



**Hon Amber-Jade Sanderson MLA**  
**Minister for Environment; Climate Action; Commerce**

Our Ref: 76-02346

Your Ref: A914146; Petition No. 018

Hon Peter Foster MLC  
Chair  
Standing Committee on Environment and Public Affairs  
By email: [env@parliament.wa.gov.au](mailto:env@parliament.wa.gov.au)

Dear Chair

**PETITION NO. 18 – HOME BUILDING INDUSTRY AND DMIRS – FURTHER INFORMATION**

Thank you for your letter of 13 September 2021 seeking further information following my previous response to the Standing Committee on Environment and Public Affairs' (the Committee) inquiry into *Petition No. 18 – Home Building Industry and DMIRS* (the Petition).

I am pleased to provide this information to the Committee at **Attachment A**.

I note the Committee's comments regarding the progress of other States and Territories in implementing the recommendations of the Building Confidence Report (BCR) and reiterate that the McGowan Government is also eager for the reforms to be implemented as a matter of priority.

Substantial consultation has occurred and is ongoing with stakeholders in Western Australia regarding implementation of the BCR recommendations.

It is significant to note that, aside from New South Wales, which has recently passed new legislation, Western Australia is well-progressed towards implementing reforms when compared to other jurisdictions. I am advised Victoria and Queensland are currently undertaking reviews of their building legislation, while other states and territories are understood to be awaiting the final recommendations from the Australian Building Codes Board (ABCB), which was tasked by the Building Ministers Meeting with developing national best practice models for some of the recommendations.

The Department of Mines Industry Regulation and Safety, has undertaken its consultation processes concurrently with the ABCB and continues to work closely with the ABCB to ensure the reforms proposed for Western Australia will be broadly consistent with the national models.

I trust you will find the information I have provided of assistance to the Committee.

Kind regards

HON AMBER-JADE SANDERSON MLA  
**MINISTER FOR COMMERCE**

Att. 24 SEP 2021

## ATTACHMENT A

### FURTHER INFORMATION IN RESPONSE TO SUBMISSIONS IN PETITION NO. 18 – HOME BUILDING INDUSTRY AND DMIRS

#### Background

Set out below is further information sought by the Standing Committee on Environment and Public Affairs following a full response previously provided to the Committee in relation to the Petition on 15 July 2021.

#### Response to the Committee's request for further information relating to the Petition

- a. *In relation to the new documentation required for the use of performance standards:*
- i. *how has the new process been conveyed to Local Government authorities and industry professionals? Is any support or training available to roll out the new process?*
  - ii. *will compliance with the new process be audited or evaluated? If yes, how and by whom?*
  - iii. *are there any penalties for not complying with the new process for performance solutions?*

#### Response:

- i. The Australian Building Codes Board (ABCB) has published supporting material including a handbook, case studies and videos on behalf of States and Territories to educate industry about the new process.  
  
DMIRS has re-distributed this information widely in Western Australia (WA). Specifically, DMIRS has informed all Local Government authorities and all registered building service practitioners and building service contractors about the new Performance Solutions Process under the National Construction Code (NCC) by emails sent out on 26 March 2021 and 1 July 2021 respectively. The emails included links to the ABCB guidance publications and encouraged industry participants to familiarise themselves with the new process.
- ii. Yes.  
  
Under the *Building Act 2011* (Building Act), applicants for a building permit can choose to have the plans and specifications for a proposed building assessed for compliance with applicable standards privately by a registered building surveyor prior to an application being submitted or assessed by a registered building surveyor employed by the relevant local government. The registered building surveyor is required to ensure the plans and specifications comply with the new requirements prescribed under Performance Solutions Process in the NCC.

If in the course of considering a building permit application the permit authority forms a belief that there is an error as to compliance (with relevant building standards, i.e. the NCC, including the new mandatory Performance-Based Design Brief process, the permit authority may refuse to grant the building permit in accordance with section 22 of the Building Act.

In response to recommendation 7 of the Building Confidence Report, DMIRS has developed and made publically available on its website, its risk-based *Building Compliance Audit Strategy 2021-2024* which is underpinned by an *Audit Priority Statement for 2021-22*.

Under the *Audit Priority Statement for 2021-22*, DMIRS has set a target to audit a minimum 80 certificates of design compliance issued by building surveyors including where performance solutions have been used to demonstrate compliance with the NCC. DMIRS audit will include an assessment of compliance with the new Performance-Based Design Brief process.

iii. Yes.

Failure to comply with the new Performance Solutions Process under the NCC is a disciplinary matter under section 53 of the *Building Services (Registration) Act 2011*. The offending building service provider may be liable to enforcement actions ranging from a caution, imposition of conditions on their registration, suspension of their registration, a fine of up to \$25,000, to cancellation of their registration.

Further, failure to comply with the NCC constitutes a breach of section 37 of the Building Act which, in turn, provides civil pecuniary penalties for the person named as the builder on the building permit. This includes a fine of \$50,000 for a first offence, \$75,000 for a second offence, and up to \$100,000 and imprisonment for 12 months for a third or subsequent offence.

b. **in relation to the C-RIS to amend the Building Services (Registration) Regulations 2011 to require certain building engineers to be registered:**

iv. **when is a decision expected to be made on whether statutory amendments will be introduced?**

v. **how long is the expected timeframe between a decision being made and the legislative changes being implemented?**

**Response:**

iv. A Decision Regulatory Impact Statement (D-RIS), analysing the responses received during the consultation about the proposals to register building engineers in Western Australia, is currently being developed by DMIRS.

A cost benefit analysis of the final proposals for reform is being carried out by a consultancy firm, in accordance with the Better Regulation Principles of the Government.

It is expected that this analysis and the D-RIS will be finalised for my consideration in the first quarter of 2022. I expect to make a decision on the proposed reforms within a short time following that.

- v. The proposed new registration scheme for building engineers will require substantial amendments to the Building Services (Registration) Regulations 2011 (Regulations). The timeframe for drafting of the proposed amendments will depend on the availability of resources and the drafting priorities of the Parliamentary Counsel's Office. It is not possible, therefore, to provide a definitive date for implementation at this stage.

Working on the basis that the D-RIS will be finalised in the first quarter of 2022, I would envisage that drafting would commence in the second quarter of 2022, with the amendments finalised by early 2023 and implemented within an appropriate time thereafter.

**c. in relation to proposed introduction of mandatory inspections:**

**vi. Noting it has been 19 months since the conclusion of the consultation period for the Consultation Regulatory Impact Statement:**

- 1. When is the Decision Regulatory Impact Statement expected to be released?**
- 2. Has the Minister considered any options to provide information to owners notifying them of the issues raised in the Building Confidence Report, the in-principle commitments made by the WA Government to implement the recommendations and advising them of their options around engaging a private building inspection at each building stage?**

**Response:**

- vi. The Building Confidence Report made 24 principle-based recommendations to improve the building regulatory frameworks across Australia. It acknowledged that, since building legislation varies significantly across Australia, each State and Territory will have to carry out their own reviews to adapt the recommendations to their legislative frameworks.

For several of the recommendations, particularly those involving legislative change, the Australian Building Codes Board was tasked, by the Building Ministers Forum, with developing national best practice models for jurisdictions to consider in developing their reforms. Some of the reforms which DMIRS has been progressing have had to rely on progress of the work being undertaken by the ABCB.

Since the 24 recommendations cover diverse matters ranging from the registration of building practitioners, powers of regulators, integrity of building surveyors, documentation requirements to inspection regimes, DMIRS developed four distinct Consultation Regulatory Impact Statements (C-RISs), each covering different areas of reform and conducted separate consultation processes concurrently,:

- Reforms to the building approval process for single residential buildings - (BCA Classes 1a and 10) - released for public consultation between September 2019 and December 2019;
- Reforms to the building approval process for commercial buildings - released for public consultation between December 2019 and June 2020;
- Registration of building engineers - released for public consultation between July 2020 and December 2020; and

- Registration of builders (and related occupations) reforms - released for public consultation between October 2020 and January 2021.

A regime of mandatory inspections cannot operate in isolation and due consideration has to be given to how such a regime would be informed by the inherent risks of the different types of building work and the complexity of the building under construction.

In response to your specific questions, I can advise that:

1. A consolidated D-RIS, analysing the responses received during the consultation processes on proposed reforms to the building approval process for single residential buildings and commercial buildings, is currently being developed by DMIRS. This D-RIS includes the proposed introduction of mandatory inspections.

A cost benefit analysis of the final proposals for reform is being carried out by a consultancy firm, in accordance with the Better Regulation Principles of the Government. It is expected that this analysis and the D-RIS will be finalised for my approval and publicly released in the first quarter of 2022.

2. I refer to my response to the Committee of 15 July 2021, most specifically my earlier response to submission 2 about private building inspectors.

As it stands currently, there is no statutory obligation under the Building Act for a homeowner to employ a private building inspector during construction of a new home. As building inspectors do not perform a prescribed role under the Building Act, DMIRS does not provide information promoting their services, but it does however publicly recommend that owners do their research and checks before choosing a building inspector.

In regard to advising the public about the proposed reforms, I can advise that the consultation was open to the public and the information on DMIRS website clearly stated that the C-RISs were “part of the first steps towards meeting the McGowan Government’s commitment to implement the recommendations of the Building Confidence Report”.

When the D-RIS is publicly released, further information will be provided to both industry and the wider public about how the proposed reforms would be implemented in WA. A communication strategy will be in place to ensure consumers are fully informed about their options, including information about how any proposed regime of inspections will operate in the future.