3. Overview of Key Issues

3.1 Context

The proposed planning reforms and new planning act are ways to address many of the issues associated with the certification system. Building approval control including certification is however a significant and complex area of the development process and therefore further reform is required to achieve the Board’s desired outcomes.

The proposed planning reforms discussed in the White Paper highlight many suggestions from industry and various practitioner associations. It is noted that these bodies identified that a separate building act and regulation were a way of providing better regulation on the building and certifications sectors. Such legislation could capture the provisions of the Building Professionals Act and Regulation. This should be pursued by the government.

3.2 Sound Regulatory Principles

The accretion of regulatory provisions results in a complex and often disjointed system which is difficult to interpret and apply. Although a separate building control statute is considered appropriate to deal with the very complex building control provisions, the White Paper planning reforms including the creation of a new planning act (and associated building control regulations) should go some way towards addressing the current complex and disjointed regulatory provisions and systems.

Any regulatory change must however be structured in such a way that it results in easy and effective application by all sectors of the development and building industry. Regulation must also be effective and targeted against risk.

Two key issues with the current private certification system in relation to regulation include:

- a lack of clarity about roles and responsibilities of PCAs, builders/contractors, and local councils; and
- inconsistency in the private PCA sector relating to enforcement action (ie not communicating with the local council and/or serving notices of intention to issue orders).

These matters require attention.

3.3 Role of Certification vs. Role of the Builder

Building certifiers have an important role to play in ensuring quality building outcomes however building certifiers are not construction managers nor are they on-site at all times throughout a building project to supervise the various construction processes. The primary responsibility for ensuring compliance should therefore fall on the principal builder with key oversight by certifiers. Owner-builders however fall within a special category and require greater certifier scrutiny. This is another area that the BPB should consider including the role of certifiers.

The current regulations and systems do not adequately define the roles and responsibilities of the various stakeholders to achieve sound construction outcomes. The new regulations to support the planning act need to address this important aspect.
3.4 Private certifiers and Local Councils

As a local government building surveyor I have encountered considerable variation in the quality of work and assistance provided by private accredited certifiers when compliance issues arise. This has included some proponents of development changing private PCA functions to council to provide a better service. I have also experienced considerable difficulties in resolving issues with incomplete works where private certifiers have disappeared or ceased operation.

Further work by the BPB in this area is required.

3.5 Scope of Certification

The application of the National Construction Code (NCC) in the building design and construction processes is a complex area. The NCC references several hundred Australian Standards many of which are very detailed and specialised documents. No single certifier has the qualifications, skills and experience to deal effectively with all of the various technical provisions that must be satisfied.

Certifiers however hold primary responsibility for the issuing of building permits and certificates confirming compliance with the Code and Standards. Certifiers must also confirm that a building is suitable for occupation. They are therefore ultimately responsible for ensuring compliance with all applicable codes and standards (and also the development consent) however their involvement in the construction phases is very limited and therefore a significant reliance is placed on builders and contractors to build to relevant standards and confirm, via certificates, that various building elements are compliant.

The absence of a comprehensive practice guide for certifiers to use and apply to address some of these issues is an aspect that needs to be looked at.

3.7 Contracts with Certifiers

The principle behind the new contract provisions is acknowledged however in the eyes of applicants the current system is very bureaucratic, particularly for very simple projects. A simpler system that achieves the desired outcomes is needed.

The suggestion in the report that this aspect of the certification process may not be necessary and could be better addressed through the “consent application process” is supported.

3.8 Occupation certificates

The change to the regulation in this area has widened the scope of certification and was necessary to place greater attention and focus on certifiers, particularly private sector certifiers, to verify that development is completed to an approval. This is a fundamental and important part of the system and should be retained, however it needs to be supported through better second and third-party certification (see also comments under 4.4).

A checklist to assist in ensuring consistent levels of compliance among certifiers when issuing occupation certificates is also needed.
3.11 The Building Professionals Board (BPB)

A greater focus of responsibility and enforcement action through detailed investigation of complaints about certifiers is required. The lodgement of complaints by local councils also needs to be made simpler with less emphasis on having to lodge detailed reports and statutory declarations to initiate action by the BPB.

3.12 A Consumer Focus

Detailed, well-structured, and targeted information on the development and building approval and construction certification processes should be developed and made easily available to consumers.

It is my experience that there is a general lack of understanding of the system. This is particularly the case with small-scale residential development undertaken by homeowners. In these cases there is a lack of understanding of the role of the certifier. Many believe that a certifier is responsible for total quality control of all building work.

Greater and more effective communication with consumers is needed including information on the role of certifiers and, more importantly, clarity on the roles and responsibilities of builders and building contractors to supply a completed building which complies with the building code, standards and the development consent.

3.13 Split Administration

With the growing complexity of building design and construction through the National Construction Code and various referenced Australian Standards, there would be merit in establishing a single specialised building regulatory government agency, similar to the Victorian and Queensland administrations, to control and regulate the building design, construction services and certification sectors. This should include an amalgamation of the relevant government departments currently responsible for these areas.

4. White Paper Directions and Priorities

4.1 Overview of the White Paper Directions

The entire building approval process needs to be reviewed across the whole system including construction processes, quality of professionals and clarity of their responsibilities, and the quality of documentation and records keeping systems).

4.2 Fire Protection – a Critical Example

The White Paper highlighted the growing use and complexity of alternative solution fire-safety designs in buildings.

The proposed peer review process for complex alternative building solution designs as suggested in the White Paper is supported as it will add rigor to the current process.

Issues associated with fire services designers and installation contractors also needs attention including consideration with respect to whether formal accreditation similar to the
structure that currently exists under Building Professionals Act should be extended to other disciplines including fire services designers.

4.4 Occupation Certificates

The amendment to the Regulations in 2013 introducing a ‘not inconsistent’ test when determining to issue an occupation certificate is an improvement however there are other important matters that also need to be satisfied before a building is approved for occupation.

The reliance on installation certificates from various disciplines within the construction industry forms a significant part of the process in deciding to issue an occupation certificate. In relying on certificates of design or installation a certifier is placing considerable faith in a contractor’s skills and qualifications and confirmation (formal certificates) that a building element is compliant.

It may therefore be appropriate to expand the accreditation scheme to component designers and contractors to increase component efficacy. Any future system must however be rigorous and include the provision for significant penalties including cancellation of accreditation where breaches occur.

As highlighted in the report builders must play a greater role in certifying various elements and aspects of building work. Persons (builders) certifying work must however be appropriately accredited and be held accountable for their actions which currently is not the case. Issues with owner-builders and compliant works need special consideration by the BPB.

4.5 Clear Roles and Responsibilities

The role of certifiers needs to be clarified. The functions of local councils also needs to be clearly defined particularly where a council is not involved in the certification of development (i.e. the PCA functions).

Clarity regarding enforcement functions and the role of councils when dealing with privately certified projects should also be considered.

4.6 Implementation and Conclusions relating to the White paper proposals

The development of a risk-based inspection regime may have some merit however this will require extensive examination and consideration to ensure sound outcomes are achievable. The development of a detailed practice guide which has legal status would assist the certification sector.

7. The Role of Certifiers

7.1 Issues relating to Scope

It is agreed that the roles and responsibilities of all individuals in the building and certification sectors need to be clearly defined. This is particularly important for building certifiers who hold primary responsibility for granting building approvals and importantly, authorising the occupation of buildings.

7.2 Primary Obligation of Certifiers

The current legislative provisions define certifiers as ‘public officials’. The designation as an “official” is considered necessary to place the required emphasis on the role of a certifier.
including the important function that a certifier provides to the community. This includes responsibilities to protect the community and the environment.

Any change to this designation i.e. amendment to the ICAC Act, needs thorough consideration to ensure that an appropriate level of responsibility is maintained in the development control system to afford appropriate and adequate community and environmental protection and accountability.

7.3 Certifier Views

The complexity of building regulations requires considerable certifier time and resources to achieve sound outcomes. This has a cost impact. There is a general view in the building surveying profession that there is downward pressure on certification fees. This is particularly evident during downturns in the development and building construction sectors.

Reduction in fees inevitably leads to less time being directed to undertaking proper assessment and building inspections with resulting potential issues of non-compliance and poor outcomes for consumers and the general public.

9. Building and Consent Compliance Boundaries

9.1 The Central Challenge

It is agreed that only after the full scope of the certifier’s role (both council and private) has been determined, can a true evaluation (costs, time saving, liability, efficiency) of the success of the certification system be ascertained.

9.3 The Building Code

As pointed out earlier building construction and compliance with the provisions of the National Construction Code (including the adopted Australian Standards) is a complex area. The ‘critical stage’ inspection regime is tilted towards small domestic scale development such as single dwelling houses and ancillary buildings. It may therefore be appropriate to review this area through a possible risk-based system. This may need to include the special risks associated with owner-builders undertaking building work.

Larger and more complex buildings, some with very elaborate fire safety systems, currently have no requirements for critical stage inspections other than a final inspection of the completed building (with a reliance on contractor certificates).

The suggestion put forward in the report to use a risk-matrix approach to guide the inspect process may have some merit and should be pursued to determine if such approach could improve the current systems whilst maintaining an adequate level of community protection and safety.