



ABCB

Building regulator powers

Model guidance on BCR recommendation 6

2021

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Enquiries about this publication can be sent to:

Australian Building Codes Board
GPO Box 2013
CANBERRA ACT 2601
Phone: 1300 134 631
Email: ncc@abcb.gov.au
Web: abcb.gov.au

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Replace introduction with preface; format; add new cover.

Preface

The [Building Confidence Report](#) (BCR), published in April 2018, made 24 recommendations to Building Ministers to address systemic issues in the Australian building industry. Building Ministers established the BCR Implementation Team within the Office of the Australian Building Codes Board (ABCB) to work with governments and industry to respond to the recommendations with a focus on national consistency where possible.

The BCR Implementation Team's work aims to establish national best-practice models in response to BCR recommendations. If implemented, the responses will strengthen compliance with the National Construction Code (NCC), better protecting the interests of people who own, work in, live in and use Australian buildings.

All responses to BCR recommendations have been developed in accordance with the [Building Confidence National Framework](#) with input from industry and governments. Figure 1 lists the outputs developed under the Framework, and where to find them.

State and territory governments have agreed to consider implementation of all BCR endorsed responses. This process will take time depending on each government's regulatory reform agenda, and may be undertaken in stages.

The model guidance for *Building regulator powers* represents a nationally agreed response to BCR recommendation 6. This recommendation states “*each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action*”. This was recommended to ensure regulators have the necessary powers to audit buildings, require rectification, and initiate prosecution action.

At their [November 2020 meeting, Building Ministers' considered](#) and agreed to a “*minimum list of powers for jurisdictions to draw on to enforce compliance with building regulations*”. Accordingly, this model guidance lists the minimum regulator powers for State and Territory governments to consider when reviewing relevant laws in their jurisdiction. Information on the origin of each power is also provided.

To assist with implementation, further details on the basis of the powers and issues to be addressed when developing provisions were noted by the ABCB and provided directly to jurisdictions in December 2020.

Figure 1 – Building Confidence Implementation Framework - Outputs



Next Steps

Implementation by state and territory governments

Governments have agreed to consider implementation of the responses. Contact the building authority in your jurisdiction for information on progress.

Each of the outputs listed in Figure 1 can be accessed on the [ABCB website](https://www.abcb.gov.au).

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Adoption of model guidance

As a model, this guidance does not have any force until adopted by a jurisdiction. States and territories may have regard to the content of the model. This may include amending or adopting the model for application in their jurisdiction.

The model guidance needs to be read in conjunction with the relevant legislation in a jurisdiction. It is written in generic terms and is not intended to override legislative requirements.

List of minimum regulator powers

1 The Power to Investigate

- 1.1 General power to respond to complaints
- 1.2 General power to proactively investigate

2 Powers of entry

- 2.1 General power of entry with consent
- 2.2 General power of entry to construction sites for the purpose of monitoring compliance
- 2.3 General power of entry to any premise under warrant where there is a reasonable belief that a breach of obligations has been committed or concealed
- 2.4 Specific power for practitioner regulators to enter relevant business premises where there is a reasonable belief that it will reveal grounds for a practitioner disciplinary inquiry or provide relevant evidence for an ongoing inquiry
- 2.5 General power to bring additional persons to assist

3 Powers to gather evidence

- 3.1 General power to require the production of documents
- 3.2 Power to seize and make copies of documents
- 3.3 Power to require the provision of information
- 3.4 General power to take photos and recordings, including through the use of drones
- 3.5 Specific power of building work regulators to examine, inspect, measure, search, and operate building equipment
- 3.6 Specific power to seize and test materials and equipment
- 3.7 General power to request reasonable assistance from occupants

4 Power to protect the public

- 4.1 General power to order remedial actions
- 4.2 Specific power to stop work on a construction site
- 4.3 Specific power to order the evacuation or prevent occupation of a premise
- 4.4 General power to share information with other regulators
- 4.5 General power to share information with the public

5 Powers to undertake disciplinary procedures

- 5.1 General power to take action in response to impairment of other powers
- 5.2 General power to order remedial actions
- 5.3 Power to negotiate enforceable undertakings
- 5.4 General power to impose financial penalties
- 5.5 General power to require additional training
- 5.6 Specific power to suspend, cancel and impose conditions on registration

Origin of regulator powers

Regulator powers recommended in the BCR

The following table lists the powers recommended in the BCR, and where incorporated through this work, which of the regulatory powers each relates to.

BCR recommended powers	BCR Rec	Model power
The power to investigate following a complaint or proactively	6	1.1, 1.2
The power to audit the performance of all registered practitioners including architects	6 & 7	1.2
The power of entry for monitoring compliance	6	2.1, 2.2
The power of entry where there is a reasonable belief of the commission of an offence or grounds for disciplinary inquiry	6	2.3, 2.4
The power to require the production of documents or information	6	3.1
The power to seize document and test and seize materials	6	3.2, 3.6
The power to evacuate, make all necessary orders, or stop works	6	4.1, 4.2, 4.3
The power to undertake disciplinary processes	6	5
The power to take immediate disciplinary action in high-risk cases	7	5
The power to issue rectification orders or order the appointed building surveyor to take reasonable actions	7	5.2
The power to negotiate voluntary undertakings	6	5.3
The power to issue infringement notices and undertake prosecutions	6	5.4
The power to issue infringement notices and undertake disciplinary processes including requiring additional training, undertakings, fines and the suspension or cancellation of registration	7	5.3, 5.4, 5.5, 5.6
The power to disqualify directors in order to prohibit them from being involved in other building companies ¹	7	N/A

¹ Model powers to mitigate phoenixing were considered but not included in the final list as some jurisdictions are addressing this issue through registration of directors and companies. The Commonwealth Treasury is also progressing separate reforms that may mitigate phoenixing.

Regulator powers not directly recommended in the BCR

The following table lists regulatory powers that do not have a direct recommendation in the BCR, and the reason for their inclusion in this model guidance.

Power	Source / Inspiration	Model power
The power to bring additional person to assist	Legislative principles for Building Product Regulation agreed by the Building Ministers' Forum in 2017 (BMF Principles) and existing legislation	2.5
The power to require the provision of information	BMF Principles	3.3
The power to take photos and recordings	BCR Team informed by existing legislation	3.4
The power to examine, inspect, measure, search and operate building equipment	Existing legislation and BMF Principles	3.5
The power to request reasonable assistance from occupants	BMF Principles	3.7
The power to share information with other regulators	BCR recommendation 5 and suggestions from jurisdictions	4.4
The power to share information with the public	Suggestions from jurisdictions and BMF Principles	4.5
The power to take action in response to impairment of other powers	BCR Team informed by existing legislation	5.1