

MASTERS OF OUR INDUSTRY

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Justice Greg Garde AO RFD
President
Victorian Civil and Administrative Tribunal (VCAT)
President's Chambers
55 King Street
MELBOURNE VIC 3000

Dear Justice Garde

VCAT Legislation Reform Project

Thank you for the opportunity to provide input regarding potential changes to the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, to enable enactments or regulations.

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.

Fair and efficient justice is a central issue for our members who build the homes, offices, workplaces, schools, hospitals and other social infrastructure that our community relies on.

Master Builders recognises the significant role VCAT plays in Victoria's building and construction industry in determining a wide range of planning matters and supports measures such as the Legislation Reform Project that seek to ensure the organisation meets modern day practices.

Planning and development activity is a vital component in Victoria's economy with a record number of permit decisions made in 2010-11, valued at \$23.2 billion. Master Builders believes the VCAT Act should best reflect the need for such matters put before the tribunal to be resolved in a timely and consistent manner.

The *Planning Permit Activity in Victoria* Annual Report 2010-11 shows a record number of applications are being lodged to decision makers. The report also shows the median timeframe for a decision to be made was up by 4.1 per cent to 76 days and that the number of applications determined within the statutory timeframe decreased to just 62 per cent of all applications.

This situation is worse in metropolitan Melbourne, with the median timeframe for decisions up 2.4 per cent to 84 days and just 58 per cent of applications determined within the statutory timeframe. As you would be aware, this slowdown in decisions being made within statutory timeframes can lead to an increase in applications seeking VCAT

resolutions. In addition, the percentage of applications subject to review at VCAT also increased in the metropolitan area to 9 per cent. This resulted in the tribunal being involved in more planning applications than any single council in Victoria, again demonstrating the significant role VCAT plays in the planning system and also in the building and construction industry.

Master Builders applauds announcements by the State Government to invest \$1 million to address case backlogs and also reintroduce the Major Cases List to minimise delays in decisions. Nonetheless, eighty per cent of cases on the Planning and Environment List at February 2012 had been waiting at least six months to be heard. This represents a significant barrier for our industry.

It has been estimated that the cost to business arising from planning delays alone in 2009-10 was \$183 million. It is therefore imperative the VCAT Act best facilitates timely and consistent decisions with regards to these planning matters.

These delays are resulting in many builders in Victoria, a significant proportion of whom are small businesses, facing increasing costs which is of concern given that the tribunal was originally established as a low-cost option.

Reducing delays in the planning process would ease the burden on the construction sector and those cases approved will provide a much-needed boost to jobs in the current economic environment.

Similarly, a mandatory costs order for decisions should also be introduced to prevent frivolous claims. Although the VCAT has at s109 the discretion to award costs, this is usually only limited to cases over \$20,000.

Master Builders would also encourage you to consider options that would only allow people genuinely impacted by a planning matter to place objections and be heard in matters before the tribunal. Our members report an increase in the number of cases where objectors who are not materially impacted by a proposal are seeking involvement in VCAT matters. This adds delays to the system and can also add significant costs to a proposal, which can result in significant cost increases, reduced investment and job opportunities and a negative effect on housing affordability, all of which are considerable issues facing our community during these current economic conditions.

Finally, the Act needs to ensure that experienced and legally qualified Members are used to provide consistency in decisions.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brian Welch', with a stylized, flowing script.

Brian Welch
Executive Director