



Australian Institute of
Building Surveyors

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Submission

Draft Planning, Development and
Infrastructure (General) (Development
Assessment) Variation Regulations 2019

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Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can be best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

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Preparation

This submission has been prepared following release of the Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations as released by the Department of Planning, Transport and Infrastructure for comment.

Overview

In general, AIBS notes that the draft Regulations are largely consistent with if not identical to the Current Development Regulations 2008 so that it appears that an opportunity for a wholesale review of the Regulations may have been missed. Additionally, a number of the matters identified in the Building Confidence report from Professor Peter Shergold and Ms Bronwyn Weir have not been addressed by the draft Regulations which, in the view of AIBS, is another opportunity missed.

AIBS notes there is a transition period contemplated by the PDI (Accredited Professionals) Regulations 2019 related to the qualification requirements for practitioners. Aside from those changes, all other changes are scheduled to come into operation on 1 July 2019. AIBS considers that provided adequate training is provided about the changes involved, this timeframe will be acceptable.

The drafting note at Regulation 5 indicates that all existing Minister's Specifications will be re-made as Ministerial Building Standards pursuant to the PDI Act. The re-making process will inevitably involve a degree of re-drafting or amendment to ensure appropriate provisions within the new Act are referenced in place of Development Act and Regulation references. It would be useful if consultation around this process also occur as there are a number of matters that require revision in these documents beyond simply translating them from one Act to the next.

AIBS provides the following comments related to specific parts of the draft Regulations:

- 1) Within the definition of 'essential safety features' there is a reference to 'any Minister's Specification under the Development Act 1993' which is confusing as there are Minister's specifications that relate to waterproofing of wet areas or grain silos that appear not to have relevance to this definition. It is suggested that this be revised to relate only to pertinent documents
- 2) Also, the definition uses the word 'features' which differs from the descriptor used in Regulations 100 and 108 being 'provisions' and consistent with the Development Act and Regulations descriptor used historically
- 3) The definition of 'farming' has been omitted from the draft Regulations despite this term still being relevant in respect of complying building work set out in Schedule 7. AIBS suggests that the definition of 'farming' provided within the NCC be adopted in the draft Regulations
- 4) The definition of fire authority differs from that in the Emergency Services Act and Regulations and for the purposes of the NCC BCA definition, will create confusion as both legislative meanings will trigger requirements in the NCC BCA. It is preferable that the definition in the Regulations match the definition in the NCC
- 5) Regulation 25 provides for a person with Level 3 accreditation to also assess planning consents pursuant to Regulation 22 related to land divisions, improving upon the current responsibilities available to level 3 qualified person under the current scheme, however takes away from such persons with respect to the building rules assessment of class 2 to 9 buildings with a floor area less than 500m² and a rise in storey not exceeding 2. There are no transition periods provided to allow for this change so that industry and local government may be disadvantaged by the change until such time as a suitably qualified person can be employed or qualifications upgraded to allow this work to be undertaken in locations where there are no suitably qualified persons currently available. AIBS recommends a transitional arrangement be put in place if these changes are to be made
- 6) Regulation 25 (6) provides no limitation that would prevent accredited persons from acting beyond their level of qualification. AIBS recommends that all definition of duties be limited to the level of qualification held

- 7) Regulation 108 establishes a new requirement for Class 1 buildings to be covered by a Certificate of Occupancy unless outside of a council area. AIBS believes that it is appropriate for a consistent application of consumer protection standards to be applied throughout South Australia so that all Class 1 buildings should be covered by a requirement to have a Certificate of Occupancy
- 8) Regulation 3A (2) appears not to properly account for the application of the building rules in respect of community title division – the Torrens title boundaries should represent fire source features but community allotment boundaries within the Torrens title boundaries are not; separating construction requirements must apply to these walls as per buildings on the same allotment
- 9) Regulation 3A should be re-written to avoid the use of double negative language which will make it far clearer what is required to be done in all land division circumstances
- 10) Regulation 83 relates to the application of the building rules also in respect of land division and should be relocated to appear together with Regulation 3A (2) requirements
- 11) Regulation 83 does not adequately cover the need to verify compliance of existing buildings with respect to fire separation requirements other than in relation to fire source features – for example, bounding construction requirements, rating of floors / ceilings / roofs. Section 53A of the Development Act is also relevant to this type of application and it would be useful to also deal with the circumstances around when an upgrade of a building would be triggered in respect of these regulations
- 12) Regulation 3G is a direct copy of Clause 6B in the Development Regulations 2008 and from current experience, will be difficult to enforce. Creating an expiation for the offence of filling an inflatable pool without approval would support compliance activities by Councils and may improve enforcement outcomes in relation to this important safety risk mitigation measure in the Regulations
- 13) Regulation 58 provides for the giving of notice of a decision. This does not include reference to how a building surveyor has decided that a proposal meets the performance requirements of the NCC BCA. AIBS believes it would be appropriate for a requirement to notify to include a description of how performance requirements have been met, particularly where this involves a method other than demonstration of compliance with the deemed to satisfy provisions.
- 14) Regulation 99 allows for the providing of notice by post however it is noted that this method will likely result in communication of the notice arriving several days after the holding period has expired and so would be unworkable as a means of ensuring critical stages are inspected upon notification. Suggest that the notification period be extended to 5 days if the notification is issued by post
- 15) The current Regulations and draft Regulation 100 do not provide a trigger for provision of a Form 2 – *Certificate of Installation of Essential Safety Provisions* with any alteration work undertaken involving a building with an existing Schedule of Essential Safety Provisions where no change to the schedule is required as a result of the work. Such a provision is important in ensuring that those responsible for the installation or alteration of an essential safety provision are able to be identified and made accountable for that work
- 16) Regulation 121 appears to need a reference to the Act inserted to ensure it can be used
- 17) Schedule 4, Clause 4 (m) exempts tree houses but not cubby houses – both should be exempted
- 18) Exempting all class 10 buildings from a requirement to provide a statement of compliance pursuant to Regulation 109(2) means that swimming pool and retaining wall builders will not be required to warrant that their work conforms. AIBS believes it is important that such structures are verified as compliant by those responsible for building them whereby perhaps it would be appropriate for a value-of-work related threshold for exemption from provision of a statement of compliance be introduced
- 19) Regulation 118 (1) (b) (ii) appears to be missing the word 'accreditation' after the word 'current'

- 20) Regulation 118 does not provide any limitation on the types of buildings that can be inspected by persons with differing levels of qualification. AIBS believes it is critical that persons with restricted levels of qualification only be permitted to operate with those limits
- 21) Regulation 119 does not require a person to hold accreditation but merely to possess the qualifications necessary for gaining accreditation. This will create a need for Councils to vet the qualifications of persons and to make determinations on what they think is suitable in the process of appointing people to serve on Building Fire Safety Committees and may open such appointments to dispute which may create an unnecessary opportunity for the activities of a Building Fire Safety Committee to be challenged in Court. AIBS believes that a person must hold the requisite level of accreditation in order to qualify for service on a Building Fire Safety Committee
- 22) Additionally, Regulation 119 sets out that Accredited Professional – building levels 3 and 4 are able to undertake responsibilities associated with the operation of a Building Fire Safety Committee which is inconsistent and in excess of the duties contemplated within the PDI (Accredited Professionals) Regulations 2019. The inclusion of both of these levels within this regulation is not supported by AIBS as the duties required of a person performing these functions is well beyond the qualification benchmarks for levels 3 and 4. Accordingly, levels 3 and 4 should be removed from this list and the role of a person with level 2 accreditation should be restricted commensurate with their qualification
- 23) Regulation 128 (b) incorrectly references the administration of the CodeMark Scheme which is now undertaken by JAS ANZ on behalf of the ABCB. Suggest that reference consistent with Division 2—*Accreditation persons and bodies* Section 239 *Prescribed persons and bodies to accredit building products* from the Building Act (Vic) 1993 is a more appropriate form of reference
- 24) The effect of Regulation 132 is to ensure that there is no retrospective application of the 10-year liability limit established by Section 159. AIBS believes this could be revised so that liability beyond 10 years is not applicable
- 25) Schedule 8 parts 2 and 3 sub clauses (a) (vii) in both, nominate a north point is required to be shown on site plans however does not stipulate if this should be the magnetic or true north point. It is important that true north be specified for consistency with energy rating software and to ensure appropriate assessment of energy performance of the building can be made
- 26) Schedule 9 clause (1) (a) (viii) nominates that an approximate north point is required however this will not be adequate with respect to assessment of the technical requirements within the building rules related to the energy efficiency performance of a building – the true north point must be specified on the plans to be consistent with Schedule 8 parts 2 and 3
- 27) An ability to issue an expiation is provided in respect of the following:

Regulation providing expiation power	Regulations relevant	Sections relevant	Subject matter description
50(7)	50(7)	107(3)(a)(ii), 110(2)(a)(iv), 107(3)(b), 110(2)(b)	Performance assessed development and restricted development
99(5)	99(1), 99(4)	146(1)	Notifications during building work
100(11)	100(5), 100(6), 100(7), 100(8)		Essential safety provisions
101(5)	101(5)		Smoke alarms in dwellings
109(10)	109(10)		Statement of compliance
131	131		Issue of expiation notices

A power to issue expiations has not been provided in respect of the following:

- Section 135 – urgent building work
- Section 136 – urgent building work in relation to trees
- Section 139 – Activities that affect the stability of land or premises
- Section 140 – Access to neighbouring land
- Section 151(5) – classification of buildings
- Section 152(1) – certificates of occupancy
- Section 155 – emergency orders
- Section 156 – designated safety requirements for swimming pools
- Section 157 – building fire safety committee actions
- Section 211 – offences against authorised officers
- Section 213 – enforcement notices
- Section 215 – general offences
- Section 216 – offences relating specifically to building work
- Section 217 – false or misleading information
- Regulation 39 – Certification of building industry insurance

AIBS suggests it would be useful and assist in ensuring adequate enforcement of requirements if expiations were also established in relation to these requirements.

In closing

AIBS notes there is much within the Development system which still needs improvement and that all parts of the system are inter-related. We hope the next stage of changes happens soon and offer our assistance in that regard. We particularly note elements of the system including inspections, the establishment of the SA portal as key reforms that will provide considerable early benefit. Reforms related to implementation of the Building Confidence report recommendations are also needed to address key structural reforms that support a better outcome for the community and we look forward to an opportunity to work with you on developing a suitable response in that regard.

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.