

Master Builders' response: Draft Building Regulations 2017

Master Builders Association of Victoria (Master Builders) welcomes the opportunity to provide feedback to the *Draft Building Regulations 2017* (the Draft Regulations).

As the peak body representing around 9,000 employers in the Victorian building and construction industry, Master Builders is an authority on the day-to-day challenges that face builders. In particular, we consider ourselves to be in an excellent position to provide feedback on the usability and suitability of the Victorian Building Regulations.

There are a number of measures proposed in the Draft Regulations that will have a positive impact on the building and construction industry, including updates to protection work requirements and steps to address building defects.

However, Master Builders is concerned about the impact a number of these changes will have on consumers. We consider it likely that a number of the proposed changes will result in additional red tape for building, which will most likely result in longer build times and higher building cost for consumers.

Master Builders supports regulatory measures to protect children, especially around pools and spas. With this in mind, the regulatory proposal for all pool and spa safety barriers to comply with AS 1926.1 2012 will be an expensive undertaking for the owners of the estimated 140,000 pools that will need to be upgraded, and is likely to put additional pressure on Council resources and building surveyors alike.

To address the likely resourcing issues associated with the proposed regulation for pool safety barriers, we recommend that the government considers one of two models to ensure pool safety barriers meet modern standards. One option requires pool owners to *immediately upgrade* their safety barriers when their house experiences a transition – such as being sold, renovated or leased to new occupants – and otherwise comply by a set timeframe. To that end, we recommend extending the timeframe for implementation to five years after the regulations are introduced, to 2023. The second model requires pool owners to ensure their safety barriers comply with the *existing* regulations when the property experiences a transition.

Master Builders is also concerned that the proposed additional inspection stages will impose more time and cost on consumers and the building process in Victoria. While in principle we support the additional inspection stages, we outline some pragmatic approaches to implementation of those inspection stages that could be considered to reduce additional burdens on the industry.



While Master Builders supports some additional inspection stages, we consider it to be only one factor to addressing the occurrence of building defects, and that mandatory trades registration is required to make a lasting improvement to the Victorian industry.

Master Builders is concerned that some aspects of these Draft Regulations are not in the interests of consumer protection. In particular, we are concerned by the proposal to allow a person who is exempt from registration to be titled and considered a building practitioner. It is inappropriate for any untrained, unregistered tradesperson or handyman to be able to use “building practitioner” in any form as a title – we cannot understand the policy intention behind this provision as it is likely to mislead consumers and undermine the credibility of trained and registered practitioners. We suggest the provision is deleted in its entirety or amended so that anyone unregistered doing work under \$5000 is NOT entitled to use the title building practitioner.

A number of the proposed changes to the regulations are likely to add cost and time to the building process, some of which may ultimately be passed onto consumers. This concern relates particularly to the additional reporting requirements for building surveyors.

To that end, we make specific comments on:

- 1.1 universal pool and spa barrier requirements;**
- 1.2 additional inspection stages;**
- 1.3 allowing anyone to be called a building practitioner; and**
- 1.4 additional administrative work for building surveyors.**

Master Builders worked closely with the Department of Environment, Water, Land and Planning (DEWLP) in developing the draft *Building Regulations (Registration and Qualifications)* (2015 Draft) and is disappointed that a number of the amendments that had previously been agreed to were not translated into this version of the Draft Regulations.

Master Builders is concerned that the new regulations have missed a rare opportunity to make a meaningful and lasting change to builder registration. To that end, we make detailed comments on:

- 2.1 builder registration categories: low, medium and unlimited;**
- 2.2 specialised categories of registration;**
- 2.3 mandatory trades registration; and**
- 2.4 prescribed qualifications.**

As was proposed in the 2015 Draft, Master Builders recommends replacing the existing commercial and domestic builder registration categories with:

- Builder (unlimited);
- Builder (medium rise); and
- Builder (low rise).

This change would enable Victoria’s registration system to more closely align with educational outcomes and skills required to carry out building work, and also align the system with the registration schemes in many other jurisdictions, which do not distinguish between commercial and domestic in registration.

Master Builders also considers that there has been a missed opportunity to reform the Domestic Building Limited and Commercial Building Limited categories so that they reflect the individuals who are the most competent to carry out certain types of building work.

The scopes of work that are listed in the *Building Interim Regulations 2017* and consequently in the *Building Amendment Regulations 2017* categorise work randomly and inconsistently, and include:

- *activities* such as ‘construction of shade structures’;
- *objects*, such as ‘garages, carports’; and
- *individuals*, such as ‘carpenter’ and ‘waterproofers’.

To resolve this, Master Builders recommends the categories are amended to only refer to the tradesperson most competent to carry out certain types of building work.

Once this has been resolved, Master Builders considers that there is also an opportunity to address the absence of mandatory trades registration. Currently, the trades categories listed do not require mandatory registration, and there are only around 2,000 tradespeople registered in Victoria, compared to 40,000 in New South Wales (NSW) and 46,000 in Queensland (QLD). Master Builders recommends that a regulatory amendment is made to require a selection of structural trades to require mandatory registration.

Master Builders has expressed strong concern with the inclusion of ‘prescribed qualifications’ in the legislation. While we support building practitioners being required to demonstrate adequate practical experience or have completed a recognised qualification in order to become a registered builder, we consider it completely impractical to have the list of qualifications managed through a regulatory process. In order for the Victorian Building Authority (VBA) to develop and maintain the list, the details of which will change frequently, Master Builders recommends a legislative amendment is made to the *Building Act 1993* to refer to ‘described’ qualifications, rather than ‘prescribed’.

We also make a series of additional comments on other questions outlined in the *Regulatory Impact Statement (RIS)* and points we would like to raise on behalf of builders.

Master Builders notes that our comments contained in this submission are in response to the changes listed in the three information packs provided with the Draft Regulations: *Strengthened Regulations; Updated Regulations* and *Reduced and Revoked Regulations*. A key reason that our comments are limited to these changes is because the draft numbering of the regulations is completely different to the number of the existing regulations. This change has made it incredibly difficult to compare the existing regulations with the Draft Regulations. Following on from this, Master Builders wants to note that the absence of comment on a draft regulation does not denote Master Builders’ support for a draft regulation.

To that end, we are concerned that the change in numbering will create a sizable burden for the building industry. It will take time and resources for building practitioners and surveyors to learn and adjust to the new set of regulations. It will also require industry training organisations to completely overhaul written materials and courses to reflect the new numbering system. We recommend that the numbering is not changed, rather that it remains consistent with the existing regulations..

1. Consumer protection

1.1 Universal pool and spa barrier requirements

The Draft Regulations propose introducing universal requirements for swimming pool and spa barriers. It is proposed that all swimming pools and spas would be required to have a four-sided isolation barrier that complies with the most recent Australian standard.

Master Builders has examined the RIS *Part B: Design, construction, completion/ use and other topics* (RIS Part B) and understands that between 1 January 2000 and 9 November 2016, 28 children aged between 0 to 12 years drowned in residential swimming pools or spas in Victoria. Of the 28:

- in all instances lack of adult supervision was noted by the coroner;
- in five instances there was no safety barrier at all;
- in eight instances the safety barrier gate was left open;
- in seven instances the gate or barrier was faulty;
- in five instances the children accessed the pool from a neighbouring property; and
- two deaths involved a climbing point allowing access to the swimming pool.

In the RIS Part B, the department has assumed that the risk of a drowning death in 20 out of the 28 cases could have been prevented if a compliant, four sided isolation barrier had been installed.

Master Builders believes in regulating steps to protect children.

We support measures to bring all Victorian swimming pool fences up to modern standards. As such, we propose the government adopt one of the following two models.

Option one: bring all pool fences in line with the most recent standard AS 1926.1 – 2012

The first option is a two-tiered approach to manage the timing of implementing fences to be upgraded to uniform, isolation barrier upgrade requirements.

The first tier is that a pool safety barrier must be immediately upgraded to comply with the regulations when a property goes through a transition. This could include when a property with a pool:

- is renovated;
- is put up for sale; or
- has a change of lease.

All the pool safety barriers would then be required to be upgraded within a period of five years from when the regulations come into effect. According to the RIS Part B, there will be around 140,000 pools that will need to be upgraded so that they comply with the latest standard. As these works are not exempt under the regulations, they will also require building permits. This is an additional impost for councils.

While the planning department will not be responsible for pool compliance, evidence of the long delays in decision making denotes a general lack of capacity within Council to keep up with existing workloads. Additional resources from councils will be required to inspect pool fences. Inner city, outer suburban and regional councils all struggle to reach decisions on planning permits within the statutory 60 day timeframe. For example, Yarra City Council took on average 117 days to reach a decision on a planning application, Whittlesea Council takes on average 113 days to reach a decision. These long delays indicate a lack of resources, and that they are not in a position to take on additional inspections en masse. So that councils are able to conduct the inspections without disrupting the usual workload, we consider it appropriate to extend the timeframe to implement the upgrade requirements to five years after the regulations are introduced, in 2023.

We note that there is an anomaly in how consistently the regulations are applied.

The Draft Regulations propose that:

- all pools / spas constructed prior to 1 May 2010 require safety barriers to comply to AS 1926.1 – 2012;
- all pools / spas constructed from the 1 May 2013 require safety barriers to comply with AS 1926.1 – 2012; and
- all pools / spas constructed between 1 May 2010 and 1 May 2013 can have safety barriers that comply with AS 1926.1 – 2007.

For the sake of consistency, Master Builders recommends that the regulations are amended to require all pools to comply with AS 1926.1 – 2012 Swimming Pool Safety by the specified date.

In addition, Master Builders questions the validity of requiring a ‘four-sided’ fence. This rudimentary allocation of the number of sides a pool fence is permitted stifles innovation in design. For example, if the back garden of a property is small, a triangular shaped pool may be the most appropriate design. In this instance, a three sided safety barrier is the most suitable. However, if a back garden is big enough for a traditional rectangular pool, a four safety barrier would be most appropriate. In both instances, a *continuous safety barrier* is most suitable. We therefore recommend that the standard is updated to require a ‘continuous safety barrier’ rather than a ‘four-sided fence’.

Option 2: additional steps to ensure pools comply with requirements when property goes through transition

This option proposes the introduction of additional steps to ensure that pools are made to comply with the existing required standard, which depends on the year they were built.

This model proposes that pool safety barriers are upgraded to comply with the existing regulations when a property goes through a transition. This could include when a property with a pool:

- is renovated;
- is put up for sale; or
- has a change of lease.

This option would still be in the interest of protecting children by ensuring pools are of a good standard, but would minimise the cost otherwise placed on 140,000 consumers to upgrade their fences to the most recent standard.

Safety barrier maintenance

Under both proposed scenarios, Master Builders supports measures to encourage fences to be regularly maintained. This would prevent pool safety barriers becoming faulty due to lack of maintenance.

To that end, we support pool owners being asked to tick a box when paying annual council rates, to confirm that their pool fence has undergone maintenance in the last twelve months. If a random audit identifies that there has been no maintenance, the government could consider taking action against the owner.

Intended outcome: changed behaviour

Master Builders supports measures that will ultimately change the behaviour of pool owners and occupiers to prevent any more children drowning in swimming pools. Master Builders considers change to liability to be an important facet of these regulatory changes. However, we consider it extremely important any change to liabilities relating to pool fences results in the responsibility – and liability – resting with the most appropriate individuals.

To that end, we strongly recommend that the government funds a broad-reaching consumer awareness campaign to ensure that all owners are aware of the dangers associated with pool safety barriers (including having climbable items near the pool safety barriers like BBQs) and of the regulatory changes made.

Recommendations:

Master Builders recommends that the requirement for a ‘four-sided’ fence is amended to require a ‘continuous’ safety barrier. This will mean that other shaped pools, such as triangular pools, will be accounted for and consumers will have greater flexibility in pool design.

Master Builders recommends the department adopts one of two options to bring all pool and spa safety barriers up to modern standards. One, that Victorian pool owners be immediately required to ensure that their pool safety barriers comply with AS 1926.1 – 2012 when the property experiences a transition, including sale of property, change of lease or renovation. All other pool and spa safety barriers must be upgraded by their owners within the given year prescribed in the regulations.

If this option is pursued, Master Builders recommends that the regulations are amended to require all pools to comply with AS 1926.1 – 2012 Swimming Pool Safety by 2023.

The second option for the government to consider requires that Victorian pool owners ensure that their pool safety barrier complies with the *existing* standards when the property experiences a transition, including sale of property, change of lease or renovation.

Master Builders recommends that the government fund a consumer awareness campaign to ensure consumers are aware of the risks associated with pools and to promote the regulatory changes.

Master Builders recommends that any change to liability ensures that the responsibility is with appropriate people for appropriated outcomes.

1.2 Additional inspection stages

The RIS explores a range of options to address concerns about poor standard of building work which could lead to defects – and imposing minimum building and safety standards on building work. Master Builders supports the government’s policy goal that all new building work should comply with minimum standards.

Master Builders acknowledges that:

“Implementing minimum building standards in individual building projects requires a building control regime designed to prevent non compliant building work being carried out, and, when it has, requires noncompliant work to be brought into compliance.” (RIS Part B, page 63)

With this in mind, currently there are four mandatory inspection stages which are:

- before placing a footing;
- before pouring an in situ reinforced concrete member nominated by a building surveyor;
- completion of framework; and
- completion of building work.

Master Builders supports these inspection stages as being important to the integrity of construction and the building process, and we agree with the department’s view that:

‘Market forces are inadequate for the purpose of ensuring that building practitioners will always produce compliant building work. Hence the need for a person with the relevant statutory authority and sufficient technical expertise – the RBS– to independently assess building work for compliance.’ (Part B p. 68)

Despite the existing four mandatory inspection stages, Master Builders is aware building defects continue to go undetected. Some of these defects have the likely potential to undermine the structural integrity of the building, such as waterproofing defects.

The additional inspection stages proposed in the Draft Regulations are:

- before covering walls, floors or ceilings, for the purpose of checking that fire resistance levels comply with the Building Code and that the structural integrity of the framework has been retained as a result of subsequent work (for example electrical and plumbing work);
- before covering or waterproofing in wet areas (as defined in the National Construction Code); and
- completion of any external drainage/ stormwater.

We acknowledge the justification given in the RIS about why these particular elements of a building are targeted, including:

- in order for the building work to comply with requirements associated with waterproofing, fire resistance and stormwater drainage occurs after the frame is completed;
- fire-rated walls and waterproofing work on a building can be covered within a short space of time;
- if these features are non compliant and there are undiscovered defects, this can have catastrophic impacts for building owners and occupants (if these elements fail as a result of substandard building work); and
- these areas are a common cause of a dispute or complaint in relation to building work.

In principle we can see benefit to the mandatory inspection stages, especially as an interim solution to detecting non-compliant building work while the investigation into the application of mandatory trade registration is underway. While we support the proposed three new mandatory notification stages, they will increase the total number of mandatory notifications from four to seven. This will have consequences for build time, additional pressure on resources and building surveyors to complete the inspections and is likely to add cost to the build process.

To minimise the impact these additional inspection stages will have on the building process and cost –but still meet the policy objective of quality checking building work – the government could consider taking a pragmatic approach to inspections, for example, in relation to large scale projects, such as multistorey apartment blocks.

An approach that could be considered, for example, could require building surveyors to randomly select and inspect one or two apartments on each level of a multistorey apartment development. If in this process an issue was identified with the waterproofing, for example, it would then trigger a requirement for the neighbouring apartments to also undergo inspection. However, if the two apartments that were inspected on the level are compliant, then the rest will be assumed to be compliant. Any such approach would need to be developed in consultation with stakeholders to determine its efficiency and effectiveness.

Stormwater inspection

Master Builders seeks confirmation that the stormwater drain inspection will occur at the storm water connection stage, not before the entire storm water system is covered. Currently the RBS signs off on the stormwater drain plan, and a certified plumber certifies that work has been completed according to the plan– there is no need to require inspection before the drains are

covered. In addition to unnecessarily doubling up on work, an inspection of the system before it is covered will add financial cost and time delays to the building process. To achieve a streamlined process that ensures the quality of the stormwater drain connection, Master Builders therefore recommends that the stormwater inspection should occur at the legal point of discharge.

Fire resistance inspection

Master Builders seeks clarification of the intent of this inspection and consequent detail on how this will be carried out by surveyors. For example, if the intent is to examine the structural integrity of the building, this would already be covered off at the frame inspection stage. If, however, the intention is to test the fire resistance of the wall, Master Builders questions when and how this inspection will occur.

We ask for clarity about the intent of the inspection, and will work with the government to develop a practical solution to achieve the objective.

Mandatory trades registration

While Master Builders in principle supports the introduction of additional inspection stages, we consider this to be only one factor in addressing building defects. Master Builders considers the introduction of mandatory trade registration as a practical and widely beneficial long-term solution to addressing this issue and improving the standard of building work.

For example, a mandatory waterproofing inspection of a shower recess may satisfy a building surveyor that the work has been completed to the required standards – but the shower will then be worked on by other trades, such as plasters and tilers. The proceeding work may be carried out by unsuitable and inadequately trained tradespeople. If the trades are particularly unskilled, it may result in disruption of the shower's membrane, which will ultimately effect the waterproofing. Comments made by many members indicate this is not an unusual occurrence. To that end, this scenario also flags that pragmatic sign off should not impose additional liability on building surveyors, as they are only signing off on what they can see at the time of the inspection, not what may happen to the area in the future. So, Master Builders notes that introduction of this mandatory inspection may not entirely resolve waterproofing concerns.

Therefore, while the inspection may be a useful step, it is not the only regulatory step that needs to be taken to address the issue of building defects. Currently there are only 2,000 tradespeople who are registered in Victoria, compared to 40,000 in New South Wales and 46,000 in Queensland. This means that a lot of the building work in Victoria is undertaken by people who neither have the training nor skills to do the job, and because they are not registered, cannot be held accountable for the shortcomings of their work. Mandatory trade registration in Victoria would not only address quality shortcomings in the industry, but give legitimacy and reputation to trade qualification and make a trade more attractive as a career path.

Recommendations

In recognition of the strain on resources that additional inspections will place on the industry and surveyors, the government could consider adopting a pragmatic approach to mandatory inspections – for example in relation to multistorey apartment buildings.

Given the RBS signs off on the storm water drain plan, and the plumber certifies that work has been completed according to the plan – there is no need to require additional inspection. Master Builders recommends that the connection stage is the most practical point for a stormwater drain inspection to occur.

Master Builders seeks clarification of the intent of the fire resistance inspection and consequent detail on how this will be carried out by surveyors.

Master Builders can see the merit of mandatory inspection of specific stages, such as waterproofing inspection, however, this is only part of the solution to address defective building work. We strongly recommend that the government implement mandatory trades registration to improve the overall standard of trades and building work.

1.3 Allowing anyone to be called a building practitioner

Master Builders strongly opposes the proposal to allow a person that engages in low value domestic building work who is exempt from registration to be titled and considered a building practitioner, **Part 19– Building Practitioners, Div 7, regs 263, 264, 265.**

It is inappropriate for any untrained, unregistered tradesperson or handyman to be able to use “building practitioner” in any form as a title. We cannot understand the policy intention behind this provision as it is likely to mislead consumers and undermines the credibility of trained and registered practitioners. We suggest the provision is deleted in its entirety or amended so that anyone unregistered doing work under \$5000 is NOT entitled to use the title building practitioner.

If however, our previous suggestion is not accepted, then we submit that the provision should be changed to enable people who are unregistered but who are doing work under \$5000 to use the title “unregistered building practitioner” – but this is not our preferred approach because the use of the term building practitioner should be one reserved for trained and registered practitioners where possible.

Recommendations

Master Builders recommends the deletion of **Part 19– Building Practitioners, Div 7, regs 263, 264, 265**, so that persons who are exempt from registration will be legally known as *unregistered building practitioners*.

Alternatively, we submit that the provision should be changed to enable people who are unregistered but who are doing work under \$5000 to use the title “unregistered building practitioner”.

1.4 Additional administrative work for RBS

RIS questions: Building permit requirements – RIS PART B Chapter B1.1

Additional information to be provided to the VBA (costs)

Is the estimate increase in time taken to record and forward information to VBA for RBSs that enter this information manually be considered reasonable?

Minor changes – building permit applications

By requiring this information at the application stage for a building permit, do you consider that this will reduce delay costs for processing a building permit and determining compliance with other regulatory compliance?

Master Builders is concerned about the impact that a number of the proposed changes to the regulations will have on the cost and timing of the building process. This concern relates particularly to the additional reporting requirements for building surveyors. We are concerned that some of these may ultimately be passed onto the consumer. These include:

- **part 5 Div 5 reg 55– Information the RBS must give to VBA;**
- **part 5 Div 7 regs 64,65,66– Time limits for building work and permits; and**
- **part 8 Div 1 regs 111,112, 113– Changes to protection work**

Although Master Builders understands the policy rationale for these regulations, they will impose additional paperwork on the building surveyor, the cost of which is likely to be passed on to the consumer.

To address this, Master Builders recommends that the government provide additional resources to support surveyors, including developing software that will assist with the organisation and developing of the additional paperwork requirements.

With regard specifically to **Part 8 Div 1 regs 111,112, 113 – Changes to protection work**, we recommend the government produce a clear practice note on the changes, to guide building surveyors and builders. In particular, we recommend the practice note include multiple examples of when protection work is required, and to include a definition of ‘significant’.

Recommendations

Master Builders recommends that the government provide additional resources to support surveyors, including developing software that will assist with the organisation and developing of the additional paperwork requirements.

With regard specifically to Part 8 Div 1 regs 111,112, 113 – Changes to protection work, Master Builders recommends that the government produces clear practice note on the changes to guide building surveyors and builders. In particular, we recommend the practice note provide multiple examples of when protection work is required, and to include a definition of ‘significant’.

2. Lost opportunities

2.1 Categories of builder registration: low, medium, high

RIS Question: Building practitioners – RIS Part C Chapter C1.2

Is there an industry need for any categories or classes of registration which are not included in the current regulations?

Why or why not? What are the potential costs and benefits of changing categories and classes of registration? For examples, is there any merit to registering practitioners in their domestic builder (unlimited) class, according to building height?

Master Builders is concerned that the new regulations have missed a rare opportunity to make a meaningful and lasting change to registration categories in the building industry.

Currently in Victoria, registration is divided into commercial builders and residential builders. This is a confusing and impractical way of registering builders, and is inconsistent with other Australian jurisdictions that do not distinguish between domestic and commercial in registration. These two current categories reflect the *end use* of the building rather than the *type of work required to build* the building.

Registration should reflect the skills required to be registered in a category; for example, if you are a licensed plumber, a consumer can be confident that your skills match the work they will pay you to do. Similarly, in building, it makes sense to be registered to perform a type of work.

The current arrangements in Victoria create issues and confusion for regional and metropolitan builders. For example, in regional areas it is common for a doctor's surgery to be an extension of their home. If the doctor wants building work done to the surgery and to an adjoining room in the house, a builder with a commercial registration can only do the work in the surgery because it is a commercial premise but not the room adjoining, because it is used for residential purposes. This limits the choice consumers have of builders to do the work, which is exacerbated in regional areas where choice is limited.

The impact of the registration system is also felt by metropolitan builders and consumers. In Victoria, the same registration is required to build a ten storey apartment building as it is to build a single storey house. However, a different category of registration is required to build a ten storey office block.

It is becoming increasingly common for medium to high-rise apartment buildings to have office or retail space on the ground floor. Under the current arrangements in Victoria, two different registrations are required to build the exact same building.

Master Builders worked closely with DEWLP to progress the 2015 Draft Regulations to a good point. In particular, builder registration had been drafted so that commercial and residential registration was replaced with:

- Builder (unlimited);
- Builder (medium rise); and
- Builder (low rise).

Organising registration into these categories makes sense. In addition to addressing some of the problems outlined above, it would enable Victoria's registration system to more closely align with educational outcomes and skills required to carry out building work, and also align the system with the registration schemes in many other jurisdictions, which do not distinguish between commercial and domestic in registration.

A lot of work went into this, and Master Builders supported the 2015 Draft Regulations. We strongly recommend that the government revisits the 2015 Draft, and adopts the three tiered categories of builder registration: low rise, medium rise and unlimited.

Recommendation

Master Builders recommends that the government revisit the 2015 Draft Regulations, and adopt the three categories of builder registration: low rise, medium rise and unlimited to reflect the type of work being carried out.

2.2 Classes of registration – specialised work

Master Builders considers that there has been a missed opportunity to reform the Domestic Building Limited and Commercial Building Limited categories to reflect the individuals who are the most competent to carry out certain types of building work. We have long been advocating for this reform.

Since the publication of the Draft Regulations, the department has introduced into the *Building Interim Regulations 2017* and consequently in the *Building Amendment Regulations 2017* specific sub categories within the 'limited' builder classes. According to the RIS (Part C page 4), these are aimed to formalise administrative arrangements already used by the VBA and be the basis for defining the exact scope of works that are allowed under each subcategory, aiming to improve consistency across registered practitioners and allow consumers to easily confirm what work a practitioner is allowed to do.

Master Builders welcomes this as the first step to reforming registration, but strongly believes it does not go far enough.

The scope of work that is listed in the *Building Interim Regulations 2017* and consequently in the *Building Amendment Regulations 2017* categorises work randomly and inconsistently, and includes:

- *Activities* such as 'construction of shade structures';
- *Objects*, such as 'garages, carports'; and
- *Individuals*, such as 'carpenters' and 'waterproofers'.

Master Builders does not support this type of random categorisation, especially in Victoria's modern building and construction regulations. In order to adequately regulate the work being carried out, the categories should clearly only refer to the tradesperson most competent to carry out certain types of building work.

2.3 Mandatory trades registration

Once these categories are clearly defined, and the redundant categories such as ‘garages, carports’ are removed, Master Builders strongly supports a select number of the categories requiring mandatory registration to carry out the work. Currently, the trade categories listed do not require mandatory registration, and there are only around 2,000 tradespeople registered in Victoria, compared to 40,000 in New South Wales and 46,000 in Queensland.

Given we are experiencing – and will continue to experience – substantial population growth expected to require the construction of 2.2 million homes by 2051¹, we must ensure that our workforce is skilled appropriately. The best way to achieve this is through the registration of trades. Among the many benefits, a mandatory system of registration will:

- protect consumers by improving the accountability and quality of the industry;
- improve the industry by ensuring that quality is achieved and minimum skills are obtained;
- allow trends in work and complaints to be monitored and dealt with;
- enhance the careers of tradespeople by ensuring there is a strong reputation and skills level in the industry; and
- equip trades people with the skills and qualifications to match the jobs for the future of Victoria.

As a way of organising the categories, Master Builders recommends focusing on some key structural trades like the New Zealand model of trade categories as a basis. The licensed trade categories in New Zealand include:

- carpentry;
- roofing;
- external plastering;
- brick and blocklaying; and
- foundations.

Additional categories that we suggest are:

- waterproofing – being a major and important issue in our industry;
- demolishing – given not only the safety issues with structural integrity but also asbestos;
- plastering – it should not be limited to external but should include internal. Given the fire rating issues, we suggest a new category of ‘walls systems’ is created so that all types of products are covered like cladding;
- swimming pools and spas (we understand this already requires registration even below \$5,000);
- restumping and re-blocking (if not covered by foundations category in New Zealand); and
- footings and slabs (if not covered by foundations category in New Zealand).

Recommendations

¹ Victoria in Future 2016: Population and household projections to 2051, Department of Environment, Land, Water and

Master Builders recommends that the scope of work categories are updated to reflect the individuals who are the most competent to carry out certain types of building work.

Master Builders recommends that a regulatory amendment is made to select number of structural trades to require mandatory registration in order to carry out work.

2.4 Prescribed qualifications

Master Builders is concerned with regulations **part 19 – 256 Prescribed qualifications and classes of building practitioner.**

The RIS explores a number of options for builder registration, including:

- prescribed qualification and experience;
- prescribed information related to character; and
- prescribed professional standards.

Master Builders supports building practitioners being required to demonstrate adequate practical experience or completing a recognised qualification in order to become a registered builder.

Master Builders strongly supports the inclusion of the CPC40110 Certification IV in Building and Construction (Building) in the list of qualifications, as it is a practical qualification that is well suited to many builders, and is completed by many builders each year. There is evidence that Victorians prefer to undertake the Certificate IV compared to other more academic qualifications, such as the CPC50210 Diploma Building and Construction (Building). According to the most recent data from national body National Centre for Vocational Education Research (NCVER), in 2015 in Victoria 9,832 students enrolled in the Certificate IV, almost double the 3,401 students who enrolled in the Diploma in the same year².

As a Registered Training Organisation, Master Builders is of the view that the Certificate IV in Building and Construction adequately covers the knowledge requirements for a Domestic Builder constructing Class 1 and 10 structures. The Diploma of Building and Construction, on the other hand, contains a number of core compulsory units of competency that we do not consider as relevant to the types of structures generally constructed by Domestic Builders.

Given our anecdotal understanding that a Certificate IV is more practical for practitioners and evidence that is a more popular course, we recommend that the government include it in any formal lists of qualifications relating to building and construction work.

Master Builders strongly advocates against the *Building Act 1993* referring to *prescribed* qualifications. We consider this to make little sense. Given the ever changing nature of training course titles and codes, it is unrealistic to hope that the prescribed list will ever be relevant and up-to-date.

² NCVER <https://va.ncver.edu.au/SASVisualAnalyticsViewer/>

This will have serious implications for practitioners seeking registration. For example, a practitioner may have begun a qualification that was prescribed, but by the time the practitioner completes the qualification, the course name or number may have been changed and the regulations not been updated to reflect the change. This would mean that the completed course is technically no longer considered a formally 'prescribed' course.

Master Builders consider that the source of this very concerning issue is reference to the term 'prescribed' qualification at s170 (1) of the *Building Act 1993*. This reference means that the qualifications are 'prescribed' in the regulations and consequently, any changes or updates to the qualifications will have to go through a formal update of the regulations, which is not a straightforward process.

It is preferable – and makes more sense – to require the VBA to keep a list of the qualifications, that can be updated on the VBA website. Being managed by the regulator, this list can be easily kept up-to-date and will not have to go through parliamentary processes to be changed.

To resolve this, Master Builders strongly recommends amending the building legislation to replace references to 'prescribed' qualifications with more flexible wording like 'described' qualifications. This would remove the requirement for the qualifications to be managed through the regulatory process, and allow the list to be developed and maintained by the VBA.

This would benefit building practitioners, consumers, training bodies and reduce the burden on the regulatory system.

Recommendations

Master Builders recommends that the government include Certificate IV Building and Construction (Building) in any formal lists of qualifications relating to building and construction work.

Master Builders strongly recommends that a minor legislative amendment is made to the *Building Act 1993* to replace references to 'prescribed' qualifications with more flexible wording like 'described' qualifications. This would remove the requirement for qualifications to be managed through the regulatory process, and allow the list to be developed and maintained by the VBA.

3. Additional comments

In addition to the points raised above, Master Builders has a number of additional comments to make.

Master Builders notes that these comments are in response to the changes listed in the three information packs provided with the Draft Regulations *Strengthened Regulations; Updated Regulations* and *Reduced and Revoked Regulations*. A key reason for this is the change in the numbering of the regulations, which has made it incredibly difficult to compare the existing regulations with the Draft Regulations.

Following on from this, Master Builders wants noted that absence of comment on a specific regulation from us does not denote our support for that regulation.

To that end, we are concerned that the change in numbering will create an additional burden on the industry in learning the new regulations. It will take time for builders and surveyors to adjust to the new set of regulations and fully understand changes. It will also require industry training organisations to completely overhaul written materials and courses to reflect the new numbering system. **We recommend that the numbering is not changed, rather that it remains consistent with the existing regulations.**

Part 1 – Preliminary

Div 1, reg 3: Master Builders queries the commencement date.

Part 5 – Building permits

RIS question: B1.1 Should any hard copy submission be required when an application is lodged electronically? Why or why not?

Master Builders considers it reasonable and practical that only a soft copy submission be required when lodging an application electronically. It is reasonable that *in addition* to the electronic submission, a hard copy can be requested.

To that end, we recommend an **amendment to div 2, Reg 33**. In the description of why the regulation is proposed, to reduce the regulatory burden, reference is made to requiring ‘only one hard copy’ of the documents. Master Builders seeks an amendment that when copies are submitted electronically it is up to the Building Surveyors discretion if hard copies are required.

It is considered that if copies of documents are forwarded in different formats (ie electronic and hard copy) then there is more opportunity for approving non-compliant building work if the documents are not consistent. Therefore, it should be left to the Building Surveyor to make the determination on a need to basis when hard copies are required when an application is submitted electronically.

In addition, Master Builders seeks **clarification of day count required in Div 4, Reg 47**. This regulation prescribes the time period for the RBS to forward a building permit and approved

documentation to the applicant. Master Builders seeks clarification about whether this refers to *work days* or *calendar days*.

Master Builders queries **Div 3, Reg 44: maximum fees for report and consent**. We recommend an incremental increase in fees over a specified period, so that its impact is not as dramatic on the building industry and consumer and prevents worsening the impact of housing affordability.

Master Builders recommends that **Div 4, reg 49 2) a) and b)** are updated to require a person in charge *'take all reasonable steps to ensure....'*

Part 6 – Siting

RIS question: should balconies and carport be permitted as allowable encroachments into setbacks into the same way as pergolas, porches and verandas?

Master Builders recommends that balconies less than 800mm high should be able to be constructed between an external wall and side or rear boundary.

To that end, we recommend an **amendment to Div 2, Reg 79**. This regulation provides distance for minimum setbacks from side or rear boundary. In regulating the setback of buildings from side and rear boundaries, low–level decks constructed between an external wall and a side boundary require report and consent from the council. Master Builders previously recommended a clause be included that allows decks less than 800mm high to be constructed between an external wall and side or rear boundary. Consideration should be made to allow concessions for low–level decks to project closer to the boundary.

Some other changes to Part 6 that we recommend include:

- **Reg 89– Correction required – Overshadowing of recreational private open space 4) a)** should be amended to read *"75% of the recreational private open space; ~~and or~~"*, to be consistent with planning regulations
- **Reg 95– correction required – fences and solar access to existing north–facing habitable room windows 1. A) iii)** should be amended to read *"~~will be situated below the height of the fence being constructed~~"* to be consistent with planning regulations.

In addition, in the description of why the 2017 Regulation is proposed, it should be updated to read:

"This Regulation reflects Standards A13 (cl 54.04–4 of the Victorian Planning Provisions). It protects the energy efficiency of existing dwellings which receive passive solar heating. Aspects of this Regulation are transferred to a definition ('north facing windows') and does not apply to existing windows, which will be situated above the ~~eaves of the proposed dwelling fence.~~"

- **Reg 96 4.) A) – Correction required – Fences and overshadowing of recreational private open space** should be amended to read *"75% of the recreational private open space; ~~and or~~"*, to be consistent with planning regulations.

Part 9 – Building work

Div 1, Reg 124: Assessment Method – Evidence of suitability – certificate from professional engineer or other qualified person: Master Builders seeks clarification on this regulation, the way it is currently worded is confusing.

Part 11 – Designation of special areas for building work

Reg 55 – Clarification sought: Master Builders notes the requirement has been adjusted so that it no longer applies for Class 5, 6, 7, 8 or Class 9b. We seek clarification about whether these classes will be dealt with under another regulation

Part 13– Inspection notices and orders

- **Division 1, Reg 169 (Prescribed mandatory notification stages) Guidance required:** In addition to the comments provided earlier on this regulation, Master Builders considers that there will need to be clear guidance provide to the industry on these inspection stages, most practically through the development of a Practice Note. We would be open to providing input into the development of this note.
- **Division 1, Reg 169 E) amendment query:** If it is considered necessary to include the regulation relating to the waterproofing stage (169 e) why does it not also refer to balconies?

Part 14 – Applications for occupancy permit

- **Div 2, Reg 189– Clarification required:** This regulation refers to the time within which the RBS must decide application to amend occupancy permit. However, Master Builder seeks clarification about whether this should refer to the municipal building surveyor instead, as the municipal surveyor otherwise carries out this role.
- **Div 3, 190–** Master Builders recommends that an option to ‘delete if inapplicable’ be added to the Place of entertainment section of Form 19: Occupancy Permit
- **Div 3, 192: To provide clarity to the consumer, we recommend wording is added to the bottom of the form add wording from the Building Act 1993 – section 46 to the bottom of the form:**

Effect of occupancy permit

- (1) *An occupancy permit under this Division is evidence that the building or part of a building to which it applies is suitable for occupation.*
- (2) *An occupancy permit under this Division is not evidence that the building or part of a building to which it applies complies with this Act or the building regulations.*

- **Div 5, 198: To provide clarity to the consumer, we recommend wording is added to the bottom of the form, from the Building Act 1993 – section 38:**
Certificate of final inspection

- (1) *The relevant building surveyor must issue a certificate of final inspection on completion of the inspection following the final mandatory notification stage of building work if–*
- (a) *an occupancy permit is not required for the building work; and*
 - (b) *all directions given under this Part in respect of the building work have been complied with.*
- (2) *A certificate of final inspection is not evidence that the building or building work concerned complies with this Act or the building regulations.*

Part 15 – Places of public entertainment

- **Reg 208: prescribed place of public entertainment:** Master Builders queries the specific inclusion of Kardinia Oval, Kardinia Park as a prescribed place of entertainment.

Part 20– Appeals and reviews

- **Reg 266– Clarification of day count required:** This regulation prescribed the time period for decisions of the Building Appeals Board after an appeal is made, Master Builders seeks clarification about whether this refers to *work days* or *calendar days*.

Part 22 – Exemptions

- **Reg 275– Correction required:** the Regulation refers to Schedule 3, however, it should refer to Schedule 4– exemptions.
- **Reg 1807, 1808, 1809 – justification sought:** Master Builders does not consider it necessary that these regulations are removed from the regulations, and are concerned that they may be removed. We consider that they will continue to play an important role and should remain.

Part 23 – Transitional provisions

- **Reg 280 – clarification sought:** Once this regulation expires, where will the regulation about prescribed fees be located?