

10 Feb 2014



SUBMISSION BY THE

**Swimming Pool and Spa Alliance**



to the

**ACT Government**  
Environment and  
Sustainable Development  
regarding

**Regulation of design and  
inspection practitioners in the  
construction industry**

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## **THE SWIMMING POOL AND SPA ALLIANCE (SPASA)**

The Swimming Pool and Spa Alliance (SPASA) represents hundreds of Australian businesses within the swimming pool and spa industry. Members of SPASA include pool builders, manufacturers, suppliers, retailers, technical servicemen, 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.

In response to your invitation, the Swimming Pool and Spa Alliance (SPASA) provides the following submission for your consideration.

### **Question 1.**

**Are there any other occupations or types of work that you think should be considered?**

- Hydraulic Engineers
- Swimming Pool Consultants

### **Question 2.**

**Are there any occupations or types of work you think should be excluded?**

No.

### **Question 3.**

**Do you think the current regulations and practices for engineers operating in the ACT are sufficient?**

Whilst being a member of an Association or being placed on a Register provides a number of benefits for engineers and some comfort to those that use them – it provides no guarantee of policing or outcome.

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**Question 4. Are there other models in operation in another state or country that you think should be considered?**

Engineers as part of their membership or registration could be made to provide the following:

- CPD - Evidence in participating in industry specific Continual Professional Development. This may be policed on a points system which is reviewed at membership or renewal.
- Insurance - Evidence of insurance covering their services.
- Claims - The requirement to report annually any insurance claims or alerts.
- Risk Management - Engineers should be required to provide evidence of a risk management compliance criteria that covers:
  - Job Acceptance Procedure
  - Terms of Engagement
  - Internal procedures
  - Reporting guidelines

**Question 5. Do you think the current regulations and practices for architects operating in the ACT are sufficient?**

Refer to Question 3.

**Question 6. Are there other models in operation in another state or country that you think should be considered?**

Refer to Question 4.

**Question 7. What do you think the purpose of regulating architects should be?**

SPASA supports comments already made within the discussion paper that state: *“The purpose of government regulation for architects should be to ensure protection against structural and other catastrophic building defects, unsafe and unhealthy building and poor practice resulting in costs of rectification to owners”.*

**Does the current system support that purpose?**

No.

**Question 8. Do you think the current regulations and practices for building designers (excluding architects) operating in the ACT are sufficient?**

No. Building designers should be required to hold minimum qualifications.

**Question 9. Are there other models in operation in another state or country that you think should be considered?**

As a minimum, these types of practitioners should have:

- Completed an approved qualification
- Be a member of an industry specific Association

**Question 10. Do you think the current regulations and practices for building consultants operating in the ACT are sufficient?**

No.

Effective 16 September 2009, building consultancy work is no longer regulated under the Home Building Act in NSW. This means that building consultancy work is no longer licensed by Fair Trading. This action was taken in response to a Council of Australian Governments commitment to rationalise occupational licensing across Australia to cut red tape.

**Question 11. Are there other models in operation in another state or country that you think should be considered?**

SPASA strongly recommends that consultants require sector specific licencing for consultants and that government prescribe a mandatory minimum insurance(s) (such as professional indemnity insurance) that cover the area of expertise.

In addition, a government property inspection register should be created.

**Question 12 – Do you think the current regulations and practices for quantity surveyors in the ACT are sufficient?**

Quantity Surveyors work on projects ranging from office blocks, schools, hospitals, factories to bridges, railways, oil and mining development, shipbuilding and large process engineering works such as oil refineries.

Therefore, Quantity Surveyors in the ACT should be required to hold an appropriate tertiary degree or VET course.

**Question 13 – Are there other models in operation in another state or country that you think should be considered?**

There are a number of membership based organisations that have minimum qualification requirements before Quantity Surveyors are able to join.

SPASA would see this as a minimum benchmark alongside an industry specific register.

**Question 14. Do you think the current regulations and practices for building inspectors preparing pre-purchase reports in the ACT are sufficient?**

No.

The practice of Building Inspections has become a costly and complex area. Consumers are faced with decisions that require the services of expert practitioners to provide reports before making significant investment.

Reports include:

- Pre-Sale Inspection Reports
- Pest Inspection Reports
- Swimming Pools Reports
- Special Purpose Property Reports
- Energy Efficient Rating Statement (requires Class A license since 1Mar 2011)
- Asbestos Report

SPASA submits that Building Inspections be done by individuals who hold appropriate qualifications and have sector specific licencing.

Further, government should prescribe a mandatory minimum insurance(s) (such as professional indemnity insurance) that cover the area of expertise.

**Question 15. Are there other models in operation in another state or country that you think should be considered?**

A government property inspection register should be created.

**Question 16. Do you think the current regulations and practices for building inspectors operating in the ACT are sufficient?**

Refer to Question 14.

**Question 17. Are there other models in operation in another state or country that you think should be considered?**

Refer to Question 15.

**Question 18. If you are a practitioner, or supply construction design or inspection services or practitioner training:**

**A. Do you operate in more than one jurisdiction in Australia?**

Members of SPASA operate in the ACT and other Australian jurisdictions.

**B. Do you use the current mutual recognition processes?**

SPASA considers mutual recognition as a fundamental process that should be preserved and expanded despite the Council of Australian Governments (COAG) deciding that the policy for a National Occupational Licensing System (NOLS) would no longer be pursued.

**C. What impact, if any, have regulations applying to your profession in another jurisdiction had on your training, qualifications or work?**

Qualifications are nationally accredited either through the completion of a degree, diploma or Certificate. Many of these qualifications already satisfy established licensing pathways.

SPASA submits that the process is streamlined.

**Question 19. If you are a practitioner, or supply construction design or inspection services or practitioner training:**

**A. Do you operate in more than one country?**

Members of SPASA who are practitioners, or supply construction design or inspection services generally do not operate abroad with the exception of New Zealand.

***Note:** Many government departments stationed overseas have relied on Australian based practitioners for many construction design and inspection services when dealing in or assessing buildings in their control.*

**B. Do or have you used an existing mutual recognition process? Which process e.g. Trans-Tasman mutual recognition, APEC Engineer agreement?**

No.....refer to Question 18 C for Mutual Recognition in Australia

**C. What impact, if any, have regulations applying to your profession in another jurisdiction had on your training, qualifications or work?**

As a Registered Training Organisation, SPASA delivers nationally accredited courses. Some regulators have been slow to adopt newly listed qualifications or have stipulated additional educational requirements over and above the principle qualification prior to granting a license.

Variances across jurisdictions are costly and time consuming for our members as well as training organisations.

**Question 20. Do you think the risks associated with construction design and inspection work are adequately covered by consumer and contract law?**

No.

**Question 21. Do you think that the current construction regulatory system adequately reflects and manages the risks associated with failing to comply with health and safety standards in construction?**

No.

**Question 22. Do you think that standards of practice in construction design and inspection need to be improved in the ACT?**

The discussion paper already highlights sufficient examples substantiating why standards of practice in construction design and inspection need to be improved.

**Question 23. Do you think there is a need for government action to bring greater accountability to construction design and inspection practitioners?**

Yes.

The government has already identified poor safety standards, non-compliances and duplication of resources to rectify building defects after completion.

**Question 24. What do you think the extent of non-compliance with building standards in the ACT is? Does this differ between building classifications?**

Extensive..... The ACT is no different to any other jurisdiction in Australia.

**Question 25. What do you think are the contributing factors for any non-compliance?**

There is enormous confusion amongst practitioners and inspectors on performance requirements of the building code and the relevant standards and complying processes.

Another contributing factor is that there is a diverse range of legislative or regulatory interpretations or beliefs that are subjectively based which impact outcomes and ultimately breed widespread non-compliances.

**Question 26. Do you agree that there may be a public benefit associated with licensing building inspectors operating under the Civil Law (Sale of Residential Property) Act 2013?**

Yes.

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**Question 27. Should non-statutory work be regulated e.g. providing a consultancy or building inspection service where not required by legislation?**

Yes.

**Question 28. Do you think building owners have confidence in building reports?**

Yes. By and large; building owners place a great deal of importance on such reports.

**Question 29. What knowledge do you think a building inspector or consultant should have?**

Addressed elsewhere in submission

**Question 30. If you are a practitioner or supply building inspection or consultancy services, what training and qualifications have you undertaken on building legislation and planning requirements?**

N/A

**Question 31. Do you agree these are risks associated with the current arrangements for design and inspection practitioners?**

SPASA supports the view that there are risks associated with the current arrangements for design and inspection practitioners.

**Are there any other risks?**

Any proposed changes should reflect a national approach to legislation and regulations to avoid the ACT becoming a standalone jurisdiction.

**Question 32. Do you agree with these objectives?**

Yes.

**Should any other objectives be considered?**

The four listed objectives are broad based and provide no detail.

SPASA supports the objectives on face value but is mindful of the red tape implications to business. Despite the sheer size of the small business sector, small businesses feel the burden of regulation more strongly than other businesses. As a consequence, red tape ultimately gets built into the cost of services.

**Q33 – Which of these criteria are important to you and your organisation?**

- Support future reforms to building regulation such as improved stage inspection and certification processes
- Are relatively straight forward to administer
- Do not lead to unnecessary regulation, costs or anti-competitive systems

**Q34 – Do you have any comments about option 1, including any issues, costs and benefits you see associated with this model?**

As a minimum, government should implement minimum qualification requirements for contractors that it employs. Legislation should also reflect compliance with standards.

Whilst not ideal in isolation, option one ensures that government leads from the front.

Cost disincentives need to be properly considered.

**Question 35. Do you have any comments about option 2, including any issues, costs and benefits you see associated with this model?**

Membership of associations and like-minded bodies should be properly considered. SPASA like many other member based organisations are a Registered Training Organisation and are well equipped to regulate members provided there is information sharing strategies in place.

Further, such organisations prescribe minimum membership requirements relevant to qualifications, licenses and insurance.

Costs and associated red tape for a co-regulation could be streamlined with industry and stakeholder consultation.

**Question 36. Do you have any comments about option 3, including any issues, costs and benefits you see associated with this model?**

As a minimum, parties should be required to hold minimum qualifications (where available), insurances as well as other risk management strategies.

These may include:

- Job Acceptance Procedure
- Terms of Engagement
- Reporting guidelines
- Insurances
- Continual Professional Development

**Q37 – Do you have any comments about option 4, including any issues, costs and benefits you see associated with this model?**

SPASA supports Negative Licensing.

Both licensing and negative licensing models are reactionary. Both models allow for parties to continue operating even though they might be considered incompetent. It is only through avenues such as complaints, inspections and audits that such parties are brought to account. Government should advocate extensive education and access to information by partnering with peak industry bodies – many of which are registered training organisations.

**Question 38. Do you have any comments about option 5, including any issues, costs and benefits you see associated with this model?**

SPASA supports expansion of COLA to other occupations.

Costs would be dissimilar to those already covered under COLA.

**Question 39. Which option, or combination of options, do you prefer? Why?**

COLA.

COLA is linked to operational acts, meaning that a licensee's obligations relating to their work is incorporated into the licensing system

**Question 40. Do you think the same model should apply to all occupations or practitioners? If not, which models should apply to each occupation?**

Yes.

**Question 41. Do you think standard engineering, architecture, drafting and building qualifications provide sufficient training on building standards, designing buildings that comply with work health and safety principles, and other relevant legislation?**

The efforts of people charged with checking the actions of designers, builders and other practitioners can never substitute for responsible practitioners getting things right in the first instance.

Many defects can be prevented by good quality design and the accountability of design professionals for poor work. Similarly, quantity surveyors estimate and monitor construction costs, from the feasibility stage of a project through to the completion of the construction period.

Errors in this process can lead to substitution of lower quality product or diminished time for completion to compensate for budget discrepancies.

At present architects are registered under the Architects Act 2004 and engineers can gain industry accreditation by Engineers Australia. These occupations are not subject to the same regulatory framework governing all other licensed construction occupations.

Education is the greatest step that the government could take to support and improve construction design outcomes in the ACT.

**Question 42. What additional education or practical experience is required to be able to design to the ‘deemed to satisfy’ standards in the building code and other legislation such as Australian Wiring Rules and the Plumbing Code of Australia?**

Members of SPASA report that inspectors have become risk-averse when faced with an “Application for an Exemption” or an “Alternative Building Solution”. The exposure to liability is at the forefront of inspector’s minds despite the fact that in many instances the exemption or alternative solution sought – satisfies or exceeds the legislative and technical requirements.

The risk of litigation is amplified when coupled with confusion amongst inspectors on how to interpret an Act, Regulation or standard and the BCA, indicating the need for a mandatory training program to increase knowledge and consistency of application across the state. The situation highlights a process that simply does not work for reasons of fear rather than reviewing and considering the solutions available under the BCA which cover exemptions, evidence based solutions, performance requirements and expert advice.

SPASA like many other membership based organisations delivers educational programs that deal with the Deemed to Satisfy provisions within the Building Code of Australia. Equally, the Australian Building Codes Board as well as some regulators hold frequent information sessions for interested parties.

**Is this readily available in the ACT?**

Yes...However, there is no compulsion for parties to undertake education or demonstrate sufficient knowledge of the ‘deemed to satisfy’ standards in the building code and other legislation.

**Question 43. What additional education or practical experience is required to be able to design an alternative solution for the building code and other legislation such as Australian Wiring Rules (AS 3000) and the Plumbing Code of Australia?**

A Continual Professional Development (CPD) program would be a good start.

CPD programs aim to create a learning culture by providing the opportunity to formally and informally learn about industry specific areas.

A well run CPD program can assist a targeted audience to stay informed, up-to-date, skilled and more be knowledgeable with current practices.

Also refer to Question 42

**Is this readily available in the ACT?**

Refer to Question 42

**Question 44. Should ongoing practitioner development and maintenance of their skills and knowledge be managed by a regulatory requirement?**

Yes..... Refer to Question 42

**Question 45. Should only unsupervised work require a registration or licence?**

No.

**Question 46. Do you agree that people designing to or advising on prescriptive standards should be excluded from direct regulation?**

Possibly.....but there needs to be some form of accountability.

Further discussion is required.

**Question 47. Do you think people providing alternative solutions or solutions that are outside prescriptive standards should be subject to a different or higher level of regulation?**

No.

**Question 48. Does design of different building classifications require different skills?**

Yes.

**Question 49. Should only individuals be regulated, or should regulation extend to corporations and partnerships?**

Regulation should extend to corporations and partnerships.

**Question 50. If corporations are licensed, should they be required to have a nominee and/or show that people in the corporate structure hold relevant skills and experience?**

Yes.

**Question 51. What do you think a reasonable term for requiring rectification of defective work?**

Under COLA, the timeframe for rectification orders is up to ten years. COLA rectification statistics would be of assistance for assessment prior to recommending alternative timeframes.

**Question 52. Should practitioners be required to hold professional indemnity of other insurance?**

Yes.

**Question 53. What do you think is a reasonable level of insurance? Does this differ depending on the classification of building a partitioner will be providing services for?**

SPASA believes that a minimum level of insurance is required. This minimum insurance level should be increased for different classes of construction. Eg. Bridges, public space areas, high rise buildings.

**Question 54. Do you agree with the assessment of general rectification costs in the industry?**

Yes.

**Question 55. What proportion of rectification costs do you think are associated with design faults or poor advice on design and compliance?**

SPASA would agree with Ross Taylor's calculations which are also supported by ESDD.

**Question 56. What other costs and benefits do you think need to be assessed?**

- Legal costs
- Dispute Resolution costs
- Administration costs
- Multiple Certification costs

**Question 57. What do you think is a viable source of funding for regulating the quality of design and inspection services in the ACT?**

Any additional costs implemented via a cost recovery scheme to an industry already exposed to seasonal and economic stresses is likely to have an immediate and sizeable impact. SPASA submits that fees already collected via the Building Levy be better appropriated rather than just having substantial amounts returned to consolidated revenue.

**For further information:**

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