

Department of Planning and Community Development

Building (Amendment) Regulations 2009

Regulatory Impact Statement

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation incorporating Guidelines for the Measurement of Changes in Administrative Burden.

May 2009

This Regulatory Impact Statement (RIS) has been prepared to facilitate public consultation on the proposed **Building (Amendment) Regulations 2009** (the proposed Regulations). In accordance with the *Victorian Guide to Regulation*, the Victorian Government seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian business and the community.

The prime function of the RIS process is to help members of the public comment on proposed statutory rules before they have been finalised. Such public input can provide valuable information and perspectives, and thus improve the overall quality of the regulations. The proposed Regulations are being circulated to key stakeholders and feedback is sought. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are now invited on the proposed Regulations. All submissions will be treated as public documents and will be made available to other parties upon request. Written comments and submissions should be forwarded by no later than **5:00pm, 2 July 2009** to:

Ms Carol Szancer
Housing and Building Policy
Department of Planning and Community Development
Level 6, 8 Nicholson Street
EAST MELBOURNE VIC 3002

or email:

Carol.Szancer@dpcd.vic.gov.au

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GLOSSARY

ABCB – Australian Building Codes Board

AIBS – Australian Institute of Building Surveyors

AQF – Australian Qualifications Framework

BAB – Building Appeals Board

BAC – Building Advisory Council

BC – Building Commission

BCA – Building Code of Australia

BIM – Building Information Modelling

BPB – Building Practitioners Board

BRAC – Building Regulations Advisory Committee

BSA – Building Services Authority (Queensland)

CAV – Consumer Affairs Victoria

COAG – Council of Australian Governments

DPCD – Department of Planning and Community Development

ESB – Ecologically Sustainable Building

GSP – Gross State Product

MCA – Multi-criteria Analysis

NCC – National Competition Council

NCP – National Competition Policy

PIC – Plumbing Industry Commission

SCM – Standard Cost Model

RBP – Registered Building Practitioner

‘the Act’ – *Building Act 1993*

‘the amending Act’ – *Building Amendment Act 2008*

‘the current Regulations’ – Building Regulations 2006

‘the proposed Regulations’ – Building (Amendment) Regulations 2009

VCAT – Victorian Civil and Administrative Tribunal

VCEC – the Victorian Competition and Efficiency Commission

VMBSG – Victorian Municipal Building Surveyors Group

VRQA – Victorian Registration and Qualifications Authority

1. SUMMARY

In Victoria the *Subordinate Legislation Act 1994* requires that new or remade regulatory proposals that impose an ‘appreciable economic or social burden on a sector of the public’ be formally assessed in a Regulatory Impact Statement (RIS) to ensure that the costs of the proposed regulations are outweighed by the benefits, and that the regulatory proposal is superior to alternative approaches. This RIS examines the proposed Building (Amendment) Regulations 2009 (the proposed Regulations), which will strengthen consumer protection mechanisms under the Act, establish a two-tiered system of building surveyor registration and recognise a recently accredited course for building designers.

Context

The need for the regulation of the building industry is well established, resting on health, safety and sustainability considerations in a sector where consumers are generally not well informed and housing is a major financial commitment. Supporting this view, the Victorian Competition and Efficiency Commission (VCEC), in its inquiry into *Housing Regulation in Victoria*, found that such regulation appears to have served Victorians reasonably well. However, the VCEC also noted that there is considerable scope for improvement.¹

Partly in response to this inquiry and as part of the department’s continuous improvement activities, over the course of 2007 the Department of Planning and Community Development’s (DPCD) Building Policy Branch worked with the Building Commission (BC) to identify ways to improve the operation, administrative efficiency and to provide greater clarity to a number of provisions of the *Building Act 1993* (the Act).

In early 2008, the Premier of Victoria, the Honourable John Brumby MP, released *Delivering for Victoria: Annual Statement of Government Intentions*. This Statement outlined the government’s intention to amend the Act. In the Statement, the Premier highlighted that “the main objective of proposed amendments to building legislation through the Building Amendment Bill is to enhance disciplinary powers for the BPB [Building Practitioners Board], the PIC [Plumbing Industry Commission] and to improve registration, licensing and permit processes for the building and plumbing industries. This legislation will also facilitate the Victorian Government’s commitments to the Council of Australian Governments (COAG) National Accreditation Framework through the provision of a two-tier registration system for building surveyors”.²

The Building Amendment Act became law on 26 August 2008, but has not yet come into effect. Some of the provisions will require regulations to give operational effect to these amendments. These amendments will require some changes to the Building Regulations 2006 (the current Regulations) and are the subject of this RIS.

Given the overall regulatory burden imposed by the Act and Regulations, and considering changes to these over recent years, it has been decided to bring forward a RIS to seek

¹ Victorian Competition and Efficiency Commission, 2005, *Housing Regulation in Victoria: Building Better Outcomes*, Final Report, October, p. xix

² Victorian Government, 2008, *Delivering for Victoria: Annual Statement of Government Intentions*, Melbourne, February 2008, pp. 21–22

stakeholder comment on the proposals. While the proposed Regulations are assessed to have only a minor impact on industry practitioners, DPCD considers stakeholder consultation is important given that the proposed Regulations will establish a ‘good character’ criteria for applicants wishing to register as building practitioners and will establish a number of new reporting requirements in circumstances where a builder’s registration is cancelled or suspended and where a builder’s ‘good character’ information changes.

This RIS formally assesses the proposed Regulations against the requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.³ The assessment framework of this RIS examines the problem to be addressed, specifies the desired objectives, identifies viable options that will achieve the objectives, and assesses the costs and benefits of the options, as well as identifying the preferred option and describing its effect.

This RIS also assesses the proposed Regulations’ impact on small business, undertakes a competition assessment and reports on any changes in the administrative burden. Finally, it considers implementation and enforcement issues, details the evaluation strategy, and documents the consultation undertaken.

Nature of the Problem

The characteristics of the building sector, such as the difficulties facing buyers relating to the complexity of building decisions and the potential for buildings to have adverse impacts on the surrounding community, justify some level of regulation of housing construction to protect consumers and to ensure a minimum standard of health, safety and amenity is met.⁴

The underlying need for regulation arises principally from the need to:

- provide a minimum standard for housing construction for public health and safety, and environmental reasons;
- provide a level of consumer protection in situations where consumers lack the information/knowledge to make informed decisions (i.e., resulting from information asymmetry); and
- provide information and education to both practitioners and consumers.

The proposed Regulations primarily relate to ensuring that there is an adequate level of consumer protection in particular situations. Specifically, the proposal seeks to rectify information gaps by requiring registered builders to provide consumers with details of suspensions. Additionally, in the case of a change in a building practitioner’s ‘good character’, the builder will be required to notify the Building Practitioners Board (BPB). This information is currently not readily available.

³ Department of Treasury and Finance, 2007, 2nd ed, *Victorian Guide to Regulation incorporating: Guidelines made under the Subordinate Legislation Act 1994 and Guidelines for the Measurement of Changes in Administrative Burden*, Melbourne

⁴ VCEC, 2005, *ibid.*, p. 35

Objectives

The focus of the Regulations relates to consumer protection and efficiency/competitiveness objectives of the Act. Specifically, the underlying objectives are:

- to reduce the risk of harm (financial, safety, etc) to consumers that arise as a result of information asymmetries; and
- to promote efficiency and competitiveness in the building industry.

The Regulations aim to balance the objectives by trying to:

- facilitate the provision of the minimum information necessary to protect consumers, by prescribing the ‘good character’ criteria and information required on a notice of suspension in a way that:
 - targets the potential harms that could arise for consumers; and
 - minimises the cost to practitioners of providing the information;
- prescribe the qualifications of building surveyors in a way that relates specifically to the degree of harm that the different tasks they perform could cause, and that is consistent with the national system; and
- prescribe the qualifications for building designers to accommodate developments in the building industry.

Proposed Regulations

Proposed Regulations 1, 2 and 3 are machinery regulations and relate to the regulations’ objectives, authorising provision and commencement date.

Proposed Regulation 4 will prescribe information on good character to be provided with an application for registration as a registered building practitioner. This information will be incorporated into the application form for registration and will establish the ‘good character’ criteria which will trigger a new reporting requirement to the BPB in relation to any change in these circumstances.

Proposed Regulation 5 provides the framework to prescribe two new forms in situations in which notice is required to be given by a registered building practitioner of his or her suspension or cancellation of registration by the BPB. Proposed Regulations 8 and 9 prescribe the forms themselves.

Proposed Regulation 6 remakes the table in Schedule 7 of the current Regulations, which prescribes the qualifications for registered building practitioners. Most changes simply remove references to previous legislation in the table and replace them with references to the current legislation. However, there are two changes to the qualifications: these relate to building surveyors and building designers.

The proposed Regulations will provide for a new category of building surveyor by prescribing qualifications. This will permit the adoption of the COAG National Accreditation Framework for building surveyors, which implements a national two-tiered building surveyor system. Building designers (also known as draftspersons) currently register with the BPB under the category of Draftsperson Building Design –

Architectural, after completing the Advanced Diploma of Building Design and Project Management, and a minimum of one year’s work experience. Proposed Regulations 6 will insert a new course, the Advanced Diploma of Building Design (Architectural), replacing the previous advanced diploma course whose accreditation was due to expire.

Proposed Regulation 7 provides a transitional measure to ensure that students who commenced the previous course will not be disadvantaged.

Parties affected by the proposed Regulations include persons proposing to train as a building surveyor or building designer, and more generally registered building practitioners (i.e., domestic builders, commercial builders, demolishers, building inspectors, building surveyors, building designers, engineers, quantity surveyors, and temporary structure erectors). Indirectly, consumers of building services should benefit from the proposed Regulations through the strengthening of consumer protection. In terms of the incidence of costs and benefits, costs associated with the proposed Regulations will be borne by certain building practitioners, while the benefits associated with the proposal will mostly accrue to consumers.

Costs and Benefits

Each of the proposed Regulations was examined for the likely costs they would impose on parties affected by the proposal. Regulations 4 and 5, alongside the Act, impose new reporting requirements (i.e., impose an administrative burden) on registered building practitioners in specific circumstances. The Standard Cost Model methodology was used to calculate the administrative costs associated with these regulations. The table below shows the discounted costs over a 10-year period to be \$74,791, or an average discounted cost of around \$7,479 per annum. This cost is relatively minor because of the estimated low number of registered building practitioners affected, i.e., proposed Regulation 4 may affect around 65 practitioners per annum, while proposed Regulation 5 may affect approximately fifteen practitioners per annum from a total population of nearly 23,000 building practitioners. The overall cost is negligible in the context of the current level of activity in the building sector, which is over \$20 billion.⁵

Costs Imposed by the Proposed Regulations, 10-Year Assessment Period

Regulation	Description of Regulation	Cost (\$)
4	Reporting change of ‘good character’	29,353
5	Notification of suspension	45,438
Total		74,791

* Costs have been discounted.

This RIS finds that proposed Regulation 6, which remakes the Schedule listing the qualifications required for a registered building practitioner, which adopts the COAG Framework for the two-tiered building surveyor system, does not impose costs as such, and arguably reduces the compliance costs associated with becoming a building surveyor. Similarly, the changes to Schedule 7 prescribes a new course for building designers, which will be a pre-requisite for registration with the BPB in that category. The new

⁵ In the 12-months ending September 2008, this figure was \$20,783 million.

course costs the same as the previous course and is of the same duration as the course it replaced.

The benefits with respect to proposed Regulations 4 and 5 are associated with consumer protection (including protecting future consumers) by removing an ‘information gap’.

Proposed Regulation 4 will provide the BPB with a mechanism to monitor the ‘good character’ of building practitioners. Any such changes may lead to an inquiry, potentially resulting in disciplinary action including suspension or cancellation of registration.

With respect to proposed Regulation 5, under the current arrangements a consumer has no way of knowing if their building practitioner has been suspended. Receiving a notice of suspension allows the consumer to consider making alternative arrangements at an early time, and may help to ensure that a suspended building practitioner does not continue working on projects while they are suspended. The two forms that this regulation proposes to prescribe will make it easier for suspended building practitioners to comply with the requirement (i.e., by providing a standard form of words) and will provide consumers with an adequate level of relevant information regarding the suspension. It should be noted that a strong argument could be made that the Act, rather than the regulations, imposes this cost because the proposal simply prescribes the forms. However, in the interests of transparency, this RIS has costed this new requirement.

While the monetary value of the benefits proved difficult to quantify, their relative weighting is given some perspective by examining the magnitude of the value of the building sector compared to the costs of the proposed measures. In this regard, the average value of work undertaken under a building permit over the year to September 2008 was \$139,300 per permit. Over this period 90,530 domestic and residential building permits were issued, with a value of \$12.6 billion. The magnitude of these figures compared to the costs (i.e., a discounted cost of around \$7,479 per annum across the entire industry) would suggest that the regulatory burden is minor compared with the likely consumer benefits of the proposal.

In this regard, according to the Consumer Affairs Victoria (CAV) research paper *Consumer Detriment in Victoria: a survey of its costs, nature and implications*, 22.4 per cent of all consumer detriment costs incurred in Victoria in the 12 months ending March 2006 related to building and renovating (\$706.4 million annual costs). It was estimated that detriment relating to building and renovating cost the consumer an average of \$1,600 in money, time and an emotional cost per incident. This survey would suggest that if four or five incidents per annum were prevented as a result of the regulations, then the benefits of the regulations would outweigh their costs.

There are two main benefits associated with adopting the COAG Framework of a two-tiered system of building surveyor registration: these are improving market access by lowering qualification barriers for persons training as a building surveyor and creating a national market. Previously, the market for building surveyor services was fragmented along geographical lines. The proposal will enhance the national market for building surveyor services. The benefits associated with a national market include increasing competitiveness, minimising regulatory impediments to free trade, increasing consumer choice, decreasing costs to the industry and increasing mobility of people registered to practice in equivalent occupations across jurisdictions.

The risks associated with not proceeding with the proposed Regulations are that consumer protection will not be strengthened as provided for by the Act, and the Victorian registration system for building surveyors will be inconsistent with all other Australian jurisdictions. The updated course for building designers needs to be recognised in the Regulations so that applicants can be registered by the BPB in the building designer (formerly known as draftspersons) category of registration.

Alternatives

With respect to alternatives to the proposed Regulations, clause 2.04 of the Guidelines states that, “where the authorising Act dictates the form of subordinate legislation required, for example, where the authorising legislation provides for fees to be prescribed by statutory rule, *there is no discretion* to set those fees by another method” (emphasis added).⁶ This is relevant to the proposed Regulations, which give operational effect to very specific amendments to the Act.

While it is clear that the amendments in the *Building Amendments Act 2008* did not contemplate alternatives to the proposed Regulations, for completeness, this RIS considers and assesses feasible alternatives to the proposed Regulations. Given the specific nature of the proposed Regulations, consideration of alternatives concentrated on possible variations of the proposed Regulations. None of the options identified was assessed as superior to the proposed Regulations in terms of the net benefits of meeting the Victorian Government’s objectives.

Identification of Restrictions on Competition

The proposed Regulations were considered against the National Competition Policy (NCP) ‘competition test’ to identify restrictions on competition. While the overall regulatory framework controlling the building industry imposes restrictions on competition, given the minor nature of the proposed Regulations it is assessed that they will not impose restrictions. In fact, the proposed introduction of the two-tiered registration system for building surveyors should be moderately pro-competitive by lowering qualification barriers and increasing the number of building surveyors.

Changes in the Administrative Burden

The *Reducing the Regulatory Burden* initiative commits the Victorian Government to reducing the administrative costs of regulation. Accordingly, this RIS uses the Standard Cost Model methodology and the guidelines on the *Measurement of Changes in Administrative Burden* to inform its cost–benefit analysis and to measure any changes to the administrative costs. Administrative costs are those costs incurred by business to demonstrate compliance with the regulation or to allow government to administer the regulation (e.g., reporting, notification, or recording requirements).

The additional administrative burden imposed by the notification requirements is relatively minor at around \$3,719 per annum.⁷ This negligible cost comes about because the expected frequency of notifications is low, and the individual notifications are relatively straightforward and impose a small cost on individuals. Since there is a net

⁶ Subordinate Legislation Act 1994 Guidelines, Revised 2007, Section 2.04

⁷ This figure has not been discounted.

increase in the administrative burden which is considerably less than the figure of \$250,000 per annum advised by the Department of Treasury and Finance as being the indicative threshold for materiality, in accordance with the guidelines in the *Measurement of Changes in Administrative Burden*, it has been determined that the proposed Regulations will not lead to a material change in the administrative burden on business organisations in Victoria.

Conclusion

This Regulatory Impact Statement concludes that:

- **the benefits to society of the proposed Regulations will exceed the costs, assuming that they help to avoid at least four or five ‘average’ incidents per year, or one significant incident;**
- **the net benefits of the proposed Regulations are greater than those associated with any practicable alternatives;**
- **the proposed Regulations do not impose restrictions on competition; and**
- **the proposed Regulations will not lead to a material change in the administrative burden on industry.**

Consultation

The prime function of the RIS process is to help members of the public comment on proposed Regulations before they are finalised. Public input, which draws on practical experience, can provide valuable information and perspectives, and thus improve the overall quality of regulations. The proposed Regulations are being circulated to key stakeholders and feedback is sought. DPCD, which is responsible for administering the *Building Act 1993* (the Act) and Building Regulations 2006 (current Regulations), welcomes and encourages feedback on the proposed Regulations.

While in no way limiting comments, stakeholders may wish to comment on:

- the criteria proposed for the ‘good character’ test (proposed Regulation 4);
- the form and wording of the suspension notices (proposed Regulation 5);
- any specific characteristics of the Victorian market that might justify variation in Victoria of the COAG National Accreditation Framework regarding the proposed thresholds distinguishing categories of building surveyors (proposed Regulation 6);
- the ability of educational institutions to offer an advanced diploma of Building Surveying, and any associated additional costs;
- any practical difficulties associated with the proposed Regulations; and
- any unintended consequences associated with the proposed Regulations.

All submissions will be treated as public documents and will be made available to other parties upon request.

2. BACKGROUND

2.1 Overview of the Victorian Building Industry

Victoria's building industry accounts for a significant proportion of economic activity in the state, contributing around 5 per cent of Gross State Product (GSP). Over 2007–08 there were around 106,000 building permits issued, valued at \$20.4 billion (see Table 1). Over this period the number of building permits issued increased by 5 per cent and their value by 22 per cent compared to the previous year.⁸

Table 1: Victorian Building Permits by Category and Value, 2007–2008⁹

Building use	Number of building permits	Value of building work (\$m)
Domestic	88,829	10,499.2
Residential	1,701	2,108.7
Commercial	6,578	3,877.9
Retail	4,286	1,702.2
Industrial	1,134	514.0
Hospital/Healthcare	497	525.8
Public Buildings	2,785	1,218.4
Total	105,810	20,445.8

The building industry is also a significant employer. Table 2 shows that during October 2008 there were 22,771 registered building practitioners in Victoria.¹⁰ A large proportion of businesses in this sector are small businesses (about 98 per cent). The businesses impacted by the proposed Regulations are those with business activities associated with the professions listed below in Table 2.

Table 2: Registered Building Practitioners, as at October 2008

Category	Number
Domestic builder	13,214
Commercial builder	4,253
Demolisher	237
Building inspector	428
Building surveyor	508
Draftsperson (Building Designers)	2,158
Engineer	1,757
Quantity surveyor	105
Temporary structure erectors	111
Total	22,771

⁸ Building Commission, Pulse Database, Building Permits Summary: <http://www.pulse.buildingcommission.com.au>

⁹ Building Commission, Pulse Database. Figures may not add due to rounding. Domestic buildings are Class 1 buildings (i.e., housing) under Building Code of Australia, while residential buildings are Class 2 or 3 buildings (e.g., flats, apartments, boarding houses, aged care accommodation, etc).

¹⁰ This figure represents only 'registered' practitioners. Over 2007–08, there were 164,100 people employed in the Victorian building industry, representing around 6 per cent of employment in Victoria.

2.2 Regulatory Framework

The main body of legislation governing the building sector is the *Building Act 1993*, *Building Regulations 2006*, and the *Building Code of Australia (BCA)*. The Act sets out the framework for the regulation of the construction of buildings, building standards and the maintenance of specific safety features in Victoria. The Act generally provides powers to establish, maintain and improve standards for the construction and maintenance of buildings. It also seeks to enhance the amenity of buildings, to protect the safety and health of people who use buildings, and to provide an efficient and effective system for issuing building and occupancy permits.

The objectives of the Act, amongst other things, are to enhance the amenity of buildings and to protect the safety and health of people who use buildings. In addition, an objective of the Act is to ensure adoption and efficient application of national uniform standards.

The Regulations are derived from the Act and contain requirements relating to matters such as registration of building practitioners, building permits, building standards and the maintenance of specific safety features in Victoria. The Regulations also ‘call up’ the BCA and give it legal status as a technical reference.

2.3 Victorian Government Policy

In February 2008, the Premier of Victoria, the Honourable John Brumby MP, released *Delivering for Victoria: Annual Statement of Government Intentions*. This Statement outlined the government’s intention to amend the Act. In the Statement, the Premier highlighted that “the main objective of proposed amendments to building legislation through the Building Amendment Bill is to enhance disciplinary powers for the BPB, the PIC and to improve registration, licensing and permit processes for the building and plumbing industries. This legislation will also facilitate the Victorian Government’s commitments to the Council of Australian Governments (COAG) National Accreditation Framework through the provision of a two-tier registration system for building surveyors”.¹¹

The Building Amendment Bill 2008 was introduced into Parliament on 31 July 2008. In moving this amendment, the Victorian Government summarised the purpose of the bill as amending:

the *Building Act 1993* to increase the consumer protection provided by the act by improving the capacity of the Building Practitioners Board (BPB) and the Plumbing Industry Commission (PIC) to discipline registered building practitioners and registered or licensed plumbers who do not comply with the act and the regulations made under the act as well as other related legislation.¹²

¹¹ Victorian Government, 2008, *Delivering for Victoria: Annual Statement of Government Intentions*, Melbourne, February 2008, pp. 21-22

¹² VicHansard, Introduction, First and Second Reading, Legislative Council, 31 July 2008, p. 2923

Specific to the proposed amendments in relation a building practitioner’s ‘good character’, the Victorian Government stated that:

the proposed measure requires an applicant for registration as a building practitioner to provide the BPB with information demonstrating their ‘good character’. A non-exhaustive list of factors going to good character will be provided. The proposed measure changes a system of regular disclosure of personal information, and creates a new requirement for its collection by the BPB.

The information is required to assess the good character of applicants before registration, and to provide a means to continually assess registrants’ good character. The interference is reasonable because building practitioners deal directly with the public and the potential for conflict and dispute is high. They enter into contracts involving large sums of money and are often required to have unsupervised access to homes and property. It is vital that the industry consists of honest practitioners who are able to act appropriately in all situations.¹³

In relation to buildings surveyors the Victorian Government stated that:

the amendments will enable adoption of the COAG national accreditation framework. Victoria is signatory to an agreement of the Australian Building Codes Board to implement a national two-tiered building surveyor/certifier system. The bill will recognise that there are two types of building surveyors. One will be a building surveyor (unlimited) who is unrestricted in the scope of work and the other will be a building surveyor (limited) whose scope of work will be limited to practising in respect of buildings up to three storeys in height and a maximum floor area of 2000 square metres.

With a shortage of building surveyors currently in the system this amendment will increase the number of building surveyors available to issue building permits while still maintaining protection of the consumer.

A person who is currently registered as a building surveyor will be grandfathered into the unlimited category. The required qualifications will be set under regulations in the same manner as for other building practitioners.¹⁴

On 26 August 2008, the *Building Amendment Act 2008* became law, but is awaiting proclamation. These amendments will require some changes to the Building Regulations 2006. These proposed changes to the Regulations are the subject of this RIS.

¹³ *ibid.*, p. 2923

¹⁴ *ibid.*, pp. 2925 – 2926

2.4 Building Amendment Act 2008

2.4.1 Good Character

Specific to the proposed Regulations, the *Building Amendment Act 2008* (the amending Act) inserted a new section 169(2)(ca) into the principal Act, which requires an applicant for registration as a building practitioner to provide information to the BPB relevant to their ‘good character’. It is proposed to prescribe the ‘good character’ criteria in Regulations (see proposed Regulation 4). Such information will include matters regarding solvency, convictions of an indictable offence against the person, registration or licensing by a body or jurisdiction outside Victoria and any disciplinary actions taken by that body or under that jurisdiction against the applicant.

In addition, a new section 172A has been inserted into the Act which requires a building practitioner to notify the BPB without delay of any change to the prescribed information relevant to their ‘good character’, which was provided at the time of their initial application for registration.

The Act provides a right of appeal to the Building Appeals Board (BAB) against a decision of the BPB. This appeal right will extend to a case where information is provided under the proposed notification process that may lead to an inquiry and subsequent suspension or cancellation of registration.

2.4.2 Suspension Notices

The amending Act inserted section 178(6) into the principal Act, which requires the person whose registration has been suspended prior to a BPB inquiry to give notice in the prescribed form of the suspension as soon as possible to any person who has contracted with them, arising out of their work as a building practitioner. They must also give a copy of this notice to the BPB (see proposed Regulation 5, Form 7A).

The amending Act also inserted section 182(4) into the Act, which requires a person whose registration has been cancelled or suspended under sections 170 or 180 of the Act following an inquiry to give notice in the prescribed form, as soon as possible after the decision to cancel or suspend takes effect or is confirmed on appeal, to any person who has a contract with the practitioner, arising out of their work as a building practitioner. They must also give a copy of this notice to the BPB (see proposed Regulation 5, Form 8).

2.4.3 COAG National Accreditation Framework – 2-Tiered Registration for Building Surveyors

The amending Act amends section 176 of the principal Act to support the creation of a two-tiered building surveyor system by making it an offence for a person to use the titles “building surveyor (unlimited)” and “building surveyor (limited)” unless they registered in that particular class. This is further provided for by new sub-section (2AA) which sets out the scope of the work a building surveyor (limited) may undertake. New sub-section 176(2AA) provides that a limited building surveyor must not practice as a building surveyor except in respect of buildings up to three storeys in height with a maximum floor area of 2000 square metres.

Finally, the amending Act inserted section 270 into the principal Act, which is a transitional provision that ‘grandfathers’ all building surveyors registered under the Act prior to the commencement of this section into the new building surveyor unlimited class of the building surveyor category.

2.4.4 *Building Amendment Act 2008 – Proposed Regulations and Parties Affected*

Table 3 below summarises amendments to the Act relevant to the proposed Regulations and parties affected by the proposals.

Table 3: Summaries of Building Amendment Act 2008

Proposed Regulation	Amendment to Building Act	Parties Affected
Regulation 4 – Good character	Section 169(2)(ca) – ‘good character’ criteria; section 172A – notification requirement	Registered building practitioners*
Regulations 5 – suspension notices	Sections 178(6) and 182(4) – suspension notices	Registered building practitioners*
Regulation 7 – Building surveyor qualifications	Section 176 – title reservation; 176(2AA) – type of work undertaken by building surveyor; section 270 – transitional provisions	Building surveyors

* Categories of registered building practitioners are: domestic builder, commercial builder, demolisher, building inspector, building surveyor, draftsman, engineer, quantity surveyor, temporary structure erectors.

3. RATIONALE FOR REGULATING THE BUILDING INDUSTRY

Public policy formulation generally begins from the premise that any economic activity should be free of regulation unless it can be shown that it is subject to ‘market failure’, which, if left unregulated, will not generate socially efficient outcomes. This is usually taken to be that which maximises the sum of the net benefits of the activity to producers and consumers. In the case of the building industry, forms of market failure known as ‘information asymmetry’ and ‘negative externalities’ may be relevant.

These include situations where contracting parties lack information and, in particular, where there is asymmetrical access to information. This is especially important in the building context where construction deficiencies may not become evident for many years and the correction of the problem may be difficult and expensive. This forms a substantial element of the justification for a regime of detailed technical standards to govern construction activity, as well as a regime of inspections and approvals before, during and at the completion of construction.

Externality issues as a source of market failure are also relevant, since there may be risks of injury to persons other than the builder in the event of sub-standard construction. In these circumstances individuals may not have an incentive to take fully into account the costs that their activities may impose upon others. The process of construction and the finished product itself can have negative impacts on inhabitants of buildings and the surrounding community. There is a need to ensure that property owners do not impinge upon the rights of other property owners.

In the absence of regulation, quality assurance with respect to the products of the building and construction industry would be reliant on common law, warranties and reputation. This approach is largely relied upon in a wide range of product markets and in many circumstances constitutes an effective and highly cost-efficient approach. However, in the housing construction sector reliance on approaches such as common law remedies and warranties have been shown to be insufficient to ensure consumer protection and public confidence in the industry and its products.¹⁵

Dispute resolution in this sector can be prohibitively expensive. This reflects the complexity of the building process, involving trade-offs between costs, skills, materials, building systems and processes which impact on the characteristics of the finished building. The full implications of these choices are often not clear to the consumer and available mechanisms to address information asymmetry problems are less likely to be taken up as would be the case in other product markets.

¹⁵ Department of Sustainability and Environment, Submission 84, p. 5 quoted in Victorian Competition and Efficiency Commission, 2005, *Housing Regulation in Victoria: Building Better Outcomes*, Final Report, October, p. 35

The underlying need for regulation arises principally from the need to:

- address public health, safety and environmental concerns by providing a minimum standard for housing construction;
- provide a level of consumer protection in situations where consumers lack the information/knowledge to make informed decisions; and
- provide information and education to practitioners and consumers, which seeks to overcome ‘information gaps’ or correct ‘information asymmetries’.

With respect to the last two points, the consumer of building services needs the building practitioner precisely because they do not have the specialist knowledge or expertise in building. Thus there is an information asymmetry between the builder and consumer. The risks to consumers associated with information asymmetries specific to the proposed Regulations include financial risks and risks to health and safety.

Finally, while the proposals in this RIS do not displace the legal remedies contained in the *Trade Practices Act 1974 (Cth)* or *Fair Trading Act 1999* (and these acts are relied upon in some cases), the consumer protection measures in the proposed Regulations are tailored to target specific high risk circumstances particular to the builder–consumer relationship.

4. NATURE AND EXTENT OF THE PROBLEM

In 2007–2008 the BC investigated 595 complaints against building practitioners, which resulted in costs and fines to the value of \$145,935 issued by the BPB and the Magistrates' Court.

In terms of disciplinary actions, of the 257 inquiries held by the BPB from February 2003 to October 2008, there were 157 reprimands, 185 fines, 20 registration suspensions and 26 registration cancellations. Of the 52 inquiries held by the BPB in 2007–2008, 14 involved building surveyors and 29 involved domestic builders (Unlimited). From 2006 to 2007, four applications for registration were refused on 'good character' grounds.

It should be noted that in most cases practitioners received reprimands and fines and/or costs. Of those who received fines, the average penalty was around \$1,850, while average costs awarded were in the order of \$700. Only the most serious cases reach the inquiry stage and accordingly reprimands/penalties occur in over 99 per cent of cases heard by the BPB.¹⁶

Table 4: BPB Disciplinary Actions, February 2003 to October 2008

	Reprimands	Suspensions	Cancellations
Number	157	20	26
Annual Average	28	4	5

In 2007, CAV received 1,818 requests for Building Advice and Conciliation Victoria (BACV) to conciliate a dispute, finalised 1,721 building disputes, prosecuted 22 building matters for breaches of the law, and recovered \$2.6 million for consumers.

According to the CAV research paper *Consumer Detriment in Victoria: a survey of its costs, nature and implications*, 22.4 per cent of all consumer detriment costs incurred (estimated at \$706.4 million) in Victoria in the 12 months ending March 2006 related to building and renovating, the largest of all the categories. It was estimated that detriment relating to building and renovating cost the consumer an average of \$1,600 in money, time and emotional cost per incident. This was also the area in which the largest number of consumers reported the emotional costs as very high.¹⁷

¹⁶ The more common breaches of the Act and Regulations include: section 16(1) of the *Building Act 1993* for either carrying out work without building permit or carrying out building work not in accordance with the building permit; Regulation 15(2)(a) Building Regulations 1994 for not performing work in a competent manner and to a professional standard usually in relation to defective work; section 136 of the *Building Act 1993* for carrying out domestic building work without the required insurance; section 80 and section 30 of the *Building Act 1993* for the private building surveyor not notifying the council within 7 days of appointment in writing, and providing the building permit, and relevant documentation including plans respectively once the building permit is issued; and section 24 of the *Building Act 1993* for issuing a building permit that does not comply with the Act, Regulations, or planning permit.

¹⁷ Consumer Affairs Victoria, 2007, Annual Report, p. 59: <http://www.consumer.vic.gov.au>

4.1 Notification of change in ‘good character’ information

Nature of the Problem

As mentioned in section 2.4.1 above, the Act was amended to require an applicant for registration as a building practitioner to provide information to the BPB relevant to their ‘good character’. In addition, a building practitioner must notify the BPB without delay of any change to the prescribed information relevant to their ‘good character’.

Prior to amending the Act, at the time of initial registration as a building practitioner, the BPB needed to be satisfied that an applicant was of ‘good character’. However, when registration is renewed annually the BPB had no mechanism to check whether a building practitioner remained of ‘good character’. Thus, even if the BPB had clear evidence the person was no longer of ‘good character’ (for example, where a person had been convicted of a charge involving fraud, dishonesty or violence) it must issue a new certificate of registration if the practitioner meets the basic renewal requirements, e.g., providing evidence of insurance and payment of the annual fee. In addition, the Act provided no guidance as to the matters that constitute ‘good character’ that the BPB should consider when deciding an application.

‘Good character’ or ‘fit and proper person’ tests are common requirements where government seeks to manage high risks. Around forty pieces of legislation in Victoria contain these or similar requirements, covering areas such as the professions and small business, the finance sector, law enforcement, transport, dealing with children, resources and environment, and certain organisations (see [Attachment A](#) for a list of Victorian legislation dealing with ‘good character’ or ‘fit and proper person’ requirements).

The ‘good character’ test is particularly important for consumers because a dwelling is often the largest and most important purchase they will make in their lifetime; thus consumers should be protected from persons with high risks of fraud, corruption, dishonesty, etc. In this regard, the consumer is often at a disadvantage with respect to knowledge of building requirements. For instance, consumers face an information asymmetry and may be exploited by unscrupulous practitioners. Currently, consumers have no way of knowing whether the building practitioner they engage has remained of ‘good character’ since their initial registration. The risks associated with engaging a builder of ‘bad character’ included financial loss, stress, and in extreme cases, physical harm. With respect to the latter, unlike many other industries, building practitioners often enter the home (e.g., during renovations or to fix a fault) and consumers should be protected from high risk individuals in their home environment.

The proposed measure introduces a system of disclosure, and creates a new requirement for its collection by the BPB. The proposed prescribed information is required to assess the good character of applicants before registration, and to provide a means to continually assess registrants’ good character.

It is worth noting that the ‘good character’ test has been in place since the Act came into effect in 1993. The BPB had the power to seek further information in any application for registration, and for the purposes of assessing for ‘good character’ these questions were included in the application form. However, it was unclear whether the Board had the power to ask a number of questions on that form, as they were of a nature that was more appropriately asked in an Act or Regulations.

The *Building Amendment Act 2008* formalised the prescribing of the questions and provided a mechanism whereby the BPB could monitor ‘good character’ on an ongoing basis. The amending Act provided the capacity for the BPB to hold an inquiry on the basis of information provided, and also introduced safeguards to ensure that any such decisions were not arbitrary and that the BPB had to give proper consideration to whether an inquiry should be held.

In terms of the administrative process associated with registration renewal, a renewal notice is sent by post to building practitioners six weeks prior to the renewal date. The renewal form asks for specific details of insurance (or Statutory Declaration for Domestic Builders), continuing professional development details (optional), any change of company or address details, and specifies the renewal fee. When the registration renewals are posted or faxed to the BPB, they are examined for completeness. If all the details have been provided, the renewal is processed and a new registration card is sent to the practitioner. If the renewal details have not been provided, the BPB sends a letter requesting these details. If the details are not received after the renewal date, the building practitioner’s registration is suspended. The BC plans to introduce electronic renewals for building practitioners and is examining introducing a similar process for registration applications.

Extent of Problem

In 2006–07 the BPB received 1,257 applications for registration as a building practitioner. Of the applications received 179 applications for registration as a building practitioner were refused by the BPB, with four persons having their applications rejected on good character grounds. In 2008 there were 172 refusals. Of these only three persons were refused registration/re-registration on ‘good character’ grounds. This is only a small proportion of the refusals (i.e., around 0.14 per cent of applications in 2008). Currently the ‘good character’ status is not a ground for inquiry, therefore the BC does not have data relating to the numbers of the registered building practitioners that have had their registration suspended or cancelled on these grounds.

While the BC does not have data concerning the number of builders currently working who are not of ‘good character’, the proposed Regulations should provide better information to the extent that this is occurring. However, anecdotal evidence suggests that such cases are occurring, and thereby exposing consumers to potential harms (see [Attachment D](#): a case study of an unregistered person of ‘bad character’ purporting to be a registered builder). It is also possible that people are ‘slipping through the net’ because the registration system is essentially a self-assessment regime. That said, the broad theme of this RIS is that while there appears to be a low frequency of incidents, the problem/costs faced by individuals can be significant and therefore warrants regulatory intervention.

Given that the proposed Regulations will impose an ongoing requirement on all building practitioners (i.e., a population of around 23,000 building practitioners) to notify the BPB of any changes in good character, it is estimated that around 65 notifications will occur annually.¹⁸

¹⁸ See Assumption 4 in [Attachment B](#).

4.2 Suspension or Cancellation Notices

Nature of Problem

Under the current arrangements a consumer has no way of knowing if their building practitioner has been suspended. This is an information asymmetry problem. The rationale to require a suspended building practitioner to provide consumers with a formal notice of their suspension is based on consumer protection objectives. Receiving such a notice allows the consumer to consider making alternative arrangements at an early time, and may help to ensure that a suspended building practitioner does not continue working on projects while they are suspended. In addition, if a building practitioner continues to work while suspended, it is likely that they will not be covered by insurance, as the Act specifies that while a building practitioner is suspended they are deemed not to be registered.

Changes giving effect to this proposal were contained in the amending Act, which provides for two distinct circumstances:

- a suspension under section 178(6) of the Act, which occurs prior to a BPB inquiry (this is likely to occur in only the most serious cases where it is in the public interest to do so); and
- a suspension or cancellation under section 182(4) of the Act, which occurs following a BPB inquiry.

It is possible that a building practitioner could be suspended prior to an inquiry and then have their registration cancelled, in which case they would be required to issue notices under both of these situations. The proposed Regulations will prescribe the form and wording of these notices.

In terms of enforcement, the BPB has no way of knowing who a builder's clients are. To obtain this information it would need to keep a register of all builders' clients, which would need to be constantly updated. The BC, however, publishes details of suspensions/cancellations in its quarterly newsletter *Inform* (although it is likely that not many consumers would be aware of this trade journal). The BC also has an online database on its webpage which enables a consumer to check whether a person is a registered building practitioner.

Extent of Problem

There is currently no way to ensure that those denied registration do not work as building practitioners (an analogue is preventing a disqualified driver from driving). However, such persons may be discovered by BC audits or through consumer complaints. Of course, such persons can work under the supervision of a registered builder, without the need to be a registered builder. Anecdotal evidence from the BC suggests that suspended or denied registrants may be working for owner-builders, however the BC does not have audit jurisdiction over owner-builders.

As noted above, from February 2003 to October 2008 there were 20 suspensions and 26 cancellations of registration, or approximately four suspensions and five cancellations per annum. This provides an annual average of around nine suspensions and cancellations. Given the recent amendments to the Act, which strengthen enforcement and disciplinary procedures, it is assumed that a total of around 15 suspensions and cancellations will occur annually.¹⁹

4.3 Building Surveyor Qualifications

The building surveyor's role is primarily concerned with the structural integrity and public safety of a building. Building surveyors are responsible for making sure that buildings are safe, energy efficient and liveable. They interact with other professionals such as engineers, architects and builders to ensure that buildings are designed and constructed to comply with building regulations. They provide advice on building legislation which could influence the design of buildings.

After the surveyor has assessed building plans, ensuring they comply with legislation, a building permit is issued to get the building or renovating process started. Once building work commences, the surveyor remains involved throughout each stage, carrying out inspections or having a building inspector carry out the inspection on their behalf before giving the final approval. In the case of building a new home, these inspections are carried out prior to placing the footings, prior to pouring an *in situ* reinforced concrete member, at completion of the frame, and final inspection before the occupancy permit is issued to the owner. Along the way, if the inspection fails the building surveyor is authorised to take enforcement action, where necessary against the responsible party to ensure that the works are rectified and brought into compliance.

Building surveyors can also carry out inspections of established buildings to determine their existing condition and level of compliance with safety standards. The building inspection comprises an assessment of the building's fabric including issues such as water tightness and structural adequacy. The inspection can include all parts of the building that are easily accessible.^{20, 21}

The scope of complexity of the role of a building surveyor can vary enormously from issuing a building permit for a simple shed or dwelling to very complex and large projects, e.g., high rise office buildings, industrial buildings, or airports. These projects may involve approval of sophisticated and complex engineered solutions such as fire safety systems. All buildings require a building permit prior to construction. The two-tiered system will provide an environment in which building surveyors with a limited registration can elect to operate in the market of approvals of the more simple structures, increasing the supply of building surveyors and competitiveness in this sector.

In simple terms, under the BCA a surveyor classifies a building according to its use. In addition, the larger/higher a building is, the more that the building fabric is required to be constructed to achieve greater resistance to the effect of fire. The BCA requires one of three construction types (Type A, B or C) with increasing levels of fire resisting

¹⁹ See Assumption 3 in [Attachment B](#).

²⁰ Building Commission, Building Surveyors: <http://www.buildingcommission.com.au/www/html/289-building-surveyors.asp>

²¹ Australian Institute of Building Surveyors, Role of the building Surveyor: http://www.aibs.com.au/aibs_docs/vic/vic_role__responsibilities_of_the_building_surveyor.pdf

construction. More fire safety systems are installed in larger (height and floor area) buildings or buildings of higher risk. A large public hospital is regarded as a high risk building due to its size and the nature of the occupants who are often non ambulant. The three storey 2000 square metre limit provides opportunity to a limited building surveyor to assess the most fire resistant construction required (Type A) on a small apartment, residential or public building (theatre, hospital, etc). At the same time it restricts the practitioner to the more simple fire safety systems.

The COAG Secretariat and the Australian Building Codes Board (ABCB) were contacted to determine whether a COAG RIS had been prepared in relation to the amendments to the Act. The ABCB explained that it considered the measure would reduce the regulatory burden by creating more flexible and less onerous qualifications. Consequently, a COAG RIS was considered unnecessary. This RIS argues that this regulatory proposal does not impose an appreciable burden on business, however, for completeness and for the purposes of stakeholder consultation the rationale for this measure is described below.

Nature and Extent

Building surveyors determine compliance with the BCA to ensure the building is safe for eventual occupiers. A building surveyor's role is to mitigate risk to the occupants of a building by ensuring compliance with the Regulations and BCA. Higher/larger buildings present greater risks and require more complex safety features, for example in relation to egress, emergency evacuation, fire safety systems and the like.

Entry qualifications seek to ensure that practitioners possess minimum acceptable levels of competence, thus protecting consumers from the possibility of engaging the services of substandard building surveyors due to a failure to accurately assess competence. Minimum qualifications are thus likely to be important particularly where significant information asymmetries exist – that is, where consumers are not reasonably able to inform themselves sufficiently about the skills of different building surveyors.²²

Information asymmetries are less likely to be of concern for business customers or other high-frequency users of a service. Consumers that use building surveyor services do not fall into this category because an average consumer may only require these services a few times over the course of decades.

It is acknowledged that any requirement for minimum entry qualifications sets a barrier to entry to a profession, which may be detrimental to competition. To lower costs associated with barriers to entry, an appropriate minimum necessary qualification standard that is consistent with consumer protection and safety should be established. The level of qualifications should take into account acceptable levels of risk. That is, the decision must involve a notional trade-off between providing protection against adverse outcomes and promoting access to the service.²³

²² Deighton-Smith, R., Harris, B. and Pearson, K., 2001, *Reforming the Regulation of the Professions: Staff Discussion Paper*, National Competition Council AusInfo, Canberra, p. 5

²³ *idem*.

There is currently a shortage of building surveyors, which is in part may be caused by the relatively high level of educational and experience requirements associated with current building surveyor qualifications.²⁴ With a shortage of building surveyors currently in the system, the proposed introduction of a ‘limited’ category of building surveyors will increase the number of building surveyors available to issue building permits while still maintaining protection for consumers.

Proposal

Currently, Victoria has a single-tier building surveyor registration system. The current prerequisites for registration as a building surveyor are a degree in building surveying from a university and three years practical experience to the satisfaction of the BPB.

Victoria is a signatory to a COAG agreement under the auspices of the ABCB which commits it to implementing a national two-tiered building surveyor system, called the National Accreditation Framework. All other states and territories have already introduced the Framework, and the same qualifications and competencies are required across all jurisdictions. These were introduced in 2003 and have since been reviewed. The proposed Regulations will conform with the approved national benchmarks. Similarly, the three storey and 2000 square metre threshold apply across all jurisdictions.

Specifically, the Agreement provides for a:

- building surveyor with an unlimited scope of work. Pre-requisites for this level of registration are a tertiary level degree and a minimum of three years practical experience to the satisfaction of the BPB. This is equivalent to the current qualification requirements; and
- building surveyor with a limited scope of work, who will be able to issue permits for buildings up to three storeys and with a maximum floor area of 2000 square metres. Pre-requisites are an advanced diploma in Building Surveying and two years practical experience to the satisfaction of the BPB.

It is the Act rather than the regulations that provides for the adoption of the COAG Framework in Victoria. The proposed Regulations will prescribe the qualifications for the new category of building surveyor (limited) and thereby giving practical effect to the provisions in the Act. Taken together, the Act and proposed Regulations will provide for a nationally consistent training and registration system, and will reduce barriers to practitioners operating across state and territory boundaries.

The proposal is likely to increase the number of building surveyors in Victoria. Firstly, building inspectors who have completed an advanced diploma in Building Surveying may be entitled to register as a building surveyor (limited). Secondly, at the margin, potential students who consider the current qualification requirements too onerous may choose to undertake training as a building surveyor (limited), which requires a diploma rather than a degree (the diploma is usually two years compared to three years for a degree) and one year less practical work experience. Around 75 per cent to 80 per cent of work undertaken by building surveyors are projects that are up to three storeys and with a

²⁴ Department of Education, Employment and Workplace Relations (DEEWR): www.workplace.gov.au, as at 27 November 2008, listed ‘building associate’ as a skills area in which there is a shortage in Victoria. Building surveyors are part of the ‘building associate’ category.

maximum floor area of 2000 square metres (i.e., work that a building surveyor (limited) can undertake).

Finally, the proposed Regulations will provide that an applicant must have ‘practical experience to the satisfaction of the Board’. This is not a new requirement and broadly applies to all persons who apply to become a registered building practitioner. The ‘practical experience’ pre-requisite also applies in all jurisdictions.

In order to assess ‘practical experience’, a person applying to become a building surveyor may need to be assessed by a BPB member/industry expert or qualified workplace assessor/industry expert. The assessment may include an interview, the tabling of documentation, including examples of work carried out, and an on-site assessment, involving a visit to a current work site. In addition, under the current system all trainees must keep a log book of the nature and type of work they have undertaken.

Building surveyors are expected to have developed competencies in areas such as reading and interpreting design documentation to determine whether it complies with legislation, applying legislative requirements to a wide variety of construction projects, processes for issuing direction notices, building notices and building orders, including the prosecution process, issuing permits, certificates, forms and consents required from relevant authorities, and maintaining records of building permits issued and copies of inspection reports. In addition, as part of completing the application as a registered building practitioner (including a building surveyor), an applicant must outline previous practical experience. An applicant must also provide two written technical references describing their experience

4.4 Recognition of New Course – Advanced Diploma of Building Design (Architectural)

Description

Building designers design buildings and develop working drawings and documentation for all components in the construction of residential, commercial and industrial buildings. Career opportunities for graduates include working for building design organisations, architects and building contractors in both large and small commercial enterprises or government departments. Specialist areas of employment associated with building design include restoration of old buildings, commercial kitchen design and as documentation technicians for specialists, manufacturers and suppliers.

Although there are similarities between the vocations of architect and building designer, there are clear differences in both the use of the terms and the regulatory requirements. The term ‘architect’ is reserved by legislation for those persons registered with state based authorities. People wishing to use the term ‘architect’ must apply for registration with the Architects Registration Board of Victoria. They are required to have a Bachelor degree in Architecture or can apply with other related qualifications, along with evidence of a minimum of seven years industry experience (three of which must have been in an architect’s office) and undertake the Architectural Practice Examination. The board then assesses the type and level of their work experience. Although there are no limitations in practice, most building design practitioners practice on a different scale of work than architects.

Building Designers currently register with the BPB under the category of Draftsperson Building Design – Architectural, after completing the Advanced Diploma of Building Design and Project Administration, and a minimum of one year’s work experience.

This RIS argues that this regulatory proposal does not impose an appreciable burden on business, however, for completeness and for the purposes of stakeholder consultation this measure is described below.

Nature and Extent

In recent years the rate of development in the areas of legislative and regulatory requirements, building and materials technologies, digital production technologies, sustainable design practices and safe design have escalated dramatically.

Developments in building technology are not addressed in the current Victorian curriculum or any existing national Training Package. There is also a need to address the new methodologies in sustainable building to allow designers to remain competitive and keep up with consumer demand for sustainable features to be included in their projects. In discussion with industry stakeholders, it was also noted that the recent building design graduates had a poor understanding of technical structural and construction knowledge and lack the ability to apply this knowledge effectively to the design of buildings.

Graduates also do not have the ability to produce design documentation with the attention to detail and high level of accuracy required. A greater emphasis is also required in the knowledge of the legal responsibilities of building designers in the application of the BCA and occupational health and safety legislation. Victoria has been dependent on the South Australian accredited curriculum to train building designers, leading to a reduced capacity to respond to industry developments in this state.

Statistics from the BC show that Ecologically Sustainable Building (ESB) is increasing with over 67 per cent of all projects surveyed including some elements of green building. Building designers need the skills and knowledge required to design buildings that integrate the principles of ESB in order to keep up with current trends. There is also a need to train students in the use of new technologies in response to the introduction of increasingly sophisticated computer programs such as 3D and 5D digital applications and Building Information Modelling (BIM) in building design.

Students also require a thorough understanding of legal obligations and responsibilities for the design of a safe building through all life cycle stages including the design itself, during the construction phase and end use. This is in response to a recommendation for the scope of building designers to expand to cover the construction phase of a building under Section 28 of the *Occupational Health and Safety Act 2004*. The course also includes the unit *VPAU349 Work safely in the construction industry*, which is the Victorian construction industry occupational health and safety induction training required by WorkSafe for all persons entering a construction site.

The proposed target group for the new Advanced Diploma includes students who have completed the VCE and mature age students seeking employment in building design, both in small and large building design and architect businesses covering domestic and commercial developments. It also includes qualified trades people from allied trades in the building and construction industry and existing workers in building design who wish

to upgrade their current qualifications or apply for registration to become a sole practitioner. Around 860 to 1,000 students undertake the Advanced Diploma of Building Design and Project Administration across all year levels. Approximately 380 students enrol each year.

The standard fees for TAFE courses are currently subsidised by government with set maximum fees of \$877 per annum for full time students. Under this arrangement a student would pay a total of \$2,193 over the period of the 2.5 year Advanced Diploma course. The previous course, the Advanced Diploma of Building Design and Project Administration, was also a 2.5 year program. Therefore, the new course will not impose additional financial costs on students or take longer to complete.

Proposal

From 1 January 2009 the new Advanced Diploma of Building Design (Architectural) replaced the previous advanced diploma course whose accreditation expired at the end of 2008.

Skills Victoria provided the funding for the curriculum development of the Advanced Diploma of Building Design (Architectural) to address the changing training needs of building designers in Victoria. In December 2008 the Victorian Registration and Qualifications Authority (VRQA) accredited the Advanced Diploma of Building Design (Architectural). Courses and qualifications are accredited within the Australian Qualifications Framework (AQF) and all accredited courses or qualifications have national recognition.

The course will provide graduates with the skills and knowledge required for employment as a building designer and to apply for registration in Victoria as a sole practitioner, following the required period of industry experience.

Whilst the core skills and competencies required by both the industry and by the BC are incorporated there are specific inclusions that differentiate the new course from its predecessor. New features include a greater emphasis on construction technologies, their application and associated detailing, documentation accuracy, safe building design and the legal responsibilities of the building designer in the interpretation and application of the BCA. A greater number of hours have been allocated to the area of Ecological and Environmentally Sustainable Building which will allow for holistic integration across all units in the course. BIM studies will be included in the digital applications area of the course in response to growth in the engagement by architectural practices, designers, state and local government in the use of BIM as a platform for integrated design and documentation practice.

The BC has stated that the Advanced Diploma of Building Design (Architectural) will be the required qualification for building designers applying for registration in Victoria, in the category of Building Design (Architectural). Therefore, without recognition of the course in the proposed Regulations, the BPB could not register building designers undertaking the new course.

5. OBJECTIVE OF THE REGULATIONS

The objective of the proposed Regulations is reflected by the purpose and objectives of the Act. Section 1 of the Act sets out the ‘purpose’ of the Act, which includes providing an efficient and effective system for resolving building disputes, and regulation of building practitioners. Section 4 of the Act sets out the objectives of the legislation. These include to:

- protect the safety and health of people who use buildings;
- facilitate the adoption and efficient application of national building standards;
- aid the achievement of an efficient and competitive building industry.

The focus of the Regulations is on consumer protection and efficiency/competitiveness objectives of the Act. Specifically, the underlying objectives are:

- to reduce the risk of harm (financial, etc) to consumers that arises due to information asymmetries; and
- to promote efficiency and competitiveness in the building industry.

The Regulations aim to balance the objectives by trying to:

- facilitate the provision of the minimum information necessary to protect consumers, by prescribing the ‘good character’ criteria and information required on a notice of suspension in a way that:
 - targets the potential harms that could arise for consumers; and
 - minimises the cost to practitioners of providing the information;
- prescribe the qualifications of building surveyors in a way that relates specifically to the degree of harm that the different tasks they perform could cause, and that is consistent with the national system; and
- prescribes the qualifications for building designers to accommodate developments in the building industry.

6. DESCRIPTION OF THE PROPOSED STATUTORY RULES

6.1 Authorising Provision

The proposed Regulations are made under sections 261 and 262 of the *Building Act 1993*. These sections generally provide the authority to make regulations for any other matter or thing required or permitted by the Act to be prescribed or necessary to be prescribed to give effect to the Act.

Specifically, section 261(f) of the Act provides the authority to prescribe the qualifications (whether obtained inside or outside Victoria) for registration in the different categories or classes Register of Building Practitioners, including but not limited to degrees, diplomas, certificates, accreditations, authorities, examinations and periods of training or experience. Section 261(ja) provides authority to prescribe the information to be included in, or to accompany, any notice or application required under this Act or the regulations, while section 261(k) provides authority to prescribe forms.

6.2 Proposed Regulations

6.2.1 Machinery Regulations

Regulations 1 to 3 are machinery regulations relating to the objectives, authorising provision and commencement date of the proposed Regulations. Regulation 1 sets out the objectives of the regulations. Regulation 2 refers to the authorising provision under which the regulations are made (i.e., sections 261 and 262 of the Act). Regulation 3 provides that the regulations come into operation on 1 September 2009.

6.2.2 Prescribed Information on ‘Good Character’

Regulation 4 proposes to insert a new regulation, proposed Regulation 1509, into the current Regulations. This regulation will prescribe information on good character to be provided with an application for registration as a registered builder. Specifically, an applicant will be required to declare whether he or she has:

- within the last 10 years (or 5 years for a child) been convicted or found guilty of an indictable offence that, if committed in Victoria, would be an indictable offence involving fraud, dishonesty, drug trafficking or violence; or
- ever been insolvent under administration; or
- had any licence, permit, registration or other authority enabling the applicant to work as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory has ever been cancelled or suspended; or
- been disqualified from holding, or been refused a licence, permit, registration or other authority enabling the applicant to work in a corresponding occupation in the building and construction industry either in or outside the State; or
- been fined, reprimanded or cautioned for any breach of an Act, regulations, rules, professional conduct or code of ethics, in relation to working as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory; or

- any insurer ever declined, cancelled, or imposed special conditions in relation to the applicant’s professional indemnity insurance, public liability insurance, or another other indemnity insurance in respect of the applicant working as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory.²⁵

These questions will be incorporated into the application form for registration and will establish the ‘good character’ criteria which triggers the reporting requirement in relation to any change in these circumstances under section 172A of the Act. For example, if a registered building practitioner is convicted of fraud which is punishable by a term of imprisonment of three or more months they will be required to notify the BPB of this fact.

The ‘good character’ criteria was developed in consultation with the Department of Justice. A review was conducted of legislation containing references to fitness to hold office and good character requirements. Legislation included the *Victorian Architects Act 1991*, *Estate Agents Act 1980*, *Legal Profession Act 2004* and *Travel Agents Act 1986*. In addition, criteria from other jurisdictions, namely the Commonwealth Migration Act 1958 and the NSW Architects Act 2003 were considered. Consideration focused on the relevance of the criteria to the particular circumstances and requirements of building practitioners.

The risks faced by consumers associated with the activities covered by the ‘good character’ criteria include risk of financial loss (e.g., through dishonesty, fraud, bankruptcy, rectifying faulty or incompetent work) and a risk of personal harm or stress.

6.2.3 *Prescribed Form of Suspension Notice*

Regulation 5 proposes to insert a new regulation, proposed Regulation 1510, into the current Regulations. This regulation provides the framework to prescribe a new form in situations in which notice is required to be given by a registered building practitioner of his or her suspension by the BPB. In the case of a notice of suspension under section 178(6) of the Act, the notice will be made in accordance with Form 7A. This regulation also proposes to insert a new regulation, proposed Regulation 1511, into the current Regulations. In the case of a notice of suspension or cancellation under section 182(4) of the Act the notice will be in accordance with Form 8.

6.2.4 *Update of Qualification Schedule*

Regulation 6 remakes the table in Schedule 7 of the current Regulations, which prescribes the qualification requirements of each of category of registered building practitioners. The current Regulations refer to the *Tertiary Education Act 1993* and the *Victorian Qualifications Authority Act 2000*. Both of these Acts have been repealed and replaced by the *Education and Training Act 2006*. Although section 16 of the *Interpretation of Legislation Act 1994* provides that where an Act is repealed or re-enacted by another Act the reference to the repealed Act is deemed to be a reference to the re-enacted Act, in the interests of improving clarity of the regulations it is proposed to change the references to reflect the current legislation. Another machinery change relates to the change of

²⁵ The categories of insurance reflect those mentioned in Domestic Building Insurance Ministerial Order made under the *Building Act 1993*, Victoria Government Gazette, No. S 98 Friday 23 May 2003.

description of the qualification of building inspector. The qualification previously known as a diploma in building inspection is now known as a diploma in building surveying. It is understood that this change occurred some years ago, and the proposed amendment will simply update the nomenclature.

The table in Schedule 7 has also been amended to provide for the building surveyor (limited) qualifications and draftsman and building design (architectural) revised qualifications. These are discussed below.

Categories of Building Surveyor Qualifications and Building Design (Architectural)

The proposal to revise the qualifications provides for a new category of building surveyor by prescribing qualifications. The regulation proposes to insert new definitions in Schedules 7 of the current Regulations. Specifically, in Item 1 of the table to Schedule 7 the words “Category of building surveyor” will be substituted by “Category of building surveyor (unlimited)”, and in Item 2 of the table of Schedule 7, an item will be inserted in Column 2, “Category of building surveyor (limited)”. The qualifications will be set out in column 3 by adding: “(a) an advanced diploma in building surveying from a course accredited under the *Education and Training Reform Act 2006*; and (b) 2 years of practical experience to the satisfaction of the Board.”

With respect to building designers, this regulation will substitute item 10 of the table to Schedule 7 in column 3 and add “(a) an advanced diploma in building design from a course accredited under the *Education and Training Reform Act 2006*”. This item replaces the current wording, which refers to an Advanced Diploma of Building Design and Project Administration. In January 2009 the previous course was replaced with the Advanced Diploma in Building Design (Architectural). Similarly, the current regulations reference for an intermediate scaffolding certificate (i.e., the Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994) has been updated to reflect the current Occupational Health and Safety Regulations 2007. There were some changes to the requirements for this certificate, however these issues were addressed in a previous RIS.²⁶

Transitional Provisions

To ensure that no students who are currently undertaking the Advanced Diploma of Building Design and Project Administration will be disadvantaged, Regulation 7 provides a transitional mechanism. This will allow a person who within 3 years prior to the regulations coming into effect, commenced study in the previous course to complete that course. In addition, the regulation also provides that a person who immediately before the coming into effect of the regulations was registered in the category of ‘draftsman’ will continue to be registered in that category.

²⁶ See: Regulatory Impact Statement, Proposed Occupational Health And Safety Regulations 2007, pp. 83–87: [http://www.vceec.vic.gov.au/CA256EAF001C7B21/WebObj/OHSRIS/\\$File/OHS%20RIS.pdf](http://www.vceec.vic.gov.au/CA256EAF001C7B21/WebObj/OHSRIS/$File/OHS%20RIS.pdf)

Forms

Regulations 8 and 9 are machinery regulations concerning forms. Regulation 8 inserts Form 7A into Schedule 2 of the current Regulations, and Regulation 9 inserts proposed Form 8 into the current Regulations.

6.3 Comparison with other Jurisdictions

NSW, Queensland, South Australia, ACT and Northern Territory require provision of ‘good character’ information for registration as a building practitioner. This is in a similar form to the Victorian proposal. In Western Australia an applicant must establish their ‘good character’ by obtaining a National Police Certificate and by providing details of any pending charges as well as two character references. In Tasmania an applicant is required to declare whether their registration has been cancelled previously and whether any disciplinary proceedings are pending.

Providing notification of suspension or cancellation varies between jurisdictions. In NSW a builder is required to advise consumers verbally and in writing of their suspension or cancellation, while in Queensland consumers are notified of these events by the Building Services Authority (BSA) (unlike other states in Queensland builders are required to take out insurance through the BSA; hence the BSA has a list of a builders’ clients). In all other jurisdictions there is no requirement to notify consumers when a builder’s registration is suspended or cancelled.

With respect to building surveyor qualifications, all other states and territories have adopted the COAG National Accreditation Framework 2-teired registration system (or an equivalent system).

The Advanced Diploma in Building Design (Architectural) was developed in Victoria to cater for the Victorian building industry, however, it is also recognised nationally. The course is similar to those offered in NSW and Queensland, and other jurisdictions are planning to update their curriculum. It has been suggested that the Victorian course could become the model for revised courses in other states.

7. COST–BENEFIT METHODOLOGY

7.1 Regulatory Costs

By their nature, regulations are designed to modify behaviour in order to achieve certain outcomes. This can impose costs on individuals or businesses known as ‘compliance costs’. In simple terms, compliance costs are the costs of complying with regulations. In the context of the Standard Cost Model (SCM), these can be divided into ‘administrative costs’ and ‘substantive compliance costs’.²⁷ It is important to note that only ‘administrative costs’ are measured by the SCM.

Administrative costs, often referred to as red tape or administrative burden, are those costs incurred by businesses to demonstrate compliance with the regulation or to allow government to administer the regulation. These costs can include costs associated with administrative requirements such as record keeping and reporting. Proposed Regulations 4 and 5 impose reporting/notification requirements to government and are therefore administrative costs. In accordance with the requirements under *Measurement of Changes in Administrative Burden* in the *Victorian Guide to Regulation*, administrative costs in the RIS are calculated using the Standard Cost Model methodology.^{28, 29}

Substantive compliance costs are those costs that lead directly to the regulated outcomes being sought. These costs are often associated with content-specific regulation and include, for example, buying new equipment or undertaking specified training in order to meet government regulatory requirements. Proposed Regulation 6, which deals with qualifications (i.e., training), is more appropriately categorised as a substantive compliance cost.

The *Subordinate Legislation Act 1994* requires, amongst other things, a RIS to assess the costs and benefits of proposed Regulations. This legislation also requires that a RIS identify practicable alternatives to the proposed Regulations and assess their costs and benefits as compared to the proposed Regulations. Conversely, the RIS is not required to identify alternatives which are not feasible or practicable.

The Subordinate Legislation Act 1994 Guidelines (the Premier’s Guidelines) are made under section 26 of the *Subordinate Legislation Act 1994* and provide assistance in interpreting this legislation. With respect to alternatives to the proposed Regulations, clause 2.04 of the Guidelines states that, “where the authorising Act dictates the form of subordinate legislation required, for example, where the authorising legislation provides for fees to be prescribed by statutory rule, *there is no discretion* to set those fees by another method” (emphasis added).³⁰ This is relevant in relation to the assessment of proposed Regulation 5, which prescribes the form in which suspension notices must be made. It is clear that the Act does not contemplate alternatives to this proposed Regulation.

²⁷ Department of Treasury and Finance, 2007, *ibid.*, p. F–7

²⁸ Standard Cost Model Formula – Administrative Cost = (tariff x time) x (population x frequency)

²⁹ This RIS uses the Standard Cost Model methodology but has not undertaken the usual five interviews with business to assess the costs, as provided in the *Measurement of Changes in Administrative Burden* in the *Victorian Guide to Regulation*. This is because the proposed Regulations introduce new requirements and their relatively straightforward nature allowed desktop exercises to be undertaken.

³⁰ Subordinate Legislation Act 1994 Guidelines, Revised 2007, Section 2.04

7.2 Discounted Cash Flow

Every effort was made to identify and quantify the costs and benefits imposed by the proposed Regulations. As far as possible, likely costs were identified and a Present Value of the costs was calculated. A discount rate of 3.5 per cent was used over a 10-year period (i.e., the life of regulations in Victoria).³¹ This allows future costs and benefits to be examined in terms of today's dollar value of costs and benefits. Assumptions underlying these calculations are contained in Attachment B.

7.3 Multi-criteria Analysis

The benefits specific to the proposed Regulations proved difficult to quantify in monetary terms. Multi-criteria Analysis (MCA) is presented in this RIS as an alternative assessment tool to complement the quantitative analysis. The MCA approach is described in part 5–18 of the *Victorian Guide to Regulation*. This approach is useful where it is not possible to quantify and assign monetary values to the impacts of a proposed measure (e.g., measures that have social or behavioural impacts). Furthermore, it represents a convenient way of comparing a range of alternative approaches.

This technique requires judgements about how proposals will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with the proposals. A qualitative score is assigned, depending on the impact of the proposal on each of the criterion weightings assigned to each of the criteria, reflecting their relative importance in the policy decision-making process, and an overall score can be derived by multiplying the score assigned to each measure by its weighting and summing the result. If a number of options are being compared, then the option with the highest score would represent the preferred approach.

³¹ Department of Treasury and Finance, 2007, *ibid.*, p. C-9

8. REGULATORY AND NON-REGULATORY ALTERNATIVES

8.1 Base Case

The ‘base case’ describes the regulatory position that would exist in the absence of the proposed Regulations. It is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the proposed Regulations. The ‘base case’ of doing nothing is not, strictly speaking, an alternative given that the government has identified a problem that needs to be addressed and has legislated for it.

In terms of establishing the base case, in the absence of the proposed Regulations:

- ‘good character’ criteria would not be prescribed. This would effectively render section 169(2)(ca) and 172A of the Act inoperative, given that these sections rely on ‘prescribed information’ to establish and determine ongoing building practitioners’ good character. For the purposes of this RIS, it could be assumed that ‘good character’ or a ‘fit and proper person’ test could be established in the courts on a case-by-case basis. This would also hamper the BPB in making a decision on good character and would vitiate the BPB’s capacity to determine ongoing good character because without the operation of these sections of the Act, the BPB would not have a ground to hold an inquiry.
- the form and words of the notices of suspension would not be prescribed. For the purposes of this RIS, it could be assumed that the Act would operate but persons suspended would need to inform contracted parties in a non-standard format and would need to make a judgement as to what information would be appropriate in such a notice.
- the two-tiered system of building surveyor registration would operate, but ineffectively as no qualifications would be prescribed. The BPB would need to rely on other mechanisms that would be less transparent. For example, the BPB could develop its own guidelines and assess applicants on a case-by-case basis.

In terms of assessment using the MCA, under the ‘base case’ each criterion is awarded a score of zero reflecting the default position (i.e., the regulatory position in the absence of the proposed Regulations). Accordingly, the base case scenario overall receives a net score of zero.

8.2 The Proposed Regulations

8.2.1 Costs of the Proposed Regulations

Each of the proposed Regulations was examined for the likely costs that they would impose on parties impacted by the proposal. It is assessed that there are no costs associated with the machinery regulations (Regulations 1, 2, 3, 8 and 9).

The estimated costs for Regulations 4 and 5 are industry-wide costs. These regulations, through an interaction of the Act, impose new reporting requirements (i.e., impose an administrative burden) on registered building practitioners in specific circumstances. The Standard Cost Model methodology was used to calculate the administrative costs associated with these regulations. Table 5 below shows that these costs over a 10-year

period are in the order of \$74,791, or an average discounted cost of around \$7,479 per annum (see [Attachment C](#) for detailed calculations). This cost is relatively minor because the estimated incidence of notifications per annum is low, that is, the reporting requirements under both proposed Regulations 4 and 5 will affect about 80 registered building practitioners from a population of nearly 23,000.³² This cost is negligible compared with the current \$20.4 billion annual activity in the building sector.

Table 5: Industry-wide Costs Imposed by the Proposed Regulations, 10-Year Assessment Period

Regulation	Description of Regulation	Cost (\$)
4	Reporting change of ‘good character’	29,353
5	Notification of suspension	45,438
Total		74,791

This RIS finds that the proposed COAG Framework for the two-tiered building surveyor system does not impose an appreciable burden on business because the new category will require relatively less onerous educational and experience requirements. Under the present arrangements, all surveyors must be qualified to a level which permits them to work on a project of any size (i.e., under the Act defined as Building Surveyor (unlimited)). In terms of individuals choosing to become building surveyors, the new limited category (i.e., Building Surveyor (limited)) will lower the study expense and the opportunity costs for those wishing to specialise in surveying smaller building projects.

Given that the Advanced Diploma of Building Design (Architectural) has replaced and updated an earlier course, and that the cost and duration of the courses are the same, it has been assessed that this regulation will not impose additional costs on students/businesses. The proposed Regulations will simply amend the current Schedule in the Regulations to specify this course so that the BPB can register applicants as building designers under the Act.

8.2.2 Government Costs

There will be negligible additional costs imposed on government arising from the proposed Regulations. The BPB will receive around 15 copies of notices of suspensions and approximately 65 notifications of change in prescribed good character information which it will file. The BC anticipates that these activities will include attaching the notice to the file and checking details on the BC levy database (1 hour), running the analysis of data and providing a report (1 hours), and if required, notifying the building practitioner if they have failed to provide copies (45 minutes). Based on the estimated frequency of notifications, this would provide a notional annual cost of \$15,920.³³ However, these activities will be undertaken by current staff and hence such notional costs will be absorbed as a result of greater productivity. While it could be argued that

³² The estimate of 80 registered building practitioners derives from around 15 suspensions and cancellations per annum and an estimate of 65 practitioners reporting changes of ‘good character’ per annum. See assumptions at [Attachment B](#).

³³ Filing and checking the notice (1 hour x VPS4 hourly rate \$39.16); analysis of data (1 hour x VPS5 hourly rate \$45.18); follow-up (45 minutes x VPS4 hourly rate \$39.16) multiplied by 80 notices (i.e., 65 changes of good character and 15 copies of suspension notice) x 1.75 (indirect costs, e.g. overheads, non-salary labour costs) = \$15,920.

any action taken as a result of these notifications is attributable to the current provisions of the Act and Regulations, an alternative point could be put that the outcomes for consumers (both the benefits and costs) resulting from the notification of suspension/cancellation are directly attributable to the Regulations. The analysis in this RIS assumes the latter view.

Any additional costs associated with a greater number of registrations of building surveyors will be fully recovered by the current \$90 registration fee, which recovers the full cost of processing these registrations. Furthermore, registered building inspectors currently holding an advanced diploma in Building Surveying may also seek registration as a building surveyor (limited).

8.2.3 Benefits of the Proposed Regulations

Consumer Protection

The benefits with respect to proposed Regulations 4 and 5 are associated with consumer protection (including protecting future consumers). Broadly, these regulations are aimed at removing an information gap. In addition, the proposals are likely to provide greater certainty for consumers and practitioners (by specifying requirements in a transparent form) and may also instil a greater consumer confidence in the general regulatory regime with respect to building practitioners.

Proposed Regulation 4 will provide the BPB with a mechanism to monitor the ‘good character’ of building practitioners. The ability to monitor building practitioners’ character should reduce the risks associated with engaging a builder of ‘bad character’ and thereby reduce the chance of incurring financial loss, stress, and in extreme cases, physical harm. However, it is acknowledged that some consumers may be disadvantaged if the proposed Regulations result in their builder being suspended, and work is not completed or covered by insurance.

With respect to proposed Regulation 5, under the current arrangements a consumer has no way of knowing if their building practitioner has been suspended. Receiving such a notice allows the consumer to consider making alternative arrangements at an early time, and may help to ensure that a suspended building practitioner does not continue working on projects while they are suspended. The two forms that this regulation proposes to prescribe will make it easier for suspended building practitioners to comply with the requirement (i.e., by providing a standard form of words) and will provide consumers with an adequate level of relevant information regarding the suspension.

While suspensions and cancellations are not common, consequences on individual consumers can be significant. For example, malpractice or dishonesty may involve significant costs for individual consumers, and builders’ insurance coverage may not be valid.

While the monetary value of the benefits proved difficult to quantify, their relative weighting is given some perspective by examining the magnitude of the value of the building sector compared to the costs of the proposed measures. In this regard, the average value of work undertaken under a building permit over the year to September 2008 was \$139,300 per permit. Over this period 90,530 domestic and residential building permits were issued, with a value of \$12.6 billion. The magnitude of these

figures compared to the costs (i.e., a discounted cost of around \$7,479 per annum across the entire industry) would suggest that the regulatory burden is minor compared with the likely consumer benefits of the proposal.

For example, the *CAV Consumer Detriment in Victoria* survey would suggest that if four or five incidents per annum were prevented (the study found that the cost of an incident with a builder cost consumers an average of \$1,600), then the benefits of the regulations would outweigh their costs. In addition, Case Study 1 ([Attachment D](#)) illustrates that the costs of a single incident of fraud can be larger than the entire annual industry costs of the proposal.

Market Efficiency – Access and Uniformity

There are two main benefits associated with adopting the COAG Framework of a two-tiered system of building surveyor registration: improving market access for new building surveyors and creating a national market.

Currently there is a shortage of qualified building surveyors in Victoria. This may, in part, be caused by the current qualification requirements. The proposal will lower barriers to entry into the profession and this should enhance competition. The levels of training and thresholds were selected to impose the lowest possible regulatory costs, while managing risks to an acceptable level.

There is a relevant precedent in the conveyancing services market. Traditionally, conveyancing was restricted to legal practitioners. In the 1990s this market was reformed and appropriately qualified non-legal practitioners were permitted to undertake most forms of conveyancing. This improved market access for conveyancing services and lowered fees. Far from imposing additional costs, setting qualification levels at appropriate levels commensurate with the risks can deliver significant benefits to consumers, while lowering entry costs for practitioners.³⁴

In addition, until recently the market for building surveyor services was fragmented along geographical lines. The proposal will enhance the national market for building surveyor services. The benefits associated with a national market include increasing competitiveness, minimising regulatory impediments to free trade, increasing consumer choice, decreasing costs to the industry and increasing mobility of people registered to practice in equivalent occupations across jurisdictions.

The benefit associated with adopting the revised Advanced Diploma of Building Design (Architectural) is that it will provide students with an up-to-date course, refined since the previous course's introduction in 1999 (based on the South Australian curriculum) and draws on practical experience over that period to meet industry needs in the building design industry.

³⁴ Deregulation of conveyancing in Victoria has resulted in a saving to the average house purchaser of about \$5,500 per conveyance, and consumers of conveyancing services in Victoria enjoy savings of just over \$500 per average sale in comparison to NSW. A survey in Victoria found that lawyers charge approximately \$350 more than non-lawyers for conveyancing services. Since deregulation approximately 40 per cent of conveyancing is undertaken by non-lawyers. Source: The Allen Consulting Group 2005, *The Regulation of Conveyancing Services in Victoria*, Department of Justice, Melbourne, p. vii and p. 6

Multi-criteria Analysis Assessment

To assist in making a considered assessment of possible alternatives to proposed Regulation 4 (prescribed information relating to good character), an MCA assessment was undertaken. For reasons discussed below, there are no practicable alternatives to other proposed regulations, however this RIS welcomes comments and suggestions on variations to these proposals to improve their efficiency and effectiveness.

Given the specific nature of proposed Regulation 4, three criteria were chosen and weightings selected. The first criterion was chosen to reflect the objectives and purpose of the Act and policy issue requiring intervention. The second criterion broadly reflects the government’s policy intentions under the *Reducing the Regulatory Burden* initiative. The third criterion assesses the effectiveness of the regulatory vehicle. The criteria are described in Table 6 below.

Table 6: Multi-criteria Analysis Criteria

Criterion	Description of criterion	Weighting
Consumer Protection	This criterion reflects the main purpose of the government objective. That is, to protect/minimise harms to consumers. Given that this criterion reflects the primary objective of the proposal, it is assigned weighting of 50.	50
Cost minimisation	This criterion relates to ensuring that the costs imposed on registered building practitioners of any regulatory measure are kept to a minimum. Given that the building industry already faces considerable regulation and consistent with the Victorian Government’s objective to reduce the regulatory burden, this criterion is assigned a weighting of 30.	30
Feasibility of implementation	The feasibility of the implementation criterion refers to the practicality of the instrument from a legislative perspective (i.e., the extent to which it is permitted by, and meets the objectives of the Act). This criterion also incorporates the costs to government of the mechanism required to implement the option (i.e., the extent to which the option would require changes to other legislative instruments and/or institutional arrangements). A proposal may have merit but the delivery mechanism must be feasible and cost-effective for government, and hence a weighting of 20 is assigned to this criterion.	20

For the purposes of an MCA assessment, an assigned score of zero (0) represents the ‘base case’, while a score of plus one hundred (+100) means that the alternative fully achieves the objectives of that criterion. A score of minus one hundred (–100) means that the proposal does not achieve of the objectives of that criterion.

A score of 50 is assigned to the consumer protection criterion. Information regarding good character and any changes to these circumstances is currently not prescribed, and the BPB currently cannot readily obtain this information. This score does not receive 100 because the proposal relies on self-assessment, and it could be reasonably expected that some building practitioners may not notify the BPB as required (however, to promote compliance, there is a penalty in the Act for not providing notification of a change in the prescribed information). This proposal, however, seeks to minimise costs for building practitioners by targeting the measure at only those whose good character information changes (as opposed to applying the measure to all registered building practitioners). The number of building practitioners affected is low (estimated in this RIS at around 65) and the cost of reporting is relatively minor, however higher than the base case. Consequently, this criterion receives a score of –10. Assessed against the Premier’s Guidelines (section 1.09), the regulatory instrument of this proposal is likely to be effective in achieving the government’s objectives and receives a score of 50. Table 7 below shows that this results in a score of +32.0.

Table 7: Multi-criteria Analysis Assessment of propose Regulations 4

Criteria	Weighting	Assigned Score	Weighted Score
Consumer protection – harm minimisation	50	50	25.0
Cost minimisation – building practitioners	30	-10	-3.0
Feasibility of implementation	20	50	10.0
Total	100%		+32.0

8.3 Variation of the Proposed Regulations

Alternatives such as provision of economic incentives, negative licensing, co-regulation or self-regulation or an information campaign were examined but considered not practicable. With respect to co-regulation or self-regulation (i.e., codes of conduct or disciplinary measures), not all registered builders are members of industry bodies, and it could be argued that because membership is self-selecting and voluntary, those likely to breach the ‘good character’ criteria may not be members of such associations. Economic incentives (rewarding good behaviour) would not be well-targeted (i.e., the proposed regulations will only affect a small minority of building practitioners) and could be expensive, while negative licensing would require a significant change to government policy (i.e., the current registration system would need to be abolished) and a characteristic of negative licensing is that it is essentially reactive and deals with serious problems after they have occurred. Finally, while the BC could initiate an information campaign through its publications, newsletters and seminar program, ensuring compliance could be difficult.

Given the minor and specific nature of the proposed Regulations the only practicable alternative is to vary the proposed Regulations. Of course, a decision could be made not to proceed with the proposal, however, this represents the ‘base case’ which the analysis in this RIS suggests is inferior to the proposed regulations.

8.3.1 Options to Collect ‘Good Character’ Information

Building Practitioner Annual Reporting

Currently, when a person initially applies for registration as a building practitioner they must provide details of their ‘good character’. The regulations could be varied to require this disclosure each year when annual registration is renewed. This would require around 23,000 building practitioners to make a declaration on an annual basis (or around 2.3 million declarations over a 10-year period based on the current level of registrations). This could be done on the current ‘tick a box’ basis on the annual registration renewal form.

While this option might improve compliance and increase the number of notifications, it would place an additional administrative burden on the vast majority (i.e., over 99 per cent) of registered building practitioners whose good character information has not changed. Such a requirement would impose a burden of around \$319,000 on industry over a 10-year period, or a discounted annual cost of around \$32,000 (see [Attachment C](#) for calculations). In addition, an annual declaration would result in a time lag (an average lag of six months) regarding provision of information to the BPB. Delay in receiving such information may place consumers at risk.

An MCA assessment was undertaken of this alternative. The consumer protection criterion receives a relatively high score of 65 because the proposal is likely to elicit broader responses than the proposed Regulations. This is because the total population of around 23,000 building practitioners would be prompted annually to assess their circumstances regarding ‘good character’ compared to the current situation in which around 1,250 declarations are made annually as part of applications for registration. This criterion does not receive a score of 100 because the information is still provided on a self-assessed basis, and as stated, there would be longer time lags for the BPB to receive this information.

This alternative would impose a much larger cost on building practitioners compared to the base case and proposed Regulations, and consequently is assigned a score of –75.

Given that the regulatory instrument is the same as the proposed Regulation (i.e., they are both statutory rules, which are characterised by flexibility, timeliness and are suitable for administrative matters), this criterion is assigned a score of 50. This results in a net score of +20.0 for this option as shown in Table 8 below.

Table 8: Multi-criteria Analysis Assessment of Annual Reporting by RBPs Option

Criteria	Weighting	Assigned Score	Weighted Score
Consumer protection – harm minimisation	50	65	32.5
Cost minimisation – building practitioners	30	-75	-22.5
Feasibility of implementation	20	50	10.0
Total	100%		+20.0

While the annual reporting proposal receives a score lower than the proposed Regulations, if the proposed Regulations do not elicit the quality of information anticipated, the government could consider introducing an annual reporting requirement.

Reporting by Institutions or Organisations

An alternative to requiring a building practitioner to notify the BPB of a change in the prescribed information relating to their good character could be to impose this requirement on institutions and organisations (i.e., removing the requirement from individuals). For example, the legislation could establish a system whereby the Victorian Courts would be required to provide details of building practitioners who have been convicted of an indictable offence involving fraud, dishonesty, drug trafficking or violence which was punishable by a term of imprisonment of three or more months. In a similar manner, the Insolvency and Trustee Service Australia (ITSA) and/or the Australian Securities and Investment Commission (ASIC) could provide information to the BPB about bankruptcy or companies under administration, while insurance companies could also be required to disclose certain information. And peak bodies or industry associations could be required to report details of disciplinary procedures to the BPB.

This option is likely to produce high quality data but the cost would be substantial. This option would also entail considerable changes to other legislation, and is likely to involve significant privacy considerations (e.g., an industry association required to report on members). It may also raise jurisdictional issues with the Commonwealth and the states and territories.

To compare this alternative with the proposed Regulations, an MCA assessment was undertaken. The consumer protection criterion receives a score of 75 because institutions would forward details on changes in good character directly to the BPB (i.e., this alternative would not rely on self-assessment) and is likely to provide high quality and timely information.

This alternative effectively removes the building practitioner from direct involvement in the reporting process because information would be provided on a government agency-to-agency basis. Given that the building practitioner is not required to report details, as is currently the case, this position is analogous to the base case and receives a score of zero.

The main drawback associated with this alternative is that it would be extremely costly to implement and administer. It would require significant changes to legislation and the establishment of systems to identify registered building practitioners, along with the implementation of new reporting systems. Given the inter-jurisdictional issues, required changes to legislation and possible privacy issues, it is not clear that this alternative would be practicable. While reporting by institutions operates in other circumstances (e.g., in relation to serious crimes, money laundering, firearms offences, terrorism matters), these arrangements usually relate to situations where government seeks to manage extremely high risks. Nature of risk and, importantly, the expected low frequency of changes to ‘good character’ and suspension notifications is likely to result in costs that outweigh benefits of institutional/organisational reporting. Consequently, a score of -100 is assigned against the feasibility criteria. This is because this option is likely to be costly to establish and maintain, while the additional procedures placed on government departments and agencies is likely to be considerable compared to the scale of the problem.

While this option would delivery high quality information, the likely high establishment and on-going costs, as well as possible practical difficulties, results in this option receiving a net score of +17.5.

Table 9: Multi-criteria Analysis Assessment of Institutional Reporting

Criteria	Weighting	Assigned Score	Weighted Score
Consumer protection – harm minimisation	50	75	37.5
Cost minimisation – building practitioners	30	0	0.0
Feasibility of implementation	20	-100	-20.0
Total	100%		+17.5

Different criteria for ‘Good Character’ test

The ‘good character’ criteria has been developed in conjunction with CAV. It is broadly consistent with the criteria in NSW, Queensland, South Australia, the ACT and Northern Territory. Other matters could be added to the proposed criteria. Alternatively, the wording or criteria could be modified or removed. As part of the consultation process for this RIS, DPCD welcomes stakeholder comment on the proposed criteria that may improve its effectiveness.

Police Checks

South Australia and Western Australia require a National Police Certificate issued within the three months prior to the application as part of their assessment of good character for an applicant. The cost of a National Police Certificate or Police Record Check in Victoria is currently \$30.70. Based on the current number of registered building practitioner (i.e., 22,887 in 2008), an additional cost of approximately \$700,000 per annum would be imposed on the industry, or a discounted 10-year costs of around \$5.8 million. DPCD considers that the cost of this impost would outweigh any potential benefits. These costs relate to police checks carried out in relation to all building practitioners annually, rather than for new applications as is currently the case in South Australia and Western Australia.

Such information would only relate to events in the previous three months (assuming that the proposal is aligned with the requirements in South Australia and Western Australia), and this information does not provide details of bankruptcy, disciplinary actions or disqualifications in other jurisdictions.

8.3.2 Notice of Suspension

As mentioned earlier, clause 2.04 of the Premier’s Guidelines states that, “where the authorising Act dictates the form of subordinate legislation required, for example, where the authorising legislation provides for fees to be prescribed by statutory rule, *there is no discretion* to set those fees by another method” (emphasis added).³⁵ This is relevant in relation to the assessment of proposed Regulation 5, which prescribes the form in which suspension notices must be made. It is clear that the Act does not contemplate alternatives to this proposed Regulation.

³⁵ Clause 2.04 of the Subordinate Legislation Act 1994 Guidelines, Revised 2007

Notwithstanding the above, it would be possible to incorporate the proposed Regulations into the Act. It is well-established that the benefit of statutory rules as a regulatory instrument is their administrative efficiency and flexibility, however. For example, if the Government decided to change the wording in the form of the suspension notices, this could be done by amending the Regulations, which is a relatively straightforward and timely process. However, if these requirements were incorporated in the Act, then any change would require a parliamentary amendment. For minor administrative matters, this is a time-consuming and relatively complex and costly procedure.

The Premier's Guidelines also provide guidance as to the types of matters appropriate for inclusion in Regulations rather than in Acts or in instruments which are not of a legislative character. The Guidelines note that significant matters should not be included in subordinate legislation, however they specifically mention that they are a more appropriate regulatory instrument when prescribing forms for use in connection with legislation.³⁶

As part of the consultation process for this RIS, DPCD welcomes stakeholder comment on the proposed wording of the forms and whether any information requirement should be added to improve its effectiveness, or suggestions of ways that the forms, or the way forms are submitted, can be streamlined.

8.3.3 *Building Surveyor Qualifications*

As noted earlier, the COAG Secretariat and the ABCB were contacted to determine whether a COAG RIS had been prepared in relation to building surveyor qualifications. The ABCB explained that it considered that the measure would reduce the regulatory burden by creating more flexible and less onerous qualifications. Consequently, no COAG RIS was prepared. This RIS finds that this regulatory proposal does not impose an appreciable burden on business and therefore the RIS has not examined alternatives. Furthermore, on a practical level it is also important to note that the Victorian Government has signed an agreement to adopt the COAG Framework for a two-tiered building surveyor system.

The thresholds that determine the level of certification were selected as an outcome of an ABCB working group. The thresholds broadly reflected existing arrangements in most jurisdictions. In turn, the levels of training and thresholds have been carefully selected to impose the lowest possible regulatory costs, while managing risks to an acceptable level. For example, there is a considerable difference in the requirements for a three storey building compared to a four storey building; the latter requiring additional safety, fire, and structural requirements.

The qualification and experience thresholds established by the National Accreditation Framework were agreed upon by all jurisdictions in 2003.³⁷ While it would be possible to vary these thresholds, there is a risk that this may compromise the creation of a national market for building surveyor services. A higher threshold could be set in Victoria (e.g., allowing a building surveyor (limited) to assess four storey projects),

³⁶ Clause 1.09 of the Subordinate Legislation Act 1994 Guidelines, Revised 2007

³⁷ VCEC, 2005, Submission number 9: Inquiry into Housing Construction Sector and Related Issues, The Chairman of the Australian Building Codes Board, p. 4

however DPCD considers that this may defeat the purpose of the amendment because building surveyors would be required to undertake more training.

That said, as part of the consultation process DPCD welcomes comments on whether unique or specific characteristics of the Victorian market might justify a variation of the proposal to accommodate local conditions.

9. PREFERRED OPTION

The analysis in the preceding section supports the proposed Regulation as the preferred option compared to the practicable alternatives identified in this RIS. In the context of the value of the building industry, the costs of the proposed Regulations of \$74,791 over a 10-year period are negligible. While the monetary value of the benefits proved difficult to quantify, the *CAV Consumer Detriment in Victoria* survey suggests that if four or five incidents per annum were prevented (the study found that the cost of an incident with a builder cost consumers an average of \$1,600), then the benefits of the regulations would outweigh their costs. In addition, experience has demonstrated that a single incident of fraud can be larger than the entire annual industry costs of the proposal.

The proposed Regulations seek to balance achieving policy objectives, while imposing the minimal costs and obligations on parties. While some of the options suggest that it would be possible to improve the quality of data collected, it is assessed that this would impose unreasonable costs on building practitioners and/or organisations. The MCA assessments, which are summarised in Table 10 below support this finding.

Table 10: Summary of Multi-criteria Analysis of proposed Regulation 4 – ‘Good character’ information

Regulatory Proposal	MCA Assessment
Base case scenario	0.0
Proposed Regulations	32.0
Annual reporting by RBPs	20.0
Institutional reporting	17.5

The above analysis concludes that the benefits of the proposed Regulations are likely to exceed the costs (i.e., there is a net benefit), and the net benefits of the proposed Regulations are greater than those associated with any practicable alternative.

Finally, while the annual reporting proposal receives a score lower than the proposed Regulations, if the proposed Regulations do not elicit the quality of information anticipated, the government could consider introducing an annual reporting requirement. The preference for the proposed Regulation is consistent with the general principle that the least cost alternative should be considered as the first option compared to more costly options that would deliver similar results.

10. CHANGE IN THE ADMINISTRATIVE BURDEN

The *Reducing the Regulatory Burden* initiative commits the Victorian Government to reducing the cost of ‘red tape’ to business and not for profit organisations. Accordingly, this RIS uses the Standard Cost Model (SCM) methodology and *Measurement of Changes in Administrative Burden* to inform its cost–benefit analysis and to measure any changes to the administrative costs. For the purposes of the measurement of change in the administrative burden, the existing burden forms the base case against which the change is measured.

Administrative costs are those costs incurred by business to demonstrate compliance with the regulation or to allow government to administer the regulation (i.e., imposing an information obligation including keeping a register, lodging documents with government, or reporting requirements). The SCM is used solely to measure the administrative costs of regulation. It is not used to measure substantive compliance costs. Similarly, costs to government of administering and enforcing the proposed Regulations are not subject to the SCM assessment.

The Act and proposed Regulations together establish two new reporting requirements. These are:

- reporting changes of the prescribed information to the BPB regarding changes to building practitioners’ good character (proposed Regulation 4);
- providing a copy of a notice of suspension to the BPB (proposed Regulation 5). For the purposes of the measuring changes in the administrative burden, only reporting requirements to government are calculated (suspension notices to consumers are regarded as a compliance cost).

Table 11 shows that the additional administrative burden is relatively minor at around \$3,719 per annum (see [Attachment E](#) for calculations). This cost is negligible because the expected frequency of reports/notifications is low, and the individual reports/notifications are relatively straightforward and impose a small cost on individuals.

Table 11: Standard Cost Model Assessment of New Administrative Costs

Regulation	Description	Annual Costs (\$)
4	Reporting change of ‘good character’	3,530
5	Notification of BPB of suspension	190
Total		3,719

* Numbers rounded to the nearest dollar. These figures have not been discounted.

Since there is a net increase in the administrative burden with respect to the proposed Regulations, which is considerably less than the figure of \$250,000 per annum advised by the Department of Treasury and Finance as being the indicative threshold for materiality, in accordance with the Guidelines issued by the Treasurer, *Measurement of Changes in Administrative Burden*, it has been determined that the regulatory changes in the proposed Regulations will not lead to a material change in the administrative burden on business organisations in Victoria (see [Attachment F](#) for Statement of No Material Impact). In fact, it could be argued that the proposed Regulations prescribe details that reduce the burdens that would otherwise be imposed by the Act alone.

11. COMPETITION IMPACTS

In 1999, the Victorian Government conducted a National Competition Policy (NCP) Review of the Act. The Review assessed the Act against clause 5 of the National Competition Policy Guidelines, which states that the guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.³⁸

The Review found a clear public benefit in the retention of regulatory controls of the market for building work services in general, and that legislation is the least restrictive and most effective means of achieving the objective of consumer protection. The National Competition Council (NCC) assessed the report and considered that Victoria had met its Competition Policy Agreement obligations.

The NCP ‘competition test’ was used to assess the proposed Regulations against any possible restrictions on competition. The test asks whether the proposed Regulations:

- allow only one participant to supply a product or service;
- require producers to sell to a single participant;
- limit the number of producers of goods and services to less than four;
- limit the output of an industry or individual producers;
- discourage entry by new persons into an occupation or prompt exit by existing providers;
- impose restrictions on firms entering or exiting a market;
- introduce controls that reduce the number of participants in a market;
- affect the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers;
- impose higher costs on a particular class or type of products or services;
- lock consumers into particular service providers, or make it more difficult for them to move between service providers; and/or
- impose restrictions that reduce range or price or service quality options that are available in the marketplace.

Assessed against this test, the proposed Regulations do not impose restrictions on competition. Proposed Regulation 4 proposes a ‘good character’ pre-requisite for registration and while it is theoretically possible that such criteria could deter ‘efficient’ entry into the industry, it is considered that the criteria will not affect industry-wide competition because of its targeted focus and small proportion of likely applicants affected. Moreover, if any such restriction exists, on consumer protection grounds, it is likely that the benefits of any restriction to the community as a whole outweigh the costs.

³⁸ Victorian Government, 1999, *NCP Review of Architects and Building Legislation*, Prepared by Freehill Hollingdale & Page

Proposed Regulation 5 prescribes the form of suspension notices and as such does not restrict competition.

Finally, while the current Act does impose restrictions on competition by, for example, imposing qualification and registration requirements on building surveyors, proposed Regulation 6 is likely to encourage entry into the market for this service and thereby, at the margin, encourage competition in the market for building surveying services. The restrictions associated with qualification and registration requirements were the subject of an earlier VCEC and National Competition Policy assessment.

While it is difficult to predict the competition effects within the market for building surveyor services, the likely increased entry of building surveyors into services covered by the ‘limited’ category may increase competition in the market segment relating to domestic dwellings (i.e., buildings under three storeys and 2000 square metres).

Given that proposed Regulation 6 simply recognises an updated course in the regulations for the purpose of registration as a Building Designer, it has been assessed that this proposal will not impinge upon the competitive operation of the building sector.

12. SMALL BUSINESS IMPACT

The *Victorian Guide to Regulation* provides a definitive guide to developing regulation in Victoria within the context of the government's vision of well-targeted, effective and appropriate regulation. As noted earlier, all new regulatory proposals that have an appreciable burden on business must be thoroughly assessed to ensure the benefits to the community outweigh the costs and that the best option is considered. In particular, it is important to examine the impact on small business because the compliance burden often falls disproportionately on that sector of the economy.^{39, 40}

As at June 2007, the total number of small businesses which engage in construction in Victoria was 76,644 (comprising 46,689 non-employed businesses and 29,955 businesses employing 1–19 employees). Small businesses in the construction sector comprise 98.3 per cent of the total number of construction businesses in Victoria, which is slightly higher than the state average of 96 per cent.⁴¹

The impact of the proposed Regulations will therefore fall proportionally more heavily on small business. However, the overall impact of the administrative burden on small businesses is likely to be small given that only building practitioners whose 'prescribed information' changes or who are suspended will be affected by the proposed Regulations – perhaps a total of around 80 businesses per annum.

Proposed Regulation 5 prescribes the form and words to be used by a building practitioner who has been suspended under sections 178(6) or 182(4) of the Act. A suspended practitioner is required to fill in a number of fields (i.e., name, date of suspension, category and class of registration) on the form. This regulation arguably lowers search and administrative costs by providing a standard form of notification to consumers (e.g., in the absence of such forms, a suspended practitioner may require professional assistance, say from a lawyer, to draft such notices).

In terms of the proposed adoption of the COAG Framework, which implements the national two-tiered building surveyor system, this regulation seeks to lower entry costs for individuals/smaller businesses by establishing an appropriate qualification level for building surveyors who engage in smaller building projects (i.e., projects under three storeys and under and 2000 square metres). It is estimated that 75 to 80 per cent of building surveyor work falls into this category. The proposal should therefore have a positive effect on this segment.

³⁹ Victorian Government, 2007, *Small Business Regulatory Impact Assessment Manual*, Melbourne, April 2007

⁴⁰ The ABS defines a small business as a business employing less than 20 people. ABS Cat. 1321.0 – Small Business in Australia

⁴¹ ABS Cat. 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2003–June 2007, Businesses by Industry Class by Main State by Employment Size Ranges, Construction (Victoria)

13. IMPLEMENTATION AND COMPLIANCE

Enforcement of the Act and Regulations is carried out by authorised officers from the BC, local governments, public and private building surveyors, and authorised officers of the Melbourne Fire Brigade and Country Fire Authority.

Compliance with the Act, Regulations and Codes is ensured by a comprehensive audit program. In 2006–07, the BC conducted 170 office audits and 167 building site audits. It also conducted 165 audits of domestic building work for compliance with the 5 Star Standard for energy efficiency. The BC conducted a total of 16 prosecutions, with 100 per cent of the cases proven guilty, resulting in 13 fines to the value of \$121,500. It also received a total of 451 complaints, representing 2.2 per cent of the total number of registered building practitioners.

The BPB reviews investigations, identifying breaches of legislation or professional conduct for prosecution by a court. The majority of BPB inquiries related to domestic builders, followed by building surveyors. In 2006–07, the BPB conducted a total of 33 inquiries, relating to 832 investigated property sites. The inquiries resulted in four registrations being cancelled and three being suspended, with total fines of \$57,131.50.

The BC will enforce the suspension notice requirements as part of its audit program. It is also able to match suspensions or cancellations with the copies of such notices received by the BPB from the building practitioner. When building practitioners have their registration suspended or cancelled the BPB will notify the person of their requirements under the Act and Regulations.

In August 2008 the *Building Act 1993* was amended to improve the disciplinary powers and penalty system available to the BPB to enable the system to deal more effectively with builders and plumbers who do not comply with their legislative requirements. The amendments included measures to improve the flexibility of the BPB with respect to penalties, requiring training or course of instruction to be undertaken by building practitioners, disqualification of building practitioners from registration for up to three years, increasing fines to a maximum 100 penalty units per inquiry, linking the conduct of company to registered director or partner, extending the grounds for suspending registration of a practitioner pending inquiry, and introducing a new ground for inquiry in relation to breach of the *Domestic Building Contracts Act 1995*. The proposed Regulations will complement and strengthen the compliance and enforcement regime.

With respect to implementation of the proposed Regulations, a person who is registered as a building surveyor when the regulations come into effect will be grandfathered into the ‘unlimited’ category. This will ensure that registered building surveyors who are currently registered are not required to re-register in the new category. In addition, to ensure that no students will be disadvantaged who are currently undertaking the Advanced Diploma of Building Design and Project Administration, regulation 7 provides a transitional mechanism. This will allow a person who three years prior to the regulations coming into effect commenced study in the previous course to complete that course.

14. CONSULTATION

Stakeholder consultation will begin in April 2009 with the Building Advisory Council (BAC), Building Appeals Board (BAB), and the Building Regulations Advisory Committee (BRAC).

The BAC is a senior industry-based advisory group that advises the Minister for Planning across a range of policy and regulatory issues. Membership comprises the:

- Building Commission and Plumbing Industry Commission;
- Australian Institute of Building Surveyors, Victorian Chapter;
- Property Council of Australia, Victorian Division;
- Royal Australian Institute of Architects;
- Master Builders Association of Victoria, Victorian Chapter;
- Housing Industry Association, Victorian Division;
- Institution of Engineers Australia, Victorian Division; and
- Consumer Affairs Victoria, Department of Justice

The BAB is an independent statutory body established under the Act. It is made up of a panel of approximately 25 expert building practitioners from across the range of building disciplines. It determines appeals on matters relating to the Building Regulations 2006, the BCA, and specified provisions of the Act.

The BRAC is a Government Statutory Body established to oversee the administration of Victorian building legislation. The Committee provides advice to the Minister for Planning on draft building regulations and also accredits building products, construction methods and components or systems connected with building work. BRAC assesses product accreditation applications against the performance requirements of the BCA. It consists of representatives from the following industry organisations:

- Building Commission and Plumbing Industry Commission;
- a nominee of the Minister responsible for public construction;
- a representative of the fire services being the Country Fire Authority and the Metropolitan Fire and Emergency Services Board;
- a nominee of the Melbourne City Council;
- a representative of the Royal Australian Institute of Architects, Victorian Chapter;
- a representative of the Institution of Engineers, Australia, Victorian Division;
- a representative of the Master Builders Association of Victoria;
- one representative from the Housing Industry Association, Victorian Division;
- one representative from the Property Council of Australia;
- a representative of the Municipal Association of Victoria;

- two representatives of the Australian Institute of Building Surveyors, Victorian Chapter;
- a nominee of the Minister with relevant building industry experience;
- at least one legal practitioner representative; and
- at least one consumer representative.

Department of Justice (Civil Policy and CAV) were consulted and assisted in the development of the ‘good character’ requirement.

The Australian Institute of Building Surveyors (AIBS) national board considered proposed Regulation 6. It noted that the “AIBS are pleased that the proposed new draft of Victorian Building Regulations in particular proposed Regulation 6, is in line with the National Accreditation Framework (NAF) in that it will now ensure through legislation that nationally the two-tiered system for the building surveying profession will be introduced.” The Victorian Municipal Building Surveyors Group (VMBSG) also supports the proposed adoption of the COAG National Accreditation Framework, noting that it should alleviate shortages in regional Victoria by increasing the number of persons able to provide building surveyor services in those areas.

Relevant officers from four academic institutions were contacted in relation to the proposed adoption of the COAG Framework for the two-tiered system for building surveyors. Victoria University of Technology and Holmesglen Institute of TAFE currently offer an advanced diploma in Building Surveying. Chisholm Institute plans to introduce an advanced diploma in Building Surveying in 2009. This will involve re-bundling current skills/modules rather than developing new subjects. The Gordon Institute of TAFE currently offers a diploma in Building Surveying and is considering developing additional subjects for an advanced diploma, but may be restrained by its resources. It currently recommends that its students wishing to complete the additional subjects to obtain the advanced diploma undertake an online course provided by TAFE Tasmania.

The changes arising from the legislative amendments relating to the proposed Regulations have also been highlighted by the BC in its publication *Inform* (see September 2008, Issue 39, pp. 8–9), through e-Bulletins, and details have been posted on the BC website.

With respect to development the Advanced Diploma of Building Design (Architectural), a Skills and Knowledge profile was developed, based on the vocational competencies required by the BC for registration. An initial workshop was conducted with representatives from the Building Design Association of Victoria, the BC and a number of registered Building Designers. The results were circulated as an electronic survey to a variety of employers, which included metropolitan and regional businesses and those designing both residential and commercial projects. A second workshop was conducted to confirm the skills and knowledge following the results of the survey.

A Course Development Steering Committee was convened to develop the course. This included representative from private sector building design businesses, the Building Industry Consultative Council, the Housing Industry Association, two TAFE institutions and RMIT University, the Advanced Building Study Network Group, the BPB, and the BC.

This RIS represents another step in the consultation process and DPCD welcomes comments or suggestions with respect to the nature, extent, and likely impacts of the proposed Regulations, and any variations that may improve the overall quality of the proposed Regulations.

The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. To provide adequate time to comment on the regulatory proposals in this RIS, the consultation period will be 40 days, with written comments required by no later than **5.00pm, 2 July 2009**.

15. EVALUATION

An important feature of best practice regulation is that it is reviewed regularly to ensure that it still represents the most appropriate means of meeting the specified objectives. In order to monitor the effectiveness of the Act and Regulations, the BC has developed an enhanced evaluation strategy. In line with VCEC's report, *Housing Regulation in Victoria*, the BC has given a high priority to 'regulatory excellence'.

A key corporate strategy of the BC is to measure and monitor the performance of regulatory systems and processes. In terms of the ongoing evaluation of Regulations, the BC collects baseline data through audits, industry reporting/compliance requirements, inquiry databases and stakeholder consultation.

The BC and BPB will continually collect baseline data about the operation of each regulation. For example, 'good character' criteria data will be collected each month on the number of notifications, which criterion triggered the notification, and information relating to the building practitioner in question (this information is subject to information privacy laws). As noted earlier, if the proposed Regulations do not elicit the quality of information anticipated, then the government could consider introducing an annual reporting requirement.

Key performance indicators for the proposed Regulations will be established as part of a project commenced by the BC in July 2008. This project (*Performance management and evaluation system for the Building Regulations 2006*) will identify other measures that will be used as part of the ongoing evaluation process, including both quantitative and qualitative measures.

16. CONCLUSION

This RIS concludes that the proposed Regulations result in net benefits to society and these are greater than the practicable alternatives identified in this RIS. In the context of the value of the building industry, the costs of the proposed Regulations of \$74,791 over a 10-year period are negligible (i.e., the cost of the proposed Regulations would impose an average cost of around 8 cents per domestic/residential permit), while the average value of work conducted under a domestic/residential building permit is \$139,300.

While the monetary value of the benefits proved difficult to quantify, the CAV *Consumer Detriment in Victoria* survey suggests that if four or five incidents per annum were prevented (the study found that the cost of an incident with a builder cost consumers an average of \$1,600), then the benefits of the regulations would outweigh their costs. In addition, experience has demonstrated that a single incident of fraud can be larger than the entire annual industry costs of the proposal.

The proposed Regulations seek to balance achieving policy objectives, while imposing the minimal costs and obligations on parties. While some of the options suggest that it would be possible to improve the quality of data collected, it is assessed that this would impose unreasonable costs on building practitioners and/or organisations.

The NCP ‘competition test’ was used to assess the proposed Regulations against any possible restrictions on competition. Assessed against this test, this RIS concludes that the proposed Regulations do not impose restrictions on competition. While the current Act does impose restrictions on competition by, for example, imposing qualification and registration requirements on building surveyors, the proposal in relation to building surveyor qualifications, at the margin, may encourage competition in the market for building surveying services.

Since there is a net increase in the administrative burden with respect to the proposed Regulations of \$3,719 per annum, which is considerably less than the figure of \$250,000 per annum advised by the Department of Treasury and Finance as being the indicative threshold for materiality, it has been determined that the regulatory changes in the proposed Regulations will not lead to a material change in the administrative burden on business organisations in Victoria.

Given the foregoing analysis, this Regulatory Impact Statement concludes that:

- **the benefits to society of the proposed Regulations will exceed the costs, assuming that they help to avoid at least four or five ‘average’ incidents per year, or one significant incident;**
- **the net benefits of the proposed Regulations are greater than those associated with any practicable alternatives;**
- **the proposed Regulations do not impose restrictions on competition; and**
- **the proposed Regulations will not lead to a material change in the administrative burden on industry.**

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VICTORIAN ACTS DEALING WITH ‘GOOD CHARACTER’ OR ‘FIT AND PROPER PERSON’ REQUIREMENTS

<p>Professions/small business</p> <p><i>Architects Act 1991</i></p> <p><i>Building Act 1993</i></p> <p><i>Estate Agents Act 1980</i></p> <p><i>Legal Profession Act 2004</i></p> <p><i>Travel Agents Act 1986</i></p> <p><i>Private Agents Act 1966</i></p> <p><i>Motor Car Traders Act 1986</i></p> <p><i>Health Services Act 1988</i></p> <p><i>Non-Emergency Patient Transport Act 2003</i></p> <p><i>Radiation Act 2005</i></p> <p><i>Health Professions Registration Act 2005</i></p>	<p>Transport</p> <p><i>Road Safety Act 1986</i></p> <p><i>Transport Act 1983</i></p> <p>Children</p> <p><i>Children, Youth and Families Act 2005</i></p> <p><i>Children’s Services Act 1996</i></p> <p><i>Adoption Act 1984</i></p> <p><i>Education and Training Reform Act 2006</i></p> <p>Organisations</p> <p><i>Trade Unions Act 1958</i></p> <p><i>Unlawful Assemblies and Processions Act 1958</i></p>
<p>Finance</p> <p><i>Fundraising Appeals Act 1998</i></p> <p><i>Securities Industry Act 1975</i></p> <p><i>Accident Compensation Act 1985</i></p>	<p>Resources and environment</p> <p><i>Mines Act 1958</i></p> <p><i>Mineral Resources (Sustainable Development) Act 1990</i></p> <p><i>Mineral Resources Development Act 1990</i></p> <p><i>Fisheries Act 1995</i></p> <p><i>Wildlife Act 1975</i></p> <p><i>Environment Protection Act 1970</i></p>
<p>Law enforcement</p> <p><i>Alcoholics and Drug-dependent Persons Act 1968</i></p> <p><i>Drugs, Poisons and Controlled Substances Act 1981</i></p> <p><i>Firearms Act 1996</i></p> <p><i>Corrections Act 1986</i></p> <p><i>Police Regulation Act 1958</i></p>	<p>Other Regulatory regimes</p> <p><i>Fuel Prices Regulation Act 1981</i></p> <p><i>Meat Industry Act 1993</i></p> <p><i>Utility Meters (Metrological Controls) Act 2002</i></p> <p><i>Trade Measurement Act 1995</i></p> <p><i>Prevention of Cruelty to Animals Act 1986</i></p> <p><i>Domestic (Feral and Nuisance) Animals Act 1994</i></p> <p><i>Racing Act 1958</i></p>

ASSUMPTIONS

1. The discount rate used in this RIS is 3.5 per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Section C.3, p. C-9)
2. The cost of a practitioner's time used to calculate 'administrative costs' is \$100.00, which the BC considered a reasonable industry average. This estimate is approximately twice that of the 'average' hourly rate of \$55.44 contained in the *Victorian Guide to Regulation* in relation to valuing staff time (Section C.2.1, p. C-5).
3. From February 2003 to October 2008 there were 20 suspensions and 26 cancellations of registration, or approximately four suspensions and five cancellations per annum. This provides an annual average of around nine suspensions and cancellations. In August 2008 the *Building Act 1993* was amended to improve the disciplinary powers of the BPB and the PIC to enable the system to deal more effectively with builders and plumbers who do not comply with their legislative requirements. The amendments included measures to improve the flexibility of the BPB with respect to penalties, requiring training or course of instruction to be undertaken by building practitioners, disqualification of building practitioners from registration for up to three years, increasing fines to a maximum 100 penalty units per inquiry, linking the conduct of a company to a registered director or partner, extending the grounds for suspending registration of a practitioner pending inquiry, and introducing a new ground for inquiry in relation to a breach of the *Domestic Building Contracts Act 1995*.

Given these changes, which strengthen disciplinary and enforcement procedures, it is assumed that a total of 15 suspensions and cancellations will occur annually.

4. The number of building practitioners who will be required to notify the BPB of a change of 'good character' has been estimated to be 65 per annum. Approximately 4 to 5 applicants are rejected each year on 'good character' grounds. Using this figure as a proxy to estimate the figure for the registered builder population, this provides an estimate of around 65 registered building practitioners per annum (based on an annual churn rate of about 6 per cent). That is: 4 rejected applicants x (20,483 average number of registered builders ÷ 1,250 average annual number of applicants) ≈ 65. The average figures were derived from the number of registered builders and applicants over the period 2001–2002 to 2007–2008.
5. From November 2000 to November 2008 the average (geometric mean) annual increase of registered building practitioners was 3.6 per cent. This in part is attributable to the strong growth over the past two years and an increase in builders registering in more than one category. The table overleaf shows the number of registered building practitioners in Victoria from November 2000 to November 2008.

Number of Registered Building Practitioners in Victoria, November 2000 to November 2008

Year (as at November)	Number of RBPs
2000	19,519
2001	19,419
2002	20,277
2003	19,536
2004	19,272
2005	19,327
2006	20,401
2007	21,679
2008	22,887

It is noted that numbers of registered building practitioners closely follows domestic building activities, for example, there were fewer builders in 2005 than in 2000. Given that the building industry in Victoria has been operating at record levels for more than a decade (i.e., the building cycle may have peaked) and taking into account the economic outlook, the number of building practitioners underlying the calculations in this RIS are assumed to be constant over the 10-year assessment period.

COST CALCULATIONS OF THE PROPOSED REGULATIONS

Summary of Costs of Proposed Building (Amendment) Regulations 2009 – 10 Year Assessment Period	
Costs imposed on Registered Building Practitioners	
<i>Description</i>	Cost (\$)
Regulation 4 – Notification of BPB of change in ‘good character’ information	29,353
Regulation 5 – Notify consumers of licence suspension	45,438
Total	74,791

* Numbers rounded. Costs are discounted at 3.5 per cent.

Regulatory Impact Statement – *Building (Amendment) Regulations 2009*

Costs Imposed by the Proposed Building (Amendment) Regulations 2009				
Price	Quantity			Administrative Cost
Regulation 4 - Notify BPB of change in 'good character' information				
	<i>Tariff</i> ¹	<i>Time (hours)</i> ²	<i>Population</i> ³	<i>Frequency</i> ⁴
Preparation of notification letter	100.00	0.5	65	1
Postage	4.30		65	1
Total				\$3,530

Discounted (10-Years)					Discounted Administrative Cost (\$) ⁵
Year	Administrative Cost (\$)				
1	\$3,530				\$3,410
2	\$3,530				\$3,295
3	\$3,530				\$3,183
4	\$3,530				\$3,076
5	\$3,530				\$2,972
6	\$3,530				\$2,871
7	\$3,530				\$2,774
8	\$3,530				\$2,680
9	\$3,530				\$2,590
10	\$3,530				\$2,502
Total					\$29,353

Notes:

1. The cost of a practitioner's time used to calculate 'administrative costs' is \$100.00, which the Building Commission considered a reasonable industry average.
The cost of postage is based on an Australia Post Prepaid B4 Envelope.
2. Based on a desktop exercise, DPCD advise that a letter advising of such notification would take around 30 minute to draft
3. From 2006 to 2007, four applications were refused on good character grounds. Given that applications represent around 6 per cent per annum of the total registered builder population, this provides an estimate of 65 practitioners who will complete such notifications per annum.
4. Building practitioners are require to notify the BPB.
5. The discount rate used in this RIS is 3.5 per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Section C.3, p. C-9)
6. Figures may not add due to rounding.

Regulatory Impact Statement – *Building (Amendment) Regulations 2009*

Costs Imposed by the Proposed Building (Amendment) Regulations 2009					
Price		Quantity			Administrative Cost
Option 8.B – Annual provision of 'good character' information					
<i>Description</i>	<i>Tariff</i> ¹	<i>Time (hours)</i> ²	<i>Population</i> ³	<i>Frequency</i> ⁴	
Complete 'good character' information annually	100.00	0.017	20,257	1	33,762
Total					\$33,762

Discounted (10-Years)					
Year	Administrative Cost (\$)				Discounted Administrative Cost (\$) ⁵
1	\$33,762				\$32,621
2	\$33,762				\$31,518
3	\$33,762				\$30,452
4	\$33,762				\$29,422
5	\$33,762				\$28,427
6	\$33,762				\$27,466
7	\$33,762				\$26,537
8	\$33,762				\$25,640
9	\$33,762				\$24,773
10	\$33,762				\$23,935
Total					\$280,789

Notes:

1. The cost of a practitioner's time used to calculate 'administrative costs' is \$100.00, which the Building Commission considered a reasonable industry average.
2. Based on a desktop exercise, DPCD advise that the 'good character' information takes around 1 minutes to complete on the application form. This activities is estimated to only take one minute because it entails ticking 5 boxes relating to those questions concerning 'good character', not the entire application form. In addition, it could be argued that given that applicants are currently required to tick these boxes on the application form, the incremental impact of the proposed regulation is negligible.
3. From November 2000 to November 2008 the average annual number of registered building practitioners was 20,257.
4. Registration renewals are completed annually.
5. The discount rate used in this RIS is 3.5 per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Section C.3, p. C-9)
6. Figures may not add due to rounding.

Box 1: Case Studies

Case Study 1

A Greensborough consumer hired Mr Frendo/Capri to supply and install a new kitchen for \$8,830, paying him a \$5,400 deposit. He did not come back to do the work, and the consumer was unable to contact him. In February 2008, Mr Frendo/Capri was convicted in the Melbourne Magistrates' Court of nine charges under Victoria's *Domestic Building Contracts Act 1995* and *Fair Trading Act 1999*.

Case Study 2

In August 2007, Shepparton Magistrates' Court convicted Christopher Steele, fined him \$500 and ordered him to pay \$75,000 compensation after he breached domestic building laws. Mr Steele entered into a domestic building contract, took excessive deposits, did not provide a copy of the required building contract, and either failed to complete work, or completed sub-standard work that had to be redone.

Case Study 3

In December 2007, the Melbourne Magistrates' Court fined Samuel Halaseh, also known as Bassem Halaseh, \$42,000 for breaching domestic building laws. The court also ordered him to pay CAV court costs of \$5,463. Mr Halaseh was the director of several companies that entered into a number of contracts to build homes, the value of which exceeded \$1.2 million. He was an unregistered uninsured builder, and promised work to consumers that he could not perform. The Court proved 15 breaches under the *Domestic Building Contracts Act 1995*, *Fair Trading Act 1999* and *Building Act 1993*.

Source: Consumer Affairs Victoria, Annual Report 2007–2008, p. 39

Standard Cost Model Assessment of Proposed Building (Amendment) Regulations 2009					
New Administrative Costs imposed of Business					
Proposed Regulation					Annual Cost (\$)
Amendment 4 - Notify BPB of change in 'good character' information					
	<i>Tariff</i>	<i>Time (hours)</i>	<i>Population</i>	<i>Frequency</i>	
Preparation of notification letter	100.00	0.5	65	1	3,250
Postage	4.30		65	1	280
<i>Sub-total</i>					3,530
Regulation 5 - Notify BPB of licence cancellation or suspension					
Copy of notification	100.00	0.08	15	1	125
Postage	4.30		15	1	65
<i>Sub-total</i>					190
Total					3,719

1. Figures may not add due to rounding.

STATEMENT OF NO MATERIAL IMPACT

Administrative Burden Statement

In accordance with the *Victorian Guide to Regulation – Measurement of Changes in Administrative Burden* issued by the Treasurer in April 2007, it has been determined that the regulatory costs imposed by the Building (Amendment) Regulations 2009 (the proposed Regulations) will not lead to a material change in the administrative burden on business or not-for-profit organisations in Victoria.

This assessment is based on calculations made using the Victorian Standard Cost Model methodology, which estimates the increase of administrative costs arising from the proposed Regulations on business to be in the order of \$3,969 per annum. These costs are associated with new requirements of a registered building practitioner to:

- notify the Building Practitioners Board of any change of ‘good character’ relating to the prescribed information; and
- provide a copy to the Building Practitioners Board of the notice sent to consumers when their registration is suspended.

The additional administrative cost is considerably less than the figure of \$250,000 per annum advised by the Department of Treasury and Finance as being the indicative threshold for materiality.