



Australian Institute of Building Surveyors

sa chapter

SOUTH AUSTRALIA HOUSE OF ASSEMBLY

SELECT COMMITTEE ON PRIVATE CERTIFIERS

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SUBMISSION TO THE SELECT COMMITTEE ON PRIVATE CERTIFIERS

The Australian Institute of Building Surveyors (AIBS) SA Chapter is pleased to provide the South Australian House of Assembly Select Committee on Private Certifiers with the following submission.

The AIBS is the peak industry body of building surveyors that represents members with the responsibility for delivering building related regulatory functions under the Development Act 1993 and the Development Regulations 2008. Our regulatory and professional role is to ensure the safety and health of the occupants of all buildings; the provision of an acceptable level of amenity for the benefit of building occupants; equitable access for people with disabilities; energy efficiency compliance in buildings and other related matters to the extent that they represent the standard required by legislation and in the public interest. The AIBS has 2,500 members nationally.

The preparation of this document has been in collaboration with the AIBS National Board, the SA State Executive, a representative group of persons registered as private certifiers and the South Australian members of the AIBS.

The AIBS is pleased that the terms of reference have been amended to include both private certifiers and building surveyors as the AIBS considers that private certifiers and local government building surveyors are all accredited at the same level, perform similar professional functions and should all be treated equally.

The AIBS suspects that there may be some confusion as to the role of building surveyors. The Chairman of the Select Committee in the interview with the Director of Legislation Ms Amanda Nicholls, made a number of comments about our profession that we believe to be misinformed and (contrary to their comments) dismissive of our profession in a highly inappropriate manner.

20 The CHAIRMAN: It seems from what you are saying—and I am not wishing to be dismissive of what they do—that these people are essentially informed compliance officers. They have knowledge of the industry and therefore are able to understand the compliance issues associated with particular aspects of building in a way that I couldn't because I don't have that experience. Beyond taking the stuff at face value, as Mr Evans was saying, they are not in a position to go behind what is apparently a compliant structure, is that correct?
Ms NICHOLLS: Based on the information provided with the application, that is correct.

21 The CHAIRMAN: So they are always standing on the shoulders of somebody else in terms of the engineering or compliance with Australian standards or whatever else. Windows may have to be Australian standard 234, they look at the plan and it says 'Australian standard 234', so they tick it—that's it, isn't it?

Ms NICHOLLS: Yes, that's the assessment function.

All States and Territories have legislation that requires development to be assessed for compliance with the building legislation. It is the only vehicle with which governments can ensure building plans are created that meet all the building codes and standards.

A building surveyor is not 'standing on the shoulders of somebody else in terms of engineering or compliance with the Australian Standards'. They must have a thorough understanding of the building codes and all relevant standards to ensure the proposed work complies with the legislation and without this understanding they would be unable to carry out their legislated duties.

Also, they do not simply look for an Australian Standard on a plan, they must be an expert in understanding and applying the Building Rules which includes the relevant legislation, the two volumes of the Building Code of Australia (BCA) – Volume 1 (860 pages) and Volume 2 (708 pages) and the construction standards (of which there are in excess of 100 in the Commercial construction Volume 1 and 72 in the Housing provisions - Volume 2).

It is the view of the AIBS, the building industry, the consumer and State legislation that the building surveyor

- is a professional person trained in understanding and interpreting building laws and codes who acts as the watchdog of the building industry for the function of building rules compliance,
- is authorised by legislation to assess building plans with a view to ensuring they are compliant with the building regulations, and in so doing interacts with other professionals such as planners, engineers, architects and builders to ensure that buildings are designed and constructed in compliance with building legislation,
- must have recognised qualifications, be registered (if a private certifier) and have appropriate insurance either through local government insurance policies or individual policies when operating as a private certifier,
- is responsible for making sure that buildings once completed are constructed in accordance with their approval and are structurally sound, protected against fire, have appropriate consideration to the escape from the building and the health and amenity of occupants, are accessible to people with disabilities and are energy efficient,
- is required to detect and diagnose problems with design issues, construction techniques and materials, and undertake inspections at any stage from foundations through to completion, and
- is required to exercise professional judgement and has a duty of care to his or her clients and can be sued for negligence ie for a breach of that duty.
- must not only understand and apply the provisions of the Development Act 1993 and Development Regulations 2008 but they must also be conversant with the workings of the Building Work Contractors Act, Occupational Health Safety and Welfare Act, CITB Act and Regulations, Fences Act and Regulations, Community Titles legislation, Health Act, Country Fires Act and Regulations et al.

Building surveyors may also perform other duties that include:

- provide advice and assistance to builders and owners before finalisation and lodgement of building plans, to avoid potential problems or conflicts,
- make recommendations on matters such as the provision of amenities for the community,
- carry out pre-purchase inspections of all types of buildings,
- keep records and write reports on building progress and instances where legislation has been breached and plans have been altered,
- give evidence in court cases involving breaches of building legislation,
- assess the condition of existing buildings for legislative compliance (fire safety, health and amenity etc),

- issue compliance certificates on completion,
- audit buildings for access for people with disabilities,
- provide advice on a buildings essential safety provisions, and
- play an active role in council building fire safety committees.

The two terms of reference are addressed from a national perspective individually below.

Term of Reference

- 1. The operation of Part 12 – Private Certification of the Development Act 1993, and in particular –**
 - a. The framework under the Development Act 1993 to handle complaints against private certifiers/building surveyors;**
 - b. The current process of accrediting private certifiers/building surveyors in the State of South Australia;**
 - c. Whether current methods of accreditation for private certifiers/building surveyors is appropriate and/or whether other streams of accreditation should be considered;**
 - d. The appropriate qualifications required by private certifiers/building surveyors to undertake tasks related to the structural integrity of buildings;**
 - e. The system of auditing approvals provided by private certifiers/building surveyors and adequacy of the current processes of enforcement in the event of a breach of the Development Act 1993; and**
 - f. Any other matters directly relevant to this Part of the Development Act 1993.**

Each of the six (6) sub-clauses of terms of reference is addressed as follows:

- 1a. The framework under the Development Act 1993 to handle complaints against private certifiers/building surveyors.

(a) Complaints process:

- (i) Complaints against all building surveying practitioners are legislated by the Development Regulations 2008 Part 16, Regulation 103 'Complaints relating to building work assessment'. Regulation 103 allows complaints to the Minister about both private certifiers and councils and the information required to be provided when lodging a complaint is the same for both a private certifier and council however the method of dealing with the complaint varies.

If the complaint is against a council the Minister **must** initially refer the matter to the council for consideration and a report. The Minister has the power (after receiving a report from council) to decide not to proceed with the complaint (r. 103(7)).

A private certifier does not get the opportunity to respond to a complaint until an official investigation is undertaken. Legislation does not allow the Minister to request a report from the private certifier and the Minister cannot make a decision not to proceed.

It is concerning that a complainant has the ability to make unsubstantiated claims about a private certifier that must result in a formal investigation with no ability for the private certifier to refute the claims to the Minister or to have the Minister set the complaint aside.

Those who support the current legislation would argue that Reg. 103(6) allows the Minister to refuse to entertain a complaint under certain circumstances such as the matter being trivial or frivolous or vexatious or is not made in good faith however if this was sufficient as a check and balance for unsubstantiated complaints then there would be no need for Reg 103 (7) as a fall back position for council.

There is also no 'right of appeal' for private certifiers in the legislation which is unfair and should be addressed.

The AIBS strongly believes that the legislation should be the same for councils and private certifiers and that the same courtesy should be afforded to private certifiers as that afforded to councils.

- (ii) The AIBS is aware that there has been significant innuendo and gossip with regard to the performance and modus operandi of private certifiers, and so that this issue is maintained in the context of objectivity, we submit that since the introduction of private certification some fifteen years ago, we understand that there have been less than ten formal complaints lodged and that none have resulted in any serious penalties, let alone the de-registration, of any practitioner.

However, we do support the concept of a fairer more efficient framework to deal with complaints. Those few private certifiers who have been the subject of a complaint have found the system to be unfair, costly and cumbersome to the detriment of all parties concerned.

The AIBS is of the opinion that the complaints framework needs to be revised to provide greater clarity for all parties involved in the process. Complaints should be directed to the Department of Planning and Local Government and that Department be primarily responsible for the management of the complaints system. We strongly submit that a framework to handle complaints must apply to all building surveyors irrespective of their place of employment.

The following comments are offered for your consideration:-

- A. complaints must apply to all building surveyors whether they work in private sector or Government,
- B. a copy of any complaint is to be provided in writing to the private certifier/building surveyor involved,
- C. an informal meeting should be held with the relevant private certifier/building surveyor and the person lodging the complaint chaired by the Department of Planning and Local Government,
- D. the Department of Planning and Local Government when chairing an informal meeting must be given the criteria for handling minor to serious complaints with the focus on discussion and resolution of the issues,
- E. if there is no resolution then the matter should be placed in the Ministerial Complaints system as it currently exists, and

F. the private certifier/building surveyor is to have a right of appeal to an independent body such as the Environment and Resources Court.

- (iii) A further matter pertaining to the complaints process is that the system invites complaints against private certifiers by councils, by virtue of the continuous perusal of privately certified applications through the council only building inspection process. It could be argued that this amounts to a technical audit of privately certified work.

Inspections of developments approved by council building surveyors are unlikely to result in a complaint being lodged against their employer as any matters that are approved as complying with the building rules that are found to have been assessed in error would be dealt with in-house.

For this reason the AIBS believes that it is misleading and unfair to draw any conclusions from a comparison of the number of complaints against private certifiers with those lodged against councils. The relevant number of applications assessed will also have a bearing on any comparison and the resultant conclusions.

(b) Code of practice for all building surveyors

Regulation 103(2)(b) allows a person to lodge a complaint based upon the failure of a private certifier to comply with a code of practice. No other person duly accredited as a building surveyor, assistant building surveyor or building surveying technician is required to comply with this Ministerial Code of Practice (refer Appendix A) simply by the virtue that they are not acting as a private certifier. The code of practice is advisory only for Local Government employed building surveying practitioners.

A private certifier is therefore required to comply with a legislated code of practice (and is subject to the legislated penalties) and an industry code of practice as agreed on application for accreditation. A council employed accredited building surveying practitioner is required to comply only with the industry code of practice. Therefore the requirements and penalties are greater on private certifiers than on a local government employed practitioners and the local government employees are indemnified by virtue of any action that is taken for failure to undertake work in an appropriate manner by virtue of the complaint being laid against the council and not the individual practitioner.

All persons accredited as building surveyors under the Development Act 1993 should be treated equally and should all be required to abide by the Ministerial Code of Practice (refer Appendix A).

(c) Relationship with accreditation authority

Our final concern with the current legislation is that Regulation 103 is very clear in the method of lodging a complaint and the powers of the Minister are set out in Reg. 103(9) – 103(20) however there are no powers to inform the accreditation authority if there has been a transgression that calls a building surveyors accreditation into question.

Once a complaint is lodged and dealt with under the legislation by the Minister the matter is at an end. There are no reports provided by the Minister to the SA Government approved building industry accreditation authority (AIBS). Any complaint that is found to be substantiated by the Minister is kept entirely within the State Government. The AIBS is not suggesting (without further consideration and discussion) that there be a 'name and shame' attitude, however matters pertaining to a person's competence to act as an accredited person should be brought to the attention of the

accrediting body. If this does not occur the AIBS accreditation authority should not be held to account for a failure to take action against any accredited person that the State Government believes has breached their role as a private certifier or building surveyor.

Recommendation

1. The complaints framework needs to be revised to provide greater clarity for all parties involved in the process. Complaints should be directed to the Department of Planning and Local Government and that Department be responsible for the management of the complaints system.
2. The AIBS comments on the restructure of the framework, numbered A - F be adopted by the Government in any review of the complaints framework.
3. The AIBS strongly believes that the complaints process legislation should be the same for councils and private certifiers and that the courtesy of appearing before the registration authority prior to a formal investigation that is afforded to councils should be afforded to private certifiers.
4. That a right of appeal be included in the complaints system.
5. That the government exercise extreme caution when comparing the number of complaints against private certifiers with those lodged against councils.
6. The AIBS strongly believe any code of practice should be applicable to both private certifier and local government building surveying practitioners.
7. Matters pertaining to a person's competence to act as an accredited person should be brought to the attention of the accrediting body.

1b. The current process of accrediting private certifiers/building surveyors in the State of South Australia.

The current system of accreditation by the Australian Institute of Building Surveyors (AIBS), (as distinct from State Government "Registration") is strongly supported. To the knowledge of the AIBS there is no evidence to suggest that the AIBS accreditation system is flawed or inadequate. Any interference or reduction to the current requirements will be detrimental to the profession, particularly given that the accreditation criteria for building surveyors are enshrined in the National Accreditation Framework (NAF) (Refer Appendix B) which is underpinned by the Australian Building Codes Board (ABCB) and the COAG.

There is currently a Commonwealth Government push for national uniform licensing of occupations where licensing is appropriate. The AIBS Accreditation Scheme is a system that is considered to be appropriate to the Commonwealth requirements and the AIBS is currently in negotiations with the COAG Skills Licensing Taskforce to be the first profession to be considered by the National Licensing Steering Committee.

(a) Accreditation / Registration of private certifiers/building surveyors

There is a clear difference between accreditation and registration and who is required to be accredited and who is required to be registered.

All private certifiers are building surveyors by virtue of State legislation. All building surveyors including local government building surveyors must be accredited (as do assistant building surveyors and building surveying technicians).

Only private certifiers are required to be registered. The State government has no control over local government building surveyors through a registration process.

Registration is the legislated criteria necessary to be registered as a private certifier by the registration authority (which under Development Regulations 2008 is the Minister). The Development Act Part 12 Section 91 states that for a person to act as a private certifier they must hold the appropriate qualifications and have the necessary experience as prescribed by the regulations.

The appropriate qualifications are contained in Regulation 91 which requires a private certifier hold the prescribed qualifications of current accreditation as a Building Surveyor as issued by the approved accreditation authority and at least 8 years experience in the practice of architecture, civil engineering in respect of buildings or building surveying (after obtaining a graduate qualification in architecture, graduate qualification in civil engineering or accreditation as a building surveyor by an approved building industry accreditation authority).

Accreditation is the process whereby an approved building industry accreditation authority assesses a person's knowledge and experience against set criteria (the NAF) and determines the appropriate level at which they can practice.

Consistent with the principles of the NAF, a person accredited as a building surveyor (irrespective of whether they work in local government or in private practice as a private certifier) is unlimited in the size and type of Development that they are allowed under legislation to assess (r.87(2)).

There are two other levels of building surveying practitioner in South Australia (assistant building surveyor and building surveying technician) and they are limited by legislation in the size and type of work they can perform (r.87(2)).

The difference between a private certifier and a local government building surveyor is the registration requirement for 8 years experience (of a type as regulated). Both can undertake exactly the same assessments however it has been determined that to act in the capacity as a relevant authority for the purposes of issuing Building Rules Consent one must have the required 8 years experience.

Once registered, the registration authority has broad powers to take action against private certifiers and (under reg. 93A(7)(b)) cancel a private certifiers registration if the certifier contravenes or fails to comply with the provisions of the Act or the regulations.

As previously discussed a private certifier must under Reg. 103 comply with a code of practice which includes that they

not undertake professional work which they are not competent to perform. If they are in any doubt to this matter, they must obtain such advice and assistance as will enable them to carry out such work competently;

If the registration authority has evidence and proof that a private certifier has contravened Reg. 103 by failing to comply with the Code of Practice, the registration

authority has the power under Reg. 93A(7) to take disciplinary action including cancelling their registration.

To the AIBS knowledge the registration authority has not exercised its disciplinary powers under the Development Regulations 2008.

The AIBS recommends the South Australian government maintain the current system of **accrediting** all building surveying practitioners as competent to perform assessments appropriate to their accreditation, however it should **register** all building surveying professionals (not just private certifiers) to ensure all building surveying professionals are required to comply with the Code of Practice and the government has a method by which to discipline practitioners that repeatedly fail to comply with this Code.

Recommendation

1. The AIBS believes that the current system of accrediting building surveying practitioners should remain and the persons accredited under the scheme are duly accredited to operate within the Development Act and Regulations.
2. That the State Government treat all building surveyors equally and require private certifiers and local government building surveyors to be registered and subsequently comply with the code of practice.
3. That the registration authority use the powers it already has to take action against any private certifier or building surveyor, where that certifier or building surveyor has been found guilty of not complying with the code of practice.

1c. Whether current methods of accreditation for private certifiers/building surveyors is appropriate and/or whether other streams of accreditation should be considered.

(a) Accreditation of building surveying practitioners

- (i) The AIBS, as an industry based accreditation authority is acting throughout Australia to accredit the qualifications of persons wishing to practice at any of the three levels of building surveying. The scheme is available to all persons wishing to be accredited and is not limited to members of the AIBS. It should be noted that this is similar to the accreditation of other professions.

The AIBS Accreditation Scheme was accepted as an approved building industry accreditation authority under regulation 91(2) by the Hon Jay Weatherill MP, Minister for Urban Development and Planning in May 2002 (Refer Appendix C).

The AIBS Accreditation Scheme is also recognised without further assessment (provided state based requirements are satisfied) by adoption in QLD, NT, SA, ACT and by the Commonwealth Department of Defence. NSW is currently investigating the adoption of our scheme in the near future and Western Australia has also accepted AIBS accredited building surveying practitioners as suitably qualified to practice under the WA legislation.

As previously advised, the accreditation framework as adopted by the AIBS is the NAF and the scheme is open to members and non-members alike, in fact to anyone who

wishes to gain accreditation as a building surveying practitioner (including those with Engineering qualifications). The scheme is designed to assess persons who wish to make a new application for accreditation, the reaccreditation of currently accredited persons and the assessment of overseas applications.

Through the scheme the AIBS also assesses tertiary and TAFE educational courses to ensure the course content complies with the NAF. Persons successfully undertaking the approved courses will meet the educational requirements of the accreditation process.

To gain accreditation in one of the three levels of building surveying practitioner, a person with the appropriate educational background must also have the relevant practical experience in core building surveying areas of knowledge and skill and then make application to the AIBS Accreditation scheme for appropriate accreditation which lasts three years.

At the end of the accreditation triennium and prior to the expiry the applicant is required to lodge an application to gain reaccreditation by submitting evidence of the appropriate maintenance of continuous professional development.

The AIBS National Accreditation Office undertakes the full administration function from receipt of an application for accreditation, acknowledgement of the application, ensuring the sufficiency of all submitted documentation, preliminary assessment, liaison with the applicants and presentation to the National Assessment Panel (NAP) for final assessment and decision.

The AIBS also has appeals processes in place where an applicant wishes to dispute a decision.

On successful completion of an application the applicant is presented with an Accreditation Certificate and ID card.

The benefits of accreditation by AIBS are

- sole focus on the building surveying profession
- well documented procedures and experience in running accreditation of the profession
- rigorous compliance evaluation practices for accreditation processes
- administrative and financial capability to carry out its activities
- full time staff in the National Accreditation Office, supervised by the AIBS CEO under the direction of the AIBS Board
- a reflection of the ABCB NAF guidelines as they relate to qualifications and experience
- a well-developed CPD program.

The AIBS Accreditation has documented procedures in place to undertake appeals and interviews and to investigate accreditation complaints.

The AIBS is currently in negotiations with the COAG Skills Licensing Taskforce to be the first profession to be considered by the National Licensing Steering Committee. Attached as Appendix D is a letter of support from the Australian Building Codes Board.

The AIBS is undertaking a review of its Accreditation Scheme and a draft of the revised scheme was sent to Minister Holloway on 04 July 2007. We also offered to meet with the Minister to discuss the scheme however this was deemed unnecessary. We were asked to forward any proposed scheme changes to the Department and that discussions would be held with the AIBS regarding the introduction of auditing (refer Appendix E). We have forwarded the draft changes but to date have not had any further discussions regarding auditing.

The AIBS recommends that the accreditation of building surveyors and private certifiers be in accord with the National Accreditation Framework with an associated CPD scheme, remain in force in SA (as per the current agreement) and that the State Government meet with the AIBS as necessary to discuss any issues that may occur.

- (ii) The Term of Reference 1c also includes 'whether other streams of accreditation should be considered'. The AIBS believes that an accreditation scheme for building surveying professionals needs people with a strong knowledge of building surveying as a profession to oversee the process and to ensure the education providers are in sync with the National Accreditation Framework.

Over the course of time there is likely to be other bodies that will make application to State Governments to undertake accreditation of building surveyors. The AIBS understands this and accepts that this may occur. We do however, expect the State Governments and the Federal Government to respect the signed COAG agreement regarding the National Accreditation Framework and to require any authority purporting to accredit the profession, do so under the NAF criteria and have a robust CPD scheme in place as has been required of the AIBS and duly provided.

The Development Act provides an option whereby the Minister may under Section 101 approve persons to undertake duties applicable to building under the Development Act 1993. Section 101 allows the Minister to authorise a person to advise a relevant authority on matters declared by regulation to be a matter on which advice should be sought.

To date the use of Section 101 authorisations has been limited to persons who are required under Section 25(3) and Section 26(1) of the Act to have prescribed **planning qualifications** when **preparing a Development Plan Amendment**.

It is important to be clear in the understanding that the Development Act and Regulations only require persons undertaking Development Plan Amendments (DPA) to have prescribed planning qualifications. Individuals providing advice to a relevant authority on the appropriateness of development applications for Development Plan Consent are not required to have prescribed qualifications.

Under Regulation 86(5), to prepare a DPA a person must have either

- corporate membership of the Urban and Regional Planning Chapter of the Planning Institute of Australia Incorporated (PIA); or
- such qualifications or experience in urban and regional planning, environmental management or a related discipline as are in the opinion of the Minister appropriate.

Where a person is not a corporate member of the Urban and Regional Planning Chapter of PIA they would not be able to satisfy the first criteria and would therefore have to request Ministerial approval under Section 101.

The AIBS understands that membership or non-membership of an organisation should not preclude an individual's right to act in the capacity required to undertake DPA's provided their knowledge and experience is of a satisfactory level. In planning matters Ministerial approval under Section 101 is appropriate.

As the approved building industry accreditation authority (AIBS) accredits all persons (whether or not they are members of the AIBS) with the necessary qualifications and experience that wish to be accredited, Section 101 authorisation should only be granted under exceptional circumstances.

In relation to allowing persons to undertake duties applicable to building under the Development Act, to the AIBS knowledge, to date there is no published criteria for approval by the Minister and no information on the qualifications or experience needed that would be considered as suitable for Section 101 accreditation.

The AIBS is unaware of any persons being granted a Section 101 authorisation to advise a relevant authority on Building Rules matters.

Should the Minister delegate the authority under legislation to issue Section 101 authorisations to another body or person the AIBS request that the Minister ensure that the delegation be open and transparent with appropriate published rules for the delegated authority including the criteria for requesting a Section 101 authorisation and a Code of Conduct for the body or persons who are given the delegated authority.

As has already been discussed the National AIBS Accreditation scheme accredits Building Surveyors (BS), Assistant Building Surveyors (ABS) and Building Surveying Technicians (BST) all in accordance with the NAF. To maintain an appropriate building rules and legislative knowledge base and to ensure our continuing professional status each accredited person is required to participate in a continuous professional development scheme.

Whilst the AIBS Accreditation scheme is an approved building industry accreditation authority and it is open to all persons wishing to gain accreditation as a BS, ABS or BST, the AIBS is of the opinion that there is no reason to have a Ministerial Section 101 for these three levels of accreditation.

There has been discussion that a Section 101 authorisation should be sought by persons who are studying building surveying either at University or TAFE and have not yet finished their study. However the AIBS believes there is adequate provision in the Regulations under Regulation 87 (1) to allow a person without the prescribed qualifications to assist in the providing advice to the relevant authority provided that advice is given with the assistance of an officer who holds prescribed qualifications.

The AIBS also understands that there may be exceptional circumstances that would require a person seek authorisation under Section 101 rather than accreditation through a NAF compliant scheme.

An example of such circumstances could be for the temporary accreditation of practitioners in remote areas, for specific times when a council may not be successful in engaging the services of an approved building industry accredited person.

The AIBS also recognises that there may be additional matters introduced into the Development Regulations (as distinct from assessment for Building Rules compliance) that may be undertaken by the existing levels of building surveying accreditation but are actually at a lower level and could stand alone for a separate level of accreditation. For example the inspection of wall and roof frames may be regulated and persons who have undertaken appropriate training and with appropriate experience would be allowed under regulation to inspect for compliance with already approved documents. The persons with such knowledge and experience would fall outside the NAF framework and subsequently outside the current AIBS Accreditation scheme. The Minister could use Section 101 authorisation to authorise individuals to carry out these kinds of regulatory functions.

The AIBS does not agree with the issuing of Section 101 authorisations for persons wishing authorisation to act as BS, ABS or BST as this will in the end amount to a Dutch auction whereby the least expensive, least onerous, and the least education criteria will become the norm. This will have the effect of lowering the standards of building surveying within the State and by mutual recognition across the country.

To authorise individuals who believe that they are capable of undertaking Building Rules assessments whilst only having a distantly related tertiary qualification to building surveying (without undertaking further study) is not acceptable.

The AIBS believe that the following matters need to be addressed by an applicant when applying for authorisation under Development Act Section 101:

- 1) Evidence of lodgement of an application with an approved building industry accreditation authority (where applying for authorisation to act in the capacity of Building Surveyor, Assistant Building Surveyor or Building Surveying Technician)
- 2) Where an application has been **granted** by the approved building industry accreditation authority and a Section 101 application is for the same level, a Section 101 authorisation should be refused based on the person being already authorised to consider building rules matters at the level requested.
- 3) Where an application has been **refused** by the approved building industry accreditation authority and the Section 101 application is for a different level then the applicant should be required to the Minister (for background knowledge) the reasons for the refusal.
- 4) Where a refusal is on financial grounds (ie failure to pay the approved building industry accreditation authority fee) and the approved building industry accreditation authority has not made a decision on the application, the Section 101 application should be refused until such time as the approved building industry accreditation authority has made a determination.
- 5) In making a final decision the Minister should consider the applicants reasons for applying under Section 101, the employers supporting statement and the approved building industry accreditation authority's reasons for the refusal.
- 6) Any decision to issue a Section 101 authorisation should be limited by time constraints and conditions including requiring the active participation in a CPD scheme for the life of the Section 101 authorisation.

- 7) The number of CPD points required and the nature of the sessions that attract CPD points should mirror the approved building industry accreditation authority scheme.
- 8) Where an application is for matters outside the levels of Building Surveyor, Assistant Building Surveyor or Building Surveying Technician the criteria will be as determined by the Minister.
- 9) The Minister could use Section 101 authorisation to authorise individuals to carry out additional functions that may be regulated such as inspections of roof trusses, swimming pools and timber framing.

Recommendation

1. That the accreditation of building surveyors and private certifiers be in accord with the National Accreditation Framework with an associated CPD scheme, remain in force in SA (as per the current agreement) and that the State Government meet with the AIBS as necessary to discuss any issues that may occur.
2. That the Minister ensure that a framework to gain a Section 101 accreditation be prepared that requires
 - a) all applications for authorisation to act in the capacity as Building Surveyor, Assistant Building Surveyor and Building Surveying Technician be first considered by the approved building industry accreditation scheme and the results of the application be considered by the Minister.
 - b) Section 101 authorisation only be granted by the Minister under exceptional circumstances or when Development Regulation requires authorised persons outside the current levels.
 - c) that the matters listed above 1 – 9 need to be addressed by an applicant if applying for authorisation under Development Act Section 101.
3. The AIBS request that should the Minister delegate the authority under legislation to issue Section 101 authorisations to another body or person the Minister ensure that the delegation be open and transparent with appropriate published rules for the delegated authority including the criteria for requesting a Section 101 authorisation and a Code of Conduct for the body or persons who are given the delegated authority.

1d. The appropriate qualifications required by private certifiers/building surveyors to undertake tasks related to the structural integrity of buildings.

The AIBS has noted that Minister Holloway in the Legislative House has cited the matter of the “Riverside” roof collapse as cause for concern with the qualifications and accreditation of private certifiers and building surveyors, on many occasions recently. The Select Committee needs to be aware that the assessment of the project was handled by Local Government and there is no mention of the private certification process made in the Coroner’s report. There is also nothing in the Coroner’s report that considers that any building surveyor involved in the assessment was inappropriately qualified to assess or inspect the work. Notwithstanding the “Riverside” tragedy the AIBS both nationally and in South Australia believe that there should not be any change to the current legislation with regard to the required qualifications of building surveyors as we believe the current system is operating well.

It is submitted that private certifiers and building surveyors are a very experienced, university educated group of professionals (as recognised by the accreditation/registration process) who fully appreciate the intent of legislation and understand when their level of expertise calls for additional engineering or other expert input.

Current university courses around the country have appropriate amounts of engineering to equip private certifiers and building surveyors to make the appropriate professional judgement. The private certifiers and building surveyors that have undertaken the UniSA course have studied Principles of Engineering Design included within the curriculum.

The qualifications of practitioners is at a professional level and part of that education and training is how to make professional judgements, including whether structural calculations need further referral to a specialist. Practitioners have studied enough structures and had sufficient on-site experience to know when specialist assessment is required.

The AIBS believe that the qualifications of private certifiers and building surveyors to undertake tasks related to the structural integrity of buildings are appropriate and the status quo with respect to this is supported.

In addition Continuing Professional Development (CPD) requirements for certifiers (and building surveyors) reinforce their level of professional ethics and conduct. They also must comply with two codes of conduct, under the Development Act and the Accreditation Authority (AIBS).

The AIBS (and, we believe, the SA State Government) has been informed by the University of South Australia (UniSA) that should building surveyors no longer be required to exercise professional judgment when accepting engineering designs, a significant component of the education of building surveyors will no longer need to be delivered. Hence the University would find it difficult to justify continuing with the building surveying programs and would have to reconsider its options in delivering the programs.

Should the University of SA decide not to include these components, the program would no longer satisfy the requirements for accreditation and would have to be removed from the approved providers list. To lose UniSA would have an enormous impact on the building surveying profession. The basis of this comment is:

- UniSA is one of only three universities in Australia that deliver building surveying programs.
- UniSA has the only Australian post graduate building surveying program and should it be withdrawn will mean that there is no program available for allied industry professionals to move into building surveying (including engineers).
- UniSA provides the only access for overseas trained professionals to up skill to building surveyor level in order to enable them to work in Australia. The national shortage of qualified building surveyors will be exacerbated by the loss of the UniSA program and will contribute in a negative way to the skill shortage in Australia as a whole and in South Australia in particular.

The AIBS also wishes to make it clear that it does not support a person (private certifier or building surveyor) undertaking any Building Rules assessment or any part of the assessment if they do not have the expertise to do so.

The AIBS has commented on a discussion paper on the approval of structural engineering qualifications and the opinion presented was to maintain the status quo and that legislative change is unnecessary. Our response advised that

1. No objective substantiated evidence has been put forward to justify a change in the current legislation.
2. The addition of a further step in the process of obtaining Development Approval will undoubtedly create additional delay in the granting of such approval. This delay will be aggravated by the creation of additional work for some engineers to perform when the available engineering resources within the State already under strain. It is fair to say that South Australia already has very substantial delays in the granting of development approval by the bulk of metropolitan councils, and the imposition of a further step in the process will only serve to aggravate such delays. It is a step which will make South Australia even more uncompetitive when compared with the other States.
3. Significant additional assessment costs will be incurred by the applicants for Development Approval. This is inevitable. Neither a council nor a private certifier could accept a certification by a third-party engineer without checking the same. To do so, would leave the council or private certifier open to an action for negligence. To protect themselves for the work necessary to be performed, either a council or a private certifier would have to charge a fee in addition to the fee charged by the third-party engineer.
3. The imposition of additional cost clearly flies in the face of housing affordability, and detracts from any competitive advantage that South Australia may have in the development of commercial enterprise in this State. The AIBS opposes unnecessary additional costs and delay in the process of obtaining Development Approval.
4. The current system of assessment places a clear onus on the assessing authority, whether it be a council or a private certifier. An applicant for development approval may choose between a council for a private certifier to obtain Building Consent. If the council or the private certifier does not carry out the task of assessing the application for consent in a proper and professional manner, and in accordance with the relevant legislation, the council or the private certifier will be liable in damages to a property owner who suffers loss or damage. It is most surprising to suggest that any building surveyor would overestimate their expertise in engineering matters merely to obtain work in the "current competitive environment" when faced with the certainty that if the work is negligently performed and loss is suffered, a legal action will follow.
5. The proposed change to the legislation to require structural calculations be assessed by a third party structural engineer will not serve to protect the community or the council to any greater extent than that already afforded. Third party engineering design checks by either a building surveyor with structural engineering qualifications or consultant structural engineers does not ensure design defects will be detected at the approval stage.

The AIBS also notes that Engineers Australia in their submission to the Select Committee on Private Certifiers under the original terms of reference stated that

'Engineers Australia believes that private certifiers who are building surveyors should do no more than take responsibility for ensuring a structural design has been carried out by a properly qualified engineer.'

When a building surveyor is not satisfied that a structural design has been designed by a registered structural engineer, the building surveyor should ensure that a registered structural engineer checks it and issues an independent technical expert certificate.

Building Surveyor's training in South Australia is designed to equip them to understand the limits of their grasp of structural engineering principles and where to call in a properly qualified and registered structural engineer to check structural designs.'

This is in line with the process in the other States of Australia where the building surveyor ensures the structural engineering design has been undertaken by a registered structural engineer and only requests third party certification by an independent technical expert if the design engineer cannot supply current details of their registration.

In their submission Engineers Australia also recommended that

'the South Australian Government introduce legislation to regulate structural engineers through an appropriate registration scheme'

The AIBS believes that if the professional body representing Structural Engineers is suggesting that Structural Engineers be registered and also providing the framework under which that registration should occur then it has the full support of the AIBS.

Recommendation

1. The qualifications as contained in the Development Act 1993 and Development Regulations 2008 remain unchanged.
2. The views of Engineers Australia with regard to the registration of structural engineers are considered by the Select Committee and the SA Government.

1e. The system of auditing approvals provided by private certifiers/building surveyors and adequacy of the current processes of enforcement in the event of a breach of the Development Act 1993
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A system of auditing has been a subject of discussion between the State Government and Industry since 2002 and the AIBS on numerous occasions advised that a transparent auditing process for all building surveying practitioners is supported.

The SA Development Act actually enables auditing of all building surveyors (council or private certifier). Section 56B – Building Rules assessment audits, was included in the Development (Miscellaneous) Amendment Act 2005 which was passed by the State Parliament on 01 December 2005. The amendments were proclaimed in the Government Gazette on 12 January 2006. However, over three (3) years since gazetting the changes the SA Government has not implemented the system of independent auditing. The AIBS can only wonder whether this whole matter may have not got to a Parliamentary Select Committee should auditing been implemented.

We understand the AIBS National Board has advised the Select Committee that it supports a transparent auditing process and system with appropriate enforcement procedures and processes that is applicable to all building practitioners equally. Such systems which have been implemented in other jurisdictions may be instructive for the South Australian Government in implementing such systems.

It is also submitted that any auditing system that is introduced must be carefully considered to ensure a proactive process aimed at improving the profession. The AIBS wish an SA auditing scheme be written such that there is:

1. a clear guide as to what is considered as a breach and the guide be published,
2. clear guidelines on the auditing process that are prepared by the Department of Planning and Local Government,
3. a commonsense, practical and informal process be encouraged to the benefit of all parties in the first instance,
4. a process that follows the normal doctrine of natural justice including rights of appeal where a more formal and serious event occurs,
5. options for rectification including follow up audits within prescribed times depending on the level of breach, and
6. auditing of all building surveyors irrespective of their place of employment.

Recommendation

That a system of auditing be introduced as soon as possible and that the matters 1-6 above be considered when drafting the auditing scheme

1f. Any other matters directly relevant to Part 12 of the Development Act 1993.

There are many other matters that have impacted on private certifiers particularly over the past five years. With an increasing amount of work carried by certifiers (understood to be 70% of all Building Consents) recent changes to legislation demanding certifiers take on an increasing role relevant to planning is proving to be detrimental to the approval processes in South Australia.

In particular:

a) Certificate of Consistency

The private certifier is required to check that the documentation that is used to issue Building Rules Consent is consistent with the Planning Consent. Irrespective of this however, councils subsequently also assess each application for consistency and in many cases have a differing view from the private certifier thus creating a conflict. On account of subjectivity inherent in the definition of “consistent” or “consistency” and the interpretation adopted by each council, the private certifiers’ task in this area is rendered contentious.

Whilst these views were made known to government authorities, and there have been attempts by the Department of Planning and Local Government to resolve the situation through the introduction of a Statement of Consistency, it is the AIBS view that the situation remains unchanged except that the private certifier is now responsible for ensuring compliance with planning conditions with which they have no authority to assess.

When considered opinions, including legal cases, suggest that the definition of “consistent” does not mean “identical” this is constantly challenged by Local Government resulting in unnecessary and costly delays, often, for very minor matters.

The AIBS requests that the State Government consult with all the affected parties to reach a consensus on what is an appropriate definition of consistent and to include this in the Development Regulations 2008. Anything short of this is unfair to private

certifiers, planners and the public who are all under considerable stress when dealing with this issue.

(b) Notice and Extent of Fees

The AIBS is concerned that Schedule 6 of the Development Regulations 2008 is becoming particularly cumbersome in its extent and is creating considerable confusion.

In particular with the implementation of the recent Residential Development Code there have been further additional fees added to the Schedule. The end result is considerable confusion amongst industry, council and certifiers as to the appropriate fees.

The AIBS would request that a working party with the AIBS, LGA, Department of Planning and Local Government be set up to discuss a rationalisation of the fees.

c) Amended Details

During the course of the construction there is often the need to amend an aspect of construction and revised details are sent to the Local Authority. Where the work is considered as minor the details are appended to the file for record. If the work is considered to be a major amendment it will need to be considered as a variation and a new Development Application for the work will be sought.

Again the interpretation as to what is minor or a major amendment varies greatly between the private certifier and council which can result in considerable re-work by the private certifier. This is related to the question of consistency. Amended details and the method of processing these should be addressed in legislation, giving clearer direction to the applicant, certifier and council.

Recommendation

1. The AIBS requests that the State Government consult with all the affected parties to reach a consensus on what is an appropriate definition of consistent and to include this in the Development Regulations.
2. The AIBS requests that a working party with the AIBS, LGA, Department of Planning and Local Government be set up to discuss a rationalisation of the fees.
3. Amended details and the method of processing these details should be addressed in legislation, giving clearer direction to the applicant, certifier and council.

Term of Reference

- 2. Whether the Building Advisory Committee or any of its members have been placed under any undue influence in the performance of their statutory duties.**

There has been no undue influence placed any member of the Building Advisory Committee in relation to his/her performance of their statutory duties by the AIBS.

Summary of recommendations

1a. The framework under the Development Act 1993 to handle complaints against private certifiers/building surveyors.

1. The complaints framework needs to be revised to provide greater clarity for all parties involved in the process. Complaints should be directed to the Department of Planning and Local Government and that the department is responsible for the management of the complaints system.
2. The AIBS comments on the restructure of the framework, numbered A - G be adopted by the Government in any review of the complaints framework.
3. The AIBS strongly believes that the complaints process legislation should be the same for councils and private certifiers and that the courtesy of appearing before the registration authority prior to a formal investigation that is afforded to councils should be afforded to private certifiers.
4. That a right of appeal be included in the complaints system.
5. That the government exercise extreme caution when comparing the number of complaints against private certifiers with those lodged against councils.
6. The AIBS strongly believe any code of practice should be applicable to both private certifier and local government building surveying practitioners.
7. Matters pertaining to a person's competence to act as an accredited person should be brought to the attention of the accrediting body.

1b. The current process of accrediting private certifiers/building surveyors in the State of South Australia.

1. The AIBS believes that the current system of accrediting building surveying practitioners should remain and the persons accredited under the scheme are duly accredited to operate within the Development Act and Regulations.
2. That the registration authority use the powers it already has to take action against any private certifier, where that certifier has been found guilty of not complying with the code of practice.
3. That the State Government treat all building surveyors equally and require private certifiers and local government building surveyors to be registered and subsequently comply with the code of practice.

1c. Whether current methods of accreditation for private certifiers/building surveyors is appropriate and/or whether other streams of accreditation should be considered.

1. That the accreditation of building surveyors and private certifiers be in accord with the National Accreditation Framework with an associated CPD scheme, remain in force in SA (as per the current agreement) and that the State Government meet with the AIBS as necessary to discuss any issues that may occur.
2. That the Minister ensure that a framework to gain a Section 101 accreditation be prepared that requires

- a. all applications for authorisation to act in the capacity as Building Surveyor, Assistant Building Surveyor and Building Surveying Technician be first considered by the approved building industry accreditation scheme and the results of the application be considered by the Minister.
 - b. Section 101 authorisation only be granted by the Minister under exceptional circumstances or when Development Regulation requires authorised persons outside the current levels.
 - c. that the matters listed above 1 – 9 need to be addressed by an applicant if applying for authorisation under Development Act Section 101.
3. The AIBS request that should the Minister delegate the authority under legislation to issue Section 101 authorisations to another body or person the Minister ensure that the delegation be open and transparent with appropriate published rules for the delegated authority including the criteria for requesting a Section 101 authorisation and a Code of Conduct for the body or persons who are given the delegated authority.

1d. The appropriate qualifications required by private certifiers/building surveyors to undertake tasks related to the structural integrity of buildings.

1. The qualifications as contained in the Development Act 1993 and Development Regulations 2008 remain unchanged.
2. The views of Engineers Australia with regard to the registration of structural engineers are considered by the Select Committee and the SA Government.

1e. The system of auditing approvals provided by private certifiers/building surveyors and adequacy of the current processes of enforcement in the event of a breach of the Development Act 1993

1. That a system of auditing be introduced as soon as possible and that the matters 1-6 above be considered when drafting the auditing scheme

1f. Any other matters directly relevant to Part 12 of the Development Act 1993.

1. The AIBS requests that the State Government consult with all the affected parties to reach a consensus on what is an appropriate definition of consistent and to include this in the Development Regulations.
2. The AIBS requests that a working party with the AIBS, LGA, Department of Planning and Local Government be set up to discuss a rationalisation of the fees.
3. Amended details and the method of processing these details should be addressed in legislation, giving clearer direction to the applicant, certifier and council.

Request to Appear Before the Select Committee

The AIBS wishes to appear before the Select Committee in support of our submission and to provide the opportunity for members of the Select Committee to seek clarification and ask

questions in relation to our submission and the issue of private certifiers generally. Our nominations to appear before the Select Committee are:

Mr Bernard Steer	AIBS SA State President, AIBS National Director
Mr Troy Olds	AIBS SA Vice President
Mr George Capetanakis	Past AIBS State and National President, State executive member

We note that during debate in the House of Assembly on 12 May 2009, The Hon. J. D. Hill moved *“that standing orders be so far suspended as to enable the introduction forthwith and passage of a bill through all stages without delay”*. That motion was passed.

We assume that Standing Order 390 (Witnesses entitled to protection) is not suspended. Any oral evidence that may be given on behalf of AIBS to the Select Committee is given on the assumption that the witnesses have the protection of the House in respect of anything they say in evidence

Should you have any queries or require clarification in relation to our submission please do not hesitate to contact me during business hours on 8203 7334 or via email on sa.director@aibs.com.au

APPENDICES TO THE AIBS SA CHAPTER SUBMISSION

APPENDIX A

Code of Practice for Private Certifiers and the Building Rules Assessment Function of Councils August 1998

APPENDIX B

INFORMATION GUIDELINES
For State & Territory Building Administrations
THE NATIONAL ACCREDITATION FRAMEWORK FOR BUILDING CERTIFIERS and
National Accreditation Framework Matrix

APPENDIX C

Letter to AIBS from Minister Weatherill dated 13 May 2002

APPENDIX D

ABCBA Letter of Support for AIBS National Licensing from Mr Ivan Donaldson, General Manager Australian Building Codes Board dated 7 April 2009

APPENDIX E

Letter from Minister Holloway to AIBS dated 1 August 2008