HIA Submission

Proposed Domestic Building Contracts Amendment Regulations 2026

Department of Transport and Planning

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Contents

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Introduction

The Housing Industry Association (HIA) welcomes the opportunity to provide a submission in response to the proposed *Domestic Building Contracts Amendment Regulations 2026* (Draft Regulations).

HIA represents Australia's residential building industry, including the nation's largest volume home builders, apartment builders, land developers, suppliers and contractors. Our members are responsible for delivering over 80% of Australia's new housing supply each year. Our members are also responsible for renovations, extensions, additions and other building work on existing homes though in these segments they unfortunately compete against a significant grey market. This submission sets out HIA's assessment of the proposed Draft Regulations, identifies key areas of concern, and outlines our recommendations for consideration.

Executive summary

The *Domestic Building Contracts Act 1995* (the Act) and the *Domestic Building Regulations 2017* (the Regulations) have failed to keep pace with changes in home building and reflect cost and payment structures relevant to the previous century. Many of the provisions of the Act and the Regulations are overly prescriptive, stifle innovation, regulate on a one-size-fits-all basis and as a result, have placed significant financial strain on the building industry.

HIA has been advocating for significant reforms to the Act and Regulations for many years and we are pleased that most of the concerns we have raised are finally being addressed. For example, we welcome the increase to deposit limits, as well as the addition of the new building stage of site preparation. These measures will assist with reducing the heavy up-front financial burden that home builders face under the current system.

Our principal concern relates to changes to section 40(4) of the Act, specifically the removal of the ability for clients and builders to agree to their own stages and payment schedules. Method 2 currently provides vital flexibility to deal with circumstances where the prescribed stages do not reflect the needs of the project or the parties, yet Draft Regulation 12D appears to remove, or at best significantly reduce, this flexibility. The new proportionality principle addresses prior concerns about Method 2 (e.g. front loading, demands for payment before work completed), therefore a new provision providing the flexibility currently afforded by Method 2 would not present a threat to consumers while allowing required flexibility.

Although we support the principle that limitation of prescribed building stages and progress payment limits is most applicable to contracts where less than 30% of the cost are attributed to modern methods of construction (MMC), further clarity is required to ensure only contracts to build a new home are captured under section 40(2). This will resolve confusion across industry, as well as the considerable counterproductive impacts resulting from its broader application.

Additionally, the unnecessary restriction on the use of cost plus contracts and cost escalation clauses should be reconsidered and where possible clarified to support wider use, particularly for renovation, refurbishment and restoration work, which is inherently high risk and requires greater flexibility to account for latent and unforeseeable conditions. There should be no restrictions on the use of cost plus contracts for high-end projects where a significant number of unknowns such as project selections and finishes would otherwise result in the excessive and unworkable use of provisional sums and prime cost items.

Summary of recommendations

1. Proposed regulation 9A be amended to clarify the deposit can be reduced or split into smaller increments up to the maximum amount.
2. The Department and the Building and Plumbing Commission (BPC) should work with stakeholders to define "complex building sites" and that the definition must be included in a new regulation 12E.
3. Draft Regulation 12D be amended to include a contract for a home on a complex site.
4. The Department should issue a guidance note on section 40 providing practical guidance on:
   - Progress payments, the proportionality requirement and the flexibility to adopt different prescribed stages.
   - The application of the requirements for work that is not a new build using traditional construction methods.
   - The application of the laws to financial institutions including an appropriate approach to assessment of contracts that diverge from the prescribed requirements.
5. The BPC should publish guidance clarifying:
   (a) what constitutes a "substantial part of the work"
   (b) when a cost plus contract can be used for renovation, restoration, or refurbishment projects
   (c) how builders should make reasonable estimates where uncertainty exists.
6. The definition of prefabrication work introduced into the Building Act 1993 by in the Consumer Legislation Amendment Act 2026 be amended to be consistent with the definition of Modern Methods of Construction as outlined in the Draft Regulations.
7. The new building practitioner category of "Prefabrication Builder" inserted into the Building Act 1993 via Consumer Legislation Amendment Act 2026 should not be implemented until industry has the opportunity to properly consider the implications and work with government on regulations.
8. Regulation 10 should be amended to include an exemption permitting the use of cost plus contracts for renovation, restoration and refurbishment works.
9. The Department should review the MDBC threshold and adjust it for inflation at least every five years.
10. The Department should review the maximum deposit limit and to determine whether it remains appropriate to cover upfront costs every five years.
11. Government should review the scope and limitations for the use of cost escalation clauses under the Act in 2027.
12. The BPC should work with stakeholders to publish and disseminate plain English guidance clarifying how builders are to comply with the notice requirements for use of a cost escalation clause.
13. The BPC should work with stakeholders to publish and disseminate plain English guidance clarifying what types of building component are included and excluded from the definition of MMC for the purposes of the Act.
14. HIA supports the prescribed circumstances set out in Regulation 12D. However, we consider that the scope of the exemption should be expanded to address the following situations:
    - deposit and building stage flexibility required to facilitate consumer finance arrangements;
    - projects involving non-standard or atypical building stages; and
    - projects on complex or challenging building sites.
15. That DTP and the BPC work with HIA and other industry stakeholders to develop and deliver a comprehensive education and training package suitable for builders.

Housing affordability and productivity

No review of proposed regulatory intervention can be undertaken without considering the impact it will have on housing affordability, productivity and the ability to get homes built.

The residential building industry is already one of the most heavily regulated industries in Victoria. Those in the industry must manage a complex web of national, state, and local laws, regulations and codes ranging from planning, design, environment, health and safety to local authority inspection and certification and a multitude of building, electrical, mechanical, and plumbing processes. Industry participants must also comply with a legislative framework that spans a multitude of issues including licensing, owner-builders, dispute resolution, builders warranty obligations and contractual requirements.

Over the past 18 months the industry has been impacted by an unprecedented amount of regulatory reform including, but not limited to:

- the introduction of the First-resort Home Warranty Scheme;
- the implementation of minimum financial requirements for registered builders which continues to evolve;
- early adoption of NCC 2025;
- prohibitions on future reticulated gas connections and replacement of existing gas appliances;
- expanded rectification and enforcement powers for the BPC;
- new planning system requirements; and
- Victorian and Commonwealth industrial relations and occupational health and safety reforms.

The industry is also facing increasing costs of construction, in particular the impact of higher fuel prices on every aspect of building, as well as continuing difficulty accessing skilled trades and apprentices. This will only be exacerbated by proposed new licensing requirements for apprentice employers, registration and licensing requirements for carpenters, labour hire licensing law changes, and taxation reform.

The cumulative impact of all these changes means that new housing is ever more expensive to build, stretching the ability of home buyers to afford a new home, degrading the ability of builders to remain profitable and stretching out the time to build.

The recommendations we have made in this submission are designed to minimise complexity and promote flexibility without reducing consumer protection while ensuring that industry's ability (and therefore government's ability) to reach housing targets is not further eroded by regulatory burden and the entanglement of red tape currently plaguing industry.

Method 2 alternative

Section 40(4) of the Act allows builders and their clients to agree on alternative construction stages and progress payment schedules where the prescribed stages and payment limits do not properly reflect the requirements of a particular project. This arrangement is commonly referred to as Method 2 (or Method B). However, the amendments to the Act mean that, from 1 April 2027, this option will no longer be available.

During stakeholder consultation, the Department gave the impression that the revised section 40 and Regulations would provide sufficient flexibility to address industry concerns about the removal of Method 2. Having reviewed the Draft Regulations, HIA does not believe this objective has been achieved. We are therefore seeking amendments to ensure the Regulations provide an appropriate level of flexibility while maintaining consumer protections.

We note that the primary concerns raised by the Department (and consumer advocates) is that Method 2 could be used to pressure consumers into unfair contracts where consumers have to pay heavy up-front payments (front loading) or pay for work before it is completed, with the risk of the builder going bankrupt before work is completed. Our position is that while those concerns where overblow, the new proportionality requirement negates these scenarios.

We also note that the increased deposit requirements and the new site preparation stage are recognition that the current arrangements are insufficient to cover builders' actual costs before building work even commences and have been that way for too long.

Any new mechanism analogous to Method 2 would be subject to the proportionality principle, therefore, could not be used to front load contracts or otherwise increase consumer risks. It would, however, allow for alternate stages that better reflect the actual project in situations where the prescribed requirements do not fit. We set out clear examples of where this flexibility is needed below.

It would also send a clear message to financial institutions that alternate stages are part of the normal fabric of domestic building contracts, not an outlier. While the new section 40(3) of the Act provides a mechanism for certain contract classes to be exempt from the prescribed stages, the reality is section 40(3) is inherently limited because it can only address circumstances that can be clearly prescribed. In practice, the need for flexibility often arises in situations that do not fit neatly within predefined categories.

Such flexibility is essential because residential building work is inherently complex. Regulatory requirements continue to evolve, building technologies are advancing rapidly, work scheduling can change based on trade and material availability, and construction methods may vary significantly between projects. As a result, it is difficult to prescribe a single set of construction stages and payment percentages that will operate effectively in every circumstance, ad infinitum.

The intent of the current section 40(4) of the Act is to allow for flexibility with progress payments and recognises that there is no one way to build. It achieves this by relieving the builder from using the prescribed progress payment stages in the current section 40(2) but also by relieving builders of the obligation in the current section 40(3) – equivalent to the new section 40(4) - to not demand or receive payments not directly related to the progress of building work carried out. While this meant that builders had more flexibility it also allowed for the possibility of excessive front loading of progress payments. While only a minority of builders took advantage of this exception it was allowed by the Victorian government to continue due to its unwillingness or disinterest in maintaining the currency of domestic building contract laws.

The revised sections 40(1)(b) and 40(4), which restrict builders to claiming payment only for completed work, provide significant consumer protection safeguards. HIA therefore considers that expanding the circumstances in which parties may depart from the prescribed stages would not diminish consumer protections. We also note that many other Australian jurisdictions do not prescribe construction stages or impose equivalent restrictions on progress payment percentages, and there is no evidence that this has led to negative outcomes or an increase in disputes between builders and consumers.

Set out below are several common circumstances in which Method 2 arrangements have traditionally been used to address the inherent limitations of prescribed stages and progress payment restrictions. HIA submits that these circumstances should be accommodated either through amendments to Regulation 12D or through another suitable mechanism.

Obtaining finance

Members have advised that one of the most common reasons for utilising Method 2 arrangements is to assist clients in obtaining finance.

Financial institutions often impose strict requirements regarding deposits, construction stages, and the release of loan funds. In some cases, clients are required to self-fund the initial deposit, or exhaust cash contributions, before a lender will approve or release subsequent funds.

To accommodate these requirements, builders and clients may agree to alternative progress payment arrangements. For example, the parties may agree to a reduced deposit of 2.5% to secure a building contract that can then be submitted to a financier as part of a loan application. This enables the client to secure finance while minimising the amount of upfront capital required. The remaining 2.5% would need to be recovered under subsequent payment stages. Without an equivalent mechanism to Method 2, builders and consumers will lose the ability to structure payments in a way that facilitates lending requirements.

The Department gave the impression that the amended Act and proposed Regulations would be sufficient to address these circumstances, noting that builders may issue progress claims before completion of an entire construction stage and that a deposit may be paid in instalments rather than as a single amount. Judicial interpretation of section 40, however, indicates a more restrictive approach.

In *Cardona v Brown* [2012] VSCA 295, the Court held that the Act's reference to payment "at completion" meant that a builder could only claim payment once a stage had been fully completed. The Court further determined that progress payments must be claimed sequentially, regardless of when the relevant work was actually performed.

More recently, in *Singh v Ozzie Homes Building & Construction Pty Ltd* [2026] VSCA 25, the Court confirmed that a construction stage is only complete when all work required for that stage has been completed, adopting a strict interpretation of the legislative requirements.

If the new provisions are interpreted in a similarly restricted manner, it is difficult to see how builders and consumers will be able to structure payment arrangements that respond to lending requirements without a clear Method 2 equivalent. This needs to be addressed.

HIA considers that the meaning of "a deposit" in section 11(1) should be clarified through an amendment to proposed Regulation 9A to make clear that a deposit may be paid either as a single amount or through multiple instalments.

Recommendation 1

Proposed regulation 9A be amended to include:

(2) "A deposit" for purposes of Section 11(1) may be paid either as a single amount or as a series of payments, subject to the total amounts paid as a deposit does not exceed the prescribed percentages in Regulation 9A(1).

Non-typical building stages

Although the proposed prescribed stages are an improvement on the current framework and better reflect contemporary building practices, they will not be suitable for every project.

Certain homes or building sites may involve an atypical allocation of costs between stages. For example, the base stage may represent a significantly larger proportion of the overall project than would normally be expected, while costs associated with later stages may be lower. Likewise, multi-stage projects that are completed out of sync with a traditional approach to new builds will be discouraged without project-specific flexibility.

Conversely, rigidity in the prescribed progress claim stages may put homeowners at risk of sanctioned forward claiming. For example, where subsequent stages include features such as raking ceilings, complex roof features or high-spec kitchens or bathrooms, prescribed percentages will be disproportionately weighted towards the beginning of the project.

Method 2 currently allows builders and homeowners to agree to progress payments that better align with these project-specific realities, however the amended Act and Draft Regulations now strip industry and homeowners of this necessary flexibility.

HIA submits that additional flexibility should be available in limited circumstances, subject to appropriate consumer safeguards. Examples could include permitting alternative stages and payment percentages where:

- the parties agree that the prescribed stages and progress payment percentages do not accurately reflect the requirements of the project;
- the alternative stages and payment amounts are clearly set out in the contract; and
- in accordance with the principle included in section 40, payments can only be claimed for completed work, although stage payments may be divided into sub-stages, where agreed under the contract.

Complex building sites

Complex building sites provide another example of where greater flexibility is required.

Such sites may require additional engineering assessments, access roads for construction equipment, extensive earthworks, demolition, retaining structures, or other significant site preparation works before construction can commence. These factors can substantially increase project costs at the beginning of a build.

HIA welcomes the inclusion of site preparation as a recognised stage in Schedule 1. However, there will be situations where the prescribed maximum percentage (5%) is insufficient to reflect the actual costs associated with complex sites.

HIA would welcome the opportunity to work with the Department to identify objective criteria for determining when a site should be classified as a "complex building site" and to include such projects within the exempt categories under Regulation 12D.

Appropriate safeguards could apply to the use of this exemption, including:

- requiring an engineering, geotechnical, planning, or similar expert report;
- demonstrating why the site should be classified as complex;
- establishing an appropriate site preparation percentage supported by evidence; and

- imposing an upper limit of 15% of the contract price for site preparation costs.

HIA therefore calls on the Government to amend Regulation 12D to include complex building sites as a prescribed circumstance under section 40(3) of the Act.

Recommendation 2

The Department and the BPC should work with stakeholders to define "complex building sites" and that the definition must be included in a new regulation 12E.

Recommendation 3

Draft Regulation 12D be amended to include:

(d) a contract to build a home that is situated on a "complex building site" as defined in regulation 12E.

Banks and other financial institutions

The banks and other financial institutions will have a significant impact on the success, or otherwise, of the changes to prescribed payments stages and to any flexibility to deviate from them. They have traditionally been reluctant to support deviations from the prescribed changes. Members inform us that many disputes arise due to the inflexibility of lenders.

The changes allow, in theory, for builders to seek payments before the completion of a stage provided those payments are limited to work actually completed. As well as our concerns about how the courts will interpret the new requirements, the financing entities could thwart practical use of this option. They may refuse to release funds other than on completion of the stage, regardless of the intent of the legislation.

We are also concerned whether the Australian Banking Association and the wider banking and finance industry have been sufficiently engaged with in relation to the proposed changes. They have considerable leverage both formally and informally. Failure to adequately engage with them could result in significant opposition to the proposed changes and the potential for strict lending protocols to negate any flexibility the legislation provides.

A guidance note should be issued by the Department in relation to the intended operation of the S 40 of the Act, where flexibility to use alternate payment schedules arises and which encourages financial institutions to support flexibility where the parties agree that alternate stages are required.

Recommendation4

The Department should issue a guidance note on section 40 providing practical guidance on:

- Progress payments, the proportionality requirement and the flexibility to adopt different prescribed stages.
- The application of the requirements for work that is not a new build using traditional construction methods.
- The application of the laws to financial institutions including an appropriate approach to assessment of contracts that diverge from the prescribed requirements.

Cost plus contracts for renovation, restoration, or refurbishment

Clarification of permitted use

Projects involving renovation, restoration, or refurbishment involve complexities not encountered in new home construction. The age, condition, design, and location of an existing building can create substantial uncertainty regarding the scope and cost of certain types of building works. In many cases, demolition, exploratory works, or engineering investigations must be undertaken before the full extent of required works can be identified. Latent issues such as termite damage, water damage, structural instability, or non-compliant construction are often not apparent through visual inspection alone.

Section 13 of the Act permits the use of cost plus contracts where it is not possible to calculate the cost of a substantial part of the work without first carrying out some of that work. However, the legislation provides no guidance on what constitutes a "substantial part of the work", which creates considerable uncertainty for builders and consumers alike. If compelled to enter into a fixed-price contract, builders may either inflate pricing to manage risk or assume potentially significant unforeseen costs. Neither of these outcomes is optimal for either party.

Examples of situations where a fixed-price contract may be impractical for these types of building contracts include:

- floors, beams, subfloor structures, and concealed building elements that may be affected by termites, mould, or water damage not evident during inspection;
- walls, roofs, and structural elements requiring stabilisation or rectification before works can proceed;
- buildings subject to heritage or historical controls that require specialised materials or construction methods that are difficult to quantify and source; and
- balconies, pools, and other external structures that interface with an existing building in a manner that creates uncertainty as to scope and cost.

HIA calls on the Department to provide clarity on the meaning of "substantial part of the work" and the circumstances in which a cost plus contract may be appropriately used in relation to renovation, restoration, or refurbishment building work.

Recommendation 5

The BPC should publish guidance clarifying:

- what constitutes a "substantial part of the work" for the purposes of;
- the circumstances in which the BPC considers a cost plus contract appropriate for MDBC involving renovation, restoration, or refurbishment projects; and
- how builders should make reasonable estimates where uncertainty exists.

The guidance note for financial institutions recommended above should also provide guidance to financial institutions on how cost plus and other contracts involving renovation, restoration, or refurbishment require flexibility in relation to payment stages to ensure they support such contracts.

Expansion of scope

HIA also believes the current exemption is overly restrictive. Even if "substantial part of the work" is clearly defined, that may not be the most appropriate threshold. A relatively small element of a project may create significant pricing uncertainty and have the potential to generate substantial cost variations.

For example, a renovation project to modernise an older home may involve extensive works throughout the property. While investigating the subfloor structure may constitute only a moderate component of the overall project, the potential cost implications could be significant. The investigation may reveal minimal deterioration requiring only minor repairs, or it may uncover extensive termite damage requiring major structural rectification, engineering design, and significant additional expenditure.

The fact that the uncertain component is not a "substantial part of the work" should not, of itself, preclude the use of a cost plus contract where the financial consequences of the uncertainty are substantial.

The guidance note for financial institutions recommended above should also provide guidance to financial institutions on how cost plus and other contracts involving renovation, restoration, or refurbishment require flexibility in relation to payment stages to ensure they support such contracts.

Conflict between RIS and Consumer Legislation Amendment Act 2026

HIA is concerned at the significant number of legislative changes that have been rammed through the parliament leading up to the 2026 election. Rushing through legislative changes without proper consultation risks creating inconsistencies as well as a failure to adequately consider the necessity and impacts of such changes.

The *Consumer Legislation Amendment Act 2026* represents a perfect example of this. While we welcome that it extends the start date for many of the DBCA changes, the inclusion of significant changes to the Building Act have been made without proper consultation. We are concerned that:

- The definition of building practitioner has been expanded to include *prefabrication builder* with proper consultation with the HIA or others in the industry. It is not yet clear what this category comprises and how it may interact with other registrations.

- The new Part 2A - Prefabrication work' definitions conflict with the proposed definitions in the Domestic Building Contracts Amendment Regulations 2026.

Recommendation 6

The definition of 'prefabrication work' in the *Consumer Legislation Amendment Act 2026* should be amended to be consistent with the definition of Modern Methods of Construction as outlined in the Draft Regulations.

Recommendation 7

The new building practitioner category of 'Prefabrication Builder' inserted into the Building Act via *Consumer Legislation Amendment Act 2026* not be implemented until industry has the opportunity to properly consider.

Recommendation 8

Regulation 10 should be amended to include the following additional exemption:

(d) A contract involving the renovation, restoration, or refurbishment to an existing building where it is difficult to accurately calculate the cost of prescribed building work at the time the contract is entered into due to the potential for significant cost variation arising from matters outside the builder's control.

Prescribed building work includes:

> *(i) floors, beams, subfloor structures, and concealed building elements that may be subject to termite, mould, water, or other hidden damage that is not apparent through reasonable initial inspection;*
>
> *(ii) work required to make a building or surrounding land structurally sound where significant additional costs may arise that were not reasonably apparent through reasonable initial inspection;*
>
> *(iii) works affected by heritage, historical, or similar requirements where the cost of materials, construction methods, or approvals cannot be reasonably quantified at the time the contract is entered into; and*
>
> *(iv) any other prescribed circumstances determined by the Minister or relevant Authority.*

Other Draft Regulations

HIA supports regulatory reforms that eliminate unnecessary regulation, reduce red tape and the administrative burden on business, facilitate the orderly operation of the residential building industry and improve conditions to support the efficient and affordable delivery of housing.

Many of the Draft Regulations will assist in addressing known problems with the existing regulatory framework. and are therefore, supported by HIA.

Value of a major domestic building contract

Regulation 6 sets the threshold at which a domestic building contract becomes a major domestic building contract (MDBC). This threshold is important because many of the requirements under the Act only apply to MDBC.

The threshold was originally set at $5,000 in 1995, increased to $10,000 in 2017 and has been overdue for another increase. Inflation in the building sector has outpaced general inflation, therefore the failure to revise the threshold to address this means contracts that were never intended to be subject to the Act have become subject to it. The current threshold increases the costs of compliance for registered builders, while encouraging homeowners to find creative means of avoiding the obligation, including the use of unregistered building practitioners.

While increasing the threshold to $20,000 will not fully restore the impact of construction inflation (running at 30% over the past 5 years), it will ensure that many more contracts that should not be subject to the Act remain outside of it. It is important, however, to ensure that ongoing construction inflation does not quickly erode the effectiveness of the increased threshold. This threshold is also consistent with other jurisdictions.

HIA proposes a period of review or indexation be included in the Draft Regulations to ensure the threshold is reconsidered regularly to account for inflation, at least every five years. Alternatively, a Department policy could achieve a similar outcome.

Recommendation 9

The Department should review the MDBC threshold and adjust it for inflation at least every five years.

Limit on amount of deposit

As a result of the amendments to the Act, the limits on deposits have been moved to the Regulation; a move HIA supports dependent on the relevant regulation being reviewed on a regular basis to ensure it remains consistent with contemporary building practices.

The current deposit limit of 5% for MDBC is too low and creates significant financial burdens, considerable risk and stresses on building businesses. It does not reflect, and has not reflected for a long time, the initial cost that builders face building a home today, which include home warranty insurance (now required to be purchased earlier), prepare the site for building and purchasing materials upfront. While builds involving significant amounts of MMC tend to incur higher upfront costs, the reality is all types of home building incur significant upfront costs, which have progressively increased since the limit was originally established.

The proposed new deposit limits are welcomed by HIA, together with the new prescribed building stage for site preparation, they should address the current imbalance. HIA supports the need for higher deposit limits for builds with higher amounts of MMC as these types of contracts involve significantly higher levels of upfront costs, not merely in the construction of the MMC, but in the preparation of the site.

As with amended Regulation 6, HIA recommends that the deposit limits be reviewed regularly to ensure they keep pace with developments in the industry and acceptable levels of risk, particularly in relation to contracts with significant amounts of MMC.

Recommendation 10

The Department should review the maximum deposit limit and to determine whether it remains appropriate to cover upfront costs every five years.

Cost escalation clauses

Cost escalation and "rise and fall" clauses provide a degree of flexibility to address unforeseeable changes to the costs of inputs. COVID-19 and recent geopolitical issues have demonstrated time and again that situations outside the control of builders can have significant impact on building costs, and if those costs cannot be passed on, builders are placed at significant risk of financial distress and potentially insolvency due to no fault of their own.

While the Act in its current form ostensibly permits the use of cost escalation clauses, the reality is that the failure of the Director of Consumer Affairs to issue a prescribed notice under section 15(3) of the Act has effectively nullified their use. Draft Regulation 10A and Schedule 2 now address those practical issues by creating a framework for their use, however, we are not convinced that the new requirements will sufficiently nor effectively deal with situations where builders require this flexibility and protection.

In particular, the $1 million contract value threshold, severely limits the practical usefulness of the provisions. Clients with contracts over $1 million are likely to use a cost plus contract due to its greater flexibility, and there is no benefit for them to use a standard contract with cost escalation clauses. Irrespective of the contract value all builders are at risk from unforeseen conditions, and arguably builders below the $1 million contract value are at greater risk due to tighter margins and more prescriptive contract terms.

HIA appreciates that this is not a matter for this review, however, we would like to place on record that it is not the value of the contract that should determine whether a cost escalation clause should be permitted; it is the inability of the builder to pass on unexpected cost increases they have no means of controlling. We note that many other Australian jurisdictions allow for this and we are keen to work with the Department and the government to develop effective policy responses.

Recommendation 11

Government should review the scope and limitations for the use of cost escalation clauses under the Act in 2027.

Notice to Building owner

The Act requires that, before a contract is entered into, the owner must be provided with a notice explaining the effect of the cost escalation clause. The owner must then sign, initial, or affix their seal to indicate that they have received the notice and agree to be bound by the cost escalation clause.

HIA encourages the BPC to publish guidance regarding how these requirements may be satisfied in practice. Clarification is needed as to whether the following approaches would be considered compliant:

- The Schedule 2 Notice is provided separately from the contract and returned to the builder before the contract is issued for execution.
- The Schedule 2 Notice is included with the contract documents provided to the owner but is returned separately to the builder before the contract is signed.
- The Schedule 2 Notice is included within the contract package, with the owner signing the notice before signing the contract.
- The Schedule 2 Notice is included within the contract package, with the owner signing both the notice and the contract before returning the documents to the builder for execution.

Recommendation 12

The BPC should work with stakeholders to publish and disseminate plain English guidance clarifying how builders are to comply with the notice requirements for the use of a cost escalation clause.

Modern methods of construction

Regulation 12C sets out the prescribed types of MMC that are used for the purposes of section 40(2)(a), (b) and (c) of the Act. These definitions will determine which type of contracts are to be used and thus the corresponding stages of building and progress payment limits as well as deposit limits.

HIA's concern is to ensure that there are no material differences between how MMC is defined for the purposes of the Act and how it is defined for the purposes of the *Building Act 1993*, the National Construction Code (NCC) and the Building Code (BCA). Conflicting definitions only create complexity and the potential for unintended non-compliance. While there are some differences as to the intent of the definitions, it is important that any difference is minimised.

In Victoria there are numerous examples of inconsistency between the Domestic Building Contracts Act and the Building Act causing confusion and unintended non-compliance. A classic example is the long standing confusion about such matters as when a builder has to be registered, when a builder must use major domestic building contracts, when a domestic building contract needs domestic building insurance, whether a project without a building permit needs a registered builder or a major domestic building contract or obtain home warranty, and whether an owner-builder job needs a trade to be registered or use a major domestic building contract or obtain home warranty. These confusions are primarily caused or encouraged by different monetary thresholds. Consistency is critical.

As noted above, we are concerned that the recent amendments arising from the Consumer Legislation Amendment Act 2026 create the possibility for conflicts to arise and this could hold back the proper development of the MMC sector.

Given the importance of how MMC is defined in determining the type of contract to be used, the deposit allowed and progress payments, it is vital that a broad understanding is facilitated across all constituents. It is understandable that the legislative definitions are sufficiently broad to deal with a range of MMC, and builders with significant MMC experience may readily understand the terminology used. However, other parties will be unfamiliar with such terminology, including homeowners and builders who primarily use traditional construction methods may incorporate modular elements or prefabricated components.

It is also important to recognise that industry participants often have an established understanding of technical terms. Where that common industry understanding differs, even slightly, from the legislative definition, there is a significant risk of misunderstanding and inadvertent non-compliance.

The area most likely to give rise to uncertainty is Regulation 12C(c), particularly the concept of a "building component". Although this term is defined in the Regulations and the Act, the complexity of the definition may create confusion in practice.

The examples included in the Draft Regulations provide a helpful starting point; however, the most effective way to address these concerns is through the development of practical, plain English guidance supported by clear examples. While it is not possible to anticipate every scenario, greater clarity in guidance materials will improve industry understanding and compliance outcomes. HIA welcomes the opportunity to work with the BPC and other stakeholders to develop this guidance and assist in ensuring it is widely disseminated throughout the industry.

Recommendation 13

The BPC should work with stakeholders to publish and disseminate plain English guidance clarifying what types of building component are included and excluded from the definition of MMC for the purposes of the Act.

Prescribed contract types

Amended section 40(3) provides for regulations to be promulgated that prescribe certain types of contracts that are not restricted to the use of the prescribed stages and percentages of contract price set out in Draft Regulation 12B.

While HIA appreciates that the $1 million contract value threshold has been selected to maintain consistency with other provisions, we do not consider that it adequately addresses the circumstances in which greater contractual flexibility is required, and these circumstances are outlined in relation to the Method 2 alternative.

Recommendation 14

HIA supports the prescribed circumstances set out in Regulation 12D. However, we consider that the scope of the exemption should be expanded to address the following situations:

- deposit and building stage flexibility required to facilitate consumer finance arrangements;
- projects involving non-standard or atypical building stages; and
- projects on complex or challenging building sites.

Revocation of Regulation 13

Regulation 13 is proposed to be revoked following amendments to the Act that remove the current section 40(4), rendering the Regulation redundant.

HIA did not support the removal of section 40(4) as outlined in this submission. Experience has demonstrated that inflexible prescriptive requirements can create unnecessary regulatory constraints that become entrenched over time and are difficult to amend, even where they are no longer effective or appropriate. Section 40(4) provided an important degree of flexibility to address circumstances that the new section 40(3) does not fully accommodate.

As the legislative amendments themselves are outside the scope of this RIS and are scheduled to commence on 1 April 2027, HIA does not oppose the revocation of Regulation 13. We note, however, that there is likely to be a future need to reintroduce flexibility similar to that currently provided by section 40(4). The flexibility proposed in the regulations to depart from the prescribed progress payments will prove to be insufficient to meet the legitimate needs of clients and builders.

Education, training and information

Education, information, training and other measures will be critical to optimise preparedness and compliance with the new requirements. Victorian builders have been subject to considerable regulatory change over the past 18-months. Many of the changes to the Act and the Regulation were announced well over a year ago and have some important changes. Therefore, providing appropriate guidance, training and communication will be vital.

The changes to the Act and the Regulations impact the day-to-day operations of builders, they will need to update their procedures and processes and engage with clients about what the changes mean for them. They will need to update their contracts (which they already had to do on 1 July this year), the information they provide on their websites and marketing materials and train their own staff and contractors.

The changes also introduce new concepts and new definitions for builders (such as determining the proportion of MMC in a contract) and place responsibilities on builders to get their documentation right.

Thankfully the delay to the start date provides the opportunity to develop and present such educations and feed information on changes through contracting relationships, membership, and subscriptions.

HIA is well-positioned to assist with communications, information and the provision of training to industry, and welcomes the opportunity to support the Victorian Government and the Department in the delivery of this service. HIA's experience as a GTO, RTO and in providing a range of other training, events and information to industry, includes supporting builder members with financial literacy and compliance. HIA also provides an ad-hoc support service to assist members in understanding their compliance requirements.

The implementation of the Buyer Protection reforms was an example of how not to undertake regulatory reform. Not only where changes hurriedly made at the last minute, there was insufficient time to provide the appropriate level of guidance and education to builders and consumers.

To avoid a repeat of this, the government needs to work with industry to develop a comprehensive practical education and training package around these reforms. We stand ready to support the government in the roll out of communication and education tools.

Recommendation 15

That DTP and the BPC work with HIA and other industry stakeholders to develop and deliver a comprehensive education and training package suitable for builders.