Submission to the “Discussion Paper”

A personal opinion or view

Edmund Burke:
“Wise men will apply their remedies to vices, not names … otherwise you will be wise historically, a fool in practice – You are terrifying yourself with ghosts and apparitions, whilst your house is the haunt of robbers.”

An earlier Minister of Planning - Frank Sartor had identified years ago when grappling with similar questions of regulation producing “not best practice outcomes”. He came to the conclusion that the minimum educational requirement to gain initial employment in the area of “certification” was a four year undergraduate degree in a building / construction management to act as a designer (architectural and engineering disciplines) supervisor or certifier on the very buildings now causing vexation to the Parliament of NSW. He also used the word “puissant” to the resistance of change he encountered when trying to advance, what then, was a less than desirable situation.

Dame Judith Hackitt has stated (referring to the British system – but said it equally applied to the Australian system) that she has a conviction that:

“a radical rethink of the whole system and how it works” is required. The common thread she identified was ignorance, indifference, lack of intellectual clarity or thinking and inadequate oversight.

She stated that the culture must change. To paraphrase:

“It must be truly “outcomes-based” (rather than based on prescriptive rules and complex guidance) maintain the spirit of collaboration and partnership”

Dame Judith Hackitt also made the following statement:

“The criticism about thinking in silos must also be laid in part at the regulatory system that oversees the industry’s activities. Viewed from one end of the lens it may matter a lot who ‘owns’ particular aspects of regulation, be that in terms of government departments or different national and local regulatory bodies. But for those on the receiving end this often results in disjointed and confusing guidance – what often gets described as “too much regulation”.”
The current regulatory scheme must be moved from a 19th Century method based on an adversarial and punitive regime often driven by, as industrial psychologists refer to “as a Confirmation of Bias” (see attachment 1) - to one of a collegial and peer reviewed system. It must champion and recognize knowledge and experience.

It should be reflected upon, that the current parlous state of affairs, have been overviewed by several state and local government agencies, albeit after a number of changes, since 1998.
It is a poor reflection that a government agency or bureaucracy measures its effectiveness on the number and quantum of fines that it issues.

Another view is that it could demonstrate a systemic failure.

There are more sophisticated management techniques available in the 21st Century for the oversight that is required of good government.

As identified by Michael Lambert -“the bureaucrats are reluctant to change” see attachment 2

The Federal and State Parliament should give formal recognition that building and construction is an applied science. The current regulatory method is for most part focussed upon a mere clerical function of form collection.

Certification is not “an industry” it is a process of validation and verification.

There seems to be reluctance by some, including some bureaucrats employed in state and local government agencies to accept that it is not the DTS solutions that are the only minimum requirement.
It is pertinent to identify that the mandatory part of the BCA are the performance requirements. As such the “scientific method” may have to be used to confirm compliance with those performance requirements when not using the DTS. Equally the application and understanding of Australian and International Standards is at times lacking.

Some additional methods could be:
Perhaps increase the developers bond – significantly. Consider a “Contractors All Risk Insurance” scheme that will still stand long after the builder and developer have departed legal accountability.
Require registered or licensed supervisors / project managers to be responsible for those building projects that have a profile “based on a clear risk matrix” - DJH
Developers and building companies can be wound up.
Projects must be supervised by real persons. Put the focus at that critical point. Develop a process to protect their integrity from being suborned by a transient building company and developer. The low rise residential building require a nominated licensed supervisor as well as a Licensed Builder.

There is no “authority” that can be referenced or cited for a technical interpretation or adjudication. The Dept. of Planning, the BPB and the ABCB to date have refused to adjudicate on technical questions. The recent BMF has recommended the ABCB move into this area. It would be helpful if some of the major Universities be required to participate in developing this body of knowledge and reference authority.

The BC should require an increase in knowledge and experience (cross skilling and up skilling) of all building practitioners including state bureaucrat and LGA operatives.

The BC will need to conform with a national approach to construction and building regulation. This should also encompass the various Acts and Regulations.

The BC could perhaps interchange the concept of “enforcement” with the term “enlightenment”. It may derive or produce a change of culture that Dame Judith Hackitt said was needed.

The Ministry of Innovation should evoke its name and in deed be innovative and creative.

The Building Commissioner needs to be more than just another delegate or bureaucrat transferred from an existing agency.

The BC should come from the building and construction industry.

The BC should be commissioned to be a facilitator of knowledge and experience for the application and verification of the applied science of construction and building.

A once in a generation chance is before us to get it right as far as can be expected by best practice.

It is important that a Professional Standards Scheme be enacted nationally. It is paramount to get the underwriters back into the industry. The premium pool needs to be spread amongst all “building practitioners”.

There needs to be a paradigm change - not “more of the same”. The system as it is at the moment is broken.
In General:

Part 2.2
There has not been “developing a practice guide for standards” as yet – perhaps that would be best left to an expanded role of the ABCB in conjunction with Engineers Australia, AIJS, AAC, AIQS, AIB, ACA, RICS

There is no technical authority that practitioners can use as a citation or adjudicate on the various conundrums that exist between the different Acts, regulations and the BCA.

Part 2.3
The NSW Government will work with stakeholders in the building and construction sector to ensure the reform package delivers maximum benefit to the NSW community.

I would strongly endorse this approach. To act precipitously will not best serve the citizens or tax payers of NSW – nor Australia as a whole.
Response to the individual questions:

1. Drawings, specifications and certifications necessary to comply with conditions precedent of a consent. This would normally be architectural, engineering, environmental and OH&S considerations.

2. The whole point is to provide documentation that the consultants, builders, subcontractors, can rely on. That comes from formal tertiary qualification, infield training and years of experience.

3. The Department of Planning is rolling out its planning portal which will require all such documentation to be digitally transmitted to its data base. Why would you replicate or replace such a programme? The Dept. of Fair Trading has a separate “building information system”. Is this an example of Government efficiency? Will the BC take over both systems? Or consolidate it into one?

4. The perennial irritation of “consistency” or “not inconsistent” has not been resolved. What definition will the “BC” adopt? Is it proposed to rely on the opinion of a BC employee? Would it not be more propitious to have such matters “peer reviewed” by the actual practitioners in the design and construction delivery process?
A statutory declaration would just add an additional field of dispute between the clerical / bureaucratic mind (based on their knowledge and experience or lack thereof) and that of best practice determined by a collegial informed body of knowledge.

5, 6 & 7 Variations can be more of a contract administration matter.

This should not be confused with DTS Performance or alternate solution or combination of both must be scribed into the CC or CDC documents.
There is little point in submitting changes to the BC. That new position will not be able to employ the numbers of staff with sufficient tertiary education, technical and in-field experience to value add.
The BC should insist of the development of a Professional Standards Scheme as recommended by the federal Building Ministers Forum.

8 & 9 Every job or project will require different amount of documents.
A carport will be different from a major hospital or airport terminal.
It would be best to let the professional providers decide. A PSS would greatly assist in this matter.
Fire matters require a process to follow the IFEG, development of a brief submitted to F&R NSW with the input of the stake holders (Fire engineer, A1 Certifier, NSW F&R). There may be several revisions. A FER is produced and sent to the
Finally signed off or accepted by an A1 Certifier.

It should be remembered or recognized that BCA part B – Structural Provisions is by it very nature a performance solution process. For none fire matters the BCA does have various verification and validation doctrines in the BCA that could be followed. In addition

Depending on the type of building, the complexity of its engineering and the acceptance criteria laid down, the hand over and commissioning methodology agreed to by the stakeholders at the beginning of the project. This would include compliance with the conditions of consent, the detail required by the SEPP codes as well as the skill sets required by various trades.
Buildings will require a “Building Manual” whilst directed to fire safety matters it could also include “as built documentation” and ongoing maintenance requirements.
The current “difficulties” again stem from the body of knowledge that is required and the quality and extent of the supervision. Perhaps reference or guidance could be gained from the ISO 9000 series of quality management systems.

Currently a registered Architect (seek more information from the Aust. Institute of Architects) would have attended a university for six years. In addition to appropriate experience before gaining that status.
The BC should use what is available already rather than reinvent yet another wheel.
The BC should benchmark all drafting services against the existing AIA registration requirements.
The BC should be very careful on who is allowed to sign-off on BCA matters. Who should take precedence an Architect or an A1 Accredited Certifier or Building Surveyor?
The most cost effective method is for the BC to insist on a Professional Standards Scheme. That scheme should lay down standard operating procedures and protocols that have been agreed to by the stakeholders. Let those who benefit most – pay for the assurance that the Parliament of NSW (as well as the federal Parliament) desires for the citizens and tax payers.

Those that produce form and function.
Ditto the various engineering disciplines
Ditto those who supervise the execution of the above in the field
Ditto those empowered by the state to “certify”
Even the bureaucrats providing government oversight should be individually
registered and demonstrate that they too have tertiary credentials and
experience to be regarded as “building practitioner” peer.
The concept of “in good faith” should apply to building practitioners out side of
the bureaucratic regime as well as, to those on the inside whether it be state
or local government employees.

19, 20, 21
The answer to this question again is a national Professional Standards
Scheme.
It would be more effective for Federal and State parliaments to provide good
government by providing oversight of a PSS than increasing the number of
bureaucrats.

22, 23, 24
The answer is to mandate a Professional Standards Scheme.
This should encompass all “building practitioners”. It should capture licensed
supervisors. Those supervisors should have a written memorandum of
understanding or compact issued by the state to protect them from undue
influence in the carrying out of their duties.

25
The powers of the BC should be moved to concentrate on technical matters.
That will materially affect the finished building. 25% Audited every year? Is it
the paper trail or clerical requirements or the infield physical inspection of
buildings?

Former politicians and staffers with no legal background would be barred from
post political jobs on the federal Administrate Appeals Tribunal under a blue
print for reform drafted by the former High Court judge Ian Callinan.
Similarly that should occur in the NSW jurisdiction. The NSW Civil and
Administrative Tribunal members dealing with these matters in and around the
building and construction industry must come from a technical background
with the requisite tertiary training and extensive experience. See attachment 3

Alternately introduce a formal peer review system or demand that a
Professional Standards Scheme do that job.

Powers to enter premises already exist for certain categories of public officials
in NSW.
I would have thought that all categories of building practitioners owe a duty of care to their fellow citizens.

That “duty of care” would follow from their specialty as an A, B or C category Certifier, designer, site supervisor, tradesman or installer of the many and varied components and activities that make a finished building.

How do you legislate for integrity, attitude and ethics?

What is needed is a new paradigm – not more of the same.

In using the word “consumer”. The implication is that building is merely a retail sale of an across the counter good or an online purchase – it is not. Building projects are bespoke design and construction requiring the input of many different skill sets. They are integral to the well being and function of our society that will be bought and sold over many decades. Many buildings will be used from one generation to the next and beyond. The first and future owners should be owed a duty of care. Then where does “caveat emptor” reside? Buildings are not static structures they will slowly age and will need ongoing maintenance over the years.

I would be willing to speak directly and expand on the above.

Yours faithfully,

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The little green balls are back

MAYOR WANTS MORE WORK

Robbie Peterson

NORTEEN BEACHES

REGAN TO RUN FOR PRESIDENT OF LOCAL GOVERNMENT ASSOCIATION
that a majority of apartment residents are irreversible, with the result there was "diminishing public confidence that the building and construction industry can deliver compliant, safe buildings in the long term."

They cited multiple instances of compliance failures in recently constructed buildings, a lack of competence of many operators; widespread lack of understanding of the national construction code; and pervasive poor documentation.

"On occasion, builders have taken the opportunity to be uncooperative, making decisions on matters that affect safety without independent oversight," they cautioned.

"We found that, until relatively recently, there has been almost no effective regulatory oversight of the commercial building industry by regulators. Those involved in high-rise construction have been left largely to their own devices."

In February, in the run up to the state election, then NSW minister for better regulation Matt Kean promised the Berejiklian government would support the "fast majority" of the 24 Shergold-Weir recommendations, starting with the creation of a specialist building commissioner and an overhaul of compliance reporting and professional licensing.

Yet so far, the reforms have failed to materialise.

"Those with longer memories recall that little came of an even more detailed and equally damning report into the building industry prepared by a former state Treasury head, Michael Lambert, in 2015. Most of his 150 reforms were left gatherinng dust, with the exception of an overhaul of some fire-safety measures."

Lambert lamented in The Guardian earlier this year that he had tried to achieve progress on his 2015 report but without success.

"The bureaucrats don't want change, and ministers do not seem motivated to push for change," he said.

CEO of developer lobby Urban Task Force Chrs Johnson told the Herald that there was "quite a lot of industry concern at the time... that while this fairly thorough report (of Lambert's) had been done, the government did not seem to be all that interested in following up".

That may be about to change. This week a spokesman for Kevin Anderson, the new Minister for Better Regulation, assured the Herald that February's commitment to the Shergold-Weir report was still in place, and talks were under way with industry on how best to implement it. "The government is committed to restoring confidence," the spokesman said, dashing "... reforms to create greater transparency, accountability and quality control across the sector."

Weir says government has been reluctant to upset the flow of money and jobs from the industry. "But it's got to the