ABCB

Auditing and compliance
Model guidance on BCR recommendation 7

2021

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Version history

Original

Publish date: 10/12/2021
Print version: v1.0

This version

Publish date: 10/12/2021
Print version: N/A
Details of amendments: N/A

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 Auditing and Compliance represents a nationally agreed response to BCR recommendation 7. The recommendation states "that each jurisdiction makes public its audit strategy for regulatory oversight of the construction of *commercial buildings*, with annual reporting on audit findings and outcomes". The BCR defined *commercial buildings* as Class 2 – 9 buildings.

The BCR Implementation Team was tasked to work with jurisdictions to develop the model guidance in response to the second part of the recommendation: "reporting on audit findings and outcomes".

States and territories are responsible for developing and making public their auditing strategies and supporting material. The model guidance has therefore been developed to assist jurisdictions by acting as a checklist for regulators to:

- develop consistent and timely reporting on auditing and compliance

- provide accessible and understandable general information about auditing and compliance to industry and the public, and

- empower industry, through access to auditing information, to take on a greater role in recognising and responding to auditing and compliance trends.

Figure 1 – Building Confidence Implementation Framework - Outputs

Registration and training

Nationally consistent initial and on-going registration of building practitioners incorporating training, education and experience, to strengthen implementation of the NCC.

National Registration Framework

Evidence of experience for building surveyor registration

Continuing professional development on the NCC and ethics

NCC CPD

Building surveyor integrity

Standards of behaviour for building surveyors performing statutory functions to improve accountability and transparency, and to manage expectations of building practitioners and consumers.

Building surveyor integrity and their role in enforcement

Code of conduct for building surveyors

Fire safety

Better integrate fire safety into design, construction and certification processes to lift compliance outcomes.

Code of conduct for fire safety engineers

Fire authorities in the building approval process

Fire safety systems

Regulatory oversight

Improve regulator collaboration, ensure regulators have powers to enforce compliance with building laws, and provide transparency for industry.

Building regulator collaboration

Building regulator powers

Auditing and compliance

Design, construction and certification

Reduce non-compliance with a robust and transparent system of inspection and certification throughout the building approval process.

Design acceptance

Independent third-party review

Mandatory inspections

Building product safety

Information sharing

Enable better access to building data for regulators and building owners, and improve understanding of building and plumbing terminology.

Data sharing MOU

Building manuals

Building Confidence Glossary

Standards Australia's Construction dictionary

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.

The context that underpins the development of the model guidance is detailed in [Auditing and compliance: Supplementary information on BCR recommendation 7](#).

Defined terms used in this document are shown in italics. The definitions can be found in the [Building Confidence Glossary](#).

Contents

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.

Background

Auditing is critical to ensuring that building work in Australia meets the minimum standards set by the NCC, state and territory legislation and Australian, or other, Standards.[1] In Australia, the public expects that buildings purchased, owned, tenanted and/or used meet these standards of construction and are maintained. This protects occupant safety. When buildings are found not to have met these standards, confidence in the building industry decreases.

Auditing, one aspect of regulation, may be seen as a commitment by government to the public that the building regulatory system meets its expectations of compliant and safe buildings.[2]

Building regulators, although part of the building ecology, have a distinct role as they are responsible for protecting the public and industry from harm. This is through modification of undesirable behaviours that produce non-compliance with the NCC and other prescribed requirements.

Regulators' efforts to modify undesirable behaviours can include developing and/or promoting education and training activities, including requiring their completion as part of registration processes or as part of continued professional development. This model guidance is expected to complement these existing activities by regulators.

Reporting on auditing by building regulators is expected to increase industry compliance with minimum standards, which is expected to increase public confidence in the building industry.

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[1] This model guidance references Australian Standards, noting that regulation may call up other referenced documents, including international standards.
[2] Australian Institute of Building Surveyors Policy – Building Regulatory Reform in Australia,

Survey

The model guidance was drafted having regard to feedback to an ABCB public survey about auditing. A summary of survey outcomes is in the [Auditing and compliance - Supplementary information](#).

The BCR Implementation Team then sought feedback on the draft model guidance. Feedback indicated that the principles are strongly supported, with 77 to 95 per cent of respondents agreeing with each principle. The model guidance was updated in response to feedback from the public consultation.

Respondents agreed that using and communicating auditing data is important, particularly to develop education and training to target trends in non-compliance. While data is not the focus of this model guidance, respondents were enthusiastic about its possible uses and its potential to uplift the industry. This could be through collecting the right data, analysing and sharing it effectively and drawing on it to develop education, training and/or tools to target trends in non-compliance. It could also be through sharing data with industry to empower informed changes to products, product instructions and work practices.

Model Guidance

The model guidance has been developed to assist state and territory regulators overseeing the construction of Class 2–9 buildings.

It aims to improve outcomes for owners and users of Class 2–9 buildings by increasing compliance of newly built Class 2–9 buildings with the NCC, state and territory legislation and Australian Standards. We anticipate this will be achieved by:

- assisting regulators to communicate the importance of their auditing activities to industry and the public, fostering confidence in regulatory actions and supporting increased efficiency;
- assisting regulators to build a collaborative relationship with industry that can be drawn on to reduce non-compliance through increased education and training, and improved clarity in legislation;
- assisting regulators to report on auditing outcomes with greater consistency and detail across jurisdictions, enabling the analysis of trends and the impacts of regulatory or policy changes to be identified, assessed and addressed;
- increasing the information available to consumers and industry, enabling them to choose not to hire practitioners listed on registers of enforcement action;
- assisting regulators to share information with industry, empowering it to innovatively respond to non-compliance issues; and
- encouraging industry to prioritise compliant work and increasing its awareness of the consequences of non-compliance.

Collectively, these changes could increase industry's ability to deliver safe and compliant buildings.

Over time, it is anticipated that the model guidance will facilitate some comparative performance monitoring.[3]

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[3] Safe Work Australia's Comparative Performance Monitoring reports are a potential model. Safe Work Australia is responsible for analysing trends in Work, Health and Safety and workers' compensation scheme performance across Australia and New Zealand.

An example of how regulators could use data and communicate it to stakeholders to inform effective auditing is provided in Figure 2 below. Communication and collaboration are key to the effective use of data.

Figure 2 Example of how regulators could use and communicate auditing data
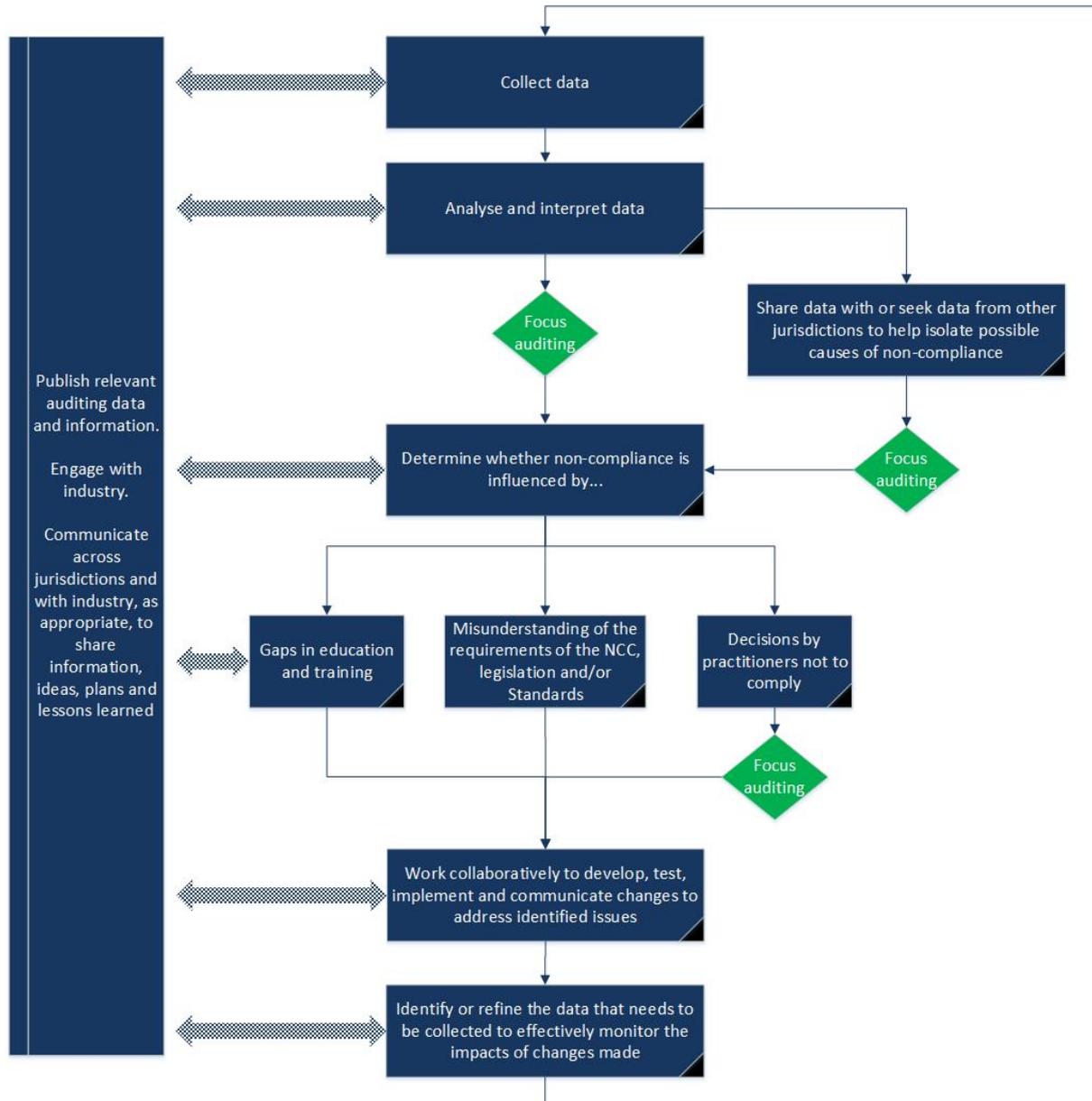
Application and limitations

When using this model guidance, jurisdictions should consider:

- variations in state and territory legislation,
- whether there are any issues unique to their jurisdiction which are not considered in this model guidance such as legislative limitations,

- whether public reporting is appropriate if it would enable re-identification of a party entitled to privacy,
- how the model guidance will complement internal reporting mechanisms, and
- how the model guidance can best be used to support a collaborative relationship with industry in that jurisdiction.

Jurisdictions should also note this model guidance was developed in the absence of known auditing strategies.

Auditing does not replace the importance of building practitioners acting with integrity and responsibility or the role of building surveyors in assessing whether legislated development requirements have been met.

Associated strategies

It is recommended that this model guidance is associated with an auditing strategy and an education strategy. It may also complement a communications or stakeholder engagement strategy. As with this model guidance, it is recommended that associated strategies be proactive, prioritised and capable of responding to trends.

Where the model guidance is associated with an auditing strategy, it is recommended that the auditing strategy ensure auditors have consistent approaches to auditing and that reported data reflects genuine trends in the building industry rather than a lack of consistency in approaches to audits.

Resourcing

Appropriate resourcing is key to effective auditing. To ensure that reporting on auditing achieves desired outcomes, regulators should consider allocating specific resources to analysis and communication of auditing activities and outcomes.

Principles

Principles for auditing and compliance reporting	
1	Auditing information is clear and concise
2	Regulators promote and discuss auditing
3	Regulator performance is publicly reported
4	Data collected to support reporting and continuous improvement
5	Enforcement action is published
6	Regulators collaborate within and across jurisdictions

Principle 1 – Auditing information is clear and concise

Information about auditing is easy to find, accessible and uses unambiguous language. Regulators include definitions of essential terms and use visual aids such as flow charts, diagrams and infographics, where appropriate, to engage with the broadest range of industry participants. Regulators provide opportunities for industry participants to engage in-person and online.

Objective

Industry views auditing as part of its 'business as usual'. The industry norm is that participants understand the purpose and importance of auditing and its impact in ensuring the delivery of buildings that are compliant with the NCC, state and territory legislation and Australian Standards.

Industry is able to access, understand and share accurate information about auditing. All participants, including those whose primary language is not English, are able to understand the role of the regulator, their own obligations, how and why their conduct or work may be audited, the range of regulatory responses to identified instances of non-compliance and when these are likely to be used.

Industry interacts with the regulator about auditing and participants feel their engagement is meaningful and beneficial.

Industry has confidence that auditing is guided by appropriate frameworks ensuring fair and transparent decision-making.

Principle 1 in practice

It is recommended that regulators:

1. Use plain English and ensure language is inclusive.[4]

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[4] The Australian Government's Content Guide provides information about accessibility.

2. Ensure accessibility of content e.g. through providing subtitles for videos.[5]

3. Use of visual aids such as flow charts, diagrams and infographics to draw attention to key findings in a way that is easily understandable and engaging for most people.[6]

4. Provide opportunities for participants to engage in-person as well as online.

5. Use data about auditing trends to target engagement opportunities to ensure industry participants are reached regardless of access to specific technologies, use of social media or geographic location.

6. Consider ways to make it as easy as possible for participants to increase or refresh their understanding of auditing.

7. Work with industry peak bodies, where appropriate, to share information through their channels such as email distribution lists, publications and events.

8. Establish working groups with industry to examine and develop responses to challenging or highly-technical compliance issues.

9. Establish and maintain a webpage about its auditing strategies (if applicable), auditing activities and auditing outcomes. The page contains or links to all the regulator's information about auditing including:

    a. the role and importance of auditing in regulation;

    b. the regulator's role in auditing;

    c. how the regulator's role relates to that of other significant regulators in the jurisdiction e.g. fire services, local governments or private surveyors;

    d. how auditing outcomes shape guidance, education, training, and regulatory or policy changes;

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[5] Further information about accessibility is available online.

[6] The Safe Work Australia's Comparative Performance Monitoring framework, for example, conveys complex findings including Work, Health and Safety trends and outcomes of compliance and enforcement activities through a traditional reporting style, however key findings are also summarised at the beginning of reports using infographics.

e. industry participants' rights and obligations if their conduct or work is audited;

f. an overview of the regulator's processes for conducting an audit, including steps after the completion of an audit such as a decision to re-audit. If the process varies in response to the specific trigger for the audit e.g. complaint or audit strategy, the overview should clearly show each process;

g. policies and frameworks that determine the range of possible regulatory responses to issues identified through auditing. Regulatory responses to be shown on a scale in order of consequence or severity for the regulated party, where one end of the scale may be a requirement to complete additional training and the other end may be cancellation of the practitioner's licence;

h. how the regulator determines a regulatory response to an identified instance of non-compliance;

i. formal reporting on auditing, such as annual reports;

j. information about how to attend upcoming events related to auditing;

k. resources for industry such as brochures, videos, posters, PowerPoint presentations, links to additional training and education and/or FAQs;

l. case studies and 'real-life examples' showing general principles regarding compliance requirements, the importance of compliance and/or the impacts of non-compliance;

m. advice for industry practitioners who want to address non-compliance;

n. links to the auditing pages of other regulators;

o. links to relevant legislation;

p. how to make a complaint about an auditing process;

q. how to report a compliance concern;7 and

r. contact details to seek further auditing information from the regulator.

10. Provide information about auditing that encourages industry to practice self-auditing (i.e. using audits as a means of internal quality assurance). This is to help familiarise businesses with the benefits of auditing so it will be perceived as 'business as usual' over time.

11. Where advance notice is given of an audit, provide information to the practitioner whose work will be audited, that complies with Principle 1 and aims to prepare the practitioner to comply with the audit processes. Information includes:

a. the types of documentation or materials that may need to be examined or copied;

b. what to expect during the audit and how long the process will take;

c. how outcomes from the audit may be used and/or made public;

d. links to relevant auditing information on the regulator's website; and

e. contact details for the relevant auditor(s).

12. During and after an audit, communicate clearly about expectations, timeframes, findings and processes to minimise disruption to businesses and practitioners. Audited parties are provided information as soon as possible about the audit findings, and provided information about how to work with the regulator to rectify any identified instances of non-compliance in a timely manner. The regulator provides audited parties the opportunity to discuss and fully understand auditing outcomes.

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7 Industry participants may be more likely to make complaints or report concerns if they are able to do so anonymously. An example of a simple format that allows anonymous reporting of aviation industry participants is available online.

Principle 2 – Regulators promote and discuss auditing

Regulators use formal reporting combined with interactive communication channels such as websites and social media to encourage continuous conversation with industry and the public about auditing activities and outcomes. Communication focuses on benefits to industry, prevention of non-compliance, learning from case studies and education and training.

Objective

Industry views auditing and compliance as part of 'business as usual' and an ongoing conversation. Education and training are seen as positive opportunities to increase compliance.

Reporting on auditing outcomes is seen as a benefit to industry.

Insights gained from auditing outcomes are used to inform continuous improvement.

Regulators establish and/or maintain collaborative relationships with industry and can draw on these relationships to address emerging issues quickly, if necessary.

Principle 2 in practice

It is recommended that regulators:

1. Communicate in a way that is multi-channel, interactive and regular. It aims to involve industry in a continuous conversation about increasing the compliance of new buildings, including through ongoing education and training opportunities.

2. Release formal reports annually and report certain measures quarterly.[8]

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[8] Reporting consistent measures quarterly provides industry a snapshot of compliance and a starting point for discussions about increasing compliance. For example, the Victorian Building Authority provides quarterly reports on its Proactive Inspections Program, which provide an insight into the regulator's activities and findings.

3. Release case studies that relate to trends pertinent to that quarter's auditing reporting.

4. Use social media, as appropriate, to promote links to reports, information and resources to industry. Social media should not be used as a tool in isolation, as character and space limits may lead to confusion or prevent regulators from sharing nuanced messages.

5. Focus communication on preventing non-compliance through promoting education and training.

Principle 3 – Regulator performance is publicly reported

Regulators report on whether they met auditing targets and/or delivered on their auditing strategies. Regulators report on how their performance is measured and how they are held accountable. They explain whether they view auditing outcomes reported as regulatory 'success' and if not, what they define as regulatory 'success'.

Objective

Industry and the public understand that all parties involved in the construction of buildings have responsibilities and are accountable for their actions, including regulators.

Industry has confidence that the regulator's auditing activities are guided by appropriate strategies and/or frameworks guiding fair and transparent decision-making, and are designed to support the achievement of the regulator's purpose.

Industry and the public understand how the regulator measures its own performance and understand that the regulator is accountable for its actions.

Industry and the public understand the relationship between auditing activities and outcomes and the regulator's performance.

Principle 3 in practice

It is recommended that regulators:

1. Report on their own performance against auditing targets and their auditing strategies more generally. Regulators explain how their auditing targets were developed and the impacts of not meeting the auditing targets, where appropriate.

2. Explain how their own performance is measured including any key performance indicators and any mechanisms that ensure accountability. This may be through annual reports that are tabled in parliament or auditing by another government agency, such a peak state government auditor. Where auditing of the regulator's activities is an accountability mechanism, the outcomes of audits should be

made public, if possible, along with the regulator's responses to the outcomes of the audit.

3. Explain what regulatory 'success' looks like and how the auditing measures it reports publicly relate to its success. If the regulator reports, for example, that seven per cent of buildings it audited in a period contained identified instances of non-compliance with a particular requirement of the NCC, it should also explain whether it considers this to have met its expectations of regulatory success and why. Key context to include is whether this is an increase or decrease on previous periods, whether it follows an education campaign targeting compliance in this area and/or whether this finding was as a result of auditors specifically targeting compliance in this area.

4. Where it considers the result was poor and does not meet its idea of regulatory success, report on measures to increase compliance in this area through development of additional education and training.

Principle 4 – Data collected to support continuous improvement

Data collection is designed to support reporting measures that enable a story to be told, including of long-term trends. Regulators are transparent about the sources of their data and any limitations of the data. Regulators regularly review data collection and reporting measures and adapt them, where necessary, to ensure they remain relevant and continue to inform collaborative conversations with industry about auditing.

Objective

Regulators are able to identify and analyse short-term changes and long-term trends to tell a story about auditing that is relevant to industry and assists it to address issues proactively and meaningfully.

Regulators are able to compare trends across jurisdictions, particularly to analyse the impacts of regulatory or policy changes.

Regulators understand and respond to industry needs, including by adapting or increasing reporting measures.

Industry views reporting measures as reliable and transparent indicators of issues and uses them to inform discussions within industry about the importance of compliance.

Insights gained from auditing outcomes are:

- viewed as a part of identifying opportunities for, and implementing, continuous improvement to auditing strategies and activities,
- viewed as a part of identifying opportunities for, and implementing, education and training activities to address the behaviours that lead to non-compliance,
- shared with industry and/or researchers, where appropriate, to improve understanding of non-compliance in the industry and develop innovative responses such as improved product design and instructions, and
- used to inform clarifications and changes to the NCC and other prescribed requirements, where applicable.

Principle 4 in practice

It is recommended that regulators:

1. Ensure legislative frameworks support the ways in which they intend to collect, analyse and share data, and that industry is informed of their relevant data rights and obligations.

2. Implement and maintain a reporting framework against the NCC for national consistency.

3. Where possible, across jurisdictions collect consistent data and publish consistent reporting measures (with consistent names). Regulators discuss and coordinate changes to reporting measures at national building regulator forums. Consistent data collection that could be considered includes:

   a. overall number of auditing activities;

   b. number of audit activities undertaken at different phases of construction (e.g. post building approval, during construction or post-construction);

   c. the type of audit activities e.g. on-site or desktop;

   d. number of instances of non-compliance found per audit;

   e. the types of non-compliance (e.g. instances of non-compliance with fire safety requirements, waterproofing or structural integrity etc.);

   f. the location of the instance of non-compliance i.e. if in a strata building, whether it was in a common area or within an individual dwelling;

   g. whether non-compliance was related to Deemed to Satisfy provisions or Performance Solutions;

   h. the parties involved in audit activities (e.g. local governments, state/territory government regulators, fire authorities or a combination of these); and

   i. the focus areas of audits.

4. Report on how they respond to the outcomes of auditing activities, including:

    a. additional education or training products or videos developed to prevent common types of non-compliance from occurring; and

    b. the outcomes of audit activities including methods for addressing identified instances of non-compliance e.g. proportion of instances of non-compliance that resulted in a practitioner being required to undertake additional training/education, issuing of fines, court action etc.

5. Demonstrate proportionate responses to non-compliance and explain how the response was considered proportionate to (potential) risk and/or consequence.

6. Report on the overall use of statutory powers including:

    a. auditing the performance of registered practitioners;

    b. using powers to take immediate disciplinary action in high-risk cases;

    c. issuing rectification orders or ordering that reasonable actions are taken in response to issues identified;

    d. issuing infringements and using powers to prosecute or require additional training, undertakings and fines;

    e. taking disciplinary actions on practitioner registration, including suspension or cancellation, and

    f. disqualifying directors to prevent their involvement in other building companies.

7. Report consistently across periods to enable analysis by non-regulators of published information. This is balanced with the need to be responsive to stakeholders, including to adapt or increase reporting measures.

8. Design additional reporting measures in response to targeted or unusual auditing campaigns. Reporting measures are always specific as to the intent of an auditing activity.

9. Conduct annual or biennial surveys of stakeholders to inform auditing reporting and/or communications about auditing, including targeting communications at specific groups. These surveys could be run by individual regulators or by national building regulator forums on behalf of all state and territory regulators. Regular reviews of the reporting measures also take into account any legislative, regulatory or policy changes.

10. Work with data analysis experts to ensure that adapting reporting measures does not impact their usefulness.

11. Where using statistics in public reporting, disclose how the statistics were generated or sourced, and any limitations. This provides industry and the public key context and the ability to draw more reliable inferences to support development of responses.

12. Ensure publicly-reported statistics and information cannot be combined to identify parties entitled to privacy.

Principle 5 – Enforcement action is published

Reporting and discussions about auditing demonstrate a range of proportionate responses to issues identified through auditing, including strong responses where appropriate. States and territories establish public registers of enforcement action taken against practitioners and report additions to the register using a range of communication tools including social media.

Objective

Industry understands the range of regulatory responses possible and the circumstances in which they may be used by the regulator.

Industry understands that where the regulator needs to take strong, decisive action, it has the capacity and willingness to do so and that the action supports the regulator's purpose.

Consumers are aware of the registers of enforcement action and check them prior to engaging building practitioners. Consumers have confidence that the registers hold accurate and timely information about instances of serious non-compliance.

Principle 5 in practice

It is recommended that regulators:

1. In their reporting, cover the range of responses taken, including a breakdown of regulatory responses by building classification or other factors. Where strong action has been taken in response to repeated, deliberate non-compliance, the regulator publicises this action as a deterrent and to increase consumer awareness.

2. Use case studies for education and training purposes, and to assist industry to avoid similar instances of non-compliance. This includes making case studies available on their websites and including case studies in reporting and conversations about auditing. Case studies are also shared with industry through peak industry body communications to leverage the good will that these organisations have with their members. The case studies are sensitive to the

causes of non-compliance and the circumstances of the individuals involved. That is, where the regulator has identified repeated and deliberate non-compliance, a case study of the actual occurrence is used however if developing a case study where non-compliance was the result of a lack of experience and appropriate supervision, a fictionalised case study is developed.

3. Maintain public registers of enforcement online, including details of the name and registration number of the practitioner or company director, the date of inquiry or investigation, the allegation and the finding and/or disciplinary action taken including details of fines, costs and/or licence conditions. The register is searchable by any of these fields, easy to use, accessible and enable assistive technologies.

4. Publish frameworks showing how they publish details of individual enforcement actions and could consider whether details should only be published following the finalisation of any appeals processes. Some information, such as orders, may be appropriate to be published prior to appeals processes.9

5. Within registers, include a warning to consumers that practitioners may work in several jurisdictions so not all relevant enforcement action may be published in a single register.

6. Within registers detail action against non-registered practitioners, e.g. those whose registration has lapsed, been cancelled or suspended or who have never obtained registration.

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9 For example, the NSW Government's [Residential Apartment Buildings (Compliance and Enforcement Powers) Act orders register](#) publishes stop work, prohibition and building work rectification orders.

Principle 6 – Regulators collaborate within and across jurisdictions

Regulators within each jurisdiction and across jurisdictions, collaborate and communicate about auditing regularly.

Objective

Regulators share auditing strategies, activities and outcomes with other regulators and collaborate with industry, where appropriate, to develop auditing strategies, activities and information campaigns.

Regulators consider the need to collaborate and communicate with consumer protection agencies to ensure that consumers can make more informed choices about purchasing or tenanting buildings.

Regulators agree when and how they will collaborate and the outcomes they aim to achieve as a group. The terms of collaboration and the outcomes sought are revised regularly to reflect regulators' capabilities and needs.

Industry understands the role of all regulators within a jurisdiction and that they may share information with each other to enable targeted auditing.

Principle 6 in practice

It is recommended that regulators:

1. Determine the scope of their collaboration and communication, noting the significant potential benefits including better use of limited resources and faster responses to identified issues.

2. Engage with consumer protection agencies to develop or update education campaigns based on the outcomes of auditing activities.