

BUILDING CONFIDENCE: SHERGOLD-WEIR REPORT

SUBMISSION: MASTER BUILDERS VICTORIA

14 August 2018

Master Builders Victoria welcomes the opportunity to provide feedback on the report from Peter Shergold and Bronwyn Weir: *Building Confidence: Improving the effectiveness of compliance and enforcement system for the building and construction industry across Australia*, February 2018 (Shergold-Weir report).

Master Builders Victoria supports many of the recommendations of the review, including the need for mandatory practitioner registration and continuing professional development (CPD) as well as greater accountability for practitioners and the regulators across the whole supply chain. We make the following points by way of general comment:

1. National principles or benchmarks

We note that the Shergold-Weir report does not endorse a 'one size fits all' solution. This is consistent with our view. We agree with the statement that: *"Each jurisdiction can meet its governance responsibilities in its own manner, under the cooperative oversight of the BMF."* We also strongly support the recommendations that a national best practice model be established for aspects of the building system (e.g. mandatory trades licensing, mandatory CPD, regulator auditing processes). This should take the form of a type of benchmark without mandated rules or legislation, especially where the state laws or systems are the same or substantially similar. Each jurisdiction can then work towards those best practices according to their own requirements.

National consistency in building legislation and regulation, for example in relation to trades registration, is desirable but could take years to achieve and may be impossible in many cases. We recommend that all states work towards a nationally consistent approach, whether through benchmarks or their own legislative reforms. In Victoria we would be concerned that progress with regulatory system improvements in this state might be reversed. We have long been lobbying for mandatory trades registration and would not like progress to be stalled by new requirements for national consistency.

2. Focus on best practice and an ambulance 'at the top of the cliff.'

In relation to recommendations about regulatory powers, the Victorian Building Authority (VBA) has been given many powers of inspection, entry, discipline etc. Master Builders Victoria considers that even with significant powers the VBA was unaware of the scale and impact of a major industry challenge like non-complaint cladding. This originated as a technical knowledge issue, not in respect of ineffectual powers and controls. The solution to industry challenges does not lie in giving regulators more powers. The answer is to provide more resources to educate and gather intelligence. This can then be provided as guidance to industry about potential trends or emerging issues. The Victorian Cladding Taskforce

recommended a State Building Inspector be appointed within the VBA as a leading expert to provide the very best technical knowledge. We support this recommendation and consider this could be one of the best practices in the systems across the country. The State Building inspectors could also share intelligence to ensure that the issues around compliance are avoided in the future.

In 2018 significant changes to the Building Act 1993 and building regulations were enacted in Victoria. The legislation included changes such as additional mandatory inspections related to fire and pool safety and increased obligations on building surveyors with respect to conflict of interest. The legislative changes in Victoria align with a number of the recommendations raised in the Shergold-Weir report. While we still see significant value in the report the Victorian changes are a good example of state-based solutions in action. The recent enactment of this legislation also illustrates where mandated national consistency in laws would be costly and inefficient.

3. Importance of the whole value chain in building and construction

The solution to many of the issues facing the building industry do not lie in increasing accountability at the end of certification process. There is a risk that overloading one category of building professional, such as surveyors, will merely exacerbate existing pressure points and create unrealistic expectations and liability concerns. We believe the entire certification process from beginning to end needs to be a strong chain of skilled building professionals relying on each other's professional assessments and mutual assurance. There are numerous professionals in the certification chain, at very least suppliers, designers and architects but also other groups such as disability consultants, fire inspectors and energy raters. If we want to aim for a best practice certification process, the responsibility of all professions in the chain should be considered.

Master Builders Victoria also endorses the Master Builders Australia submission, but has specific responses in relation to the Victorian system. Master Builders Victoria's responses to individual recommendations are contained in the following document.



Recommendation 1: Registration of building practitioners

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

- *Builders*
- *Site or project manager*
- *Building surveyor*
- *Building inspector*
- *Architect*
- *Engineer*
- *Designer / draftsman*
- *Plumber*
- *Fire safety practitioners*

In Victoria there is a system of registration that captures most of the categories referenced in the Shergold-Weir report but there are key categories of tradesperson such as carpenter, bricklayer and waterproofer that the report does not reference. Master Builders Victoria has lobbied for a system of mandatory trades registration based on the existing DB-L categories of registration, to ensure that greater skill, safety and quality outcomes are delivered in the industry. In addition, greater accountability should be developed for practitioners across the supply chain such as suppliers, designers and architects.

Consistent with point 1 at the beginning of this submission, national consistency of registration is a sensible goal but not a priority.

Recommendation 2: Consistent requirements for registration

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

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

Consistent with our point 1 at the beginning of this document, we strongly support the development of best practices. This would require jurisdictions to have mandatory practitioner registration for key categories. Consistency of system and implementation is desirable but it is not a priority.

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Master Builders Victoria supports existing skills and qualifications testing systems as well as other tests such as fit-and-proper person and financial viability within the Victorian building practitioner registration system. This is already set up to register building practitioners including Domestic Builder Limited (DB-Ls) but certain categories do not at present require mandatory registration. Master Builders Victoria has been lobbying for the introduction of mandatory trades registration (e.g. DB-Ls like carpenters, waterproofers etc)

Also important will be addressing the quality of training that underpins registration. For example, the falling quality in training that has accompanied the enormous increase in Certificate IV in Building & Construction training providers must be addressed as a priority. Industry training RTOs like Master Builders Victoria should be recognised across the country for the superior deliverables and outcomes they provide. Further, we support appropriate training on the NCC being compulsory to each category of registration.

Master Builders Victoria has established the Building Leadership Simulation Centre (BLSC), one of three in the world. The centre provides a controlled simulation environment that accelerates learning through the immediate application of skills and knowledge. This dramatically improves learning retention while eliminating the risks inherent in a real-world setting, such injury, cost and damage to future business. For industry to flourish we need to be embracing the innovation from industry itself and more heavily utilising the BLSC.

There is clearly a statutory role for the government in auditing and disciplining architects and professions where accreditation by their industry body is the basis of their registration. We welcome other building practitioners being held to the same high standard as registered building practitioners.

Recommendation 3: Continuing Professional Development

That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.

Master Builders Victoria has long advocated for the introduction of mandatory CPD programs for registered practitioners – which would include but not be limited to appropriate NCC topics. We agree that it is essential for CPD to provide for “targeted learning on topics of genuine relevance to improve the competence of practitioners”.

One of the continuing frustrations for builders throughout Australia, particularly small businesses, is the lack of free access to all Australian building codes and standards. While we note the NCC is now available on the ABCB website there are a range of codes that require subscriptions for access. Not only does this hamper easy compliance with regulation, the codes are regulatory instruments and should be freely available to those working to observe them.

Similarly, we would welcome better mechanisms to identify reoccurring compliance issues to feed into the CPD system – such as the State Building Inspector role outlined in Point 2 on the first page of this submission.

We have been working with the VBA to develop a system of CPD for builders and tradespeople – and stand ready to support its implementation.

Recommendation 4: Career paths for building surveyors

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That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.

The declining numbers of building surveyors is a concern shared by industry. In Victoria, there is a great concern that whilst there is a pathway to becoming a registered practitioner there are a lack of trainers and providers available and disincentives to entering the career path because of insurance and other pressures upon surveyors. This issue needs addressing urgently including provision of Government incentives.

Registered training organisations like Master Builders can play a role in providing a solution to these skill shortages and we encourage governments at all levels to consider opportunities for meaningful partnership with industry in training.

Recommendation 5: Improving collaboration between regulators

That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).

Master Builders Victoria supports clear roles and responsibilities for state government, local governments and private building surveyors in providing regulatory oversight. It is also important that each regulator is appropriately resourced to fulfil their assigned role.

While there is a collaborative relationship amongst regulators for the oversight of the building and construction industry, there is an opportunity to achieve better outcomes through improved collaboration across all industry stakeholders.

In addition, there is a role as outlined in Point 2 on the first page of this submission – for State Building Inspectors to play an information sharing and educative role across the country.

Recommendation 6: Effective regulatory powers

That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.

The VBA has a broad suite of powers to monitor buildings and building work, which have been enhanced through the amendments to the *Building Act 1993* and the implementation of the *Building Regulations 2018*.

The exception is the power to audit the performance of practitioners registered by other bodies such as architects. Master Builders Victoria believes that all building professionals should be held to the same high standard.

Although Master Builders Victoria supports compliance standards in the construction industry it does consider that regulators must improve quality of communication with industry and technical and operational knowledge in order to better communicate with the industry generally.



We do not consider that expansion of enforcement powers is the ultimate solution to improved outcomes. Enforcement is an ‘ambulance at the bottom of the cliff’ solution because it is slow to identify systemic problems and focuses on after-the-fact compliance. In addition, there is little in the proposed enforcement powers proposed in the report that does not already exist in Victoria.

The report recognises the challenges facing the building industry and the supply chain is systemic. A more contemporary approach by government is to recognise that the ‘ambulance at the top of the cliff’ is a consultative, industry partnership approach with the building industry.

Recommendation 7: Strategy for the proactive regulation of Commercial buildings

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.

Master Builders Victoria supports a more transparent audit strategy as well as reporting strategically about the “outcomes and learnings” from inspections by the VBA. In particular, commercial and multi-story residential buildings need to be given more focus by the VBA.

The VBA currently conducts proactive inspections as does Consumer Affairs Victoria and WorkSafe relevant to their areas of expertise. Master Builders Victoria welcomes proactive inspections and audit processes as part of quality assurance within the system. We also note the findings of the Victorian Cladding Taskforce which was taken up by government to require the VBA to inspect more of Victoria’s buildings each year, from less than 2% of buildings to up to 10%.

Recommendation 8: Collaboration with fire authorities in the development of fire safety design.

That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.

Master Builders Victoria supports fire authorities having an input in the building approval process. It is important that the involvement is appropriate to the project. In Victoria, in addition to a certification process there are systems in place for consultative meetings between fire authorities, architects, builders, engineers and building surveyors to consider compliance with safety design.

We believe the apparent diminishment of technical operational expertise within regulators and the significant strain on building surveyors may be partly alleviated by such advisory services. However, if a number of advisory services exist within a jurisdiction they should be co-ordinated and the limits of their authority/liability must be clear to industry.

Recommendation 9: Integrity of private building surveyors

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That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.

Controls intended to manage conflict of interest must be carefully considered as the potential for unintended consequences is great. Building surveyors (certifiers) perform an important and clearly defined regulatory function in Victoria.

Recent reforms in Victoria have been undertaken to require the owner to engage the building surveyor whilst the builder has the right to coordinate the surveyor for the building works being undertaken. Conflict of interest provisions for surveyors were enhanced in 2018 with a related party prohibition. Building surveyors are registered practitioners with the VBA and therefore are subject to the disciplinary process within the Victorian system.

Ensuring that surveyors are given information and have appropriate CPD requirements would also ensure the skills and quality of building surveyors is delivered.

Recommendation 10: Code of Conduct for building surveyors

That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.

In Victoria, industry associations for practitioners – like Master Builders – have Codes of Conduct for their members. Additionally, there are significant legal requirements imposed on registered practitioners, as well as disciplinary and dispute resolution processes. Ensuring the practitioner registration and legal obligations are understood by registered practitioners, should be the primary focus of reforms.

Recommendation 11: Role of building surveyors in enforcement

That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.

Master Builders Victoria is opposed to broadened supervision responsibility for building surveyors because surveyors are not appointed to act as the owner's site supervisor and should not carry out duties akin to a project manager.

Aside from proposed mandatory reporting requirements, it is difficult to see what enhanced supervisory powers are contemplated by the review. Consistent with point 4 at the beginning of our submission building surveyors are not the only link in the chain of the certification process. We have concerns that more obligations and will also burden to a profession that is currently reporting considerable pressure and future skill shortage.

Recommendation 12: Collecting and sharing data and intelligence

That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.



We support the better coordination of information but the cost/benefit of this proposal should be taken into account against higher priority matters in the report.

We note that the Australian Boards Building Code certified products register and the Codemark Scheme already exist at a national level and recommend that the review take this into account when considering the merits of a jurisdiction by jurisdiction option. Master Builders Australia outlines the information and certification model that might be considered in this context.

Recommendation 13: Responsibility of design practitioners

That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.

Quality project documentation is the basis for build quality. Low quality documentation leads to inefficiency, cost overruns, and adversarial behaviour.

We also consider there is merit in introducing CPD for designers and other professions around regulatory compliance which would help reduce heavy reliance on surveyors during the process.

Recommendation 14: Adequate documentation for performance solutions

That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificate the circumstances in which performance solutions have been used and for what purpose.

This matter has been appropriately addressed in Victoria as part of the recent changes to legislation (see particularly regulation 38 of the Building Regulations 2018 and referenced on Form 16 of the regulations.)

Recommendation 15: Approval of performance solutions for construction building work

That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.

Please see answer in Recommendation 14 (above)

Recommendation 16: Approval of documentation throughout the construction process

That each jurisdiction provides for a building compliance process which incorporates clear obligations for the approval of amended documentation by the appointed building surveyor throughout a project.

This is another example of our point 4 at the outset of this submission relating to the collective responsibility for certification throughout the process. We agree that documentation must be clear throughout the process but consider the building surveyor is only one link in an overall process, albeit a critical one. Better education on



documentation is a priority for all building industry professionals to understand the relevance and importance of documentation at all stages in the process.

Recommendation 17: Independent third party review

That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.

We are opposed to mandatory third party review and prescribing where types or designs of buildings must be subject to third party review. The discretion to determine third party review should be left to professional judgment which is a better than trying to mandate on the basis of complexity or in relation to design or type of building. This recommendation is also relevant to our point 4 at the outset of this paper and we consider it preferable to strengthen and improve the chain of responsibility, rather than add mandatory review onto the surveyor certification process.

Recommendation 18: Mandatory inspections

That each jurisdiction requires on-site inspections of building work at identified notification stages.

The mandatory certification stages for building work have been changed in Victoria to meet this requirement in 2018. It is understood these changes were based on risk as they vary for different classifications of building work.

Recommendation 19: Inspection and certification of fire safety installation

That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.

We support the recommendation that the Fire Engineer certify the proposed fire safety system and inspects and certifies that the works on site comply with the designs.

Recommendation 20: A building manual for commercial buildings

That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.

We understand that Regulation 49 of the Victorian building regulations requires that a copy of the approved documentation as part of the building permit/occupancy process is maintained by councils until such time as the building is demolished or removed. Given that the ownership of a building can readily change it reasonable that council be the document holder.



Recommendation 21: Building product safety

That the Building Ministers' Forum agrees its position on the establishment of a compulsory products certification system for high-risk products.

Master Builders Victoria supports this position. We recommend the review specifically consider the role of manufacturers who can be reluctant to provide appropriate data that demonstrates compliance and construction appropriate requirements. Master Builders Victoria recommends it be mandated that manufacturers allow industry access to this data. In the alternative we recommend that government creates a register of certified products with consistent accreditation documentation for industry assessment and review. This should be considered in the context of a national system as part of the BMF process (and the Master Builders Australia submission highlights a process for this).

Recommendation 22: Dictionary of terminology

That the Building Ministers' Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.

We support this kind of initiative as another step toward a consistent national terminology for building – to the extent it doesn't create further complications (e.g. licensing vs. registration might mean the same thing in different jurisdictions).

Recommendation 23: Implementation of the recommendations

That the Building Minister's Forum acknowledges that the above recommendation are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.

We specifically reference our point 1 at the outset of this submission and the acknowledgement by the review that one size will not fit all. Master Builders Victoria supports a national initiative toward best practice but considers elements of the process must be discretionary and jurisdictions must have the option to make their best choices when looking at the overall scheme. We would prefer to identify areas of commonality to work toward (such as Recommendations 21 and 22) and areas in which compliance is substantially achieved and would otherwise be duplicated (for example conflict of interests legislation for building surveyors).

It must be acknowledged that the legislation in Victoria has only recently been re-drafted and implemented. Those new provisions address a significant number of the recommendations in the Shergold-Weir report.

Recommendation 24: Implementation plan

That the Building Ministers' Forum priorities the preparation of a plan for the implement of the recommendation against which each jurisdiction will report annually.

We agree that an implementation plan is a sensible next step, subject to our comments that we prefer to identify areas of commonality to work toward and ensure we do not duplicate areas in which compliance is substantially achieved through state based legislation.

