

Building

Regulations Advisory Committee

Committee Charter & Terms of Reference

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Introduction

These Terms of Reference were endorsed for use by the Members (**Committee**) of the Building Regulations Advisory Committee (**BRAC**) on 23 December 2020 to assist the Committee in the exercise of its functions and responsibilities.

1. Establishment of the Committee

The BRAC is a statutory committee created under section 209 of the Building Act 1993 (**the Act**).

2. Membership of the Committee

Membership and procedure of the committee is established under s210 of the Act.

- 1) The members of the Building Regulations Advisory Committee are to be appointed by the Minister.
- 2) Of those members—
 - a. one is to be the Chief Commissioner or a Commissioner nominated by the Chief Commissioner, who is to be chairperson of the Committee;
 - b. one is to be nominated by the Minister administering Part 4 of the Project Development and Construction Management Act 1994;
 - c. one is to be nominated by the Minister administering the Country Fire Authority Act 1958 and the Minister administering the Fire Rescue Victoria Act 1958;
 - d. one is to be nominated by the Melbourne City Council and is to be a person who, in the Minister's opinion, has experience in matters provided for by this Act or the regulations;
 - e. one is to be chosen from a list of 3 names submitted by the Royal Australian Institute of Architects, Victorian Chapter;
 - f. one is to be chosen from a list of 3 names submitted by the Institution of Engineers, Australia, Victoria Division;
 - g. one is to be chosen from a list of 3 names submitted by the Master Builders Association of Victoria;
 - h. one is to be chosen from a list of 3 names submitted by the Housing Industry Association, Victoria/Tasmania Division;
 - i. one is to be chosen from a list of 3 names submitted by the Property Council of Australia, Victoria Division;

- j. one is to be chosen from a list of 3 names submitted by the Municipal Association of Victoria;
 - k. one is to be nominated by the Building Designers Association of Victoria Inc.¹;
 - l. two are to be chosen from a list of 6 names submitted by the Australian Institute of Building Surveyors, Victorian Chapter;
 - m. one is to be a person who in the Minister's opinion, has experience in the building industry or in matters related to that industry;
 - n. at least one is to be an Australian lawyer of at least 5 years' standing;
 - o. at least one is to be a person who, in the Minister's opinion, is able to represent the interests of users of the services of building practitioners.
- 2A) For the purposes of subsection (2)(a), the Chief Commissioner may nominate a Commissioner to act in the place of the Chief Commissioner in his or her absence.
- 3) If there is or there is to be a vacancy in the membership of the Building Regulations Advisory Committee under subsection (2)(b) to (k), the Minister may, as appropriate, request the relevant Minister to make a nomination for appointment or the relevant organisation to submit a list of names within a period specified in the request.
- 4) The Minister may appoint an otherwise eligible person to be a member of the Committee without a nomination or list of names, if that request is not complied with.
- 5) **Parts 1 and 2** (except for clause 8) of **Schedule 3**² apply to the membership and procedure of the Building Regulations Advisory Committee in the same way as they apply to a Board.

¹ The Building Designers Association of Victoria Inc is now known as Design Matters National.

² Parts 1 and 2 of Schedule 3 are provided as part of this Charter and Terms of Reference and are titled item 4 Membership and Procedure of the Committee.

3. Functions of the Committee

The BRAC's functions are set out in s211 of the Act.

The Committee is:

- 1) to advise the Minister on draft regulations prepared under this Act, and in particular the extent to which they promote the objectives of this Act, are cost effective and are necessary;
- 2) to accredit building products, construction methods or designs, components or systems connected with building work for the purposes of this Act and the building regulations;
 - a. to advise the Minister on the administration of this Act and the regulations, other than Part 12A and the regulations made under that Part;
 - b. to advise the Minister on the impact on the building regulations system established by this Act of regulations made under any other Act;
 - c. to advise the Minister on issues relating to the building permit levy;
- 3) to advise the Minister on any matter referred to it by the Minister;
- 4) any other functions conferred by or under this or any other Act.

In carrying out its functions, the Committee recognises its responsibility to act honestly, fairly, diligently and in accordance with the law.

The Committee is accountable to the Minister for Planning while at the same time having proper regard to the interests of all stakeholders.

The Committee observes the Victorian Public Sector values as set out in the Public Administration Act 2004.

4. Membership and Procedure of the Committee

Part 1 Membership

4.1 Term of Appointment

- 1) Subject to this clause, a member of the Committee holds office for a period, not exceeding 3 years, specified in the instrument of his or her appointment.
- 2) A member of the Committee is eligible for re-appointment.
- 3) The instrument of appointment of a member of the Committee may specify terms and conditions of appointment not inconsistent with this Act or the regulations.
- 4) A member of the Committee appointed by the Minister can be removed from office by the Minister.

4.2 Remuneration and allowances

A member of the Committee (including a chairperson or deputy chairperson) is entitled to receive—

- a) remuneration; and
- b) travelling or other allowances—

from time to time fixed by the Minister in respect of that member.

4.3 Vacancies

- 1) A member of the Committee may resign from membership by letter signed by the member and delivered to the Minister.
- 2) The office of a member of the Committee becomes vacant if the member—
 - a. becomes bankrupt; or
 - b. is convicted in Victoria of an offence punishable on first conviction with imprisonment for a term of 12 months or more or is elsewhere convicted of an offence which, if committed in Victoria, would be so punishable; or
 - c. ceases to hold a position or qualification which made the member eligible for appointment as a member.

4.4 Application of Public Administration Act 2004

The Public Administration Act 2004 (other than Part 3 of that Act) applies to a member of the Committee in respect of the office of member.

4.5 Acting members

- 1) If a member of the Committee is unable to perform the duties of his or her office, the Minister may appoint a person to act in the place of the member during that period of inability.
- 2) An acting appointment is to be for any term and on any conditions determined by the Minister.
- 3) The Minister may at any time terminate an acting appointment.
- 4) An acting member of the Committee has all the functions of the member for whom he or she is acting.
- 5) An acting member of the Committee is entitled to receive any remuneration or travelling, or other allowances fixed from time to time by the Minister in respect of that acting member.
- 6) The provisions of this Schedule (except clause 2) applying to members of the Committee also apply to acting members.

4.6 Pecuniary interests

- 1) If a member of the Committee has a direct or an indirect pecuniary interest in a matter which is about to be or is being considered by the Committee, the member must as soon as possible after the relevant facts come to his or her knowledge disclose the nature of the interests—
 - a. to the Minister, in the case of the chairperson; or
 - b. to the chairperson, in the case of any other member.
- 2) A member who has disclosed a pecuniary interest in a matter under subclause (1) must not be present while the Committee is considering or deciding the matter and must not take part or further part in that consideration or decision.
- 3) An act or decision of the Committee is not invalid merely because a member contravenes subclause 1) or 2).
- 4) Subclause 3) does not prevent a member of the Committee being removed from office because he or she has contravened subclause 1) or 2).
- 5) For the purposes of this clause, a member of the Committee must not be taken to have a pecuniary interest in a matter merely because the member is engaged in the building industry or in any matter connected with that industry.
- 6) Without limiting what is a pecuniary interest in a matter for the purposes of this clause, a person must be taken to have a pecuniary interest in a matter relating to a building or building work if the person—

- a. is or was involved in designing the building; or
- b. has assisted in preparing or making an application for a building permit or occupancy permit for the building or work; or
- c. is the relevant building surveyor in respect of an application for a permit for that building or building work.

4.7 Membership of the Committee not office or place of profit

A member of the Committee must not, in respect of the office of member, be taken to hold an office or place of profit under the Crown which would—

- 1) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- 2) make void the member's election to the Legislative Council or Legislative Assembly; or
- 3) prevent the member continuing to be a member of the Legislative Council or Legislative Assembly; or
- 4) subject the member to liability to a penalty under the **Constitution Act 1975**.

Part 2—General procedure

4.8 (Does not apply to the BRAC)

4.9 Decisions not affected by certain matters

An act or decision of the Committee is not invalid only because—

- 1) of a defect or irregularity in the appointment of a member or acting member; or
- 2) of a vacancy in its membership; or
- 3) the occasion for the appointment of an acting member has ceased to exist.

4.10 Meetings

- 1) At a meeting of the Committee a quorum is half the number of the members currently holding office and, if this would not be a whole number, the next highest whole number.
- 2) The functions of the Committee may be performed at a meeting at which there is a quorum.
- 3) At a meeting a decision of the Committee is the decision of the majority of the members present and voting at the meeting and if voting is equal, the person presiding at the meeting has a casting vote as well as a deliberative vote.

- 4) The person who is to preside at a meeting of the Committee is—
 - a. the chairperson, if present; or
 - b. the deputy chairperson (if any), if the chairperson is not present; or
 - c. a person elected by the members present if the chairperson is not present and either there is no deputy chairperson or the deputy chairperson is not present.
- 5) Subject to this Act and the regulations, the procedure of the Committee is in its discretion.
- 6) If a member of the Committee holds 2 or more positions on the Committee ex officio—
 - a. he or she is only entitled to exercise a single deliberative vote at meetings of the Committee, regardless of how many of those positions he or she holds on the Committee; and
 - b. for the purposes of determining the total number of members of the Committee currently holding office for the purposes of determining whether a quorum of the members is present, all the ex officio positions held by the member are to be counted as one member.

4.11 Authentication of documents

- 1) A document required or authorised to be prepared by the Committee must be taken to be authenticated by the Committee if—
 - a. it is signed by the chairperson or deputy chairperson of the Committee and the Registrar of the Committee or another person employed for the purposes of this Act and designated by the Committee for that purpose.
- 2) The production of a document purporting to be a copy of a record of an act or decision of the Committee and purporting to be signed by the Registrar is evidence and, in the absence of evidence to the contrary, is proof that a decision in those terms was duly made by the Committee or that the stated act was duly done by the Committee.

5. Code of Conduct for the Committee

As noted in item 4.4 above, Members are expected to act in accordance with the *Public Administration Act 2004*. Duties of members are set out in Section 79 of this Act.

Members are required to abide by the *Code of Conduct for Directors of Victorian Public Entities* issued by the Victorian Public Sector Commissioner.

6. Conflict of Interest

The Committee has adopted the declaration of conflicts of interest that complies with the Victorian Public Sector Commission's *Conflicts of Interest and Duty For Directors of Public Entities: Practice Guide*.

Formal declarations are renewed annually.

Members will be invited to disclose conflicts of interest at the commencement of each meeting. Ongoing conflicts of interest need not be disclosed at each meeting once declared and recorded in the minutes of the meeting. A register of these declarations will be maintained by the Committee secretariat and provided to every Committee meeting.

Where members are deemed to have a real or perceived conflict of interest, they will be excused from discussions on the issue where a conflict exists.

7. Committees and Working Groups

- 1) Standing subcommittees may be established by the Committee to assist it in the effective execution of its responsibilities.
- 2) Working groups may also be established by the Committee from time to time for a specific period to consider and report on specific issues.
- 3) The composition, roles, responsibilities, administration and any delegated authority of subcommittees and working groups will be clearly defined by written Charter approved by the Committee from time to time. No subcommittee has executive powers in relation to its findings or recommendations.
- 4) Each subcommittee or working group will have a chairperson who will report on the work of the subcommittee at each Committee meeting. Subcommittees are to meet as often as required.

8. Role of the Chair

- 1) The Commissioner is the Chair of the Committee. The Chair presides over meetings of the committees.
- 2) If the chair is absent, Committee appoints a Member who is present to preside at the meeting.
- 3) The Chair provides leadership to the Committee and is responsible for:
 - a. overseeing the Committee in the discharge of its role;

- b. the efficient organisation and conduct of the Committee's functions and meetings;
 - c. ensuring that all policies adopted by or relevant to the Committee are provided to all Members;
 - d. facilitating the effective contribution of all Members;
 - e. guiding and promoting the ongoing effectiveness and development of the Committee and individual Committee members;
- 4) no decision is taken without the required quorum; and
- a. Committee meetings run in an effective and timely manner.

Overall, the chair balances the need to ensure that all Committee members have a fair opportunity to express their views and ask questions with the need to progress the meeting in a timely manner, taking into account the nature, complexity, and importance of the issue being discussed and decided, and all other relevant circumstances.

Committee members assist the chair in ensuring that Committee meetings and decisions occur in accordance with this framework.

9. Meetings

9.1 Frequency and timing

- 1) The Committee will hold at least six meetings per year. The Committee Secretariat will prepare an annual schedule of meetings for the Committee's approval in advance of every new calendar year.
- 2) In addition, the Chair can call a Committee meeting by providing all of the Members with seven days' written notice of the meeting including the date, time and location and the matters to be considered.
- 3) The Committee may meet with less than seven days' written notice if all members have been contacted and are able to attend at an agreed date and time, whether in person or by electronic means.

9.2 Attendance

- 1) Members are expected to attend all scheduled Committee meetings. A minimum attendance of 75% is required. The Committee may grant leave of absence at its discretion. Attendance at meetings will be reported in the BRAC annual report submitted to the Minister on January 1.
- 2) With the approval of the Chair, a member may attend a meeting or part of a meeting remotely (see Clause 12.4).

9.3 Attendance at meetings by non-committee members

A non-committee member may only attend a committee meeting if he/she is invited by the chair or by another committee member on behalf of the committee. The committee will determine the item(s) during which the invited guest may attend. A non-committee member who attends a committee meeting:

- 1) must not participate in any committee discussions unless requested to do so by the chair; and
- 2) never takes part in any committee decision.

9.4 External Guests

The chair will advise external guests (e.g. an expert consultant) that, as a condition of attending the meeting:

- 1) he/she must refrain from discussing any matters raised at the meeting with non-Committee members; and
- 2) if he/she is provided with any Committee papers, access will be limited to during the meeting, unless specific alternative arrangements are made for their use and return

9.5 Agenda

- 1) The Agenda for each Committee meeting will be prepared by the committee Secretariat in consultation with the Chair.
- 2) The agenda and supporting papers are to be distributed at least five business days prior to the meeting, to provide Members with reasonable time to prepare for the meeting.

9.6 Remote attendance

- 1) The Committee may convene meetings by electronic means, as long as the means chosen does not create a barrier to participation for any Member. A meeting convened by electronic means is a formally constituted Committee meeting and all the same administrative requirements, such as an agenda, papers and minutes of the meeting, shall be prepared.
- 2) Where a Member wishes to cease taking part in a meeting convened by electronic means before the Chair has called the meeting to a close, that Member must indicate to the meeting their intention to cease taking part. Without giving this notice, a member will be deemed to still be in attendance at the meeting.

9.7 Committee resolutions without meeting

- 1) With the approval of the Chair, the Committee Secretary may distribute to the Committee proposed resolutions in writing and seek Members' votes in favour or against the proposed resolutions in written electronic form by a certain time and date.

- 2) If all the members sign a document containing a statement that the members are in favour of the resolution/s, the matter shall be considered to have been at a meeting held on the day the document is signed or the day the last member signs the document.
- 3) The requirement to sign can be satisfied if an identifying electronic communication, such as a personal email address, is used.
- 4) The Committee Secretary shall ensure that a minute of the resolution is recorded and provided to the next scheduled meeting of the Committee for consideration and ratification.

10. Secretariat

- 1) The BRAC Executive Support Officer provides secretariat services to the Committee.
- 2) Minutes of Committee meetings are maintained by the Secretariat.
- 3) The Secretariat is responsible for:
 - a. maintaining an action list;
 - b. drawing up the agenda so that the Committee observes any forward schedule of agenda items that may be approved by the Committee from time to time;
 - c. preparing the Committee papers;
 - d. circulating the papers to Committee members at least five business days prior to each meeting; and
 - e. providing draft minutes of the meeting of the Committee to the Chair for review prior to including the draft in the Committee papers.

11. Performance Review

It is a requirement in Section 81(1)(d) of the Public Administration Act that adequate procedures be in place for assessing Board member's performance (collective and individual) and for dealing with poor performance (if any).

The BRAC will conduct performance assessment/s in accordance with its obligations and with good public sector governance practice, including:

- a. the establishing Act, being the Building Act 1993;
- b. the Public Administration Act 2004 (Section 79 and 81);
- c. the Directors' Code of Conduct;
- d. any assessment guidelines/requirements issued by the Minister or the Secretary of the Department of Environment, Land, Water and Planning (DELWP); and

- e. any other directions, guidelines and/or statements of obligation or expectation issued by the Minister;

The performance of the BRAC will be assessed on an annual basis, including:

- a. the collective performance of the BRAC (annual assessment);
- b. the performance of individual BRAC members; and
- c. the performance by the chair of his/her additional duties as chair.

The purpose of assessment is to enable performance areas that require improvement to be identified and addressed.

12. Committee Charter and Terms of Reference

The Committee annually reviews this Charter and Terms of Reference to provide assurance that it remains consistent with the Committee's objectives and responsibilities.