



29 November 2022

Mr John Stimson
Presiding Member
Planning System Review Expert Panel
GPO Box 1815
ADELAIDE SA 5000

Dear Mr Stimson

Re: Scope of matters to be considered in the planning system implementation review

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

The opportunity to contribute to the review is welcome. AIBS notes that the panel was able to determine the scope of review within terms of reference that permit this and that seven key areas of focus have been identified by the expert panel you lead. AIBS also notes that six of the seven areas deal with matters related to land use or town planning issues and one deals with the accredited professionals scheme that regulates the qualification of persons who work in the building industry.

AIBS believes that the expert panel has been somewhat remiss in limiting the scope of review to only those seven items. In 2019, the then Minister contributed advice to a Building Ministers meeting identifying gaps that exist between the South Australian regulatory environment and the recommendations made in the 2018 Building Confidence report by Professor Shergold and Ms Weir. These gaps continue to exist with significant work needed to address matters that impact on public safety, consumer protection and effectual regulation of the building industry in South Australia.

Enclosed is a submission that we now provide to the expert panel outlining what these differences are together with our view about important reform work that should but currently is not contemplated in the current review.

It is our firm view that the current scope aimed at improving amenity outcomes should not proceed unless and until work needed to resolve safety and consumer protection outcomes has first been undertaken. We trust that, having had this issue brought to your attention that you and the expert panel are of a similar mind and act to advise the Minister accordingly.

Yours sincerely



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Australian Institute of
Building Surveyors

Submission

**Planning System Implementation Review
(SA)**

29 November 2022



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Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Professional Standards

The Australian Institute of Building Surveyors (AIBS) Professional Standards Schemes for Building Surveyors operates across all states and territories and is a legislative instrument that obliges AIBS, to monitor, enforce and improve the professional standards of members under the Scheme, thereby reducing risk for consumers of professional services.

The AIBS Professional Standards Scheme upholds the professional standards of Scheme Members, who are building surveyors, and ensures that clients have access to appropriately qualified and skilled building surveyor practitioners for representation and advice.

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Preparation

This submission has been prepared in response to public consultation on three discussion papers issued by the implementation review panel in October 2022.

Overview

The Australian Building Codes Board Building Confidence Report Implementation Taskforce produced model guidelines around the 24 recommendations of the 2018 report from Professor Peter Shergold and Ms Bronwyn Weir commissioned by the Building Ministers and commonly referenced as the Building Confidence Report.

In 2019, a communique was issued by Building Ministers following a meeting they held to discuss progress toward implementation of the recommendations in the Building Confidence Report. In that communique, South Australia's regulatory system was identified as having a series of gaps between what it provided and what has been recommended. These gaps have not yet been addressed.

As such, the Planning System Implementation Review Panel should be aware that there is an identified need to amend the Planning System to account for the known gaps and these matters, particularly those linking to life safety or consumer outcomes, should be included in the review scope and prioritised ahead of matters impacting local amenity and the like.

AIBS notes the range of additional matters that are not contemplated in the discussion papers and urges the panel to replace or, if resources allow the current scope to continue to be included, expand the scope of review to as many of the additional matters we have identified in this submission as possible.

AIBS notes also issues with as of right (Residential Code) development processes, land division processes, and dispute resolution mechanisms which could be addressed by this review if resources allow.

In detail

The following comments provide detailed descriptions of matters that have previously been identified as areas of reform required to better regulate the building industry in South Australia, together with additional issues identified by AIBS and its members. In particular, the following issues are raised:

- Recognition of professional standards schemes
- The Accredited Professionals Scheme
- Certificates of Occupancy
- Essential Safety Provisions
- Mandatory inspections
- Dispute resolution and licence renewal
- Life safety requirements in land division applications
- Licencing and registration of industry participants as per model national registration framework
- Complex buildings
- Brigade involvement
- Accountability of design and construction practitioners

Recognition of professional standards schemes in the process for registration of accredited professionals

Related to the panel's proposed review of the accredited professionals scheme, AIBS recommends the review scope be expanded to consider the role of professional standards schemes in the process of registration of accredited professionals.

A Professional Standards Scheme is a legislative instrument that obliges an occupational association to monitor, enforce, and improve, the professional standards of its members under the Scheme, thereby reducing risk for consumers of professional services.

A Scheme upholds the professional standards of Scheme Members and ensures that clients have access to appropriately qualified and skilled practitioners for representation and advice.

A Scheme ensures that Members are insured appropriately, participate in continuing professional development, adopt appropriate risk management strategies and processes and are subject to a complaints and disciplinary structure.

As an occupational association operating under a Professional Standards Scheme structure, this provides further assurance to Government that the occupational association is regulated under Professional Standards legislation and is not an organisation accountable only to its members.

An Occupational Organisation is accountable to governments across Australia through the Professional Standards Councils (PSC). The key requirement for an occupational organisation to satisfy the PSC that they are upholding their responsibilities is through the submission of an Annual Professional Standards Improvement Report, which, in turn, informs the PSC's Annual Report.

The Annual Report presents the PSC's work and activities over the past financial year, as well as the work of occupational associations in delivering on their professional standards schemes. It provides responsible Ministers and the community with assurance that occupational risks are being managed and association members are being held to high professional standards when delivering services to consumers across Australia.

In the Professional Standards reporting, one of the requirements for occupational associations is to report on professional risk management learnings or improvements, including but not limited to;

1. effects of any risk management strategies implemented in previous reporting years
2. demonstration of good practice in occupational standards
3. changes to occupational standards
4. improvements to member governance processes
5. developments relevant to the scheme
6. innovations implemented from analysing and responding to risks
7. projects enabling better consumer protection.

About the AIBS Professional Standards Scheme

After a great deal of work, AIBS was awarded the right to operate the Professional Standards Scheme for Building Surveyors. The AIBS Scheme was announced in the NSW Government Gazette on 21 May 2021, pursuant to section 13 of the Professional Standards Act 1994. The AIBS Scheme commenced on 1 July 2021 across all States and Territories, except for Victoria where it commenced on 1 September 2021. The AIBS Scheme has been approved for five (5) years.

The AIBS Professional Standards Scheme and the South Australian Government share the same goals - to ensure there are sufficient appropriately qualified, skilled professional building surveyors to perform their crucial role of ensuring the safety of the built environment.

The AIBS Professional Standards Scheme is a legislative instrument that obliges AIBS to monitor, enforce and improve the professional standards of its building surveying members under the Scheme, thereby reducing risk for consumers of professional services.

The AIBS Scheme upholds the professional standards of Scheme Members, who are building surveyors, and ensures that clients have access to appropriately qualified and skilled building surveyor practitioners for representation and advice.

The AIBS Scheme ensures that Members are insured appropriately, participate in continuing professional development, adopt appropriate risk management strategies and processes and are subject to a complaints and disciplinary structure.

The AIBS Professional Audit Program is a key competent of the Professional Standards Scheme. Our program of auditing will be effective and will enhance the credibility of the building surveying profession amongst government regulators, insurers, building professionals, and the community through its capacity to demonstrate that building surveyors who are AIBS Scheme members are upholding the public interest, adhering to consistent levels of practice and professionalism in their work. The program aims to provide a fair and equitable audit system that encourages the application of high standards of professional ethics and practices through consistent implementation and compliance with legislative and technical requirements. All AIBS Scheme members must comply with the requirements of the AIBS Audit Program.

Accredited professional scheme

The current accredited professionals scheme is adversely impacting co-regulation opportunities in South Australia and actively discourages professionalisation of building surveyors and in particular, joining a Professional Standards Scheme. By not recognising membership of a Professional Standards Scheme, Scheme members are effectively 'doubly regulated' under two sets of legislation that effectively seek to achieve the same thing – to ensure there are sufficient appropriately qualified, skilled professional building surveyors to perform their crucial role of ensuring the safety of the built environment and with that, increased consumer protection.

This duplication makes no sense and furthermore takes valuable resources from an already under-funded regulator where a specialist occupational association with a scheme approved under legislation, can achieve the same outcome in a co-regulatory partnership. As previously advised, the Regulator can take confidence that an Occupational Association with an approved Professional Standards Scheme is regulated under Professional Standards legislation and has a high level of accountability.

As the SA Accreditation Authority has done previously, and recently indicated its desire to contract professional organisations such as AIBS to undertake assessment of building surveyors for registration of building surveyors on their behalf, it is apparent that there is insufficient resources or capacity for Government to currently undertake this function on a wider scale. While AIBS are of the view there should always be an alternative for the Government to undertake this process and therefore have their own system, once again given their limited resources, it makes sense for the Government to actively encourage membership of a professional standards scheme where it is available.

AIBS are of the view that, like the proposed legislation in NSW, only professional bodies (i.e. those with an approved Professional Standards Scheme) are recognised as an equivalent scheme for the recognition of qualifications, experience and technical skills that is recognised by the Chief Executive for the purposes of regulation 16(2)(a)(i) of the Planning, Development and

Infrastructure (Accredited Professionals) Regulations 2019 (“the Regulations”). This would ensure that any recognised scheme and professional body operating a scheme is subject to appropriate oversight under professional standards legislation via the Professional Standards Councils.

There are multiple pathways potentially available to the South Australian government should it seek to implement changes with regard the future direction of the administration of the Accredited Professionals Scheme for building surveyors. We have provided a description of some of these in the appendix to this submission, inclusive of a high-level summary of the pitfalls with ideas that some have offered as ways forward with accreditation schemes.

AIBS recommends that the SA Government should actively establish and encourage a direct pathway to registration for people who are practicing members of an occupational association authorised to operate a professional standards scheme. This should also be the preferred pathway to registration and incentivised as this pathway demands little additional assessment and requirement by the South Australian government as the accreditation authority – and allows valuable government resources to be directed into more prioritised areas that require greater support. This migration from government responsibility for the provision of accreditation assessment services and CPD provision toward external provision of these functions of professional bodies under legislation will further support Government to operate in a more effective manner, yet still provide a high level of consumer protection and quality services.

AIBS notes that the NSW government has recently exhibited draft legislative reforms which propose an approach to credential recognition and registration of building surveyors to perform statutory roles in NSW that is consistent with that proposed by AIBS in this document. Adoption of a similar or identical process would also be appropriate and beneficial in the event that the requirements of the Automatic Mutual Recognition Act (Cth) 1992 are fully implemented in states and territories yet to do so with respect to building surveyors. This is because the qualification benchmarks and processes for building surveyors would be more uniform nationally, so that the South Australian government will not be liable to criticism from other jurisdictional governments should South Australian registered building surveyors cause issues in other jurisdictions.

Discussion Paper consultation question responses:

- 1. Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?*

No. AIBS members are of the view that the ability to assess a limited range of applications for planning consent is appropriate and provides an efficient service to the community and industry.

- 2. What would be the implications of only planning certifiers issuing planning consent?*

Because the service would be delivered by two separate accredited persons, most likely working for different organisations, there would be a reduction in the efficiency of the service currently provided, adding cost to affected development proposals, particularly through the additional application processing time that would be involved.

- 3. Would there be any adverse effects to Building Accredited Professionals if they were no longer permitted to assess applications for planning consent?*

Yes. The current service levels that are able to be offered would no longer be available. The current resourcing levels established to deliver this service would have to be redeployed to other work which could cause a level of redundancy for some, adversely impacting employment.

Certificates of occupancy

AIBS notes the history of requirements in the PDI Act 2016 and the Development Act 1993 which have both from time to time required a Certificate of Occupancy to be obtained for Class 1 buildings (houses). It is understood that a Certificate of Occupancy will again be required for Class 1 buildings so that the only classification for which a Certificate of Occupancy will not be required will be Class 10 buildings and structures.

AIBS supports this approach, noting that this will bring South Australia into alignment with every other Australian jurisdiction in this respect.

There are however several aspects of the process leading to the issue of a certificate of occupancy in South Australia that could be improved.

AIBS recommends a system where there is one simple clear cert of occupancy for all buildings. This certificate needs to be easily available to all statutory users of the system and the building owner. The system should be able to be updated and changed as changes occur to the building. For example, if there is a change in classification of an individual tenancy within the building this should be changed by the statutory building surveyor on approval for the tenancy. If there is an additional performance solution created as part of an application this should be updated on the Certificate of Occupancy by the statutory building surveyor. The Planning portal allows for this flexibility.

The review of the Certificate of Occupancy process should address matters identified in the ABCB's Model Guidelines document, including:

- Building complexity and if and how this might change the process
- Accountability of persons who perform building work to consumers irrespective of the absence of a contractual link
- Fire brigade involvement

In addition, AIBS recommends that the review consider how the process of authorisation of occupation can support the generation of a record of the history of a building / property that can assist in future development considerations and for other purposes.

Essential safety provisions

AIBS members have reported issues with the regulatory scheme related to essential safety provisions for many years. The most common issues arise in how the scheme deals with alterations and additions to an existing building that is subject to a schedule of essential safety provisions. Where the new work requires approval, it may cause a new schedule to be issued specifically related to the new work. If that work contains provisions that are not listed in the schedule that applies for the rest of the building, or the new work is approved without provisions that are required for the rest of the building, a conflict will exist.

Additionally, even when the scheduled items for alterations or additions are consistent with an existing schedule, the tendency to apply maintenance standards consistent with contemporary requirements at the time of issue of the new schedule often makes the two schedules inconsistent which can cause considerable frustration and difficulty in compliance.

The problems described above are most commonly experienced in multi tenancy buildings such as shopping malls, office towers and the like. It is not an uncommon issue and impacts metropolitan and regional development in the same way as it does developments that occur in the CBD.

Additionally, many shopping centre management schemes require each tenant to refresh their shop fit out periodically so that the number of schedules of essential safety provisions that are applicable for a big shopping centre can become very difficult to manage. The owners of such

centres must ensure that they are able to provide a certificate of maintenance each year, for which they will usually rely on the provision of evidence of maintenance from each tenant and contractors that have been employed by the centre managers for maintenance of common / communal areas.

The structure of the system therefore places considerable management burden on property owners and managers, and is also considerably more complex than it could be from a compliance and enforcement point of view.

As with Certificates of Occupancy, the planning portal should allow for a single certificate of occupancy to be established on a building. Where a statutory building surveyor undertakes an assessment of works at the site the statutory building surveyor can consider the existing Essential Safety Provisions and add or adjust any items which are relevant to the application. A Form 2 Certificate of Installation of Essential Safety Provisions will then be required just for the items which are added and altered. The form 3 Certificate of Maintenance of Essential Safety Provisions process is then also a simple process where each year the building owner only has to submit one form for all items in the building.

AIBS recommends that the processes and requirements for essential safety provisions be included in the review and that the following matters are also considered as part of that review:

- Sites with multiple buildings each with essential safety provisions that are required to be maintained – consolidation of schedules
- Buildings with multiple tenancies each with a separate schedule of essential safety provisions – consolidation of schedules

Mandatory inspections

AIBS notes that the ABCB's Implementation Taskforce published model guidelines to regulation of mandatory inspections in response to Shergold and Weir's Building Confidence report recommendation 19. South Australia currently requires inspections to occur for certain stages of certain classes of building, and permits only Councils to undertake mandatory inspections. The requirements in South Australia's legislation are not as comprehensive as the standard of inspection recommended. This was acknowledged by the South Australian government in a report to Building Ministers of 2019 summarising the differences between South Australia's system of regulation of the building industry and the Shergold and Weir recommendations.

Given that there is clear acknowledgement of a need to revise mandatory inspection requirements in South Australia, AIBS recommends that the review scope be expanded to consider firstly what should be subject to mandatory inspection and secondly what level of inspection should be required to be undertaken.

A further consideration should be given to expanding the scope of the review to consider the extent of involvement of the private sector in the undertaking of inspections.

AIBS notes that South Australia is alone among Australian jurisdictions in not requiring or permitting private involvement in the undertaking of mandatory inspections. Traditionally, there has been an argument about the need for independent review in the process which is facilitated by the involvement of local government during the construction phase to identify any defect in the assessment process and indeed the construction process. With the statutory requirements for auditing (including AIBS PSS members being audited) it seems that the auditing system should be the mechanism to ensure minimal defects in the assessment process.

With the state APS it can be as simple as requiring a number of mandatory inspections to be undertaken during construction (and some additional inspections based on the complexity of a project). It is then up to an applicant to engage an accredited professional, whether in Council or private practice to undertake these inspections.

Inspections could also be expanded to include engineers who currently already inspect the majority of residential footings.

In terms of involvement of private building surveyors in the conduct of mandatory inspections, we note there are views about how this could be addressed which we have summarised in the Appendix.

AIBS recommends a hybrid model of mandatory inspection responsibility. In this model, mandatory inspections are able to be carried out by private building surveyors and local government. This approach means that there are opportunities for additional inspections to be carried out that wouldn't have been able to be achieved, at least within the same timeframes, in a local government only model. This model also provides opportunities for the application of specialist skills in regions of the state where the skills available within the local council may not exist.

This approach ensures that the greatest number of mandatory inspections possible are performed in the most timely manner. This in turn delivers better consumer outcomes from an increased number of inspections performed and also through better alignment of skills of those performing the inspections to the complexity of the work being inspected. This comes from two influences, firstly, by engagement of private building surveyors in inspection work, the skills of those in the private sector can be accessed by councils for projects that they otherwise may not be able to access due to resource proximity issues. Secondly, where a private building surveyor is engaged to undertake mandatory inspections as well as performing a statutory assessment role, the practitioner with the most detailed knowledge of the development risks is able to apply that understanding through the inspection process.

Dispute resolution and licence renewal

AIBS notes that, after exhausting avenues with their builder, South Australia's dispute mechanism does not permit a consumer to engage with the Environment Resources and Development Court in order to access a compulsory conference process that might assist in resolution of contractual or like disputes between consumers and builders. Some builders provide dispute resolution options via arbitration clauses within contracts, but not all. South Australian consumers have fewer options than their counterparts in other jurisdictions so that they are more likely to need to resort to the legal system to achieve any result.

It is also noted that builders who frequently offend their clients are not identified to the licencing authority so that there might be consequences for poor consumer outcomes. Instead, the licencing authority is at best reactionary, when it could be considerably more proactive in its consideration of applications to renew a building or trade contractor licence. This too would drive better consumer outcomes, particularly where a dedicated dispute resolution process that supports fair consumer outcomes was also in place that could act to inform the licencing authority of issues with licenced practitioners.

AIBS believes there is likely considerable value to be derived from consideration of this issue as part of the review scope and recommends that it is added to the scope of work the panel will consider.

Life safety requirements in land division applications

Land division applications for buildings where essential services that serve both communal and private areas are inconsistently considered with respect to the strata or community body rules that are established to ensure maintenance access is included in by-laws approved with the land division, common property definitions etc. There are significant safety implications for ongoing use and occupation of buildings where maintenance of essential safety provisions cannot fully, properly

or completely be carried out when required. If the land division is not properly established to account for the access that is required to perform required maintenance, significant compliance or indeed safety issues can arise.

Whilst powers exist within the PDI Act and Regulations that facilitate appropriate steps being taken, these are inconsistently understood and applied across South Australian jurisdictions. AIBS recommends that the panel give consideration to inclusion in the scope of the review of measures to improve understanding and consistency of practice regarding how fire and life safety considerations are accounted for with land division applications.

Other BCR recommendations

In addition to the elements described above, there are other key recommendations of the 2018 Shergold and Weir building confidence report where the South Australian regulatory system is yet to be amended to address the recommendations. AIBS believes that it is important that the panel consider adopting the model guidance provided by the ABCB Implementation Taskforce as part of the scope of the review, particularly with respect to the following elements of industry regulation:

- Licencing and registration of industry participants as per model national registration framework
- Complex buildings (model guidelines by ABCB Implementation Taskforce)
- Brigade involvement (Stakeholder response, mandatory referral response, role definition)
- Accountability of design and construction practitioners (including to subsequent owners of apartments)

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.

Appendix

The following discussion points reference sections of the submission as noted:

Accredited Professionals Scheme

Pitfall pathway 1: Change nothing – which will maintain full involvement of the South Australian government because external support for assessment of credentials and provision of continuing professional development will diminish or cease completely so that the South Australian government will become the sole entity responsible for assessment of credentials and provision of training.

This pathway requires extensive resourcing to administer the scheme, but also to monitor the qualification framework referenced in the scheme to ensure ongoing relevance. There is also a need to resource and undertake auditing of accredited professionals and to monitor the conduct of persons who work in South Australia via an Automatic Mutual Recognition process.

The resourcing required is further increased by the effect of the absence of professional associations, which have been left to wither within this environment, who would otherwise work to improve professional practices, skills and knowledge.

Pitfall pathway 2: Require maintenance of external accreditation as ongoing evidence of credentials with each renewal of status as an Accredited Professional – which will provide an incentive for practitioners to maintain membership with professional associations recognised within the AP Scheme as accreditation bodies, sustaining a capacity for professional associations to provide training and accreditation services to members.

This pathway does not adequately incentivise participation in a professional standards scheme where such is available in a market place that also includes associations that provide accreditation services. As such, the impact of this approach is to diminish and potentially cause professionalisation to become unviable, representing a poorer outcome for consumers and also for the government who will be required to maintain a greater level of resourcing than would otherwise be necessary within a true co-regulatory environment.

Certificates of Occupancy

Pitfall pathway 1: Status quo + industry awareness – the government could maintain the current occupancy certificate system (subject to expansion to Class 1 buildings) and also conduct an industry awareness campaign to ensure that practitioners work more diligently to discover any conditions etc. of relevance that are to be maintained on subsequent partial occupancy certificates.

This approach will not cause all to change their behaviour and the majority will follow the lowest common denominator approach that the regulator tolerates. It is therefore unlikely to improve safety or consumer outcomes.

Pitfall pathway 2: Change the current process by adding a new responsibility – the government could require certificates to include base building information where this exists, compelling the inclusion of any conditions on previous certificates of occupancy to be repeated on newer partial certificates when issued.

This pathway maintains the current decentralised information keeping approach. It is therefore less efficient to operate and represents an unnecessary compliance cost burden that is passed on to consumers and provides insufficient benefit to justify the higher cost approach.

Mandatory Inspections

Pitfall pathway 1: Status quo – all mandatory inspections are only able to be carried out by local government. This option could explore the opportunities for expanding the resourcing of mandatory inspection within local government, either by a conditional funding model which reduces the cost shift to local government for implementation of State legislation, or by mandating minimum levels of inspection to be performed.

In any event, this pathway is limited in its capacity to deliver levels of inspection needed by the limitation of local government's capacity to undertake inspections of the range of buildings approved in each local government area. The skills and knowledge of building surveyors within local government is supported by this approach, however where projects that are beyond the available skillset, local government is forced to import contractors to undertake inspections or to decline to inspect.

Pitfall pathway 2: Singular responsibility model – the entity that approved the work should be compelled to also conduct all mandatory inspections. This model would likely reduce the numbers of mandatory inspections required to be performed by local government, with this responsibility shifting to private building surveyors for the majority of developments. In order to support this approach, a significant transition period would be necessary.

Additionally, this approach diminishes the support for local government to maintain skilled building surveyors within their staff with implications for the capacity of local government to respond to compliance and enforcement responsibilities.