



Australian Institute of  
Building Surveyors

**Submission**

**Inspection Policies Practice Direction**

**(SA)**

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*Submission to: [DPTI.PDBuildingBranch@sa.gov.au](mailto:DPTI.PDBuildingBranch@sa.gov.au)*



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### **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.

### **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 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.*

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## **Preparation**

This submission has been prepared following release of the *Draft Practice Direction – Council Inspection Policies* as released by the Department of Planning, Transport and Infrastructure for comment.

## **Overview**

AIBS notes that there are several points where clarification of the proposed draft will improve the document. In addition, there is a need to more clearly express the purpose of inspections and the role played by those carrying out inspections.

It is clear that the draft practice direction is written within the confines of the current legislative scheme and AIBS believes that this limitation poses particular issues for the efficacy of the inspections that are to be undertaken. This also creates issues related to the funding of additional inspectorial activities, the capacity of the people available to undertake the inspections relative to the developments that occur and related to the process of issue of a certificate of occupancy.

Also beyond the limitations of the practice direction are issues which arise for building surveyors and local government related to resourcing. In particular, the increased numbers of inspections that the practice direction contemplates compared to the current level of inspection being performed will have impacts on the allocation of duties for existing building surveying officers and accordingly on the budgets of councils where additional staff will need to be employed to cover reallocated duties or additional building surveyors to undertake the inspections.

We note also that the practice direction is not able to deal with fees for councils to cover the increased cost of inspections, nor is it able to address the resource pressures that will likely arise from an increased level of compliance and enforcement activity arising from increased levels of inspections.

On another point, AIBS notes that there is a significant opportunity to link inspections with the licensing regime in South Australia so that the effect of increased inspections can be amplified via consequences for individual practitioners who underperform.

Overall, AIBS believes that the practice direction represents an appropriate approach to enhanced levels of inspection in South Australia however believes that introduction of the practice direction should not occur until several revisions are made to the practice direction itself and also to the legislative environment supporting it.

In particular, AIBS would like to see the following legislative changes made:

- A link between inspections and licensing and registration of practitioners;
- A link between mandatory inspections and the certificate of occupancy process;
- Deregulation of fees for statutory building surveying functions in South Australia;
- The introduction of private participation in the conduct of mandatory construction audit inspections;
- Establishment of an accountability pathway to ensure that local governments are accountable for enforcement actions either taken or not taken.

Following is a more detailed discussion regarding the points AIBS believe arise from the proposed implementation of the draft practice direction – Council Inspection Policies.

## **Detailed discussion**

### **Specific points of clarification**

In the second paragraph of the introduction, there appears to be a need to revise the text. “Section 156 of the Act *[provides that]* the Commission may also....”. Additionally, the last sentence is not clear in that it references “This practice direction” having just said that the Commission may issue a direction related to swimming pools and associated buildings. Perhaps it should say “An associated practice direction ...”.

The third paragraph also references “this direction” which is confusing having followed the previous paragraph. We suggest that the text should be revised to say “In issuing the practice direction – Council Inspection Policies, the Commission ...”.

In the definitions, there is a definition of a balustrade which uses terminology consistent with NCC BCA 2019 however does not make reference to the Building Rules which NCC BCA 2019 forms a part of. It would be appropriate to at least cross reference Building Code in the definition of Balustrade.

In Part 2, Clause 1(1) begins with the text “Subject the terms ....” which we suggest should say “Subject *[to]* the terms ...”.

Clause 2(2) in Part 2 does not reference other elements of building work which could reasonably be included in the scope of an inspection such as energy efficiency or condensation management; water proofing of wet areas; lighting and ventilation; ceiling heights; stair geometry; safety glass or termite protection. It is not clear why, as these elements are important features of work, some related to safety and others to minimum but essential standards of amenity.

Clause 3(3)(b) of Part 2 references “disabled or vulnerable persons” which we believe should be changed to say “vulnerable persons or persons with disabilities”.

Clause 3(3)(d) of Part 2 includes text which says “that is not trivial”. It is not clear what this means. It is possible to presume that extinction is not a trivial matter, being a possible outcome arising from a failure to comply with energy efficiency requirements of the Building Rules. There should be greater clarity regarding what is intended by this clause.

Clause 3(3)(g) of Part 2 also references the phrase “that is not trivial” which also should be clarified. Is it possible to have a threat to human safety that is not trivial?

In Appendix 2 all tables include a heading to column three which relates to the “proportion of developments in council area to be inspected”. It is not clear how the proportion of developments is to be measured. Is it the proportion of work that commences in a calendar year? Is it related to the number of approvals issued per month?

In Appendix 2, Table 3, the application of the table includes at (d) a reference to class 8 buildings greater than 500m<sup>2</sup>. There is no difference in the proposed inspection frequency or scope for a class 8 building exceeding 2,000m<sup>2</sup>. It is suggested that class 8 buildings should be treated in the same way as class 6 buildings of the same size in Table 3.

In Appendix 2, Table 4, class 8 buildings with a floor area of 2,000m<sup>2</sup> or over should be treated in the same way as class 6 buildings of similar size.

### **Purpose of the practice direction**

AIBS notes that neither the legislative scheme nor the draft practice direction make clear the purpose of the inspections that must be undertaken by councils.

AIBS takes this opportunity to make clear that a building surveyor, irrespective of public or private engagement, who is engaged to perform a statutory inspection role, is not and can never be accountable for the standard of compliance achieved by the builder or their contractors.

Inspections by building surveyors provide only spot checks of work at key or nominated points during the progress of the work which, depending on the state of the work observed at the time, provides an impression of the overall standard of compliance likely to have been achieved by the builder and contractors. The building surveyor is not on site at all times, cannot observe all of the work that has been undertaken when they are there, and has little if any ability to interrogate the supply of products and materials to ensure that these are as specified. It is therefore totally inappropriate to hold a building surveyor responsible for compliance of the work performed through their inspectorial role.

There are three main purposes of inspections, each with different impacts on the outcome for the built environment. Broadly, these are:

1. **Building supervision** inspections undertaken by building contractors wanting to ensure that their work program, construction cost or reputation are not adversely impacted by sub-standard works;
2. **Construction audit** inspections undertaken by building surveyors acting in a statutory role and related to the standards of conformity achieved; and
3. **Licensing** inspections undertaken related to practitioner performance by licensing authorities or other bodies responsible for monitoring practitioner standards.

There is a fourth purpose of inspections, related to inspections undertaken post occupation. Such inspections are also undertaken by regulatory bodies and can be related to verification of ongoing compliance, building fire safety and maintenance of essential safety provisions.

The draft practice direction should make it clear the purpose of the inspections to be undertaken is related to **construction audits supporting the standard of conformity of the work undertaken.**

Clause 3 of Part 1 does not say this, rather it points to providing for occupant and public safety, which is a substantially different purpose, implying application of wider requirements than conformity with approvals to which part (b) of Clause 3 in Part 1 relates. We believe that a statement to this effect, together with a clear description of the purpose of the required inspections should be included as part of the introductory text. It is not enough to simply reference Clause 3 of Part 1.

Public safety is a matter often arising in relation to protective works, where there are also opportunities arising for building surveyors to provide a public protection role through inspections that is not clearly identified in Clause 3 of Part 1 of the draft practice direction.

Council's play a key public safety role. Building work often involves impact upon or even occupation of public land adjacent to the building site. Council's use powers pursuant to the Local Government Act to control occupation of public land however this is largely a process focussed on ensuring that appropriate insurances are in place and that there is a clear line of responsibility for reinstatement of the condition of the public land post completion of the occupation of that land. Little if any regard is paid by most councils as to the nature of the activity on the public land and its potential impacts on safety.

Inspections during the progress of the work may bring to the attention of a building surveyor issues related to the safety of the public or within the site and where these are not able to be addressed via dialogue with the contractor, the building surveyor should be able to report concerns to a suitably resourced and responsive enforcement body for investigation and action. In the past, the state government provided this role. SafeWork SA has the ability to address this need however resourcing is often cited as a barrier to effective control. It is more and more up to Councils to use emergency powers to resolve safety issues with protective works.

It is appropriate for such measures to be the responsibility either local government or a state entity, as many of the protective measures will be located outside of the property where a development is occurring where a statutory building surveyor in private practice will have no jurisdiction.

A practice direction confirming the level of resourcing that is appropriate for this activity in addition to other types of inspections undertaken by council should be issued to support an understanding of the total resourcing needed to properly address the inspection needs of the community.

**Recommendation**

- 1) In addition to clarifying the objectives in Clause 3 of Part 1, AIBS recommends a clear statement is made about the purpose of the inspections to be carried out within the introduction.**
- 2) Further, AIBS recommends that practice directions covering all types of inspections are issued to make clear the total inspection resourcing needs**

### **Limitations of the proposed practice direction**

AIBS notes that the draft practice direction is proposed within existing legislative constraints. Existing legislative constraints require inspections to be carried out by councils. The legislation does not provide an ability for building surveyors in private practice to undertake statutory inspections unless engaged by councils to undertake this function on their behalf.

AIBS believes this is a significant limitation on the quality and efficacy of inspections in South Australia and although not part of the considerations at hand, AIBS takes this opportunity to be on record that there is a need to reform the legislative arrangements for inspections in South Australia in order that a better outcome becomes possible. It should be possible for private building surveyors to undertake statutory inspections related to work that they have assessed.

AIBS notes also that the draft practice direction will apply only to areas outside of Metropolitan Adelaide.

### **AIBS Policy position on inspections**

In respect of sub-clause (b) in Clause 3 of Part 1, inspections play a key part in underpinning the success of building regulation. A measure of success of a building regulatory scheme is the degree to which the community has confidence in the scheme. There are few mechanisms other than inspections that are as effective at driving high rates of compliance of building and construction work, a key measure of success. Inspections can be performed relatively quickly and with minimal disruption to the construction process. The cost of building inspections is more than overcome by the benefits of detection of defective or non-conforming work before that work causes a need to remediate the work later.

This has been the case throughout the history of the building and construction industry. In fact, with the advent of modern construction materials, systems and products, interplaying with the wide range of project delivery structures, inspections during construction have an importance now more than they ever have. Increasing system complexity demands competent and independent oversight. In larger projects, this is recognised as an important efficiency measure and people are employed by client representatives specifically to address this need, often including people responsible for closely supervising specific components of a project. Unfortunately, not all projects are delivered within such a model so that it is necessary for independent oversight of all projects to ensure adequate attention to compliance by all.

AIBS therefore supports mandating inspections. We believe that a wide range of construction elements should be identified for mandatory inspection. Ideally, the building surveyor who assessed the proposal documentation should undertake construction audit inspections to confirm compliance of the particular elements identified at the assessment stage.

The building surveyor's assessment may identify additional elements not listed in the regulations as mandatory. It may also be that some elements listed in regulations are identified as not applicable or where an inspection will not yield sufficient benefit to be of use. In this circumstance, AIBS believes that a building surveyor should have the power to waive an otherwise mandatory inspection requirement.

Elements we believe should be included in regulation as potential mandatory inspections include:

- footings and reinforcement prior to the concrete pour;
- concrete slab prep prior to pour;
- walls:
  - brickwork;
  - blockwork prior to any concrete pour; or
  - frame construction;
- roof frame including all tie downs and bracing prior to roof installation;
- waterproofing of wet areas;
- fire separating construction;
- bush fire requirements;
- energy efficiency provisions;
- condensation provisions; and
- final inspection before occupancy

Inspections undertaken by building surveyors engaged by councils should be an audit of construction work visible and accessible at the time of the inspection and ideally be undertaken at times and frequencies sufficient to gain a degree of confidence in the level of conformity achieved by those who have performed the work.

Councils may engage private building surveyors specifically to undertake specialist inspections on behalf of local government and AIBS believes this represents an improvement in respect to efficacy of the system.

The AIBS Policy: *Building Regulatory Reform in Australia* contemplates a regulatory model with similar features. Essentially, AIBS supports:

- An approach where both council and private building surveyors have authority for the issue of approvals authorising construction to commence, for undertaking inspections, and for the authorisation of occupation
- Councils as the authority responsible for enforcement action arising from an investigative power that includes inspections for the purpose of community protection and legislative compliance, however AIBS would like to see oversight of the exercise of this role to ensure that it is not abused or neglected.
- Where a private building surveyor is involved, council inspection of work subject to private engagement should still occur. Council inspections serve a different purpose to inspections undertaken by private building surveyors for that work.
- Councils should audit aspects of the work relevant to community protection and legislative compliance matters which indirectly benefit the community, in addition to construction audit inspections related to conformity with approvals and technical requirements which directly benefit the owner.

### **Linkage between inspection outcomes and licensing**

AIBS believes that all who participate in the building and construction industry should see participation as a privilege not a right. Such a view can be established by requiring all who wish to

participate to hold a license or registration that allows participation, prohibiting participation for all but the most minor of developments without a license or registration.

When all who participate are holding a license or registration, it becomes possible for the work of individuals to be identified and audited. It also becomes possible for defective work to be traced back to an individual or individuals so that they can be disciplined, referred to training or for their license or registration to be conditioned or restricted as may be appropriate.

Building surveyors can report what they find during assessment of design documentation and during inspections of work in progress to registration and licensing authorities, which would address one of the recommendations of the Building Confidence report around data collection and sharing and enforcement (Recommendations 11 and 12).

As building surveyors undertake inspections, there are opportunities for the performance of individual licensed practitioners to be observed and where appropriate, sub-par performance reported to licensing authorities. For example, it might be possible to identify a person working outside of their license parameters, persons undertaking work in an unsafe manner, or persons who have undertaken work otherwise than in accordance with an approval or without approval. These matters should be brought to the attention of a licensing authority for further action.

### **Resourcing opportunities / implications**

AIBS, through member engagement on the draft practice direction, understands that there is a degree of capacity within regional councils for a re-allocation of duties which building surveying officers are currently responsible for so, that they will have adequate time to allow the levels of inspection proposed in the practice direction to be achieved. Many such officers are engaged in multiple roles, health, planning, general inspectorial activities and such like. Councils who include such roles within the position description or duties of their officers can avoid or minimise the need to find additional building surveying officers to achieve the increased level of inspections contemplated. They may need to employ additional resources to cover the other duties however this is often easier than finding additional building surveying staff in regional areas.

This is not true of all councils. For those councils where existing staff are fully utilised on building surveying functions, clearly it will be necessary to employ additional building surveying staff to achieve higher rates of inspection. There are some opportunities for councils working in existing regional resource sharing arrangements to mitigate impacts through such arrangements however this may not address the resource needs fully, particularly given the large distances required to be travelled between sites where inspections are required.

This issue also poses issues regarding the notification time periods. AIBS has heard from members that it is more appropriate that at least a three day hold period be applied to any mandatory notification stage having been reached, to allow adequate opportunity for an inspection to occur. Often, an inspection could be undertaken within three days of notification so that the actual hold on work progression is less than three days. Irrespective of this, the additional costs arising from holding work for three days at each mandatory notification stage is more than offset by the benefit of adequate levels of competent inspections.

AIBS also notes that construction compliance in local government areas where relatively high numbers of inspections are currently undertaken are considerably better than in areas where this is not the case. This makes the conduct of inspections more efficient. The fewer non-compliances occurring on site, the faster an inspection can occur. We expect then that the increased numbers of inspections state-wide will reduce the time it takes to perform each inspection. Because of this effect, it is hard to estimate the additional resource needs that might arise from the implementation of the draft practice direction. AIBS believes the impact in regional areas to be minimal and achievable.

## **Fees**

AIBS members have reported concerns that the draft practice direction without appropriate legislative changes around the collection of fees for inspections will lead to significant budgetary impacts on local government with increased inspection activity. Many suggested that a fee should be levied for each inspection, directly paid by the owner of the property involved on a full cost recovery basis.

AIBS believes fees associated with statutory building surveying functions should be de-regulated. Currently in South Australia, there is a schedule of fees that limits what can be charged by local government for statutory building surveying functions. This serves as a benchmark for industry who view the schedule as a maximum fee that should be charged by private practitioners also.

AIBS understands that South Australian fees tend to be around one tenth of the fees charged in other jurisdictions. Consequently, it is very rare for a private practitioner based in South Australia to provide training opportunities for prospective building surveyors, private building surveying firms are unable to invest in innovative business systems or assessment approaches and most are reporting particularly severe difficulties arising from increasing costs of insurance.

It is important to ensure that an adequate level of cost recovery is available to councils required to undertake additional inspections. If this is not via a user pays approach, it should be via a State Government funding model. Implementation of the practice direction should be delayed until such time that an appropriate funding model is in place.

## **Linkage between inspections and Certificate of Occupancy**

The draft practice direction describes inspections of the completed works as part of the scope of mandatory inspections. It is not clear if the conduct of an inspection of completed work is to be linked with the certificate of occupancy process. It would appear that these are not to be linked as no legislative change is proposed that would establish such a link.

Unlike other jurisdictions, in South Australia the conduct of mandatory inspections, including a final inspection, is not linked to occupancy authorisation. The absence of a linkage between inspections at mandatory stages and the authorisation of occupation is a weakness in the South Australian regulatory system. It makes it possible to obtain authorisation for occupancy without an inspection having been undertaken. It also means that where an inspection has been undertaken and the work was found to be unsatisfactory, there can be no consequence for the certification of occupation.

## **Enforcement resourcing and motivation / accountability**

Councils are often reluctant to undertake enforcement actions. Enforcement actions are resource intensive, costly (particularly where the matter must be brought before a Court) and often involve 'upsetting' prominent members of the local business community or investors in the region making such actions politically sensitive. With high costs and significant political risk to a council, it is easy to appreciate why councils rarely engage in enforcement actions.

The often-achieved outcomes when a matter goes to the Courts is also a significant deterrent for Councils contemplating enforcement action, where such outcomes are often minimal penalties and in only the rarest of instances are costs awarded in favour of a council having taken an action.

There is also risk, real or perceived, that a council might use enforcement action to drive off a competitor to local business.

Both outcomes represent a real threat to the effectiveness of the enforcement system operating in South Australia. On one hand, enforcement action that should be taken may not be taken and on the other hand, the enforcement system could be misused.

There are no automatic mechanisms whereby a community can be assured that the decisions about when to and when not to take enforcement action are appropriate. Maladministration can be reported to the Office of Public Integrity and excessive use of enforcement powers can be addressed through the Courts, but both of these mechanisms involve an individual taking action to hold a council to account, a daunting prospect for most.

AIBS believes that it is necessary for oversight of decisions regarding enforcement actions to be provided by the regulator to ensure all actions that are required to be taken, are taken, and that all actions taken are in the public interest. Because local government is undertaking this role for the community benefit, there should be appropriate funding of this activity provided from the community where it is not available as an outcome from legal proceedings.

### **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.