



SUBMISSION BY THE  
**Housing Industry Association**

to the  
**Victorian Competition & Efficiency Commission**  
on the  
**Inquiry into Victoria's Regulatory Framework**  
December 2010

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## HIA Submission

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## 1. Introduction

HIA represents over 42,000 members nationally, with some 13,000 members in Victoria. HIA members comprise all major building industry manufacturers and suppliers, including all Top 100 builders, as well as small to medium builder members, developers, contractors and consultants to the industry. In total HIA members construct over 85% of the nation's new housing stock.

This submission outlines the importance of continued reform of regulation which impacts the housing industry, so that investment in residential housing construction is encouraged.

Regulatory reform must continue to be part of the Government's wider micro-economic agenda to develop a healthy and productive business environment. Government should review and remove any regulation which is not efficient in cost-benefit terms.

## 2. Regulatory Framework Inquiry

HIA appreciates the opportunity to provide comment to the Inquiry into Victoria's Regulatory Framework. The Housing Industry Association (HIA) is keen to make comments as the recommendations from the inquiry have the potential to affect our members.

HIA has made previous submissions to VCEC concerning planning, building and environmental regulation. The relevant inquiries were:

- *Inquiry into Streamlining Local Government Regulation*
- *Inquiry into Environmental Regulation in Victoria*
- *Inquiry into regulation of the housing construction sector & related issues*

This submission addresses the following Terms of Reference for the VCEC Inquiry into Victoria's Regulatory Framework:

- 1) *specific areas of Victoria's regulation which are unnecessarily burdensome, complex, redundant or duplicative***
- 2) *those areas of regulation that should be reformed or reduced as a matter of priority***

## 3. Victoria's Planning System

A number of HIA's recommendations for regulatory reform relate to reducing unnecessary or duplicative planning and building controls and encourage more effective procedures to reduce development approval timeframes.

Planning decisions taken by both state and local governments are among the major contributors to escalating regulatory costs facing the housing industry. Planning decisions which are beyond the reach of a Regulatory Impact Statement process are of major concern. At the State level, planning policies have, by significantly restricting the availability of land for new housing, greatly increased the land cost component in new house and land packages. These decisions, and decisions on related matters such as the application of development charges, are increasingly leading to major housing affordability problems.

There is also growing tendency for local government to use planning powers to address non-planning related issues, such as access, energy efficiency and stormwater



management. As well as representing an inappropriate use of powers such decisions create substantial problems of regulatory inconsistencies between local government areas and reduce predictability as to regulatory requirements. These factors can impede the operation of the building industry and significantly increase its costs.

One of the most significant impacts on the cost associated with the planning regulation is the delay associated with the planning permit process. Unexpected delays may be caused by poor local government administration, under resourced planning departments, unwarranted objections and ever increasing layers of planning controls to be considered. These delays have significant impacts on the viability of small building impacts because of holding costs and loss of income.

### **Issue**

HIA members often report of the significant differences in the level of information required by different Councils and individual Council officers when lodging an application. Councils frequently state that the level of detail provided by applicants is inadequate and all too often this is well after the application has been lodged.

Local council planners can request further information but it is often appears to be used as a mechanism to 'stop the clock', thereby giving more time to meet statutory timeframes.

HIA is of the view that if pre-application meetings were held and pre-lodgement certification by private practitioners was permitted across the State, this would make a substantial improvement to the standard of application lodgement and processing timeframes.

### **Recommendation**

- *Some form of private certification being permitted in all municipalities for a wide range of planning applications, similar to that already in place with the building permit process.*
- *Pre-application meeting processes should be formalised and made available for all types of planning applications by all local councils.*

### **Issue**

The rights of individuals to participate in the planning process is important, however this needs to be balanced against the cost to the community at large in respect to the time taken to consider and determine an application. Guidance on how Councils should manage objections that are non-planning or where objections are not submitted in a timely manner should be provided.

More precise notification requirements would significantly benefit the planning process. Councils have traditionally erred on the side of safety, tending to over advertise to parties they perceive would be affected by a proposal. However, many recipients of the notification may not have any reasonable grounds for objection.

Without guidelines for advertising, applicants in different municipalities are subject to different advertising requirements for similar applications. Broad advertising procedures have driven a culture that if notification is received, it is an invitation to object to a proposal.

By standardising the notification requirements and guiding potential objectors with a more structured objection form that outlines the reasonable grounds, objections would



be limited to those with legitimate concerns including material detriment and loss of amenity. Disruptive and unfounded objections would be less frequent.

**Recommendation**

- *Standardised notification processes for specific types of planning applications.*
- *Remove the ability for third party objections to be lodged after the specified period.*

**Issue**

Planners commonly assess applications against Council policies and guidelines that do not form part of the planning scheme and planning permits are often issued with conditions that are based on these policies. HIA members are frustrated by the use of ‘under the counter policies’, such as sustainable building policies, that have not been endorsed by the State Government through a planning scheme amendment process.

**Recommendation**

- *Directing local councils and referral authorities to refrain from assessing applications against policies and guides that do not form part of the planning scheme.*

**Issue**

Councils regularly fail to meet the legislated time limit of 60 days to make a determination. The latest Planning Permit Activity Report (2008/09) demonstrated that only 62 per cent were within the statutory timeframe.

While applicants can seek a review at VCAT concerning a ‘Council’s failure to determine’, there are currently long delays in having the matter scheduled for hearing and determination. Appeals to VCAT can also generate antagonism between the applicant and Council, which is a position that should be avoided.

**Recommendation**

- *Introduce incentives (or penalties) to encourage local councils and referral authorities to comply with statutory timeframes.*
- *That a deemed to consent provision is included in the Planning and Environment Act to ensure that referral authorities are undertaking assessment of applications in a timely manner.*

**Issue**

The increasing workload for planners results in significant backlogs and applicant frustration. These factors can only serve to provide a poor working environment for planners, leading to high turnover rates and lengthy approval timeframes given the number of planning policies and issues that need to be considered.

Although assessment of planning scheme amendments requires planning authorities to address strategic assessment guidelines and the environmental, social and economics effects, there is insufficient consideration by planning authorities of the effect of new planning controls on the cost of housing.

### **Recommendation**

- *State and local governments need to include an assessment of the costs and benefits of any planning scheme amendment to ensure that there is no undue effect on housing affordability.*

HIA continues to support the Development Assessment Forum (DAF) 'Leading Practice Model for Development Assessment in Australia', as it offers a model for streamlining the planning process in Victoria.

The DAF leading practice model proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

The introduction of the assessment tracks will allow for greater efficiencies for the issuing of determinations, enable more experienced planners to focus on more complex applications and development of strategic plans and allow graduate planners to focus on simpler assessments.

### **Recommendation**

- *Develop a planning framework that supports the 'Leading Practice Model for Development Assessment' for all development assessments across all Victorian Councils.*

### **HIA's key recommendations for planning regulation reform:**

- *Some form of private certification being permitted in all municipalities for a wide range of planning applications, similar to that already in place with the building permit process.*
- *Pre-application meeting processes should be formalised and made available for all types of planning applications by all local councils.*
- *The State Government should establish an agreed list of basic information to be provided with all development applications to provide a consistent checklist for councils and applicants.*
- *Standardised notification processes for specific types of planning applications.*
- *Remove the ability for third party objections to be lodged after the specified period.*
- *Directing local councils and referral authorities to refrain from assessing applications against policies and guides that do not form part of the planning scheme.*
- *Introduce incentives (or penalties) to encourage local councils and referral authorities to comply with statutory timeframes.*
- *Introduce a deemed to consent provision is included in the Planning and Environment Act to ensure that referral authorities are undertaking assessment of applications in a timely manner.*



- *State and local governments need to include an assessment of the costs and benefits of any planning scheme amendment to ensure that there is no undue effect on housing affordability.*
- *Develop a planning framework that supports the 'Leading Practice Model for Development Assessment' for all development assessments across all Victorian Councils.*

#### **4. Victorian Building Regulation**

##### **Issue**

In relation to Victoria's 5 star energy efficiency standard for new housing, building permit applicants can be required to obtain consent from both the Plumbing Industry Commission and the relevant building surveyor, if an alternative solution is proposed for the water saving features.

In Victoria, to achieve the 5 star energy efficiency standard, in addition to the national energy efficiency provisions under the Building Code of Australia, there is a requirement for either a solar hot water service or a rainwater tank for toilet flushing to be installed for all new housing.

These requirements are implemented through a State variation to the Building Code of Australia and are also regulated through Plumbing Regulations 2008.

There are often circumstances where an applicant may seek an alternative water saving solution to installing a rainwater tank or solar hot water service. For example, new housing estates often provide treated greywater for gardens and toilets therefore reducing a household's need for a rainwater tank. If a building permit applicant proposed to modify the 5 star standard water saving provisions, both the relevant building surveyor is required to assess the alternative solution under the Building Code of Australia and the Victorian Building Regulations 2006 however Plumbing Industry Commission would also be required to assess the solution under the Victorian Plumbing Regulations 2008.

HIA believes this dual consent requirement is a result of the overlap of the Building Code of Australia and the Plumbing Regulations 2008 in mandating energy and water provisions of Victoria's 5 Star Standard.

##### **Recommendation**

- *The State Government develop a single compliance pathway and remove dual consent requirement from the Plumbing Commission and the relevant building surveyor for modifications to the 5 star water saving requirements.*
- *The State Government put an end to State variations to the Building Code of Australia in keeping with the Australian Building Codes Board's Variation Reduction Strategy.*

##### **Issue**

There is a requirement of the Victorian Building Regulations 2006 for walls on boundaries which creates risks of non-compliance through lack of technical knowledge and possible moisture ingress into buildings through an inferior construction method. This building regulation is dealt with via Clause 54 or Clause 55 (Standard A11 or B18) of the Victorian planning provisions is a ResCode assessment is undertaken for the purposes of a planning permit.



Regulation 415 of the Victorian Building Regulations 2006 (1) (a) , relating to walls on or within 150mm of the boundary, does not provide an adequate distance for standard building elements to be incorporated into the construction and there are unintended consequences resulting from this regulation.

The intent of the Building Regulation 415 is to prevent storage of flammable materials in the space but the maximum setback creates an issue in relation to standard building elements. A minimum of 200mm is required for a 32mm fascia board and a 150mm wide gutter however the regulation allows a wall to be constructed within a 150mm setback. To comply with this regulation a non-standard method of construction needs to be adopted which can create issues with moisture ingress and aesthetics and can also be cost prohibitive. A report and consent is required to vary the setback requirement which creates delays, administrative burden and additional costs for an applicant.

It is common knowledge in the industry that this regulation creates problems. Most municipal building surveyors would attest to this due to the number of report and consent they are involved with in relation to this issue. The attached diagram will also substantiate the issue.

### **Recommendation**

- *The Department of Planning and Community Development alter the Victorian planning provisions (Standard A11 and B18) and the Building Regulations 2006 (415 (1)(a)) to allow walls on or within 200mm of the boundary to accommodate standard building elements that will remove the need to adopt an inferior method of construction or obtain a report and consent for the purpose of a Building Permit.*

### **Issue**

HIA is disappointed that the fee for consideration by a reporting authority under section 29A of the Building Act 1983 remains. The process developed under Section 29A was only ever intended to be a stop gap measure – to provide time for Councils to implement their heritage overlays. It is some 5 years since the introduction of this requirement - ample time for Councils to implement a heritage overlay.

The Section 29A process is a major time consumer for industry, as it applies to almost all additions and alterations and demolitions. HIA would strongly suggest that no fee be attributed to this function to encourage Councils to implement any outstanding heritage overlays at the earliest possible time. This section in the Act then could be abolished. Those Councils who have implemented a heritage overlay are receiving double fees, one through the planning system and the Section 29A process in the building system.

In any event, the times asserted in the RIS are out of step with reality – the function is limited to reference to a list containing heritage or notable properties, which can be performed by a base administrative officer in approximately 5 minutes.

### **Recommendation**

- *Remove fee for report and consent under 29A.*



- *Consider abolishing this section of the overlay as local councils have the power to introduce interim heritage overlays while permanent overlays are being considered.*

## **5. Victoria’s Occupational Health and Safety Laws**

### **Issue**

The quantity and complexity of OHS regulation is of significant concern for HIA members who usually rank OHS regulation as one of the major regulatory burdens, along with other business laws.

While the current national harmonisation of OHS laws aims to remove duplication of OHS laws and may reduce the regulatory burden for businesses that operate across borders, harmonisation also means that most states and territories will have to pick up OHS laws that they currently do not have but that apply in other jurisdictions. A key concern for HIA members is that this is likely to wipe out any regulatory duplication removal benefit for the great majority of Australian businesses, as they do not operate across borders and will, in effect, be burdened with a net increase in the quantity and complexity of OHS regulation.

### **Recommendation**

- *The State Government ensure that as a result of national harmonisation, no additional regulatory burdens are imposed on the building industry.*

## **6. Other areas Victoria’s legislation which are unnecessarily burdensome**

### **Issue**

The regulation of domestic building and contracting in Victoria is significantly burdensome and creates confusion for builders, trades, suppliers and owners.

The following areas of legislation are considered unnecessarily complex and burdensome and should be considered for reform.

### **6.1 The Domestic Building Contracts Act**

Aspects of the Domestic Building Contracts Act requiring specific attention include:

- the dispute resolution procedure between owners and builders, (both legislative and administrative);
- definitions and thresholds of legislative cover;
- preliminary agreements, particularly following the Glenvil decision;
- caveats and protection for builders;
- the definition of completion.

### **6.2 The Overall Regulation of Domestic Building in Victoria**

The Building Commission and Consumer Affairs Victoria are both involved in the regulation of domestic building in Victoria.

This creates significant duplication of administration, compliance and enforcement roles of the executive and increases the confusion of owners and builders.



In addition to the regulators, the housing industry is also subject to the additional application of the Fair Trading Act, creating general rights and obligations against a background of specific legislation.

### **6.3 Owner-Builders**

Owner-builders represent a significant part of housing construction in Victoria. However, owner-builders are not subject to the same legislative requirements and enforcement as registered builders.

This results in adverse outcomes, both for consumers and the industry as a whole.

### **6.4 The Security of Payments Act**

The Security of Payments Act represents a complex and difficult process for claiming payments.

The processes are not easily understood by participants and represent a more costly and complex method when compared to other traditional methods of litigation.

### **6.5 Independent Contractors and Workcover**

Principals and independent contractors are subject to the 'deeming' provisions of the Accident Compensation Act.

The deeming provisions of the Accident Compensation Act are complex and difficult to apply, creating uncertainty and commercial risk for the construction industry.

This area of law urgently needs clarification to ensure certainty for principals and subcontractors.

### ***Recommendation***

- *The State Government review the areas of legislation discussed in this section with a view to clarifying and streamlining the unnecessary regulatory burden created by each.*

## **7. Conclusion**

In a climate of deteriorating housing affordability HIA strongly advocates that regulations must not unnecessarily delay the design, planning, approval and construction stages of residential development.

HIA hopes this list of items will inform the preparation of the draft report. HIA is keen to continue to be part of the process and will make further, more detailed comments once the issues paper becomes available.

If you require any further information in relation to this submission or wish to discuss these comments in detail please do not hesitate to contact either Fiona Nield or Emily Waters 9280 8200.