

# Discussion paper: Independent third party review - 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](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf) (BCR) noted that building surveyors are not always competent to review and confirm compliance of all building design documentation, particularly for complex and high risk fire safety and structural designs. In the case where the building surveyor doesn't have the required level of competence, they may rely on the competence of the designer with no detailed review being undertaken. This introduces a significant risk of non-compliance.

Building Ministers reconfirmed the importance of this work at their meeting on 27 November, noting

“...that the building industry is committed to providing safe and high quality buildings that support Australia's diverse communities. Building Ministers noted the importance of maintaining momentum on proposed reforms to support safety and quality and improved compliance with the National Construction Code (NCC).”

In response to BCR Recommendation 17, which proposes **‘that each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings’**, the BCR Implementation Team has developed a discussion paper outlining a draft model process for independent third party review. This model has proportionate actions tied to building complexity (risk) and uses the definition of complex buildings, which has been redefined following an extensive **consultation process** [engagement/definition-for-building-complexity/](#) and supported by Building Ministers for inclusion in the NCC 2022 Public Comment Draft. This model acts as a means of improving building outcomes through greater NCC compliance.

It is expected that independent third party review would assist in ensuring designs are independently reviewed where the statutory building surveyor does not hold the necessary skills and experience for checking a component(s) of the design. The process would ensure design issues are identified and rectified earlier in the process, resulting in enhanced public confidence in the building industry.

The discussion paper can be downloaded below.

## Why we are consulting

The BCR Implementation Team has developed a discussion paper for independent third party review. The discussion paper defines the draft model process for independent review, including where to source third party reviewers, how and when the design review process is undertaken, documentation and record keeping requirements, and preferred terminology.

Feedback on the draft model process 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

Comments on the discussion paper are open until **11:59PM AEDT Sunday 28 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](mailto:bcrimplementationteam@abcb.gov.au).

## 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?

(Required)

### 4 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)

### 5 On 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?

### 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

(Required)

*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

## Proposed approach

10 Do you agree the risk based model is the correct approach to identify the need for independent third party reviews?

Please select only one item

- Yes  No  Maybe

What is an alternative approach?

11 What are your views on the terminology proposed for an Independent third party review?

### More information

This Discussion Paper proposes terminology which, if agreed by the Building Ministers, would be consolidated into a Preferred Terms Publication for consideration and adoption into State and Territory laws. Current legislative terminology used across Australia has been considered when developing the proposed terminology. The agreed terminology used in the Preferred Terms Publication would not be legal definitions unless adopted by jurisdictions.

**Independent third party review** is an examination and assessment of a component of a building's design, reports and documents for compliance with the NCC, by an individual who is completely separate to the building designer.

**12** What are your views on the terminology proposed for an Independent third party reviewer?

**More information**

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**Independent third party reviewer** is an independent, registered and competent practitioner who is engaged to review and assess the design, reports and documents for compliance of a building with the NCC, prepared by an appropriately qualified and experienced professional in a relevant field. Independence is assured by not having participated in any component of the original design or in the process of design decisions. The independent reviewer must not work for the same organisation as the designer that prepared the original design.

**Risk levels**

**13** The Discussion Paper proposes structural and fire safety review is mandated for buildings with a low to very high building complexity (BC) levels and must be reviewed by an independent third-party reviewer. What elements of the design do you believe must be reviewed by an independent third-party reviewer for each BC level?

|                          | Low                      | Medium                   | High                     | Very high                |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Structural design        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire safety design       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Disability access design | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Façade design            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Energy Efficiency design | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Other elements of Design and Building Complexity

Australian Building Codes Board

**14** Do you agree that independent structural and fire safety designers must conduct the structural and fire safety reviews for all building complexity (BC) levels? Choose ALL appropriate practitioners that are acceptable for independent reviews for the corresponding BC level.

|   | Low                      | Medium                   | High                     | Very high                |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| Independent Fire Safety Designer                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Independent Structural Designer                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lead Structural Designer who was involved in the structural design    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lead Fire Safety Designer who was involved in the fire systems design | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire Authorities  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**15** The Discussion Paper identifies three mechanisms for sourcing independent reviewers for the different building complexity (BC) levels. Which option would work best and do you agree with the options provided? If you have alternative mechanisms in mind, let us know in the text box below (include the appropriate BC levels).

|   | Low                      | Medium                   | High                     | Very High                |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| Registered list of individual practitioners | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Panel of experts                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Government appointed list of practitioners  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Are there alternative sources? (include their suitable BC level).

## Third Party Reviewers

**16** Do you agree the independent third-party reviewer can exercise judgement to determine the extent of the review or should this be prescribed for various BC levels?

*Please select only one item*

Yes  No  Maybe

Explain your answer

**17** Does the proposed approach address all the issues related to independent third-party reviews? If your answer is No/Maybe, what items are missing to ensure independent third-party review of building design is compliant with the NCC and meets the intent of BCR Recommendation 17?

*Please select only one item*

Yes  No  Maybe

What items are missing to ensure independent third party reviews are compliant and meets the requirements of BCR Recommendation 17?

**18** Do you have any further comments?



## 19 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 attach a copy of any documents you wish to include to this printout.**

File upload No.3

Please provide supporting documentation in .doc, docx or PDF format.

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