



Response to:

Buyer Protections Regulations 2025

Regulatory Impact
Statement

**Building and Plumbing
Commission | Victoria**

Via email: building.policy@transport.vic.gov.au

<https://engage.vic.gov.au/security-buying-building-a-home>

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ABOUT SPASA AND THE SWIMMING POOL & SPA INDUSTRY

The Swimming Pool & Spa Association of Australia (SPASA) is the peak industry body representing businesses involved in the design, construction, installation, and maintenance of pools, spas, and related products across Australia and New Zealand. SPASA's diverse membership includes large-scale operators, independent builders, retailers, consultants and service providers, all committed to delivering high-quality products and services that meet the needs of homeowners, builders and developers.

The swimming pool and spa industry is a key economic driver across Australia and New Zealand, supporting tens of thousands of jobs through the construction and installation of more than 12,000 new swimming pools and spas annually and the maintenance of more than 1 million existing swimming pools and spas.

SPASA recognises the role the industry has in delivering quality design, construction and installation, supporting by excellence in service and products. In advocating for our members, we are working to ensure there is a positive regulatory environment that balances the need for appropriate controls with the need to foster affordable and cost-effective building and maintenance solutions for swimming pools and spas.

SPASA is committed to fostering industry growth through collaborative policy development, guidance and support to understand and achieve compliance, and promoting the need for innovation in every part of the industry.

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INTRODUCTION

SPASA appreciates the opportunity to set out our position in relation to the proposed Buyer Protections Regulations 2025 that are intended to support the operation of the *Building Legislation Amendment (Buyer Protections) Act 2025*.

While the broader context of the Regulatory Impact Statement (RIS) relates to domestic (home) building and large-scale residential developments, there are key elements of the regulations that will directly impact the swimming pool and spa industry in Victoria, their clients, and industry broader consumers. This submission focuses on those key elements.

The swimming pool and spa sector is operationally niche and comparatively standardised in its delivery model. For policy purposes, this means the dominant compliance issues are typically repeatable and well-bounded, and the sector is often ill-served by a ‘whole-of-industry’ approach that assumes each step and each role is consistent with those involved in home building and large-scale residential development.

Imposing an approach on this niche sector can increase administrative burden without improving consumer outcomes.

SPASA has addressed the key questions set out in the RIS consultation survey as they relate to the swimming pool and spa industry.

The submission takes the opportunity to address unique aspects of the industry, including the issue of ‘sleeper pools’, and the approach taken to pool building contracts which involves multiple building professionals.

Contemporary pool delivery increasingly involves ‘sleeper pools’, where excavation and shell-stage works must occur early in a build project, then pause while the dwelling is constructed by the home builder who has control over the site. This often occurs because smaller blocks and larger house footprints remove access. With dwelling build times commonly extending to 12–18 months, pool builders can be forced into a prolonged stand-down before returning to complete finishes, interfaces, commissioning, equipment, barriers, and handover.

Sleeper pools present an issue under turnover or project-number insurance settings. These paused projects can still consume capacity despite minimal activity and reduced builder control, restricting builders and undermining the intent of capacity settings that support building activity and appropriate cashflow, without a commensurate benefit to the consumer.

SPASA does not offer comment on the Developer Bond Scheme.

First-resort Home Warranty Scheme

The key premise of the regulations is the establishment of a new First-resort Home Warranty Scheme (FHSW), to replace the existing last resort domestic building insurance arrangements.

SPASA accepts that there is a place for appropriate protection of consumers, being pool and spa buyers, through arrangements such as the existing or proposed insurance scheme. However, the shift from a last-resort arrangement to a first resort arrangement will have a significant impact on the swimming pool and spa building industry, particularly during the changeover period.

The RIS sets out three insurance models along with the pros and cons of each, indicating that Option 2 is the preferred option. SPASA agrees that this option is the preferred model of the three set out and we note the specific elements of this option that seek to address the swimming pool and spa industry.

The impact of this change should not be underestimated and while it is in operation in other jurisdictions, this does not mean that the process to change from last resort to first resort in Victoria will be seamless.

There are many elements in the new regime that the industry will require direct and ongoing engagement and consultation to ensure there is an agreed and effective process. The timeframe provided for consultation was less than desirable occurring during the Christmas/New year period. SPASA does not consider that finalising the regulations with sufficient time for a 1 July 2026 will be practical or more importantly effective. There remain many unknown aspects that need to be resolved prior to industry education and implementation.

This submission sets out SPASA's position on the details provided to date, however we reserve our position on the matters not set out in the RIS, which we consider will have an impact on the operation of the swimming pool and spa industry. Additional comments in relation to the questions in the RIS and survey are set out below.

Sleeper Pools

SPASA RECOMMENDATION: Create an explicit regulatory and administrative pathway that recognises 'sleeper pools' as a distinct project delivery pattern. This pathway must allow eligible projects to be temporarily classified as dormant, thereby limiting their calculation in the insurance caps provided to an individual builder.

This classification would then cause the project to be fully or partially discounted for project-count and/or turnover calculation.

The dormant status would necessitate clear eligibility criteria, record-keeping and notification requirements, a clear re-activation trigger on handback and regaining access, and safeguards such as, time caps, periodic reconfirmation, variation and scope change rules, and regulator and insurer review steps.

Discussion

A feature of contemporary pool delivery, common on older property lots being renovated and greenfield and project-home estates is the 'sleeper pool': a project where excavation or early-stage structural works have commenced, and then the project must pause for an extended period while

the dwelling is constructed, or other works undertaken. The site is progressively managed by the head builder.

This sequencing of pool construction is a very common and provides a practical solution for both the pool builder and the home builder. As blocks have become smaller and house footprints larger, the pool is frequently required to go in first because once the dwelling is constructed, there is often no viable access for excavation plant, craneage, spoil removal, shell placement, or safe working clearances.

At the same time, project-home build times have materially lengthened. A house that historically took around nine months is increasingly taking 12–18 months due to staged approvals, trade shortages, supply constraints, programme rework, and planning and inspection bottlenecks. The pool builder may therefore complete the excavation or shell stage, then be forced to stand down until the head builder hands the site back to the owner and the pool builder can return to complete the remaining works, finishes, surrounds interfaces, commissioning, plant and equipment installation, fencing coordination, and handover.

Under turnover and project number-based insurance regimes, sleeper pools can create a disproportionate and unintended constraint on pool builders:

- ◆ **Capacity is ‘consumed’ for the entire period.** Even though the project is paused, often not generating progress payment claims, it still counts to the builder’s active project and turnover limits.
- ◆ **This precludes otherwise compliant builders from accepting new work** despite the risk profile and actual on-site activity being materially different from a continuous build.
- ◆ **The policy intent is undermined.** Insurance capacity settings are meant to manage exposure and reduce consumer risk; however, treating a sleeper pool as ‘fully active’ for the entire dormancy period reduces industry capacity without delivering a commensurate consumer protection benefit.

SPASA suggests a workable model would include:

1. **Defined, objective, eligibility criteria** for dormancy status, for example:
 - ◆ Shell/structural stage completed and documented with inspection records, photos, engineering sign-off where relevant, and associated progress payment claims made (and paid)
 - ◆ Confirmation of the site being under control of the home builder, or otherwise inaccessible to the pool builder to carry out any works for a specified period of time
2. **Fully or partially discounted** project count and/or turnover calculation subject to:
 - ◆ The pool builder maintaining insurable status generally and continuing to trade
 - ◆ Clear record-keeping and notifications to the insurer
3. **Mandated re-activation trigger** when the pool builder regains access and control to complete the project, at which point the project returns to ‘active’ status and is treated normally for limits calculations and oversight.
4. **Safeguards**, such as:
 - ◆ Time caps or periodic reconfirmation; 6 months would be ideal
 - ◆ Clear rules around variations and scope changes while dormant
 - ◆ Ability for the regulator and insurer to review dormant classification

SPASA believes this common practice can be appropriately included in the new insurance model and we would appreciate further engagement on this prior to the regulations commencing.

Rectification Orders

The RIS provides minimal information on Rectification Orders (ROs) making it difficult to provide a clear position on whether SPASA agrees with the findings of the RIS.

Whilst it is purported that ROs will provide a more streamlined outcome for all parties involved in a dispute, it is far from clear how the Commission will manage each stage of the dispute and how this will interact, or trigger, the first resort insurance. It is essential that a builder be given the opportunity to redress any defects identified prior to insurance being claimed. Equally it is essential that a defect is clearly apparent, and all parties agree that a defect exists. Where there are conflicting views on the existence of a defect, it is not considered appropriate that insurance would be triggered.

SPASA acknowledges that the existing dispute resolution processes are extremely time consuming, stressful and costly for all parties involved. However, the RIS does not provide sufficient detail to assess how the proposed dispute resolution process will be more streamlined or effective than the current processes managed through the Domestic Building Disputes and Resolution Victoria (DBDRV) and the Victorian Civil and Administrative Tribunal (VCAT).

The RIS also offers limited commentary on the processes that may be established to publish the outcomes of disputes where an RO is upheld. SPASA's position on this is set out below in response to the survey questions provided in the paper.

Survey on the Buyer Protections Regulations

The following responses address relevant questions in the survey provided with the RIS. Given many matters are not relevant to swimming pool and spa projects, not all questions are addressed.

Rectification orders

1. Do you support the proposal to enable the Building and Plumbing Commission to publish details of rectification orders?

SPASA does not support the proposal to publish ROs on a public register. The RIS provides no details on how the Commission would determine when such a step would be taken, the timeline for such publication, and how the builder would be engaged in the dispute resolution process to ensure procedural fairness and equity. Without this information, it is unclear how a building practitioner will be able to navigate the processes involved with ROs.

2. When do you think details of rectification orders should be published?

If any register publication is to occur, it should be limited to finalised, substantiated non-compliance outcomes, where procedural fairness has occurred and all parties have been entitled to have their view heard. Where a building practitioner has been found to have engaged in serious, repetitious, poor conduct the publication of that information would be appropriate.

Discussion

If a register is to be established, it must include mandatory fairness controls such as:

- ◆ clear status/outcome fields (issued/varied/stayed/withdrawn/complied/superseded)
- ◆ a 'complied on' date
- ◆ links to reasons and supporting documents
- ◆ normalised metrics (e.g., volume bands or RO rate)

The visibility and inclusion of these controls is crucial to prevent disproportionate impacts and misleading optics for consumers.

A register should also include context fields such as:

- ◆ Scope category
- ◆ Project stage
- ◆ Interface/third-party indicators
- ◆ Substantiation status

Publishing an RO through a public register shifts this tool from being a targeted compliance direction into a public reputational marker, and it is unclear whether such a step would occur prior to a final finding. Without rigorous context coding and live status updates, register entries will predictably mislead consumers and commercial counterparties, and unduly impact the viability of competent businesses ultimately leading to the very outcome this legislation is seeking to avoid.

Register publication can operate as a market signal affecting insurance, credit, subcontractor engagement and consumer decisions, often disproportionately impacting SMEs.

The regulatory objective is best met through rectification and verified outcomes being managed through the RO process in a timely and fair manner. Publication of such outcomes is a secondary matter that should not be seen as the primary purpose of ROs.

RO Register

If it is deemed necessary to implement an RO register, SPASA insists relevant stakeholders are directly involved in further consultation to ensure that it is fit for purpose.

The effectiveness of a public register also depends on active, ongoing stewardship by the Commission. A register must be easily searchable, consistently tagged, and clear, so as to avoid misinterpretation, overreach and unintended consequences. A register must exist in one distinct place, rather than embedded in multiple websites, or broken up into different access pathways. It must show clear links to any disciplinary outcomes; decisions and summaries must be reliably accessible and indexable.

The register must also be clear on the inclusions and exclusions of an RO, and what an absence of information does and does not mean, particularly in those situations where investigation activity is not published unless finalised.

Finally, from a technical standpoint it's important that any proposed register have sufficient measures in place to ensure reliability and useability, and that the RO entries have stable identifiers and change logs, persistent IDs, and a visible correction history.

Alternative approach

SPASA suggests that another option would be to publish aggregated industry statistics for lower-severity matters and reserve practitioner-level publication for serious, repeated, or safety-critical non-compliance breaches.

SPASA Questions regarding issuing ROs

1. Given ROs will be recorded/published on the practitioner register from 1 July 2026, what status and fairness safeguards will be established to prevent misleading register outcomes?
2. Will RO practice guidance adopt outcome-based drafting as default, and avoid single-method mandates, especially for niche technical trades such as those involved in pools and spas projects?
3. What feasibility/equity engagement with the builder is intended before an RO is finalised?
4. What is the escalation pathway for contested causation/method, and will there be a formal technical conclave option?
5. How will FHWS decision-makers distinguish defects from maintenance/water chemistry, owner modifications, owner-supplied items, and interface trades?

SPASA proposes a 'Pools & Spas Guidance Note' be established to ensure consistency approach and interpretation which should include:

1. Scope and definitions for example, pool shell, penetrations, hydraulics, surrounds, interfaces.
2. Evidence expectations such as commissioning checklist, handover pack, photos, variation record, owner-supplied item record.
3. Causation triage: defect vs chemistry/operation vs modification vs latent condition vs interface trade.
4. RO drafting model clauses: outcome-based directions; options where multiple compliant solutions exist.
5. Technical escalation: specialist assessor pathway; conclave triggers.
6. Register status conventions: mandatory status fields; withdrawal/variation notation; compliance dates.
7. Consumer communication: plain-English explanation of pool responsibilities post-handover, including chemistry.

First-resort Home Warranty Scheme

1. Do you agree that the First-resort Home Warranty Scheme should cover major defects for 6 years?
2. Do you agree that non-major defects should have 2-year insurance cover?

SPASA recognises that an insurance regime should exist that supports homeowners access a remedy where a major or minor (non-major) defect in the construction work is identified. The proposed 6 year and 2-year benchmarks are considered appropriate.

Claim lodgement and assessment

SPASA seeks the inclusion of a bespoke framework for the pool industry.

1. A structured triage checklist should be used before claim acceptance or denial, including:
 - evidence of handover/commissioning
 - owner maintenance records and water chemistry history where relevant to the defect
 - variations and owner-supplied item logs that ensure builders are not held responsible for the conduct of others
 - details of interface trade scopes to ensure builders are not held responsible for work they did not undertake or engage third parties to undertaken on their behalf
 - site/ground condition history covering hydrostatic, drainage, backfill, and reactive soils
2. Where the cause is disputed, SPASA suggests a specialist assessment pathway be available, including peak-body input or a technical conclave mechanism, before final liability or assistance determinations are made.
3. Align time triggers with pool project reality

The consultation material highlights coverage periods and triggers that are sensitive to timing, including contract signing, completion, and discovery.

For pools and spas, approvals and owner readiness often delay commencement. SPASA recommends settings that do not unintentionally shorten the practical protection period or create disputes about 'completion' milestones outlined in swimming pool and spa contracts.

Definition clarification

SPASA believes the phrasing '*certain non-structural pool defects*' is too vague. In pools and spas, 'non-structural' defects can still be high-cost and high-impact. These can be issues with penetrations, fittings, hydraulic lines, waterproofing interfaces, and commissioning failures causing damage. This area needs clearer definition to avoid arbitrary or disputed claim outcomes.

It is crucial for the scheme to define or clarify:

- what constitutes a 'pool defect' as opposed to 'surround/interface' works,
- what 'non-structural pool defects' means, and what remains covered
- how pool waterproofing interfaces fit the 'major defect' category
- how normal settlement or movement within-tolerance is treated, so as to avoid claim inflation for the expected behaviour of a finished pool within standards and tolerances.

3. Do you agree that waterproofing, weatherproofing and structural defects are considered major defects in the First-resort Home Warranty Scheme?

Without reference to whether each of these matters should be considered major defects, SPASA would like to highlight that there is an industry calibration issue with these terms that must be addressed. Pool shells and waterproofing interfaces do not map neatly onto generic building concepts for waterproofing. Without pool-specific guidance, definitional disputes may increase. Importantly only approximately 5 to 10% of pools require waterproofing and are in fact waterproofed. Therefore, further information is required to determine whether the categorisation as a major defect would be appropriate.

4. In your opinion, is the maximum limit of cover of \$400,000 appropriate?

5. Do you support the sublimits for assistance to secure the building site, assistance for accommodation, storage and removal, or assistance for swimming pool work?

SPASA note the proposed \$100,000 sub-limit for swimming pools set out in Option 2. This limit is considered appropriate for many defects, however there are further aspects which SPASA is seeking clarity on being:

- ◆ when the pool sub-limit applies, particularly in the context of a standalone pool contract vs a pool which is part of larger domestic building contract;
- ◆ whether consequential reinstatement costs such as landscaping and finishes disturbed by pool rectification, are counted within the pool sub-limit or the general cap; and
- ◆ how integrated pool works that are functionally part of the dwelling, such as podium slab interfaces, are treated within the scheme?

Once these issues are addressed, SPASA can provide further advice on the adequacy of the sub-limit.

Incomplete builds

6. Do you support a payment of up to 30 per cent of the original contract cost to cover the cost to a homeowner to hire a new builder to complete the build?

7. Do you support providing compensation to the homeowner for the reasonable cost to demolish incomplete works as an alternative to providing the reasonable cost to complete said works?

8. Do you think the proposed claim process (including complaint notices and the timeframe for the Building and Plumbing Commission to assess claims) provides adequate periods for response from builders and timely decisions from the Building and Plumbing Commission?

No. Based on the minimal details set out in the RIS, it is impossible to determine whether the proposed process will be appropriate.

The RIS sets out the following timeframes:

1. *Owner serves a complaint notice; builder responds within 28 days.*
2. *BPC can serve within 7 days if requested.*
3. *BPC assesses the claim within 90 days.*
4. *VCAT review is available where decisions are delayed or contested.*

The window of time involving the builder's response and the BPC assessment may numerically be adequate. What is not clear is how the BPC will be resourced with technically competent staff that can assess these disputes and how a decision will be made that ensures equity and fairness for both

parties. If the BPC is unable to meet its own obligations under these timeframes, what impact will this have on a builder. For pool projects, if the builder is not responsible for the work in dispute, how will the third party be involved in the process.

Exclusions

9. Are the proposed exclusions from cover under the scheme adequate?

10. Do you agree there should be a minimum threshold to make a claim? What do you think is an appropriate threshold?

Pool equipment carve-out

SPASA is proposing a targeted carve-out for pool and spa equipment. Swimming pool and spa equipment such as pumps, filters, heaters, heat pumps, chlorinators and salt systems, controllers, automation, lights and associated proprietary components, commonly represents between 10-to-30% of the contract value for a basic pool build.

For more elaborate builds, particularly where heating, automation, in-floor cleaning, advanced lighting, water features, and integrated controls are specified, equipment and proprietary components can well exceed 30% of the total contract value.

The FHWS scheme should avoid creating an overlapping protection architecture which inflates insured value and premiums without materially improving consumer outcomes by including an explicit carve-out that excludes the pool and spa equipment component from the insured value and/or scope of cover to the extent that those items are:

- ◆ Equipment supplied as discrete goods in form of pumps, filters, heaters, chlorinators, controllers, lights, and so forth; and
- ◆ Already covered by manufacturer warranties and consumer guarantees.

This carve-out should be drafted to preserve consumer protection for genuine building defects and builder non-completion risks by retaining cover for:

- ◆ Installation workmanship directly attributable to the builder, including incorrect plumbing connections, non-compliant electrical interface work within the builder's contracted scope, and poor commissioning practices, and
- ◆ Consequential building rectification where the builder's defective work causes damage, noting that consequential loss settings should be clear and consistent across the scheme.

The regulations should distinguish between:

- ◆ Goods-based equipment warranty claims which are the manufacturer's responsibility
- ◆ Builder workmanship and installation defects which are the builder's responsibility

In most cases, warranty assessment and rectification involves the equipment supplier or manufacturer network directly, and the builder's role, if involved, is often facilitative

This approach reflects how these matters are already resolved in the industry and would serve to:

- ◆ Improve proportionality in premium and capacity settings,
- ◆ Reduce disputes and administrative churn, and
- ◆ Maintain robust consumer outcomes through the most appropriate remedy pathway.

Landscaping and pool safety barriers

Landscaping and pool safety barriers are often separate elements in the design and construction of a swimming pool or spa and not included in the pool building contract. To this end, it is common practice that the owner will separately contract these parties when their nominated builder does not provide these services.

It is critical that builders are not held responsible for work they have not undertaken or engaged the services of third parties to undertake on their behalf, as part of the domestic building contract. In particular, landscaping can often be the cause of a defect in the pool structure identified after completion that leads to a claim.

The scheme should ensure that the party responsible for the work that leads to a defect claim is the party responsible for the remedial action associated with that claim.

Developer Bond Scheme

SPASA does not have comments or feedback in relation to the DBS.

Further comments

11. Do you think the proposed regulations strike the right balance between consumer protections and industry accountability?
12. Do you have any additional comments or suggestions regarding the proposed regulations?

Payment default and disputed contracts – claim gatekeeping

SPASA considers that the same payment-default risk is present whether a last resort or first resort approach is adopted. A first-resort scheme should not become a pathway for owners to seek regulatory or insurance intervention while they remain in clear breach of payment obligations.

SPASA recommends introducing claim gatekeeping controls that:

- ◆ Require disclosure of current payment status and any active payment dispute mechanism steps, such as contractual notices, adjudication, mediation, or tribunal proceedings.
- ◆ Where the owner is in clear payment default and the matter is not urgent or safety-critical, require payments to be brought up to date, or the payment dispute to be formally determined, before progressing a defect claim assessment.
- ◆ Where urgent risk exists, allow interim protective measures while preserving the principle that non-payment should not be rewarded.

In practical terms, this mirrors the Commission's existing approach in dispute resolution, where orders can be made against both owners and builders, and decision-makers must consider whether it is fair and reasonable to issue an order in the circumstances.