

BUILDING  
REGULATORY  
REFORM  
**SUMMIT 2018**

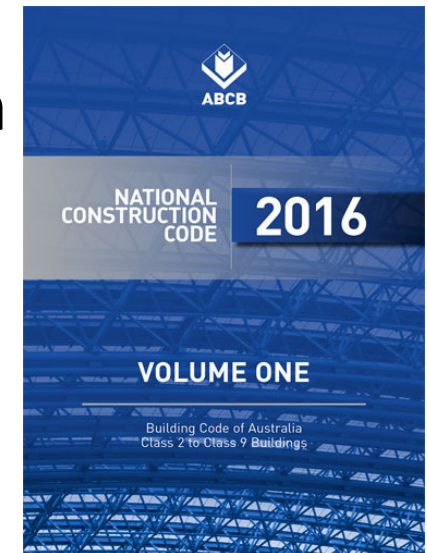
# **Accountability in Certification**

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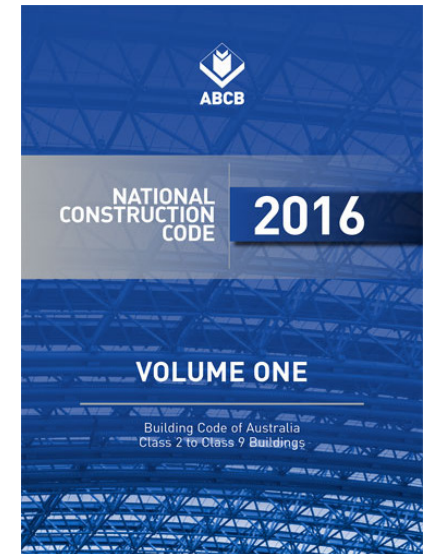
## Background ...

- Built environment impacts our lives
- Buildings must comply with Building Code (BCA)
  - Health, safety and amenity
- BCA compliance is monitored via certification
  - Certification varies across Australia
  - Demonstrating BCA compliance is difficult
- Sharing certification liability is a problem .



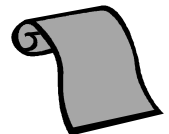
## Purpose of paper ...

- Big picture look at certification of built environment
- Identify 'certification players'
- Identify certification road blocks
- Suggest strategies to improve:
  - Certification
  - Built form.



## Current certification stages ...

- Planning:
  - For building work + use (Development consent)
- Building:
  - For building work to commence
- Occupation:
  - That completed work is 'suitable for occupation'
- Ongoing use:
  - That use accords with certification.



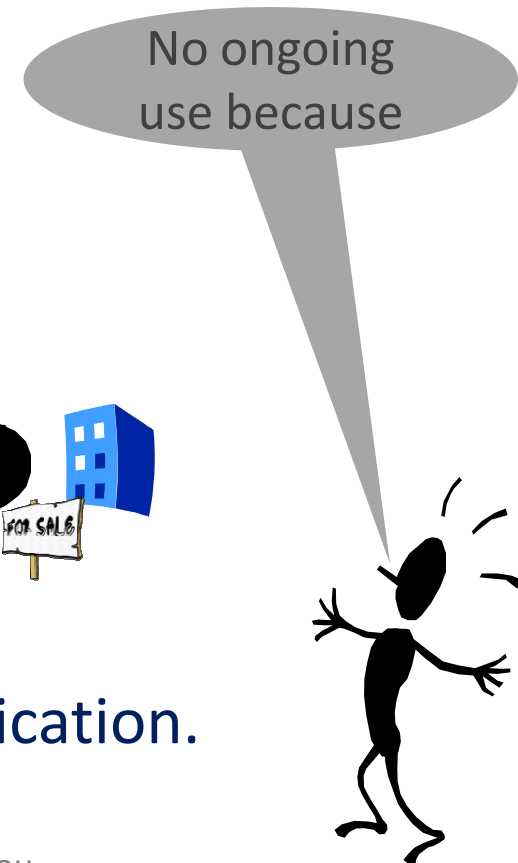
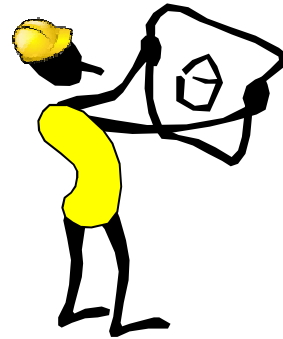
## Planning certification ...



- Controls building in terms of ‘planning impact’
- Requires compliance with BCA
- Whilst not addressed in this paper some issues are:
  - Planning variations across Australia
  - Amending planning approvals to reflect built form
  - Conditions of consent that are unhelpful.

# This paper focusses on certification required for ...

- Building:
  - for proposed work
  - work can commence
- Occupation:
  - for completed work
  - building is suitable for occupation
- Ongoing use:
  - building is safe & use accords with certification.



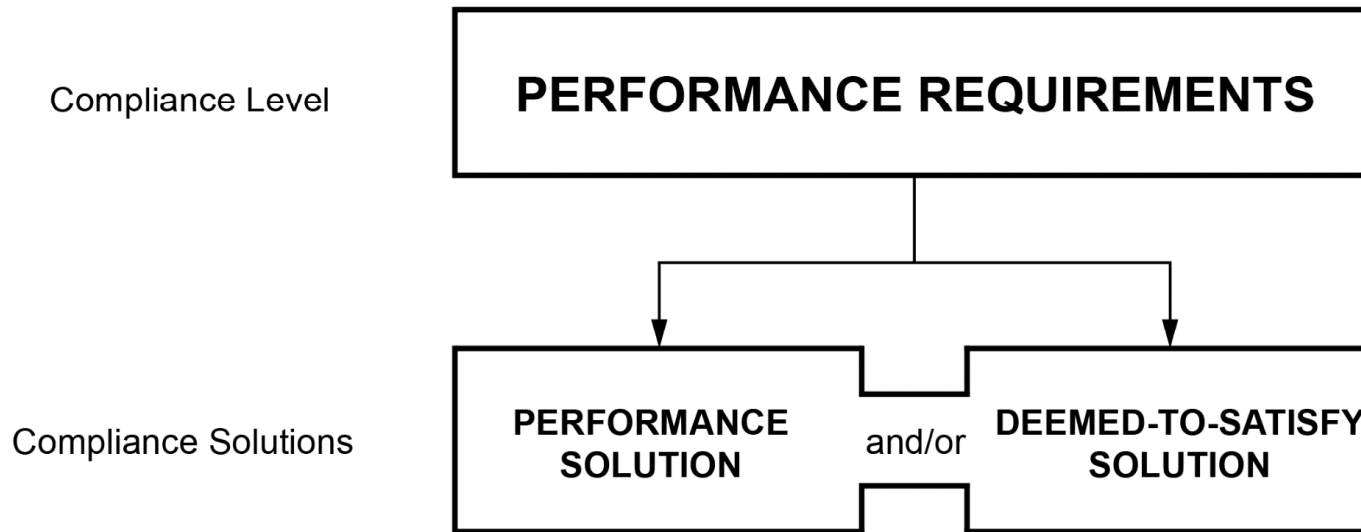
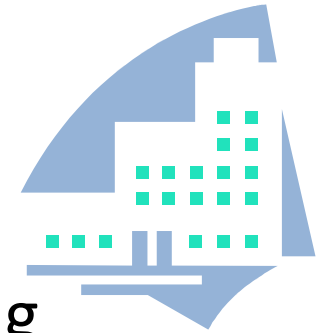
## About certifiers ...

- In this paper a certifier is:
  - Accredited to issue certification; and
  - Liable for matter/s subject to that certification
- Certifiers should include at least:
  - A Principal certifier (formerly Building Surveyor)
  - Design & installation certifiers:
    - Architects & builders
    - Various other consultants.



# BCA ...

- Performance based
- Rules for demonstrating compliance are changing





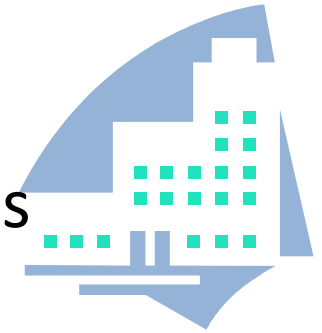
## BCA compliance ...

- How many buildings comply with DTS Solutions
- Who determines BCA compliance prior to:
  - Building ?
  - Occupation ?
  - Ongoing use ?
- Who is liable for each stage .



## Some observations ...

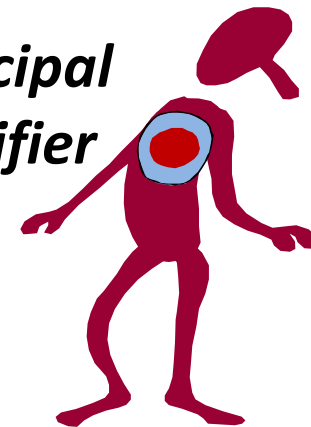
- Buildings don't always comply with DTS Solutions
- These terms are subjective:
  - the ..... is fit for purpose ....
  - this building is suitable for occupation ....
  - generally consistent with ....
  - .... installation appears OK & work can continue ...
- Not many of built environment players are accountable .



## Some observations ...

- Occupation certificate:
  - Certifies building is 'suitable for occupation'
  - Does not certify BCA compliance
- Responsibility for ensuring BCA compliance is unclear
- Building defects litigation is common
- Principal Certifier:
  - invariably 'last man standing'
  - sometimes only insured entity .

***Principal  
Certifier***



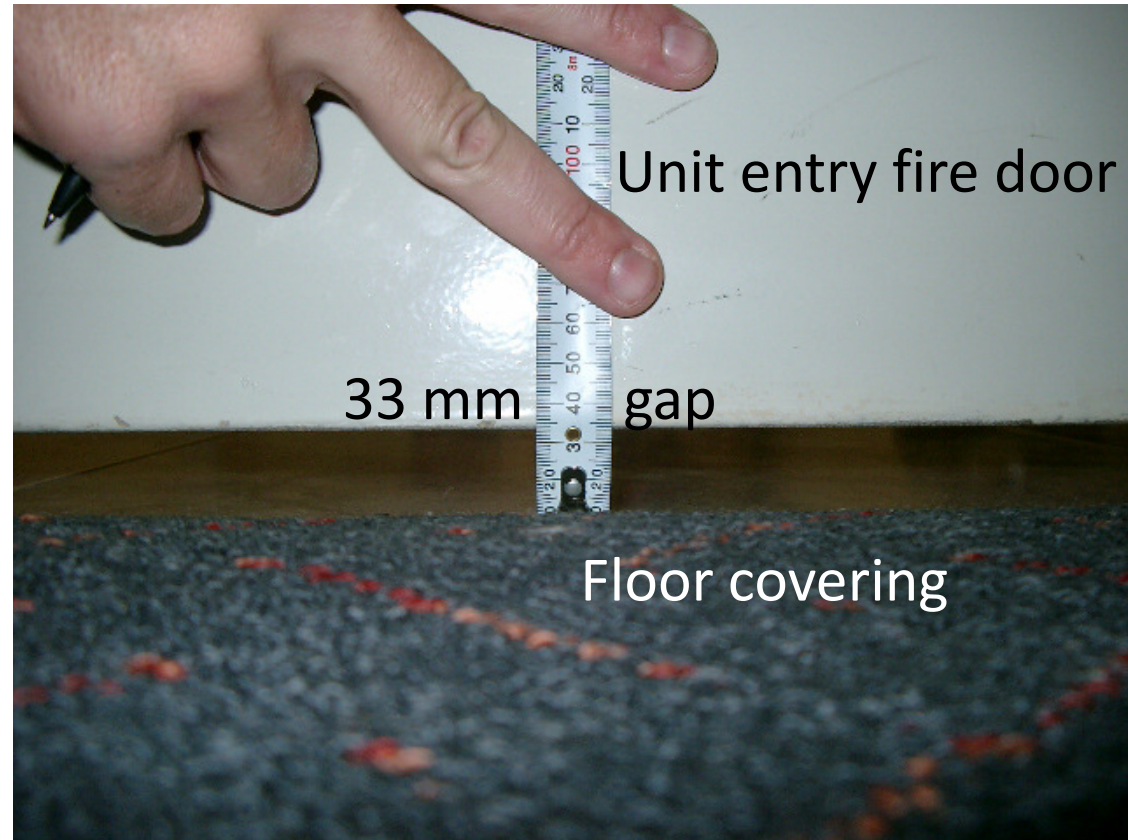
## Vertical separation – No Performance Solution ...

- Who's responsible ?



## Gap under unit entry fire door ...

- Who's responsible ?



## Fire damper not yet installed ...

- Who's responsible ?





# Unprotected opening in external wall ...

- Who's responsible ?



## Fire collar installation insufficient ...

- Who's responsible ?





## In a better world a certifier would ...

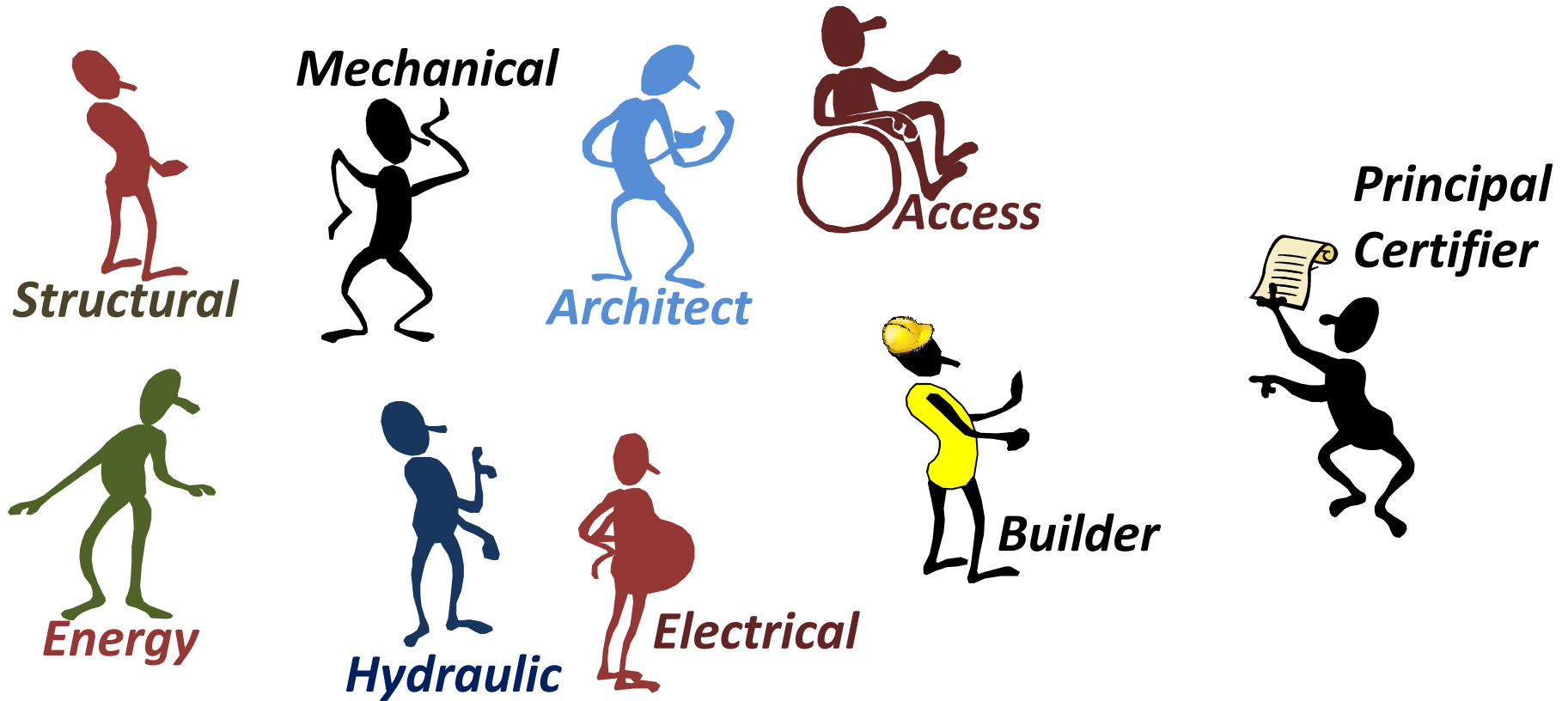
- Be accredited by Govt to issue certification
- Be liable for any matter they certify
- Have professional indemnity insurance
- ‘Enjoy proportionate liability’:
  - i.e. rely on certification by other certifiers .



## Mandatory certification ... in a better world ...

- Certifiers would issue:
  - Design certificates prior to approval to start work
  - Installation certificates prior to approval to occupy
  - ‘Fire safety’ certificates prior to allowing ongoing use
  - ‘Use consistency’ certificates prior to ongoing use
- Principal certifiers would:
  - require & coordinate these certificates
  - rely on these certificates in issuing certification .

# Principal certifier would rely on certificates from ...



# Design certifiers & Principal certifier ...



- Architect C
- Mechanical C
- Electrical C
- Hydraulic C
- Structural C
- Energy C
- Access C
- Principal C

# Installation certifiers & Principal certifier ...



- Architect C
- Mechanical C
- Electrical C
- Hydraulic C
- Structural C
- Energy C
- Access C
- Builder C
- Principal C

## Other players ....

- Raw material suppliers
- Manufactured products suppliers
- Some issues:
  - Source - Australia and overseas
  - Quality of product and certification
  - Accountability for noncomplying product
- These players should be accredited .



## All certifiers 'share the love' (liability) ...



- Design certifiers
- Raw materials certifiers
- Manufacturing certifiers
- Installation certifiers
- Ongoing use certifier
- Principal Certifier

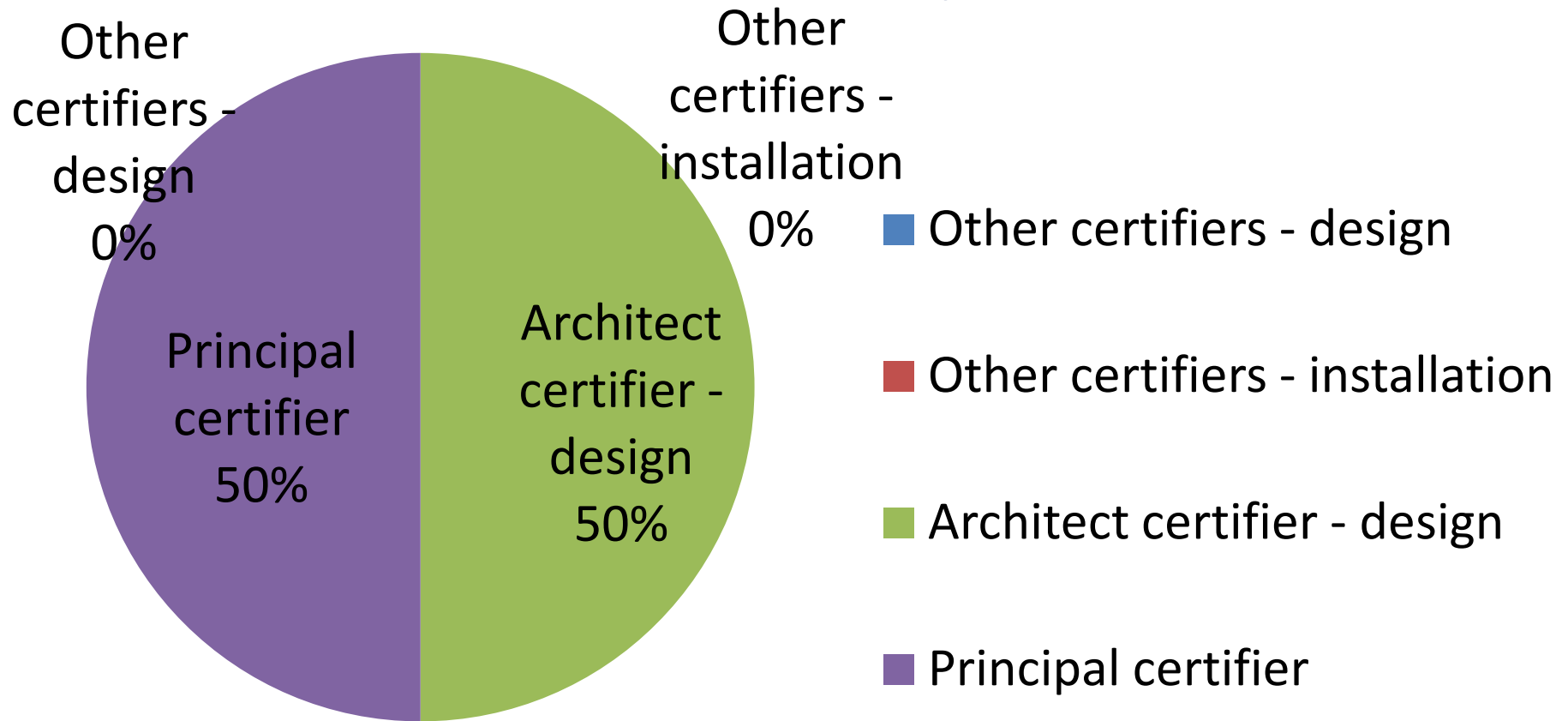
## Example - vertical separation ...

- 800 mm shown on plans
- No Performance Solution
- Principal certifier:
  - didn't identify noncompliance
  - Issues certification for work to start
- Architect is a certifier for design .



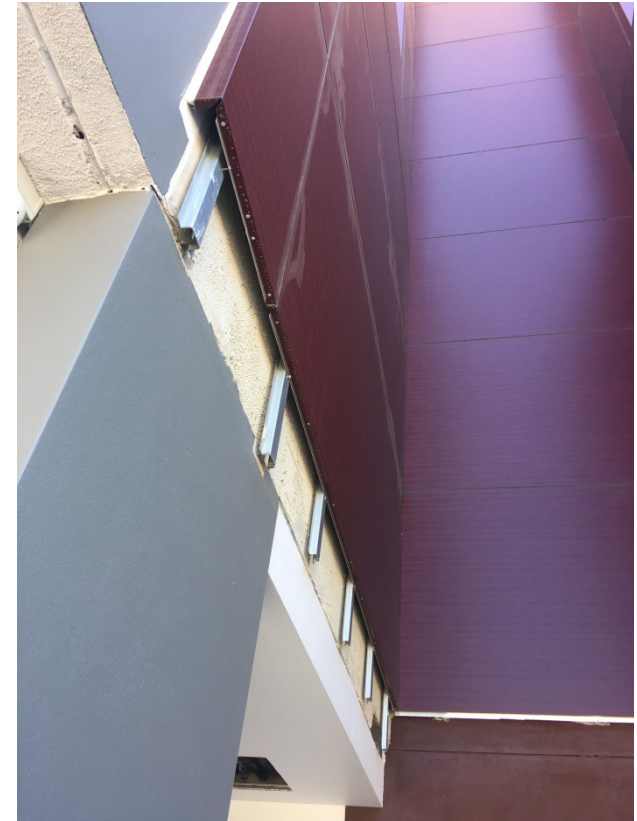


# Outcome of action - vertical separation ...

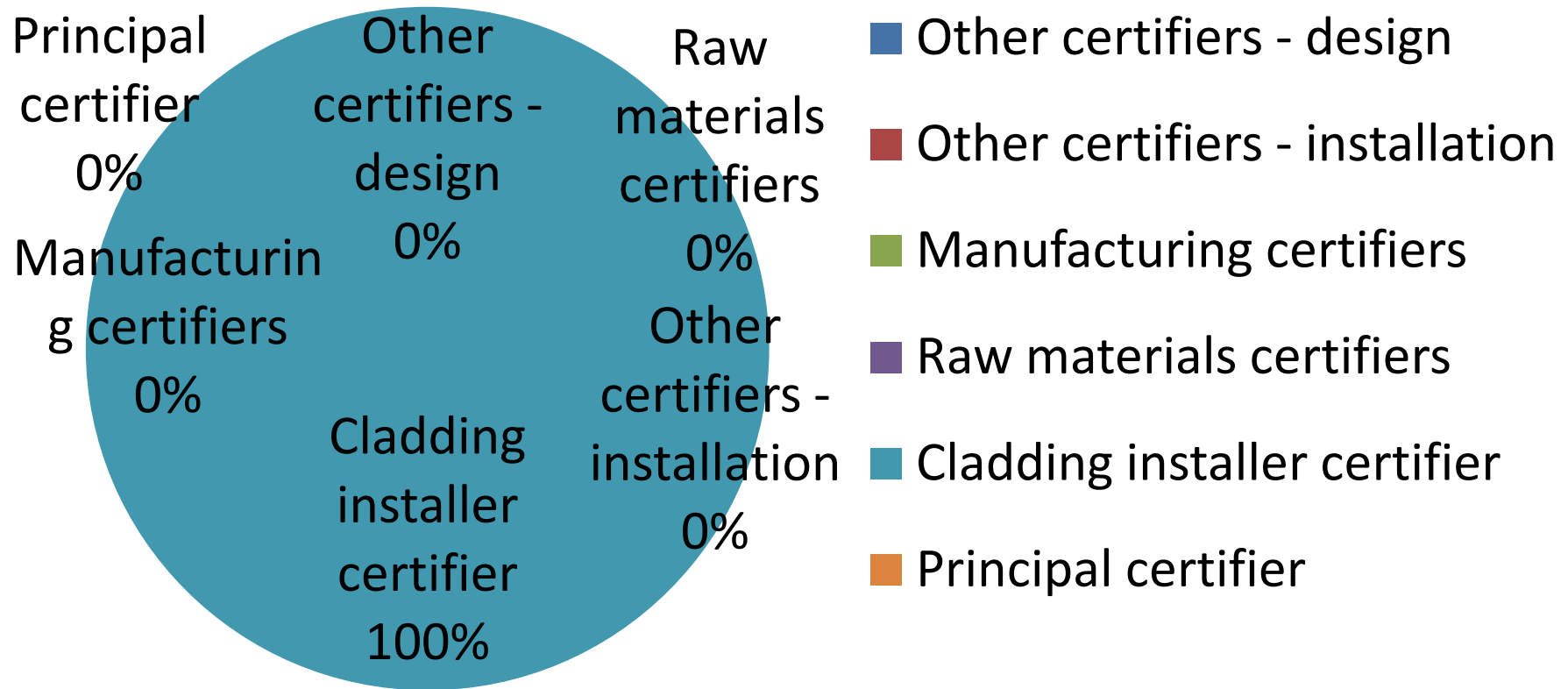


## Example – cladding installation ...

- Cladding designer is a certifier:
  - issues design certificate for cladding
- Cladding installer is a certifier:
  - issues cladding installation certificate
- Principal certifier relies on:
  - cladding design certificate
  - cladding installation certificate
- Installation does not comply



# Outcome of action - external cladding ..



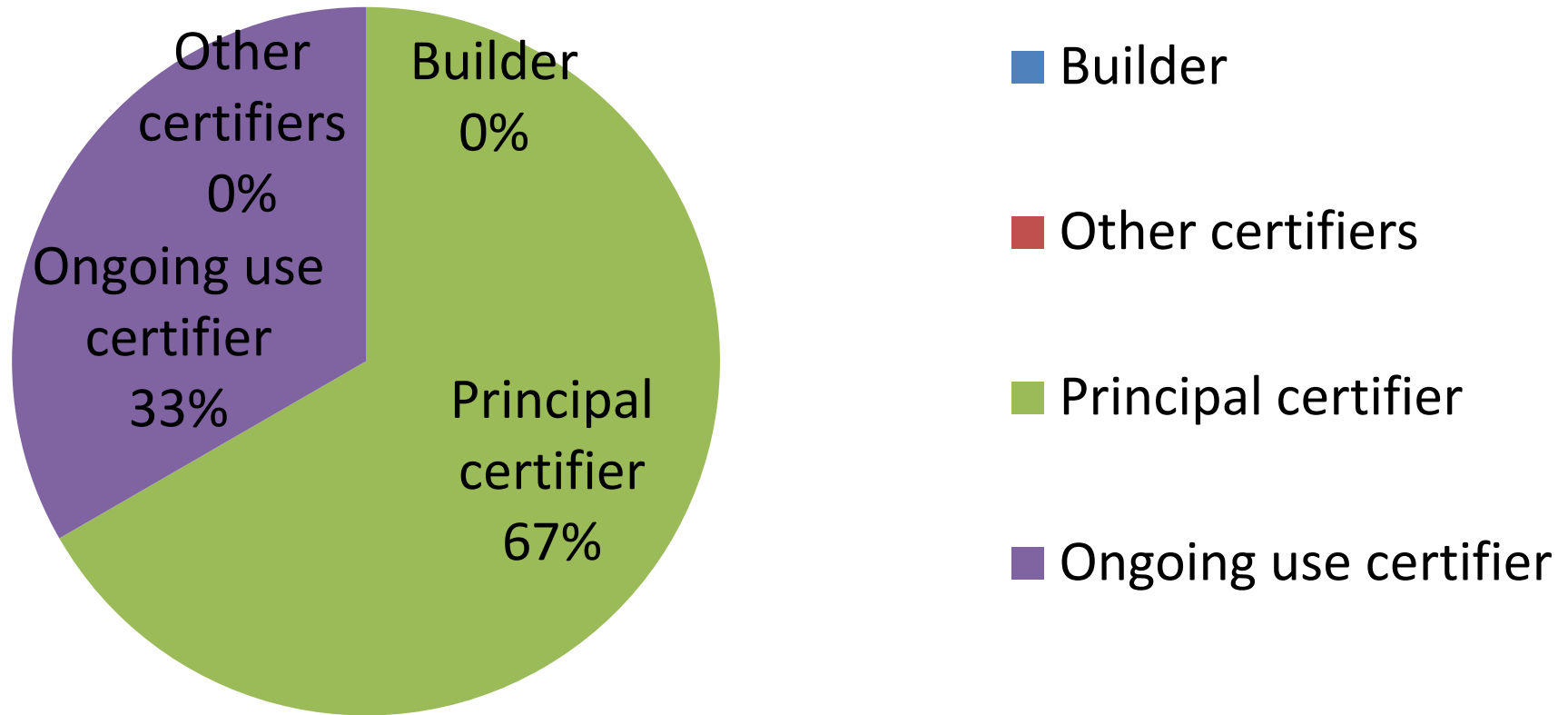
## Example – openings + ongoing use ...

- Builder certifies collars comply but:
  - Is not a certifier
  - Later shuts down company
- Principal certifier:
  - Relies on builders certificate
  - Issues occupation certificate
- Ongoing use certifier:
  - Issues ongoing use certificate

50 % of fire collars are defective



## Outcome – openings + ongoing use ...



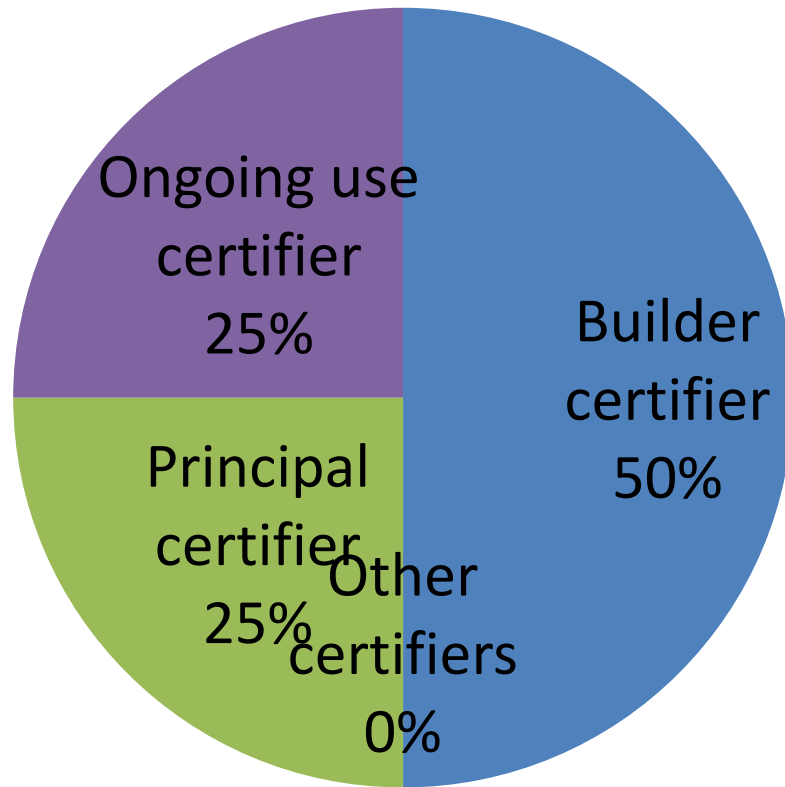
## Example – openings + ongoing use ...

- Builder:
  - certifies collars comply:
  - Is a certifier
- Principal certifier:
  - Relies on builders certificate
  - Issues occupation certificate
- Ongoing use certifier:
  - Issues ongoing use certificate

50 % of fire collars are defective



# Outcome – openings + ongoing use ...



- Builder certifier
- Other certifiers
- Principal certifier
- Ongoing use certifier

## Insurance and missing builders ...

- Inadequate home owners warranty insurance
- Lack of mandatory professional indemnity insurance:
  - Principal certifiers in NSW must carry at least \$1 million
  - Principal certifiers are a prime target for claims
- Builders 'shut down' with relative ease
- Costly & difficult to prove any other entity is liable
- Principal certifiers targeted as they are insured & certify



## Suggestions – accredit main players ...

- Require that all ‘players’ are accredited
- Mandate that Principal certifiers must rely on:
  - Design certificates from certifiers
  - Adequacy certificates from raw materials certifiers
  - Adequacy certificates from manufacturing certifiers
  - Installation certificates from certifiers

## Suggestions – insurance + liability...

- Strengthen mutual recognitions rules:
  - Across Australia and with other countries
- Require that all certifiers:
  - carry professional indemnity insurance
- Require appropriate insurance ‘run-off cover’
- Strengthen/introduce ‘proportionate liability’ legislation

## Suggestions – complex buildings ...

- Determine when constitutes a complex project:
  - Size and use?
  - Impact on community if building is unable to be used?
  - Number/complexity of Performance Solutions?
- Require peer review of such projects prior to:
  - Building work being approved
  - Occupation
  - Ongoing use .

## Suggestions – forms, inspections + training

- Encourage standard reports and checklists
- Improve critical stage inspection process
- Introduce flexibility between:
  - approval and
  - built outcomes (noting that changes always occur onsite)
- Provide more training and courses for certifiers .

## Suggestions – capture ongoing use ...

- Improve process for annual fire safety measures check:
  - Require those responsible to be accredited
  - This is the competent fire safety practitioner in NSW
- Introduce mandatory certification for ongoing use:
  - Consistent with development approval
  - Consistent with Performance Solution .

## Suggestions – various roles ...

- Make roles of all players clear – for example:
  - Principal & design certifiers
  - Raw materials & manufacturing certifiers
  - Installation & ongoing use certifiers
- Make certifiers accountable:
  - This is the compliance certificate in NSW
  - Mandate issuance of these certificates:
    - **Proportionate liability .**



## Suggestions – occupation ...

- Make clear intent of an occupation certificate
  - does suitable for occupation mean:
    - building complies?
    - building is OK to use but may not fully comply?

I can't allow  
occupation because



## Questions ...

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