

Ms Simone Lieser
Assistant Policy Officer Industry Regulation Policy
NSW Fair Trading
2-24 Rawson Place
Sydney NSW 2000

By email to - Simone.Lieser@services.nsw.gov.au

Re: **Section 18F of the Draft Act**

Dear Ms Lieser

Thank you for the opportunity to make comment on the wording of proposed changes to the Home Building Act through the Home Building Amendment (Review) Bill 2013.

Observations of the Draft Section 18F

The Australian Institute of Building (AIB) has significant concerns with the proposed definition of 'building professional'. The term as expressed in the discussion paper is dangerously vague, and will cause not only considerable confusion, but will potentially lead to adverse results for the community.

Of most concern is the lack of any independent verification of 'representations' made by individuals relying on clauses 4 (a), (b) and (c). To claim to act as a 'professional' one must be assessed to a professional level by an appropriate professional body – **and as demonstrated below, we believe that the proposed changes will in fact diminish certainty, as well as public and consumer confidence in the Act, and give rise to unintended consequences.**

In medicine, law, accounting, financial planning and many other 'professions' there are clear independent assessments that individuals must achieve in order to 'represent' themselves as a recognised professional.

These safeguards are in place for the sole purpose of protecting the community and ensuring there are minimum entry standards to meet.

Further when you consider that:

- **Unlike architects and surveyors, that there is no statutory definition (outside of Queensland) of who may call themselves and engineer;**
- **The only legislation that has currency in NSW that seeks to define engineering in any way is federal legislation that defines licensed aircraft engineers;**



- unlike our members who **do** comply with NSW Fair Trading's educational criteria for a building contractor's licence by possessing a:

Degree in Building, Construction, Construction Management, Construction Economics, Applied Science (Building), or Quantity Surveying from an Australian University which requires the applicant to undertake the equivalent of 4 years' full time study and a mandatory work placement.

Refer: http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Home_building_licensing/Licence_classes_and_qualifications/Building.page?

engineers and architects in this and other jurisdictions are required to obtain TVET qualifications in building to fulfil the educational criteria to acquire a building contractor's licence in NSW and most other jurisdictions – so they could hardly be said to be *building professionals*;

- when you consider that unlike building, no TVET qualification in engineering, architecture, or surveying are even considered relevant to obtaining any sort of trade contractor's licence, let alone building contractor's licence in this and other jurisdictions – **engineers, architects nor surveyors could not therefore be said to *building professionals***;
- and given that no experience in engineering (regardless of discipline), architecture, or surveying (regardless of type) are even considered relevant to obtaining any sort of trade contractor's licence, let alone building contractor's licence in this and other jurisdictions – **engineers, architects nor surveyors could hardly be said to *building professionals***;

then it is clear that Draft Section 18f needs to be **considerably** improved to provide some level of certainty to the public and consumer.

Further given that the **engineering profession** is not defined by any State statute in NSW or any jurisdiction outside of Queensland:

- which disciplines of the engineering profession are pertinent under the Act – are aeronautical, chemical, mechanical, software engineers etc. are to be included?
- are aircraft engineers, as defined by Federal legislation (as opposed to professional aeronautical engineers) to be included?
- are Naval Architects (the traditional term for ocean vessel designers) to be specifically excluded as they are from the definition of 'Architect' under the Architects Act 2003?

Refer: <http://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20ILLEGAL%20USE%20OF%20THE%20TITLE%20'ARCHITECT'%201.pdf>

And what of so called 'Acoustic Engineers' and 'Fire Safety Engineers'?

- The only degree in NSW and indeed Australia for acoustics is Sydney University's *Master of Design Science (Acoustics and Audio)* conducted not by its engineering faculty nor is accredited in any form by Engineers Australia, but rather the Faculty of Architecture and Planning – the majority of its students do not possess any engineering degree and hence are ineligible ever to describe themselves as chartered engineers - but instead they have long been eligible to acquire *Chartered Building Professional* status as appropriately qualified and experienced individuals through the National Building Professionals Register (as opposed to the National Professional Engineers Register to which those without an Engineers Australia accredited or recognised degree bachelor degree are ineligible to join).



Similarly the only degree in NSW for fire safety is UWS's *Master of Fire Safety Engineering* which is not accredited in any form by Engineers Australia – the majority of its students do not possess any engineering degree and hence are ineligible ever to describe themselves as chartered engineers - but instead they have long been eligible to acquire *Chartered Building Professional* status as appropriately qualified and experienced individuals through the National Building Professionals Register (as opposed to the National Professional Engineers Register to which those without an Engineers Australia accredited or recognised degree bachelor degree are ineligible to join).

Also, what type of surveyor is to be regarded as a building professional?

- Given that **quantity surveying** is a discipline of the building profession, and that degrees in such (which like degrees in all the disciplines of the building profession are accredited by the AIB) do and have long fulfilled the educational criteria for a NSW Building Contractor's Licence we could hardly object – **but the fact remains that there is no statutory definition of that discipline outside of Victoria, and that only the AIB and the AIQS through the National Building Professionals Register provide the industry and professional benchmarks for that discipline by Chartered Quantity Surveyor status for appropriately qualified and experienced individuals.**
- Similarly, **building surveying** is a discipline of the building profession, but there is no mention of A1, A2 or A3 certifiers as defined by the NSW BPB, let alone that again **it is only the AIB and in this instance the AIBS through the National Building Professionals Register provide the industry and professional benchmarks for that discipline by Chartered Building Surveyor status for appropriately qualified and experienced individuals.**

It should be noted that it is the AIB's accredited degrees at UNSW, Newcastle, UTS and UWS which fulfil the educational criteria for these disciplines of the building profession.

- **But both Land and Mining Surveyors, who alternatively complete a Bachelor of Surveying (Newcastle) or a Bachelor of Engineering (UNSW) who are defined by the Surveyors Act 2002 are by definition professionals but not building professionals.**

Recommendation

The construction industry is deemed to be a high risk industry and robust independently assessed registration procedures are of paramount importance. The general public have a right to feel safe when they traverse amongst and inside the built environment. Without the proper safeguards, as evidenced in other countries, public safety will continue to be at risk and costs to the community of substandard work will continue to skyrocket.

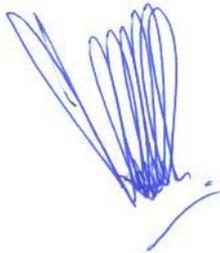
It is the strong recommendation of the AIB that your department seriously consider grasping this opportunity in the review to properly and accurately define the term '*building professional*' and preferably use the term '*relevant professional*' in this vein we put forward the amended wording as per Appendix 1 to this letter.

Further, it highly inappropriate, that those who hold higher qualifications (e.g. a doctorate in engineering or a degree in landscape architecture) are not held accountable when those who might hold the minimal qualifications for a trade contractor licence (such as a mere Cert III in Horticulture with no formal apprenticeship let alone post qualification experience, as is the case for a licence as a Structural Landscaper [it is a similar situation for trade licences as carpenters, bricklayers etc – there is no specified experience requirement that exists for trades such as plumbing]) are held directly liable for the designs and instructions of those who are (and are permitted to imply) that they are more highly qualified than even the building contractor.

Builders with the minimum qualifications (a carpentry or bricklaying Cert III trade certificate with Cert IV certificate in building) should not be expected to have to challenge, let alone prior to the works in question, the design details of an architect who purports (through the benefit of a 5 year double degree, at least 2 years post graduate experience, and the successful completion of exams to become a registered Architect) just to have some form of defence for following the architect's details in the first place.

All licence holders should be able to depend upon the drawings, specifications and instructions issued by a 'relevant professional' as defined in Appendix 1 attached to this submission.

The AIB is most grateful for the department's early consultation on this matter and we remain committed to assisting wherever possible to make the most of this timely review of the Home Building Act.



Robert Gordon Whittaker FAIB

Adjunct Fellow – School of Mathematics Computing and Engineering – the University of Western Sydney

Adjunct Professor – Faculty of Business Government and Law – University of Canberra

National President

January 16th 2014.

APPENDIX 1

AIB Submission to Department of Fair Trading on proposed definition of 'Relevant Professional' (in lieu of 'Building Professional')

4. In this section, **relevant professional** means a person who is any one of the following:
- (a) i. Professional Engineer, those:
 - who are eligible to become a Chartered Professional Engineer with Engineers Australia (IEAust incorporated by Royal Charter 1938);
 - who are registered upon the National Professional Engineers Register in Category 3 (Civil and Structural);
 - who are registered as a C7 Certifier (structural engineering compliance) under the Building Professionals Board Act 2005; and
 - who are registered as a C12 Certifier (geotechnical engineering compliance) under the Building Professionals Board Act 2005.
 - ii. Professional Architect, those who are registered under the Architects Act 2003.
 - iii. Professional Surveyor, those:
 - who are registered under the Surveyors Act 2002
 - who are registered as a B1 Certifier (subdivision certification) under the NSW Building Professionals Board Act 2005
 - who are registered as a D1 Certifier (strata certification) under the NSW Building Professionals Board Act 2005
 - iv. Building Professionals, those:
 - who are registered upon the National Building Professionals Register as a Chartered Building Professional;
 - who are registered upon the National Building Professionals Register as a Chartered Building Surveyor;
 - who are registered as A1 (building surveying grade 1), A2 (building surveying grade 2), and/or A3 (building surveying grade 3) Certifiers under the Building Professionals Board Act 2005;
 - who are registered upon the National Building Professionals Register as a Chartered Builder;
 - who are registered upon the National Building Professionals Register as a Chartered Quantity Surveyor; and
 - who are registered as a C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C13, C14, C15 or as a C16 Certifier under the Building Professionals Board Act 2005.
 - v. Professional Landscape Architect, those:
 - who are eligible for full corporate membership of the Australian Institute of Landscape Architects; and
 - who are eligible for full corporate membership of the Australian Institute of Landscape Designers and Managers.

- vi. Professional Planner, those:
- who are eligible for full corporate membership of the Planning Institute of Australia; and
 - those who are employed by local government or a statutory authority as such.

(b) **As per proposed draft**

(c) **As per proposed draft**
