



## Australian Institute of Building Surveyors

Response to the report

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

by

Professor Peter Shergold and Ms Bronwyn Weir  
commissioned by the Building Ministers' Forum (BMF)

27 July 2018

27 July 2018

Building Ministers' Forum  
GPO Box 2013  
CANBERRA ACT 2601

Dear Building Ministers

The Australian Institute of Building Surveyors (AIBS) are pleased to present this response and comment on the report by Professor Peter Shergold and Ms Bronwyn Weir.

We look forward to your considered response in due course.

Yours faithfully  
AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS

**Brett Mace**  
Chief Executive Officer

**Tim Tuxford**  
National President

## Overview

The Australian Institute of Building Surveyors (AIBS) welcomes the report to the Building Minister's Forum (BMF) by Professor Peter Shergold and Ms Bronwyn Weir.

AIBS believes the report, *'Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building & construction industry across Australia'* presents a long overdue guide to much-needed reform of Australia's building regulatory system. Modernisation of the system is crucial if the Australian public is to retain confidence that the built environment in which they live, work and play is safe and compliant with standards all Australians are entitled to expect.

AIBS has advocated for major reform in this area. We set-out how this reform could be achieved in the *'AIBS Policy – Building Regulatory Reform in Australia'* which was published in September 2017.

The AIBS policy advocates for a consistent, national approach to building regulation in place of the piecemeal jurisdictional approach currently in place. It is particularly noteworthy that the BMF, in commissioning the Shergold Weir Report, has taken a national approach to examining Australia's building regulation system rather than previous approaches which have focussed on individual jurisdictions. The BMF is to be applauded and supported for taking this approach.

This document provides AIBS' response to the findings and recommendations of the Shergold Weir Report. This response has been developed after meeting with report co-author Ms Bronwyn Weir to obtain more understanding of the rationale for some of the recommendations together with consultation with AIBS members across all jurisdictions.

Overall, AIBS considers the Shergold Weir Report is a forthright assessment of the state of compliance in Australia. Generally, the Report is a significant step forward in reform of the building regulatory system, but it is simply the first step. AIBS urges the BMF to work closely with industry to ensure the majority of the recommendations contained in the report are implemented, albeit with some modifications, to achieve genuine regulatory reform.

### Building Surveying

The Shergold Weir Report contains significant criticism of the building surveying profession. AIBS acknowledges that the terms of reference provided to Shergold and Weir by the BMF included a request to examine perceptions of conflict of interest within the private building surveying profession. AIBS also acknowledges criticisms of building surveyors within the Report while, at the same time, we are greatly encouraged by recognition in the Report that the profession of building surveying is crucial to the future viability of compliance in the Australian building industry.

Importantly, the criticisms levelled at the performance of the building surveying profession relate to known issues which AIBS is already working to address by increasing professionalism and other efforts which have, in part, been acknowledged within the Shergold Weir Report. While some members of the profession will be unhappy with some of the recommendations and findings in relation to the profession, AIBS believes that implementation of the majority of the recommendations will serve to strengthen the role of building surveyors within the industry including enhancement of the reputation of the profession with industry and the general public.

AIBS is also encouraged to note a considerable number of the recommendations in the report align with the building regulatory system reforms contained in *'AIBS Policy-Building Regulatory Reform in Australia'*.

**NOTE:** The Shergold Weir Report uses the term ‘private building surveyor’ which AIBS believes incorrectly delineates between private and public building surveyors undertaking the same statutory assessment and inspectorial functions. AIBS believes that many of the suggested improvements would equally apply to any building surveyor undertaking such functions. Accordingly, it is recommended that the term ‘statutory building surveyor’ be adopted by the BMF and all jurisdictions to better emphasise the statutory nature of the role and to recognise that the same or similar pressures exist for building surveyors undertaking statutory roles in public settings.

### **Executive Summary**

1. AIBS makes the following overall observations about the contents and recommendations within the Report:
  - Performance of private participation within the regulatory system is not serving the community adequately
  - The majority of the Shergold Weir recommendations were related to commercial buildings rather than the residential sector
  - There has been a lack of performance by regulators
  - The role of the building surveyor is crucial to the system
  - There is a requirement for whole of industry and government solutions to the issues raised
  - There is a need to adopt the universal use of the term ‘building surveyor’ across all jurisdictions
  - The role of building surveyors as co-regulators could be more widely recognised within the community, some parts of industry and in some government agencies
  - Nationally consistent accreditation and qualification standards are needed
  - Private engagement of statutory building surveyors should be robust, reflecting the co-regulatory role that these professionals perform on behalf of the community
2. Key priorities for reform: - AIBS has identified the following recommendations from the Report that we believe should be prioritised for implementation to improve the standard of compliance within the Australian building industry:
  - Recommendation 9 which related to improving the integrity of building surveying practice;
  - Recommendation 18 which related to introducing mandatory inspections with amendments;
  - Recommendation 21 which related to establishing a system for building product safety with amendments; and
  - Recommendations 1,2 and 3 together which relate to the establishment of a nationally consistent practitioner registration scheme with associated mandatory continuing professional development (CPD) requirements.
3. Whilst AIBS supports the majority of the recommendations in the Shergold Weir Report, there are some areas in which AIBS has a differing understanding of the background which appears to have led to some recommendations. For these reasons, AIBS does not necessarily agree with certain recommendations of the report. These are:
  - Recommendation 14 which relates to documentation of performance solutions;
  - Recommendation 15 which is related to post construction approvals using performance solutions;
  - Recommendation 17 which is related to independent third-party reviews of performance proposals; and
  - Recommendation 19 related to inspection and certification of fire safety system installations.

AIBS also considers that recommendations 7, 8, 10, 18 and 21 have merit but remains cautious about aspects of the recommended approach.

4. AIBS raises the following queries arising from the Shergold Weir Report:

- Why didn't the report consider the impact of increasing use of performance solutions on the ability of the community and practitioners to achieve or drive high levels of voluntary compliance?
- Considering compliance motivation theories, how does the Australian legislative landscape compare with the latest available knowledge around achieving compliant behaviours?
- Why does the report not advise on the suitability of the various proposed controls on how building surveyors are engaged to undertake assessment and other functions?
- Why is the moral hazard of builders not raised in the discussion on page 13 or elsewhere in the report, given the existence of moral hazard represents a significant risk factor to be mitigated by any compliance and enforcement system?
- How has a view arisen that approvals processes across Australia generally provide for a very high level of self-certification of the design and construction of commercial buildings?

## Part 1 - AIBS Commentary on the report

1. **What drives compliance:** The report contains discussion about two fundamental requirements needed in order to derive maximum benefit from a performance based regulatory system; practitioner competence and statutory building surveying involvement. AIBS raises an important third point about how compliance is most often achieved is missing. That is, voluntary compliance with requirements.

AIBS believes it is appropriate that the BMF be informed regarding the role of voluntary compliance in the setting of regulatory schemes to address compliance levels.

2. **Regulatory reform process:** Our view is that regulatory reform is an issue that cannot be dealt with 'one Band-Aid at a time' but must be approached holistically and involve all stakeholders in the process.
3. **Public confidence in the system:** AIBS supports open decision making during design and construction as a means of fostering greater levels of voluntary compliance. We also note that there is currently no way for the community to understand decisions taken by enforcement bodies, be they statutory building surveyors, local government, state or territory governments. Greater transparency in this regard could ensure entities with enforcement responsibility might be held to account for their decisions.
4. **Clarity of requirements and what to do about it:** Shergold and Weir have identified that clarity of requirements is important, and that this element of the bigger picture was outside the terms of reference of their engagement so has not been investigated.

AIBS believes clarity of technical requirements is paramount to efficient and consistent application of requirements and also to the degree with which compliance is likely to be achieved. Not only must the approach to design be clear, there must also be clarity in the performance approach.

### 4.1 *The National Construction Code*

AIBS believes that the deemed to satisfy provisions of the National Construction Code Building Code of Australia (NCC BCA) are in need of improvement regarding clarity, particularly in relation to the complexity generated by the sheer number of referenced standards – there are well over 3,000 documents that must be referred to in order to understand what is required. Fees are charged for access to these documents which further hinders widespread comprehension and conformity.

### 4.2 *Quantification of Performance*

The performance requirements in the NCC should act as a yardstick against which to measure the benchmarks determined in any Performance Based Design Brief process. This would prevent designers and statutory building surveyors having to establish what they believe are appropriate performance benchmarks for each project, which, aside from the diligence of the statutory building surveyor to their public duty, occurs outside of community involvement.

Each of the above points underscores the need for clarity of requirements as part of an approach to management of performance design, a high-risk element of industry, where judicious application of inspectorial resources is vital to ensure adequate levels of compliance are commonplace which, in turn, supports public confidence in the system.

5. **Where AIBS disagrees with the discussion:**

### **5.1     *Role of the building surveyor***

There is a comment about purchasers having to rely on the regulatory controls and competence of practitioners to deliver a complaint, safe building. This suggests that the role of building surveyors in this process is viewed as ineffectual.

It is disappointing that this passage does not make clear why the authors believe purchasers are having to rely on the regulatory controls and competence of practitioners. Is it due to a lack of diligence of building surveyors or is it a function of the legislative systems in place that effectively inhibits the ability of a building surveyor to be influential in achieving a compliant outcome?

AIBS believes it is more often the latter and calls for a more rigorous auditing regime of all in the building supply chain to mitigate the risk of the former. If all practitioners are held equally accountable, this can only serve to strengthen the building regulatory system.

### **5.2     *Collaboration***

There are concluding remarks in the executive summary (page 4) which give a sense that the lot of purchasers is due to a combination of both the regulatory controls and the input of statutory building surveyors, in combination with an industry that is ill-prepared to deliver compliant buildings in the first place. The lack of direct discussion on this point is disappointing given that the terms of reference were primarily about investigation of the efficacy of compliance and enforcement systems in Australia.

AIBS believes more could have been made of this issue so that it is clearer what needs to be done to support end users of buildings to have confidence in the built environment.

### **5.3     *The role of local government***

There appears to be a lack of recognition that municipal building surveyors too are subject to influence, not only from the clients but also from elected representatives who might seek to have particular policy positions prevail at the expense of the integrity of the process.

Whatever the system, there needs to be transparency brought to bear at least from the oversight of a regulator, and potentially in relation to the actions or inaction of regulators themselves.

### **5.4     *Regulatory failure***

There is expression of an idea that all the problems associated with the building and construction industry is the result of the practices of building surveyors. Such a view is significantly flawed and ignores:

- the roles of others in bringing about defective work and failing to have quality assurance programs in place;
- the inadequacy of the regulatory environment to ensure that adequate resourcing is available to ensure building surveyors have the capacity to undertake their responsibilities fully; and
- the influence of regulatory requirements which dictate what should be inspected and when, and how this takes away from the ability of a building surveyor to apply risk management principles to this aspect of building control so that the whole system is inherently inefficient at delivering compliance.

This is far more a regulatory failure issue than an issue of building surveyors failing to uphold their responsibilities. AIBS suggests it is the system and its capacity to support sound decision making that needs to be examined. Blaming building surveyors is analogous to blaming parking inspectors for the

number of drivers that overstay the time limits outside a hospital. In the latter situation, who has made the decision to park for longer than permitted?

## **6. The responsibility of builders:**

### **6.1 Moral Hazard**

It is the view of AIBS that a proper understanding of the moral hazard position of builders is necessary to ensure that the regulatory environment is properly able to support compliance. The report has not done this.

### **6.2 Documentation**

The regulatory system does not fit with modern design and construction procurement methodologies with their attendant commercial imperatives behind construction scheduling and decision-making processes. Submission and assessment processes for variation documentation will be better supported by systems that work with rather than against the procurement systems in place. This has not been examined in the report.

### **6.3 Responsibility shedding**

Builders work hard to ensure that they cannot be held responsible for anything that goes wrong, mostly because they can pass responsibility to a sub-contractor or supplier. There are structural mechanisms that also ensure this; they are not obliged to carry insurance, so any claim will often cause the builder to fold and disappear without apparent consequence for those who controlled the building company. AIBS believes more investigation of this issue is required.

### **6.4 Relationships**

AIBS believes the passage *“It is imperative that builders play their part in helping to redefine the role of private building surveyors. Builders need to recognise that inappropriate relationships with private building surveyors undermine the whole system.”* May have been expressed in a way that does not convey what was truly intended.

Clearly, the role of statutory building surveyors is a matter for regulators, not builders. Building surveyors should rightfully expect that their statutory roles will and should be defined by regulators, and appropriately in consultation with building surveyors, and particularly ahead of any consultation with builders.

What is less clear, and presumably was the true intention behind this passage from the Report is that, by the relationships that builders seek to establish with statutory building surveyors, they can influence the efficacy of those people to perform a co-regulatory role. Builders should consider carefully how they seek to work with statutory building surveyors so that they do not compromise, or even give an impression of potential for compromise of their role.

## **7. Creating a more harmonised national system:**

AIBS would like to see an analysis of the powers that might enable the Commonwealth to establish legislation applying to the building industry.

Already, legislation relating to insurance is a matter for the Commonwealth and there are other aspects of commerce over which the Commonwealth should legislate. AIBS believes there may be other areas in which the Australian Constitution could provide relevant power or powers which, if utilised, could create a pathway for nationalisation and therefore harmonisation of compliance and enforcement systems within the Australian building industry.



## Part 2 – AIBS Commentary on Shergold and Weir’s Recommendations

This section addresses each of the recommendations from the Shergold Weir Report.

### Recommendation 1 – Registration of building practitioners

AIBS **supports** this recommendation and makes the following points:

- The proposal for each jurisdiction to require registration of certain categories of building practitioners is largely consistent with the position taken by AIBS in the *Policy for Building Regulatory Reform in Australia*. The differences are that AIBS calls for all practitioners to be registered and if that were the case, there is no need to identify limitations on who can be involved in performance solution preparation.
- The list of practitioners should be considered to be a minimum number, or core group, of practitioners. AIBS supports this approach as part of a pathway towards widespread licensing and registration of practitioners.
- Shergold and Weir also say they believe sub-categories of registration should apply, defining an individual’s capacity to work on different classes of building of differing scale and also on specific disciplines within different professional categories. This differs from our policy position.
- AIBS believes it is critical that building surveyors and builders are appropriately categorised, so they do not work beyond their levels of competency. AIBS has considered how this recommendation can best be implemented. A review of the National Accreditation Framework is underway and, at the same time, AIBS is examining similar considerations as part of preparing a proposal to establish a Professional Standards Scheme. These deliberations will also examine the need for levels of practitioner including in respect of any limitation as to who can participate in performance solution preparation which may be appropriate.

### Recommendation 2 – Consistent requirements for registration

AIBS **supports** the recommendation and makes the following points:

- The AIBS policy position at A8 calls for all practitioners to carry Professional Indemnity (PI) insurance as a pre-requisite for registration.
- The benefit of nationally uniform registration requirements based upon nationally uniform recognised qualifications maintained through national training programs is identified. There is currently considerable variation of registration requirements not with the types of training provided but also variation of the types of training that governments accept as relevant to skills maintenance. Undertaking a first aid course is accepted in at least one jurisdiction as relevant for building surveyors implementing the requirements of the NCC.
- AIBS believes that consideration should be given to how jurisdictions can support development of training relevant to CPD on applying the NCC changes.
- Shergold and Weir note that industry bodies are capable of verification of credentials for registration and collaborating with regulators on the discipline of practitioners (page 18). This supports the AIBS policy position related to Professional Standards Schemes.

**Recommendation 3 – Continuing Professional Development**

AIBS **supports** the recommendation and makes the following point:

- The recommendation is consistent with the AIBS position related to CPD. There is a suggestion that governments give consideration to the subsidisation of compulsory CPD training which AIBS supports (page 19). AIBS has also made comment on the training aspects of registration under recommendation 2.

**Recommendation 4 – Career paths for building surveyors**

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir contend there may not be an adequate supply of building surveyors to meet future needs (page 19). Also, from similar references, they state that the average age of building surveyors is now over 50.
- These points are understood to have been raised in various referenced reports prepared within different States and Territories and published within the last 15 years.
- AIBS queries the accuracy of the above statements because we believe there may not be any single organisation that would have access to the relevant data. The studies referenced were undertaken in single jurisdictions and in some instances are outdated considering the rate of change observed within industry over the last 10 years. AIBS urges caution on making important industry decisions based on statements that may not be accurate.
- The report also suggests that the aging demographic of building surveyors may be a result of building surveying as a second or third career choice for older tradespeople who join the industry when they can no longer continue in their trade. AIBS believes this may not be an accurate characterisation of the profession and may be based on outdated data. Those “coming off the tools” have a role to play but new entrants of this background typically do not have the skillset to cover the shortfall in practitioners available to assess and approve commercial buildings. Greater focus and recognition needs to be applied to younger industry participants who can more easily keep pace with changing technology.
- AIBS has also identified a need for the establishment of a supervised career pathway supporting entry into the building surveying profession. Establishment of a nationally consistent pathway of this nature would likely assist in changing the demographics of the building surveying profession. The AIBS accreditation scheme and the National Accreditation Framework identify the minimum qualification benchmarks applicable and the courses that meet the qualification standards so that consistency of curriculum and education providers is already available.
- The establishment of a supervision scheme could, in conjunction with study, assist with the attainment of adequate industrial experience and also in gaining post qualification experience which would assist individuals to achieve and improve accreditation.

**Recommendation 5 – Improving collaboration between regulators**

AIBS **supports** the recommendation and makes the following points:

- Sharing of compliance and enforcement information is encouraged via consideration of this recommendation. AIBS supports a coordinated approach to enforcement.
- Shergold and Weir identify a need for terms of reference for an oversight body inclusive of information sharing agreements dealing with, among other things, risk assessment practices. AIBS calls for a regulatory risk differentiation model to guide those with enforcement responsibility.

- Shergold and Weir point out that the oversight body should also be capable of identifying and reporting deficiencies in the legislative system which AIBS supports.

**Recommendation 6 – Effective regulatory powers**

AIBS **supports** the recommendation and makes the following points:

- The AIBS policy does not mention the powers of enforcement bodies so that this recommendation represents a welcome development beyond the AIBS current position.
- AIBS has advocated for building products and materials to be subject to recall powers similar to consumer products.

**Recommendation 7 – Strategy for the proactive regulation of commercial buildings**

AIBS is **cautious in support** for the recommendation and makes the following points:

- Shergold and Weir say that “approvals processes across Australia generally provide for a very high level of self-certification of the design and construction of Commercial buildings” (page 21). This statement is not referenced and therefore cannot be verified with respect to accuracy. AIBS does not have data that could confirm or refute this claim. It does appear inconsistent with the involvement of building surveyors in the process however so on that basis there is cause for concern. It suggests building surveyors are either being sidelined in the assessment process related to commercial buildings or are deliberately accepting design documents without assessing them. Either way, the shadow that this statement casts on the role of building surveyors involved in commercial projects is significant, particularly as Shergold and Weir are using this statement as part of the justification for a compliance strategy, directed particularly at building surveyors, to be established by each jurisdiction.
- The quotation of Tony Enright, Enright Consulting about the creation of moral hazard from weak enforcement being especially associated with building surveyors is similarly concerning (page 22). Mr Enright, who we note is not a building surveyor and his expertise in this area is therefore unclear, has lumped building surveyors in with builders and fire engineers. AIBS rejects the comments made by Mr Enright. Building surveyors do not gain from weak enforcement therefore their role cannot give rise to moral hazard in this respect. Other corrupting influences must come into play in order for building surveyors to become involved in moral hazard situations, such as a client, fire engineer, developer or builder seeking to induce a building surveyor to make compromises.
- Further concern arises from the creation of statutory powers to allow directions to be given to building surveyors while there is no mention of an expression of a similar power related to other practitioners. This gives an impression that building surveyors are the main cause for the concern that gives rise to the need for controls to be introduced, apparently ignoring the involvement of the other practitioners referenced in the Enright quotation. Statutory building surveyors must be subordinate to regulators in relation to the carrying out of regulatory functions. It is vital that the subordination mechanisms do not diminish the authority of statutory building surveyors as co-regulators.
- A further difference between the positions of AIBS and Shergold and Weir in relation to auditing is that Shergold and Weir believe that this should be rolled out in relation to commercial buildings as distinct from domestic scale residential buildings. However, AIBS believes auditing should apply to those involved in all forms of building work. This is particularly important considering the contribution low rise domestic dwelling construction represents to economic activity in Australia.
- The response time of State and Territory Regulators to reports of unsatisfactory conduct historically has been poor, with individual investigations taking months, sometimes years. A significant injection of resources would be required, especially in larger areas such as Melbourne and Sydney.

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

AIBS is **cautious in support** for the recommendation and makes the following points:

- The lack of uniformity of involvement of fire authorities in the assessment process is identified by Shergold and Weir (page 23). Shergold and Weir also say that 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.”
- AIBS supports fire authorities having a comment role but not a consent role so that the consensus to which Shergold and Weir refer is not accurate. AIBS supports the view expressed by Shergold and Weir that fire authorities should provide comment, particularly in relation to performance-based proposals affecting firefighting operations.
- With respect to the use of the International Fire Engineering Guidelines, AIBS participated in the development of the document and therefore AIBS supports the use of the approach outlined within it.
- Shergold and Weir state that “A failure to comply with the code would establish a ground for disciplinary inquiry” (page 23) which AIBS does not support. Adoption of alternative approaches without adequate justification would represent a failure which would establish a ground for disciplinary inquiry.
- In most Australian jurisdictions, fire authorities are often involved in evaluation of performance proposals against the provisions of the NCC which takes them away from their core responsibility as a fire authority and also duplicates the role of the statutory building surveyor on these projects. It is likely that where this occurs, reduction of the role to the core issue of operational needs of the authority / brigade will not require any additional resources than currently provided. In some locations though, additional resourcing of the fire authority’s capacity to provide comment may be needed.

**Recommendation 9 – Integrity of private building surveyors**

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir state that legislation should ensure engagement of building surveyors is undertaken by owners and for information to be consistently provided to the owner by the building surveyor throughout the period of engagement.
- AIBS does not support this approach, particularly as it will not overcome many issues with commercial construction or the development of apartment buildings where the eventual owner is not typically the owner at the time of assessment and construction, which means that such controls will be ineffective. AIBS prefers to see other means of controlling potential for conflict of interest utilised.
- For example, disengagement controls are recommended consistent with the AIBS policy. Otherwise, Shergold and Weir have identified standard conflict of interest clauses that should be legislated to prevent statutory building surveyors accepting engagements where such circumstances apply.

**Recommendation 10 – Codes of conduct for building surveyors**

AIBS offers **cautious support** for the recommendation and makes the following points:

- Shergold and Weir state: “We found only two jurisdictions in which the licensing bodies had suspended or cancelled the registration of private building surveyors. This suggests that the regulatory oversight of building surveyors across Australia has been limited and ineffective” (page 25). AIBS states that relative to the number of decisions made, there are actually very few instances of building surveyors failing to uphold their responsibilities.

- This issue is raised to justify proposed content of a code of practice. Shergold and Weir suggest such codes should include a prohibition on building surveyors preparing performance solutions and participating in the development of design solutions. AIBS believes that wherever the building surveyor is to be engaged in a statutory assessment role, they should not provide design advice for the same project.

### **Recommendation 11 – Role of building surveyors in enforcement**

AIBS **supports** the recommendation and makes the following points:

- Shergold and Weir assert that building surveyors undertaking site inspections will, by that activity, be scrutinising what is happening on site on a day-to-day basis (page 26). Inspections are generally undertaken at completion of specific stages of a project or on a random basis, rarely requiring attendance at a site on a daily basis, let alone with sufficient regularity to be able to claim day-to-day understanding of what is happening on a site. However, we acknowledge that Shergold and Weir may have been referring to building surveying activity in the broader sense that on any given day throughout the nation, there are building surveyors undertaking inspections on building sites.
- A reasonable estimation of the performance of building practitioners can be obtained using the frequency with which AIBS recommends building surveyors should inspect sites, provided adequate numbers of inspections actually take place. There is significant variation in the mandatory inspection requirements between Australian jurisdictions.
- The AIBS Policy advocates for the establishment of a linkage between the inspection processes and auditing and accreditation / licensing processes. The Shergold Weir Report takes this concept further and calls for mandatory referral requirements for the building surveyor to follow when adverse inspection results occur. AIBS states that building surveyors should be obligated to provide mandatory notification, with reports of any rogue or fraudulent practitioners of any discipline ideally being made to a State or Territory Regulator or a formal enforcement body established specifically to address such instances.
- AIBS supports enforcement bodies with appropriate resources and the capacity to act expeditiously, with a transparent oversight mechanism.

### **Recommendation 12 – Collecting and sharing data and intelligence**

AIBS **supports** the recommendation and makes the following points:

- This recommendation is consistent with part A12 of the AIBS Policy.
- The justification for the creation of such a system of document collation and retention is an expansion of the reasons articulated by AIBS in the Policy document and is supported by AIBS.

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

AIBS **supports** the recommendation without further comment.

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

AIBS **opposes** the recommendation and makes the following points:

- Shergold and Weir state “Performance solutions require project stakeholders to collaborate and develop an agreed pathway. Each requires empirical analysis, modelling and/or testing” (page 30). Some performance solutions are adequately demonstrated to comply without modelling or testing so that this statement is misleading in that it is so absolute.
- AIBS does not support this recommendation as presented. It would be preferable that building surveyors participating in statutory roles in the performance solution process be able to identify the level of

documentation that is appropriate for performance solutions. At Section B2 of the AIBS Policy, we address the level of documentation required in support of a standard application.

- The NCC BCA 2016 Volumes One and Two set out what constitutes appropriate evidence of suitability which establishes an appropriate benchmark against which practitioners could expect to be audited with consequences for registration where there is a failure to act appropriately.

#### **Recommendation 15 – Approval of performance solutions for constructed building work**

AIBS **opposes** the recommendation and makes the following points:

- Shergold and Weir earlier advocate that building surveyors are to be engaged by owners. In this circumstance, it is hard to understand why an appeal right related to the assessment of a performance solution post construction might be necessary. Surely the owner will be aware and will determine if assessment fees are to be paid for such a service.
- Where the developer is the owner and future purchasers who are at this stage unknown might reasonably have an interest in post completion variations, there may need to be another process to provide greater certainty around the application of performance solution processes post construction.
- There is a suggestion that third party review of performance solutions that arise post construction is justified (page 31). The assessment process that is followed for performance-based proposals lodged prior to construction should not be any different from processes followed for applications lodged post construction. The motivation for lodgement of the proposals will differ but the assessment process, undertaken by a professional co-regulatory person, should not be any different.
- AIBS does not accept that simply the time at which the proposal is put could cause a complete change in approach regarding the assessment of a performance proposal.
- It is preferable that consideration be given to other accountability mechanisms ahead of regulating the assessment process in respect of existing buildings. Implementing audit provisions should provide ample control over the risks associated with this kind of work.

#### **Recommendation 16 – Approval of documentation throughout the construction process**

AIBS **supports** the recommendation and makes the following points:

- This recommendation is consistent with AIBS Policy part B5, in terms of the adequacy of design documentation, and B2 in relation to clarity of the approval system. AIBS therefore supports this recommendation.
- Shergold and Weir identify ‘notification points’ (page 31). AIBS agrees with the principles, as outlined above, and notes that there needs to be clear articulation as to who has responsibility for enforcement in the event of a failure to comply with ‘agreed notification points’.

#### **Recommendation 17 – Independent third-party review**

AIBS **opposes** the recommendation and makes the following points:

- AIBS does not accept the contention that building surveyors currently accept complex technical information from engineers without assessment (page 32). It is perhaps a part of the Shergold Weir Report where the expression does not match the intention. Shergold and Weir appear concerned that building surveyors should be able to rely on third-party reviews of design components. This is acceptable in respect of determining if a complex set of calculations or the like is appropriate, but not in lieu of oversight by a building surveyor.



- The integration of engineering and other specialist design into the wider design is crucial to the success of the building and only a building surveyor can ensure this occurs properly.
- A building surveyor provides oversight of independent third-party reviews and disparate design elements which is particularly important in respect of confirming that compliance is achieved within total design integration.
- The AIBS policy sets out what is appropriate regarding third-party reviews at part B1 of the policy whereby referral to a third-party or peer review panel for performance proposals should be at the discretion of the statutory building surveyor. Shergold and Weir contend that this should not be a discretionary matter and that legislation should prescribe what is referred and when. The basis used to justify this approach is not accepted by AIBS as it is an inaccurate reflection of the issue the recommendation seeks to manage.
- Additionally, creation of any statutory board or panel responsible for third-party reviews must be done with great care to ensure that there is no conflict of interest or pecuniary interests or loss of intellectual property. This is particularly important in places where the pool of persons sufficiently expert to fulfil the role of panellist is small and panellists remain involved in the industry to ensure appropriate skills are available.
- There is a risk of perceptions arising that competitive interests might colour the opinions of a panel for commercial advantage/reputational gain, thereby diminishing the standing of the process. Panels may need to be comprised of experts from outside the jurisdiction to avoid the potential for such conflicts but this may compromise the panel's ability to properly accommodate local conditions.
- Deferral of decision making authority to a panel could also add unnecessary complexity and delay to the process, particularly if the matter is well within the capabilities of the practitioners involved. In that case, the benefit of the referral is merely about perception or reputation of the system without actual benefit to the community or economy. The reputation of the system will not be enhanced if the community believes it is simply "red tape." Change should only be contemplated if it adds value and/or genuinely provides a better outcome for the community.

### **Recommendation 18 – Mandatory inspections**

AIBS offers **cautious support** for the recommendation and makes the following points:

- The approach recommended by Shergold and Weir to setting of a core minimum of requirements to be inspected, together with the ability for the building surveyor to add further inspection requirements, is supported by the revised AIBS Policy at Part C2.
- Shergold and Weir also suggest that inspections can be carried out by appropriately registered engineers for prescribed types of work (page 34). AIBS cautions against support for this approach on account of an engineer being a specialist who is not ordinarily trained in the application of regulatory requirements or on identification of conflicts between components of a building that are not part of the engineering design which might otherwise be detected if a building surveyor inspected technical elements.
- It is therefore necessary that any inspections carried out by specialists be done so under the guidance, oversight and recommendation of a building surveyor.

**Recommendation 19 – Inspection and certification of fire safety system installation**

AIBS **opposes** the recommendation and makes the following points:

- AIBS understands that the recommendation is at odds with the AIBS position in its Policy only in that the Shergold and Weir recommendation is not properly expressed. Involvement of fire engineers and similarly qualified practitioners in the process should be at the direction of the building surveyor so that it is clear where the responsibility rests for verification of compliance.
- Breaking verification processes into separate packages risks the process becoming siloed so that gaps and errors can arise with potential for adverse safety outcomes.
- It is understood that involvement of other professionals in the construction verification process should be within and subject to the direction of a statutory building surveyor with responsibility for final verification.

**Recommendation 20 – A building manual for commercial buildings**

AIBS **supports** the recommendation and makes the following points:

- AIBS notes a need for discussion about how and by whom such documents are prepared. This is a rapidly changing environment with significant potential for digital technology to play a key role in how this occurs in practice.
- Responsibility for populating a data base should therefore not be vested with any specific part of the industry so that industry is not constrained by this in future.
- Instead, controls should provide that information is made available and set out what must be accessible by whom. Industry will then determine the most effectual and efficient means of achieving compliance, most likely as part of a service offered for a fee within a highly competitive and efficient market place.

**Recommendation 21 – Building product safety**

AIBS offers **cautious support** for the recommendation and makes the following points:

- This recommendation is similar to that contained at part A6 of the AIBS Policy however AIBS is calling for all product claims to be verified by an independent body. Shergold and Weir are suggesting a compulsory certification system applicable only to products deemed to be high-risk.
- The AIBS position is similar to the consumer products requirements whereby it is unlawful to make false or mis-leading claims about a consumer product. WE also note this is actively policed.
- Shergold and Weir are not proposing a scheme of anywhere near this level of involvement or rigour.

**Recommendation 22 – Dictionary of terminology**

AIBS **supports** the recommendation and makes the following points:

- The recommendation is consistent with the AIBS Policy set out in parts A1 and A3 without express statement. In other words, the concept of aligning legislative requirements nationally would by default involve developing a consistent set of terminology so that Shergold and Weir's recommendation goes to support part of AIBS' objective in this matter.

**Recommendation 23 – Implementation of the recommendations**

AIBS **supports** the recommendation and makes the following points:

- AIBS aims to seek progressive implementation of the Policy elements wherever and whenever the opportunity arises without assigning a timeframe to this. Shergold and Weir suggest a three-year period of reform. AIBS has no concerns about reform within three years provided reforms are not rushed or inadequately developed and industry is fully and effectively consulted.



**Recommendation 24 – Implementation plan**

AIBS **supports** the recommendation and makes the following points:

- AIBS would like to see COAG sign off on the reform recommendations, supporting Ministers to bring to their Parliaments the changes necessary for the implementation of the recommendations in each jurisdiction. Without COAG support, it is hard to see how individual Ministers could realistically achieve change let alone bring about greater national harmonisation of administrative requirements.

**End**