

# AUSTRALIAN STEEL INSTITUTE RESPONSE TO THE BUILDING STRONGER FOUNDATIONS DISCUSSION PAPER

## Introduction

The Australian Steel Institute (ASI) welcomes the opportunity to respond to the NSW Government's initial response to the *Building Confidence Report*.

The Australian Steel Institute (ASI) is the nation's peak body representing the entire steel supply chain, from the manufacturing mills right through to end users in building and construction, heavy engineering, and manufacturing. A membership organisation, the ASI provides marketing and technical leadership to promote Australian-made steel as the preferred material to building, construction and manufacturing industries and policy advocacy to government. Our activity covers advocacy and support, steel excellence, standards and compliance, training, events and publications.

Over the past number of years there has been significant dislocation in the building construction regulatory environment, precipitated in particular by a procurement environment that has opened up under Australia's World Trade Organisation obligations for free trade which has permitted the use of cheap noncompliant building product (**NCBP**) that has demonstrably put the NSW community at risk.

Whilst the outcomes undoubtedly provide the consumer and builder with a plethora of cost effective alternatives sourced internationally, it is a practical reality that regulation has not kept up with this changed procurement environment.

A plethora of forums, discussions, working groups and reports sponsored variously by professional organisations and Government have followed, the latest and most definitive being the Shergold and Weir *Building Confidence* report<sup>1</sup>.

With Australia's construction industry regulatory environment reaching a critical tipping point, ASI believes government and industry must work together to implement the viable, cost-effective solutions available.

Various state governments are currently in the process of examining and implementing a number of the recommendations from Shergold and Weir, which is a step in the right direction.

Some States have published the outcomes of these reviews. In others, ASI has been in discussion with the regulators on the planned approaches.

The outcomes are promising, but it is also evident that there are some real issues of concern:

1. The recommendations from Shergold and Weir should be adopted in a sensible totality. There appears to be a tendency for some 'cherry picking' of the easier options by some States. Selection of only some of the recommendations will leave holes in other areas and put undue pressure on those doing the right thing;
2. There is a significant focus on registration of various parties in the supply chain, undoubtedly seen as an easier option from those on offer. The 'big stick' of deregistration can then be used to ensure policing of the construction industry players. Whilst this may be considered part of a total solution, it avoids the

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[https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

reality that the best approach should focus on ensuring noncompliant product does not enter the supply chain to start with; and

3. There is a tendency to try to avoid fundamentally changing regulation and other more involved options, with a focus on 'quick fixes'. The problem is significant, and our community deserves better than quick fixes in the medium to long term.

ASI notes this consultation is designed to give business input to allow the NSW Government to draft legislation to be introduced to Parliament.

It is understood the current proposals will:

- require buildings to be designed and constructed to plans that fully comply with the Building Code of Australia;
- require all building practitioners, including building designers, architects and engineers, be registered to ensure they have the appropriate skills and insurance, and can be held accountable for their actions;
- introduce a new industry-wide principle of duty of care, enabling home owners to seek compensation if a building practitioner has been negligent; and
- appoint a Building Commissioner, who will regulate all aspects of the NSW building industry, and have the power to investigate and take disciplinary action for improper conduct.

As with any legislation, the devil is always in the detail.

ASI will carefully consider the legislation produced as a result of this consultative process.

So that a best practice piece of legislation is introduced into Parliament, ASI strongly recommends a consultation draft of the legislation be circulated prior to introduction to ensure that imperfections (particularly in relation to a broad imposition of a duty of care on the industry) can be identified and corrected.

### **An important insertion into the legislation: mandatory third party certification of safety critical construction products**

There is one area not covered in the proposed amendments to the law that should be considered at this early stage in NSW's implementation of Shergold and Weir.

In November 2013 the Australian Industry Group reported a lack of independent verification and visible regulatory authority is making the conformance framework ineffective and unfair, with 92% of 222 respondent companies NCBPs in their market sector.<sup>2</sup>

A subsequent report from the Australasian Procurement and Construction Council outlined 12 principles for improved procurement outcomes (including 3<sup>rd</sup> party certification) and provided a listing of available certification schemes.<sup>3</sup>

**ASI is therefore of the opinion that mandatory third-party certification of safety critical construction products is a necessary component of a total solution to the building construction problems in Australia.**

Assessing the compliance of construction products is a complicated and difficult field with few in the supply chain adequately trained to properly assess compliance, regardless of whether they are registered or not.

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<sup>2</sup> AIG *The Quest for a Level Playing Field: The Non-Conforming Building Products Dilemma* (2013): [https://www.aigroup.com.au/policy-and-research/standardsregulation/researchproject/REPORT\\_NCP\\_FINAL.pdf](https://www.aigroup.com.au/policy-and-research/standardsregulation/researchproject/REPORT_NCP_FINAL.pdf)

<sup>3</sup> APCC *Procurement of Construction Products A Guide to Achieving Compliance* (2014): [https://docs.wixstatic.com/ugd/473156\\_54e042e91f914e81a2e55b6a9bbbc301.pdf](https://docs.wixstatic.com/ugd/473156_54e042e91f914e81a2e55b6a9bbbc301.pdf)

Open borders to trade means heightened scrutiny and policing is required, and third-party certification is the most powerful and expedient tool available.

An example of what could be done is the ASI '**National Structural Steelwork Compliance Scheme**' (NSSCS), a third-party certification scheme for fabrication and erection of structural steelwork in buildings and structures.

The NSSCS covers the scope of AS/NZS 5131, including supply of steel material, forming, cutting, holing, welding, bolting, surface preparation, corrosion protection and erection. One overarching certification is a sensible and cost-effective approach compared to multiple certifications to only certain aspects of fabrication.

That said, however well voluntary certification schemes may operate, it is clear that a mandatory scheme is necessary to ensure the use of safe building components in the building industry.

ASI therefore calls on the Government to insert into its proposed legislation provisions requiring that only products certified by an approved third party certifier as conforming to relevant standards specified in the Building Code of Australia in the construction of a particular structure are used.

This is a necessary accompaniment to the proposal to require buildings to be designed and constructed to plans that fully comply with the Building Code of Australia.

After all, it is better for provisions that require products certified as meeting standards *before* a building is erected rather than take action after an incident such as Opal Tower occurs because of the use of inferior building products.

### **Insurance**

As is well known, the Australian Institute of Building Surveyors recently announced that building surveyors will soon no longer be able to obtain exclusion free Professional Indemnity insurance policies.<sup>4</sup>

The last insurance companies to provide exclusion free professional indemnity insurance are introducing exclusions, either for external cladding or more generally for all NCBPs, presumably a consequence of the recent high profile failures. If this is not resolved, many private certifiers will not be able to practice, resulting in severe dislocation to an already strained building construction industry.

Current government proposals under consideration propose permitting certifiers to have professional indemnity insurance with exclusions. This is a short term expedient fix that does not address the fundamental problems.

The Government must ensure that practitioners can gain suitable insurance cover before making significant changes to building legislation.

### **A further opportunity – harmonisation of building and WHS laws**

Non-compliant construction products are a demonstrable risk to the health and safety of the community.

Workplace Health and Safety (WHS) Regulation laws prescribes a 'duty of care' for all persons conducting a business or undertaking that is involved in the construction of a building.

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<https://www.aibs.com.au/Public/News/2019/MemberCommuniqueProfessionalIndemnityInsuranceUpdate.aspx>

Safety outcomes would be further enhanced if relevant WHS Regulations and the relevant Codes of Practice (particularly the 2012 *Safe Designs of Structures Code of Practice*<sup>5</sup>) drew the connection between non-compliant building products and risk-minimised WHS outcomes more definitively.

Resources should be found to fund this relatively straightforward review process so the revised WHS Code of Practice can be considered for adoption as soon as possible.

### **Conclusion**

Regulations must be fit-for-purpose and retain public confidence in the building and construction sector.

ASI believes that a solution to the regulatory dislocation is in sight, but it will require both Government and industry to work together. While industry can assist it is critical that Government provides and supports the regulatory and commercial ecosystem that will ensure reforms in building practices gain traction.

### **Australian Steel Institute**

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<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/698/Safe%20Design%20of%20Structures.pdf>