

**SUBMISSION IN RESPONSE TO FRAMEWORK
FOR REFORM – MODERNISING VICTORIA’S
BUILDING SYSTEM (DISCUSSION PAPER).**



TO THE VICTORIAN GOVERNMENT AND EXPERT PANEL.



VICTORIAN CHAPTER



**Australian
Institute of
Architects**

Submission issued May 2021

ABOUT THE INSTITUTE

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 12,000 members across Australia and overseas including 3,300 members in the Victorian Chapter.

The Institute works to improve our built environment by promoting quality, responsible, and sustainable design. Architecture influences all aspects of the built environment and brings together the arts, environmental awareness, sciences and technology.

By combining creative design with technical knowledge, architects create the physical environment in which people live, work and learn. Therefore, through its members, the Institute plays a major role in shaping Australia's quality of life.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

PURPOSE

- This submission is made by the Institute to the Victorian Government and the Expert Panel leading Victoria's Building Reform. It responds to the request for submissions in relation to *Framework for Reform- Modernising Victoria's Building System* Discussion Paper.
- At the time of this submission the National/Chapter President is Mr. Tony Giannone FRAIA, and the Victorian Chapter President is Mr. Bill Krotiris RAIA.
- The Chief Executive Officer is Ms. Julia Cambage and the Victorian State Manager is Mr. Tim Leslie FRAIA.

CONTACT DETAILS

Australian Institute of Architects

ABN 72 000 023 012

Lvl 1, 41 Exhibition Street, Melbourne, Victoria, 3000

+61 (03) 8620 3877

vic@architecture.com.au

Contact Name: Mr. Paul Zanatta | Advocacy and Policy Manager

Email: paul.zanatta@Architecture.com.au

TABLE OF CONTENTS

1	INTRODUCTION	4
2	EXECUTIVE SUMMARY OF RECOMMENDATIONS AND POSITIONS	9
2.1	Practitioner Registration.	9
2.1.1	General support for practitioner registration.	9
2.1.2	National Registration Framework.	9
2.1.3	Insurances.	11
2.1.4	Students and Graduates of Architecture.	12
2.1.5	Competence frameworks.	12
2.2	Practitioner Regulation.	12
2.2.1	Improving procurement.	12
2.2.2	Preferred regulation structure for Architects and Design Practitioners.	13
2.2.3	Support for design declarations.	13
2.2.4	A milestone model for design declarations.	14
2.3	Building Approvals.	14
2.3.1	Review the current regimes for inspections.	14
2.4	Consumer Protections	14
2.4.1	Consumer protection inherent to the intent of this submission.	14
2.4.2	Government to urgently appoint consumer representatives to the Architects Registration Board of Victoria.	15
3	OUR RESPONSE IN DETAIL	15
3.1	Practitioner Registration	15
3.1.1	Registration for regulated scopes of practice	15
3.1.2	National Registration Framework.	16
3.1.3	A need to provisionally register architecture graduates	19
3.1.4	A further comment on competence frameworks.	21
3.1.5	Regulation of design practitioners.	23
3.2	Practitioner Regulation	23
3.2.1	Regulation as a government lever for improvement.	23
3.2.2	Other means to improve building quality.	25
3.2.3	Practitioner regulation structures	27
3.2.4	Strengthen oversight arrangements within existing structures	28
3.2.5	Solutions to regulate architects and other design practitioners.	29
3.3	Regulation of design (design declarations)	37
3.4	Building Approvals	40
3.5	Consumer Protection	41
3.5.1	Architects Registration Board of Victoria – accountability mechanisms.	41

1 INTRODUCTION

The Expert Panel's Discussion Paper, *Framework for Reform*, has been released for the primary purpose of consultation with the community, industry and other stakeholders on Stage 1 of Victoria's building reform process in establishing greater consumer confidence and protection.

National reform implemented locally.

The overall reform of Australia's construction Industry has been initiated by the adoption by the Building Ministers' Forum of the Building Confidence Report. The Australian Institute of Architects (the Institute) has been involved in the National Building Reform agenda of the Federal Government and to varying degrees with the reforms underway in other states and territories (particularly NSW), in addition to Victoria. This is both the backdrop to the Victorian Government's Building Reform Expert Panel's advice to Government on legislation and regulatory systems and the Institute's response.

The construction industry is national. Operators of different scales undertake cross-border work. Pursuing consistency and alignment nationally will support greater productivity and efficiencies. National mutual recognition should be underpinned by a consistent approach to practitioner regulation in each jurisdiction so that equivalent practitioner classes, qualifications, competencies, ongoing continuing professional development protocols and scopes of work are readily and easily understood. On this basis, the Institute supports the concept of a National Registration Framework (NRF). We note the Institute has provided recommendations to the Victorian Government in our 2021 Budget Priorities paper on the NRF, which have been further revised for the purpose of this submission.

Solicitation of many views.

Following the release of the discussion paper, the Institute has consulted with representative groups of its members and a range of external stakeholders on the key issues and proposals raised in the discussion paper. The Institute was provided a pre-release high level briefing on Friday 12th March 2021. The paper was released on 7th April 2021. A six-week period has been allowed for a response. Discussion and debate has taken place nationally inside the Institute, including its various State and Territory Chapters who are aware that aspects of the Victorian Government's reforms may be adopted by their own governments.

Amongst the many external stakeholders we have consulted include universities' architecture schools, their deans of architecture and representative bodies. They have indicated their support for the positions proposed by the Institute. Accompanying this submission are submissions that have been made to the Victorian Government in respect of the *Framework for Reform* by:

- Monash University¹
- Association of Architecture Schools of Australasia²
- The University of Melbourne³
- Swinburne University of Technology⁴
- RMIT University⁵
- Australian Deans of Built Environment and Design⁶

Critical Areas which still need Reform.

The '*Framework for Reform – Modernising Victoria's building system*' focuses to a large degree on regulation and registration as outcomes. However, the reform are also tasked to address '*industry failure*⁷ and '*address contemporary building design and construction approaches*⁸.

Regulation and registration are not the sole issues that are impacting the quality of our built outcomes. They play a role, however there are fundamental issues directly impacting the building industry that the Panel should consider in their review of industry submissions.

Time, cost and quality are the three elements that are balanced in varying design and construction procurement delivery models. In recent decades there has been a focus by many clients (both private and government) purely on reduced time and reduced cost outcomes. This is predicated by shedding risk to all other parties in building projects.

Both private and government project briefs are invariably well intentioned and highly aspirational. However, the contract agreement environment that aligns with these project briefs are often neither fair and equitable nor include an appropriate allocation of risk. This creates the non-alliance relationship model at the start of many projects with time and cost overriding the quality pursuits.

¹ See: Att_1_Building Review Secretariat Response Monash 08.05.21

² See: Att_2_AASA_ Response to the framework for Reform_Signed by PM

³ See: Att_3_UniMelb_210518 letter to Building Review Secretariat

⁴ See: Att_4_Swinburne response to the Framework for Reform paper

⁵ See: Att_5_20210520_Framework for Reform response_RMIT Architecture

⁶ See: Att_6_Framework for Reform_ADBED_210525

⁷ See *Framework for Reform* Foreword, p.1

⁸ See *Framework for Reform* Foreword, p.1

Thus, the industry model for this delivery is design and construct, with novation of the lead consultant's services, particularly in Class 2 buildings. Many constructed outcomes may be directly attributed to these onerous contractual terms established alongside the well-intentioned aspirational project briefs. These contractual terms often conflict or inhibit parties to act in the best interest of the public.

This procurement and contractual environment has led to faster processes, less oversight, lower fees, critical steps omitted, higher risks, thereby often resulting in a lower quality design and construction outcome. In turn, this has led to building failures.

The Building Confidence Report⁹ (a.k.a. '*Shergold-Weir*') report and other industry reports on construction performance were not scoped to investigate or reform a critical area of concern leading to poor outcomes on many construction sites – novation in design and construct procurement.

Over the past three years, the Victorian Chapter of the Institute has been leading the Institute's national research piece on this procurement model. Led by the large architectural practices of Victoria in 2019, a national survey was developed to understand if there was a national issue regarding procurement and other construction issues.

In 2019 the findings of the survey were presented at a series of meetings with the Planning Minister and representatives of Victorian Departments of Environment, Land, Water and Planning (DELWP), Premier and Cabinet (DPC), and Treasury and Finance (DTF), as well as the Victorian Building Authority (VBA) and Development Victoria (DV). In turn, these findings were synthesised into a 'draft Code of Novation' that was then tabled at the Building Ministers Forum in December of that year.

It is also acknowledged that the impact of inequitable contractual arrangements results in designers and other consultants being required to turn around significant bodies of work in unreasonable timeframes, thereby increasing the possibility of errors as well as creating secondary risks of mental health issues within the consultancy workforce..

In 2020 and continuing into 2021, the Victorian Chapter has been consulting with a large number of stakeholders across the construction sector, including developers, contactors, quantity surveyors, building surveyors, and agencies of the Victorian Government to fine-tune this industry-wide Code of Novation.

⁹Shergold, P. and Weir, B. (2018) [Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. February 2018](#)

Our strategic, research and consultation on design and construct with novation procurement provides important information in relation to this reform and directly informs our response.

While this is not the focus of the *Framework for Reform* discussion paper, it was discussed at length with the Expert Panel during the forum consultation meetings and it is fundamental that these issues are addressed if there is to be a true and sustainable reform in construction industry.

Risks of overlooking the important details before embarking on change.

There is a risk of an approach which limits the detail and therefore does not achieve a comprehensive understanding of the relationships between parties and different elements of the construction sector. This includes, the markets the construction sector supplies and their procurement mechanisms, the sector's regulation, the background legal framework for its operations, and its workforce structure.

The design and construction industries workforces have evolved over the decades from the influences and oversight of industry and professional education programs that lead to qualifications, competency frameworks and codes of conduct. The responsible stakeholders include higher education and vocational training institutions, national standards accreditation bodies, industry peaks and professional associations and government regulators.

However, we note that the *Framework for Reform* discussion paper has given this very light touch treatment. For example, the Architects Accreditation Council of Australia (AACA) and the National Standard of Competency for Architects (NSCA) are not referred to in the discussion paper and the paper implies that there are no competency frameworks in place. It proposes with regard to *Possible improvements to practitioner registration and licensing schemes* in Section 6.3 to, *Boost practitioner competence by adopting competence frameworks*. This proposal is made without qualification and recognition of what is already in place.

Further detailed consultations and a major mapping exercise are required to more accurately understand and represent the current competence frameworks before setting out on a costly exercise to replace or introduce entirely new frameworks. However, the Institute is supportive of additional layers or elements of competency primarily around National Construction Code (NCC) competency that would apply to undergraduate students to experienced practitioners and add to, rather than replace current frameworks such as the National Standard of Competency for Architects (NSCA). The revised NSCA standards will be in place in 2021 that includes a stronger focus on regulatory codes and standards as well as ongoing CPD for experienced practitioners.

Response provided in this submission.

The Institute's deliberation over the *Framework for Reform* discussion paper and the preparation of this submission have carefully considered the questions put in the discussion paper, the issues raised and proposals for improvements laid out in the executive summary and mirroring those at the end of Chapters 6 through 9¹⁰.

The Institute has identified many of the pertinent issues and the more controversial proposed improvements that are expressed in the detailed main body of Chapters 6 through 9 of the discussion paper. This submission provides its responses to these identified issues and improvements.

Importantly, we note that the paper has drawn attention to the concerns of the Expert Panel and the Victorian Government in relation to consumers building or renovating a home, including buying off the plan apartments¹¹ with a repeated theme about the risks and a regulatory system which has not kept pace with the growth in apartments construction. Two pertinent descriptions of this situation of risk highlighted in the discussion paper are noted,

Some stakeholders suggest that the lack of specialisation in building practitioner registration classes allows practitioners without the necessary skills to carry out complex or high-risk work they are not qualified to do, particularly in relation to multi-storey apartments. It is important to note that the building surveyor and building inspector practitioner classes include scopes or work that are limited to buildings of a particular height and floor area. (p43)

and,

A joint report by Deakin University and Griffith University released in 2019, found defects in 74% of Victorian apartment buildings including structural defects, water ingress, building fabric and cladding, fire protection and other issues (p44)

As such, our submission also focusses largely on the situation of risk created by Class 2 (multi-level) apartments, and the best responses to manage these risks. In this regard, as design and construct with novation procurement is used to develop apartments where the developer is not the end user or owner (i.e. where end-owners purchase off the plan), our submission provides a large amount of comment about design and construct with novation procurement as contributing to the conditions which create risk.

¹⁰ Chapters six through nine respectively address the four core focus areas for reform in Stage one of Practitioner Registration, Building Approvals, Regulatory Oversight, and Consumer Protection.

¹¹ pp 1, 10, 19, 43, 44, 60, 96 (ibid)

However, there are other procurement models and the use of different procurement models varies according to the end-user /owner, building class and typology. Achieving the best possible outcomes for improving regulation and mitigating construction risks, so that high quality built outcomes are achieved, together with enhanced consumer experience and protections, requires in-depth exploration of best fit approaches. The Institute looks forward to the further opportunity to discuss this with the Expert Panel.

2 EXECUTIVE SUMMARY OF RECOMMENDATIONS AND POSITIONS

2.1 Practitioner Registration.

2.1.1 General support for practitioner registration.

The Institute supports the broad intent taken by the discussion paper to:

- register all practitioners who undertake regulated work in relevant classes and categories
- develop specialist practitioner categories and/or classes for complex and high-risk work

We note, for clarity, and to leave no doubt, all architects are registered, and a practitioner of design cannot represent themselves as an architect if they do not hold current ARBV registration. The registration model for architects is independent via the Architects Registration Board of Victoria (ARBV). In order to become registered with the VBA as a draftperson a design practitioner is required to demonstrate the minimum years of supervised experience and of the specified areas of work in order to be registered as a specified class design practitioner. Not all building designers are required to be registered to prepare design documentation while all architects are.

2.1.2 National Registration Framework.

The Institute is unable to make definitive recommendations about adoption of the National Registration Framework (NRF), with the Australia Building Code Board's most recent version still under deliberation, and unreleased for public consideration. However, based on the previous versions, the following principles are recommended by our Institute with respect to all design practitioners:

- that the final registration and scope of work be determined under State legislation utilising:
 - competency frameworks that go beyond education and years of experience alone

- suitable robust and independent methods of assessment of design practitioners against practitioner standards established by the competency framework
 - being bound by a code of conduct
 - mandated professional indemnity insurance of coverage suited to the work being performed
 - ongoing requirement for CPD
 - mechanisms by the design practitioner’s registration body for managing breaches of a code of professional conduct that involve a robust investigatory and determination process and includes appropriate sanctions
- that scopes of work for different levels of design practitioner adopt a risk-based approach and determine scopes according to parameters of:
 - Building Code of Australia Class
 - Levels and size
 - Building typology
 - Building complexity
 - NCC Construction type
- that architects are identified as being able to prepare design documentation, have oversight and provide relevant certifications such as proposed design declarations, for all buildings on the basis of:
 - their Australian Qualifications Framework (AQF) Level 9 qualification,
 - the National Standard of Competency for Architects,
 - 3,300 hours of logged, verified and appraised supervised practice,
 - and the oral and written components of the three-part Architectural Practice Examination (APE) under the national requirements set by the Architectural Accreditation Council of Australia.

The Institute recommends that that the Victorian Government, through the Building Ministers’ meeting of the National Cabinet, urgently requests that the definition of complex building is reviewed. At present, the definition could be understood to apply to relatively small domestic type construction through to hospitals and high-rise buildings. Further subdivision of the definition of “complex” may be required.

The Institute additionally recommends that practitioner registration in Victoria:

- requires that project managers are:
 - bound by a code of conduct,
 - carry profession indemnity insurance (PII), and
 - undertake annual CPD.
- mandates, where the project manager:
 - is responsible for ensuring that the project is completed on budget and within scope, and

- provides instruction on behalf of the principal, such as approval of variations, selection of procurement models, and making assessment of design options,
- that they should have the same level of qualifications (AQF9), code of conduct, registration protocols, and PII insurance as the architect.
- automatically registers architects in any new registration category or class for project managers as proposed by the NRF.

Project Managers, Quantity Surveyors and Superintendents.

The Institute recommends that project managers and quantity surveyors are registered and carry appropriate professional indemnity insurances. Both these parties play instrumental roles on projects and make decisions, or influence the principal, on which design options should be undertaken, whether or not this is supported by other consultants.

The discussion paper had not scoped the superintendent role in its consideration of other currently non-registered practitioners who fulfill critical roles.

Among the those employed as superintendents are architects, project managers and, quantity surveyors. The superintendent on projects provides arbitrating directions for the client and the head contractor.

If the architect is not the superintendent, situations may then arise where the superintendent makes decisions which are at odds with the various consultants' design advices. However, the consultancy agreements often prohibit consultants from enforcing design advices in this regard.

The Institute recommends that superintendents are also considered for the purposes of practitioner registration.

2.1.3 Insurances.

All architects already must carry professional indemnity insurance and its currency is checked every year by the ARBV. All design and construct with novation agreements also require evidence of certificates of currency of the architect's PII

The Institute recommends that all individual practitioners hold professional indemnity insurance that is proportionate to the level of risk within the scope of the work and overall responsibility for the work that they undertake.

We note that Victoria has a model of company based insurance cover for its registered architects. We consider this is a modern and adept model for dealing with insurances where projects run for many years, and staff can move between employers during this

time. We recommend this company insurance model is applied to all practitioners. We additionally note that architect practices do not “phoenix” unlike the development leads for some apartments and other multi-level buildings.

2.1.4 Students and Graduates of Architecture.

The Institute recommends that both graduates of a bachelor degree that qualifies them to enrol in a Masters of Architecture program and graduates of Master of Architecture should be able to be provisionally registered with the Architects Registration Board of Victoria. As noted above, with company insurance, this would permit the bachelor and masters graduates to be covered by their employer’s professional indemnity insurance.

2.1.5 Competence frameworks.

The Institute also supports the broad intent taken by the discussion paper to boost practitioner competence across all disciplines in Victoria by adopting competence frameworks and improving the education, training and other support available.

We note that a competency framework for architects has been in place for over thirty years and is nationally recognised which, in turn, feeds into broader national and international recognition. The National Standard of Competency for Architects (NCSA) provides the standard for all architects who are registered with the ARBV and all other States’ and Territories’ Architect Registration Boards.

The discussion paper has placed great emphasis on competence frameworks that link to the National Construction Code (NCC) and a range of other regulatory requirements. Importantly, the NCSA is regularly reviewed. Even the early review draft of the NSCA 2020¹² demonstrates a strengthening of the national competency standards performance criteria in relation to regulatory controls, building standards, and codes. We have been advised that this is continuing to be strengthened and refined as the AACA responds to the Building Confidence Report. This appears well aligned to the intent of the discussion paper in relation to competency and the NCC.

2.2 Practitioner Regulation.

2.2.1 Improving procurement

The Institute recommends that the Building Reform Expert Panel examines and makes recommendations on the regulation of design and construct procurement with novation, taking particular note of:

¹² Architects Accreditation Council of Australia. 2020 Revised National Standard of Competency for Architects – Consultation draft. See: <https://www.aaca.org.au/wp-content/uploads/Revised-NSCA-Consultation-Draft-December-2020.pdf>

- the potential to regulate minimum contract terms
- the potential to utilise recommendations from the Institute’s Code of Novation amongst the range of improvements to design and construct procurement, and
- making specific recommendations to the Victorian Government on its own procurement contracts and processes including those used for design, construction and novation in order to improve the procurement process for the benefit of the public. This includes examining the particular adverse impacts of clauses which promote lowest value and fastest process at the risk of impairing quality and compromising co-ordination.

2.2.2 Preferred regulation structure for Architects and Design Practitioners.

The ARBV is part of a state and international recognised regulation structure for architecture. It has been in place for other thirty years and has been built around providing consumer protection. The registration board is completely independent of the membership bodies, such as the Institute.

It is important to note that the design process is different in its requirements to the building process, and its separate regulation is one that the Institute believes is important to ensure clarity of design-based and technical expertise.

Should the perceived fragmentation of design practitioners be seen as a critical issue we recommend that non-architect design practitioners¹³ should become registered under the ARBV and that the ARBV is provided with an expanded regulatory remit. A core competency framework is already in existence and could be mapped with other competencies to suit different divisions, as is done in other regulatory bodies such as the Dental Board of Australia¹⁴.

The Institute recommends that current preferred option for practitioner regulation in respect of architects and design practitioners is Option 3 described in section 3.2.5 of this submission. Option 3 proposes that all architects and design practitioners are registered with an independent ‘Architects and Design Practitioner Board’ achieved through an expansion of the register of the current ARBV, its scope and authority.

Our recommendation is subject to the caveat, that the Institute is not aware of the full intent of the Victorian Government nor the preferences of the Expert Panel and only to the very limited extent of that provided in the discussion paper, about how Practitioner Regulation is proposed to occur. The Institute would welcome further dialogue with the Victorian Government to better understand these intentions.

2.2.3 Support for design declarations

The Institute cautiously supports the introduction of design declarations in Victoria.

¹³ E.g. the current Victorian Building Authority practitioner category of Draftsperson, in the class of Design (Architectural)

¹⁴ Which registers Dentists and a range of Dental paraprofessionals in separate divisions of its register.

2.2.4 A milestone model for design declarations.

The Institute recommends considering a different and more rigorous model for design declarations to that currently being established in NSW. The Victorian model should comprise a series of *milestones* at which declarations must be submitted. These milestones could map to design and level of NCC compliance staging and also to approvals processes, for example:

- 100% schematic design, town planning submission
- 100% design development, building permit
- 100% construction documentation

Milestone design declarations would provide greater consumer protection by establishing 'hold points' at these specific points for any project. This will allow for a base reference at each of these points, providing greater clarity on design declarations related to documentation and may influence parties to not deviate from the milestone design declarations. An example is a design declaration that includes specified materiality which may limit the design and construction delivery model carrying out materials substitution.

2.3 Building Approvals

2.3.1 Review the current regimes for inspections.

The Institute recommends that the frequency and staging of inspections is reviewed to develop a framework of inspection protocols that are proportionate to the risks that might be associated with different building classes, construction types and building complexity. In addition, there should always be a provision for random and unannounced inspections (similar to visits by workplace health and safety inspectors).

Examples of important stages may be the installation of insulation as an additional inspection stage, as this has a direct and significant impact into creating sustainable buildings and the poor application can lead to damp and mould issues. With climate change being a global risk and mould being a greater understood building defect and health issue, this should be carefully considered.

2.4 Consumer Protections

2.4.1 Consumer protection inherent to the intent of this submission.

The Institute advises that all of the positions and recommendations that we have put forward in this submission are focused towards increased quality and accountability to the public and protections for consumers.

We note that the Architects Registration Board of Victoria (ARBV) is already independent to

the profession and is set up to protect consumers. It's stated purpose is to,

*'...protect the community interest and instil confidence in the regulation, integrity, and delivery of architectural services in Victoria.'*¹⁵

We support other practitioners establishing independent consumer protection for their areas of expertise.

2.4.2 Government to urgently appoint consumer representatives to the Architects Registration Board of Victoria.

The Institute recommends that the relevant Ministers and the Director of Consumer Affairs Victoria, respond with urgency to the required obligations under the Architects Act 1991, to appoint the two consumer representatives to the ARBV that enable the Board to function appropriately and remain fully accountable to the Victorian public.

3 OUR RESPONSE IN DETAIL

3.1 Practitioner Registration

3.1.1 Registration for regulated scopes of practice

The Institute supports the broad intent taken by the discussion paper to:

- *register all practitioners who undertake or provide direct input into regulated work*
- *develop specialist practitioner categories and/or classes for complex and high-risk work*
- *require sign off from appropriately registered practitioner for each practitioner class, whether it be advice, design, or construction*

In supporting this position, the Institute notes that registration is not the single fundamental issue that is leading to the construction industry failures. Contractual terms and fast paced procurement models with unclear co-ordination and scopes of services are far more problematic in producing poor built outcomes.

The Institute notes the detailed position of the discussion paper stated under 6.3.1 (*Assess and align practitioner categories and classes to modern construction practices*). That is, the current categories and classes of practitioner registration and licensing should be assessed to ensure they align with regulated scopes of work for practitioner categories and classes including the proposed National Registration Framework (NRF).

¹⁵ <https://www.vic.gov.au/role-arbv>

We note, all architects are registered, and a practitioner of design cannot represent themselves as an architect if they do not hold current architect registration.

3.1.2 National Registration Framework.

The Institute is unable to make definitive recommendations about adoption of the National Registration Framework (NRF), with the Australia Building Code Board's most recent version still under deliberation, and unreleased for public consideration. However, based on the previous versions, the following principles are recommended by our Institute with respect to all design practitioners:

- that the final registration and scope of work be determined under State legislation utilising:
 - competency frameworks that go beyond education and years of experience alone
 - suitable robust and independent methods of assessment of design practitioners against practitioner standards established by the competency framework
 - being bound by a code of conduct
 - mandated professional indemnity insurance of coverage suited to the work being performed
 - ongoing requirement for CPD
- mechanisms by the design practitioner's registration body for managing breaches of a code of professional conduct that involve a robust investigatory and determination process and includes appropriate sanctions
- that scopes of work for different levels of design practitioner adopt a risk-based approach and determine scopes according to parameters of:
 - BCA Class
 - Levels and size
 - Building typology
 - Building complexity
 - NCC Construction type
- that architects are identified as being able to prepare design documentation, have oversight and provide relevant certifications such as proposed design declarations, for all buildings on the basis of:
 - their AQF Level 9 qualification,
 - the National Standard of Competency for Architects,
 - 3,300 hours of logged, verified and appraised supervised practice,
 - and the oral and written components of the three part Architectural Practice Examination (APE) under the national requirements set by the Architectural Accreditation Council of Australia.

The Institute recommends that that the Victorian Government, through the Building Ministers' meeting of the National Cabinet, urgently requests that the definition of complex building is reviewed. At present, the definition could be understood to apply to

relatively small domestic type construction through to hospitals and high-rise buildings. Further subdivision of the definition of “complex” may be required.

The Institute additionally recommends that Practitioner Registration in Victoria:

- requires that project managers are:
 - bound by a code of conduct,
 - carry Profession Indemnity Insurance (PII), and
 - undertake annual CPD.
- mandates, where the project manager:
 - is responsible for ensuring that the project is completed on budget and within scope, and
 - provides instruction on behalf of the principal, such as approval of variations, selection of procurement models, and making assessment of design options,

that they should have the same level of qualifications (AQF9), code of conduct, registration protocols, and PII as the architect.

- automatically registers architects in any new registration category or class for project managers as proposed by the NRF.

Project managers, superintendents, quantity surveyors, design managers and construction managers

The Institute recommends that project managers, superintendents and quantity surveyors are registered and carry appropriate insurances. These parties play instrumental roles on projects and make decisions, or influence the principal, on which design options should be undertaken, whether or not this is supported by other consultants.

The discussion paper has acknowledged the potential need to register project managers and quantity surveyors. However, one of the other key roles in construction, is the superintendent. When architects administer contracts, they can fill the role of superintendent. However, currently anyone can fill this role. They are appointed by the principal to give directions and as a certifier to fulfill roles including:

- ensuring the contractor is building to the quality specified in the contract documents
- construction is running to schedule
- making decisions on variations including extensions on time
- certifying as an independent certifier for the purposes of progress claims, and extension of time claims

Whereas some construction projects in commercial and multi-residential developments may not engage a project manager, they will always have someone in the role of superintendent. The discussion paper had not scoped this role in its consideration of other currently non-registered practitioners who fulfill critical roles. The Institute recommends that superintendents are also considered for the purposes of practitioner registration.

In addition, key decision makers undertaking actual construction need to be held equally accountable for design decisions. In particular, design managers should be registered and carry insurance. Design managers instruct design teams on how they should alter or undertake design solutions on behalf of the contractor, who they represent and work for. The design manager will develop the design strategy up to '*for construction set*'.

The construction manager will also issue instructions to the design consultant team who are novated under them. These instructions, restrictions or alternative solutions can have significant impact on building outcomes. Construction managers, therefore, should also be registered and carry appropriate insurance.

The Institute agrees with the discussion paper's overall appetite to strengthen insurance.

The current requirements to hold professional indemnity insurance only includes consultants who are registered with Victorian Building Authority in the categories of Building Surveyor, Building Inspector, Quantity Surveyor and Draftsperson¹⁶, as well as architects registered with the ARBV.

Building practitioners are only required to take out domestic building insurance if they undertake domestic building work worth more than \$16,000, and with a certificate of currency in respect of a client's property. The insurance only covers the client if,

before work is complete, the practitioner dies, is declared insolvent or disappears. It covers costs up to \$300,000 to fix structural defects for six years, and non-structural defects for two years. In all other cases, it is up to the building practitioner to fix or complete works, or to pay any costs awarded. (Victorian Building Authority¹⁷)

It is also noted that,

the fact that no Domestic Building Insurance (DBI) is currently required for buildings above three storeys, consumers have limited or no recourse when works are defective. (Framework for Reform, p.11).

¹⁶ <https://www.vba.vic.gov.au/building/renewals-other-requirements/building-insurance-requirements>

¹⁷ [vba.vic.gov.au/building/renewals-other-requirements/building-insurance-requirements](https://www.vba.vic.gov.au/building/renewals-other-requirements/building-insurance-requirements)

The Institute recommends that all sole practitioners hold professional indemnity insurance that is proportionate to the level of risk within the scope of the work and overall responsibility for the work that they undertake. Company professional indemnity insurance cover should be provided for all levels of registered employees. This will allow consumer protection as there will be insurance for all staff on multi-million projects and continued cover irrespective of the movement of staff between companies over the duration of a project. Company professional indemnity insurance would only be effective if coupled with legislation that prevents ‘phoenixing’.

3.1.3 A need to provisionally register architecture graduates

In order for architects to become registered in any State or Territory Architects Registration Board, Master of Architecture graduates are required to undertake the three-part Architectural Practice Examination (APE)¹⁸ under the national requirements set by the Architectural Accreditation Council of Australia (AACA).

Supervised practice requirements for architecture graduates as part of the APE

To complete the APE Part 1, all candidates must complete a minimum of 3,300 hours (approximately 2 years) practice - usually under the supervision of an architect. Candidates must log their experience in the AACA’s APE Logbook. The purpose of the Logbook is to record in a condensed format, the candidate’s fulfilment of the practical experience required for the APE. This experience is logged against 15 specific performance criteria drawn from the NSCA (see side bar below).

While this is the minimum experience level of hours, some graduates often practice for many years prior to sitting the Practice Examination, consolidating their experience on many levels of practice¹⁹.

A *Statement of Practical Experience* is also required to account for the 3,300 hours experience. The objectives of the statement are to provide evidence of satisfaction of the practical experience requirements and to provide assessors with information on the candidate’s practical experience, which is referenced in the APE Part 3 – *Examination by Interview*, which examines candidates under the context of a ‘complex project’.

The statement is required to be a well-considered, precisely expressed and cross-referenced to the performance criteria included in the logbook. It requires candidates to select the project, or projects, that best illustrate the application of the performance criteria. This provides a basis for assessors to explore the nature and level of experience in

¹⁸ <https://www.aaca.org.au/architectural-practice-examination/>

¹⁹ The ARBV would be better placed to provide data about of log book hours and duration between graduation and registration.

the Part 3 of the *Examination by Interview*. The statement begins with a one-page summary curriculum vitae (exclusive of the statement word limit) to give an overall view of the candidate's professional experience, and then the *Statement of Practical Experience* of either 2,000 or 3,000 words depending on whether all experience is logged under the supervision of an architect or some or all logged experience has not occurred under the supervision of an architect.

While this is the standard pathway to gaining registration, there are also alternative pathways for local and overseas experienced practitioners who may be eligible to complete the fast-track assessment before applying to the local Architect Registration Board²⁰.

The discussion paper has identified an issue that,

in relation to design practitioners, there is no requirement under the Architects Act, Building Act or Building Regulations that those who prepare design documentation must be registered. (p43).

The proposed possible improvements to practitioner registration and licensing schemes outlined under Section 6.3 of the discussion paper include,

assess and align practitioner categories and classes to reflect modern construction practices so that...all work that should be regulated has a practitioner category and class; and... (p. 47)

NATIONAL STANDARD OF COMPETENCY FOR ARCHITECTS (NSCA)

The National Standard of Competency for Architects establishes the Standard for architectural education and assessment of professional competency prior to registration as an Architect in Australia.

The Standard identifies the primary activities that are fundamental to the practice of architecture and in relation to which an architect is expected to demonstrate competence in the delivery of professional services.

Competency standards are occupational functions (expressed as Performance Criteria) that a candidate should be able to perform effectively in an ordinary work environment. The National Standard of Competency for Architects (NSCA) sets out functions important to the profession of architecture, rather than simply measuring knowledge in isolation from skills, or time spent in formal education.

The Standard applies to the accreditation of architecture programs, Overseas Qualifications Assessment, the National Program of Assessment, the Architectural Practice Examination and the Experienced Practitioner Assessment. It consists of 4 Units of Competency covering Design, Documentation, Project Delivery and Practice Management, which contain 70 individual Performance Criteria and 5 Knowledge Domains which underpin all Performance Criteria.

The Architects Accreditation Council of Australia (AACA) has maintained the National Standard of Competency for Architects (previously known as the National Competency Standards in Architecture) since 1990, in collaboration with the architectural sector and Australian state and territory Architects registration boards.

²⁰ <https://www.aaca.org.au/registration-as-an-architect/>

This issue, taken together with the proposed possible improvements, would mean that Master of Architecture graduates undertaking their 3,300 hours of supervised experience and who prepare design documentation will need to hold some form of registration. It is noted that some bachelor graduates who have not yet completed their master's degree also work in the design professions before or while completing their master's degree. The Institute recommends that both students who have completed a bachelor degree that qualifies them to enrol in a Masters of Architecture program and graduates of Master of Architecture should be provisionally registered with the ARBV

An example of a profession with provisional registration for graduates undertaking a period of supervised practice in a professional occupation with that requires a high degree of public accountability are psychologists who register with the Psychology Board of Australia. The pathways to registration for psychology graduates who complete minimum four years degree includes a requirement to hold provisional registration for the entire duration of undertaking a supervised practice program (internship) depending on the pathway²¹.

Provisional registration with the ARBV would be more inherently appropriate and provide a clear and accountable pathway that aligns with a formal registration process than registration in the Building Practitioner category of Draftsperson in the VBA designated 'classes' of Building Designer (Architectural) or Building Design (Interior). Provisional registration with the ARBV would, from the outset, hold the practising graduate accountable to the AACA's national competency standards within the mapping set out in the logbook guide and the mapped competencies set out in the AACA's matrix of competencies for the APE. This would allow architectural graduates to move through the registration process more easily to ultimately become an architect.

3.1.4 A further comment on competence frameworks

The Institute also supports the broad intent taken by the discussion paper to boost practitioner competence by adopting competence frameworks and improving the education, training and other support available. On the evidence provided in the previous subsection, we advise that the NCSA that has already been adopted in Victoria for the past thirty years and provides the standard for all architects who are registered with the ARBV and all other states' and territories' Architect Registration Boards.

This also provides the immediate assurance to the Victorian Government that for purpose of National Mutual Recognition arrangements coming into operation, that architects who are registered in other states and territories and may practice in Victoria, are all mandated

²¹ There are three pathways depending on the level of degree above 4 year bachelor. For example a four years bachelor graduate requires 3,000 hours of supervised practice under the 4+2 pathway. (See: <https://www.psychologyboard.gov.au/registration/provisional.aspx>)

to the single competency framework of the NSCA. This is a well-established and functioning, national model.

The discussion paper has placed great emphasis on competence frameworks that link to the National Construction Code (NCC) and a range of other regulatory requirements. Importantly the NCSA is regularly reviewed.

Even the early review draft of the NSCA 2020 demonstrates a strengthening of the national competency standards performance criteria in relation to regulatory controls, building standards, and codes. There are four broad units of competency. The Design and Documentation unit of competency

encompasses the process of developing the design through research, detailed assessment of alternative proposals and the integration of technical solutions, value and cost control processes to maintain or enhance the design intent. The final design proposal is fully described and resolved to achieve value and cost objectives and complies with planning controls and construction codes.

Among the performance criteria proposed for graduates to demonstrate this competency is that they will,

Have knowledge of the processes for producing project documentation that meets the requirements of the project contract and project procurement procedure and complies with regulatory controls, building standards, codes, and conditions of construction and planning approvals.

Moreover, among the proposed performance criteria is the requirement that architects at registration and post-registration,

Ensure the timely production of accurate, complete and comprehensible project documentation of the conceptual design to meet the requirements of the project contract and project procurement process, and complies with regulatory controls, building standards, codes, and any conditions of construction and planning approvals²².

²² Architects Accreditation Council of Australia. 2020 Revised National Standard of Competency for Architects – Consultation draft. See: <https://www.aaca.org.au/wp-content/uploads/Revised-NSCA-Consultation-Draft-December-2020.pdf>

This appears well aligned to the intent of the discussion paper in relation to ensuring practitioners achieve and maintain relevant competency to apply the NCC in their specific area of practice.

3.1.5 Regulation of design practitioners

The Institute notes the discussion paper's proposed improvement in Chapter 6 to develop a consistent approach to regulation of design practitioners. As the discussion paper's more detailed consideration of Practitioner Regulation is set out in Chapter 8 of the discussion paper, our response is set out in the next section of this submission.

3.2 Practitioner Regulation

3.2.1 Regulation as a government lever for improvement

We note again that regulation is only one part of the solution. We believe that reform needs to occur with contractual and procurement processes as the primary means in improving built outcomes for all and thus improving consumer protection.

The Institute notes that the discussion paper and the three-stage reform process largely limit themselves to a very narrow range of 'levers' that governments have to alter behaviours in any market or area of industry. These traditional hard levers are:

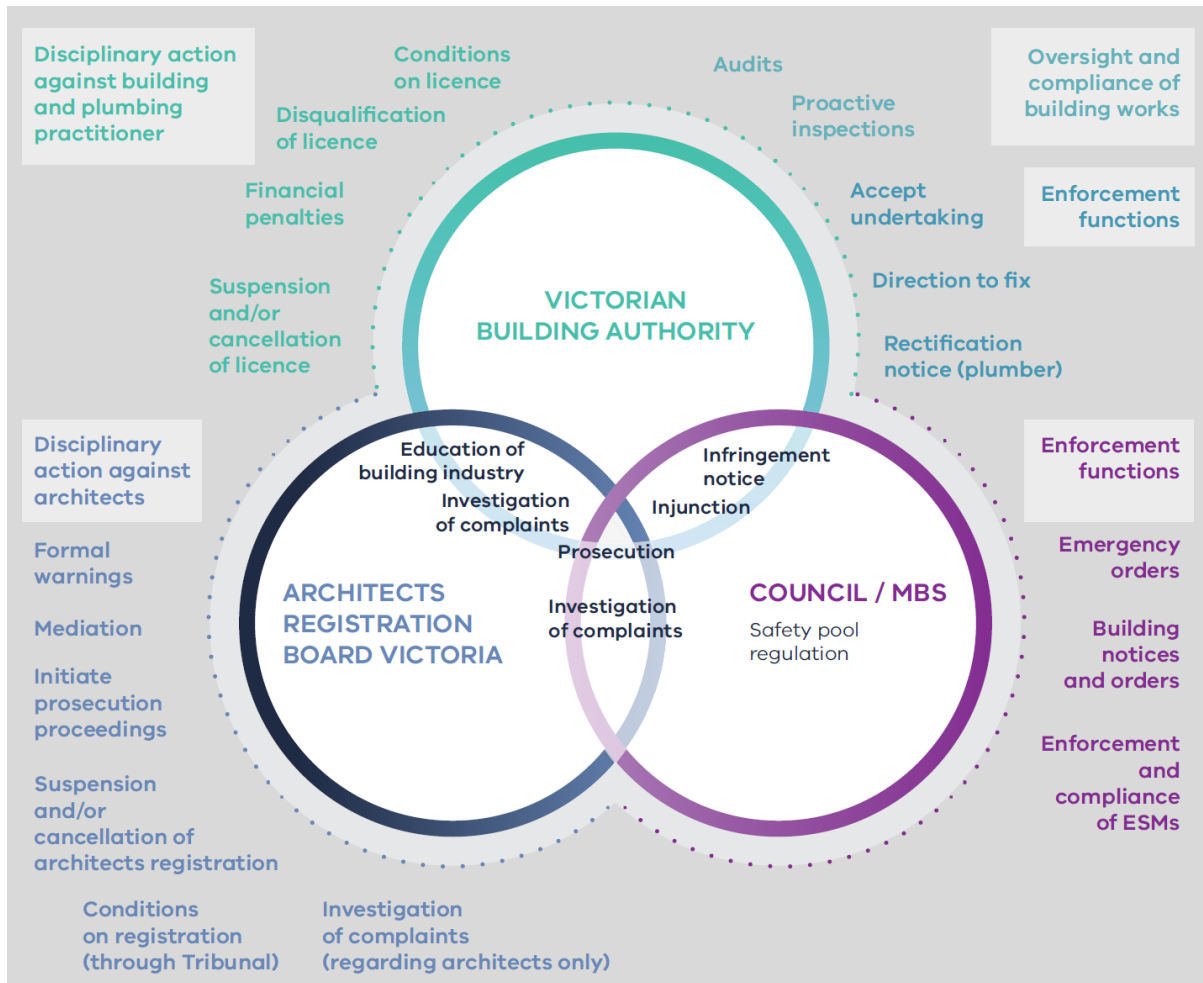
- regulation through statute and regulations, with this given effect through boards, departmental officers, commissioners, tribunals and ombudspersons,
- fiscal measures such as direct and hypothecated taxes, duties and service charges, and
- direct government outlay programs to deliver, fund or procure services or capital.

Soft levers include:

- the development of charters, guidelines and codes,
- public education, and
- partnering with industry and community sectors through various advisory, reference groups, panels and roundtables as a symbolic point of reference and behavioural leadership.

The discussion paper seems to focus largely on the use of regulation as a solution to improving building quality and safety, reducing variance and increasing public confidence and accountability and providing redress or reparation mechanisms for consumers. The Institute recommend consideration of a mix of levers that can provide a broad and strategic response to the intent of the Victoria Government's building reform.

Figure 16 | Core regulatory oversight functions across the building system



In a limited way, the discussion paper addresses the relationships between the three component areas of the building sector regulation shown in Figure 16 of the paper. These three regulatory areas also clearly reflect the different components of the building industry.

In recent times, through different procurement models, the roles of each of these traditional elements has become blurred and needs to be clearly re-defined. Placing all regulation under one or even two regulatory bodies will not necessarily assist, reform. Instead, it would create the conditions for further confusion in what is already a highly complex industry. The reform should strengthen each element, remove regulatory duplication and provide clarity about core responsibilities

The three major regulatory components could map to the three main components of

- design and design regulation (ARBV)
- construction and construction regulation (VBA)
- permit and approval and its regulation (proposed *Office of the State Building Surveyor*)

This clarity of functions for each part of the regulatory system will assist strengthening independence and accountability and improve regulatory efficiency as each regulator deals with its actual core requirements.

The risk with one “super regulator” is that it cannot deal with the specificity of each component part adequately and leads to lowering of standards rather than the intended improvement. It is noted that with the potential registration of all tradespersons, that the smaller professions of architects and design practitioners, and building surveyors and inspectors would become lost within a large super regulator including the full range of diverse building trades and plumbers.

The VBA’s recent strategy – the Building Surveyors’ Code of Conduct – aims to re-instate the independence of the building surveyor. All building surveyors could be regulated as practitioners by the proposed Office of State Building Surveyor (SBS) as the permit and approval regulatory body. This would clearly separate building surveyors and inspectors from builders, and notably the regulatory structures, processes and personnel out of the VBA. Separation of building surveyors and inspectors from builder would enable greater independence and minimise the inherent conflicts of enmeshed operations with the regulatory body.

3.2.2 Other means to improve building quality

What seems to have not yet been considered, especially for solutions, in the discussion paper and even the Building Confidence report, is a more comprehensive exploration of the issues and relationships at play in the market itself.

The discussion paper recognises some of these issues and that increased risks for consumers are exacerbated by,

Limitations in the regulatory system that do not properly account for industry practices, such as the use of design and construct procurement and value engineering and does not effectively regulate the product supply chain or place clear obligations on industry participants to supply safe, compliant products with clear and accurate safety information. (p.11)

Design and construct procurement with novation

The Institute has been particularly attentive, over the past three years, to the adverse impacts of sub-optimal procurement practices. The Institute has undertaken industry research and extensive stakeholder consultation on the design and construct procurement model, inclusive of novation of consultants from the principal (owner or developer) to the head contractor (builder).

Findings from this consultation and research highlight areas of concern with design and construct procurement with novation when it is poorly executed. Pressures that impact one

or more of the three outcomes of quality, cost and timely delivery include the financing models used for many projects and the level of control or stakehold of the end owner(s) or building end-user(s). We note the particular risks and the lack of ability for further action or control when the end-owners or users are multiple parties to a high-rise apartment development. This is currently evidenced by the owners' corporations seeking damages from developers/head contractors for latent defects in their building ownership.

A potential role for the Victorian Government to influence procurement

The Victorian Chapter of the Institute has developed a draft '*Code of Novation*' which is being tested with direct stakeholders in the market as well as government and secondary interests (e.g. legal profession). We offer to the Victorian Government and the Expert Panel the opportunity to discuss the Code of Novation as well as our industry research and consultation.

During the past three decades, privatisation, outsource procurement and private public partnerships have coincided with the increased use of design and construct with novation procurement.

Therefore, we also note that the Victorian Government, as one of the largest procurers of buildings and built form in the Victorian economy from the private market does have an additional lever to use in the way it can influence change.

The Victorian Government's own procurement method including its settings for using design and construct (with novation) and the contracts and legal instruments which give effect to this could powerfully influence the way that the building industry in Victoria uses and enjoys the benefits of this procurement methodology. Performed to optimum settings, the Victorian Government can provide important leadership and demonstrate with industry the best way to procure that addresses the discussion paper's above quoted observation that poorly executed procurement does exacerbate risks for consumers.

The Institute recommends that the Building Reform Expert Panel examines and makes recommendations on the regulation of design and construct procurement with novation, taking particular note of:

- the potential to regulate minimum contract terms
- the potential to utilise the Institute's Code of Novation amongst the range of improvements to design and construct procurement, and
- making specific recommendations to the Victorian Government on its own procurement contracts and processes including those used for design, construction and novation.

3.2.3 Practitioner regulation structures

The Institute is conditionally supportive of the intent of the discussion paper to strengthen oversight arrangements within existing structures and consider reform to structure of the current regulatory oversight framework.

A theme corroborated at different points in the discussion paper is one that seeks all design practitioners to be regulated through one scheme. As noted above, Chapter 6 concludes as a possible improvement to practitioner registration, the development of a consistent approach to regulation of design practitioners.

The discussion paper comments in Chapter 8 that,

Some stakeholders also consider that the separate regulation of design practitioners under the Building Act and of architects under the Architects Act fragments regulatory oversight of persons involved in building design. The inconsistent approach to regulation of those involved in design may contribute to poor quality and inconsistency of design documentation during the early stages of building works. (pp77-78)

Further on in Chapter 8, the discussion paper portends to move the *functions only* of ARBV to a VBA practitioner regulation scheme,

As noted, there are a number of regulators with different functions which impact on the building and construction sector. This fragmentation can create uncertainty about overlapping roles and responsibilities and affect the effectiveness of the overall regulatory framework. This could be addressed by considering whether to bring together these functions. For example, the practitioner regulator functions of the VBA could be expanded to include architects and the current functions of the ARBV. This option is also consistent with recommendations in the Building Confidence Report to achieve greater consistency in the regulation and oversight of design practitioners and building industry participants across the construction process. (p82)

It is noted that Fig 17 on page 81 shows that the current VBA regulatory oversight might be split in two separate regulators, one for practitioners and another for building.

The summary conclusion of Chapter 8 also highlights as one of four key issues, the *fragmented regulatory approach to oversight of design practitioners*.

The conclusion that the Institute has drawn from the discussion paper and from a confidential briefing provided by representatives of the Victorian Government²³ to the Institute on Friday March 12th is that the preference of the Victorian Government is to dismantle the well-functioning Architects Registration Board of Victoria (ARBV).

The ARBV is an important long-standing statutory authority institution that provides a high degree of public accountability for every architect in Victoria. Evidence has not been provided in the discussion paper to suggest that there are any problems with the operation or governance of this self-funded board. Dismantling the ARBV is not supported by the Institute.

The ARBV has direct impact to state, national and international recognition of Victorian architects and architecture programs delivered by Victorian universities. It is high functioning, well established and integrated into education and competency frameworks. It is formed around consumer protection and has review and improvement strategies inherent in its purpose. It is supported by the profession, by academic institutions, and international regulatory boards. It is a cornerstone of understanding the breadth and complexity of 'design', which encapsulates National Construction Code (NCC) knowledge, but also extends to include the far broader remit of what architectural knowledge is required to entail.

With the discussion paper's important and justified emphasis on NCC compliance it would, nonetheless, be an oversight by the panel to simply reduce the scope of an architect only to this aspect of design. The architect also represents the consumer in a vast array of other critical issues in addition to pure compliant documentation – such as heritage protection, master plan design, sustainability, acknowledgment of country and provision of qualities²⁴ over and above the NCC minimum requirements.

3.2.4 Strengthen oversight arrangements within existing structures

What the Institute does support is to strengthen oversight within existing structures.

The discussion paper demonstrates in Figure 16 a schematic representation of regulatory oversight across the building industry in Victoria with three overall components. These also align to three component functions of building delivery through design, construction and building approvals (as shown by the current oversight arrangements of the ARBV, VBA and Council/Municipal Building Surveyors respectively). It poses the regulatory diagram as a

²³ Representatives from the Department of Treasury and Finance and the Department of Environment, Land, Water and Planning.

²⁴ Intangible qualities such as space, light, aspect, place, elements which have been demonstrated through research to provide many health benefits to people while not being codified within the NCC. An example are hospital design studies which provide demonstrate direct health benefit outcomes /returns from good evidence-based design.

potentially problematic, when, considered from a different perspective, it is the basis of the solution. The three components of the building process need to be better defined, not amalgamated. Each one of these systems has its own bespoke characteristics that are critical to its function and these need to be enhanced and supported. The diagram should be viewed as design regulation, construction regulation and approvals regulation.

The ARBV is already a highly functioning, internationally recognised design regulator, that:

- regulates the profession to longstanding and nationally agreed competency standards,
- mandates and monitors CPD,
- has representative composition to ensure independence from the profession it regulates,
- undertakes accreditation of the universities' architecture education system, and
- carries out periodic or ongoing processes of review and enhancement.

Critically, its registration of architects and accreditation of architectural schools is recognised nationally and internationally and is a fundamental plank of the education and export/import sector for architecture in Australia.

It is an existing structure that should be retained and strengthened.

3.2.5 Solutions to regulate architects and other design practitioners.

The Institute has considered the issues for the Victorian Government that are raised in *Framework for Reform* and its suggested solutions. Consistent with the broad schematic representation of industry and its regulation in Figure 16, the Institute regards that this structure could be strengthened.

Three options are considered in this subsection, that extrapolate from our previous comments under subsections 3.2.1 and 3.2.4. Our options consider the best fit for a re-regulation approach that aligns to the industry structure itself.

Option 1: Architects become another “Building Practitioner” fully regulated in the VBA structure.

Option 1 would see the Architects Registration Board of Victoria's practitioner regulator functions migrated to the VBA or the proposed new “practitioner regulator”, discussed in section 8.3.3 of the discussion paper.

For example, the practitioner regulator functions of the VBA could be expanded to include architects and the current functions of the ARBV. (p.82)

Section 8.1.3 of the discussion paper notes that the core functions of the ARBV as a practitioner regulator are:

- monitoring architect conduct;
- investigating architect misconduct;
- undertaking disciplinary action against architect misconduct; and
- establishing a Tribunal to hold an inquiry into misconduct of an architect.

The paper does not mention the actual registration of architects under 8.1.3 including the requirement under Section 15B of the Architects Act (1991)²⁵ that,

Every architect must comply with any prescribed continuing professional development requirements and give written proof of such compliance in the prescribed manner to the Board by 1 July in each year.

The discussion paper has twice stated (p.5 and p.46) that “*No requirements for CPD are active*”²⁶ and yet does not acknowledge that there are a number of indicators outlined on the ARBV’s web page²⁷ that there is an active requirement for architects registered in Victoria to undertake CDP including the following components:

- architects must make a legal declaration that they have completed CPD at registration renewal (by 1 July each year)
- each architect is required to keep a record of their CPD
- the ARBV will audit an architect’s CPD activities based on risk
- the Victorian Architects Code of Professional Conduct under the Architects Regulations 2015 requires architects to maintain suitable skills and knowledge.
- there is an ability for the ARBV to request more information or take other steps to investigate and understand the situation if an architect has not carried out enough CPD activities.
- the ARBV states, in relation to CPD on its CPD page, *Failure to comply with the Code is unprofessional conduct and in high risk cases, we may consider pursuing disciplinary action under Part 4 of the Act.*

We also note the requirement for registration and renewal purposes (as a practising architect) that architects must also hold professional indemnity insurance.

Option 1 schematically represents the regulation structure if the practitioner regulator functions of the VBA were expanded to include architects and the current functions of the ARBV.

²⁵ Consolidated version to 28th July 2020.

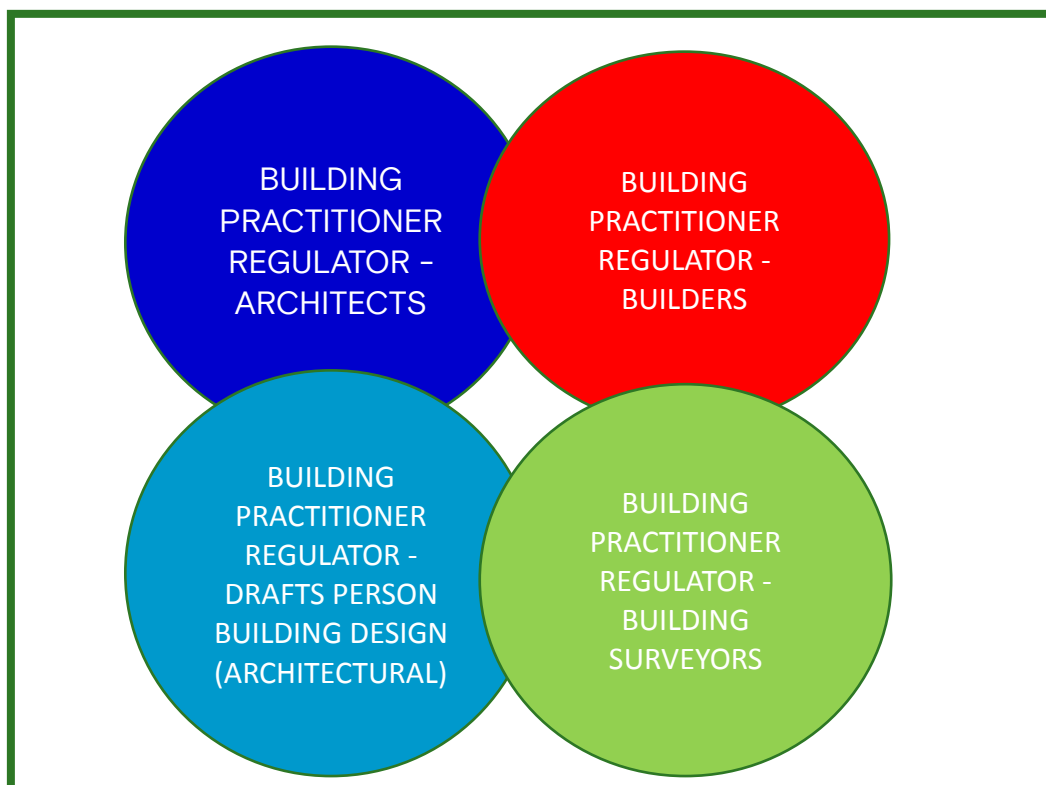
²⁶ Correspondence between the Institute and DTF between April 8th, the date of the discussion paper’s release, and April 14th when a reply was received from DTF including advice from DELWP, is that these CPD requirements have not yet been written into the Architects Regulations.

²⁷ <https://www.arbv.vic.gov.au/for-architects/cpd/>

The advantages of Option 1 are that it could facilitate:

- enhanced data about non-compliance in design (subject to data collection and reporting mechanisms being established) being quickly communicated to practitioners. However, if a separate practitioner regulator is established, then the lines of communication may be no more efficient than communication between the proposed new Building Regulator and the current ARBV. (Note engineers are already outside this regulatory framework, so this approach would still not achieve having all practitioners under one regulator).
- negotiation about scope of design work under the National Registration Framework takes place within one practitioner registration authority.
- continuing professional development on issues for improvement that are identified through systematic data gathering and on advice of a technical panel (or the potential new Office of the Victorian Building Surveyor) being quickly disseminated.
- the development of one complaints process and /or pathway.

Option 1: Architects become another “Building Practitioner



The disadvantages of Option 1 include:

- decoupling from the National Standards of Competency for Architecture (as explained above in subsection 2.1.5 of this submission). The flow on effects from this

would adversely impact national mutual recognition and international mutual recognition. Through the Architects Accreditation Council of Australia, architects registered with the ARBV currently experience benefit of:

- international mutual registration recognition with New Zealand and many states in the USA²⁸
 - prospectively international mutual registration recognition with the UK from late 2021/ early 2022 (currently being negotiated).
 - qualifications recognition with New Zealand, Hong Kong and Singapore²⁹
 - an agreement with Canada, Japan and Singapore that requires demonstration of domain specific knowledge³⁰
- the loss of the ARBV. This means the loss of an important means of public accountability where a mix of peers, experts and consumers can form a view about matters of professional misconduct. A dedicated Board ensures focus and rigour in the most fit-for-purpose approach. By way of comparison, each of the fifteen independent health practitioner boards that sit under the Australian Health Practitioners Registration Authority exist because each board can ensure the required rigour and focus on each of the professions that form the basis of each board's regulatory remit including formulation and/or application of codes of conduct and standards³¹.
 - a major unresolved issue would be created as to which body would accredit the architecture programs of the five Victorian universities³² that deliver the Master of Architecture. These five universities train 43% of all of the Master of Architecture graduates in Australia. The Master of Architecture and the bachelor's degree programs are accredited by the Architects Registration Board of each state and territory. Victoria would have to franchise this to another state or territory's Architects' Registration Board (e.g. NSW ARB).
 - the loss of investment (human, knowledge and financial) over many years of a self-funded Board, as well as the costs to the taxpayer that would be involved in transitioning the Board's functions to the VBA or the new practitioner regulator.
 - "a one-size fits" all approach to the CPD developed by the new regulator or the proposed new Office of the Building Surveyor that does not fit the required range or

²⁸ See: <https://www.aaca.org.au/wp-content/uploads/Mutual-Recognition-USAustraliaNZ-Guide-for-Applicants.pdf>

²⁹ : <https://www.aaca.org.au/wp-content/uploads/Accredited-Architecture-qualifications.pdf>

³⁰ <https://www.aaca.org.au/wp-content/uploads/APEC-Supplementary-Assessment-Guide.pdf>

³¹ Varies between Boards as to whether there is a separate Council (e.g. Australian Medical Council)

³² University of Melbourne, RMIT University, Monash University, and Deakin University. Swinburne University of Technology is currently pursuing accreditation.

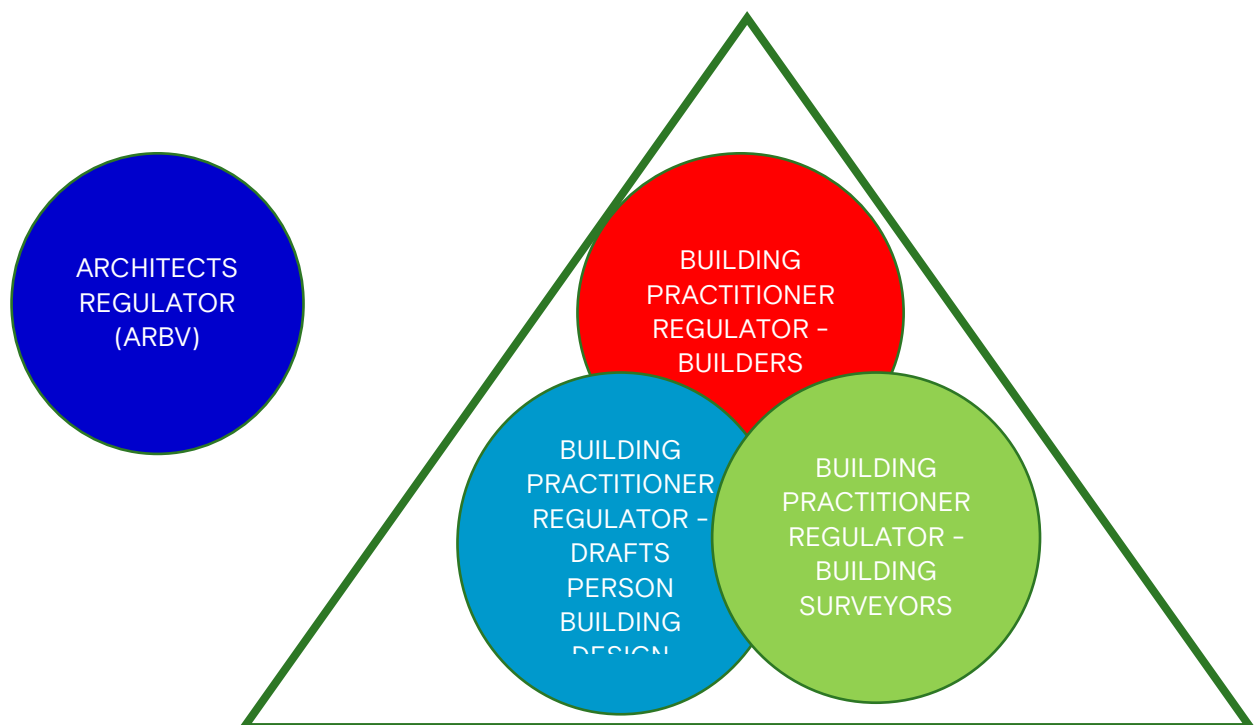
scope for competent practice taken from the distinct practitioner perspectives of an architect, designer, builder (and specified trades) or building surveyors/ inspectors.

- a less direct path for consumers to architects and other designers through a ‘one size fits all’ complaints pathway that would have to triage complaints.

Option 2: Architects sit outside of the VBA or a proposed new Building Practitioner regulator

Option 2 is similar to the current regulatory arrangement, which would differ according to whether there was a proposed split of the VBA into two regulatory bodies. The key advantages of this option is that it avoids the disadvantages for architects set out for Option 1. The key disadvantages are that:

Option 2: Architects sit outside the VBA or its proposed new Building Practitioner regulator



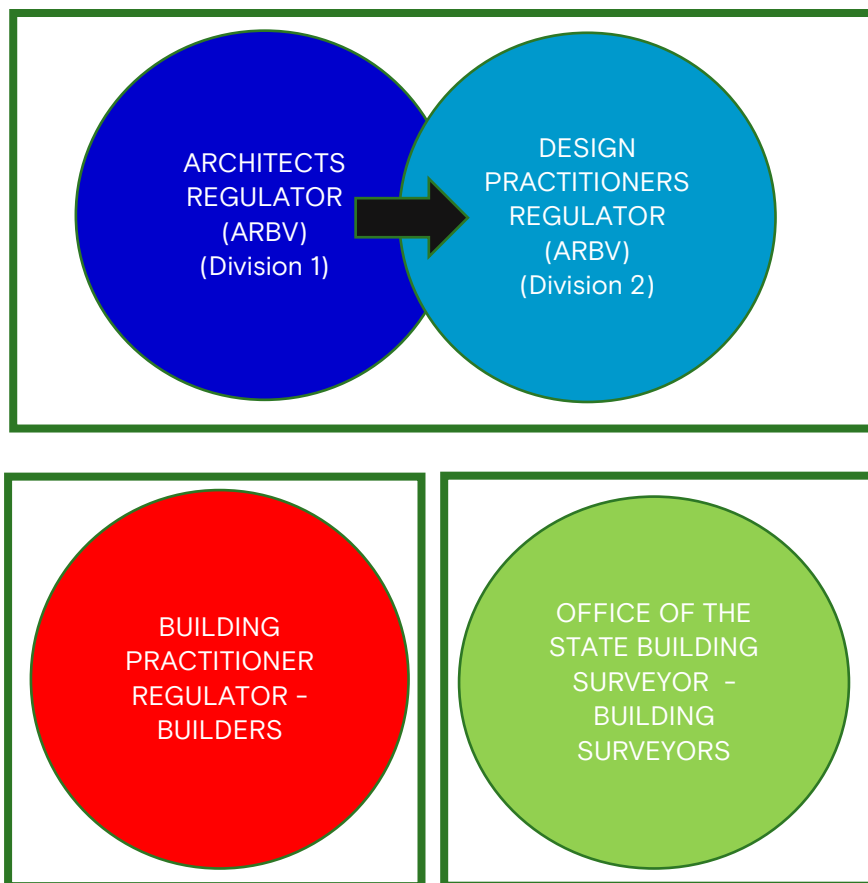
- strengthened links and pathways for data, complaints and information would need to be built between the ARVB and the VBA/ new Practitioner Regulator.
- it does not provide a solution to the problem that the discussion paper has identified of a ‘*fragmented regulatory approach to oversight of design practitioners*’. However, in part, the fragmentation could be addressed by introducing a design declaration scheme for all architects and designers. We note that such a design declaration scheme would need to have specific operating conditions, that have been detailed in Section 3.3 of this submission.

Option 3 – The ARBV is expanded to include non-architect designer practitioners

Under Option 3 the ARBV could be expanded in its regulatory scope and remit to include non-architect design practitioners.

Many countries licence classes of “building author” aside from architects. Engineers are licensed in most OECD countries and licensing of other occupations is also common. For example, in the Netherlands, the Architects Register also controls the use of the titles of urban designer, landscape architect and interior architect. Similarly, in Italy, the Provincial Rolls cover architecture, landscape architecture, urban planning and conservation. South Africa licences three classes of architectural technologist and draftsman. The Board of Architects Malaysia also licenses drafters and interior designers. In Spain, there is a licence class called Aparejador, which is like an assistant architect and building work supervisor. While in Japan, only 1st class Kenchikushi are able to design complex buildings.

Option 3: The ARBV is expanded to include non-Architect Designer Practitioners



It should be noted that most countries regulate architectural design function by building class through planning law (i.e. the right to sign off plans for development approval) rather than directly through Architects Acts or similar legislation. This is in some ways comparable to the scopes proposed through the National Registration Framework.

In a similar vein of a stratified registration model, the Dental Board of Australia has separate divisions on its register for Dentists, Dental Hygienists, Dental Prosthetists, Dental Therapists and Oral Health Therapists³³.

The key advantages of Option 3 are:

- bespoke and best fit-for-purpose attention to the regulation of all designers and strategically addressing performance improvement including CPD.
- it enables the regulation of practitioners to be structured to fit the building industry. This is dependent on the appetite of the Victorian Government and the construction industry to recalibrate the core functions of design, construction and approvals so that the boundaries, professional responsibilities, remit to consumers and public accountability become redefined. A theme that comes through strongly from a major research project of our Institute that studied the processes and impacts of design and construct with novation procurement across 408 design and construct building projects undertaken by Institute members³⁴ is that the line of responsibility back to the principal (owner or developer) is broken when the consultant's (architect's) services are novated to the builder, as the legal contractual obligation shifts to the builder away from the principal.
- in this model, the many non-registered designers who have completed architecture qualifications (double degree of 5 years) but have never become registered can be provided with bespoke support to gain architect registration.
- non-architect designers can still be required to meet recognised competencies mapped out of the National Standard of Competencies for Architects and additional competency requirements set by the VBA.
- non-architect designers who aspire to attain architect registration using established processes already set out by the Architects Accreditation Council of Australia (AACA) can be more easily supported to do so. By supporting people to attain higher tiers of registration their personal professional accountability is increased providing greater protection to the consumer.
- the strengthened Board (this might possibly be called the '*Architects and Building Designers Board*') would benefit from increased registration revenues that would allow further scope for strategic and continuous quality improvement projects focused specifically on improving design competencies. These projects could

³³ <https://www.dentalboard.gov.au/registration.aspx>

³⁴ The total sample was 483 projects. For 408 projects, 'most' questions (an arbitrary 32 or more of 36 questions) were answered for 408 project examples.

include research on design quality, design practitioner conformance and performance, and pathways to re-establish required standards of performance for poorly performing professionals.

- the Architects Code of Conduct could be readily adapted for broader application to all designers.
- the strengthened Board would be in a more powerful position to influence ongoing development of competencies by the AACA – noting that the AACA is owned and governed by all of the Architects Registration Boards across Australia. It would also be in a stronger position to collaborate with Victorian universities to develop components of curriculum suited to the specifications of a nation-leading construction industry in Victoria.
- it avoids the disadvantages of Option 1.

The disadvantages of Option 3 include:

- non-architect design professionals might perceive the model as some form of trade restriction.
- a Victorian government competency framework, as proposed in the discussion paper, would need to be operationalised into application by the Board alongside the National Standard of Competencies for Architects (NSCA). However, this would also likely need to occur in the Options 1 and 2 above.
- currently registered draftspersons would need to be migrated from the VBA to the expanded Board.
- Board composition might need to be expanded or adjusted to ensure the Board is able to fully put its mind to those issues attendant to the practice of non-architect designers.

The Institute has received very limited information about the full intent of the Victorian Government or the preferences of the Expert Panel other than what has been provided in the discussion paper, the aforementioned briefing on March 12th and three consultation forums attended by the Institute representatives since the discussion paper's release. Therefore, the view on preferred options is caveated by a need for further information.

Subject to this caveat, the Institute recommends that current preferred option for practitioner regulation in respect of architects and design practitioners is Option 3 which proposes that all architects and design practitioners are registered with an independent *Architects and Design Practitioner Board* achieved through an expansion of the register of the current ARBV, its scope and authority. The ARBV is perfectly positioned to be a larger

design regulator, while also maintaining all of its national and international functions which are of significant benefit to Australia more broadly.

3.3 Regulation of design (design declarations).

Subsection 6.4.1 of Framework for Reform proposes,

To ensure a consistent approach to the regulation of design practitioners, the Panel will focus on developing a requirement for design practitioners to provide a 'Declaration of Design Compliance' or like declaration (p. 51)

Noting the case study provided in the discussion paper, the panel on the following page provides more up to date detail (as at 25-4-21) of the operation of the NSW Scheme.

The Institute cautiously supports the introduction of design declarations in Victoria. Victoria does not need to emulate NSW's scheme, but there are two key features that could be incorporated into a Victorian approach from NSW:

- The most important feature that the Institute recommends be adapted from NSW is a reciprocal declaration by the builder that the building has been built to the detailed 'complete design'.
- The other feature is the requirement for design declarations for variations set out under Clause 17 of the NSW and Design and Building Practitioners Regulation 2021 and documentation of *variations other than for building elements or performance solutions after building work commences* set out in Clause 27.

The Institute notes the point made under subsection 10.3 of the discussion paper that,

Requirements for compliance declarations from design and building practitioners to declare that building work complies with the requirements of the NCC prior to issuing an occupancy permit, which may include a requirement for lodgement of 'as-built' design plans that can be accessed by the building owner, regulator and future practitioners. (p. 97)

However, the Institute also cautions against the reference to 'as-built' plans. This implies that design can continually change throughout the development. It is this continual changing of designs that can lead to confusion, allows potential cutting of corners, and even more wholesale design variations that have not been fully integrated and resolved for their full impacts on the final built form. Simply put, the building should be built to the declared design, and variations discouraged except for unforeseen issues that may arise.

The Institute recommends a different and more rigorous model for design declarations to that currently being established in NSW. The Victorian model should comprise a series of *milestones* or *hold-points* at which declarations must be submitted. These milestones could map to design staging and also to approvals processes for the purpose of planning.

Moreover, these milestones could be regulated as the specific permitted junctures for novation to occur.

An important feature of this approach is that industry agreed scope of services could be agreed for each consultant for each milestone. One of the current issues with design and construct procurement with novation is that there can be large inconsistencies between scopes of services between consultants on projects and between projects. A consultant may be engaged for partial services while all other consultants may be on full services. The reason for this, is that often at novation some of the consultants are no longer engaged and sub-contractors or trades take over their role going forward. Hence, partial consultant services for a particular stage can make it impossible to adequately co-ordinate the design, as there is no alignment of work. It is important to note that consultants are not aware of one another's scopes of services as their agreements are generally back to the client or project manager.

Consultants often reduce their scope of service with a client to reduce their

A MORE DETAILED SUMMARY OF NSW DESIGN DECLARATIONS

1. In NSW from 1 July 2021 in relation to Class 2 Buildings:

- *Design and Building Practitioners working on class 2 buildings need to register under a new Compliance Declaration Scheme.*
- *Certain designs will need to be declared for compliance with the Building Code of Australia and other relevant standards before building work can start, and declared designs will need to be lodged on the NSW Planning Portal. Builders must then construct according to those designs.*

2. Who needs to be registered?

Design and Building Practitioners working on class 2 buildings or buildings with a class 2 part need to register to declare certain designs or building work, and lodge documents on the NSW Planning Portal.

*This affects you if you meet **ALL** of these requirements:*

- *you are a Design or Building Practitioner in one or more of the classes shown below; and*
- *you meet the eligibility requirements; and*
- *you are working on a class 2 building or building with a class 2 part; and*
- *you are the practitioner who will declare or lodge documents.*

3. The certain designs that will need to be declared are called "Regulated designs".

- *From 1 July 2021, new requirements will be introduced for Design and Building Practitioners relating to 'regulated designs'. These are the designs prepared for a building element, or a performance solution, for building work.*
- *Building work refers to the construction; alteration or addition; or the repair, renovation or protective treatment of a class 2 building.*
- *A performance solution is a tailored solution to meet the performance requirements in the Building Code of Australia.*
- *For this scheme, building element means any of the following:*
 - *fire safety systems*
 - *waterproofing*
 - *building structure*
 - *building enclosure*
 - *building services.*

4. Other Building Classes:

- *We see class 2 as the highest priority right now, but the NSW Government intends to expand the reforms to other classes of construction in the future. (see: <https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/design-and-building-practitioners/frequently-asked-questions>)*

fee, and this can vary widely from project to project even with the same consultant. By providing agreed base levels of documentation for each stage, it allows for alignment of work. Furthermore, by allowing this alignment at a range of stages, it still allows for novation to occur at different times throughout a project but with added protection of consistent levels of documents appropriate to that stage of the project.

This provides protection to all parties, the developer has a consistent set of documents, the consultants have a known body of work to expect from one another, the contractor has a better set of consolidated documents to tender on, the building surveyor has defined set of base levels of documentation. This can then be saved digitally as an archive as a key milestone.

An important feature of this approach is that it would enable the identification of where potential risk has been created in the event of a building fault. It would discourage fundamental design change (inclusive of product substitution) to building height, massing, building envelope, floorplans or elevations as these would need to be followed through with design declarations fully through the progressive stages depending at which fundamental stage of documentation the variation is being made.

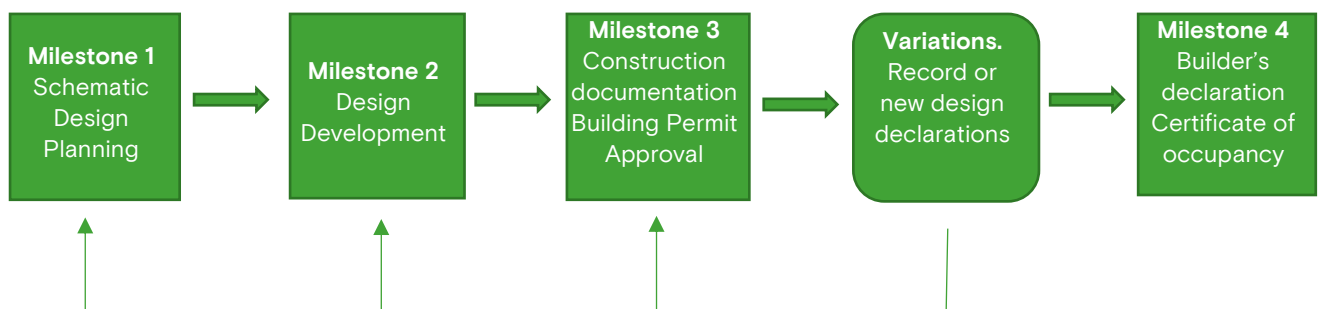


Figure 1: Design and Builder Declarations using milestones

In addition, we propose that each declaration would be accompanied by design declarations from relevant sub-consultants such as relevant structural and services or fire engineers, a back to back style of design declaration, with each discipline providing a declaration on their area and how it interfaces with the whole.

All declarations would be required to be lodged into a portal which would then be publicly available. A requirement should be set for the relevant materials from approvals and inspections by building surveyors and inspectors to also be lodged into such a portal. In accordance with the discussion at the Expert Panel's forum on Building Approvals held on Friday May 7th 2021 ³⁵, all materials that relate to approvals and inspections by building surveyors and inspectors should be made available to relevant consumers.

³⁵ Victorian Government's Expert Panel on Building Reform | Possible improvements to building approvals. Held Friday, 7 May 2021 9:30 AM-11:30 AM at Nous Group, Level 19, 567 Collins Street, Melbourne Victoria.

We also we propose that with Class 1 developments and Class 2 multi-residential apartments, the end buyers would have access to these reports for absolute transparency³⁶. All digital sets would be lodged and providing the final owner with the history of the design and construction process for their asset. For example, if a negligent authority did not follow through with a planning condition, this would protect the end user from third party claims on a planning issue.

This would rely on the portal functioning as a ‘building compliance platform’ as it should be possible to obtain for end-users, such as owners, owners corporations and building managers, a full building manual for the purposes of future alterations, additions and upgrades as well as required maintenance and recommissioning cycles over the anticipated life of the building. Appropriate controls would need to be established to ensure that the intellectual property of the architect is protected.

3.4 Building Approvals

The Institute notes that Chapter 7 of the Framework for Reform has provided careful consideration of models that can help assure independence of the building surveyor, and that are timely and efficient. The pre-eminent concern of the Institute is that building inspections must be thorough. This means that inspectors inspect what is being built at appropriate stages.

The Institute recommends that the frequency and staging of inspections is reviewed to develop a framework of inspections protocols that are proportionate to the risks that might be associated with different building classes, construction types and complexity. In addition, there should always be a provision for random and unannounced inspections (similar to visits by Workplace Health and Safety inspectors).

We note that the Australian Sustainable Built Environment Council and the Energy Efficiency Council (EEC) have recommended in their report³⁷, released in February this year, that there needs to be exploration of the frequency and staging of inspections, insofar as insulation is concerned, in their recommendation as follows,

Recommendation 13: Improve independent assessment of insulation installation
As a complement to internal quality assurance, governments should consider a range of measures to improve the independent assessment of insulation installation,

³⁶ That is to say, the detail reports are generally not provided to the client – only the certificate of approval for the completed stage.

³⁷ Energy Efficiency Council 2021, [ASBEC and EEC Ensuring quality control and safety in insulation installation. A research report to support an industry-led roadmap for healthy, comfortable buildings.](https://www.asbec.asn.au/research-items/ensuring-quality-control-and-safety-in-insulation-installation-a-research-report-to-support-an-industry-led-roadmap-for-healthy-comfortable-buildings/) Available from: <https://www.asbec.asn.au/research-items/ensuring-quality-control-and-safety-in-insulation-installation-a-research-report-to-support-an-industry-led-roadmap-for-healthy-comfortable-buildings/>

including:

- Requiring builders to provide time- and location-stamped photos of insulation installations to the building assessor;*
- Conducting a cost-benefit study on whether building surveyors should be required to use thermal imaging equipment to determine whether insulation has been installed correctly; and*
- Conducting a cost-benefit study on whether building surveyors should carry out remote or in person inspections of a building at an earlier stage of its construction (e.g. prior to plasterboard being installed) in order to help them assess whether insulation has been installed correctly.*

Insulation is seen as providing one of the cheapest returns on investment for the built environment. It can dramatically reduce heating and cooling bills, illness and even death for the occupant. However, the poor installation of insulation, such as small gaps along a wall, can have a dramatic reduction in the overall thermal performance of a wall. Conversely airtight insulation solutions with incorrect ventilation can lead to mold in cavities. Correct installation of insulation is a critical phase of construction for Class 1 and Class 2 buildings for both occupants and for global sustainability – yet it is currently not an inspection point and cannot be retrospectively inspected as it is concealed behind wall linings.

3.5 Consumer Protection

The Institute advises that all positions and recommendations that we have put forward in this submission are focused towards increased quality and accountability outcomes and protection for consumers.

3.5.1 Architects Registration Board of Victoria – accountability mechanisms.

As little has been said about the functioning of the ARBV in the *Framework for Reform* discussion paper it is important, in light of the preferred position of the Institute for Practitioner Regulation, that comment about consumer protection is made here.

ARBV attention to strengthen protection mechanisms.

The Institute is aware, through its general liaison work, of a number of strategic projects that have been carried out by the ARBV. A strategic project is currently underway to improve internal pathways and processes for managing inquiries and complaints. Representatives of the Institute advised the Expert Panel at its forum on regulatory

oversight³⁸ on Tuesday May 4th 2021, in response to a question of whether the ARBV undertakes pro-active auditing, that it would be best for the Expert Panel to seek this advice directly from the Registrar (CEO) of the ARBV. We are aware the Board does monitor that all architects' registration renewals include a declaration of compliance on CPD and that practicing architects hold professional indemnity insurance.

Consumer Representation on the ARBV

Section 47 of the *Architects Act 1991* provides for two consumer positions on the ARBV to be appointed as representatives of consumer interests and be nominated by the Victorian Minister administering the *Australian Consumer Law and Fair Trading Act 2012*.

Furthermore, Section 20 of the Act in Victoria, different to other states, enables the Board to constitute a Tribunal to conduct:

- (a) all inquiries concerning architects; or*
- (b) any class of inquiries concerning architects; or*
- (c) an inquiry concerning a particular architect.*

Section 21 of the Act sets out how the tribunal members cannot be members of the Board, and must be chosen from a panel of persons appointed by the Minister under section 21A.

Section 21A specifies that consumer representatives on the panel are recommended by the Director of Consumer Affairs Victoria to the Minister. Importantly, each tribunal must always include:

- (a) one person who is a practising architect; and*
- (b) one person who is not an architect; and*
- (c) one person who is a representative of consumer interests.*

The Institute supports these consumer representation structures and processes, in terms of oversight of the ARBV and the handling of matters of inquiry or complaint.

It should also be clearly noted that the Tribunal that undertakes determinations about architects is independent from the Board itself. This illustrates the high level of protection that is provided to consumers within the ARBV structure.

Our concern is that the ten-member Board, itself, has not included consumer representatives as set out in Section 47 since the middle of 2020. The Governor in Council of the Victorian Government appoints the two consumer representatives, who have been first nominated by the Minister administering the *Australian Consumer Law and Fair Trading*

³⁸ Victorian Government's Expert Panel on Building Reform | Possible improvements to regulatory oversight. Held Tuesday, 4 May 2021 2:30 PM-4:30 PM at Nous Group, Level 19, 567 Collins Street, Melbourne Victoria.

*Act 2012*³⁹. The absence of the consumer representatives creates a risk of diminishing the public accountability of the Board. The depletion of numbers makes it more arduous for the Board to establish its quorum at every one of its meetings and to undertake its work.

The Institute recommends that the relevant Ministers and the Director of Consumer Affairs Victoria, respond with urgency to the required obligations under the *Architects Registration Act 1991*, to appoint the two consumer representatives to the Architects Registration Board of Victoria that enable the Board to function appropriately and remain fully accountable to the Victorian public.

³⁹ Six of the remaining eight members are nominated the relevant Minister responsible for the Act, and two representatives are Architects using a prescribed process for voting set out in Part 4 of the Architects Regulations 2015.