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INDEPENDENT REVIEW OF THE BUILDING PROFESSIONALS ACT 2005,
Draft Report – August 2015

**Submissions on behalf of the Society of Construction Law Australia
(SoCLA)**

SoCLA supports the recommendations set out at pages 251 to 258 of the Report.

These Submissions focus primarily on the issues of compliance and certification addressed in section 14.2 to 14.9 of the Draft Report. The Submissions as to these issues are addressed under the Issue headings included in Chapter 14.

SoCLA agrees with the criticism of the fragmentation and complexity of the existing legislation and regulations in several sections of the Report.

The recommendations within the Report for statutory reform, particularly the introduction of a new Building Act and the consolidation of building construction regulation within such legislation are strongly supported.

The following Submissions do not propose any particular amendments to the existing legislation but approach the issues by reference to public policy and the content of various provisions.

SoCLA's principal submissions are summarised in the Overview.

Overview

- A** Regulatory and quality compliance of construction work for strata unit developments should be the subject of a statutory obligation upon developers to ensure compliance by the engagement of the professional accredited designers of critical building elements to:
- (i) undertake design;
 - (ii) certify relevant compliance of the design
 - (iii) inspect the construction of the elements **during** construction; and
 - (iv) certify that the elements as constructed comply on completion.
- B** The statutory obligation should include liability on the part of developers to have non-compliant construction work rectified.
- C** The statutory liability should extend to directors of development corporations which are deregistered within a prescribed limitation period.
- D** The statutory obligation should be supplemented by a strengthened certification procedure which reflects the developer's obligation and requires that design and construction compliance for critical building elements be undertaken by qualified professional practitioners.
- E** Where possible generally, and in particular for fire engineering design, fire protection systems and for waterproofing of all building elements, the design and construction compliance certification should only be issued by the accredited professional designer.

Issue 1.3 – Quality of Building and Critical Element Design and Certification of Design

1. The proposals for reform at page 188 of the Report are strongly supported.
2. As proposed elsewhere SoCLA considers that design and construction compliance certification should be undertaken by accredited professionals and preferably by the actual designer of the building element or system.
3. The priorities should be as proposed – **fire safety and waterproofing**.

Issue 1.4 – Development Approvals – Information Requirements and Conditions and Consistency of Conditions across Councils

4. SoCLA supports the proposed reforms at page 189, particularly the recommendations for standardisation.
5. Consideration should also be given to the preparation, in cooperation with the construction industry and professionals, of guidelines for the execution of critical elements within buildings. Major contractors have developed such documentation to address the inadequacies in the training available for construction trades.

Issue 2.1 - Clarity of requirements for issue of construction certificate or CDC

6. The proposals at page 192, for codification of the information requirements and the management of certification documentation are supported.

Issue 2.3 – Assessment of certification of alternative solutions

7. The recommendations at page 193 are supported and it is suggested that particular emphasis be placed upon the regulation of alternative solutions with respect to fire engineering design.

Issue 3.1 – Specific matters impacting on strata and community titled developments

8. The proposals for reform at page 198 are supported.
9. Further, the issue of compliance can only be appropriately addressed if the responsibility for ensuring compliance is placed upon those in the best position to achieve that objective, that is the developers.
10. The imposition of a statutory obligation to ensure compliance and possibly a statutory liability for the failure to ensure compliance should be considered.
11. Alternatively the construction compliance certification procedures should require developers to ensure that inspections of the construction work involved in critical elements are carried out during construction.
12. Certification of construction compliance which has not been the subject of inspection by qualified and experienced persons (the designers) is ineffective.
13. The recent reforms under Part 11 of the *Strata Management Bill 2015* are hopelessly inadequate and provide for a mere “paint surface inspection” process which will need to be supported by a strengthened certification regime.

Issue 3.3 – Adequacy of mandatory building inspections

14. The proposals at page 201 are supported.
15. The obligation to ensure that construction work is inspected so as to confirm actual compliance during the course of construction should be placed upon the developer as part of the development approval and certification regulatory processes.
16. Improving the scope and detail of mandatory building inspections of critical building elements is strongly supported.
17. Whilst the proposed reforms are supported, SoCLA submits that construction compliance certification which is not based on professional inspections during construction is ineffective.

Issue 3.4 – Improving the certification process for critical building elements

18. The proposed reforms at page 203 are supported and further it is suggested that documentation defining the critical building systems and elements should include details as to what must be assessed by a certifier before a compliance certificate may be issued for specific systems and elements.

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19. The issues associated with the certification of the design of alternative solutions for fire engineering and the certification of compliance of fire protection elements are matters for great concern.
20. SoCLA agrees that the issues in the Report on the aspect require particular and industry wide consideration.
21. A related issue which also must be considered in the course of implementing the proposed measures is the frequent non-compliance of occupants and owners with the maintenance of fire services and protection measures and the conditions of development consent as to the occupation of residential apartment buildings.