



Australian Institute of Building Submission to the

IPART Review of Reforming Licensing in NSW

Introduction

The Australian Institute of Building (AIB) welcomes the opportunity to respond to the *IPART Review of Reforming Licensing in NSW*. The AIB is keen to see more efficient and thorough licensing regulation in the construction industry, and welcomes this review.

Vision

The vision of the AIB in regards to this review is to ensure that:

- The building sector in NSW is improved through higher educational standards and appropriate regulation; and
- The building industry is a viable and growing sector for the benefit of the state, consumers and builders.

Priorities for licence reform

The AIB strongly advocates that builders' licensing is necessary and should remain in place. Builders' licensing protects the public and consumers, and is in the interests of New South Wales.

Other key recommendations that the AIB advocates in regards to licensing in NSW are:

- The Director of Licensing should control policy in regards to licensing;
- Building professionals and the building industry should be able to deal with policy officers who have a very good understanding of their departments, statutes and regulations; and
- It would be preferable if the relevant Assistant Commissioner for Builders' Licensing could draw upon the advice of the Director of Licensing without that advice being prejudiced from the department's own internal third parties.

1 Which licences have the greatest effect on business (including small business) and the community?

Builders' licensing has a definite positive effect for the community. There reasons for this are:

- 1.) Public safety depends on construction which is of high quality, structurally sound and meets all federal, state and local regulation;
- 2.) The investments that members of the public make in having homes built is probably the largest investment that they will make in their lives. There needs to be surety of clients' financial investment, whether it be for a family home or a commercial concern.
- 3.) The building industry represents 8 per cent of the economy and is the nation's largest employer.

However, while AIB is strongly in favour of builders' licensing, we also believe that some reforms are necessary.

2 Which factors or criteria can we use to identify licences that should be removed or reformed?

The licences which should be removed are those which:

- Provide no consumer protection or benefit, or
- Which do not assist consumers receive a service.

3 Which specific licences are unnecessary? Why?

AIB advocates a policy by which the registration of architects comes under the banner of one building regulator, as has been proposed in Victoria, and deemed as essential in that state. If this does not occur, then the NSW Government should consider the deregulation of the architecture profession in NSW. This is because under Fair Trading's consumer building guide requirements of building contracts, it is the builder, and not the architect, who is required to take responsibility for all the plans and compliance issues.

Currently, there are no tangible benefits of the licensing/registration of architects. It is the view of the AIB that as architects are not at present effectively regulated to take responsibility for their own work, then they should be deemed a trade and not a profession.

The relevant clauses which illuminate the current anomaly in the system are on page 8 of Fair Trading's Consumer Building Guide, and are as follows:

Compliance with laws

9. *A clause that states the work, or components, will comply with the Building Code of Australia, to the extent required under the Environmental Planning and Assessment Act 1979, all other relevant codes, standards and specifications that the work is*

required to comply with under any law, and the conditions of any relevant development consent or Complying Development Certificate.

10. A clause that states that the contract may limit the liability of the contractor to comply with the clause referred to immediately above if the failure relates solely to a design or specification prepared by or on behalf of the owner, or a design or specification required by the owner, if the contractor has advised the owner in writing that it contravenes the clause referred to immediately above.
[AIB's underlining, bold and italics.]

Fair Trading's Consumer Building Guide can be accessed via the following link:
http://www.fairtrading.nsw.gov.au/pdfs/About_us/Publications/Consumer_building_guide.pdf

The above clauses effectively negate any liability by any architect.

It is, therefore, the builder and not the architect or engineer which takes effective responsibility for the design of a building's detailing and structure, even though he or she may have had no input or control of their work. The builder is being required to be an unpaid quality assurance service for the architect and engineer, even though he or she has no right of action against them for defective work and may not have even have engaged them.

4 Which licences include unnecessary or excessive requirements? Why are they unnecessary or excessive and how should they be reformed?

With regard to builders' licensing, the premise of this question is misplaced, and the question should also be asked if any new licenses would be in the interests of the state of New South Wales.

New South Wales remains one of the easiest jurisdictions in Australia to obtain a builder's licence. Further, builders' licences in NSW are purely for residential work, whether that be for a fifty-storey apartment block or a home extension. The absence of graded licences to cover all the various types of construction work is a situation that needs to be addressed by the NSW Government as soon as possible, and would have great community benefit.

Also, the fact that a trades' licence can be acquired without a candidate or applicant being required to acquire a Cert IV Building & Construction (Trade Contracting) is of great concern, and AIB is of the view that this situation should be addressed without delay.

5 Which licences are not efficiently administered?

AIB advocates that the NSW Government acknowledge and accept proven industry instruments, such as the National Building Professionals Register (NBPR), as a means of evidencing a license applicant's experience and qualifications. Also, proven industry and academic instruments such as those degrees accredited by the AIB should also be seen as fulfilling the educational criteria for builders licensing. Further, it should be noted that the current TVET and TAFE qualifications articulate only into AIB accredited degrees, as has been the case with their predecessors for some 60 years.

How can administration be improved?

AIB advocates that the public sector should not be required, and the taxpayer should not be expected, to expend valuable resources to record evidence and appraise an applicant's

experience, when this is currently being undertaken by industry, and when such information is available to be easily accessed by the relevant regulators.

AIB is also of the view that the Building Professionals Board, builders and trade licensing, and the Architects Registration Board should all under one 'umbrella' organisation, without artificial 'silos', or divisions between them. This is so the consumer is not confused by contradictory, and often entirely omitted, regulations affecting their access to the building sector.

AIB will not be offering a view on the following questions in the discussion paper:

Framework to assess licences

6 Would PwC's draft framework and guide be effective in:

- identifying or preventing unnecessary licences**
- ensuring that licences are well designed**
- ensuring that licences are efficiently administered?**

7 Can PwC's draft framework and guide be effectively applied by regulators when proposing new licences and reviewing existing licences?

8 What improvements can be made to PwC's draft framework and guide?

9 Which case studies should we use to test PwC's draft framework and guide?

Estimating the impacts of our recommendations

10 Which administrative tasks are required by your licence(s)? What costs do these impose on you, or how much time does it take to complete these tasks?

11 Which (if any) of these administrative tasks are unnecessary or inefficient? What additional costs do these impose on you, or how much time does it take to complete these tasks?

12 What do you need to do to comply with your licence? What costs do these requirements impose on you?

13 Which (if any) of these compliance requirements are unnecessary or inefficient? What additional costs do these impose on you?

14 Which fees or charges does your licence(s) impose?

15 Which (if any) of these fees and charges are too high or unjustified?

16 Have you experienced significant delays with your licence? What were the cost implications for you or your business?

17 Which licences impede efficiency and economic activity? How?

18 Do you have any information on indirect impacts (positive or negative) of specific licences?

19 Do you have any other information that will assist us in estimating:

- costs of specific regulatory burdens arising from licensing activities?
- cost savings from potential reforms to licences?

Other issues or comments?

20 Do you wish to comment on any other issues relevant to this review?

Further Information

For further information, please contact the AIB Chief Executive Officer or Policy & Advocacy Manager on (02) 6247 7433 or ceo@aib.or.au or policy@aib.org.au

Appendix 1

About the AIB

Founded in 1951, the AIB is the peak body for building and construction professionals, acknowledged for its ability to bring individuals together who share a common interest in improving the standing of the building profession and their career within Australia and overseas.

The AIB is incorporated by Royal Charter and is the pre-eminent professional body for building professionals in Australia and the Asia-Pacific region.

Recognised as the accrediting body for building and construction degrees at educational institutions, the AIB has a long and proud history of supporting and servicing the building profession. For more than sixty years, the Institute has worked with the building and construction industry, government, universities and allied stakeholders to promote the building profession, support the development of university courses in building and construction whilst promoting the use of innovative building techniques and a best-practice regulatory environment.

AIB is proud of its role in promoting the exchange of information amongst individuals and accomplishes this through publications including the *Construct* magazine and the Australasian Journal of Construction Economics & Building (AJCEB).

The AIB also has an extensive continuing professional development program in Australia and overseas and facilitates the annual AIB Professional Excellence in Building Awards Program.

For further information please go to www.aib.org.au