

Mr Andrew McKeegan
Deputy Secretary, Planning and Land Services
Department of Transport and Planning
Level 13, 1 Spring Street
MELBOURNE, VIC, 3000

20 January 2025

Dear Mr McKeegan,

REGULATORY IMPACT STATEMENT FOR BUILDING AMENDMENT (BUILDING MANUALS AND MANDATORY INSPECTIONS) REGULATIONS 2025

I would like to thank your staff at the Department of Transport and Planning (the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Statement (RIS) for the proposed Building Amendment (Building Manuals and Mandatory Inspections) Regulations 2025 (the proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 20 January 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and problems

The *Building Act 1993* (the Act) and the Building Regulations 2018 (the Regulations) provide the regulatory framework for all building and construction in Victoria. The Regulations establish standards for the design, construction, and maintenance of buildings in Victoria, and oblige relevant building surveyors (RBSs) to inspect construction work and ensure compliance with the Act and Regulations.

In the RIS, the Department explains that Victoria's building sector is a crucial driver of economic growth for the state, employing over 325,000 Victorians and accounting for 10 percent of the state's jobs. It explains that the sector will continue to play a critical role in the economy in the coming years in line with the Government's Housing Statement target

to build an additional 800,000 homes over the next decade, with apartments being a significant portion of this target.

However, the Department notes that recent reviews, such as the Building Confidence Report and Expert Panel on Building Reform, have found that Victoria's building system is failing to ensure that new apartment construction is safe and compliant with building standards. The Department cites data from the VBA's Proactive Inspection Program, which found compliance risks in 78 per cent of inspected apartments and other similar buildings, compared to 51 per cent for detached residential buildings. The Department argues that the high prevalence of defects as well as several high-profile building failures have eroded the public's confidence in the building system. It also highlights the significant costs to Victorian consumers of rectifying defects, estimated at approximately \$1 billion annually.

In the RIS, the Department considers problems relating to information asymmetry and non-compliance in complex building classes. In the RIS, the Department explains buildings such as class 2 buildings (residential apartments) are more complex than class 1 buildings (single dwelling residences) due to design considerations, and having multiple occupancies, shared facilities, and strata management. The Department also notes that there is a higher prevalence of defects in complex buildings, such as apartment buildings, and that defects are more costly to rectify in these buildings. The Department notes that the current Regulations do not impose more stringent requirements on class 2 and similar buildings, despite greater complexity and risks.

The Department explains that many building owners and owners corporations have difficulty accessing building documentation, which is not consistently transferred from builders and RBSs to owners. Poor information-sharing practices have hindered owners' efforts to maintain buildings and essential safety measures, replace assets, and identify and address defects. In response to this problem, the *Building Legislation Amendment Act 2023* introduced the requirement for builders to prepare a building manual for new buildings, which must be maintained and updated by owners throughout the building's lifespan. However, to take effect, the Regulations must be amended to prescribe the scope of buildings and the detailed requirements of the manual.

The Department also explains that, under the current Regulations, the RBS is required to cause an inspection when construction work reaches one of five 'mandatory notification stages.' However, inspections are not currently required prior to covering framework or after completing waterproofing works. This means defects at these stages often go unnoticed and unrectified during construction, which can result in significant rectification costs and health and safety risks to residents in the future.

Options and impact analysis

There are two parts to the Departments' analysis in the RIS. First, the Department identifies and analyses options for requiring a building manual to be prepared and updated annually to include new building works on common property or shared property. Second, the Department identifies and analyses options for requiring additional inspections of buildings during construction.

Due to the difficulty in quantifying the benefits of both proposals, a multi-criteria analysis (MCA) is conducted to identify the Department's preferred option. The criteria considered includes:

- Costs to builders
- Costs to RBSs
- Cost to government
- Costs to building owners/owners corporations*
- Reduced risk of building defects and associated harms
- Improved efficiency of the building system*

* These criteria are only considered for the building manual options analysis.

The Department then conducts a break-even analysis for each proposal to determine whether the benefits of the preferred option are likely to exceed the costs. In the RIS, the Department explains that this break-even only considers the most readily quantifiable benefits, and notes other benefits are not captured in this analysis.

Building manual

For the building manual, the Department analyses three options:

- **Option 1:** Building manual for new Class 2 buildings.
- **Option 2:** Building manual for new Class 2 and Class 3¹ buildings.
- **Option 3:** Building manual for new Class 1b,² 2, and 3 buildings.

The contents of the draft building manual would largely consolidate documentation already required under the Act and Regulations. The manual must be stored in an accessible, open-file format, and the RBS must assess the manual for completeness before issuing an occupancy permit. Building owners must provide a copy to the Victorian Building Authority (VBA)³ after issuance of the occupancy permit and annual updates. Emergency services, local councils, building practitioners, the Victorian Energy Safety Commission, and Homes Victoria may also request access to the manual.

The Department identifies Option 3 as the preferred option for introducing a building manual, as its broad scope generates the greatest benefit and imposes little additional cost to industry when compared to Options 1 and 2. It explains that the collation of building documentation into a manual will save building owners' time, help owners make more informed decisions related to maintenance, repairs and upgrades, and reduce the risk of defects and associated harms.

¹ Class 3 buildings refer to residential buildings providing long-term or transient accommodation for unrelated persons (e.g. boarding houses, hotels, hostels, student accommodation, etc.).

² Class 1b buildings refer to boarding houses, guest houses or hostels with a less than 300 m² floor area.

³ In October 2024, the Government announced that the VBA will be replaced with the Building & Plumbing Commission in 2025.

The Department estimates that Option 3 will have a cost of \$108 million⁴ in present value terms over a ten-year period, comprised of:

- \$23 million for builders to prepare building manuals;
- \$10 million for RBSs to review and approve the manuals;
- \$76 million for building owners and owners' corporations to update and maintain the manuals; and
- \$450,000 for government to prepare guidance materials and store the manuals.

The Department notes that some of these costs may be passed on to end consumers.

The Department's breakeven analysis assesses the amount of time a building owner needs to save by using the manual to 'cover' the cost of developing and approving the manual. For each building type, the hours of time saved needed for the benefits to outweigh the costs are:

- Class 1b: Owners need to save 57 hours over the building's life (valued at \$3,200);
- Class 2: Owners need to save 114 hours (valued at \$6,500); and
- Class 3: Owners need to save 133 hours (valued at \$7,600).

The Department notes that stakeholder feedback relating to the potential time savings of having the building manual varied greatly. However, it argues that the benefits of the preferred option are likely to exceed the costs when considering the many other benefits that are not considered in the analysis, such as improved compliance and safety.

Additional inspections

The Department considers three options related to additional inspections at the pre-lining and waterproofing stages of construction for class 2, 3 and 4⁵ buildings:

- **Option 1:** Encourage additional inspections through a non-binding practice note (non-regulatory option).
- **Option 2:** Amend the Building Regulations to require additional mandatory inspections, supported by prescriptive requirements in the Regulations.
- **Option 3:** Amend the Building Regulations to require additional mandatory inspections, supported by risk-based guidance in a Ministerial Guideline.

The Department identifies Option 3 as its preferred option. It argues that the regulatory approach of Options Two and Three will ensure a much higher level of compliance among RBSs in conducting additional inspections compared to Option 1. The Department assesses that Option 3 will be the costliest to industry, but the additional costs compared to Option 2 are small and are offset by Option 3's greater effectiveness and flexibility.

The Department explains that the Ministerial Guideline, while still enforceable, provides more flexibility for RBSs to tailor their inspections according to the risks of a particular

⁴ Due to rounding, the sum of the costs to various groups does not add to \$108 million.

⁵ Class 4 buildings refer to single domestic dwellings within a building of a non-residential nature.

project. Compared to the prescriptive, 'one-size-fits-all' approach of Option 2, the Department expects that Option 3 will result in more thorough inspections for high-risk projects, while reducing regulatory burden for low-risk projects. It argues the risk assessment required under Option 3 is more likely to identify non-compliance, while incentivising builders to proactively mitigate risks on projects.

The Department estimates the preferred option will cost \$113 million in present value terms over the next ten years, comprised of:

- \$79 million in time and delay costs to builders;
- \$34 million for RBSs to conduct the additional inspections; and
- \$65,000 for government to prepare guidance and education materials.

In its breakeven analysis, the Department finds that Option 3 needs to reduce non-compliance in apartment construction by 12 per cent for the benefits to exceed the costs. It argues that this breakeven point is achievable, as recent reports have estimated that more frequent inspections could reduce non-compliance by over 30 per cent.

Implementation and Evaluation

In the RIS, the Department explains that the proposed Regulations will not come into effect until at least six months after they are made. The Department anticipates that the Regulations will be made by June 2025. The Department commits to working with the VBA to communicate the new requirements and provide guidance to key stakeholders, such as builders and RBSs.

As the proposed Regulations are expected to be high impact, the Department commits to conducting a mid-term evaluation of the building manual and additional mandatory inspections. The mid-term evaluation will take place in 2028, as part of the sunset review of the Building Regulations 2018. This review will focus on assessing whether the proposed Regulations are meeting their objectives, such as bridging information gaps for building owners and reducing rates of non-compliance. The Department will work with the VBA to collect data and stakeholder feedback for this sunset review.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cressida Wall', with a stylized, looping flourish at the end.

Cressida Wall

Commissioner for Better Regulation