



Response to:

# **Building and Construction Industry Review**

DISCUSSION PAPER

**Consumer and Business  
Services | South Australia**

## 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 pool and spa industry is a key economic driver across Australia, supporting tens of thousands of jobs across Australia and New Zealand, and contributing to a variety of residential and commercial projects, from new builds to luxury pools. SPASA advocates for its members by promoting best practices, ensuring a positive regulatory environment, and offering resources such as technical advice, training, and business support.

SPASA is committed to fostering industry growth through policy development, compliance support, and continuous innovation. With offices across Australia and New Zealand, SPASA provides the tools and resources needed for business success and industry excellence.

## INTRODUCTION

The Building and Construction Industry Review is crucial for SPASA and its members as it directly impacts the regulatory framework governing the building and construction industry, including key areas that affect the swimming pool and spa sector. Considering challenges such as increased demand, labour shortages, and supply chain disruptions, it is vital that regulations are modernised to better support businesses, ensure compliance, and protect both consumers and industry professionals.

The key focus areas of this review; enhancing compliance, strengthening dispute resolution, improving licensing, and supporting ongoing professional development, have the potential to help SPASA members successfully navigate these industry changes. The proposed reforms offer a valuable opportunity to streamline processes, reduce operational risks, and create a more stable business environment amidst cost pressures and other challenges.

To ensure the regulatory framework meets the evolving needs of businesses and consumers, SPASA remains available for further consultation and would like to meet with Consumer and Business Services to discuss these matters in more detail.

See the **For more information** section at the end of this submission for relevant contact details.

## 1.1 Binding Rectification Order Scheme

1. Would the introduction of binding rectification orders enhance the building dispute resolution process in SA?
2. Is the proposed binding rectification order scheme appropriate? Are there alternate model or mechanisms that would provide faster and cheaper resolution of domestic building work contract disputes for parties?
3. How should binding rectification orders be enforced, and what should the consequences be for non-compliance?
4. Are there any unintended consequences the proposed rectification order scheme may have? What would be the costs and benefits for consumers and building practitioners if the proposed binding rectification order scheme was implemented?

SPASA does not support the proposed Binding Rectification Order Scheme for the following reasons:

- a) **Increased Costs:** Small pool and spa businesses may face higher compliance costs, which could be passed on to consumers, raising costs.
- b) **Legal Risks:** The scheme could lead to more disputes and unfair liability for builders, especially in cases of issues beyond their control, such as consumer-caused damage or situations outside the builder's control.
- c) **Reduced Flexibility:** Binding orders may limit the ability to negotiate flexible, cost-effective solutions, especially for minor or industry-specific challenges.
- d) **Overburdened System:** The scheme could result in more disputes being escalated, putting pressure on the system and slowing down resolutions.

## 1.2 Transfer of domestic building work disputes to SACAT

5. Would the transfer of the identified building disputes from the Magistrates/District Court to SACAT assist in improving the dispute resolution process in sa?
6. Are there any unintended consequences that could arise from transferring jurisdiction from the identified matters to SACAT, or other factors that should be taken into account?
7. How could SACAT utilise experts when considering building work disputes?
8. Aside from transferring the jurisdiction for domestic building work contract disputes to SACAT, are there other options to reduce the current expense and delays associated with court proceedings about domestic building work disputes? (for example, changes to existing court processes and monetary limits)
9. What factors need to be considered when contemplating any changes to court processes to facilitate improved resolution of building work contract disputes?

Forcing a builder, contractor or consumer to go to SACAT rather than allowing them the choice to attend court could have several negative impacts:

- a) **Loss of Legal Protections:** Courts offer specific legal protections for both parties, such as access to legal representation, procedural fairness, and clearer remedies.

- b) **Limited Appeal Options:** Court decisions are typically subject to appeal, providing a safety net for correcting potential errors. SACAT decisions have fewer options for appeal, reducing the ability to challenge unfair outcomes.
- c) **Increased Perception of Bias:** SACAT, being less formal than a court, could be perceived as more consumer-friendly, potentially putting builders at a disadvantage if they feel the process is biased or lacks the legal protections available in court.
- d) **Inflexibility and Loss of Choice:** Forcing parties into SACAT removes their ability to choose the most appropriate forum for their dispute, particularly if they believe the formal court system offers better procedural safeguards or expertise.
- e) **Impact on Access to Justice:** Builders, contractors or consumers may feel that SACAT is not the right venue for resolving complex building disputes, limiting their access to justice. The informal nature of SACAT may not provide the thorough, structured process that court proceedings would.
- f) **Potential for Inefficiency:** SACAT may not have the same resources or capacity to handle complex building work disputes, leading to longer delays and less efficient resolutions compared to the court system.

Forcing parties into SACAT instead of allowing them the choice to attend court will reduce fairness, limit access to legal protections, and potentially delay or complicate the dispute resolution process.

### 1.3 Compulsory conciliation conferences for building disputes

#### 10. Should the expiable offence for non-attendance at a compulsory conciliation conference be applied to all traders who fail to attend compulsory conciliation conferences, including conferences relating to building disputes?

SPASA supports this proposal.

Conciliation and mediation processes are effective and successful in resolving disputes before they escalate into court cases. Both contractors and consumers should be strongly encouraged to attend, and if the inclusion of an expiation, *for both contractors and consumers*, can incentive attendance then we believe this will leader to a higher level of successful resolutions.

CBS can make further consideration for penalties to apply to unjustified or unreasonable last-minute cancellations. These cancellations can severely impact other attendees, and CBS, who will have lost income or incurred expense as a result of preparing for the session.



## 2.1 Certificate of Occupancy and swimming pool requirements in building contracts

11. **Would it be helpful to require information about the proposed COO information and swimming pool safety feature requirements to be contained within building work contracts?**
12. **Are there other mechanisms which might increase the effectiveness of enforcement action in relation to the COO and swimming pool safety feature requirements?**
13. **Should the COO and swimming pool safety feature requirements be included in a building work contract as obligations to be met by the builder, instead of information for the consumer? For example, should the pool builder be required to arrange installation of swimming pool fencing as part of the building contract, or should the consumer have the option of separately arranging a trader to install the fencing?**

SPASA is opposed to the introduction of COO information being included within building work contracts.

The inclusion of COO information and COO and swimming pool safety feature requirements within building work contracts would introduce more prescribed contract complexity.

While enforcement mechanisms are important, simply adding more requirements to contracts is not the most effective way to ensure compliance. Instead, SPASA recommends further engagement with regulators, industry associations, and stakeholders is a more effective way to enhance enforcement without adding unnecessary complexity to contracts.

Additionally, councils should offer clearer information to pool owners on their websites, in development applications, via email and hard copy, explaining their responsibilities relating to pool barriers and obtaining a COO. This should include guidance on pool barrier responsibilities, how to obtain a COO, relevant timelines, and the maximum duration for which temporary barriers can remain in place.

The installation of pool barriers is typically a separate scope of work and contract from the pool installation itself and should remain separate. The pool owner should ultimately have the choice of barrier installer, contractor, or to undertake the installation as an owner-builder.

Contractors and builders may not want to, or be able to, include installation of a pool barrier in the scope of their contracted works. This may be due to a variety of reasons such as a lack of requisite skills, insufficient insurance coverage, or simply a lack of business capacity to adequately resource the additional work.

Currently the timeframe in which temporary fencing can remain in place is two months. It is important for councils and regulators to understand the context of a situation if temporary fencing has remained in place for a longer period of time; there may be delays due to materials shortage, supply chain disruption, or other unforeseen factors. Reasonable concessions should be made for legitimate delays and an extension afforded for the temporary barrier to remain in place. Naturally, if there is no justifiable delay reason, then appropriate actions should be taken by council and the regulator.

## 2.2 Sunset clauses

14. Are sellers, including developers, using sunset clauses inappropriately to terminate off-the-plan contracts with consumers in SA? Please provide evidence.
15. Should there be limitations on the use of sunset clauses similar to those implemented interstate? Are there other options to address this problem?
16. What would be the costs and benefits for consumers, developers and industry if there were limitations imposed on the use of sunset clauses to terminate off-the-plan contracts?
17. If changes are implemented, what transition period should apply?

SPASA has not provided feedback on this section.

## 3.1 Building inspections

18. Are the current council building inspection requirements (in Practice Direction 9) ensuring building work complies with the National Construction Code?
19. Is the approach to inspections consistent across council areas and building types? Are there specific stages of building work that should be inspected that are not being adequately or appropriately inspected?
20. Does the experience and expertise of the inspector have a large bearing on the effectiveness of the inspection? Should inspections be able to be undertaken by other suitably qualified and experienced building professionals (private building certifiers, architects, engineers, trade specialists etc)?

In South Australia, there is inconsistency in how inspections are conducted across different council areas, particularly for swimming pools. Variations in the interpretation of regulations and Practice Direction 9 have led to discrepancies in inspection practices. These inconsistencies arise from differing local council practices, qualifications, and expertise among inspectors, resulting in certain stages of building work not receiving consistent scrutiny or being overlooked entirely.

Councils are required to ensure that inspections are performed by qualified individuals with the necessary skills, knowledge, and experience as outlined in Practice Direction 9. While the qualification requirements under r112(1) of the Regulations remain unchanged, councils must assess whether certain tasks require specific expertise.

### ***Case Study: Pool Builder (Company Name Withheld)***

*The Pool Builder received an expiation notice from a council for failing to notify the completion of swimming pool installations. The builder explained their interpretation of "completion" was different than council's, but rather than understanding the builder's position, council chose to take legal action, charging the company under Regulation 93(5) of the Planning, Development and Infrastructure (General) Regulations 2017 (SA).*

*The council's interpretation of "installation" was imprecise, while other councils used clearer milestones. Despite this, the council pursued legal action,*

*and the builder sought legal advice. The council's approach was excessive and based on the subjective opinion of council staff.*

*Ultimately, the council withdrew the court action, conceding the prosecution would not succeed. This case highlights the need for local authorities, regulators, and industry to collaborate on improving communication and avoid hastily prosecuting small businesses.*

SPASA believes that best practice would be for inspecting officers to be accredited at a level that allows them to provide advice, or grant Building Rules consent, for the project being inspected. In some cases, councils may need to appoint external professionals to meet their obligations under Practice Direction 9.

**21. What evidence is there to indicate specific failures by residential building inspectors in SA?**

**22. Should the Government increase regulation of building inspectors? If so, how? And what would be the costs and benefits for consumers, building inspectors and other tradespeople in the construction industry?**

**23. Who should be included in a registration scheme for building inspectors?**

In South Australia, frequent pool barrier inspections are not regulated beyond the initial completion inspection conducted by councils or individuals recognized under the Accredited Professionals Scheme.

SPASA recommends that the South Australian Government consider involving qualified Licensed Swimming Pool and Spa Service Technicians, along with other relevant industry professionals, in the pool barrier inspection process.

Given the focus on child safety around private pools and spas, it is crucial to engage qualified professionals already working within the industry, such as Swimming Pool and Spa Service Technicians. These technicians service hundreds of residential pools daily, and one of their first tasks is opening the pool gate upon arrival.

The criteria for pool barrier inspectors should include experienced industry professionals:

- Pool & Spa Service Technicians
- Pool & Spa Builders
- Pool & Spa Service Consultants
- Retired industry professionals with relevant experience
- Other experienced individuals

Incorporating industry professionals into the pool barrier inspection program would enhance its coverage and effectiveness across the state. Technicians are already familiar with basic swimming pool safety requirements as part of their duty of care, and their inclusion would contribute to improved outcomes for pool safety statewide.

## 3.2 Regulation of owner builders

- 24. Are there problems with the quality of building work performed by owner-builders in SA? Please provide evidence.**
- 25. Is there evidence indicating problems with licensed or unlicensed builders masquerading as owner-builders in SA, whilst building, selling or renting homes for profit? If so, what options are there for the Government to address these problems?**
- 26. Is there evidence indicating that building work contractors are inappropriately persuading consumers to declare owner builder status for projects, in circumstances where the work performed by the building work contractor? If so, what options are there for the Government to address these problems?**
- 27. What costs and benefits might accompany increased regulation of owner builders? (e.g., introduction of a permit scheme, a notification system or close monitoring of 'owner builder' planning approvals by councils).**

SPASA receives frequent complaints regarding the quality of building work performed by owner-builders.

Whilst Owner Builders rely on individual subcontractors and trades to carry out the work, they themselves may not have the experience and knowledge to inspect the work, or despite having the knowledge, they may not execute the project in the correct sequence.

SPASA has no comment on questions 25 and 26, as we have not seen this as an issue being highlighted by our members, or consumers.

It is likely that increased monitoring is accompanied by increased costs. SPASA does not believe that costs should be a consideration in this situation.

Owner-builders are legally obligated to comply with the same building regulations as licensed builders, including obtaining Building Indemnity Insurance. They are responsible for the quality of their work, the workplace health and safety (WHS) of the project, and accountable to any future property owners. The costs associated with these additional regulations should be covered by the owner-builder(s).

A permit scheme may work if it supports consistent tracking across all councils, state government, and regulators. A more 'hands-on' approach from CBS by providing educational material and issuing warnings, and conducting random audits, would act as a deterrent.

Further measures such as a permit scheme, requiring the submission of certain forms and statutory declarations will increase awareness of obligations and penalties.



### 3.3 Regulation of building developers

- 28. Are there issues with developers not meeting their obligations in residential development projects? Please provide evidence.**
- 29. Are consumers sufficiently aware of the different roles of developers and building work contractors, and their rights when entering into a contract with these parties? For example, some consumers may enter a contract with a developer but not understand that physical building work will be undertaken by a separate entity with a building work contractor licence.**
- 30. Are there sufficient protections for consumers where a developer fails to complete essential infrastructure works (e.g., common roads, driveways and utilities connections) for a residential housing development? If not, what can the Government do to address this issue?**
- 31. Is there a case for stronger regulation of building developers and, if so, what options should the government consider? For example, introducing a licensing scheme for developers or a developer rating scheme for consumers.**
- 32. How should a developer be defined? Is the definition of a developer used in this discussion paper suitable?**

The modern consumer has access to more information than ever before. Additionally, many builders use standard form contracts, often written in plain English which include regulator prescribed information and checklists.

Consumers must ensure they are aware of their obligations and responsibilities. Consumers must read contracts, and if they do not completely understand them, they should discuss any queries with their builder. If the consumer still has questions, they should seek legal advice. or contact their local council or the regulator who is well equipped to assist them.

The issue regarding essential infrastructure works is one of process and sequencing. If a developer has not yet completed essential infrastructure works, then they cannot market dependent developments until those works are complete. The planning, approval, and inspection process undertaken by councils and regulators is of higher importance than increased regulation. The more complex the project the more frequent and critical the inspections are. Councils must withhold approval for dependant developments, until essential infrastructure under the same Development Application is completed.

The suggested definition for developer is flawed and could easily result in multiple parties being defined as developers for a single project. One party might seek and provide finance, another might perform planning and submit applications, another might market it (often a Real Estate Agent). A developer must have a direct financial interest in the project, not by a third party, and be able to exercise a measure of control over the process and outcomes of the project.

### 3.4 Qualifications and Recognition of Prior Learning

**33. Should the Commissioner have discretion to not accept trade qualifications obtained wholly or partly through Recognition of Prior Learning? Are there other options to address this problem?**

SPASA is strongly opposed to the Commissioner having discretion to refuse trade qualifications obtained through RPL.

In a situation where the commissioner feels that there are issues with an RTO issuing RPL, then the commissioner has power to review the situations, investigate, and where appropriate refer to ASQA. An RTO who is found to be issuing RPL incorrectly can have their accreditation suspended or revoked or be required to improve their processes to ensure they gather appropriate evidence and comply with the requirements of the RPL framework.

In situations where the RTO has acted improperly, but the student acted in good faith, ASQA and the Commissioner have a duty to assist someone who gained a qual through RPL, but has then been deemed insufficient, to bridge the gap and formally gain their qual, especially noting they may have paid significant sums of money already.

In situations where the student has provided inaccurate information, the Commissioner can seek verification from the RTO, investigating directly, and then taking subsequent steps to address any deception or impropriety from the student.

### 3.5 Setting PGE worker qualifications

**34. Should the older qualifications for PGE contractors and workers be removed from the PGE regulations, along with the power to prescribe qualification and experience requirements by regulation?**

SPASA supports the proposal in principle, provided that the regulation grants the Commissioner discretionary powers to modify qualifications and consider aligned alternatives as needed.

While the removal of outdated qualifications from the PGE Regulations is supported, it is crucial that the Commissioner retains flexibility to update and adapt qualifications efficiently to meet industry needs. We look forward to discussing the potential impacts and ensuring the changes support ongoing industry development and safety standards.

### 3.6 Reviewing the scope of electrical work

**35. Should tradespeople who perform work on “off-grid” electrical installations that are not connected to a public electricity network require a licence or registration? Please provide reasons.**

**36. What types of “off-grid” electrical installations should require a registered or licensed electrical worker?**

**37. What would be the practical benefits and costs to industry, workers and the community if new licensing requirements were introduced for “off-grid” electrical work?**

**38. What types of work should electrical trade assistants be allowed to undertake, and why?**

**39. What would be the practical benefits and costs to industry, workers and the community if electrical trade assistants were allowed to perform some tasks on un-energised electrical installations?**

**40. Are the current exemptions to electrical licensing requirements listed in the PGE Regulations appropriate?**

SPASA supports the creation of an Electrical Trade Assistance licence to undertake the examples listed within the Discussion Paper for the following reasons:

- a) **Safety and Compliance:** Ensures safe disconnection and reconnection of basic electrical equipment, reducing risks and improving industry safety standards.
- b) **Industry-Specific Expertise:** Provides tailored training for pool builders and service technicians, ensuring they meet safety regulations without needing an electrical license.
- c) **Streamlined Certification:** Simplifies the process for obtaining certifications, making it easier for businesses to comply with safety standards and increasing professionalism.
- d) **Economic Benefits:** Reduces costs for businesses and customers by eliminating the need for third-party electricians undertaking low risk work, enhancing competitiveness and efficiency.
- e) **Consumer Protection:** Increases consumer confidence by ensuring only qualified professionals handle low risk electrical work, with clear accountability for any issues.
- f) **Reduced Legal Risk:** Minimises legal complications and liability for businesses by providing clear regulations and guidelines for low-risk electrical work.
- g) **Alignment with Regulations:** Supports existing government initiatives for certification and aligns with current safety standards in the industry.

### 3.7 Installation of stormwater piping

**41. Are there problems with the quality of stormwater piping work undertaken by people and businesses without a plumbing registration or contractor's licence? Please provide supporting evidence.**

**42. Should all stormwater work connected to public disposal system only be undertaken by licensed plumbers? Please provide reasons.**

**43. What would be the costs and benefits for consumers, plumbers and other tradespeople in the construction industry if the current exemption for stormwater piping work was removed?**

SPASA has not provided feedback on this section.

### 3.8 Access to Australian Standards

**44. How can the Government ensure fair and equitable access to the Australian Standards for tradespeople working in SA?**

SPASA suggests the following measures to ensure fair and equitable access to the Australian Standards for all tradespeople working in South Australia:

- Make them free to access online.
- Allow tradespeople to pay a fee for a hard copy to be posted to them.
- Provide a copy to all libraries / Councils for public inspection.

- Provide a copy to all industry bodies who can make it available to their members.  
*Especially relevant for contractors who may be based in one state, and operate only occasionally in other states, who work under different variations of the same standard.*
- Subsidised or discounted access to Australian Standards for industry bodies and member organisations.

Contractors are required by law to comply with specific standards, and are then made to go and buy them so they can comply with them

A relevant example is the National Construction Code which in the past had a cost attached to it, but is now free. The code, however, is still full of references to a variety of Australian Standards which must be purchased.

Access to Australian Standards could be linked to CPD, which is discussed in section four of this consultation.

## 4 Continuous Professional Development

- 45. Are there areas of poor performance or non-compliance in SA that could benefit from building practitioners participating in professional development? To what extent are these problems with poor quality work due to lack of knowledge as opposed to work being done by 'rogue operators' or people without an appropriate licence? Please provide evidence.**
- 46. What evidence (including experience from other jurisdictions) is there that introduction of mandatory CPD will address problems with poor performance and non-compliance?**
- 47. What other options besides mandatory CPD could be considered to address the problem?**
- 48. What types of professional development activity could be required? How much training and how frequently would it be required?**

SPASA supports the introduction of a CPD scheme, especially when targeted not only to address areas of poor performance and non-compliance, but also incentivised participation to ensure ongoing proactive learning and development across all trades.

While CPD schemes can be used to address areas of poor performance and non-compliance. It primarily a mechanism for the industry to ensure that its members keep up to date with technical advancements, innovation in processes and materials, and general best practice within the industry. This approach to CPD has an ongoing benefit for the industry and consumers and supports futureproofing.

Individual state regulators may be best placed to share their respective data regarding the introduction of CPD schemes and the impact on enquiries, and whether specific problem-areas saw a reduction in issues.

A variety of CPD activities should be offered. These should include no-cost, low-cost, and fee-for-service activities including:

- Formal learning
- Workshops / conferences / seminars
- Industry-lead eLearning

- Industry events
- Publications, online materials, podcasts

**49. Who should deliver CPD training?**

**50. How well is the mandated CPD working in other jurisdictions and what evidence is there for this?**

**51. Should CPD in SA be voluntary or mandatory? Who should be subjected to a CPD scheme and what form of CPD is appropriate?**

SPASA strongly supports the introduction of a well-designed mandatory CPD program that benefits contractors, the industry, and the public.

A mandatory CPD program should be developed with the intention of changing the culture in the home building industry, providing license holders with the opportunity to formally and easily learn about their industry and related skills. Moreover, the CPD points system allows license holders to stay informed and up to date with current practices.

A CPD scheme should be straightforward, and in-line with existing schemes. Participants accumulate a certain number of points per license renewal period.

CPD activities should be offered in a variety of delivery methods, outlined in previous questions, and target a broad range of agreed topics to support the necessary learning outcomes.

The proposed CPD program needs to consider the following:

- Training delivery:** SPASA advocates that only Registered Training Organisations (RTOs) with industry-specific expertise, who are also peak bodies and associations, should be approved to deliver CPD training. This ensures that the training is consistent, compliant, relevant, and tailored to practitioner and industry needs and requirements.
- CPD topics and structure:** Any CPD program should encourage a proper spread of activities across the entire range of topics, ensuring comprehensive professional development.
- CPD license categories:** SPASA strongly supports expanding the scope of the CPD system to include all license categories. Trades not only work directly with consumers but often subcontract with license holders. The exclusion of certain trades from a CPD program presents an unnecessary risk, and there is no justification for not requiring them to obtain CPD points.

**52. If CPD were to be implemented, how could its success be measured? What indicators might suggest that the problems are being successfully addressed?**

**53. How could it be ensured that CPD would be appropriately targeted and address the problem areas in the construction industry?**

As outlined previously, a CPD scheme should address not only areas of poor performance and non-compliance but also act as a mechanism for the industry to ensure that its members keep up to date with technical advancements, innovation in processes and materials, and general best practice within the industry. This approach to CPD has an ongoing benefit for the industry and consumers and supports futureproofing.



Success of CPD could be measured by the level of industry involvement. SPASA believes that simply by implementing a CPD scheme, where none currently exists, there will be a measure of success.

An overall reduction in complaints may be indicative of the success of a CPD scheme, however there are many factors which influence complaints to regulators so this may not be directly correlated. Similarly, a reduction in complaints in a target area may be indicative of the success of a CPD scheme.

Appropriate targeting of not only the CPD scheme, but also the content, should be led by peak industry bodies and RTOs. The regulator should then provide feedback based on trends from their complaints and enquiries which can guide delivery CPD activities to address those trends and supported by information sharing to provide context.

**54. Are there any costs or other potential impacts of a proposed CPD scheme that are not considered in this discussion paper, but which may affect the Government's decision to proceed with mandating CPD requirements?**

While SPASA supports mandatory CPD, we emphasise that training delivery should include a blend of no-cost, low-cost, and fee-for-service options to ensure accessibility for all practitioners. This will help make ongoing professional development both affordable and flexible for a wide range of professionals.

Accessibility must also be considered so that face-to-face CDP activities on topics are available at a variety of times, and at accessible locations, to avoid participants shouldering the costs associated with lost business time and excessive travel.

The consideration around multiple layers of CPD for multiple licenses is an important one to note, to ensure participants avoid excess and burdensome costs.

The paper highlights that a CPD scheme may not address issues associated with someone actively choosing to cut corners. This concern is the domain of inspectors, certifiers, and regulators to actively investigate and address.

## **5.1 Increasing penalties**

**55. Are there particular penalties in the BWC and PGE Acts that should be reviewed? Please provide details.**

Rather than solely focusing on increasing penalties for non-compliance in the building and construction industry, SPASA believes a more effective approach would be to prioritise education and greater involvement from industry associations.

- a) Focus on prevention through education.
- b) Involvement of associations as industry stewards.
- c) Addressing root causes.
- d) Encouraging a positive industry culture.
- e) Sustainability and cost-effectiveness.

Supporting industry associations in providing education, training, and resources will help prevent offences, create a culture of compliance, and improve long-term outcomes for both industry professionals and consumers.

## 5.2 Use of another builder's licence in advertising

### 56. Would it be useful to introduce the proposed offence prohibiting unlicensed building work contractors from using another person's building work contractor's licence in advertising?

SPASA supports the introduction of a proposed offence to prohibit unlicensed contractors from advertising under another builder's licence number. This move will improve transparency and integrity in the building industry and ensure only licensed professionals represent themselves as such, strengthening consumer protection and maintaining trust in licensed builders.

Consumers will gain confidence that the contractors they engage are properly qualified, while licensed builders are protected from misuse of their credentials. This measure enhances accountability, ensuring builders meet regulatory standards and consumer expectations, leading to a safer, more reliable construction industry.

## 5.3 Unlicensed subcontractors

### 57. Would it be beneficial to introduce the proposed offence prohibiting building work contractors from engaging unlicensed subcontractors?

### 58. How can the Government hold subcontractors accountable for ensuring that they are appropriately licensed to undertake contracted work?

SPASA supports the introduction of measures to prohibit building work contractors from engaging unlicensed subcontractors.

This can be supported through ensuring that certification and registration schemes exist for all classes of subcontractors.

SPASA notes that an unlicensed contractor could do impeccable work, and a licensed contractor could do sub-standard work. Either way the builder is ultimately responsible. Ensuring that certification and registration exists consistently across all trades offers a measure of protection; consideration should be given to the avenues available to a builder to avoid engaging a subcontractor who is uncertified, or who fraudulently withholds information about a revoked or suspended license or never held one in the first place.

## 5.4 Building work supervision requirements

### 59. Is the current guidance on "proper supervision" sufficiently clear for building work supervisors to understand their obligations?

### 60. Should "proper supervision" requirements for building work supervisors be defined under the BWC Act? Should this include record-keeping and reporting requirements for building work supervisors to keep track of inspections they conduct? Please provide reasons.

### 61. Should the Government codify specific requirements for building work supervision?

**62. What would be the costs and benefits for consumers, building work supervisors and other practitioners in the construction industry if specific requirements for building work supervision are codified?**

SPASA submits that the proposed changes to the building work supervision requirements, including mandatory record-keeping and clearer descriptions of supervision tasks, may not effectively address the core issues within the industry and could potentially create additional burdens without delivering the intended outcomes. Our concerns include:

- a) **Increased administrative burden:** Mandatory record-keeping for supervisors adds administrative strain, especially for small pool and spa businesses already struggling with burdensome red tape. The time and costs for maintaining detailed records will not lead to improved supervision or quality control on-site.
- b) **Limited effectiveness in supervision:** Codifying "proper supervision" and requiring records will not directly translate to effective supervision. Supervision quality depends on the supervisor's competence and engagement, not just documentation. SPASA advocates for enhanced training and professional development for supervisors.
- c) **Potential for "name only" supervisors:** The proposal doesn't address why supervisors are sometimes only engaged in name. Clearer definitions and record-keeping alone won't ensure supervisors are actively involved in the work.
- d) **Lack of flexibility for different project types:** The proposed requirements will disproportionately impact smaller projects, especially in the pool and spa industry. A one-size-fits-all approach will burden smaller contractors and discourage them from taking on certain projects due to burdensome additional compliance costs.
- e) **Increased costs and consumer impact:** Additional record-keeping requirements will lead to higher costs for contractors, which could be passed on to consumers. This could make building projects more expensive, particularly in industries like pools and spas, where costs are already high. SPASA advocates for improving supervisor capacity rather than adding more compliance burdens.

A more effective solution would be to focus on improving industry training, supporting supervisors with CPD through peak industry bodies, and ensuring active, on-site engagement with projects, rather than relying heavily on documentation and theoretical definitions.

## **5.5 New Commissioner powers relating to practitioner training**

**63. Should the Government introduce new powers enabling the Commissioner to direct a licensed or registered building practitioner to undertake further training? What criteria should be satisfied before exercising this power?**

SPASA supports the initiative allowing the Commissioner to direct further training for building practitioners without suspending their licence but believes this should be done in consultation with peak industry bodies to ensure the training is relevant and targeted.

- 1. **Relevant training:** Pool and spa contractors have specialised skills that differ from other trades. Without consultation, training may be too general, missing the specific and niche needs of these contractors.

2. **Effective training:** Industry bodies are better positioned to develop practical training programs that reflect sector real-world challenges, ensuring training is both relevant and effective for on-the-job application.
3. **Over-Regulation:** Mandating training without consultation could result in unnecessary or redundant requirements, adding to the regulatory burden without improving competence. Industry bodies can help assess where training is truly needed.
4. **Practitioner needs:** Industry bodies can identify specific needs for specialised training, ensuring that training is directly applicable and beneficial, especially for emerging technologies and materials in the pool and spa sector.
5. **Collaboration:** Consultation fosters continuous improvement in training standards, ensuring that the regulatory framework adapts to industry changes, and enhances contractor competence.

SPASA submits that training requirements should be developed in consultation with peak industry bodies to ensure effectiveness, relevance, and minimal regulatory burden, ultimately improving outcomes for contractors and consumers.

## For more information

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