



# Model Regulatory Powers

2020

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## Adoption of model documents

As a model, this document 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.

This document was provided to state and territory governments in December 2020 for their consideration and implementation, as appropriate.

# 1 Introduction

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To ensure that regulators have the necessary powers to audit buildings, require rectification and initiate prosecution action, recommendation 6 of the [Building Confidence Report](#) (BCR) recommended that *“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”*.

Building Ministers considered a list of proposed powers at their [November 2020 meeting](#) and agreed the following *“minimum list of powers for jurisdictions to draw on to enforce compliance with building regulations”*.

Consistent with the [Building Confidence National Framework](#) and Building Ministers’ decision, the model powers listed in Section 2 are intended to be considered by State and Territory governments when reviewing regulatory powers in their jurisdiction. Section 3 provides information on the origin for each of the model powers.

## 2 List of Model Regulatory Powers

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- 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.

## 3 Origin of the Model Regulatory Powers

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### 3.1 Regulatory Powers recommended in the BCR

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

BCR Recommended Regulatory and Auditor Powers	BCR Rec	Model powers
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 (Rec 7)	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

BCR Recommended Regulatory and Auditor Powers	BCR Rec	Model powers
The power to disqualify directors in order to prohibit them from being involved in other building companies <sup>1</sup>	7	N/A

## 3.2 Regulatory Powers not directly recommended in the BCR

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

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

<sup>1</sup> 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.