



Building Designers  
Association Victoria

24 July 2019

Building Stronger Foundations consultation  
Regulatory Policy, Better Regulation Division  
Department of Finance, Services and Innovation  
2-24 Rawson Place  
Haymarket NSW 2000  
[BCR@finance.nsw.gov.au](mailto:BCR@finance.nsw.gov.au)

Dear Sir/Madam

The Building Designers Association of Victoria (BDAV) welcomes the opportunity provided by the Office of Fair Trading to provide a submission to the Building Stronger Foundations Discussion Paper (“discussion paper”) dated June 2019.

BDAV provides a response to this discussion paper because even though the majority of our 2,000 members are Victorian, the association has building designer members in every state and territory, and also with so many members based on the NSW border and performing work in multiple jurisdictions being impacted it was important that their views are lodged.

The BDAV supports many of the recommendations of the *Shergold Weir Building Confidence Report* (Shergold Weir) and commend the NSW Government for consulting on implementing the recommendations.

The specific questions highlighted in the discussion paper are enclosed in this correspondence, however we also provide the following for consideration in regard to the Shergold Weir recommendations that directly related to building designers.

### **Recommendation 1 – Registration of building practitioners**

Building surveyors/certifiers are under extreme pressure due to the risk and responsibilities defined in their roles. This risk and responsibility needs to be shared by all registered building practitioners who contribute to the process, to ensure a sustainable future for the building industry.

The only exception to this should be true owner-builders performing building work on domestic buildings. The necessary controls need to be put in place to ensure that this does not become a back door for unregistered practitioners to continue to work and make an uneven playing field for the rest of the industry.

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In Victoria there is a registration system that addresses the majority of the professions reference in the Shergold Weir; and legislation has recently passed to develop a trade registration as well as the practitioners listed in Shergold Weir.

On this basis, BDAV supports the registration of all building practitioners in conjunction with the requirement to hold professional indemnity insurance and maintaining continuing professional development (Shergold Weir Recommendation 3 – BMF are not progressing at this stage).

As there is such a gap between those jurisdictions with and without the registration of the practitioners involved in the design, construction and maintenance of buildings, the BDAV believes that each state/territory needs to ascertain the registration model which works for their regulatory environment. Rather than reinvent the wheel, each jurisdiction should assess the advantages/disadvantages of each model that exists around the country and implement the best solution for their needs.

BDAV has long held the opinion that non-tiered registration is essential, and that a tiered system would add unnecessary burden to practitioners who are attempting to expand their scope of works. However, if as proposed in Shergold Weir the architects were to introduce tiered registration categories, we would reconsider this opinion and possibly welcome the introduction of a tier registration for building designers/draftspersons in Victoria.

BDAV agrees that to allow an even playing field registered architects should be held responsible to the same regulator as all other practitioners. A perfect case in point is the recent Lacrosse Fire in Victoria, which has seen those practitioners answerable to the Victorian Building Authority facing inquiries while the Architects Registration Board of Victoria opted not to have an inquiry of the registered architect when the VBA put forward the recommendation.

### **Recommendation 2 – Consistent requirements for registration**

BDAV supports national consistency so far as it supports the mobility of building designers/draftspersons, assisting both the competitiveness of labour markets for building designers and the geographical spread of the work they can be involved in.

We support measures to ensure the highest educational standard is adhered to in any nationally consistent registration system.

However, we do support national consistency at the expense of quality.

Due to the inconsistencies in current jurisdictions regimes of building design/draftsperson registration, BDAV's recommends first a system of registration be implemented in each state/territory. Once these systems are in place than clearly documented pathways be mapped to allow mobility, with the eventual goal that all jurisdictions will have the same standards and an even playing field would exist across the country.

BDAV could not support a system at the cost of a restriction of trade on practitioners who currently are able to practice. For example, New South Wales regulatory environment prohibits

the design, documentation and certificate of some building types, whereas such a restriction does not exist in Victoria.

### **Recommendation 13 – Responsibility of design practitioner**

As cited in the PA Tilley, SL McFallan and SN Tucker report *Design and documentation quality and its impact on construction process*, September 1999, the “quality of design and documentation has a major influence on the overall performance and efficiency of construction projects. Poor design and documentation quality is a major cause of construction process inefficiency, leading directly to delays, rework and variations, and contributing to increases in project time and cost, for both client and contractors alike.”

Quality building permit documentation is essential and in response to the Victorian Auditor-General’s report *Compliance with Building Permits*, 2011, the BDAV has been advocating and providing continuing professional development in multiple formats on improving building permit documentation. In 2012, 669 registrants were exposed to this information, and since 2013 the current full-day workshop format, another 200 members and non-members have committed to improving their skills in this arena.

The introduction of continuing professional development for all registered building practitioners responsible for documentation would assist in exposing more practitioners to this type of activity.

From an insurance perspective, design certification is implied with a Victorian registered building practitioner recording their registered building practitioner number on documentation. Therefore BDAV would support the introduction of a design compliance certificate.

The BDAV would welcome the chance to discuss these matters with the NSW Government further.

Yours sincerely

Kate Bell  
Chief Executive Officer

Encl

## **BDAV submission to Building Stronger Foundations: Discussion Paper**

### **1. What kinds of plans should be signed off and declared by a statutory declaration?**

The certification of plans by the various building designers that prepared them will not improve the quality of the documentation or ensure compliance.

Building Regulations inherently include a requirement that the documents submitted for a building permit comply with the building regulations, Australian standards, BCA etc.

Any further certification is unlikely to improve current document quality or lead to greater compliance or better built outcomes.

Building Designers require a registration system that incorporates a compulsory requirement for professional indemnity insurance, this combined with an appropriately resourced regulatory body that scrutinises, enforces, and disciplines practitioners will ensure that designers and documenters take greater care and responsibility for their documentation.

The registration and insurance requirements should be further underpinned by a requirement for compulsory continuing professional development to ensure that building designers maintain the currency of knowledge and stay abreast of regulation and material use reforms etc.

### **2. Could plans be statutorily declared at the CC/CDC stages? If not, why not?**

Statutory declarations at either stage will not improve compliance for the reasons stated above.

A better solution would be to separate the development approval process and the building (construction) approval processes.

Development assessment should be made by the local statutory authority (Municipal).

Construction assessments should be made by a certifier (either Municipal or Private) once a development has been approved.

The combination of the approval streams is antiquated and has led to an apparent 'streamlining' of the documentation and approval processes, but it has in fact led to a reduction of construction documentation to cover both streams more efficiently (i.e. cheaply).

Certification of either documentation stage will have no effect.

### **3. To what extent should changes to plans be submitted to the regulator?**

Variations to plans that alter a performance solution or a building regulation require submission to the regulator/certifier, plans that vary building or regulatory performance or compliance require permit amendments, these amended permits will assist in ensuring the builder makes no changes 'on the fly' and that the regulator/certifier are aware of any change in the performance of the building solution beforehand.

### **4. Should a statutory declaration accompany all variations to plans or only major variations?**

Any statutory declaration should accompany any variation that changes the buildings assessed and permitted performance solution.

### **5. Are there any obstacles that would prevent a person from submitting a statutory declaration for variations? If so, what are those obstacles?**

No obstacles, only the issues of construction delay and cost impost.

### **6. What other options could be workable if there are variations to plans?**

None.

### **7. How could the modifications process be made simpler and more robust?**

Amended permits with construction only permitted to be in accord with those amended permits, this with a more robust process of mandatory inspections to ensure that the builder is building only the amended permitted design would ensure that construction outcomes will accord with the intended approved design.

### **8. How should plans be provided to, or accessed by, the Building Commissioner?**

Electronic copies of plans should be made available to the Commissioner via the Municipal authority if and when required.



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**9. What types of documents should 'building designers' provide to the Building Commissioner?**

Site Plans, Demolition Plans, Floor Plans, Elevations, Sections, Specifications and any other details necessary to demonstrate compliance with the Act, Regulations, Australian Standards, and the BCA.

**10. In what circumstances would it be difficult to document performance solutions and their compliance with the BCA?**

None.

**11. Would a performance solution report be valuable as part of this process? If not, why not?**

Performance solution reports should be prepared by the design team for all building solutions that are not deemed to satisfy a solution, these should be approved by the authority, referral authorities and the regulator/certifier before a construction certificate is issued.

**12. Are there any other methods of documenting performance solutions and their compliance that should be considered?**

None

**13. What would the process for declaring that a building complies with its plans look like?**

All documents that were relied upon in determining a building solution should be referenced by the permit or construction certificate, these should be stamped and strictly complied with.

A process of mandatory inspection and a final certificate should be issued prior to use or occupation. Any variation should be incorporated into an amended certificate process.

**14. What kind of role should builders play in declaring final building work?**

Builders could be asked to sign a compliance certificate indicating the building complies with its permit or construction certificate prior to occupancy.

**15. Which builders involved in building work should be responsible for signing off on buildings?**

All builders should sign off on their respective work/trade.

**16. Are there any circumstances which would make it difficult for builders to declare that buildings are constructed in accordance with their plans? If so, what are those circumstances?**

No, builders are required to ensure compliance with the permit or construction certificate, it is beholden upon them to ensure trades carry out work strictly in accordance with the permit.

**17. Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?**

Building designers who are registered in Victorian under the Victorian Building Authority; and Queensland with an Open Licence would be a suitable regime. While Tasmania has restrictions on their “open” category it would not be appropriate given building designers can obtain the appropriate knowledge and experience to work unrestricted.

BDAV has been in discussions with the Professional Standards Council about the introduction of a building designer accreditation scheme which could address this requirement across the country and will continue to work with the Council to this end.

**18. What occupations or specific activities are involved in ‘building design’ and should be in scope for the registration scheme?**

As per 22.

**19. What should be the minimum requirements for a registration scheme?**

- Knowledge and experience must be assessed.
- Compulsory CPD to maintain skills is essential.
- PI insurance.



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## 20. What form of insurance should be mandatory for 'building designers'? Why?

Professional indemnity. It covers for the loss arising due to professional negligence i.e. design related issues.

## 21. What kinds of minimum requirements should be prescribed for the insurance policy (for example, value, length of cover, etc.)?

The Victorian model<sup>1</sup> outlined in the gazetted Ministerial Order would be appropriate.

The Queensland model<sup>2</sup> is perceived by some to be less robust, with limits required starting from only \$500,000 cover.

## 22. What skills should be mandatory for 'building designers'?

Ability to:

- Advise building owners and/or builders on building materials and construction methods
- Apply knowledge of the requirements of the relevant building legislation, regulations and Australian standards to the design (including plans and specifications) of all classes of building and types of construction
- Brief and coordinate a range of secondary consultants (such as engineers and heating, ventilation and air conditioning (HVAC) consultants) to provide specialist advice and recommendations on the design of all types of building and their components
- Enable builders to prepare tenders for building projects
- Ensure a project's design, specifications and documentation consider energy rating reports.
- Ensure a project's design, specifications, and documentation consider Bushfire
- Initiate applications for building permits and liaise with the Building Surveyor/Certifier to produce the documentation needed for the permit application
- Prepare documentation on behalf of clients to Prepare plans and related documentation for the design and construction of all types of building, for use in relation to building permits. Documentation must include sufficient detail for obtaining building permits and for tender and contractual use
- Undertake project administration and monitoring for projects that the practitioner has documented, on behalf of clients

<sup>1</sup> [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0017/18233/Ministerial-Order-Building-Practitioners-Insurance.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0017/18233/Ministerial-Order-Building-Practitioners-Insurance.pdf)

<sup>2</sup> <https://www.qbcc.qld.gov.au/contractor-insurance-requirements/professional-indemnity-insurance>



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### **23. Should specific qualification(s) be required?**

Dependent on the type of designer different qualification requirements should be required.

In the case of building designers, that is non-architects, an open licence to design any works should have a minimum of an Advanced Diploma level qualification. We will defer to architects and engineer representative to provide feedback to their professionals.

The qualification should address in no particular order:

- Design sustainable buildings
- Select construction materials for building projects
- Present architectural designs
- Apply structural and construction technology to the design of residential buildings
- Undertake site survey and analysis to inform design process
- Produce preliminary and working drawings for residential buildings
- Undertake complex architectural projects
- Conduct, interpret and apply a Bushfire Attack Level (BAL) assessment
- Comply with relevant legislation in the design of residential buildings
- Provide design solutions for residential and commercial buildings
- Prepare to work safely in the construction industry
- Apply structural and construction technology to the design of commercial buildings
- Apply project risk management techniques
- Comply with relevant legislation in the design of commercial buildings
- Integrate digital applications into architectural workflows
- Design safe buildings
- Integrate services layout into design documentation
- Produce preliminary and working drawings for commercial buildings
- Manage architectural project administration

All this and more is addressed with the 22477VIC Advanced Diploma of Building Design (Architectural) which does not map or allow transition to any of the existing qualification in the national training package, including the proposed qualifications that are currently in consultation via the industry skills council.

### **24. Should there be other pre-requisites for registration?**

Minimum experience in the industry should be required. While the Victorian current legislation specifies two (2) years, in practice it takes a practitioner at least 5 years to gain all the necessary experience.

To demonstrate experience:

- Provide a CV/resume that shows the minimum practical experience undertaking activities associated with the class of registration. This experience must have been supervised by a person registered in the relevant category; and be obtained within a specified time frame from the application of registration.
- Provide a portfolio of documentation, including detailed plans and specifications for a minimum of a minimum of three building designs that you produced and that demonstrate your capacity to design buildings in compliance with building legislation and Australian standards. Of the three projects:
  - at least one must be a Class 1 building as defined in the NCC
  - at least one must be in Classes 2–9 and of Type A or B Construction, as defined in the NCC.

**25. What powers should be provided to the regulator to support and enforce compliance by registered ‘building designers’?**

The powers to audit, inspect and prosecute.

**26. Which categories of building practitioners should owe a duty of care?**

All building practitioners should owe a duty of care. The responsibility should just not lie with a handful of registered practitioners.

Everyone in the supply chain should be registered. There are currently a lot of individuals e.g. developers who are involved in decision making – with our without approval from registered practitioners – which impact on the final outcome. There is currently no liability or responsibility on these individuals.

**27. What should be the scope of the duty of care? Should it apply to all or certain types of work? If so, which work?**

All works. Fair trade legislation in every state and territory requires individuals to provide goods and services to the best of their abilities. This should not be any different in the building industry.



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**28. How will the duty of care operate across the contract chain?**

Each individual trade owes a duty of care to the builder and/or the owners, builders should be encouraged to enter into supply agreements with each trade.

**29. What types of consumers should be owed a duty of care?**

All consumers should be owed a duty of care.

**30. On what basis should a particular consumer be afforded the protection?**

All consumers should be afforded protection.