

**Review of the categories and classes of
building practitioner registration in Victoria**

**Industry Discussion Paper
30 September 2003**

Building Commission &
Building Advisory Council

Building Commission

The seal of the Building Commission Victoria is a circular emblem. It features a central design with a diagonal line and a smaller circle. The words "BUILDING COMMISSION" are written in a circle around the top, and "VICTORIA" is written around the bottom.

Building Commission



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Introduction

Purpose of this discussion paper

This Discussion Paper is a key step in the review of building practitioner registration categories and classes being conducted by the Building Commission and the Building Advisory Council in Victoria. The review has been instigated because of the need to ensure that practitioner registration categories and classes are consistent with the long term needs of the building industry and reflect both (1) the requirement for practitioners to be appropriately skilled and (2) changes in the industry environment such as the recent developments in professional insurance.

The Paper presents an overview of the issues that have been identified during a series of consultations with key industry associations and representatives of consumer groups. It is now being broadly circulated to industry participants as well as to the general public in order to canvass the views of consumers. This process will generate valuable feedback and discussion on the most appropriate practitioner registration system for Victoria, reflecting the diversity of interest and opinion both within the industry and in the community. This information will be critically important in the development of the Industry Position Paper.

The Industry Position Paper will draw on the information provided in response to this Discussion Paper and any additional information gathered in further consumer and industry organisation consultation. The Industry Position Paper will put forward the final agreed proposals for modifications to the categories and classes of Building Practitioner Registration in Victoria.

We invite you to respond

Your response to this Discussion Paper is important. Please forward comments to Ian McKendry, the Building Commission, Level 27 Casselden Place, 2 Lonsdale Street, Melbourne 3000, or email to imckendry@buildingcommission.com.au by 19 December 2003.

Copies of this paper and an electronic response form may be found at <http://www.buildingcommission.com.au/initiatives/initiatives.asp>

Please direct any enquiries to Roger Frith on (03) 9285 6414 or Ian McKendry on (03) 9285 6489.

Message from the Building Commissioner and Chair Building Advisory Council

The Building Commission and the Building Advisory Council, with the support of the Building Practitioners Board and Consumer Affairs Victoria, are undertaking a review of the underlying rationale and structure of the categories and classes of Building Practitioner Registration in Victoria.

An effective building practitioner registration system provides a way to correct an information imbalance experienced by consumers engaging the building industry. It does this by providing confidence in the technical and other skills of the building practitioners they employ. A registration system also provides a mechanism for protecting the consumer from those who are less skilled, and a disciplinary process for those not maintaining the regulatory standard of conduct and competency.

In Australia, each State or Territory administration initiated the registration of practitioners from differing policy standpoints, with the result being different registration systems. The Victorian model introduced four main elements:

- compulsory registration of building practitioners
- compulsory insurance for most registered building practitioners
- proportionate liability and liability capping for building practitioners
- the freedom for consumers to choose between private building surveyors and municipal building surveyors for building approvals and inspections.

The building industry is characterised by constant change. The hierarchy of drivers that led to the creation of the registration system may have changed and new drivers may have emerged. One such new driver is the emphasis to be given to improvement of practitioner capabilities by participation in continuous professional development.

In undertaking the review we have sought clarification as to the purpose of the registration system and the issues or problems it is designed to address.

The extent of registration of building practitioners has been considered in many reports including the *Review into National Homebuilders Warranty Insurance and Consumer Protection* carried out by Professor Percy Allan in 2002. This project will consider many of these reports with an aim of recommending a position that provides a net public benefit. We wish to thank those consumer and industry organisations that have already contributed to the development of this Discussion Paper. We value any further contributions and comments you may wish to make to assist us in developing an Industry Position Paper.

Tony Arnel
Commissioner
Building Commission

Genevieve Overell
Chair
Building Advisory Council

Executive Summary

The purpose of this discussion paper is to present a balanced view to industry of the potential modifications to the current practitioner registration system. After extensive consultation a total of 49 separate issues have been identified by industry and consumers as potential amendments or inclusions into a modified practitioner registration system.

However in reviewing these potential modifications, it will be necessary to distinguish between essential and non-essential potential amendments. The reason for this is that while a practitioner registration system operates for the benefit of industry, it also has a corresponding cost. It has been estimated that a marginal increase in registrations of 1,000 will result in an additional cost of \$200,000 to industry and therefore consumers, while a moderate increase in practitioner registrations of about 15,000 will amount to an additional cost of \$3 million. A significant increase in registrations of about 50,000 will amount to an additional industry cost of \$10 million.

Our current position

In Australia each State or Territory administration has embarked on the registration of practitioners from differing policy standpoints with correspondingly different registration systems. The Victorian model includes four main elements:

- compulsory registration of building practitioners
- compulsory insurance for most building practitioners
- proportionate liability for building practitioners
- providing a choice between private building surveyors and municipal building surveyors for building approvals and inspections.

From its inception the registration system has been intended as a mechanism to facilitate the liability reforms including insurance arrangements of the *Building Act*. A secondary intent has been to assure the community that practitioners in positions of responsibility are indeed competent.

Meeting competition policy objectives

The current review of Categories and Classes of Building Practitioner Registration has sought clarification as to the purpose of the registration system and what issues or problems it is designed to address. To assist in this it has developed criteria to assist in considering the acceptability of registrants while meeting the twin challenges posed by the National Competition Policy (NCP) to:

- ensure that regulatory restrictions relate directly to the achievement of the public benefit objectives, and
- pursue the objectives of regulation at minimum cost to the public in terms of restrictions on competition or other matters.

Tests for applicability for registration

The 'tests' for building industry registration look at each potential practitioner category or class to ensure that they meet essential criteria. The tests adopted by the review are:

- involvement in the building industry
- identifiable qualifications
- potential to cause significant damage.

Drivers for practitioner registration

The identification of drivers for registration is the major element in designing a practitioner registration system that will meet current and future industry needs. The seven drivers for the current registration of building practitioners have been identified as:

- financial guarantee
- health and safety
- practitioner competency
- product quality
- service quality
- market information
- branding and market recognition

Key contemporary registration issues to be considered in this review

Following extensive consultation with stakeholders, a wide range of issues were raised in relation to the review of the practitioner registration system. For ease of understanding, we have grouped these issues into the following three categories :

1. *Industry direction and refocus.*
Issues identified within this category stem from a shift in policy direction and industry focus onto issues such as practitioner competency, continuing professional development (CPD) and insurance.
2. *Amendments to existing categories for consideration.*
This group of issues relates to potential modifications to existing practitioner categories so the categories more accurately reflect the type of service covered.
3. *New categories for consideration.*
Industry identified for consideration a number of new category areas relating to a range of practitioner services that were previously not subject to registration.

These issues will potentially drive changes to the current practitioner registration system and care needs to be taken to assess the need and cost-benefit of any proposed changes. To assist industry in further deliberations, stakeholders are asked to explore the following questions:

- How essential are these issues in driving changes to the current registration system?
- Will they yield collective benefits to consumers, the industry as a whole or only to a specific category or class of practitioner?
- Can a net benefit be demonstrated as required under NCP principles?
- Do the potential amendments meet the criteria or tests for registration?
- What are the potential costs relative to the benefits that will be derived by the industry as a whole if these issues drive changes to the current registration system?

Potential new models

Four models for considering registration categories are outlined in this paper. These are:

- no change
- minimal change
- moderate change
- significant redesign.

These models are included to provide some general appreciation of the costs associated with the potential adoption of varying levels of change to the practitioner registration system.

Target industry outcomes

Target industry outcomes sought from a building practitioner registration system for Victoria could include:

- better buildings in terms of fitness for purpose, quality of materials and workmanship, improved life-cycle performance and asset value
- improved health and safety due to building works being undertaken only by those practitioners with specific competencies
- improved consumer confidence that building practitioners are competent to undertake the work required

- improved consumer confidence that industry practitioners will conduct themselves in a fair and honest manner and that practitioner services will be delivered efficiently
- identification of specific skills/competencies for specific work required
- no reduction in competition between similarly skilled/competent industry practitioners
- existence of an independent mechanism for acting on grievances / discipline.

Stakeholder feedback on these target outcomes is sought.

Performance indicators

Given the objectives of a practitioner registration system, performance indicators need to be established to measure whether objectives are being met. The anticipated outcomes outlined in the section above indicate the areas where possible performance information may be obtained or developed. However data capture and analysis has been limited in the building industry to date, and this will limit objective measurement of performance indicators.

The key performance indicators that have been identified in the consultation process include the following:

- reduction in litigation against industry practitioners
- reduction in insurance claims
- reduction in defects in commercial and domestic building work
- reduction in the number of health and safety issues that arise during construction and after completion
- reduction in consumer complaints
- an increase in consumer satisfaction.

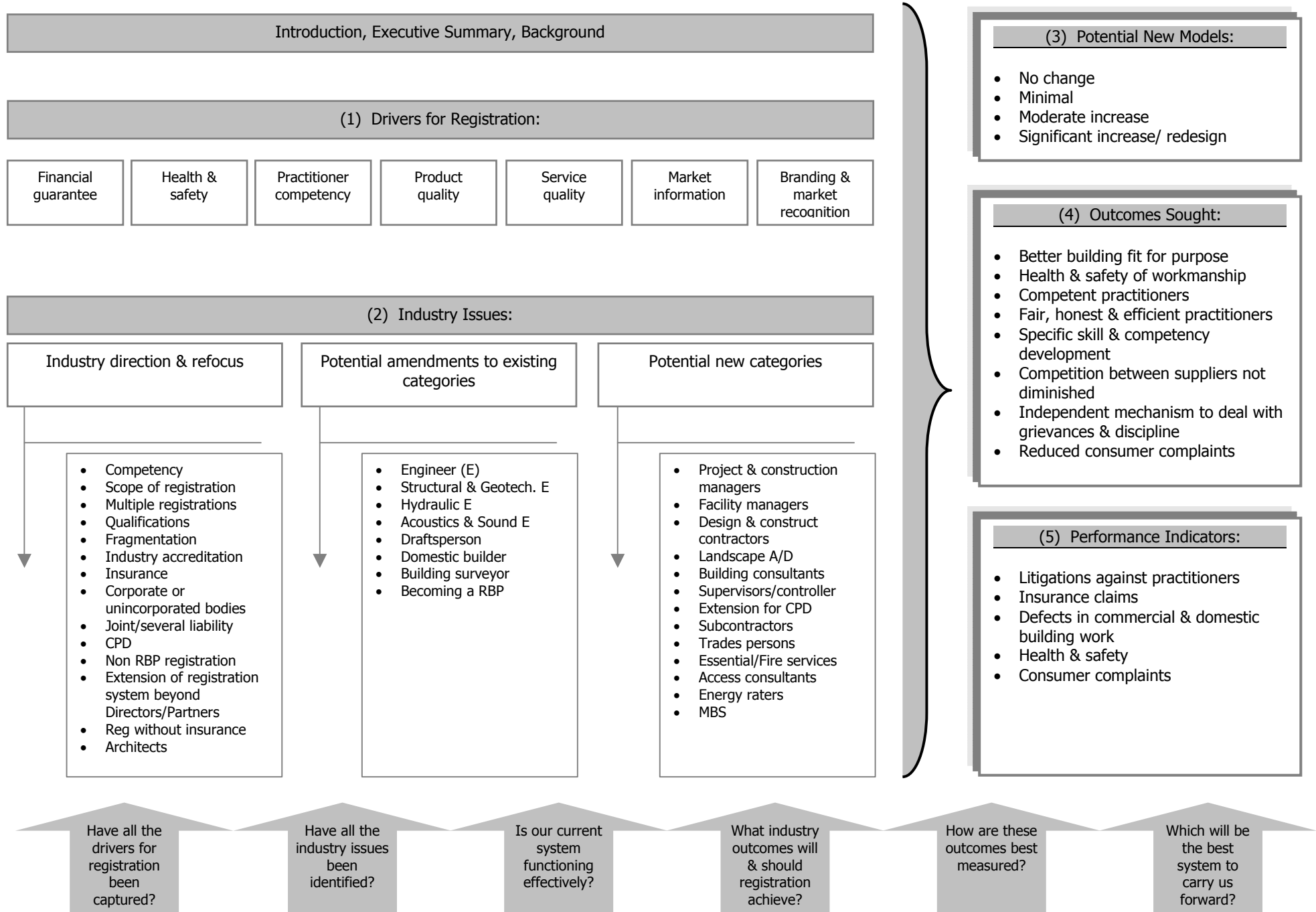
Where to from here

Industry stakeholders are strongly encouraged to consider the issues presented in this paper and contribute to the debate so that industry and Government can reach an agreed position that is the result of rigorous consultation and evaluation.

An Industry Position Paper will be prepared which will be used as a basis for recommending to the Minister for Planning and the Government any amendments proposed to be made to the *Building Act* to make potential changes to the practitioner registration system legal and binding. In addition, an economic analysis dealing with the cost-benefit impacts of any proposed changes will be undertaken.

The strategy map on the following page will assist stakeholders in navigating through this document and its issues.

Review of Practitioner Categories & Classes ~ Strategy map



Background to the Registration Category Review

The requirement to register building practitioners in positions of responsibility was introduced into Victoria as part of the liability reform measures of the *Building Act 1993*. The policy intention was only to register natural persons (i.e. individuals rather than companies) in positions of responsibility for (1) decisions fundamental to effective building control or (2) decisions that may later give rise to a compensation claim in the courts for economic loss resulting from a latent building defect.

This policy meant that about 17,000 practitioners, being mainly principals of practices, are currently required to be registered, resulting in about 20,000 registrations. Companies, businesses, employees and tradespersons contracted to a builder and other entities or practitioners not in positions of responsibility do not need to be registered.

In Australia, each State or Territory administration has embarked on the registration of practitioners from a different policy standpoint with correspondingly different registration systems.

From its inception, the registration system was intended to facilitate the reforms to the practice of building surveying, practitioner liability and insurance arrangements contained in the *Building Act*. As a secondary intent, the system was to assure the community that practitioners in positions of responsibility were indeed competent.

The system was amended by the *Domestic Building Contracts Act 1995*, which relied on it for the registration of practitioners who may not be in positions of responsibility but who were undertaking work for an owner. Similarly some builders who were formerly registered with the Housing Guarantee Fund Limited but who only wished to provide services in the domestic building market were also registered by the system. The registration of these applicants was outside the original intention of the registration policy.

The extent of registration of building practitioners has been considered in other reports including:

- the National Competition Policy Review of Architects and Building Legislation (Victoria)
- the Security of Payment Task Force Report (Victoria), and
- the Review into National Homebuilders Warranty Insurance and Consumer Protection by Professor Percy Allan.

In 1995, Victoria signed, with other Governments, the Competition Principles Agreement (CPA), one of three agreements to give effect to the National Competition Policy (NCP). Under the CPA the signatories agreed to adopt the guiding principle that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- benefits to the community of the restriction outweigh the costs
- objectives of the legislation can only be achieved by restricting competition.

In essence, the Victorian Government is committed to removing and not adding to restrictions on competition unless a net benefit to the whole community is demonstrated – not just to one group. Accordingly, the *Building Act* and its regulations – which established the current registration scheme – were examined in 1999 to assess compliance with the NCP principles. This inquiry, conducted by lawyers Freehills, concluded that registration (with the inclusion of some form of CPD) provided long term benefit for consumers and an improvement in the professionalism of the industry.

In August 2001, the Building Commission launched its strategic vision for a reformed Victorian building industry, with the support of key stakeholders. The foundations of that vision are *right rules, better practitioners* and *informed consumers*.

In March 2003, the Building Advisory Council (BAC) undertook the responsibility to review the categories and classes of building practitioners. It approved the project methodology and plan (detailed in Appendix II) and a BAC Working Party was established to address project issues as they arose and to oversee industry consultation and the development of the discussion and position papers.

Current developments in the building industry environment suggest that an examination of practitioner registration categories and classes is timely. These developments include the impacts of the changes in the insurance industry, domestic building dispute resolution, and the aim of the Building Commission and Building Practitioners Board to introduce compulsory CPD across all registration categories. In addition, a number of practitioner bodies are currently seeking inclusion in the building practitioner registration system.

This task is given added focus by the imminent 'sun-setting' or automatic revocation of the Regulations made under the *Building Act* which is due in 2004/5. This imposes a requirement to consider the policy framework of any 'replacement' regulations proposed, and seek consultation through a Regulatory Impact Statement (RIS).

The current review of Categories and Classes of Building Practitioner Registration has developed criteria to assist in considering the acceptability of registrants while meeting the twin challenges posed by the NCP to:

- ensure that regulatory restrictions relate directly to the achievement of the public benefit objectives, and
- pursue the objectives of regulation at minimum cost to the public in terms of restrictions on competition or other matters.

The 'tests' for building industry registration to ensure that registration meets the overall industry objectives are as follows:

1. **Involvement in the building industry.** For example, registration of engineers can only cover those practitioners seeking to work directly in the building industry rather than those performing similar functions or tasks in other industries.
2. **Identifiable qualifications.** The qualifications and/or experience required as a prerequisite for acceptance to registration must be discernable and relevant to the area of registration.
3. **Potential to cause significant damage.** The potential for a practitioner to cause significant or very significant harm to consumers through incompetence, error or misconduct means that this practitioner should be registered for consumer protection purposes.

The justification for registration should also consider the following key questions:

- Should registration be limited only to those disciplines that have a direct contractual relationship with the building owner or consumer?
- Should registration be extended to include disciplines that normally have a contractual relationship with the current categories of principal RBP and can cause significant damage to a building owner or consumer?

This discussion paper will present the current and potential industry discussion on the review of practitioner classes in the following sections:

1. Drivers for registration
2. Industry issues
 - 2.1. Industry direction and refocus
 - 2.2. Potential amendments to existing categories
 - 2.3. Potential new categories

1. Drivers for registration

As previously stated, each State or Territory administration has embarked on the registration of practitioners from a different policy standpoint that has resulted in correspondingly different registration systems.

From its inception, the registration system in Victoria focused on ensuring those practitioners likely to be the subject of litigation for design or construction defects have sufficient assets to provide redress for damage i.e. insurance. The system was first introduced for the commercial and government building sectors as part of a package to address a number of perceived market failures such as the “deep pocket syndrome” whereby those parties with substantial assets were made to bear a disproportionate share of an award for damages. This was addressed by introducing proportional liability of directors/partners.

The liability reforms included the introduction of mandatory insurance arrangements that relied on a registration process to ensure that the practitioners to be covered by that insurance were qualified and competent. This was a risk management approach to ensure the potential liability of the insurers was contained and quantifiable.

As a secondary intent, the system sought to assure the community that practitioners in positions of responsibility were competent.

The Housing Guarantee Fund Ltd (HGFL) had, in parallel with the Building Commission, operated a domestic builders registration system. The registration function for the HGFL was largely carried out by the Housing Industry Association and the Master Builders Association. This system sought to ensure that domestic builders also were qualified and competent but did not include mandatory insurance. The Building Commission and HGFL systems were joined in 1995 with a result that the liability regime became applicable to the domestic building sector as well.

A need was identified by the Building Commission to understand the drivers behind registration systems and consider their relevance to the review of practitioner categories and classes. As a result an internal Building Commission workshop sought to identify the past and current drivers for a practitioner registration system. Seven drivers for registration were identified. These seven drivers have been presented and discussed further by the Building Commission with the Building Practitioners Board, the Building Regulation Advisory Council and the Building Appeals Board. They have also been raised at the interviews held with industry organisations and appear to cover the main elements of the rationale behind the system.

Determining the continuing relevance of these drivers is the major prerequisite to designing a practitioner registration system that will meet current and future industry needs. The seven drivers are listed below for further industry comment and feedback:

Financial guarantee

Practitioners involved in large or commercial developments need to have some financial substance (provided by insurance), or the assets of the company/partnership involved need to be accessible by registration of at least one director/partner, in the event of litigation. All practitioners must have some financial substance (by insurance) provided as a basis to settle claims for damages assessed by proportionate liability.

Health and safety

Construction is the worst performing industry in terms of industrial accidents, due to low levels of OHS system development and implementation. A registration system provides the potential for practitioners with continuing poor performance in construction safety to be suspended. A related recent development is the introduction by Government of additional requirements in relation to public construction to ensure only firms with safety systems in place are engaged on public construction projects above \$100,000.

Competency

Public benefit is served by ensuring practitioners are competent. Industry has moved over the last decade to increasingly specify competencies of practitioners in various categories to assist the public in determining the skills available/ required for building work. The need for practitioners' skills and knowledge to be kept current will be driven by the Continuous Practitioner Development (CPD) initiative.

Product quality

Defects in new building work may be reduced by ceasing to register those practitioners with a poor record for workmanship or providing acceptable materials on building projects.

Service quality

The aim of this driver is to facilitate the provision of better information on design and construction processes by practitioners to consumers and to provide effective complaints management mechanisms for builders and consumers.

Market information

Many consumers rarely use the services of the building industry and do not build up expertise in managing construction processes and participants. Therefore information is necessary to avoid the inadvertent selection of an incompetent or unethical practitioner, who could cost a consumer dearly. Regulation could also improve the availability and quality of information about the technical competence of practitioners thus reducing consumer risk.

Branding and market recognition

Differentiation in the market place for highly qualified practitioners can be achieved through the establishment of a pre-determined standard that builds the value of the 'registered practitioner brand'. This will entail the identification of specific skill sets and competencies within the categories and will result in greater consumer confidence in engaging building industry professionals.

However a 2001 National Competition Council Staff Discussion Paper cautioned that the clear identification of regulatory objectives was essential.

"A fundamental requirement [of regulation] is that the objectives identified are clearly related to broader social benefit goals, rather than being concerned with the status, income or other interests of the professional group".¹

Discussion Paper Issue 1:

Do these seven drivers capture all areas that are relevant to practitioner registration today and for the foreseeable future?

¹ Deighton-Smith, R., Harris, B and Pearson, K. @2001, *Reforming the Regulation of the Professions*, National Competition Council Staff Discussion Paper, AusInfo, Canberra, p.18

2. Industry Issues

Following extensive consultation with stakeholders, a wide range of issues was raised in relation to the review of the practitioner registration system. For ease of processing, we have grouped these issues into the three distinct categories:

- industry direction and refocus
- potential amendments to existing categories
- potential new categories.

These issues will potentially drive any changes to the current practitioner registration system and care needs to be taken to ascertain the following for each key issue:

- How significant are these issues in driving changes to the current registration system?
- Will they yield collective benefits to consumers and industry as a whole or only to a specific category or class of practitioners i.e. is there a net benefit within NCP guidelines?
- Do these issues meet the criteria or tests for registration?
- What are the potential costs relative to the benefits that will be derived by consumers and the industry as a whole if these issues drive changes to the current registration system?

Specific issues raised throughout this discussion paper (as in [Discussion Paper Issue 1](#) above) are summarised at Appendix I.

2.1 Industry Issues: Industry Direction and Refocus

Recognition of Levels of Competency in Practitioners

During the interview process suggestions were made that the registration classification should provide for recognition of various levels of competency, skill experience or capability of practitioners.

It was suggested that a tiered system might be useful to indicate to the consumer the 'level' at which a particular practitioner works. This would assist consumers to ensure that suitably experienced and skilled practitioners are chosen to undertake the required work. The rating of practitioners according to their ability to undertake work classified as simple, normal, or complex was proposed. It was also suggested that the level of insurance required may have some relationship to these tiers.

To implement such a system would require the establishment of objective criteria, supported and understood by consumers and industry that would allow practitioners to be rated. However, coming up with watertight criteria could be problematic, and the potential for practitioners to disagree with their rating, if less than the highest level, would probably be considerable.

Discussion Paper Issue Number 2:

Would the consumer benefit of creating and administering a system of levels of practitioner competency justify the cost?

Scope of Registration

Some industry participants have proposed that all practitioners involved in the building planning and permit process should be registered. Industry reports have also recommended similar major expansions of the registration system. The proposition generally put is that by introducing registration requirements for a broader range of industry participants, standards of competency are set.

Discussion Paper Issue Number 3:

Are there sufficient grounds for a major expansion in the categories of practitioners required to be registered beyond those discussed in section 2.3 under Supervision and Control and Trade practitioners (see pages 26 – 27)?

‘Usually Done’ Exemption for Multiple Registrations

Concern has been expressed at the extent of design and drafting work being undertaken by builders, particularly on domestic building projects. Builders frequently employ draftspersons to carry out documentation work adequate for submission with an application for a building permit but there is no current requirement for the builder to employ a qualified draftsperson and there is no requirement that this person(s) be registered in the category of draftsperson. As the builder is the registered building practitioner interfacing with the consumer, the liability cover for the practitioner service is met.

The *Building Act* provides for persons to carry out work ‘usually done’ in a particular category that is also undertaken by building practitioners registered in another category without the requirement for separate registration. Domestic builders who undertake design and drafting work to obtain a building permit are an example of this. Building practitioners using this discretion cannot use the title of the other relevant category.

This section is designed to avoid the need for multiple registrations where a building surveyor inspects building work for which he or she has issued a building permit. Also, engineers do not have to be registered separately as draftspersons to cover the building design component of their plans for building work or documentation relating to permits and permit applications.

Discussion Paper Issue Number 4:

Information and comments are requested on the potential harm to consumers arising from the ‘*usually done*’ concession in respect to further limiting the extent of design and drafting work a builder should be entitled to undertake.

Registration Qualifications & Minimum Standards

The existing system has been based on the ability of industry to identify a base level of qualification and competency that may have application for several potential classes of practitioner. For example engineers undertake a qualification in civil engineering, after which they then choose to become a specialist in a particular discipline of engineering such as geo-technical engineering or structural engineering.

The issue of the need for differentiation between certain disciplines of persons qualified as civil engineers is problematic for a regulatory body as experience rather than a specific qualification in a particular field may be the only indicator of the specialist competencies. The issue of whether offences should be pursued where a person of similar qualification provides services relating to another sub-class of practitioner in the same category of practitioner should be considered.

Discussion Paper Issue Number 5:

Is there merit in the grouping of persons of related disciplines under a generic class?

It has been proposed that if there is a course made available by a tertiary education provider that relates to a set of skills or knowledge for a practitioner in the building industry, then this should be sufficient ground for establishing a corresponding category of practitioner registration.

While such a view may meet with items 1 and 2 of the tests for applicability of registration referred to on page 10, the potential for significant consumer harm in each potential practitioner category/class would need to be established to warrant further consideration.

Specialisation and Fragmentation in the Building Industry

The registration categories and classes have been cited as a contributory factor in fragmentation in the building industry. The use of the term fragmentation in this context implies that divisions between practitioners by registration categories/classes create barriers in the industry that may not be in the interest of consumers.

However specialisations appear to be continually emerging in the building industry and this is a reflection of the increasing complexity of technology used. Views have been expressed that for every practitioner discipline that has specific qualifications a category or class of registration should be created.

Such a system is based on a perceived need for identification and differentiation of specialisation in the building industry market to aid consumers seeking, and being able to rely on, specific competencies.

In general the creation of such barriers by a registration system can only be justified where issues such as potential health and safety risk are involved or there is potential for significant harm to consumers as a result of inadequate service.

Discussion Paper Issue Number 6:

Should the registration categories/classes act as an agent for restraining fragmentation of the building industry or should they support identification of specialisation?

Industry Association 'Accreditation'

Industry associations have raised the possibility of the Building Commission accrediting industry organisations to carry out practitioner registration functions. The Productivity Commission (PC) examined 'industry co-regulation' models in its National Competition Policy Report *Review of Legislation Regulating the Architectural Profession* and stated that:

'Co-regulation combines the legislative provisions with functions administered by the professional association. Governments typically administer those processes where conflicts of interest may affect decisions made by a professional association'.²

Conflicts of interest appear where industry organisations that are created and funded by the membership to service and promote the membership take on a role of also acting in the interests of consumers or the public. In the case of regulation of architects the PC observed that co-regulation 'is likely to produce outcomes no better than and possibly inferior to current arrangements'.

A possible model may be where industry associations undertake practitioner competency or qualification evaluations that the BPB uses to determine practitioner eligibility for registration. An efficiency gain may accrue where the industry association also provides a complying insurance scheme for its members. Such a model would leave the complaints and disciplinary processes with the Building Commission.

Whether such a model would address concerns related to co-regulation in regard to providing better outcomes for consumers is doubtful. Inclusion of industry and public consumers on the boards of management of industry organisations may lead to the development of potential models that address these concerns. The potential for any efficiency gains provided by any co-regulation models would have to be established before any detailed evaluation could be undertaken.

Insurance

Industry organisations interviewed supported mandatory insurance requirements linked to registration for current building practitioners. This is consistent with a public expectation that defective building work will be fixed. The existing insurance requirement focuses on the principals in the building permit process being the ones who will attract claims for damage in the event of defective building work or practitioner services.

Recently the requirement for insurance for domestic builders limited to work up to \$12,000 was relaxed. This was on the basis that the Building Advice & Conciliation Victoria (BACV) system would provide the mechanism for addressing defects in small domestic work.

² Productivity Commission 2000, *Review of Legislation Regulating the Architectural Profession*, Report No. 13, AusInfo, Canberra, p.181.

Corporate or Unincorporated Bodies

Currently there are no requirements for the registration of corporate or unincorporated bodies such as companies, businesses or partnerships. The related current registration requirement under s 176 of the *Building Act – Offences* – is that the use by a partnership or corporation of a restricted title is only permitted if at least one of the partners/directors is registered in the category or class appropriate to the practitioner services to be provided by the body.

The consultation process raised issues experienced by consumers when they engage or contract a company/partnership that employs persons and engages sub-contractors. It is claimed that poor performance may be attributed to the individuals, who may or may not be registered, as well as the organisation itself.

This suggests that a company providing poor services should be the target for de-registration as well as the relevant registered individuals i.e. directors/partners. An alternative view is that the benefits and disadvantages of company registration are evenly balanced, and that the ownership of a company should not be tied to the qualifications or eligibility of its principals.

The *Architects Act* currently requires architectural companies and partnerships to be approved by the Architects Registration Board of Victoria. The effect of registration is that these entities must meet the registration requirements and if not registered, must not provide, 'hold out' or imply that the organisation provides the services of an architect. This review will address whether consistency between the *Architects Act* and the *Building Act* is appropriate.

It has been proposed that company registration should be automatic if a certain number, such as 50%, of practitioners employed by that company are registered. This proposal may provide consumers with a mechanism for determining which companies are more likely to provide the services of registered practitioners rather than non-registered practitioners. The benefits of such a mechanism would need to be clarified before it could be considered further.

Builders warranty and/or professional indemnity insurance is generally provided for individual RBPs by the company /partnership. Such insurance may relate to the relevant director/partner and any nominated employee of the body. There is no constraint that only directors/partners should be registered building practitioners.

In jurisdictions where the corporate body is registered, and not the individual, the risk of the principals of a de-registered company re-commencing operation as a new or different company is subject to limited control. The new company is often referred to as a 'phoenix company'. The *Building Act* focuses on the registration of individuals as RBPs and this has been acknowledged as a successful provision. There has been no suggestion by industry or consumers that this system should be reduced in any way. Instead some level of at least monitoring or recording of corporate entities has been generally supported.

The current provisions have been criticised for not being strong enough to provide an effective restraint on organisations offering the services of an RBP without complying with the requirements of the *Building Act*. The Act requires that each organisation must have a RBP director or partner relating to the services being provided. It also requires the organisation to cease to provide RBP services related to a specific category where a sole RBP director or partner registered in that category leaves the organisation, is suspended or de-registered. This does not stop the organisation from continuing to exist, but it makes it an offence to provide any RBP service where it does not have a RBP director or partner currently registered in the relevant RBP category.

Joint and Several Liability of Directors/Partners

The relationship between the conduct of the corporate entity and the RBP is established by the one director/partner Act requirement discussed above and the principle of 'joint and several liability'

established under company legislation. This principle ensures that each director is responsible for the conduct of any and all other directors.

The joint and several liability principle has resulted in the successful prosecution of RBP directors where the proximity of that director to the conduct issue has been reasonably close. Where it is not close (i.e. where the RBP director could not reasonably have had knowledge of the conduct issue) it becomes more difficult to undertake a successful prosecution action. Non-RBP directors have also been prosecuted under section 253 of the *Building Act* where the proximity to the conduct issue is not close to any RBP director. Such prosecutions are difficult to conduct and penalties are limited to fines, with no impact on any related RBP director's registration.

The undermining of the joint and several liability principle by a requirement for proximity to the conduct matter may present an inadequate control over the conduct of non-RBP directors and the adequacy of the practitioner services provided by the corporate entity.

The level of occurrence of an inability to successfully prosecute any RBP director would need to be significant to warrant any action such as the registration of companies.

Substitution of Directors or 'Phoenix' Directors

Where a RBP director/partner has been deregistered for an offence committed by the organisation, the possibility of that RBP director/partner being replaced by the engagement of another RBP and the offence continuing has been raised. It has been suggested that such a scenario could be addressed by introducing some controls related to the company in addition to the existing controls related to individual RBP registration.

There appear to be few, if any, instances of this scenario occurring. However only anecdotal data is available as no tracking of the relationship between individual RBPs and their roles in related bodies is currently undertaken.

Discussion Paper Issue Numbers 8 & 9:

(8) Are there any other matters to be considered when considering controls over corporate or unincorporated bodies?

(9) Is there any data available that identifies systemic failures relating to corporate or unincorporated bodies?

Continuing Professional Development (CPD)

There is strong encouragement within building industry and supporting organisations (such as insurance companies) for an enhanced emphasis on CPD. In response to this strong industry mandate, the Building Commission and the Building Practitioners Board are proposing to introduce a compulsory building industry CPD program, linked to annual registration, across all registered building practitioner categories. CPD should provide important benefits to consumers, the building industry and registered building practitioners.

The Building Commission, the Building Practitioners Board and industry believe that the introduction of a CPD program would provide the framework for practitioners to keep abreast of good practice developments and to meet changing consumer and industry demands. The introduction of the CPD system would involve a period of non-compulsory participation followed by mandatory participation tied to initial and annual registration renewal across all registered building practitioner categories.

Those industry associations consulted have identified the introduction of CPD as the most significant new driver to impact on the registration system. The overarching principle of CPD is to improve and expand the skills base of registered building practitioners. Key benefits for the building industry are the improvement of registered building practitioners' performance standards, improvement in public image of practitioners and consumer confidence, and the encouragement of lifelong learning and professionalism within the industry.

Industry associations are generally in favour of a system that mandates a broader level of participation in CPD than is currently embraced by the RBP system. It was noted during interviews that many organisations or professions seeking inclusion into the practitioner registration system frequently based their view on the grounds that registration would 'keep the cowboys out'.

CPD for existing RBP categories

As indicated above, the Building Commission and the Building Practitioners Board are proposing that CPD should be undertaken by all registered building practitioner categories.

The observation has been made that, if legislation is not passed and the CPD system does not become mandatory for any or all categories/classes of RBP, there should be a way for consumers to determine which practitioners are undertaking CPD and which are not. This concept is supported by industry if the intended mandatory CPD system does not eventuate.

It has also been proposed that the RPB categories should in some way reflect the level of CPD attainment, particularly for those RBPs with unblemished records and/or considerable industry experience. This could result in a practitioner category system that has within it mechanisms for identifying CPD attainment.

Non-RBP Registration CPD

It has been proposed that where a small scale domestic builder involves a partnership and only one partner is currently subject to the requirement for registration, CPD undertaken by either person should be recognised as contributing to the annual requirement of the registered person. This appears to be problematic as it introduces a general principle that organisations or persons other than the registrant may undertake CPD activity to the benefit of the RBP. Such arrangements potentially include concepts of director/partner CPD, company CPD, employee CPD or even those contracted to the RBP. If such concepts are considered to have some merit the limits of proximity to the RBP would need to be clearly defined.

The discussion on whether both partners involved in small scale domestic builders should be subject to registration is also referred to on page 22.

Discussion Paper Issue Number 10:

Should a person or entity other than the RBP be recognised or registered for the purpose of contributing CPD activities to the related RBP?

Extension of the Registration System beyond Directors/Partners

During the interview process, several organisations expressed a view that those who supervise and control the services provided by a company/partnership as a building practitioner service should be registered. It appears there has been some misunderstanding whether such persons are required to be registered. An alternative view was that only those with direct contractual responsibility should be subject to registration.

Those who exercise supervision and control over a practitioner service are responsible for the work within the company/ partnership. Concerns have been expressed that the proximity of the relevant RBP to the work being done is sometimes extended to the point where they exercise no supervision or control over the service is being provided. This situation may occur regularly in medium and large consultant and construction companies.

Persons who supervise and control the service are normally included, or can be included, in the company/partnership insurance policy. Whether insurance is an essential component of registration for such persons where the policy is provided by the company/partnership should be considered further.

Discussion Paper Issue Number 11:

Should persons who supervise and control the building practitioner service be subject to registration? If so, what are the benefits and what should the insurance requirements be?

Other levels of employed practitioners

Some organisations have expressed a view that all participants in the building industry should be subject to registration. Reports such as those of the Security of Payment Task Force, Professor Percy Allan's *Review into National Homebuilders Warranty Insurance and Consumer Protection* and the Freehill's *Review of Architects and Building Legislation* made such recommendations.

The rationale for such views appears to be that there should be a general barrier to entering the building industry for those who are of insufficient qualification/experience or skill. While such a barrier may substantially raise the standard of workmanship and service provided to consumers, the cost to consumers would require careful scrutiny.

Discussion Paper Issue Number 12:

Is there evidence of significant consumer harm that supports inclusion of all or most industry participants in a practitioner registration system?

Registration without Insurance

Mandatory insurance applies to all practitioners who are part of the registration system, except for those who undertake small domestic building work. All practitioners are to be required to undertake CPD. Suggestions have been made that additional categories/classes of practitioners should be included in the registration system to ensure that they are assessed for a reasonable level of competence and are undertaking CPD. The requirement for insurance does not appear to have application for such practitioners.

RBPs who are insured (directors/partners) will reduce their risk by having those whom they employ undertake CPD.

Discussion Paper Issue Number 13:

Should registration for certain industry participants occur on the basis of competency plus the requirement for CPD, but exclude the requirement for insurance?

Architects

Architects are registered under separate legislation and are not required to register again under the *Building Act*. However architects who use the title of 'building practitioner' and/or provide the services of a building practitioner must carry insurance in accordance with the Ministerial Order issued under the *Building Act*.

Some organisations have supported the notion that all design and construction practitioners should be incorporated into one Act including electrical and architectural practitioners. However, others have suggested that the system should be divided into two Acts, one being for constructors and the other for design practitioner categories. While these views have been noted, the appropriateness of the legislative vehicle that gives effect to the building practitioner system is not part of this review.

Recently a National Competition Policy review of Victoria's architects and building legislation (NCP Review) was undertaken. The issues of whether architects should remain subject to registration requirements and whether the Architect's Board and separate legislation should remain have been addressed through that process and are not part of this review.

The proposed Government Response to the NCP Review contains a proposed action that the registration or approval of 'architectural companies' be considered as part of a general review of whether building practitioner company/partnership registration provides a net public benefit. Discussion on company/partnership registration may be found on pages 16-17.

2.2 Industry Issues: Potential amendments to existing categories

Potential Amendments to Existing Categories

During the consultation process no proposals were made by industry that the existing number of categories of RBP be reduced; however several comments were made on the need to add new or amended classes to existing categories. Comment was also made on the need for clarification of the existing classes and sub-classes associated with the engineer, draftsman, commercial and domestic builder categories.

No suggestion was made that insurance should not continue for the existing categories/classes although comment on this issue is invited again from industry. It was generally agreed by stakeholders that all existing categories/ classes of practitioner should undertake continuous professional development.

The introduction in this section of the Discussion Paper of the terminology of principal, sub-consultant or sub-contractor is in order to clarify the normal role of a category or class in contractual relationship terms.

Discussion Paper Issue Numbers 14, 15 & 16:

(14) Should registration be limited only to those disciplines that have a direct contractual relationship with the building owner or consumer (principal RBP)?

(15) Do these disciplines meet the tests for applicability for registration outlined on page 10?

(16) Should registration include disciplines that normally have a contractual relationship with the current categories of principal RBP and can cause significant damage to a building owner or consumer?

Engineer

Currently there are four classes of registration of building industry engineers: – civil, mechanical, electrical and fire services. The market sectors they operate in are principally those of commercial and government building. Proposals have been made by industry to include additional classes of engineer for registration. These are structural, geo-technical, hydraulic, energy management, environmental, acoustics, building services-mechanical, building services-electrical, building services-civil.

The general rationale for adding these classes and sub-classes is that they will make it easier for building owners, consumers and other practitioners to identify practitioners with the specific skills required for their projects. However this assumes that consumers and/or other practitioners have the capacity to distinguish between the various classes of engineer by qualification or experience.

Domestic consumers would be unlikely to have a general need to identify specialist engineers. Involvement of engineers in domestic work is commonly contracted through a principal engineer registered under existing categories.

Commercial and government consumers are more likely to require the services of specialist engineers given the higher level of complexity and size of their projects. Such consumers tend to have internal systems and processes in place that enable them to identify the specialist skills for their projects.

The inclusion of additional classes of engineers would also constrain engineers in being able to provide services under other classes without the need for multiple registrations. Moving from generic engineer classes to a range of specialist classes risks triggering the compliance regime if practitioners provide services outside their class(es) of registration.

An option may be to treat the category of engineer in a generic fashion and list within it a series of sub-disciplines as acceptable within that category.

Discussion Paper Issue Number 17:

Should the category of engineer be treated in a generic fashion and list within it a series of sub-disciplines as acceptable within that category?

Structural and Geo-Technical Engineers

Currently structural engineers are required to register under the class of engineer–civil. Such engineers generally qualify as civil engineers and then specialise in either civil, structural or geo-technical practitioner services.

Geo-technical engineers require specific academic qualifications and are not currently required to register in the category/class of engineer–civil. The design work carried out by both structural and geo-technical engineers has the potential to cause ‘very significant damage’ and to give rise to major cost imposts on projects where building failures occur due to poor design work.

Discussion Paper Issue Number 18:

Should the potential categories of structural and geo-technical engineer be treated in a generic engineer category that reflects the range of competencies covered by that category?

Hydraulic Engineers

Engineers who offer hydraulic engineering services are currently required to register under engineer–mechanical. Suggestions have been made that a separate ‘engineer–hydraulic’ class be created to assist consumers in the identification of a specific set of engineering skills widely recognised as a separate discipline in the building industry.

Hydraulic engineers provide specialist services principally in the commercial and government sectors. However this discipline would not normally be the principal consultant contracting directly with the consumer. If poorly performed the design work of hydraulic engineers has the potential to cause major disruptions and costs to projects where building failures occur. The liability for such work will fall to the principal consultant who is already subject to a registration requirement.

Discussion Paper Issue Number 19:

Does the potential category of hydraulic engineer meet the tests for registration applicability outlined on page 10?

Acoustic Engineers and Sound Designers

Industry stakeholders are concerned that practitioners providing advice on building acoustic design can cause significant damage to consumers where the acoustic performance of buildings is inadequate. Acoustic performance includes air borne and structure borne sound as well as the acoustic performance within environments. This is currently an issue in multi-unit domestic developments particularly in medium and high-rise developments.

Currently, a practitioner wishing to use the title of engineer in association with acoustics work must be registered as a building practitioner. The category of engineer–mechanical is the most appropriate current category/class for practitioners providing sound transmission/acoustic design services.

Discussion Paper Issue Numbers 20, 21, 22 & 23:

(20) Does the potential category of engineer–acoustics meet the tests for registration applicability outlined on page 10?

(21) Should a class of practitioner relating to sound transmission/acoustic design be created?

(22) Should this class be related to the category of engineer or a more general building design category?

(23) Should such practitioners be subject to insurance provisions?

Draftsperson - Building Design

Concern has been raised by industry that the title and classification of practitioners covered by this category are not sufficiently informative to consumers or industry of the services provided by draftspersons.

In the current system, allowance is made for practitioners to provide drafting services without formal qualifications, however they still need to meet a minimum level of qualification and experience. The introduction of the class of 'building designer' under 'draftsperson' was intended to resolve concerns with the use of the term draftsperson to also include design functions.

A possible approach could be to separate the skills of design from drafting. Such a system could include an additional category of 'designer' to complement that of 'draftsperson'. Classes under the possible new category of 'designer' could include the current sub-classes of 'interior', 'services' and 'building' (the latter being used in lieu of 'architectural'). Practitioners registered in this category could then be entitled to use titles such as 'designer–building' or 'designer–interior'. Additional classes could be created under the category of draftsperson to better identify the provision of drafting services not involving design.

Such a modification would reflect similar categories in other state jurisdictions. The modification would require that a practitioner have acceptable design qualifications and/or related experience to be eligible for registration under this potential category.

Discussion Paper Issue Number 24:

Should the current category of 'draftsperson' be modified to distinguish between design competencies and drafting competencies?

A number of additional classes have been proposed by various industry bodies for inclusion under the draftsperson-building designer category/class. These include, for example, hydraulic/plumbing design and fire safety design. The market for design services in such classes is principally in the commercial and government building sectors. It would need to be established whether there are sufficient grounds to warrant including these professions as separate registered categories.

Discussion Paper Issue Number 25:

Should the current category of 'draftsperson' be modified to include those practitioners providing hydraulic/plumbing or fire safety design services?

Domestic Builder

The current builder category contains three classes of domestic builder and a series of domestic builder –limited sub-classes. Domestic builders in the unlimited category (DB-U) can carry out multi-storey work and it has been suggested by industry that limits should be set on DB-Us according to the value of the projects that they undertake.

The aim of this suggestion is to cap the amount of work a builder can undertake at a level that is consistent with their financial capacity and management capabilities. It is believed this has the potential to reduce the financial stress on builders and reduce the number of insolvencies in the building industry.

It is understood that some insurers active in the building industry are involving themselves in this area. For example, one substantial insurer has introduced a rating system to assess credit risk.

Creating limits on the value of work undertaken either in relation to individual contracts or annual turnover implies that some financial assessment of the builder would be required. Such assessment would involve an additional administrative cost to the registration system.

Discussion Paper Issue Number 26:

Would a modification to the registration class of domestic builder unlimited, such as imposing limitations on the work undertaken by these practitioners, provide a net public benefit to consumers and industry?

The small number of registrations in the limited builder sub-classes indicates that considerable registration avoidance is occurring in these areas. The discontinuation of sub-classes associated with domestic builder–limited has been suggested. However some stakeholders have suggested that additional sub-classes may be useful in this category as a means to recognise specialty building areas.

Discussion Paper Issue Number 27:

Is there evidence to support the continued registration of sub-classes associated with domestic builder–limited as providing a net public benefit?

Industry stakeholders believe that there is a need for the recognition of a partnership arrangement common among small domestic builders where one partner performs the physical building tasks and the other the 'backroom' administration role. An example of this arrangement is a husband and wife working in partnership to provide domestic building services.

This issue is also related to the discussion of CPD involvement on page 17. One proposal is that the domestic builder–unlimited class be separated into domestic builder –manager and domestic builder – technical to reflect each person's role in the partnership. Another proposal is to offer 'unlimited' registration to partnerships that currently have 'limited' builder status in situations where one person brings 'administration' and the other 'technical' attributes to the partnership.

The impact of such proposals needs to be subject to further industry agreement on liability and competency issues. It also has relevance to the issue of corporate registration on page 16.

Discussion Paper Issue Number 28:

Would a modification to the registration class of domestic builder–unlimited granting recognition to partnership arrangements where one partner performs the physical building role and the other provides the administrative support provide a net public benefit to industry?

Building Surveyor

There was little industry comment on the registration category and practice licence of Building Surveyor. As this discipline is the keystone of the system that ensures that registered building practitioners are involved in building developments in Victoria the continuation of registration requirements for this category in its present form appears to not require further discussion.

It should be noted that a National Accreditation Framework for Building Certifiers is being developed which will establish national registration standards applicable to practitioners providing the services of a building surveyor in Victoria.

A number of stakeholders have queried the effectiveness of the role of the building surveyor. Their comments include reference to instances of the avoidance of personal liability by building surveyors where trade compliance certificates were not accepted, resulting in certification work being redone by a relevant building practitioner at considerable cost to consumers. It has also been alleged that some building surveyors are unwilling to sign off on work completed by trade persons who are not subject to registration, often requiring engineers or other persons to check the work.

On the other hand, building surveyors may be undertaking liability for design and construction work which requires specific competencies not normally possessed by building surveyors. The above issues relate to the practice of building surveying and are not within the scope of this Discussion Paper.

Becoming a Registered Building Practitioner

It has been suggested by industry that the RBP system should establish special categories/classes for practitioners who have recently gained registration or are attempting to gain sufficient skills and experience to meet the requirements for registration.

It has been suggested that a period of 'probationary' registration be introduced for recently registered domestic builders, which would involve placing a limit on the number and value of contracts entered into. The impact of 'probationary' registration on limiting the business opportunities of a builder needs to be

carefully considered. An alternative approach would be to incorporate these practitioners into a general class of domestic builders specified to operate in the small domestic building sector.

The issue of whether the registration system should provide for apprentices as well as those wishing to become domestic builders has also been raised. The Building Commission is undertaking a registration awareness project, which will consider this issue.

Discussion Paper Issue Number 29:

Should the RBP system place limitations on domestic builders who have recently registered?

2.3 Industry Issues: Potential new categories

The registration system in Victoria has been developed with the specific policy objective of protecting consumers by ensuring that key building industry practitioners are accountable, qualified and are covered by insurance. There was a conscious effort made in the drafting of the *Building Act* to limit intervention in the area of occupational registration. Registration requirements under the Act were kept to the minimum necessary for the proper functioning of the building permit system in the new environment where liability reform and private sector competition in building surveying services were the emerging key features.

While some industry stakeholders see recognition as a building practitioner as a means of improving the public image of their profession, the desire for recognition is not a criterion for registration under the *Building Act* or the Building Regulations. In the decade since the establishment of the registration system a number of groups have sought or have been suggested for registration, and these claims of new disciplines for registration must be assessed against appropriate criteria. The tests for registration are discussed in 'Tests for applicability for registration' on page 10.

Project Managers and Construction Managers

Currently project managers and construction managers are not subject to practitioner registration. These practitioners are significant decision-makers and service providers in the building industry but are not subject to mandatory competency or insurance provisions. They may however independently obtain professional indemnity insurance and offer such as a risk management service to their clients.

The titles of project manager and construction manager have been previously considered by the BAC as lacking sufficient definition when applied to the building industry. In many cases the titles are used by employees within organisations offering building services, and include employees of designers, builders, sub-contractors as well as principals of companies. Employees of registered building practitioners are not currently required to be registered provided they refrain from using a protected title.

The type of project and construction managers most frequently nominated for registration tend to be those offering services directly to a consumer, where they often undertake the role of agent for or representative of the client. The creation of a general category of practitioner for project manager and/or construction manager is likely to cause confusion in the building industry, as the use of those titles would become restricted. Those who operate as agents for clients are readily identifiable through their possession of industry recognisable qualifications and experience. The potential for consumer harm would need to be articulated before consideration of an extension of the registration system to include these practitioners. It should be noted that if a project manager is directly engaged by an owner in the same manner as a builder and if that project manager performs the function of a builder, then that project manager is required to register as a builder.

Discussion Paper Issue Number 30:

Does the potential category of project or construction manager meet the tests for registration applicability outlined on page 10?

Facility Managers

Facility managers operate in the commercial and government sectors of the property industry but may also provide services to the building industry. The expansion of the registration categories to include facility managers has been proposed by industry, as it is a growing and increasingly influential group of practitioners. It is a discipline similar to that of project manager except that facility managers generally manage existing buildings rather than the development of new buildings. Nevertheless building work to or within existing buildings under the management of facility managers is normally subject to the building permit process.

Discussion Paper Issue Number 31:

Does the role of facility managers warrant consideration as a building practitioner category separate to the consideration of project managers?

Design and Construct Contractors

It is proposed by industry that the registration system provide for a category or class of 'design and construct' practitioners. The general basis for practitioner registration has been to identify separate registrations where practitioners carry out multiple roles on a building project. The separation of competencies for design services and building construction services has resulted. This is consistent with the insurance provisions, which generally apply policies limited to a particular role.

'Design and construct' services also occur in relation to practitioners registered under different legislation such as electrical contractors and plumbers. Where such practitioners are the key practitioners, it has been observed that additional registration to facilitate the issue of building permits should not be required. Building industry stakeholders have requested that improvements be made in the interaction of registration systems to provide clarity on requirements.

Discussion Paper Issue Number 32:

Does the potential category of design and construct contractor meet the tests for registration applicability outlined on page 10?

Landscape Architects / Designers

It has been suggested that landscape architects and/or designers are more commonly involved in building projects than was the case a decade ago. Structural elements designed by practitioners offering landscape design services to consumers such as retaining walls require a permit and may have the potential to cause significant damage if the design or construction is faulty. Currently RBP registration is required for those who carry out the construction of retaining walls. It seems doubtful that other aspects of the work of landscape architects – the 'soft landscape' elements such as design of plantings – offer significant risk to consumers.

Registration as a draftsman or a new designer category as discussed on page 22 may be a feasible alternative where a landscape architect is doing work that constitutes 'building work' as defined under the *Building Act* and for which a building permit is required.

Discussion Paper Issue Number 33:

Does the potential category of landscape architect/designer meet the tests for registration applicability outlined on page 10?

Building Consultant; Building Contractor

Stakeholders claim that there has been an increasing incidence of practitioners using generic titles such as 'building consultant' and 'building contractor'. It has been claimed that this is misleading consumers as to what services may be expected from these practitioners and what competencies/qualifications held by these practitioners.

Generic terms used by many disciplines in the building industry may create perceptions that such persons are building practitioners. Use of such terms may be in conflict with the 'holding out' provisions of the *Building Act* in relation to building practitioners. It has been suggested that constraints on the use of such titles be clarified and that their use be restricted to RBPs in relevant categories.

Discussion Paper Issue Number 34:

Should the use of generic titles in the building industry be restricted to those registered in relevant categories?

Supervisors and/or Controllers of Practitioner Services

It appears to be a widely held view that persons who exercise supervision and/or control over the provision of a practitioner service should be registered.

Directors/partners currently represent the majority of registered building practitioners. Such persons may also be directly involved in the provision of a practitioner service for small or medium-size firms. However for larger firms the registered building practitioner is usually the director/partner and may not be the principal provider of the practitioner services to consumers. Larger firms may have a tier of employees below that of director/partner who exercise a supervisory or controlling responsibility in relation to practitioner services but who are not registered as building practitioners.

Such persons may be identified as those who sign documents including drawings and certificates and may be named on the firm's insurance policies. Non-director/partner persons named on insurance policies are not currently required to be registered unless they exercise prescribed functions under the *Building Act*, although many may be registered.

It has been suggested that persons who exercise supervision and control over practitioner services should be registered. Such registration would require the mandatory competency check at initial registration and thereafter require the practitioner to meet CPD commitments.

Discussion Paper Issue Numbers 35 & 36:

(35) Should those who control and supervise practitioner services be required to be registered?

(36) Should those who control and supervise practitioner services be named in insurance policies?

Extension of the Registration system for CPD

Mandatory CPD for tradespersons or similarly skilled industry service providers has been proposed by a range of industry associations on the basis that it would result in benefits to consumers. Such benefits include the registration of tradespersons for the purpose of improving the overall standards of work.

This would result in the potential removal from registration of tradespersons who continue to produce a high level of defects. Such registration would require that CPD be directed towards correcting the skills deficiency related to the occurrence of defects.

Discussion Paper Issue Number 37:

Should tradespersons or similarly skilled industry practitioners be required to undertake CPD?

Sub-contractors

As sub-contractors carry out a major proportion of total building work it has been proposed that there is a need to improve the competence of these practitioners. Major sub-contractors are the responsibility of the registered builder or equivalent but it is claimed that the lack of separate registration for sub-contractors results in poor quality of work and lack of skills development. Any proposals for registration of sub-contractors will need to provide a clear definition of what liability sub-contractors should have for defective work.

Discussion Paper Issue Number 38:

Does the potential category of sub-contractors meet the tests for registration applicability outlined on page 10?

Tradespersons

The current builder category contains a class of domestic builder–limited together with a series of sub-classes that relate to trade activities. These sub-classes exist to assist consumers wishing to enter into a contract for building work related to the specific sub-class or when operating as an owner builder (refer also to the paragraph on owner builders below).

It has been suggested that additional sub-classes may be necessary to take into account the full range of specialty building services. However the small number of registrations in the limited builder sub-classes indicates that considerable registration avoidance is occurring in these areas.

Anecdotal information indicates that certain building industry trades produce a high level of building defects. This contention is supported by work undertaken by the Building Commission and the Building Appeals Board who have identified brickwork, carpentry and concreting as trades experiencing high levels of defects. This evidence appears to support the argument that trades that have produced a high level of defective work should be subject to a registration system that sets a standard of skill/competency and experience.

Discussion Paper Issue Numbers 39 & 40:

(39) Information is requested on the potential harm to consumers that might arise from the introduction of registration for tradespersons who provide services direct to **consumers**.

(40) Information is requested on the potential harm to consumers that might arise from the introduction of registration for tradespersons who provide services to a **builder**.

Owner Builders

Currently tradespersons who provide services direct to an owner builder are subject to a registration requirement. This system of registration is being addressed separately from this review and submissions on it should not be provided as a response to this Discussion Paper.

Essential Services & Fire Safety Services

Currently building surveyors are the only practitioners accredited to carry out essential services reports for building owners. Industry has suggested that this is unnecessarily limiting and that other practitioners should also be to carry this function, for example fire safety engineers or an additional class of practitioner with appropriate competencies and provisions for any related liability risk.

Discussion Paper Issue Number 41:

Should essential services reports be provided by practitioners other than building surveyors?

Another consumer service distinct from the preparation of essential services reports is that of the inspection and certification of fire services equipment and systems. Currently this function may be carried out by existing practitioners from a range of categories/classes or other industry practitioners

who are not subject to registration. This appears to present a risk to consumers because lack of competence in the practitioner providing the services has the potential to create very significant harm. Such practitioners should therefore be required to meet specific qualifications and demonstrate relevant experience. It should be noted that the Building Regulations currently recognise the category of fire safety engineer.

Discussion Paper Issue Number 42:

Should the practitioners providing services in relation to the inspection and certification of fire services equipment and systems be subject to registration?

Access Consultants

As standards for accessibility for homes, public and commercial buildings are being raised the demand for competent practitioners in accessible design and construction will increase. Such competencies relate to the design disciplines and building surveyors, implying that persons wishing to practise in the area of accessible design are already registered building practitioners.

The appropriateness of the inclusion in or recognition of accessible design practitioners within the building practitioner system should be considered. It is recognised that the competencies required of such practitioners may not be resolved at this time but current actions to address this are noted.

The option of the attribution of additional competencies relating to accessible design to existing categories of practitioner would recognise the wider competencies relevant to their category that building practitioners can provide. Another option would be to create a new category of practitioner but this would be at a greater registration cost due to the requirement for existing building practitioners to register in the new category. The relevance of insurance for access consultants should be considered in relation to the potential liability issues that may arise from such services.

Discussion Paper Issue Numbers 43 & 44:

(43) Should the provision of accessible design services be subject to the building registration system?

(44) Is the system of attribution of building practitioners preferred to the creation of a new category?

Energy Raters

Building Regulations require that thermal insulation standards be assessed by a registered building practitioner accredited in the use of the Sustainable Energy Authority Victoria's (SEAV) 'FirstRate' house energy rating software. Sufficient numbers of competent providers of energy rating services must be assured to address the government's 'Five Star' energy rating initiative for new homes.

Energy raters are currently drawn from the design, engineer and building surveyor categories. It has been suggested that all building practitioners should provide advice to consumers on general matters of energy design and construction relevant to their practitioner category. However this is not encompassed in or implied by their SEAV accreditation.

Most service providers of energy rating services are already registered as building practitioners. The option of an attribution of additional competencies relating to energy rating to existing categories of practitioner would recognise the wider competencies relevant to their category that building practitioners can provide. Another option would be to create a new category of practitioner. The relevance of insurance for energy rating services should be considered in relation to the potential liability that may arise from such services.

Discussion Paper Issue Numbers 45 & 46:

(45) Should the provision of energy rating services be subject to the building registration system?

(46) Is the system of attribution of building practitioners preferred to the creation of a new category?

Municipal Building Surveyors

The Victorian Municipal Building Surveyors Group (VMBSG) expressed concerns that the registration system does not adequately recognise the fundamental differences between the roles of private and municipal building surveyors. The key difference cited by is that municipal building surveyors are required to perform additional tasks not demanded of private building surveyors. These include:

- provision of consent reports
- provision of information for Court action
- conducting fire safety audits
- conducting pool safety audits.

Employees of councils performing work normally requiring registration are generally exempt from insurance provisions of the *Building Act*. Building surveyors have traditionally moved between municipal and private sectors with ease, and the creation of a separate registration category for municipal building surveyors could place barriers to this flexibility.

Discussion Paper Issue Number 47:

Are the differences between the roles of private and municipal building surveyors sufficiently fundamental to require separate registration?

Data on Registration Systems

There is insufficient data available to compare the beneficial impact of the registration systems of various jurisdictions. The information provided by industry has been mainly anecdotal and further sources of information are being sought.

The following information is routinely generated by Building Commission and Building Practitioners Board processes:

- number of prosecutions of RBPs indicating those whose conduct is unacceptable
- number of prosecutions of persons 'holding out' to be RBPs when not registered
- number of persons refused registration by not meeting eligibility requirements
- number of complaints made against RBPs.

It is noted that registration/licensing systems in other States such as NSW and Queensland embrace much larger numbers of practitioners. Victorian industry stakeholders agreed that if it cannot be demonstrated that a broader registration system is more effective than the current Victorian model, then any expansion should be carefully considered.

3. Potential New Models

A total of 49 separate issues have been identified through stakeholder consultation as having the potential to generate amendments or inclusions into a modified practitioner registration system. The Building Commission recommends that industry express its views on what are essential and what are non-essential potential amendments to practitioner registration categories and classes. The reason for this is that while the practitioner registration system operates for the benefit of consumers and industry, it also has a corresponding cost.

It has been estimated that a moderate increase in practitioner registrations by 15,000 will amount to an additional cost of \$3 million to industry. A significant increase in registrations of 50,000 will amount to an additional cost of \$10 million.

The four models described below offer a range of possible outcomes from this review of registration categories and classes. These models are only indicative and any one of or a combination of any range of elements into a different model is possible.

No change

- Retain practitioner categories providing services to the commercial, government and domestic building sectors
- Retain current scope of insurance requirements
- Include or clarify some classes of engineer, draftsman etc.

Minimal change

- Delete practitioner categories providing services to the commercial and government building sectors
- Retain practitioner categories providing services to the domestic sector
- Reduce current scope of insurance requirements.

Moderate change

- Retain practitioner categories providing services to the commercial, government and domestic building sectors
- Include or clarify some classes of engineer, draftsman, designer, etc.
- Add categories such as project manager
- Add those who 'supervise and control' BP services
- Add some monitoring of companies/partnerships
- Consider registration of 'high defect' tradespersons.

Significant change/ redesign

- Redesign based on building complexity/ construction techniques eg low/medium/high rise and/or combined with brick veneer/ concrete, steel construction
- Add all qualified employees providing an RBP service
- Add all sub-contractors and tradespersons participating in an RBP service
- Register companies and partnerships etc.

The following table provides an overview of the estimated cost impacts of each of the potential new practitioner registration models.

Model	Potential change in registrations	Potential Cost Impact
No change	+ 1,000	+ \$200,000
Minimal change	- 4,000	- \$800,000
Moderate change	+ 15,000	+ \$3 million
Significant redesign	+ 50,000	+ \$10 million

4. Target Industry Outcomes

Stakeholders identified the following as target industry outcomes from a modified building practitioner registration system for Victoria:

- better buildings in terms of fitness for purpose, quality of materials and workmanship, improved life cycle performance and asset value
- improved health and safety, due to building works being undertaken only by those practitioners with specific competencies
- improved consumer confidence that industry practitioners are competent to undertake the work required
- improved consumer confidence that industry practitioners will conduct themselves in a fair and honest manner and that practitioner services will be delivered efficiently
- easier identification of specific skills/competencies for specific work required
- no reduction in competition between similarly skilled/competent suppliers
- existence of an independent mechanism for acting on grievances and disciplinary action.

Discussion Paper Issue Number 48:

Are there any additional industry outcomes an optimum registration system should aim for?

5. Performance Indicators

Performance indicators need to be established to measure whether objectives or targets are being met by the registration system. The anticipated outcomes outlined in the previous section indicate the areas where key performance information is required. However data capture and analysis is limited in the building industry, which will in turn limit objective measurement of performance indicators for this project.

The key performance indicators that have been identified in the consultation process include the following:

- a reduction in litigation against industry practitioners whether registered or not
- a reduction in insurance claims
- a reduction in defects in commercial and domestic building work
- a reduction in the number of health and safety issues that arise during construction and after completion
- fewer consumer complaints
- improved consumer satisfaction.

Discussion Paper Issue Number 49:

Should jurisdictions, through Builders Licensing Australia, develop performance indicators and required measurement information to enable the effectiveness of registration systems to be monitored, evaluated and improved?

6. Where to from here

Industry stakeholders are strongly encouraged to consider the issues presented in this paper and to contribute to the debate so that we can reach a final position that is the result of rigorous consultation and evaluation.

Written responses from stakeholders are requested by 19 December 2003. Those who have already been interviewed do not need to submit their views again unless they wish to address issues not previously considered or add further to the discussions.

A Position Paper will be prepared taking into account all issues raised in response to this Discussion Paper and will be used as a basis for consideration of changes to the *Building Act* and regulations. Economic analyses dealing with the cost-benefit impacts of any proposed changes will also be undertaken.

We have summarised the key issues that were raised in the body of this discussion paper on page 34 for ease of stakeholder consideration and feedback. You may also wish to raise additional issues that have not been fully explored in this paper.

We would like to take this opportunity to thank you again for your ongoing interest and participation in this important project for our building industry.

Appendices:

- I) List of industry issues raised in this discussion paper
- II) Background
- III) Legislative Framework
- IV) Existing registration categories and classes

Appendix I: List of industry issues raised in this discussion paper

1. Do these seven drivers capture all areas that are relevant to practitioner registration today and for the foreseeable future?
2. Would the consumer benefit of creating and administering a system of levels of practitioner competency justify the cost?
3. Are there sufficient grounds for a major expansion in the categories of practitioners required to be registered beyond those discussed in section 2.3 under Supervision and Control and Trade practitioners (see pages 26 – 27)?
4. Information and comments are requested on the potential harm to consumers that relates to the '*usually done*' concession in respect to limiting the extent of design and drafting work a builder should be entitled to undertake.
5. Is there merit in the grouping of persons of related disciplines under a generic class?
6. Should the registration categories/classes act as an agent for restraining fragmentation of the building industry or should they support identification of specialisation?
7. Can insurance be relaxed for any existing categories?
8. Are there any other matters to be considered when considering controls over corporate or unincorporated bodies?
9. Is there any data available that identifies systemic failures relating to corporate or unincorporated bodies?
10. Should a person or entity other than the RBP be recognised or registered for the purpose of contributing CPD activities to the related RBP?
11. Should persons who supervise and control the building practitioner service be subject to registration? If so, what should the insurance requirements be?
12. Is there evidence of significant consumer harm that supports inclusion of all or most industry participants in a practitioner registration system?
13. Should registration for certain industry participants occur on the basis of competency plus the requirement for CPD, but exclude the requirement for insurance?
14. Should registration be limited only to those disciplines that have a direct contractual relationship with the building owner or consumer (principal RBP)?
15. Do these disciplines meet the tests for applicability for registration outlined on page 10?
16. Should registration include disciplines that normally have a contractual relationship with the current categories of principal RBP and can cause significant damage to a building owner or consumer?
17. Should the category of engineer be treated in a generic fashion and list within it a series of sub-disciplines as acceptable within that category?
18. Should the potential categories of structural and geo-technical engineer be treated in a generic engineer category that reflects the range of competencies covered by that category?
19. Does the potential category of hydraulic engineer meet the tests for registration applicability outlined on page 10?
20. Does the potential category of engineer–acoustics meet the tests for registration applicability outlined on page 10?
21. Should a class of practitioner relating to sound transmission/acoustic design be created?
22. Should this class be related to the category of engineer or a more general building design category?
23. Should such practitioners be subject to insurance provisions?

24. Should the current category of 'draftsperson' be modified to distinguish between design competencies and drafting competencies?
25. Should the current category of 'draftsperson' be modified to include those practitioners providing hydraulic/plumbing or fire safety design services?
26. Would a modification to the registration class of domestic builder unlimited such as imposing limitations on the work undertaken by these practitioners provide a net public benefit to consumers and industry?
27. Is there evidence to support the continued registration of sub-classes associated with domestic builder-limited as providing a net public benefit?
28. Would a modification to the registration class of domestic builder-unlimited granting recognition to partnership arrangements where one partner performs the physical building role and the other provides the administrative support provide a net public benefit to industry?
29. Should the RBP system place limitations on domestic builders who have recently registered?
30. Does the potential category of project or construction manager meet the tests for registration applicability outlined on page 10?
31. Does this type of practitioner warrant consideration as a building practitioner separate to the consideration of project managers?
32. Does the potential category of design and construct contractor meet the tests for registration applicability outlined on page 10?
33. Does the potential category of landscape architect/designer meet the tests for registration applicability outlined on page 10?
34. Should the use of generic titles in the building industry be restricted to those registered in relevant categories?
35. Should those who control and supervise practitioner services be required to be registered?
36. Should those who control and supervise practitioner services be named in insurance policies?
37. Should tradespersons or similarly skilled industry practitioners be required to undertake CPD?
38. Does the potential category of sub-contractors meet the tests for registration applicability outlined on page 10?
39. Information is requested on the potential harm to consumers that might arise from the introduction of registration of tradespersons who provide services direct to consumers.
40. Information is requested on the potential harm to consumers that might arise from the introduction of registration of tradespersons who provide services to a builder.
41. Should essential services reports be provided by practitioners other than building surveyors?
42. Should the practitioners providing services in relation to the inspection and certification of fire services equipment and systems be subject to registration?
43. Should the provision of accessible design services be subject to the building registration system?
44. Is the system of attribution of building practitioners preferred to the creation of a new category?
45. Should the provision of energy rating services be subject to the building registration system?
46. Is the system of attribution of building practitioners preferred to the creation of a new category?
47. Are the differences between the roles of private and municipal building surveyors sufficiently fundamental to require separate registration?
48. Are there any additional industry outcomes an optimum registration system should aim for?
49. Should jurisdictions, through Builders Licensing Australia, develop performance indicators and required measurement information to enable the effectiveness of registration systems to be monitored, evaluated and improved?

Appendix II: Background

Review process

The methodology approved by the BAC included the following actions:

- 1) interview the representatives of key industry stakeholder organisations
- 2) produce a Discussion Paper(s) to seek broad industry and public comment on issues relating to the registration categories and classes
- 3) consider and review the issues raised in the Discussion Paper(s)
- 4) produce a Position Paper indicating a response to the issues raised.

The key stakeholder organisations to be the subject of interviews were intended to include the industry organisations represented on the BAC and the BPB. In consultation with Consumer Affairs Victoria this was extended to include relevant consumer groups to provide a view on issues of concern to purchasers of practitioner services.

A further range of meetings took place particularly with organisations known to have specific issues to raise in regard to registration. Further meetings will be initiated with such organisations.

This Discussion Paper will be broadly circulated to industry participants and be made available to the public to canvass consumers' views. Information and submissions already received, together with further submissions arising from the release of this Discussion Paper, will be reviewed and considered with the assistance of the BAC Working Party, and other relevant bodies such as the BPB will be consulted.

A Position Paper will be developed from this information for consideration by the BAC.

Parameters of the Project

A number of issues will **not** be addressed as part of this project, including some which were raised during interviews with consumer organisations and key industry stakeholders. This is because the focus of this paper is on issues relevant to registration categories and classes of practitioners and not the whole registration system.

The project does **not** address:

- the owner-builder system, as it is the focus of a pre-existing project
- plumber and electrician registration and licensing systems, other than to draw on them for issues relevant to building practitioner registration
- the registration of architects except on common issues such as company and/or director/partner registration
- insurance issues, apart from considering whether certain categories or classes of registration should be subject to an insurance requirement
- competencies and/or qualifications of practitioners, except where they have the potential to provide the basis for a new category or class of registration.

The project does not investigate whether the registration of building practitioners is the best system of providing consumer protection and achieving a net public benefit. It accepts that registration is the model adopted in Victoria and the principal issue is who, or what, should be included in that system. Some observations on the intent of registration systems are included to provide a context for the consideration of issues arising from this project.

National Competition Policy and Public Benefit

The decade since the implementation of the registration scheme in Victoria has seen significant change in the regulatory environment. A major influence has been the National Competition Policy (NCP) reforms agreed upon by all State, Territory and Commonwealth governments.

The NCP reforms were designed to benefit the Australian community through encouraging competition and fostering economic growth, including growth in employment.

In 1995 Victoria signed, with other Australian Governments, the Competition Principles Agreement (CPA), one of three agreements to give effect to NCP. Under the CPA the signatories agreed to adopt the guiding principle that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- benefits to the community of the restriction outweigh the costs
- objectives of the legislation can only be achieved by restricting competition.

The Victorian Government in the April 2002 Business Statement *Building Tomorrow's Businesses Today* expanded on this principle through the statement in Chapter 2: Building Partnerships Between Government and Business under the heading 'A Supportive Regulatory Environment' that:

'The Government...will:

- *ensure that, wherever possible, regulations will deliver real and practical benefits for the community while providing business (particularly small businesses) with flexibility in achieving compliance;*
- *accelerate the ongoing program to identify, review and reform those major pieces of legislation that act as a barrier to business growth; and*
- *ensure that new regulatory proposals not proceed unless it is clear to Government that the benefits outweigh the costs and that non-regulatory alternatives have been fully explored.'*³

In essence, the Victorian Government is committed to removing restrictions on competition unless it can be demonstrated that retaining specific restrictions will provide a net benefit to the whole community – not just to one group.

To give effect to the guiding legislative principle, the Victorian Government agreed to review and, where necessary, reform all existing legislative restrictions on competition in accordance with this principle and to ensure that all new legislative proposals are consistent with this principle. Professional and occupational registration and licensing schemes as forms of restriction on competition are included within the NCP reviews.

Accordingly, the *Building Act* and its regulations – which established the current registration scheme – were examined in 1999 to assess compliance with the NCP principles. The inquiry, conducted by the Freehills Regulatory Group, concluded that registration (with the inclusion of some form of continuing professional development) provided long term benefit for consumers and an improvement in the professionalism of the industry.

Consumers of Building Practitioner Services

Consumers of practitioner services are divided into three main groups of building owners:

- commercial clients, representing approximately 35 % of the building market
- domestic clients, representing approximately 55 % of the building market
- Government clients, representing approximately 10 % of the building market (not including civil construction and infrastructure).

The characteristics of these three groups of consumers are discussed below.

Commercial Consumers

The registration systems in place in other Australian States generally focus on, or are exclusively concerned with, the domestic building system. Victoria's system evolved differently in that it was initially developed to involve the commercial building sector and ensure that critical participants in that sector were covered by appropriate insurance.

³ *Building Tomorrow's Businesses Today*, Victorian Government Business Statement, Melbourne, April 2002, p.20

The domestic building industry was included later when builders formerly registered with the Housing Guarantee Fund Limited were 'folded in' to the registration system.

The affordable remedies available to commercial consumers are broader than those available to domestic consumers. Compared with domestic consumers, for whom a building project may be a once in a lifetime experience, commercial consumers are familiar with the building process as they move from project to project, building expertise. Commercial consumers are generally involved in larger projects and:

- deal with substantial contractors on a structured contractual basis
- are structured and organised to carry out the tasks
- have a range of risk management systems and insurances in place
- are resourced to use the full range of legal processes when disputed issues arise.

In short, commercial consumers are better equipped than the average domestic consumer to deal with problems that may arise with a building project.

Domestic Consumers

Systems of building industry registration and licensing are generally focused on the domestic building industry as the projects tend to be small scale, involve many small contractors, and have the potential to impact on large numbers of consumers. Domestic consumers may have less knowledge of the building process, and are at a disadvantage in any technical dispute.

Domestic consumers may only rarely seek the services of the building industry, with perhaps a decade or more between such purchases. They therefore do not develop a high level of knowledge of building processes, appropriate practitioner conduct or technical standards to be met.

Domestic consumers lack the information to be able to ascertain the competencies required for their projects or whether practitioners possess such competencies. These consumers have a need for systems that ensure those they engage are competent.

Government

Public construction projects are subject to the building permit process and therefore require the participation of registered building practitioners. Government agencies have developed systems for 'pre-qualifying' practitioners to undertake its works by applying criteria relevant to the particular agency's interests or specific policies.

The principal Government system is the Construction Supplier Register (CSR), which is managed by the Department of Infrastructure for the use of the construction sections of departments and public bodies. CSR, as a basic eligibility requirement, requires that, where an RBP category exists that is also a CSR category, then evidence of registration must be provided. This provides a level of qualification/competency attainment useful as a basis for the evaluation of further criteria.

At present the CSR maintains a number of pre-qualification categories of which engineering and quantity surveying services relate to current RBP categories. CSR categories not currently part of the RBP system include project management, urban design, landscape architecture and acoustic engineering services.

Appendix III: Legislative Framework

Background

The Building Act

The proposal for a new Act grew out of a general review of Victoria's building regulatory legislation, in conjunction with the development of a Model Building Act by the Australian Uniform Building Regulations Co-ordinating Council (AUBRCC). The Victorian *Building Act* came into effect in July 1994.

The point at which the building practitioner registration system is linked to the building permit process is contained in Section 24(3) of the Act, which states that the relevant building surveyor must not issue the permit unless:

'...he or she is satisfied that each building practitioner to be engaged in the building work holds a building practitioner's certificate'

Domestic Building Contracts Act 1995

The Domestic Building Contracts Act 1995 (DBCA) regulates contracts for the carrying out of domestic building work and provides for the resolution of domestic building disputes and other matters by the Victorian Civil and Administrative Tribunal.

The Act also requires builders carrying out domestic building work to be covered by insurance in relation to that work and amends the House Contracts Guarantee Act 1987 to phase out the making of claims under that Act.

The DBCA imposes a registration requirement on those contracting with homeowners to carry out, manage or arrange domestic building work when the contract is over \$5000. The Act defines domestic building work broadly so that it essentially applies to building work associated with a home. The Act also applies to any work associated with the erection of a building which occurs on land which is zoned residential and for which a building permit applies.

However, there are certain types of buildings and building work that are exempted either by the Act or by Regulations. The Act expressly defines 'home' to exclude certain types of residential premises. The Act also excludes building work such as for farms or the accommodation of animals, premises for exclusive business use, work that is for foundations data or the transportation of a building from one site to another.

The Regulations made under the Act further exempt certain kinds of buildings (eg. community service buildings, remand centres etc.) and certain types of building work where that building work is done in isolation. This means that where tradespersons are contracting directly with a homeowner they may be exempted from the usual registration requirements for domestic building contracts over \$5000 if they are undertaking the type of work specified as exempt in the Regulations (such as draining, plumbing, glazing, electrical, painting, plastering or tiling work) and that work is done in isolation.

These provisions are discussed further in sections below.

What is a Building Practitioner?

In the *Building Act* under Part 1 Section 3 'building practitioner' is defined as

- (a) a building surveyor; or
- (b) a building inspector; or
- (c) a quantity surveyor; or
- (d) an engineer engaged in the building industry; or
- (e) a draftsman who carries on a business of preparing plans for building work or preparing documentation relating to permits or permit applications; or
- (f) a builder including a domestic builder; or

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

but does not include--

- (i) an architect except in Part 9 and sections 24(3) and 176(6); or
- (j) a person (other than a domestic builder) who does not carry on the business of building;

Building Act Definitions:

- 'domestic builder' means a builder within the meaning of the *Domestic Building Contracts Act 1995*
- 'domestic building work' has the same meaning as it has in the *Domestic Building Contracts Act 1995*

Who is required to be registered under the Building Act?

Persons listed in the section above must be registered as building practitioners. Those not so registered are not able to use the title of building practitioner or registered building practitioner. Exceptions in relation to registered (building practitioner) architects and domestic builders are included: see discussion below.

A partnership or a corporation is allowed to use the title of 'building practitioner' and to hold itself as being registered and qualified to practise as long as at least one partner or director is a registered building practitioner. A partnership or corporation may therefore operate through the partner/s or director/s under the Act.

In general terms the registration system only requires directors or partners to be registered except for specific classes of practitioner such as building surveyor, or those who undertake certain specific actions. The requirements of the DBCA also rely on the registration of certain categories of building practitioners to undertake domestic building work.

Who is required to be registered under the Domestic Building Contracts Act?

House builders have been required to register under the *Building Act* as a result of the *Domestic Building Contracts Act 1995*, which came into operation on 1 May 1996. They were previously registered for the purposes of the *House Contracts Guarantee Act 1987*.

A builder who wishes to enter into a major domestic building contract to carry out domestic building work for more than \$5000 with a homeowner must register as a builder under Section 29 of the DBCA.

Definitions and key provisions of the DBCA

'builder' means a person who, or a partnership which--

- carries out domestic building work; or
- manages or arranges the carrying out of domestic building work; or
- intends to carry out, or to manage or arrange the carrying out of, domestic building work;

Building work to which this Act applies 1(e) (ii) in respect of which a building permit is required under the *Building Act*.

Section 29. Builder must not enter into a contract unless registered.

A builder must not enter into a major domestic building contract unless--

- the builder is registered as a builder under the *Building Act*, in the case of a natural person; or
- in the case of a builder which is a partnership, at least one of the partners is registered as a builder under that Act; or
- in the case of a builder which is a corporation, at least one of the directors is registered as a builder under that Act; or

- in the case of a builder who is exempt under the *Building Act* from the requirement to be registered, the domestic building work to be carried out under the contract is to be carried out by a builder who is registered as a builder under the *Building Act*.

The DBCA also provides for certain actions in respect to domestic building contracts to be carried out by persons registered under the *Building Act*, such as building surveyors or inspectors.

Who is required to be registered under the House Contracts Guarantee Act?

In its definition of 'recognised person' the House Contracts Guarantee Act includes a building surveyor or engineer registered under Part 11 of the *Building Act*.

Who is not currently required to be registered?

Building Commission internal guidance notes from the time of the introduction of the original *Building Act* indicated that registration requirements under the *Building Act* were kept to the minimum necessary for the proper functioning of the building permit system in a new environment where liability reform and private sector competition are key features.

The registration requirements only apply to natural persons. Therefore building surveyors are not required to be satisfied that a corporation holds a building practitioner's certificate before a building permit can be issued.

Employees of registered building practitioners are not required to be registered as long as they refrain from using a protected title or hold themselves out to be registered.

Domestic building work

A person who enters into a contract with a domestic builder is defined as a sub-contractor under section 3(1) of the DBCA and is exempted from registration as a builder for that work.

A tradesperson who acts in the capacity of a subcontractor is not required to be registered as they are not contracting directly with the homeowner.

Protection of Titles under the Building Act

The protection of titles that are subject to registration requirements is standard practice in legislation. Such provisions are designed to avoid confusion on the part of consumers and misrepresentation by industry participants.

The legislation lists the titles of building practitioners who are currently subject to registration. Such titles are restricted in their use to the building industry.

Corporations and partnerships may use building practitioner titles relevant to the categories of registration in which their respective directors or partners are registered.

The legislation also contains a requirement that any person who wishes to practise as a building surveyor and/or a building inspector be registered.

The legal provisions relation to the above are found in the *Building Act*.

Section 176. Offences:

(1) A person who is not registered in the appropriate category or class under this Part must not—

(a) take or use any of the following titles--

- (i) building practitioner or registered building practitioner; or
- (ii) building surveyor; or
- (iii) building inspector; or
- (iv) engineer, if the use of the title relates to the building industry; or

- (v) draftsman, if the use of the title relates to the building industry; or
 - (vi) quantity surveyor; or
 - (vii) a prescribed title; or
- (b) practise as a building inspector; or
- (c) hold himself or herself out as being registered under this Part or in a particular category or class of registration; or
- (d) hold himself or herself out as being qualified to practise as a building practitioner either generally or in a particular category or class of work.
- (2) A person who is not registered under this Part as a building surveyor must not practise as a building surveyor.
- (2A) A builder must not carry out domestic building work of a particular category or class under a major domestic building contract unless the builder is registered by the Building Practitioners Board under this Part to carry out domestic building work of that category or class.
- (3) Sub-sections (1), (2) and (2A) do not apply to the use by a partnership of a title that can only be used by a person registered under this Part or the carrying out by a partnership of work that can only be carried out by a person registered under this Part, if at least one of the partners is registered in the appropriate category or class under this Part.
- (4) Sub-sections (1), (2) and (2A) do not apply to the use by a corporation of a title that can only be used by a person registered under this Part or the carrying out by a corporation of work that can only be carried out by a person so registered if at least one of the directors of the corporation is registered in the appropriate category or class under this Part.
- (5) Sub-sections (1), (2) and (2A) do not apply to--
- (i) an employee under Part 3 of the *Public Sector Management and Employment Act 1998*; or
 - (ii) an officer or employee of the public service of the Commonwealth or a State or Territory of the Commonwealth other than Victoria; or
 - (iii) an officer or employee of a public authority established under the law of the Commonwealth or a State or Territory of the Commonwealth other than Victoria; or
- (b) an organisation or member of staff of an organisation for the time being exempted by the Building Practitioners Board.
- (6) Despite anything to the contrary in this section, an architect registered under the *Architects Act 1991* may use the title 'building practitioner' or 'registered building practitioner'.

Appendix IV: Current Registration Categories and Classes

CATEGORY OF REGISTRATION	CLASS	Sub-class	CODE
<i>Building Surveyor</i>			BS
<i>Building Inspector Unlimited</i>			IN-U
<i>Building Inspector Limited</i>			IN-L
<i>Quantity Surveyor</i>			QS
<i>Draftsperson</i>	Building Design (Architectural)		DP-AD
	Building Design (Interior)		DP- ID
	Building Design (Services)		DP- SD
<i>Engineer</i>	Mechanical Engineer		EM
	Electrical Engineer		EE
	Civil Engineer		EC
	Fire Safety Engineer		EF
<i>Builder</i>	Commercial Builder Unlimited		CB-U
	Commercial Builder Limited	Low Rise	CB-L
		Structural fit-out	CB-L
		Non structural fit-out	CB-L
		Sign Erection	CB-L
		Blinds and Awnings	CB-L
		Re-blocking	CB-L
		Steel Erection	CB-L
		Underpinning	CB-L
		Greenhouse	CB-L
		Damp proofing	CB-L
		Other	CB-L
	Demolisher (low rise buildings)		BD-L
	Demolisher (medium rise buildings)		BD-M
	Demolisher (unlimited)		BD-U
	Domestic Builder Unlimited		DB-U
	Domestic Builder Manager		DB-M
	Domestic Builder Limited		
		Work not exceeding \$12,000	
		Carpenter	DB-L (C)
		Relocation of a Home	DB-L (D)
		Class 10(a)	DB-L (E)
		Door/Window installation	DB-L (F)
		Fences	DB-L (G)
		Brickwork	DB-L (H)
		External Cladding	DB-L (I)
		Subfloor work	DB-L (J)
		Improvements to roof	DB-L (K)
		Bathroom/Kitchen	DB-L (L)
		Heating/Ventilation	DB-L (M)
		Cabinet/Joinery	DB-L (N)
		Floor slabs and Footings	DB-L (O)
		Retaining Walls	DB-L (P)
		Sundry Works	DB-L (Q)
		Swimming Pools	DB-L (S)
<i>Erector or supervisor (temporary structures) class 1</i>			V1
<i>Erector or supervisor (temporary structures) class 2</i>			V2