General Meeting

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Welcome ... 

Rob Kruber, 
SPASA Victoria President 
SPASA Australia Vice President 
Spa Industries, Operations Manager
What we’ll cover ...

**Know Your Legal Obligations**
New enforcement of Builder Registration, Compulsory Contract use & Builder Warranty Insurance
- Warren Jensen, Peter Zagorski & Brendan Watkins

**The Pathway to a Single Entity National Body**
- Rob Kruber & Brendan Watkins

**Pool Builder: Practice Note Update & Builder Meeting / Sub Committee Formation**
- Colin Sloggett

**General Business**
Know Your Legal Obligations – Enforcement of Builder Registration, Compulsory Contract use & Builder Warranty Insurance

The Past …
If the works did not involve:
> changing the “structural integrity” or “footprint of the swimming pool” (no steel or concrete)
> did not require a permit to perform the works
> no barrier or hydraulic interference

Then it was generally considered non-structural & hence builder registration & BWI was not required.
Know Your Legal Obligations –
Enforcement of Builder Registration, Compulsory
Contract use & Builder Warranty Insurance

After much criticism of the Building Commission via VAGO & various
reports / media allegations, the absence of a CEO/Commissioner since
Michael Kefford, there has recently been active enforcement of the
Building Act, leading to several substantial fines to unregistered /
uninsured individuals.

Many of those penalised, rightly or wrongly, may have had no
knowledge of their legal obligations.

SPASA wants its members to be fully aware of their obligations.
Know Your Legal Obligations –
Enforcement of Builder Registration, Compulsory
Contract use & Builder Warranty Insurance

The association has sought independent legal advice. Our pool shops &
service technicians have some obvious issues.

“We therefore advise that renovation work carried out on an existing pool to a
value of more than $5,000 must be carried out by a registered builder and that
builder must carry insurance if the value of the work is greater than $12,000. This
is so, except where the work is only in relation to one aspect such as only tiling,
or only landscaping or only plastering.”

There are two intersecting sets of authorities & obligations; those of
Consumer Affairs (largely around Contracts & Warranties) & those of
the VBA (around Registration, Regulation & BWI)
Know Your Legal Obligations – Enforcement of Builder Registration, Compulsory Contract use & Builder Warranty Insurance

Exemptions: Single-tasks performed “in isolation” and are “non-structural” - painting, tiling, paving, rendering, etc - and are generally considered to be “safe” with regard registration (but not necessarily Contracts).

Generally, the issue arises when more than one task is undertaken.

Issues -
1. Builder Registration
2. $5k+ Contract necessity
3. $12k+ BWI mandated
Know Your Legal Obligations – Enforcement of Builder Registration, Compulsory Contract use & Builder Warranty Insurance

SPASA may now – following this joint presentation from the VBA & Consumer Affairs – have new work to do for our members.

It may be that additional support is required for those performing work around pools / renovators / pool shops & service techs / above-ground installers / vinyl-liner work / etc.

Members may require: Standard Contract provision, Handover books, BWI referrals, dispute resolution processes, etc.
Domestic Building Contracts

Warren Jensen
Consumer Affairs Victoria
Contracts for domestic building work

• Domestic building contract
  – means a contract to carry out, or to arrange or manage the carrying out of, domestic building work other than a contract between a builder and a sub-contractor

• Major domestic building contract
  – means a domestic building contract in which the contract price for the carrying out of domestic building work is more than $5000
Domestic building work - DBCA

What is domestic building work for which the *Domestic Building Contracts Act 1995* (‘DBCA’) applies?

- The construction of a home
- The renovation, alteration, extension, improvement or repair of a home
- Landscaping, paving, driveways, fencing, garages, workshops, swimming pools or spas that is carried out in conjunction with a construction or renovation
- Any site work (including work required to gain access, or to remove impediments to access, to a site) related to domestic building work
- Demolition or removal of a home
- The preparation of plans or specifications for the carrying out of work unless prepared by a registered draftsperson or architect
- Any work the Domestic Building Contracts Regulations 2007 state is building work

- NB – a reference to a home includes a reference to any part of a home
Single trade exemptions

You will not be carrying out domestic building work for which the *Domestic Building Contracts Act 1995* applies if you are carrying out a job that involves **only one** of the following:

- plastering
- tiling (wall and floor)
- electrical work
- glazing
- insulating
- painting
- plumbing work as defined in the Building Act 1993
- installing floor coverings
- attaching external fixtures (awnings, security screens, insect screens and balustrades)
- erecting a chain wire fence around a tennis court
- erecting a mast, pole, antenna, aerial or similar structure
Who can enter into a MDBC?

- Registered Building Practitioner (‘RBP’)
- partnership where at least one of the partners is a RBP
- company where at least one of the directors is a RBP
- in the case of a builder who is exempt under the Building Act 1993 from the requirement to be registered, the domestic building work to be carried out under the contract (that) is to be carried out by a builder who is registered as a builder under the Building Act 1993
Discussion case No. 1

• Pool renovation
  – re-surfacing of pool (painting)
  – repair and replacement of coping and water edge tiles
  – repair and replacement of filtration system
  – landscaping
  – new pool barrier
  – contract price $30,000

• Is a building permit required?
• Is it a major domestic building contract?
• Does the builder need to be registered?
• Does the builder need to provide domestic building insurance?
Discussion case No. 2

- Above ground pool
  - length 3.8m, width 3.0m, depth 1.35m

- Supply and installation $6,500
  - supplier to arrange installation of pool including filtration system

- Owner to arrange:
  - necessary permits
  - decking to pool and pool barrier $8,000 (separate contractor)
  - landscaping (by owner)

- Is a building permit required?
- Is it a major domestic building contract?
- Who needs to be a RBP?
- Is domestic building insurance to be provided, and if so by who and when?
Peter Zagorski
Technical and Regulation Building
Section 24 A - Building permits –

- 24A Further limitations on issue of building permit

(1) The relevant building surveyor may consider an application for a building permit for building work that is not domestic building work but must not issue the permit unless he or she is satisfied that—
(a) each building practitioner to be engaged in the building work is registered under Part 11
• Building Regulation 1810 - Domestic Building work
  — Practitioner to be registered under Part 11 Building Act 1993
  — If Building work over $5000

• Definition of Domestic Building Work under the Building Act
  - domestic building work has the same meaning as it has in the Domestic Building Contracts Act 1995;
  - includes landscaping, paving, garages, carports, swimming pools and spas
• Section 135 of the Building Act 1993 provides the authorization for the Minister to make orders requiring insurance.

• The Domestic Building Insurance Ministerial Order S98 issued May 2003

• The Order applies to Domestic Building Contracts over $12000

• Domestic building Insurance is required before entering into a Domestic Building Contract
Schedule 8 – Exemptions from Building permits

• Item 3 - Repairs, renewal or maintenance
  – Non structural, doesn’t increase area, use similar materials and won’t affect safety and health of occupants
  – Note: If the contract price for the carrying out of domestic building work is more than $5000, the builder is required to enter into a major domestic building contract with the owner under the Domestic Building Contracts Act 1995.

• Item 9 - Relocatable swimming pools or spas that is erected temporarily, or a spa that does not share a water recirculation system with a swimming pool, if either the swimming pool or the spa is erected in an area enclosed by an approved barrier. (Exemption does not apply to the barrier)
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Q & A