

TISHER LINER FC LAW

Shergold Weir Report

24 Recommendations addressing the issues with compliance in the construction industry.

Recommendation

Description

Registration and Training of Practitioners

1	Registration of building practitioners involved in the design, construction and maintenance of buildings.	Categories include Builders, Site/Project Managers, Building Surveyors, Building Inspectors, Architects, Engineers, Designers and Draftspersons, Plumbers and Fires Safety Practitioners.
2	Consistent requirements for the registration of building practitioners.	Requirements: 1. Certified and compulsory training on the operation and use of the NCC; 2. Additional competency and experience requirements; 3. Compulsory professional indemnity and/or warranty insurance and financial viability requirements; 4. Evidence of practitioner's integrity, based on assessment of fit-and-proper person requirements.
3	Practitioners to undertake Continuing Professional Development (CPD) on the NCC.	Regulators need to have mechanisms to identify common non-compliances which may indicate systemic misunderstanding of the requirements of the NCC, which can be used to identify compulsory topics for the proposed CPD.
4	Establish a supervised training scheme to provide a defined pathway for becoming a registered building surveyor.	A nationally consistent supervised training scheme for building surveyors, designed in collaboration with industry with training on regulatory obligations, ethical conduct and operation of the NCC.

Roles and Responsibilities of Regulators

5	Establish formal mechanisms for a collaborative and effective partnership between those with responsibility for regulatory oversight.	Implementation could be achieved through enhancements to an existing panel or committee. Alternatively, a new body could be established which would be dedicated to the task of enhancing regulatory practices.
6	Regulators be given a broad suite of powers to monitor buildings and building work so that they can take strong compliance and enforcement action when necessary.	Example powers include: » Powers of entry for monitoring compliance and investigation; » Powers to request production of documents or information; » Powers to undertake disciplinary processes and prosecution.
7	Each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.	Strategy should include targeted audits of: 1. Documentation for commercial building projects; 2. Conduct of building surveyors; 3. The work of builders including their management processes.

For more information, please contact a member of our **Construction Law Team**.

*Recommendation**Description***Role of Fire Authorities**

8	Each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.	This should be consistent with the International Fire Engineering Guidelines and establish best practice codes of conduct for fire engineering and building surveyors.
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Integrity of Private Building Surveyors

9	Establish minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.	As quoted by the Australian Institute of Building Surveyors: "Building surveyors engaged to provide advice during the design stage, particularly on how to achieve compliance, cannot then accept an engagement in a statutory role for the same project without being in conflict because they would essentially be assessing and approving their own design input."
10	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.	Such codes of conduct for building surveyors should state that: <ol style="list-style-type: none"> 1. Their primary obligation is to ensure compliance with legislation; 2. They must not prepare performance solutions; 3. They must not participate in the development of the design; 4. They must act within their area of skill and expertise; 5. They must have mechanisms in place to encourage owners to advise of any concerns about non-compliant work; and 6. They must have policies and procedures for the proper management of complaints.
11	Each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.	For example, where private building surveyors conduct inspections or issue occupancy certificates, they be given powers to issue directions to fix or to stop work where noncompliance is detected.

Collecting and Sharing Building Information and Intelligence

12	Each jurisdiction establish a building information database that provides a centralised source of building design and construction documentation.	Information to be collected can include: <ul style="list-style-type: none"> » Details of practitioners, building surveyors and issuing authorities involved; » Details of design certificates, performance solutions and compliance or approval certificates; » Inspection records, investigation details or enforcement actions.
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*Recommendation**Description***Adequacy of Documentation and Record Keeping**

13	Each jurisdiction requires building approval documentation to be prepared by registered practitioners.	Approval documentation should demonstrate that the proposed building complies with the NCC and quantify/qualify the compliance.
14	Each jurisdiction sets out the information which must be included in performance solutions.	Particularly in occupancy certificates, it should specify the circumstances in which the performance solutions have been used, to what extent and for what purpose.
15	Each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.	Requirements should include that: <ol style="list-style-type: none"> 1. The documented performance solution was developed in relation to constructed building work why it was sought for that work; 2. The building surveyor prepares a written statement of reasons for accepting a performance solution; 3. Notification of the request for the approval of a performance solution and the outcome of that request be given to the owner, who must consent or have an appeal right to the use of the performance solution. 4. The occupancy certificate lists all performance solutions relating to the work and the date of their approval.
16	Each jurisdiction provides for a building compliance process which requires the approval of amended documentation by the appointed building surveyor throughout a project.	Design development, variations and product substitutions should be approved by the building surveyor prior to associated work being carried out. Where a project involves staged building approvals, the application for building approval should set out the proposed stages and the proposed design schedule and there should be offence provisions for builders who do not notify the building surveyor or provide the necessary documentation in advance of building work progressing.
17	Each jurisdiction requires genuine independent third party review for specified components of designs and/ or certain types of buildings.	Independence to be assured by the third party review: <ol style="list-style-type: none"> 1. Being conducted by a panel of experts sitting on a statutory board or panel; 2. Being appointed from a list of government approved third party reviewers; or 3. Conducted by other registered practitioners in appropriate categories of registration with independence based on guidance.

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	<i>Recommendation</i>	<i>Description</i>
Inspection Regimes		
18	Each jurisdiction requires on-site inspections of building work at identified notification stages.	A mandatory inspections process must be supported by registration of inspectors and clear directions to building surveyors about what enforcement action is required to be taken where non-compliance is detected.
19	Each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.	This include mandatory certification of the testing and commissioning of fire safety systems by registered fire safety system practitioners. To avoid any conflict of interest, the certification of testing and commissioning should not be performed by the system installer.
Post-Construction Information Management		
20	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 buildings.	Building manual should contain the following information; <ol style="list-style-type: none"> 1. As-built construction documentation; 2. Fire safety system details and maintenance requirements; 3. Assumptions made in any performance solution; 4. Building product information, including certificates and details of maintenance or safety requirements; and 5. Conditions of use—such as occupant numbers, loads, replacement of products after certain periods.
Building Product Safety		
21	The BMF agrees its position on the establishment of a compulsory product certification system for high-risk building products.	The product certification systems will need to include mandatory permanent product labeling and prohibitions against the installation of high-risk building products that are not certified.
The Implementation of the Recommendations		
22	The BMF 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.	It enhances comparative reporting, facilitates the sharing of good practice, and assists those in the building and construction industry who work in a number of jurisdictions. Jurisdictions should then have regard to the dictionary and the preferred terms when considering reforms with a view to adopting more consistent language over time.
23	The BMF acknowledges that the recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.	Feedback from jurisdictions has indicated that setting an implementation timetable is essential to ensuring that the recommendations are actioned in an expeditious manner. Most have agreed that a three-year time-frame is ambitious, but possible. All have agreed that significant progress should be able to be made in this period.
24	The BMF prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.	A full list of agreed actions should be prepared, with jurisdictional performance against each one to be reported annually. This will allow the BMF to monitor achievement. The plan should be flexible enough for it to be amended over time.

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