

OVERVIEW:

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation representing over 14,500 members across Australia and overseas. Over 1,000 of these are based in South Australia and supported by the South Australian Chapter.

Architects, as agents of principals (consumers) and as superintendents of building construction contracts, are well placed to provide advice on appropriate building reform. We welcome the opportunity to provide comment on the *Building and Construction Industry Review: Discussion Paper* and the potential reforms and measures to strengthen the building and construction industry in South Australia.

The Institute continues to support the timely and consistent implementation of the recommendations in the *Building Confidence Report*¹ across all jurisdictions in Australia.

Building safety and building defects are a costly problem. A study commissioned by the Australian Building Codes Board in 2021 and prepared by the Centre for International Economics² estimated the cost per annum of building defects in 2022 for class 1 and 2 buildings in Australia seen in 236,000 dwellings to be \$1.979 billion. The estimated cost per annum of building defects in 2022 for class 1 and 2 buildings in South Australia seen in 10,000 dwellings is \$82 million.

We believe that regulatory reform should be advancing the professions and industry to deliver the best possible outcomes for the community. There needs to be real changes to the industry, as opposed to creating ‘perceived short-term’ confidence through additional red tape/paperwork.

Preparation of the Institute’s response highlighted the need for improved education and licencing standards, as well as progressive monitoring of construction by independent and appropriately qualified people. These are essential to deliver improved standard of construction and to increase consumer confidence.

¹ Shergold P and Weir B, February 2018, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*; Commissioned by the Building Ministers Forum. Available: https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf

² *Building Confidence Report - A case for intervention*. Prepared for the Australian Building Codes Board July 2021 The Centre for International Economics. Sourced from: <https://www.abcb.gov.au/sites/default/files/resources/2022/Building-confidence-report-case-intervention.pdf>

Item	Proposal	BCR Recommendation	RAIA Response	Comments
PART 1 Dispute Resolution				
1.1	Binding rectification order scheme	Recommendation 6	Supported	<p>There is a strong precedent in other states successfully administering binding rectification schemes.</p> <p>Introduction of a binding rectification scheme in SA needs to coincide with implementation of enhanced enforcement powers for the CBS, e.g. inspection powers (right to enter sites); administer stop-work-orders on high-risk sites, etc.</p> <p>It is unclear from the process as to the costs of application for rectification order. We understand that the cost of administering the rectification order process will vary from case to case, it would be helpful to establish a schedule of rates for inspections,</p> <p>It is unclear from the Review how a “genuine attempt to resolve a building dispute” will be determined. This needs to be clearly defined to enable the process to be implemented effectively.</p> <p>It is recommended that formal mediation administered by the CBS be introduced as a mandated first step before a party can lodge a request to the Commissioner for a binding rectification order.</p>
CONSULTATION QUESTIONS:				INSTITUTE RESPONSE
1	<i>Would the introduction of binding rectification orders enhance the building dispute resolution process in SA?</i>		Yes	
2	<i>Is the proposed binding rectification order scheme appropriate? Are there alternate models or mechanisms that would provide faster and cheaper resolution of domestic building work contract disputes for parties?</i>		YES – with further commissioner power enhancements and mediation.	<p>Another possible mode is conciliation. An example of this is the Domestic Building Disputes Resolution Service in Victoria, which has been shown through a Victorian Auditor Generals Office review to be working, if somewhat slow to allocate an officer in the first instance.</p>

3	<i>How should rectification orders be enforced, and what should the consequences be for non-compliance?</i>	Dependent on severity and frequency of non-compliance – fines/penalties, license review		
4	<i>Are there any unintended consequences the proposed rectification order scheme may have? What would be the costs and benefits for consumers and building practitioners if the proposed binding rectification order scheme was implemented?</i>	Risks – insufficient commissioner powers to enforce rectification orders, insufficient powers to access site by commission appointed expert to determine status of defects, may require commission to prosecute via SACAT which will be costly for the Department.		
1.2	Transfer of domestic building work disputes to SACAT	-	Supported	<p>There is strong precedent in other states for building disputes to be settled outside the court system, via tribunals.</p> <p>The court system is expensive, protracted and not accessible by all types of building consumers, particularly the domestic consumers (new builds and alterations and additions).</p> <p>Many consumers would forgo pursuing defect rectification as cost to pursue would outweigh the cost of defect rectification.</p> <p>SACAT's decisions need to be enforceable and binding for the proposal to work. SACAT also requires sufficient resources, and diversity of representation, with expertise in building and design, to support the expanded role of determining building disputes. SACAT would also need to have general civil claims jurisdiction to deal with debt claims or common law contractual disputes for the proposal to be effective.</p> <p>Mandatory mediation as a precursor to SACAT system is recommended.</p>
CONSULTATION QUESTIONS: INSTITUTE RESPONSE				
5	<i>Would the transfer of the identified building disputes from the Magistrates/District Court to SACAT assist in improving the dispute resolution process in SA?</i>	YES – provided SACAT is adequately resourced, and has diversity of representation, with expertise in building and design. Design and construction knowledge are required to enable comprehensive understanding of the issues and to develop a co-ordinated and effective rectification plan.		
6	<i>Are there any unintended consequences that could arise from the proposal to transfer identified building disputes from the Magistrates/District Court to SACAT, or other factors that should be taken into account?</i>	If the decisions of SACAT are not enforceable and binding, then the intended benefits of the proposal will not come to full fruition. The result would be a complex multi-stage system, which is still reliant on the courts to be enforceable. Insufficient expertise and/or resources to		

		administer building disputes could create a backlog of cases which lose the efficiency of the proposal.
7	<i>How could SACAT utilise experts when considering building work disputes?</i>	SACAT can issue expert review requests to a panel of pre-qualified experts to undertake an independent review of defective work. The SACAT panel should include people with expertise in design and construction, as building defects are frequently complex, and require cross-disciplinary knowledge and experience to accurately identify. Similarly, rectification needs to consider the core issue(s) within the context of the overall construction to deliver an effective outcome.
8	<i>Aside from transferring the jurisdiction for domestic building work contract disputes to SACAT, are there other options to reduce the current expense and delays associated with court proceedings about domestic building work disputes? (for example, changes to existing court processes and monetary limits)</i>	<p>Monetary limit adjustments – to allow the Commissioner power to enforce rectification orders (proposal 1.1). Monetary limit adjustments between Magistrates Court/District Court/Supreme Court will have limited benefits (of cost/time).</p> <p>Conciliation, as recommended above, should be considered. The VAGO report into the Domestic Building Disputes Resolution Service Victoria found that it this is less costly for consumers and government than VCAT. Only 12% of disputes considered by DBDRSV proceeded to VCAT.</p> <p>Improvements to the site investigation procedure should be implemented. Currently the court appoints a Building Determiner to assess the project, determine the scope of rectification, approve quotations for the works and sign off the rectification. However, the Institute is aware that this process does not include a requirement to document the work requiring rectification prior to seeking quotes. Contractors are often asked to price rectification based on site inspection and a written scope of work. This represents a significant risk to the contractor, and results in contractors either refusing to quote or submitting inflated quotes to cover their risk, which are then rejected by the Building Determiner. The result is a protracted and costly process for all parties. Engaging an appropriate design professional to</p>

				participate in the site inspection process and document the agreed rectification work would result in more timely outcomes, higher quality rectification work and reduce risk.
9	What factors need to be considered when contemplating any changes to court processes to facilitate improved resolution of building work contract disputes?			<p>Factors to be considered include:</p> <ul style="list-style-type: none"> - Modelling of the estimated costs of proposed changes as compared with current costs - Review of the resources required to deliver the proposed process - Availability of appropriately qualified and experienced people to deliver the proposed process
1.3	Compulsory conciliation conferences for building disputes	-	Partially supported	<p>Conciliation process in dealing with building disputes has mixed industry opinion. It relies heavily on:</p> <ul style="list-style-type: none"> - a clearly articulated and resourced process by the department - technical building and design understanding by the conciliator - a conciliator is typically a legally trained professional, which may represent a significant cost to the commission - the acceptance by both parties of the (non-binding) conciliation process <p>Mediation, which is based on a negotiated outcome, is less reliant on the active advisory role of the conciliator and more on the empowerment of the parties to come up with their own way to resolve the dispute. We would recommend the inclusion of a compulsory conference/mediation into the dispute system.</p>
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
10	<i>Should the expiable offence for non-attendance at a compulsory conciliation conference be applied to all traders who fail to attend compulsory conciliation conferences, including conferences relating to building disputes?</i>			<p>YES. There needs to be a penalty for non-attendance of sufficient value to act as a disincentive.</p> <p>However, mediation is recommended as an option offered to applicants.</p>

PART 2 Building and construction industry contracts			
2.1	Certificate of Occupancy and swimming pool requirements in building contracts	Recommendations 5, 6	Partially supported.
CONSULTATION QUESTIONS:		INSTITUTE RESPONSE	
11	<i>Would it be helpful to require information about the proposed COO requirements and swimming pool safety feature requirements to be contained within building work contracts?</i>	<p>Yes.</p> <p>The required elements to achieve compliance and COO should already be included the scope of the building contract and adequately specified.</p> <p>The scenario of a renovation project or small works projects (pool installation to existing home) is not addressed by this proposal.</p>	
12	<i>Are there other mechanisms which might increase the effectiveness of enforcement action in relation to the COO and swimming pool safety feature requirements?</i>	<ul style="list-style-type: none"> - expansion of private certification to undertake pool inspections and lodge Certificates of Occupancy applications to councils. There is precedent of such a model in other states, e.g. Victoria and Western Australia - increased penalties for non-compliance, particularly for builders who do not “make good” on temporary pool fencing. - where there is a building contract for work that includes swimming pools, it should be mandated that these works be included in the scope of the contractor, to ensure all the work meets the compliance requirements of the COO. This option will limit cost/installation options for consumers but will provide increased certainty that they will be completed in accordance with required legislation and standards. - audits embedded within system with increased penalties for non-compliance. 	
13	<i>Should the COO and swimming pool safety feature requirements be included in a building work contract as obligations to be met by the builder, instead of information for the consumer?</i>	<p>As noted above, this will limit cost/installation options for consumers (reducing competition). The preferred option is to either adequately resource local councils to undertake the inspections/audits, or to expand the remit of private certification.</p>	

2.2	Sunset Clauses	-	Supported	
CONSULTATION QUESTIONS:			INSTITUTE RESPONSE	
14	<p><i>Are sellers, including developers, using sunset clauses inappropriately to terminate off-the-plan contracts with consumers in SA? Please provide evidence.</i></p>		<p>The Institute is aware that the inappropriate use of sunset clauses is occurring in South Australia. Members involved in the design of multi-residential developments report that this was not something that had occurred to their knowledge on projects that they were involved in, but tended to occur in developments where an architect is not involved or engaged to do initial concept design only. Projects involving architects tend to have better financial oversight and mechanisms for managing cost variations more effectively.</p> <p>One instance of the developer invoking the sunset clause to terminate off-the-plan contracts was provided. The developer invoked the clause a year after the project was supposed to be completed according to the contract. The consumer did not want the contract terminated and took the developer to court. The developer successfully argued that the delays experienced in delivery of the project had made construction financially unviable. The matter was resolved when the consumer agreed to pay an additional amount to the developer, who completed the project three years later than initially anticipated.</p> <p>However, the architects consulted also reported that sunset clauses benefited some consumers, who were able to use the sunset clause to recover their deposit where construction was significantly delayed.</p> <p>It was observed that the use of sunset clauses increased following COVID, when material and skills shortages and increased material and labour costs placed significant strain on the home building sector. Delays in construction during this time had significant cost impacts, which were not allowed for by many home builders/developers. This</p>	

				<p>may have led some developers to utilise sunset clauses to manage their financial exposure.</p> <p>Increased use of rise and fall contracts was also observed during this time. This also exposes consumers to significant financial risk.</p>
15	<i>Should there be limitations on the use of sunset clauses similar to those implemented interstate? Are there other options to address this problem?</i>			<p>This is a good proposal.</p> <p>An option to this proposal would be the legislated requirement for the parties to make a genuine attempt to negotiate an acceptable outcome (i.e. consumers are given the option of contract extension or termination).</p>
16	<i>What would be the costs and benefits for consumers, developers and industry if there were limitations imposed on the use of sunset clauses to terminate off-the-plan contracts?</i>			<p>The Institute does not have sufficient information to respond to this question. However, it is likely that limitations on the use of sunset clauses would be largely beneficial for consumers and would have minimal impact for developers who currently utilise them in an ethical manner.</p>
17	<i>If changes are implemented, what transition period should apply?</i>			<p>The equivalent of Development Application validity plus administration time (max 3 months).</p>
PART 3 Licensing and Registration				
3.1	Building inspections	Recommendation 18	Partially supported	<p>Inspections during construction</p> <p>The Institute, in general, supports the introduction of mandatory inspections for building works. Ideally, these inspections need to be undertaken by a registered professional with expertise in the works they are inspecting (e.g. steel inspected by structural engineer), who produce inspection reports outlining any incomplete works and non-compliances, which are then lodged to the certifier/certifying body. Further reform is required in relation to registration of building professionals (e.g. engineers), private certification, central database for building inspections, and central body for administering audits and penalties.</p> <p>Inclusion of registration of building inspectors using a system based on the Accredited Professionals Scheme should be considered.</p>

	CONSULTATION QUESTIONS:	INSTITUTE RESPONSE
18	<p><i>Are the current council building inspection requirements (in Practice Direction 9) ensuring building work complies with the National Construction Code?</i></p>	<p>The current building inspection requirements place unreasonable pressure on, often under-resourced, local authorities to carry out inspections. The inspectors may lack specific skill to identify non-compliances (e.g. MPa strength of concrete/bricks, gauge of steel reinforcement, etc.)</p>
19	<p><i>Is the approach to inspections consistent across council areas and building types? Are there specific stages of building work that should be inspected that are not being adequately or appropriately inspected?</i></p>	<p>1.</p>
20	<p><i>Does the experience and expertise of the inspector have a large bearing on the effectiveness of the inspection? Should inspections be able to be undertaken by other suitably qualified and experienced building professionals (private building certifiers, architects, engineers, trade specialists etc)?</i></p>	<p>The experience and expertise of the people undertaking inspections is critical to their effectiveness. Building design and construction is a technical, complex and specialised process requiring the contribution from a variety of specialist consultants. The skill to inspect specialist works lies best with the specialist who has worked on the design. They have comprehensive knowledge of the intent of the design as well as the context within which any remedial work needs to be designed and delivered.</p> <p>Consideration also needs to be taken with regards to the independence of the consultant team in different procurement models. For example, in the Design and Construct (D&C) method, the consultant</p>
20		<p>team is directly contracted or employed by the builder and lodges their reports directly to the builder. This relies on the ethical behaviour of the builder/developer to act on the findings in the inspection reports to provide effective outcomes, and places consumers at significant risk. This methodology applies across the volume home sector, which supplies the majority of new housing in Australia.</p>

		<p>To address this lack of independent, impartial reporting, a system where the person performing mandatory inspections directly reports to the certifier and provides copies of their reports to the builder, owner, and certifier is recommended. The building certifier should be employed by the consumer and not the developer/builder, be subject to a Code of Conduct and be required to lodge the progress reports to a central database to enable trends in defects to be understood. This could inform CPD requirements for specific participants across the residential construction sector.</p> <p>Inspection by suitably qualified and experienced people such as architects, engineers, building certifiers and trade specialists is supported. Where an architect is engaged to provide contract administration, they undertake regular site inspections to monitor delivery of the construction in relation to the approved documentation. Inspection reports for such projects could logically be prepared by the architect and, where relevant, the project engineer.</p>
21	<p><i>What evidence is there to indicate specific failures by residential building inspectors in SA?</i></p>	<p>The Institute is contacted by home-owners seeking advice about the construction of their homes from time to time. Defects relating to water tightness are most common. In most cases the defect(s) have not been identified until after the home is occupied, which indicates that council inspections are not effective in some cases.</p>

21		<p>We received feedback from one member who reported being on site when an inspector was present to inspect the footing excavations and reinforcement. The client noted that the vapour barrier, which separates the slab from the ground and prevents it from absorbing moisture, was collecting water and was concerned that this would affect the concrete. The inspector suggested making holes in the vapour barrier to drain the water, which would have resulted in defective construction.</p>
22	<p><i>Should the Government increase regulation of building inspectors? If so, how? And what would be the costs and benefits for consumers, building inspectors and other tradespeople in the construction industry?</i></p>	<p>Registration of building inspectors is strongly supported. Inspections are a critical quality control mechanism within the construction sector and should be carried out by suitably qualified and experienced practitioners who are required to hold PI insurance, undertake mandated CPD and adhere to a code of ethics. The Institute advocates for registration of all building professionals, as recommended in the Building Confidence Report.</p> <p>Registration of building inspectors will represent a cost to them or their employer. It is likely that this cost will be passed onto the consumer through council fees or some other mechanism. We note that consumers currently pay a fee for inspections as part of their development approval.</p> <p>However, registration of inspectors would provide consumers with greater confidence that their home, which is a significant investment, will be constructed to an acceptable standard. This should result in fewer defects, and a corresponding reduction in disputes regarding rectification, providing benefit to consumers, developers and regulatory authorities.</p>

22				Where an architect is engaged to administer a construction contract, they undertake regular site inspections as an impartial party to the contract. They are responsible for monitoring that the project is constructed in accordance with the approved documents which form part of the contract. As architects are already a registered profession, there would be no additional cost to consumers.
23	<i>Who should be included in a registration scheme for building inspectors?</i>			Building surveyors, engineers, architects
3.2	Regulation of owner builders	Recommendation 1	Supported	
CONSULTATION QUESTIONS:				INSTITUTE RESPONSE
24	<i>Are there problems with the quality of building work performed by owner-builders in SA? Please provide evidence.</i>			<p>The Institute is aware of issues arising from the quality of work performed by owner-builders. This is based on information provided by people contacting the Institute for advice. This may be in relation to defects identified following the purchase of a home where work has been undertaken by an owner-builder. Issues including works undertaken without approval, waterproofing defects, un-licensed electrical and plumbing installations and structurally inadequate construction have been raised.</p> <p>The most significant example was an owner-builder who contacted the Institute in relation to the alterations and additions that they were doing to their home. They had designed the project themselves and had the drawings prepared by a drafter. When they were unable to get builders to price the work, they decided to subcontract the work. The outcome was a partially constructed, non-complaint addition that they were unable to complete as they had run out of money. While there are also examples of very successful outcomes achieved by owner/builders, this example provides a stark demonstration of the risk</p>

24	<p>presented by undertaking construction without the necessary education and experience.</p> <p>Architects involved in residential projects reported that inspections are not occurring consistently across council areas. Currently, inspections are only required for the slab construction, the timber framing and, where the project includes a pool, inspection of the safety fencing.</p> <p>The inspection of reinforcing prior to the concrete being poured is undertaken by an engineer. On architectural projects this is usually the engineer who has documented the footings and are reported as occurring consistently. This may not be the case on projects where architects are not involved.</p> <p>It was also noted that inspections of pool fencing have been occurring consistently for many years. Sign off is required prior the owner being permitted to fill the pool, and this is relatively simple to monitor.</p> <p>It is not always clear to the architect framing has been inspected, as this is arranged with the builder, who may not report the inspection unless an issue is identified for rectification. It was noted that framing inspections appear to have been occurring more visibly in the past 12 months, but that inspections are only known to have been carried out on a small proportion of projects.</p> <p>The framing inspection is supposed to occur once the builder advises that the work had reached the appropriate stage. However, in some instances the Council inspects without prior notice. Some architects reported that inspections have occurred before the framing has been completed, and that the project is signed off based on the work completed at that time. Where an issue is identified, it is not always</p>
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24		<p>apparent that a follow up inspection has been carried out to ensure that rectification has been completed satisfactorily.</p> <p>Feedback also indicates that the experience of the inspectors varies. One architect reported that projects two projects with traditionally framed roofs had been deemed non-compliant by the council inspector. The inspection report indicated that the inspector was not familiar with traditional framing and based his findings on the fact that trusses had not been used. Another architect reported that a council inspector identified minor variations between the documentation and construction of a traditionally framed roof. This inspector had been a carpenter and this experience enabled him to provide detailed and relevant reporting.</p> <p>The Institute recommends that council inspections are mandated at the following stages of construction:</p> <ol style="list-style-type: none"> 2. Excavation, placement of reinforcement and footings – current requirement. Inspection of sub-floor insulation should also be included in this stage. 3. Completion of framing – current requirement. 4. Completion of first fix to review installation of floor/wall/roof insulation, sarking, window framing and thermal breaks – new requirement to improve airtightness, watertightness and thermal performance. Rectification is also very expensive and difficult to achieve to the required standard once linings are installed. Consideration of these issues regarding insulation were considered by EEC and ASBEC in the Insulation Roadmap and their 2021 report: (especially Recs 13 and 14). 5. Waterproofing of wet areas and installation of reinforcement in bathroom walls in accordance with NCC 2022 liveable housing requirements. – new requirement to ensure that these works are
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24		<p>carried out correctly before they are concealed, Water leaks not identified during construction generally cause significant damage to structure and finishes, which are expensive and disruptive to rectify.</p> <p>6. Glazing – new requirement to confirm that installed glass meets the performance requirements stated in the approved documentation.</p> <p>Pressure testing – new requirement to confirm that airtightness achieved in final construction meets the standard specified in the approved documents. Failure to achieve the documented performance will result in poor thermal performance and increase the risk of condensation, which compromise occupant health and increase living costs.</p>
25	<p><i>Is there evidence indicating problems with unlicensed individuals masquerading as owner-builders in SA, whilst building, selling or renting homes for profit? If so, what options are there for the Government to address these problems?</i></p>	<p>The Institute is not directly aware of this issue.</p> <p>Regulation of owner-builders is recommended to improve oversight of the extent of work being undertaken through this pathway. Other options could include:</p> <ul style="list-style-type: none"> - Imposing an upper limit on the value of work that an owner-builder can undertake within a specified period, - Restricting the number of properties that an owner-builder can gain development approval for within a specified period.
26	<p><i>Is there evidence indicating that building work contractors are inappropriately persuading consumers to declare owner builder status for projects, in circumstances where the work performed by the building work contractor If so, what options are there for the Government to address these problems?</i></p>	<p>The Institute is not directly aware of this issue.</p> <p>Mechanisms for addressing this issue could include:</p> <ul style="list-style-type: none"> - Regulation of owner-builders, including information about the reasons for engaging a registered building professional and the risks associated with not doing so. - Introduction of financial penalties that significantly exceed the value of the required insurance where a licenced builder has been identified as working on an owner-builder project.

26				Review of the builder's licence, including de-registration for multiple offences.
27	<i>What costs and benefits might accompany increased regulation of owner builders? (e.g., introduction of a permit scheme, a notification system or close monitoring of 'owner builder' planning approvals by councils)</i>			Permits for owner builders allow for audits and monitoring of potential malfeasance/manipulation of process with unintended consequences. The potential home defect and non-compliance ramifications extend throughout the lifecycle of the building to future owners of these homes. SA building regulation needs to equally protect the future homeowners of owner-builder constructed homes
3.3	Regulation of building developers	Recommendation 1		<p>Generally, the Institute supports the registration of all building professionals, including developers. The registration of developers, particularly for class 2 (apartment) buildings is strongly encouraged.</p> <p>Apartment buildings are far more complex, with inclusion of significantly more specialist services including: vertical access services, emergency evacuation, fire services, pumps and tanks. Apartment consumers enter contracts with developers, not building contractors, and frequently do not understand the contractual relationship, nor the pathways available to rectify defects, post practical completion. Apartment homeowners require the same levels of consumer protection as the class 1 counterparts.</p>
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
28	<i>Are developers not meeting their obligations in residential development projects? Please provide evidence.</i>			<p>There is clear evidence of developers not meeting their obligations in residential development projects and this is occurring at all scales. This is reflected in the significant amounts being expended to rectify residential building defects.</p> <p>For example, the cost of building defects for apartments in 2022 in South Australia are estimated to be \$53 million across 3,000 dwellings³. Further protections are required for stronger responsibility</p>

³ Building Confidence Report - A case for intervention. Prepared for the Australian Building Codes Board July 2021 The Centre for International Economics. Sourced from: <https://www.abcb.gov.au/sites/default/files/resources/2022/Building-confidence-report-case-intervention.pdf>

		<p>for developers to rectify building defects, post construction, and/or for body corporates to directly lodge building disputes against non-compliant building works to the commission.</p> <p>Examples that the Institute is aware of include:</p> <ul style="list-style-type: none"> - Apartments where the internal temperature has been recorded as 50 degrees centigrade with the air conditioner operating. Post construction inspection found that insulation was not installed in the external walls, and windows were not in accordance with the approved documents. - An apartment building where the garden deck waterproofing had failed resulting in water dripping onto cars below and causing significant damage. - Incorrect installation of insulation – subfloor insulation not installed, gaps between bats and joints not taped – resulting in poor thermal performance. - Omission of sarking resulting in moisture ingress leading to black mould in the interior of homes.
29	<p><i>Are consumers sufficiently aware of the different roles of developers and building work contractors, and their rights when entering into a contract with these parties? For example, some consumers may enter a contract with a developer but not understand that physical building work will be undertaken by a separate entity with a building work contractor licence.</i></p>	<p>Many consumers are not sufficiently aware of the roles of building practitioners, the extent of their involvement in delivery of projects or who they are in a contract with. For example, there is a misconception that architects are involved in the design of most projects and that they remain involved throughout construction. The reality is that 95% of housing is delivered without any architectural involvement, and that many developers only engage the architect for the initial stages of the project.</p> <p>It is important that consumers are made aware of the different ways to manage a project including contract administration by an architect. https://www.architecture.com.au/explore/working-with-an-architect</p>

		<p>Based on the misconceptions regarding architects, similar confusion regarding the roles and responsibilities of the developer and builder are also highly likely. The fact that the developer and builder may have different roles and relationships on each project adds to the issue. This will make it difficult for many consumers to identify which party is responsible for construction quality and defects rectification, should this be required.</p> <p>It is important that consumers are made aware of the different ways to manage a project including contract administration by an architect. The Institute provides resources to support consumers understand what is mostly an unfamiliar and complex process. One example is: https://www.architecture.com.au/explore/working-with-an-architect</p> <p>Development of independent information for consumers that developers they are required to provide prior to entering into a contract should be considered. This is already required in relation to home owners insurance and some other matters, but could be expanded to include other rights and responsibilities.</p> <p>For example, many consumers sign contracts with the developer that prevent or discourage them from inspecting the site during construction. This limits opportunities for consumers to monitor quality and pick up errors and omissions as the project progresses. Consumers should be informed of the benefits of progressive inspections prior to selecting a developer.</p> <p>Some developers also discourage or preclude changes to standard designs. For example., one major project home company recently changing their contracts to exclude addition of additional electrical outlets. Consumers are advised that power points and lights not included in the standard design can only be added once they take</p>
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		possession of the home. This is more costly, disturbs insulation and can result in damage to finishes. In some instances, reticulation of cables may not be possible due to obstructions in the wall cavity. A list of inclusions and exclusions in contracts could provide consumers with increased awareness of what to discuss prior to entering into a contract.
30	<i>Are there sufficient protections for consumers where a developer fails to complete essential infrastructure works (e.g., common roads, driveways and utilities connections) for a residential housing development? If not, what can the Government do to address this issue?</i>	The example provided in the review regarding the developer who failed to complete essential road infrastructure clearly demonstrates that there are insufficient protections. The fact that the developer remains in business, and therefore should have the capacity to complete the contracted works, demonstrates a clear case for increased protection.
30		The Institute support stronger regulation control with separate applications for broader land-development/subdivision projects. Infrastructure works would be a “forward works” package that needs to be completed prior to development approval being granted for any building works. Deposits from pre-purchase of house and land packages should also be held in trust until infrastructure works are completed.
31	<i>Is there a case for stronger regulation of building developers and, if so, what options should the government consider? For example, introducing a licensing scheme for developers or a developer rating scheme for consumers.</i>	The Institute supports the introduction of a licensing scheme, with mandatory CPD requirements and insurance, for developers. Developers have significant influence over the quality of construction, and this directly impacts consumers. A star rating system is only effective if: administered by a third party, regularly updated, mandatory for all developers, and a clear process of disclosure of complaints/applications against developers be disclosed by the commission/governing body to allow for appropriate updates to the rating scheme.
32	<i>How should a residential building developer be defined? Is the definition of a developer used in this discussion paper suitable?</i>	The proposed definition of a ‘developer’ is sound. The definition of residential building developer needs to include subdivision developers,

				“house and land” package providers, apartment, hostel, student housing and housing developers.
3.8	Qualifications and Recognition of Prior Learning	Recommendation 2	Supported	
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
33	<i>Should the Commissioner have discretion to not accept trade qualifications obtained wholly or partly through Recognition of Prior Learning? Are there other options to address this problem?</i>			The Institute supports strengthened, competency-based, provisions for licensing.
3.9	Setting PGE worker qualifications	Recommendation 2	Partially supported	
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
34	<i>Should the older qualifications for PGE contractors and workers be removed from the PGE regulations, along with the power to prescribe qualification and experience requirements by regulation?</i>			It is recommended this be reviewed based on precedent and best practice, and in a way that facilitates the establishment of automatic mutual recognition across jurisdictions.
3.10	Reviewing the scope of electrical work	Recommendation 2	Supported	
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
35	<i>Should people who perform work on “off-grid” electrical installations that are not connected to a public electricity network require a licence or registration? Please provide reasons.</i>			Yes, this still includes high-risk, with potential threat-to-life consequences, work on inhabited infrastructure/building projects.
36	<i>What types of “off-grid” electrical installations should require a registered or licensed electrical worker?</i>			All examples outlined in discussion paper.
37	<i>What would be the practical benefits and costs to industry, workers and the community if new licensing requirements were introduced for “off-grid” electrical work?</i>			Increased safety, standardisation of asset installation across the state (with associated increased productivity), confidence in estimates for subsequent work (as may be assumed as deemed-compliant).

38	<i>What types of work should electrical trade assistants be allowed to undertake, and why?</i>		This should be determined in consultation with the relevant electrical trades and regulatory bodies.
39	<i>What would be the practical benefits and costs to industry, workers and the community if electrical trade assistants were allowed to perform some tasks on un-energised electrical installations?</i>		Economic and trade availability benefits, particularly on larger projects.
40	<i>Are the current exemptions to electrical licensing requirements listed in the PGE Regulations appropriate?</i>		It is recommended this be reviewed based on precedent and best practice, across jurisdictions. There are a number of items on the exempt work list that may be perceived as high-risk.
3.11	Installing of stormwater piping	Recommendation 2	Supported
CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
41	<i>Are there problems with the quality of stormwater piping work undertaken by people and businesses without a plumbing registration or contractor's licence? Please provide supporting evidence.</i>		The Institute is not aware of specific examples relevant to this question. However, the impact of defective stormwater systems can be significant, with water leaks often being costly and complex to rectify and the resulting damage extending well beyond the source of the defect. This makes work by unlicensed businesses a significant risk to consumers and may severely limit their ability to access compensation in the event of a defective installation.
42	<i>Should all stormwater work connected to public disposal systems only be undertaken by licensed plumbers? Please provide reasons.</i>		Generally, suggest yes. In WA, building reform has required this to alleviate damage to public assets, and ongoing domestic flood insurance cover issues.
43	<i>What would be the costs and benefits for consumers, plumbers and other tradespeople in the construction industry if the current exemption for stormwater piping work was removed?</i>		The likely implications are that stormwater installations would be more expensive. This would be balanced by the benefits resulting from less insurance claims, building disputes and defect rectifications resulting from water damage.
3.12	Access to Australian Standards	Recommendation 2	Supported

CONSULTATION QUESTIONS:			INSTITUTE RESPONSE	
44	<i>How can the Government ensure fair and equitable access to the Australian Standards for tradespeople working in SA?</i>		<p>Universal cost-free access to relevant standards for license holders and is recommended.</p> <p>Apprentices should be provided with access to relevant standards through their RTO.</p>	
PART 4 Continuous Professional Development				
	Recommendation 3	Recommendation 2, 3	Supported	<p>Architects, as registered professionals, are required to hold Professional Indemnity insurance and complete a minimum 10 hours of formal CPD and 10 hours of informal CPD annually. The Institute supports</p> <p>mandatory CPD requirements for all building professionals. CPD is required given the complexity of, and rate of change occurring in, the construction sector.</p> <p>The Institute notes that financial support is available through the Construction Industry Training Fund to workers within the construction sector to offset training costs. Currently this support is only available to people who work 'on site'. We recommend this funding be extended to people involved in off site construction. This will assist in supporting the growth of prefabricated and modular construction which is critical given the current skills shortage.</p>
CONSULTATION QUESTIONS:			INSTITUTE RESPONSE	
45	<i>Are there areas of poor performance or non-compliance in SA that could benefit from building practitioners participating in professional development? To what extent are these problems with poor quality work due to lack of knowledge as opposed to work being done by 'rogue operators' or people without an appropriate licence? Please provide evidence.</i>		<p>The Institute does not have specific evidence to provide a response to this question. However, we note that organisations such as the MBA and HIA have expressed strong resistance to implementing NCC 2022, on the basis that their members are not confident that they understand the new standards of construction. This suggests a sector-wide issue regarding regulatory and construction knowledge. This will logically result in poor quality and non-compliant work.</p> <p>This is further reinforced by measurement of energy performance of existing dwellings which shows that the rating achieved is 3.5 stars on</p>	

		average. This is well below the 6-stars that was legislated in South Australia for the 13 years prior to the introduction of NCC 2022 on 1 July 2024.
46	<i>What evidence (including experience from other jurisdictions) is there that introduction of mandatory CPD will address problems with poor performance and non-compliance?</i>	The Institute is not aware of mandatory CPD for other sectors of the building industry. Some sectors have CPD requirements that are defined and monitored by their professional bodies. However, penalties for non-compliance are relative minor and do not prevent practitioners from practicing in South Australia.
46		Architects are the only construction industry profession subject to registration under the SA Architectural Practice Act , which includes mandated CPD . The closest equivalent applies to planners and building certification professionals, who are required by the Planning, Development and Infrastructure (PDI) Act to be undertake CPD as specified in the PDI (Accredited Professionals) Regulations . However, the rules stipulating what activities constitute acceptable CPD for Accredited Professionals are not as robust as those for architects.
47	<i>What other options besides mandatory CPD could be considered to address the problem?</i>	Competency based registration/licensing schemes coupled with some CPD is recommended. Disciplinary systems in addition to works rectification orders and codes of conduct should also be implemented.
48	<i>What types of professional development activity could be required? How much training and how frequently would it be required?</i>	Professional development activities should be structured and the frequency and number of hours of training should be commensurate with the competencies and risk. Auditing of CPD is also required to monitor compliance. NCC changes should be the highest priority in development of CPD. CPD activities focused on relevant NCC changes should be mandated. Evidence of poor performance coming from complaints and inspection reports should also be used to inform CPD requirements.
49	<i>Who should deliver CPD training?</i>	A range of training providers needs to be allowed for to include the vocational education training sector, universities, peak bodies (such as the Institute) and other education providers. The training needs to be

				documented based on a competency framework and documented appropriately in the assessment.
50	<i>How well is the mandated CPD working in other jurisdictions and what evidence is there for this?</i>			Mandated CPD works well for architects. Overall numbers of disciplinary findings are low in proportion to the size of the profession. Mandated CPD was introduced for architects registered in South Australia in July 2020. Prior to this we note that many architects did not meet the CPD requirements recommended by the registration board.
51	<i>Should CPD in SA be voluntary or mandatory?</i>			It is recommended to be mandatory to lift the knowledge of the industry consistently and impose same requirements across all building practitioners. Mandated CPD needs to be subject to compliance audits to be effective.
52	<i>If CPD were to be implemented, how could its success be measured? What indicators might suggest that the problems are being successfully addressed?</i>			To measure the impact of CPD effectively a record of defects needs to be established and maintained. This could be established using the information collected through enhanced inspection requirements detailed in this response. A digital reporting system would facilitate the collection, collation and analysis of data.
53	<i>How could it be ensured that CPD is appropriately targeted and addresses the problem areas in the construction industry?</i>			Base CPD programs and requirements on set competency areas within the mandatory CPD framework.
PART 5 Compliance and enforcement				
5.1	Increasing penalties	Recommendation 6	Supported	
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
55	<i>Are there particular penalties in the BWC and PGE Acts that should be reviewed? Please provide details.</i>			The Institute, generally, supports increased penalties to ensure they are proportionate with the breach that has occurred, and frequency of that breach. It is recommended that the department/commission undertake necessary audits of past offences to identify these.

5.2	Use of another builder's license in advertising	Recommendation 6	Supported	
CONSULTATION QUESTIONS:				INSTITUTE RESPONSE
56	<i>Would it be useful to introduce the proposed offence prohibiting unlicensed building work contractors from using another person's building work contractor's licence in advertising?</i>			This is strongly supported. Currently consumer complaint mechanisms for this type of 'offence' are restricted to 'misleading and deceptive conduct' under the ACL, which does not represent a sufficient deterrent. .
5.3	Unlicensed subcontractors	Recommendation 6	Supported	
CONSULTATION QUESTIONS:				INSTITUTE RESPONSE
57	<i>Would it be beneficial to introduce the proposed offence prohibiting building work contractors from engaging unlicensed subcontractors?</i>			This proposal is supported – a clearly articulated licensing scheme is required listing each trade and competency requirements.
58	<i>How can the Government hold subcontractors accountable for ensuring that they are appropriately licensed to undertake contracted work?</i>			An appropriate licensing scheme needs to be developed for all building trades, outlining competencies, pre-qualifications, ongoing obligations. and penalties for non-compliance.
5.4	Building work supervision requirements	Recommendation 6	Supported	
CONSULTATION QUESTIONS:				INSTITUTE RESPONSE
59	<i>Is the current guidance on "proper supervision" sufficiently clear for building work supervisors to understand their obligations?</i>			It is recommended this be reviewed based on precedent and best practice, across jurisdictions. This needs to also be cross-checked against all other reform items (e.g. mandatory inspections). It would be expected that a supervisor would oversee all the trades on a construction project and maintain records of the construction. The supervisor's role also includes OHS obligations – and this needs to be reviewed to ensure completion, alleviation of conflicting obligations, consistency and lack of repetition.
60	<i>Should "proper supervision" requirements for building work supervisors be defined under the BWC Act? Should</i>			It is recommended that this be retained within the Regulations with a set review period (3-5 years) within the Act. This will allow for agility to

	<i>this include record-keeping and reporting requirements for building work supervisors to keep track of inspections they conduct? Please provide reasons.</i>			<p>be able to review the list and ability to respond to innovation in the construction sector.</p> <p>Record keeping and reporting are important as they enhance the ability to effectively maintain, operate and modify the building into the future. They are also invaluable in identification and rectification of defects and in the resolution of disputes. Records should include photographs of key construction milestones, including the suggested inspection points.</p>
61	<i>Should the Government introduce an offence for building work supervisors who fail to provide adequate supervision?</i>			<p>Yes, this is supported as part of licensing/registration requirements. The penalty needs to be appropriately split between the ‘employer’ (builder) and the supervisor.</p> <p>The Institute is aware that the level of supervision on most residential sites is limited. This is based on first-hand experience across projects that architects are involve in, as well as observation of developer lead sites. Trades are increasingly left to work independently and provide a compliance statement to the builder confirming that they have delivered their scope in accordance with the contract. This is particularly problematic where work is later concealed.</p>
62	<i>What would be the costs and benefits for consumers, building work supervisors and other practitioners in the construction industry if specific requirements for building work supervision are codified?</i>			<p>The cost of supervision would be offset by significant reduction in defective work and workplace accidents.</p>
5.5	New Commissioner powers relating to practitioner learning	Recommendation 6	Supported	
	CONSULTATION QUESTIONS:			INSTITUTE RESPONSE
63	<i>Should the Government introduce new powers enabling the Commissioner to direct a licensed or registered building practitioner to undertake further training? What criteria should be satisfied before exercising this power?</i>			<p>This proposal is supported in principle. The proposal would need to include appropriately scaled processes: warnings, temporary suspensions (pending training completion), temporary reinstatements, audits, etc.</p>