



Review of the *Building Act 1975* and building certification in Queensland

Discussion paper

June 2014

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Purpose

This discussion paper outlines potential improvements to the building legislation and building certification system to further cut costs and reduce delays within the Queensland construction industry. It is a key part of the Queensland Government's commitment to reduce red tape and unnecessary regulation for the construction industry and in doing so strengthen one of the four pillars of the Queensland economy, which contributed to the economy approximately \$60 billion in the 2013-14 financial year.

Proposals in the discussion paper will contribute to the State and Federal Governments' reform agenda to further reduce red tape without impacting on the health and safety of the community. One of the ways in which this will be achieved is to reduce the regulatory count by 20 to 25 per cent. To help attain this goal, the paper invites submissions on what building work can be included as self-assessable or exempt. In addition, where possible, legislative provisions will be streamlined or clarified and redundant provisions removed.

Enhancements to the building certification process will also deliver greater accountability to consumers and help protect against conflicts of interest. This will include implementing measures in Item 9 of the Government's Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

Background

History of the *Building Act 1975* and private certification

The *Building Act 1975* was introduced in Queensland in 1975 and prescribed, for the first time, standard building by-laws for all building work in Queensland. It commenced on 1 April 1976.

The Building Code of Australia (now known as the National Construction Code) was introduced in the early 1990s and replaced the standard building by-laws. It introduced a nationally consistent set of minimum building standards.

In 1998, the system of private certification commenced in Queensland with the aim of improving efficiency and flexibility within the construction industry, and introducing competition into the choice of service providers. The system also reflected National Competition Policy reforms at the time.

There have been a number of reviews of the *Building Act 1975* and the system of private certification since their introduction, including in 2003 and 2006. These reviews implemented a number of improvements including mandatory planning and regulatory training for certifiers, amendments to the certifier's code of conduct, improved documentation requirements and introducing on-the-spot fines for building certifiers who failed to meet their legislative obligations.

In August 2011, the Queensland Government commenced a further review of building certification and released the discussion paper "*Improving building certification in Queensland*" for public consultation. The results of the consultation and proposed improvements were being considered by government but the review process was put on hold when the Parliamentary Inquiry into the former Queensland Building Services Authority was announced. The discussion paper was subsequently referred to the Inquiry for consideration.

Review into the operation and performance of the Queensland Building Services Authority

On 2 August 2012, the Legislative Assembly directed the Transport, Housing and Local Government Parliamentary Committee to inquire into and report on the operation and performance of the Queensland Building Services Authority in its regulation of the construction industry.

The Parliamentary Committee tabled its report in November 2012. The Report contained 41 recommendations based on the information received throughout the public briefing, the public hearing process and written submissions.

The Queensland Government provided its response to the report in May 2013 in the form of a Ten Point Action Plan released by the Minister for Housing and Public Works, the Honourable Tim Mander MP.

An Implementation Committee was established to oversee the implementation of all items in the Ten Point Action Plan and report back to Government.

Action Item 9 of the Ten Point Action Plan committed the Government to undertake a review of the role of private certifiers practising in Queensland. The item places an emphasis on probity, conflicts of interest, quality and appropriate accountability for private certifiers to ensure they adequately perform their functions. The Implementation Committee endorsed a number of recommendations which have been included as part of this discussion paper.

Context

Related legislative changes

The issues raised in this discussion paper will need to be considered in the context of the other legislative reviews that are currently occurring in Queensland, including:

- The review of the *Building and Construction Industry Payments Act 2004*, in which a number of improvement measures are proposed to provide a more equitable process and timeframes between claimants and respondents.
- The planning reforms which include a review of the *Sustainable Planning Act 2009*, with proposed changes likely to have implications for building certification and the *Building Act 1975*.
- The review of the *Queensland Heritage Act 1992*.

Scope of the review

The scope of this review includes key issues that have been raised by stakeholders, the public, and the Parliamentary Inquiry into the former Queensland Building Services Authority, about the *Building Act 1975* and the system of private certification. Although the basic structure of the *Building Act 1975* is expected to remain the same, there are a number of potential improvements that may benefit the community and industry.

Potential improvements have been grouped under the following key topics:

- building certifiers
- development applications and approvals
- inspections and certificates
- enforcement and miscellaneous.

When reading this discussion paper, it is important that each of the proposed options not be considered in isolation. Instead, a holistic view should be taken of the expected combined effects of related proposals.

Engagement of Mr Andrew Wallace

Mr Andrew Wallace, a construction law barrister, has been engaged to lead the review, consult with stakeholders throughout the state and analyse the results of the consultation based on this discussion paper. Mr Wallace will provide a report to the Queensland Government about proposed recommendations for implementation. Mr Wallace brings not only his experience from the legal profession, but also his industry background as a carpenter and joiner. He is also a licensed builder with the Queensland Building and Construction Commission (the Commission).

In 2012, Mr Wallace was appointed to conduct a review of the *Building and Construction Industry Payments Act 2004* and was also appointed to advise the Queensland Government on the implementation of recommendations of the Parliamentary Inquiry into the operation and performance of the former Queensland Building Services Authority.

Discussion

1. Building certifiers

Background

Building certification involves independently checking, approving, inspecting and certifying building designs and work to ensure that it complies with the safety, health, amenity and sustainability standards specified in legislation and building codes.

Building certifiers, also known as building surveyors, are involved in many aspects of the building industry. In Queensland, a building certifier:

- assesses building development applications and grants or refuses building approvals
- inspects buildings at various stages to ensure that they meet minimum standards and comply with the building approval
- informs the builder when work does not comply with the minimum standards or the building approval
- performs building compliance and enforcement roles by ensuring that the builder attains compliance with the standards and the building approval.

Building certifiers may be employed by local governments or work as private certifiers. Those who are private certifiers can work either for themselves or for a private certifier employer, such as a private company. Since the introduction of private certification there has been a significant shift to

the private sector, with most developers and builders opting to use private certifiers rather than local government certifiers.

As a result of this shift, many local governments have withdrawn from providing in-house certification services. However, the building legislation requires local governments to accept and assess building development applications. If a local government does not employ its own certifiers, it may also appoint or employ a private certifier or another local government's certifier to work on its behalf.

Issues

1.1 Private certification system

The system of private certification was introduced in 1998 to reflect National Competition Policy and help achieve greater efficiencies and flexibility for applicants. Previously local governments were solely responsible for providing certification services. Industry reported concerns about lengthy timeframes for local government decisions and in the absence of competition, applicants were unable to use an alternative service provider.

There are approximately 409 building certifiers currently licensed in Queensland. Of these, around 347 are private certifiers. Australian Bureau of Statistics data suggests there were up to 108,877 building approvals issued last year in Queensland¹. The majority of these approvals are believed to have been issued by private certifiers as most local governments have withdrawn from providing in-house certification services.

In 2001, three years after the commencement of private certification, a review conducted by the Local Government Association of Queensland, the former Queensland Building Services Authority and Building Codes Queensland showed broad support for the new system. The review found that stakeholders believed that private certification was benefiting the Queensland community by reducing overall approval times and the costs of approvals. There was also perceived to be an increased level of customer service. However, private certification was also shown to have reduced the income of local governments.

In 2006, as part of another review of the private certification system, a report prepared for the Local Government Association of Queensland found there were divergent views across Queensland local governments, with some supporting a more "hands on" role for local government in terms of regulating building approvals, while others simply wanted greater oversight and auditing of private certifiers. The report concluded that the existing system should be retained and improved upon rather than reverting back to local government certification only. An alternative model was also proposed which involved a final checking or approval role for local governments.

The 2006 report suggested that a flaw in the current system was the responsibility for private certifiers to consider local planning requirements as part of a building development approval, a matter they often have little knowledge or experience in determining. Private certifiers were originally tasked with this role to provide a form of safeguard to ensure that local planning requirements were not contravened. The Commission currently receives approximately 56

¹ Based on number of approvals for individual residential dwelling units and number of jobs for non-residential building work valued at over \$50,000 during the 12 months to January 2014, Source: ABS 8731.0 - Building Approvals, Australia, March 2014

complaints about private certifiers per year (40 per cent of total complaints received) related to planning matters, mostly from local governments. The matters are usually related to a certifier allegedly misinterpreting a local government planning scheme.

In 2012, the Parliamentary Inquiry into the operation and performance of the Queensland Building Services Authority recommended that measures be investigated to help ensure certifiers and other contractors are held more accountable, particularly for non-compliant or defective work. The Queensland Government's Ten Point Action Plan response included an action item to review the role of private certifiers with an emphasis on probity, conflicts of interest, quality and an appropriate penalty regime for failure to perform. This included investigating the process of appointing private certifiers to clearly define their roles and responsibilities.

In particular, a perceived flaw with the system of private certification is the potential for conflicts of interest. As private certifiers perform a regulatory role, they must act in the public interest. However private certifiers usually have ongoing commercial relationships with individual builders who engage them to provide certification services. A potential conflict of interest may arise where a certifier may be tempted to enforce the building standards less strictly in order to preserve that commercial relationship.

Despite the potential for some improvements, there appear to be comparatively few complaints about certifier conduct in Queensland. While there were up to 108,877 building approvals issued last year in Queensland², the Queensland Building and Construction Commission receives on average³ 140 complaints per year about building certifiers. Of the total average complaints received, only 35 per cent (or 49 per year) resulted in a negative decision and disciplinary action being taken against the certifier. This broadly equates to 1 complaint per 2222 approvals per year.

Other jurisdictions

All other jurisdictions in Australia currently have some form of private certification, and the majority have a dual model similar to Queensland, which includes local government certification. Western Australia has a hybrid type model whereby the private certifier assesses building code compliance but a local or state permit authority issues the building approval. South Australia has a similar hybrid system where either the private certifier or local government grants the building consent but it is the relevant authority (local or state) that issues the development approval once both planning and building consents have been granted.

The following table (Table 1) provides a comparison of the current certification systems in other jurisdictions.

² Based on number of approvals for individual residential dwelling units and number of jobs for non-residential building work valued at over \$50,000 during the 12 months to January 2014, Source: ABS 8731.0 - Building Approvals, Australia, March 2014

³ Average based on complaints received by the Commission during the last 5 years.

Table 1—Certification systems in other jurisdictions

State/Territory	Certification system
Australian Capital Territory	Private certification only.
New South Wales	Private certification, also local government
Northern Territory	Private certification only.
South Australia	Hybrid model - Private certifier or local government issues building rules consent and local government issues development approval.
Tasmania	Hybrid model—Private or council certification of building code compliance, however council permit authority issues final building permit.
Victoria	Private certification, also local government.
Western Australia	Hybrid model—Private certification of building code compliance, however local and State permit authorities issue final building approval.

*Potential improvements***Option 1.1 (a) Retain the current system of private certification, with some improvements**

The current system of private certification could be retained, on the basis that some of the potential improvements outlined in this discussion paper are likely to be implemented to help reduce red tape and provide for greater accountability and protection of consumers. The overall benefits and disadvantages of the current system of private certification are outlined below (Table 2).

Table 2—Benefits and disadvantages of private certification generally

Benefits	Disadvantages
<ul style="list-style-type: none"> • Short timeframes associated with approvals. • Consumers have a choice of private certifier or local government. • Overall level of satisfaction with certifier conduct. • Few issues with non-compliant building work overall. • Economic benefits through the support of a specialised profession and associated employment opportunities. 	<ul style="list-style-type: none"> • Perceived conflict of interest could remain (although this could potentially be addressed through options outlined in this paper). • Perceived failure of certifiers to adequately consider local planning requirements when issuing a building development approval.

The benefits and disadvantages of some of the potential improvement options for the current private certification system are outlined throughout the remainder of this discussion paper.

Option 1.1 (b) Remove the private certification system

The current system of private certification could be removed and Queensland could revert to a system of certification undertaken solely by local governments. Existing private certifiers would need to be employed or contracted to local governments.

The benefits and disadvantages of removing the current system of private certification and reverting to a local government monopoly for certification services are outlined below (Table 3).

Table 3—Benefits and disadvantages of removing the current private certification system

Benefits	Disadvantages
<ul style="list-style-type: none"> • Less of a perceived conflict of interest for certifiers. • Local government would be the single point of control over development in their area. • There would be a “one-stop-shop” for consumers. 	<ul style="list-style-type: none"> • Significant negative impacts for existing private certifiers and certification companies. • Significant resource implications for local governments. • No alternative service provider for consumers. • Likely increases in approval timeframes. • Decreased service levels due to lack of competition in the market.

Option 1.1 (c) Introduce a hybrid private certification/local government model

A hybrid model involving private certifiers and local government could be investigated, similar to the Western Australian approach. This could involve an applicant or local government procuring the services of a private certifier to provide compliance advice about whether an application meets the building assessment provisions, but the ultimate approval would be issued by local governments. Similarly, private certifiers could be tasked with conducting inspections on behalf of local governments throughout the construction. While this approach is not prevented under the current legislation, it is not widely used due to the ability for applicants to engage a private certifier directly.

The benefits and disadvantages of a potential hybrid model of building certification are outlined below (Table 4).

Table 4—Benefits and disadvantages of a hybrid model of building certification

Benefits	Disadvantages
<ul style="list-style-type: none"> • Less of a perceived conflict of interest for certifiers. • Continued employment opportunities for many existing private certifiers. • Reduced liability for private certifiers. • Decision making on planning matters would revert to the local government thus reducing the potential for error. 	<ul style="list-style-type: none"> • Increased resource requirements for local governments. • Potentially reduced income for existing private certifiers. • Likely increases in approval timeframes.

1.2 Engagement and access to information

In Queensland, there are no rules about who may engage a private certifier. Generally, this is done by either the builder, or sometimes the property owner/developer. Although an owner has the ability to engage a certifier themselves, this does not seem to be widely known or used. Given that it is usually the builder who engages the private certifier, there can therefore be a perceived conflict of interest due to their business relationship as the builder is the “employer” and the private certifier assesses their work. Many large scale building companies consistently use the same certifier, and as a result a certifier may be reluctant to disturb that relationship as it could negatively impact on their income.

Property owners also have limited access to documentation that relates to the certification process, such as inspection records, and have no ability to request a building certifier to undertake inspections of the building work (or a final inspection if this has not yet been completed), as this is currently restricted to the builder.

Other jurisdictions

The Australian Capital Territory *Building Act 2004* provides that the owner or lessee has the right to appoint a certifier for a building application. However, an owner may also assign that right to another person, such as the builder. In Victoria under the *Building Act 1993* a person who is entitled to apply for a building permit may appoint a private certifier. This can be the owner or an agent authorised by the owner, which can include the builder.

The South Australian *Development Regulations 2008* provide that where someone who is not the owner of the land, proposes to engage a private certifier, the land owner must be notified of this intention before the private certifier is engaged. For houses, the written consent of the owner of the land must be obtained for the use of that certifier.

Western Australia and the Northern Territory do not require the owner to be a party to the engagement. In Tasmania the *Building Act 2000* provides an owner or their agent is to engage a building surveyor to perform functions under that Act. An offer of engagement of a building surveyor is to be in writing, signed by the owner and provided to the building surveyor.

In New South Wales under the *Environmental Planning and Assessment Act 1979* a building contractor may not engage a building certifier (the “principal certifying authority”) unless they are also the owner of the land on which the proposed work is to be conducted, i.e. the person with the benefit of the development consent or complying development certificate.

In 2013, the NSW Government released the report *Building Certification and Regulation – Serving a New Planning System for NSW* which made recommendations about their building certification system. Amongst other things, the report considered the efficacy of the current engagement processes for building certifiers. The report highlighted concerns about the owner being made to act as a conduit for communication between the certifier and the builder, noting the risk that an owner may fail to communicate the need for inspections to the certifier and the potential for misunderstandings about issues of compliance. The report also noted that the concept of the contractual relationship between the owner and the certifier seemed “inconsistent” with the primary responsibilities of a certifier. This could be for example, because owners may not welcome certain conditions being placed on building approvals such as those that deny them a desired view, or building standards which drive up their costs. The report recommended that owners should be allowed to choose whether to engage the certifier directly or to leave this to the builder.

Potential improvements

Option 1.2 (a) Mandatory owner engagement

Amend the building legislation so that the owner must engage a private certifier. This would provide a benefit to the owner, as the owner would have the ability to “shop around” for a certifier and make an informed decision about what certifier would be most suited to the development. The owner would also have the ability to negotiate on the contract price directly with the certifier.

This option would result in more transparency between the owner and the certifier, as the owner would no longer effectively be locked out of the engagement process.

To ensure that these benefits are maintained, it would generally be only the owner who could engage the certifier. However an owner could also appoint an agent for this purpose, provided the agent was not the builder or an agent of the builder. A company would also have the ability to appoint an authorised person to act on its behalf, providing the company's agent was not the person performing the work. A builder would not have the ability to engage a certifier unless the builder is also the property owner.

Although this approach would likely help in making the certifier more accountable to the owner, some property owners may not wish to be so closely involved in the certification process and may prefer to have this handled by their builder. Delays may also occur if an owner cannot be contacted. In practice, a property owner may also simply refer to their builder for a recommendation for a certifier, even though they would still have the ultimate decision. This was found to be relatively common in New South Wales. This practice would not entirely resolve the perceived conflict of interest.

The benefits and disadvantages of mandatory owner engagement are outlined below (Table 5).

Table 5—Benefits and disadvantages of owner engagement

Benefits	Disadvantages
<ul style="list-style-type: none"> • May be less of a perceived conflict of interest. • Certifier would be more accountable to the owner. • Owner would have better access to documentation. 	<ul style="list-style-type: none"> • Owner may not want to be so closely involved in process. • Owner may seek recommendation from builder, and perceived conflict of interest would remain. • May present logistical difficulties and delays if owner is absent or unable to be contacted. • Would still be a high probability of builders and certifiers establishing relationships over time because of the limited number of certifiers available, particularly in remote locations.

Option 1.2 (b) Introduce signposting provisions in contracts about owner's ability to choose the certifier⁴

An alternative to mandating a contractual relationship between the owner and the building certifier would be ensuring that owners are provided with information about the role of building certifiers and of their opportunity to directly engage them. This could be achieved by mandating provisions in domestic building contracts requiring that owners must be made aware that they have the right to choose a certifier themselves. This would mean that owners are made aware of the role that building certifiers play in approving and inspecting buildings and of the benefits of direct engagement. The option would not impose a regulatory burden on owners who are happy for the builder to appoint the building certifier.

The benefits and disadvantages of this option are outlined in the following table (Table 6).

⁴ This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan

Table 6—Benefits and disadvantages of introducing signposting provisions in contracts

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would highlight to the owner their rights under current legislation. • The decision would remain the choice of the owner. 	<ul style="list-style-type: none"> • The potential for conflict of interest could still arise. • Increased red tape for industry in having to amend contracts. • May not align with proposed changes to streamline the <i>Domestic Building Contracts Act 2000</i>.

Option 1.2 (c) Increased ability for owners to request information or inspections⁵

Where a contract of engagement for certification services is between a builder and the building certifier, the owner has no ability to request inspections (such as additional inspections to the mandatory inspections prescribed under legislation) or documentation from the certifier. This can place them at a disadvantage compared to an owner who has directly engaged the certifier. Changes to the building legislation could enable a property owner to request from the certifier:

- copies of inspection documentation and other certificates; and
- inspections to be undertaken (such as a final inspection or additional inspections).

The benefits and disadvantages of this option are outlined below (Table 7).

Table 7—Benefits and disadvantages of providing an increased ability for owners to request information or inspections

Benefits	Disadvantages
<ul style="list-style-type: none"> • Certifier would be more accountable to the owner. • Owner would have access to more documentation. • Owner would be able to request inspections independently of the builder. 	<ul style="list-style-type: none"> • Potential resource implications for certifiers. • Perceived conflict of interest would remain. • Owner would bear the cost of further inspections or provision of documentation.

Option 1.2 (d) Mandatory provision of inspection documentation to owner

While similar to Option 1.2 (c) above, this option would involve amending the building legislation so that it would be mandatory for the certifier to provide all relevant inspection documentation to both the owner and the builder throughout the construction process. A specific request from the owner would not be required. The builder would still be required to liaise with the certifier directly to arrange any mandatory inspections. The certifier would continue to be responsible for notifying the local government and the owner (if the owner has not engaged them) of their appointment, as well as providing copies of approval documents to all parties.

The benefits and disadvantages of this option are outlined in the following table (Table 8).

⁵ This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan

Table 8—Benefits and disadvantages of requiring mandatory provision of inspection documentation to owners

Benefits	Disadvantages
<ul style="list-style-type: none"> • Owners would be more informed and have the opportunity of greater involvement. • Would become part of a certifier's general business process, rather than requiring a specific request from the owner. • Inspection documents could no longer be withheld by the builder as a means of enforcing payment by the owner. 	<ul style="list-style-type: none"> • Minor resource implications for certifiers. • Some owners may not want to receive the information. • Perceived conflict of interest would remain. • Would not address the inability for an owner to request inspections by the certifier.

1.3 Disengagement of building certifiers

Queensland building legislation currently places few restrictions on discontinuing the engagement (disengagement) of a private certifier. It only sets out the need to comply with whatever action is required under the engagement to discontinue it and to notify each party that the engagement is being discontinued.

Having these limited parameters around the disengagement of a private certifier can have adverse outcomes for both private certifiers and property owners. There is also potential for clients to 'shop around' for outcomes that best suit their needs, for example to look for a certifier with a less stringent inspection/certification regime who may be prepared to discount fees accordingly or provide a more favourable outcome.

Similarly, certifiers can disengage if they do not like the expectations of a client in relation to how the certifier is performing their role. For example, a client may insist on additional inspections for a particular element of construction that the certifier considers unnecessary. If the certifier believes a client has undue expectations they are able to disengage during the course of an approval. Certifiers may also be inclined to disengage when situations involving the initiation of enforcement action are required. Their disengagement at these times can disrupt the flow of important documentation and inspection services which can result in delays and increased costs. Making it more difficult for disengagement to occur should result in a more rigorous certification process.

Other jurisdictions

All other states and territories except Western Australia currently have requirements for an independent body to consider and authorise disengagement of private certification services. Some jurisdictions also limit the circumstances in which an application for disengagement can be made. This can reduce disengagement occurring for minor or inappropriate matters.

The following table (Table 9) provides a comparison of the approach that other jurisdictions take to restricting the disengagement of building certifiers.

Table 9—Certifier disengagement requirements in other jurisdictions

State/Territory	Requirements for disengagement of a certifier?
Australian Capital Territory	Yes—certifier must seek permission from the Registrar to disengage, however there are no restrictions on an owner disengaging.
New South Wales	Yes—approval must be sought from the Building Professionals Board unless all parties i.e. the person with the benefit of the consent (usually the owner), the current principal certifying authority (PCA) and proposed new PCA, agree to the disengagement.
Northern Territory	Yes—requires agreement from owner and certifier and written approval from Director, Building Control.
South Australia	Yes—applicant must seek permission from the Minister, however there are no restrictions on certifier disengaging, except that another certifier cannot be engaged without consent of Minister.
Tasmania	Yes—consent must be obtained by the Director of Building Control where the owner wants to change their building surveyor, or their building surveyor has died, disappeared is or unable to perform their functions. There is also a procedure for the “referral” of matters where the owner and two building surveyors agree to transfer a matter. Three years after their engagement, a building surveyor may resign without the permission of the Director.
Victoria	Yes—written consent must be obtained from the Victorian Building Authority.
Western Australia	No

Potential improvements

Note: Please also refer to the related issue of lapsing of building development approvals (Issue number 2.2).

Option 1.3 (a) Disengagement may only be approved by the Commission in strict circumstances⁶

Change the building legislation to require all disengagements, whether initiated by a client or a certifier, to be approved by the Commission (possibly for a cost recovery fee). If the applicant is not happy with this decision, the matter may be referred to the Commission’s internal review unit for consideration. If the applicant remains dissatisfied with the outcome of the internal review, there could be a right to appeal through the Queensland Civil and Administrative Tribunal.

The circumstances under which disengagement could be allowed include death, serious illness, bankruptcy of a party to an engagement, inability to find one of the parties, or other limited circumstances. Given that disengagement is intended to be allowed on very limited grounds, it is not expected that the cost recovery fee would be high. Again because the criteria for disengagement would be narrow, it is expected that these applications will be dealt with expeditiously.

⁶ This was a recommendation of the Implementation Committee for the Government’s Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

The experience in New South Wales has been that limited applications for disengagement are made.

The following table (Table 10) sets out the benefits and disadvantages of placing limitations on the disengagement of private certifiers.

Table 10—Benefits and disadvantages of introducing requirements for the disengagement of building certifiers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would limit “shopping around” for certifiers, and disengagements based solely on a disagreement. • Could lead to a higher degree of compliance. • Internal review and appeal would be available for disputed decisions. • Fewer delays and lower costs due to disengagements and the need to engage a new certifier. • Continuity of certification services for the project. 	<ul style="list-style-type: none"> • Possible cost recovery fee for applications for disengagement. • Time taken for application to be decided, although this is expected to be minimal. • Potential resource implications for the Commission and QCAT.

Option 1.3 (b) Provide for standard clauses in certifier engagement contracts

Amend building legislation to provide for standard clauses to be included in contracts for the engagement of a private certifier to specify the circumstances under which disengagement may occur. The *Building Act 1975* already includes some requirements for contracts of engagement for certifiers. Currently, engagement of a private certifier must be written and state the fees payable by the client to the certifier or the certifier’s employer. By specifying when disengagement may occur all parties would be aware, when the contract is entered into, of the circumstances in which disengagement may occur, and the required process to follow.

The restrictions on disengagement would be similar to those mentioned above, including death, serious illness, bankruptcy of a party to an engagement or inability to find one of the parties. It could be a requirement that the Commission is responsible for approving disengagement or the Commission may only be required to assess and approve disengagement where it does not fit within the circumstances prescribed in the contract. As discussed above, the Commission may need to charge a cost recovery fee for providing this service.

The table below (Table 11) sets out the benefits and disadvantages of introducing standard contract clauses about the disengagement of private certifiers.

Table 11—Benefits and disadvantages of introducing standard contract clauses regarding the disengagement of building certifiers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Greater awareness of both parties from the beginning of the engagement. 	<ul style="list-style-type: none"> • Possible cost recovery fee for applications for disengagement. • Time taken for application to be decided, although this is expected to be minimal. • Provisions in a contract may not be as “clear cut” as if the provisions were included in legislation.

1.4 Licensing and accreditation

There are currently approximately 409 licensed building certifiers in Queensland. This represents about one third the number of certifiers registered within the states of New South Wales (1298 certifiers) and Victoria (1206 certifiers). Due to the lower numbers, it has been suggested that Queensland's certifiers are on average subjected to higher workloads than those practising within New South Wales and Victoria. The lower numbers have raised concerns about the capacity of Queensland certifiers to adequately undertake their legislative responsibilities, such as on-site inspections.

There are a number of possible reasons as to why Queensland has significantly fewer licensed building certifiers. One reason could be that both New South Wales and Victoria currently have an additional "entry-level" category of building certifier that has fewer qualification requirements but can assist with specific certifying functions such as undertaking inspections. There are currently approximately 144 of these entry level "inspector" certifiers within New South Wales and 198 in Victoria. This new entry level category could be providing a new career pathway into the building certification industry for experienced builders when they decide to 'down tools'.

Queensland does not currently have a certifier licence that is restricted to only conducting inspections. Instead, there are three levels of building certifier licences, as follows:

- Building certifiers—Level 1 can perform building certifying functions on all classes of buildings and structures;
- Building certifiers—Level 2 can perform certain building certifying functions on buildings and structures no more than 3 storeys high or with a floor area of not more than 2000 metres squared without the supervision of a Building certifier—Level 1, and can also help in assessing and inspecting all classes of buildings under the supervision of a Building certifier—Level 1; and
- Building certifiers—Level 3 can only perform building certifying functions on class 1 or 10 buildings or structures (such as houses, garages and sheds).

Current Queensland building legislation provides that an individual may apply to the Commission for a building certifier's licence. To apply for a certifier's licence, the person must be accredited by an accreditation body. The legislation prescribes two bodies which may undertake this process, the Australian Institute of Building Surveyors and the Royal Institution of Chartered Surveyors.

In comparison, to become a registered engineer, the *Professional Engineers Act 2002* states that the person must have an approved degree, have the required level of competence (assessed by an assessment entity), and be assessed by the Board of Professional Engineers as being fit to practise. The requirements for registered architects in Queensland include passing an examination and assessment by the Board of Architects.

Licensed certifiers can also seek help from other experts in certain circumstances. The competent persons framework in Queensland allows building certifiers to seek inspection and design help from persons assessed as 'competent' by the certifier. An assessment of competency includes whether the person has a licence, if required, to perform the work. If a competent person used by a certifier is not required to have a particular licence, it can be difficult for the Commission to hold the competent person accountable for their work.

Potential improvements**Option 1.4 (a) Introduce a fourth “Inspector” level of building certifier**

Create a fourth entry-level building certifier’s licence to undertake building inspections. The current licence levels would remain unchanged but a new licence level would allow additional people, who are appropriately qualified, to undertake inspections of buildings. Creation of this licence class would help to ensure that those undertaking inspections are licensed and therefore subject to investigation and disciplinary action by the Commission. Holders of this “inspector” class of licence would not be able to approve building development applications.

Note: This option is also related to the competent persons framework (refer to Issue number 3.1).

The table below (Table 12) sets out the benefits and disadvantages of introducing a fourth “inspector level of building certifier.

Table 12—Benefits and disadvantages of introducing a new “inspector” level of building certifier

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would increase the number of building certifiers available for inspections. • Create a lower entry level to the profession. • May reduce workloads of existing building certifiers. • Individuals undertaking inspections would be more accountable to the Commission. • May encourage uptake of building surveying as a profession, leading to higher level licensing. • Increased employment opportunities for mature aged workers from building and construction related fields. 	<ul style="list-style-type: none"> • Does not align with the National Accreditation Framework (NAF) for building certifiers.⁷ • Administrative changes required to reflect new level.

Other jurisdictions

The table below (Table 13) provides a comparison of the levels of certifiers in other jurisdictions.

Table 13—Interstate comparison of levels of certifiers in other jurisdictions

State/Territory	Main levels of licenses for certifiers	Additional “inspector” level of certifier?
Australian Capital Territory	Two	No
New South Wales	Three	Yes
Northern Territory	Two	No
South Australia	One—and certain conditions placed on Mutual Recognition licences at other levels	Inspections performed only by local authorities.

⁷ The NAF provides for two levels of building certifiers only. The existing framework allowing level 3 building certifiers does not align with the NAF.

Tasmania	Two	No
Victoria	Two	Yes—two categories.
Western Australia	Three	No—no mandatory inspections.

Option 1.4 (b) Give the Commission responsibility for assessing qualification and experience (accreditation) requirements for certifiers

Although the Commission decides an applicant's suitability to obtain a licence, it is not involved in the accreditation process. Accreditation is the responsibility of the Australian Institute of Building Surveyors and the Royal Institution of Chartered Surveyors. There is no suggestion of any impropriety in relation to the current accreditation process. However, there is limited transparency in the process. Also, an applicant for accreditation does not have a right of external review or appeal against an accreditation decision.

To make the process more transparent the legislation could provide that qualification and experience criteria for each level of building certifier licence be prescribed under a regulation. This would also ensure that the requirements remain up to date. The Commission, rather than accreditation bodies, could be required to assess qualifications and experience of all licence applications. The prescribed requirements may still permit accreditation from an accreditation body to be accepted by the Commission as an acceptable qualification. However, provision could be made for the Commission to consider other qualifications or experience in particular circumstances, for example by recognition of prior learning. Internal review would lie from a decision of the Commission. If an applicant was dissatisfied with the decision from the internal review process, they would be entitled to seek a further review of the decision in QCAT.

The table below (Table 14) sets out the benefits and disadvantages of this option.

Table 14—Benefits and disadvantages of providing the Commission with responsibility for assessing qualification and experience requirements for certifiers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Potential for more flexibility in assessing competency. • Aligns with other licensing provisions currently administered by the Commission. • Provides alternative pathways to licensing. • Potential red tape reduction • Potential to reduce costs to obtain a licence. • Improves equity and procedural fairness for applicants (allows applicants the ability to seek a review of decisions about competency). 	<ul style="list-style-type: none"> • Increased responsibility and resource implications for the Commission. • Is still potential for external non-government agency control of qualifications rather than government. • Continues differing requirements in relation to other QBCC licensees.

Other jurisdictions

The following table (Table 15) outlines the approaches taken by other jurisdictions to assessing qualifications and experience of building certifiers.

Table 15—Inter-jurisdictional comparison of requirements for a regulatory body to assess qualifications and experience requirements for building certifiers.

State/Territory	Regulatory body assesses qualifications and experience?
Australian Capital Territory	No—other than a due diligence check on accreditation (such as from the AIBS).
New South Wales	Yes
Northern Territory	Yes
South Australia	Possible—generally this is done by an accreditation body (such as AIBS) but an application can also be made to the Minister.
Tasmania	Yes
Victoria	Yes
Western Australia	Yes—but also accept AIBS accreditation as a way of meeting requirements.

1.5 Certifier Code of Conduct

The building legislation provides for a Code of Conduct with which building certifiers must comply and by which their performance may be measured. It sets out standards of conduct and professionalism expected from building certifiers when performing their functions in Queensland. The Code of Conduct can be changed at any time but must be approved by regulation.

The current Code of Conduct (www.hpw.qld.gov.au/SiteCollectionDocuments/code-conduct-building-certifiers.pdf) outlines ten requirements, some of which reflect existing legislative requirements or provisions. Where already covered, duplication of legislative provisions can raise questions as to the need for a separate document. However, having a separate Code of Conduct may benefit building certifiers and consumers by summarising and highlighting the fundamental obligations of building certifiers in a single, readily accessible document.

The Code of Conduct requires building certifiers to act in the public interest. This reflects the regulatory role performed by certifiers. One of the basic tenets of the Code of Conduct and the building legislation is that building certifiers must not perform certifying functions where there is “a potential for conflict of interest”. However, neither the Code nor the legislation are clear on what constitutes a conflict of interest. With this lack of clarity building certifiers may become too focused on a client’s needs at the expense of the expectation to deliver services in the public interest and without conflict of interest.

The following table (Table 16) summarises the extent to which other jurisdictions have a code of conduct.

Table 16—Codes of Conduct in other jurisdictions

State/Territory	Code of Conduct?
Australian Capital Territory	No—although legislation does provide for a code of practice to be made.
New South Wales	Yes
Northern Territory	No—although some definition of “professional misconduct” is being considered.
South Australia	Yes—mandatory code of practice that is referenced in legislation.
Tasmania	Yes
Victoria	No—but looking at a potential code of practice.
Western Australia	No

*Potential improvements***Option 1.5 (a) Transfer Code of Conduct provisions into legislation**

Review the provisions of the Code of Conduct and transfer them into specific legislative requirements, where they do not already exist. There would no longer be a stand alone Code of Conduct.

The table below (Table 17) provides a summary of the expected benefits and disadvantages of this option.

Table 17—Benefits and disadvantages of repealing the current Code of Conduct and instead transferring the relevant provisions into legislation

Benefits	Disadvantages
<ul style="list-style-type: none"> • Avoids potential duplication of certain provisions. • May allow better integration of offence and penalty provisions. • Allows tailoring of penalties to seriousness of offence. • Still provides for overarching obligations. 	<ul style="list-style-type: none"> • Occupations in professional fields typically have codes of conduct. This option would see the loss of the Code of Conduct for building certifiers in Queensland. • Removal of a discrete document containing all obligations and scattering them in legislation, thus making requirements more difficult to locate. • Reduced flexibility in changing provisions to suit contemporary conditions, as they would no longer be subordinate legislation.

Option 1.5 (b) Retain and review the Code of Conduct as a stand alone document or a schedule in a regulation

Review the current Code of Conduct with the aim of clarifying its provisions and providing more examples, but retain it as a stand alone document given force by legislation, or alternatively included as a schedule in a regulation. The review would include providing more guidance about matters such as what constitutes a conflict of interest.

A summary of the expected benefits and disadvantages of this option is provided in the following table (Table 18).

Table 18—Benefits and disadvantages of retaining and reviewing the current Code of Conduct

Benefits	Disadvantages
<ul style="list-style-type: none"> • Allows the retention and maintenance of a Code of Conduct outlining the overarching obligations of a certifier in a single place. • Better clarifies what constitutes a conflict of interest. • Provides guidance to certifiers in the performance of their functions, including avoiding potential conflicts of interest. • Assists consumers in understanding the obligations of a certifier. • Assists the Commission in decision making. 	<ul style="list-style-type: none"> • May duplicate certain provisions (where also included in the primary legislation).

1.6 Building certifiers providing advice at design stage of a building and generally

Design stage

Building codes and standards can be difficult to understand and there are situations where a client may benefit from expert advice about compliance at the design stage of a building. With an increase in the use of alternative solutions, particularly in areas of fire safety, building certifiers are having more input into proposed building development at the design phase. While this is seen as one of the benefits of the private certification system, a potential for conflict of interest or perception of bias can arise where a building certifier provides technical advice at the design stage, particularly for alternative solutions, and then also assesses and approves the building design through the building development application process.

There is no clarity in either the Code of Conduct or the building legislation about a certifier's involvement in the design phase of a building.

General advice

There are also situations where a client may wish to seek the advice of a building certifier outside of a building development approval. For example, the prospective purchaser of an older commercial building may wish to know whether it complies with the requirements for disability access, as they intend it to be used by the public. The assessment of building work against relevant codes and standards is central to a building certifier's role and so they are well placed to provide this advice. However, the building legislation is currently unclear about whether certifiers have the ability to provide advice about building code compliance outside of the building development approval process.

The Commission has power to investigate and take disciplinary action against a certifier for failing to meet their legislative obligations in relation to a development approval but not in relation to the provision of general advice. Consideration should be given as to whether building certifiers should be liable for disciplinary action if they provide incorrect advice outside of the building development approval process.

Furthermore, certain licence classes and legislative provisions under the *Queensland Building and Construction Commission Act 1991* appear to restrict building certifiers who do not hold certain licences from providing advice on matters that may otherwise be within their area of expertise.

Potential improvements**Option 1.6 (a) Create a guideline to clarify the circumstances in which a certifier may provide advice during the design stage of the building, particularly in relation to providing advice on alternative solutions at this stage**

Develop a new guideline to clarify the extent of involvement a certifier should have in the design of buildings, particularly in the formation of alternative solutions. This would include providing guidance about what advice may or may not be acceptable from a building certifier at the design stage. Corresponding changes could also be made to the Code of Conduct, if it is to be retained.

Table 19 below sets out the advantages and disadvantages of clarifying the circumstances in which building certifiers can provide advice at the design stage of a building.

Table 19—Benefits and disadvantages of clarifying when building certifiers can provide advice at the design stage, particularly in relation to providing advice on alternative solutions at this stage

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides clients with the ability to obtain advice at the beginning of a project, thus potentially saving time and money. • Assist certifiers to avoid potential conflicts of interest and perceptions of bias. • Could assist the Commission in its decision making processes about the conduct of certifiers regarding conflicts of interest. • May increase the need for peer review of certification decisions, but this would increase scrutiny of the advice. 	<ul style="list-style-type: none"> • Increased costs and delays from applicants having to seek design compliance advice from an alternative building certifier not involved in the approval or certification process. • May increase the need for peer review of certification advice, thus increasing costs.

Option 1.6 (b) Clarify that building certifiers can provide advice outside of the building approval process and will be subject to disciplinary action for providing incorrect or misleading advice

The building legislation could be amended to make it clear that certifiers can give advice outside of the building development approval process, which is similar to most professions. Certifiers may be subject to disciplinary action for providing incorrect or misleading advice.

Table 20 below sets out the advantages and disadvantages of making it clear in legislation that building certifiers can provide advice outside of the building approval process.

Table 20—Benefits and disadvantages of clarifying that building certifiers can provide advice outside of a building development approval

Benefits	Disadvantages
<ul style="list-style-type: none"> • Removes the present confusion that exists about whether a certifier is entitled to give general advice on matters within the ambit of their functions. • Would broadly align certifiers with other professions. • Certifiers would not run the risk of acting unlicensed under other Commission building 	<ul style="list-style-type: none"> • Resource implications for the Commission. • Would impose additional regulation around the provision of advice by building certifiers.

<p>licence classes with respect to giving advice.</p> <ul style="list-style-type: none"> • Consumers would be aware of concluded disciplinary action about certifiers providing misleading or incorrect advice. • Incorrect advice would form part of the disciplinary process. 	
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1.7 Disciplinary action

The building legislation provides that the Commission is responsible for auditing and investigating complaints about building certifiers. When making decisions, the Commission must decide if the building certifier has (or has not) engaged in “*unsatisfactory conduct*” or “*professional misconduct*”. Disciplinary decisions relating to “*unsatisfactory conduct*” can be made by the Commission, while matters of “*professional misconduct*” must be referred by the Commission to the Queensland Civil and Administrative Tribunal (QCAT) for decision. The QCAT process for “*professional misconduct*” is resource intensive for the Commission.

While the terms “*unsatisfactory conduct*” and “*professional misconduct*” are defined in legislation, there are some similarities between the two and it is often a matter of interpretation by the individual decision maker as to what constitutes “*unsatisfactory conduct*” or “*professional misconduct*”. This level of subjectivity can lead to reviews of the Commission’s decisions by QCAT. There can even be differing views among QCAT members, particularly regarding findings of “*professional misconduct*” for repeated cases of “*unsatisfactory conduct*”.

Circumstances may also exist when the Commission is compelled to make a finding of “*unsatisfactory conduct*” for very minor administrative errors. There is currently no discretion for the Commission to give the certifier a caution or improvement notice to allow the certifier to improve their administrative practices, other than by way of a finding of “*unsatisfactory conduct*” which is then displayed to the public as part of their online licence record.

Concerns have also been raised previously about the Commission’s role as both “prosecutor” and “judge” on matters of “*unsatisfactory conduct*”, and the potential for conflict of interest or bias. An internal review unit has been established within the Commission as part of the Parliamentary Committee’s recommendations, which advocated “firewalling” between certain divisions with different responsibilities. There may be an opportunity to take advantage of the internal review unit to serve as an independent area of the Commission to deal with the review of Commission decisions about “*unsatisfactory conduct*”⁸. This would provide a cheaper and quicker intermediate step to the formal QCAT review process.

Potential improvements

Option 1.7 (a) Remove distinction between “unsatisfactory conduct” and “professional misconduct”

Review and combine the current categories of “*unsatisfactory conduct*” and “*professional misconduct*”. The new term would be “*misconduct*”. The Commission would still investigate complaints or undertake audits, and would be able to make decisions based on legislative provisions, about whether a certifier has complied with legislative requirements or engaged in action that would constitute misconduct. The Commission would then decide what disciplinary

⁸ This was a recommendation of the Implementation Committee for the Government’s Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

action may be required. There could also be an ability for the Commission to issue a caution or improvement notice rather than by making a finding of “*misconduct*” for minor administrative errors. Prior to more serious disciplinary action being taken, such as licence suspension or cancellation, a show cause notice would need to be issued to the certifier. If disciplinary action was still taken after the show cause process, the certifier would have further rights of review.

A certifier would be able to have the Commission’s decision reviewed by the Commission’s internal review unit in the first instance. For more serious disciplinary action, such as licence suspension or cancellation, the certifier would also have the ability to review the Commission’s decision in QCAT. The certifier would have the option of applying to QCAT for a stay of the decision until QCAT had decided the matter.

The advantages and disadvantages of this option are set out in the table below (Table 21).

Table 21—Benefits and disadvantages of removing the distinction between “unsatisfactory conduct” and professional misconduct”

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would improve certainty and remove the need to differentiate between the two categories. • Would ensure that all disciplinary matters are dealt with expeditiously at first instance. • Reduced resource implications for the Commission as matters previously considered to be professional misconduct would no longer need to be referred to QCAT for initial decision. • More efficient decision making process. • Internal Review unit would provide timely, cost effective alternative to QCAT reviews. 	<ul style="list-style-type: none"> • A single category would not provide a distinction between minor and more serious types of misconduct, particularly on a certifier’s public record.

Option 1.7 (b) Review the legislative provisions relating to *unsatisfactory conduct*” and “*professional misconduct*”

Maintain the separate categories of “*unsatisfactory conduct*” and “*professional misconduct*” but review them to assist with their interpretation and application, including providing clearer definitions and more examples of each. For *professional misconduct*, this could include clearly defining what constitutes “*repeated unsatisfactory conduct*”. As per Option 1.7(a) above, there could also be an ability for the Commission to issue a caution or improvement notice rather than by making a finding of “*unsatisfactory conduct*” for minor administrative errors.

Cases of “*professional misconduct*” would still need to be referred to QCAT in the first instance for decision, while the Commission would continue to decide matters of “*unsatisfactory conduct*”. If a certifier was dissatisfied with the Commission’s decision about “*unsatisfactory conduct*”, they would be able to have it reviewed by the Commission’s internal review unit, with further possible review to QCAT.

Table 22 sets out the advantages and disadvantages of this option.

Table 22—Benefits and disadvantages of retaining and reviewing the current categories of “unsatisfactory conduct” and “professional misconduct”

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would provide some clarity for the Commission, certifiers and QCAT. • The Internal Review unit would provide timely, cost effective alternative to QCAT for appeals. • Maintains distinction between serious breaches of misconduct and minor infractions. • Ensures that more serious breaches of misconduct which may lead to licence suspension or cancellation are determined by QCAT. 	<ul style="list-style-type: none"> • The Commission would still need to differentiate between the two categories to determine if they have the ability to take disciplinary action. • Resolution of more serious matters would be delayed for QCAT hearing, as is presently the case. • Significant Commission resources would still be required to progress a case of professional misconduct to QCAT.

1.8 Demerit point system

The building legislation currently allows the Commission to issue building certifiers with penalty infringement notices (PINs) for certain administrative offences. While a number of other licensees (such as builders, designers and trade contractors) can currently be issued with demerit points in addition to PINs, a similar system does not exist for certifiers.

It has been suggested that the current disciplinary process does not sufficiently encourage compliance with some administrative functions, such as providing relevant information to local governments within prescribed timeframes. Anecdotal evidence suggests that, in some cases, the fines applicable to these offences are simply accepted as a risk of doing business and factored into the pricing model for certification services. These repeated infringements do not result in a more serious outcome. While this type of behaviour continues, there is the potential for inaccurate or incomplete information being available to the public.

Potential improvements

Option 1.8 (a) Introduce a demerit point system for certifiers⁹

Introduce a demerit point system that will support the current disciplinary process. Depending on the specific offence or level of noncompliance, there will be an ability to impose demerit points to be applied as the case requires. An accumulation of demerit points over time may result in suspension or cancellation of a licence.

The advantages and disadvantages of this option are set out in the following table (Table 23).

⁹ This was a recommendation of the Implementation Committee for the Government’s Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

Table 23—Benefits and disadvantages of introducing a demerit point system for building certifiers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides another tool that can be used by the Commission to address misconduct by certifiers. • Provides an incentive for certifiers to comply with legislative requirements. 	<ul style="list-style-type: none"> • The calibration of demerit points will need to ensure that unreasonable disciplinary outcomes do not arise.

1.9 Targeted Continuing Professional Development

Part of the requirements for building certifiers to maintain their accreditation in Queensland is to participate in continuing professional development (CPD) activities. CPD helps ensure certifiers have current knowledge of building legislation, codes, standards and practices. The CPD schemes are managed by accreditation bodies and generally reflect current trends and technologies in building design and practices.

Through its auditing and investigation activities, the Commission collects data about recurring issues or errors being experienced or made by building certifiers. However, under the current system, the Commission has no ability to influence the type of CPD or educational activities that are developed. Also, the accreditation bodies that undertake CPD activities are not aware of the outcomes of the Commission's audits and investigations.

Therefore there is limited opportunity to target and improve practices that may be resulting in complaints to the Commission. Failing to address known issues may also unnecessarily expose building certifiers to professional liability and may result in increased building dispute litigation and pressures on the Queensland Home Warranty - Scheme.

This also applies to other licensees, whose role in the certification process is not currently addressed through the Commission's complaint and audit processes. For example, a building certifier may fail to adequately inspect a fire rated dividing wall which is later found to be noncompliant. This is an error on the part of the certifier. However, it is also a failing on behalf of the trade contractor who constructed the building that it did not meet the minimum requirements of the National Construction Code. Both the certifier and contractor need to be aware of particular problems occurring in the industry to that recurrence of the problem can be prevented.

Potential improvements

Option 1.9 (a) Link mandatory CPD to building certifier licence requirements and provide for oversight by the Commission

Change the building legislation to make CPD a mandatory requirement for all licensed certifiers in Queensland, rather than linking it to accreditation only. Certifiers would need to provide a certificate to the Commission to show they have fulfilled their CPD requirements in order to get their licence renewed. Certain CPD bodies (for example current accreditation bodies) could be charged with managing the process of developing overall CPD schemes and keeping records of CPD activities undertaken by certifiers. Those CPD bodies would be required to apply to the Commission on a regular basis (for example, every five years) to have their CPD schemes approved. Part of each CPD scheme could include a flexible component that might change depending on particular training needs at the time, as well as training and education activities conducted by regulatory bodies.

The advantages and disadvantages of this option are set out in the table below (Table 24).

Table 24—Benefits and disadvantages of linking mandatory CPD to licensing requirements for building certifiers and providing for oversight by the Commission

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would allow for greater oversight of CPD activities. • A more robust CPD system could help to achieve a higher ongoing professional standard. 	<ul style="list-style-type: none"> • Resource implications for the Commission. • Resource implications for accreditation bodies wanting to manage CPD schemes.

Option 1.9 (b) Allow for the Commission to direct specific subject areas of CPD for building certifiers¹⁰

Provide for the Commission to direct the CPD bodies at certain times to address specific areas or matters as part of CPD activities for building certifiers. These would be likely to focus on established areas of noncompliance and would require the development of specific CPD units to be delivered by CPD providers. Building certifiers would then have to complete these areas of CPD in order to be able to renew their licences.

The advantages and disadvantages of this option are set out in the table below (Table 25).

Table 25—Benefits and disadvantages of allowing for the Commission to direct certain areas of CPD for building certifiers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would raise awareness of current issues and areas of concern. • Could help to achieve a higher level of compliance and better outcomes for the community. 	<ul style="list-style-type: none"> • Potential resource implications for CPD providers who would need to develop CPD activities based on directions of the Commission.

Option 1.9 (c) Provide for certifier CPD activities to be available to other industry practitioners¹¹

Investigate measures to make certifier CPD activities available to be undertaken by builders and tradespeople, in order to raise awareness about common issues of noncompliant building work. To encourage participation in the activities, builders could have an acknowledgement placed on their public record confirming their attendance and completion of any activities. This incentive-based system could also extend to trade contractors and will potentially reduce defective building work and certifier complaints, and increase educational awareness about building practices.

The advantages and disadvantages of this option are set out in the following table (Table 26).

¹⁰ This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

¹¹ This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

Table 26—Benefits and disadvantages of providing for certifier CPD activities to be available to other industry practitioners

Benefits	Disadvantages
<ul style="list-style-type: none"> • Could assist in raising awareness and professional standards across the building and construction industry. • Could lead to improved levels of compliance. • Create a positive record for the licensee to attract potential clients. 	<ul style="list-style-type: none"> • Costs to attend CPD activities, although this will likely be optional. • If these CPD activities are not mandatory, there could be a limited ability to improve practices across the industry.

1.10 Requirements of private certifier employers

The building legislation allows a person or public sector entity who employs private certifiers to enter into contracts for those certifiers to perform certifying functions for others. These entities are referred to as “private certifier employers”.

There are no rules about who can be a private certifier employer, nor are there many obligations imposed upon them under the building legislation. Unlike employers of other contractors within the industry, private certifier employers do not need to be licensed or assessed for suitability, and cannot generally be held accountable by the Commission. One exception is where the employer is a corporation or a local government and the employer has not taken all reasonable steps to ensure that their employed certifiers do not engage in professional misconduct. In such a case, QCAT has the power to make an order against the employer.

Private certifier employers who are not individually licensed as a private certifier in their own right must continue to employ one or more private certifiers throughout the period in which they have valid contracts with their clients. However, as an employee, a private certifier has the ability to discontinue his or her employment by giving notice to their employer. When this occurs, the private certifier does not have an ongoing obligation to their former employer’s clients and cannot be expected to undertake inspections or to complete any undecided building assessment work.

Given the relatively low numbers of licensed certifiers in Queensland and difficulties in recruiting qualified staff, those employers who do not employ sufficient numbers of private certifiers may be unable to fulfil their obligations to clients upon the resignation or termination of a private certifier. This can lead to delays and additional costs for clients due to the need to engage a replacement private certifier or local government.

Difficulties also arise with respect to administration and record-keeping. At all times the individual private certifier remains responsible for the functions that they or their employers may or may not perform on their behalf, including administrative functions and the keeping of records. In the event of an error or oversight, it is the individual private certifier who is accountable to the Commission. Despite this, it is often the private certifier employer or another person within the employer’s company who assumes responsibility for document management and the keeping of records. The records themselves belong to the employer and in the event of the resignation or termination of a private certifier, the contracts of engagement with each client remain with the employer.

There is some evidence that both private certifier employers and private certifiers may not fully understand their rights and obligations with regard to client engagements and the

keeping of records. For example, circumstances have arisen when private certifiers have, without authority, discontinued the engagements with their employer's clients and effectively stolen their employer's records for applications with which they have been involved. Conversely, some private certifiers do not keep their own records, as required under legislation, but rely solely on the maintenance of the records held by their employers or former employers.

Other jurisdictions

A brief summary of the approaches taken by other jurisdictions to licensing of certification companies is set out in the table below (Table 27).

Table 27—Inter-jurisdictional comparison of the approaches taken to licensing of certification companies

State/Territory	Licensing/registration/accreditation of companies?	Ownership of approval/inspection documents
Australian Capital Territory	Yes—but must appoint a nominee who holds the relevant licence and will share responsibility for the work with the company.	Remains with the entity engaged, but legislation requires documentation be given to relevant people, and copies provided to Government.
New South Wales	Yes—but not mandatory for bodies corporate. The body corporate must have at least one director who is an accredited certifier, and employ at least two other persons who are accredited certifiers. There are only five accredited bodies corporate.	Remains with the entity engaged and the person with the benefit of the development consent.
Northern Territory	Yes—but must have a director/nominee registered in same or higher category.	Remains with the entity engaged.
South Australia	Yes—although this has not been used. All certifiers are currently registered as individuals. A company would be required to act through an officer or employee having prescribed qualifications and experience.	Remains with the entity engaged.
Tasmania	Yes—but it is actually one of the directors/employees/partners who is accredited. Councils may engage an accredited building surveyor under a <i>contract for services</i> (e.g. does not have to be a permanent employee of that council). Council remains the entity engaged.	Remains with the entity engaged.
Victoria	No— but investigating licensing of companies providing a director or partner is a registered practitioner.	-
Western Australia	Yes—but must have at least one nominated supervisor who is registered.	Remains with the entity engaged.

Potential improvements**Option 1.10 (a) Provide for licensing of private certifier employers**

To help ensure private certifier employers can be held more accountable, a framework could be established for the licensing of private certifier employers by the Commission. The framework could include requirements that the person must be a suitable person (fit and proper assessment), and must either be individually licensed as a private certifier or have another private certifier as a nominee. It could also include provisions requiring appropriate professional indemnity insurance for employees, the employment of a minimum number of private certifiers (or the ability for employers to demonstrate how they can fulfil their obligations to clients upon the termination or resignation of a private certifier), and clear requirements for the keeping of records by employers and allowing access to those records by the Commission and formerly employed private certifiers.

The advantages and disadvantages of this option are set out in the table below (Table 28).

Table 28—Benefits and disadvantages of licensing of private certifier employers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Ensures employers are suitable persons. • Ensures employers have the capacity to fulfil their obligations. • Relieves employees from record keeping, transferring this function to employers. • Introduces measures of accountability. • Allows the Commission and private certifier employees access to documentation. 	<ul style="list-style-type: none"> • Increased responsibility for private certifier employers. • Imposes additional costs on private certifier employers with the introduction of licence fees.

Option 1.10 (b) Transfer record keeping obligations to private certifier employers and clarify rights and obligations regarding contracts of engagement

If licensing of private certifier employers is not supported (Option 1.10 (a) above), amendments could instead be made to the building legislation to include provisions for the keeping of records by private certifier employers and allowing access to their records by the Commission and formerly employed private certifiers. Amendments could also better clarify the rights and obligations of employers and private certifiers regarding contracts of engagement with clients.

The advantages and disadvantages of this option are set out in the table below (Table 29).

Table 29—Benefits and disadvantages of transferring record-keeping obligations to private certifier employers and clarifying rights and obligations regarding contracts of engagement

Benefits	Disadvantages
<ul style="list-style-type: none"> • Relieves employees from record keeping, transferring this function to employers. • Introduces measures of accountability. • Allows the Commission and private certifier employees access to documentation. 	<ul style="list-style-type: none"> • Increases red tape for private certifier employers. • Does not address suitability or capacity of private certifier employers to provide the service.

Option 1.10 (c) Prevent anyone other than an individual private certifier from being engaged to provide private certification services

Remove the current provisions which allow a “person or public sector entity” to enter into contracts to provide the services of its private certifiers to others. To enter into a contract of engagement of a private certifier, the contract would need to be made directly with a licensed private certifier. The individual engaged would have carriage of the engagement from beginning to end, including all legislative responsibilities. However, the individual would retain the ability to allow any other private certifier who is employed or appointed by them to perform building or private certifying functions under the engagement. Any other private certifier involved would remain responsible for the private certification functions that they personally perform.

The table below sets out the advantages and disadvantages of this option (Table 30).

Table 30—Benefits and disadvantages of preventing anyone other than an individual private certifier from entering into a contract to provide certification services

Benefits	Disadvantages
<ul style="list-style-type: none"> • Prevents anyone who is not individually licensed from offering private certification functions. • Ensures engaged individual is a suitable person (suitability assessed as part of licence application). • Assigns overall responsibility to the engaged individual. 	<ul style="list-style-type: none"> • Prevents local government and other public sector bodies from offering private certification services. • Prevents existing private certifier employers who are not individually licensed from continuing trade • Reduces competition. • Reduces the benefits of corporate structures within the building certification industry and may result in the profession being less attractive to current service providers.

Option 1.10 (d) Develop guidelines about record-keeping and contracts of engagement

Develop one or more new guidelines that clarify and provide guidance to employers and private certifiers about record keeping requirements and their rights and obligations regarding contracts of engagement with clients.

The advantages and disadvantages of this option are set out in the table below (Table 31).

Table 31—Benefits and disadvantages of developing guidelines about record-keeping and contracts of engagement

Benefits	Disadvantages
<ul style="list-style-type: none"> • Assists and provides guidance to private certifiers and their employers. • May result in increased compliance. 	<ul style="list-style-type: none"> • Nil.

2. Development applications and approvals

Background

The building development application and approval process currently falls within the Integrated Development Assessment System under the *Sustainable Planning Act 2009*. This ensures there is greater consistency in the development application process with other types of development such as a material change of use and operational works. The *Building Act 1975* makes some changes to the process for building work that are necessary because of differences in the building sector, such as private building certification.

Building development applications allow for proposed building work to be assessed by a building certifier to ensure it complies with the building assessment provisions, including relevant building codes and standards. Once a building development approval is issued, it means that the proposed work is able to commence.

Issues

2.1 Local government planning scheme advice

Building certifiers are currently required to ensure all necessary planning approvals are in place and that development is consistent with the local government's planning scheme.

Currently there are no provisions in building or planning legislation that compel a local government to provide information about the compliance of a building development application with planning scheme requirements. Local governments can provide information upon request (for a cost recovery fee), however, there is no mechanism for a building certifier to rely on this information without further checks.

Approximately 40 per cent of the complaints about private certifiers received by the Commission relate to building development approvals being given without the prerequisite planning approval or in ways that are inconsistent with planning scheme provisions. Anecdotal evidence suggests that in some cases, a building certifier has relied on incorrect advice from a planning consultant or a local government or advice that was not consistently supported by local government officers.

Central to this issue is the complex nature of planning schemes and how they interact with the building legislation. These complexities create potential for elements of planning schemes to be overlooked or misinterpreted at the building approval stage. In some cases, noncompliance with a planning scheme can be raised after a building has been constructed, resulting in possible enforcement action against the property owner.

Most local governments do not have a service that can deliver advice on whether a building development application is consistent with planning scheme requirements. The provision of such a service, and the ability to rely upon that advice, could provide a high level of certainty at the earliest point of a project cycle that building development applications are consistent with planning scheme requirements.

Potential improvements**Option 2.1 (a) Provide that local governments must give advice to private certifiers about planning scheme compliance, if requested, that can be relied upon by the certifier¹²**

Change the legislation to require local governments to provide advice (either directly or via a planning consultant that has been approved or accredited by the relevant local government) about whether a building development application meets any applicable planning scheme requirements. The advice should be able to be relied upon by building certifiers in order to approve the building work and enable it to commence.

The advantages and disadvantages of this option are set out in the table below (Table 32).

Table 32—Benefits and disadvantages of providing that local governments must give advice to private certifiers about planning scheme compliance if requested

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides certainty to certifiers, applicants and local governments about planning scheme compliance. • Would reduce the number of complaints to the Commission about certifiers misinterpreting planning schemes. • Would better ensure the intended outcomes of local governments' planning schemes are achieved. 	<ul style="list-style-type: none"> • May be increased costs for development, as local government charges for the service would likely be passed on to applicant. • Potential for increases in the time taken to assess building development applications.

2.2 Lapsing of building development approvals

Under Queensland's building and planning legislation there are two separate processes relating to the lapsing of building development approvals. The building legislation has always provided an option for building certifiers to place a condition on their approvals stating the date on which the approval will lapse. In 2006, lapsing provisions were changed to provide a reminder to applicants that their approvals would lapse at a specified time. Under these provisions the building certifier approving the application can control when building work should be completed.

The planning legislation allows for situations where a building certifier may decide to not place a condition in their approval limiting the time for completion. If no condition is placed on a building development approval and building work starts, under the provisions of the planning legislation the approval will not lapse.

Time conditioned approvals provide certainty for the applicant and the building certifier that the work will be completed within a certain period of time. However, if an approval does lapse and building work has not been completed, an applicant is forced to obtain another approval. This attracts all of the requirements for a fresh application, including new documentation and another set of relevant fees.

¹² This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

In contrast, if an approval does not lapse because there has been no time condition placed on the approval, there is no need for a fresh application to complete outstanding building work. While this may be of benefit to an applicant, it means there is no restriction on the time it can take to complete building work and there can be resource implications for local governments if they are requested to finalise an approval that may previously have been given by a private certifier.

Potential improvements

Option 2.2 (a) Remove lapsing provisions from the building legislation

Remove lapsing provisions entirely from the building legislation and provide that as long as work under a building development approval has started, the approval will not lapse.

The advantages and disadvantages of this option are set out in the table below (Table 33).

Table 33—Benefits and disadvantages of removing lapsing provisions from building legislation

Benefits	Disadvantages
<ul style="list-style-type: none"> • Reduces regulatory obligations of certifiers to cause lapsing of approval. • Allows for transfer of approval between certification service providers. 	<ul style="list-style-type: none"> • Lack of clarity about when building work has commenced. • Less incentive to complete building work • Local government generally assumes role of default assessment manager.

Option 2.2 (b) Allow for reinstatement of an approval after it has lapsed

Maintain the ability for a building development approval to include a time limit but allow reinstatement of a lapsed approval within a specified time without having to make a fresh application.

The advantages and disadvantages of this option are set out in the table below (Table 34).

Table 34—Benefits and disadvantages of allowing for reinstatement of a building development approval within a specified time limit of it lapsing

Benefits	Disadvantages
<ul style="list-style-type: none"> • Removes requirement for new approval if original approval lapses. • Provides cost and time savings to applicant. • Certifier maintains control of approval and limits application of relevant codes and standards. 	<ul style="list-style-type: none"> • Less incentive to complete building work. • Increased administration of approval.

2.3 Referrals for building development applications

The referral system enables regulatory bodies to provide input to a building development application in an efficient manner as part of a single application process. It removes a requirement for an applicant to seek individual approvals from a number of entities who may have a specific interest in the application, such as heritage or fire safety matters, as the referral process is managed by a single building certifier.

Under the *Sustainable Planning Regulation 2009*, certain matters related to a building development application, such as specific fire safety matters, building work on a Queensland heritage place or alternative building solutions for a private health facility, must be referred to a referral agency for a response. Referral agencies can be either “concurrency” (i.e. the referral

agency has certain powers with respect to the application, such as requesting certain conditions be imposed or refusing all or part of the application) or “advice” (i.e. the referral agency can only provide recommendations to the building certifier about the application). For example, in the case of advice that is provided by the Queensland Fire and Emergency Services on fire safety matters, the advice is related to certain operational firefighting issues as building certifiers do not have the ability to address these matters. Once an application is referred, the referral agency is required to assess all or part of the building development application within a specific timeframe and for a regulated fee, and provide a response to the building certifier.

While the referral process provides specialist expert advice, it also results in some additional costs and delays for applicants. For example, a fire safety referral for a 1000m² building that meets the “deemed-to-satisfy”¹³ requirements of the National Construction Code and has a fire detection and alarm system, sprinklers and hydrants would cost around \$3,825 and take up to 15 days to decide. If an alternative solution was required for the same building, the fee could be at least \$14,180. While referrals are necessary in a lot of cases, there may be some potential to review and reduce the current scope of work that is referred to a referral agency for response. This would be expected to achieve significant benefits in terms of the timeframes and costs of development.

Potential improvements

Option 2.3 (a) Review current referral triggers

Review, in consultation with referral agencies, the current scope of work that is subject to a referral with the aim of identifying any referrals that may be able to be reduced or removed.

The advantages and disadvantages of this option are set out in the table below (Table 35).

Table 35—Benefits and disadvantages of reviewing current referral triggers

Benefits	Disadvantages
<ul style="list-style-type: none"> • Rationalising and updating existing individual referral agency requirements against current building legislative processes. • Significant cost and time savings for applicants. 	<ul style="list-style-type: none"> • May result in additional requirements from individual agencies.

2.4 Self assessable and exempt building work

A building development application is generally required where there may be sufficient risk to public health and safety to justify having the building work checked for compliance. The current building legislation requires all building work to be assessed through an application, unless it is prescribed under regulation as not requiring assessment (i.e. self assessable or exempt). Self-assessable work must meet the applicable codes but does not require a formal building approval. Exempt work is not required to comply with codes and therefore does not require approval.

¹³ Note: the “deemed-to-satisfy” requirements provide a technical ‘recipe’ for how to meet the performance requirements of the building codes.

An example of building work that may be expanded under self-assessable requirements is a garden shed. Currently, a building approval is required for all sheds that have an area greater than 10 square metres. This can be costly and time consuming for what is typically a simple building with fewer risks than habitable buildings. It may be possible to expand the area requirement under the schedule without significantly increasing the public health and safety risks of the work. The work would still be required to comply with applicable codes and standards such as structural adequacy and setbacks from boundaries.

Potential improvements

Option 2.4 (a) Increase scope of building work that does not require an approval

There may be an opportunity to review and expand the amount of work that does not require an approval for building work. More building work could be prescribed as self-assessable that would be required to meet codes without needing a building approval. The obligation for compliance with the applicable codes and standards will be on the owner/licensee performing the work. The type of building work that could be expanded includes class 10 buildings and structures including sheds and fences (other than swimming pool fences). It could also include clarification on matters such as child play equipment including cubby houses.

The table below are the advantages and disadvantages of this option (Table 36).

Table 36—Benefits and disadvantages of increasing the scope of building work that does not require an approval

Benefits	Disadvantages
<ul style="list-style-type: none"> • Significant cost and time savings for those conducting relevant building work. • Significant reduction in delays. 	<ul style="list-style-type: none"> • Potential increase in level of risk as more building work will not be subject to a building approval depending on size and complexity of building work. • Greater risk for owners as they retain ultimate responsibility for the work.

3. Inspections and certificates

Background

Inspections and inspection certificates verify that building work has been carried out in accordance with the applicable building codes and standards. Therefore, undertaking inspections and issuing certificates provides a level of confidence to the owner and local government that work is safe and meets these standards. This differs from development applications and approvals, which provide endorsement that the proposed building work complies with the building assessment provisions and is able to commence. In other words, building applications and approvals are about proposed building work whereas inspections and certificates are about checking building work during or after construction.

Naturally, inspections and certificates are closely linked to building approvals. For example, building approvals typically require inspections at certain stages to enable a certificate to be issued showing compliance. The way in which inspections are undertaken is therefore critical to ensuring consumer protection. Some of the matters that are important to inspections that are discussed in this paper include the competent persons framework and the use of technology in inspections.

In addition to compliance, certificates also provide some finality to building work. For this reason, many property sales contracts include standard conditions that allow the purchaser to research records of building approvals and certificates to give them peace of mind during an acquisition. This also helps to mitigate against possible enforcement action being taken against them by the local government should they purchase the property without the appropriate finalisation. As a result, the timing and responsibility for issuing a certificate, and the types of certificates, may need to be reviewed. For example, the ability for a local government or private certifier to issue a certificate for building work outside of a development approval may provide further assurances to potential purchases when a property is for sale.

Issues

3.1 Competent persons framework

Building certifiers can use competent persons to help with the design and inspection of building work, including certification or confirmation that the work meets the relevant minimum building codes and standards. This allows certifiers to seek help from experts in areas of building design and construction that may be outside their areas of expertise. Certifiers must determine a person's competencies based on the area of work they will be involved in.

The Commission has the ability to audit a building certifier's work and the processes involved in using a competent person, and can hold the certifier accountable for errors or oversights. The Commission does not, however, have the same ability to audit the work of, or take disciplinary action against, a competent person if they are not licensed by the Commission. For example, if a building certifier relies upon the advice of a registered structural engineer or registered architect as a competent person and that advice proves incorrect, the Commission has no jurisdiction to take disciplinary action against those competent persons.

It has become common practice for some certifiers to rely on competent persons to inspect aspects of construction that are within their area of technical expertise, skills and knowledge. This practice is not consistent with the original intent of the building legislation for the use of competent persons.

Over-reliance on competent persons for matters which are clearly within the scope of a competent building certifier's expertise can potentially affect the integrity of the approval and inspection system which ensures the construction of safe and compliant buildings. This system relies on the expertise of qualified professionals who understand the relationships between the integral components of a building as part of a holistic approach. Over reliance on competent persons results in building certifiers spending less time actively inspecting construction activity onsite. This raises concerns about the ability of certifiers to identify and address building defects during the inspection process.

Other jurisdictions

The table following (Table 37) provides an overview of some examples from Australia and overseas in relation to different models of Queensland's "competent persons" framework.

Table 37—Examples of different approaches taken in other jurisdictions and countries to the competent persons framework¹⁴.

State/Territory	Similar model competent persons framework?
Australian Capital Territory	No—but a certifier may have regard to a certificate provided by a supplier or tradesperson as part of the inspection process. This does not negate the certifier’s requirement to inspect with due diligence.
Northern Territory	Yes—building certifiers to rely upon the certification of another building practitioner such as structural or mechanical engineer or a plumber. A building certifier when issuing an occupancy certificate, can also rely on prescribed documents such as certificates of termite management systems and glazing.
South Australia	Local authorities perform all inspections.
Tasmania	No
Western Australia	No—no mandatory inspections.
United Kingdom	Yes—have “competent person schemes” for a multitude of different types of building work. Competent person schemes enable installers (individuals and businesses) of certain types of building work to join after they have demonstrated minimum technical competence requirements. Installers are then able to self-certify their work rather than obtaining building regulations approval or having the work approved by a private inspector ¹⁵ .

Potential improvements

Option 3.1 (a) Review the current Form 16 (inspection certificate)¹⁶

Review the Form 16 (inspection certificate) to determine whether the format provides sufficient information for its purpose. The Commission could implement processes to increase and target its audits with respect to the use of Form 16s. An education and awareness program about the use of competent persons and the Forms 15 and 16 could complement the Commission’s increased auditing.

The table below (Table 38) outlines the benefits and disadvantages of reviewing the current Form 16.

Table 38—Benefits and disadvantages of reviewing the current Form 16—inspection certificate

Benefits	Disadvantages
<ul style="list-style-type: none"> Increased awareness about proper use of relevant inspection certificates. Greater consumer confidence in inspection process. Improved compliance outcomes. Accurate identification of systemic construction and certification issues. 	<ul style="list-style-type: none"> Increased resources required for additional audits. Increased resources required to deliver educational programs.

¹⁴ New South Wales and Victoria have not been considered in this table as they rely upon inspections performed by accredited building inspectors. See the Discussion at Section 1.4 above

¹⁵ See: www.gov.uk/competent-person-scheme-current-schemes-and-how-schemes-are-authorised#how-schemes-are-authorised

¹⁶ This was a recommendation of the Implementation Committee for the Government’s Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

Option 3.1 (b) Restrict use of competent persons

Restrict the use of competent persons to certain aspects and/or introduce a new entry level class of certifier to assist with undertaking inspections (see also Option 1.4 (a)). For example this could include restricting certifiers to only obtaining advice from a competent person for:

- aspects of construction that are outside of the certifier's particular areas of expertise
- aspects of construction that involve an alternative solution
- construction that is undertaken in a remote location
- certain aspects of building work that pose particular problems for certifiers undertaking inspections (e.g. waterproofing).

The table below (Table 39) outlines the benefits and disadvantages of this option.

Table 39—Benefits and disadvantages of restricting the use of competent persons

Benefits	Disadvantages
<ul style="list-style-type: none"> • Reduced requirements for certifiers to decide competencies. • Specialist skills of practitioners to assist certification functions. • Enhanced accountability of practitioners assisting certifiers. • Additional entrance level to building certifying as profession. 	<ul style="list-style-type: none"> • Increase to licence classes and administration.

3.2 Critical stage inspections

The building legislation provides that buildings must be inspected throughout construction at the stages generally stated within the building development approval. It is usually the building certifier who decides what inspections will be required for any given project.

However, for detached houses, sheds, carports (class 1a and 10 buildings and structures) the building legislation prescribes minimum inspections to be conducted at certain stages. These mandatory, or “critical” inspections must be conducted at footing, slab, frame, and final stage. There is also a mandatory inspection for temporary fence stage inspections (swimming pools only).

Inspection guidelines assist certifiers to fulfil their legislative obligations regarding the critical inspections¹⁷. Despite the existing inspection regime, the Commission encounters recurring building defects relating to wet area waterproofing, waterproofing of exterior decks and balconies and fire-separating wall construction¹⁸. With the recurring nature of these defects, consideration may be given to increasing the number of mandatory inspections.

Any increase in the number of critical inspections regime will need to take into consideration the likely cost increases and also the capacity of Queensland's limited number of building certifiers to conduct additional inspections (note also potential Option

¹⁷ See www.hpw.qld.gov.au/SiteCollectionDocuments/final-inspection-guidelines-class-1a-and-10.pdf

¹⁸ Defective building work reported by the Commission in the 11 months to 1 June 2014 includes work relating to waterproofing of internal wet areas (4.30%), waterproofing of external membranes (4.49%) and fire safety (1.53%).

1.4 (a)). These factors will need to be balanced against the desired benefits relating to a potential decrease in building defects.

Other jurisdictions

The table below (Table 40) provides an overview of the approaches to mandatory inspections adopted by other jurisdictions.

Table 40—A summary of the requirements for mandatory inspections in other jurisdictions

State/Territory	Critical stage inspections
Australian Capital Territory	Yes, footing and final inspections for all classes of buildings. Pre-pour inspection for all concrete elements and frame inspection for class 1 and class 10 buildings only. Structural frame and pre-pour inspection for all concrete elements for other classes of buildings but only if specified by certifier exercising discretion. Also, mandatory requirement for inspection and survey certificate by land surveyor at dampcourse level.
New South Wales	Yes, footing inspection, pre-pour inspection for all concrete elements, frame inspection, wet area flashing inspection, stormwater inspection and final inspection for class 1 and class 10 buildings. Footing, wet area flashing inspection (limited to not less than 10% of wet areas in a building), stormwater inspection and final inspection for class 2, 3 and 4 buildings. Footing inspection, stormwater inspection and final inspection for class 5, 6, 7 and 8 buildings. Final inspection for all swimming pool fences.
Northern Territory	Yes, footing inspection, pre-pour inspection for all concrete elements, frame inspection, wet area flashing inspection, stormwater inspection and final inspection for class 1 and class 10 buildings. Inspection after the excavation of and prior to the placement of the first footing, wet area flashing inspection (limited to not less than 10% of wet areas in a building), stormwater inspection and final inspection for class 2, 3 and 4 buildings. Inspection after the excavation of and prior to the placement of the first footing, stormwater inspection and final inspection for class 5, 6, 7 and 8 buildings. Inspection after the erection of all swimming pool barriers.
South Australia	Yes, applies to all classes of buildings except class 10 but individual local governments must compile their own inspection policies based on risk and only local government officers inspect (not private certifiers). However, local governments must perform roof frame inspections (portal roofs excluded) for at least 66% of jobs if builder is licensed and 90% of jobs if builder is an owner builder. Final inspection for all swimming pools and swimming pool fences.
Tasmania	Yes. In Tasmania a building surveyor may receive and rely on Certificates from prescribed classes of experts or third party reviewers; that building surveyor receives a statutory immunity if they receive a certificate from a person who has the prescribed qualifications. Examples of such “other persons” include accredited engineers, energy assessors, bushfire hazard assessors.
Victoria	Yes, applies to all classes of buildings and includes footing

	inspection, pre-pour inspection for all concrete elements (as specified by building certifier), frame inspection and final inspection.
Western Australia	No. However a legislative framework for the prescribing of inspections exists but this is currently limited to testing of certain fire safety systems in class 2 to 9 buildings and also a final inspection for swimming pool enclosures (i.e. fence). An Occupancy Permit application may require a certificate of construction compliance or a certificate of building compliance which may necessitate additional inspections.

Potential improvements

Option 3.2 (a) Require additional mandatory inspections for houses, duplexes, villas and townhouses (class 1a buildings)

New mandatory inspections could be introduced to address recurring defects identified by the Commission in these types of buildings. For example, a new mandatory inspection could be introduced for houses (single detached class 1a buildings) for the wet area waterproofing aspect. Wet areas, particularly rooms containing shower recesses, would be required to be inspected and certified prior to the fixing of wall and floor tiles or other finishes.

A new mandatory inspection for duplexes, villas and townhouses (attached class 1a buildings) at the fire separating wall aspect could also be considered. This would mean that all walls separating individual dwellings and required to have a fire resistance level would be inspected and certified during construction. Depending on the type of construction and the number of fire separating walls, multiple inspections may be required.

The table below (Table 41) outlines the benefits and disadvantages of this option.

Table 41—Benefits and disadvantages of introducing new mandatory inspections for houses (for example, the waterproofing aspect) and duplexes, villas and townhouses (for example, the “fire separating wall” aspect)

Benefits	Disadvantages
<ul style="list-style-type: none"> • Improved compliance outcomes. • Increased consumer protection and confidence in industry. • Reduced costs in the rectification of defects. • Addresses the potential issue of “no waterproofing certificate” at the final stage inspection preventing finalisation of completed work. 	<ul style="list-style-type: none"> • Creates more red tape. • Increased costs for additional inspections. • Resource implications for certifiers. • Risk of time delays in construction activities. • Waterproofing inspection may be difficult to implement and no guarantee that waterproofing will remain intact after inspection.

Option 3.2 (b) Introduce mandatory inspections for other classes of buildings

Presently the number and type of inspections for other classes of buildings (such as class 2-9 buildings) are determined by the building certifier using a risk-based approach. A guideline assists building certifiers to make this determination¹⁹. This approach reflects the varied nature and levels of risk associated with these types of buildings.

¹⁹ See: www.hpw.qld.gov.au/SiteCollectionDocuments/guidelines-inspection-of-class-2-to-9-buildings.pdf

Similar to the current requirements for class 1a and 10 buildings and structures, mandatory inspections could be introduced for other classes of buildings. For example, all buildings, regardless of classification, could be required to have a final stage inspection.

There could also be specific mandatory inspections to address areas of recurring defects (similar to Option 3.2 (b) above). This would reflect the fact that other residential buildings, particularly residential flats/apartments (class 2 buildings), also have wet areas and elements of construction involving fire separation. Similar to the options for class 1a buildings discussed above, mandatory inspections could be prescribed for wet area waterproofing and fire separating construction in class 2 buildings.

The table below (Table 42) outlines the benefits and disadvantages of this option.

Table 42—Benefits and disadvantages of introducing mandatory inspections for other types of buildings

Benefits	Disadvantages
<ul style="list-style-type: none"> • Improved compliance outcomes. • Increased consumer protection and confidence in industry. • Reduced costs in the rectification of defects. • Aligns inspection regime with Class 1a and 10 buildings and structures. 	<ul style="list-style-type: none"> • Creates more red tape. • Increased costs for additional inspections. • Resource implications for certifiers. • Risk of time delays in construction activities.

3.3 Use of technology in inspections

Technology is advancing at a rapid pace and is helping to promote greater efficiencies in the workplace and at home. The use of wireless technologies, smart phones and tablet computers is helping building professionals like building certifiers to conduct business out of the office and on-site. In a vast de-centralised state such as Queensland, it can assist them keep in contact with clients, to conduct their regulatory functions and to keep records. However, with changes in technology there have been very few opportunities to assess when, how and if it is appropriate to use some of this technology.

The use of technology can have significant benefits. With the advantage of laser measuring equipment buildings can be built better, faster and safer. Technology can help building certifiers to perform regulatory functions like inspections. However, there is anecdotal evidence that suggests some certifiers are relying on digital photography taken by installers and contractors to show that building work has been performed and meets the appropriate standards. Arguably, this may place too much reliance on the integrity of the person supplying the images.

Technology is only an aid and should be used to assist a building certifier to make decisions. Just like a “blind-spot” detection feature on a new car will assist the driver rather than replace them, technology should not be relied upon to do the job of a building certifier without the certifier doing their own “blind-spot” checks.

This means that a building certifier should not rely solely on technology, such as digital photographs or video taken by another person, as a way of undertaking an inspection. However, photographs might assist a certifier in reviewing work and keeping records. It can also help when considering evidence that a non-compliant matter has been fixed or when trying to approve and certify building work retrospectively.

The introduction of building information modelling (“BIM”) is also becoming more prevalent in construction management worldwide²⁰. BIM enables the virtual construction of a project before it is physically built, enabling contractors, subcontractors and suppliers to identify any conflicts or difficulties prior to the construction phase. The use of BIM can potentially lead to significant benefits in the pre-fabrication of buildings off-site, resulting in less waste, time and cost. While still in its infancy in Australia, BIM is likely to have significant benefits to certifiers both in the approval and inspection phases of building projects.

Other jurisdictions and industries

No Australian jurisdiction expressly permits the use of technology as part of the building inspection process.

However, the use of technology is evident in some other industries. For example, researchers from CSIRO’s Computational Informatics division have developed ReMoTe (Remote Mobile Tele-assistance) technology which connects remote experts with on site operators to provide real-time assistance²¹.

Another example of the use of technology is found in the airline industry. In early 2014, the UK airline easyJet announced the introduction of the use of drones to inspect its fleet of Airbus aircraft. EasyJet also announced the introduction of new technology to enable a remote engineering team to see exactly what a pilot or engineer is seeing using virtual reality glasses. The glasses use the world’s purported first high definition see-through display system, providing augmented reality to help easyJet remotely diagnose a technical issue.

A recent paper written by Sydney architect Rana Abboud examined the potential benefits of augmented reality (“AR”) and the use of technology on construction sites. The number of worldwide users consuming AR via portable media devices is purportedly expected to exceed 1 billion users by 2020. After completing an international study tour, Abboud was however, not optimistic about the introduction of such technology in the construction sector in the short term. In essence, Abboud found that the reality of AR products in the construction sector was hampered by the “one-off” nature of its projects and the multiple processes involved in procuring a custom made building. In short, she considered that the hype surrounding AR did not meet the reality of the reliability and robustness of the products at this point in time. Abboud considered that widespread adoption of such technology was more likely to be in the five to ten year time frame rather than the immediate future.²²

²⁰ The Royal Institute of British Architects’ NBS National BIM Survey 2014 of 1000 construction professionals reveals that in 2010, BIM had been adopted on at least one project by 13% of respondents. By 2013, that figure had risen to 54%. The UK government has dictated that by 2016, BIM will be used on all publicly funded building work – see: <http://www.thenbs.com/pdfs/NBS-National-BIM-Report-2014.pdf>

²¹ <http://www.csiro.au/Organisation-Structure/Divisions/Computational-Informatics/ReMoTe.aspx>

²² *Architecture in an Age of Augmented reality: Mobile AR’s Opportunities and Obstacles in Design, Construction, and Post-Completion*, Abboud R., March 2014, www.codessi.net/sites/codessi/files/IWDS2013%20AR%20PAPER%20-%20R%20ABBOUD%20-%20MARCH.pdf

Potential improvements

Option 3.3 (a) Clarify inspection requirements

Review the existing inspection guidelines with a view to clarifying the roles and responsibilities of building certifiers when undertaking inspections. The inspection guidelines could include additional information about the use of technology in undertaking inspections.

The table below (Table 43) outlines the benefits and disadvantages of this option.

Table 43—Benefits and disadvantages of clarifying inspection requirements

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would provide clarity to certifiers about conducting inspections, and when it is appropriate to use technology. • Potential savings for remote area inspections. 	<ul style="list-style-type: none"> • Technology subject to ongoing and rapid change. • Access to recorded information may be difficult to transfer.

Option 3.3 (b) Develop a new guideline specifically relating to the use of technology

Develop measures in a new guideline under the building legislation to promote the way in which technology should be relied upon. The guideline could focus on providing practical examples as to the appropriate use of technology.

The table below (Table 44) outlines the benefits and disadvantages of this option.

Table 44—Benefits and disadvantages of developing a guideline specifically relating to the use of technology

Benefits	Disadvantages
<ul style="list-style-type: none"> • Would provide a specific resource for clarifying the use of technology during the certification process. • Would reflect current technology. 	<ul style="list-style-type: none"> • Would be a separate document, rather than being incorporated into the inspection guidelines. • May be subject to frequent change.

3.4 Certificates of classification

Under the building legislation a certificate of classification is issued by a certifier for the approval once they are satisfied a building (other than a detached house, garage or shed) has been substantially completed. The requirements for substantial completion are set out in detail in the building legislation and cover minimum health, safety and amenity provisions for occupants.

The building legislation also requires that before certain buildings can be occupied, a certificate of classification must be issued. In essence, this is a form of occupancy permit currently used by most other Australian States and territories.

The certificate of classification is the first document in the approval and certification process that is required to state the classification of a building. A building certifier will establish the classification of a building early on as part of assessing the application against the National Construction Code and other relevant codes and standards. However, there is no compulsion for the certifier to record the classification at the time of approval.

In the absence of any recorded classification at approval stage, there can be no certainty at the end of the construction process the building will be classified as when it was first assessed. To provide certainty to the applicant, referral agencies and the certifier, recording the classification at the beginning of the approval process is paramount. If throughout the construction phase of a project there are changes to the proposed building, additional assessment can be carried out with clarity about the initial classification. This will provide certainty about the building's use and assist in ensuring other referral agency requirements are met including any local government planning requirements.

The building legislation currently requires a certifier to place details about alternative solutions on certificates of classification, including any restrictions on the building's use. This information is considered particularly important for agencies such as the Queensland Fire and Emergency Service. However, the building legislation does not require information about deemed-to-satisfy solutions that may be equally important to other agencies to be recorded.

The maximum number of people capable of occupying a building has been identified as one item that would be of particular benefit for some regulatory agencies. This aspect is of importance to certain types of public buildings such as those used for entertainment or civic events. Providing this information for all buildings of this type, irrespective of the way they are approved, would enhance safety of occupants and support compliance activities by relevant regulatory agencies.

Other jurisdictions

The table below (Table 45) provides a summary of the terminology used in other jurisdictions that is equivalent to Queensland's certificate of classification.

Table 45—Terminology used in other jurisdictions that is equivalent to Queensland's certificate of classification.

State/Territory	System
Australian Capital Territory	Certificates of occupancy are required for lawful occupation of buildings. Can also be "certificates of occupancy or use" for buildings or structures that are not occupied, such as retaining walls or industrial plant.
New South Wales	Occupation certificates are required for lawful occupation of buildings.
Northern Territory	Occupancy certificates are required for lawful occupation of buildings.
South Australia	Certificates of occupancy are required for all class 2 to class 9 buildings only.
Tasmania	Occupancy permits are required for lawful occupation of buildings.
Victoria	Occupancy permits are required for lawful occupation of all buildings (except for Class 10). Certificates of final inspection are required for buildings or structures that are not occupied, such as pools, retaining walls sheds. The Occupancy Permit states that building's class.
Western Australia	Occupancy permits are required for all class 2 to class 9 buildings only.

Potential improvements**Option 3.4 (a) Require the class of building to be included on the approval**

Maintain the current requirements for the issue of a certificate of classification but require recording of the building class at the approval stage for a building development application.

The table below (Table 46) outlines the benefits and disadvantages of this option.

Table 46—Benefits and disadvantages of requiring the class of building to be included as part of the approval

Benefits	Disadvantages
<ul style="list-style-type: none"> • Certainty about the proposed building classification is established at the earliest possible stage of approval process. • Validation of the building's classification at completion of construction and confidence it aligns with original assessment advice and approval. 	<ul style="list-style-type: none"> • A building's classification may not be easily discernible at time of initial assessment, e.g. the same building may ultimately be used as either a factory (class 8) or warehouse (class 7). • May be difficult to establish clear delineation of multiple classifications within a complex building.

Option 3.4 (b) Replace certificate of classification with an 'occupancy permit' or similar

Rename the certificate of classification as an 'occupancy permit' that must be issued at satisfactory completion of construction. This would better align with its purpose and would also use similar terminology to that used in most other jurisdictions around Australia.

The table below (Table 47) outlines the benefits and disadvantages of this option.

Table 47—Benefits and disadvantages of replacing the certificate of classification with an "occupancy permit" or similar

Benefits	Disadvantages
<ul style="list-style-type: none"> • Aligns Queensland's occupation processes and terminology with other Australian jurisdictions. • Provides clarity about the purpose of certification in allowing occupancy of buildings. 	<ul style="list-style-type: none"> • Requires legislative amendments and cultural shift throughout the building and allied professions. • Initial impact on established processes within building certification business practices.

Option 3.4 (c) Require additional information to be included on a certificate of classification (or occupancy permit)

Require additional information to be included on a certificate of classification/occupancy permit for buildings approved through deemed-to-satisfy or alternative solutions, such as the class of building and/or the maximum number of building occupants, particularly for public use or event type buildings.

The following table (Table 48) outlines the benefits and disadvantages of this option.

Table 48—Benefits and disadvantages of requiring additional information to be included on a certificate of classification/occupancy permit

Benefits	Disadvantages
<ul style="list-style-type: none"> Allows clear information on all finalised building approvals irrespective of the type of solution used. More focused and useable information for relevant compliance and enforcement agencies. 	<ul style="list-style-type: none"> Slight increase in required information at finalisation of building work. May not continue to reflect building occupation over extended periods of time.

3.5 Certificates for buildings without records or approvals

A building constructed prior to the commencement of the building legislation is not required to have a certificate issued in order for it to be occupied. However, it can be common for information to be sought on the compliance of a building through relevant certificates during the sale or lease of a property. In some cases a certificate may be requested in order to satisfy requirements of financial providers or insurers.

Currently, an owner can apply to a local government for a certificate of classification to be issued for most types of buildings if they were constructed prior to 30 April 1998 regardless of whether a building approval is in effect. However, there is no ability to obtain the equivalent certificate for a single detached house or shed outside of a building approval.

Under the current building legislation for issuing a certificate of classification for a pre-1998 building it is not clear to what extent a local government must ensure a building meets technical standards. The situation is more complex for buildings pre-dating the commencement of the building legislation as there were no state building standards in existence at the time.

Local governments have expressed concern over the amount of legal liability they may be exposed to when issuing certificates of classification for these types of buildings.

Other jurisdictions

The following table (Table 49) provides an overview of the approaches taken in other jurisdictions to certificates for buildings without records or approvals.

Table 49—Summary of different approaches taken in other jurisdictions to buildings without records or approvals.

State/Territory	Certificates for undocumented or unapproved buildings?
Australian Capital Territory	Yes—a certificate of regularisation can be issued for a Government building that whilst not necessarily meeting the standards required of present day, is safe to occupy in terms of matters such as egress in the event of a fire. If building work is not strictly in accordance with the prescribed requirements but is substantially in accordance with the requirements, a certificate can be issued to state that the building as erected or altered is fit for occupation and use.
New South Wales	Yes—a building owner may apply to a council for a building certificate which gives the building owner some qualified protection that it will not be ordered by the council to repair, demolish or rebuild the building for a period of 7 years.

Northern Territory	Yes—currently a moratorium in place for undocumented buildings. At the time of the announcement of the moratorium, approximately 36,000 building permits did not have a corresponding occupancy permit. The moratorium is due to expire on 30 June 2014. A discussion paper has recently been released which considers, among other things, the ability for a building owner of an undocumented building to apply for a “certificate of substantial compliance” which will allow a property owner to demonstrate that the building work was substantially completed in accordance with the building permit. Where a building has been constructed without a permit, a “certificate of existence” is proposed to be created which will state the building meets a minimum level of safety to allow its continued use or occupation.
South Australia	No particular certificate—when undertaking the assessment of an addition or alteration to an existing building, the private certifier can require that the whole, or part of an undocumented building be upgraded to comply with the National Construction Code, if the certifier is of the opinion that the building in its current form is unsafe, structurally unsound or in an unhealthy condition.
Tasmania	Yes—for building work performed without a permit, to regularise illegal work an owner may apply to the council general manager, and then to a building surveyor for; either: <ul style="list-style-type: none"> • a certificate to proceed (incomplete illegal work), or • a certificate of substantial compliance (completed work), followed by an occupancy permit and then a certificate of completion of building work. The owner or purchaser may also apply for a building certificate which prevents the general manager from taking any compliance action (giving a building order) in relation to the building.
Victoria	No—no legislative provision to apply for a certificate retrospectively. However, some local authorities do issue various forms of certificates for undocumented buildings.
Western Australia	Yes—any building work approved under previous legislation is unaffected, unless the building is to be used in a way that is different from its approved use or classification. Where a building has been constructed without authorisation, an occupancy permit may still be obtained if a building surveyor is satisfied that the building substantially complies with the applicable building standards of today.

Potential improvements

Option 3.5 (a) Amend the building legislation to clarify the minimum technical requirements applicable to a building constructed before the commencement of the legislation

Provide clarity to local governments about issues they must consider when considering an application for a certificate of classification for an older building, such as fire safety, health and amenity and structural adequacy.

This would help to achieve a more consistent approach across local governments to establish if a particular building meets satisfactory levels of safety, amenity and structural adequacy that do not pose a risk to occupants. If this can be satisfactorily established, local governments would have a higher degree of confidence to either request upgrades or

provide a certificate of classification without upgrades to a building. In addition to this, an applicant would have the ability to appeal a local government's decision based on established categories of safety, amenity and structural adequacy.

If a local government could not establish a sufficient level of compliance, they could also be given the ability to request improvements to the building within the categories of fire safety, health and amenity and structural adequacy before a certificate of classification will be granted.

The table below (Table 50) outlines the benefits and disadvantages of this option.

Table 50—Benefits and disadvantages of clarifying in legislation the minimum requirements for issuing a certificate of classification for buildings built before the legislation commenced

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides certainty to local governments about minimum requirements for buildings prior to issuing a certificate of classification. • Provides for a more consistent approach across local governments. • Could result in buildings being upgraded to meet minimum safety, health and amenity standards. 	<ul style="list-style-type: none"> • May be difficult to quantify minimum requirements across all building types. • May not readily address specific requirements unique to some older buildings such as heritage requirements. • Required changes to relevant standards could be difficult or costly to achieve.

Option 3.5 (b) Provide guidelines about the minimum technical requirements applicable to existing buildings before a certificate of classification is issued

As an alternative to legislative amendments, a guideline could be developed to provide clarity to local governments about the issues they must consider when considering an application for a certificate of classification for an older building.

The table below (Table 51) outlines the benefits and disadvantages of this option.

Table 51—Benefits and disadvantages of providing a guideline to outline minimum requirements for issuing a certificate of classification for buildings built before the legislation commenced

Benefits	Disadvantages
<ul style="list-style-type: none"> • Referencing of applicable standards or requirements may be easily changed without lengthy legislative amendment processes. • Could achieve a more consistent approach across local governments. 	<ul style="list-style-type: none"> • May not provide local governments with acceptable levels of confidence and risk mitigation. • May be difficult to quantify minimum requirements across all building types • May not readily address specific requirements unique to some older buildings such as heritage requirements.

Option 3.5 (c) Amend the building legislation to allow a 'final' certificate to be issued for a single detached house or shed independently of a building development application

Provide for the ability to apply for a final certificate to be issued for detached houses, garages and sheds, regardless of whether there is a related building approval. This would

provide greater capacity for the finalisation of this type of building work and align with the provisions available regarding certificates of classification for other types of buildings. It would also remove the need for a new approval to be sought for outstanding matters involving only documentation and certification.

Consideration would be required as to what issues would need to be assessed before a final certificate can be issued, similar to those discussed for the certificate of classification above. This would also include whether the building complies with the original approval, if there is one. For work that is the subject of an approval that has lapsed, a time limit could also be included for a certificate to be issued after lapsing. For example, there could be a requirement that a certificate can only be issued up to 12 months from the lapsing time to ensure there is minimal impact from changing codes and standards.

The table below (Table 52) outlines the benefits and disadvantages of this option.

Table 52—Benefits and disadvantages of amending the legislation to allow that a final certificate for a single detached house or shed can be issued independently of a building approval

Benefits	Disadvantages
<ul style="list-style-type: none"> • Could help facilitate finalisation of this type of building work. • Would align with provisions for other types of buildings. • Would help to achieve consistency across local governments. • Would assist with the transfer of properties if some level of certainty was required by insurance or loan providers. • New approvals not required for outstanding matters involving only outstanding documentation and certification. 	<ul style="list-style-type: none"> • May provide an incentive not to obtain a building approval. • May not readily address specific requirements unique to some older buildings such as heritage requirements.

4. Enforcement and miscellaneous

Background

The current building legislation provides a framework for both local governments and building certifiers to take enforcement action in relation to non-conforming building work. The processes include an ability to take action ranging from initial show cause notices to formal proceedings in the court system. Private certifiers may only take enforcement action for work they are engaged to approve and certify.

Issues

4.1 Enforcement of building standards

While private building certifiers have the ability to issue enforcement notices, there is little incentive for certifiers to pursue matters in a court proceeding. This may be due to a reluctance to take legal action against their own client, who is paying for their services. Many certifiers are also not financially positioned to do so. As a result, enforcement action is generally left to local government, even where the local government has not been involved in providing the certifying functions. However, local governments are often ill-equipped and under resourced to engage in such enforcement action. In circumstances where neither the

private certifier nor the local government take enforcement action, there may be a risk to community safety.

Potential improvements

Option 4.1 (a) Provide for local government to take over enforcement process after certifier has issued a show cause notice²³

Review the current provisions about enforcement action with a view to engaging local governments earlier in the process and increasing the incentives for building certifiers to ensure building work is compliant.

The review could focus on a process whereby a private certifier notifies the local government when they have taken initial “show cause” action. Once this process has been exhausted it is proposed local governments will assume responsibility for continuing any further enforcement action. It is proposed that where an enforcement notice relates to non-conforming building work carried out by a licensed builder, a copy should also be provided to the Commission. This will assist the Commission in cases where action against a licensed contractor may also be required.

The table below (Table 53) outlines the benefits and disadvantages of this option.

Table 53—Benefits and disadvantages of providing for local governments to take over enforcement processes after a show cause notice is issued

Benefits	Disadvantages
<ul style="list-style-type: none"> • Certifier would no longer be in position of having to take enforcement action against their client. • Better reflects local government's community protection role. • Could result in more enforcement action taken where necessary. • Enhanced ability for the Commission to take action against contractors involved in non-compliant work. 	<ul style="list-style-type: none"> • Resource implications for local governments.

4.2 Pool safety management plans

Queensland's pool safety laws currently provide owners of pools associated with class 3 buildings (such as hotels, motels, hostels and backpackers accommodation) the option of using an approved pool safety management plan to comply with the swimming pool legislation instead of providing compliant pool barriers. A pool safety management plan allows the use of alternative measures (such as lifeguard supervision, CCTV footage or pool alarms) to provide an equivalent or greater degree of safety as the pool safety standard for children under five years of age. Pool safety management plans are approved by the Department of Housing and Public Works²⁴ and must be renewed annually. Fees apply for both an initial application and subsequent renewals.

²³ This was a recommendation of the Implementation Committee for the Government's Ten Point Action Plan response to the Parliamentary Inquiry into the former Queensland Building Services Authority.

²⁴ It is proposed this function will be transferred to the Commission along with pool safety inspector licensing and compliance

Since the commencement of the current pool safety laws in December, there has been limited uptake of pool safety management plans, largely by tourist resort complexes where the number, location and configuration of pools can make it difficult to install compliant pool barriers. While pool safety management plans provide greater flexibility to use alternative safety measures, these can be time consuming to develop, require ongoing consultation and negotiation between the applicant and the Department (often exceeding the statutory timeframe for deciding an application), and costly to implement. Also, the pool safety standard currently does not allow pool barriers to be purpose built to an approved pool safety management plan, with pool owners needing to rely on an alternative solution or a variation to the standard in order to partially enclose a pool.

Potential improvements

Option 4.2 (a) Simplify the application process for pool safety management plans

A number of minor legislative and administrative changes to the pool safety management plan framework could help simplify the application process and reduce red tape and costs for applicants. These include:

- increasing the timeframe for making a decision whether to approve or refuse a pool safety management plan application
- amending the pool safety standard to allow pool barriers to be purpose built to a pool safety management plan
- providing increased guidance to industry about what is expected from a pool safety management plan, for example, by reviewing the current guidelines to incorporate specific examples of alternative safety measures and when they could be used.

The table below (Table 54) outlines the benefits and disadvantages of this option.

Table 54—Benefits and disadvantages of simplifying the application process for pool safety management plans

Benefits	Disadvantages
<ul style="list-style-type: none"> • Allows applicant and Department to work collaboratively on proposed safety strategies. • Allows for any requests for further information or site inspections required. • No need to seek alternative solution or variation when constructing partial barriers—reducing time and costs. • Improved industry understanding of what is required and possible compliance options. • Potential reduction in approval timeframes due to improved industry understanding. 	<ul style="list-style-type: none"> • Does not provide any benefits in terms of reducing cost of application fees or implementation of alternative safety measures.

Option 4.2 (b) Extend the currency period for pool safety management plans

Retain the option of a pool safety management plan but remove the need for plans to be renewed annually. Instead, a pool safety management plan will remain in effect unless the applicant stops being the owner of the regulated pool or the conditions under which the plan

was approved change. Increased auditing by the Department²⁵ would ensure continued compliance with pool safety management plans.

The table below (Table 55) outlines the benefits and disadvantages of this option.

Table 55—Benefits and disadvantages of extending the currency period for pool safety management plans

Benefits	Disadvantages
<ul style="list-style-type: none"> Reduces costs through removal of annual renewal fees. 	<ul style="list-style-type: none"> No annual checks to ensure continued compliance—would need to rely solely on audit activities. Potential for applicants to fail to make a new application where there is a change of ownership or to the conditions of the approval. Reduced revenue to fund assessment and auditing of PSMPs.

Option 4.2 (c) Create a new category of exemption for pools in class 3 buildings

Remove the option of a pool safety management plan and create a new category of exemption for pools associated with class 3 buildings (e.g. hotels and motels). Currently, pool owners may apply to their local government for an exemption from part of the pool safety standard on the grounds of disability or impracticality. Under the proposed new category, a local government would be required to assess applications for exemptions. In making these decisions, the local government would consider, for example, the size of the class 3 building with which the pool/s are associated and its maximum occupancy, the location of the pool, the nature of its use (e.g. spa for private use of the occupant, adults-only pool) and whether there are any alternative safety measures in place.

The table below (Table 56) outlines the benefits and disadvantages of this option.

Table 56—Benefits and disadvantages of creating a new category of exemption for pools in class 3 buildings

Benefits	Disadvantages
<ul style="list-style-type: none"> Greater ability to consider individual circumstances and develop solutions appropriate to pool's use. Potential for less stringent requirements (appropriate to the pool's use) which reduces cost of implementation. 	<ul style="list-style-type: none"> Increased resource burden on local government (unless incorporated into current PSMP framework).

4.3 Energy assessors

New houses in Queensland must be designed and built to a 6-star energy efficiency standard and new multi-unit residential buildings to a 5-star standard. To support these building standards, approved software under the Nationwide House Energy Rating Scheme (NatHERS) is the compliance method most used by housing providers. House energy assessors use NatHERS software to determine the energy star rating for the building shell (roof, walls, windows and floors).

²⁵ It is proposed this function will be transferred to the Commission along with pool safety inspector licensing and compliance

Building certifiers have discretion to decide whether a house energy assessor is a 'competent person' to assist with housing design and specifications under the Building Regulation 2006. There is no oversight for assessors in Queensland as they are not required to be accredited or hold a licence.

Issues

Some housing practitioners advise that there is a lack of quality and consistency with the star ratings being generated. These reports have recently been supported by a national benchmark study undertaken by the Commonwealth Department of Industry²⁶ which highlighted several deficiencies with the quality of house energy assessments. For instance, it identified low consistency and accuracy for star ratings, with only one in five assessors (20 per cent) getting the correct star rating for sample house designs and around half (49 per cent) over-estimating the star rating. The report concluded that there are serious inaccuracies being generated across the house energy assessor industry.

Both the Association of Building Sustainability Assessors (ABSA) and the Building Designers Association of Victoria (BDAV) are approved by the NatHERS Administrator as accrediting organisations for house energy assessors. They operate similar to other professional organisations by providing a Code of Conduct for members, as well as reviewing and auditing member's work, including verifying the accuracy of star energy ratings and identifying/addressing incorrect use of the software.

To operate in Queensland, a house energy assessor needs to successfully complete a four (4) day training course to use the software. A new, more extensive Certificate IV training course has been developed nationally and available since 1 July 2013. It is hoped that this course will lift standards across the industry, however the course is not compulsory in Queensland. There are no other occupational requirements for house energy assessors to practice in Queensland.

Potential improvements

The introduction of oversight measures for house energy assessors could improve industry standards in Queensland. It would provide minimum professional standards, independent auditing and quality assurance processes to ensure greater consistency and reliability of star ratings. It would also promote technical support and continuing professional development for assessors.

Oversight of assessors would be expected to result in greater confidence for industry practitioners and consumers about house energy star ratings, with a greater likelihood that the client would get what they pay for.

²⁶ Source: NatHERS Benchmark Study: www.nathers.gov.au/sites/default/files/files//pdf/benchmark-study-report.pdf

Other jurisdictions

The table below (Table 57) outlines approaches taken in other jurisdictions to licensing and accreditation of energy assessors.

Table 57—Summary of requirements for energy assessors in other jurisdictions

State/Territory	Mandatory requirements
Australian Capital Territory	Must be licensed with ACT Government, which includes minimum qualification requirements.
New South Wales	House energy ratings must be prepared using NatHERS software by accredited assessors (as part of BASIX certificates).
Northern Territory	No qualification or accreditation requirements.
South Australia	Registration of house energy assessors is only a list of people who have been trained in use of software No accreditation or quality assurance processes.
Tasmania	House energy ratings by third party experts must be prepared by assessors accredited by either ABSA or the Building Designers Association of Victoria), to be accepted by building certifiers. Assessments can also be done by the responsible architect and building designer. If they are using NatHERS software such as Firstrate for their own designs, those designers must have received appropriate training and be competent in the use of that software product.
Victoria	House energy ratings must be prepared by accredited assessors.
Western Australia	No accreditation, licensing or qualification requirements.

Option 4.3 (a) Introduction of mandatory accreditation

Establishing an accreditation requirement would involve house energy assessors to become accredited with an approved assessor accrediting organisation (either ABSA or BDAV). As an industry-based accreditation system is already nationally established and approved under a NatHERS protocol, this option could be implemented at a minimal cost to government and industry. The accreditation cost for assessors range from around \$800 to \$900 annually after the first year.

The table below (Table 58) outlines the benefits and disadvantages of this option.

Table 58—Benefits and disadvantages of requiring mandatory accreditation of energy assessors

Benefits	Disadvantages
<ul style="list-style-type: none"> Established industry-based program with minimal cost to government. Oversight of assessors with minimum professional standards and industry support. Greater consistency and accuracy in star rating assessments to achieve regulatory compliance. Greater confidence for industry practitioners and consumers in getting 	<ul style="list-style-type: none"> Cost for assessors required to be accredited with a professional body. Assessors may pass on this additional cost increase to clients as part of the fee for their services. May not be perceived as independent as accreditation is industry-based. Increase in red tape. Increase regulatory burden.

<ul style="list-style-type: none"> • what they paid for. • Reduced risk on building certifier when approving housing design and construction. 	
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Option 4.3 (b) Introduction of a new licensing requirement

Alternatively, a new licence class could be introduced for house energy assessors. This could potentially be implemented through the Queensland Building and Construction Commission to align with the licensing of other building practitioners and certifiers.

The table below (Table 59) outlines the benefits and disadvantages of this option.

Table 59—Benefits and disadvantages of introducing a new licence for energy assessors

Benefits	Disadvantages
<ul style="list-style-type: none"> • Oversight of assessors with minimum professional standards • Independent of industry. • Greater consistency and accuracy in star rating assessments to achieve regulatory compliance. • Greater confidence for industry practitioners and consumers in getting what they paid for. • Reduced risk on building certifier when approving housing design and construction. 	<ul style="list-style-type: none"> • A new licensing class would need to be developed and would present an ongoing cost to the Commission. • Cost for assessors required to be licensed. • Assessors may pass on this additional cost increase to clients as part of the fee for their services. • Increase in red tape. • Increase regulatory burden.

4.4 Government work

All building work carried by or on behalf of State or local government is self-assessable. This means it must be assessed to ensure it complies with all relevant building codes and standards but does not require a formal building development application and approval.

Self-assessable building work carried out by or on behalf of the State or a local government can involve a wide range of projects. These can include construction of small projects such as retaining walls, sheds and single detached houses up to large and complex buildings such as hospitals and schools. In some cases, building projects are coordinated by various Government departments, each having different processes for recording assessment and inspection of building work.

Currently there is no requirement for the State or local governments to follow the legislative processes relating to mandatory inspections and certification. This includes the processes of determining that building work complies with the building assessment provisions and providing relevant authorities with information.

For example, a referral agency must be consulted when a development approval is to be given for certain types of assessable building work. Another example is a requirement for approvals relating to houses to include a condition for mandatory inspections. In turn, those inspections must be recorded as satisfactory through the issue of an approved form of certification.

The purpose of these requirements is to establish a consistent approach to approval and inspection processes and record-keeping for public benefit. The absence of similar

requirements for self-assessable government building work can create problems if those assets are subsequently transferred or sold to private sector entities.

Other jurisdictions

The table below (Table 60) outlines approaches taken in other jurisdictions to processes and documentation of government work.

Table 60—Summary of approaches taken in other jurisdictions to processes and documentation for government work

State/Territory	System
Australian Capital Territory	A building permit, known as a commencement notice, is required for government buildings other than where the building work is by, for, or on behalf of the Commonwealth (as building laws do not necessarily bind the Commonwealth).
New South Wales	A construction certificate is not needed, but the building work needs to be certified by or on behalf of the Crown as complying with the technical provisions of the State's building laws. As there is no formal building approval there is no legislative requirement for inspections or final certificates for the building work.
Northern Territory	A building permit is required for government buildings.
South Australia	Legislatively imposed conditions on the planning consent allow government building work to commence after it has been certified as complying with the provisions of the Building Rules. This "certification" can be by a private certifier or someone determined by the Minister. As there is no formal building approval there is no legislative requirement for inspections or final certificates for the building work.
Tasmania	A building permit is required for government buildings.
Victoria	A building permit is required for all building work unless it is exempted. There is some building work relating to the state that has exemptions, such as a relocatable building used as a State School within the meaning of the <i>Education Act 1958 (Vic)</i> .
Western Australia	A building permit is required for government buildings unless the work commences before 30 June 2017 and has a particular value.

Potential improvements

Option 4.4 (a) Align assessment and inspection processes for work conducted for or on behalf of the State or local government with assessable building work

Amend the building legislation to introduce similar assessment and inspection requirements for self-assessable building work carried out for or on behalf of the State or local government to those currently in effect for assessable building work.

The following table (Table 61) outlines the benefits and disadvantages of this option.

Table 61—Benefits and disadvantages of aligning assessment and inspection frameworks for work conducted on behalf of State or local government with those for assessable building work

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides a consistent level of information. • Centralises procedures for whole of government. • Provides for a more informed transfer of building assets from public to private sector. 	<ul style="list-style-type: none"> • Significant changes required to internal government processes.

Option 4.4 (b) Create a guideline for self assessable building work

Create a guideline for self-assessable building work carried out for or on behalf of the State or a local government setting out requirements for assessment and inspection processes the same as for assessable work.

The table below (Table 62) outlines the benefits and disadvantages of this option.

Table 62—Benefits and disadvantages of creating a guideline for the assessment and inspection of work conducted on behalf of State or local government

Benefits	Disadvantages
<ul style="list-style-type: none"> • Provides a consistent platform for use across all government entities involved in building and construction work. 	<ul style="list-style-type: none"> • Significant changes required to internal government processes. • May not adequately address issues for prospective purchasers of government constructed buildings.

How to provide comments

Online:

You can complete the online survey at the Get Involved website www.getinvolved.qld.gov.au

Please note: the survey will take approximately 30 minutes to complete.

To request a copy of the survey to be sent to you, please telephone (07) 3224 6758 or email buildingcodes@qld.gov.au.

Mail:

You can mail your survey response form or written submission to:

Attention: Review of the *Building Act 1975* and building certification
GPO Box 2457
Brisbane QLD 4001

Email:

You can email your survey response form or written submission to:

buildingcodes@qld.gov.au

Please use "Review of the *Building Act 1975* and building certification" as the email subject line.

Closing date for comments

The closing date for comments is **5pm Friday 25 July 2014**.

Where to get more information

For more information on any of the proposals outlined in this discussions paper, please contact (07) 3224 6758 or email buildingcodes@qld.gov.au.

The *Building Act 1975* is available from www.legislation.qld.gov.au.