



The Australian Institute of Building

Incorporated by Royal Charter

National Industry and Government Liaison Committee

Tony Hinton Esq.,
The Productivity Commissioner,
P.O. Box 80,
Belconnen,
A.C.T., 2616.

5th October, 2004.

Dear Mr Hinton,

REFORM OF BUILDING REGULATION

Thank you for this opportunity to submit some comments on your draft report. This response will be brief and will be directed at the following issues:

- i Durability
- ii Weathertightness
- iii Quality
- iv Practitioner accreditation
- v Training.

1.0 DURABILITY

- a The BCA does not at present require buildings to achieve any minimum durability standard. In the days when the commercial and industrial sectors used loadbearing masonry there was little need of durability regulation beyond mortar strength. With the shift last century from loadbearing masonry structures to frames in these sectors and in multi-storey residential, standards and codes have been somewhat left behind, and durability has become an issue.
- b There has also been a marked shift in the attitude of building owners and users; whereas the loadbearing masonry building was regarded as a permanent structure with centuries of usefulness, today's requirement is to make the building serve its purpose and return its dividend in a much lesser time; as few as twenty years being considered the life of a working building, after which period replacement or extensive refitting is expected; but what in fact usually happens is that the building is sold and it remains in place as is.
- c There are a number of factors contributing to this philosophical change: requirements of specific tenants, continuous change in

the ideas of workplace planners and designers, changes in zoning etc.

- d Whatever the reasons, we now have buildings that are designed for twenty years but are left standing far longer than that.
- e Can society afford twenty-year buildings? This is the overarching question for our community's regulators to deal with, but the practical problem being faced now is what do we do with the prematurely aging and sick buildings that our low-price quick-turnover mentality has produced. Can we afford to keep allowing these buildings to proliferate?
- f The same questions face us with regard to cottage building, but this sector is blighted by not only poor planning and design, but also a severe skill shortage brought on by a number of factors including the low entry level and poor performance of licensing regulators over many years. Another factor is the loophole, provided by the code to substandard builders, that allows a job that does not meet the deemed-to-satisfy provisions to be certified by an engineer as structurally sound and therefore to comply with the performance criteria. This is a problem not only in the area of durability but in all facets of cottage building.

2.0 WEATHERTIGHTNESS

- a The factors identified above also contribute to a general lack of weathertightness in building envelopes. In many cases the attempt is made to weatherproof elements that either are not able to be weatherproofed or that require constant maintenance to retain any semblance of weathertightness.
- b There are other contributing factors to water entry problems, such as a general lack of knowledge of what is required, the belief that application of a membrane will weatherproof a building that has no intrinsic weathertightness etc.
- c The performance criteria allow the shifting of responsibility from the building process to the maintenance schedule. This allows poorer and cheaper practices to become the norm in the construction phase and requires the owner, who is inexperienced and whose concern is to achieve the maximum return for a short period, to invest resources in something that is not seen as being productive.
- d The advent of silicone has been a disaster for the building industry; it has lowered the skill requirement by providing a quick fix, but it provides a two-year solution to a problem that proper practice would solve for fifty or a hundred years. If performance criteria are the answer they must address longevity issues.

3.0

QUALITY

- a There are two problems in this area:
 - i Australian Standards are increasingly going to performance criteria that do not address such issues as alignment and dimensions
 - ii Even where standards do prescribe tolerances and other quality criteria, a builder can engage an engineer to certify that the structure will not fail and therefore complies with the performance criteria. Thus the performance provisions can be used in the pre-construction phase by legitimate contractors (as it was intended) and as a backstop by those who cannot build to the standard.
- b If the issue is taken to dispute, the owner cannot rely on the building code and is left with trade practices legislation as a backstop for indeterminate common law criteria such as 'fitness for purpose', 'acceptable standard of construction' and 'normal industry standard'. Sometimes the owner wins and sometimes not, but the remedy is almost always monetary and rarely is the building brought to the standard that should have obtained, largely because the cost and the disruption are seen as being too great. This is the inherent problem with reactive mechanisms such as consumer law, which is only triggered by complaint.

4.0

PRACTITIONER ACCREDITATION

- a The AIB has long held that all site workers other than labourers should undergo accreditation as to expertise. The writer has represented the AIB for three years in a working party, sponsored by the Building and Construction Council of NSW, that has been charged with developing a model for accreditation and putting the model to the NSW government. A copy of the report summary is attached.
- b The model is based on participation by industry associations and professional institutes. The idea is that industry regulates itself in a 'user pays' system that requires only a watchful eye from government. This is the system's strength, but also its weakness, because the industry bodies have been seen by government as being unable to properly service the whole industry, and there is also a perception that the system is open to corruption.
- c The AIB has formed the National Building Professionals (and para-professionals) Register, with the intention of providing a method of accreditation that is unbiased and open to all. Recently the AIB has achieved recognition as a Registered Training Organisation, so that assessment will be carried out under the national guidelines. The Institution of Engineers

Australia has had such a register in place for many years. It is relied on by governments and is of high repute universally.

5.0 TRAINING

- a Training has suffered because of several circumstances:
 - i In the modern era, methods of engagement of labour have changed from regular employment to subcontracting, a staccato arrangement that is not conducive to indenturing apprentices.
 - ii Governments under the modern dogma of efficiency have forsaken their traditional role as builders of their own buildings and trainers of a large body of apprentices.
 - iii Technical colleges have seen numbers drop and because of their imposed requirement to show a financial return, many of them, particularly in the regions, have simply cut out the courses.
 - iv The new national assessment guidelines mean that people are assessed to competency standards, meaning that a person can become a carpenter by passing a one-day (or less) assessment rather than providing a trade certificate that has required three (or more) years of study on the job and at TAFE, plus an extra 'journeyman' year for unsupervised experience. The new assessments do not even necessarily involve the ability to read or write in English or at all.

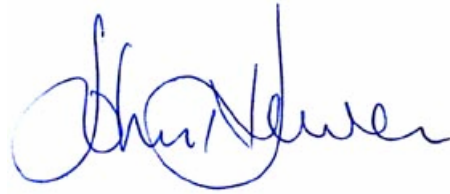
6.0 CONCLUSION

- a This short paper asks questions but does not provide answers. This is not because there are no answers but because the answers must be made to fit the philosophy of the government that is charged with providing society with workable and adequate building regulations.
- b A lot has been said about alternatives to regulation. Contracts and specifications have been cited as ways of mandating a minimum quality performance, and this is theoretically possible, but the writer has prepared many specifications, and they are not only very time-consuming to write and to read, but also very discouraging to the majority of tenderers, and the balance tend to load their prices inordinately. In reality, unless minima are mandated in the code or some other enforceable document, the industry will always regard a standard as something to aspire to rather than something to use as a base.

Training also seems to be regarded as separate from regulation, but the idea of training is to teach what is required by the standard; if a level of workmanship is not mandatory it may be taught but it will not be done as long as the cost imperative prevails.

- c The vast majority of the people working in the industry want the certainty that prescriptive standards bring. Community expectations also need to be founded on mandatory minima. There is room for performance criteria also but so far this dogma does not give the impression of having been thoroughly thought through. It is certainly not all things to all men in the way that its apologists believe it to be.
- d The Institute has always been a proponent of uniformity throughout the Commonwealth; we supported the setting up of the ABCB and are vitally interested in its continued presence. We also supported the introduction of the performance document but your review will not have completed its job unless it seriously looks at those areas that have fallen through the cracks, such as the few addressed above.
We hope that these points will be of benefit to you in your task and express our willingness to be at your service in any way we can.

The Australian Institute of Building



John Lewer, FAIB,
Chairman, Industry & Government Liaison Committee.

▪ EXECUTIVE SUMMARY

A Proposal for Competency Accreditation of Building and Construction Practitioners in New South Wales

1. This proposal has been prepared by an Industry Working Group which was formed and co-ordinated by the Building and Construction Council of NSW Inc (BACC).
2. There is concern within the community that the quality of new building and construction projects in Australia has declined in recent years. Public Inquiries have been held to examine this issue, and a number of possible causes have been suggested. The significance of some of these factors is open to debate.
3. Professional bodies and contractor associations representing the many sectors within the industry are all conscious of the need to control the 'cowboys' - those practitioners who are out to make a quick profit and who do not possess the skills, training and resources or ethics to perform their work to an acceptable industry standard.
4. Practitioners who perform substandard work, commonly at cheap rates, damage the reputation of others in their calling, often put the public at risk and provide unfair competition for practitioners who meet all their obligations.
5. Quality ultimately is a consequence of the capability of the people who perform the building and construction work. If these people do not possess the necessary skills, the whole community suffers. Firstly, through having to accept unsatisfactory buildings, and secondly through the additional costs incurred for rectification of faults.
6. The proposals considered in detail in the position paper have been developed by a consortium of professional institutes and contractor associations, in consultation with some government agencies, as a strategy to improve the quality of building and construction work without imposing additional costs on the community.
7. Essentially, the scheme envisages that all building and construction practitioners should be assessed and graded, and be required to hold appropriate accreditation of technical competency for the work they perform, on all projects above a stipulated minimum value.
8. This is common practice in other occupations, for instance medical practitioners and paramedical professionals, air crew and maintenance staff, transport workers, seafarers, etc. The building and construction industry represents a major share of the Australian economy, and there is no obvious reason why similar standards of performance should not be demanded. The market place cannot be expected to make an informed judgement about the competency of a practitioner claiming to have specialised skills.

9. The definition of building and construction practitioners extends to all levels of the industry, from design professionals to contractors, sub-contractors and individual tradespeople who contract directly with clients or other contractors. It includes people who provide expert technical advice on a consultancy basis. However, it does not extend to those people who work as employees of an accredited contractor.
10. The proposals relate to all sectors of the building and construction industry, including civil works, commercial construction, residential housing and buildings or major components that are manufactured off-site, such as a prefabricated building.
11. Unlike existing contractor or trade licensing schemes, the proposals provide for mandatory accreditation of the technical competency of individual practitioners, not registration of companies or other corporate entities. Consumer protection considerations may still require a statutory licensing scheme for residential building work, taking account of factors such as warranty insurance, financial stability and management skills. Accreditation of competency obviously could be a factor to be considered in granting such a licence or registration.
12. This would be a "co-regulatory" scheme, where government creates the necessary legislative framework, but the accreditation of practitioners is delegated to relevant existing industry organisations, or alliances of organisations. For some categories, particularly those involving critical safety or public responsibility, a statutory Board already exists, or is about to be established.
13. Accreditation would be based on formal qualifications as well as demonstrated assessment of competency. In effect, this is a process of peer-review. The nature of the assessment would depend on the level of skill expected for a particular occupation.
14. Practitioners would be graded according to the scope of work that is commensurate with their training and experience. It would be illegal to carry out work beyond the grade of accreditation.
15. Young people commencing their careers in the industry would not be disadvantaged, provided that they could demonstrate competency obtained through the relevant tertiary training, whether by a university degree or a trade certificate.
16. Competency accreditation would be valid for a fixed period, with renewal dependent upon providing suitable evidence of continuing professional development, as is required already in many occupations.
17. There would be no "grandparent" provision for admission of existing practitioners, but a reasonable transition period would be allowed for an assessment process that would include recognition of prior learning, and for re-training if necessary.
18. A centralised registry of all applicants for accreditation would be maintained by an independent, non-government accreditation authorisation agency, to ensure that practitioners did not seek accreditation from a number of different bodies until successful.

19. The public would be able to confirm accreditation from the practitioner database, so that clients could be assured that they were dealing with an accredited person.
20. This Independent Accreditation Authorisation Agency would be responsible for determining which professional, trade or industry organisations were suitably equipped to issue practitioner accreditation for particular occupations. The agency would audit and monitor the performance of these accreditation organisations in order to preserve the integrity of the scheme. An organisation that failed to maintain acceptable standards would lose its authorisation. The agency would serve as an accreditation organisation of last resort where no industry bodies has been accredited for a particular occupation.
21. Effective disciplinary procedures, including removal of accreditation, are stipulated for practitioners who fail to meet or maintain expected competency standards. Although practitioners who lost accreditation could no longer enter into contracts for building work, they would still be able to work as employees for a person holding appropriate accreditation.
22. This industry-based scheme would be financially self-sustaining, through fees payable to the accreditation organisation. Although this cost would be passed on to the consumer in the first instance, there should be long-term savings through reduced maintenance costs, and through the avoidance of expensive rectification. More importantly, unacceptable practitioners would be removed, saving the costs of dispute resolution and rectification.
23. An incidental benefit for accreditation organisations is that they may gain increased membership, partly offsetting the costs of administering the scheme. However, it would not be a requirement for accredited practitioners to be a member of any industry association, and all accreditation organisations would be expected to carry out assessment and accreditation without discrimination. Practitioners would be able to choose any accreditation organisation which covers their specialty.
24. Government would enact the necessary legislation, supervise the independent accreditation authorisation agency and review the performance of the accreditation organisations. The cost to Government would be minimal. Indeed the long term improvement in standards should minimise the current need for judicial and administrative resolution of disputes.
25. The Industry Working Group considers that all existing building-related legislation should be consolidated into a comprehensive Building Act, preferably administered by one government department. The implications of this element of the proposals are still being examined. Specific recommendations will be made to the NSW Government. However, implementation of the Competency Accreditation Scheme should not be delayed whilst this proposal is being prepared and debated.

(Endorsed by BACC Council , 5 May 2004)