

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.

Email: [BCR@finance.nsw.gov.au](mailto:BCR@finance.nsw.gov.au)

**SUBJECT:** (NSW) - *Building Stronger Foundations Discussion Paper*

## **Introduction**

This submission is made by the Swimming Pool and Spa Association of Australia (SPASA Australia).

SPASA Australia represents hundreds of local and national businesses within the swimming pool and spa industry across Australia.

Members of SPASA Australia include pool builders, service technicians, retailers, manufacturers, suppliers, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interests of pool and spa owners.

SPASA Australia is also the only Registered Training Organisation (RTO) in Australia dedicated entirely to the swimming pool and spa industry that provides training and assessment to the swimming pool and spa industry.

Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, regulators, employers and the wider community.

SPASA Australia's consultation process for the *Building Stronger Foundations Discussion Paper* has included a broad range of industry stakeholders.

Accordingly, SPASA Australia's response to the *Building Stronger Foundations Discussion Paper* are tabled within this document.

## **General Comments**

### Smaller Building Businesses

The swimming pool and spa industry includes mainly smaller building businesses who are particularly vulnerable to the negative impact of additional red tape and government regulation.

Additional regulations targeting larger and higher risk business activities impose unnecessary cost barriers and administrative burdens on smaller building businesses.

The overwhelming burden of excessive red tape and regulation is often cited by SPASA Australia members as the number one reason they leave the industry whilst at the same time deterring new entrants.

Smaller building businesses should not be cannot and should not be captured under a one-size-fits all regime.

## **Continuing Professional Development (CPD)**

SPASA Australia supports a nationally consistent approach to the registration of certain categories of building practitioners and compulsory Continuing Professional Development (CPD) with mandatory hours and/or units.

The CPD system was created to change the culture in the home building industry. The intention or spirit of the CPD system was to allow license holders the opportunity to formally and easily learn about their industry and related skills. Moreover, the CPD points system allowed license holders to stay informed and up to date with current practices.

Currently, only builders and swimming pool builders can undertake any one of the 8 topics within the CPD guidelines and obtain up to 12 CPD points in a specific topic alone whilst others can be avoided altogether.

For CPD to truly work as intended, the CPD system must be expanded across all license categories. Eg, Electricians, Plumbers etc. These trades not only work with consumers directly but also sub-contract with builders and pool builders. SPASA Australia sees their omission from the CPD system as a real risk for their knowledge not to be up to date or for errors to be more frequent.

A genuine and real concern is that the Subcontractors employed by Head Contractors are not required to attain 12 CPD points annually to maintain their license. Their exclusion may in fact reduce the effectiveness in what the CPD system was initially intended to do.

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

SPASA Australia supports the need for Building Designers who prepare plans to confirm in writing that plans are compliant with the BCA before they are given to the certifier, or at another appropriate point in time, however, a Statutory Declaration requirement for various plans through various stages declared and witnessed is not practical, is timely and would add to the cost of projects.

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

Confirmation should be limited to Construction Certificate or Complying Development stages of approval, depending on the approval pathway.

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

Changes and/or variations to swimming pools and spa construction are limited once and minor in nature once construction commences. Further submissions to the regulator for minor changes relating to the swimming pool and spa industry are not supported.

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

As per question 3 response, changes and/or variations to swimming pools and spa construction are limited once construction commences.

SPASA Australia does not support the requirement to provide statutory declarations for changes and/or variations to the construction or installation of swimming pools and spas.

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

The construction or installation of a swimming pool and spa can take approximately two and eight weeks from the date of commencement. Statutory declaration requirements for minor changes and/or variations for these types of projects would create unnecessary red tape and cost imposts for pool building businesses.

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

See response in question 3 and 5.

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

SPASA Australia submits that the current process for the construction or installation of swimming pools and spas is sufficient and does not require additional control measures.

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

The appointed Building Commissioner should be able to access information as required from the approval authority directly. There should be no additional step or process.

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

See response in question 8.

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

Building Designers are not performance solution experts. Thus, they rely upon Verification Methods, comparison with the Deemed to Satisfy Provisions, use of Expert Judgement or Evidence of Suitability from suitable and relevant experts.

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

Yes, however it is foreseeable that requesting a performance solution report from Building Designers will see them simply summarise information already provided to them from experts they have engaged rather than them drafting their own report on matters where they are not the expert.

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

A performance solution summary checklist demonstrating assessment methodology, process and compliance.

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

The process on constructing or installing a swimming pool and spa is less complicated than that of a residential or commercial building.

SPASA Australia submits that there is no justification to require a swimming pool builder to now declare that the swimming pool and/ or spa is constructed in line with compliant building plans.

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

See response in question 13.

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

Builders already have responsibilities to follow existing statutory controls, such as building according to the CC plans and following the conditions of development consent. Requiring builders to prepare declarations or to confirm that buildings are built to plan is a problematic and an unnecessary burden.

**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?**

Requiring a builder to declare or self-certify building compliance after the project has been built does not work and is fraught with danger.

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

Many building practitioners are already subject to regulatory requirements through licensing or registration schemes. Notwithstanding, a nationally consistent approach to regulating building practitioners is desirable as categories in each jurisdiction currently differ.

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

See response in question 17.

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

SPASA Australia supports the proposed minimum requirements for a practitioner as listed in the discussion paper.

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

SPASA Australia submits that for licensing purposes, anyone wanting to build a Swimming Pool and Spa should be required to undertake the following:

Completion of: *CPC40808 Certificate IV in Swimming Pool and Spa Building qualification*

OR

Completion of: *CPC40110 Certificate IV in Building and Construction qualification* **PLUS** the addition of dedicated swimming pool Units of Competency from within *CPC40808 Certificate IV in Swimming Pool and Spa Building qualification*

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

**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?**

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

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

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

A duty of care already exists for Building surveyors to ensure that non-compliance is detected and documented. In this regard, they must give clear directions to the builders for rectification. If the builder does not comply with the directions, the owner should be notified, and the matter escalated.

Building practitioners are already obliged to perform work with reasonable skill and care and comply with the Home Building Act 1989 which details statutory warranties (six years for statutory warranties and two years for all other defects). The primary means of redress for breaches is pursuable through various established legislative protections against building defects.

SPASA Australia does not support a legislated duty of care for the swimming pool and spa industry as there are already sufficient powers in place for the regulator(s) to support and enforce compliance.

**For further information:**

---

Spiros Dassakis - COO  
Swimming Pool and Spa Association of Australia (SPASA)

Web: [www.spasa.com.au](http://www.spasa.com.au)