



24 July 2019

Attention: Policy Officer
NSW Government Fair Trading

By Email: BCR@finance.nsw.gov.au

ACA SUBMISSION – BUILDING STRONGER FOUNDATIONS DISCUSSION

ABOUT US

The Association of Consulting Architects (ACA) represents architectural practices in business and employment matters. The ACA has been actively concerned about issues of building quality, procurement, certification and regulation for some time.

OUR SUPPORT

Through our membership of the Australian Construction Industry Forum (ACIF) we have long advocated for uniform registration and licensing of building professionals and a national approach to the current problems in the construction industry. We note that architects are one of the only building practitioner groups in Australia that have uniform registration requirements, common examinations, similar independent regulatory Boards, codes of ethics and disciplinary procedures.

We have provided input into the submission lodged by the Australian Institute of Architects and offer general acceptance for that submission.

OUR SAY

We wish to make the following additional and specific comments on the discussion paper.

A) Culture in the Development and Construction Industries

We note that the majority of issues reported relate to speculative, multi-storey residential developments. The Building Confidence Report notes the pressures to reduce cost and time through reducing quality, and while the issues dealt with in the discussion paper address the technicalities of certification, compliance, and duty of care, we strongly urge the NSW Government to ensure that these areas of responsibility are part of the Building Commissioner's duties.

B) Use of the term “building designers”

We wish to point out that the term “building designer” has specific meaning and is used by those who may design buildings but are not architects registered in NSW. In standard use, it is not an all-encompassing term, and does not include architects, engineers, builders, specialist services trades and the many other consultants and subcontractors that are involved in some aspect of design and utilise a broad range of skills in the process.

As such, the use of the term “building designer” in legislation is likely to cause confusion. The Shergold-Weir term “building practitioner” is more accurate, and we recommend that this be used instead.

C) Declaration or certification of compliance with the BCA (Questions 1–4)

The issue of compliance extends beyond complying with the Building Code. Materials can be substituted that comply but that significantly reduce the durability of the building or increase the recurrent costs for future owners.

Compliance needs to be approached on two levels.

1. Compliance with the Building Code of Australia

Compliance with the Building Code is and should be the responsibility of the building surveyor, even if the regulations need to be tighter to ensure full independence from the builder and prevent external pressures on building surveyors.

2. Compliance with the construction documents and specifications

Compliance with the construction documents has traditionally been the responsibility of the architect and their subconsultants. Procurement methods such as novation and design and construct have changed the role of the architect to become agent of the builder. This removed the architect's traditional ability to act as arbitrator of compliance and quality.

The architect is the only professional within the building process that has the education, broad-based skills and knowledge of the project history to fulfil this role. Architects are best placed to interpret and determine the intent of construction documents and specifications. To ensure compliance, the independence role of the architect must be reinstated.

D) Statutory Duty of Care (Questions 26–30)

The ACA believes that this proposal requires further discussion prior to implementation. Similar concepts such as “fit for purpose,” have proved to be problematic in the past simply because, as designers, architects are not often briefed on all the purposes that our designs may be subsequently used for. The ACA would welcome the chance to engage further with the Government on this issue to ensure that the laudable aims of protecting consumers can be met without creating unknown risks and liabilities to architects.

E) Integrated Procurement

The Building Confidence Report makes it clear that increasingly fragmented processes for procuring and delivering complex building projects are compromising the built outcome, to the detriment of all. The experience of ACA members backs up this finding. Current processes need to be carefully and thoroughly investigated with a view to consolidating and integrating procurement processes. This is a crucial step in achieving a safer, better quality built environment.

Design and construct is a procurement form that has the potential to shift risk and cut cost to improve profits. It is often at odds with whole-of-life approaches, particularly when the ultimate owners (in residential projects) are not involved in the process.

The ACA strongly advocates for better procurement processes throughout the lifecycle of the project. The independent role of the architect must be acknowledged, and architects look forward to working cohesively with other building practitioners as part of a coordinated and transparent model.

We would appreciate the opportunity contribute to the working groups on declaration of plans and statutory duties of care.

Yours faithfully

Agi Sterling
ACA NSW/ACT Branch President

John Held
ACA National President