

2021-22 PRE -BUDGET SUBMISSION



TO THE VICTORIAN GOVERNMENT



Australian
Institute of
Architects

VICTORIAN CHAPTER

Submission issued January 2021

2021-22 Pre-Budget Submission

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 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 Australian Institute of Architects (the Institute) to provide comment on matters affecting the 2021-22 budget of the Victorian Government.
- At the time of this submission the National/Chapter President is Ms. Alice Hampson FRAIA¹ 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.

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EXECUTIVE SUMMARY -

The Australian Institute of Architects' engagement with the big issues.

The Australian Institute of Architects and its members are dedicated to raising the quality of the built environment for people and to the advancement of Architecture. We seek to improve the enduring health and wellbeing of all Australians and our diverse communities. The design of the built environment shapes the places where we live, work and meet. The quality of the design affects how spaces and places function and has the potential to stimulate the economy and enhance the environment. Good design adds value to all aspects of the built environment and the significant building sector of Australia's economy.

Australian Architects have a worldwide reputation for innovative design leadership and our profession is well placed to support governments through advising on ways to address key challenges that we are facing in our built environment.

Primary issues include the creation of built environments which are environmentally, socially and economically sustainable. Climate change, housing affordability, equitable access to community services, an ageing demographic, increasing demand for efficient transport systems, and the need for more community and public infrastructure to support a growing population - these are urgent issues, requiring sophisticated solutions. The planning and design of cities and towns to address these challenges will significantly impact the shape of Australia's built environment, requiring governments' commitment to a high quality, sustainable legacy for future generations. The buildings and urban solutions we accept today directly impact on our ability to successfully navigate these key issues in the future - most buildings will have a minimum of a 30 year life span taking us past any 2050 commitments - we need to design and build today for the future we hope to have.

This past twelve months has presented the global challenge of the Covid-19 pandemic. The pandemic has had different impacts across the globe and between the cities and regions across Australia with a second tragic wave in Victoria, which, at least has provided lessons for the whole of Australia. By global standards, we continue to lead with among the most effective public health prevention measures. The pandemic's call to action has clearly illustrate the ability for Government to intervene to make decisions for the greater good, to lead and protect the State, irrespective of short-term disruption and challenges.

The past twelve months has also seen the delivery of a Royal Commission into National Natural Disaster Arrangements. As disconcerting, is the anthropogenic climate change that underpins these 'natural' disasters.

To face these challenges and the act upon the lessons learnt, governments will require built environment expertise and strategic planning to support its development of effective policy and project solutions. It is critical to foster the unique capability of our built environment professionals and their capacity to bring innovation and know-how to a government's work.

Our conversation with the Victorian State Government.

This submission re-establishes the Victorian Chapter's remit to set out of its priorities for direct outlays or other funded measures announced in state budgets such as regulation and policy reviews.

Many of the above-mentioned challenges are being addressed by the Victorian State Government. The Australian Institute of Architects, in the past three months, has publicly applauded the Andrews Government and its Ministers for far sighted initiatives. These include:

- \$5.3bi for Victoria's Big Housing Build, which represents first and foremost, a substantial in-roads into social and affordable housing which, then, also acts as important economic stimulus.
- \$797 million to reduce the impact of Greenhouse gases through measures that will make Victorian's homes more energy efficient and which brings benefit to the household budgets of many struggling Victorians.
- \$1.4 billion for the revitalisation of the Melbourne Arts Precinct, including the design and construction of the NGV Contemporary announced in this year's state budget. This is both a very significant cultural and economic stimulus measure.

Our Institute is also actively engaged in Victorian Government reviews and consultations underway, such as the Planning Minister and Department of Environment, Land, Water and Planning's current consultation process about Environmentally Sustainable Development, Infrastructure Victoria's consultation on Victoria's 30 year Infrastructure Plan (five yearly update), and the Victorian Building Authority's consultation on minimum standards for design documentation.

Many of the above-mentioned issues and challenges also require a national approach with the Australian Government supporting and collaborating with its States and Territories' governments. To this end, many of the Institute's priorities are given carriage in this year's Federal Budget pre-submission.

Having the conversation about strengthening good design, safety and quality in Victoria's built environment.

This submission is focussing on the opportunities to 'open up the conversation' about good design, safety and quality in Victoria as we are at the precipice of change, commencing with the imminent release of the *Framework for Reform* discussion paper for Victoria's Building System Review.

This is about challenging existing processes and having frank conversations about how we arrived at this point of having high profile significant building failures that threaten immediate human safety. Sitting alongside is the undercurrent of buildings that continue to be produced with inferior solutions, product substitutions, or poor chain of custody in procuring. An overdue national conversation was opened up by the Shergold-Weir review, and the release of their *Building Confidence* report in 2018.

Now, three years on, there is a new framework of Commonwealth and States relations announced in the second half of 2020 with the new National Cabinet that replaces the Council of Australian Governments. In the wake of the Conran Review, the former Building Ministers' Forum has been replaced by a 12-month, time-limited Building Ministers' Meeting. It is critical that impetus on the reforms is not lost and the Australian Institute of Architects

and its Victorian Chapter members calls upon the Victorian Government to continue to demonstrate its leadership and its position of strength at the National Cabinet to bring about the improvements through the measures put forward in our Victorian State Budget pre-submission.

Our recommendations

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| <p>National Registration Framework.</p> | <p>Recommendation 1.</p> <p>The Australian Institute of Architects strongly recommends that if the Victorian Government adopts the National Registration Framework, that it:</p> <ul style="list-style-type: none"> • adopts as the three levels of registered building designer: <ul style="list-style-type: none"> ○ Level 1. Registered Architect – All Buildings ○ Level 2. Registered building designer level 2 Medium rise buildings (with medium rise being defined as two storeys and conditional on the number of consultants that are required to deliver the building). ○ Level 3. Registered building designer level 3 Low rise buildings • restricts the design of buildings of Construction Type A to registered Architects as Construction Type A are the source of the most failures and risks, • recognises that Architects are already registered to practice and therefore exempt the requirement to simultaneously register as building designers, • requires that registration category of Project Manager should be AQF Level 9 qualified and minimum 2 years post graduate experience, have a code of conduct and be required to hold PI insurance and undertake annual Continuing Professional Development (CPD), and • automatically registers Architects in the new registration category of Project Manager as proposed by the National Registration Framework. |
| <p>Quality Procurement of Consultants – adopting the Institute’s EOI and RFT Guidelines.</p> | <p>Recommendation 2.</p> <p>To ensure fair and open procurement for Architecture services that maximises economic benefits and creates a rich legacy of community and public buildings and urban space, the Australian Institute of Architects recommends that the Victorian Government:</p> <ul style="list-style-type: none"> • references and advises use of the Australian Institute of Architects’ <i>Guidelines: Expressions of interest and Requests for Tender for Architectural services</i> (the Guidelines) as an adjunct to its procurement policies, |

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| | <ul style="list-style-type: none"> • extends this advice as a condition of funding to all relevant Victorian Government partnerships and funding agreements, • recommends to all Victorian Local Government Authorities to implement the Guidelines, and • promotes to other governments and agencies, by its own examples, fair and responsible procurement that improves the likelihood of improved built outcomes for the public. |
| <p>A better framework for contracts to support novation practice.</p> | <p>Recommendation 3.</p> <p>The Institute calls for the Victorian Government to include investigation of options for coordinating and standardising contracts used in the upcoming Victorian Building System Review Framework for Reform consultation phase. This should include the possible option to legislate for minimum contract terms and multiple-party disclosures.</p> |
| <p>A comprehensive electronic building manual for owners of new and upgraded buildings.</p> | <p>Recommendation 4.</p> <p>We recommend the Victorian government conducts an investigation and research project of digital documentation in order to:</p> <ul style="list-style-type: none"> • develop a comprehensive digitised building manual for commercial, residential, civic/ community and public buildings that includes a series of practical demonstration projects evaluated for outcomes. • provide digital access for independent approval/regulatory authorities to the latest drawing sets throughout construction stages to confirm compliance, and • consider the feasibility and commercial viability of the most suitable options as well as recommendations for efficient regulatory compliance once adopted. |
| <p>Addressing Residual Risk and Insurance.</p> | <p>Recommendation 5</p> <p>That the Victorian Government continues to undertake consultation and research in the Victorian Design and Construction sectors to strengthen the evidence base around:</p> <ul style="list-style-type: none"> • affordability of insurances, • scope and scale of uninsurable risks that are legacy risks of the previous use of flammable cladding as well as newly identified risks, • total impact of insurances costs on business, and <p>consider the options to encourage good design ensuring that insurance does not become a major impediment to the viability of Architecture practices at any scale.</p> |

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| | <p>Recommendation 6</p> <p>That the Victorian Government, undertakes a review of its government procurement of Architectural services (inclusive of its consultancy contracts requirements) to ensure that Architecture practices at different scale are all confident to engage in government work. This will help maintain a large field of competition to deliver greater choice and value for Victorians.</p> |
| <p>Independent oversight – Clerk of Works.</p> | <p>Recommendation 7</p> <p>That the Victorian Government raises, as part of its consultation and deliberation on Building System Review and Reform, the options for ensuring that projects of particular scale, type or complexity have an independent on-site arbiter and overseer of the works contracted directly to the client – namely a Clerk of Works.</p> |

1 INTRODUCTION

The Australian Institute of Architects (the Institute) is the peak body for the Architectural profession in Australia, representing around 12,000 members. The Institute works to improve our built environment by promoting quality, responsible, 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, in turn, influences quality of life. Through its members, the Institute plays a major role in shaping Australia's future.

Architects are a key component of Australia's \$100 billion built environment sector and there are around 13,500 Architectural businesses in Australia with around 40,000 employees. Approximately 25,000 people in the labour force hold Architectural qualifications (Bachelor degree or higher) and Architectural services in Australia in 2017-18 had revenue of \$6.1 billion and generated \$1.1 billion of profit² The significant benefit of architecture and good design is outlined in numerous articles, including the Office of Victorian Government Architects 'The Case for Good Design' or 'Revaluing and Icon – Sydney Opera House' by Deloitte which explores the value of exceptional design.

Australian Architects have a worldwide reputation for creative and innovative design leadership and Australia is known for producing contemporary and breakthrough Architecture. Australian architect Glen Murcutt, for example, in 2002 was the Pritzker Architecture Prize Laureate³, which is considered the design equivalent of the Nobel Prize. A number of Australian cities are ranked as the most liveable, globally, and attract people from all over the world who wish to live and work here. We have a well-recognised, high quality and liveable built environment.

The Institute, therefore, welcomes the opportunity to make a pre-budget submission to the Victoria Government in order to ensure improving use of good design, and strengthening of building safety and quality into the future.

In this way we, will create buildings and public spaces that are well designed to achieve outcomes of environmental, economic and social sustainability and positive health and wellbeing, in our culturally rich state. The buildings will also be safe and reflect the overall high quality which Victorians expect.

² Industry Profile: Architectural Services in Australia, IBISWorld April 2019

³ See: <https://www.pritzkerprize.com/about>

2 KEY PRIORITIES AREAS FOR 2021

2.1 National Registration Framework.

2.1.1 Outline of issues.

The National Registration Framework for Building Practitioners (NRF) has been developed by developed by the Australian Building Codes Board and will be considered by the Building Minister Meeting for adoption by all States and Territories. The Institute welcomes this as a necessary enabler to ensure that all practitioners have the appropriate qualifications and competence to undertake work in the building sector. However, we believe the proposed NRF will have unintended consequences and will result in poorer quality and a less safe outcome for the public.

There are increasing professional registration, mandatory training and experience requirements for registered Architects. In broad terms, a person in Australia seeking to become a registered Architect is required to complete a three-year Architecture undergraduate bachelor's degree and undertake a further two-year Architecture Master's degree⁴.

Moving from university graduate to registered Architect involves demonstrating application of knowledge in skills in Architectural practice as specified in the National Standard of Competency for Architects (NSCA) which are governed by the Architects Accreditation Council of Australia (AACAA). Part of this process requires the completion of a minimum of 2 years practice experience (giving rise to 3,300 log-book recorded hours) across a range of Architectural practice areas while working for a practice under the supervision of a Registered Architect. After this, the graduate is also required to sit oral and written exams conducted by the Architects Registration Board of the relevant State/ Territory. In addition, Architects requirements of Architectural registration include holding professional indemnity insurance and abiding by a code of conduct⁵.

In major contrast, the NRF allows building designers with a diploma in building design (a 1 to 2-year course) with 3 years post qualification work experience to be able to undertake a good proportion of services for building types that currently require the professional services of a registered Architect. Experience does not equal competence and the 3-year experience requirement is not sufficient to address the shortfall in education and experience required of a registered architect having undergone a rigorous examination process.

Registration requirements for Architects relate to education, experience and demonstration of competency through an examination and interview against national competency standards that are recognised internationally. Yet, the proposed NRF is not based on assessment of competency and without a comparable robust assessment process for building designers there is no basis for comparing designers to Architects and, therefore,

⁴ Level 9 in the Australian Qualifications Framework or 'AQF Level 9'

⁵ In the Victorian Architects Act 1991, Part 2 deals with prohibited conduct.

neither for proposing that both groups should be able to undertake the same complexity of work across all building classes.

Designer registration and general building scale.

The NRF has proposed that a building designer, registered at the relevant level, is permitted to design and document building design work using Performance or Deemed-to-Satisfy Solutions. The three levels of registered building designer in the NRF are:

1. Registered building designer level 1 All buildings
2. Registered building designer level 2 Medium rise buildings
3. Registered building designer level 3 Low rise buildings

The Australian Institute of Architects (the Institute) believes there needs to be a focus on the competency of practitioners rather than solely on education level and years of experience. Levels of education and assessment of experience set out in the NRF are inappropriate with regard to the skills required to deliver safe buildings and buildings that comply with the National Construction Code (NCC) in all of its aspects. It is vital that the NRF does not introduce a “lowest common denominator” approach. Yet, it appears that the NRF is reducing the level of education, experience and skill required to design and document buildings in the building designer category of the NRF, at level 1 in particular, but also in level 2.

Project Management.

Architects frequently act as Superintendents and lead and coordinate Project Consultants in delivering projects of various complexities. As such, it is important that this continues to be recognised. Project Managers’ responsibilities include managing the program, its scope, the inclusions of all the consultants, as well as managing the cost of the project and keeping the client well informed throughout the project.

Without a deep understanding and knowledge of the specific expertise of all consultants, the emerging complexity of construction, and the importance of the building to the public/urban design and other social impacts, the Project Manager can be driven purely by short term time benefits and immediate costs, without due consideration to real cost impacts of decision and actual long term return on investment implications. An architect is trained to be an independent advisor who considers a holistic outcome in relation to design decisions that can drive true value, best-for-project outcomes.

An example of elements that contribute to holistic outcomes is given evidence in current research that reveals buildings have a direct impact on our health. Wellness is now a key consideration in creating appropriate environments – an area that many architects are trained in and which allow them to provide appropriate advice. The benefit to society and the economy in creating healthy and positive environments is significant and needs to be a focus.

As the proposed NRF encourages utilisation of existing regulatory frameworks, the Institute recommends that Architects should be automatically endorsed as meeting the criteria as Project Manager within the National Registration Framework’s Project Co-ordination category.

2.1.2 Our recommendations.

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| Recommendation 1 → | <p>The Institute strongly recommends that if the Victorian Government adopts the National Registration Framework, that it:</p> <ul style="list-style-type: none"> • adopts as the three levels of registered building designer: <ul style="list-style-type: none"> ○ Level 1. Registered Architect – All Buildings ○ Level 2. Registered building designer level 2 - Medium rise buildings (with medium rise being defined as two storeys and conditional on the number of consultants that are required to deliver the building). ○ Level 3. Registered building designer level 3 - Low rise buildings • restricts the design of buildings of Construction Type A to registered Architects as Construction Type A are the source of the most drastic failures and risks, • recognises that Architects are already registered to practice and therefore exempt the requirement to simultaneously register as building designers, • requires that registration category of Project Manager should be AQF Level 9 qualified and minimum 2 years post graduate experience, have a code of conduct and be required to hold PI insurance and undertake annual Continuing Professional Development (CPD), and • automatically registers Architects in the new registration category of Project Manager as proposed by the National Registration Framework. |
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We additionally note that our proposed three levels of registration, if adopted universally across Australia, will also reduce risks to international trade in Architectural services which are currently covered by mutual recognition agreements with other countries as well as the risk of each state and territory implementing the NRF in a different way and assigning different responsibilities and accountabilities to practitioners within building approval systems.

2.2 Quality Procurement of Consultants – adopting the Institute’s EOI and RFT Guidelines.

2.2.1 Outline of issues.

The Australian Institute of Architects (the Institute) has identified the procurement process of Architectural services as a key policy priority in improving the quality of built outcomes.

Government agencies and institutions in Australia have adopted various methods of quality-based selection including Expressions of Interest (EOI), Request for Tenders (RFT), Request for Proposals (RFP) and Design Competitions. Each of these methods has merit and provides agencies with options to suit the burgeoning type of projects commissioned in the public sector. Thoughtful and thorough consideration of consultant procurement, at the early stage, maximises the possibilities for design quality, cost savings, and a productive working relationship between the client and consultant group.

Over time, variance and complexity of these methods has increased, as has the onus on Architectural practices to respond with more detail and take on greater risks associated with changing procurement models. The selection of an Architect through a process that matches submission demands with project complexity is a crucial early step in the delivery of a successful built form outcome.

The Victoria Office of the Government Architect⁶ has further qualified the importance for governments of the procurement process,

A key legacy offered by any government is the quality of buildings, infrastructure and the public realm that they produce. Well-designed buildings and places promote community pride and identity and offer an enduring legacy. Over the life of a building, evidence shows that bad design ends up costing money, while good design ends up costing less and, at the same time, adds real value.

Good design does not just happen: it is purposefully and carefully undertaken by skilled practitioners, valued by the client, and needs to be protected through delivery of the project.

The method by which a building project is procured has a significant impact on the quality of the final building. While good design is able to be achieved with all procurement methods, some make it seriously challenging unless their potential threats to design quality are understood and well managed. (p1, ibid)

Our Institute has recently undertaken research to investigate best practice Expression of Interest (EOI) and Request for Tender (RFT) methods in public sector and educational institutions that commission Architectural services. In the context of ongoing change, the research explored the perceptions and experiences of clients and Architects of

⁶ Office of the Victorian Government Architect. (2013). Government as ‘Smart Client’: Guidelines for building procurement processes, the implications for design quality arising from these processes, and the recommendation of strategies to enable good design. August 2013. Office of the Victorian Government Architect, Melbourne.

procurement practices, with a view to improving the procurement process. The research included an analysis of industry and government policy documents, interviews with government and institutional clients, and an online survey of Institute members.

Our research enabled the Institute to develop a set of Guidelines for Expressions of Interest (EOI) and Request for Tender (RFT) for Architectural services (the 'Guidelines')⁷. The objective of the Guidelines is for potential clients to review their own EOI and RFT methods and documents and align them with best practice to enable an effective and efficient process that maximises the potential for high-quality built outcomes and reduces bidding and assessment costs for all parties. The Guidelines have been endorsed by the Office of the Victorian Government Architect (OVGA).

The Institute is continuing to engage with government at all levels across Australia while encouraging members to share the guidelines with potential clients so that together we can promote better procurement practices for all.

2.2.2 Our recommendation.

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| Recommendation 2 → | <p>To ensure fair and open procurement for Architecture services that maximises economic benefits and creates a rich legacy of community and public buildings and urban space, the Australian Institute of Architects recommends that the Victorian Government:</p> <ul style="list-style-type: none"> • references and advises use of the Australian Institute of Architects' <i>Guidelines: Expressions of interest and Requests for Tender for Architectural services</i> (the Guidelines) as an adjunct to its procurement policies, • extends this advice as a condition of funding to all relevant Victorian Government partnerships and funding agreements, • recommends to all Victorian Local Government Authorities to implement the Guidelines, and • promotes to other governments and agencies, by its own examples, fair and responsible procurement that improves the likelihood of improved built outcomes for the public. |
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⁷ Available for free download from https://www.architecture.com.au/archives/policy_campaigns/procurement

2.3 A better framework for contracts to support novation practice.

2.3.1 Outline of issues.

Novation and design documentation.

The Australian Institute of Architects, for the past four years, has been investigating opportunities to improve the methods by which good design, safety and quality can be achieved in today's building environment. A major shift, across more than two decades in Australia, has been the increased use of the Design and Construct model. Under this model, the services of the lead consultant (Architect) are novated (substituted/switched) from the client/asset owner or property developer (the Principal) to the Contractor (the builder) once the owner/ developer has contracted (engaged) the builder.

The process differs, in part, due to the contracts, themselves, that are used. However, one consistent parameter of the Design and Construct with Novation model, that is regarded as impacting good design, safety and quality, is the stage of documentation when novation takes place. In succinct terms, building projects are often assessed as to whether novation has taken place as "earlier" or "later" stage novation.

The distinction between earlier or later is determined by the stages of design. Early stages typically refer to design work at the "schematic design", through to and up to two thirds of "design documentation" stage, whilst late novation occurs at the end of 'design documentation' through to and up to the end of "construction documentation". One synopsis is that the Schematic Documentation provides some impressions of the general building appearance and features inside and out. The Design Development stage of documentation shows the more detailed layout for the entire building (e.g. floor by floor), while the Construction Documentation shows exactly how detailed elements of the building are actually to be constructed. Absence of these detailed elements provides the opportunity for shortcuts, including products substitution, to be used in the construction and which may diminish safety and quality. As an example, detailed construction drawings might include fine details of how flashing and sealer, and other waterproofing elements are to be affixed to ensure that heavy rain does not cause water to come inside an apartment from its balcony. Multi-level buildings include thousands of such details.

Importantly, completed "late stage" Construction Documentation drawings will also specify the particular products to be used. This significantly reduces (but does not eliminate) the opportunity for products substitution. We make particular note that in line with Recommendation 21 of the Building Confidence (Shergold-Weir) report, that our Institute is currently advocating to the Australian Government for the introduction of a products certification scheme for higher risk building products, coupled with the Queensland Government's recently introduced, "Chain of Responsibility" legislation⁸

⁸ The Building and Construction Legislation (Non-conforming Building Products— Chain of Responsibility and Other Matters) Amendment Act 2017 (Qld), establishes a chain of responsibility, placing duties on building supply chain participants (including designers,

Findings of our National Novation Survey.

In 2019, a National Novation Survey was conducted by the Australian Institute of Architects. In Victoria, the survey included 71 Architectural practices and 158 of their most recently delivered projects where novation had occurred. The following is a summary of the survey results which indicated how novation can create risks and blind-spots. Victorian finding highlights included:

- substitution of specified materials was more likely under a novated contract,
- a much lower commitment to the principles of ecologically sustainable design (ESD) occurred in novated projects,
- reduced involvement of architect (despite being the lead consultant and design lead) in project control group meetings after novation,
- Architect practices being denied access to the site to undertake inspections at certain stages of the building process.
- Architect practices judged the optimal point for novation to be at either 100% Design Development or after more than 51% of the Construction Documentation had been completed.
- Architect practices felt unable to effectively protect the original client's (principal's) interests and not even knowing if their monthly reports prepared for the clients were being passed onto the client, and
- Architect practices being unable to increase their fees to suit the increased workload commensurate with increased Total Construction Costs (which, in turn reduces the ability to deliver complete services to a larger project).

Code of Novation.

Two very important additional findings which the Institute is seeking to address is the appetite for a more industry-wide agreement on the accepted process settings and behaviours through an industry-wide code of novation and the legal contracts used in novation. A code of novation was favoured by 83% of Victorian respondents, in our Novation Survey, as one part of a solution to improve the quality of projects delivered through novation. To this end, the Victorian Chapter of the Institute has drafted and is currently conducting early testing of an industry-wide *Code of Novation*⁹. The Institute Victorian Chapter looks forward to briefing the Victorian Government when the Code's testing is further progressed.

Legal contracts.

There was evidence of serious concern, among our Novation Survey respondents in Victoria, about the need to undertake significant re-negotiation of client contract conditions at novation where the contract that the architect signed up to is altered, which

manufacturers, importers, suppliers and installers) to ensure building products used in that state are safe and fit for intended purpose. The Act expands the compliance and enforcement powers of the Queensland Building and Construction Commission (QBCC), and the responsible minister.

⁹ The Institute is also developing a research project that measures the association between novation and evaluations of building performance by the principal.

is not the intention of novation – it should be the same contract is maintained. In our survey 67% of respondents believed that contract negotiations impacted negatively on their ability to deliver quality outcomes for the general public and end-user. The Novation Survey also showed a number of different contracts or letters of agreement used to give effect to novation¹⁰.

The Victorian Chapter’s early testing of its Code of Novation across a range of property and construction sector stakeholders is also revealing that the issue of contract conditions is further complicated in the Design and Construct model seeing several and separate legal contracts with varying terms between:

- consultants and the principal,
- principal and contractor
- contractor and lead consultants (after novation)
- contractor and other consultants including structural and fire services engineers.

Moreover, and most disconcertingly, the stakeholders report that these contracts can be poorly aligned, thereby resulting in gaps in scope of work and responsibilities.

What is needed is greater coordination and standardised of legal contracts to balance risks and achieve greater transparency among all parties so that novation procurement meets the aspirations of good design, safety and quality in Victoria’s design and construction industries. The opportunity to address this presents itself now as Victoria is set to commence the major consultation stage of Victoria’s Building System Review with imminent release of the Framework for Reform discussion paper¹¹.

2.3.2 Our recommendation.

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| Recommendation 3 → | The Australian Institute of Architects calls for the Victorian Government to include investigation of options for coordinating and standardising contracts used in the upcoming <i>Victorian Building System Review Framework for Reform</i> consultation phase. This should <i>include</i> the possible option to legislate for minimum contract terms and multiple-party disclosures. |
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¹⁰ This included Industry Standard Contract (eg AS4904-2009) with no amendment; Industry Standard Contract (AS 4122-2010) with custom deed; Industry Standard Contract – minor amendments; Industry Standard Contract – major amendments; Bespoke Professional Services Agreement; and other including fee letter.

¹¹ See: <https://www.vic.gov.au/building-system-review>

2.4 A comprehensive electronic building manual for owners and access to digital documents during construction.

Currently, new building owners and Owners Corporations can take possession of a building with documents to reflect the constructed outcome. These documents often inherit a high degree of variability in both the quality of documentation and accuracy of the representation of the constructed outcome.

This final documentation often does not include the changes undertaken through the construction journey where the contractor sought to create project efficiencies that ultimately amended the original design.

Documentation is a complex and ongoing process throughout construction and even more so under a design and construct procurement model due to novation and the level of completed documentation at the point of novation. It is also impacted by the willingness of the contractor to pay for further detailed documentation incorporating changes under their direction.

There is an opportunity to improve design, safety and quality if every building, that is completed handed over to the owners, is accompanied by a documentation set, much like a car with its manual and its service history.

The Building Confidence (a.k.a. Shergold-Weir) report made a recommendation to this same effect,

Recommendation 20:

That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the buildings.

Implementing the recommendation

The building manual should be in a digital format and be required to have prescribed information such as:

- *as-built¹² construction documentation;*
- *fire safety system details and maintenance requirements;*
- *assumptions made in any performance solution (for example, occupant characteristics);*
- *building product information, including certificates and details of maintenance or safety requirements; and*
- *conditions of use—such as occupant numbers, loads, replacement of products after certain periods (for example, glass after 25 years).*

There should be a requirement for the manual to be provided to successive purchasers of the building.

¹² Even though the report uses this term, there are interpretation issues and we suggest “final as issued for construction documentation” more accurately reflects the intent.

Benefits for end-users in addition to fire-safety systems could also include detailed information about:

- The designed environmental performance of buildings in terms of CO2 production, its ability to mitigate climate change impacts for occupants, and water and waste management
- Ventilation systems and the availability of a continuous supply of clean air, free of biological pathogens, as has become highlighted during Covid-19
- Placing owner(s) in a better position for any future alterations or upgrades - ensuring more flexible buildings. This is even more important as buildings age and may become subject to heritage classification after decades.

In addition, the Building Confidence (Shergold-Weir) report highlighted the need for detailed, accurate (and up to date) documentation *during* construction

Recommendation 12 That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.

Implementing the recommendation

It is imperative that jurisdictions collaborate with a view to ensuring that their central database enables intelligence sharing. This will inform each other's compliance and enforcement activities and the work of the BMF. At a minimum, there needs to be agreement on the key data points that are congruent across all jurisdictions and upon which reliable information can be shared.

It is proposed that information about the construction of buildings should be lodged on a progressive basis during construction and that post-occupation fire safety system maintenance reports should also be lodged. The databases should have information about all Commercial buildings as a priority but could also contain information about Domestic buildings. Preferably, the information would be collected and stored in a digital form using emerging technologies.

Information collected should include:

- *the name of the appointed building surveyor or issuing authority;*
- *a description of the proposed building work;*
- *details of all practitioners engaged;*
- *details of design certificates relied on and any information about third party review;*
- *details of any performance solutions and any information about third party review;*

This would allow, for example, Building Surveyors to go onto site to review work against the latest drawing sets (ones that incorporate value management changes and variations) and state whether what is being built is in accordance with the drawing set. They could also have access to the original approved set of drawing to compare to and determine if there has been a divergence from original intent.

We note and commend the Victorian Government's recent announcements into digitising the built environment in the November 2020 State Budget with:

- \$4 million to help councils upgrade their digital planning permit systems making it easier to lodge and track permits online, speeding up the approval process and reducing the requirement to lodge applications in person,
- \$14 million to the Victorian Planning Authority, including funding the Streamlining for Growth program which provides support to local councils to fast-track local planning applications and
- \$2 million for the trial of an innovative new 3D spatial data program called Digital Twin Victoria. The trial will bring together currently disparate spatial data to develop digital models of Victoria – making it easier to accurately assess and plan projects remotely.

In addition to these important initiatives, there is an opportunity in the work presently being carried out by the Victorian Building Authority to develop minimum standards for design documentation. Progressing this latter work to a more replete project that addresses Recommendations 20 and 12 of Shergold-Weir would place Victoria as a leader amongst the States and Territories, similar to Queensland Government's Chain of Responsibility Legislation that is providing leadership to address products substitution.

However, there are many unknown challenges – not just technology, but agreed rules, including who undertakes and pays for the building manual, given that such a complete set of documents for end-users are not commonly prepared.

2.4.1 Our recommendation.

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| Recommendation 4 → | <p>We recommend the Victorian government conducts an investigation and research project of digital documentation in order to:</p> <ul style="list-style-type: none"> • develop a comprehensive digitised building manual for commercial, residential, civic/ community and public buildings that includes a series of practical demonstration projects evaluated for outcomes, • provide digital access for independent approval/regulatory authorities to the latest drawing sets throughout construction stages to confirm compliance, and <p>consider the feasibility and commercial viability of the most suitable options as well as recommendations for efficient regulatory compliance once adopted.</p> |
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2.5 Addressing Residual Risk and Insurance.

2.5.1 Outline of issues.

The Lacrosse combustible cladding fire court decision did not fairly apportion liability in the eyes of the Architecture profession. The outcome of the Lacrosse decision leaves many unresolved issues around residual risk for the Architecture profession.

In a recent small sample survey with Victorian Chapter members we heard that Architecture practices take out many different types of insurances – not just professional indemnity insurance, which is a legislated requirement of registration. It is a significant overhead for Architecture practices.

We also heard industry reports that some government contracts seek to transfer all latent liability to suppliers which heightens residual risk and stands to elevate insurance costs experienced by Architecture practices. Some forms of cladding have become an uninsurable risk.

Architects and Architecture practices at different levels of business scale can move forward more quickly and with greater certainty to progress building design that adapts to environment and societal needs and address issues of safety and quality if they have the assurance of a sensible and affordable insurance framework. The Victorian Government will also be exposed to an increased competition field with more procurement choices options and greater value for Victorians if government procurement contracts are balanced in terms of transfer of risks.

2.5.2 Our recommendations.

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| Recommendation 5 → | <p>That the Victorian Government continues to undertake consultation and research in the Victorian Design and Construction sectors to strengthen the evidence base around:</p> <ul style="list-style-type: none"> • affordability of insurances, • scope and scale of uninsurable risks that are legacy risks of the previous use of flammable cladding as well as newly identified risks, • total impact of insurances costs on business, and <p>consider the options to encourage good design ensuring that insurance does not become a major impediment to the viability of Architecture practices at any scale.</p> |
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| Recommendation 6 → | That the Victorian Government, undertakes a review of its government procurement of Architectural services (inclusive of its consultancy contract requirements) to ensure that Architecture practices at different scale are all confident to engage in government work. This will help maintain a large field of competition to deliver greater choice and value for Victorians. |
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2.6 Independent oversight – Clerk of Works.

2.6.1 Outline of issues.

Historically, Clerks of Works ensured the independent oversight and reporting of a building project back to the owner/ developer. Present-day Design and Construct arrangements in Australia have all but generally made extinct the Clerk of Works as an independent consultancy continually present on the construction site for the purposes of oversight of construction and arbiter between client and contractor to assure quality. This extinction trend started in the 1980s. However, Clerk of Works remains a key project role in many other developed countries including the UK, USA, Hong Kong, Ireland, Spain and in developing countries such as Kenya..

The Royal Institute of British Architects (RIBA) regularly publishes a Clerk of Works and Site Inspector Handbook¹³. RIBA dates the role back to the Middle Ages¹⁴ and describes the important watchdog role on-site,

While a Clerk of Works is not empowered to issue instructions on site (unless formally acting in a supervisory role under a NEC contract), they can challenge contractors about why they have made changes and ask them to defend their decisions, and will report back to the client if not satisfied.

On site they will be on the lookout for any poor workmanship or defects in building works that could lead to time and cost problems further down the line. Any issues will be flagged up immediately rather than being compiled near to the end of a project. (Ibid).

There is also a separate Institute of Clerks of Works and Construction Inspectorate of Great Britain Incorporated founded in 1882¹⁵ It has been reported that, in the last three years in the UK, the number of Clerks of Works has doubled. In terms of costs, the British

¹³ See: <https://www.Architecture.com/riba-books/books/practice-and-business-management/product/9781859467114-clerk-of-works-and-site-inspector-handbook-2018-edition.html>

¹⁴ See: <https://www.Architecture.com/knowledge-and-resources/knowledge-landing-page/how-the-clerk-of-works-can-ensure-that-delivery-matches-design>

¹⁵ See: <https://www.icwci.org/page/?title=The+Organisation&pid=79>

adjudicator and barrister Tony Bingham once declared that: “The cost of a clerk of works per annum is cheaper than a day in court”.

This issue has also been raised in the NSW parliament in recent times in its November 2019 report on the Regulation of Building Standards, building quality and building disputes¹⁶ and included a recommendation (18),

That the NSW Government, including through the Building Commissioner, consider the merits of reintroducing a 'clerk of works' on projects of a significant scale as part of its review of its response to the Lambert report. (ibid)

The clerk of works is a full-time inspector of the works on behalf of the owner but exercises no executive authority and is usually under a site Architect's direction. Under current Design and Construct model in Australia, there is no Clerk of Works nor independent site Architect as the Architect's contract with the developer is novated to the building contractor – this is a fact that is not well understood by some within and the majority outside the construction industry. The inspection role is either managed by a project manager or the building contractor monitors construction progress and quality. Quality can very easily be undermined if the building contractor seeks inappropriate cost cutting.

The principal duties of the Clerk of Works are inspection of the works and the provision of written reports to the site Architect. Other duties may include:

- checking the quality of materials delivered to the site for inclusion in the works and their conformity with the contract documents
- recording the on-site issue of drawings and other documents
- arranging materials tests and recording the results
- keeping records of meetings
- recording weather conditions
- recording the daily workforce
- checking claims for payment
- making recommendations to the Architect

If a similar role to the Clerk of Works is reintroduced into the Victorian building system, it is imperative that the role be independent of the building contractor. This would mean that the position could not be paid by the building contractor. However, the cost of this would reduce the margin of error during construction and importantly the risk of costs of rectification, remediation, maintenance, and costs associated with evacuating apartment owners and tenants.

To address the issues of inaccurate as-built drawings and manuals/ warranties, the Clerk of Works should report to the site Architect and inform that role for appropriate issuing of

¹⁶ NSW Legislative Council Public Accountability Committee 2019. Regulation of building standards, building quality and building disputes : first report November 2019. NSW Parliament. Sourced from www.parliament.nsw.gov.au

these items.

With the imminent release of the Framework for Reform discussion paper for Victoria's Building System Review, there is an opportunity to lead on ensuring that consumers – building owners and developers – have an independent, reliable voice on their side without conflicting interests.

2.6.2 Our recommendation.

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| Recommendation 7 → | That the Victorian Government raises, as part of its consultation and deliberation on Building System Review and Reform, the options for ensuring that projects of particular scale, type or complexity have an independent on-site arbiter and overseer of the works contracted directly to the client – namely a Clerk of Works. |
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