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| Regulatory impact statement  **Building Regulations 2017**  Part C: Building practitioner registration |
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This RIS has been prepared for the express purpose of supporting the proposed Building Regulations 2017 and other potential uses of the information contained in the RIS have not been a consideration in its development. The information contained in the RIS has not been subjected to an audit or any form of independent verification.

**Author**

The information, statements, statistics and commentary contained in RIS Part C have been substantially prepared by Regulatory Impact Solutions from material provided by or through the department.

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# Acronyms and abbreviations

| **Acronym** | **Name** |
| --- | --- |
| ABS | Australian Bureau of Statistics |
| Act, the | *Building Act 1993* |
| BPB | Building Practitioners Board |
| CAV | Consumer Affairs Victoria |
| current Regulations | Building Regulations 2006 |
| NPV | Net present value |
| PBS | Private building surveyor |
| proposed Regulations | Building Regulations 2017 |
| RIS | Regulatory impact statement |
| the department | Department of Environment, Land, Water and Planning |
| VAGO | Victorian Auditor-General's Office |
| VBA | Victorian Building Authority |
| VCAT | Victorian Civil & Administrative Tribunal |

###### Abbreviations for Acts and Regulations

| **Abbreviation** | **Name** |
| --- | --- |
| Clause(s) | Cl(s) |
| Division(s) | Div(s) |
| Part(s) | Pt(s) |
| Regulation(s) | Reg(s) |
| Schedule(s) | Sch(s) |
| Section(s) | S(s) |
| Subdivision(s) | Sub-div(s) |

# Summary

Part C of the regulatory impact statement (RIS) considers building practitioner registration. The range of options considered in this part of the RIS is limited to the remaking of the current Regulations, with some minor variations also considered. In preparing the proposed Regulations, further options were identified that would involve a more substantial shift from the current arrangements. These were:

* to introduce into the Regulations specific subcategories within the ‘limited’ builder classes; this would formalise administrative arrangements already used by the Victorian Building Authority (VBA) and be the basis for defining the exact scope of works that are allowed under each subcategory, and it also aims to improve consistency across registered practitioners and allow consumers to easily confirm what work a practitioner is allowed to do

based on this, prescribing allowed scopes of work, in order to provide a more-objective basis for defining what experience is required to be eligible for registration in each category; this aims to improve certainty for practitioners and improve the transparency of the assessment process.

The Department of Environment, Land Water and Planning ('the department') considers these options to have merit but will not implement them at this time. This is because amendments to offences in the Act, progressed as part of the *Building Legislation Amendment (Consumer Protection) Act 2016* (the amending Act), will commence on 1 July 2017 and affect building practitioners by detailing the scope of work that can be conducted under registration for domestic builders, building inspectors and building surveyors.

Therefore, by 1 July 2017, the department will be preparing an amending set of Regulations which implements these consequential amendments to the Act.

The timing of the consequential amendments on account of the amending Act will also allow the formal prescription and updating of building practitioner categories and classes, including an update to the qualifications required for registration (as per the options explained in this part of this RIS). This will allow regulatory amendments about building practitioners to be implemented seamlessly.

This process will also involve supplementing the general description of an academic qualification (for example, 'in building') with a list of examples of formal academic qualifications offered by training providers that will be accepted as meeting this eligibility requirement for registration. Given this list of examples may need updating frequently, it is intended to be managed externally to the Regulations. It is intended that as part of these reforms, VBA will compile a list of acceptable academic qualifications. The list will be nonexhaustive, as VBA can accept an equivalent qualification.

These amendments will also correspond with the first tranche of building practitioner renewals as the registration process transitions to five-yearly registration, rather than an undefined period of time (a reform that was also implemented as part of the amending Act).

Therefore, the department intends to assess the merits of adopting these options and determine a preferred approach separately from this RIS process and before the start of the proposed Regulations. This process will not involve another formal RIS but will include engagement with industry in the form of stakeholder meetings, so the industry has an opportunity to comment on the proposed approach to registration. This consultation will include consideration of registration issues (such as new classes of registration, prescribed qualifications and any required transitional measures to a new structure).

The department anticipates any changes that the analysis suggests are warranted will commence on 1 July 2017, to correspond with consequential legislative amendments to the Act.

Table 1 summarises the assessment of the options in this RIS and indicates which options are preferred.

Table 1: Options and outcomes

| Area of regulation | Options assessed | Outcome |
| --- | --- | --- |
| Practitioner qualifications and experience requirements | **Option 1 (preferred**) – Remake reg1503 (with some updates for qualifications no longer offered) *(status quo option)* | Incremental costs of $27.0 million a year. After allowing a cost saving to consumers (reduced search costs) of $2.1 million a year, this option breaks even if 33,155 detrimental incidents[[1]](#footnote-2) are avoided a year. The department considers this break-even point is likely to be achieved, given the risks to consumers of building practitioners who are not competent and the scale of building work undertaken each year. |
| Option 1.1 – Remove requirement for VBA to assess practical experience *(a reduced-regulation option when compared with the status quo)* | Incremental costs of $22.3 million a year. This option breaks even if at least 27,008 detrimental incidents are avoided each year. |
| Prescribed information related to character | **Option 2 (preferred) –** Remake reg1509 without change | Incremental cost of $24,171 a year. This option breaks even if the requirement will prevent three unsuitable practitioners being registered each year. The department considers this break-even point is likely to be achieved, given the risks to consumers of those building practitioners considered of poor character and the scale of building work undertaken each year. |
| Option 2.1 – Reduce prescribed information to be provided by removing reg1509(e) | Incremental cost of $19,337 a year. This option breaks even if the requirement will prevent on average 2.5 unsuitable practitioners being registered each year. |
| Option 2.2 – Expand prescribed information required to be provided | Incremental cost of $33,839 a year. This option breaks even if the requirement will prevent on average 4.5 unsuitable practitioners being registered each year. |
| Professional standards | **Option 3 (preferred)** – Remake reg1502 without change | No material cost or benefit measured as the Regulation is considered to assist in the management of disciplinary action but of itself does not change behaviour. This will provide increased certainty as to why disciplinary actions are being taken. |
| Option 3.1: Remake only pt(a) of reg1502 | No material difference from remaking the current Regulation as VBA reports very little use of the Regulations other than pt(a). |
| Period during which a private building surveyor cannot act | **Option 4 (preferred)** – Remake reg1504 *(retain period during which a private building surveyor cannot act of one year)* | The optimal prescribed period needs to balance the need to avoid conflicts of interest while minimising restricting work where no conflict exists or forcing use of exemption processes. The department considers the current period of one year balances these needs, and has no significant impact on the ability of building surveyors to operate. |
| Option 4.1 – Reduce the prescribed period to six months  Option 4.2 – Increase the prescribed period to two years |
| Prescribed information for applications | **Option 5 (preferred)** –Prescribe application forms and other documents to be provided with an application | No material cost or benefit as this codifies the practice already used by VBA, for which it has legislative powers. This will help provide transparency of process for applicants seeking registration as a building practitioner. |
| Completing applications personally | Option 6 – Require a statutory declaration that an applicant, not a third party, has prepared the application | Incremental cost to applicants of $10,038 a year. However, requiring an applicant to prepare the application themselves will not adequately address the problem identified and will most likely result in a higher burden on other applicants. VBA advises there other nonregulatory steps it could take to address the problem. |

In summary, the preferred approach is to:

* remake the Regulations related to qualifications and experience with some updates
* remake the Regulation prescribing information to be provided with an application to demonstrate good character
* remake the Regulation related to professional standards, without change
* remake the Regulation related to the period for which a private building surveyor (PBS) cannot act, without change

introduce a Regulation prescribing application forms and other documents to be provided with an application.

Two of the current Regulations impose restrictions on competition. These are the prescribing of qualifications and experience in order to be registered and the prescribing of the period in which a building surveyor may not undertake certain work. These impacts are discussed in the relevant chapters in this report.

# C1 Introduction

As explained in parts A and B of this RIS, under the Act a person must not carry out building work unless the work is carried out in accordance with the Act, the current Regulations and a building permit issued in relation to that work (if required). Some aspects of building work and practitioners are covered by the *Domestic Building Contracts Act 1995* which is outside the current scope of this RIS.

Various parts of the Act set out requirements in relation to:

* building standards (pt 2)
* building permits (pt 3)
* inspection of building works (pt 4)
* occupancy permits (pt 5)
* registration of building practitioners (pt 11)
* enforcement, appeals and administration (pts 8, 13, 10 and 12)

plumbing licensing (pt 12 A).

The operation of the Act is supported by the building Regulations, which regulate matters including:

* owner-builders (pt 2)
* building permits (the process for applications and issuing) (pt 3)
* siting (pt 4), building work (pt 6) and safety (pt 7)
* inspections, notices, directions and orders (pt 9)
* occupancy permits (processes) (pt 10)
* building product accreditation (pt 14)
* building practitioners (pt 15)
* appeals and reviews (pt 16)

exemptions (pt 18).

Under the Act,[[2]](#footnote-3) a building practitioner means:

a) a building surveyor

b) a building inspector

c) a quantity surveyor

d) an engineer engaged in the building industry

e) a draftsperson who carries on a business of preparing plans for building work or preparing documentation relating to permits or permit applications

f) a builder including a domestic builder

g) a person who erects or supervises the erection of prescribed temporary structures

h) a person responsible for a building project or any stage of a building project and who belongs to a class or category of people prescribed to be building practitioners.

Under the Act, a building practitioner does not include an architect or a person (other than a domestic builder) who does not carry on the business of building.

## C1.1 The need for regulation

The rationale for regulation of building practitioners is influenced by the government’s ability to pre-emptively reduce a range of impacts which are commonly attributed to the nature of the building sector. As discussed in RIS Part B, the complexity of building work and the associated potential for harms to practitioners, the public and consumers bolsters justification for government intervention in the interests of prevention. This includes:

* enhancing public confidence in building practitioners, by ensuring registered building practitioners have the minimum level of knowledge, skills and experience to competently and professionally carry out the specific scope of building work authorised by their desired registration
* protecting consumers, by reducing safety risks (in addition to health, economic, environmental, social and cultural risks) to the public from unqualified people carrying out regulated building work or carrying out substandard work
* providing better information to consumers about the minimum standard of knowledge, skills and experience they can expect of a particular category or class of registered building practitioner

providing information to potential building practitioners, as a reference point from which to review their knowledge and skills to identify their training needs and career pathways in the building industry.

RIS Part A provides further information about the underlying problem the Regulation of building practitioners intends to address.

## C1.2 Options

The department has considered a range of options for building practitioner registration. A description of the options and their costs and benefits are set out in Chapter C3 Cost-benefit analysis. The options considered are:

* Prescribed qualifications and experience (reg1503)
  + Option 1 – Remake reg1503
  + Option 1.1 – Remove the requirement for experience to be demonstrated to the satisfaction of VBA
* Prescribed information related to character (reg1509)
  + Option 2 – Remake reg1509
  + Option 2.1 – Reduce the information required
  + Option 2.2 – Increase the information required
* Prescribe professional standards (reg1502)
  + Option 3 – Remake reg1502
  + Option 3.1 – Remake only pt(a) of reg1502
* Period during which a PBS cannot act
  + Option 4 – Remake reg1504
  + Option 4.1 – Reduce the prescribed period to 6 months
  + Option 4.2 – Increase the prescribed period to 2 years
* In relation to other matters
  + Option 5.1 – Prescribe the information to be included in an application for registration
  + Option 5.2 – Require that applications for registration are completed personally by the applicant

The range of options considered in this RIS is limited to the remaking of current Regulations, with some minor variations also considered. In preparing the proposed Regulations, further options were identified that would involve a more substantial shift from the current arrangements. These included:

* to introduce into the Regulations specific subcategories within the ‘limited’ builder classes; this would formalise administrative arrangements already used by VBA and be the basis for defining the exact scope of works allowed under each subcategory, which would improve consistency across registered practitioners and allow consumers to easily confirm what work a practitioner is allowed to do

based on this prescribing of allowed scopes of work, establish a more-objective basis for defining what experiences are required to be eligible for registration in each category, which would improve certainty for practitioners and improve transparency of the assessment process.

As described in 'Summary', the department intends to assess the merits of adopting these options through a separate process. This will include considering new classes of registration, how best to incorporate the subcategories and scope of work in the Regulations (which would be most appropriate to include to best reflect the risks associated with the work undertaken) and any required transitional measures to a new structure. The department anticipates any changes that are warranted will commence on 1 July 2017, to correspond with consequential legislative amendments to the Act. Additional changes (such as any new classes of registration suggested through this process) will be considered as part of the department’s midterm evaluation.

**Consultation questions**

Is there an industry need for any categories or classes of registration which are not included in the current Regulations?

Why or why not? What are the potential costs and benefits of changing categories and classes of registration? For example, is there any merit to registering practitioners in the domestic builder (unlimited) class, according to building height?

# C2 Issues with building practitioners

In Victoria, there are two main avenues for consumers of domestic building work to lodge complaints against practitioners, apart from engaging in a dispute or legal action as detailed in the previous chapter.

The first is through Consumer Affairs Victoria (CAV), which can hear complaints and offer free advice and conciliation services.[[3]](#footnote-4) In 2013–14, CAV assessed 2,683 building complaints, of which 1,833 were subject to conciliation.[[4]](#footnote-5) CAV is likely to only be able to help conciliate minor complaints and refer all other consumers to either legal action (covered in the previous chapter) or to VBA as appropriate. CAV has no power to compel parties to a domestic building dispute to undertake conciliation. From 2017 a new dispute resolution service will provide for mandatory conciliation of disputes between consumers and builders.

VBA is the second main avenue for complaints and has a broader scope to investigate and otherwise deal with complaints. After a complaint has been investigated and found to be substantiated, VBA can issue a notice of complaint with no further action, refer the practitioner for disciplinary action or prosecute the practitioner.[[5]](#footnote-6) In 2015–16, VBA conducted 405 investigations into building work, down from 464 in 2014-15 and 441 in 2013–14. In 2015–16, VBA prosecuted 50 practitioners (up from 35 in 2014-15) and the BPB held 91 disciplinary hearings.[[6]](#footnote-7)

As of September 2016, VBA had direct responsibility for practitioner registration and discipline. A new show-cause process is in place with provision for internal review and the ability to appeal to the Victorian Civil & Administrative Tribunal. The result of any disciplinary action is published on a public register maintained by VBA and accessible by consumers (online at VBA’s website). The current register records decisions of the Building Practitioners Board (BPB) from 1 July 2009 to 21 May 2015 and documents a total of 403 decisions, an average of 67 a year or six a month.[[7]](#footnote-8) In 2013–14, 47 disciplinary action decisions were recorded, down 50% from 94 in 2012–13.

## C2.1 Size of the problem

To inform the potential size of the problem, a sample of building surveyors and domestic builders will be discussed, based on information supplied from VBA about disciplinary proceedings for building practitioners between 2009–13 (inclusive).

## C2.2 Domestic builder

### C2.2.1 Number of domestic builders registered in Victoria

As of 30 June 2016, there were 15,047[[8]](#footnote-9) domestic builders registered in Victoria, comprising:

* 2,660 registered in the category/class of domestic builder (limited)
* 1,082 registered in the category/class of domestic builder (manager)

11,305 registered in the category/class of domestic builder (unlimited). [[9]](#footnote-10)

Of the total number of building practitioners registered in Victoria at 30 June 2016 – being 22,377[[10]](#footnote-11) – 50% were registered in the category/class of domestic builder (unlimited), 12% in the category/class of domestic builder (imited) and 5% in the category/class of domestic builder (manager). In total, this means 67% of registered building practitioners are registered as a domestic building practitioner.

### C2.2.2 Scope of regulated work

Domestic building work is defined in the *Domestic Building Contracts Act 1995* as work associated with the construction, renovation, improvement or maintenance of a home (class 1, 2 and 4 buildings and associated Class 10 buildings as classified in the Building Code of Australia). A home is any residential premises, which includes any part of a commercial building or industrial premise that is used as a residential premise.

Persons registered in the class of domestic builder (unlimited) are responsible for carrying out, or managing or arranging the carrying-out of, all components of domestic building work for the construction, renovation, improvement or maintenance of a home.

VBA uses 29 administrative subclasses of domestic builder (limited) to register and authorise domestic builders to carry out 29 specific components of domestic building work. These components include bricklaying, carpentry, framing work, construction of retaining walls, footing and slabs work and restumping and reblocking. It also includes cabinet-making, kitchen renovation work and sheet plastering.

VBA has identified criteria for use in a new knowledge and experience assessment framework. It has identified scopes of work for its 29 administrative subclasses of domestic builder (in addition to other particular categories and classes of registration of building practitioner) and the competencies required to carry out the identified scopes of work. It has also recommended renaming some categories and classes of building practitioner to better reflect the scope of work in which they are required to be competent to carry out, for the purposes of registration.

### C2.2.3 When registration of domestic builders is required

If a builder intends to carry out, manage or arrange the carrying-out of domestic building work for another person, and the cost of that work is more than $5,000, the parties must enter a major domestic building contract. The builder must not enter this contract unless they are registered in the appropriate class of domestic building practitioner under the Act.

A building surveyor must not issue a building permit for domestic building work to be carried out under a major domestic building contract unless they are satisfied (among other conditions) that the work is to be carried out by a builder who is registered in the appropriate class of domestic builder.

### C2.2.4 Volume of work undertaken by domestic builders in Victoria

In 2015–16, 90,670 building permits were issued for domestic building work, on account of a reported cost of domestic building work of $16,203,987,963 in that financial year.

### C2.2.5 Performance of domestic builders

The scope of regulated work of domestic builders, as set out above, necessarily charges domestic builders with a statutory responsibility to mitigate risk to owners, occupants and users of a building by ensuring domestic building work carried out by them complies with building standards, the building permit, the Act and Regulations.

The 2015 Victorian Auditor-General's report found evidence of considerable consumer detriment in domestic building and concluded that, '… the existing framework does not adequately protect consumers'.

The *Australian Consumer Survey 2016*[[11]](#footnote-12) found at least 17% of consumers who had undertaken home building, renovations, repairs or maintenance in Victoria had experienced a problem.[[12]](#footnote-13) Problems were likely to be related to poor workmanship and delays in getting substandard work fixed.[[13]](#footnote-14) The average estimated cost to resolve a problem was $1,321.02.[[14]](#footnote-15)

Based on building permit data for 2015–16 and assuming 100% of complaints related to domestic building work that required a building permit (which is conservative), up to 15,405[[15]](#footnote-16) consumers experienced problems that required the work to be rectified or redone at a total additional cost to consumers of about $20.3 million.[[16]](#footnote-17)

In July 2016, CAV commissioned research into demand and dispute experiences to assist with the establishment of the new dispute resolution service, Domestic Building Dispute Resolution Victoria. Waterproofing, brickwork and plastering consistently feature as some of the most commonly occurring defects. All are defects which have the potential to affect the safety and amenity of the home and occupants. If left unrectified, each could undermine the structural integrity of the dwelling and fail to meet the objective or performance standards in the National Construction Code.

The 2015 Victorian Auditor-General's report also reported that CAV in 2013–14 responded to 21,342 calls in relation to building-related matters. This compares with the NSW Office of Fair trading responding to 7,988 complaints and the Queensland Building and Construction Commission reporting receiving 12,702 calls in the same period. CAV data shows that in 2014–15 this figure had increased to 22,993.

### C2.2.6 Discipline of domestic builders

VBA has supplied the department with information about disciplinary proceedings for building practitioners between 2009–13.

During this period, 561 disciplinary inquiries were conducted by the BPB into the conduct of domestic builders (unlimited). As a result of these inquiries, 77% of findings regarding culpable practitioners were that the builder breached the Act or Regulations, with 67% of these breaches in relation to carrying out building work in contravention of s 16 of the Act (that is, without a building permit or in contravention of a building permit), 7% were regarding unprofessional conduct, 8% were for failing to carry out a recommendation contained in an inspector's report under s 48 of the *Domestic Building Contracts Act 1995,* 6% were for failing to comply with the *Domestic Building Contracts Act 1995* and the balance of findings were in relation to being found guilty of conduct in relation to his or her practice as a building practitioner.

In contrast, for the same period, only 88 inquiries were held into the conduct of building practitioners registered in the class of domestic builder (limited). As a result of these inquiries, 75% of findings were that the builder breached the Act or Regulations (53% of these being in relation to carrying out building work in contravention of s 16 of the Act), 10% were on account of unprofessional conduct, 8% were for failing to comply with the *Domestic Building Contracts Act 1995* and 3% were for failing to carry out a recommendation contained in an inspector's report under s 48 of the *Domestic Building Contracts Act 1995*. The balance of the findings were in relation to being found guilty of conduct in relation to his or her practice as a building practitioner.

### C2.2.7 Summary of performance measures

As with building surveyors, it is not discernible from the information available (especially in relation to findings which involved a breach of the Act and/or Regulations) whether the reason for the culpable conduct was unfamiliarity with the relevant parts of the relevant Acts and/or Regulations, or intentional noncompliance. However, the department considers prescribing appropriate qualifications for domestic builders and assessing these on application for registration will provide the best possible opportunity, at the point of registration, to ensure successful applicants have the necessary knowledge, skills and experience to carry out domestic building work in a competent and professional manner.

## C2.3 Building surveyor

As at 30 June 2016, there were 666[[17]](#footnote-18) building surveyors registered in Victoria, comprising:

* 108[[18]](#footnote-19) registered in the category/class of building surveyor (limited)

558[[19]](#footnote-20) registered in the category/class of building surveyor (unlimited).

Of the total number of building practitioners registered in Victoria at 30 June 2016 (being 22,377),[[20]](#footnote-21) 0.5% were building surveyors (limited) and 2.5% were building surveyors (unlimited).

### C2.3.1 Scope of regulated work

People registered in the category/class of building surveyor (limited) may perform the statutory functions and powers of a building surveyor as authorised or required by the Actand Regulations for all classes of building up to three storeys in height with a maximum floor area of 2000 m2.

People registered in the category/class of building surveyor (unlimited), in contrast, may perform all the statutory functions and powers of a building surveyor authorised or required by the Act and Regulations for all classes of building of unlimited height or floor area.

The two-tiered system of registration for building surveyors provides an environment in which building surveyors with a limited registration can elect to operate in the market for building approvals for simpler structures, increasing the supply of building surveyors and competitiveness in this sector. The complexity of the role of a building surveyor can vary enormously from issuing a building permit for a simple shed or dwelling to very complex and large projects (for example, high rise office buildings, industrial buildings and airports). These projects may involve approval of sophisticated and complex engineered solutions (such as fire safety systems).

Functions and powers of a building surveyor under the Act and Regulations include:

* issuing building permits and temporary approvals
* arranging and undertaking inspections of building work to determine compliance with the Act and Regulations (including relevant building standards) and the building permit
* taking actions authorised under the Act and Regulations to ensure building work complies with the Act and Regulations and the building permit, including issuing:
  + building notices
  + building orders
  + directions to fix building work
  + approving the use and occupation of buildings or parts of buildings in accordance with the Act and Regulations including issuing occupancy permits and certificates of final inspection
  + in relation to building work that has been inspected personally by that building surveyor, issuing a report of stage inspection stating that the building work complies with the Act and Regulations.

### C2.3.2 Volume of work undertaken by registered building surveyors in Victoria

In 2015–16:

* 10,085 building permits were issued by people registered in the category of building surveyor (limited):
  + on average, this amounted to 93 permits issued per practitioner in that financial year (using 365 days, this amounts to on average 3.8 days spent issuing and managing each permit)
  + of these 10,085 permits:
    - 9,354 permits were issued in relation to domestic building work (92.75% of permits, at a reported cost of building work of $1,118,164,771)
    - the balance of permits was issued in relation to commercial, retail, healthcare, industrial and public-use buildings (with a reported cost of building work of $119,380,023)
* 99,984 building permits were issued by 558 people registered in the category of building surveyor (unlimited):
  + on average, this amounted to 179 permits issued per practitioner in that financial year (using 365 days, this amounts to on average 3.1 days spent on issuing and managing each permit in that year)
  + of these 99,984 permits:
    - 81,316 permits were issued in relation to domestic building work (81.33% at a reported cost of building work of $15,085,823,192)
    - the balance of permits was issued in relation to commercial, retail, healthcare, industrial and public-use buildings (at a reported cost of building work of $15,172,676,113)

This means building surveyors (unlimited) on average each issued about double the number of permits a year as did building surveyors (limited).

### C2.3.3 Performance of building surveyors

The scope of regulated work of building surveyors, as set out above, necessarily charges the building surveyor with a statutory responsibility to mitigate risk to owners, occupants and users of a building by ensuring the building work complies (at both the design and construction stages) with building standards, the Act and Regulations.

Building standards are the minimum necessary standards for safety (including structural safety and safety from fire), health, amenity and sustainability. If these standards are not required and enforced, harm (for example, safety, health and financial) may result to the building owners, occupants and users. Higher / larger buildings present greater risks and require more-complex safety features (for example, in relation to egress, emergency evacuation and fire safety systems).

Building surveyors (unlimited) are generally responsible for approving more-complex building projects than building surveyors (limited), which necessarily involve a higher level of risk to building owners, occupiers and users should something go wrong.

To gain an understanding of how well building surveyors in Victoria are performing their statutory functions and powers, and if this performance relates in any way to the qualification eligibility requirement for registration, the performance of building surveyors is briefly considered below.

### C2.3.4 2011 Compliance with Building Permits report

In 2011, in relation to the performance of building surveyors, the Victorian Auditor-General's Office (VAGO) concluded in his *Compliance with Building Permits* report that there are significant gaps in the documentation lodged by building surveyors with councils. This absence of documentary evidence to support assessments provides little assurance that surveyors have carried out their responsibilities effectively and that they are adequately upholding and enforcing building and safety requirements.[[21]](#footnote-22)

### C2.3.5 Discipline of building surveyors

Based on authority information, between 2009–13 (inclusive), 197 disciplinary inquiries were carried out by the BPB into the conduct of building surveyors (unlimited).[[22]](#footnote-23) As a result of these inquiries, 95% of findings in relation to culpable practitioners were that the building surveyor breached the Act or Regulations. The remaining 5% of decisions were findings of unprofessional conduct, misconduct in relation to their practice as a building practitioner and the employment or engagement of a person to do on their behalf work that could only be done by a person registered under the Act and the person was not so registered.

Breaches of the Act or Regulations by building surveyors (unlimited) during the period included:

* breaches of s 24 of the Act by failing to refuse a building permit in a situation where it must be refused (58% of findings)
* failing to give copies of permits and documents to a council (24% of findings)

failing to notify a council of their appointment as the relevant building surveyor and also of the building work in respect of which they were appointed (8% of findings).

The balance related to findings of claiming to be insured when uninsured and issuing an occupancy permit in contravention of s 44 of the Act.

For the same period, only four disciplinary inquiries were carried out into the conduct of building surveyors (limited). As a result of these inquiries, about 50% of findings regarding culpable practitioners were in relation to unprofessional conduct and 50% for breaches of the Act or Regulations.

About half the breaches of the Act or Regulations related to making false or misleading statements; about 25% to a failure to provide a council with documents; and about 25% to contravening s 24 of the Act by issuing a building permit when it should have been refused.

At least 11 building surveyors had been subject to more than one inquiry into conduct which resulted in disciplinary action being taken.

There were no reported inquiries into registered building surveyors’ ability to practise under s 180 of the Act. It is assumed all disciplinary inquiries were conducted under the broad grounds available under s 179 of the Act – Inquiry into conduct).

It is not discernible from the information available, especially in relation to findings which involved a breach of the Act or Regulations, whether the reason for the culpable conduct was because of an unfamiliarity with the relevant parts of the Act and/or Regulations or intentional noncompliance. In any event, the knowledge and experience (qualification) eligibility requirements for registration as a building practitioner, together with VBA’s knowledge and experience assessment framework applied to all applications for registration, are designed to ensure that at the point of registration the applicant has sufficient knowledge and experience to competently perform the scope of regulated work of a building surveyor. This necessarily requires demonstrating to VBA a sound working knowledge of the Act and Regulations.

## C2.4 Practitioner issues – qualifications and experience

As explained in RIS Part A, building practitioners' incompetence can have a multitude of harms for the building industry and on society more broadly. These harms can be economic (such as property damage and financial loss), health and safety (such as injury and loss of life), environmental (such as pollution during or after construction), societal (such as groups excluded from facilities or buildings) and cultural (such as streetscape amenity).

Mandating minimum skills and qualifications provides a means by which to regulate entry to registration. An effective registration system provides consumers with confidence in the technical skills of the building practitioners they employ. Consumers should have a reasonable expectation that using a registered practitioner on building projects will result in a high level of competency and quality built outcomes, an expectation that can be assisted by regulation.

Academic qualifications and practical experience are the two forms in which competency is commonly assessed. Trade-specific academic courses allow practical and theoretical skills to be adopted specific to the type of service a prospective practitioner wants to supply. These trade-specific skills are crucial to the regulation of building practitioners, as consumers should be able to contract the services of a building practitioner with confidence that these skills have been obtained.

While certain qualifications encompass the full range of competencies expected of a practitioner, there may also be deficiencies in a practitioner's ability to apply their skills in the context of the legislative framework and its many requirements. Consequently, practical, on-the-job experience including that which is supervised by practitioners already registered, allows an additional layer of skill development by which to assess practitioner competency and increase consumer confidence before contracting for services. This type of experience, as compared to experience gained academically, can in some circumstances provide an effective alternative to formal training.

The qualifications required for registration processes are used to overcome information asymmetry in the marketplace. Consumers, who are typically infrequent purchasers of building work services, are unlikely to know who are qualified providers of services. This means that prices for supply can be pushed down, which in turn can lead to a reduction in the quality of services provided by building practitioners and an increase in the discussed harms.

The prescription of minimum academic qualifications and practical experience requirements may have the effect of reducing these harms including for example defects in building work, or in the case of building surveyors improving their ability to detect defects in building work, as the demonstration of competency before registration allows the regulation of entry based on competency. A defect avoided by a builder or detected by a building surveyor is likely to avoid costs to consumers to rectify that defect, whereas a defect that occurs and requires rectification is likely to be a source of substantial cost to consumers.

As explained in Option 1 – Remake reg1503, in the absence of the Regulations VBA could still refuse to register a practitioner if it considered they did not have sufficient knowledge or ability to be registered. The intent of prescribed academic qualifications and experience requirements is to provide objective grounds on which prospective building practitioners can base their registration pathway. While these qualification grounds are objective, they are not exhaustive and VBA continues to retain the ability under the Act to assess applicants for registration that have alternative but equivalent qualifications and experience.

### C2.4.1 Assessment of experience

Under the Act, to qualify for registration an applicant must demonstrate to VBA that they can competently perform the scope of building work applicable to the relevant category or class of building practitioner for which they seek registration. To achieve this, VBA's application form requires among other things the applicant’s building employment history, an experience statement and at least two technical referee reports (which enable VBA to validate the information in the application). The department is proposing to formalise these information requirements in the Regulations as a way to reduce or avoid delays caused by lack of information. VBA has advised that it is often required to request further information because an application is incomplete. The department expects codifying the requirements will improve the applications received.

VBA’s knowledge and assessment framework may involve an initial examination of the applicant, the checking of technical referee reports and an interview. Building surveyors are expected to have developed and be able to demonstrate competency in the scope of regulated work relevant to building surveyors, described above. While some years of practical experience is prescribed in the Regulations, if competency cannot be demonstrated after that period has expired, registration will not be granted by VBA.

# C3 Cost-benefit analysis

RIS Part C assesses the costs and benefits of Regulations that relate to building practitioners:

* prescribed qualifications and classes (current building reg1503 and other options to remake)
* prescribed information as to character (current reg1509 and other options to remake)
* professional standards (current building reg1502 and other options to remake)
* the period during which a builder surveyor cannot act (current reg1504 and other options to remake)

potential new Regulations about requiring an applicant to complete their application personally, the prescribed information in applications and mandatory business skills.

The cost-benefit analysis does not consider currents regs1505, 1506, 1507 and 1508 (which are proposed to be moved to a new part of the Regulations to deal with compliance of building work and are discussed in RIS Part B), 1511 or 1512.

The modelling assumptions used for the cost-benefit analysis are set out in Appendix 1.

## C3.1 Approach

RIS Part C considers the costs and benefits associated with some options identified by the department and explained in chapters C1 Introduction and C2 Issues with building practitioners. The measurement of costs and benefits is against the base case of the relevant Regulation not being in place after it sunsets. This is not the same as an absence of all regulation, as much of the regulatory framework and controls are contained in the Act with the specific Regulations in pt 15 supporting the broader framework by providing administrative detail required to operationalise certain provisions in the Act. The measurement of costs is only those impacts incremental to the base case, meaning those costs incurred that are genuinely in addition to those that are likely to be incurred anyway.

The focus of this analysis has been on measuring the costs of the current Regulations, as the presented data provide some evidence about how these have operated in practice. Other options have not necessarily been modelled separately but as variations from the current Regulations (for example, reduce or increase certain elements). The variations quantified are therefore limited to areas where there would be a material change to the costs or benefits.

In some instances, the differences of costs and benefits between options is not significant or the overall costs and benefits of the Regulation itself is not significant. For these areas, judgement about a preferred option will primarily be based on the department’s judgement about alignment of the option against the objectives set out in the RIS, which itself will be informed by an assessment of the risk profile associated with the underlying problem. Similarly, where options are assessed using a break-even analysis, the department has considered likely risks to inform its judgement about the likelihood of reaching the break-even point.

This cost-benefit analysis is to assist consideration of options related to building practitioners (pt 15 of the current Regulations) only. It assumes that other parts of the current Regulations are likely to remain in place in some form, as it would be unhelpful to assess the requirements on building practitioners with all other building Regulations on an all-or-nothing basis.

### 3.1.1 Sources of data

The analysis in this part relies on data provided by VBA unless otherwise indicated. Sometimes, the data available from VBA were not sufficient to fully model the likely impacts of some options. Working assumptions have therefore been used in some places. Where this occurs, the reasonableness of these assumptions has been validated based on discussions with VBA and through limited consultation with a small sample of registered practitioners, including discussions with 20 practitioners across all practitioner categories.[[23]](#footnote-24) Given the nature of the analysis used to compare the options, this level of consultation is sufficient to develop indicative results, noting that the RIS process will be an opportunity for stakeholders to comment on the assumptions relied on.

## C3.2 Prescribed qualifications and classes

The current building Regulations (reg1503 sch 7) set out a range of classes and the qualifications for each. This is a prerequisite related to the competency of a practitioner.

### Option 1 – Remake reg1503

#### Base case

In the absence of reg1503 (and the other Regulations related to building practitioners), there would remain a registration framework for building practitioners. The Act still requires practitioners to be registered (s 16 and s 176) to carry out building work.

Even in the absence of reg1503, the Act requires VBA to be satisfied that a building practitioner is a fit and proper person to practise as a building practitioner (s 170). In the absence of specific Regulations on qualification and experience, the assessment of fit and proper person could take account of matters such as skills and competency. A number of court decisions have confirmed that ‘fit and proper’ includes skill and competency.[[24]](#footnote-25) The Act itself notes that fit and proper includes character, indicating other factors may also be considered. This suggests that in the absence of current reg1503 VBA could still refuse to register a practitioner if it considered an applicant did not possess sufficient knowledge or ability.

The Act requires building practitioners to ensure all building work is carried out in accordance with the Act, Regulations and building permits, with penalties for noncompliance. This suggests that even in the absence of any formal requirements on qualifications or experience, a practitioner would need to take at least some form of training or have experience in order to comply with the Act. Otherwise, they may suffer reputational damage if they are not able to perform building work to the required standard. Outside the Act, tort law and other legislation (for example, the *Domestic Building Contracts Act 1995*) would also apply, giving incentive for practitioners to make themselves reasonably competent to undertake building work.

In addition, the Act requires certain building practitioners to have relevant insurance (pt 9). While primarily aimed at protecting consumers, the insurance requirement also acts as a de facto control over competency as a pattern of poor performance is likely to result in insurance being refused. Loss of insurance results in immediate suspension of registration.

Further, the Act provides mechanisms to suspend or cancel the registration of a practitioner found to be incompetent. Disciplinary action can be taken under s 179 and can occur in relation to contraventions of the Act, unprofessional conduct, a pattern of incompetence or negligence, or where VBA considers the person is no longer fit to practise.

In summary, in the absence of a Regulation specifically on minimum qualifications and experience, it appears that:

* VBA may still consider the knowledge and ability of an applicant in deciding whether or not to register the practitioner; probably under this scenario VBA could ask applicants to list any qualifications and experience on the application form
* the practitioner is likely to take some form of training and have experience in order to be able to have the expertise to comply with other parts of the Act

there are several mechanisms in the Act that would lead to registration being taken away should a practitioner be found to be not competent.

Currently, consumers use the registration of a building practitioner as a signal that the government has checked the competency of a practitioner. In the absence of this, consumers would be able to take their own steps to check the quality of a practitioner (for example, they could reference check past work and many do this even in the presence of registration requirements).

Indeed, in the absence of this government endorsement of competency, building practitioners may take their own steps to demonstrate their competency, such as providing further information about their experience to potential customers. In addition, there may be an incentive in the sector to form practitioners' associations whereby an association would set membership requirements and then market its membership to consumers. Some membership organisations exist (such as Master Builders and Housing Industry Association) although these do not assess the qualifications or experience of their members. The likelihood they would take on a broader role of assessing qualifications in the absence of regulatory requirements for a qualification and experience is unknown and the department has assumed it will not occur in this base case. The department notes however that associations in various sectors do use other means to signal the quality of their members.

The core analysis in this chapter addresses Option 1, which assumes the current Regulation about qualifications and experience will be remade in its current form, and would allow for updating of prescribed qualifications to reflect the current courses available.

###### Costs

Table 2 shows the regulatory costs of Option 1.The cost in the table for the qualification and experience requirements is not the total cost of meeting these requirements, but the incremental cost that occurs beyond what would occur in the base case. As noted above, in the absence of current reg1503, there would be reasons (from both a registration perspective as well as basic knowledge to undertake work) for practitioners to undertake formal training and work experience. Discussions with a sample of practitioners indicated that in the absence of these qualifications being prescribed about 75% of practitioners would have the relevant qualifications and 80% of practitioners would have the relevant experience when they begin providing services, as a means of preparing themselves to operate as building practitioners. This has been reflected in the modelling assumptions, noting that the RIS is available for wider comment on these assumptions.

The total costs, of about $27 million a year, represent about 0.08% of the value of works completed under building permits issued in 2015–16.

Requiring applicants to have competed a qualification or otherwise satisfy their qualification through an alternative pathway is a barrier to entry (compared to having no requirements for registration) and as such will affect competition. Compared to the base case, the qualification and experience requirements will result in fewer building practitioners than would otherwise be the case, collectively producing less output than in the base case. It is this reduction in output (economic production) that is the real economic cost of reducing competition. However, quantifying this competition effect is difficult for this sector.

Table 2: Regulatory costs of Option 1

|  |  |  |  |
| --- | --- | --- | --- |
| Type of cost | Description of burden | Measurement of burden | Total cost |
| Administrative cost | New applicants would need to provide information about their qualifications and experience in their application. In practice, VBA requires copies of transcripts and written references. | Additional time to note qualifications and experience is assumed to be negligible.  The time required to obtain copies of the relevant documents is estimated to be one hour per applicant. Valuing an applicant’s time at $37.36 per hour,[[25]](#footnote-26) this adds a total $37.36 per application. about 700 new applications for registration are received each year, giving a total administrative cost of $26,152 a year.  These costs assume that in the absence of Regulations about qualifications VBA would not need to obtain evidence of qualifications. However, as noted above, VBA could still decide to obtain information about an applicant’s qualifications to determine if they are otherwise suitable for registration, which would reduce the incremental nature of this cost item for this option. It has been included here for transparency, and the department notes it is a very small component of the overall scale of costs of this option. | $26,152 a year |
| Administrative cost | Most applicants are required to attend testing and interviews. This is to test the practical application of their knowledge. | Online testing takes about 1.5 hours per applicant. The time value ($37.36 per hour) provides $56.04 per applicant.  Attendance at interviews may take up to three hours but not all applicants are required to attend an interview. Averaged over all applicants, at one hour per applicant, the estimated time cost is $37.36 per applicant. This gives a total cost of $65,380 a year.  These costs assume that in the absence of Regulations about experience VBA would not need to obtain evidence of experience. However, as noted above, VBA could still decide to obtain information about an applicant’s knowledge and experience to determine if they are otherwise suitable for registration (that is, fit to practise), which would reduce the incremental nature of this cost item for this option. It is included here for transparency, and the department notes it is a very small component of the overall scale of costs of this option. | $65,380 a year |
| Substantive compliance cost | Applicants are required to have the prescribed qualification listed in the Regulations. In most cases, the primary means to satisfying the qualification requirement is the completion of a qualification recognised under the Australian Qualifications Framework (such as a certificate, diploma or degree), although the Act also provides for alternative pathways to satisfy the qualification requirement.  For those that obtain the relevant Australian Qualifications Framework qualification, there is a cost of obtaining this qualification (tuition/course fees) as well as the time (opportunity cost) spent doing the course. | The cost to applicants of doing a qualification (or alternative pathway) is estimated at $20.6 million a year incremental to formal training that practitioners may undertake in the absence of an explicit qualification requirement. This cost includes the cost of the course itself as well as the time taken to complete the course. | $20.6 million a year |
| Opportunity cost | The requirement of minimum amounts of experience means in practice there is a delay in being able to practise. | This opportunity cost has been estimated based on a delay (the years of experience) in obtaining additional annual income. | $4.6 million a year |
| Market effects | Setting barriers to entry generally results in fewer practitioners than otherwise in the market. This is a competition effect: reducing the number of available practitioners results in higher costs for consumers. | No cost has been included. See the explanation below. | - |
| Government costs | There are additional costs to government associated with checking the qualifications and experience of applicants. | VBA has not measured its costs for each step of the application process. The current applicant fees are an indication of the magnitude of costs but are unlikely to be precise: fees have not been reviewed for some time. Further, many application processing activities would occur in the absence of qualification or experience requirements. Prescribing specific qualifications may reduce the costs to VBA of otherwise determining whether an application has the knowledge to be fit to practise.  For modelling purposes, it is assumed a cost of half the current application fee is taken as the cost attributable to checking the qualifications and experience of applicants, based on discussion with VBA about the tasks involved. | $1.7 million a year |
| **TOTAL COSTS** |  |  | **$27.0 million a year, or $237 million[[26]](#footnote-27) NPV over 10 years** |

While higher prices may be an indicator of reduced competition, it is also likely that other regulatory costs (for example, the cost of obtaining a qualification) are ultimately passed on to consumers through the practitioners’ costs and hence this impact is already reflected in the costs in the above table.[[27]](#footnote-28) The reduction in output, if it could be measured, would also be problematic as the output common to both scenarios would not be of the same quality: in other words, while the barriers to entry may reduce the amount of building activity undertaken, the community would place a higher value on this output because it would have a higher average quality. Thus, the extent of any real competition impacts would depend on the benefits explained below.

###### Benefits

The department expects there would be reduced search costs for consumers. In the base case, consumers would need to satisfy themselves of the competency of a building practitioner, a task which would often be lessened if they accept the registration process has already checked the qualifications and experience of the practitioner. This benefit may not always occur: many consumers would continue to undertake their own investigations even where registration is evidence of competency and conversely, some consumers may not undertake adequate checks even in the base case. Assuming that search costs are reduced by one hour on average[[28]](#footnote-29) in half the number of permits issued, taking the value of a person’s time as $37.36 gives a total saving to consumers of $2.1 million a year.

For other consumers, checking competency will result in improved quality of building works and integrity of dealings with practitioners. A 2006 report by CAV[[29]](#footnote-30) estimated detriment relating to building and renovating cost the consumer an average of $1,600 in money, time and emotional cost per incident. That survey has not been repeated since 2006 but a similar survey was conducted at the national level in 2011 and 2016.[[30]](#footnote-31) The 2016 survey estimated the average cost to Australian consumers to resolve building problems was $751.36 per incident. To break even (for benefits to outweigh costs), the number of detrimental incidents needed to be avoided due to the increased competency of practitioners would need to be at least 33,155. This is a high number but represents only 30% of the number of permits issued each year and is smaller than the proportion of incidents that occur under the existing arrangements. Despite the lack of evidence about the reasons for incidents, and the potential link between these and the specific qualification requirements in the Regulations, the department is satisfied that this break-even point is achievable given the analysis of the extent of the problem detailed above and that this option therefore will result in an overall net benefit.

However, caution should be exercised when considering benefits. In a sector that is highly regulated because of perceived high risks of harms, it is difficult to link benefits to single elements of the overall regulatory system. The Regulations about qualifications and experience are not the primary instruments to ensure quality but work as part of a suite of measures to reduce overall risk.

In that regard, an assessment of costs and benefits also needs to consider whether the reduction of risk will be effective in practice. Measures to address one area of risk may increase risks in other areas. For example, if entry requirements for registration in Victoria are set too high, practitioners may seek to avoid the requirements by becoming registered in another state where requirements are lower and then practise in Victoria under mutual recognition arrangements. This means that an attempt to increase the competency requirements in Victoria may actually lead to a reduction in the quality of practitioners. The department considers the requirements appropriately balance this risk, in light of actions undertaken by VBA to address such problems including sharing information with interstate counterparts and use of investigators to determine whether a practitioner genuinely operates in the state in which they are registered.

### Option 1.1 – Remove requirement for VBA to be satisfied of experience

An option to reduce the regulatory barrier would be to remove the current requirement for VBA to be satisfied of the applicant’s experience. Registration would rely on demonstration of the relevant qualification (as with the current Regulations) and attestation by two referees that the applicant has the relevant experience. VBA would not need to satisfy itself of the applicant’s experience beyond those references.

This would likely reduce the amount of experience needed to be undertaken before registration could occur, although some experience would still be necessary in order to properly obtain references about experience and to gain sufficient skills to operate effectively in the industry. Importantly, VBA's assessment process would be shorter, requiring a lower cost to it of assessing applications.

It is estimated that the incremental costs of the Regulation under this option would be about $22.3 million a year, about $4.7 million less than the cost of remaking the current Regulations. Under this option, the Regulation would need to prevent about 27,008 detrimental incidents each year in order to break even. While this is less than the break-even point for continuing the current Regulations, the department considers that the likelihood of reaching the break-even point is less because there would be a higher likelihood of building defects and poor dealings with consumers, due to practitioners in general having less practical experience compared to Option 1. On balance, the department considers this option increases risks, which would exacerbate the already high levels of concern about building practitioners outlined earlier in the RIS. The department considers the probability of reaching the break-even point of this option is less that the status quo and the status quo (Option 1) is therefore the preferred option.

This option would also potentially lower competition barriers compared to remaking the current Regulations and improve market access and choice. As noted above, these impacts are difficult to quantify and are complicated by the likely market responses to the Regulations (that is, pass-through of costs to consumers) which are already included in the above costs.

## C3.3 Prescribed information related to character

The Act requires VBA to determine if an applicant is a fit and proper person to practise as a building practitioner (s 170). To facilitate this, the Act requires an applicant to provide with their application prescribed information relating to their character (s 169). The current prescribed information is set out in reg1509 which requires the applicant to disclose if:

a) the applicant has within the last 10 years as an adult or the last five years as a child, been convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence involving fraud, dishonesty, drug trafficking or violence; or

b) the applicant has ever been insolvent under administration; or

c) any licence, permit, registration or other authority enabling the applicant to work as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory has ever been cancelled or suspended; or

d) the applicant has ever been disqualified from holding, or been refused a licence, permit, registration or other authority enabling the applicant to work as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory; or

e) the applicant has been fined, reprimanded or cautioned for any breach of an Act, Regulations, rules, professional conduct or code of ethics, in relation to working as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory; or

f) any insurer has ever declined, cancelled, or imposed special conditions in relation to the provision of professional indemnity insurance, public liability insurance, or any other indemnity insurance regarding the applicant working as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory.

### Option 2 – Remake reg1509

Under Option 2, the current Regulation would be remade.

#### Base case

In the absence of prescribing the current information, there is still an obligation on VBA to consider an applicant’s character before registration can occur (s 170(1)(c)). There are existing mechanisms to do this. VBA:

* may arrange for the conduct of a police record check (s 169 A); in practice, VBA does this for all applicants
* may look for risk indicators based on past known activities (including the disciplinary history and previous referrals) of the person or associated persons or where referees have been unreliable in the past
* can also do other checks (for example, checks by the Australian Securities and Investments Commission, checks of information from the Victorian Managed Insurance Agency if deemed relevant or liaison with interstate regulators if particular risks are identified)

has a power under the Act to ask the applicant to give it any information that it reasonably requires to determine the application (s 169(3)).

There is no application form prescribed by the Act or Regulations, but in practice VBA uses a standard application form that it requires applicants to complete. This means in practice, in the absence of reg1509, VBA could still include questions related to the same information in the standard application form. While an applicant could refuse to answer these questions, VBA could refuse to consider the application unless the information is provided (relying on s 169(3)).

###### Costs

The direct costs of the current Regulation 1509 is that an applicant needs to answer a series of questions related to character as part of their application form. These are yes-no questions, and in nearly all cases no other information is required to be provided. This is estimated to involve an incremental cost to completing an application of about five minutes per applicant.[[31]](#footnote-32) Valuing an applicant’s time at $56.04 per hour,[[32]](#footnote-33) the incremental cost is estimated at $4.67 per application.

From 1 September 2016, registered practitioners must renew their registration at least every five years. This means the number of applications where the prescribed information will need to be provided will be for new applicants as well as a share of existing registered practitioners. As the change to five-yearly renewals is new, VBA is still working through the process to allocate renewal years to registrations before September 2016. This may result in the number of renewals being volatile from year to year, but for modelling purposes a smoothed distribution of renewals is assumed, such that one-fifth of existing practitioners will need to renew each year. There were 22,377 registered building practitioners as at 30 June 201 so it is therefore assumed that 4,475 practitioners need to renew each year. There will also be about 700 net new applications.[[33]](#footnote-34) This gives a total number of registration renewals and applications each year of 5,175.

The total administrative burden for applicants providing the prescribed information is therefore $24,171 a year, or $212,393 NPV (net present value) over 10 years.

The prescribing of information in reg1509 also triggers another obligation under the Act. Under s 172A, a registered practitioner must notify VBA of any change to the prescribed information about the practitioner provided as part their application, without delay, after the change occurs. However, authority staff consulted for this report were not aware of any practitioners providing such information in practice, and therefore this secondary requirement is assumed to impose no real burden on practitioners.

###### Benefits

The risks sought to be addressed by regulating building practitioners go to the high risks of fraud, corruption and dishonestly that may occur in an unregulated sector. The prescribed information is not the first line of checking character: VBA obtains its own police record checks and reference checks. Indeed, the above costs may be zero in practice if VBA requests the information from applicants anyway. To the extent that prescribing the information may allow VBA to identify unsuitable applicants that it otherwise would not, the benefit of the prescribed information is to increase the likelihood that unsuitable practitioners will be prevented from becoming registered and consumers will therefore be protected.

The prescribed information is not only a mechanism to capture information that may not be identified through other checks: it also serves as a way of seeing if an applicant is honest and open in their application, which is itself a matter of character (for example, admission of prior insolvency or disqualification in another state, which may be able to be separately verified in some cases).

These benefits are difficult to quantify, both in assigning a value to the benefit and in estimating the frequency with which the prescribing of information will result in a different outcome. Based on the data held at an aggregate level by VBA, the number of applications refused on character grounds was unable to be determined, as was whether or not this was only possible because of the prescribed information. This is because applications are often in practice refused for multiple reasons and are not easily counted on the basis of single grounds for refusal: complete information is recorded on each individual file only.

The *2016 Australian Consumer Survey* indicated the cost to Australian consumers to resolve building problems was an estimated average of $751.36 per incident. While this figure represents the costs from all types of problems (that is, poor-quality work as well as unprofessional conduct), it is an indicator of the possible benefits of avoiding unsuitable practitioners from being registered. In order to break-even (for the benefits to outweigh the costs), the prescribing of the character information would need to result in 22 incidents being avoided each year. As each registered builder may undertake about 10 building works each year, the break-even point suggests that if about three unsuitable practitioners are prevented from being registered because of the prescribing of the character information, then the benefits will outweigh the costs. While aggregate data is not available, our understanding from VBA is that character grounds are common in refusals, and that asking for the prescribed information is how VBA identified initial risk indicators. The department considers it likely that this break-even point is met, despite it not having data on the extent to which issues of character are (or would be) a cause of problems reported by consumers.

The department has considered two other options.

### Option 2.1 – Reduce the prescribed information to be provided

This option is examined to consider a reduced-Regulation option. Reg 1509(e) requires an applicant to disclose whether they have been fined, reprimanded or cautioned for any breach of an Act, Regulations, rules, professional conduct or code of ethics, in relation to working as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory. The department identified that this Regulation could be removed, as it is considered to be rarely used in making a decision about character.

### Option 2.2 – Expand the prescribed information to be provided

Following discussions with VBA, additional information was identified that could be useful in making an assessment but is currently not requested. Under this option, information in relation to breaches of the securities of payment legislation, domestic building contracts legislation, environmental protection legislation and occupational health and safety legislation would also be requested.

The main differences in relation to the costs of these options is the time it takes an applicant to read the relevant question and provide a yes-no answer. While continuing the existing questions was estimated to take five minutes per application, reducing the number of questions by one is unlikely to have a material change: purely based on the number of questions, this may take only four minutes. Therefore, Option 2.1 (the reduced-Regulation option) would have a total cost of $19,337 a year and require the information to lead to an average 2.5 unsuitable practitioners being refused registration each year in order to break even.

Conversely, under Option 2.2, asking for additional information would increase the administrative cost to applicants. The additional information may be more time-consuming to provide as an applicant may need to consider a wider range of information before responding. It may therefore take about seven minutes to complete this range of questions in an application. On the same methodology, this option would result in a total cost of $33,839 a year, and require an average of some 4.5 unsuitable practitioners being refused each year because of the prescribed information.

Table 3 shows the yearly and 10-year NPV costs of remaking the Regulation and the three options and the benefits of each.

Table 3: Prescribed information relating to character options, costs and benefits

|  |  |  |
| --- | --- | --- |
| Option | Costs | Benefits[[34]](#footnote-35) |
| 2 Remake reg1509 without change | $24,171 a year  $212,393 NPV (10 years) | Benefits outweigh costs if the information leads to three unsuitable practitioners being registered each year |
| 2.1 Reduce the prescribed information to be provided | $19,337 a year  $169,914 NPV (10 years) | Benefits outweigh costs if the information leads to an average of 2.5 unsuitable practitioners being registered each year |
| 2.2 Expand the prescribed information to be provided | $33,839 a year  $297,359 NPV (10 years) | Benefits outweigh costs if the information leads to an average of 4.5 unsuitable practitioners being registered each year |

The department considers all three options would probably achieve their break-even points, as it understands the information collected on character has been relied on in refusing registration to far more applicants than these break-even points.

The status quo is preferred. While Option 2.1 has a lower cost, the lower break-even point is minor and the department considers it does not justify the reduced information that will be available to VBA. Conversely, the additional cost for Option 2.2 is more significant and, because it is not known whether the additional information requested will itself lead to more unsuitable practitioners not being registered, the department considers is not justified based on the very small amount of information that will be available.

## C3.4 Professional standards

### Option 3 – Remake reg1502

### Option 3.1 – Remake only pt (a) of reg1502

S 261(1)(j) allows the Regulations to prescribe the professional standards to be observed by registered building practitioners in the different categories or classes. Standards are relevant for matters such as disciplinary action (s 179).

Current reg1502 sets out basic standards of behaviour that can be expected of all registered building practitioners. Option 3 would remake this Regulation, which requires that a registered building practitioner must:

a) perform his or her work as a building practitioner in a competent manner and to a professional standard; and

b) immediately inform the client in writing if a conflict of interest arises or appears likely to arise between his or her interest as a building practitioner and that of his or her client; and

c) receive remuneration for his or her services as a building practitioner solely by the professional fee or other benefits specified in the contract of engagement or by the salary and other benefits payable by the building practitioner's employer.

These standards have been in place since 1994.

No formal evaluation of the impacts of reg1502 has been undertaken, but VBA advises data on disciplinary action indicates that standard (a) is used, while the others are not.

A preliminary reading of the register reveals that reg1502 is often used as a basis for disciplinary action. In particular, reg1502(a) (competent manner and to a professional standard) is often referenced whereas reg1502(b) (notification of conflict of interest) is referred to only once. Reg 1502(c) (remuneration other than through fees for services) is not mentioned at all. Most of the misconduct relating to payments involves the builder demanding more or earlier payments. Reg 1502(a) has been used to capture a wide variety of misconduct relating to technical competency (for example, ensuring that work is not defective), procedural requirements (for example, failing to issue a building permit) and business conduct (for example, delays in communicating with clients).

It is not apparent that reg1502 genuinely introduces any new obligations or consequences for a practitioner, as other provisions in the Act could be used to achieve the same result. The Act provides mechanisms to suspend or cancel the registration of a practitioner found to be incompetent. Disciplinary action can be taken under s 179 and can occur in relation to contraventions of the Act, unprofessional conduct, a pattern of incompetence or negligence, or where VBA considers the person is no longer fit to practise. Unprofessional conduct under s 179 would include conduct that ‘falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency’.[[35]](#footnote-36) However, VBA advises that it does in practice rely on this Regulation as an overall benchmark in undertaking its assessment of practitioners, in particular linking a practitioner’s conduct to the legislative assessment of being a fit and proper person to practise. VBA use the requirement for professional conduct in the process of assessing knowledge and experience: to determine if it is satisfied that an applicant has demonstrated sufficient knowledge and experience to perform the functions of the registered practitioner in a competent manner and to a professional standard.

Generally, standard (a) (as it relates to disciplinary action) is used where other breaches may already be relevant (for example, failing to issue a building permit or technical competency in terms of defective work) as well as business conduct.

A sample of practitioners was asked about their understanding of their obligations arising from reg1502. No practitioners could describe any precise obligations that arise from reg1502(a), and no practitioners considered the Regulation changes their behaviour beyond what is already required.

The current form of the Regulation has been in place since 1994. To the extent that it originally was a meaningful signal of the expectations of practitioners, such behaviour is likely to have now become part of normal behaviour.

It therefore appears that reg1502 imposes no additional costs on practitioners, but it remains necessary as it clearly establishes the professional standards to which a building practitioner must adhere. Contravention of this standard provides a basis for disciplinary action. It is important to note that reg1502 is not needed in relation to a consumer’s right for remedy should a consumer suffer harm from dealings with an unprofessional practitioner.

On this basis, there is effectively no material cost or benefit of remaking reg1502 in its current form. Similarly, there is no material difference should the Regulation be reduced to include only pt(a) (Option 3.1), or whether the Regulation remains in its current form with VBA issuing guidance notes about how it will be interpreted and applied.

The department has identified an option to strengthen the Regulation by including more specific information about what constitutes professional conduct, either within the Regulations or by incorporation of other documents. While one such specific standard has been suggested – requiring domestic builder (manager) to only hire registered building practitioners – it is still unclear whether describing standards in more detail would change behaviours and introduce new obligations, or remain only as a means to establish grounds for disciplinary action. The department has not pursued this option, although it is an area the department will monitor as part of the evaluation process, to determine if sufficient evidence emerges to warrant revisiting this topic.

Thebase case must now also recognise new s 177 of the Act (which commenced on 1 September 2016), which provides that VBA may approve codes of [conduct](http://www.austlii.edu.au/au/legis/vic/consol_act/ba199391/s3.html#conduct) for [building](http://www.austlii.edu.au/au/legis/vic/consol_act/ba199391/s3.html#building) practitioners and disciplinary action may be taken where a practitioner does not comply with a code. The Act sets out a process for preparing such a code. From a regulatory compliance perspective, a code of conduct may be a more appropriate mechanism to set out standards of behaviour in the long run. The department considers that, as the code of conduct regime has not been developed (and would take some time to develop), the Regulation should be remade in its current form.

## C3.5 Period during which a private building surveyor cannot act

Under the Act, a PBS may be appointed to carry out all or any of the following functions:

a) the issuing of building permits[[36]](#footnote-37)

b) the carrying-out of inspections of buildings and building work under pt 4

c) the issuing of occupancy permits and temporary approvals under pt 5.

S 79 sets out the circumstances in which a PBS must not act. These are where the building surveyor has a pecuniary interest in the building work or its design, where they were involved in the design of the building or work, and where they were previously employed or engaged by the entity that prepared the design for the building or works. This last circumstance only applies where the employment or engagement was within a period prescribed in the Regulations.

The objective of s 79 is to prevent a building surveyor having a conflict between their own interests (such as a sense of fidelity or loyalty to a former employer) and their duty to a consumer. There is a risk that a consumer will not be adequately protected (for example, be informed about defects) where a building surveyor has such a conflict of interest.

#### Base case

Current reg1504 sets the prescribed period at one year. In the absence of this Regulation, s.79(1) of the Act could not be used to prevent a person acting as building surveyor for a building works designed by their previous employer, even if that employment relationship existed immediately before the functions performed by the building surveyor. Remaking reg1504 is Option 4.

This creates a risk of conflict of interest in the functions carried out by building surveyors. However, the Act still has controls to prevent such conflicts of interest arising. These include s 79(1A), which provides that a PBS must not carry out any function as a PBS in relation to which the PBS or a related person has a conflict of interest. Disciplinary action can be taken under s 179, including for unprofessional conduct of which acting under a conflict of interest would be an example.

Thus, in the absence of prescribing a period to which previous employment would prevent a building surveyor from acting, the Act may nevertheless prevent the building surveyor from acting where to do so amounts to a conflict of interest (generally defined) or unprofessional conduct.

S 79(1A) was only introduced in the 2016 amendments to the Act and as such now provides a general catch-all for conflicts of interest. This was introduced following the 2015 VAGO *Victoria’s Consumer Protection Framework for Building Construction* report, which found the framework had failed to manage a long-recognised conflict of interest for PBSs, and evidence of collusion and conflict of interest between builders and building surveyors. The new s 79(1A) means that reliance on the period prescribed under s 79(1) is now much less important.

There are also likely existing reputational incentives for a builder surveyor to avoid perceptions of conflict of interest, as well as some more-astute customers actively ensuring conflicts of interest are avoided.

Proving a case of conflict of interest related to previous employment is inherently subjective as there may be several factors to be considered, only one of which is the time period since the employment relationship ended.

With the introduction of s 79(1A), the prescribed period in relation to previous employment now only acts as an effective default minimum. It is a minimum because even if the employment occurs outside the period prescribed for s 79(1), a conflict of interest may still be considered to exist under s 79(1A). It is a default, because a person may apply to be exempt from s 79 even where they may have previously employment within the prescribed period.

With the introduction of s 79(1A), prescribing any period for the purpose of s 79(1) may sometimes increase the risk of misinterpretation, for example if a building surveyor (wrongly) considers that once the prescribed period has elapsed there is no longer a question of conflict of interest. The department considers however that this risk is low. Moreover, removal of any prescribed period (that is, an intention to rely solely on s 79(1A)) may cause some practitioners to (wrongly) believe there is no longer a restriction on providing services for work undertaken by a former employer.

S 79(1A) relies on a practitioner being able to identify and assess that a conflict of interest exists. The department considers this is not always likely and therefore considers that to ensure conflicts of interest are avoided (as opposed to subsequently detected), a more-objective rule that restricts the period in which a building surveyor can work on particular projects is beneficial.

The choice of an appropriate prescribed period therefore needs to balance:

* not being too short as to not capture genuine conflicts of interest that could arise from these situations

not being too long as to capture too many situations where conflicts are unlikely to be present, or place a higher need on people needing to apply for exemptions.

### Option 4 – Remake reg 1504

Option 4 is to remake the current Regulation and retain the period during which a PBS cannot act of one year. Preliminary discussions with a small sample of building surveyors considered that the current one-year period was reasonable and noted that this time period did not impose a material burden on building surveyors. While notionally prescribing a period where a person cannot do work in relation to works undertaken by others is a restraint on competition, in practice there are only a small number of building surveyors compared to the very large number of building works undertaken each year. Precluding a building surveyor from performing functions in relation to a previous employer was considered to not have any real impact on their ability to operate and compete in the market. VBA advised that requests for exemptions from the current one-year prescribed period are extremely rare.

### Option 4.1 – Reduce the prescribed period to six months

Option 4.1 is to reduce the prescribed period to six months. This would not materially alter the costs of complying with the Regulation but would increase the risk of a building surveyor acting where, despite six months elapsing, a relevant conflict of interest still existed. This is because they would be guided by the prescribed period and not separately consider the operation of s 79(1A) which applies without a time limit. The risks of a building surveyor acting while under a conflict of interest are the costs to the customer if potential defects are not properly identified and avoided. Because of this risk, the department considers a six-month prescribed period is inferior to the current one-year period, although the extent of the difference (and whether it is significant) cannot be meaningfully quantified.

### Option 4.2 – Increase the prescribed period to two years

Option 4.2 is to increase the prescribed period to two years. This might provide greater protection against conflicts of interest, but it would also increase the costs of the Regulation. A two-year period would continue to restrict when building surveyors could act even where a real conflict of interest no longer existed. If people could demonstrate no conflict of interest existing within this period, they may apply for an exemption under the Act, which itself is a time-consuming process. There would appear to be no strong evidence of the need to increase the prescribed period: as s 79(1A) is new, an evaluation on its effectiveness may provide further insights in the future.

## C3.6 Other topics

The department also considered some additional Regulations, based on suggestion made through previous VAGO/Ombudsman reports and authority advice.

### Option 5 – Prescribe application forms and other documents to be provided with an application

Option 5 is to prescribe in Regulations the information needed to be provided in an application for registration. This could be a standard application form, but it could also include specific additional information needed to be included before an application is in an acceptable form (for example, copies of transcripts or written references).

The department understands this would merely codify what VBA requires from applicants, for which there is already powers in the Act for VBA to request any information it considers it reasonably requires to determine the application. It may refuse the application if the applicant does not comply with the request within a reasonable time (s 169).

As such, prescribing the information that is already required by VBA would not impose any substantive incremental costs or benefits, and the department is proposing to include this in the new Regulations to assist in providing transparency of process for applicants seeking registration as building practitioners.

### Option 6 – Require a statutory declaration that the applicant, not a third party, prepared the application

Option 6 is to introduce a requirement whereby applications for registration must be completed personally by the applicant and not by third parties.

The department understands some applicants seek the services of other parties to help them prepare their applications. This may be to assist in understanding the application requirements or to ensure their information correctly addresses all relevant registration requirements. There is no reason why this genuine assistance should not occur.

However, the third party sometimes effectively writes the entire application and the applicant only signs the form. A 2012 Ombudsman’s report found some applications for registration as a building practitioner are completed by third parties for a fee and then provided to the applicant for submission. This has sometimes meant that the information provided in an application does not properly reflect the person making the application, particularly where completing the form would require an applicant to demonstrate they understand the nature of the work involved. While such a practice is generally identified during interviews (for example, an applicant is unable to explain building practices in person that they demonstrated in their application), it means that time and resources are used up when it should have been clear much earlier that an applicant had inadequate knowledge.

The Ombudsman concluded this was an integrity issue with the application process. The Ombudsman’s report recommended each applicant be required to prepare their own application for registration. This would introduce tighter controls to ensure the integrity of practitioner registration, including requiring applicants to complete a statutory declaration that they have personally prepared all documentation submitted to VBA.

While a requirement for applications to be prepared personally would be straightforward, the difficultly with such a requirement relates to enforcement and compliance. As a mere requirement, compliance is expected to be low. As such, a feasible mechanism would be for applicants to provide a statutory declaration that they have indeed prepared the application themselves. Requiring a statutory declaration to be provided has a regulatory burden. An applicant needs to spent time preparing the statutory declaration and to obtain a witness. While VBA could provide a template declaration, it would still be expected that an applicant would spend up to 15 minutes preparing the form and getting it witnessed. This would be about $9.34 per applicant. Further, the time burden imposed on the witness would also need to be considered: while the range of witnesses is large, an indicative cost is where, for example, certain registered professions charge a small fee for witnessing documents. A fee of about $5 is common.[[37]](#footnote-38) Therefore, the total cost of providing a statutory declaration is about $14.34 per new applicant, with a total cost of this requirement being $10,038 a year, or $88,209 NPV over 10 years.[[38]](#footnote-39)

Based on the similar break-even analysis of the other Regulations, this requirement would break even if it resulted in just over one practitioner on average a year not being registered (13 over 10 years). While this is a small number, it is difficult to attribute the identification of unsuitable practitioners to the requirement to complete the statutory declaration as VBA has a series of check points.

There may be other costs incurred as a result of this requirement. For example, a person who may have previously used some assistance to complete an application (to ensure their information was complete and legible) may no longer seek such assistance, resulting in an application that requires VBA to follow up to clarify information. Alternatively, VBA further advises that such a requirement is likely to unnecessarily slow down the process for many applications where there is very low risk. For example, if an applicant declares they had assistance with their application, VBA would be required to investigate the circumstances, which they consider in most cases would be benign assistance (such as a spouse helping an applicant fill out a form). However it would be difficult to establish a clear evidentiary basis for what constituted allowable assistance (for example, an applicant may have difficulty in demonstrating that assistance from a spouse is merely benign). To overcome this difficulty, there would be a significant resource burden on VBA to collect and assess evidence to be satisfied of the nature of the assistance provided.

The other question to consider is the effectiveness of such a requirement. While the influence of the statutory declaration may change the behaviour of some applicants, it may not for all. Indeed, the requirement may provide a disincentive for people who would otherwise only seek assistance and advice in preparing their own application and provide little incentive for people who already allow a third party to write the entire application.

Based on the difficulties in enforcing such a requirement and the likelihood that a blunt approach would impose a greater burden on applicants for which seeking assistance is not a problem, the department considers this option (that is, relying on a broad-based Regulation that applies to all applicants) is unlikely to result in benefits that outweigh costs. Therefore, there will be no requirement in the proposed Regulations for an applicant to personally complete their application. Instead, VBA advises there are nonregulatory options that could be used more effectively (such as using the interview process to more rigorously test an applicant’s knowledge and understanding if VBA suspects the information included in an application does not represent the applicants’ knowledge of building requirements).

# C4 Competition and small business impacts

## C4.1 Competition impacts

Two of the current Regulations impose restrictions on competition. These are the prescribing of qualifications and experience in order to be registered, and the prescribing of the period in which a building surveyor may not undertake certain work. These impacts are discussed in the respective chapters in this report.

## C4.2 Small business impacts

It is useful when considering regulatory options to examine the impacts on small business. While all Regulations can affect small businesses, the key policy question is whether a Regulation has a disproportionallyadverse impact on small businesses to the extent it affects small businesses’ ability to compete with larger businesses. There is no single definition of a small business, although number of employees and annual turnover are often used.

Registered practitioners are individuals although practitioners may employ other people to work under their supervision. These may be employees but are often independent contractors. The Housing Industry Association's *Renovations Roundup (autumn 2016)* reports the vast majority of practitioners active in the market operate on a small scale. Further, given the nature of the types of work performed, it is more common for smaller practitioners to compete in practice with other smaller practitioners.

The range of Regulations considered in this report do not have any apparent disproportional impact on small businesses. To the extent that the Regulations require a practitioner to do something that they otherwise would not, there is no identified additional time, cost or effort for a small business to meet these requirements compared to other businesses. Indeed, the Regulations may provide a disproportionate benefit to small businesses, as a more-rigorous registration and regulation process signals a practitioner’s competence and quality, which may otherwise be more costly for small businesses to demonstrate to a customer.

# Appendix 1: Modelling assumptions

#### Net present value

For net present value calculations, the number of registered building practitioners is assumed to grow at 1.54% a year, consistent with employment projections by occupation groups published by the Commonwealth Department of Employment (2015–20 projections).

A real discount rate of 4% has been used, consistent with the rate used for RISs and guidance published by the Department of Treasury and Finance.

#### Value of time

The administrative burdens caused by some options involves a practitioner or applicant spending an amount of time to comply (for example, to complete a form). The amount of time spent has been estimated by a review of the information required and consultation with a sample of practitioners.

The value of the time spent on these activities has been estimated from data about average wages and hours worked published by the Australian Bureau of Statistics (ABS). In particular, earnings were taken as average weekly ordinary time earnings for full-time adults as at May 2016 (seasonally adjusted). For new applicants, it is assumed that the average weekly earnings represent their opportunity cost of time. For practitioners that are already registered (and therefore likely earning a higher income as a result of their registration) a multiple of 1.5 times average earnings has been used to reflect the higher value of time for skilled workers.

It is assumed these represents costs to individuals, as practitioners are registered as individuals. Therefore, costs to business associated with employees' time (for example, overheads) are not considered.

#### Travel costs

Applicants may need to travel to attend interviews and obtain a witness’ signature on a statutory declaration. These have not been included in the costs of the options analysed.

In the absence of the Regulations, VBA is still required to determine an applicant’s suitability to practise. While the testing and interviews may not be as extensive as under the Regulations, it is expected that applicants would still need to attend some form of meeting with VBA. Therefore, the cost-benefit analysis takes account of expected additional time involved in the interviews, but it does not include any costs for the time and travel costs to arrive at the interviews as these would not be additional.

In relation to obtaining a witness' signature on a statutory declaration, it is assumed that applicants could attend a relevant witness (for example, a pharmacist) in the course of their other activities and not need to undertake a separate and additional trip to obtain the signature. Therefore, no additional travel costs have been factored in. However, the time of an applicant to wait for a witness signature (for example, enter a pharmacy and wait for the pharmacist to witness and sign the document) has been included in the applicant’s costs (an allowance of 10 minutes).

#### Prescribed qualifications and experience

The number (population) included is only successful new applications each year. Practitioners renewing do not need to obtain qualifications after their first registration. Unsuccessful applicants often apply again so to count all applications would double-count the people actually obtaining qualifications. The number of new registrations granted was provided by VBA.

Table 4 shows the underlying cost assumptions used for each type of registration.

Table 4: Cost assumptions for categories / prescribed classes of building practitioner

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Category/prescribed class of building practitioner | Cost of qualification (course fees) | Hours of course | Years of experience required in practice | Income differential (annual) |
| Building surveyor (unlimited) | $44,800 | 4,800 | 4 | $15,000 |
| Building surveyor (limited) | $28,080 | 2,340 | 3 | $10,000 |
| Building inspector (unlimited) | $13,992 | 1,166 | 3 | $15,000 |
| Building inspector (limited) | $13,992 | 1,166 | 3 | $10,000 |
| Quantity surveyor | $28,080 | 2,340 | 3 | $15,000 |
| Civil engineer | $35,668 | 6,400 | 4 | $20,000 |
| Mechanical engineer | $35,668 | 6,400 | 3 | $20,000 |
| Electrical engineer | $35,668 | 6,400 | 4 | $20,000 |
| Fire safety engineer | $35,668 | 6,400 | 4 | $20,000 |
| Building design (architectural) | $25,032 | 2,086 | 2 | $10,000 |
| Building design (interior) | $13,252 | 1,325 | 2 | $10,000 |
| Building design (services) | $13,252 | 1,325 | 2 | $10,000 |
| Commercial builder (unlimited) | $22,080 | 1,840 | 4 | $15,000 |
| Commercial builder (limited) | $11,040 | 920 | 1 | $10,000 |
| Domestic builder (unlimited) | $22,080 | 1,840 | 4 | $10,000 |
| Domestic builder (limited) | $11,040 | 920 | 1 | $7,000 |

*Source: Regulatory Impact Solutions*

Course fees are taken as the average of course fees published by a selection of institutions (Victoria University, Victoria Polytechnic, Holmesglen and Latrobe University). Using the average is likely to overestimate the minimum cost of compliance, but will more accurately reflect the costs more likely to be incurred across the population. Where the listed qualification is no longer offered under that title, the current equivalent has been used. Course costs include tuition fees and course materials. Student service fees have been excluded as students receive other benefits in exchange for these fees.

Courses below diploma level include the full course cost even though the course cost may be subsidised by the Victorian Government under the Victorian Training Guarantee. This means the cost reflects the total cost to the Victorian community of the course. However, for degree courses, only the student contribution has been included under an assumption of all places being Commonwealth-supported places.

The number of years needed to achieve the experience requirement is generally higher than the number of years listed in the Regulations. This is because it nearly always takes more time to achieve experience in all relevant elements assessed by VBA. Therefore, the actual duration of experience before achieving registration has been used. This is an average, based on discussions with VBA about their assessment methodology.

The income differential used refers to the difference between average earnings for the population and the starting annual income for each group. It is based on desktop research, validated by discussions with a sample of registered building practitioners across all groups. This is used for modelling purposes only, as it is difficult to estimate the income a building practitioner might be able to achieve were no experience requirements in place.

#### Avoided consumer detriment

This report uses a measure of consumer detriment reported in the *2016 Australian Consumer Survey* (published on 18 May 2016) by the Commonwealth Treasurer. The full report is available on the Australian Consumer Law website.

A ‘detrimental incident’ is one of a range of problems experienced by consumers when engaging professionals to undertake building, renovations, repairs or maintenance. The problems reported include poor workmanship, poor customer service, faulty or unsafe products, delays in having defects repaired or replaced, false or misleading information, nondelivery of a service, unclear or unfair terms or price, and scams. The measure used to determine the break-even points is the cost to the consumer either direct loss or costs of rectifying the problem. It includes the time spent by the consumer dealing with the problem.

The survey only reports this estimated average cost at a national level: $751.36 per incident. This was a reduced estimate from the previous 2011 survey of $1,321.02. However, both estimates are below a previous estimate measured for Victoria by CAV[[39]](#footnote-40) in 2006, which estimated that detriment relating to building and renovating cost the consumer an average of $1,600 in money, time and emotional cost per incident. There was no overlap in the timing of the surveys, so it is unclear whether Victoria has experienced a decline in the average cost of building problems or if the costs of detriment in Victoria per incident are higher than the national average.

The 2016 survey does report state and territory results on the incidence of experiencing a problem, which reports that the incidence of problems relating to building or renovations is slightly higher (18%) in Victoria than the national incidence (17%). It is unclear how (or if) this higher incidence may translate into a higher average cost of rectifying problems.

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1. In this report, ‘detrimental incidents’ means one of a range of problems experienced by consumers when engaging professionals to undertake home building, renovations, repairs or maintenance. The problems reported include poor workmanship, poor customer service, faulty or unsafe products, delays in having defects repaired or replaced, false or misleading information, nondelivery of a service, unclear or unfair terms or price, and scams. The measure used to determine the break-even points is the cost to the consumer in terms of either direct loss or costs of rectifying the problem. It includes the time spent by the consumer in dealing with the problem. [↑](#footnote-ref-2)
2. S 3(1) of the Act. [↑](#footnote-ref-3)
3. CAV (2015) Building disputes, defects and delays. Available at <http://www.consumer.vic.gov.au/housing-and-accommodation/building-and-renovating/defects-delays-and-insolvency/disputes-defects-and-delays>. [↑](#footnote-ref-4)
4. Victorian Auditor General Office (2015), Victoria’s Consumer Protection Framework for Building Construction. Available at: <http://www.audit.vic.gov.au> [↑](#footnote-ref-5)
5. VBA (2015) Complaints process. Available <http://www.vba.vic.gov.au/disputes-and-resolutions/complaints/building> [↑](#footnote-ref-6)
6. VBA five-year metrics 2011-16, available at: http://www.vba.vic.gov.au/about/annual-reports [↑](#footnote-ref-7)
7. VBA (2015) Practitioner Disciplinary Register. Available at http://www.vba.vic.gov.au/disputes-and-resolutions/practitioner-disciplinary-register [↑](#footnote-ref-8)
8. Information supplied by VBA. [↑](#footnote-ref-9)
9. Information supplied by VBA. [↑](#footnote-ref-10)
10. Information supplied by VBA. [↑](#footnote-ref-11)
11. Australian Consumer Survey 2016, The Treasury, on behalf of Consumer Affairs Australia and New Zealand, (EY Sweeney Ref No. 25364) – 18th May 2016, <http://consumerlaw.gov.au/files/2016/05/ACL-Consumer-Survey-2016.pdf>. [↑](#footnote-ref-12)
12. Figure 23 on page 39. [↑](#footnote-ref-13)
13. See page 59 of the report and figure 49 on page 59 of the Australian Consumer Survey 2016. [↑](#footnote-ref-14)
14. See Table 17 on page 109 of the Australian Consumer Survey 2016. [↑](#footnote-ref-15)
15. 17% x 90,670 domestic building permits issued. [↑](#footnote-ref-16)
16. 15,405.4 x $1,321.02. [↑](#footnote-ref-17)
17. Information supplied by VBA. [↑](#footnote-ref-18)
18. Information supplied by VBA. [↑](#footnote-ref-19)
19. Information supplied by VBA. [↑](#footnote-ref-20)
20. Information supplied by VBA. [↑](#footnote-ref-21)
21. Compliance with Building Permits, VAGO report, December 2011 at page 21. [↑](#footnote-ref-22)
22. Information supplied by VBA. [↑](#footnote-ref-23)
23. The practitioners consulted were 7 domestic builders (including both small and large scale builders), 5 commercial builders, 3 building surveyors, 2 building inspectors, 1 engineer, 1 building design and 1 erector/demolisher. [↑](#footnote-ref-24)
24. *Hughes and Vale Pty Ltd v New South Wales* (No 2) [(1955) [1955] HCA 28; 93 CLR 127 at 156-157 – ‘Fit’ means ‘honesty, knowledge and ability’. *Sobey v Commercial and Private Agents Board* [(1979) 22 SASR 70 at 76] – Fit and proper person requires an applicant to show he is possessed of a requisite knowledge of the duties and responsibilities devolving upon him as the holder of the particular licence under the Act. [↑](#footnote-ref-25)
25. This value of time uses the Average Weekly Ordinary Times Earnings for Victorian, seasonally adjusted as at May 2016 (ABS), over a 38-hour week. [↑](#footnote-ref-26)
26. 10-year NPV assumed a growth in the number of registered practitioners of 2.5% a year over the next 10 years, discounted at a real discount rate of 4%. [↑](#footnote-ref-27)
27. Indeed, it is expected that most practitioners would only undertake the qualifications and experience to become registered if they believed they would recover those associated costs through higher lifetime earnings, which would only occur in practice where the market was prepared to reward that increased competency through increased prices. Therefore, there is an inherent tendency towards an optimal number of practitioners, provided the market has sufficient confidence in the registration process. [↑](#footnote-ref-28)
28. Search time of 1 hour reflects the department’s estimate of time to request referee details from a prospective builder, contact up to three referees to inquire about the performance of the builder, and (in some cases) travel to and inspect previous work completed by a builder. This is an average across those consumers that do take active steps to find out about a builder’s past performance. [↑](#footnote-ref-29)
29. *Consumer Detriment in Victoria: a survey of its costs, nature and implications.* [↑](#footnote-ref-30)
30. Australian Consumer Survey, published by Commonwealth Treasury, May 2016. [↑](#footnote-ref-31)
31. This is based on the time needed to read and answer each question. Discussions with a sample of practitioners confirmed this as reasonable, although several practitioners suggested that where they are familiar with the information requested, it would take only about 1 minute to answer ‘no’ down the list of questions. [↑](#footnote-ref-32)
32. This value of time uses the Average Weekly Ordinary Times Earnings for full time adults, private sector, seasonally adjusted as at May 2016 (ABS), increased by 50% to account for average incomes of skilled building practitioners, over a 39.7-hour average week. [↑](#footnote-ref-33)
33. The net figure includes new applications less an allowance for practitioners who may not renew (e.g., retirement, cancellation) as well as existing practitioners who apply to be registered in a different category. [↑](#footnote-ref-34)
34. These benefits are average over the life of the Regulations. [↑](#footnote-ref-35)
35. See cases *In re R: A practitioner of the Supreme Court; and Campbell v Dental Board of Victoria*. [↑](#footnote-ref-36)
36. An application for a building permit may be made to a private building surveyor or to a municipal building surveyor. [↑](#footnote-ref-37)
37. Based on a sample of prices charged by five pharmacists in Melbourne CBD during August 2016. [↑](#footnote-ref-38)
38. This assumes that the requirement only applies to new applications for registration. If a statutory declaration were required also for those renewing registrations every five years, the total cost would be $98,382 a year. [↑](#footnote-ref-39)
39. *Consumer Detriment in Victoria: a survey of its costs, nature and implications.* (2006) [↑](#footnote-ref-40)