

MASTERS OF OUR INDUSTRY

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Regulations Officer, Courts Policy
Strategic Policy and Legislation
Department of Justice
GPO Box 4356
MELBOURNE VIC 3000

Dear Sir/Madam

Thank you for the opportunity to provide input into proposed changes to the *Victorian Civil and Administrative Tribunal (Fees) Regulations 2013*.

The Master Builders Association of Victoria is the peak body representing employers in Victoria's building and construction industry. Our membership consists of more than 9500 builders, subcontractors, manufacturers/suppliers and students. More than 50 per cent of our members are small businesses with an annual turnover of \$2 million or less.

Accessible, efficient and cost-effective civil justice is central to the aims of the Victorian Civil and Administrative Tribunal (VCAT) and Master Builders understands the need to balance this with cost increases necessary to reflect the number and complexity of changes of matters now being heard.

In circumstances where disputes do progress to VCAT, we are concerned that many of the existing processes, including unsustainably low cost fees for an applicant to lodge a case, operate to support consumers only. Recourse is not often available for builders when consumers or community groups make vexatious claims, which can add unnecessary costs and delays to building projects. A significant proportion of builders in Victoria are small businesses and, in the current difficult economic environment where builders' margins are declining, the cost and time imposts of defending against such claims can have more profound impact on the viability of their business.

Master Builders supports the proposed cost increases, noting they may discourage vexatious claims being lodged through VCAT. Reviewing claims prior to hearing the matter could also assist in identifying vexatious claims before they proceed.

In circumstances where vexatious claims do arise, VCAT's s109 discretion to award costs has traditionally been underutilised and greater allocation of costs or the introduction of a mandatory costs order for decisions should be introduced.

We also believe that the current domestic building disputes resolution process under Building Advice and Conciliation Victoria, jointly administered by Consumer Affairs

Victoria and the Building Commission, fails to meet the needs of builders and consumers.

The process involves onsite conciliation with consent of both the builder and the consumer, and a technical report from a Building Commission Inspector as to the existence of a defect. However, the Inspector's findings are not authoritative and whilst recommendations may be binding on the builder who can face Building Commission action, the consumer is not bound by the decision. If there is no agreement the only recourse is through the VCAT.

Defending a VCAT dispute where there is only an allegation of defect(s) can run into the tens of thousands of dollars for a builder, resulting in few disputes being resolved in a timely, conclusive or cost-effective manner. Furthermore, the ability for consumers to withhold final payment in these circumstances can have serious consequences for those in our industry where turnover is of vital importance.

Victoria should have a similar process to New South Wales with appropriately qualified inspectors who have a formal connection to the new building authority permitted to make quick and binding determinations following onsite inspections. They should also have the power to compel consumers to make the final payment being withheld where work is deemed complete or non-defective.

This would not always prevent the matter progressing to VCAT, but it will allow the appropriately qualified inspector's report to be admitted as evidence, which does not currently occur.

It would also be beneficial for VCAT to review the current mediation structure to expediate the processes involved.

Quick, cost effective resolution of disputes will help solve problems before they escalate and reduce demand on VCAT, freeing up time and government resources.

If have any questions regarding this matter, please contact Tim Salathiel, Policy and Communications Manager, on (03) 9411 4515.

Yours sincerely



Brian Welch
Executive Director