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# Building Confidence Report Jurisdictional Update

December 2019

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# Contents

Contents..... 2

Overview..... 3

Recommendations ..... 5

New South Wales ..... 8

Victoria.....11

Queensland.....14

Western Australia.....17

South Australia.....21

Tasmania.....25

Australian Capital Territory.....27

Northern Territory.....30

Australian Building Codes Board (ABCB) .....32

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# Overview

The tragic fire at Grenfell Tower in London in June 2017 raised global concerns about building safety and industry compliance with required standards. Australia is not immune as shown by the recent Neo200 apartment and 2014 Lacrosse apartment fires in Melbourne and building issues in the Opal Tower building in Sydney.

Australian governments—Commonwealth, state and territory—are strongly committed to ensuring the safety of Australia’s buildings through effective regulation, certification and enforcement, and working with the sector to support industry-led initiatives to improve practice and compliance.

Through the Building Ministers’ Forum (BMF), jurisdictions have worked together to identify and address immediate safety issues, and to assess the broader compliance and enforcement problems within the industry.

Following the Grenfell Tower tragedy in 2017, Ministers took immediate action to prevent the misuse of aluminium composite panels in Australia. The BMF undertook a number of coordinated actions in response to cladding that did not meet Australia’s standards, focusing on high-rise buildings.

The BMF commissioned the Building Confidence Report (BCR), an independent expert examination of the broader compliance and enforcement problems within Australia’s building and construction system. The report concluded that there are a number of significant systematic deficiencies with Australia’s building industry culture and Australia’s governance arrangements and made 24 recommendations to address these (see Table 1).

The BMF provided in-principle support for the report and affirmed Australian governments’ commitment to delivering reforms that will restore the community’s confidence in the nation’s building and construction industry. This document sets out a summary of reforms underway in each jurisdiction.

At the BMF held on 18 July 2019, Building Ministers supported a national framework to address the issues identified in the BCR and determined that an implementation team would be established, for a period of time, as part of the Australian Building Codes Board (ABCB). The BCR Implementation Team has now been established within the ABCB. While states and territories retain responsibility for building and construction matters; the implementation team will develop and report on this national framework as well as the design, construction and certification of complex buildings.

# Recommendations

Table 1: Snapshot of jurisdiction's positions by recommendation

Building Confidence Report Recommendation	Jurisdiction position							
	<i>S Support</i>		<i>IPS In-Principle Support</i>		<i>UC Under Consideration</i>			
	<i>NS Not Supported</i>		<i>AI Already Implemented</i>		<i>PI Partially Implemented</i>			
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
<p>1. That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:</p> <ul style="list-style-type: none"> <li>• Builder</li> <li>• Site or Project Manager</li> <li>• Building Surveyor</li> <li>• Building Inspector</li> <li>• Architect</li> <li>• Engineer</li> <li>• Designer/ Draftsperson</li> <li>• Plumber</li> <li>• Fire Safety Practitioner</li> </ul>	PI	PI	AI	PI	PI	AI	PI	PI
<p>2. That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:</p> <ul style="list-style-type: none"> <li>• certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;</li> <li>• additional competency and experience requirements;</li> <li>• where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and</li> <li>• evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.</li> </ul>	PI	PI	AI	UC	PI	AI	PI	PI
<p>3. That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development (CPD) on the NCC.</p>	IPS	PI	PI	IPS	IPS	AI	PI	IPS
<p>4. That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.</p>	UC	UC	AI	IPS	IPS	AI	UC	IPS
<p>5. That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).</p>	IPS	S	AI	IPS	PI	IPS	N/A	N/A

Building Confidence Report Recommendation	Jurisdiction position							
	<i>S Support</i>				<i>IPS In-Principle Support</i>			
	<i>NS Not Supported</i>				<i>UC Under Consideration</i>			
	<i>AI Already Implemented</i>							
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
6. That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.	AI	AI	AI	PI	AI	AI	PI	AI
7. That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.	PI	IPS	AI	UC	IPS	PI	PI	PI
8. That, consistent with the International Fire Engineering Guidelines (IFEG), each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.	PI	PI	AI	PI	AI	AI	AI	AI
9. That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.	AI	AI	AI	PI	AI	AI	AI	PI
10. That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.	AI	UC	AI	UC	AI	AI	AI	AI
11. That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.	PI	PI	AI	UC	UC	AI	AI	PI
12. That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.	PI	IPS	PI	UC	IPS	S	PI	AI
13. That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.	PI & IPS	UC	PI	UC	PI & IPS	AI	UC	AI
14. That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have been used and for what purpose.	PI & IPS	AI	AI	UC	PI & IPS	PI	PI	AI
15. That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.	UC	AI	AI	UC	IPS	PI	UC	AI

Building Confidence Report Recommendation	Jurisdiction position							
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
16. That each jurisdiction provides for a building compliance process which incorporates clear obligations for the ongoing approval of amended documentation by the appointed building surveyor throughout a project.	PI	UC	PI	UC	PI	AI	AI	IPS
17. That each jurisdiction requires genuine independent third-party review for specified components of designs and/or certain types of buildings.	IP & PI	UC	PI	UC	UC	AI	UC	IPS
18. That each jurisdiction requires on-site inspections of building work at identified notification stages.	AI & UC	AI	AI	UC	IPS	AI	AI	PI
19. That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.	PI & UC	UC	PI	UC	PI	PI	UC	IPS
20. That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.	S	IPS	PI	UC	IPS	S	PI	IPS
21. That the BMF agree its position on the establishment of a compulsory product certification system for high-risk building products.	The BMF supports this recommendation and has directed the SOG to continue its strategic response to this issue. <sup>1</sup>							
22. That the BMF develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.	The BMF supports this recommendation and has directed the ABCB to progress this recommendation.							
23. That the BMF acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.	The BMF supports these recommendations, as set out in this implementation plan.							
24. That the BMF prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.								

<sup>1</sup> SOG [Strategies to address risks related to non-conforming building products: implementation plan](#).

# New South Wales

## Update overview

The NSW Government is progressing its response to the Shergold Weir *Building Confidence Report* (BCR), which complements other reforms underway in the building and construction sector.

The NSW Government is progressing or has already introduced the majority of the reforms outlined in the BCR, particularly in relation to certification, and has committed to further reform.

The NSW Government will continue to work closely with other jurisdictions to promote best practice across all Australian states and territories.

## Update on reforms

### **Implementing a four-point plan to improve the certification industry**

The NSW Government is progressing with a four-point plan focused on compliance and enforcement reforms to improve certification. The four-point plan includes:

- a compliance blitz with 25-30% of the industry to be audited every year;
- a new disciplinary policy that will see certifiers penalised for not complying with relevant legislation or negligently signing off on a building which is unsafe or structurally unsound;
- better protection for strata buildings, with certifiers unable to work on new strata developments if they have breached the code of conduct in the previous 12 months, regarding building quality; and
- increased transparency, which will include more information for homeowners about a certifier's disciplinary record on an enhanced public register, and the provision of information to prospective buyers of off-the-plan developments about a certifier's disciplinary history.

The certifier audit program commenced in April 2019, with 55 audits completed as of December. Fair Trading is currently auditing 13 certifiers a month. This meets the commitment to audit 25-30% of private building surveyors each year.

### **Compliance action against certifiers during 2018-19**

During the 2018-19 financial year, Fair Trading:

- determined a record 271 complaints against certifiers
- cancelled the accreditation of 3 certifiers
- imposed a record \$443,000 in fines
- issued 34 reprimands
- ordered 10 certifiers to complete an education course
- imposed conditions of accreditation on six certifiers
- issued 47 penalty infringement notices
- commenced proactive investigations into 15 certifiers.

### **Creating a new legislative framework for certifiers in the Building and Development Certifiers Act 2018 (the BDC Act)**

The BDC Act passed the NSW Parliament in October 2019. The legislation delivers on the NSW

Government's commitment to overhaul certifier regulation in its response to the statutory review of the *Building Professionals Act 2005* (the 'Lambert Review'). The BDC Act, which will be supported by new regulations, strengthens compliance in the sector by:

- clarifying certifiers' roles and responsibilities through the introduction of a certifier practice guide;
- improving the independence of certifiers through revised conflict of interest provisions and attaching penalties to breaches of the code of conduct;
- introducing powers for the Secretary to accept undertakings, issue warning notices about non-compliant certifiers, apply for injunctions to the Land and Environment Court, and issue conditions on the suspension or cancellation of a certifier's registration, in addition to conditions on a registration which is in force; and
- increasing the maximum penalty for the issue of false certificates from \$30,000 to \$1.1 million and/or two years imprisonment.

In September 2019 the NSW Government released the draft Building and Development Certifiers Regulation 2019 for consultation.

The draft Regulation proposes to streamline the different classes of registration and prescribe the qualifications, skills and experience required. It also seeks to provide greater protections for consumers by strengthening contract requirements for certification work and establishing a new accreditation authority framework for regulated work.

Once finalised, this would allow the BDC Act to commence by the middle of 2020.

### **Strengthening building safety and quality through amendments to the Environmental Planning and Assessment Act 1979 (the EP&A Act)**

On 1 October 2017, the NSW Government introduced reforms to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) to strengthen fire safety regulation and the NSW certification system. Under the EP&A Regulation, an accredited 'competent fire safety practitioner' must be used to:

- endorse plans and specifications for relevant fire safety systems;
- endorse fire safety performance solution reports;
- endorse exemptions to the Building Code of Australia for minor works to existing relevant fire safety systems; and
- undertake the annual fire safety statement assessment of buildings.

A number of reforms will be operationalised through following amendments to the EP&A Regulation. Reforms include revised procedures for occupation certificates to reduce compliance risks associated with the occupation of incomplete structures while still enabling staged development, including the issuing of compliance certificates in lieu of occupation certifications in some circumstances. Reforms are also proposed to improve principal certifier obligations to proactively manage non-compliances, by providing clarity around the role of certifiers and supporting the enforcement role of councils.

The NSW Government is drafting the regulations and expects to release a consultation draft.

### **The NSW Government response to the Building Confidence Report**

The NSW Government has been progressing the major reforms committed to in its Response to the BCR.

In August 2019 the NSW Government appointed the State's first Building Commissioner, Mr David Chandler OAM.

The Building Commissioner will be responsible for:

- the investigation and disciplinary action for misconduct in the building industry
- overseeing the end-to-end licensing and auditing across the building industry and
- driving legislative reforms of the building industry, including consultation with industry.

In October 2019 the NSW Government tabled the Design and Building Practitioners Bill 2019 into Parliament. The Bill introduces reforms intended to improve the quality and compliance of design documentation and to strengthen accountability across the design, building and construction sector, such as:

- Introducing the concept of ‘regulated designs’, which include designs for a building element and performance solutions for prescribed classes of building work or a building element;
- Requiring that design practitioners who prepare regulated designs issue a compliance declaration to declare that the designs comply with the Building Code of Australia;
- Requiring that building practitioners obtain, rely upon and build in accordance with declared designs, and issue a compliance declaration to declare they have complied with the Building Code of Australia;
- Requiring that any variations to declared designs are prepared and declared by a design practitioner if they are in a building element or performance solution, or in any other case, documented by the building practitioner;
- Introducing the optional role of a ‘principal design practitioner’;
- Requiring any design, principal design or building practitioner who intends on making a compliance declaration to be registered under a new registration scheme set out under the draft Bill; and
- Clarifying the common law to ensure that a duty of care is owed for construction work to certain categories of ‘owner’.

Ms Bronwyn Weir, co-author of the BCR, was engaged by the NSW Government to provide her specialist expertise to support the drafting of the legislation.

It is intended that the reforms will initially apply to certain categories of regulated designs and to multi-unit and multi-storey residential apartment buildings, and other classes of buildings included over time.

## Timeframes

Reform	Associated recommendation	Timeframe
The NSW Government response to the BCR	1, 2, 6, 7, 12, 13, 14, 15, 16	Short/Medium-term
Four-point plan to improve the certification industry	6, 7, 9, 10, 11	Medium
Development of a new legislative framework for certifiers through the BDC Act and supporting regulations	1, 2, 6, 9, 10, 11	Medium
Amendments to the EP&A Act	1, 5, 8, 11, 19, 20	Competent fire safety practitioner reforms: nil – implemented Remainder: medium
Introduction of the BPS Act	5, 6	Nil – implemented

# Victoria

## Update overview

The Victorian Government is committed to ensuring Victorians can live in houses, townhouses and apartments that are liveable, safe and compliant. The safety of building occupants is the top priority, which is why Victoria has put considerable focus on a statewide cladding audit and establishing a robust regime of proactive inspections of building projects.

In July 2019, the Victorian Government announced a world-first \$600 million package to rectify buildings with combustible cladding. This package will fund rectification works on hundreds of buildings, found to have high-risk cladding, overseen by a new agency, Cladding Safety Victoria, which will manage funding and work with owners' corporations. Rectification of buildings with high-risk cladding and the establishment of a dedicated cladding agency were key recommendations from the final report from the Victorian Cladding Taskforce.

The Victorian Government also announced it will commence a comprehensive review of the state's building regulatory scheme to identify what legislative changes are needed to strengthen the system and better protect consumers. This reform agenda will propel Victoria to deliver the recommendations sought by the BCR.

The Victorian Government will not limit the scope of the review to the recommendations of the report. In some cases, bolder reform may be required which goes beyond what was contemplated under the BCR terms of reference. As an example, the Victoria Government has been implementing the findings of the Victorian Cladding Taskforce Interim Report and is preparing to respond to the Taskforce's Final Report which touch on areas not contemplated in the BCR.

Findings across all three reports are consistent, including that there are broad cultural and regulatory issues in the building sector, with systemic failures across:

- the product supply chain from manufacturing, marketing, import, supply, sale and purchase
- the building and construction process from design, specification, procurement, installation, building and construction and maintenance
- regulation itself, particularly in the level and adequacy of compliance and enforcement.

## Reforms underway

Victoria is well-placed to advance the recommendations of the BCR. The Victorian Government has been implementing a comprehensive program of reform since 2016 to improve industry performance and consumer satisfaction. This means many of the recommendations have already been implemented in full or partially or are under consideration as part of the recently announced review.

### **Actions to address the non-compliant use of cladding in Victoria**

The Victorian Cladding Taskforce was established by the Victorian Government to assess the extent of non-compliant cladding use on Victorian buildings, advise on the rectification of buildings which are identified to have non-compliant cladding and recommend changes to the regulatory system.

The Victorian Building Authority (VBA), with support from local government; the Metropolitan Fire Authority; the Country Fire Authority and building owners or owners' corporations, prioritized an urgent audit of 1,369 planning permits in response to recommendations made by the co-chairs of the Victorian Cladding Taskforce, in their November 2017 Interim Report.

On the advice from the Victorian Cladding Taskforce, the Minister for Planning introduced *Minister's Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products* (MG-14). This provides that a building surveyor should not issue a building permit for proposed building work which includes the installation of certain high-risk products unless the Building Appeals Board has determined that the proposed application complies. The *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* provided the Minister the power to ban high-risk cladding products. However, it is considered that a national approach to this issue will be more effective and easier for industry to comply with.

The Victorian Government has also been advocating at a national level for more action on issues related to cladding. Victoria is leading efforts to deliver a national ban on the misuse of combustible cladding products to provide greater certainty. In the interim, Victoria is considering whether MG-14 needs strengthening to respond to emerging product and product certification issues.

## Enhanced enforcement and compliance activities

The state's principal building regulator, the VBA, has directed significant resources into increasing its proactive inspection regime so that it will inspect at least 10 per cent of building work each and every year going forward. In the 2019-20 Budget, the VBA has been allocated funding of \$33.9 million over four years to enable it to continue regulatory activity associated with combustible cladding rectification of privately-owned buildings. In addition, a further \$4.5 million has been provided to the VBA to increase and maintain inspection of 10 per cent of building permits to improve safety and quality outcomes.

As the principal building and plumbing industry regulator the VBA conducts investigations into the compliance and conduct of Victoria's registered building and plumbing practitioners. The VBA is willing to undertake strong disciplinary action where building and plumbing practitioners are found to be flouting the rules. New powers introduced by Parliament in 2018 allow the VBA to immediately suspend building practitioners on public safety grounds. The VBA exercised this new power for the first time on 26 February 2019. The VBA continues to invest in its capacity to take disciplinary action to address those practitioners identified through inspections or reported by consumers and others. The Architects Registration Board of Victoria is also seeking to take action against architects associated with breaches of requirements including specifying combustible cladding.

## Planned reforms and timeframes

The *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* (the 2018 Act) amended the *Building Act 1993* to establish a framework for the registration of trades and sub-contractors to prescribe types of building work that can only be carried out by people who hold the requisite skills and experience. The objective of this scheme is to facilitate greater accountability for the work being carried out and ensure that appropriate disciplinary actions can be taken for non-compliance. Regulations necessary to support the operation of this change are being developed with consultation completed in early August 2019 on what trades should be registered and licensed first. In 2018 when the legislation was introduced into Parliament, certain trades were identified as being likely to be priority areas for consideration and these were named as:

- carpenters (and framers);
- plasterers;
- footing and foundation workers;
- bricklayers; and
- water proofers.

Regulations to implement the new registration scheme will be made in September 2020.

Victoria has been drawing on the recommendations of the BCR to develop terms of reference for review of the building legislative framework. The details of this review are being settled. However, there is a clear expectation that comprehensive reform is required. The Victorian Government is also progressing a number of projects to be delivered in the short-term including options to:

- address changed market conditions for professional indemnity insurance to provide greater confidence to the market, regulators, practitioners and consumers
- strengthen the oversight of private building surveyors, including but not limited to:
  - introducing a code of conduct for building surveyors and
  - the use of peer review to ensure a higher quality outcome for the industry and consumers
- provide greater protection for consumers who purchase properties which have defects
- tackle illegal phoenix activity.

## Next steps

Within this bold agenda, the Victorian Government will continue to work closely with other jurisdictions to promote best practice across all Australian states and territories. Where Victoria's reforms can be developed nationally, or be developed to be nationally consistent, Victoria supports this approach.

The Victorian Government will further develop its reform agenda in conjunction with appropriate stakeholder consultation to ensure that these reforms are developed and implemented effectively.

# Queensland

## Update overview

Queensland has, in full or partially, implemented 20 of the *Building Confidence Report's* (BCR) 24 recommendations. The remaining four recommendations (21, 22, 23 and 24) are being progressed directly through the Senior Officers' Group (SOG), the Australian Building Codes Board (ABCB) or the BMF and Queensland remains an active contributor to the reform program through all of these bodies. The implementation of the Queensland Building Plan 2017 (QBP) and the state's pending legislative reform program (to improve the certification process) will address the partially implemented recommendations. The legislative reform program will enhance the certification framework by increasing a certifier's independence, improving professional standards and compliance, and enhancing regulatory oversight. Queensland anticipates the reforms, including the QBP commitments will be progressed in the next 12 months.

Queensland has an existing, robust regulatory framework and supports the findings and recommendations in the BCR. The QBP, released after extensive consultation in October 2017, delivers a plan to change culture and practice in the building and construction industry, strengthen the existing system and improve consumer confidence in the industry.

Certification plays a critical role by ensuring buildings are constructed to required standards and are safe to occupy. Queensland has already proposed a reform agenda that will advance confidence in the certification industry. Together, these reforms work to improve confidence in Queensland's built environment.

### **Safer Buildings Taskforce**

In October 2019, the Safer Buildings Taskforce, led by Independent Chair Mr Peter Koutsoukis, was established to continue the important work of the previous Non-Conforming Building Products Audit Taskforce. The Safer Buildings Taskforce is a dedicated taskforce with a focus on delivering the necessary policies and practices to ensure the safety of Queensland's building infrastructure is maintained.

The previous Non-Conforming Building Products Audit Taskforce undertook an extensive audit of Queensland Government buildings and made six recommendations to address this issue. One of these was an audit of privately-owned buildings. Through the online Combustible Cladding checklist, owners of certain types of buildings work through a three-part checklist to determine whether the building is an affected building. In November 2019, the checklist moved into its final part which requires a Building Fire Safety Risk Assessment by a registered Fire Engineer. The end of this process will ensure building owners and the building regulator understand the extent of combustible cladding use in Queensland.

Key tasks are providing oversight, advice and guidance about remediation of private affected buildings and to ensure Queensland remains well positioned with the implementation of the BCR recommendations.

### **Licensing Frameworks**

A new Mechanical Services licensing framework commenced on 1 January 2020. This work involves the construction, installation, replacement, repair, alteration, maintenance, testing or commissioning of a mechanical heating or cooling system in commercial and residential buildings. It also includes work on medical gas systems found in hospitals and other health services such as dental facilities.

The fire protection licensing framework has been comprehensively reviewed. Once implemented, this will significantly rationalize the existing framework, and deliver a modernised and fit-for-purpose fire protection licensing framework.

## **Continuing Professional Development (CPD)**

BCR recommendation 2 supports consistent requirements for the registration of building practitioners (including certificated training which includes compulsory training on the operation and use of the NCC) as it applies to each category of registration. The BCR recognised the importance of a nationally consistent approach to regulating building practitioners (these expanded requirements could be implemented progressively based on categories of practitioners) and, given the significance of their role, the BCR recommends priority to be given to building surveyors.

Queensland, through its primary industry consultation forum – the Ministerial Construction Council recently established the 'Building Confidence - Compulsory Continuing Professional Development' (CCPD) sub-committee to develop a CCPD framework which will support the state's building industry. It has already recommended a comprehensive CCPD framework be developed. This was provided to the BCR Implementation Team as a template for nationally consistent work.

## **Professional Standards Schemes (PSS)**

Work has continued on investigating medium to long-term options to remedy the current professional indemnity (PI) insurance issues facing building certifiers. One of the preferred options to emerge from this process was the establishment of PSS for various building practitioners to raise the occupational standards and to, thereby, reduce insurance premiums for these individual practitioners. Queensland is taking the lead in scoping and assessing the feasibility and practical implementation factors associated with linking PSS to licensing requirements.

## **Building certification reforms**

Queensland is making enhancements to its certification framework by strengthening the independence of certifiers, improving professional standards and compliance and enhancing regulatory oversight. The Government will introduce a phased legislative amendment program addressing these issues.

Reforms proposed include: Phase 1 is targeted towards improving the conduct of certifiers, transparency and oversight and control of building owners during the building development approval process. Phase 2 is the concurrent sunset review of the Building Regulation 2006 and will enable regulatory and other administrative reforms. Finally, Phase 3 will capture issues requiring further policy development, including more detailed regulatory impact analysis.

## **Non-conforming building products**

A key focus for the BMF has also been non-conforming building products. In 2017, the Queensland Parliament passed the *Building and Construction (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017* (NCBP Act), which commenced on 1 November 2017. The NCBP Act was the first of its kind in Australia and created a chain of responsibility, placing obligations on participants in the building product supply chain. The final report of the Senate inquiry into non-conforming building products released on 4 December 2018 recommends that other states and territories pass legislation similar to this law (recommendation 6).

## **Increased powers for the state regulator**

Laws passed by the Queensland Government give the independent building industry regulator, the Queensland Building and Construction Commission (QBCC), expanded powers to uphold compliance and protect consumers and licensees who do the right thing. The QBCC is committed to enhancing confidence in the State's building and construction industry.

The QBCC has increased powers to investigate the use of non-conforming building products and take action against non-compliance. If required, the Queensland Minister can issue warnings about products

and recall products. Queensland's strong stance on non-conforming building products has set an innovative precedent. These powers are being used and, for example, were exercised in May 2018 to issue a state-wide product recall of Clark Rubber's unsafe pool fence, following an investigation by the QBCC, leading to a subsequent national recall of this particular non-conforming product.

### **BCR Recommendation 12 – Building Information Database**

Queensland supports the development of a Building Information Documentation system as it aligns strategically with both the regulatory role of the state's regulator (the QBCC) and the effective implementation of the Queensland Building Plan. Potential benefits of such a system may include responding to concerns over documented plan variations or changes; ensuring certification inspections are carried out at key stages of design and construction; highlighting architectural or engineering plans in conflict with the NCC and reducing problematic product substitution, during construction. This is also a recommendation where a nationally consistent approach presents real potential.

## **Timeframes**

Reforms outlined in the QBP and in response to this report see a multi-year delivery program requiring a combination of consultation, administrative, regulatory and legislative amendments to support a change of practice and culture in the building and construction industry.

# Western Australia

## Update overview

In Western Australia building permits are always issued by permit authorities which are generally local government authorities. Building permit applications for class 1b and class 2-9 buildings must be certified by a private building surveyor whereas for single residential dwellings and associated non-habitable buildings, either a certified or an uncertified application may be made.

While the BCR acknowledges that the extent of reform will differ between jurisdictions, the Western Australian Government has committed to reviewing the current legislative framework to address the shortcomings identified by the report. As a result, Western Australia has initiated three distinct projects to consider options for reform.

As a result, Western Australia has initiated three distinct projects to consider options for reform:

1. Review of the residential building approval process (BCA Class 1a and 10).
2. Review of the commercial building approval process (BCA Class 2 to 9).
3. Review of registration requirements for the building industry.

## Reforms underway

Since most of the BCR recommendations will require amendments to Western Australian statutes and regulations, regulatory impact assessments on all proposals for change is necessary. As a first step, state-based consultation will be undertaken.

### **Review of the residential building approval process**

A consultation regulatory impact statement (CRIS) on improving the building approvals process for single residential dwellings (BCA Class 1a and 10) was released in mid-September 2019 for a three month period of public and industry consultation.

The CRIS considers three options: the status quo; full private certification with all the safeguards recommended by the BCR; and options to improve the current system by adopting relevant recommendations from the BCR to improve effective compliance with the NCC.

The purpose of the CRIS is to seek feedback on proposals for reform and all the feedback and information gathered through this consultation process and will be analysed to inform a Decision Regulatory Impact Statement (DRIS) recommending a final policy position.

### **Review of the commercial building approval process**

A consultation regulatory impact statement (CRIS) canvassing views on proposals to improve the building approvals process and regulatory framework for commercial buildings (BCA Class 2 to 9) will be released for a three-month period of public and industry consultation.

The CRIS will consider options for addressing many of the issues identified in the BCR report. Most specifically the CRIS proposes to options to implement recommendations 6, 8 to 11, 13 to 18 and 20. Some of the proposed reforms are summarised in the table below:

BCR Recommendation		Proposals for reform
6	Regulators' powers	<ul style="list-style-type: none"> <li>Amend the Code of Practice: Safe design of buildings and structures to address non-conforming and non-compliant building products.</li> <li>Amend the Building Regulations to mandate the Code of Practice: Safe Design of Buildings and Structures as an applicable standard for all classes of building.</li> <li>Amend the Building Services (Complaint Resolution and Administration) Act 2011 to empower the Building Commissioner to prescribe requirements on technical matters.</li> <li>Amend the Building Act and the BSCRA Act to empower the Building Commissioner's inspectors to enter and inspect any building site.</li> </ul>
8	Fire Authority consultation	<ul style="list-style-type: none"> <li>Amend the Building Regulations to require that documentation of fire safety performance solutions must include a fire engineering brief and fire engineering report, in accordance with the International Fire Engineering Guidelines' process.</li> <li>Amend the Building Regulations to provide that the FES Commissioner may issue a certificate at any time confirming that a building design meets operational requirements.</li> <li>Amend the Building Regulations to clarify that the FES Commissioner's written advice must be considered and responded to no matter when it is provided.</li> <li>Amend the Building Regulations to clarify the information that must be included when responding to the FES Commissioner's advice.</li> </ul>
9	Conflicts of interest	<ul style="list-style-type: none"> <li>Amend the definition of 'independent building surveyor' in the Building Act to require that a building surveyor must be independent of anyone whose work they certify.</li> </ul>
10	Code of Conduct	<ul style="list-style-type: none"> <li>Introduce a mandatory Code of Practice for registered building surveyors in WA.</li> </ul>
11	Supervisory power for building surveyors	<ul style="list-style-type: none"> <li>Amend the Building Act to require that a building surveying contractor's contract must extend for the duration of a construction project, must incorporate a prescribed scope of services, and may not be terminated early except in certain prescribed circumstances.</li> <li>Amend the Building Act to require that a building surveyor must be paid for work undertaken, even if they are unable to issue a certificate of compliance because the building design or construction does not comply with the applicable standards.</li> </ul>

BCR Recommendation		Proposals for reform
13	Building documentation	<ul style="list-style-type: none"> <li>Amend the Building Regulations to require that supporting documents specified in a certificate of compliance must demonstrate how the building work will comply with each applicable building standard.</li> <li>Amend the Building Regulations to require that all supporting documents referenced in a certificate of compliance must state the author's name, and registration number if applicable.</li> <li>Amend the Building Regulations to prescribe the information that must be included in documents supporting a permit application.</li> <li>Amend the Building Regulations to prescribe that when completing the certificate of design compliance (CDC), building surveyors must include the revision number or date of each supporting document.</li> <li>Amend the Building Regulations to prescribe that any occupancy or maintenance conditions that must be met, to ensure compliance over the life of a building, are stated on the certificates of design and construction compliance, and the occupancy permit.</li> <li>Amend the Building Act to require that a builder's notice of completion is not required for building work that requires an occupancy permit.</li> </ul>
14	Performance solutions - documentation	<ul style="list-style-type: none"> <li>Amend building legislation to prescribe documentation requirements for performance solutions. Mandatory documentation requirements includes: <ul style="list-style-type: none"> <li>What performance requirements apply;</li> <li>Copy of fire engineering report, if applicable;</li> <li>How design meets performance requirements;</li> <li>How design differs from deemed-to-satisfy provisions;</li> <li>Evidence relied on, e.g. inspection or test results;</li> <li>Building surveyor's reasons for accepting design; and</li> <li>Owner's consent.</li> </ul> </li> </ul>
15	Performance solutions - retrospective approval	<ul style="list-style-type: none"> <li>Amend the Building Act to prescribe a process for retrospective approval of performance solutions. Certain types of unauthorised work to be reported to regulator. CCC to state that building work complies with applicable standards.</li> </ul>
16	Variations during construction	<ul style="list-style-type: none"> <li>Amend the Building Act to provide a process to manage variations to the approved design during construction.</li> </ul>
17	Third party review	<ul style="list-style-type: none"> <li>Amend the Building Act to require independent, third-party reviews for high-risk design elements.</li> </ul>
18	Inspections	<ul style="list-style-type: none"> <li>Amend the Building Act and Regulations to mandate inspections for all class 2-9 buildings. Options include whether the inspections will be undertaken by permit authorities; or private sector inspectors.</li> <li>Inspection points to be notifiable stages for building compliance;</li> </ul>
20	Building manual	<ul style="list-style-type: none"> <li>Amend the Building Act to provide for digital building manuals for all buildings</li> </ul>

It should be noted that the above proposed reforms do not represent the government's policy position at this time. The purpose of the CRIS is to seek feedback on proposals for reform and all the feedback and information gathered through this consultation process and will be analysed to inform a DRIS recommending a final policy position. The Government will then decide which reforms to adopt, based on the feedback from industry and the community.

## **Review of registration requirements for the building industry**

The BCR has proposed extensive changes to registration requirements for a range of occupations. Western Australia has commenced a two-stage review which will consider the BCR recommendations and also examine the current registration requirements for registered building practitioners.

- Stage 1 will review registration requirements for builders, building-related engineers and fire safety practitioners.
- Stage 2 will consider the introduction of registration of building designers and changes for architects, as well as examining the registration requirements for building surveyors.

It is anticipated consultation on the Stage 1 reform to registration requirements will begin during the first quarter of 2020.

The purpose of the CRIS is to seek feedback on proposals for reform and all the feedback and information gathered through this consultation process and will be analysed to inform a DRIS recommending a final policy position.

# South Australia

## Update overview

The South Australian Government is committed to ensuring that the built environment is safe, healthy and liveable for all South Australians now and into the future. The safety of building occupants is the top priority, which is why South Australia is continuing to audit buildings that may be clad with aluminium composite panels, has adopted legislation aimed at improving practitioner accountability and is developing a risk-based proactive inspection regime.

These measures, along with a number of other complementary measures outlined below, form the basis of South Australia's ongoing response to the BCR and build upon recent reforms such as the *Development (Building Cladding) Variation Regulations 2018*, which address shortfalls with building documentation, notifications prior to building work commencing and the substitution of building products, in relation to cladding products.

The South Australian Government will continue to work closely with other jurisdictions to promote best practice across all Australian states and territories.

## Reforms underway

### **Improved building controls to deliver a safe, high-quality built environment**

The new *Planning, Development and Infrastructure Act 2016* (PDI Act) introduces changes to the way that building and construction is undertaken in South Australia and aims to ensure that the standards of assessment and compliance activity undertaken by practitioners in the building sector are improved.

### **A new accredited professionals scheme**

On 1 April 2019, a new accredited professionals scheme commenced in South Australia. The new Scheme aims to improve the accountability of decision-makers in the development system and will ensure that decision-makers are appropriately qualified to make key decisions and that a high standard of ethical conduct and professionalism is met. An improved code of conduct—which builds on the existing ICAC provisions—will provide an additional integrity threshold.

Under the new Scheme, building professionals who are involved in assessing development applications are expected to maintain minimum standards of professional practice, hold all necessary insurance, comply with an improved code of conduct, be subject to regular audit, and undertake specified units of continuing professional development. The new Scheme also includes revised procedures for complaints and investigations.

Approximately half of South Australia's building certifiers have transitioned to the new Scheme, and continue to be transitioned prior the full commencement of the PDI Act.

### **Revision of building regulations**

In June 2019 the draft *Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019* were approved. These Regulations broadly set out the operational requirements for the development assessment system in South Australia.

The Regulations will be amended by way of a staged process, with the initial draft changes aimed at addressing regulatory gaps and clarifying the roles and responsibilities of parties to an application.

Proposed changes include:

- additional expiation fines and increased penalties for failure to provide mandatory notifications, essential safety provisions and Statements of Compliance
- a Certificate of Occupancy for new houses
- requirements for applications to provide comprehensive detail about the owner, the builder and the private certifier prior to the application progressing.

## Planned reforms

### **Creation of new Council inspection policies**

A state-wide Council inspection policy has been developed by the State Planning Commission to ensure a more consistent and increased level of compliance across the State. This will build on existing requirements to inspect swimming pool safety barriers and roof trusses. Following public consultation, the approved policy will be in place by July 2020.

### **Accreditation of additional building professionals**

Further consideration will be given to the role that engineers and fire safety practitioners should play in the design, assessment, inspection and sign-off of buildings, particularly buildings with a high-risk occupancy profile. This will build on existing requirements for sprinkler installers to be licensed with Consumer and Business Services.

### **Revision of building regulations**

Further regulatory reforms will focus on:

- prescribing documentation that must be submitted to justify performance-based solutions
- greater clarity about post-approval processes and responsibilities.

### **Delivery of the state-wide ePlanning platform for development assessment**

South Australia will move to a system where all development applications across the State will be lodged via the SA Planning Portal. The portal will become the 'one-stop-shop' for building practitioner registration, building approvals and building inspection records. All Ministerial Building Standards, building regulations and council inspection policies will also be housed on the SA Planning Portal.

Improved monitoring and reporting through new performance indicators will be part of the ePlanning platform, which will provide improved transparency around the effectiveness of the building system and the ability to monitor policy and practitioner trends.

## Timeframes

Reform	Associated recommendation	Timeframe
Accredited professionals scheme	1, 2, 3, 4, 9, 10, 13, 17, 19	Medium to long-term
Revision of building regulations	5, 8, 14, 15, 16, 20	Short to medium-term
Creation of new Council inspection policies	6, 7, 11, 18	Short-term
Delivery of the state-wide ePlanning platform for development assessment	1, 8, 12	Medium to long-term

## Next steps

The South Australian Government will develop the above reforms in conjunction with key stakeholders to ensure that the reforms are developed and implemented effectively. Ongoing work will be required to ensure that the reforms can be implemented in the proposed timeframes.

Amendments to reflect the new Accredited Professionals Scheme Code of Conduct have been adopted. Following consultation, a set of state-wide council inspection policies, once approved by the State Planning Commission, will support a more consistent and increased level of compliance across the state. These will be tailored to meet a range of Council requirements but will, subject to approval, look to introduce greater inspections for Class 1b 9 buildings in particular, in addition to examining existing requirements for Class 1a buildings. These policies will be in place by July 2020.

# Tasmania

## Update overview

During 2015–16 Tasmania undertook a building reform program that resulted in the *Building Act 2016*, which came into force on 1 January 2017. Many of the recommendations from the BCR were implemented through the *Building Act 2016*, the *Occupational Licensing Act 2005* and associated regulations. Recommendations 1–4, 7–11, 13 and 15–18 have been fully implemented under either one of these Acts. Priority recommendations set by the BMF (1, 2, 9–11, 13 and 24) have been fully implemented in Tasmania and recommendation 23 is fully supported.

With the establishment of an independent implementation team with the ACBC, Tasmania will review the outputs of that team to assess further changes to our current statutory framework.

## Reforms underway

To implement recommendation 12, funded work has commenced on the development of an online portal that will result in a database of building work in Tasmania and is expected to be online in 2021. However, details of the data required for the national database are needed from the independent implementation team before progressing on this recommendation further.

During the reform program in 2015–16, the proposal of a building manual for commercial buildings was not adopted, however, the work will now be used to implement recommendation 20.

Inclusion of performance solutions information on occupancy permits is supported and the implementation is under review.

Tasmania has implemented a process that requires specified high-risk building products to undergo a state accreditation process. In support of recommendation 21, Tasmania will continue to work at a national level for a consistent approach to be adopted nationally.

## Planned reforms

Tasmania is waiting on the outcomes from the independent implementation team before assessing any further statutory reforms.

## Timeframes

Reform	Associated recommendation	Timeframe
Online Building Portal	12	Long term (2021)
Performance Solutions/Occupancy Certificates	14	Short term (2020)
Commercial Building Manual	20	Long term (2021)

## Next steps

- Stakeholder feedback and consultation is ongoing through direct engagement with industry.
- Tender for the next stage of the Planning and Building Portal project.
- Development of requirements for the inclusion of performance solution information on occupancy certificates.

Tasmania will continue to work with other jurisdictions to further improve actions that have already been taken to implement the recommendations and also develop consistent approaches to the remaining implementation work.

# Australian Capital Territory

## Update overview

The ACT Government completed a review of its building regulatory system in 2015 (the Review). As a result of the Review, the Territory has implemented, and continues to implement, reforms to strengthen the integrity of the system. The ACT Government has delivered and is progressing a range of reforms that relate to the recommendations of the BCR.

The current *Improving the ACT Building Regulatory System* program includes a comprehensive set of reforms targeting issues such as design and documentation, practitioner regulation, supervision and regulatory oversight of building projects, client protections such as insurance and warranties, dispute resolution and contracting practices. The ACT Government will continue to work closely with other jurisdictions on best practice.

## Current system and reforms

The ACT's building regulatory system already includes many of the powers and processes suggested in the BCR. Some of these have been in place for many years, while others have been introduced as a result of the ACT Review.

Reforms to date include:

- expanded powers for the regulator to refuse or condition a construction licence
- new powers to require licensees to undertake skills assessment
- a framework for the regulator to direct construction licence holders in particular licence classes to undertake specified training
- new offences and increased penalties for failing to comply with the ACT Building Act, building code and with a rectification order
- creation of a public register of disciplinary information about licensees
- improved information gathering powers for investigators.

Under the current reform program, the ACT Government has also:

- made further restrictions on the types of qualifications and experience required to gain an ACT building licence
- introduced new provisions and powers to help prevent 'phoenixing' in ACT construction licensees and people shifting their operations between existing licences
- clarified the roles of building certifiers and the obligations of corporate and partnership construction licensees in legislation
- created new grounds for occupational discipline and automatic suspensions of a construction licence
- expanded statutory warranties to all residential buildings
- increased maximum payments that can be imposed in an occupational discipline order
- introduced new reporting related to changes in a licensee's eligibility, including on financial grounds.

Following a pilot of licence exams for certain residential builder licences, the ACT Government has extended licence examinations to the main builder licence categories. This means that all applicants for a new ACT licence will need to pass an examination before they are issued a licence.

The examinations cover the licensee's obligations under building laws and fundamental skills such as the ability to read and interpret legislation and technical documents applying to building work. Examinations can also be applied to existing licensees at the time of renewal, particularly licensees with rectification orders or whose work is not compliant with building standards.

In addition to the reform agenda, the ACT Government has improved the way that compliance is monitored on building work and how complaints about building work are managed. Government building inspectors attend the sites of complaints usually within five days, to quickly determine if further action is necessary.

Since the Implementation Plan was released, the ACT has completed a further 15 reforms under the *Improving the ACT Building Regulatory System* reform program.

The reforms include:

- A new code of practice for licensed building surveyors that outlines their general obligations when undertaking licensable services and statutory functions as well as minimum requirements for carrying out stage inspections (completes work related to recommendations 9 and 10).
- A new regulation separating building contracts for residential building work from any agreement between a landowner and another party to appoint the building certifier or arrange approvals (relates to recommendation 9).
- A new minimum documentation guideline for building approvals applications for new or substantially altered class 2-9 buildings (supports recommendations 11, 12, 13, 14, 16 and 20).
- Introducing licence examinations for applicants for new builder licences and pre-licence assessments for applicants for building surveyors licences (relates to recommendations 1, 2 and 4).
- Changes to licensing processes for building practitioners to increase checking of eligibility against technical and probity requirements at first application and at renewal (supports recommendation 2).
- Release of a new online training courses for practitioners on the ACT building regulatory system (relates to recommendations 2, 3, 4 and supports 9, 10 and 11).

## Planned reforms

Reforms that will be completed in the next six months include a new code of practice for builders to improve supervision and oversight of building projects by licensees during construction. Additionally, the ACT Government has introduced legislation that, if passed, will introduce enforceable rectification undertakings completing work on recommendation 6. The regulator will publish an audit strategy for buildings and building approvals for the year shortly (recommendation 7).

The ACT Government will also consult further on licensing scopes, insurance and accountability of design practitioners preparing plans, specifications and other reports for building approvals (relates to recommendations 1, 2, 13, 17 and 19).

In relation to recommendation 15, which is to provide a process for the approval of a performance solution for constructed building work, in the ACT's system a building approval is for proposed

building work and cannot be issued retrospectively. This recommendation will be considered in relation to processes for final certification of buildings with unapproved work.

The ACT has an existing database where all building approval documents and a range of certificates and inspection information is stored (recommendation 12).

With one level of ACT Government and one building regulatory agency, the ACT considers that establishing further regulatory bodies (recommendation 5) is not needed in the Territory.

## Timeframes

All reforms in the current *Improving the ACT Building Regulatory System* program will be completed by quarter three of 2020. Further information can be found at: <https://www.planning.act.gov.au/build-buy-renovate/reviews-and-reforms/building-reforms>.

# Northern Territory

## Update overview

The Northern Territory Government is committed to providing a robust building regulation system based on best practice. The NT is a small jurisdiction with a less complex building regulation framework than other jurisdictions. This is mainly because local government does not have a role in the building approval process and a large proportion of complex non-residential projects are government managed.

Significant reforms were undertaken in 2016 to improve compliance outcomes. The *Building Confidence Report* (BCR) provides an opportunity to further enhance the system and apply a risk-based and outcome-focused approach.

Consultation with local industry regarding the report in late 2018 showed that stakeholders recognise that reform is required and that an industry-wide approach is preferred. Further consultation with industry was undertaken in September 2019 on the themes identified in the BCR through a Building Industry Forum. Participants at the Forum identified the need to understand different perspectives through continued consultation and information sharing during the reform process.

## Reforms underway

Work is underway to develop projects for delivery in early 2020 that will enhance systems and administrative processes without the need for legislative change.

Consultation with the ABCB Implementation Team in October 2019 confirmed that the ABCB is developing model provisions which will assist the NT to develop locally relevant legislative reforms in response to the BCR recommendations identified below. This will allow the NT to take advantage of opportunities to harmonise with other jurisdictions.

The role of the NT Fire and Rescue Service in providing advice to building certifiers as a reporting authority was clarified in April 2019 and effective from 1 July 2019 through changes to procedures and information to stakeholders.

Collaboration with the agency responsible for practitioner registration has begun in relation to the development of the registration category Fire Safety Engineer.

Following recent compliance cases, the NT Government has commenced reviewing its auditing and compliance policies to align with best practice.

## Planned reforms

Recommendations 1, 2, 7, 9, 11 and 18 have been partially implemented already. Implementation of recommendations 3, 4, 16, 17, 19 and 20 is supported in-principle. Of those, recommendations 1, 2, 3, 19 and 20 will require a nationally harmonised response. The NT is looking forward to the contributions from the ABCB Implementation Team as they will inform the efforts to implement best practice in a nationally consistent way. Reforms to fully implement remaining recommendations 4, 7, 9, 11, 16, 17 and 18 on a risk-based and outcome-focussed basis will be developed by reviewing frameworks in other jurisdictions that have already implemented those recommendations.

## Timeframes

The reforms below will require detailed policy analysis and development in the short to medium-term and legislative reforms will be implemented in the third year of the implementation plan to allow for further consultation with industry and the normal legislative amendment process to take place.

Reform	Associated recommendation	Timeframe
Registration and training of practitioners	1, 2, 3 and 4	Long-term
Roles and responsibilities of regulators	7	Long-term
Integrity of building certifiers	9 and 11	Long-term
Adequacy of documentation and record keeping	16 and 17	Long-term
Inspection regimes	18 and 19	Long-term
Post-construction information management	20	Long-term

## Next steps

The Northern Territory Government has commenced analysis and policy development for the reforms identified above. Consultation will continue with stakeholders through all phases of implementation.

# Australian Building Codes Board (ABCB)

## Update overview

The BMF at its meeting on 18 July 2019, established an Implementation Team as part of the ABCB, to develop and publicly report on a national framework for the consistent implementation of the recommendations of the BCR, as well as the design, construction and certification of complex buildings.

The BCR Implementation Team has now been established within the ABCB and the BMF has agreed to a BCR National Framework available on the ABCB website, as well as a recast Strategic Plan and a revised Business Plan for the ABCB to reflect the challenges needing to be addressed in implementing the recommendations of the BCR.

As one of the functions of the BCR Implementation Team is to publicly report on the BCR National Framework and in order to remove confusion, the work of the ABCB in respect to the BCR will occur separately, noting that this is occurring in coordination with the individual activities of the States and Territories.