



COMMISSIONER FOR
BETTER REGULATION

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10 March 2017

Ms Jenny Pequignot
Acting Director, Building
Planning, Building and Heritage
Department of Environment, Land, Water and Planning
Level 7, 8 Nicholson Street
EAST MELBOURNE VIC 3002

Dear Ms ~~Pequignot~~ *Jenny*,

REGULATORY IMPACT STATEMENT FOR THE BUILDING REGULATIONS 2017

I would like to thank you and the staff of the Planning, Building and Heritage Division within the Department of Environment, Land, Water and Planning (the Department) for working with my team on the preparation of the Regulatory Impact Statement (RIS) for the Building Regulations 2017, which sunset on 5 June 2017. (The operation of the Building Regulations 2006 was extended until 5 June 2017 by the Subordinate Legislation (Building Regulations 2006) Extension Regulation 2016, which were made in February 2016).

Under section 10 of the *Subordinate Legislation Act 1994* (the Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. The Commissioner's role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise you that the final version of the RIS received by us on 9 March 2017 meets the adequacy requirements of the Act.

The proposed Building Regulations deal with a wide range of complex issues relating to the design, construction, use and safety of buildings and places of public entertainment. They set detailed requirements for matters such as building permits, building inspections, occupancy permits, enforcement procedures and maintenance requirements, as well as prescribing qualifications and other matters relating to registration of building practitioners.

The Department makes it clear in the RIS that there are data limitations in terms of analysing the impacts of changes in Building Regulations. It recognises the need to improve the evidence base and outlines a plan to strengthen data collection (see comments later), and conduct a mid-cycle review in 2022, as required by the *Victorian Guide to Regulation* (the Guide) for 'high-impact' proposals. The RIS is seeking stakeholder feedback through a range of questions on aspects of the Proposed Regulations, to improve understanding of the potential impacts. It notes, however, that these questions are not intended to limit comment, and the Department welcomes feedback on other aspects of the proposed Regulations.

Consistent with the proportionate approach recommended in the Guide, the Department has focused on assessing the higher-impact aspects of the Regulations. The Department and the Victorian Building Authority (VBA) conducted a systematic prioritisation to determine the appropriate extent of analysis for different aspects of the Regulations. This prioritisation considered factors such as stakeholder views, evidence about the extent of the problems to be addressed, and the costs of specific regulations.

For the aspects of the Regulations that are examined in detail, a cost–benefit analysis was conducted for two (siting and amenity controls (Part 4 of the Regulations) and swimming pool requirements), with a mix of break-even analysis and Departmental judgements used to determine the preferred approach in other areas.

The RIS proposes a number of changes to the current Regulations. Some of these — such as the reduction in some reporting and documentation requirements — aim to reduce regulatory burdens (and costs), without compromising important health, safety and amenity objectives. Others will have the effect of increasing costs. In these cases, the RIS outlines clearly why the Department considers that the benefits will outweigh the costs, or why it believes the change is justified, even where there is uncertainty about the likely impacts of the change.

Following concerns raised by some stakeholders about the prevalence and cost of specific types of building defects, the Department outlines the proposal to introduce the following **three mandatory notification stages** in addition to the current four stages:

- prior to covering walls, floors or ceilings (to check fire resistance levels and that the structural integrity of the framework has been retained following subsequent work);
- prior to covering waterproofing in wet areas; and
- on completion of any external drainage/stormwater.

In the RIS, the Department estimates that adding these three notification stages to the existing four will increase costs by up to \$73.4 million annually, or \$620 million in net present value (NPV) terms over ten years. According to the RIS, the rationale for these additional stages is that:

The department expects that the benefits derived from additional inspection stages will exceed the costs of those inspections by reference to reduced number of undiscovered and unremedied building defects. This change is proposed based on emerging evidence gathered by the [Victorian Building] Authority as part of its research into failures in the built environment.

The Department notes that deficiencies in the available data mean that it has not been possible to undertake a full cost–benefit analysis . It is, therefore, important that the Department’s plans for evaluation (see later discussion) build on the VBA’s current work to enable the collection of further data about the benefits of the additional stages to building purchasers and further details of the costs. The RIS seeks specific feedback from stakeholders about their views of the likely impacts of these additional inspection stages to inform better the Department’s final recommendations.

The Regulations retain the ***Victorian variation to the Building Code of Australia in relation to sprinklers on balconies***, which requires sprinkler protection on balconies in high-rise residential buildings, regardless of the size of balconies. This measure was introduced in response to recommendations made by the Metropolitan Fire Brigade following a fire at the Lacrosse building in Docklands in November 2014, and was designed to mitigate the risks associated with fire spread in high-rise residential buildings. Given the Department’s concern to address this fire safety issue as a matter of urgency, a RIS was not undertaken at the time the measure was introduced. As the Department explains, estimates of the costs of requiring sprinklers on all such balconies were provided to the Premier and Scrutiny of Acts and Regulations Committee at the time. These estimates were based on (necessarily limited) consultation with stakeholders.

The RIS estimates that the cost of extending the requirements for sprinklers on balconies is about \$5 million per year in 2016, rising to \$6.6 million per year in 2019. In the RIS, the Department makes it clear why it considers that the benefits, including in terms of lives saved and serious injuries avoided, will outweigh these costs.

The Department’s commitment to include the impacts of this change as a specific focus of the mid-cycle review of the Regulations is important. This will help to assess whether this variation is the most effective way to address this important fire safety issue.

In the case of ***swimming pool barriers***, there are currently three sets of standards, depending on when the pool was built. Under the proposed Regulations, by October 2020, all existing and new swimming pools in Victoria will be required to have a four-sided isolation barrier that complies with the most recent Australian standard. Existing barriers which do not comply would need to be replaced or updated.

In the RIS, the Department explains the uncertainty surrounding estimates of the precise costs and benefits of this proposal, including in regard to the effectiveness of four-sided rather than three-sided barriers. Based on the available data as well as the Department’s assumptions, the RIS estimates that the average cost of a barrier upgrade will be between \$3600 and \$3900 for pre-1991 pools, and between \$1300 and \$1800 for pools built between 1991 and 2010. In aggregate, the RIS estimates that the requirement will impose costs of between \$221.4 million and \$395.8 million over the ten-year life of the Regulations, with quantified benefits of between \$115.6 million and \$185 million.

The Department explains that it sees merit in having only one standard and considers its preferred approach is the best option because its *‘main priority ... is the safety of people who are in and around swimming pools and spas, particularly young children who are most vulnerable and must be protected, as far as is possible, from drowning and near-drowning incidents’*. It notes, moreover, that a greater proportion of the burden associated with upgrades will fall on households with relatively higher incomes. Feedback is explicitly sought through the consultation questions in the RIS on the implementation aspects of this proposal.

There are several aspects of the proposed Regulations for which the Department has, for various reasons, proposed little or no change.

The siting and amenity controls in Part 4 of the Regulations mainly address issues such as overshadowing, overlooking, solar access, and streetscape considerations, and largely replicate clauses 54 and 55 of the Victorian Planning Provisions (VPP). The Department notes in the RIS that including these issues in the Building Regulations means that most new single dwellings, and alterations and extensions to single dwellings, will not require a planning permit, while ensuring that siting and amenity controls still apply to these developments. It has proposed remaking the current provisions as they are, concluding that they *'produce net benefits to stakeholders, given that building permit applicants would, in most cases, not need to also obtain a planning permit assessment, while providing adjoining owners benefits by ensuring amenity issues are taken into consideration'*.

The Department's cost-benefit analysis suggests that by reducing the number of approvals required to build a single dwelling, the Part 4 provisions reduce costs by about \$20 million annually, or \$170.6 million NPV over ten years, compared with a situation in which these requirements were not specified in the Regulations.

The Department explains that there could be scope to reduce burdens further without compromising amenity outcomes, and has included in the RIS consultation questions about some specific areas — such as allowable encroachments — where such scope may exist.

There are other areas for which the current Regulations are largely being remade, but the Department is proposing to undertake specific further work.

Some of these — such as removing certain requirements that stakeholders have suggested are duplicative or unnecessary — are identified in the RIS as *'other changes for future consideration'*, to enable evidence to be gathered about their potential costs and benefits.

In relation to fees, there was insufficient relevant data on which to base new fee levels and structures. As a result, fees are being made for a period of only three years to enable a detailed review to be conducted and new fees put in place by June 2020. The RIS outlines in detail how this review will be conducted.

Some options relating to building practitioner registration requirements cannot be implemented until legislative changes come into effect on 1 July 2017. Therefore, the Department intends to conduct a separate consultation process on registration issues such as new classes of registration, prescribed qualifications and any required transitional measures.

As noted earlier, the Department recognises the importance of improving the evidence base on building issues, as well as the significance of the challenge of doing this. The Department explains in the RIS how it will improve data collection to enable changes to Regulations to be more accurately estimated. The Department's plans include an evidence improvement project and a thorough evaluation strategy. The timing and nature of these initiatives are described in detail in the RIS. They include the following initiatives:

- a number of targeted stakeholder roundtable sessions, as part of the consultation process for the RIS, to seek preliminary comment on directions in the RIS, and to help to form a preliminary view on aspects that require further consideration;
- commence development, in July 2017, of a regulatory framework plan that will provide the basis for confirming priority actions, defining desired outcomes, and informing and refining the evaluation methodology, for the mid-cycle review of the Regulations;
- the evidence improvement project, to commence in 2017-18, which will involve identifying the core set of baseline data needed to assess the effectiveness of the regulations; and
- the development of at least two policy papers on priority topics each year in the three year period commencing in 2017-18.

The Department has foreshadowed that all of these initiatives will be underpinned by a collaborative approach, involving the VBA, industry groups, building practitioners, and building owners and/or occupants, local councils and fire authorities. This approach is to be commended because, as the Department notes in the RIS, each of these groups has a role to play in enabling *'the evidence improvement project to deliver a sound evaluation framework'*. This approach aims to improve the data surrounding building activities and, thereby, enable future policy changes to be more responsive to emerging issues and to deliver the best outcomes for Victorians.

As you know, one of the functions of my office is to support departments in developing and implementing evaluation plans. We welcome the opportunity to work with you and your colleagues as you develop these plans ahead of the mid-cycle review.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation