

Discussion paper: Building Design Acceptance - A response to the Building Confidence Report

Overview

In 2017, Building Ministers authorised an assessment of the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. Amongst other recommendations the resulting **Building Confidence Report**

https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf (BCR) recommended that there be a statutory duty on design practitioners to prepare documentation that demonstrates compliance with the National Construction Code (NCC). It also recommended a more robust approach to third party review of designs, and to the documentation and approval of Performance Solutions and design variations. Building Ministers tasked the Australian Building Codes Board's BCR Implementation Team with developing responses to each of the report's recommendations.

Recommendations 13-16 of the BCR, cover the process of design documentation, including the development and documentation of Performance Solutions and variations to approved documentation. The relevant recommendations specifically state:

- **Recommendation 13:** That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the NCC.
- **Recommendation 14:** That each jurisdiction sets out the information which must be included in Performance Solutions, specifying in occupancy permits the circumstances in which Performance Solutions have been used and for what purpose.
- **Recommendation 15:** That each jurisdiction provides a transparent and robust process for the approval of Performance Solutions for constructed building work.
- **Recommendation 16:** 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.

In response to these recommendation, the **BCR Implementation Team** <https://www.abcb.gov.au/Initiatives/All/building-confidence-report-implementation-team> has developed a discussion paper to seek feedback on proposed reforms. The discussion paper can be downloaded below.

Why we are consulting

The discussion paper has been developed by the BCR Implementation Team and outlines proposed reforms to address the four BCR recommendations.

Feedback on the proposed reforms will improve the rigour of the work by capturing the views of regulators, industry and the public, and will test measures developed to help increase compliance with the NCC, state and territory legislation and NCC referenced documents.

Providing comment

Responses to questions on the discussion paper are invited until **11:59PM AEDT Sunday 7 February 2021**. Only comments submitted using the online form will be considered.

A preview of the consultation form is provided below.

If you have a question about this consultation, please contact bcrimplementationteam@abcb.gov.au.

Consultation Contents

This discussion paper, contains questions that have been included to guide respondents on specific matters where more information may assist with refining the proposed reforms. The consultation is divided into key sections:

1. Glossary and Proposed Terminology
2. Recommendation 13: Building Approval Documentation
3. Recommendation 14: Documentation of Performance Solutions
4. Recommendations 15 and 16: Approval During and After Construction
5. Other considerations

Each section contains a series of questions that seek your view on information contained within the discussion paper. You are also provided an opportunity to explain your response and provide additional information or separate submission.

Please ensure that you have also completed to 'Information Collection' and 'Personal Information' sections.

Additional information

Save and come back later

The "save and come back later" button gives you the option to save your work. Enter your email address to receive an email with a link to return to your consultation response before the closing date.

Once you have submitted your response you are unable to change it.

Questions

Any technical questions regarding the discussion paper can be submitted to the email address identified on the 'Overview' page. Otherwise, if your question is in relation to the ABCB's Consultation Hub, please **submit an enquiry** [<https://abcb.gov.au/ABCB/Contact-Us>](https://abcb.gov.au/ABCB/Contact-Us) .

Information Collection

Important: Please ensure that you have read and understood the below statements before proceeding

Privacy Collection Statement

The Australian Building Codes Board (ABCB) is bound by the Australian Privacy Principles (APPs) outlined in Schedule 1 of the *Privacy Act 1988* (Cth) (Privacy Act), which regulates how entities may collect, use, disclose and store personal information.

Your personal and sensitive information is being collected by the ABCB Office to assist the ABCB to carry out its functions, to inform the consultation process and for other purposes including to communicate with individuals or organisations about their submission.

The personal and sensitive information collected as part of the submission process may be disclosed to and used by the following individuals or organisations:

- the Department of Industry, Science, Energy and Resources or the ABCB Office, and the staff of the Department and the ABCB Office;
- the ABCB, its committees and any working groups established by the ABCB, and their staff and advisors;
- the Commonwealth Government, and State and Territory Ministers responsible for building regulation and policy, and their staff and advisors;
- other Commonwealth or State and Territory government departments and agencies;
- any consultant or contractor engaged by the ABCB for the purpose of undertaking work in respect of the subject matter of the submission process.
- any organisation for any authorised purpose with your express consent, for the purposes set out above.

Personal and sensitive information obtained will be stored and held in accordance with the ABCB's obligations under the *Archives Act 1983* (Cth). Further information about how the ABCB collects, uses and discloses personal information is set out in its **Privacy Policy** <<https://abcb.gov.au/Footer/Privacy>> .

If you have an enquiry or request relating to your personal information, please contact:

Privacy Contact Officer
Australian Building Codes Board
GPO Box 2013
Canberra ACT 2601

Confidential Information Statement

All submissions and comments will be published unless they are marked 'commercial-in-confidence'. However, any contact details you provide within your submission will be redacted prior to the submission being published.

In order to promote debate and transparency, the ABCB prefers that all submissions and comments be provided in a way that does not require confidentiality to be maintained. However, it recognises that in some circumstances you may want to provide information in confidence.

It is the responsibility of the person making the submission to ensure that any 'commercial-in-confidence' information is clearly identified. Please consider if you can structure your response to keep only some parts confidential. If only part of your submission is confidential, you can provide the confidential part as a separate submission so that the ABCB can publish the non-confidential part of the submission.

Where confidentiality is requested for an entire submission, it will not be published by the ABCB, nor will your name or organisation details; however, see the comments below regarding Regulation Impact Statements.

Please note that we may still disclose the confidential part of your submission to any of the above identified users of the information as part of the consultation process and we will use reasonable efforts to ensure that the recipients keep the submission confidential.

Submissions for Regulation Impact Statements will be made public in accordance with the Council of Australian Government's **Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies** <<https://www.pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies>> . A summary of the views expressed in the submissions will be published as part of the Regulation Impact Statement.

The ABCB or the ABCB Office may also disclose confidential information in circumstances where:

- we are required or authorised by law disclose it;
- you agree to the information being disclosed; or
- someone other than you has made the confidential information public.

Your submission, comments, opinions and responses will not be published if the ABCB or the ABCB Office considers that your submission, comments, opinions and responses may contain potentially defamatory statements or other offensive comments.

By making a submission to this consultation you agree to the collection of the information you provide in your submission; and the use and disclosure of the information you provide in your submission as outlined above.

(Required)

Please select only one item

- ☐ Publish response
- ☐ Publish response anonymously (this will remove personal identifiers including, name and organisation)
- ☐ Do not publish

Personal Information

Australian Building Codes Board

What is your name?

(Required)

What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

(Required)

On whose behalf are you making this submission?

Please select only one item

- ☐ I am making this submission on my own behalf ☐ I am making this submission on behalf of a business
☐ I am making this submission on behalf of an industry body
☐ I am making this submission on behalf of a government agency

What is your organisation (if relevant)?

Which best describes your industry sector?

Please select only one item

- ☐ Building Commercial ☐ Building Residential ☐ Building Commercial and Residential
☐ Building and plumbing products ☐ Building Certification/Surveying ☐ Architecture and design
☐ Engineering ☐ Plumbing ☐ Compliance, testing and accreditation ☐ Legal and Finance
☐ Specialist - disability access ☐ Specialist - energy efficiency ☐ Specialist - fire safety
☐ Specialist - health ☐ Specialist - hydraulic/plumbing ☐ Student/apprentices
☐ Trades and other construction services ☐ Education ☐ Community and Non-Government organisations
☐ Government ☐ General Public ☐ Other

If other, please specify

Please select your state or territory

Please select only one item

- ☐ ACT ☐ NSW ☐ NT ☐ Qld ☐ SA ☐ Tas ☐ Vic ☐ WA

If you work in the building industry, in which state or territory do you undertake the most work?

Please select only one item

- ☐ ACT ☐ NSW ☐ NT ☐ Qld ☐ SA ☐ Tas ☐ Vic ☐ WA
☐ NA - I do not work in the building industry

Glossary and Proposed Terminology

Do you agree with the definitions for the preferred terms used in this discussion paper?

	Yes	No	Unsure
Building approval <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Building approval applicant <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Building surveyor <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Declaration of Design Compliance <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Occupancy approval <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Project Product Register <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Statutory building surveying assessment work <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Statutory building surveying approval work <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Statutory functions <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Of the terms you did not agree with, could you expand on why, and how they should be changed?

Recommendation 13: Building Approval Documentation

Recommendation 13: 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.

Are the five proposed objectives (see Proposed measures) an appropriate benchmark for adequate documentation?

Proposed measures

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is it appropriate to require Declarations of Design Compliance from each registered design practitioner responsible for an aspect of the design of a building?

Please select only one item

☐ Yes ☐ No ☐ Maybe

Should there be exceptions?

Does the obligation for registered designers to provide a Declaration of Design Compliance differ across circumstances?

For example: different building types, delivery types, or buildings of a certain construction type, Use Class, Importance Level, or Complex Buildings etc.

Please select only one item

☐ Yes ☐ No ☐ Maybe

If yes/maybe, how does the obligation differ?

Should the Declaration of Design Compliance include details of the practitioner's relevant qualifications and/or experience specific to the design work, or is evidence of a relevant licence sufficient?

Please select only one item

☐ Qualifications and/or experience specific to the work ☐ Only relevant licence needed ☐ Other

Please expand on your answer.

Are the circumstances described (detailed at M13.1h and i, see below) appropriate for the building surveyor to rely on Declarations of Design Compliance?

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is the minimum documentation list (see M13.2 in Table 8) appropriate?

Table 8: Proposed measures responding to Recommendation 13

Please select only one item

☐ Appropriate ☐ Maybe appropriate ☐ Inappropriate ☐ Unsure

What other information that should be required, or please expand on your answer?

Is an NCC Performance Requirement checklist (detailed at M13.2 f) a necessary requirement for all building types?

Table 8: Proposed measures responding to Recommendation 13

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is it appropriate that the building surveyor be able to condition an approval in limited circumstances?

Please select only one item

☐ Yes ☐ No ☐ Maybe

What might be those circumstances?

Is the right approach to staged building approvals being proposed (see M13.3)?

Table 8: Proposed measures responding to Recommendation 13

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is it appropriate to require a Product Register for products/systems used for the fire and structural elements (see M13.4)?

Table 8: Proposed measures responding to Recommendation 13

Please select only one item

☐ Yes ☐ No ☐ Maybe

Should there be exceptions?

Are there exceptions to when the Product Register should be required?

Please select all that apply

☐ All ☐ None ☐ Risk 0 ☐ Risk 1 ☐ Risk 2 ☐ Risk 3 ☐ Risk 4 ☐ Risk 5

Please expand on your answer.

Who is the right person to compile the Project Product Register?

Please select all that apply

☐ Lead designer ☐ Specialist engineer ☐ Someone else

Please expand on your answer.

Recommendation 14: Documentation of Performance Solutions

Recommendation 14: That each jurisdiction sets out the information which must be included in Performance Solutions, specifying in occupancy permits the circumstances in which Performance Solutions have been used and for what purpose.

Is this the right information to document Performance Solutions (see M14.1)?

Table 10: Proposed measures responding to recommendation to document Performance Solutions

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is the information being required sufficient to enable a holistic assessment of the design?

Please select only one item

☐ Yes ☐ No

Please expand on your answer.

Is the detail on where Performance Solutions (M14.4) have been used, and for what purpose, sufficient information to record on the occupancy certificate?

Performance Solutions (M14.4)

Please select only one item

☐ Yes ☐ No ☐ Unsure

Please expand on your answer.

Recommendations 15 and 16: Approval During and After Construction

Recommendation 15: That each jurisdiction provides a transparent and robust process for the approval of Performance Solutions for constructed building work.

Recommendation 16: 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.

Is this the right process to address variations to the approved documentation (Table 12)?

Table 12: Proposed measures responding to BCR recommendations for documentation and approval of variations during and after construction

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Should all variations be documented and included in the occupancy certificate, regardless of whether they affect the compliance of the building?

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Is it appropriate to require the building surveyor to inform the state regulator as soon as they become aware that building work has proceeded not in accordance with the building approval?

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

When approving variations to the building approval in constructed work (post-facto approvals) is the process sufficiently robust (M15/16.5 & 16.6)?

M15/16.5 & 16.6

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

If the post-facto approval involves a Performance Solution:

	Yes	No	Maybe
Should the owner's consent be required before a variation to the building approval can be made for constructed building work? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Should the regulator receive a copy of the documentation and statement of reasons? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please expand on your answer.

Do the proposed measures go far enough to address additional risks to building quality where the owner during design and construction is a developer and not the end owner.

Please select only one item

☐ Yes ☐ No ☐ Maybe

If not, please advise what additional measures you think should be included.

Other considerations

Are different actions required to implement the proposed measures for different project types?

	Commercial buildings	Complex buildings	Buildings being delivered for certain end users? E.g. strata owners.
High level legislative principles <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Detailed regulatory requirements <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Practice guide <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please expand on your answer.

Are there other actions to implement the proposed measures that should be considered?

Please select only one item

☐ Yes ☐ No ☐ Maybe

Please expand on your answer.

Do you have any other comments about the discussion paper?

Supporting documentation

Supporting documentation, such as diagrams, research papers or other information, can be uploaded here to substantiate your comments. Supporting documentation will not be published.

Please attach a copy of any documents you wish to include to this printout.

File Upload No.1

Please attach a copy of any documents you wish to include to this printout.

File Upload No.2

Please make sure your file is in .doc, docx or PDF format.

If you would like to provide more than two files, please email copies to bcrimplementationteam@abcb.gov.au, stating the name and email address associated with your submission.