

Stuart Moseley
Deputy Secretary, Housing Building and Land Delivery
Department of Transport and Planning
1 Spring Street
MELBOURNE VIC 3000

12 December 2025

Dear Mr Moseley,

REGULATORY IMPACT STATEMENT FOR THE BUILDING BUYER PROTECTIONS REGULATIONS

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 (Rectification Orders) Regulations 2025, the Building (Developer Bonds) Regulations 2025, and the Building (Statutory Insurance Scheme) Regulations 2025 (collectively, the proposed Regulations).

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 11 December 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

BACKGROUND AND PROBLEMS

As a result of several high-profile industry failures, where widespread non-compliance and poor construction practice resulted in a high burden on homeowners to remediate building defects, Parliament passed the *Building Legislation Amendment (Buyer Protections) Act 2025*.

The Act introduces a range of initiatives to enhance consumer protections, improve the quality of building work and strengthen regulatory oversight.

While the Act provides the broad legislative framework, regulations are needed to detail their implementation. This RIS assesses these proposed Regulations, which consist of three key reforms:

- **Developer bond scheme (DBS)**, which requires developers of any residential apartment building that is four storeys or above to issue a bond of 2 per cent of the total build cost in favour of the Building and Plumbing Commission (BPC). This bond would be claimed by the owners corporation to rectify reportable defective building work identified in the approved building assessor's final report.
- **First-resort Home Warranty Scheme (FHWS)**, which replaces the existing 'last-resort' domestic building insurance (DBI) model with a 'first-resort' warranty scheme for domestic buildings that are three storeys or less. This will enable consumers to make claims without the previous DBI triggers of the builder's death, insolvency, or disappearance.
- **Rectification orders (ROs)**, which empowers the BPC to issue orders requiring builders, developers, or other responsible parties to rectify defective, non-compliant, or incomplete work.

OPTIONS AND ANALYSIS – DEVELOPER BOND SCHEME

Definition of defective work

In the RIS, the Department distinguishes between "defective" and "non-compliant" work to determine the scope of the DBS. The Department explains that:

- "Defective" building work is any work that breaches any warranty listed in Section 8 of the Domestic Building Contracts Act 1995 (DBC Act) or fails to maintain a standard or quality of building work specified in the domestic building contract under which the work is being carried out.
- "Non-compliant" building work is any work in breach of the building permit and/or the building laws, including the Building Act, the Building Regulations 2018 and the Plumbing Regulations 2018. All non-compliant domestic building work is also defective domestic building work because the statutory warranty in section 8(c) of the DBC Act provide protections against building work that does not comply with relevant laws and legal requirements.

In determining the scope of reportable defective building work for the DBS, the Department also considers different areas of an apartment building where defective building work may occur, and distinguishes between "private residential lots" and "common property". "Private residential lots" are the residential apartment lots that are separately bought and sold, and "common property" includes common areas (e.g., stairwells, driveways and gardens). Residential apartment buildings can also sometimes contain non-residential lots such as cafes or shops. The Department has included coverage of any serious defects in non-residential lots within the scope of reportable defective building work for all regulatory options. A 'serious defect' is defined in Part 5 of the Building Legislation Amendment (Buyer Protections) Act 2025 as:

- a defect in a major building element that is caused by non-compliant work; or
- a defect in the building work or in a building product that either has a defective design, workmanship or materials that can cause the building to be uninhabitable, destroyed or collapse; or
- the use of unsafe building products; or
- any other prescribed defects.

The Department considers three options for the scope of reportable defective building work for the DBS, which are assessed using a multi-criteria analysis (MCA):

- **Option 1:** DBS covers all defective building work in both common property and private residential lots.
- **Option 2:** DBS covers all defective work in common property, but only covers non-compliant work in private residential lots.
- **Option 3:** DBS covers non-compliant work only for both common property and private residential lots.

Option 1 receives the highest weighted score in the MCA and is selected as the preferred option. While Option 1 is the most costly to developers, consumers and Government, the Department explains that this option provides the broadest coverage for apartment owners. As such, it is more likely than the other two options to reduce the risk of minor defects escalating into more serious safety hazards, thereby also being the most likely to increase consumer confidence. These benefits are expected to outweigh the higher costs to developers and Government resulting from the higher complexity of inspections and compliance processes with this option.

The Department uses an illustrative case study to estimate that the DBS as a whole will redistribute the financial responsibility for defect rectification by transferring \$244 million annually from lot owners to developers, reducing owner costs by approximately 40 per cent. While the total net impact of rectifying defects remains unchanged, the distribution of direct rectification costs is materially improved for consumers. Across an estimated 400 developer bonds to be issued annually, the Department estimates the total compliance costs are estimated at \$31.2 million statewide, predominantly driven by issuing the developer bond in the form of bank guarantees.

The Department acknowledges that these estimates are not precise forecasts but serve to demonstrate the likely scale and distribution of costs under the scheme and to provide context for the regulatory impacts. The department has used a break-even analysis to estimate the point at which the expected benefits of the preferred option equals the costs of the DBS. This analysis indicates that when considering the average value of an avoided defect¹, an average of six defects would need to be avoided per residential

¹ This is assumed to be \$13,000 per defect, which is derived from modelling by the Centre for International Economics.

apartment building to cover the associated per-building compliance costs². The Department considers that this is feasible, given historical defect data shows an average apartment building with 66 lots is expected to have approximately 132 defects. As the DBS is expected to incentivise improved construction practices and accountability among developers, the DBS is well positioned to reduce defect rates and contribute to economic savings that offset its compliance costs.

Building assessor qualifications

The Department also considers three options for prescribing the qualifications required for a person to be appointed as a building assessor for the purposes of the DBS. These options are assessed through a separate MCA:

- **Option 1** allows any building practitioner who holds a registration as a building surveyor (unlimited), a building inspector (unlimited) or as a domestic builder (unlimited) to be a qualified building assessor.
- **Option 2** allows a prescribed list of authorised professional associations to accredit individuals as suitably qualified building assessors.
- **Option 3** expands on Option 1 by allowing the BPC to deem a suitably experienced and qualified applicant as a qualified building assessor. Assessors deemed suitable by the BPC may not need to hold a current registration. Additionally, as with Option 1, any building practitioner who holds an active registration as a building surveyor (unlimited), a building inspector (unlimited) or as a domestic builder (unlimited) is automatically deemed a qualified building assessor.

Option 3 receives the highest weighted score in the MCA and is selected as the preferred option. As Option 3 has the broadest eligibility, the Department assesses that it reduces the risk of delays to the DBS from workforce shortages, and therefore offers the most consumer protection. While the Department does not quantify the costs imposed under these options, it assesses that Option 3 imposes the highest costs for practitioners and Government due to additional administrative requirements.

The Department explains that three new fees associated with the DBS will be introduced, which are expected to raise \$930,460 in annual revenue. These fees relate to:

- Developers notifying the BPC that a developer bond has been issued.
- The BPC appointing a building assessor when required.
- The BPC considering an exemption for a building assessor from preparing a final inspection report if the preliminary inspection did not identify any reportable defective work.

OPTIONS AND ANALYSIS - FIRST-RESORT HOME WARRANTY SCHEME

² The Department estimates compliance costs of the DBS to be \$78,000 on a per-building/per-bond basis.

The Department explains that regulations are required to prescribe the following parameters for the First-resort Home Warranty Scheme (FHWS):

- The types of assistance available to consumers under the FHWS.
- The types of defects and periods of cover the FHWS applies to the building work.
- The maximum amount of cover.
- Exclusion to cover.
- Claim management.
- Builder notification time periods and methods.

The Department considers three options for these parameters, which are assessed through another separate MCA:

- **Option 1:** Parameters for each area are aligned to the previous 'last-resort' Victorian DBI scheme, however consumers can lodge a claim as a 'first-resort'.
- **Option 2:** Bespoke parameters that expand on the Victorian DBI scheme with added elements of the Queensland Home Warranty Scheme (the only other first-resort insurance scheme in Australia). Option 2 introduces key changes to the FHWS based on those two schemes, and gives greater clarity about the cover periods for major and other defects, and higher maximum amounts of cover. Exclusions and claims processes under Option 2 are aligned with the two schemes.
- **Option 3:** Parameters for each area are completely aligned to the Queensland Home Warranty Scheme.

Appendix E of the RIS contains further details about the parameters under each option.

Option 2 receives the highest weighted score in the MCA and is selected as the preferred option. The Department considers that Option 2 creates the largest financial and reputational incentives for builders to undertake rigorous quality assurance throughout the construction process. Relatedly, Option 2 is expected to be most effective in reducing risks for consumers from incomplete work or after a defect or non-compliant work is identified.

The Department also assesses Option 2 to be most consistent with best practice, industry recommendations and existing and planned Victorian legislation.

The Department expects that, compared to current arrangements, consumers will experience reduced costs under Option 2. The Department explains that the biggest cost savings stems from avoided lengthy and costly mediation and litigation, as the consumer will be able to access assistance from the BPC even if the builder is still active. In addition, increased cover limit will reduce out-of-pocket costs for consumers, and having longer periods of cover reduces the likelihood of consumers having to fund repairs themselves. The Department explains that it considered preliminary actuarial advice to determine whether the 'first-resort' scheme would increase insurance premiums. The advice indicated that premiums may increase however the impact is mitigated by the BPC's enhanced enforcement powers, such as rectification orders, will place greater emphasis on compelling rectification, rather than progressing insurance claims.

The Department notes that Option 2 imposes the highest compliance and administrative costs to industry and costs to Government. However, the RIS does not quantify the additional costs to industry because defects are currently resolved through multiple pathways. Existing DBI claims data and DBDRV/VCAT information provide only a partial picture and do not capture the rectification costs incurred by builders who resolve issues before a formal dispute process is triggered. The RIS also notes that defects and non-compliant work are unlawful, and therefore the costs of rectifying illegal work are not considered a regulatory burden. While the Department argues that a 'first-resort' scheme can reduce overall rectification costs by ensuring defects are addressed before they worsen, it estimates that the administrative burden on the BPC to manage claims under this model would be approximately \$3.3 million per year.

As with the DBS, the Department acknowledges data limitations relating to the FHWS in the RIS and therefore supplements the MCA with a breakeven analysis. This analysis indicates that, when only considering the cost of dispute resolution that would be avoided by Government, the FHWS would need to prevent 25 per cent of building-related disputes escalating to the Victorian Civil and Administrative Tribunal (VCAT) for the FHWS to breakeven.

The Department considers this is feasible given it expects most claims would be resolved by the BPC before progressing to VCAT.

OPTIONS – RECTIFICATION ORDERS (ROs)

The Department explains that regulations are required to prescribe the information that will be contained in an RO as well as the details that will be available to the public on an online register when an RO is issued. The Department explains that the proposed Regulations will prescribe that an RO must contain any conditions specified by the BPC, and that information about ROs will be published.

The Department expects only minor costs to be imposed on industry, consumers and the BPC as a result of ROs, given the scope and requirements of the RO come from the *Building Legislation Amendment (Buyer Protections) Act 2025*. As such, RO requirements are not subject to detailed options analysis in the RIS.

IMPLEMENTATION AND EVALUATION

The Department explains that the proposed Regulations will commence by 1 July 2026. The Department and the BPC will work with key stakeholders to ensure the industry is appropriately informed and prepared for the Regulations and the changes they will bring. They will also both monitor the implementation of the proposed Regulations.

Throughout the RIS, the Department acknowledges several uncertainties about the potential effects of the proposed Regulations due to data gaps, and also acknowledges that actual impacts for various stakeholders will differ from the expected outcome. In the RIS, the Department outlines questions for stakeholders, upon which it is seeking advice and input.

The Department commits to a mid-term evaluation of regulations relating to the FHWS and DBS (which are being introduced as standalone Regulations) in 2031. However, the Department explains provisions relating to ROs will be housed in the Building Regulations 2018, which sunset in 2028. As these provisions would have been in effect for two years, DTP considers that a mid-term evaluation of these measures would be premature and unlikely to produce reliable outcomes. Therefore, it does not commit to a mid-term evaluation of these provisions.

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 'Katrina McKenzie'.

Katrina McKenzie

Commissioner for Better Regulation