



NEW SOUTH WALES & ACT

SWIMMING POOL & SPA ASSOCIATION

Submission on the

Improving the ACT Building Regulatory System

12 February 2016

Building Regulatory Reforms
C/- Environment and Planning Directorate
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INTRODUCTION

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

SPASA represents hundreds of businesses within the swimming pool and spa industry.

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 is also a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

Please find attached our comments on **Improving the ACT Building Regulatory System**.



NOTE: Only questions considered relevant have been answered.

2. Design and Documentation

Minimum Design Documentation

1. Do you support the introduction of guidelines for applicants and practitioners on the types and level of information that should be included in design documentation for building approval applications?

SPASA supports the introduction of guidelines in consultation with industry to improve consistency and documentation as well as provide a greater level of certainty for all parties.

Industry specific consultation is seen as key for this process.

3. Stage Inspection and On-Site Supervision

Mandatory stage inspections

3. To improve the operation and understanding of the stage inspection process, should the Act and practice guides be clearer on:
 - The building certifier's responsibilities?
 - The types of documents and certificates that may be required at each stage?

Yes.

Despite the fact that Private Certification has been around for a number of years now there still exists a noticeable lack of understanding amongst consumers and sections of the construction industry, of the role of a private certifier.

SPASA supports any initiative that is likely to improve processes, documentation flow as well as the development of an education program for the entire certifier, consumer and construction industry outlining the building certifier's responsibilities.



4. Builders and building surveyors licensing

Formal qualifications

1. Should formal qualifications for builders' licences include only qualifications that include a majority of content and competencies in building or construction management?

Yes.

Swimming Pool and Spa Building

SPASA submits that for licensing purposes, new entrants wanting to build a Swimming Pool and Spa should be required to undertake the following Nationally Accredited Course(s):

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

OR

Completion of: CPC40110 Certificate IV in Building and Construction with the addition of dedicated Units of Competency from within CPC40808 Certificate IV in Swimming Pool and Spa Building

Swimming Pool and Spa Service

SPASA submits that a new license category be created for Swimming Pool and Spa Service Technicians as is the case in NSW.

"For licensing purposes in NSW, swimming pool repairs and servicing covers work involved in servicing and repair of elements of an existing swimming pool, including internally reticulated pool plumbing not connected to a potable water source, solar thermal heating systems that are not hard wired (excluding any solar photovoltaic (PV) systems), and equipment installation (including filters and skimmers). It also includes any additions, alterations and repairs of a non-structural nature, the painting or surfacing (rendering or application of surface coatings) to a swimming pool, acid washing and pool cleaning."

New entrants wanting to service a Swimming Pool and Spa should be required to undertake the following Nationally Accredited Course:

Completion of: CPP31212 Certificate III in Swimming Pool and Spa Service

Building experience

3. Should applicants be required to demonstrate experience across all critical stages of a project to gain a licence?

SPASA submits that applicants wishing to apply for a license to become a Swimming Pool and Spa Builder should be required to demonstrate they have sufficient experience and knowledge to be granted a license to build a swimming pool and/or spa.

Verification of experience

4. Which independent (i.e. non-government) systems for verifying building experience could be recognised under the licensing system?

Specialised Independent *Third Party Providers* such as industry specific Associations who are also Registered Training Organisations (RTO's) should be considered as suitable organisations who can undertake a verification process.

5. Do you agree with the introduction of an assessment for building licence applicants?

SPASA submits that Continual Professional Development (CPD) could be adopted as a proactive and progressive way to improve the assessment culture in the ACT.

The intention or spirit of a CPD system would be to allow license holders the opportunity to formally and easily learn about their industry and related skills. Moreover, a CPD points system would allow license holders to stay informed and up to date with current practices. Importantly, a predetermined number of CPD points would be required prior to an applicant's license being able to be renewed.



6. What should an assessment cover?

SPASA would also welcome the introduction of defined Building Essentials Continual Professional Development (CPD) topics.

Building Essentials CPD topics could:

- Introduction to building and construction contracts
- Communication
- Termination breaches and events
- Contractual remedies
- Negotiation
- Liquidated and other damages
- Building and Construction Industry Security of Payment Act
- Court Processes
- Non-court processes (Alternative Dispute Resolution)
- Common building and construction disputes
- Timing and sequencing of projects
- Insurance Requirements
- Financial Management
- Quoting and Tendering
- Understanding NCC, Acts, Regulations and Standards

5. Builders and building surveyors licensing

Corporation and partnership licences

1. Should directors or partners collectively be able to meet the mandatory qualifications that individuals need to meet (i.e. at least director or partner has a specified formal qualifications and minimum building experience)?

Irrespective of a company structure, often a Director may simply be a shareholder or investor and may not be involved in the day to day running of the construction business.

In such circumstances, companies hire appropriately qualified contractors.



Nominees

2. Would the nominee system be more effective if the nominee for a corporation or partnership licence must be more directly in control of the business for example, a director or a partner?

Again, irrespective of a company structure, often a Director may simply be a shareholder or investor and may not be involved in the day to day running of the construction business.

It would make more sense to restrict corporate licensees shifting responsibility to a nominee outside of the corporation.

3. Should a nominee's actions be linked directly to the corporation or partnership licence, for example both the nominee and corporation incur demerit points for a breach?

The concept of linking the nominee directly to the corporation or partnership licence may have some merit but such as scheme may bring with it unintended consequences.

Accordingly, SPASA would like to see more discussion and information on this proposal.

Professional indemnity (PI) insurance

4. To improve consistency across building practitioner licenses, do you think professional indemnity insurance requirements for building certifiers and building assessors (minimum indemnity limits of at least \$1 million) should be extended to licensed builders?

Such an extension would add a small but long tail cost to the operating expenses of Swimming Pool and Spa Builders – *many of which do not ordinarily carry such insurance.*

SPASA would need to see data specific to the Swimming Pool and Spa Industry highlighting a need for such a change before this can properly be considered.



6. Contracts for residential buildings and building work

Standard contract provisions

1. Should contracts for residential buildings and building work:

Use consistent definition of stages of work in a building project?

Yes.....and only where possible.

Better define the scope of a variation that can be made without further consultation with an owner or purchaser?

Mandatory clauses within a building contract defining a variation and the process of formalising variations is sufficient.

Exclude clauses that automatically authorise the builder to acting on behalf of the owner to approvals and building certification?

Contract options may include “Include” and “Exclude” authority for the builder to act on behalf of the owner.

Be accompanied by standard information on the parties’ rights and obligations under the law and the kinds of remedies and dispute processes available to them?

Yes.

2. Should completion of a stage be supported by documentation such as receipts and invoices for expenditure or installation certificates?

No. Contracts already include stages of work and progress claim mechanisms and triggers.

Statutory warranties for residential building work

3. Do you support the expansion of the existing statutory warranties (note: this does not include mandatory warranty insurance) for low-rise residential buildings (three storeys and below) to:
- Private residential apartments in medium-high rise buildings?
 - Serviced residential apartments in medium-high rise buildings?

Yes.

Unit Holders are in just as much need of protection as individual Home Owners and Single Storey Complex Unit Holders and generally in no better position to pursue their rights for rectification of defects

Maximum progress payments

4. Should there be maximum progress payments for residential building contracts?

SPASA supports a maximum “initial” deposit of \$10,000.

SPASA does not support Progress Claims being capped. Progress Claims should continue to reflect work completed.

5. What should value of the maximum progress payment be (e.g. the same as the maximum amount of the insurance for a stage of work (currently \$85,000))?

As above.

Accountability for contractors

6. Would you support a mechanism(s) preventing developers or other contractors with a history of serious breaches of the Act, contractual obligations and consumer protection legislation from contracting for residential buildings and building work?

Yes.....but definitions would be important as would infrastructure to deal with “serious”, “minor” and “technical” breaches. An appropriate, timely and transparent appeal process would be required for contractors who feel they may have grounds for an appeal.

7. Project funding, payment claims and retentions

Management of project payments

Cash retentions

1. Does the regulatory system need to address the retention of funds for sub-contractors?

Yes but not via a blanket approach. SPASA recommends specific industry and sector consultation would be required prior to advancing any proposal.

2. Which of the options, if any, do you prefer for cash retentions?

- Option 1 (trust funds established by head contractors)

For commercial projects, Options 1 seems like a viable and sensible option but mechanisms need to be in place to ensure the retention of funds are returned to subcontractors at the end of the defined period.

- Option 2 (deemed trust model)
- Option 3 (general project accounts)

Both Option 2 & 3 provide no real protection.

Security of payments – progress payment claims

10. Should the Security of Payments Act establish a maximum period in a contract for payment of a progress payment to a subcontractor once a claim has been made?

(Note: this would not affect the 10 business day default for payment if the contract does not set a day)

Yes.



11. If yes, what time period should this be?

As per the NSW Security of Payment Act.

12. Should the Security of Payments Act be amended to remove the requirement to 'endorse' a progress payment claim when the principal contractor is not a residential owner?

No.

14. Any other comments on retention moneys, project accounts and progress payments under the security of payments scheme?

A notable major cause of builder insolvency is non-payment by customers for works carried out!

The means to recover residential consumer debt is expensive and time consuming. The *Security of Payments Act* or some other similar mechanism needs to be geared to include residential building works contracted directly to the homeowner.

8. Alternative dispute resolution – residential building

1. How could the existing building complaint resolution process be improved?

Contractor Initiated Dispute

Licensed builders and tradespeople should be able to access a free dispute resolution service if a dispute occurs with a consumer or owner-builder over a payment or residential building issue. This service is already available in NSW and can be easily adopted in the ACT.

Payment Verification

A condition of raising a dispute should require that outstanding progress claims for work completed must be paid in full by the homeowner.

Conclaves

Streamlined conclave processes to allow for technical experts to consider issues.

2. Is there a need for a new alternative dispute resolution – other than the existing complaints, tribunal and court processes – for residential building disputes?

Yes.

For further information:

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