SPASA
SWIMMING POOL & SPA ASSOCIATION

RESPONSE TO:

CONSULTATION ON PROPOSED BUILDING REFORMS IN NSW

- **Proposed Building Approvals Framework**
- **Regulation Of Prefabricated Buildings**
- **Consumer Protections For Home Building Work**
- **Competency Assessments and Proposed Coregulation Model**

Aug 2024

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CONSULTATION ON PROPOSED BUILDING REFORMS IN NSW

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ABOUT SPASA

This submission is made by the Swimming Pool & Spa Association (SPASA).

SPASA represents the largest body of swimming pool and spa industry professionals across the nation. Our charter is not only to advocate and respond on issues of importance to our industry, but also proactively create and execute strategies to enhance the credibility and longevity of our members and the broader community.

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

SPASA's Registered Training Organisation (RTO), the Institute of Research and Learning (IRLearning) is dedicated entirely to the swimming pool and spa and broader industry. IRLearning' s qualifications, courses and workshops are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, regulators, employers, and the wider community.

PROPOSED BUILDING APPROVALS FRAMEWORK

Completion of Works Approval

Proposal – Introduce a simpler, more efficient approval process for non-occupiable structures.

As the only industry body representing professionals in the swimming pool and spa construction and service sector, SPASA strongly supports the introduction of a simplified, more efficient approval process for swimming pools.

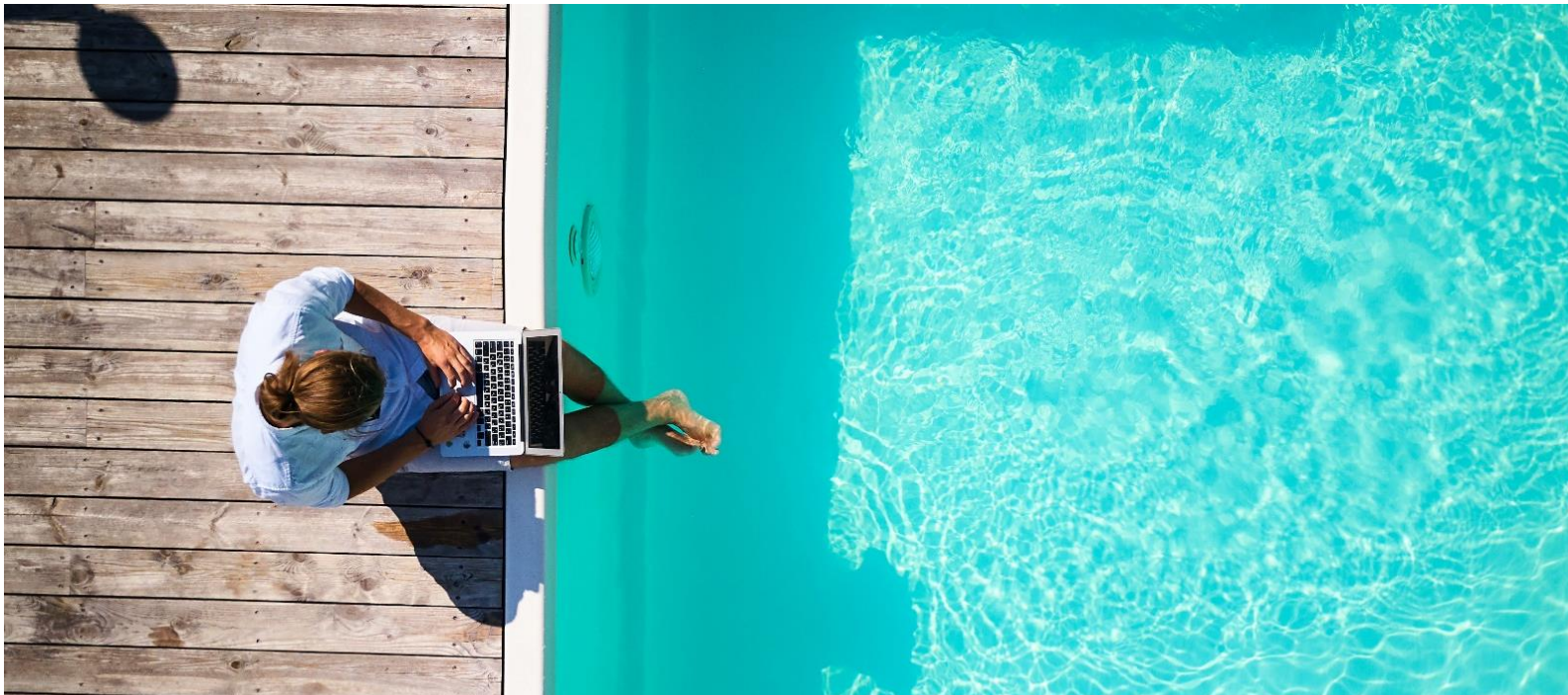
The current statutory requirements and lengthy assessments associated with Occupation Approval for swimming pools are often cumbersome and time-consuming. These processes frequently lead to significant delays and increased costs for both homeowners and pool builders, without necessarily improving safety or compliance outcomes.

Key points to consider:

- The construction and installation of swimming pools and spas differ substantially from the complexities involved in building residential structures.
- Swimming pools and spas are typically built or installed separately from residential buildings, often in backyard locations.
- While some pool and spa installations can be complex, many adhere to standardised reinforcement methods.
- Due to the repetitive nature of swimming pool and spa construction, architectural, engineering, and site drawings are generally standardised.

SPASA believes that streamlining the approval process will reduce administrative burdens, lower costs for pool builders and homeowners, and eliminate unnecessary regulatory red tape. This will enable quicker project completion and a more cost-effective approach to installing swimming pools and spas without overburdening the planning system.

SPASA urges the NSW Building Commission to consider the advantages of a simplified approval process for swimming pools and spas and to explore ways to implement changes that balance efficiency with necessary safety and regulatory oversight.



REGULATION OF PREFABRICATED BUILDINGS

Prefabricated and similar swimming pools and spas

In reviewing the proposed building reforms in NSW, it is noted that the consultation document addresses changes related to prefabricated buildings. However, it does not specifically mention fibreglass and similar swimming pools and spas, which are also manufactured offsite and subsequently installed in residential backyards.

For the avoidance of doubt, we seek confirmation that fibreglass and similar swimming pools and spas, which are produced offsite and then installed, should be excluded from the scope of these proposed reforms.

These types of swimming pools and spas, while prefabricated, differ significantly in their application and installation compared to other types of prefabricated buildings addressed in the consultation.

We would appreciate confirmation that prefabricated fibreglass and similar swimming pools and spas are excluded from the proposed regulations due to their distinct nature and their installation processes.

Definition of Home

The proposed Building Bill aims to streamline the definition of "home" by referring to specific classes of buildings, including class 1a (residential buildings), class 2 (apartment buildings), and class 10 (non-habitable buildings like sheds and carports). However, it is critical to emphasise that certain structures, despite their association with a residence, should not fall under this definition. Among these structures, swimming pools and spas should be explicitly excluded.

Functionality and Usage Distinction

Swimming pools and spas, unlike the buildings categorised under class 1a or 2, are not designed for habitation. Their primary function is recreational, offering a space for exercise, relaxation, and social interaction rather than serving as living quarters. This clear distinction in functionality underlines the necessity of their exclusion from the definition of "home." Including these structures under the same classification as habitable spaces dilutes the intention behind categorizing buildings based on their usage.

Precedent for Exclusion

The Bill itself acknowledges that certain non-habitable structures—such as jetties, slipways, boat ramps, pontoons, and farm buildings—should not be classified as part of a "home" despite their association with a residence. This precedent supports the argument that swimming pools and spas, which similarly do not serve as living spaces, should also be excluded. Their inclusion would create an inconsistency in how the Bill treats structures that are closely linked to a residence but do not contribute to its habitable function.

Alignment with Industry Standards

The swimming pool and spa industry operates under well-established guidelines that address safety, installation, and maintenance, distinct from the standards applied to residential buildings. Recognising pools and spas as separate from the definition of "home" ensures that industry practices remain aligned with these specialised standards, avoiding the risk of regulatory overlap and maintaining clarity for both industry stakeholders and consumers.

Position

For the reasons outlined above, swimming pools and spas should be explicitly excluded from the definition of "home" under the proposed Building Bill. Their non-habitable nature, the precedent for excluding similar structures, the potential for regulatory confusion, and the alignment with industry standards all underscore the importance of maintaining a clear distinction between residential buildings and recreational structures associated with them.

Such an exclusion would uphold the Bill's intent to streamline and clarify the classification of buildings without imposing unnecessary constraints on homeowners or the industry.

Contract Requirements

Thresholds SPASA supports the Building Commissions final position.

Progress Payments SPASA supports the Building Commissions final position.

Contract Variations SPASA supports the Building Commissions final position.

Preliminary Service Agreements (PSA)

SPASA supports the Building Commissions final position *with the following exceptions:*

In many instances, a swimming pool builder might connect a PSA to a contract for the construction of a swimming pool and/or spa. However, this connection should not result in these agreements being automatically considered a single contract for home building work, nor should it affect the associated deposit, progress payments, or HBCF.

Reasons why SPASA advocates for keeping these agreements distinct:

- PSA costs should not be captured under HCBF as this cover is designed to protect homeowners as a last resort if their builder cannot complete *building work or fix defects* because they have become insolvent, died, disappeared or had their licence suspended for failing to comply with a court or tribunal order to compensate a homeowner. PSAs are for services provided to consumers before, but separate to, residential building work.

- It is important of maintaining a clear distinction between Preliminary Service Agreements (PSAs) and construction contracts in the swimming pool and spa industry. While PSAs are an essential component of the overall project planning process, linking them directly to building contracts can lead to complications that do not serve the best interests of either consumers or service providers.

- The investigatory work conducted under a PSA often involves detailed assessments, planning, and the determination of what will and will not be included in the final construction project. This phase is crucial for identifying potential issues, setting realistic expectations, and ensuring that the final design aligns with the client's vision and regulatory requirements. However, this work frequently involves exploring options that may not be part of the actual construction. As a result, the outcomes of a PSA may address a set of building descriptors that ultimately determine what is not to be built. Linking the PSA to the construction contract could therefore misrepresent the scope of work that will be carried out, leading to confusion and potential disputes.

- In many cases, only a small percentage of the services provided under a PSA are directly relevant to the final construction project. For instance, initial site assessments, feasibility studies, and design revisions might not translate into physical construction activities. If PSAs are automatically linked to construction contracts, there is a risk that the value and scope of these preliminary services will disproportionately influence the terms of the construction contract, including deposit requirements, progress payments, and HBCF. This linkage could lead to an inflated perception of the project's complexity or value, creating unnecessary financial and contractual burdens on both the builder and the client.

- By maintaining a separation between PSAs and construction contracts, both consumers and industry professionals benefit from greater clarity and transparency. Consumers can better understand the distinct phases of their project, recognising that the PSA is primarily about planning and preparation, while the construction contract covers the actual building work. This separation helps manage expectations and ensures that each stage of the process is adequately documented and understood.

- Linking PSAs directly to construction contracts could lead to inconsistencies in how different projects are regulated and managed, particularly in relation to deposits, progress payments, and HBCF. By treating these agreements as separate entities, the regulatory framework remains consistent and fair, applying the appropriate standards and protections to each phase of the project without unnecessary overlap or confusion.

SPASA strongly advocates for the separation of Preliminary Service Agreements (PSAs) from construction contracts. The investigatory work under a PSA plays a crucial role in determining the scope and feasibility of a project, but it should not automatically influence the terms of the construction contract. Keeping these agreements distinct ensures that the unique nature of each phase is respected, provides clarity for consumers, and upholds a fair and consistent regulatory framework for the industry.

Statutory Warranties

SPASA supports the Building Commissions final position ***with the following exceptions**:*

The proposal to maintain the existing statutory warranty periods of 6 years for major defects and 2 years for other defects, with the addition of a statutory pause for dispute claims within the last 6 months of the warranty period, presents several concerns that may not be in the best interest of either consumers or the industry. As a peak industry body, here are the key reasons for not supporting this proposal:

- The introduction of a statutory pause in the warranty period for claims arising within the last 6 months could lead to prolonged dispute resolution processes. While the intention may be to ensure consumers have adequate time to address issues, the pause could inadvertently encourage delays in resolving disputes. This extension may cause uncertainty for both consumers and builders, as the final resolution of a claim could be postponed indefinitely, leading to prolonged periods of liability and uncertainty for all parties involved.

- The proposed statutory pause could also result in increased administrative and legal burdens for builders. Extending the warranty period effectively by pausing it during the last 6 months may require builders to maintain records, insurance, and other compliance obligations for longer periods. This could increase operational costs and lead to higher legal fees, particularly if disputes are drawn out over extended periods. For smaller businesses, this additional burden could be particularly challenging, potentially leading to financial strain and reduced capacity to serve new clients.

- The statutory pause could inadvertently encourage consumers to delay raising concerns until the last possible moment, knowing that doing so could potential increase the damage and associated costs while extending the warranty period.
  This behaviour could result in a surge of last-minute claims, overwhelming builders and the dispute resolution system. The focus should instead be on encouraging prompt reporting and

resolution of defects, ensuring that issues are addressed efficiently and effectively without the need for artificial extensions to the warranty period.

- The proposed changes could strain the relationship between consumers and builders. If consumers feel they can wait until the end of the warranty period to report issues, this could create an adversarial environment, where trust is eroded, and communication is minimised. A more collaborative approach, where both parties are incentivised to address defects as they arise, would likely lead to better outcomes and stronger, more positive relationships.

- The current statutory warranty periods of 6 years for major defects and 2 years for other defects are already robust protections for consumers. These periods provide ample time for defects to become apparent and for consumers to seek remediation. Extending these periods through a statutory pause may not significantly enhance consumer protection, but rather create new challenges in the form of delays and additional costs.

While the intention behind the proposed statutory pause is to protect consumers, it may lead to unintended consequences that could negatively impact both consumers and builders.

SPASA submits that the current warranty periods are adequate for addressing defects, and maintaining them without the addition of a statutory pause would better serve the interests of all stakeholders by promoting timely resolution of disputes, reducing administrative burdens, and fostering positive relationships between consumers and builders. Therefore, SPASA does not support the proposed statutory pause in the warranty periods.

Incidental Work

The NSW Building Commission's proposal to broaden the scope of statutory warranties to include incidental work, as outlined in clause 96 of the draft Building Bill, raises several significant concerns. While the intention is to enhance consumer protection, the implications of this proposal may lead to unintended consequences that could negatively impact the construction industry, builders, and consumers. Here are key reasons to argue against this proposal:

- Broadening the scope of statutory warranties to include work that is "necessary" or "incidental" to the contracted work introduces a level of uncertainty and legal ambiguity that could be problematic for builders. The terms "necessary" and "incidental" are inherently subjective and open to interpretation, which could lead to disputes over what constitutes incidental work. This ambiguity may result in increased litigation as parties attempt to define the scope of warranty coverage, leading to costly and time-consuming legal battles that could have been avoided with clearer, more precise definitions.

- The proposal effectively expands the builder's liability beyond the express terms of the contract, holding them accountable for work that may not have been explicitly agreed upon. This could result in builders being held responsible for issues arising from work that was not originally within the agreed scope but is later deemed "incidental" or "necessary." Such an expansion of liability is disproportionate and unfair to builders, particularly in cases where incidental work might involve elements beyond their direct control or expertise. This increased risk could discourage builders from taking on certain projects or lead to higher costs for consumers as builders seek to mitigate these risks.

- Expanding the scope of statutory warranties to cover incidental work could lead to increased project costs and delays. Builders may need to factor in the potential liability for incidental work, resulting in higher project bids or the inclusion of more comprehensive and expensive insurance policies. Additionally, the need to carefully document and manage every aspect of incidental work to avoid future disputes could slow down the construction process, leading to longer project timelines and increased costs for consumers.

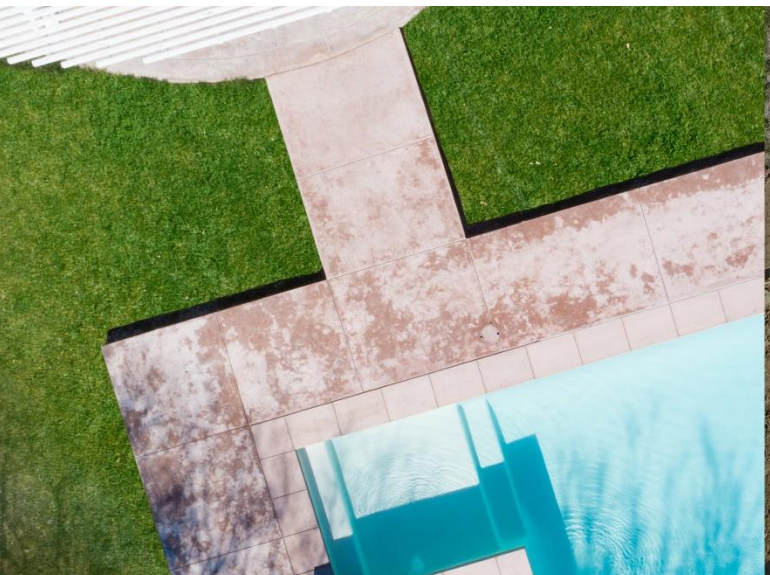
- One of the fundamental principles of contract law is that the parties involved clearly define the scope of work and responsibilities within the contract. This proposal undermines that principle by extending the scope of statutory warranties beyond the express terms of the contract. By doing so, it erodes the certainty and predictability that contracts are meant to provide. Builders and consumers alike rely on the contract as the definitive guide to the scope of work, and expanding warranties to cover undefined incidental work diminishes the clarity and enforceability of these agreements.

- Including incidental work in statutory warranties could overburden builders, especially smaller businesses that may not have the resources to manage the additional liabilities effectively. The increased administrative and legal responsibilities associated with monitoring and documenting incidental work, coupled with the potential for extended liability, could strain smaller builders and reduce their capacity to operate efficiently.

- While consumer protection is a valid concern, there are alternative approaches that could address these concerns without broadening the scope of statutory warranties. For example, clearer guidelines and standards for what constitutes incidental work could be developed, allowing builders and consumers to negotiate and include these terms explicitly within their contracts. Additionally, enhanced communication and documentation practices could be encouraged to ensure that all parties have a clear understanding of the scope of work, reducing the need for broad statutory warranties.

While the intention behind the proposal to broaden the scope of statutory warranties is to offer stronger consumer protections, the potential negative impacts on the industry outweigh the perceived benefits. The increased legal ambiguity, disproportionate liability, potential for higher costs and delays, erosion of contractual certainty, and the risk of overburdening builders all suggest that this proposal may not be the most effective approach to achieving the desired outcomes. Instead, a more balanced approach that respects the integrity of the contract while providing clear and fair protections for consumers would better serve all stakeholders in the industry. Therefore, the proposal to include incidental work within statutory warranties should be reconsidered or revised to mitigate these concerns.

For reasons tabled above, SPASA does not support the NSW Building Commissions proposal to broaden the scope of statutory warranties to include incidental work.



Major Defect Definition

The Building Commission's decision to replace the term "major element" with "building element" in Clause 95 of the draft Building Bill, thereby broadening the scope of what constitutes a major defect, raises significant concerns. While the intention is to enhance consumer protection, this change could have unintended negative consequences for contractors, the industry, and consumers. Here are the key reasons why this proposal should not proceed as currently planned:

- The shift from "major element" to "building element" expands the range of defects that could be classified as major, thereby significantly increasing contractor liability. While the Building Commission argues that liability should rest with the party best able to control the risks, this broader definition could unfairly burden contractors with responsibility for defects that may not have been directly under their control or that are minor in nature but now fall under the expanded scope of major defects. This increased liability could lead to higher insurance premiums, additional legal costs, and greater financial risk for contractors, particularly smaller businesses that may not have the resources to absorb these additional burdens.

- Broadening the scope of what constitutes a major defect is likely to lead to more disputes and litigation, as the expanded definition may create ambiguity over what qualifies as a major defect. The current definition of "major element" is well-understood and accepted within the industry, providing clarity and predictability. Replacing it with the broader "building element" could open the door to more frequent challenges and claims, potentially overwhelming the dispute resolution system and leading to delays in resolving issues. This could also result in a more litigious environment, where builders are more frequently subjected to claims, even for issues that may have previously been considered minor.

- The existing definition of "major defect" under the HB Act is designed to focus on defects that significantly affect the structural integrity, safety, or habitability of a building. This focus ensures that statutory warranties cover serious issues without extending to minor or incidental defects that do not pose substantial risks. By broadening the definition to include a wider range of building elements, the clarity and consistency of what constitutes a major defect are compromised. This erosion of clarity could lead to inconsistent application of the law, with different interpretations leading to varying outcomes in similar cases.

- Smaller contractors and builders are likely to be disproportionately affected by the proposed changes. The broader definition of major defect could result in a higher number of claims, which smaller businesses may struggle to manage due to limited resources. This could force smaller contractors out of the market, reducing competition and potentially driving up costs for consumers.

- While the intention behind the broader definition is to provide greater consumer protection, the reality could be quite different. The increased liability for contractors may lead to higher project costs as builders pass on the costs of additional insurance, legal fees, and risk management to consumers. Additionally, the potential for more disputes and litigation could result in longer project timelines, as builders may need to take extra precautions and include more extensive documentation to protect themselves against future claims. This could ultimately result in higher costs and delays for consumers, undermining the very protection the proposal aims to provide.

The decision to replace the term “major element” with “building element” is not supported by SPASA.

Definition of Practical Completion

The Building Commissions final position is unnecessarily complex and no data or evidence has been provided to demonstrate why the proposed changes are required.

SPASA supports *the existing Practical Completion arrangements* which is defined as work complete except for any omissions or defects that do not prevent work from being used for the intended purpose, and can be determined by the earliest of one of these scenarios:

- the date on which the builder 'handed over' the work to the owner;
- the date on which the contractor last carried out work (other than remedying minor defects)
- the date the occupation certificate (OC) is issued for the work; or
- 18 months after the owner-builder permit was issued (if applicable)

Dispute Resolution

The proposed changes in the draft Building Bill, which aim to shift the initial responsibility for resolving certain building disputes to the Building Commission, raise several concerns.

These changes may undermine the effectiveness of dispute resolution and create new challenges for both consumers and industry professionals. It is essential to argue against these proposals and advocate for retaining the existing provisions under the Home Building Act (HB Act).

- The proposal to centralise the handling of disputes within the Building Commission risks overburdening the Commission with a wide range of cases, including those related to the supply of goods, standard and quality of work, contract compliance, and payment issues. Given the broad scope of disputes that the Commission would be responsible for, there is a significant concern that it may lack the capacity, resources, and specialised expertise needed to handle these cases efficiently. The anticipated influx of disputes could lead to delays, reduced quality of dispute resolution, and a backlog of cases, ultimately leaving parties without timely resolutions.

- The draft Building Bill acknowledges the feedback received about delays but offers a limited solution: if the Building Commission fails to take action within four weeks, the dispute can proceed to the NSW Civil and Administrative Tribunal (NCAT). While this provision may seem like a safeguard, it does not address the root cause of potential delays. The four-week waiting period before a dispute can move to NCAT could become a frustrating bottleneck for parties seeking swift resolution. Under the current HB Act, disputes can be brought directly to NCAT, providing quicker access to a resolution process without unnecessary delays. Retaining this direct access is crucial for maintaining the efficiency of the dispute resolution system.

- NCAT has long been recognised for its expertise in handling building disputes, particularly in cases involving complex technical and contractual issues. The proposed changes would divert many of these disputes to the Building Commission, which may not have the same depth of experience or specialized knowledge. This shift could result in less informed decision-making and potentially less favourable outcomes for parties involved. By keeping the existing provisions under the HB Act, disputes would continue to benefit from the expertise and established processes of NCAT, ensuring that resolutions are grounded in a thorough understanding of the issues at hand.

- The proposed system introduces multiple steps and authorities involved in the dispute resolution process, making it more complicated and fragmented. Parties may need to navigate through the Building Commission, possible conciliation or mediation, and then potentially proceed to NCAT. This multi-tiered process could be confusing, time-consuming, and costly, particularly for consumers who may not be familiar with the nuances of the legal and regulatory framework. In contrast, the existing HB Act provides a more straightforward and direct path to resolution through NCAT, which is more accessible and easier to navigate for all parties involved.

- The replacement of rectification orders with compliance orders under the draft Building Compliance and Enforcement Bill introduces uncertainty. Compliance orders may be broader in scope but could also lack the specific focus and enforceability of rectification orders, potentially leading to disputes over their interpretation and application. Furthermore, the ability of the Building Commission to issue compliance orders for all defects could increase the regulatory burden on contractors without necessarily improving the quality of outcomes for consumers. Retaining the existing rectification order system under the HB Act ensures that there is a clear, focused, and well-understood mechanism for addressing defects.

- The proposed changes could strain the relationship between consumers and contractors. With the Building Commission acting as the initial dispute resolution authority, there may be a perceived loss of impartiality, especially if the Commission is seen as more regulatory than mediatory. This could lead to a more adversarial atmosphere, where trust between parties is eroded. In contrast, the existing NCAT process allows for a more balanced approach, where both parties can present their cases before an independent tribunal with a proven track record in dispute resolution.

While the draft Building Bill aims to streamline and improve the dispute resolution process, the proposed changes could create more problems than they solve. The risk of overburdening the Building Commission, potential delays, loss of specialised expertise at NCAT, a complicated process, uncertain impact of compliance orders, and negative effects on consumer-contractor relations all suggest that retaining the existing provisions under the Home Building Act is the better course of action. The current system, with direct access to NCAT and a clear, established process for resolving disputes, offers a more effective and timely delivery of dispute resolution.

Statutory Warranty Pause

The introduction of a statutory warranty "pause" as outlined in Clause 100 of the draft Building Bill is intended to provide additional time for the Building Commission to investigate disputes without the pressure of an expiring warranty period. However, there are several reasons why this proposal could have negative implications for both contractors and consumers, and why the existing framework under the Home Building Act (HB Act) should be retained without this pause:

- The statutory warranty pause could lead to prolonged uncertainty for contractors and consumers alike. By extending the time period during which a dispute can be addressed, even if the warranty period itself is not technically extended, the resolution of claims could be delayed significantly. This delay can create an environment of prolonged liability for contractors, who may be left in a state of limbo while awaiting the outcome of the Building Commission's investigation. For consumers, this uncertainty can result in extended periods where they are unsure whether their claim will be resolved favourably, leaving them without clear recourse for addressing their concerns.

- The statutory warranty period is designed to provide a clear and defined timeframe within which claims must be made. This certainty benefits both consumers and contractors by creating a predictable legal environment. The proposed pause undermines the finality of this period by introducing a potential extension that, while not extending the warranty itself, effectively prolongs the time in which claims can be pursued. This change could erode confidence in the statutory warranty framework by creating the perception that the warranty period is no longer definitive, potentially leading to more disputes and litigation as parties navigate this ambiguous extension.

- The pause on statutory warranties could significantly increase the administrative burden on both the Building Commission and contractors. The Building Commission would need to manage and monitor cases during the pause period, which could strain its resources and lead to inefficiencies. Contractors, on the other hand, may face additional documentation and compliance requirements to ensure that they are adequately protected during the extended period of potential liability. This increased administrative complexity could lead to higher costs and reduced efficiency in the dispute resolution process.

- The proposed pause could reduce the incentive for parties to resolve disputes in a timely manner. With the pressure of an expiring warranty period removed, there may be less urgency for both consumers and contractors to reach a resolution quickly. This could lead to drawn-out disputes that might otherwise have been settled more promptly under the current system. The lack of a strict deadline could result in delays that are detrimental to both parties, particularly for consumers who may be left waiting longer for repairs or compensation.

- Although the proposal argues that the pause should not impact Professional Indemnity Insurance (PII) premiums because there is no expansion of individual liability, the reality could be different. Insurers may perceive the pause as introducing additional risk due to the extended period of potential claims. This perceived risk could lead to higher PII premiums or more stringent underwriting conditions, particularly if insurers believe that the pause creates uncertainty about when liability truly ends. Even if the pause does not technically extend liability, the extended timeframe for resolving disputes could be viewed as increasing exposure, leading to higher costs for contractors.

- The statutory warranty pause could erode confidence in the dispute resolution process by creating a perception that the system is skewed in favour of extending liability rather than achieving timely justice. Consumers and contractors may feel that the pause unnecessarily complicates the process, making it harder to know when a dispute will be definitively resolved. This could discourage the use of the Building Commission's dispute resolution services, contrary to the proposal's intent, as parties may seek quicker resolutions through alternative means, such as NCAT, to avoid prolonged uncertainty.

While the statutory warranty pause is intended to allow for thorough investigation and resolution of disputes, it introduces several risks and challenges that could outweigh the benefits. The potential for prolonged uncertainty, undermining the finality of the warranty period, increased administrative burdens, reduced incentives for timely resolution, possible impacts on PII premiums, and erosion of confidence in the dispute resolution process all suggest that this proposal may not be in the best interest of the industry or consumers. Retaining the existing provisions under the Home Building Act, which provide clear and predictable timeframes for warranty claims, would better serve all parties involved by ensuring that disputes are resolved efficiently and within a well-defined legal framework.

Accordingly, SPASA does not support the Statutory Warranty Pause.

Duty of Care

The draft Building Bill's proposed consolidated framework for the statutory duty of care aims to align and clarify definitions and operations related to building work, with the intention of maintaining the status quo while incorporating stakeholder feedback and recent case law.

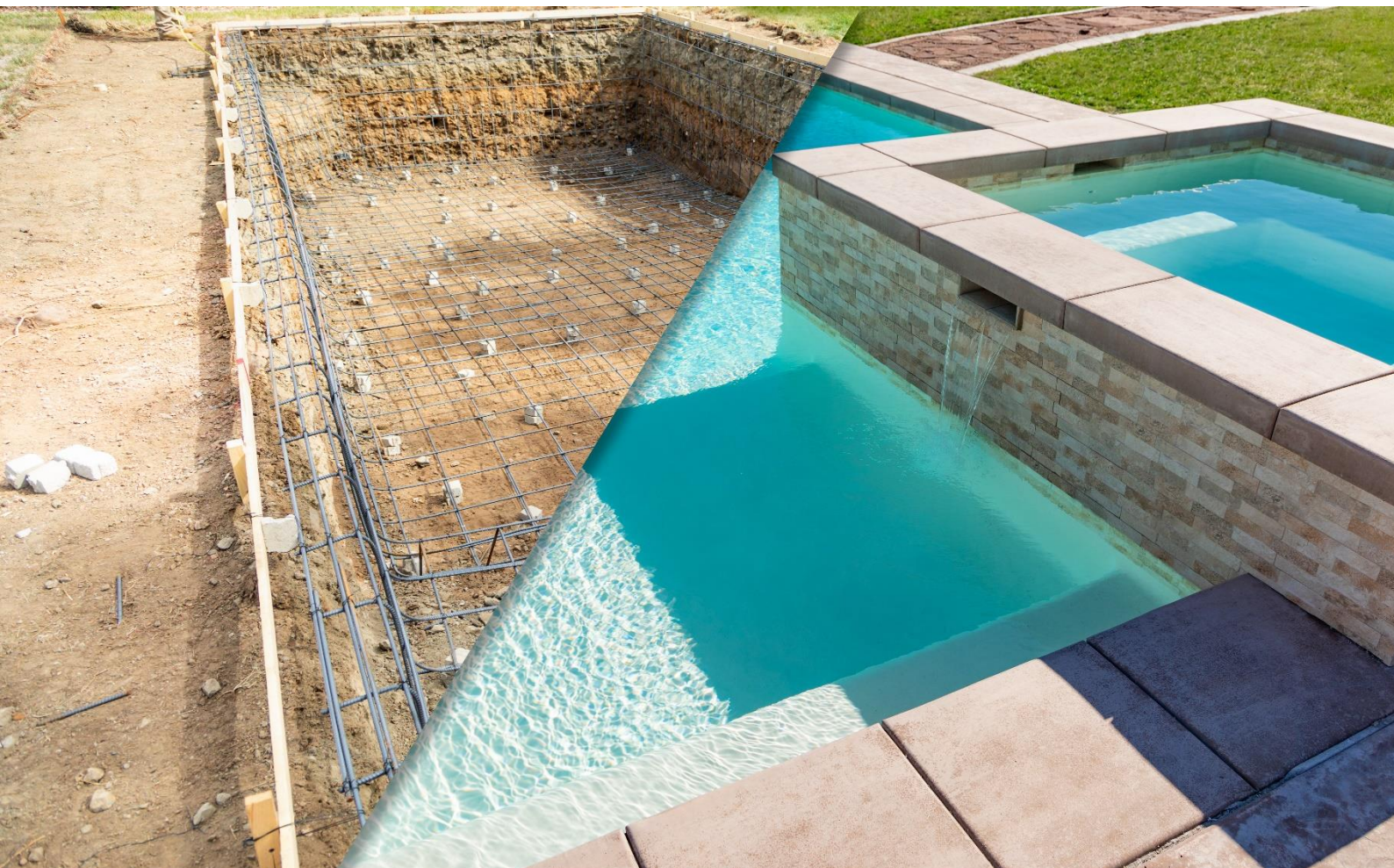
Support for the Consolidated Framework

- Alignment with Existing Definitions and Case Law
    - The draft Building Bill aligns the statutory duty of care with the existing definitions and principles in the DBP Act and the EP&A Act, ensuring continuity and minimizing disruptions for stakeholders. This alignment helps in maintaining a consistent legal framework, which is beneficial for both practitioners and consumers.
    - By considering stakeholder feedback and recent case law, the draft aims to address any ambiguities or issues that have arisen, potentially leading to a more refined and effective duty of care.
- Clarification of Scope and Application
    - The clear definition of "building work" and the extension to include those involved in manufacturing or supplying building products provides a comprehensive approach to duty of care, ensuring that all relevant parties are covered.
    - The adoption of the 10-year limitation period and the exclusion of personal injury claims from this limitation period aligns with existing practices and provides clarity on how claims can be made.
- Maintaining Status Quo
    - Retaining the current framework for the duty of care as it operates under the DBP Act provides predictability for all parties involved. This can reduce uncertainty and help maintain stability within the industry.

Potential Negatives and Considerations

1. Complexity and Interpretation
    - Even with alignment and clarity, the integration of multiple acts (DBP Act, EP&A Act, and Civil Liability Act) into a single framework can lead to complex legal interpretations. Stakeholders may face challenges in navigating this complexity, potentially leading to disputes over the scope and application of the duty of care.
2. Impact on Liability
    - The broad application of the duty of care to include manufacturing and supply of building products could increase liability for these parties. This expansion may lead to heightened legal and insurance risks, which could impact smaller manufacturers and suppliers disproportionately.
3. Administrative and Compliance Burdens
    - Aligning and consolidating various definitions and frameworks may require additional administrative efforts from stakeholders to ensure compliance. This could potentially increase the burden on businesses, especially those that are less familiar with the consolidated framework.
4. Potential for Unintended Consequences
    - Despite careful drafting, there is always a risk of unintended consequences arising from changes to legal frameworks. Stakeholders should be prepared for the possibility of unforeseen issues or legal challenges that may arise from the new provisions.

SPASA is mindful of the potential complexities and administrative burdens that may arise from the consolidation and believes this further consultation before implementation.



COMPETENCY ASSESSMENTS & PROPOSED COREGULATION MODEL

GENERAL COMMENTS

Role of ASQA in Ensuring Quality:

The existing framework to deliver training and capture competency of qualified tradespeople through the Australian Skills Quality Authority (ASQA). While there may be concerns about the reliability of some qualifications, it's important to stress that the majority of RTOs are reputable institutions that take their role in training and assessment seriously. These RTOs adhere to rigorous standards and work hard to ensure that their graduates are competent and well-prepared for the workforce.

The ASQA is the national regulator for the vocational education and training (VET) sector in Australia. ASQA plays a crucial role in ensuring that RTOs meet the necessary standards for quality training and assessment. Through audits, compliance monitoring, and enforcement actions, ASQA works to identify and weed out any RTOs that do not meet these standards.

Regulator and ASQA Collaboration

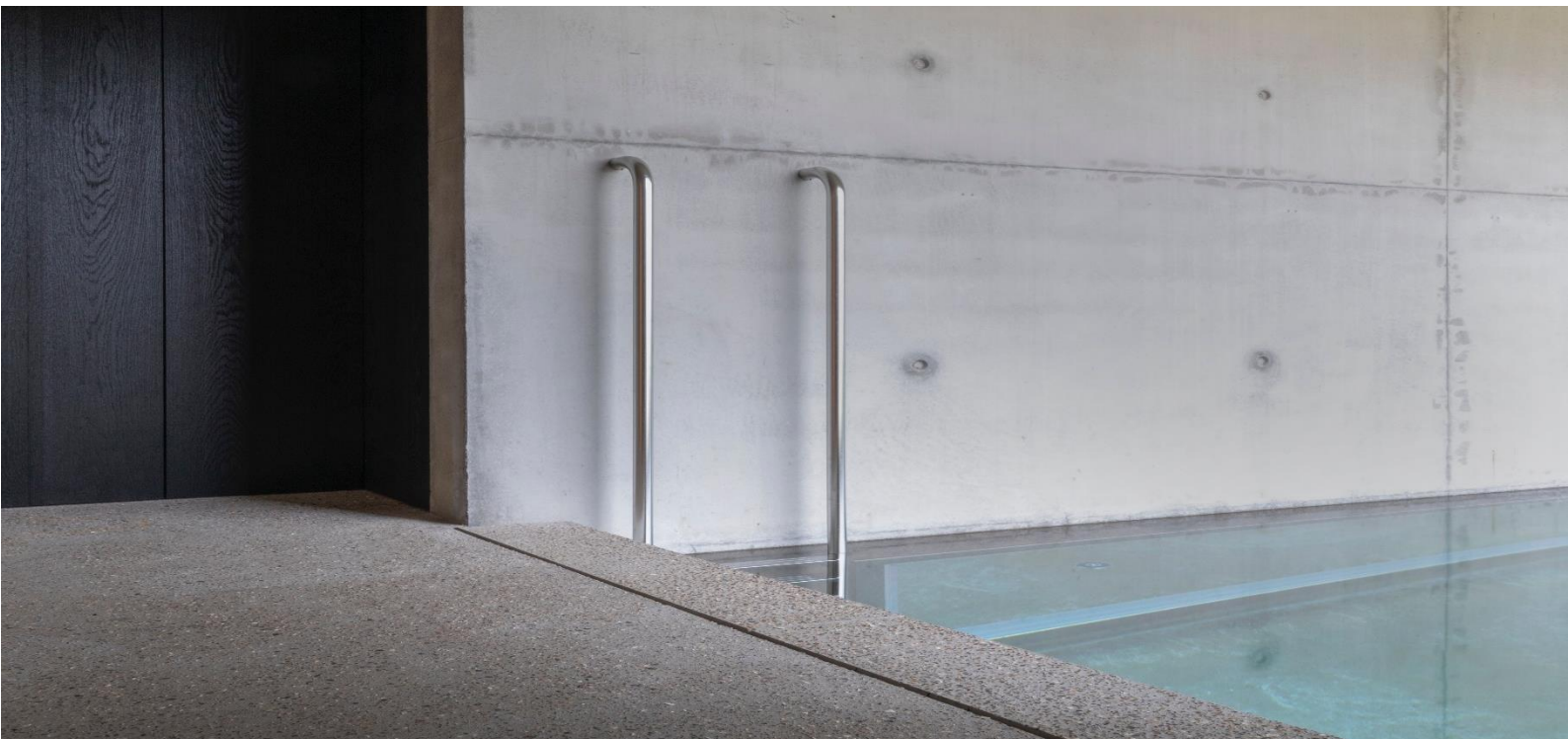
By working more closely with ASQA, the NSW Building Commission can create a more robust and reliable licensing system that ensures only students who complete their qualifications through professional, credible, and compliant RTOs are eligible for licenses. This partnership would enhance the quality of the workforce, protect consumers, and elevate the overall standards of the building industry in NSW. Through coordinated efforts to weed out non-compliant RTOs, the Commission can ensure that its licensing decisions are based on the highest quality qualifications, leading to a stronger, more trustworthy industry.

SPASA is committed to working positively with the NSW Building Commission to ensure the co-regulation model has every chance of success.

Qualifications and Licensing

The licensing assessment process currently relies on the ASQA framework with qualifications and experience essential to acknowledge that most Registered Training Organisations (RTOs) operate with integrity and professionalism allocating qualifications that align with the qualification framework.

Whilst SPASA supports co-regulation, it's important to note that the vast majority of RTOs are committed to delivering high-quality education and training that meets industry standards.



1. Do you support the proposed compliance and enforcement tools outlined above? What other compliance mechanisms should the Commission consider?

SPASA acknowledges that while the model offers potential benefits, such as targeted, risk based regulatory oversight and a partnership between the Commission and Accredited Industry Bodies, there are several aspects that require thorough assessment from SPASA's perspective.

Support for Targeted Regulatory Oversight

The proposed model allows the Commission to concentrate its efforts on the riskier and more influential players in the market, which could lead to more efficient use of regulatory resources and a more streamlined approach to ensuring competency within the industry.

However, it is crucial that the criteria used to determine “risky” players are transparent and consistently applied. The risk-based approach should not unfairly disadvantage smaller operators or those new to the industry. SPASA would advocate for clear guidelines on how risk profiles are developed and how they impact regulatory actions.

Concerns Over Compliance and Enforcement

While SPASA supports the Commission's intent to collaborate with Accredited Industry Bodies and focus on education and upskilling, there are concerns regarding the potential for disciplinary actions, particularly in cases of minor misconduct. The Commission's approach should prioritise support and remediation over punitive measures, especially for Accredited Industry Bodies that may require additional resources or guidance to meet expected standards.

Moreover, the proposal to leverage data and intelligence to inform compliance activity raises questions about data accuracy, interpretation, and the potential for over-reliance on quantitative metrics. SPASA would urge the Commission to ensure that any data-driven compliance actions are supplemented with qualitative assessments and that Accredited Industry Bodies are given the opportunity to address identified issues before more severe actions, such as suspension or cancellation of accreditation, are considered.

Potential Negative Impacts

One potential downside of the proposed model is the additional administrative burden it may place on Accredited Industry Bodies. If these bodies are required to meet stringent information-sharing requirements and adhere to a complex set of compliance standards, there could be significant costs involved in maintaining accreditation. SPASA would recommend that the Commission consider ways to minimise these burdens, perhaps through streamlined reporting processes or providing additional support and resources to Accredited Industry Bodies.

Recommendations

1. Ensure that the criteria for identifying "risky" players are clear, transparent, and consistently applied across the industry.

2. Emphasise education, support, and remediation over punitive actions in cases of minor misconduct. Provide Accredited Industry Bodies with the resources they need to meet standards.

3. Supplement data-driven compliance actions with qualitative assessments and ensure Accredited Industry Bodies have the opportunity to address issues before severe penalties are imposed.

4. Explore ways to reduce the administrative burden on Accredited Industry Bodies, possibly through streamlined processes or additional support.

SPASA's cautiously supports the proposed co-regulation model, provided that these concerns are addressed and that the framework is implemented in a manner that fosters collaboration, fairness, and efficiency within the industry.

2. What further information could the Commission provide to support Accredited Industry Bodies?

SPASA strongly supports the NSW Building Commission's proposed framework for Accredited Industry Bodies under the co-regulation model. We believe that this approach will enhance the overall competency and professionalism within the building industry, particularly in specialised sectors such as swimming pools and spas.

Accredited Industry Body Requirements

SPASA is pleased to see that the Commission has outlined clear eligibility criteria for industry bodies seeking accreditation. By establishing a rigorous assessment process, the Commission ensures that only those bodies with the necessary expertise, capability, and commitment to high standards will be entrusted with the responsibility of conducting competency assessments. We support this thorough evaluation process, as it aligns with

The Commission’s plan to develop clear guidelines in consultation with industry stakeholders is particularly commendable. SPASA believes that these guidelines will be essential in helping potential Accredited Industry Bodies understand the application process and the standards they must meet.

This transparency and collaboration will facilitate a smoother accreditation process and encourage industry bodies to strive for excellence.

Ongoing Requirements and Appeals Processes

SPASA also supports the ongoing requirements set by the Commission for maintaining accreditation. Clear expectations are crucial for ensuring that Accredited Industry Bodies continue to uphold the standards necessary for the integrity of the co-regulation model. We appreciate the Commission's emphasis on established appeal processes and the capability to manage appeals effectively.

The delineation of responsibilities between the Commission and Accredited Industry Bodies for managing appeals is well-considered. SPASA agrees that Accredited Industry Bodies should handle appeals related to competency assessments, as this allows them to directly address and resolve issues within their domain of expertise. The Commission's responsibility for appeals related to licensing suitability ensures that these critical decisions are managed by the regulatory authority, maintaining fairness and objectivity.

Support from the Commission

SPASA values the Commission's commitment to supporting Accredited Industry Bodies through the provision of guidance material and processes. This partnership approach is crucial for the success of the co-regulation framework. The proposed guidance materials, such as a clear matrix of roles and responsibilities and standards for operational processes, will help Accredited Industry Bodies implement robust and effective systems for governance, data management, and appeals. This support will be vital in ensuring that all bodies operate at the highest standards, contributing to the overall integrity of the industry.

3. Are you supportive of a two-tiered model? Why or why not? If you do not support a two-tiered model, do you propose an alternative approach?

SPASA supports the NSW Building Commission's proposed tiered approach within the co-regulation model. This approach recognises the varying levels of capability and commitment within industry bodies and provides a structured pathway for enhancing regulatory oversight while offering tangible benefits to those bodies that achieve higher standards.

Support for the Tiered Approach

SPASA believes that the tiered approach is a balanced and effective method for accommodating the diverse range of industry bodies within the building sector. By not mandating a Professional Standards Scheme (PSS) for accreditation, the model remains accessible to a broad array of industry bodies, ensuring that even those who may not have the resources or capacity to obtain a PSS can still participate and contribute to the co-regulation framework.

Ensuring Access and Fairness

SPASA is particularly supportive of the provision that allows PSS Accredited Industry Bodies to conduct competency assessments for all applicants, regardless of their membership status. This ensures that access to necessary assessments is not restricted, maintaining fairness and equity within the industry. It also safeguards against any monopolistic practices that could arise if only a limited number of bodies were permitted to conduct these assessments.

Insurance and CPD Benefits

The insurance benefits associated with PSS membership, such as limits on civil liability, provide an added layer of protection for industry professionals. This is a significant advantage and an important consideration for those industry bodies weighing the benefits of pursuing PSS accreditation. Additionally, the ability for PSS Accredited Industry Bodies to prescribe and mandate their own CPD requirements allows for the development of more specialised and relevant training that aligns closely with industry needs, further enhancing the skills and knowledge of their members.

Complaints Handling and Compliance

SPASA agrees with the proposed role of PSS Accredited Industry Bodies in managing trader vs. trader complaints and upholding professional standards among their members. This role complements the Commission's broader regulatory oversight and allows for more tailored and industry-specific dispute resolution processes. The information-sharing provisions between the Commission and PSS Accredited Industry Bodies will be critical to ensuring that regulatory actions are coordinated and effective, ultimately leading to a more accountable and transparent industry.

4. Should the Commission consider any other restrictions or eligibility requirements for certain types of industry bodies? For example, requiring for-profit organisations to demonstrate how they would ensure that their revenue generation objectives would not detract from the overall objectives of the scheme.

SPASA supports the inclusive approach to allowing various types of industry bodies (if they meet the eligibility requirements), such as membership-based organisations, professional associations and not for profits, to become Accredited Industry Bodies under the proposed co-regulation model. This inclusive strategy ensures that the diversity of the industry is reflected in the regulatory framework, promoting a broad range of expertise and perspectives.

SPASA sees the below discussions points crucial for the Commission to consider:

Accredited Bodies - FOR PROFIT BUSINESSES

Financial Motives

For-profit businesses should be required to submit a detailed plan demonstrating how their revenue generation activities will not detract from the overall objectives of the scheme. This plan should include strategies for ensuring that profit motives do not influence the quality or fairness of competency assessments.

Industry Investment

For-profit businesses should provide regular, detailed financial reports to the Commission, showing how revenue from their participation in the scheme is reinvested into improving training, assessments, and industry standards.

Conflict of Interest

For-profit businesses should be required to implement and enforce a strict conflict of interest policy. This policy should outline how they will prevent financial interests from interfering with their duties under the scheme and should be subject to approval and regular review by the Commission.

Stricter Eligibility Criteria

For-profit businesses should meet enhanced eligibility criteria, including demonstrating a commitment to ethical business practices, a strong track record in the industry, and the ability to contribute positively to the scheme's goals.

Consultation

For-profit businesses should be required to engage regularly with industry associations, stakeholders and the broader community. This could involve conducting consultations, gathering feedback, and publicly reporting on how their activities align with the scheme's objectives.

Accredited Industry Bodies – NOT FOR PROFIT ORGANISATIONS

SPASA supports the idea that Accredited Industry Bodies are not required to hold a Professional Standards Scheme (PSS) to participate in the NSW Building Commission's proposed co-regulation model is crucial for fostering inclusivity and practicality within the industry. However, Accredited Industry Bodies who also wish to hold a PPS provides additional benefits.

A tiered approach is both necessary and beneficial:

Inclusivity and Accessibility

Not requiring a PSS for participation ensures that a wide range of approved industry bodies can engage in the co-regulation model. This inclusivity is vital, as many industry bodies might not have the resources or capacity to obtain a PSS. By allowing these bodies to participate without this requirement, the Commission ensures that the co-regulation model is accessible and representative of the entire industry.

Smaller Industry Participants

Smaller or niche industry bodies, which might struggle to meet the stringent requirements of a PSS, can still apply to contribute to the scheme. This broad participation enriches the model with diverse perspectives and expertise, enhancing its overall effectiveness.

Tiered Approach with Incentives

- The introduction of a tiered approach offers a pragmatic solution. It rewards Accredited Industry Bodies that have achieved a PSS by providing them with additional benefits as outlined in the consultation paper.

- While a PSS is not mandatory, the eligibility requirements for accreditation under the co-regulation model will still ensure that all participating bodies meet a baseline standard of competence and capability. This approach allows the Commission to maintain high standards across the board without excluding industry bodies that might find obtaining a PSS unfeasible.

- The Commission's proposal directly addresses the concerns raised in industry feedback regarding the accessibility of a PSS. By clarifying that a PSS is not required for accreditation,

the Commission responds to industry needs while still promoting higher standards through the tiered benefits system. SPASA supports ths approach.

- By listening to and incorporating industry feedback on a tiered approach, the co-regulation model is not only effective but also has the support and buy-in from those it seeks to regulate.

Membership-Based Bodies

We acknowledge the feedback from some membership-based industry bodies regarding potential conflicts between their roles in member advocacy and competency assessment. However, SPASA believes that these concerns can be managed effectively within the framework of the co-regulation model. Many industry associations, including SPASA, already uphold stringent codes of conduct and are committed to enhancing industry standards. These existing practices align well with the goals of the proposed model, and any necessary adjustments to meet the obligations of an Accredited Industry Body can be supported through clear guidance from the Commission.

Role of RTOs

SPASA recognises the value that RTOs can bring to the co-regulation model by leveraging their expertise in training and assessment. However, we also agree with the Commission's view that there should be a clear separation between training delivery and competency assessment to avoid conflicts of interest. This separation is essential to maintain the integrity of the assessment process and ensure that competency assessments are conducted impartially and fairly.

Prescribing Accredited Industry Bodies in Legislation

SPASA acknowledges the suggestion to prescribe Accredited Industry Bodies within legislation as a means of providing certainty and confidence in the co-regulation scheme. While this could enhance transparency and trust, we also recognize the potential operational challenges this could introduce, such as the need for frequent updates to the list of prescribed bodies. SPASA is open to further evaluation of this concept and believes that any such measures should be carefully balanced to avoid unnecessary administrative burdens.

5. Should the Commission prescribe Accredited Industry Bodies within legislation (such as via Gazette) to provide certainty to industry and the public?

SPASA does not support the idea of prescribing Accredited Industry Bodies within legislation, such as via Gazette, as there are many potential challenges associated with this approach, such as the need for timely updates to the list of prescribed bodies whenever there are changes in accreditation status or the scope of services offered by these bodies. To mitigate these challenges, we recommend that the Commission implement a streamlined process for updating the Gazette, ensuring that changes are reflected promptly and accurately.

Alternatively, the Commission could explore digital platforms or publicly accessible databases, providing real-time updates and detailed information on Accredited Industry Bodies.

6. Do these proposed powers and requirements mitigate conflict of interest risks? If not, what other powers and requirements should be considered?

SPASA supports the proposed powers and requirements to mitigate conflict of interest risks within the co-regulation model, as they provide a robust framework for ensuring transparency, accountability, and public confidence in the licensing framework.

The Commission's strong auditing and reporting requirements, including proactive and reactive audits are essential tools for maintaining the integrity of the co-regulation scheme. These measures, coupled with strict ongoing reporting and disclosure obligations for Accredited Industry Bodies, ensure that any potential conflicts of interest are identified and addressed promptly.

The requirement for Accredited Industry Bodies to be considered a 'public official' under the Independent Commission Against Corruption Act 1988 is a particularly strong safeguard.

The proposed ring-fencing requirements for Accredited Industry Bodies that also function as Registered Training Organisations (RTOs) are a thoughtful and proportionate response to the potential for conflicts of interest in such dual roles. By ensuring a clear separation between the RTO function and the competency assessment function, and by preventing RTO trainers from assessing competency assessment applicants, the model addresses the concerns raised by stakeholders while still allowing these bodies to participate in the scheme.

SPASA believes that these measures, as outlined, strike the right balance between mitigating conflict of interest risks and maintaining a diverse pool of Accredited Industry Bodies. The approach taken by the Commission is both practical and effective, and we support the continued development and refinement of these safeguards to ensure the ongoing success of the co-regulation model.

7. Should the Commission, in conjunction with industry, develop and mandate one competency assessment for each licence class? Alternatively, should Accredited Industry Bodies be able to develop and implement a bespoke competency assessment? (Noting this would still be subject to approval by the Commission)

SPASA supports the Commission's proposed approach to developing one standard competency assessment for each licence class in collaboration with industry. This approach strikes a crucial balance between maintaining consistency and ensuring high standards across the board, while still allowing for industry input and innovation.

By developing a single competency assessment for each licence class, all applicants are held to the same rigorous standards, regardless of which Accredited Industry Body administers the assessment. This consistency is essential for maintaining public confidence in the licensing framework and ensuring that all licensed professionals possess the required knowledge and skills.

However, SPASA also recognises the importance of flexibility and innovation within the industry. Therefore, we support the Commission's proposal that, while one standard assessment will be developed for each licence class, Accredited Industry Bodies will still have the opportunity to offer more rigorous assessments if they choose to do so.

This approach encourages innovation and allows bodies to differentiate themselves by offering assessments that go above and beyond the minimum standards.

In terms of the alternative approach, where Accredited Industry Bodies could develop bespoke competency assessments subject to Commission approval, SPASA believes this could lead to inconsistencies and potential confusion within the market. The proposed standardization approach avoids these risks while still providing a clear pathway for maintaining high standards.

Overall, SPASA supports the Commission's proposal to develop and mandate a single competency assessment for each licence class, while allowing for enhanced assessments by Accredited Industry Bodies. This approach effectively balances the need for consistency, public confidence, and industry innovation.

8. Do you support the proposed approach to require Accredited Industry Bodies to provide an outcomes report to failed applicants? Why / why not?

SPASA supports the proposed approach of requiring Accredited Industry Bodies to provide an outcomes report to failed applicants. This approach is a positive step towards ensuring transparency, fairness, and continuous improvement within the competency assessment process.

Providing an outcomes report offers several key benefits:

1. An outcomes report would give applicants clear and specific feedback on why they did not meet the required competency standards. This transparency helps maintain trust in the assessment process and ensures that applicants understand exactly where they fell short.
2. By highlighting areas where an applicant needs improvement, the outcomes report serves as a constructive tool for professional development. This aligns with the broader industry goal of upskilling and improving the competency of professionals in the sector.
3. When applicants receive clear and detailed feedback on their performance, they are less likely to feel that the process was unfair or arbitrary. This could reduce the number of complaints and appeals, making the system more efficient and reducing the administrative burden on Accredited Industry Bodies.
4. SPASA agrees with the Commission's view that a full skills gap assessment, which could potentially direct applicants to specific training providers, might introduce conflict of interest risks. By focusing on providing an outcomes report without mandating specific training, the Commission can mitigate these risks while still offering valuable feedback to applicants.
5. The outcomes report strikes a good balance between offering constructive feedback and maintaining the integrity of the assessment process. It supports applicants in their professional growth without compromising the fairness and objectivity of the competency assessments.

SPASA supports the Commission's proposal to require Accredited Industry Bodies to provide outcomes reports to failed applicants. This approach effectively supports transparency, professional development, and fairness while avoiding the potential risks associated with more detailed skills gap assessments.

9. Do you have any further questions relating to the financial viability of the proposed co-regulation model?

In addressing the financial viability of the proposed co-regulation model, SPASA acknowledges the Commission's efforts to outline potential challenges and opportunities for industry bodies participating in the scheme. While the indicative guidance provided offers a helpful starting point, further clarity on several key areas is essential to ensure the success and sustainability of the model. SPASA would like to raise the following points and potential considerations:

SPASA recognises that the financial viability of the scheme is heavily influenced by the volume of assessments conducted. Smaller licence classes may face significant financial challenges due to lower volumes, potentially leading to unprofitability for Accredited Industry Bodies. This could result in limited participation from industry bodies, ultimately reducing the effectiveness of the co-regulation model.

Recommendation: SPASA suggests exploring options for financial assistance or subsidies for Accredited Industry Bodies that service smaller licence classes. This could ensure a more balanced participation across all licence classes, regardless of the expected volume of assessments.

The financial burden on Accredited Industry Bodies, particularly those with smaller operational capacities, should not be underestimated. The costs associated with setting up and maintaining the necessary infrastructure to deliver competency assessments, along with meeting the stringent regulatory requirements, may be prohibitive for some bodies.

Recommendation: SPASA recommends that the Commission consider introducing a financial assistance program or grant scheme to support Accredited Industry Bodies in the initial stages of implementing the competency assessments. This could include assistance with digital infrastructure, training for assessors, or subsidies for delivering assessments in regional or remote areas.

SPASA supports the Commission’s proposal to set a maximum fee for competency assessments to prevent price gouging and ensure fairness across the industry. However, this must be carefully calibrated to reflect the actual costs incurred by Accredited Industry Bodies, particularly for more resource-intensive assessments.

Recommendation: SPASA suggests that the Commission engage in further consultations with industry bodies to determine an appropriate maximum fee structure that reflects the varying costs associated with different licence classes and assessment formats.

Questions for Further Consideration

1. How will the Commission ensure that the prescribed fee structure remains flexible enough to accommodate changes in the volume of assessments over time? For example, if an unexpected surge in applications occurs, will there be mechanisms in place to adjust fees or provide additional support to Accredited Industry Bodies?

2. While the Commission's proposal to explore digital solutions to reduce costs is promising, what specific investments or partnerships are being considered to develop and implement these solutions? Additionally, how will the costs of these digital platforms be distributed between the Commission and Accredited Industry Bodies?
3. What strategies are in place to ensure the long-term financial sustainability of the co-regulation model, particularly in light of potential fluctuations in the number of licence holders or changes in industry dynamics?

By addressing these concerns and providing targeted financial support, the Commission can help ensure that the proposed co-regulation model is both financially viable and effective in maintaining high competency standards across the industry. SPASA remains committed to working with the Commission to refine these proposals and ensure their successful implementation.

10. Do you support Accredited Industry Bodies being required to notify the Commission of all assessment outcomes, including individuals who fail?

The following points represent SPASA's stance on several key aspects of the model, particularly concerning the requirement for Accredited Industry Bodies (AIBs) to notify the Commission of all assessment outcomes, including those of individuals who fail, and the broader resourcing considerations for the industry.

Support for Notifying the Commission of All Assessment Outcomes

SPASA supports the proposal requiring Accredited Industry Bodies (AIBs) to notify the Commission of all assessment outcomes, including the outcomes of individuals who fail. This requirement is crucial for several reasons:

- Regular reporting of all assessment outcomes ensures that the Commission can maintain a clear and comprehensive view of the performance and conduct of AIBs. This transparency is essential for maintaining public trust in the licensing process and ensuring that all applicants are held to consistent standards across the industry.

- By collecting data on assessment outcomes, the Commission can identify trends or irregularities that may indicate issues with specific AIBs. For example, if an AIB consistently passes applicants who have failed elsewhere, it could prompt a targeted review or audit, ensuring the integrity of the competency assessments.

- The reporting requirement acts as a safeguard against potential misconduct or malpractice within AIBs. It allows the Commission to intervene early if patterns of concern emerge, thereby protecting the reputation of the industry and the safety of the public.

Concerns and Recommendations on Resourcing

SPASA acknowledges the feedback from stakeholders regarding the resourcing burdens associated with the proposed co-regulation model, particularly the 5-year renewal requirement for AIBs and the information-sharing obligations. While SPASA supports these measures for maintaining the integrity of the scheme, we believe there are opportunities to refine these processes to reduce the administrative and financial burdens on AIBs.

- SPASA agrees with the necessity of a 5-year renewal requirement to ensure ongoing compliance and maintain public confidence. However, to alleviate the administrative burden on AIBs, especially those with a strong compliance record, SPASA recommends:
    - Renewal fees should reflect the actual work required to process the renewal of an AIB with a good compliance history. This reduction would help incentivize ongoing compliance and reduce the financial burden on AIBs.
    - A streamlined renewal process should be available for AIBs that have demonstrated consistent compliance and effective operation over the previous term. This would reduce the administrative load on both the AIBs and the Commission.
- The Commission's balanced approach to information sharing, particularly the move away from real-time reporting towards regular, scheduled reporting intervals (e.g., monthly or quarterly) is welcomed. This approach strikes a reasonable balance between maintaining oversight and managing the resourcing burdens on AIBs.
    - SPASA supports the proposal to develop a digital platform for streamlined information sharing. However, we emphasize the need for this platform to be user-friendly and designed in consultation with industry stakeholders to ensure it meets the practical needs of AIBs without introducing additional complexities.

Further Considerations on Financial and Resourcing Impacts

SPASA would like to raise additional considerations regarding the financial viability and resourcing impacts of the proposed co-regulation model:

- The varying costs associated with different licence classes, particularly those with smaller volumes, could present significant financial challenges for smaller AIBs. SPASA recommends exploring financial assistance or subsidy options for AIBs that service these smaller licence classes to ensure their continued participation and the overall success of the co-regulation model.

- To further mitigate resourcing challenges, SPASA suggests that the Commission consider providing initial financial support to AIBs for setting up the necessary infrastructure to meet the new regulatory requirements. This could include grants or subsidies for digital infrastructure, assessor training, or the additional costs associated with serving regional and remote communities.

- As the scheme matures, SPASA recommends that the Commission regularly review the financial and operational impacts on AIBs to ensure the model remains sustainable and effective. This ongoing review process should include consultation with industry stakeholders to identify and address emerging challenges promptly.

11. Should individual applicants be required to disclose to an Accredited Industry Body if they have recently failed a competency assessment?

SPASA supports the proposal requiring individual applicants to disclose to an Accredited Industry Body (AIB) if they have recently failed a competency assessment. This requirement has several important benefits:

- Disclosure of recent failures ensures that AIBs have a complete understanding of an applicant's assessment history. This transparency helps maintain the integrity of the assessment process by preventing potential manipulation or repeated failures without addressing underlying issues.

- With knowledge of an applicant's recent assessment history, AIBs can make more informed decisions regarding the suitability of the applicant for their assessments. It allows AIBs to tailor their assessments or provide additional support to address specific areas where the applicant may have previously struggled.

- Requiring disclosure helps ensure that all applicants are assessed under consistent conditions. It avoids scenarios where applicants might otherwise attempt to circumvent failing assessments by applying to different AIBs without disclosing their previous failures.

- Disclosure can lead to better support for applicants who have failed assessments. AIBs can use this information to offer targeted guidance or additional resources to help applicants address their weaknesses and improve their chances of success in future assessments.

Potential Challenges and Recommendations

While SPASA supports the disclosure requirement, we acknowledge potential challenges and recommend strategies to address them:

- Ensuring that the disclosure of assessment failures is handled confidentially is crucial. The Commission should establish clear guidelines and safeguards to protect the personal information of applicants and ensure it is used solely for the purpose of assessment and support.

- Applicants must be informed clearly about their obligation to disclose recent failures and the reasons for this requirement. Providing guidance and support on how to disclose this information can help alleviate any concerns or confusion.

- AIBs should be transparent about how they use the information regarding an applicant's previous failures. This includes ensuring that the disclosure does not lead to unfair discrimination or bias in the assessment process.

- Implementing systems to support applicants who have disclosed previous failures can enhance the effectiveness of the requirement. For instance, AIBs could offer additional preparatory resources or counselling to help applicants improve their skills and knowledge.

12. Do you agree that these processes could mitigate risks relating to assessor availability and skills shortages?

While the Commission's proposal is designed to address key industry needs, it carries the risk of significantly disrupting the current balance of the workforce. As a peak industry body and RTO, we urge the Commission to consider these concerns carefully and to work collaboratively with the industry to find solutions that do not further strain an already overburdened skills base. The future of the swimming pool and spa industry depends on maintaining a strong, skilled workforce that is capable of meeting both current and future demands.

Strain on Industry

The proposal suggests that skilled tradespeople and trainers could take on assessor roles as secondary responsibilities. However, this approach overlooks the existing strain on these professionals, who are already stretched thin due to the current skills shortage. Diverting their attention from their primary roles to conduct assessments - even on a part-time basis could reduce their availability to perform essential work in the industry, leading to delays and a further erosion of the industry's capacity to meet demand.

Reduced Skills Pipeline

The concern that highly skilled trainers could be incentivised to leave RTOs in favour of assessor roles is particularly alarming. This shift would not only deplete the pool of qualified trainers but would also undermine the foundational education and training pipeline that is critical for developing the next generation of skilled workers. The industry's long-term viability relies heavily on the strength and consistency of its training programs, which could be compromised if experienced educators are drawn away to fulfill assessment duties.

Retirees and Others

While the proposal to utilise retired or medically retired tradespeople as assessors is opportunistic and creative, it is fraught with challenges. These individuals may lack the necessary up-to-date industry knowledge and technological proficiency required to perform assessments effectively in a rapidly evolving and dynamic industry. Additionally, the emotional and physical toll of their previous work might limit their ability to engage in the demanding process of assessments, which could lead to inconsistencies in the quality of evaluations.

Industry Gaps

The shift towards a co-regulation model that relies on industry bodies and RTOs to share the burden of assessments could destabilise the current workforce balance. The potential redirection of skilled tradespeople and educators to assessment roles could lead to gaps in the workforce, where fewer professionals are available to carry out essential construction and training activities. This could slow down project timelines, increase costs, and ultimately harm the industry's reputation and efficiency.

Alternatives for Consideration

The Commission's proposal is concerning and will have significant and clear foreseeable impacts on many industries. Alternatives for consideration should include but not be limited to the following:

- The establishment of dedicated state and commonwealth programs aimed at developing a new cohort of assessors who are separate from the current pool of skilled tradespeople and trainers. These programs should focus on attracting and upskilling individuals specifically for the role of assessors, without pulling from the existing workforce.

- Develop a range of industry-specific micro-credentials focused on the unique skills needed for competency assessments. These micro-credentials could be shorter and more targeted than a full Certificate IV in Training and Assessment, focusing specifically on assessment techniques, legal compliance, and ethical considerations.

- Investigate processes for conducting assessments that do not rely heavily on diverting skilled tradespeople and educators from their primary roles. Leveraging technology to support assessors, especially those in niche industries and in remote areas. Virtual assessments, online portfolios, and digital tools can help assessors conduct evaluations without needing to be physically present, allowing for more flexible and efficient use of resources.

- Establish an apprenticeship-style program for aspiring assessors, allowing them to work under the supervision of experienced assessors while they gain the necessary qualifications. This could include on-the-job training, mentorship, and completion of micro-credentials tailored to assessment practices.

It is essential that the Commission continues to engage with industry stakeholders to assess the ongoing impacts of the proposed model on the workforce. Regular consultations and pilot programs should be implemented to ensure that the transition to co-regulation does not inadvertently weaken the industry's skill base.

13. Do you have any questions about how the co-regulation model would be integrated into the broader regulatory framework proposed under the draft Building Bill?

Integration with the Draft Building Bill:

1. **How will the proposed co-regulation model interact with the mandatory CPD requirements outlined in the draft Building Bill?** Understanding how these two regulatory mechanisms will complement each other is crucial. Will there be coordination to avoid redundancy and ensure a cohesive approach to competency assessment and professional development?
2. **What mechanisms will be in place to ensure alignment between the co-regulation model and the enforcement and disciplinary measures proposed in the Building Bill?** Ensuring that the co-regulation model's processes are integrated with the broader enforcement framework will help in addressing non-compliance and maintaining industry standards.

3. **How will the Commission's oversight and monitoring of Accredited Industry Bodies be coordinated with the broader regulatory oversight proposed under the draft Building Bill?** Coordination between these oversight mechanisms will be essential to avoid duplication of efforts and ensure effective regulatory supervision.

Assessors' Eligibility and Compliance Monitoring:

1. **What are the specific procedures for monitoring compliance with the eligibility requirements for assessors?** It would be beneficial to understand the practical steps the Commission will take to ensure assessors meet the prescribed qualifications and industry experience.
2. **How will the Commission address potential challenges related to assessor availability if the prescribed eligibility requirements are too restrictive?** Clarifying the balance between ensuring high standards and maintaining a sufficient pool of assessors is important.

3. **Will there be any support or incentives provided to Accredited Industry Bodies to help them develop and implement processes for ensuring assessor qualifications and compliance?** Understanding any available resources or support will help in evaluating the feasibility of maintaining compliance with the eligibility requirements.

Addressing Skills Shortages:

1. **What specific strategies will be employed to mitigate the risk of exacerbating industry skills shortages due to the demand for qualified assessors?** Details on how the Commission plans to manage the potential trade-off between assessment roles and industry work will be helpful.

2. **How will the Commission support the integration of retired or medically retired tradespeople into the assessor role without impacting the industry's skill availability?** Ensuring that this group's involvement does not create additional shortages in the workforce will be crucial.

Feedback and Adaptation:

1. **How will industry feedback be incorporated into the ongoing refinement of the co-regulation model, especially concerning assessor availability and skills shortages?** Understanding the feedback mechanisms will help in ensuring that the model remains responsive to industry needs.

2. **What processes will be in place for reassessing the eligibility requirements for assessors as the industry evolves and the co-regulation model matures?** Clarity on how eligibility criteria will be adjusted over time will be important for maintaining relevance and effectiveness.

Complementary Regulatory Measures:

1. **How will the proposed education notices and disciplinary actions under the draft Building and Compliance Enforcement Bill interact with the co-regulation model's competency assessments?** Understanding the interplay between these mechanisms will be important for a comprehensive regulatory approach.

2. **What criteria will be used to determine when a licence holder should be subjected to additional competency assessments as a disciplinary action?** Clear guidelines will be needed to ensure fairness and effectiveness in using competency assessments as a disciplinary tool.

FOR MORE INFORMATION

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