



Australian Institute of
Building Surveyors

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Submission

South Australia
Accredited Professionals Scheme
Draft

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Australian Institute of Building Surveyors
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Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can be best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

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Preparation

This submission has been prepared following the August 2018 release of the Accredited Professionals Scheme draft document by the Department of Planning, Transport and Infrastructure for comment.

Content has been provided from AIBS South Australian Chapter members, the AIBS Adelaide Metropolitan Branch member forum, AIBS South Australian Chapter Committee, AIBS Board and the final submission coordinated by the National Technical Manager.

Overview

AIBS supports government taking control over who can participate in the building industry whereby we would like to see a scheme of registration and licensing introduced for all involved. The Draft Accredited Professionals Scheme in large part addresses this objective however we believe the proposed scheme does not go far enough in this respect.

In our view, the scheme is ostensibly an accreditation scheme; however accreditation is a precursor to registration of practitioners proposed to be covered by the scheme, with an opportunity for third party accrediting bodies to become involved in the accreditation process; whereby the effect would be for the government to be providing a registration and licensing scheme with strict specifications on how accreditation by third parties is to be undertaken.

This concept is supported by AIBS as it allows for those who do not participate in a third-party accreditation scheme to also be accredited by the government. Our view is that the scheme should be made applicable to a wider specification of practitioners, noting that it is proposed only to apply to building surveyors and town planners at this time.

Our response to the Scheme is arranged to reflect the description of the scheme. That is, our response deals with:

- The draft regulations;
- The draft specification of qualifications, experience and technical skills required;
- The draft accredited professionals code of conduct; and
- General matters not addressed within the above.

Draft Regulations

Scheme scope

Section 88 of the Planning Development and Infrastructure Act 2016 (the Act) provides a power for the establishment of regulations providing for an accreditation scheme. Section 92 of the Act provides for the use of the term “building certifier” by persons who are accredited professionals qualified pursuant to the accreditation scheme with respect to application of the Building Rules. We understand this to relate to what we have termed “statutory building surveyor”. In the interpretation section of the Act, the accreditation authority is defined as the Chief Executive.

Regulation 5 follows these provisions. In consultation with the Commissioner for Consumer Affairs, the Act provides for a wide-ranging scheme to be established. AIBS notes that Regulation 5 sets out that the proposed scheme is to be limited, providing for a scheme related to building surveying and town planning professionals only. Acknowledging that the scheme needs to start somewhere, AIBS urges that consideration be given to broadening the scheme to involve all design practitioners and other practitioners as soon as possible.

Complaints and auditing

Regulation 27 now refers to a person being able to make a complaint rather than an applicant. The making of a complaint must also include a statutory declaration. It is not clear if a council wishing to make a complaint would need to have the declaration signed by a Mayor, or other officer depending on delegations, and how this would impact the process. This should be clarified. It is the preference of AIBS that the raising of a complaint should be the purview of suitably qualified persons within Councils in line with requirements for the issuing of emergency orders related to non-heritage matters.

Is the six-month limitation following raising of the matter a complaint relates to and the lodgement of the complaint reasonable? AIBS believes that it may be more appropriate that the timeframes for this reflect the timeframes for action currently provided in Section 84 of the Development Act 1993. It is recognised that with the efflux of time, the ability to recall the circumstances about which a complaint is raised will fade so that it is reasonable that a complaint is raised as soon as possible. AIBS suggests that guidance materials be provided around this point with limitations expressed in regulations consistent with time limits related to the taking of action related to breaches of the Development Act.

Considering Regulation 27(2), it is noted that only a person can raise a complaint. Should industry bodies be allowed to raise complaints? Industry bodies typically have codes of conduct for their members to follow and from time to time will take disciplinary action. In this circumstance, there is a clear relationship to the Code of Conduct adopted by the Minister so that a complaint related to Regulation 27(2) might be raised. Industry bodies might be prevented from doing this though as they may not be recognised as a person. AIBS recommends that clarification be provided about the ability of industry bodies to make complaints.

Regulation 27(7) provides for the accreditation authority to appoint an investigator. AIBS believes that industry bodies could not be appointed as investigators. Prime amongst the reasons for this is that the costs of conducting investigations is likely to be high in comparison to the funds an industry body would have available for this activity, investigators lack of powers sufficient to support efficient attainment of appropriate evidence, and perceptions of a lack of independence (which beset the medical, architectural and legal complaint investigation bodies) would likely diminish public confidence in an investigation by an industry body. Whilst the regulations do not intimate that an industry body might be appointed as an investigator, there is nothing in the regulations which would preclude this. We thought it prudent to point out the difficulties of this approach.

It is noted also that Regulation 27(8)(d) provides that an investigator may require provision of documents or other information, but this power does not extend to a power to search for relevant documents or in relation to interviewing witnesses and the like, techniques usually associated with investigative powers and actions. AIBS recommends that these powers be reviewed to ensure an adequate investigation is supported.

Regulation 28 provides for a review of decisions – an appeal pathway. The appeal pathway has limitations around who can appeal, the timeframe within which an appeal can be made and the types of accreditation decisions that are reviewable. AIBS is also concerned that there appears not to be an appeal pathway related to complaint investigations, be it a complaint about a process, the voracity of the complaint or any other matter pertaining to the process including who is involved in the process. The draft regulations do not compel the investigator to test the voracity of the complaint before proceeding to investigate. AIBS is concerned that this may not be adequate to discourage vexatious complaints and there should be an ability for a person subject to a complaint investigation to raise concerns about the voracity of the complaint before the process starts.

AIBS also notes that no appeal can be made with the accreditation authority. Appeals must be raised with a Court so that the process is therefore likely to be expensive and time consuming which may not be appropriate in all circumstances. AIBS supports an avenue of decision review in addition to the appeal rights provided.

AIBS believes that the limitations around appeals might be open to challenge if alternative avenues of appeal are not available for matters excluded from appeal. It is also problematic that the complaint investigation process has no appeal route until a decision about accreditation has been made arising from the compliant process.

Penalties proposed to apply where a practitioner fails to participate in an audit scheme are supported. AIBS believes auditing is of fundamental importance to compliance. It should be mandatory that all practitioners involved in the building industry are subject to audit.

The responsibility of accredited professionals for decisions is noted. The named respondent in litigation would be the accredited professional working for the council concerned, not the council as is currently the case. AIBS wonders why this change is needed. It is difficult to see how this change will improve compliance.

Role of the building surveyor

Division 2 – Authorised Functions sets out what can be done by whom within the scheme. There is no recognition of the consultant building surveyor role in the accreditation scheme such that it appears that this role is either unregulated or that it cannot be undertaken by accredited practitioners.

AIBS believes that building surveyors engaged to provide advice during the design stage, particularly on how to achieve compliance, cannot then accept an engagement in a statutory role for the same project without being in conflict because they would essentially be assessing and approving their own design input. Building surveyors can also be engaged and provide compliance advice during the design stage where that engagement is limited to providing compliance advice on requirements only, leaving the design team to make decisions about how to comply. No conflict arises when the same building surveyor is subsequently engaged in relation to a statutory role.

The scheme rules should be as clear as this when detailing what is appropriate / inappropriate in respect of the role of a consulting building surveyor and should also provide for the accreditation of a person working in this role. Perhaps such individuals are intended to be unregulated as is the case for a fire engineer or building designer and as such, guidance material might be appropriate to ensure there is no confusion about the different classes of building surveying practitioner able to participate in the industry.

The accreditation process

We were unable to find provision within the proposed regulations that provides for delegation of authority for assessment of the qualifications of a practitioner by a professional body or other entity providing this service. AIBS understands that a memorandum of understanding would be established providing for AIBS to provide this service consistent with our current role in authorising practitioners to participate in the South Australian industry. It would be more certain for all concerned if the regulations could make specific reference to the ability for the accreditation authority to delegate to accreditation bodies.

It is not clear how a body such as AIBS would be required to act in relation to attainment or renewal of accreditation if it were responsible for verification of competence. Would AIBS be expected to undertake an assessment of the ongoing suitability of a practitioner's qualifications to support accreditation renewal?

What will be the impact of a break in service with annual accreditation renewals? AIBS can accommodate this within its scheme via maintenance of CPD – will the new scheme also have this capacity? It is the view of AIBS that demonstration of competence and experience should be as per the AIBS scheme.

There should be a discount of government accreditation fees for those submitting evidence including AIBS accreditation as this alleviates the government from having to verify competence. AIBS believes that in addition to a regulation contemplating delegation, there should also be a regulation providing for fee relief for those using an external scheme.

In relation to the onus of accreditation – is it on the individual to be accredited or is it on the Council employing the individuals to ensure they are accredited? AIBS believes that a Council must be obliged to verify that an individual is accredited before that individual is appointed or assigned responsibilities pursuant to the Act.

Accreditation levels

Regulation 5(1)(h) relates to a fourth level of building surveying practitioner. AIBS does not support a fourth level of accreditation. The need for this level of accreditation is not understood. AIBS is not aware of any national qualification standards for such a level of accreditation. This change represents a de-professionalisation of building surveying. AIBS is concerned that a fourth level practitioner may not be able to capably deal with the breadth of issues faced in regional areas, particularly where such persons might be the only employee of a council holding building surveying qualifications.

There are many instances where technical integration of requirements must be understood in order than an effective inspection can be carried out. For example, the requirements that support the resistance of a building to concealed termite entry are influenced by the construction of the footings, underfloor plumbing installation, brickwork and stormwater and paving works. Some of these works conflict and without an adequate understanding, it would be more likely for common defects to go unnoticed by a person undertaking an inspection. Inspections also rely on a person having extensive knowledge of technical requirements so that effective inspections are best achieved using experienced building surveyors.

Persons who solely have qualifications in building construction (e.g. a trade qualification), Architecture or engineering are unlikely to possess sufficient knowledge of the required breadth of technical requirements to be able to undertake inspections effectively without also obtaining qualifications in building surveying to at least AQF level six.

A level four practitioner would likely come from a trade background and should be restricted to undertaking inspections of work related specifically to their background until they are able to demonstrate competency in other areas.

AIBS notes that there is also a commercial building exclusion for level three practitioners which raises issues for practitioners in many areas. Currently, level three practitioners are able to assess and inspect buildings of all classes up to 500m², among other limitations. This is particularly useful for practitioners in regional areas where a variety of smaller commercial classes of building are developed. Application of the proposed accreditation limitations would prevent these practitioners from undertaking this work so that a greater reliance on consultant building surveyors would be required to service the community's needs. AIBS is not aware of why the South Australian government has changed its stance in this respect.

Continuing professional development

Regulation 24 provides for a continuing professional development (CPD) scheme.

AIBS supports the proposed scheme noting that it will be a significant improvement on the voracity of CPD schemes offered by some currently able to accredit building surveyors in South Australia.

CPD activity requirements for fourth level practitioners are noted to be less than that for other levels. AIBS believes that in many respects fourth level practitioners should be required to do more CPD than other practitioners to bring their skills up more quickly. We would support at least equal requirements for CPD activities across all levels of accreditation related to building surveyors.

Professional Indemnity Insurance

AIBS believes that demonstration of adequate insurance cover is preferable to the provision of statements that it has been obtained, as a pre-requisite to obtaining accreditation / registration. It is noted that other than draft Regulation 16 relating to the imposition of a condition about insurance and Regulation 31 relating to the cancellation of insurance, there is no mention of the need to obtain or hold insurance as part of the process of applying for accreditation. AIBS believe this should be made clearer to support the imposition of the condition and also to support the importance of action in the event of cancellation of a policy.

It is crucial that auditing scope covers the adequacy of professional indemnity insurance cover obtained. Without this, the proposed specification of a need to obtain cover would need to include a regulated minimum. Our preference is that the issue of adequacy of cover is managed via auditing rather than regulated minimums so that the proposed Regulatory requirements are supported. AIBS suggests that the procedural matters related to audits make clear that this will be a matter subject to audit.

Accredited Professional qualifications, experience and technical skills required by the Chief Executive under Regulation 5 of the draft Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018

Relevant building surveyor qualifications

The AIBS does not support the process whereby the Minister can cause academic courses to be listed as being recognised as meeting the education requirements for all levels of building surveyor. Regulation 5 of the draft Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018 provides authority for this aspect of the scheme.

Essentially there are two pathways to achieve the academic requirements to become a registered building surveyor (all levels), these are vocational, education & training (VET) and higher education (HE). The VET Advanced Diploma of Building Surveying is provided with a nationally consistent training package, however the implementation and application including resources, is not adequately regulated or assessed and this has resulted in a wide range of delivery variances across the nation for graduates.

The HE courses however are vastly different from VET courses. There is no standard set of guidelines for a building surveying degree and most HE providers are afforded with self-accrediting status through the Tertiary Education Quality and Standards Agency (TEQSA). Building surveying degrees are therefore not required to be assessed against state registration requirements or industry bodies such as the AIBS. This has provided inconsistency with the quality of delivery and course content across the higher education sector.

The AIBS is concerned that there is no policy within the Accredited Professionals Scheme that provides for review of a building surveying course prior to approval and listing as meeting the academic requirements for registration purposes. Whilst it is acknowledged that the current courses listed in the Scheme are accredited by the AIBS, there are no on-going provisions within the proposed scheme that continually assess and monitor these courses to ensure that they deliver what was previously approved.

The AIBS has a specific policy and process in place for any new building surveying course to be accredited and listed in the AIBS scheme. This process ensures that any accredited building surveying course delivers the national academic framework and is continually monitored and reviewed on an annual basis. As there are no provisions within the Accredited Professionals Scheme that assesses and approves building surveying courses or any current listed courses are provided with an on-going quality assurance program, it is recommended that the listing of each specific building surveying course is removed and replaced with reference to courses recognised by the Australian Institute of Building Surveyors or other bodies with suitable processes in place.

Experience

The requirement for relevant experience requires clarification. Is the experience to be related to the sought level or can the experience be at any level in building surveying practice? Is it necessary for a council-based building surveyor to also have the nominated durations of experience before they can be registered?

AIBS supports additional experience beyond that of a council-based building surveyor for building surveyors who wish to practice in the private sector, particularly recognising the potential for such persons to engage in the private sector as a sole trader.

Draft Code of Conduct

Similar instruments that may be applicable for practitioners who are members of professional bodies are noted to have no legislative standing and wherever there is a conflict between the Minister's code and that of a professional body, the Minister's code is to be followed. AIBS is disappointed in this outcome, noting that many members of AIBS will now be subject to three codes, a membership code, an accreditation code and the Minister's code. Given AIBS's national commitments, there is little that can be done to alleviate this complexity for South Australian members who seek to be accredited both by AIBS and the government. It is our preference that the Minister have the ability to recognise a code of a professional body so that the AIBS code might be given legal status via recognition, to reduce the impact of this issue.

Other matters

Procedural guidelines

Development of procedures for the investigation of complaints should be undertaken prior to gazettal of Regulations.

To consider procedural aspects of the scheme after it is established is too late and may also reveal defects in the establishment of the scheme so that amendment would be required post gazettal. This relates to accreditation procedures as well as audit and complaint handling procedures.

Natural justice

AIBS is concerned that there is a lack of separation of administrative and judicial roles contemplated in the regulations. That is, there is no separation of accreditation and audit roles; and there is no separation of accreditation and complaint investigation functions. AIBS believes there needs to be greater separation of these roles to ensure natural justice principles can be achieved.

Industry research funding

There is no indication that the cost of industry research will need to be contributed to via the fees collected for accreditation. Industry research is vital to ensuring that the scheme maintains relevance and efficacy.

Performance assessment

Can all levels undertake performance assessment? The scheme provides a description of roles and responsibilities of building surveyors however this is not detailed enough to confirm which of the various levels will be permitted to participate in performance assessment. This should be clarified to ensure that practitioners and the community can properly understand the implications of the scheme.

Inspections

Are there restrictions on what can be inspected by each level? See comments above about clarity of the impact of the scheme.

Will private involvement in inspection activities be considered? See comments above about clarity of the impact of the scheme. Additionally, it is noted that currently there is only an opportunity for

private practitioners to engage in inspectorial work by commercial arrangement so that private inspections carry no statutory responsibility or function.

Building Fire Safety Committee Participation

Building Fire Safety Committee work is a form of assessment and should be recognised as appropriate experience, will it be?

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.