

Discussion Paper: Integrity of private building surveyors and their role in enforcement - 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. 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) made 24 recommendations for a best practice model for compliance and enforcement, to strengthen the effective implementation of the National Construction Code (NCC).

To varying degrees, all jurisdictions rely on private building surveyors as part of their building approvals process. During this process commercial relationships inevitably form between private building surveyors and those seeking their services.

BCR recommendations 9 and 11 relate specifically private building surveyors. The objectives of these recommendations are to:

- mitigate conflicts of interest;
- increase transparency in engagement and statutory responsibilities; and
- provide enhanced supervisory powers and require mandatory reporting.

Meeting these objectives will help increase compliance with the NCC, state and territory legislation and NCC referenced documents.

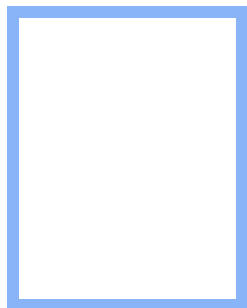
To fulfil these recommendations, the BCR identifies 11 minimum necessary statutory controls and supporting measures required in each jurisdiction's building approval process. For the purposes of developing benchmarked minimum model guidance, as requested by Building Ministers, these have been defined as 10 principles. It is expected that state and territory governments will have regard to these principles, and the corresponding model guidance, when reforming their legislation

The BCR Implementation Team has developed a discussion paper to facilitate input into the content of the model guidance that will underpin each principle.

Why we are consulting

Feedback on the proposed model guidance for BCR recommendations 9 and 11 will improve the rigour of the work by capturing the views of regulators, industry and the public.

The full discussion paper can be accessed below or downloaded from the bottom of this page.



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Providing a response

Responses to questions in the discussion paper are open until **11:59PM AEST Monday 26 April 2021**. Only responses submitted using the online form will be considered.

If you have a question about this consultation, please contact the BCR Implementation Team.

Thank you for your feedback.

Information Collection

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

Privacy Collection 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.

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2 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

3 What is your name?

Name (Required)

4 What is your email address?

Email address (Required)

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

5 On whose behalf are you making a submission?

Oh whose behalf are you making this submission? (Required)

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

6 What is your organisation?

Organisation

7 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.

8 Please select your state or territory

State or Territory

Please select only one item ACT NSW NT Qld SA Tas Vic WA**9 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

Context

To assist in informing your responses to the consultation questions, it's recommended you familiarise yourself with the context section of the discussion paper. This section provides important background information on the building approvals process, the differing building certification models used across the jurisdictions and the application of BCR recommendations 9 and 11 to each model.

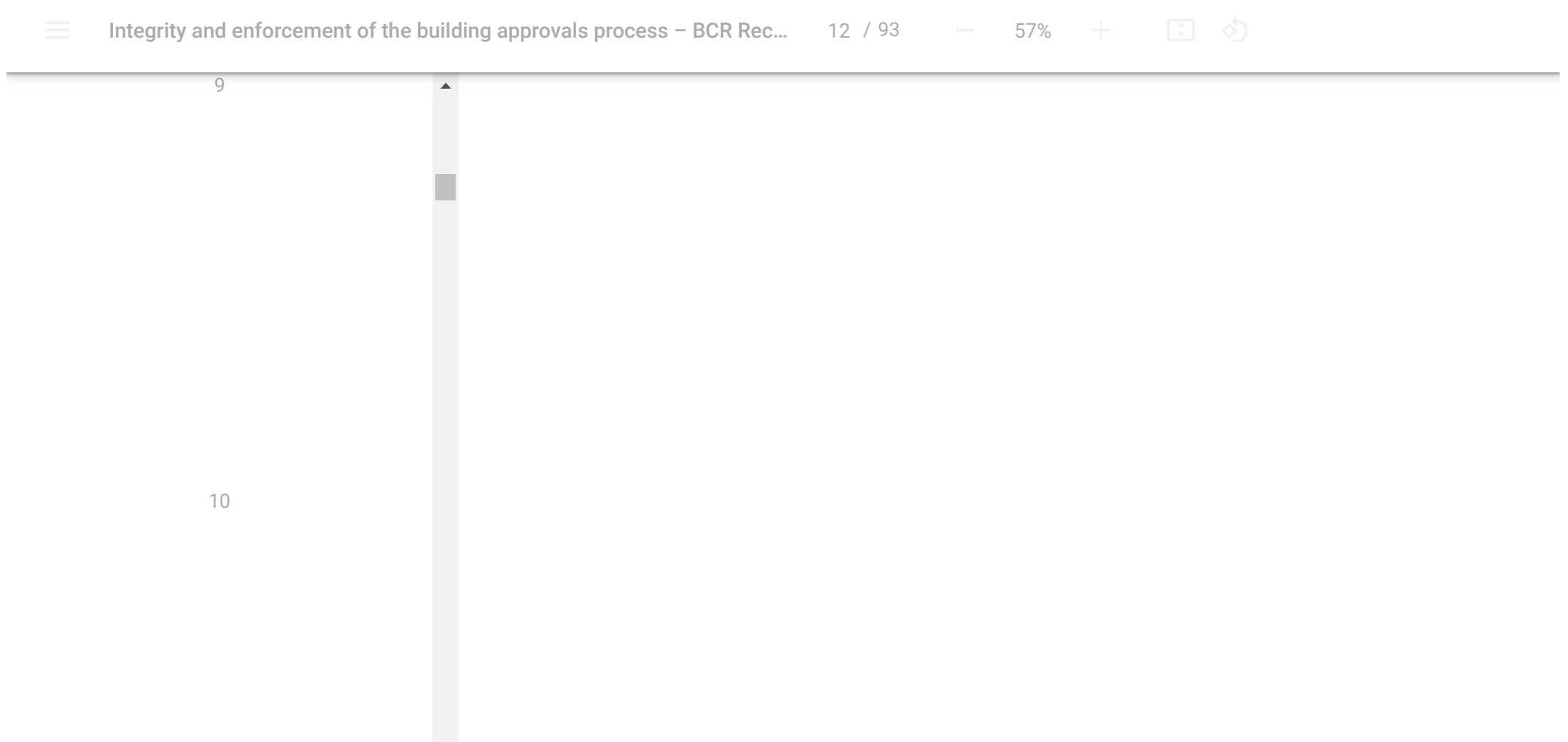
The context section of the discussion paper can be accessed below.

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Terminology and acronyms

Relevant section from the discussion paper for Terminology and acronyms



10 Do you agree with the terminology proposed for 'building approval process' 'certificate of compliance', 'certify or certifying' and 'private building surveyor'?

Yes

No

Unsure

Terminology proposed for
'building approval process'

Please select only one item

Terminology proposed for
'certificate of compliance'

Please select only one item

Terminology proposed for 'certify'
or 'certifying'

Please select only one item

Terminology proposed for
'private building surveyor'

Please select only one item

If you answered 'no' or 'unsure' to any of the above, please explain your answer.

11 Do you have any comments on other defined terms and their use in the context of this discussion paper?

Please select only one item

Yes No

Please provide any comments you have.

Application of recommendations 9 and 11 to private building surveyors

Relevant section from discussion paper for Application of recommendations 9 and 11 to private building surveyors



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12 Should specific principles of recommendations 9 and 11 apply to council employed building surveyors?

Please select only one item

Yes No

If you answered 'yes', please outline which parts of recommendation 9 and 11 should apply and to what extent

Principle 1: Appointment by the owner or agent

A private building surveyor should be appointed by the owner of the land or their agent.

Relevant section from discussion paper for Principle 1



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13 Do you agree with the recommended option for Principle 1?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

14 Should legislation expressly provide for the appointment of an agent?

Please select only one item

- Yes No Unsure

Please explain your answer.

15 Should the requirement for who can appoint the building surveyor vary based on building type, complexity or procurement arrangement?

Yes

No

Unsure

Requirement should vary based
on building type

Please select only one item

Requirement should vary based
on building complexity

Please select only one item

Requirement should vary based
on procurement arrangement

Please select only one item

If you answered 'yes' to any of the above statements, please explain how this could be achieved.

Principle 2: Appointment to be documented

A private building surveyor's appointment should be documented.

Relevant section from the discussion paper for Principle 2



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16 Should the model guidance include a requirement for owners to pay private building surveyors up front for their services?

Please select only one item

Yes No Unsure

Please explain your answer.

17 Do you have any other comments in relation to the fees charged by building surveyors for their services and whether this should be regulated?

18 Do you agree with the recommended option for Principle 2?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

19 If notification of appointment is to occur after a specified time, what should that timeframe be?

Please select only one item

5 days 10 days other

If you answered 'other' please specify a timeframe.

20 When should the timeframe be calculated from?

Please select only one item

- From signing an agreement to provide services From receipt of an application for building approval
- From another point in the process

If you answered 'from another point in the process', please elaborate.

21 For Option 2, should a national agreement be developed or an agreement developed by each jurisdiction?

Please select only one item

- National agreement Agreement developed by each jurisdiction

Please explain your answer.

22 For Option 2, should there be more than one version of the prescribed agreement developed to cater for different types of projects?

Please select only one item

Yes No Unsure

Please explain your answer.

Principle 3: Controls on termination of appointment

There should be controls on the termination of a private building surveyor's appointment.

Relevant section from the discussion paper for Principle 3



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23 Do you agree with the recommended option for Principle 3?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

24 If transfers of functions can occur by consent, could the building surveyor find themselves under pressure from the builder or developer to consent to the transfer?

Please select only one item

Yes No Unsure

If you answered 'yes', please explain how this could be mitigated.

25 Should it be an offence for an owner to appoint multiple building surveyors for one project?

Please select only one item

- Yes No Unsure

Please explain your answer.

26 Are there other matters relating to the appointment or termination of appointment of the private building surveyor that should be included in the model guidance? This question relates to all options and discussion on the appointment of the private building surveyor.

Yes

No

Other matters relating to the
appointment of the private building
surveyor

Please select only one item

Other matters relating to the
termination of appointment of the
private building surveyor

Please select only one item

If you answered 'yes' to either of the above statements, please explain your answer.

Principle 4: Conflict of interest controls

A private building surveyor should be prohibited from accepting an appointment or continuing to act if they are or have been involved in the preparation of design.

A private building surveyor should be prohibited from accepting an appointment or continuing to act when they have a pecuniary interest.

Controls to mitigate conflicts of interest should also apply when any related person of the private building surveyor has any of the conflicts prohibited.

Relevant section from the discussion paper for Principle 4



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27 The matters below were not recommended in the BCR. Should either of these matters be included in the model guidance?

- **Preventing the building surveyor from doing advisory building surveying work and statutory building surveying work for designers, builders or developers at the same time on different projects.**
- **Prohibiting the building surveyor from accepting inducements or benefits, or prohibiting them from providing false information.**

Please select only one item

Yes No Unsure

Please explain your answer.

28 Should the model guidance include conflict of interest controls for persons providing certificates of compliance to the private building surveyor?

Please select only one item

Yes No Unsure

Please explain your answer.

29 Do you agree with the recommended option for Principle 4 'Preparation of design'?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

30 For Option 1 of Principle 4 'Preparation of design', are there aspects of sub-paragraphs a to d that should be changed or removed from the definition of 'participate in design work'?

Please select only one item

Yes No Unsure

Please explain your answer.

31 For Option 2 of Principle 4 'Preparation of design', what would be a suitable 'prescribed period'?

Please explain your answer

32 Would Option 2 of Principle 4 'Preparation of design' create practical problems in rural areas or smaller jurisdictions where there are fewer practitioners?

Please select only one item

Yes No Unsure

Please explain your answer

33 Would Option 2 of Principle 4 'Preparation of design' have a significant impact on project cost or timing in smaller jurisdictions or rural areas?

Please select only one item

Yes No Unsure

Please explain your answer.

34 Should the requirement from the NSW scheme outlined below, or a version of it, be included in the definition of 'participate in design work'?

The NSW scheme states that a building surveyor should not participate in a fire engineering brief other than for the purpose only of determining the scope of work for a fire engineering analysis and the basis for that analysis.

Please select only one item

Yes No Unsure

Please explain your answer.

35 Should the requirement from the ACT scheme outlined below, or a version of it, be included in the definition of 'participate in design work'?

The ACT scheme states the building surveyor can sketch a required design as part of a direction to rectify non-compliant work.

Please select only one item

Yes No Unsure

Please explain your answer.

36 Do you agree with the recommended option for Principle 4 'Pecuniary interest'?

(Required)

Please select only one item

- Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

37 For Option 1 of Principle 4 'Pecuniary interest', are there aspects of sub-paragraphs a to c that should be changed or removed?

Please select only one item

Yes No Unsure

Please explain your answer.

38 Would Option 1 or Option 2 of Principle 4 'Pecuniary interest' create practical problems in rural areas or smaller jurisdictions where there are fewer practitioners?

Yes

No

Unsure

Option 1 would create practical problems in rural areas

Please select only one item

Option 1 would create practical problems in smaller jurisdictions

Please select only one item

Option 2 would create practical problems in rural areas

Please select only one item

Option 2 would create practical problems in smaller jurisdictions

Please select only one item

Please explain your answer.

39 Would Option 1 or Option 2 of Principle 4 'Pecuniary interest' have a significant impact on project cost or timing in smaller jurisdictions or rural areas?

Yes

No

Unsure

Option 1 would have a significant impact on project costs in smaller jurisdictions

Please select only one item

Option 1 would have a significant impact on project costs in rural areas

Please select only one item

Option 1 would have a significant impact on project timing in smaller jurisdictions

Please select only one item

Option 1 would have a significant impact on project timing in rural areas

Please select only one item

Option 2 would have a significant impact on project costs in smaller jurisdictions

Please select only one item

Option 2 would have a significant impact on project costs in rural areas

Please select only one item

Yes

No

Unsure

Option 2 would have a significant impact on project timing in smaller jurisdictions

Please select only one item

Option 2 would have a significant impact on project timing in rural areas

Please select only one item

Please explain your answer.

40 Does the term 'pecuniary interest' need to be defined?

Please select only one item

Yes No Unsure

If you answered 'yes' please explain why and provide a definition.

41 Are there aspects of sub-paragraphs a to f that should be changed or removed from the definition of ‘related person’?

Please select only one item

Yes No Unsure

Please explain your answer.

42 Would Option 1 of Principle 4 'Related persons' create practical problems in rural areas or smaller jurisdictions where there are fewer practitioners?

Please select only one item

Yes No Unsure

If you answered 'yes' please provide further information.

43 Would Option 1 of Principle 4 'Related persons' have a significant impact on project cost or timing in smaller jurisdictions or rural areas?

Please select only one item

Yes No Unsure

If you answered 'yes' please provide further information.

44 Should the model guidance also suggest the above conflict of interest controls be offences?

Please select only one item

Yes No Unsure

If you answered 'yes' please provide further information.

45 If the conflict of interest controls were suggested as offences in the model guidance, what penalty should apply?

Please provide further information.

46 Are there other options or matters that should be considered in relation to conflicts of interest?

Please select only one item

Yes No Unsure

Please explain your answer.

Principle 5: Accepting certificates of compliance from others

Obligations on a private building surveyor for checking certificates of compliance before accepting them should be clear.

Relevant section from the discussion paper for Principle 5



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47 Are there any other key matters for checking or other issues to consider in developing the model guidance relating to the reliance on certificates of compliance by building surveyors?

Please select only one item

Yes No Unsure

If you answered 'yes' please provide further information.

48 Do you agree with the recommended option for Principle 5?

(Required)

Please select only one item

- Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

49 For Option 2, do guidelines need to be prepared for how to meet the 'good faith' test?

Please select only one item

Yes No Unsure

Please explain your answer.

50 For Option 2, should the guidance be developed nationally or should each jurisdiction prepare its own guidance?

Please select only one item

Guidance developed nationally Guidance developed by each jurisdiction

Please explain your answer.

51 Are there other options or matters that should be considered?

Please select only one item

Yes No Unsure

Please explain your answer.

Principle 6: Provision of information to the owner, builder or applicant

Key information should be sent from the private building surveyor to the owner, builder and applicant throughout the process.

Relevant section from the discussion paper for Principle 6



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52 Do you agree with the recommended option for Principle 6 'Types of information to be given', being required to be provided by the building surveyor?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

53 For the 'approved information sheet' in clause a of Option 1 of Principle 6 'Types of information to be given', should a national model be developed, or should each jurisdiction prepare their own versions?

Please select only one item

National model Each jurisdiction prepares its own version

Please explain your answer.

54 Do you agree with the recommended Option for Principle 6 'who should the information be given to?'

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

55 For Option 3 Principle 6 'who should the information be given to?', what information should be sent directly to the owner, builder or applicant?

56 Are there other options that should be considered?

Please select only one item

Yes No

If you answered 'yes', please provide further information.

Principle 7: Rights of appeal against the building surveyor

There should be a right to have decisions of the private building surveyor reviewed.

Relevant section from the discussion paper for Principle 7



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57 Do you agree with the recommended option for Principle 7?

(Required)

Please select only one item Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

58 For Option 2, which types of decisions may have a “significant effect on the rights of an owner or other person” and should be subject to review rights?

Please provide further information.

59 Are there any other options or matters that should be considered?

Please select only one item

Yes No

If you answered 'yes' please provide further information.

Principle 8: Enhanced supervisory powers

A private building surveyor should have enforcement powers which allow them to regulate where they detect non-compliance.

Relevant section from the discussion paper for Principle 8



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60 Do you agree with the recommended option for Principle 8?

(Required)

Please select only one item

- Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

61 Should the type of enforcement powers a private building surveyor has vary depending on the specifics of the building (building class, number of storeys or complexity)?

Yes

No

Unsure

Vary based on building class
(Class 1, Class 2 etc.)
Please select only one item

Vary based on number of
building storeys
Please select only one item

Vary based on building
complexity
Please select only one item

If you answered 'yes' to any of the statements above, please explain how this could be achieved.

62 Are there other options or matters that should be considered?

Please select only one item

Yes No

If you answered 'yes', please provide further information.

Principle 9: Mandatory reporting obligations

It should be mandatory for a private building surveyor to report specified conduct to the government regulator.

Relevant section from the discussion paper for Principle 9



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63 Do you agree with the recommended option for Principle 9?

(Required)

Please select only one item

- Yes No Unsure

If you answered 'no' or 'unsure', please explain your answer.

64 For Option 1 of Principle 9, should the guidance be developed nationally or should each jurisdiction prepare its own guidance?

Please select only one item

Guidance developed nationally Guidance developed by each jurisdiction

Please explain your answer.

65 For Option 2 of Principle 9, should the guidance be developed nationally or should each jurisdiction prepare its own guidance?

Please select only one item

Guidance developed nationally Guidance developed by each jurisdiction

Please explain your answer.

66 For Option 3 of Principle 9, which industry bodies could run the scheme?

67 For Option 3 of Principle 9, would a new industry body need to be established?

Please select only one item

- Yes No Unsure

Please explain your answer.

68 For Option 3 of Principle 9, should the scheme operate nationally or would there need to be a scheme in each jurisdiction?

Please select only one item

Scheme operate nationally Scheme operate in each jurisdiction

Please explain your answer.

Principle 10: Co-regulatory support

There should be adequate co-regulatory support provided to private building surveyors by governments.

Relevant section from the discussion paper for Principle 10

Background information on the proposed changes to the Building Code of Australia (BCA) is available in the Discussion Paper for Principle 10, which is available on the Australian Building Codes Board (ABCB) website. The Discussion Paper for Principle 10 is available in both English and Chinese. The Discussion Paper for Principle 10 is available in both English and Chinese. The Discussion Paper for Principle 10 is available in both English and Chinese.

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Options

The Discussion Paper for Principle 10 provides two options for the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA.

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Options

The Discussion Paper for Principle 10 provides two options for the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA. Option 1 is to maintain the current BCA, and Option 2 is to implement the proposed changes to the BCA.

69 Do you agree with the recommended option for Principle 10?

(Required)

Please select only one item

Yes No Unsure

If you answered 'no' please explain your answer.

70 How else could these parts of BCR recommendation 11 be implemented?