

# Chapter 4

## Increasing compliance in the building industry

4.1 The Lacrosse apartment fire and Grenfell Tower fire highlighted the potential safety risks of non-compliance in the building and construction industry. The committee's interim report on cladding included a number of recommendations aimed at lifting professional standards in the building and construction industry in order to address issues involving non-compliant use of building products. This chapter revisits this area and examines the need for a national licensing scheme, the role of building surveyors, the need for onsite inspection during the construction process, making the National Construction Code (NCC) more user friendly, and making Australian Standards freely available.

### Licensing and inspections

#### *National licensing scheme*

4.2 The committee's inquiry into insolvency in the Australian construction industry considered that 'an effective licensing regime is necessary to protect participants from both unscrupulous and hapless operators'.<sup>1</sup>

4.3 The committee's interim report on aluminium composite cladding found that a national licensing scheme for all trades and professionals involved in the building and construction industry, including building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. The committee considered that a national licensing scheme, including requirements for continuing professional development, would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.<sup>2</sup>

4.4 The government response to the interim report on aluminium composite cladding noted that:

A consistent occupational licensing scheme across jurisdictions has been previously considered by the Council of Australian Governments (COAG). The Commonwealth moved away from national licensing in 2013 when COAG announced that occupational licensing would remain a state and territory matter which would be addressed through the Council for the Australian Federation. This decision followed extensive state-based consultation, after which the majority of states decided not to pursue the proposed National Occupational Licensing Scheme (NOLS) reform.

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1 Senate Economics References Committee, *Insolvency in the Australian construction industry*, 3 December 2015, p. xxii.

2 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 43.

The outcome of the BMF Assessment [the Shergold and Weir Report] will be to establish a national best practice model for compliance and enforcement for building and construction, to improve the compliance and safety of Australian buildings. As such, the findings of the BMF Assessment may inform the case for change, and potential options for government intervention.<sup>3</sup>

4.5 The Shergold and Weir Report also recommended a nationally consistent approach to the registration of certain categories of building practitioners and compulsory Continuing Professional Development, which includes mandatory hours/units dedicated to training on the NCC and the establishment of supervised training schemes.<sup>4</sup>

4.6 As such, the Shergold and Weir Report found:

Registration of practitioners is a regulatory mechanism for providing public accountability. Whilst all jurisdictions register building practitioners as part of their compliance and enforcement systems, the categories that are registered differ. This affects the mobility of participants and creates complexity in applying mutual recognition. More importantly, there are gaps in the accountability of practitioners with key responsibilities for compliance with the NCC across Australia.<sup>5</sup>

#### Recommendation 1

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

- Builder
- Site or Project Manager
- Building Surveyor
- Building Inspector
- Architect
- Engineer
- Designer/Draftsperson
- Plumber

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3 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, pp.10–11.

4 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

5 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 15.

- Fire Safety Practitioner<sup>6</sup>

4.7 With regard to the need for consistent requirements for registration, the Shergold and Weir Report found:

Currently, where the same category of practitioner is registered in two or more jurisdictions, there are often different requirements for registration. Nationally consistent training packages are limited. Each jurisdiction recognises different levels of qualification and experience when assessing applications for registration. This makes the operation of mutual recognition burdensome.<sup>7</sup>

Recommendation 2:

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

- certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;
- additional competency and experience requirements;
- where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
- evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.<sup>8</sup>

4.8 The Shergold and Weir Report outlined the need for Continuing Professional Development:

Building practitioners operate in a dynamic environment. New products, technologies and practices are actively encouraged through the performance-based NCC which, itself, is amended every three years. The introduction of nationally consistent mandatory registration requirements provides a mechanism to ensure currency of competencies. Those already practising need to have up-to-date knowledge of the current edition of the NCC.<sup>9</sup>

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6 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 15.

7 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 17.

8 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 17.

9 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 18.

Recommendation 3:

That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.<sup>10</sup>

***Role of building surveyors***

4.9 The committee's interim report on aluminium composite cladding noted evidence received concerning the role and independence of building surveyors in ensuring buildings are built in compliance with the NCC and the relevant Australian Standards. Since the early 1990s, state and local governments have progressively privatised once in-house building surveyor services. While some building surveyors are still employed by local governments, most functions are fully privatised. The committee noted that at the same time the role of building surveyors was privatised there was a shift to deregulation.<sup>11</sup>

4.10 The Shergold and Weir Report recommended the establishment of supervised training schemes which provide better defined career paths for building surveyors (Recommendation 4). In addition, it made a number of recommendations intended to improve the integrity of building surveyors. These included minimum statutory requirements for the engagement, and role, of private building surveyors, a code of conduct with legislative status and enhanced supervisory powers and reporting obligations (Recommendations 9–11).<sup>12</sup>

***On-site inspections***

4.11 The committee's interim report on cladding found that there was a need for a nationally consistent approach to mandatory on-site inspections throughout the construction process. Evidence to the committee highlighted the need for oversight, independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorsed the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.<sup>13</sup>

4.12 The Shergold and Weir Report found that there are significant differences across jurisdictions in the number of inspections required and the notification stages. In addition, it considered that:

Increased requirements for inspections are necessary. Unfortunately, there are doubts about whether there are sufficient numbers of suitably qualified

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10 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 18.

11 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 43.

12 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 5.

13 Senate Economics References Committee, *Interim report: aluminium composite cladding*, 6 September 2017, p. 47.

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persons to conduct them. Reservations have been expressed about the conflict of interest that arises when the private building surveyor who has certified the building documentation then inspects the building work. Some question whether the inspections will be thorough and whether surveyors will be willing to act if they discover non-compliant building works.

For Commercial buildings, many jurisdictions leave it to the building surveyor to determine what inspections are appropriate. This makes it difficult for regulators to know what level of oversight is occurring and whether it is adequate.<sup>14</sup>

4.13 As such, the Shergold and Weir Report recommended that each jurisdiction requires on-site inspections of building work at identified notification stages (Recommendation 8).<sup>15</sup>

#### ***Committee view***

4.14 The committee believes the current system is broken and fragmented, with regulation and licensing spread over eight jurisdictions, and various regulators each having different requirements and standards for building practitioners.

4.15 The committee believes the work undertaken by building practitioners greatly affects building compliance, and as a result, the fire safety of Australian buildings. As such, the committee believes there should be consistent licensing arrangements across all jurisdictions.

4.16 The committee's interim report on aluminium composite cladding concluded that a national licensing scheme for all trades and professionals involved in the building and construction industry including building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes.

4.17 The committee's view has not changed and it believes further consideration be given to developing a national licensing authority to oversee the development of a national licensing policy and administration of such a licensing scheme.

4.18 The committee is encouraged that the Shergold and Weir Report confirms the evidence received by the committee as well as its finding that compliance and enforcement systems have not been adequate to prevent these problems from emerging and need to change as a matter of priority.

4.19 The committee notes that the recommendations of the Shergold and Weir Report support the committee's position on the need for a national licensing scheme and that the BMF is considering Recommendations 1 and 2 as part of its initial Implementation Plan for reform.

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14 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 32.

15 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 33.

4.20 The committee reiterates the need for the government to prioritise the establishment of a national licensing scheme as outlined in the committee's interim report on aluminium composite cladding.

### **Recommendation 7**

**4.21 The committee recommends that the Australian Government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.**

4.22 As noted in Chapter 1, the BMF is developing an Implementation Plan for reform, incorporating feedback from industry stakeholders, for consideration at the BMF's next meeting in December 2018. The initial Implementation Plan will focus on Recommendations 9 to 11 (which relate to the integrity of private building surveyors), with further consideration of Recommendations 1 and 2 (relating to nationally consistent registration of building practitioners) and Recommendation 13 (relating to documentation provided by design practitioners).<sup>16</sup>

4.23 The committee is encouraged that the Shergold and Weir Report confirms the evidence received by the committee in relation to the role of building surveyors and on-site inspections, issues that were raised in the interim report on cladding.

4.24 The committee gives in principle support to the following recommendations from the Shergold and Weir Report:

- Improve collaboration, including between state government bodies, local governments and private building surveyors in order to minimise duplication, establish clear lines of responsibility and improve information sharing (Recommendation 5).<sup>17</sup>
- Establish a more proactive strategy for the regulation of Commercial buildings by ensuring that 'each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes' (Recommendation 7).<sup>18</sup>
- Each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor in order to

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16 Building Ministers' Forum, *10 August 2018—Communiqué*, <https://www.industry.gov.au/data-and-publications/building-ministers-forum-communiques> (accessed 1 November 2018).

17 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 19.

18 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 21.

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ensure there is an adequate supply of building surveyors to meet future needs (Recommendation 4).<sup>19</sup>

- Ensure the integrity and independence of private building surveyors by recommending each jurisdiction; establish minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors; develop codes of conduct for building surveyors; and provide private building surveyors with enhanced supervisory powers and mandatory reporting obligations (Recommendations 9, 10 and 11).<sup>20</sup>
- The committee is encouraged by the BMF's commitment to developing an implementation plan for reform, as noted above, and welcomes the recommendation in the Shergold and Weir Report that each jurisdiction report annually on progress of the implementation of the report's recommendations (Recommendation 24).<sup>21</sup>

## National Construction Code

### *Out-of-cycle amendment to the National Construction Code*

4.25 Following the Grenfell Tower fire in London, in June 2017, the BMF directed the ABCB to expedite the implementation of a comprehensive package of measures to prevent non-compliant use of wall cladding on high-rise buildings. In order to achieve this, an out-of-cycle amendment to Volume One of the 2016 edition of the NCC was released (waiting until the release of NCC 2019), which came into effect from 12 March 2018.

4.26 The ABCB also published an updated *Fire Performance of External Walls and Cladding Advisory Note* (to reflect the amended provisions), and a new *Evidence of Suitability Handbook*.

4.27 In addition, on 6 October 2017, the BMF agreed that all Ministers will use their available laws and powers to prevent the use of aluminium composite panels (ACPs) with a polyethylene (PE) core on class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys, until it can be demonstrated that manufacturers, importers and installers, working in collaboration with building practitioners, are complying with:

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19 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 19.

20 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, pp. 24–26.

21 Peter Shergold and Bronwyn Weir, *Building Confidence—Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, February 2018, p. 38.

- the new fire testing standard for external wall cladding products (AS 5113:2016); and
- a newly established system of permanent labelling on cladding products to prevent product substitution.<sup>22</sup>

4.28 To ensure ACP products are supplied and used for the purpose for which they are designed, the BMF agreed to address inappropriate advertising and labelling of polyethylene (PE) aluminium composite cladding utilising available laws and powers, and to ask the Legislative and Governance Forum on Consumer Affairs (CAF) to create a national information standard for ACP products.<sup>23</sup>

4.29 The SOG is consulting with industry on possible options for a new system of permanent labelling for cladding products and a discussion paper was released in June 2018.<sup>24</sup>

### ***Guidance material in relation to support the National Construction Code***

4.30 A number of submissions to the inquiry called for the development of guidance material on how to meet the evidence of suitability requirements under the NCC. For example, Master Builders Australia (MBA) submitted:

There is limited guidance available to local manufacturers as to when they are required to comply with the NCC and what evidence should be supplied to the market.<sup>25</sup>

4.31 The Housing Industry Association (HIA) advised the committee that since it made its original submission to the inquiry 'some good work has been done to revise and improve the NCC product evidence requirements, which included enhanced evidence requirements'.<sup>26</sup> The ABCB has been working since late 2016 to implement a comprehensive package of measures which included enhancing evidence of suitability provisions and developing a new supporting handbook to complement them. HIA further explained:

The ABCB recently produced an 'evidence of suitability/product assurance handbook' based on a similar publication by the New Zealand government. This handbook contains a product assurance framework and introduces the use of a risk matrix that looks at likelihood of product failure and

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22 Department of Industry, Innovation and Science, *Building Ministers' Forum—6 October 2017—Communiqué*, [https://www.industry.gov.au/sites/default/files/July%202018/document/extra/building\\_ministers\\_forum\\_communique\\_-\\_october-2017.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/extra/building_ministers_forum_communique_-_october-2017.pdf) (accessed 1 November 2018).

23 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 7.

24 Department of Industry, Innovation and Science, Building Ministers' Forum sub-groups, <https://www.industry.gov.au/regulation-and-standards/building-ministers-forum/building-ministers-forum-sub-groups> (accessed 1 November 2018).

25 Master Builders Australia, *Submission 125*, p. 26.

26 Housing Industry Association, answers to questions on notice, p. 2 (received 14 August 2018).

consequence of failure. Where there is a high likelihood of failure and/or consequence of failure is potentially significant it suggests enhanced product evidence requirements.<sup>27</sup>

4.32 The government response to the interim report on aluminium composite cladding also noted that the ABCB is 'simplifying the design and language of the NCC to make it easier to understand by a wider audience'.<sup>28</sup>

### *Committee view*

4.33 The committee supports the work of the ABCB to make the NCC more accessible to a wider audience, including the development of additional guidance material such as the *Evidence of Suitability Handbook*, and encourages the ABCB to publish additional guidance where specific issues arise in relation to non-compliance with the NCC.

### **Availability of Australian Standards**

4.34 The inquiry received evidence indicating that the cost of purchasing Australian Standards may deter companies from ensuring their products comply with relevant standards. In the committee's interim report on aluminium composite cladding, it recommended 'that the Commonwealth government consider making all Australian Standards and codes freely available'.<sup>29</sup>

4.35 The government response to the committee's interim reported stated:

Ensuring reasonable public access to Australian Standards is fundamental to the reliability of products and services in the economy. Improving access to standards requires the support of Standards Australia and SAI Global in facilitating greater flexibility and cost options available to government.

In July 2017, the COAG Industry and Skills Council (CISC) established a Standards Accessibility Working Group tasked with investigating options for improving standards accessibility. The working group will report back to the CISC by 31 January 2018.<sup>30</sup>

4.36 The COAG Industry and Skills Council is comprised of ministers from the Commonwealth, states and territories with portfolio responsibility for industry and skills in their jurisdiction. The Communiqué following its meeting on 20 April 2018 stated:

Standards are designed to help ensure products, services and systems are safe, reliable and consistent. Following a detailed investigation into access to Australian Standards, ministers considered how to make standards,

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27 Housing Industry Association, answers to questions on notice, p. 2 (received 14 August 2018).

28 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p. 12.

29 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 49–51.

30 Australian Government response to the *Interim report: Aluminium composite cladding*, February 2018, p.12.

including those referenced in legislation, more accessible. A more coordinated approach to collecting information about standards referenced in legislation and to purchasing standards information across governments is key to providing better solutions for community and businesses who rely on this information. Ministers agreed that recommendations on solutions to the longstanding issue of access to and charges for standards be progressed as a matter of priority, out of session, prior to the next meeting.<sup>31</sup>

4.37 At its most recent meeting on 3 October 2018, ministers 'considered options to progress towards a more open and cost effective approach to accessing standards...This includes continuing to support public access to standards for non-commercial users through national and state libraries'.<sup>32</sup>

4.38 In a response to questions on notice, the Department of Industry, Innovation and Science noted:

The development of standards is not free. Industry, governments and others volunteer their time to the standards development process. Standards Australia recoups part of their costs for facilitating this development through royalties earned on the sale of standards. Free access to standards for all users would require government/s to seek to enter into an agreement with the standards distributor and fund the development and delivery of standards to the community. At present there are no plans for government/s to fully fund these costs but Governments are exploring ways to provide more universal access for consumers for non-commercial purposes.<sup>33</sup>

### *Committee view*

4.39 The committee maintains its view that building practitioners should not be expected to pay unreasonable sums of money to access Australian Standards which are required to ensure they comply with the NCC. In the committee's view, making Australian Standards freely available would have a significant positive impact on building compliance. More importantly, it will reduce the overall cost of compliance and insurance and, most significantly, it will reduce the cost and impact on future state and territory emergency, fire and medical services.

### **Recommendation 8**

**4.40 The committee strongly recommends that the Australian Government consider making all Australian Standards freely available.**

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31 COAG Industry and Skills Council, *Communiqué for the COAG Industry and Skills Council*, 20 April 2018, p. 2.

32 COAG Industry and Skills Council, *Communiqué for the COAG Industry and Skills Council*, 3 October 2018, p. 1.

33 Department of Industry, Innovation and Science, answers to questions on notice, p. 1 (received 10 August 2018).