

6 July 2018

Hon Mick de Brenni MP  
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Minister for Digital Technology  
Minister for Sport  
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Dear Minister,

**Building Confidence: Improving the effectiveness of compliance and enforcement system for the building and construction industry across Australia**

Thank you for the opportunity to provide feedback on this important review. Master Builders would like to offer the following comments on the recommendations contained in the review.

**Recommendation 1: Registration of building practitioners**

*That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:*

- *Builders*
- *Site or project manager*
- *Building surveyor*
- *Building inspector*
- *Architect*
- *Engineer*
- *Designer / draftsman*
- *Plumber*
- *Fire safety practitioners*

Queensland already benefits from a comprehensive system of contractor licensing and professional registration. Specifically, the three professions identified in the report as needing to be registered are already licensed in Queensland.

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The Queensland approach can therefore serve as a model for the other states in developing 'complimentary provisions'.

There are also great benefits derived from ensuring that the accountability and regulatory oversight of architects is consistent with other categories of building practitioners. They design and specify products and in a number of instances they act as the project manager. Master Builders therefore supports change to the legislation where necessary to achieve this goal.

National consistency of registration is a sensible goal but not a priority.

## Recommendation 2: Consistent requirements for registration

*That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:*

- *certificated training which include compulsory training on the operation and use of the NCC as it applies to each category of registration;*
- *additional competency and experience requirement;*
- *where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirement where appropriate; and*
- *evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.*

From nationally consistent registration, it flows that the requirements for registration should also be nationally consistent. Again, we believe that the Queensland system of building contractor licensing and professional registration provides a workable model.

Further, we support appropriate training on the NCC being compulsory to each category of licensing and registration.

We support expanded competency and experience requirements where they are identified as being necessary.

Also important will be addressing the quality of training that underpins registration. For example, the falling quality in training that has accompanied the enormous increase in Certificate IV in Building & Construction training providers must be addressed as a priority. We recommend that jurisdictions look to introduce a formal assessment as part of the licensing process for Low Rise Builders as is currently in place in Victoria and the ACT.

We support the compulsory insurance and financial viability requirements already in place in Queensland.

Evidence of practitioner integrity by way of a fit and proper assessment has long been a requirement in Queensland and works well. Master Builders also supports the continuation of the Queensland system of minimum financial requirements for building contractors.

There is clearly a statutory role for the government in auditing and disciplining engineers, architects and building surveyors; professions where the accreditation by their industry body is

the basis of their registration. We welcome other building practitioners being held to the same high standard as construction licensees.

### **Recommendation 3: Continuing Professional Development**

*That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.*

Master Builders has long advocated for the introduction of a targeted, compulsory CPD program for licensees. We agree that it is essential for CPD to provide for “targeted learning on topics of genuine relevance to improve the competence of practitioners”.

Similarly, we would welcome better mechanisms to identify reoccurring compliance issues to feed into the CPD system.

We are well placed and stand ready to assist in the delivery of CPD.

While we recognise it is beyond the scope of this review, it is important that any program extends beyond training on the NCC to include business management skills and help address the important problem of security of payment.

### **Recommendation 4: Career paths for building surveyors**

*That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.*

The declining numbers of building surveyors is a concern shared by industry. We therefore support the recommendation for supervised training schemes to provide a defined pathway to becoming a building surveyor, in the expectation that it will achieve the goal of encouraging practitioners to “aspire to achieving that status”. Government incentives would be a significant benefit in this area.

### **Recommendation 5: Improving collaboration between regulators**

*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).*

Master Builders supports clear roles and responsibilities for state government, local governments and private building surveyors in providing regulatory oversight.

It is also important that each regulator is appropriately resourced to adequately fulfil their assigned role.

Queensland legislation already provides “provides clear statement of responsibility for each authority”.

While there is a collaborative relationship amongst regulators for the oversight of the building and construction industry, there is an opportunity to achieve better outcomes through improved collaboration across all industry stakeholders.

## **Recommendation 6: Effective regulatory powers**

*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 QBCC now has a broad suite of powers to monitor buildings and building work with the passing of the Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017.

The exception is the power to audit the performance of practitioners registered by other bodies such as engineers and architects. Master Builders believes that all building professionals should be held to the same high standard.

## **Recommendation 7: Strategy for the proactive regulation of Commercial buildings**

*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.*

Master Builders supports the current QBCC audit strategy that is publicly available on their website. The statutory powers to take action in support of the strategy and a public register of any enforcement action are also in place.

The QBCC's Annual Report could include a report on the "outcomes and learnings" from the audits.

## **Recommendation 8: Collaboration with fire authorities in the development of fire safety design**

*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.*

Master Builders supports the Queensland Fire and Rescue Service having an input in the building approval process. It is important that the involvement is appropriate to the project.

The Queensland system where the Queensland Fire and Rescue Service has a mandatory role as an advice agency at the building approval and building certification stages works well and we recommend that this be considered for adoption by the other states.

We are opposed to any form of mandatory involvement outside these two stages as it would not be feasible nor cost effective for either industry or the fire service.

The Queensland Fire and Rescue Service 'right of appeal' already exists through the Queensland Planning and Environment Court.

We support, in principle, a Code of Conduct for fire engineers based on the updated International Fire Engineering Guidelines.

## Recommendation 9: Integrity of private building surveyors

*That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.*

Controls intended to manage conflict of interest must be carefully considered as the potential for unintended consequences is great.

Building surveyors (certifiers) perform an important and clearly defined regulatory function.

Under the terms of building contracts, the builder controls the building site and the execution of the building works. Certification is an integral part of building work and therefore should remain the builder's responsibility. The builder also has the right expertise to engage and coordinate the certifier for the building works being undertaken.

Where the owner has engaged the certifier it is unrealistic to expect that they would be directed to address all issues with a project, including those of quality which are outside the regulatory function and not appropriate.

Master Builders does not support the requirement to have QBCC approval to disengage a building surveyor. While recognising the role of the certifier as the regulator, there to protect the public interest, adding QBCC approval would only add delays and costs to construction. As an alternative, we recommend that the QBCC monitor whether there are contractors abusing their role and require that certifiers notify the QBCC when they are disengaged.

We accept that the certifier cannot have another interest in the project and support some limits being put in place. At the same time there is value in the certifier advising early in the process on how to achieve compliance and this should be allowed to continue.

We support there being checks in place before accepting certificates such as Form 15s. We regularly work with our members to advise on their own checks that they should have in place and would welcome the government's support in this area. Education programs targeting improved industry knowledge and understanding on the use of Form 15s and 16s could form part of a targeted CPD program.

We support the owner receiving copies of the final documents (as per Recommendation 20). Documents should not be forwarded during construction as this can lead to unnecessary delays.

In Queensland the owner has an effective right of appeal in being able to refer any concerns with the certification to the QBCC and onto QCAT.

## Recommendation 10: Code of Conduct for building surveyors

*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.*

Master Builders supports a Code of Conduct for building surveyors.

In Queensland there is the “Code of conduct for building certifiers” with which they must comply and by which their performance may be measured. A breach of the Code may constitute unsatisfactory conduct or professional misconduct under the *Building Act 1975 (Section 32)*.

Master Builders also recommends that a demerit point system for building surveyors be introduced, similar to the one that exists for other licensees as another means for the Commission to address misconduct by building surveyors.

## Recommendation 11: Role of building surveyors in enforcement

*That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.*

In Queensland building surveyors have enforcement powers to stop work in the case of noncompliant or defective work until the point of giving the final inspection certificate or certificate of classification. If the enforcement notice is not complied with the local authority must be notified. To be effective, the responsibility to prosecute these offences must sit with a local authority or a state regulator.

There is scope to strengthen requirements regarding mandatory reporting but this needs careful consideration given the complexity of commercial building. Mandatory reporting requirements also need to be matched by the regulators’ capacity to investigate and take action once a report is made. This must be achieved in a cost effective way, without adding to licensing and insurance costs borne by the contractor.

Master Builders is opposed to broad supervision powers for building surveyors as that is beyond their role as a regulator. They are not there to act as the owner’s site supervisor.

We support all efforts to assist building surveyors in carrying out their regulatory role, including training, help desks and other support.

When it comes referrals that are made to the relevant regulator, we have confidence in their ability to prioritise their own workload appropriately.

## Recommendation 12: Collecting and sharing data and intelligence

*That each jurisdiction establishes a building information database that provides a centralise source of building design and construction documentation.*

While there is value in a centralised building information database, we expect that it can only be achieved at a significant cost. Building manuals (Recommendation 20), along with advancing the

quality of project documentation (Recommendation 13) and the take up of Building Information Modelling would be more realistic steps towards the goal of better building information.

This is also a reactive response and is only likely to address problems after mistakes have been made.

Databases to assist building practitioners in their decision making would be more proactive response and help mistakes not to be made in the first place. To this end, Master Builders has long advocated for a product certification database to help in selecting compliant building products (Recommendation 21).

### **Recommendation 13: Responsibility of design practitioners**

*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.*

Master Builders has long been an advocate for quality project documentation. Quality documentation goes to the heart of build quality. We believe that if we are to get buildings right that the investment needs to be made in getting it right up front. Documentation also needs to be practical and appropriate to the project.

We recommend the document “*Getting it Right First Time*” prepared by a Queensland industry-wide taskforce as a starting point for further work in this important area.

Designers, architects and engineers must have a legislated duty to prepare documentation which demonstrates that the proposed building will comply with the NCC.

### **Recommendation 14: Adequate documentation for performance solutions**

*That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificate the circumstances in which performance solutions have been used and for what purpose.*

It is imperative that we get the documentation of performance solutions right, if we are to address non-compliance. We strongly support the development of a national best-practice guide for documenting performance solutions that is given legislative force.

We suggest that this recommendation be given a high priority in the implementation plan.

## Recommendation 15: Approval of performance solutions for construction building work

*That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.*

In the majority of cases an alternative solution is likely to have implications for how the building it to be used and maintained, insurance contracts. It is also likely to be a variation on the original scope of works. It is therefore important that the owner be notified.

Including the owner will also assist in the reduction of product or system substitution by the builder.

Including a list of all performance solutions on the occupancy certificate (in Queensland the Form 11: Certificate of Classification) could be a practical way to improve documentation in this area.

## Recommendation 16: Approval of documentation throughout the construction process

*That each jurisdiction provides for a building compliance process which incorporates clear obligations for the approval of amended documentation by the appointed building surveyor throughout a project.*

We agree that there needs to be a process for any changes to an approved performance solution to be properly checked.

## Recommendation 17: Independent third party review

*That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.*

We are opposed to mandatory third party review. This is the responsibility of the certifier and should be left to their professional judgment. On projects where the certifier feels it is appropriate we would support their decision.

## Recommendation 18: Mandatory inspections

*That each jurisdiction requires on-site inspections of building work at identified notification stages.*

The current Queensland legislative requirements for mandatory inspections are adequate.

For commercial construction in Queensland “Guidelines for inspection for class 2 to 9 buildings” are already in place and should be considered in developing a national guide.



## Recommendation 19: Inspection and certification of fire safety installation

*That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.*

We support the Queensland system where licensees and registered persons design, install and certify fire safety systems in commercial buildings.

## Recommendation 20: A building manual for commercial buildings

*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.*

Master Builders supports comprehensive building manuals being provided to the owner at the end of the project. This will be a more effective mechanism for ensuring a safe building for occupants than providing piecemeal information throughout the construction process.

We have concerns with the potential cost impact of this recommendation. This would be mitigated by the increased uptake of BIM. We therefore recommend government assistance with increasing take-up of this technology.

## Recommendation 21: Building product safety

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

Master Builders has long advocated for improved product certification across all product types and strongly supports this recommendation.

While addressing high-risk products is an important first step, it is also important that the system is flexible to improve product information across all products types and able to incorporate new products.

## Recommendation 22: Dictionary of terminology

*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.*

A national 'dictionary of terminology' will improve understanding across state borders and should be an outcome that is easy to achieve. We understand that this is work that has been undertaken in the past and could be used as a starting point.

## Recommendation 23: Implementation of the recommendations

*That the Building Minister's Forum acknowledges that the above recommendation are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.*

We acknowledge that the recommendations are intended to form a coherent package, to be executed in their entirety over a three year period.

Seeking “national consistency whilst also empowering jurisdictions to implement change in their own way” is a practical and realistic approach.

## Recommendation 24: Implementation plan

*That the Building Ministers' Forum priorities the preparation of a plan for the implement of the recommendation against which each jurisdiction will report annually.*

In developing the implementation plan government must consider the impact on affordability. With all of the QBCC's resources directly provided by the industry in the form of license fees and insurance premiums, any increase in resource requirements will directly add to the cost of new construction.

A rigorous cost-benefit analysis of all proposed regulatory requirements must therefore be conducted prior to them being introduced.

Thank you for the opportunity to provide input to this review. Please do not hesitate to contact me if I can provide any further information.

Regards,

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Deputy CEO