting subsidiary legislation will also be required.

The reforms represent the most significant changes to the WA building industry in over 10 years, but once implemented could be expected to improve confidence in the built environment and achieve the key policy objectives of:

- ⇨ Protection;
- ⇨ Compliance
- ⇨ Growth
- ⇨ Quality; and
- ⇨ Oversight.

Subject to Government's approval, the amendments needed to the legislation will be progressed in consultation with the Parliamentary Counsel's Office.

The progress of implementation of the amendments will be subject to the Government's existing legislative agenda and priorities, as well as a decision on the funding required to meet on-going compliance and enforcement by Building and Energy.

Consultation

It is proposed that further consultation is undertaken with industry and local government stakeholders on the detail of the recommended reforms through the public release at the appropriate time of draft legislation, including both an Amending Bill and Amending Regulations. This will provide stakeholders with an opportunity to consider the technical detail of the changes and how they may be affected.

Implementation

Implementation of the recommended reforms will be phased in over a period of time.

The building industry in WA, as is the case elsewhere, is facing a number of challenges caused by impacts of the COVID-19 pandemic, disruptions to global trade and increasing inflationary pressures. These are expected to continue for some years. Care must be taken to ensure the recommended reforms are implemented gradually, so as to cause as little disruption as possible.

The CBA prepared by the CIE has assumed for the purposes of analysing the economic impact that the changes will commence by the end of 2025.

Even so, it is suggested that implementation of the recommended reforms may not commence until slightly later in 2026 and will need to be staged to allow industry time to build capacity and adapt.

Critical to the issue of capacity is the role of building surveyors and ensuring there are sufficient persons available to manage and perform notifiable stage inspections. This will need to be closely monitored in the lead up to the reforms commencing. Significant effort will need to be made to provide training and support for practitioners to upskill on the requirements and processes involved. Both Building and Energy and industry associations will have a role to play.

A high-level Implementation Roadmap is set out below outlining suggested stages of implementation.

Subject to the Government's approval of the recommendations, a more detailed Action Plan will be prepared in due course with the anticipated dates for commencement.

The Action Plan will be released for public comment along with the draft legislation to ensure a complete understanding of the approach to be taken. The Action Plan will also include details on the measures that will be used to educate and inform industry participants, local governments and building owners on the reforms.

Transitional provisions

Many of the recommendations made in this DRIS suggest the inclusion of appropriate transitional provisions. Further consultation will occur with stakeholders during the drafting process where other transitional provisions are considered appropriate.

Review

This DRIS represents the outcome of Stage 2 of the review of WA's building regulatory framework. Subject to Government approval, a further review will be conducted to consider other recommendations from the Building Confidence Report.

The review will commence with consultation on reforms to the Registration Regulations to introduce the registration scheme for building designers. A review into registration requirements for fire safety system installers will also be carried out.

In addition, once the reforms in Stage 3 of the high-level Implementation Roadmap have commenced, the effectiveness of mandatory notifiable stage inspections on Class 2-9 buildings will be considered before the requirements are extended to Class 1 residential buildings.

High-level Implementation Roadmap[83]

Stage 1

- Design documentation to demonstrate compliance and meet Building Commissioner Standards for Class 2-9 buildings (rec 1)
- Reform to appointment and powers of building surveyors (rec. 6-9)
- Improvements to consultation with DFES Commissioner during building design phase (rec 10-12)
- Mandatory notifiable stage inspections for medium-high rise [1] (Class 2) apartment buildings and Class 3-9 commercial buildings (rec 13-18)
- Improved process for documenting/approving variations during construction (rec 19)
- Reforms to Occupancy Permits, CDCs, CCCs and NoCs (rec 3, 21-24)
- Improvements to regulatory powers, penalties and administrative matters (rec 25-32)[2]
- Increasing monetary threshold for freestanding Class 10a building work (rec 35)
- Mandatory CPD on the NCC for building surveyors (rec 37)
- Reforms to disciplinary matters and regulator powers (rec 39)
- Other administrative (non-controversial) reforms to modernise and improve WA building legislation

[1] Class 2 apartment buildings 4 storeys or above

[2] Rec 28 subject to implementation of registration for building engineers

Stage 2

- Mandatory notifiable stage inspections for low rise[1] (Class 2) apartment buildings (rec 13-18)
- Tiered registration for builders (rec 33)
- Changes to registration pathways for building practitioners (rec 34)
- Remove exemption for Class 10C private bushfire shelters (rec 35)
- High risk retaining walls to be built by registered builder[2] (rec 35)

[1] Class 2 buildings 3 storeys or below

[2] Subject to implementation of building permits for prescribed structures

Stage 3

- Registration of building designers (rec 2) [1]
- Design documentation for prescribed buildings (initially Class 2) to be prepared and signed by registered building designers and include technical certificates [2] (rec 2)
- Extension of builder registration requirements to all South West Division and adjacent border areas [2] (rec 36)[3]
- Independent third party review of structural and fire safety designs for significant and complex buildings (Class 2 apartments above 25m in height) (rec 4)*
- Building manuals for high-rise Class 2 apartment buildings (over 25m in height) (rec 20)

[1] Subject to review/consultation on regulation changes.

[2] Subject to registration for designers and regulation changes.

[3] Subject to implementation of tiered registration for builders and increases to monetary threshold (Stage 1 and 2)

* Subject to commencement and operation of the Commerce Amendment (Building Services) Regulations 2023.

Stage 4
Subject to review

- Design documentation to meet Building Commissioner standards for Class 1 buildings (rec 1)
- Mandatory notifiable stage inspections for Class 1 residential buildings in regional areas [1] (rec 13-18)

[1] The case for inclusion of mandatory notifiable stage inspections for Class 1 buildings will be considered subject to review of the effectiveness of the regime for Class 2-9 buildings in Stages 1 and 2.

83 Timeframe is indicative only and subject to change depending on Government legislative priorities and consultation with the WA Parliamentary Counsel's Office.

Notes

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