



# FRAMEWORK FOR REFORM

Modernising Victoria's  
building system

## Acknowledgements

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We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices. We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

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# FOREWORD

**The Victorian Government has established the independent Building Reform Expert Panel (the Panel) to lead its review of the building legislative and regulatory system (the Review). The reasons the Government commissioned this comprehensive Review of Victoria's building system include the need to:**

- **address risks of regulatory and industry failure, as highlighted by the use of combustible cladding material; and**
- **modernise the legislative and regulatory framework to address contemporary building design and construction approaches, and to underpin a thriving construction sector.**

This Review was a key recommendation of the Victorian Cladding Taskforce in its 2019 report to the Government.

The importance of the Review to Victoria's economy is clear: Victoria's construction sector is a major contributor to the state's economy and plays a central role in shaping the future of the built environment. Typically, more than 100,000 building permits are issued annually, contributing around \$40 billion to Victoria's economy. As such, the sector has substantial impacts on the state's growth, prosperity and jobs.

The importance of ensuring that we have a modern and effective regulatory framework for the building design, construction and maintenance industries cannot be overstated. Over 300,000 Victorians are directly employed in the construction industry – including architects, builders, building surveyors and inspectors, engineers, fire safety professionals, planners, project managers, property managers and trades. A modern regulatory framework which supports continual improvements in industry and professional practice and delivers the best possible outcomes for consumers is fundamental to supporting jobs growth – both within the construction sector and throughout the economy. And it is improving the regulatory system which is the main focus of the Panel's reform program.

And, the Review is vital in delivering significant improvements to protect and empower Victorian consumers for whom building or renovating a home, including buying off the plan apartments, is a significant and complex decision.

One of the common criticisms of the current Victorian building system is the potential for conflicts of interest between private building surveyors and builders, developers or design practitioners which has arisen due to a lack of sufficient regulatory oversight. The Panel has considered a number of options to address this important issue.

Although a series of changes have been made to the building regulatory system over the last decade, these changes have been largely focused on addressing specific issues rather than delivering whole-scale reform.

Recent evidence of regulatory and industry failures that led to incidents, such as the Lacrosse and Neo200 building fires caused by the use of combustible cladding, highlighted weaknesses in the regulatory system and the fact that our regulatory system has not kept pace with changes in housing demand and construction practices. The current structure of the building regulatory system does not adequately hold all those involved in the process responsible and accountable for the safety and quality of buildings and compliance with the law.

The Government has already undertaken a number of reforms to regulatory arrangements for the construction industry, particularly in response to the issue of combustible cladding. These reforms include the establishment of the \$600 million Cladding Rectification Program and the Victorian Building Authority's development of a code of conduct for building surveyors.

In addition, the Government is investing significantly in the industry as part of Victoria's economic recovery from the coronavirus (COVID-19) pandemic. Initiatives include establishing the Development Facilitation Program and committing \$5.3 billion in the 2020-2021 State Budget for the Big Housing Build to construct more than 12,000 new homes throughout Victoria.

The Panel has been asked to advise, as recommended by the Cladding Taskforce, on the further reforms necessary to address key building policy issues and place safety and consumer protection at the heart of the system. The key objectives of this Review are to create a building regulatory system for Victoria that:

- delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;
- protects consumers and improves confidence in the industry and regulators;
- supports skilled and experienced practitioners<sup>1</sup> to carry out compliant and safe practices; and
- supports regulators to effectively and efficiently enforce compliance<sup>2</sup>.

With these objectives in mind, the Panel has a clear vision for developing a building system where consumers can be confident that industry participants involved in the design, construction and maintenance processes will take responsibility and be held to account for the safety and quality of buildings, and that this is reflected in the culture of the industry.

Achieving the vision relies on effective dispute resolution mechanisms for consumers if things do go wrong, on an industry which delivers safe and quality buildings and on strong and capable regulators – who have the right tools and are prepared to use them to demonstrate there are consequences if standards are not met.

In considering the regulatory system for complex buildings in the United Kingdom, the Independent Review of Building Regulations and Fire Safety: Interim Report noted that:

**“ There is plenty of good practice but it is not difficult to see how those who are inclined to take shortcuts can do so.**

**Change control and quality assurance are poor throughout the process. What is initially designed is not what is being built, and quality assurance of materials and people is seriously lacking<sup>3</sup>.**

Similar issues have been evident in the Victorian building system.

In order to deliver holistic and fundamental changes required for an effective risk-based building regulatory system for Victoria which will improve compliance and enforcement and encourage and reward best practice, the Panel has recommended a staged approach to the reforms, comprising three stages, to be delivered over two years from 2021.

This approach will enable significant changes to be implemented in 2021, with further reforms to be delivered in 2022 and, finally, with a new Building Act to be introduced in 2023. This staged approach also facilitates meaningful and effective engagement with stakeholders throughout the reform, design and implementation journey.

As detailed in the Terms of Reference, the Panel has included the following core aspects in Stage One:

- Consumer protection;
- Practitioner registration and regulation; and
- Regulator powers, roles, responsibilities and structure.

**In Stage One, we are prioritising the delivery of ‘game changing’ improvements to the system which will underpin the foundations of a modern, robust and growing construction sector at this critical time in economic recovery.**

This Framework for Reform Discussion Paper (Paper) outlines the key issues and possible improvements for Stage One relating to the following four key elements:



In Stage Two, the Panel will recommend actions to improve building information, dispute resolution and building approvals (including mandatory inspections) and consider the introduction of statutory duties of care. The Panel will also finalise its advice on any additional improvements to the core aspects of Stage One.

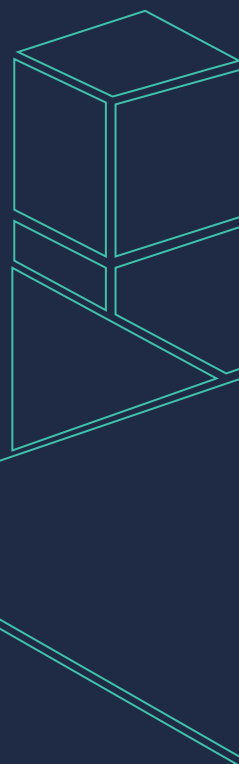
Finally, in Stage Three we will propose the legislative framework for the new Building Act. We will also consider potential improvements required to other legislation that impacts the building system, including the Domestic Building Contracts Act and the Owners Corporation Act.

In this Paper, the Panel has set out a number of possible improvements to address the Stage One core aspects as outlined above. We are now seeking stakeholder input on these possible improvements. Following the consultation period, the Panel will finalise its recommendations in the Stage One final report to Government.



# GLOSSARY

ABCB	Australian Building Codes Board
ACL	Australian Consumer Law
AIBS	Australian Institute of Building Surveyors
AIA	Australian Institute of Architects
ARBV	Architects Registration Board of Victoria
BAB	Building Appeals Board
BAMS	Building Activity Management System
BCA	Building Code of Australia
BDAV	Building Designers Association of Victoria
BIM	Building Information Modelling
BMF	Building Ministers' Forum
BMM	Building Ministers' Meeting
BPB	Building Practitioners Board
CAV	Consumer Affairs Victoria
CPD	Continuing Professional Development
CSV	Cladding Safety Victoria
DBC Act	Domestic Building Contracts Act 1995 (Vic)
DBDRV	Domestic Building Dispute Resolution Victoria
DBI	Domestic Building Insurance
DBS	Defects Bond Scheme
DBLS	Domestic Building Legal Service, Justice Connect
DELWP	Department of Environment, Land, Water and Planning
DLI	Decennial Liability Insurance
ESV	Energy Safe Victoria
ESMs	Essential Safety Measures
EWOV	Energy and Water Ombudsman of Victoria
IDI	Inherent Defects Insurance
IAMA	Institute of Arbitrators and Mediators Australia
JBIG	Joint Building Intelligence Group
MAV	Municipal Association of Victoria
MBS	Municipal Building Surveyor
NCC	National Construction Code
PAC	Plumbing Advisory Council
PBS	Private Building Surveyor
PCA	Plumbing Code of Australia
PBI	Private Building Inspector
PB Insurance	Project Based Insurance
PI Insurance	Professional Indemnity Insurance
PwC	PricewaterhouseCoopers
RBS	Relevant Building Surveyor
RTOs	Registered Training Organisations
SA	Standards Australia
SBBIS	Strata Building Bond and Inspections Scheme
SBS	State Building Surveyor
SCA	Strata Community Association
VAGO	Victorian Auditor General's Office
VBA	Victorian Building Authority
VCAT	Victorian Civil and Administrative Tribunal
VCEC	Victorian Competition and Efficiency Commission
VCT	Victorian Cladding Taskforce
VLSB	Victorian Legal Services Board
VMBSG	Victoria Municipal Building Surveyors Group
VMIA	Victorian Managed Insurance Authority
WSV	Worksafe Victoria



# EXECUTIVE SUMMARY

The Victorian Government has established the independent Panel to lead its Review of the building legislative and regulatory system. The Panel's Review will design a modern building regulatory system that:



delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;



protects consumers and improves confidence in the industry and regulators;



supports skilled and experienced practitioners to carry out compliant and safe practices; and



supports regulators to effectively and efficiently enforce compliance.

The role of private building surveyors and regulatory oversight have been the subject of considerable debate in industry and the broader community – not just here in Victoria, but around Australia and in other jurisdictions.

The following factors in particular warrant attention:

- The regulatory system has not kept up with the massive changes which have been seen in construction – in its practices, its technologies and its materials – and the impact of these on the role of building certifiers or surveyors (in the case of Victoria).
- Accountabilities of industry participants, including developers, across the whole construction process – from design to build, to maintenance – have not been clearly defined or appropriately allocated. This has led to a lack of key accountabilities across the process and resulted in a disproportionate burden falling on the regulated building practitioners with statutory responsibilities (the relevant building surveyor).
- The skills and competencies of practitioners, including building surveyors, have not been of sufficient standard to ensure that buildings are safe and of high quality, leading to risks to the community, consumers and other industry participants.
- The potential for conflicts of interest for the relevant building surveyor which could occur if they are reliant on their commercial relationship with a particular builder, developer or design practitioner.
- Consumers are not adequately informed or necessarily empowered to make decisions about the practitioners which they select.

These factors have contributed to the significant regulatory failure which we have seen in Victoria. A modern building regulatory system will address the complexity of multi-storey developments where design and construct contracts are used, and will clarify responsibilities and accountabilities for the compliance, enforcement, quality and safety of all construction work. It will provide for right touch regulation depending on risk.

This Paper sets out the complex issues that have led to a building regulatory system that has not kept pace with contemporary building design and construction practices.

This Paper outlines possible improvements to the building regulatory system which will strengthen accountability across all construction processes, improve practitioner and industry performance and strengthen regulatory functions. Taken together these reform proposals will fundamentally improve the consumer experience. Additional proposals to improve consumer representation and advocacy are also canvassed.

Significantly improved consumer protections must be at the heart of our reformed building system – something which is made clear in the Panel's Terms of Reference and is uppermost in the Panel's consideration of regulatory reform.

Together we can refine these improvements to support a thriving industry that delivers safe, durable, affordable, compliant and sustainable buildings where:

- all participants are competent, accountable and maintain and update their skills continuously;
- accountabilities for each specific practitioner along the construction chain are clear and enforceable;
- regulators are effective, efficient and transparent; and
- there is increased and improved consumer agency and access to remedies if things go wrong.

This Paper also foreshadows the Panel's focus for Stage Two which will recommend actions to improve building information, dispute resolution and building approvals (including mandatory inspections) and consider the introduction of statutory duties of care.

# PRACTITIONER REGISTRATION

The registration and licensing schemes for building, plumbing and design practitioners are important regulatory safeguards aimed to ensure that building, plumbing and design work is undertaken by people who are qualified, competent, and meet probity requirements. These schemes also provide for accountability and recourse through disciplinary action to sanction or remove practitioners from the system and regulatory requirements that practitioners hold insurance.

## The Panel has identified four key issues that relate to practitioner registration:

1. only some classes stipulate that a practitioner must be registered in that class to carry out the particular type of work;
2. complex and high-risk work can be performed by practitioners without specialist skills;
3. not all aspects of work undertaken for today's construction projects are covered by registered practitioner classes; and
4. the corporate registration scheme does not effectively deter non-compliance.

## There are three further issues relating to practitioner competence and support for practitioner training, these are:

- concerns about the quality of training and assessment by some Registered Training Organisations (RTOs);
- competence in the National Construction Code (NCC) and use of performance solutions is not well understood; and
- no requirements for Continuing Professional Development (CPD) are active.

## To address these issues, the Panel presents the following possible improvements:

- assess and align practitioner categories and classes to reflect modern construction practices so that:
  - all work that should be regulated has a practitioner category and class; and
  - specialist practitioner categories and/or classes are developed for complex and high-risk work;
- boost practitioner competence by adopting competence frameworks and improving the education, training and other support available; and
- provide effective assessment of technical competency (and reduce duplication) through improvements in the quality and technical capacity of accreditation bodies and RTOs.

## Following implementation of the above possible improvements, the Panel will finalise its advice on:

- a consistent approach to regulation of design practitioners; and
- a stronger corporate registration scheme.



## KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER

- How can accountability across all construction work be improved?
- Which currently unregistered practitioners should be considered for registration?
- Do you agree with developing practitioner competence frameworks to support system-wide industry competence?
- Could accreditation by industry bodies or RTOs become part of the practitioner registration and/or licensing process? If so, how can we guarantee the improvement of practitioner standards through such a process?
- Should the NSW approach (see case study 1) to design practitioners be considered for Victoria?
- What measures could be considered to boost the number of skilled building surveyors and technical experts?

Are there other key issues and possible improvements that the Panel should consider?



## BUILDING APPROVALS

Building approvals are the regulatory processes that aim to ensure that building work complies with the relevant legislation and meets requisite standards of building safety, amenity and quality. Most building works require a series of permits that provide authorisation for works to occur and seek to ensure that these works meet the required standards at specific points in the construction process.

### **The Panel has identified four key issues relating to the building approvals process:**

1. inadequate processes and oversight of complex buildings, including mandatory inspections;
2. concentration of responsibility and associated risk on the Relevant Building Surveyor (RBS) in the building approvals process;
3. limited oversight over decision-making by the RBS during the building approvals process; and
4. potential for conflicts of interest between Private Building Surveyors (PBSs) and builders, developers or design practitioners.

### **To address these issues, the Panel presents the following possible improvements:**

- different models for building approvals that have been presented to the Panel by the Victorian Municipal Building Surveyors Group (VMBSG), the Municipal Association of Victoria (MAV) and Australian Institute of Building Surveyors (AIBS); and
- the option of a graduated, proportionate approach to approvals to provide greater oversight and improved compliance checks depending on the nature of the proposed building work.



### **KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER**

- What do you see as the benefits and potential risks of the models described above? In particular, what are the implementation issues which the Panel needs to consider?
- Do you agree that a stronger regulatory framework for building approvals for complex or high-risk building work is needed?
- Are there any other potential approaches to strengthen accountability across the building approvals process that the Panel should consider?
- What other suggestions are there that would remove

the potential for conflicts of interest between PBSs and builders, developers or design practitioners?

- Is there merit in introducing a 'clerk of works' or similar oversight function into the approvals process?
- Should the NSW system of requiring the developer to notify the regulator in advance of the issuing of an occupancy permit and associated enforcement measures be considered?

**Are there other key issues and possible improvements that the Panel should consider?**

## REGULATORY OVERSIGHT

There are three core regulatory bodies which oversee industry practice in the building regulatory system – the Victorian Building Authority (VBA), local councils and the Architects Registration Board of Victoria (ARBV). Each play an important role in the oversight, compliance and enforcement of building functions.

### **The Panel has identified four key issues relating to regulatory oversight:**

1. overlap of the functions and powers of the regulators;
2. fragmented approach to oversight of design practitioners;
3. inadequate data collection, access to and sharing of data, among regulators and with other government agencies or departments; and
4. ongoing criticism of building regulators.

### **To address these issues, the Panel presents the following possible improvements:**

In this Paper, the Panel outlines the need for fundamental improvements to strengthen the existing regulatory structures by clarifying roles and functions and implementing measures to improve regulatory practice.

This Paper also considers the following possible improvements:

- further strengthening of the State Building Surveyor's role and independence by creating an independent Office of the State Building Surveyor (SBS); and/or
- consider reform to regulator structure by separating the regulation of building approvals and enforcement from registration and oversight of building practitioners.



### **KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER**

- What changes to the functions and/or structure of the regulator(s) would improve regulatory outcomes?
- Will improvements to strengthen existing oversight arrangements adequately address the issues relating to regulatory oversight of the building and construction industry?
- What are the benefits and risks of establishing an independent Office of the State Building Surveyor?
- What are your views on the most effective oversight structures for the regulatory functions in construction

work, practitioners and consumer protections?

- Should there be separate regulators for practitioners and for building works?
- Should regulation of all design practitioners be brought together under one regulator?

**Are there other key issues and possible improvements that the Panel should consider?**

## CONSUMER PROTECTION

Consumer issues during building, renovations, repairs and maintenance are widespread. Gaps in Victoria's consumer protection mechanisms and support services expose consumers to both personal and financial risk, and enable builders and practitioners involved in building problems to avoid accountability.

### **The Panel has identified three key issues relating to consumer empowerment and representation:**

1. difficulties for consumers accessing and acting on information to exercise their rights;
2. a lack of transparent information about consumer harms and systemic risks; and
3. a lack of formal systemic representation and individual advocacy support for consumers.

### **To address these issues, the Panel presents the following possible improvements:**

- improve existing advocacy and support services for individual consumers;
- establish a consumer representative body to address systemic consumer building issues; and
- establish a consumer reference group or advisory mechanism.

### **Following implementation of the above possible improvements, the Panel will finalise its advice on the need for:**

- a tool to enable consumers to differentiate based on quality; and
- improvements to current insurance arrangements.



### **KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER**

- Which of the approaches outlined above would improve the consumer experience most effectively?
- Are there innovative ways to identify systemic issues faced by consumers in building and construction activities?
- How can consumers be better represented in the building system?
- What kinds of direct consumer feedback mechanisms would work best in the building context?

Are there other key issues and possible improvements the Panel should consider?

# 1. CONTEXT FOR THE REVIEW

**Victoria's building system is a major contributor to the state's economy and plays a central role in shaping the future of the built environment. Typically, more than 100,000 building permits are issued annually, contributing around \$40 billion to Victoria's economy. This means the construction industry is one of the key enablers influencing the state's growth and prosperity.**

The building regulatory system has a material impact on the ability of the Victorian Government to deliver the homes, jobs and services needed to support population growth. The system also directly affects the lives of all Victorians by creating the conditions to support home ownership, employment growth, liveable communities, provision of infrastructure, productive businesses and a sustainable environment.

The way that buildings are designed, constructed and maintained has changed substantially over the last 25 years. These significant changes have been driven by broad demographic and sociological changes in the way that Victorians live, particularly the rise of multi-storey residential living and technological innovations in building and construction.

In the past decade, a series of reviews have scrutinised the Victorian building regulatory system – most notably the Victorian Cladding Taskforce Reports and the Building Confidence Report. These reports highlighted the fact that our regulatory system has not kept pace with changes in housing demand and construction practices.

While the main focus of the Victorian Cladding Taskforce was to make recommendations to address the use of non-compliant cladding and rectification issues, its Final Report found that stakeholders view cladding issues as *"symptomatic of broader underlying levels of non-compliance and pointed to a misalignment of current legislation and the building and construction process"*.<sup>4</sup>

The Victorian Cladding Taskforce made it clear that there is substantial scope to improve the building system – its legislative and regulatory frameworks; its regulator structures and operations; the accountability of practitioners and industry participants<sup>5</sup> for the specific work they do; and the ways consumers can seek redress when building defects occur.

As noted in the Cladding Taskforce Final Report (which is consistent with the findings of the Building Confidence Report):

**“ there are broad cultural and regulatory issues in the building sector, with systemic failures across:**

- **the product supply chain from manufacturing, marketing, import, supply, sale and purchase**

- **the building and construction process from design, specification, procurement, installation, building and construction and maintenance**<sup>6</sup>. ”

The Government has undertaken reforms to regulatory arrangements for the construction industry (particularly in response to the issue of combustible cladding). However, despite recent efforts, it is clear that whole-scale reform is needed to modernise the building regulatory system, address risk and accountability across the system and improve outcomes for consumers.

## 1.1 Changes in housing demand and industry practices have exposed gaps in the regulatory system

The regulatory system has not kept up with changes to industry practices and housing demand. These changes have exposed the lack of accountability of industry participants, including developers, across the whole construction process - from design to build, to maintenance.<sup>7</sup> The following sections outline some of the recent shifts recently seen in housing demand and industry practices and the risks they have created.

### Demand for housing has shifted both in terms of volume and type of demand

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*Victoria's urban form is undergoing significant transition...yet there is increasing evidence that the building system is not fit for purpose and consumers are largely experiencing the fall-out from the failure of the system to adequately respond to this shift.*

**Victorian Cladding Taskforce Final Report p.46**

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Strong population growth in Victoria has fuelled dwelling construction and investment which has helped to underpin Victoria's strong economic growth. Increases in dwelling investment have been most evident in higher density and off the plan apartment buildings of four or more storeys. The increase in mid to high-rise developments (normally involving multi-storey, multi-occupancy residential or mixed-use developments) has exposed major risks in the current one-size-fits-all approvals pathway which does not differentiate between simple or complex, small or large-scale developments. The complexity of construction processes, materials and practices used in multi-storey and off the plan builds are not factored in to the current one-size-fits-all approvals pathway and inspections process. This leaves the potential for non-compliance to go unchecked until building works are complete where consumers are left to remedy issues through dispute resolution mechanisms. This leaves consumers with disproportionate levels of risk and costs where things go wrong.

An increase in multi-storey and off the plan dwelling investment presents other significant areas of risk for consumers:

- Off the plan purchasers do not have a role in selecting the builder or building surveyor, there is limited bargaining power in building contract negotiations or off the plan contracts (where standard forms are deployed with little appetite to vary terms) and often have no expertise to ensure that the completed product accords with the product the purchaser contracted to buy.
- Lot owners in strata arrangements are inherently vulnerable because they buy off the plan or from a previous owner with limited ability to access information about the compliance of the building and products. Consumers are often uninformed about the complexities of large buildings and therefore not aware of poor construction of the common areas, defective structural elements, non-compliant cladding, plant and equipment issues and reduced fire protection and safety systems. When something does go wrong, collective decision making is required from people with very different financial positions, knowledge and interests in the building.

### Changing construction practices have affected building safety and compliance and increased risk for consumers

Changes in construction practices can lead to increased risks for building safety and compliance and consumers, including:

- **Increased use of design and construct procurement for large-scale domestic and commercial builds.** Developers value this model because the construction process is fast-tracked as both the design and construction phases are the responsibility of the builder. This can result in less detailed initial designs and substantial differences between the as-designed and as-built building. Changes made to design during a design and construct project are often not well documented or transparent. Stakeholders consider the current approvals process is not well-suited to providing oversight of these current contract practices.

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*Although building approvals are required, the nature of a design and construct project means that many aspects of the design change after the initial approval is obtained. This often leads to just-in-time supply of documentation and squeezes the compliance checking processes.*

**Building Confidence Report p. 10 – 11**

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- **Use of Special Purpose Vehicles.** For large projects, developers and/or builders tend to establish single project companies, known as Special Purpose Vehicles, which are shut down as soon as the project is completed. When coupled with the fact that no Domestic Building Insurance (DBI) is currently required for buildings above three storeys, consumers have limited or no recourse when works are defective.

These risks are exacerbated by:

- Lack of accountability under the legislative framework for industry participants including for developers, site supervisors, project managers, geotechnical and façade engineers who all have a strong influence over outcomes as well as other trades and subcontractors.
- Limitations in the regulatory system that do not properly account for industry practices, such as the use of design and construct procurement and value engineering and does not effectively regulate the product supply chain or place clear obligations on industry participants to supply safe, compliant products with clear and accurate safety information.
- The frequency with which performance-based solutions<sup>8</sup> are applied on complex sites and which are often prepared by engineers who certify their own work. The Relevant Building Surveyor (RBS) is entitled to rely on those certificates in good faith meaning that complex aspects of design are self-certified and not substantively checked by the RBS or any other professional through independent peer review (this issue is discussed in detail at pages 60 and 61).

These include upgrades to metal cladding, render and aluminium window profiles. There have been recent concerns about the risks of using substandard ('non-conforming') products or materials – or using them incorrectly ('non-complying'). The use of combustible cladding products is a good example of where the widespread use of non-conforming and non-complying products has led to extreme safety risks for building occupants (as was the case in the Lacrosse and Neo200 building fires).



*many consumers have experienced defective and low-quality buildings that pose a significant public safety and amenity issue. Not only do such failures impose a high emotional cost on consumers, but remediation and rectification of defective buildings also impose a high productivity cost on society.*

**Victorian Cladding Taskforce Final Report p.46**



## Technological innovation has further driven changes in construction practices

There has also been substantial technological innovation in the past few decades that has led to changes in the construction, maintenance and use of buildings. Key trends that have implications for regulation include:

- **Prefabrication:** This is a construction process where part of a building is built or fabricated away from where it is to be located. Prefabrication includes the use of modular construction or pods. It offers potential efficiency and cost advantages but poses challenges for regulation, particularly in relation to accreditation of building products.
- **New materials:** New materials are continually introduced to improve efficiency on building sites.

## 1.2 Past inquiries have scrutinised the construction industry and regulatory systems in Victoria, and nationally

Since the establishment of the *Building Act 1993* (Vic), the Victorian building regulatory system has been the subject of considerable scrutiny and change<sup>9</sup>.

In the last five years, two significant inquiries highlighted regulatory failures and made recommendations to improve policy settings: the Victorian Cladding Taskforce (Interim<sup>10</sup> and Final Report<sup>11</sup>) and the Shergold & Weir, Building Confidence Report.<sup>12</sup> The catalyst and outcomes of these reports are detailed below. For a full list of past inquiries and reviews over the past 20 years and the legislative changes that occurred in response, see [Appendix A](#).

### The Victorian Cladding Taskforce Interim and Final Report

In 2017, the Victorian Government established the Victorian Cladding Taskforce to investigate the use of non-compliant or non-conforming external wall cladding. The Victorian Cladding Taskforce was established in response to the Lacrosse and Neo200 building fires and the Grenfell fire in London which all highlighted *“the fire safety risks arising from the non-compliant use of combustible cladding”*.<sup>13</sup>

The Cladding Taskforce Interim Report found widespread non-compliant use of combustible cladding and noted that its use reflected a combination of three issues – *“the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues”*.<sup>14</sup>

Of note, the Interim Report recommended the development of a State-wide cladding audit of privately owned, residential, multi-unit buildings of three storeys and above and all public-use buildings two storeys and above. The Interim Report also made a series of recommendations to improve the building regulatory system, more generally. A full list of all recommendations is provided at [Appendix B](#).

In the Final Report, the Victorian Cladding Taskforce presented the outcomes of the State-wide cladding audit work and provided an update on legislative and policy changes made in response to the use of combustible cladding. The Final Report also made an additional 37 recommendations to Victoria’s building regulatory system (set out at [Appendix B](#)). This included recommending the establishment of a cladding rectification program and new body to oversee the program (now known as Cladding Safety Victoria).

### The Building Confidence Report

In 2018, after a suite of building incidents in Australia and internationally that resulted from poor building compliance, the Building Ministers’ Forum (BMF)<sup>15</sup> commissioned independent experts Peter Shergold and Bronwyn Weir to undertake an assessment of building regulatory compliance and enforcement systems across Australia. The Building Confidence Report found that the nature and extent of issues facing building regulatory systems across Australia were extensive and have:

“*led to diminishing public confidence that the building and construction industry can deliver compliant, safe buildings which will perform to the expected standards over the long term.*”<sup>16</sup>

The Building Confidence Report detailed 24 priority recommendations to support the states and territories in the development of nationally consistent standards. Since then, an implementation team has been established within the Australian Building Codes Board (ABCB) to consider proposals for implementing the recommendations.

## 1.3 The Government has already undertaken reforms to the building regulatory system

The Government has progressively delivered a program of reform to address many of the complex issues that affect the building regulatory system. Recent significant reforms to the key elements of the building regulatory system are set out in Table 1. Reforms have largely focused on addressing specific issues (many of which were in response to past inquiries and/or regulatory and industry failures). Despite the reforms undertaken, there are still significant regulatory failures in our building system which require the comprehensive, whole-scale review and modernisation the Panel has been asked to deliver.

**Table 1 | Recent reforms to the key elements of the building regulatory system**

KEY ELEMENTS	RECENT LEGISLATIVE REFORMS
<b>Practitioner registration and regulation</b>	<p>The Government has recently responded to issues in the industry relating to poor practitioner conduct by increasing the requirements under the registration and licensing schemes and strengthening disciplinary processes and sanctions, this included:</p> <ul style="list-style-type: none"> <li>• A requirement that building practitioners renew their registration every five years and demonstrate ongoing competency and compliance with professional development requirements<sup>17</sup>.</li> <li>• A fit and proper person test as part of the requirements for registration for building practitioners and architects.<sup>18</sup></li> <li>• New powers to the VBA to immediately cancel a person's registration if there is a finding that they are not a fit and proper person<sup>19</sup>.</li> <li>• A scheme for corporations to be registered as building practitioners<sup>20</sup> and additional probity matters to enable greater scrutiny of company directors, secretaries and influential persons in the registration process<sup>21</sup>.</li> <li>• A framework for the registration of building trades and employees to prescribe types of building work that can only be carried out by people who hold the requisite skills and experience<sup>22</sup>.</li> </ul>
<b>Regulatory oversight</b>	<p>Recent reforms have increased regulatory oversight of the construction industry to address and respond to a series of safety risks and non-compliance issues raised in past reports, including:</p> <ul style="list-style-type: none"> <li>• The merging of plumbing and building regulatory functions in the VBA so it can regulate, register and discipline building and plumbing practitioners, and monitor and enforce compliance with the Building Act and Building Regulations<sup>23</sup>.</li> <li>• An expansion of the grounds on which the VBA and ARBV can take disciplinary action and introduction of new powers to immediately suspend practitioner registration on public interest grounds<sup>24</sup>.</li> <li>• New indictable offences and stronger injunction powers<sup>25</sup>.</li> <li>• Strengthening of information gathering powers for the VBA and other regulators. This included additional powers for the VBA to enter into information sharing agreements where necessary to assist in the exercise of their functions<sup>26</sup>.</li> <li>• Reforms to modernise and strengthen the ARBV<sup>27</sup>.</li> </ul>

KEY ELEMENTS	RECENT LEGISLATIVE REFORMS
<b>Building approvals process</b>	<p>A key theme of recent reform has been to strengthen the building approvals process, particularly in relation to the RBS. Recent legislative reforms have intended to provide greater assurance to building owners, and consumers more broadly that persons who carry out mandatory inspections are qualified to do so and there is an accessible record of inspections, this included:</p> <ul style="list-style-type: none"> <li>• Mandatory requirements for the RBS to issue a direction to fix for work that is non-compliant, and powers for the VBA to issue directions to fix non-compliant building work<sup>28</sup>.</li> <li>• Limitations on the categories of a person authorised to undertake inspections and, where requested, a duty on inspectors to provide records of inspection to the VBA, Municipal Building Surveyors (MBSs) and the building owner<sup>29</sup>.</li> <li>• New requirements to specify builders on a building permit. The specified builder must ensure all building work is compliant<sup>30</sup>.</li> <li>• A prohibition on builders from appointing a PBS on behalf of the building owner for works under a major domestic building contract and for a PBS to accept such appointments.<sup>31</sup></li> </ul>
<b>Consumer protection</b>	<p>Consumer issues during building, renovations, repairs and/or maintenance are widespread. The key recent legislative reform to enhance consumer protection is the <i>Building Legislation Amendment (Consumer Protection) Act 2016 (Vic)</i> which included:</p> <ul style="list-style-type: none"> <li>• A new process for conciliation and dispute resolution through the creation of Domestic Building Dispute Resolution Victoria (DBDRV) to significantly reduce the cost and time of dispute resolution for consumers and builders.</li> <li>• A requirement for builders to provide consumers with information on domestic building work before entering into a major domestic building contract.</li> </ul> <p>Recent reforms also include establishing the Register of Building Practitioners which requires publication of information on practitioners' registration and a register which lists any disciplinary action taken against practitioners. Making disciplinary information publicly available was designed to "assist consumers to make more informed decisions about their choice in building practitioner."<sup>32</sup></p>

## The Government has responded to the issue of combustible cladding

In response to the issue of combustible cladding and the recommendations from the Victorian Cladding Taskforce, the Government has:

- established Cladding Safety Victoria to deliver the \$600 million Cladding Rectification Program;<sup>33</sup>
- worked with the VBA to introduce a code of conduct for building surveyors;
- issued improved apartment design standards; and
- introduced a power for the Minister for Planning to ban dangerous cladding products, and subsequently declared the ban.

## The Building and Plumbing Regulations were recently reviewed and replaced

The Building Regulations were replaced with the new *Building Regulations 2018 (Vic)* (Building Regulations), which are fairer, clearer and more complete. A key change was the introduction of a new mandatory inspection stage for any building permit where the building work includes fire and smoke resistant building elements. This change addressed the inappropriate installation of light weight fire resistant construction in multi-storey residential buildings. Other changes to the Building Regulations improved the transparency and quality of permit documentation for building regulators, the general public and building owners.

Similarly, the *Plumbing Regulations 2018 (Vic)* (Plumbing Regulations) were recently modernised, and a number of important reforms were introduced including:

- new additional experience requirements for practitioners prior to being eligible for licensing to reduce the rate of non-compliant work;
- a new specialised class of work for the maintenance of thermostatic mixing valves;
- re-classified classes of plumbing work to better reflect training pathways;
- new standards and technical requirements, including a new requirement for the replacement of hot water heaters;
- a new requirement for practitioners to provide proof of the successful completion of approved competency units required for licensing; and
- clarification on the types of minor tap repairs that may be carried out by non-plumbers.

### **A series of reforms are currently underway to continue to modernise the legislative and regulatory framework**

Further reforms that are underway include:

- the development of a continuing professional development (CPD) scheme for building and plumbing practitioners;
- the Victorian trades registration and licensing project; and
- the Victorian professional engineers registration project.

These reforms are currently being developed by Building Division of the Department of Environment, Land, Water and Planning (DELWP) and have been considered by development of possible improvements set out in this Paper.

### **Recent initiatives have supported increasing the supply of qualified building practitioners in the market**

There is currently a shortage of suitably qualified workers, which has caused high demand for services and put pressure on the quality of services delivered. This problem is compounded by insufficient future supply of suitably qualified tradespersons, with low apprenticeship completion rates contributing to the problem.

In 2019, Better Regulation Victoria (BRV) noted that the limited recognition of qualifications and increases in liability and risk for the building surveying profession discourage people from entering and remaining in the profession<sup>34</sup>.

The Government's Free TAFE initiative is expected to increase skills and participation in the construction industry and the recently announced \$33.2 million Big Build Apprenticeship Model will see up to 1,500 apprentices and trainees a year work across Victoria's major infrastructure projects.

The Government's Women Building Surveyors Program, launched as part of the 2020-21 State Budget, will commit \$6.3 million over two years to give 40 women new opportunities to become building surveyors with local councils across Victoria. These initiatives are expected to support individuals to gain specific skills to improve their potential employment opportunities.

The Panel also considered opportunities to address workforce supply issues and has advised the Government as part of its Early Initiatives on some non-legislative reforms to support a strong pipeline of surveyors in the future. [Appendix E](#) sets out in detail the Early Initiatives.

Discussions with the ABCB staff have taken place which suggest there could be scope to develop a bridging course for certain building practitioners. This work is continuing.



## 1.4 The coronavirus (COVID-19) pandemic has increased the need for reform for the building regulatory system

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There is an opportunity for embedding improvements in the regulatory system as Victoria recovers from the coronavirus (COVID-19) pandemic. The Victorian Government has provided significant investment to support the construction industry in economic recovery, such as Building Victoria's Recovery Taskforce, Development Facilitation Program,<sup>35</sup> and the Big Housing Build.<sup>36</sup> The Federal Government has also provided investment through the HomeBuilder scheme.<sup>37</sup>

The coronavirus pandemic (COVID-19) will only heighten the risks which building, construction and maintenance practitioners will need to address in the future: for example, there could be additional risks of infection spread in high rise commercial and residential buildings through air conditioning and ventilation systems which will require preventative measures and ongoing monitoring. These risks and those identified throughout this Paper and by the Cladding Taskforce and Building Confidence reports emphasise the importance of continuing technical training for practitioners as well as the need for regulatory approaches to be targeted at emerging risks.

An improved building regulatory system will help to ensure that these investments are delivered effectively and efficiently. An effective regime also provides industry with certainty and confidence to invest and operate and encourages continuous improvement in the skills, training and quality of building and construction around the state.

## 1.5 Reform to the building regulatory system is occurring at the national level

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As described above, the Building Confidence Report made a number of recommendations to improve and strengthen implementation of the National Construction Code (NCC)<sup>38</sup> across Australia.

As of December 2019, Victoria had broadly implemented six of the Building Confidence Report recommendations. However, many of the recommendations were already a part of Victoria's existing legislative regime. For example, in 2016 and 2018, the Building Act was amended to expand the powers of the regulator with respect to compliance and enforcement measures (Recommendation 6). Victoria also already had in place a system of statutory controls over the appointment of the RBS, designed

to mitigate the risk of potential conflicts of interest (Recommendation 9). The remaining Building Confidence Report recommendations have either been partially implemented, are currently under consideration, or have been given in-principle support.

An implementation team has been established within the ABCB which has since released multiple discussion papers for consultation on proposals to implement recommendations from the Building Confidence Report:

- National Registration Framework (NRF)<sup>39</sup>
- Auditing and Compliance Publication Framework<sup>40</sup>
- Building design acceptance<sup>41</sup>
- Independent third-party review<sup>42</sup>
- Mandatory inspections<sup>43</sup>
- Model Code of Conduct for Building Surveyors<sup>44</sup>
- Definition of Building Complexity<sup>45</sup>
- Integrity of PBSs and their role in enforcement consultation<sup>46</sup>
- Building Manuals<sup>47</sup>

## 2. ABOUT THE REVIEW

In December 2019, the Victorian Government announced the establishment of an independent Expert Panel (the Panel) to conduct a comprehensive review of Victoria's building regulatory system (the Review). Recent evidence of regulatory and industry failures that led to incidents, such as the Lacrosse and Neo200 building fires caused by the use of combustible cladding, highlighted weaknesses in the regulatory system and the fact that it has not kept pace with changes in housing demand and construction practices.

Of particular relevance to the Review is the work of the Victorian Cladding Taskforce which, in its Final Report outlined a number of *"systemic issues which undermine the delivery of an efficient, robust building sector in Victoria."*<sup>48</sup> The Victorian Cladding Taskforce found that significant reform was required to address the underlying problems affecting the building sector.

In response to this recommendation, the Government established the Panel to lead its review of Victoria's building system. The Terms of Reference for this Review are directly based on the Victorian Cladding Taskforce's recommendations and are set out at [Appendix D](#).

This Review is being conducted in parallel with work being undertaken by the ABCB (described in [section 1.5](#)) to develop a framework for implementation of the recommendations of the Building Confidence Report.

“ *Systemic review is required so that the building system proactively responds to risk to deliver a quality and safer built environment for Victorians in an efficient and effective manner.* ”

Victorian Cladding Taskforce Final Report p.46

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## 2.1 Who are the panel members?

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The Panel comprises six members with expertise in different aspects of the building system: collectively, the Panel has decades of international and domestic experience in engineering, occupational health and safety, law, consumer protection, best practice regulation and building design, safety and quality.



**Anna Cronin (Chairperson)**

Anna is Victoria's first Commissioner for Better Regulation, appointed by the Victorian Government in 2015. She was given the additional role of Red Tape Commissioner in 2018. Anna has worked in economist, executive and leadership roles in Commonwealth and State governments.



**Dame Judith Hackitt**

Dame Judith was the Chair of the Independent Review of Building Regulations and Fire Safety commissioned by the United Kingdom Government and is Chair of manufacturing trade body Make UK. An engineer by profession, Dame Judith holds a degree in chemical engineering from Imperial College, London.



**Dr Gerry Ayers**

Gerry has worked in the construction industry for over twenty-five years. He started out as a builder's labourer and is now the OHS Manager of the Construction, Forestry, Mining and Energy Union (Construction and General Division – Victorian/Tasmanian Branch). Gerry is a strong advocate of the right of workers to be involved in workplace decision making.



**Professor Ian Bailey AM SC**

Ian is a Senior Counsel based in New South Wales, specialising in construction disputes, professional negligence and technical and engineering claims. He has been National Vice President of the Institute of Arbitrators and Mediators Australia and is a Grade 1 arbitrator with the Institute. Ian is the founding Chair of the Society of Construction Law Australia and a Professional Fellow of the University of Melbourne Law School.



**Lauren Solomon**

Lauren was appointed Chief Executive Officer to establish the Consumer Policy Research Centre in May 2017. She has worked in a range of policy roles across the corporate, government and not-for-profit sectors for over a decade, including senior policy roles in the New South Wales Government.



**Melanie Fasham**

Melanie is the Managing Director of Melbourne residential building company Fasham. Her background is as an engineer and process quality manager for global manufacturers. Melanie is a Registered Builder and has a leadership role in the building industry, including as a past President of Master Builders Victoria – the first woman to ever hold that position.

The Panel is working closely with the Building Division of DELWP. DELWP staff have provided valuable research and policy advice to the Panel.

## 2.2 Objectives and outcomes of the Review

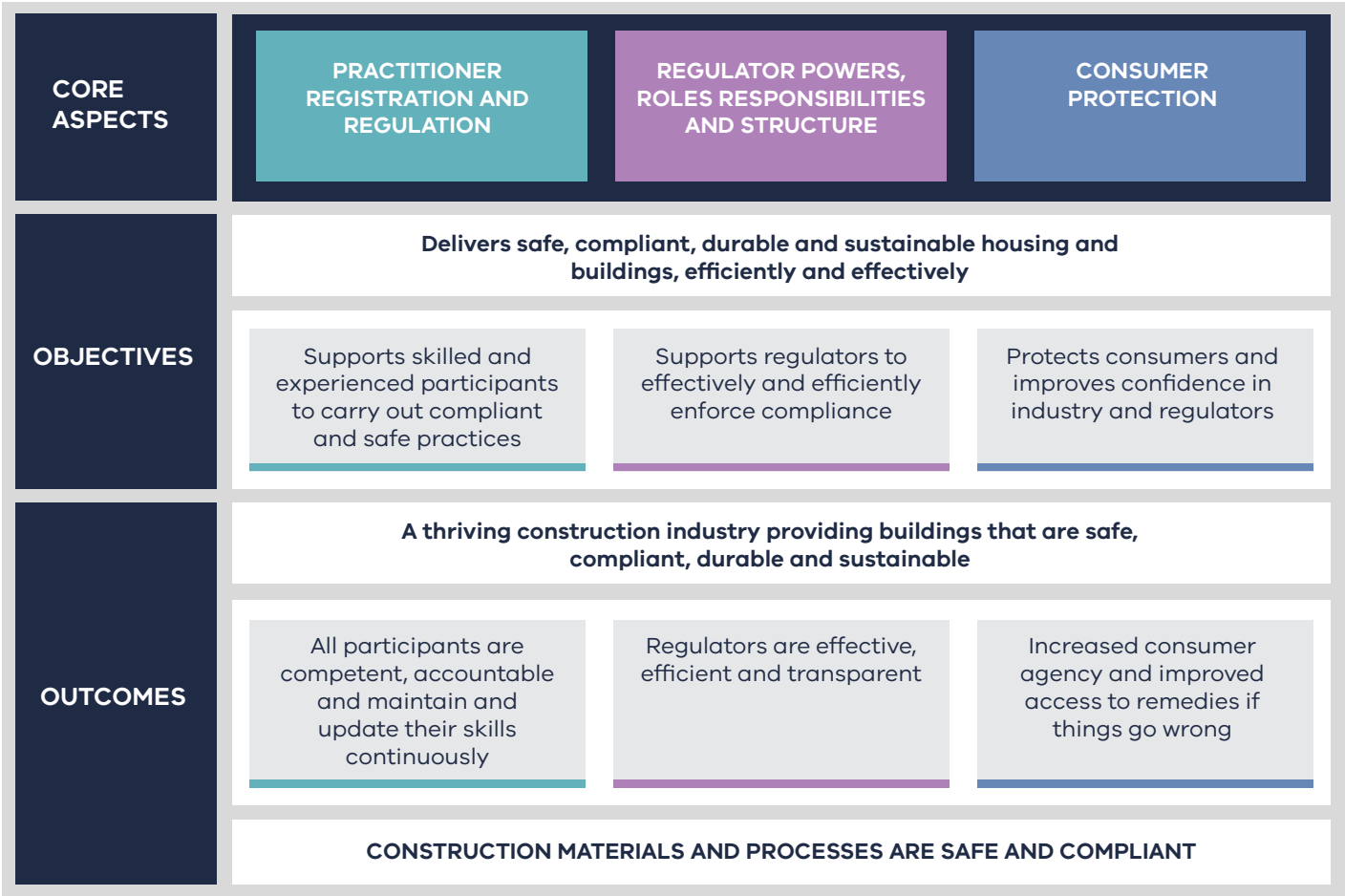
The objectives of the Review are set out in the Panel’s Terms of Reference. The objectives are to provide a building regulatory system that:

- delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;
- protects consumers and improves confidence in the industry and regulators;
- supports skilled and experienced practitioners to carry out compliant and safe practices; and
- supports regulators to effectively and efficiently enforce compliance.

The Review is important to protect and empower Victorian consumers for whom building or renovating a home, including buying off the plan apartments, are significant and complex decisions.

Figure 1 sets out the outcomes we are aiming to deliver and links each outcome to the objectives described above.

Figure 1 | Objectives and outcomes of the Review



## 2.3 Approach to the Review

### Early Initiatives

As requested in the Terms of Reference, the Panel has advised the Minister for Planning on some Early Initiatives to improve the building system:

1. Establish a centralised building consumer information and support service.
2. Consider a pathway to project-based insurance in Victoria.
3. Promote consumer awareness about and consider registration of building consultants.
4. Strengthen the role of the State Building Surveyor.
5. Support higher education and training system reform.
6. Support improvements in industry compliance.

Improvements to the building regulatory system discussed in this Paper build on the Early Initiatives.

The Early Initiatives propose changes which aim to improve the way the current system works and support the fundamental reforms which are planned as part of the staged approach. Further detail on the Early Initiatives is provided at [Appendix E](#).

### A staged approach to reform

As outlined in the Foreword, the Panel has recommended that the comprehensive reform of the building system be delivered over three stages: Stages One and Two will

review the existing building legislative and regulatory system and Stage Three will propose a new Building Act.

The staged approach prioritises the reform steps and provides for a pathway for implementation. Possible improvements proposed in this Paper for Stage One are the foundational reforms that relate to overarching governance, the roles of key decision-makers in the system and go to the core of how the building system operates to improve the consumer experience.

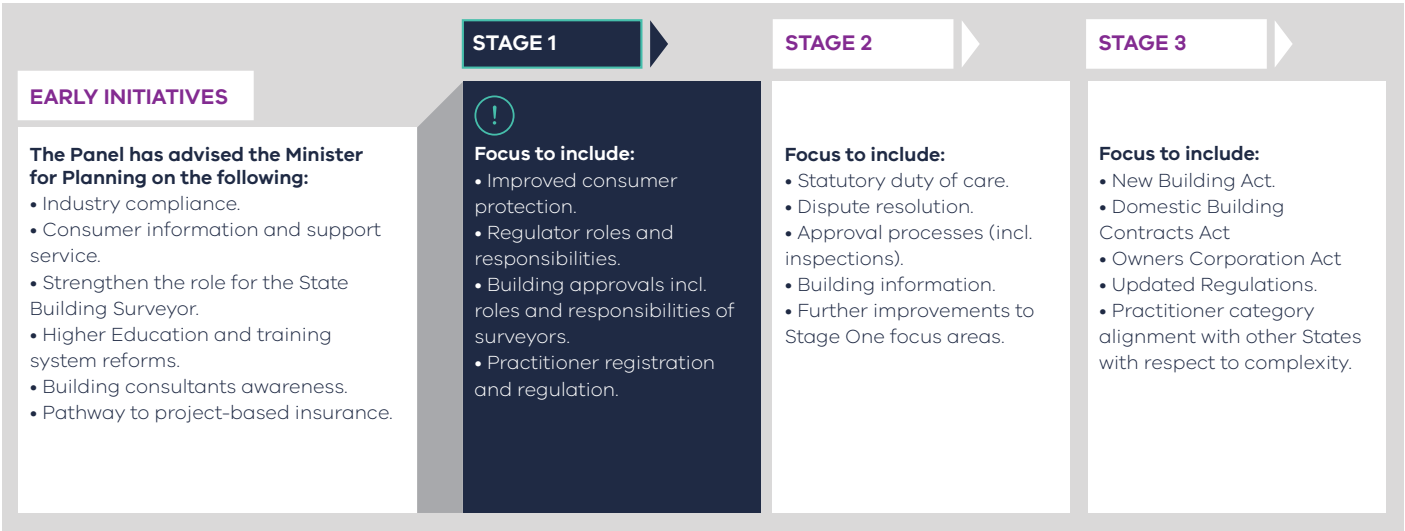
Stage Two improvements will flow on from the foundational reforms proposed in Stage One: each stage will build on the next to deliver a comprehensive suite of reforms which meets the objectives and outcomes of this Review.

Stage Three will involve finalisation of the total reform package, including settling the content of a new Building Act. This will involve restructuring the legislative framework and subordinate instruments to align with the outcomes of Stages One and Two.

Stage Three will provide the scope to further enhance and revise the reforms to ensure they continue to give effect to the objectives and outcomes driving the reform program. The Panel will also consider potential improvements required to other legislation that impacts the building system such as the *Domestic Building Contracts Act 1995* (Vic) (DBC Act) and the *Owners Corporation Act 2006* (Vic). The staged approach is set out in Figure 2.

The focus of this Paper is Stage One. Some issues are more appropriately the focus of Stage Two, including those that relate to the outcomes of the consultation papers released by the ABCB to implement the Building Confidence Report recommendations. Links to the ABCB consultation documents are at [Appendix C](#).

Figure 2 | Objectives and outcomes of the Review





# 3. ABOUT THIS FRAMEWORK FOR REFORM DISCUSSION PAPER

As detailed in [section 2](#), the Panel has recommended that the comprehensive reform of the building system be delivered over three stages.

This Paper sets out the complex issues relating to Stage One and proposes possible improvements for consideration.

The core aspects in Stage One (set out in the Terms of Reference) are addressed in this Paper across the following four key elements of the regulatory system:



While each of these four elements are discussed separately in the Paper, the Panel recognises the links between each element and how they contribute to the whole building regulatory system. For example, improvements in the competence and capability of practitioners and the clarification of regulators’ roles and responsibilities will improve safety and compliance in the building approvals process. While consumer protection is a stand-alone focus of Stage One, taken together these reforms proposals will fundamentally improve the consumer experience.

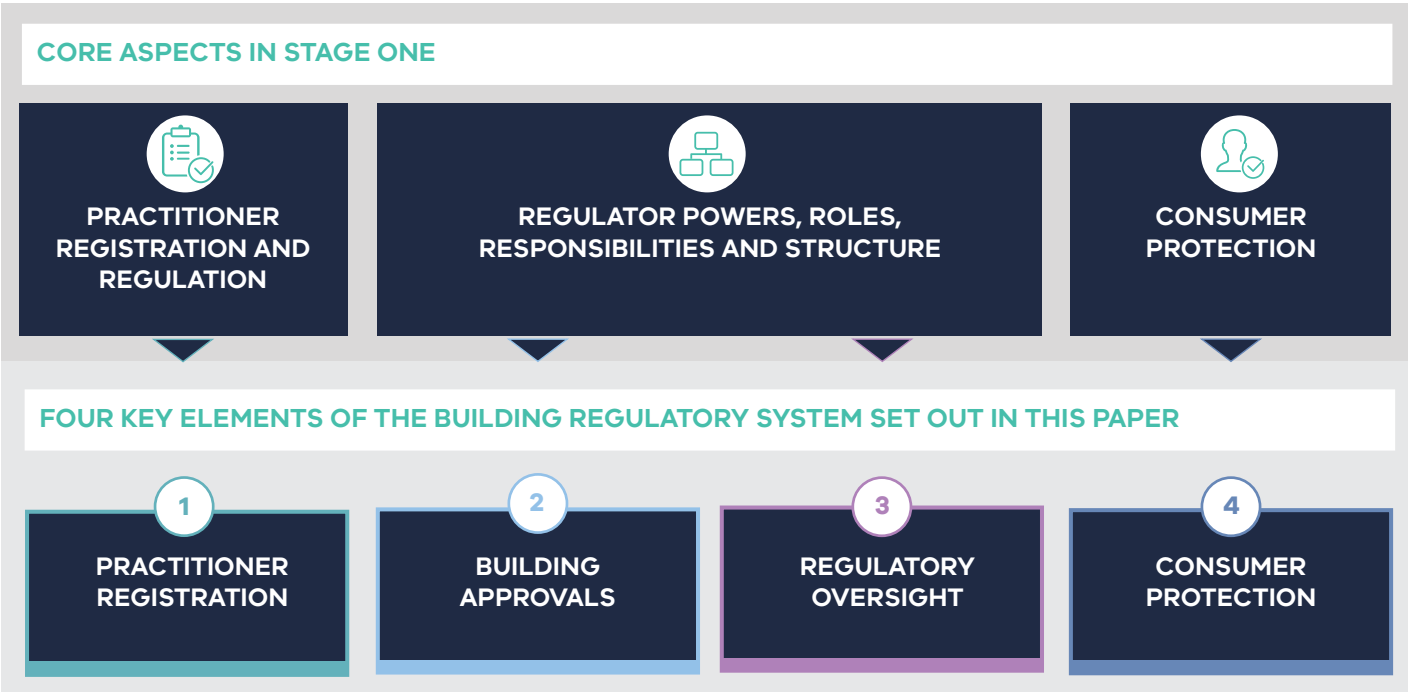
In respect of each of the four elements of the building regulatory system, this Paper presents:

- relevant parts of Victoria’s building regulatory system;
- key issues raised in consultation to date; and
- possible opportunities for improvement.

Identification of the issues and possible improvements is based on extensive research and initial consultation with a broad range of stakeholders.

This approach is described in Figure 3.

Figure 3 | Core aspects of Stage One across the four elements of the building regulatory system



## 3.1 Stakeholder involvement in this paper

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The Panel welcomes further stakeholder feedback on our assessment of the key issues and the possible improvements we are putting forward in Stage One.

- Are there any additional issues that you believe could be covered in our proposed reform program?
- What are the pros and cons of the possible improvements presented and do they address the key issues?
- Where there are potential alternative options presented in the possible improvements (such as for building approvals or regulatory oversight), please explain which is your preferred approach and why.
- Are there other possible improvements to deliver the reform objectives which have not been considered?
- Are there any implementation issues you would like to draw to the Panel's attention?

Consultation and opportunities for comment will continue as the Panel moves through the three stages of the Review. It is envisaged that the Panel will also release discussion papers for public consultation on possible improvements it identifies as part of Stages Two and Three.

### Consultation

A broad cross-section of stakeholders have been consulted as part of this Review to date. The consultation period began in April 2020 and has involved a range of discussions with stakeholders to enable them to voice their views and experience, and inform the key issues and opportunities reflected in this Paper. The key stakeholder groups we have consulted include:

- industry associations;
- councils;
- unions;
- developers, building practitioners and consultants;
- government departments, agencies and regulators;
- professional associations and other experts; and
- consumers and representative organisations.

Consultation was undertaken through one-on-one and group meetings, presentations, and workshops.

Written submissions, case studies and other materials have been received from these stakeholders.

A workshop on specific issues associated with building surveying was conducted by Bronwyn Weir<sup>49</sup>. 35 attendees from across industry, government and the VBA contributed to the workshop which was held in August 2020.

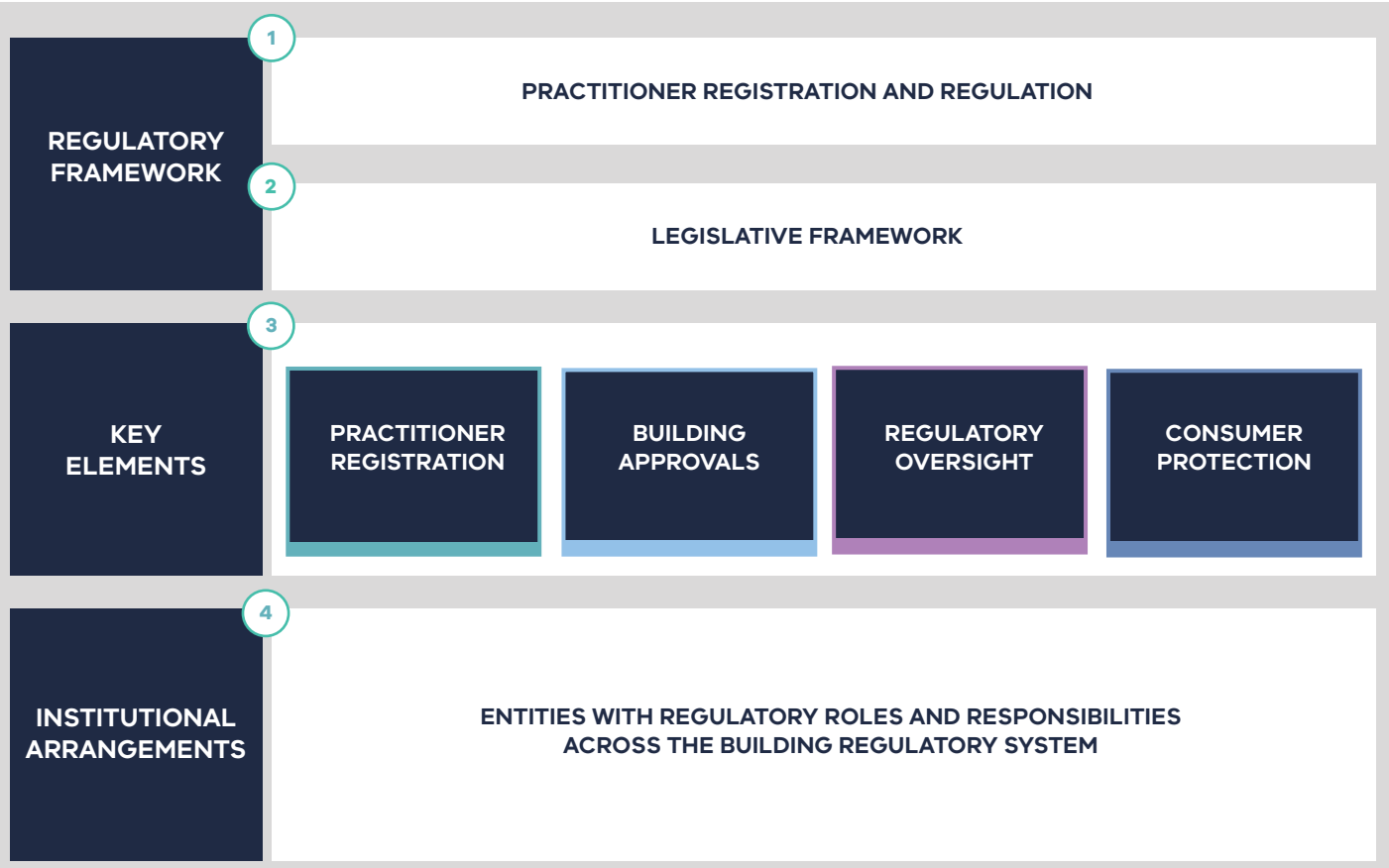
# 4. THE CURRENT BUILDING REGULATORY SYSTEM IN VICTORIA

The activities of building, plumbing and design practitioners in relation to the design and construction of building work are regulated through the building regulatory system.

The building regulatory system can be broadly separated into the building, plumbing and design industries each with distinct technical expertise and capability that contributes to the built environment.

The building regulatory system consists of the regulatory objectives, the legislative framework and the institutional arrangements that includes entities with regulatory roles and responsibilities. The building regulatory system also includes the key elements detailed in this Paper. The whole system is set out in in Figure 4.

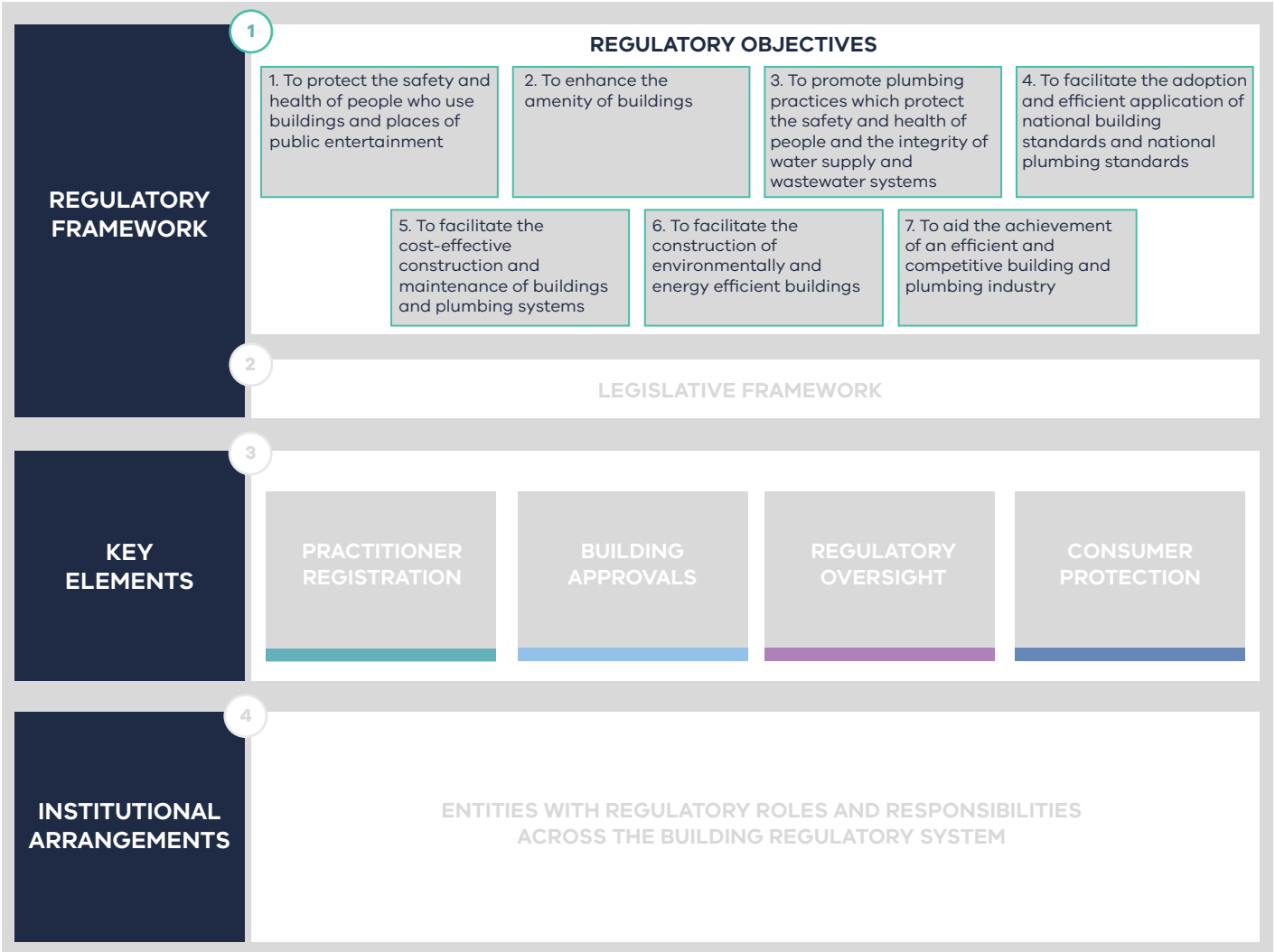
Figure 4 | Victoria’s building regulatory system



# 4.1 The building regulatory system has seven core objectives

The building regulatory system ultimately exists to achieve objectives that are in the public interest and which may not be optimally achieved through an unregulated construction industry. Section 4(1) of the Building Act sets out the key objectives for the building regulatory system<sup>50</sup>. These are detailed overleaf in Figure 5.

Figure 5 | Objectives of the Building Act



The DBC Act also sets out key objectives, including consumer protection objectives, that relate to the building legislative framework. These are important given the vulnerability of some consumers in relation to building products. In particular, off the plan purchases where the consumer (as the subsequent building owner) does not have a role in selecting the builder or RBS and has more limited rights of remedy. The DBC Act lists the following consumer protection objectives:

- to provide for the maintenance of proper standards in the carrying out of domestic building work in a way that is fair to both builders and building owners;
- to enable disputes involving domestic building work to be resolved as quickly, as efficiently and as cheaply as is possible having regard to the needs of fairness; and
- to enable building owners to have access to insurance funds if domestic building work under a major domestic building contract is incomplete or defective.

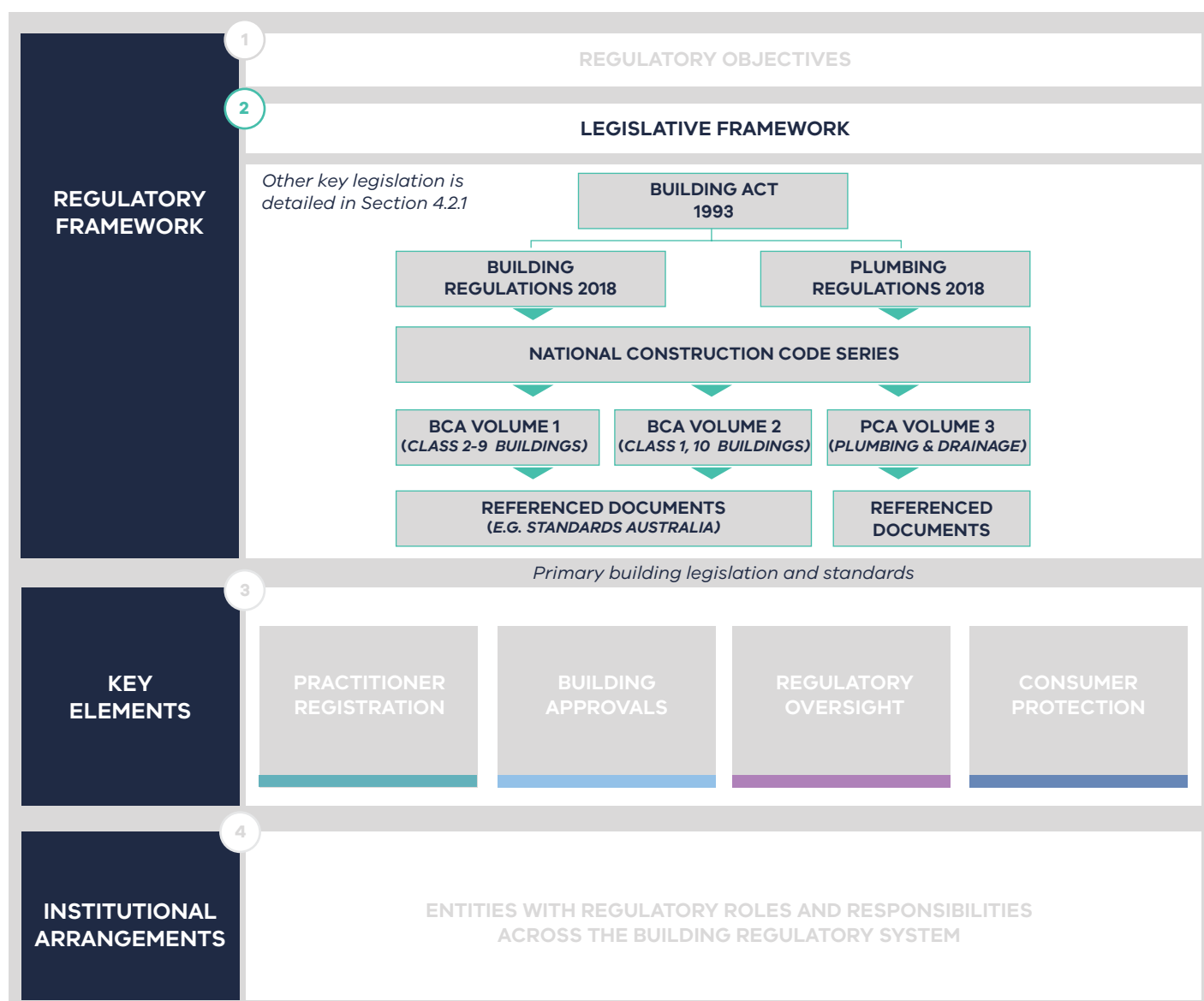
## 4.2 The building regulatory system includes state legislation and national codes and standards

The building regulatory system is underpinned by the Building Act and Building Regulations, national codes and standards, referenced documents and other state legislation. Figure 6 overleaf shows the legislative framework and depicts the hierarchy of legislation and regulatory instruments that govern the regulatory system. Despite the range of legislative frameworks and national codes, four key pieces of legislation and regulation drive the building regulatory system:

- Building Act – regulates building and plumbing work in Victoria.
- Building Regulations - prescribes the standards for design, construction and use of buildings and places of public entertainment.
- Plumbing Regulations - prescribes the standards for plumbing work.
- National Construction Code (NCC) - includes technical provision for the performance of buildings.

Further detail on the Building Regulations, Plumbing Regulations, and the NCC are provided at [Appendix E](#).

**Figure 6 | Legislative frameworks across the building system**

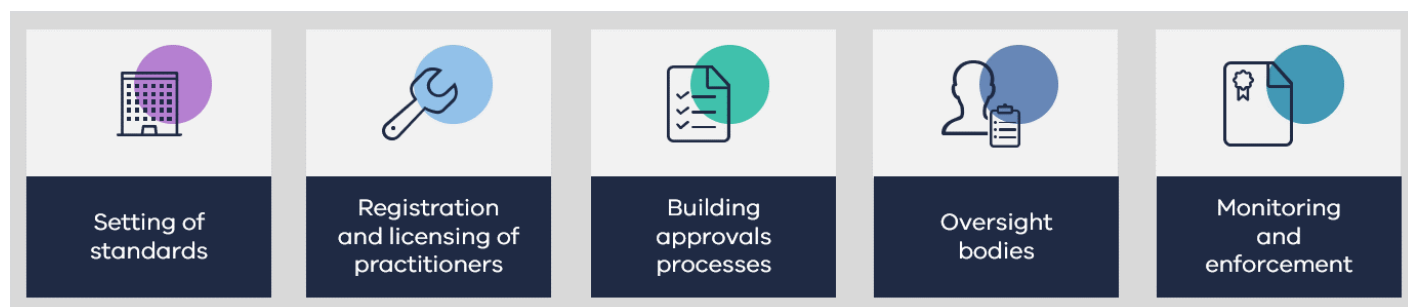




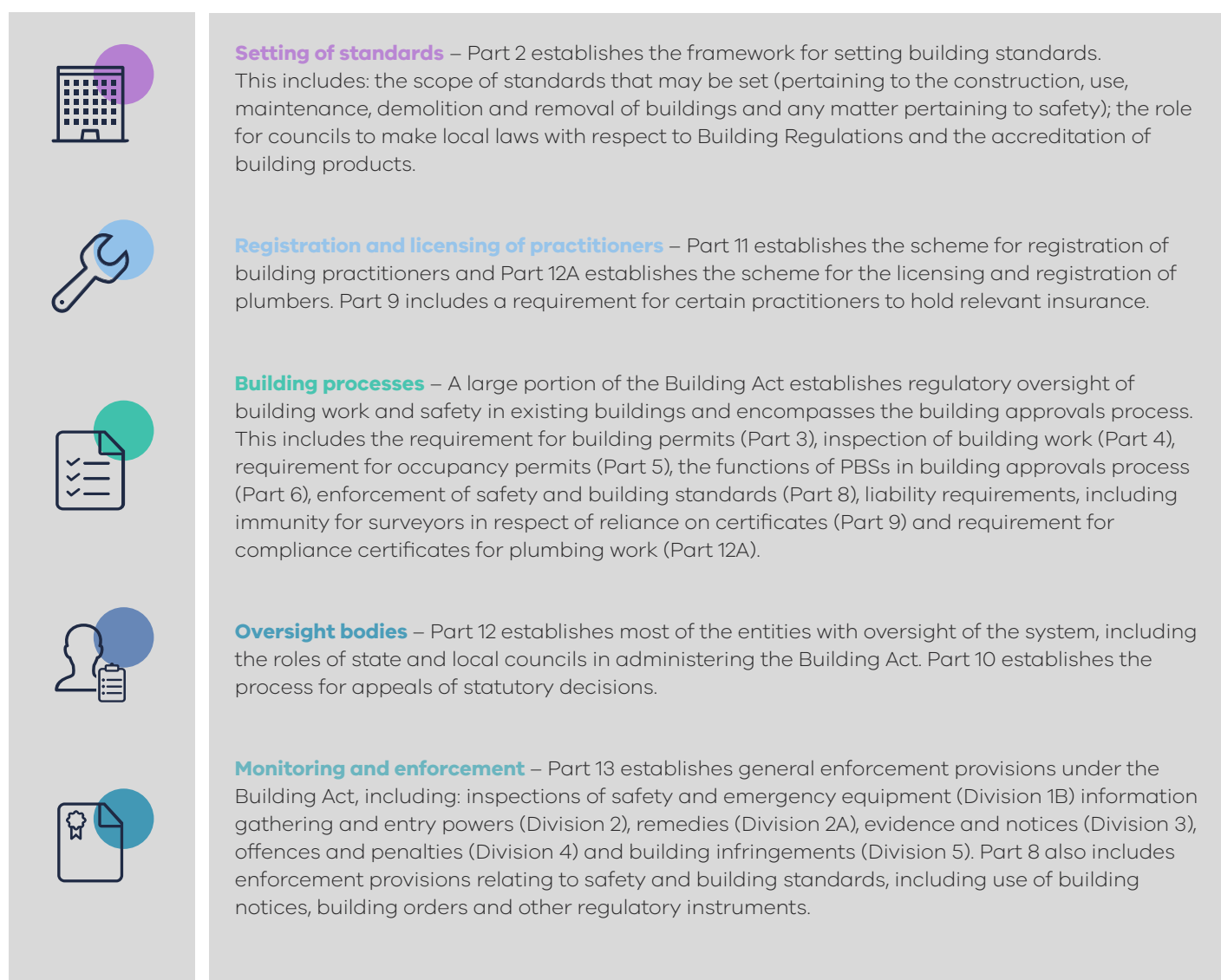
## 4.2.1 The Building Act regulates building and plumbing work in Victoria

The Building Act is the primary legislation for regulating building and plumbing work, and the conduct of building and plumbing practitioners, in Victoria. The key components of the Building Act are illustrated at Figure 7.

**Figure 7 | Components of the Building Act**



Key components of the Building Act that establish the broad building regulatory system include:



## 4.2.2 Other Acts play an important role in the building regulatory system

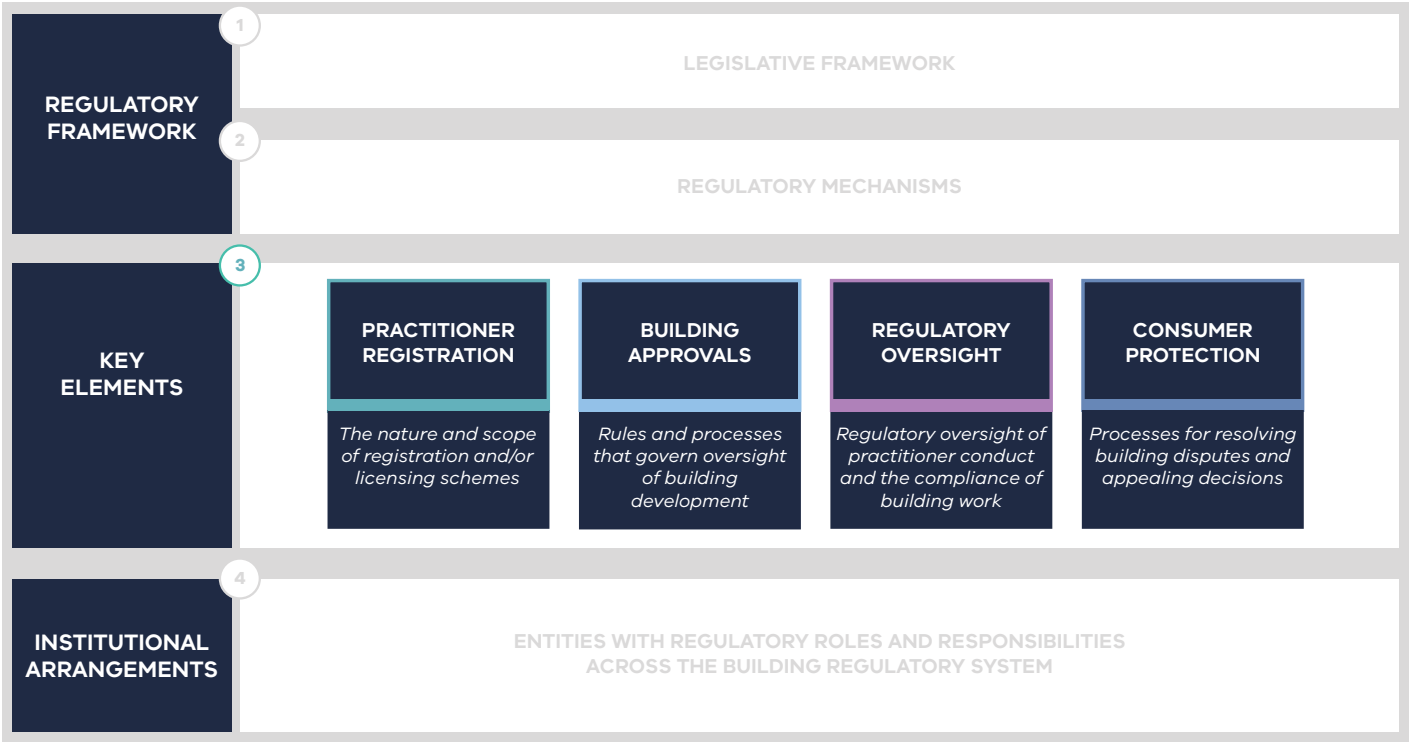
Other legislation sits alongside the Building Act and has an important bearing on how building work is undertaken in Victoria. Notably, this includes:

- *The Planning and Environment Act 1987* (Vic) (Planning and Environment Act) establishes a framework for use and development of land (including through the planning approvals process).
- *The DBC Act* regulates contractual relationships between builders and building owners for domestic building work, including resolution of domestic building disputes.
- *The Security of Payments Act 2002* (Vic) (SOP Act) provides for progress payments to be made for people carrying out construction work, including establishing a right to progress payments and procedures for recovering them.
- *The Architects Act 1991* (Vic) (Architects Act) provides for registration of architects and regulation of their professional conduct. The Architects Act also sets out procedures for handling complaints against architects and approval of companies providing architectural services.
- *The Professional Engineers Registration Act 2019* (Vic) (PERA) will come into operation on 1 July 2021 and will require engineers who provide professional engineering services in the areas of structural, civil, electrical, mechanical and fire safety engineering to be registered.
- *The Occupational Health and Safety Act 2004* (Vic) (OHS Act) sets out key principles, duties and rights about OHS, seeks to protect the health, safety and welfare of employees and other people at work and aims to ensure that the health and safety of the public is not put at risk by work activities. It is the main workplace health and safety law in Victoria.
- *The Australian Consumer Law* (ACL) in Schedule 2 of the Competition and Consumer Act 2010 (Cth) provides consumers protection from misleading and deceptive conduct, unfair contract terms and defective goods or services purchased for the purpose of building and construction<sup>51</sup>.
- *The Electricity Safety Act 1998* (Vic) and *Gas Safety Act 1997* (Vic) provides Energy Safe Victoria (ESV) oversight and investigatory powers for building issues relating to electricity or gas.
- *The Owners Corporation Act 2006* (Vic) sets out the duties and powers of owners' corporations in reference to apartment buildings and provides appropriate mechanisms for the resolution of disputes relating to owners' corporations.
- *The Sale of Land Act 1962* (Vic) enables provisions to be made in respect to the sale of land in Victoria, and amendments to the Local Government Act 1958, the Transfer of Land Act 1958, and the Town and Country Planning Act 1961.


### 4.3 There are four key elements to the building regulatory system


There are four key elements to the building regulatory system. These are set out in Figure 8.


Figure 8 | Key elements of the building regulatory system




This Paper uses these key elements of the system to discuss the key issues and possible improvements for Stage One. Across the key elements, there are four main types of persons or entities involved: building owners or developers, regulators and practitioners.

 **At registration** – practitioners are required to apply to the regulator for a licence or registration. The relevant regulator determines an applicant’s fulfillment of registration or licensing requirements and a decision is made to issue the licence or registration, provided the practitioner meets the requirements.

 **At design, approval and construction stages** – the building owner or developer engages a design practitioner to design the proposed building work, a builder and/or trades person to undertake the building work and a building surveyor to obtain the necessary permits and approvals. The statutory role of the RBS includes issuing building permits, approving any amendments, undertaking inspections, issuing of occupancy permits and monitoring and enforcing compliance<sup>52</sup>.

 **Once building works are complete**, the building owner becomes responsible for ongoing maintenance and repair of the building. Any additional building work required may be subject to the same approval processes as applied during construction.

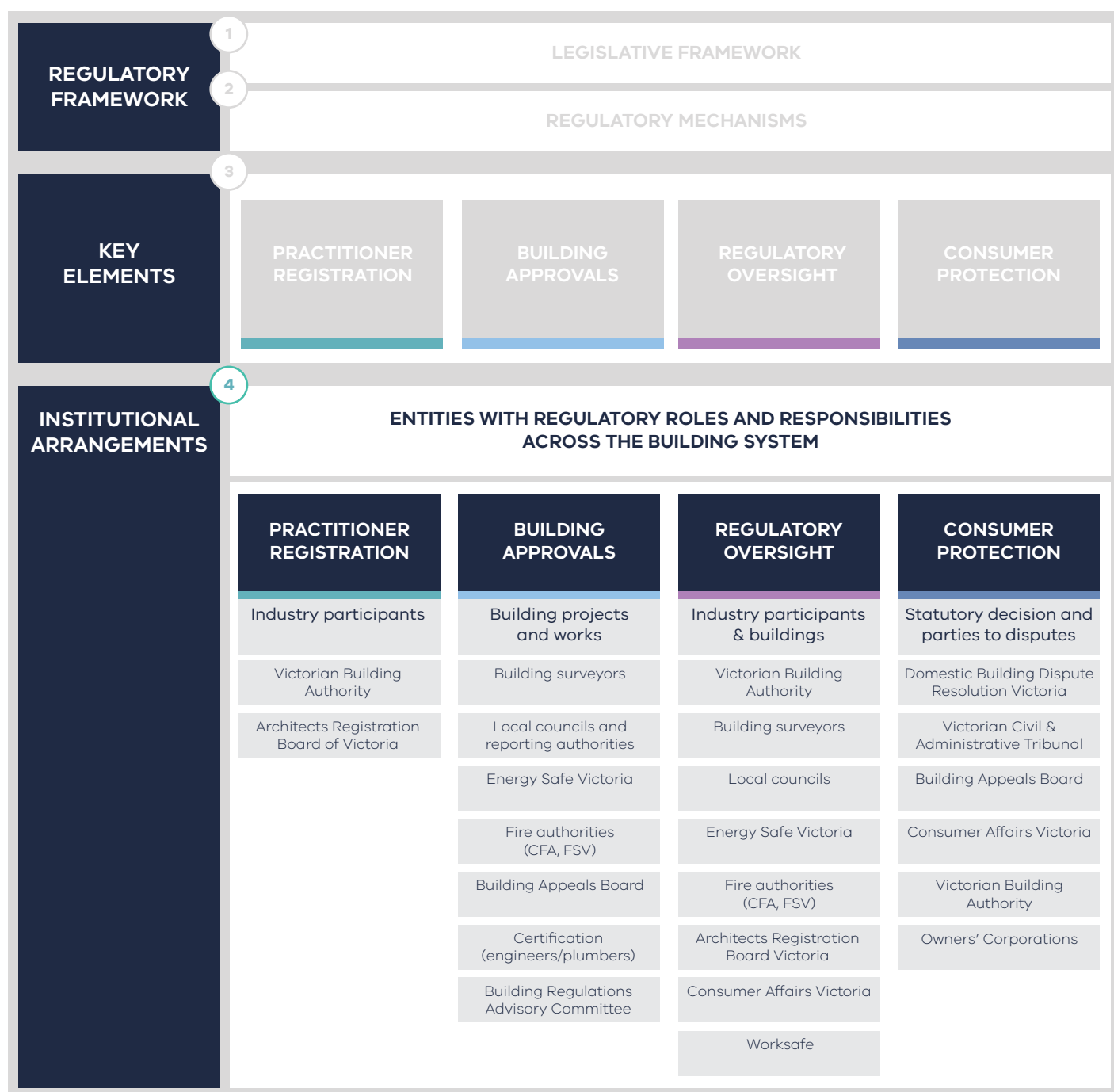
 Various regulators have **monitoring, disciplinary and enforcement functions** across the design, approval and construction stages. The VBA is established under the Building Act and has core responsibility for regulating Victoria’s building and plumbing industries.

 Building owners, developers and practitioners can access **dispute resolution mechanisms** during or after construction to seek remedy of defective and/or non-compliant work or resolve other disputes such as contractual or payment obligations.

## 4.4 There are many entities with regulatory roles and responsibilities across the building system

Many organisations and entities have regulatory responsibilities in Victoria's building regulatory system. There are specific functions performed by regulators including registration and licensing and related disciplinary action, permits and approvals and compliance monitoring and enforcement of legislative obligations and duties. The institutional arrangements across the regulatory system are summarised at Figure 9.

**Figure 9 | Entities with regulatory roles and responsibilities across the building regulatory system**



The sub-sections below describe the following regulatory roles and responsibilities:

- the VBA and the ARBV oversee practitioner registration and licensing schemes;

- regulators and building and plumbing practitioners oversee building work and existing buildings;
- there are several regulatory bodies involved in monitoring, compliance and enforcement; and
- specialist and generalist bodies help to resolve disputes.

### 4.4.1 Two regulators oversee practitioner registration and licensing schemes for building and plumbing practitioners

Building and plumbing practitioners can be licensed or registered to design and/or carry out certain building or plumbing work. Registration and licensing processes – administered by the VBA and the ARBV – authorise practitioners to undertake design, building and plumbing work for which registration or a licence is required.

Table 2 describes the roles and functions of the VBA and the ARBV in registering or licensing building, plumbing and design practitioners.

**Table 2 | Building system regulators – practitioner registration and licensing**

ENTITY	FUNCTION	ROLE DESCRIPTION
VBA	Registration and discipline of building and plumbing practitioners	<ul style="list-style-type: none"> <li>• oversees the registration of building and plumbing practitioners (under Parts 11 and 12A of the Building Act); and</li> <li>• has powers to initiate and determine disciplinary proceedings against both building and plumbing practitioners with any subsequent sanctions recorded on a disciplinary register maintained by the VBA and made available to the public<sup>53</sup>.</li> </ul>
ARBV	Registration of architects	<ul style="list-style-type: none"> <li>• oversees the registration of architects (under Part 3 of the Architects Act<sup>54</sup>); and</li> <li>• oversees the conduct of architects, including powers to receive and handle complaints, undertake disciplinary action and cancel, suspend or withdraw an architect’s registration.</li> </ul>



### The SBS position has recently been introduced

In 2019, the VBA appointed the SBS with the intent that the position would act as an authoritative industry leader for building surveyors and building practitioners across Victoria. This action followed a recommendation of the Victorian Cladding Taskforce and was broadly welcomed by industry stakeholders. Initially, the SBS was established as a senior executive position in the VBA with limited functions. As part of a recent restructure at the VBA, the SBS reports to the CEO of the VBA and has increased responsibilities including oversight of the Principal Structural Engineer, the Principal Plumbing Specialist, and the technical and regulation and audit and inspection functions of the VBA.

### 4.4.2 Regulators and practitioners provide oversight of building work and existing buildings






The building regulatory system establishes a number of regulatory roles in relation to building work and existing buildings.

A distinction can be drawn between:










-  oversight of building work which is primarily undertaken by the RBS; and
-  oversight of existing buildings, which is largely within the purview of local councils.<sup>55</sup>

Some parties have responsibilities that span both (a) and (b). – the role of relevant entities is described in Table 3 overleaf.

**Table 3 | Regulatory entities involved in oversight of building work and existing buildings**

ENTITY	ROLE DESCRIPTION	TYPE
<b>RBS (private or municipal)</b>	<p><b>Issue building and occupancy permits and conduct inspections of building work.</b></p> <p>A building surveyor (either private or a municipal surveyor) becomes the RBS under the Building Act when appointed by a building owner (or their agent) to undertake building surveying work.</p> <p>In most instances, the involvement of the RBS marks the beginning of regulatory oversight of building works. The RBS is chiefly responsible for ensuring the design and at each mandatory inspection stage, the building work, complies with the Building Act, Building Regulations, and the NCC, and if not, the RBS must determine what actions are required to be taken. RBSs have the responsibility to:</p> <ul style="list-style-type: none"> <li>• assess applications for, and/or issue, permits; including building permits, occupancy permits and certificates of final inspection; and</li> <li>• conduct mandatory inspections of building works and any additional inspections if specified in the permit, determine whether building work is compliant with the Building Act and building permit;</li> <li>• exercise their responsibilities to issue 'directions to fix' building work and issue building notices and building orders and refer non-compliance to the VBA; and</li> <li>• perform compliance monitoring and limited enforcement activities during a building project.<sup>56</sup></li> </ul> <p>RBSs can also delegate their inspection responsibilities to any 'authorised persons' under the Building Act.<sup>57</sup></p>	
<b>Building inspectors</b>	<p><b>Conduct inspections of buildings.</b></p> <p>The RBS can use an appropriately registered building inspector to carry out inspections on behalf of the RBS. However, the RBS retains all responsibility for the inspection.</p> <p>Building inspectors report onsite inspections at mandatory inspection stages, and other inspections that are set as a condition of a building permit by the RBS. Like the RBS, private inspectors have regulatory functions.<sup>58</sup></p>	
<b>Engineers</b>	<p><b>Issue certificates of compliance that can be relied upon by the RBS.</b></p> <p>Engineers can issue a certificate of compliance in relation to design of building work. Alternatively, the engineer can inspect and certify the building work.</p>	
<b>Licensed Plumbers</b>	<p><b>Issue compliance certificates for prescribed plumbing work.</b></p> <p>Licensed plumbers must issue compliance certificates for certain plumbing work where the plumber completes the work themselves or the work is completed by a registered plumber or an apprentice plumber.</p>	
<b>Accredited energy efficiency assessors</b>	<p><b>Assess energy efficiency score of homes.</b></p> <p>Assessors judge whether the energy efficiency requirements of a home meet the energy efficiency requirements under the Building Code of Australia (BCA) Volume two, which must be complied with under the Building Act and Building Regulations. Assessors include the Australian Building Sustainability Association (ABSA), Building Designers Association Victoria (BDAV) and House Energy Raters Association (HERA). The scheme is overseen by the Nationwide House Energy Rating Scheme.</p>	



<b>Fire Rescue Victoria (FRV)</b>	<b>Conduct inspections of buildings.</b> Chief officers of fire authorities have powers as ‘authorised persons’ under the Building Act. This includes power to conduct inspections of safety and emergency equipment and requirement that their consent is obtained in relation to some fire safety matters prior to the issuing of permits.	 
<b>ESV</b>	<b>Conduct inspections of buildings.</b> ESV has powers as an ‘authorised person’ under the Building Act including for information gathering and entry powers and general enforcement provisions. <sup>59</sup> ESV may conduct check of building sites to ensure appropriate licensing and proper certification.	 
<b>MBSs</b>	<b>Oversee existing buildings.</b> Aside from powers afforded to MBSs when acting as RBS, MBSs have powers to inspect safety and emergency equipment of existing buildings, monitor compliance and changed use of existing buildings. MBSs also has the power to issue emergency orders, and other building orders. MBSs can also perform the functions of the RBS in another municipality with the consent of the relevant local council.	 
<b>VBA</b>	<b>Oversee building work compliance.</b> The VBA has the power to issue ‘directions to fix’ non-compliant work to a builder during construction and is responsible for enforcing non-compliance with a building notice and order that has been issued by a PBS. A VBA inspector or compliance auditor can also issue a rectification notice to a plumber requiring rectification of defective plumbing work.	 
<b>Reporting authorities (such as local councils and service authorities)</b>	<b>Oversee issuing of certain building permits.</b> Report and consent (approval) of a reporting authority may be required as part of the issuing of permits when building work may affect assets, infrastructure or amenity of the community.	

WorkSafe is also a key regulator of building work in Victoria. WorkSafe is Victoria’s health and safety regulator and manager of Victoria’s worker’s compensation scheme. WorkSafe aims to keep all workplaces healthy and safe and to deliver high quality care and treatment when workers are injured. This includes helping to prevent workplace injuries and illness by enforcing Victoria’s occupational health and safety laws.

### 4.4.3 There are several regulatory entities involved in compliance and enforcement

The building regulatory system includes general monitoring powers to detect non-compliance and various enforcement tools that can be used where individuals and organisations fail to comply with the requirements of the legislation. The VBA is the principal regulator of building and plumbing practitioners. The VBA's functions are established under section 197 of the Building Act and include monitoring and enforcing compliance with the

Building Act and Building Regulations (section 197(a)) and monitoring the conduct of registered practitioners (section 197(c)).

The VBA shares responsibility for enforcement of the Building Act and Building Regulations with other co-regulators, including the RBS, local councils and fire authorities. The ARBV is also a regulator under the Architects Act.

Table 4 overleaf provides a summary of the role of each regulator in providing regulatory oversight and enforcing compliance with the regulatory system.

**Table 4 | Regulatory entities involved in monitoring, compliance and enforcement**

REGULATOR	ROLE	MONITORING POWERS	ENFORCEMENT POWERS
<b>VBA</b>	Principal regulator of Building Act and Regulations	<ul style="list-style-type: none"> <li>Power to require production of information or documents (section 227F).</li> <li>Power to require production of information or documents under court order (section 227I).</li> <li>Powers of entry for monitoring (section 228).</li> <li>Hear complaints (section 232).</li> <li>Information sharing agreements (section 259AB).</li> </ul>	<ul style="list-style-type: none"> <li>Direction to fix (section 37B).</li> <li>Infringement notices (r.276).</li> <li>Accept undertaking (section 234B).</li> <li>Injunctions (section 234E).</li> <li>Rectification notice to plumber (section 221ZW).</li> <li>Disciplinary proceedings and action (section 178).</li> <li>Proceedings for any offence against the Building Act or Building Regulations (section 241(3)).</li> </ul>
<b>Local councils in their municipalities (through the MBSs)</b>	Enforcement of specific parts of the Building Act	<ul style="list-style-type: none"> <li>Powers of inspection of safety and emergency equipment (section 227E).</li> <li>Power to require production of information or documents (section 227F).</li> <li>Power to require production of information or documents under court order (section 227I).</li> <li>Powers of entry for monitoring (section 228).</li> </ul>	<ul style="list-style-type: none"> <li>Emergency orders to vacate building, prohibit entry or use of building (section 103-104).</li> <li>Building notices and orders (Part 8)</li> <li>May cause building work to be carried out and recover the cost as a debt where a building owner fails to carry out work as required by an emergency order or building order made by an MBS (sections 121 and 123)</li> <li>Infringement notices (r.276).</li> <li>Injunctions (section 234E).</li> <li>Bring proceedings for a summary offence against Part 3, 4, 5, 7 or 8 of the Building Act or Building Regulations (working with local council).</li> </ul>
<b>Local councils are responsible for enforcement of Parts 3, 4, 5, 7 and 8 of the Building Act and the Building Regulations in its municipal district (section 212). Proceedings for summary offences under these parts may be brought by a person authorised by the relevant local council.</b>			

<b>RBSs</b>	Building approvals, compliance and enforcement	<ul style="list-style-type: none"> <li>• Conduct site inspections of building works to determine building work is compliant with regulatory requirements and building permit (Part 4).</li> </ul>	<ul style="list-style-type: none"> <li>• Issue 'directions to fix' non-compliant building work to building practitioner (Part 8).</li> <li>• Issue building notices and building orders for non-compliant building work to a building owner (Part 8).</li> <li>• Refer non-compliance with notices and orders to the VBA for enforcement.</li> </ul>
<b>Fire authorities</b>	Regulate existing buildings	<ul style="list-style-type: none"> <li>• Powers of inspection of safety and emergency equipment (section 227E).</li> <li>• Powers of entry for monitoring (section 228).</li> <li>• Hear complaints (section 234).</li> <li>• Reporting authority for specific occupancy permits (r.187).</li> </ul>	<ul style="list-style-type: none"> <li>• Issue building infringement notice on a building owner or occupier (section 255, r.276).</li> <li>• Bring legal proceedings against building owner or occupier in respect of specific Building Regulations (section 255).</li> </ul>
<b>ESV</b>	Technical regulator for electricity and gas; has powers of an authorised person under Part 12A of the Building Act	<ul style="list-style-type: none"> <li>• Power to require production of information or documents (section 227F).</li> <li>• Power to require production of information or documents under court order (section 227I).</li> <li>• Powers of entry for monitoring (section 228).</li> <li>• Hear complaints (section 233).</li> </ul>	<ul style="list-style-type: none"> <li>• Injunctions (section 234E).</li> </ul>

#### 4.4.4 Specialist and generalist bodies help to resolve disputes

The legislative framework establishes dispute resolution and appeal mechanisms to resolve disputes that arise in building work:

- the DBC Act includes a resolution process for domestic building disputes between builders and building owners that can involve Domestic Building Dispute Resolution Victoria (DBDRV), Consumer Affairs Victoria (CAV) and the Victorian Civil and Administrative Tribunal (VCAT);
- the Building Act establishes an appeals body – the Building Appeals Board (BAB) – to determine appeals of decisions made under the Building Act; and
- a range of entities can hear complaints under the Building Act, including the VBA.

The entities involved in the dispute resolution and their role is described in Table 5.

**Table 5 | Entities involved in dispute resolution**

DISPUTE TYPE	ENTITY	ROLE DESCRIPTION
<b>Domestic building dispute resolution</b>	DBDRV	DBDRV is an independent government agency which resolves domestic building disputes; it commenced operations in 2017. If the dispute is a type of matter DBDRV is able to resolve – these include defective or incomplete building work, delays, issues with payment, issues about the domestic building contract – and it can satisfy certain other eligibility criteria, DBDRV can issue an order to resolve the matter.
	CAV	CAV oversees the administration of the DBC Act. CAV provides free and impartial advice to building owners and builders on their rights and responsibilities when building or renovating.
	VCAT	Where a building owner is one of the parties VCAT may become involved in the dispute resolution stage only after the matter has progressed through DBDRV or the matter is expedited because an injunction is needed to immediately stop another part from doing something (or to compel them to do something). Otherwise, the complainants can apply directly to VCAT where the dispute does not involve the building owner. VCAT also has rights of review in other circumstances such as a review of a warranty insurers decision.
<b>General complaint handling</b>	VBA	As the lead regulator, the VBA can deal with complaints relating to breaches and offences of legislation under the Building Act, the Building Regulations, and the Plumbing Regulations. Section 231 of the Building Act states ‘any person can complain to the Authority about the exercise of a power’ under relevant divisions of the Building Act, including powers exercised by a plumbing inspector, building surveyor a person authorised to act as a building surveyor.
	Others	Other entities can hear complaints under the Building Act; this includes local councils, fire authorities and ESV.
<b>Appeals</b>	BAB	The BAB can hear appeals and disputes under Part 10 of the Building Act. The BAB’s authority also includes the power to make certain modifications to regulations that apply to building or land or relate to access for persons with disabilities. The BAB can also assess whether a design or element of a building complies with the Building Act. The BAB’s decisions are final and can only be appealed at the Supreme Court on a point of law.

## 5. OPPORTUNITIES FOR IMPROVEMENT ACROSS THE BUILDING REGULATORY SYSTEM

As highlighted by the Cladding Taskforce Reports and Building Confidence Report, there are significant opportunities to modernise and improve the building regulatory system. The Stage One key issues and possible improvements to the regulatory system are discussed across the four key elements of the building regulatory system – practitioner registration and licensing, building approvals, regulatory oversight and consumer protection. Each element is discussed in detail across the following four sections and is summarised in Figure 10.

Figure 10 | Summary of Stage One key issues and possible improvements across the key elements of the building regulatory system

KEY ISSUES		STAGE ONE POSSIBLE IMPROVEMENTS	OUTCOMES
PRACTITIONER REGISTRATION	Only some classes require a practitioner to be registered in that class to carry out the particular work	Assess and align practitioner categories and classes to modern construction practices	A thriving construction industry providing buildings that are safe, durable, affordable, compliant and sustainable
	Complex and high-risk work can be performed by practitioners without specialist skills	Develop a consistent approach to regulation of design practitioners	
	Not all work undertaken on today's construction sites are covered by registered practitioner classes		All participants are competent, accountable and maintain and update their skills continuously
	There are concerns about the quality of training and assessment by some RTOs	Provide effective assessment of technical competency through accreditation bodies and RTOs	
	Competence in the NCC and use of performance-based solutions is not well understood	Boost practitioner competence by adopting competence frameworks and improving the education, training and other support available	
	No requirements for CPD are active		
BUILDING APPROVALS	The corporate registration scheme does not effectively deter non-compliance	Strengthen corporate registration scheme	
	Inadequate processes and oversight of complex buildings for complex buildings	Consider models presented by VBMSG, MAV and AIBS	A thriving construction industry providing buildings that are safe, durable, affordable, compliant and sustainable
	Concentration of responsibility and limited oversight of decision-making for the RBS	Develop a graduated, proportionate approach to approvals	
REGULATORY OVERSIGHT	A potential for conflicts of interest between PBSs and builders, developers or design practitioners		Regulators are effective, efficient and transparent
	Overlap of functions and powers between regulators	Implement measures to strengthen oversight arrangements within existing structures	
	A fragmented approach to oversight of design professionals	Establish an independent statutory Office of the SBS	
	Ongoing criticism of building regulators	Consider separation of the regulation of building approvals and enforcement from registration and oversight of building practitioners	
CONSUMER PROTECTION	Inadequate data collection, access to and sharing of data, among regulators and with other government agencies or departments	Building information and sharing is a focus of Stage Two	Increased consumer empowerment and improved access to remedies
	Difficulties for consumers accessing and acting on information to exercise their rights	Improve existing advocacy and support services for individual consumers	
	Lack of transparent information about consumer harms and systemic risks	Establish a consumer representative body to address systemic consumer building issues	
	Lack of formal systemic representation and individual advocacy support for consumers	Establish a consumer reference group or other advisory mechanism	
	Barriers to dispute resolution	Dispute resolution is a focus of Stage Two	
	Uncertainty in insurance market for practitioners	Insurance arrangements is a focus of Stage Two	
	Lack of accountability across the system when things go wrong	Statutory duties of care is a focus of Stage Two	

## 6. PRACTITIONER REGISTRATION

The registration and licensing schemes for building, plumbing and design practitioners are important regulatory safeguards aimed to ensure that building, plumbing and design work is undertaken by people who are qualified, competent, and meet probity requirements. These schemes also provide for accountability and recourse through disciplinary action to sanction or remove practitioners from the system and regulatory requirements that practitioners hold insurance.

This section outlines how practitioner registration and licensing works in practice, the key issues this gives rise to, and possible improvements to strengthen the practitioner registration and licensing schemes.

### 6.1 Overview of the current practitioner registration and licensing schemes

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Victoria's building regulatory system utilises both licensing and registration of practitioners. For building practitioners, a system of registration categories and classes generally applies. Plumbing practitioners on the other hand can be either registered or licensed. A plumbing licence is used to recognise a more qualified and experienced plumber and confers greater responsibility and accountability than registration.

Under the current system, not every person performing building work requires registration (if they are, for example, a subcontractor or employee of the registered practitioner). A separate registration and licensing schemes has also been established (although yet to commence) for subcontractors and building employees.

The range of practitioners (regulated and unregulated) involved in the whole construction process - from design to build, to maintenance - can vary considerably across different construction projects.



The registration and licensing processes and ongoing monitoring of practitioner conduct is overseen by the VBA (for building and plumbing practitioners) and the ARBV (for architects). Registration and licensing confer obligations on the practitioner, including the requirement to perform work in a competent manner and to a professional standard and the requirement to hold and maintain the required qualifications and insurance. The registration and licensing of engineers is not a focus of this Review, this is described right.

## REGISTRATION AND LICENSING OF ENGINEERS

The Building Act currently requires the registration of certain classes of engineers. Engineers must be registered if they are to carry out certain inspections and issue certificates of compliance.

It is important to note that the recent passage of the *Professional Engineers Registration Act 2019* (Vic) (PERA) introduces a requirement for registration and licensing for all engineers who provide professional services. This aspect of PERA takes effect from 1 July 2021. Engineers will be registered by the Business Licensing Authority, and those who wish to continue engaging in building work will be required to be endorsed by the VBA. Given their impending commencement, the new registration and licensing arrangements for engineers have not been examined by the Panel in terms of identifying opportunities for improvement. However, linkages between this new registration and licensing scheme and the registration and licensing arrangements for other practitioners are considered to ensure that the overall practitioner regulatory requirements are as consistent as possible.

### 6.1.1 Registration and licensing of building and plumbing practitioners is the responsibility of the VBA

The VBA currently administers three registration and licensing processes:

- building practitioners seeking registration;
- plumbing practitioners seeking registration; and
- plumbing practitioners seeking a licence.

In each case, there are several stages applicants and the VBA must move through for registration or a licence to be granted. Common features in the building and plumbing registration and licensing processes include: a written application, prescribed qualifications, an exam and/or interview and registration or licence renewal process.

The Building Act sets out the personal and financial probity requirements that a practitioner must meet to be registered or licensed (and remain registered or licensed) to carry out regulated work. For building practitioners, these are set out in section 171D and 171E of the Building Act and in section 221T for plumbers.

Once registered, certain professional standards apply to a registered building practitioner. A practitioner must:

- perform work in a competent manner and to a professional standard;
- immediately inform a client in writing if a conflict of interest arises or appears likely to arise between the building practitioner and that client; and

- receive remuneration for services as a building practitioner through the payment of professional fees (or other benefits specified in the contract) or by the salary and other benefits payable by the building practitioner's employer.

For all building surveyors, a new VBA code of conduct provides further guidance on the meaning of professional conduct<sup>60</sup>.

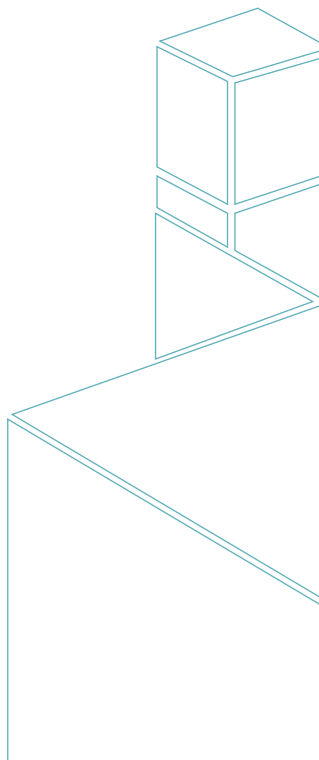
### 6.1.2 Not every person performing building work currently requires registration

The Building Act sets the categories of regulated building practitioners and the Building Regulations prescribe the classes of practitioner categories, including required qualifications and experience and, in some cases, scope of work.

Currently there are eight categories of building practitioner, each with a number of practitioner classes. The different ‘classes’ within practitioner categories enables proportionate regulation so that practitioners with certain skills and competence levels are able to work on specific tasks, related to their skills and competence. Classes also enable practitioners to specialise by performing only discrete parts of building design or building work.

For example, there are 30 classes of domestic builder, one prescribed class is ‘unlimited’ and authorised to carry out all components of domestic building work. The other 29 are classes of limited domestic builder, which are each authorised to carry out specific types of building work. These include classes that are limited to construction of gates and fences, and others which are limited to door and window replacement.

Practitioner categories and classes are summarised in Table 6 overleaf.



**Table 6 | Building practitioner registration categories and classes under the Building Act and Building Regulations**

CATEGORY	NUMBER OF CLASSES	PRACTITIONER CLASSES
<b>Builder</b>	11	Commercial builder (unlimited, limited)
	30	Domestic builder (unlimited, limited)
	3	Demolisher (unlimited, low rise, medium rise)
<b>Building Surveyor</b>	2	Building Surveyor (limited and unlimited)
<b>Building inspector</b>	3	Building Inspector (limited, unlimited and pool safety)
<b>Site or Project Manager</b>	1	Project manager (domestic)
<b>Draftsperson</b>	3	Building Design (architectural) Building Design (interior) Building Design (services)
<b>Engineer</b>	3	Engineer (civil) Engineer (mechanical) Engineer (electrical) Engineer (fire safety)
<b>Erector or supervisor (temporary structure)</b>	2	Class of temporary structures (limited to scaffolding stages and towers) Class of temporary structures (limited to tents and marquees)
<b>Quantity surveyor</b>	There is no prescribed class of quantity surveyor	

While the Building Act and Building Regulations provide a comprehensive set of registration and licensing categories and classes, not every person involved in building work is required to be registered. For example, a building practitioner must be registered where the builder enters a contract for work over \$10,000 with the building owner of a property and is named as the builder on a building permit. Persons undertaking building work are not currently required to be registered when working as a sub-contractor or employee of the practitioner

named on the building permit, although this will change with the introduction of a new registration scheme for subcontractors and employees (see overleaf).

## TRADE SUBCONTRACTORS AND EMPLOYEES TO BE REGISTERED AND LICENSED UNDER A NEW SEPARATE SCHEME

A separate trades registration and licensing system has also been established (although yet to commence) for subcontractors and building employees. This is because of the different role they play in carrying out work, including their lower level of responsibility and accountability (because they are supervised by, and report to, a registered building practitioner). The new scheme, once implemented, will mean that identified trade work must be performed by the holder of an appropriate registration or licence. These trade registration and licence holders will be accountable for their work through the disciplinary system administered by the VBA. These schemes are being progressively implemented for relevant trades, starting with carpenters.

### 6.1.3 Plumbing practitioners can be either licensed or registered

A plumber can obtain either a licence or registration to carry out regulated plumbing work. A plumbing licence is used to recognise a more qualified and experienced plumber. A licensed plumber has additional powers and can:

- supervise apprentices and other plumbers registered in the classes they are licensed in; and
- sign compliance certificates for work done by the licence holder themselves, or a registered plumber or apprentice under their supervision.

The Plumbing Regulations define ten main classes of plumbing work and five specialised classes that must be carried out by a licensed or registered plumber. The Plumbing Regulations require a person to be registered or licensed in a main class of work to be eligible for registration or licensing in a specialised class of work (for which they need to demonstrate the holding of additional qualifications and experience prescribed for that specialised class).

The VBA can issue restricted licences or registrations for aspects of work falling within a main or specialised class, provided the applicant holds the appropriate level of qualifications and experience for that particular aspect of work. The current classes of plumbing practitioners are set out in Table 7 below.

**Table 7 | Classes of plumbing practitioners**

MAIN CLASS OF PLUMBING LICENCE	SPECIALISED CLASS
<b>Drainage</b>	None
<b>Fire protection</b>	None
<b>Gas fitting</b>	Type A appliance servicing /Type A appliance conversion work
<b>Irrigation (non-agricultural)</b>	None
<b>Mechanical services</b>	None
<b>Refrigerated air-conditioning</b>	None
<b>Roofing (stormwater)</b>	None
<b>Sanitary</b>	None
<b>Type B gas fitting</b>	Type B gas fitting advanced
<b>Water supply</b>	Backflow prevention / Thermostatic mixing valve work

## 6.1.4 The Building Act enables corporate registration

Amendments to the Building Act made in 2017 enabled the registration of corporations as building practitioners. The amendments also set out financial and personal probity criteria which the VBA must consider in assessing the 'fit and proper person' requirements. One of the main reasons these amendments were made was to ensure that the probity of corporations that consumers are purchasing buildings or building services from, can be checked.

Corporate registration means that a company registered in an appropriate class can:

enter into major domestic building contracts;

- be named as a builder on a building permit for major domestic building work, or any other work (e.g. non-domestic building work) costing more than \$10,000; and
- be appointed as the RBS.

The Building Act requires a registered body corporate building practitioner to have a director who is a registered building practitioner (a 'nominee director') in each class in which the company holds registration or licence. This requirement ensures that a corporate entity registered to carry out certain types of building work has the necessary qualifications and expertise (collectively through one of its directors) to undertake building work and regulate the conduct of the company. The nominee director is under a duty to ensure that the corporate entity complies with the Building Act and Building Regulations. Additional fiduciary duties and obligations apply to the directors of such an entity company, these help to ensure the accountability and compliance of the corporate entity.

## 6.1.5 Registration of architects occurs under the Architects Act

Registration of architects under the Architects Act provides for 'practising' and 'non-practising' registration classes. Practising registration class allows architects to provide architectural services, whereas the non-practising class of registration allows an architect to represent themselves as an architect but not carry out architectural work.<sup>61</sup> The Architects Act and Architects Regulations 2015 (Vic) (Architect Regulations) allow for approval of a company and partnerships. Schedule 1 of the Architects Regulations sets out the Victorian Architects Code of Professional Conduct which outlines the broad scope of activities and operational environment that is expected from each class of registration.

## 6.2 Key issues in the current practitioner registration and licensing schemes

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A rigorous practitioner registration and licensing schemes that clearly defines and allocates the accountabilities of practitioners is integral to a modern building regulatory system and safe and compliant buildings.

The Panel has identified the following key issues that relate to the registration and licensing schemes:

- the current registration and licensing schemes, including practitioner registration categories and classes, are limited, and not fit for purpose; and
- There are gaps in practitioner competence which are not addressed by current education and training.

The Panel also considers that the current building regulatory system does not provide sufficient oversight of building industry participants and practitioners across the construction process from design through to project development and to building and maintenance. This has led to a lack of key accountabilities across the process.

### 6.2.1 Practitioner registration and licensing schemes are limited and not fit for purpose

The current approach to registration and licensing of building, plumbing and design practitioners does not always ensure that only competent, experienced, and suitable people are undertaking design, building and plumbing work. In effect, this means the practitioner registration and licensing schemes do not necessarily protect consumers from non-compliance resulting from poor practitioner practice. There are four sub-issues which impact on the effectiveness of the current registration and licensing schemes:

1. Only some classes stipulate that a practitioner must be registered in that class to carry out the particular type of work;
2. Complex and high-risk work can be performed by practitioners without specialist skills;
3. Not all aspects of work undertaken on today's construction sites are covered by registered practitioner classes; and
4. The corporate registration scheme does not effectively deter non-compliance.

## Only some classes stipulate a requirement that a practitioner must be registered in that class to carry out the particular type of work

The practitioner categories and classes should reflect the varying levels of complexity, qualification and experience required to perform a particular role. For all registration and licensing classes, the building regulatory system should ensure that practitioners meet requisite standards of skill and competence before they can perform work.

For some registration and licensing classes, restrictions are currently applied to ensure that practitioners only carry out work that is authorised by the registration or licence. This is achieved through prescribing scopes of work that only a registered practitioner is permitted to perform.

But the reality is that, at present, there are many elements of design and building work involved in construction of a building that are not captured within prescribed scopes of work. This is partly due to the fact that the building regulatory system has not kept pace with changing construction practices. Many of the prescribed scopes of work are also not mandatory for those working in building sites, where they are working as a sub-contractor or employee.

Registered practitioner classes which have no regulated scopes of work include:

- commercial builders;
- engineers engaged in building work;<sup>62</sup>
- quantity surveyors;
- design practitioners;
- site supervisors; and
- project managers.

This lack of defined scopes of work means that some practitioners undertake complex work that may be beyond their qualifications or experience. This issue was raised by some stakeholders and was discussed in the Building Confidence Report which noted:

“Unfortunately, in many jurisdictions the scope of work that can be performed by some categories of registered practitioner is not limited to the type of design or construction work they have the capability to perform. This results in registered practitioners taking on building work for which they are not fully competent.”<sup>63</sup>

In relation to design practitioners, there is no requirement under the Architects Act, Building Act or Building Regulations that those who prepare design documentation must be registered.

## Complex and high-risk work can be performed by practitioners without specialist skills

It is clear that different risks arise for building work carried out on a multi-storey building, compared to a single storey dwelling. For example, building standards and the nature of building work differ considerably for residential buildings, hospitals, and schools.

The current building practitioner registration system does not distinguish registration classes based on risk or complexity of work on different building sites. Some stakeholders suggest that the lack of specialisation in building practitioner registration classes allows practitioners without the necessary skills to carry out complex or high-risk work they are not qualified to do, particularly in relation to multi-storey apartments. It is important to note that the building surveyor and building inspector practitioner classes include scopes of work that are limited to buildings of a particular height and floor area. These limitations of scope are consistent with the risk-based approach the NCC takes when setting building standards.

Appropriate supervision by more senior practitioners may alleviate some of these challenges, however, this is not always assured.

In contrast, the two-component plumbing licence and registration system distinguishes between different skills and experience to carry out more specialised work. As discussed above, licensed plumbers are given greater responsibility for certifying plumbing work and are required to demonstrate a higher level of skills and experience than a registered plumber. In addition, there are a certain number of specialised classes of plumbing work which require additional qualifications and experience.

However, similar to building practitioners, plumbing stakeholders raise concerns that some main classes do not limit inexperienced or newly registered plumbing



practitioners from completing work they are not qualified to carry out. As a result, a newly registered plumbing practitioner can work on high-rise buildings without having gained the necessary skill or experience in such buildings.

### **Not all aspects of work undertaken on today's construction sites are covered by registered practitioner classes**

Building practitioner classes have not kept up with the scope and nature of contemporary construction practices – a point made in the Cladding Taskforce Final Report. This means that registration and licensing categories and classes do not reflect the way in which buildings are constructed from design through to occupancy and do not therefore reflect the different risks across the construction process. These gaps exacerbate the lack of clear and specific accountabilities in the building process.

The lack of accountability then places greater liability and risk for non-compliant work on registered classes of practitioner who may not have the skills or qualification to assess the work of specialist, unregistered, professionals. The Victorian Cladding Taskforce noted that essential safety measures (ESMs) maintenance practitioners are not a registration and licensing class. This means there is little oversight or regulation of training, qualification and conduct of those involved in servicing and maintaining ESMs.<sup>64</sup> Industry experts also raised with the Panel the risks from electrical wiring installation as an emerging issue. The COVID related risks in air conditioning and ventilation in high rise commercial and residential building is also causing concern and needs to be addressed in future regulatory arrangements. Another emerging risk is that of concealed defects in the construction process.

The Building Confidence Report also observed that while complex commercial and multi-purpose buildings include fire safety systems that require considerable expertise to design, install, certify and maintain, most jurisdictions do not require the registration or licensing of fire safety maintenance contractors or fire safety system installers.<sup>65</sup> In this case, it is notable that in Victoria, fire safety engineers, and plumbers are registered to undertake fire protection work. ESV also registers electricians involved in fire systems.<sup>66</sup>

Stakeholders suggest that consultants who perform home building inspections for due diligence purposes (for example to inform the purchase/handover of a property), should also be considered for registration and licensing. The Panel's Early Initiative recommended greater consumer awareness about building consultants and consideration of registration (see Appendix E).

There are also concerns that registered building

practitioners responsible for building work (such as those named in the domestic building work contract) are often not present on building sites, and supervision of building work is left to unregistered practitioners (see above, right).

### **UNREGISTERED PRACTITIONERS ARE ABLE TO WORK, WITHOUT EFFECTIVE OVERSIGHT, ON DOMESTIC LOW RISE AND SINGLE DWELLINGS**

There are also risks for domestic low rise and single dwellings which are not adequately addressed by the current building regulatory system. For example, it is common for companies to have one or two directors as the registered building practitioners who rarely, if ever, attend the building sites. Site supervisors are employed to oversee construction, but they are not usually registered as they are not required to be and so there is limited physical oversight of the work of trades and employees by registered practitioners. This does differ for plumbers, where often those supervising work are licensed or registered plumbers. Most trades are also not registered, as only trades working independently as a head contractor are required to be registered. Other practitioners are considered to ensure that the overall practitioner regulatory requirements are as consistent as possible.

Of particular concern to the Panel is the lack of accountabilities relating to certain practitioners and industry participants which has led to insufficient oversight of building processes and gaps in the safety and quality of buildings. A joint report by Deakin University and Griffith University released in 2019, found defects in 74% of Victorian apartment buildings including structural defects, water ingress, building fabric and cladding, fire protection and other issues.<sup>67</sup>

Improving the chain of responsibility across all stages of construction to deliver compliant buildings is critical to improving confidence in the building system. Developers are significant players in the system and drive new developments, take financial risks and have contractual arrangements with other participants in the process. For example, in some circumstances, they directly engage the key practitioners such as building surveyors, the designer and the builder. Importantly, developers are often in control of the finances for large-scale development projects, as well as lot sales to consumers.

The reforms which the Panel is considering as part of Stage One are aimed to significantly strengthen the accountabilities across the practitioner processes. This includes strengthening the current registration and licensing scheme (described below) and reforms to modernise the building approvals process (see [section](#)

73). In regard to developers, the Panel is interested in the measures which have been introduced in NSW and QLD (see case study 2 and 6). NSW has also introduced a statutory duty of care for persons who carry out construction work that results in economic loss for an owner (see case study 7).

The importance of improving accountability for developers is a matter of concern to the Panel and will be examined as part of further improvements to the building approvals process in Stage Two of the Review (see [section 10](#) for further detail). This will include considering additional requirements to address risk and complexity and the oversight of developers' roles. As part of Stage Two, the Panel will also consider options for the introduction of a statutory duties of care to address accountability for all participants involved in the stages of construction – design, approvals, construction, occupation and maintenance.

### **The corporate registration scheme does not effectively deter non-compliance**

The corporate registration scheme does not effectively deter non-compliance. The requirements do not prevent illegal phoenix activity and director substitution. In practice, the misconduct of certain practitioners may be hidden under the 'corporate veil' of a registered corporation. For instance, a company may be able to continue trading unaffected by the misconduct of a replaced director – the practitioner may be disciplined but the company might not be, and the consumer can be left unaware of these circumstances.

A practice which has impeded accountability and consumer recourse is when companies create Single Purpose Vehicles to carry out individual building work and then wind up the corporation when the project is complete and before any claim can be made by a consumer. This practice is commonly used in building works for multi-storey buildings and is not prohibited under either State building legislation or Australian corporations law. This practice creates significant problems for consumers if there is non-compliant work as it is difficult to enforce warranty obligations and to have allegations of non-compliance or misconduct investigated if a corporate entity no longer exists.

The current registration system has not provided adequate powers for regulators to investigate, monitor, and penalise illegal phoenix activity and director substitution. The Building Act was amended in 2020 to introduce additional criteria in the 'fit and proper' person test administered by the VBA. These changes enable the VBA to better monitor and investigate companies, and directors (or influential persons within those companies), who engage in a pattern of behaviour that may be characterised as illegal phoenix activity. A number of

stakeholders welcomed these amendments but continue to make the point that stronger negative repercussions may be necessary to address this behaviour.

### **6.2.2 There are gaps in practitioner competence which are not addressed by current education and training**

Given the diverse and highly technical nature of work related to the design and construction of buildings (including plumbing work), it is important that the regulatory system ensures that all practitioners have requisite competencies and skills – and that they are required to maintain their competence through ongoing training and professional development opportunities.

The Building Confidence Report cited evidence of serious compliance failures in recently constructed buildings involving a lack of practitioner competence and inadequate training and understanding of the NCC. Similar concerns were raised by the Victorian Cladding Taskforce, which highlighted the need to increase the skills and capabilities of building practitioners.

“*Whilst inspections during building work have merit, the competency of builders will always be a critical factor in the effective implementation of the NCC.*”

**Building Confidence Report p.13**

These reports confirm the current registration and licensing schemes for practitioners are not rigorous enough to assure the skill and competence of practitioners engaged in the design and construction of buildings.

There are three additional issues which impact the registration and licensing practitioner schemes and illustrate the failures in the current system to assure the skill and competence of practitioners:

- there are concerns about the quality of training and assessment by some RTOs;
- competence in the NCC and use of performance-based solutions is not well understood; and
- no requirements for CPD are active.

## There are concerns about the quality of training and assessment by some RTOs

The Panel heard concerns about the quality of training and assessment delivered by some RTOs and the variability of standards in the qualifications granted. The lack of confidence in the RTO qualification process means that the VBA is duplicating assessments and creating inefficiency resulting in stakeholder frustration.

Exacerbating the lack of confidence in the training and assessment of practitioners is the fact that competence requirements, as set out in the Building Regulations, have not been reviewed for some time. This means that requirements as written may not match current scopes of work and may not reflect changes in the nature of building work and its complexity.

## Competence in the NCC and use of performance-based solutions is not well understood

A core component of practitioner competence is the application of the performance-based solutions in the NCC. Performance-based solutions allow practitioners to use building materials and practices that are not 'deemed to satisfy' per formal/prescriptive requirements, as long as they meet relevant performance conditions.

Performance-based solutions therefore afford practitioners and building surveyors flexibility to determine whether a solution is appropriate and compliant.

The Building Confidence Report noted that:

*“many stakeholders report that building practitioners across the industry do not have a sufficient understanding of the NCC or its revisions. This has led to non-compliance or poor-quality documentation of compliance.”<sup>68</sup>*

Similar sentiment was reflected in the Cladding Taskforce Interim Report which noted many stakeholders express concerns:

*“about the level of skills and training in the construction industry including trades, building practitioners and other professionals.”<sup>69</sup>*

The Panel also heard the additional following concerns:

- Limited support was provided to industry when it moved from a rules-based to a performance-based system. Stakeholders note that the performance-based system was not adequately explained to practitioners and that this has resulted in a weak understanding across industry about how to apply performance-based solutions.
- The courses for engineering and architecture often do not include compulsory training on the NCC.
- The NCC can be confusing and inconsistent, making interpretation difficult for practitioners.
- The NCC is amended every three years to ensure its relevance to changing construction practices. Stakeholders note that it can be difficult for practitioners to keep up to date and ensure compliance with changes to the NCC.

## No requirements for CPD are active

New products, technologies and practices are continuously introduced to the construction sector and, as noted in the Building Confidence Report “...are actively encouraged through the performance-based NCC.”<sup>70</sup> Practitioners therefore require up-to-date understanding of the NCC and how the use of new materials and building practices meets compliance.

Noting that the current registration and licensing regime is a point-in-time assessment of skills, competence and integrity, stakeholders consider that a greater emphasis on ongoing education after registration and licensing would be valuable to support industry performance.

This included general support for CPD requirements to be adopted as part of the registration and licensing renewal process. It is important to note that DELWP is developing a framework for building and plumbing practitioners to undertake CPD as a requirement of registration and licensing.<sup>71</sup> Completion of CPD requirements will be considered in the renewal of a practitioners' registration or licence every five years.

## 6.3 Possible improvements to practitioner registration and licensing schemes

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This Paper sets out the priority improvements to practitioner registration and licensing to address the key issues outlined above. They are:

- Assess and align practitioner categories and classes to reflect modern construction practices so that:
  - all work that should be regulated has a practitioner category and/or class; and
  - practitioner categories and classes include specialist categories for complex and high-risk work.
- Boost practitioner competence by adopting competence frameworks.
- Provide effective assessment of technical competency (and reduce duplication) through improvements in the quality and technical capacity of accreditation bodies and RTOs.

The above possible improvements are a priority focus for the Panel and are fundamental to a modern building regulatory system that will address risk and accountability across the system and improve outcomes for consumers.

### 6.3.1 Assess and align practitioner categories and classes to modern construction practices

The current categories and classes of practitioner registration and licensing should be assessed to ensure they reflect the range of professionals engaged in modern construction practices, including:

- alignment of regulated scopes of work for practitioner categories and classes with work carried out in practice and the proposed NRF;
- consideration of specialist categories for complex and high-risk work; and
- inclusion of new categories and classes of practitioners.

*The primary defence [against building non-compliance] should be the professionals engaged in the building and construction role who are responsible for ensuring that their work is compliant with the relevant codes and standards and have a professional obligation of due diligence.*

**Building Confidence Report p.13**

The assessment and alignment of regulated scopes of work and practitioner categories and classes would ensure:

- that all practitioners are appropriately limited to performing work within their qualifications and experience; and
- that all practitioners responsible for the quality and safety of building work are appropriately registered and overseen by the regulator so that all core work is regulated.

The Panel proposes a two-step procedure to assess and align the categories and classes of practitioners.

#### **STEP 1 | SET OUT THE SPECIFIC SCOPES OF WORK FOR THE PRIORITY PRACTITIONERS:**

- assess existing scopes of work to ensure all functions and responsibilities requiring competence and oversight are included in the new framework; and
- align existing classes to risk across the prescribed work.

#### **STEP 2 | MODERNISE THE PRIORITY PRACTITIONER CATEGORIES TO REFLECT CURRENT CONSTRUCTION PRACTICES:**

- introduce new classes to reflect specialised/complex work; and
- include new mandatory classes, where needed.

As a priority, this two-step procedure will be applied to the following practitioner categories and the accompanying classes:

- Building Surveyors and Building Inspectors;
- Design practitioners (including Architects and Draftspersons);<sup>72</sup>
- Builders; and
- New categories of fire safety practitioners.

Scopes of work will then be assessed and aligned for the remaining practitioner categories and accompanying classes:

- Site supervisors;
- Project managers;
- Quantity surveyors; and
- Plumbers.

This work is occurring alongside reforms at the national level to develop an NRF for core categories and classes of building, plumbing and design practitioners.<sup>73</sup> A discussion paper on the NRF has been developed in response to the Building Confidence Report recommendations 1 and 2.<sup>74</sup>

Some of the categories of practitioner that have been identified as not currently being regulated in Victoria are:

- Energy Efficiency and Disability Access Design practitioners;
- Clerk of Works (or similar) for high-risk construction;<sup>75</sup>
- Building consultants; and
- Modular/prefabricated building assembly.

Any reform to Victoria's practitioner categories or classes will consider the options identified in the NRF and by the ABCB. It is important to note that the Panel's Early Initiative suggested the Government investigate options for registration or licensing of building consultants (see [Appendix E](#)).

The Panel will also consider introducing any other new practitioner categories and classes that are necessary for building quality and safety, for example ESMs servicing and maintenance practitioners (discussed overleaf).

## POSSIBLE IMPROVEMENT TO REQUIRE REGISTRATION OF THOSE UNDERTAKING MAINTENANCE OF ESSENTIAL SAFETY MEASURES

ESMs are an important part of fire safety systems within certain buildings including houses, apartments, hotels, aged care facilities and hospitals. An ESM is any item that is provided to a building for the safety of persons in the event of fire. This includes means of egress (exit), lighting, firefighting services and equipment, signs, emergency lifts, and air handling systems and ventilation, along with building elements required to satisfy prescribed fire-resistance levels or required to be non-combustible.

Occupancy permits or certificates of final inspection are required to list all of the ESMs, specify the required level of performance of those ESMs and the frequency and type of maintenance required – as determined by the RBS. To operate effectively, the ESM maintenance and reporting system requires owners and owners' corporations to comply and proactively maintain their fire safety systems. Building owners are required to prepare an Annual ESM Report in line with a maintenance determination or a condition of the relevant occupancy permit. The Annual ESM Report must declare that the owner has complied with ESM maintenance obligations.

Some stakeholders have concerns about the current ESM regime including the skill and competence of those undertaking ESM maintenance, the rigour and frequency of checks or inspections undertaken by relevant regulators, the lack of proportionality in the initial setting of maintenance requirements and the limited and uncertain enforcement powers. Possible improvements that some stakeholders have raised include:

- requiring all those undertaking and assessing ESM maintenance requirements to be registered;
- considering increasing the penalties for non-compliance; and
- increasing oversight of the setting of ESMs and monitoring of their maintenance.

As building products and construction practices continue to change, there will be a need for consequential changes to practitioner requirements. It is proposed that DELWP develop a strategy for regular reviews of practitioner classes to ensure that they reflect changing technologies and skills requirements in the construction industry.

### 6.3.2 Boost practitioner competence by adopting competence frameworks and improving the education, training and other support available

As explained above, there are limitations at present in terms of how competence in the NCC requirements are met and in providing ongoing support and competence assessment. The importance of practitioners maintaining up to date technical skills and competencies needs to be recognised by improving the registration and licensing processes, including renewal. The Panel proposes that DELWP develop competence frameworks for each practitioner category, including accompanying classes.

Competence frameworks would first be considered for the priority practitioner categories:

- Building Surveyors and Building Inspectors;

- Design practitioners (including Architects and Draftspersons); and
- Builders.

The competence frameworks would also provide clarity around the accountabilities and responsibilities for each practitioner category. The frameworks would set out competence requirements for each practitioner category to ensure that each practitioner can successfully perform their identified functions and responsibilities. Competence frameworks would be used to determine the competence requirements necessary for both initial licensing or registration and renewal.

It is envisaged that each practitioner competence framework would include the following elements:

- a clear description of the role of the practitioner in terms of functions and responsibilities;
- the competence standards (mapped to the practitioner's functions and responsibilities) to be met;
- the requirements for qualifications and practical experience in initial registration and licensing;
- the requirements for the assessment of competence at initial registration and licensing;
- the periodic requirements for maintaining competence



after registration and licensing, including post-registration CPD NCC competency; and

- specific NCC competence requirements for registration and licensing.

Stakeholders will be engaged as these competence frameworks are developed to ensure they meet industry and professional needs for the priority practitioner categories.

### 6.3.3 Provide effective assessment of technical competency (and reduce duplication) through improvements in the quality and technical capacity of accreditation bodies and RTOs

There is an opportunity to consider alternative models that share the burden of registration with RTOs and accreditation bodies. For instance, exams that are delivered by the VBA as part of registration could instead be delivered and assessed by accreditation bodies or specified RTOs as a final test for courses. This possible improvement seeks to reduce current issues with duplicative and inefficient assessments and strengthen the VBA's confidence in the ability of accreditation bodies and RTOs to deliver skilled practitioners. This improvement requires trust between RTOs and the VBA and for the VBA to work closely with RTOs to ensure qualifications and training provide adequate assurance of the skills of applicants.

Alternatively, the VBA could accept a practitioner's membership of industry accreditation bodies as fulfilment of some aspect of practitioner registration or licensing. This approach was supported in the Building Confidence Report:

*Presently, some jurisdictions rely on accreditation by industry bodies as a basis for registration. There is merit in this approach. Well-run industry accreditation can ensure that the competencies of practitioners are tailored to their area of work and can alleviate state or territory regulators from the detailed assessment of applications.<sup>76</sup>*

For example, the AIBS have proposed a professional standards scheme which would create an opportunity for AIBS to co-regulate building surveying practitioners through membership of AIBS. Membership of AIBS could then be accepted by the VBA as satisfying competence requirements.

Greater integration in competence training between the VBA, RTOs and accreditation bodies may also enable greater understanding of the NCC and application of performance-based solutions across industry. The VBA could, for example, share insights from inspections and auditing functions to inform training modules for new and existing practitioners.



## 6.4 The next priority focus areas for practitioner registration and licensing schemes

To continue to deliver improvements to practitioner registration and licensing following implementation of the Stage One reforms mentioned above, the Panel will finalise its advice on the next priority focus areas to ensure:

- a consistent approach to regulation of design practitioners; and
- a stronger corporate registration scheme.

### 6.4.1 A consistent approach to regulation of design practitioners

To ensure a consistent approach to the regulation of design practitioners, the Panel will focus on developing a requirement for design practitioners to provide a 'Declaration of Design Compliance' or like declaration.


This declaration would state that the design aspects submitted as part of a building permit application comply with the NCC and any relevant standards. Similar reforms undertaken in other jurisdictions, such as New South Wales (NSW), will inform the Panel's approach (case study 1).

### 6.4.2 Strengthen the corporate registration scheme

To strengthen the corporate registration scheme, the Panel will focus on:

- strengthening accountability of registered corporations, their directors and employees, including reviewing registration requirements and disciplinary sanctions;
- increasing regulator powers to better track relationships between individual registered building practitioners and their roles in relation to registered body corporate building practitioners to monitor and evaluate the nature and extent of illegal phoenix activity (including substitution of directors); and
- clarifying the application of warranties and liability where a company is voluntarily wound up with the aim of enabling consumer redress.

#### CASE STUDY 1 | NSW register of design practitioners



In June 2019 NSW published a discussion paper titled Building Stronger Foundations which assessed the recommendations from the Building Confidence Report and considered how NSW could strengthen its building regulatory system.<sup>77</sup>

The report found a key gap in the building system in that no party had responsibility to detail design plans that were compliant with the NCC or explain and document plans to ensure compliance with the NCC throughout construction.

*The Design and Building Practitioners Act 2020 (NSW) (Design and Building Practitioners Act) introduced a new category of registered design practitioners.*

A design practitioner is responsible for preparing a design compliance declaration that declares plans are compliant with the NCC or any other requirements prescribed by Regulations.

The design practitioner must also provide documentation that explains any performance-based solutions that are used in the building comply with the NCC. This will give design practitioners a clear line of responsibility for the compliance of designs that are relied upon for building work.

A large onus will be put on design practitioners to prepare more complete plans earlier in the building process as they will not be able to issue a compliance declaration without a design that is detailed enough to comply with the code.

The Design and Building Practitioners Act also places a responsibility on the building practitioner to ensure that all building work is completed in line with the design compliance declaration. A building practitioner must obtain a design.

## SUMMARY

### The key issues relating to practitioner registration are:

1. only some classes stipulate that a practitioner must be registered in that class to carry out the particular type of work;
2. complex and high-risk work can be performed by practitioners without specialist skills;
3. not all aspects of work undertaken for today's construction projects are covered by registered practitioner classes;
4. the corporate registration scheme does not effectively deter non-compliance;
5. there are concerns about the quality of training and assessment by some RTOs;
6. competence in the NCC and use of performance solutions is not well understood; and
7. no requirements for CPD are active.

### The possible improvements to address these

#### key issues are:

- assess and align practitioner categories and classes to reflect modern construction practices so that:
  - all work that should be regulated has a practitioner category and class; and
  - specialist practitioner categories and/or classes are developed for complex and high-risk work;
- boost practitioner competence by adopting competence frameworks and improving the education, training and other support available; and
- provide effective assessment of technical competency (and reduce duplication) through improvements in the quality and technical capacity of accreditation bodies and RTOs.

### Following implementation of the above possible improvements, the Panel will finalise its advice on:

- a consistent approach to regulation of design practitioners; and
- a stronger corporate registration scheme.



### KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER

- How can accountability across all construction work be improved?
- Which currently unregistered practitioners should be considered for registration?
- Do you agree with developing practitioner competence frameworks to support system-wide industry competence?
- Could accreditation by industry bodies or RTOs become part of the practitioner registration and/or licensing process? If so, how can we guarantee the improvement of practitioner standards through such a process?
- Should the NSW approach (see case study 1) to design practitioners be considered for Victoria?
- What measures could be considered to boost the number of skilled building surveyors and technical experts?

**Are there other key issues and possible improvements that the Panel should consider?**

## 7. BUILDING APPROVALS

Building approvals are regulatory processes which aim to ensure that building works comply with the relevant legislation and accompanying regulations and meet the requisite standards of building safety and quality. Most building works require a series of permits that provide authorisation for works to occur and seek to ensure that these works meet the required standards at specific points in the building construction process.

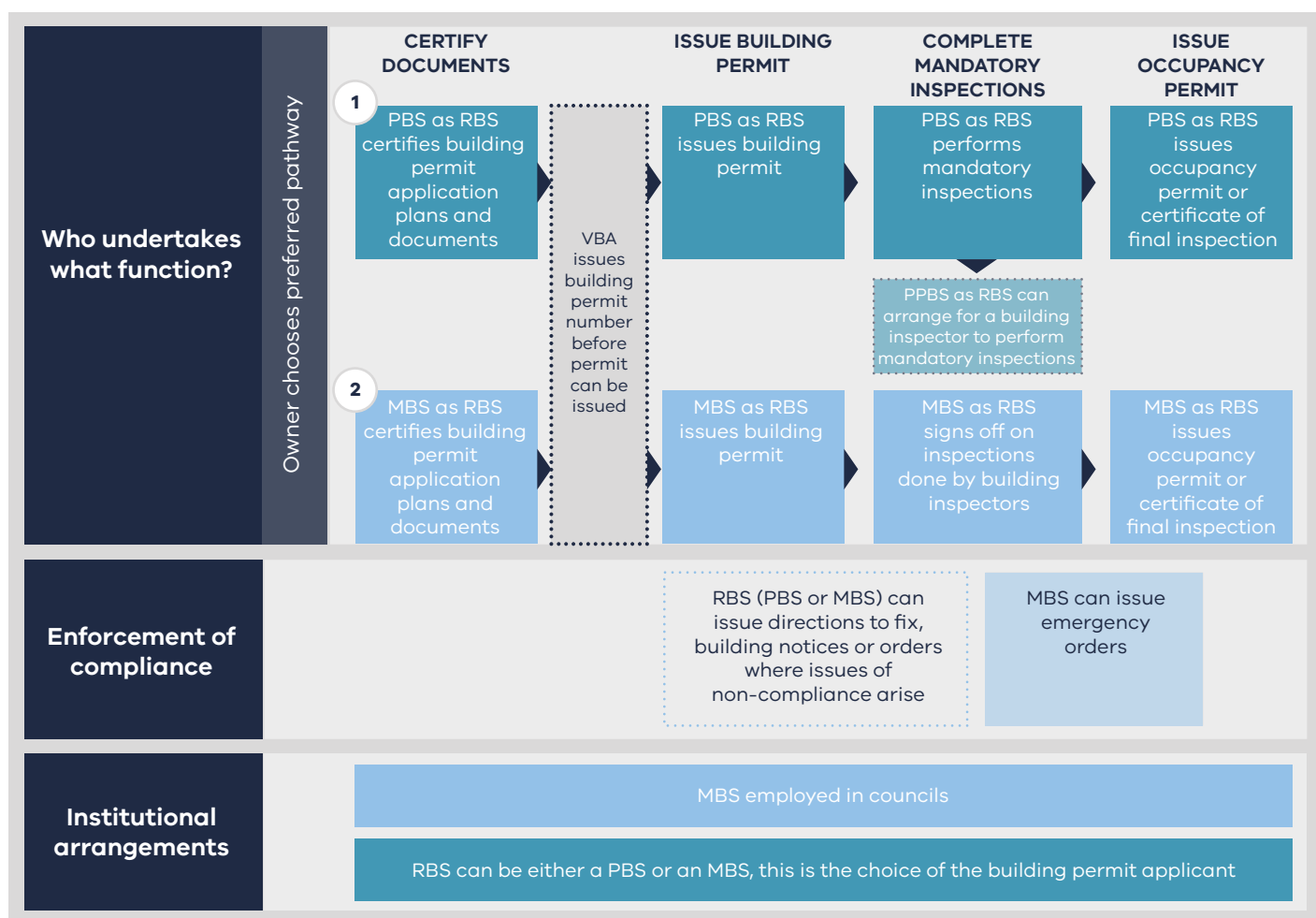
This section provides an overview of how the approvals process currently works, the key challenges it presents and possible improvements to strengthen this element of the building regulatory system.

### 7.1 Overview of the building approvals process

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The building approvals process occurs through a series of permits, checks and balances. There are four key steps in the building approvals process – certification of documentation, issuing of the building permit, mandatory inspections, and issuing of the occupancy permit or certificate of final inspection. The completion of each stage is overseen by the Relevant Building Surveyor (RBS), who can be either a Municipal Building Surveyor (MBS) or a Private Building Surveyor (PBS). Other practitioners (such as inspectors or engineers) can also be involved in the process. A high-level overview of the current building approvals process is provided at Figure 11 overleaf.

Figure 11 | Building approvals process



### 7.1.1 Certification of documents and building permit required to commence building work

The issuing of a building permit certifies that the design documentation, proposed building work and the building permit comply with the Building Act, Building Regulations, NCC and a range of other regulatory requirements.

Before a permit can be issued, the consent of a reporting authority may be required.<sup>78</sup> The RBS must ensure that the building permit is consistent with any relevant planning permit.

Building permits are established under Part 3 of the Building Act. Section 16 of the Act prohibits building work to be carried out unless a building permit has been issued and is in force.<sup>79</sup> A building owner can choose whether to use a PBS or an MBS to certify and issue the building permit (over 90 per cent of permits are currently issued by PBSs).<sup>80</sup> Once a PBS or an MBS is appointed<sup>81</sup>, they become the RBS for the entire building approvals process.

Before a building permit can be issued by the RBS, they are required to apply to the VBA for a building permit number. The RBS advises the VBA on the cost of the proposed building work. This provides the basis for calculating the building permit levy which is required to be paid by the building owner.<sup>82</sup> Building permit numbers may be referenced in other stages of the building approvals process and are used by the VBA to support its auditing, data intelligence and compliance activities.

Where there are performance-based solutions that relate to certain fire safety matters, the RBS will require the 'report and consent' of the chief officer before issuing a building permit.<sup>83</sup>

## 7.1.2 During construction, building works are assessed through mandatory inspections

Once the building permit is issued, construction of a building project can commence. Inspections undertaken at mandatory notification stages are key oversight requirements in the construction phase.

The builder is required to notify the RBS at the completion of each mandatory notification stage of work to initiate an inspection.<sup>84</sup> The purpose of the mandatory inspection stages is to provide a means of identifying and rectifying non-compliant building work during the construction process.

### Mandatory inspection stages are broadly the same for all building work

The Building Regulations set out prescribed mandatory inspection stages for the construction or alteration of a building.<sup>85</sup>

When informed that a mandatory notification stage is complete, the RBS, or a prescribed person under the Building Act, must inspect the building work.<sup>86</sup>

For example, where a PBS is appointed as the RBS, they can contract a Private Building Inspector (PBI). PBIs are registered practitioners that are authorised to carry out inspections of building work on behalf of the RBS. However, the responsibility and accountability for oversight remains with the PBS.

The following mandatory inspection stages are broadly the same for all building work:

- before placing a footing;
- before pouring an in situ reinforced concrete member<sup>87</sup> that is specified in the relevant building permit by the RBS;
- on the completion of the frame work;
- during the carrying out of building work specified in the relevant building permit for the purposes of inspecting fire and smoke resisting building elements; and
- on the completion of all building work.

The RBS can omit mandatory inspection stages where they are not relevant to the building project and will specify on the building permit which stages require an inspection.<sup>88</sup> The RBS can also require more inspections to be completed at any time.

### The RBS can respond to non-compliance identified during a mandatory inspection in several ways

The RBS can issue a direction to fix, building notice and/or building order in response to non-compliant building work.

In the first instance, the RBS must issue a 'direction to fix' building work to the relevant builder if, on reasonable grounds, they believe the work fails to comply with the Building Act, Building Regulations or building permit.<sup>89</sup>

The RBS may also issue a building notice or order to the building owner to bring about compliance with the Building Act, Building Regulations, NCC and/or building permit.<sup>90</sup> Building notices and orders are intended to be used as a last resort and must not be issued unless it is clear that a direction to fix has not been complied with or is not appropriate. A building order may include making an order to stop building works, evacuate a premise, or prohibit any person from entering.

If a builder does not comply with a written direction to fix, or the building notice or order is not complied with by the building owner, the RBS is required to refer the matter to the VBA for enforcement action. The VBA will then assess the direction's enforceability and commence an investigation that may lead to potential disciplinary action or prosecution (for detail on the VBA's compliance and enforcement functions see [section 8.1](#)).

Where there is a matter of danger to life or property, a PBS can refer the matter to an MBS. An MBS may then issue an emergency order if they are of the opinion that the order is necessary.<sup>91</sup> This includes an order prohibiting use or occupation, ceasing of building work, requiring an inspection or specifying materials to be tested.

### Once building works are complete, the RBS may issue an occupancy permit or certificate of final inspection

Once building works are complete, and any directions to fix or orders have been complied with, the RBS may then issue an occupancy permit. An occupancy permit is evidence that a building or part of a building is suitable for occupation. It is not evidence that the building or part of a building to which the permit applies complies with the Building Act or Building Regulations.<sup>92</sup>

The RBS can issue an occupancy permit with conditions or refuse to issue the permit.<sup>93</sup> A person must not occupy a building unless an occupancy permit has been issued.<sup>94</sup> The RBS may be required to seek the 'report and consent' of Fire Rescue Victoria to issue an occupancy permit.<sup>95</sup>

Where required under the building permit, the RBS may

instead issue a certificate of final inspection (typically for extensions or alterations of existing homes where the existing building already has an occupancy permit). A certificate of final inspection is also not evidence that the building or building work concerned complies with the Building Act or Building Regulations.

The RBS determines inspection, testing and maintenance requirements for ESMs, where required. These are documented in the occupancy permit and maintenance schedule and set out the ongoing maintenance requirements that must be met by the building owner. The RBS is required to provide the local council with the occupancy permit and associated documentation once the occupancy permit is issued.

### **Local councils have other functions relating to the building approvals process**

Local councils play other important functions relating to the building approvals process:

- providing approval (report and consent) regarding proposed building work that may affect public assets, infrastructure and amenity;
- receiving, retaining and making available documents and information relating to building and planning permits and occupancy permits;<sup>96</sup> and
- inspecting ESM documentation at any point – this is, however, not a mandatory obligation.



## 7.2 Key issues in the building approvals process

A clear approvals process which appropriately distributes responsibility for decision-making will hold all those involved in the process responsible and accountable for the safety and quality of buildings and compliance with the law.

The Victorian Cladding Taskforce – as well as other expert reviewers – have found that the current building approvals process in Victoria does not enable sufficient oversight to ensure that building works are compliant and meet the objectives of the regulatory system.

The Panel has identified the following key issues relating to building approvals:

- inadequate processes and oversight of complex buildings, including mandatory inspections;
- concentration of responsibility and associated risk on the RBS;
- limited oversight of the RBS in the building approvals process; and
- potential for conflicts of interest between PBSs and builders, developers or design practitioners.

### 7.2.1 There are inadequate processes and oversight of complex buildings, including mandatory inspections

Modern buildings vary in their complexity, both in terms of the construction of their physical form and their design processes. As discussed above in [section 1](#), the current regulatory system, including the approach to building approvals, has not kept pace with significant changes to design and construction of buildings. Stakeholders frequently raise the issue that the current building permit process is a one-size-fits-all approach and that this is no longer appropriate.

The one-size-fits-all nature of the current system is demonstrated by the fact that mandatory inspections are the same for all types of builds. The introduction of additional mandatory inspections for more complex buildings, tailored to risk, was a focus of discussion for many stakeholders. This issue was thoroughly canvassed in the Building Confidence Report, which observed that the current building approvals process may not address the specific risks related to multi-storey residential buildings particularly those associated with design and construct contracts.

Building complexity and risk is also a key focus of the Building Ministers' Meeting (BMM), which recently approved the inclusion of a definition of building complexity in the NCC to commence in 2022.<sup>97</sup> Work by the BMM is being considered by the Panel to ensure consistency in approach to building risk and complexity in the building approvals process.

### 7.2.2 There is a concentration of responsibility and associated risks on the RBS in the building approvals process

The RBS has the primary regulatory responsibility for building approvals decisions, which include:

- assessing and approving building design, and inspecting building works through all mandatory stages of construction; and
- assessing compliance with legislative requirements, approval of changes of use of buildings, determining upgrades for existing buildings, compliance, and enforcement limited to issuing directions to fix and issuing notices and orders.

“While there are many participants in the building supply chain, building surveyors are often relied on as a critical point of quality assurance.

**Victorian Cladding Taskforce Interim Report**

As discussed above, the Building Act provides significant decision-making discretion and independence to the RBS through the various building approvals processes. Under the current system, there is a concentration of responsibility for decision-making about compliance on a single individual – the RBS. Many stakeholders observe that this concentration of responsibility is inappropriate, onerous and can lead to poor outcomes. This concentration also has implications for the building surveyor function and profession:

- The RBS is required to oversee work that may involve complex engineering designs about which they are not likely to be expert. Stakeholders told the Panel that RBSs do not receive appropriate technical advice and support to be able to assure compliance at both the building permit stage and at the mandatory inspection stages.
- Some stakeholders consider that fees paid to the RBS does not reflect the work required to comprehensively check building works and associated documentation.



This imbalance negatively impacts regulatory processes and discourages new entrants to the profession.

- The concentration of decision-making responsibility and associated risks in PBSs<sup>98</sup> has contributed to higher premiums and reduced coverage for Professional Indemnity insurance (PI insurance). Insurance difficulties for surveyors have been particularly acute in recent years given the exposure of the profession to cladding issues.<sup>99</sup> The current challenges in the availability, coverage and cost of PI insurance indicate that insurance providers view the magnitude of the risks held by PBSs (and other practitioners) as significant. This has flow-on effects for not only PBSs and their eligibility to maintain registration and licensing, but also for building owners as the appointed PBS may no longer be covered for certain types of risks.

only be realised by the building owner after occupation, where dispute resolution or legal proceedings may be the only course available for rectification. And, as explained in [section 6](#), the issues of Single Purpose Vehicles and illegal phoenix activity may make it even more difficult for consumers to obtain redress. Recently, NSW has introduced an additional oversight step for Class 2 buildings during the approvals process which is being considered by the Panel (case study 2 overleaf).

### 7.2.3 There is limited oversight over decision-making by the RBS in the building approvals process

There are steps in the building approvals process where the VBA provides some oversight, including the requirement for the RBS to apply for a building permit number before the permit can be issued. However, at this step the VBA does not check the compliance of the building permit with the Building Act or other regulatory requirements.

“

*Many private certifiers are individuals of high integrity. They often experience considerable pressure from the conflicting demands they face from their clients, the regulators and the insurers*


**Building Confidence Report p.12**

”

The current building approvals process provides limited third-party checks on decision-making by the RBS. Oversight is concentrated on the VBA's compliance and enforcement functions. For example, the VBA undertakes desktop audits of PBSs as part of their registration.

This may lead to circumstances where the RBS approves building works that are non-compliant either through a reliance on their own understanding of compliance (which may be outdated or incorrect) or malpractice. There are few opportunities to independently check and confirm the accuracy of the RBS's assessment of compliance in real time. Therefore, the approval of non-compliant work may remain undetected throughout the construction process. In some cases, non-compliance issues may

## CASE STUDY 2 | NSW has introduced new oversight requirements for Class 2 buildings during the building approvals process



NSW has recently introduced the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW) which includes additional oversight requirements for any Class 2 and 3 buildings. Developers are required to notify the Secretary of the Department of Customer Service at least 6 months before they intend to apply for an occupation certificate. The Building Commissioner is then authorised to investigate the construction site for any potential defects – this power is delegated to the Building Commissioner by the Secretary. Where defects arise, the Secretary is notified and may prohibit the issuing of an occupancy permit.

This gives rise to concerns of potential conflicts of interest where a PBS depends on a builder, developer and/or design practitioner they are regulating for their commercial success. The commercial relationship that exists between PBSs and builders, developers or design practitioners creates a risk that the regulation and oversight of building approvals is not impartial or free of conflict and bias.

The potential for conflicts of interest in the relationship between the builders, developers, design practitioners and PBSs can lead to poor decisions. For example, a PBS may rely (or be seen to rely) on a builder, developer and/or design practitioner for recurrent work, which may mean they are reluctant to refuse to issue a building permit. This dynamic can also play out during the mandatory inspections (potentially influencing the thoroughness of the inspection conducted by the PBS).

*they [PBSs] continue to be appointed by developers, who have a financial incentive to minimise cost and ensure that projects are completed as soon as possible. This commercial relationship aligns the incentives of the building surveyor with the developer rather than the eventual end users of the building.*

**Victorian Cladding Taskforce Interim Report p.25**

## 7.2.4 There is a potential for conflicts of interest between PBSs and builders, developers or design practitioners

Approximately 90 per cent of building surveyors in Victoria are private. Given the significant statutory decision-making role of the RBS, this means that regulatory responsibility for building approvals in Victoria lies primarily with non-government practitioners, playing a significant regulatory role.

*the private certification model will always have a significant potential for conflict of interest given the commercial relationship that must necessarily exist between the designer/builder and building surveyor.*

**Building Confidence Report p.11**

The 2015 Victorian Audit-General Office (VAGO) audit also expressed particular concerns about the potential for conflicts of interest that exists for a PBS charged with assessing the work of other building practitioners while also relying on them for future work.<sup>100</sup> This issue was also raised in the Cladding Taskforce Reports and the Building Confidence Report (described right).

In 2016, amendments were made to the Building Act to require a building owner to appoint the RBS and prohibit a builder from being involved in the appointment.<sup>101</sup> This was expected to reinforce the independence of the building surveyor and to give the consumer more control over appointment of the key person responsible for checking compliance of the building work. However, in practice, many building owners take advice from their builder or design practitioners on the selection of a building surveyor.

Stakeholders indicate that recent legislative changes have not sufficiently addressed the underlying potential for conflicts of interest surrounding the appointment of a PBS. Builders and PBSs often enter into commercial arrangements to work together on certain construction projects. This can lead to the builder advising that a specific PBS is the preferred surveyor of the developer or

builder and recommending the surveyor be appointed by the building owner. In other cases, contractual clauses may limit the ability for a consumer to appoint a different surveyor if they want to use that particular developer or builder.

Some stakeholders consider that these commercial arrangements can provide benefits and efficiencies in construction that save time and money, as the PBS is familiar with the nature of the work of the developer or builder. However, this close commercial relationship has the potential to significantly impact the scrutiny which the PBS brings to bear on the project.

The 2019 Statement of Expectations issued by the Minister for Planning to the VBA directs the VBA to “...play a leadership role in strengthening the building surveyor profession...”<sup>102</sup> including through increased information, engagement and performance monitoring. The VBA has recently released a Code of Conduct for building surveyors in response to Recommendation 10 of the Building Confidence Report.

*You can't effectively regulate those who employ you.*

**Insight drawn from Building Reform Expert Panel workshop**

## **PRIVATE BUILDING SURVEYORS – GREATER OVERSIGHT AND IMPARTIALITY IS REQUIRED TO SUPPORT SAFE COMPLIANT BUILDINGS**

In 1993, the Victorian Government introduced the option for PBSs to undertake statutory roles as the RBS in the building system, including issuing building permits, undertaking mandatory inspections and issuing occupancy permits. This move reduced the role of MBSs in the building approval process.

The last thirty years have seen significant changes in how the construction industry operates and how buildings are designed and built. Technology changes have had considerable impacts on the industry, in terms of building and engineering techniques, work practices and materials used. The complexity of buildings has increased – with many more medium and high-rise apartments. As buildings have become more complex, it has become more difficult for a building surveyor to have all the necessary skills or capability to fully assess all elements of proposed building work for compliance with the NCC and other regulatory requirements.

Other technical experts are often used to advise the surveyor but this has led to uncertainty about accountability and increases potential for commercial interests to override the public interest.

The scope of work for building surveyors, designers and other practitioners has not been updated to take account of the increase in construction complexity and risk. Clarifying the roles, responsibilities and accountabilities for building surveyors, designers, building practitioners and regulators so that accountability for compliance and enforcement is appropriately allocated is a key focus for the Panel.

### **The Reports**

The Cladding Taskforce Reports and the Building Confidence Report highlighted concerns with the regulation of PBSs and their role, including:

- potential conflicts of interest between PBSs and builders, developers or design practitioners – with some surveyors influenced by commercial relationships when discharging statutory responsibilities;
- lack of clarity about roles and responsibilities between PBSs, MBSs and the VBA, particularly in relation to compliance and enforcement; and
- concerns about the quality and capability of some PBSs (when acting as the RBS) in providing adequate compliance checks particularly in large and complex construction projects.

In practice, these issues have contributed to poor building quality and safety and have led to a weakening insurance market – ultimately to the detriment of consumers and the industry.

The Government and the VBA have made a number of significant improvements to address these issues by:

- strengthening enforcement functions and powers for the VBA;
- requiring building owners, and not builders, to appoint the RBS;
- issuing a code of conduct for building surveyors; and
- appointing a new position of State Building surveyor.

To further support these improvements, the Panel has made a number of complementary recommendations in its Early Initiatives to Government including:

- developing a protocol for councils, PBSs and the VBA that sets out clear compliance and enforcement responsibilities and developing Municipal Building Control Plans; and
- enhancing the role of the SBS in, and oversight of, the building control system through allocating specific responsibilities, including monitoring and providing guidance to PBSs, and making decisions on applications to terminate the RBS.

The ABCB has recently released a discussion paper for public consultation titled *Integrity of private building surveyors and their role in enforcement – A response to the Building Confidence Report*.<sup>103</sup> This consultation paper responds to Recommendations 9 to 11 of the Building Confidence Report and proposes a model framework for PBSs in fulfilling their regulatory functions.

***Despite these initiatives, the Panel is aware that more needs to be done and this is a priority focus for the Panel's Review in Stage One of the reform program.***

This Paper outlines further improvements to the building approvals process designed to fix the regulatory settings to ensure safe and compliant buildings in Victoria. These involve regulatory changes to improve standards and compliance and to address the potential for conflicts of interest between PBSs and builders, developers, or design practitioners. They include:

- introducing a graduated approach to building approvals based on building complexity, so that complex, high-risk buildings are subject to more rigorous assessments that may include requirements such as independent peer review, mandatory oversight

arrangements (e.g. clerk of works) and increased mandatory inspections (amongst other things);

- creating a greater role for MBSs in the approvals process; and
- establishing a statutory office of the SBS with greater oversight of the building surveying industry and the building approvals process.

Each of these possible improvements are discussed in greater detail below.

The Panel is seeking input on these possible improvements and other approaches to modernising and improving the approvals system as they finalise their recommendations to the Government. As is made clear in this Paper, the Panel has prioritised the need to strengthen building approvals as part of Stage One reforms.

## 7.3 Possible improvements

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The Victorian Municipal Building Surveyors Group (VMBSG), the Municipal Association of Victoria (MAV) and the Australian Institute for Building Surveyors (AIBS) have each proposed a model for improving the building approvals process. Each model seeks to balance accountabilities and increase effectiveness and oversight across the approvals process.

The Panel has also considered another approach which is a graduated approach that could be introduced to provide different approval pathways based on risk, complexity and class of the building project.

In describing the possible improvements, the Panel refers to the following roles that currently exist in the approvals process – PBSs, MBSs and the SBS. The Panel is, however, thinking about each role in terms of its status (private entities, local government and state government) and how this influences the efficacy, transparency and robustness of the approvals process, as well as reducing risks around conflict of interest and individual liability. Each model would require changes to the functions performed by PBSs, MBSs and the SBS.

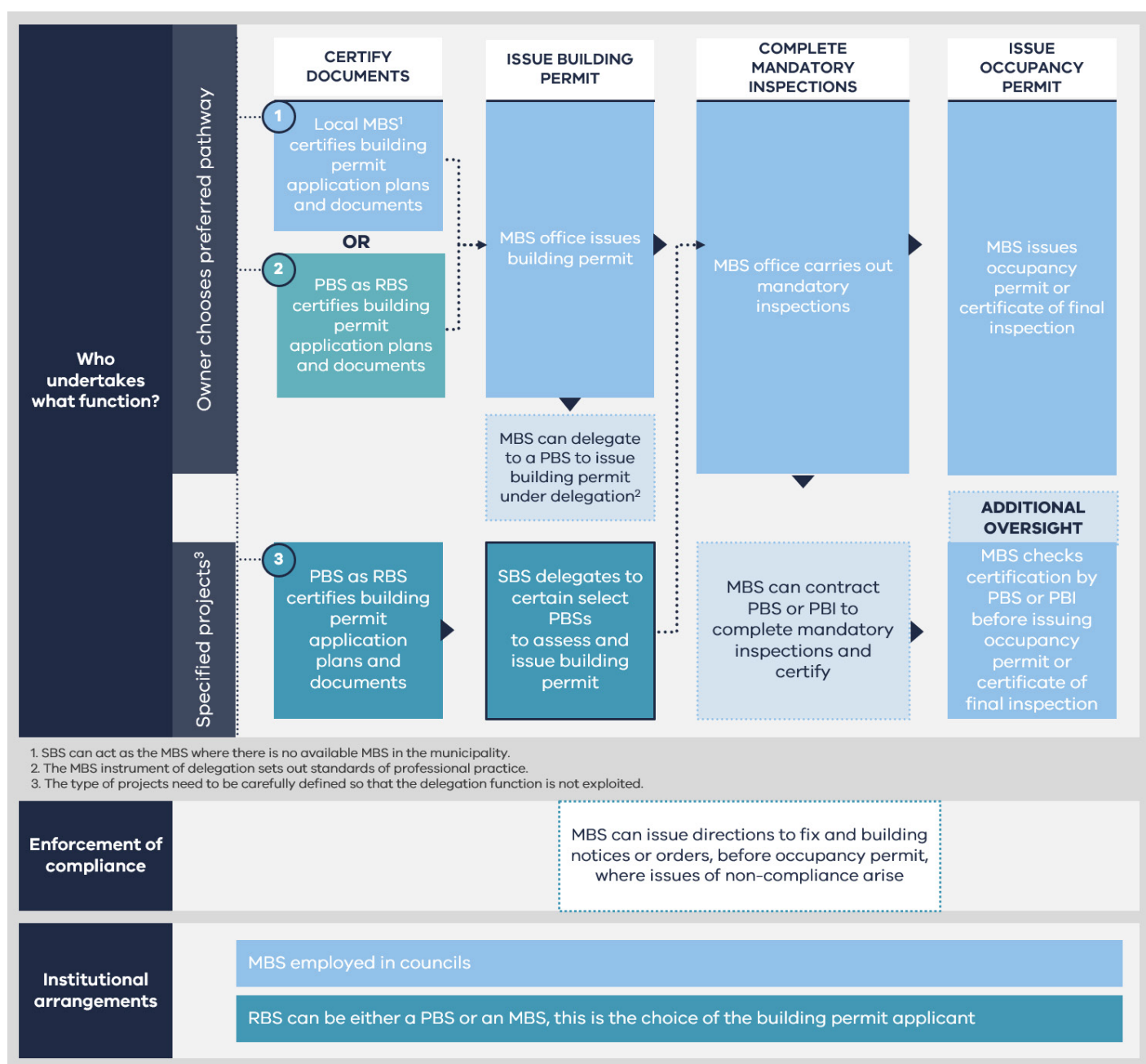
Each of these models has implications for funding and cost recovery. For the purpose of this Paper we are focusing on getting the regulatory framework right and further work will be undertaken on costing and funding implications, subject to the Panel's final recommendations.

Specific reforms that strengthen the building approvals process, which may include consideration of the inspection and certification stages which apply to construction projects (and which may differ with different types of projects), will be considered in Stage Two of the reform program.

### 7.3.1 The VMBSG model – MBSs to play a central role in building approvals

VMBSG proposes that Victoria move to a more centralised building approvals model where MBSs are primarily responsible for the building approvals process. The role of the PBS would be limited to certification of plans and building designs for building permit applications, and the provision of consultative services (design and compliance) to industry generally. A visual depiction of the VMBSG model is provided at Figure 12 overleaf.

Figure 12 | Building approvals process



The VMBSG model is discussed below with reference to the four stages of the building approvals process – certification of documents, issuing of building permits, mandatory inspections and occupancy permits.

## Certification of design documentation

Similar to the current model, the VMBSG model proposes that a building owner may choose whether to use an MBS or appoint a PBS to certify that the building design documentation complies with the Building Act, Building Regulations and the NCC. However, the role of the PBS would be limited to certification of design documentation and they would be unable to be appointed as the RBS.



## Issuing of building permit

Under this model, there are three pathways for the issuing of building permits.

### 1. MBSs to issue building permit after documents certified by PBS

A building owner may appoint a PBS to certify any plans or documents and be engaged in the design process. This then feeds into the application for a building permit that is subsequently issued by an MBS.

### 2. MBSs to certify documents and issue building permit

A building owner may instead go directly to the local council MBS to apply for a building permit which includes the certification of plans and documents and issuing the building permit. Currently, it is common practice for a building owner to appoint a PBS to issue the building permit. This model removes the role of the PBS in issuing building permits.

VMBSG envisages that this reform would place a greater demand on the MBSs to issue building permits and require additional council resourcing for the MBS role. Therefore, the VMBSG model proposes that an MBS could contract a PBS to issue building permits. Any permits issued by a PBS would be overseen by the relevant MBS. MBSs would be responsible for ensuring that permits are issued in compliance with the Building Act, Building Regulations and the NCC.

### 3. PBSs to issue building permits as delegates of the SBS for specified projects

For construction projects that are identified by the VBA as having special circumstances (for example, a major construction project in a rural area), a building owner may appoint a PBS who has delegated authority from the SBS to assess and issue the building permit.

The SBS would have statutory responsibility and accountability for issuing building permits, a function they could delegate to a PBS. The SBS would only delegate functions based on prescribed criteria (possible prescribed criteria are described right).

VMBSG considers that delegation by the SBS has the advantage of leveraging existing skills in the private industry in a more centralised model and would enable the VMBSG model to operate effectively in small towns where there may be few MBSs.

## *THE SBS COULD CONSIDER PBSS' EXPERIENCE, AND BUILDING WORK COMPLEXITY AS CRITERIA TO DELEGATE FUNCTIONS*

The prescribed criteria for the SBS to delegate functions to a PBS may include situations where the PBS is:

- registered with the building regulator as a Building Surveyor;
- holds prescribed PI insurance to issue building permits;
- has AIBS or RICS Building Surveyor professional accreditation; and
- passes the fit and proper person tests.

The SBS may also consider the scale, cost complexity and class of building work allowed in delegations. This option can integrate risk into the building approvals system, so that a PBS with delegated authority could issue building permits for low-risk Class 1 and Class 10 builds. The SBS would have the power to monitor and review PBS delegations and could undertake regular audits of PBSs' functions. PBSs could still function in the market and issue building permits, however decision-making authority and the associated risk would sit with the SBS.

## Mandatory inspections and issuing occupancy permit or certificate of final inspection

Once a building permit has been issued, MBSs would be responsible for the oversight of the approvals process. MBSs would be responsible for all inspections conducted at the mandatory notification stages, as well as decisions to issue an occupancy permit or a certificate of final inspection.

An MBS acting as the RBS could contract a PBS to complete the mandatory inspections stages – MBSs would retain regulatory accountability and only MBSs could issue the occupancy permit.

PBSs would have no enforcement functions (such as issuing of 'directions to fix'). Where a PBS is sub-contracted and determines an issue of non-compliance during a mandatory inspection, the matter must be referred to contracting MBS for enforcement.

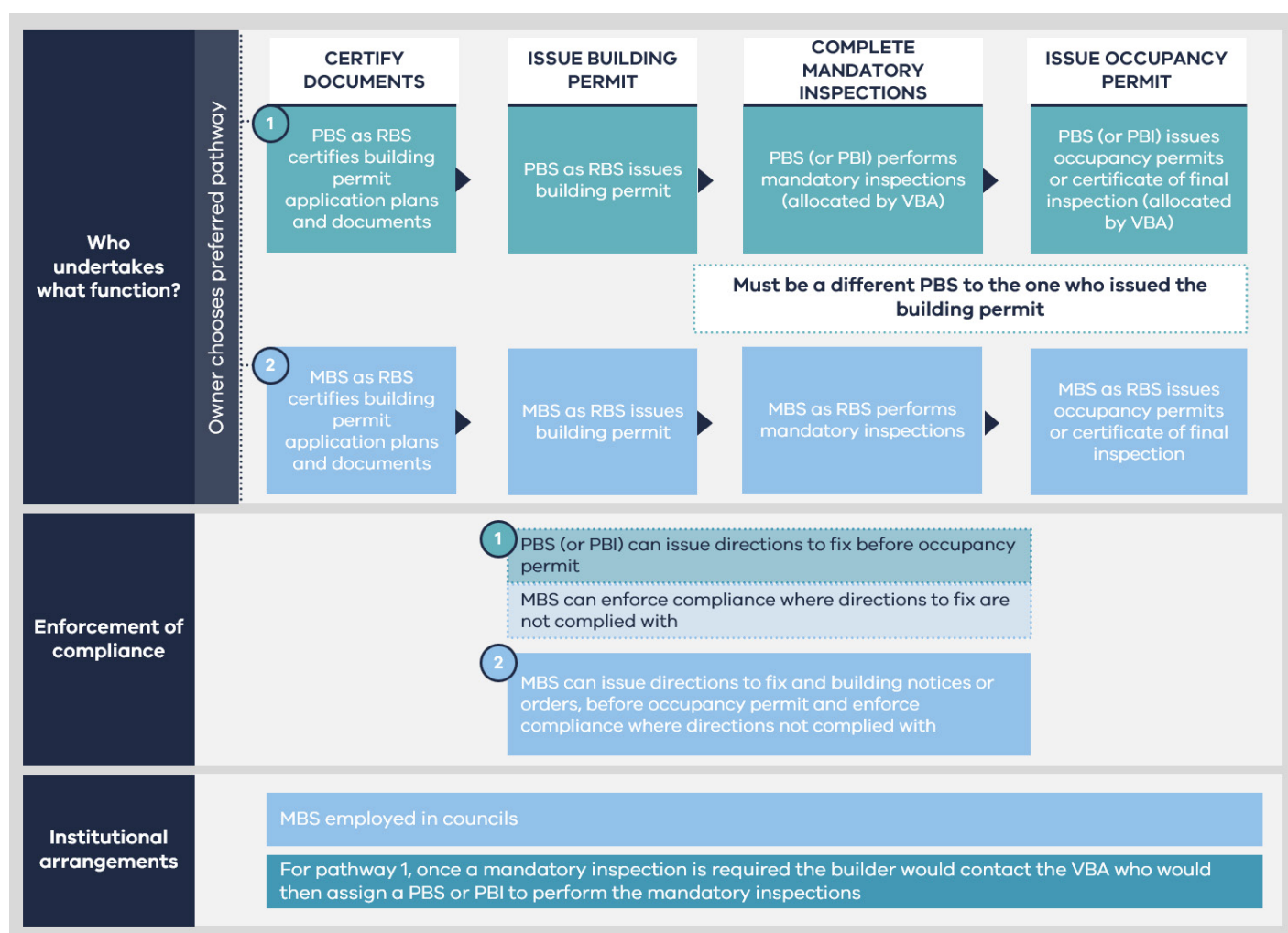
The ability to contract out inspection stages would reduce the strain of additional resources to meet the new demand on MBSs that this model requires, especially in regional and rural communities.



## 7.3.2 The MAV model – PBSs to retain role in building approvals with greater oversight of decision-making

MAV proposes a model where PBSs largely retain their role in the issuing of permits and building work approvals, but with greater oversight of decision-making, no enforcement functions, and a split between the permit issuing role and the inspection role. A visual depiction of the MAV model is provided at Figure 13.

**Figure 13 | The MAV model**



The MAV model is discussed below with reference to the four stages of the building approvals process – certification of documents, issuing of building permits, mandatory inspections and occupancy permits.

## Certification of design documentation and issuing of building permits

The MAV model proposes no changes to the current model of certifying and issuing building permits. A building owner can choose to appoint a PBS or go directly to a local council MBS to certify the design documentation and issue a building permit.

## Mandatory inspections and issuing occupancy permit or certificate of final inspection

There would be two pathways to complete the mandatory inspections and issue the occupancy permit or certificate of final inspection.

### 1. MBSs to act as the RBS (same as current model)

The MAV model proposes no changes where a building owner chooses to go to a local council MBS to issue the building permit. See [section 71.2](#) for a description of the current model.

### 2. PBSs (or PBI) to complete mandatory inspections and issue occupancy permit (allocated by the VBA)

The MAV model proposes options to change the role of PBSs (and how they engage in that role) in mandatory inspections and issuing of occupancy permits or certificates of final inspection.

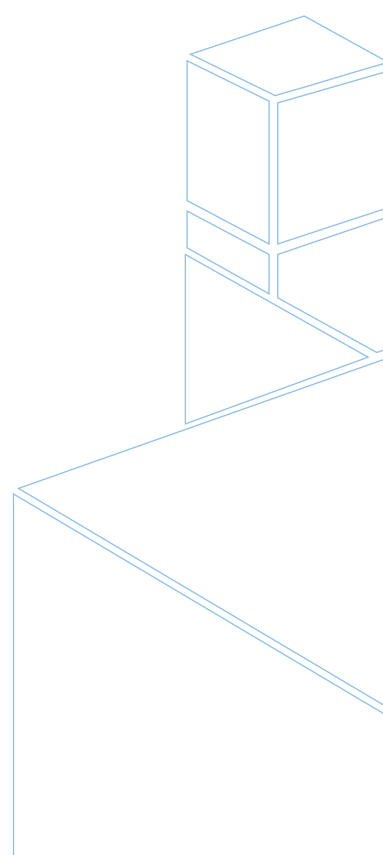
The building owner could still appoint a PBS to issue a building permit. However, the model proposes that the builder (instead of the building owner) would then contact the VBA and the VBA would assign a separate PBS (or PBI) to perform the inspections and issue the occupancy permit or certificate of final inspection. The PBS (or PBI) would be allocated on a 'taxi rank' basis to undertake the two functions. The PBS who completes the mandatory inspections and issues the occupancy permit or certificate of final inspection cannot be the same PBS that originally issued the building permit. Under the MAV model, the building approvals process would be split across two private individuals.

The model suggests that both the PBS appointed by the building owner (to issue the building permit) and the PBS (or PBI) assigned by the VBA should be involved in the final inspection. Both would also be required to sign-off on the issuing of an occupancy permit or certificate of final inspection.

It is expected that some current PBSs would focus on inspection work, some on certification and issuing permits, and some would continue to be active in both roles. MBSs could still undertake functions in building approvals where a building owner chooses to go directly to the local council.

Where there is an issue of non-compliance, the PBS (or PBI) who undertakes the inspections would have the power to issue 'directions to fix'. The PBS (or PBI) would then refer the matter – through the VBA – to an MBS for enforcement (through building notices or building orders).

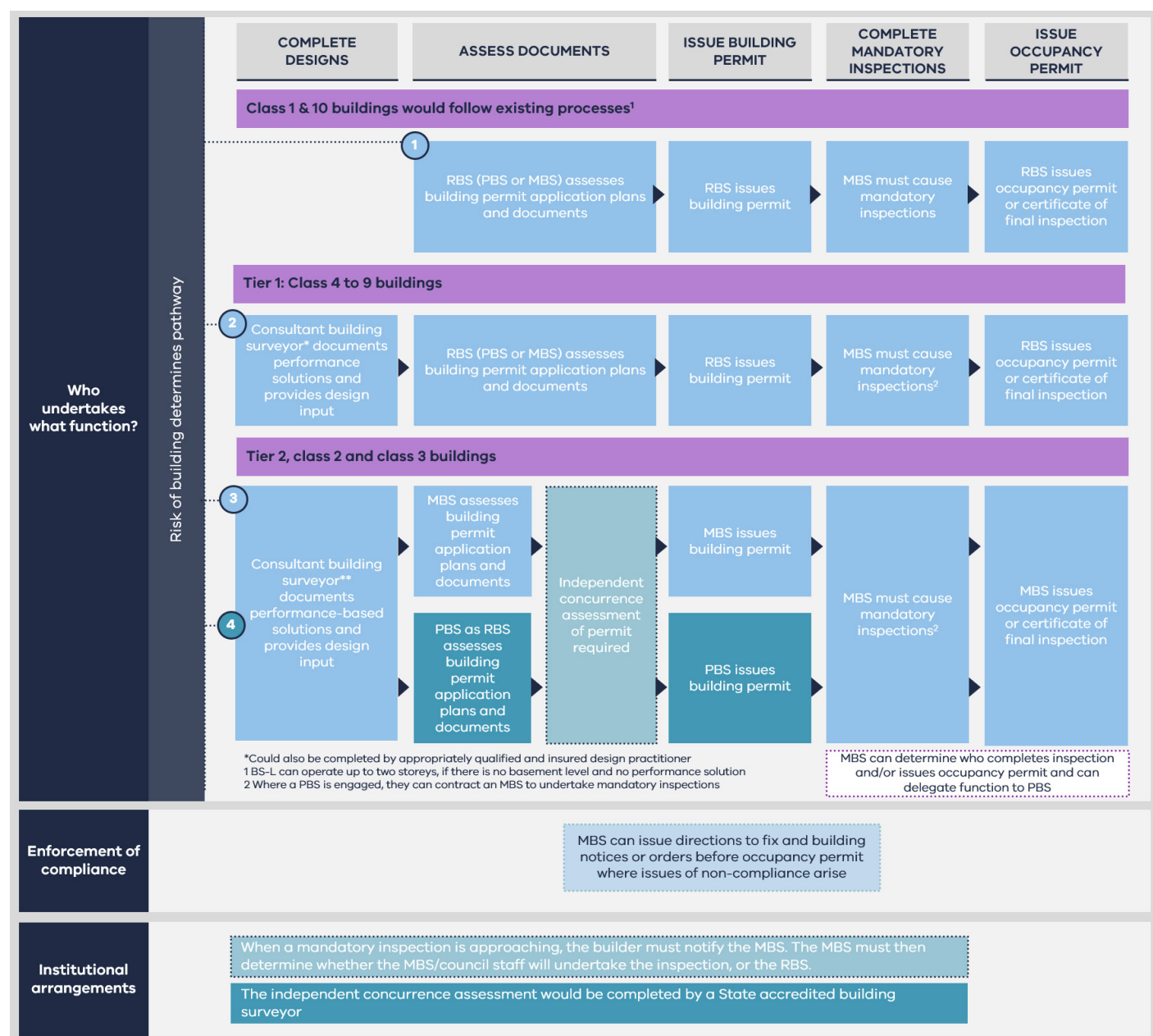
The MBS could then issue an infringement notice as a matter of practice when taking on non-compliance with the 'direction to fix'. The infringement notice would serve both a cost recovery and a deterrence purpose, and would not preclude any further enforcement activities required. MAV proposes referral of non-compliance with a direction should be facilitated through the VBA to provide a single point of entry for the PBS (or PBI) and ensure that the VBA has oversight of the performance of industry as a whole.



### 7.3.3 The AIBS model – role of PBS and MBS dependent on building class and additional step in building approvals process

AIBS proposes a tiered approach with additional steps in the building approvals process. A visual depiction of the AIBS model is provided at Figure 14.

Figure 14 | The AIBS model



The AIBS model is discussed below with reference to the three stages of the building approvals process – assessment of design documents,<sup>104</sup> issuing of building permits, mandatory inspections and occupancy permits; and an additional step (the design stage).

The AIBS discusses Class 1 and 10, Class 4 to 9 and Class 2 to 3 buildings. Buildings that are in Class 1 and 10 are proposed to undergo the least change in process. AIBS notes that there are limitations that should apply in relation to Class 1 and 10 buildings assessed and inspected by building surveyor – limited practitioners, arising from the skills and knowledge by virtue of their education and registration limitations. In addition, AIBS notes the following in respect of Class 1 and 10 and 4 to 9 buildings:

- Inspections should be caused by the MBS for all classes of building, with those inspections undertaken by the RBS, when a notification is received by council that a mandatory stage has been reached. If no inspection is able to be undertaken by the PBS, the MBS can undertake the inspection or engage another to do the inspection.
- The Municipal Building Control Plan should set out the circumstances around when additional (non-mandatory) inspections might occur, with these inspections to be performed by the MBS at times other than mandatory inspection stages of the work.

The AIBS model includes a series of different categories of building surveyor, these are:

- **a consultant building surveyor** to be involved in the design stage for Class 2 to 9 buildings;
- **an independent building surveyor** to provide independent concurrent assessment of the permit for Class 2 and 3 buildings before it is issued;
- **the RBS** (similar to the current model, it can be an MBS or a PBS) to issue building permits and undertake mandatory inspections and occupancy permits in Class 4 to 9 buildings and Class 2 and 3 (with additional review); and
- **an MBS** (acting separate to its functions as the RBS) to have greater responsibility for inspection and authorisation of occupancy of Class 2 and 3 buildings.

## Additional step for Class 2 to 9 - The design stage

The AIBS model proposes an additional step in the building approvals process – a consultant building surveyor to be involved in the design stage for Class 2 to 9. The consultant building surveyor would document all performance-based solutions in accordance with the permit and building design requirements.<sup>105</sup> A design practitioner could be appointed instead of a consultant building surveyor to undertake this function.<sup>106</sup>

At the design stage, the building owner would be required to appoint a consultant building surveyor or design practitioner and the RBS (both individuals must be from different, unrelated companies). The development of performance-based solutions would include input from the consultant building surveyor, the statutory building surveyor (currently known as the RBS) and other designers (including, for example, architects and engineers).<sup>107</sup>

A consultant building surveyor may be appointed for Class 1 and 10 buildings, although it would not be mandatory.

For Class 4 to 9 buildings, the AIBS model proposes that the building approvals steps remain the same as the current model (detailed at 7.1.2).

For all classes, the AIBS model suggests an approach whereby PBSs (when acting as the RBS) can contract MBSs to undertake mandatory inspections. This would enable local councils to offer building surveying staff on a fee basis to PBSs.

## Additional step for Class 2 and 3 – Assessment of design documentation and issuing of building permit

Regardless of whether a PBS is appointed or an MBS is engaged, the AIBS model proposes an additional independent concurrence assessment of the building permit prior to it being issued. An independent building surveyor would be contracted by the RBS to undertake this function.<sup>108</sup>

The model suggests that the independent building surveyor would be accredited by the SBS expressly for this purpose.

To avoid increased cost of independent concurrence assessment flowing through to consumers, AIBS proposes that it could be considered as a public benefit conducted at taxpayer expense.

## Class 2 and 3 - Mandatory inspections and issuing occupancy permit or certificate of final inspection

AIBS notes that currently, the legislated approach requires every building to have the same inspections, which is very predictable, does not address risks efficiently and allows work that is not subject to inspection to go uninspected. AIBS proposes the RBS is responsible for nominating mandatory inspections in addition to legislative minimums.

For all classes of building, mandatory inspections should be supplemented within the current legislation by random inspections undertaken by Local Government acting as a regulatory body, acting consistently with a Municipal Building Control Plan.

AIBS notes that the VBA also has a role to play during construction (conducting inspections at random) to confirm all work required to be performed by registered practitioners is being performed by registered practitioners and to the requisite standards.

From the three sets of inspection types possible, a person undertaking work will not fall into an impression that the only inspections that will occur are at mandatory stages.

In addition, for Class 2 and 3 buildings, the AIBS model proposes that MBSs would be the responsible authority for causing and the undertaking of mandatory inspections and issuing occupancy permits or certificates of final inspection. At each mandatory notification stage, an MBS would be notified by the builder and then cause the inspection to occur by an appropriately qualified,

competent and registered person – this may include delegating the function to a PBS or other staff from local council that were not involved in the issuing of the building permit.

Responsibility for compliance and enforcement actions that might be necessary through the building approvals process' would be with the MBS.

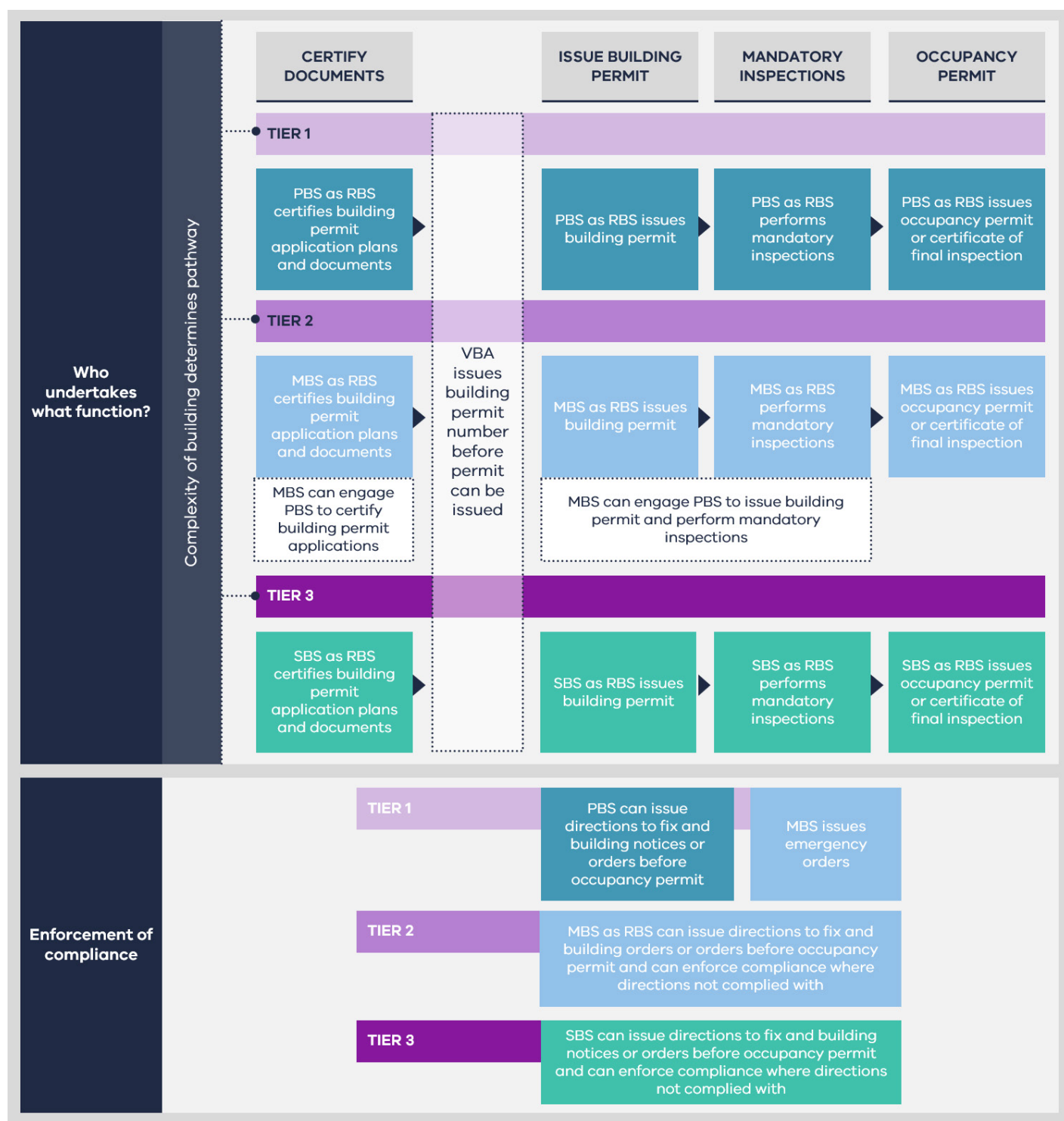
AIBS also suggests that each local council area must adopt an annual compliance and enforcement strategy, such as a Municipal Building and Control Plan. The strategy would include the number of inspections and specific compliance activity to be undertaken and be based in part on public input.



### 7.3.4 A graduated, proportionate approach to approvals

The Panel has considered a graduated approvals approach. The specific application of this model will depend on an assessment of criteria for risk and complexity of proposed building work. An illustrative diagram is provided at Figure 15.

**Figure 15 | Illustrative model of the graduated approvals approach**



A graduated approvals pathway would deliver better built form outcomes as it would apply greater oversight and improved compliance checks depending on the nature of the proposed building work. This option would mean development of different approval pathways based on the attributes and characteristics of the proposed building work. This could include the type and/or use of a building, risk and complexity. Different persons or entities with the appropriate skills and oversight capability would then carry out the statutory functions in the approvals process, based on established criteria, which would be set out in the legislation.

This option provides an opportunity to consider how the approvals system can better integrate risk and complexity into regulatory oversight arrangements, thereby shaping the decision-making processes to achieve higher quality outcomes and provide greater consumer protection. For example, a graduated model could be adopted based on a risk-based classification system.

- For proposed building work that is **low risk and not complex**, a PBS could continue to be responsible for the approvals process. This category likely captures most Class 1 and Class 10 buildings and some additions or alterations (where a permit is required). It might also capture building work related to other building classes where the work can be categorised as low-risk and not complex. Consideration will need to be given to the method of appointment of the PBS, and other checks within the approvals process to minimise the potential for conflicts of interest to impact the PBS' decision-making. For instance, the options to consider may include:
  - responsibility to be given to the SBS for receiving building permit applications and allocating a PBS to be appointed as RBS; and
  - greater oversight of the PBS during approvals and construction, which may involve independent compliance checks or review at certain stages.
- For proposed building work that is **high-risk and complex**, MBSs could be responsible for the approvals process. This category could capture most Class 2 to Class 9 buildings and some Class 1 buildings. Again, this would depend on the application of the relevant criteria.
- For proposed building work that is **highly complex and may present significant risk**, the SBS or the VBA could be responsible for the approvals process either by default or through a 'call-in' function. This category could include construction projects that present significant safety risks, including those types of projects where the VBA is currently appointed by the Minister for Planning as the MBS. Additional measures

may be introduced into this approval pathway to improve regulatory oversight and increase compliance, safety and quality.

Using this approach, the roles, responsibilities and accountabilities of the SBS, MBSs and PBSs would need to be clearly established for both the building surveying industry and others who operate in this environment. Clear pathways that designate particular decision-makers (including procedural steps in the approvals process) would remove the current overlap in roles and functions and lack of clarity relating to responsibilities and accountabilities. It would also remove the potential for conflicts of interest by prioritising the public interest and breaking the direct nexus between PBSs and builders, developers or design practitioners.

The criteria for establishing the relevant pathways would be set out in the Building Regulations, and could distinguish the path that a building permit application may be required to follow based on matters such as risk, complexity of the possible work and type and use of the building. The national definition of building complexity to be incorporated into the NCC in 2022 could be used as one of the criteria. Further analysis will be taken to determine relevant thresholds and what those thresholds mean in terms of requiring different decision-making processes.

## **A graduated approach could include enhanced building approvals processes to assure compliance**

To improve compliance and confidence in Victoria's building system, other possible improvements could be included as part of the different approval pathways to impose additional levels of oversight that address varying complexity and risk. Changes could include mandatory certification of designs, the use of a 'proof expert', clerk of works, additional inspections or compliance checks, third party review and other measures aimed at increasing compliance, safety and quality. Possible improvements in terms of strengthening inspections will be considered in more detail in Stage Two. Additional inspections have clear synergies with the graduated approach to building approvals that the Panel has considered and on which it is seeking stakeholder feedback.



## SUMMARY

### The key issues relating to building approvals are:

1. inadequate processes and oversight of complex buildings, including mandatory inspections;
2. concentration of responsibility and associated risk on the RBS in the building approvals process;
3. limited oversight over decision-making by the RBS during the building approvals process; and
4. potential for conflicts of interest between PBSs and builders, developers or design practitioners.

### The possible models for improvement are:

- the VBMSG model – MBSs to play a central role in building approvals;
- the MAV model – PBSs to retain role in building approvals with greater oversight of decision-making;
- the AIBS model – role of PBS and MBS dependent on building class and additional step in building approvals process; and
- a graduated, proportionate approach to building approvals to provide greater oversight and improved compliance checks depending on the nature of the proposed building work.



### KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER

#### The Panel is interested in receiving feedback on the models presented above, in particular:

- What do you see as the benefits and potential risks of the models described above? In particular, what are the implementation issues which the Panel needs to consider?
- Do you agree that a stronger regulatory framework for building approvals for complex or high-risk building work is needed?
- How should we differentiate between different type of buildings in terms of which types need greater oversight?
- Are there any other potential approaches to strengthen accountability across the building approvals process that the Panel should consider?
- What other suggestions are there that would remove the potential for conflicts of interest between PBSs and builders, developers or design practitioners?
- Is there merit in introducing a 'clerk of works' or similar oversight function into the approvals process?
- Should the NSW system of requiring the developer to notify the regulator in advance of the issuing of an occupancy permit and associated enforcement measures be considered?

Are there other key issues and possible improvements that the Panel should consider?

## 8. REGULATORY OVERSIGHT

There are three main regulatory oversight bodies in the building regulatory system – the VBA, local councils and the ARBV. Each has oversight, compliance and enforcement functions.

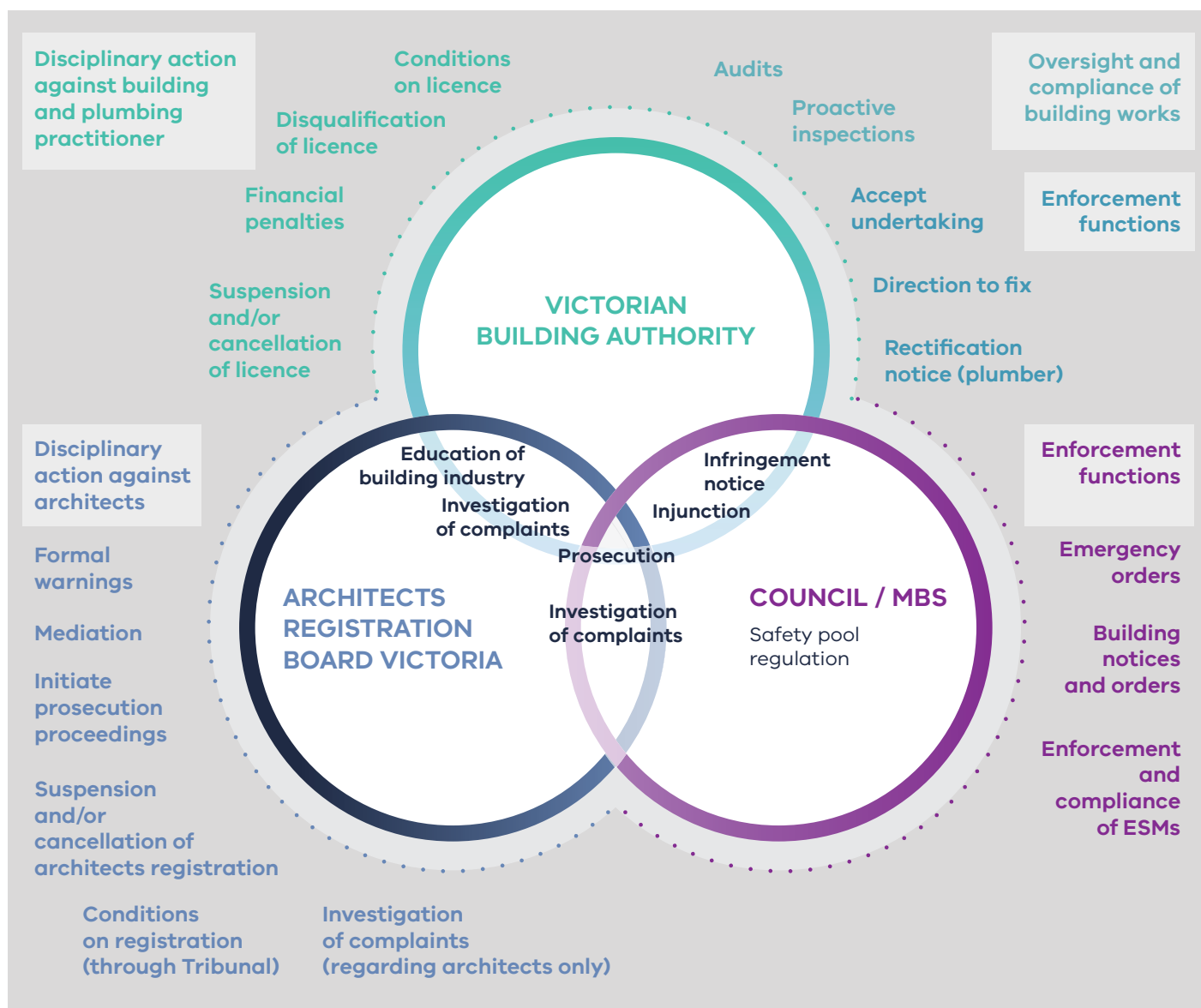
This section provides an overview of the current functions and responsibilities of each regulatory oversight body, identifies the key issues relating to regulatory oversight and sets out the possible improvements to element of the building regulatory system.

### 8.1 Overview of current regulatory oversight bodies

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The roles of the VBA, local councils and the ARBV are illustrated in Figure 16 overleaf. The illustration demonstrates the overlapping enforcement functions of the VBA and local councils.

Figure 16 | Core regulatory oversight functions across the building system



## 8.1.1 The VBA oversees compliance and enforcement of practitioners and building works

In its role as the regulator of Victoria's building and plumbing practitioners the VBA:

- Monitors compliance of building work through a Proactive Inspections Program (PIP), targeted audit and inspection programs and a plumbing audit program.
- Enforces the law through prosecutions for breaches of the Building Act and Building Regulations.
- Takes disciplinary action where the conduct of

registered building practitioners and registered and licensed plumbers raises significant concerns about the practitioner's competency, professionalism and/or compliance with regulatory requirements.

- Provides education and engagement with practitioners and the construction industry, including publishing practice notes, technical solution sheets, fact sheets and other guidance material, technical advice and education seminars, forums and information sessions.

Recent compliance and enforcement action undertaken by the VBA is detailed overleaf.

“Most of the regulators we consulted advised us that proactive audits of private building surveyors were not done or had only commenced in the past three or four years... although there is work presently underway to develop more substantive audit programs. Intervention is rare.

**Building Confidence Report p.12**

## 8.1.2 Local councils are responsible for building compliance within their municipalities

Local councils are responsible for administration and enforcement of parts of the Building Act and the Building Regulations within their municipalities.<sup>113</sup> Local councils appoint MBSs to lead their building control activities and many of the relevant functions and powers in the regulatory scheme are vested directly in MBSs.

The principal regulatory responsibility of MBSs is the enforcement and compliance of building work, particularly in relation to building matters that raise immediate risks to life and safety. MBSs have broad entry and information gathering powers to investigate potential non-compliance with the building regulatory requirements. Where there are issues of non-compliance, MBSs also have the power to issue building notices and orders, in some circumstances, even where they are not acting as the RBS. The MBS cannot issue directions to fix, unless acting as the RBS.

MBSs also have powers to make emergency orders at any time for any building in their municipality where the building, building work or place of public entertainment poses a danger to life or property.<sup>114</sup>

MBSs can issue infringement notices to building owners or occupiers of any building or land or persons carrying out building work, and local councils can prosecute some offences under the Building Act.

In line with their broad responsibilities relating to the safety and compliance of buildings and building work in their municipal districts, local councils have other distinct functions:

- Enforcing compliance with obligations relating to ESMs in buildings within their municipal districts.
- Responding to emergency situations to assess the impact of natural disasters, fires, vehicle impacts etc. on affected building(s) and, where required, exercising their powers to ensure public safety.
- Overseeing the recently introduced swimming pool safety regulations, including through registering private pools and spas within their municipalities and ensuring that certificates of barrier compliance are regularly lodged as proof that they have been checked for compliance.
- Receiving applications for assessing and issuing occupancy permits for places of public entertainment and siting consents for prescribed temporary structures in their municipality.

### IN RECENT YEARS, THE VBA HAS INCREASED THEIR PROACTIVE INSPECTION REGIME

Over 11,912 building sites were inspected as part of the PIP in 2019-20.<sup>109</sup> The VBA has been working steadily over the last three years to increase its PIP program. 2019-20 saw a 48 per cent growth in inspections from 2018-19 and with 305 per cent growth from the previous year.<sup>110</sup> Approximately 500 proactive plumbing inspections were completed in the first two months of the program to 30 June 2019, this doubled to 1,095 in 2019-20.

In 2018-19, the VBA took disciplinary action in 59 building cases,<sup>111</sup> conducted 16 plumbing inquiries and completed 61<sup>112</sup> prosecutions. In addition, 59 show cause notices were issued to practitioners, with 14 of these accompanied by an immediate suspension.

### 8.1.3 The ARBV oversees compliance and enforcement of architect's conduct

The primary focus of the ARBV is the regulation of architects. The core functions of the ARBV are:

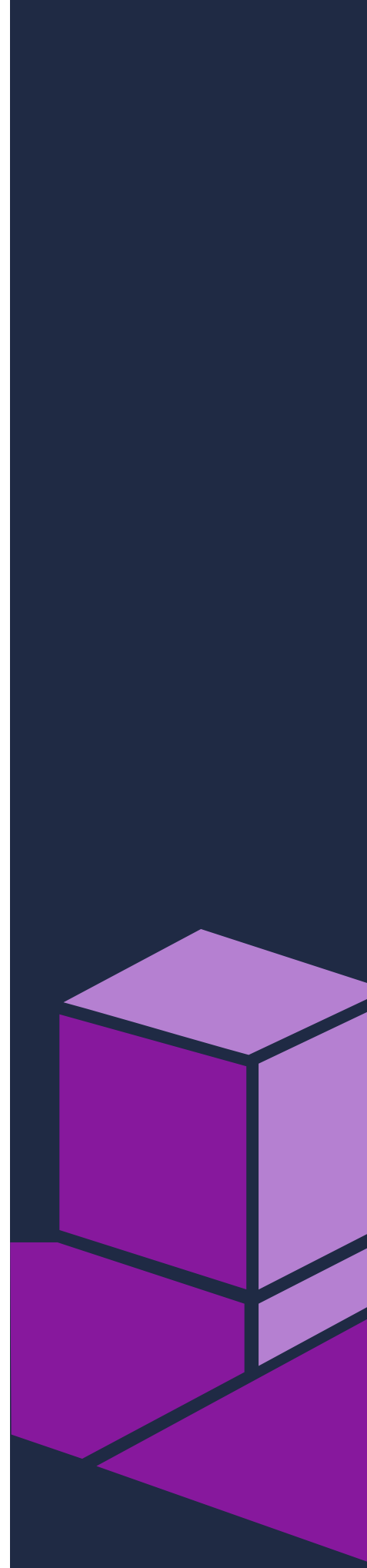
- monitoring architect conduct;
- investigating architect misconduct;
- undertaking disciplinary action against architect misconduct; and
- establishing a Tribunal to hold an inquiry into misconduct of an architect.<sup>115</sup>

Similar to the VBA, the ARBV investigates and takes action in response to incidents of potential architect misconduct. Matters may be referred to the ARBV through complaints made by any person, including a client or a related practitioner. The ARBV also investigates complaints against architect practitioners that are referred by other regulators, including the VBA.

The ARBV can respond to potential misconduct through informal advice or formal warnings. The ARBV can then establish and refer the matter to a Tribunal for further disciplinary action. If referred, the Tribunal can make the following determinations:

- cautions and/or reprimands;
- mandatory further education; and
- conditions, suspension, or cancellation of registration.

The ARBV is required to enforce any determination by a Tribunal. In 2019-2020 there were four cases referred to a Tribunal and six that were finalised.<sup>116</sup>



## 8.2 Key issues in regulatory oversight

The current arrangements for regulatory oversight, compliance and enforcement do not enable effective monitoring of practitioner conduct and enforcement of the Building Act and Building Regulations. The Panel has identified the following key issues in relation to regulatory oversight:

- overlap of the functions and powers of the regulators;
- fragmented approach to oversight of design practitioners;
- inadequate data collection, access to and sharing of data, among regulators and with other government agencies or departments; and
- ongoing criticism of building regulators.

### 8.2.1 Overlap of the functions and powers of the regulators

As illustrated above in Figure 17, the regulatory functions and powers of the MBSs/local council and the VBA overlap. This overlap has led to a lack of clarity as to where each regulator's oversight begins and ends and who is responsible for taking enforcement action for breaches of the law.

For example, local councils and the VBA are both responsible for ensuring and enforcing compliance with the Building Act and Building Regulations. Both regulators can inspect building work and take enforcement action through injunctions, infringement notices or prosecutions. There are some clear distinctions between enforcement functions. The VBA can issue directions to fix, whereas MBSs cannot, unless acting as the RBS. MBSs can, however, issue a building notice or order in some circumstances, whereas the VBA cannot. However, under section 190 of the Building Act, the VBA can be declared an MBS for specified building work or a class of building work within a municipality and can therefore undertake all of the functions of an MBS.

“*It is not just the conduct of private building surveyors that contributes to the problems but also the lack of regulatory oversight of their conduct and, more importantly, the absence of a cohesive and collaborative relationship between state and local government and private building surveyors.*

**Building Confidence Report p.12**

”

The lack of role clarity has contributed to tensions between regulatory actors (including between the VBA and local councils). For example, some stakeholders consider that the broad remit of section 212 of the Building Act has led to numerous disagreements in relation to who is ultimately responsible for enforcement action.<sup>117</sup>

This has been a consistent theme in previous reports and inquiries into Victoria's building regulatory system. The Cladding Taskforce Interim Report cited evidence of continuing confusion regarding the respective regulatory responsibilities of the regulators and local government, especially in situations where a PBS has been appointed. The Interim Report indicated it was *“timely to recalibrate and clarify the role of VBA/Local Government/MBS and the PBS”*.<sup>118</sup>

This lack of role clarity also results in accountability failures. Not surprisingly, consumers are often ‘handballed’ between the regulators when they have issues.

### 8.2.2 Fragmented regulatory approach to oversight of design practitioners

Design practitioners include a range of professionals involved in design work, including architects, engineers and draftspersons. Under the Building Act, design professionals may be registered either as a drafts person or engineer – the VBA has oversight of both categories of design practitioners.<sup>119</sup> Architects are registered under the Architects Act and the registration and regulation of architect conduct is the responsibility of the ARBV.

The Building Confidence Report noted that the quality of design documentation that informs building permits is often poor and that this has ongoing negative impacts on the quality of buildings.<sup>120</sup> Importantly the Building Confidence Report made a number of recommendations to improve design of performance-based solutions.<sup>121</sup>

In [section 6](#), this Paper discusses possible improvements to assess and align the registration of design practitioners as necessary to strengthen accountability for those involved in the design of building work. The Panel is also considering improvements to ensure a consistent approach to the regulation of design work, including a Declaration of Design Compliance (see [section 6.4.1](#) for further detail).

Some stakeholders also consider that the separate regulation of design practitioners under the Building Act and of architects under the Architects Act fragments

regulatory oversight of persons involved in building design. The inconsistent approach to regulation of those involved in design may contribute to poor quality and inconsistency of design documentation during the early stages of building works.

### 8.2.3 Inadequate data collection, access to and sharing of data, among regulators and with other government agencies or departments

Current information sharing between regulators and agencies in the building sphere is sporadic and ad hoc. A lack of systematic information sharing means that where non-compliant building work is identified by a local council or the VBA, this is not communicated to the other, who may or may not be aware of the issue. This can result in duplication of effort where both regulators take enforcement action, or both fail to act.

It also means that neither the VBA or local council gets a full picture of the trends and patterns emerging that require a regulatory response. For example, there might be an increase in the number of compliance failures for waterproofing that could indicate a need for more education, a targeted audit program and/or enforcement or disciplinary action by the regulator. Sharing of information could alert regulators to poor practitioner performance that needs to be urgently addressed.

A second issue is that information is not collected in a consistent format which makes sharing difficult. Each local council and each regulator have different data collection and record keeping processes and systems. The VBA also has a number of legacy systems that mean data is difficult to share systematically and analyse to inform regulatory responses. Poor information gathering and analysis also negatively affects consumers ability to make empowered choices in relation to builders they engage with (see [Section 9](#) for a discussion on consumer protection).

It is important to note that the VBA are in the process of making improvements to their systems, commencing with introducing a new system for the collection and management of building permit information reported to the VBA by the RBS, the Building Activity Management System (BAMS).

Other information about practitioner conduct and compliance should be available to regulators and other relevant entities as required. For example, data from DBDRV or the Victorian Managed Insurance Authority (VMIA) may inform improvements in the VBA's education, enforcement and compliance functions. A more consistent understanding across entities about what information can be shared with whom would improve information sharing practices.

In some cases, stakeholders suggest that there are certain legislative barriers that prevent regulators from sharing information, including privacy principles.

However, regulators and other agencies have taken steps to better understand and leverage information they hold. These steps include the establishment of committees and working groups tasked to identify opportunities to share relevant information. The Joint Building Intelligence Group (JBIG) was established to identify opportunities for improvement in the consistency of information collected and stored by regulators. JBIG membership covers all key agencies involved in the building system, including the VBA, CAV, ARBV, VMIA, DBDRV and ESV.

### 8.2.4 Ongoing criticism of building regulators

Over the past few years there has been increased scrutiny of the effectiveness of the Victorian building regulatory system, particularly in relation to poor safety and consumer protection outcomes. Recent evidence of regulatory and industry failures are discussed above.

Successive reports by VAGO in 2011<sup>122</sup> and 2015,<sup>123</sup> and the Victorian Ombudsman in 2012,<sup>124</sup> have criticised the operation of the VBA and its predecessor, the Building Commission, and their contribution to regulatory failures and persistent poor outcomes.

The Victorian Cladding Taskforce highlighted a “*culture of non-compliance in the building industry*” and noted in its Interim Report that many submissions received commented negatively on the investigation, enforcement and discipline processes that are currently in place to ensure compliance.<sup>125</sup>

Several legislative reforms introduced in recent years have sought to strengthen the powers of the regulators, particularly the VBA, to oversee building and plumbing work and practitioners.<sup>126</sup> The VBA has also delivered improvements to its regulatory oversight, with a particular focus on consumer protection, building safety and lifting practitioner performance over the last few years. These improvements are set out at [Appendix G](#).

However, stakeholders continue to express a need for further reform to provide greater regulatory oversight of building approval processes and practitioner conduct.

*In the face of the shift to private certification across the country since 1993, regulatory oversight of the role of private surveyors by governments around the country has been patchy.*

**The Building Confidence Report p.23**



## 8.3 Possible improvements to regulatory oversight

Continuing improvements to the existing regulators, particularly relating to the VBA, are currently underway. The Panel recognises the need for fundamental improvements to clarify regulatory roles and functions and strengthen existing oversight arrangements. The Panel has also considered the introduction of an independent statutory 'Office of the SBS' which can build on improvements to strengthen and clarify the existing arrangements. Another improvement considered below is to separate regulation of building work from practitioner registration and oversight into two distinct regulators.

The following possible improvements are detailed below:

- strengthen oversight arrangements within existing structures;
- establish an independent Office of the SBS; and
- consider reform to the structure of the existing regulatory oversight framework.

### 8.3.1 Strengthen oversight arrangements within existing structures

There are two mechanisms with which to strengthen the existing oversight arrangements, these are:

- clarify oversight roles and functions of regulators; and
- implement measures to improve regulatory practice.

#### Clarify oversight roles and functions of regulators

Amendments could be made to the Building Act to improve clarity of the respective building oversight roles and functions that each regulator holds. For example, section 212 of the Building Act could be amended to provide greater clarity regarding what requirements rest with local councils to enforce, particularly focusing on clearly delineating their responsibilities from those which sit with the VBA.

A forum – or other formalised structure – could also be established where representatives from relevant regulators can meet to collaborate and discuss key issues. This would help facilitate more collaborative and effective working arrangements between regulators and enhance overall regulatory oversight within the system.<sup>127</sup> As part of its Early Initiatives, the Panel has recommended

that a protocol be developed with the aim of reaching agreement between MBS/local council, the VBA and PBSs on their respective roles and responsibilities. This Early Initiative is set out at [Appendix E](#).

#### Implement measures to improve regulatory practice

There is also a range of legislative and non-legislative measures that could be implemented to optimise desired regulator behaviours and practice. The following non-legislative action could be taken:

- The VBA could implement a program of random inspections of completed work and at mandatory inspection stages to complement the PIP.
- Regulators, including DBDRV and the VMIA, could be required to produce an annual or bi-annual report on trends in, and incidences of, defective and non-compliant building work.
- The Government could consider ways to improve resourcing available to MBSs and local council building departments to ensure that they can robustly discharge their building control functions.
- The Minister for Planning could issue guidelines (section 188 of the Building Act) and/or directions (section 188AA of the Building Act) to all PBSs and/or MBSs about the way that they carry out their statutory functions.
- The Minister could use the Statements of Expectation to the ARBV and the VBA to set out matters relevant to improving particular areas of regulatory practice and bolster information sharing and collaboration between regulators.
- Further support could be provided to regulators to improve information and intelligence capabilities. This might include funding IT improvements.
- Information sharing arrangements between regulators, government departments and other relevant bodies (including CAV, DBDRV and VMIA) could be facilitated and specified.

Some legislative measures that could be introduced include:

- Remove legislative barriers that limit the sharing of information through legislative amendment or clear overarching information sharing agreements.

- Amend the Building Act to reduce current overlap and lack of clarity around which regulator should act in certain instances of non-compliant building work.

Once feedback is received from this Paper on approaches to regulatory oversight, the Panel will consider possible improvements to regulatory tools and powers to strengthen the regulators' monitoring and enforcement functions. This may include enhancing the tools and powers available to regulators to require non-compliance to be rectified, especially post-issuing of an occupancy permit. Strengthening the oversight arrangements within existing structures will improve confidence and inform consideration of structural reform proposals.

### 8.3.2 Establish an independent Office of the SBS

Another improvement opportunity would be to create a statutory Office of the SBS and assign the SBS a legislated role and clearly defined functions and responsibilities under the Building Act. This improvement would position the SBS as the clear source of technical expertise for industry and provide them with responsibility for oversight and guidance of the building surveying profession.

Establishing an independent Office of the SBS would be a logical extension of the Panel's Early Initiative to strengthen the role of the SBS in the current capacity as an executive officer of the VBA. An independent office of the SBS would provide the required clarity, authority and foundation on which the SBS can be appropriately resourced and supported to discharge the functions of the office. Stakeholders have expressed strong views on the need for the SBS to attain greater independence in order to act as the leading building surveying industry technical expert.

There are a wide variety of functions that the Office of the SBS could be assigned, including:

- Providing technical advice and guidance to building surveyors (and potentially the broader building industry) including through publishing guidance material such as practice notes.
- Advising the Minister for Planning on significant strategic and regulatory issues impacting the building surveying profession and the broader building industry, which could include a data capture and reporting obligation.
- Working with, and acting as the conduit between, each of the regulators in the building system and leading efforts to enhance regulatory processes across the

board.

- Representing Victoria on national bodies and forums such as the Building Codes Committee and the ABCB.
- Having a legislated seat on the Building Regulations Advisory Committee.
- Preparing and issuing guidelines and mandatory directions to PBSs and MBSs relating to the way that they exercise their statutory functions.
- Acting as the decision-maker for applications to terminate the appointment of a PBS.
- Making decisions on the appointment of a manager for a PBS's business in circumstances prescribed under Part 6 of the Building Act.
- Stepping in to temporarily assume the role of MBS in situations where a local council does not have an MBS appointed.
- Auditing building permits to check for compliance with the requirements of the Building Act, Building Regulations and the National Construction Code, and referring issues of non-compliance to the VBA.

Many of the functions outlined above are currently performed by the VBA. Moving them to the Office of the SBS would streamline the VBA's functions and allow greater focus on 'core' regulatory oversight functions. Establishing the SBS as independent from the existing regulatory structure would strongly position them to work individually and collectively with the industry regulators to improve coordination of oversight and overall regulatory practice. The independent Office of the SBS would also provide advice directly to industry in a way that does not conflict with the oversight function of a regulator.

Depending on the preferred improvements to be made to the building approvals process, the SBS may also play a role in any changed approvals system. This may be as the RBS 'called in' construction projects (as per [section 7.3.4](#)).

A further consideration under this possible improvement would be whether MBSs should be employed by the Office of the SBS with each MBS being embedded within local councils to manage their statutory building approvals and control functions. This would provide centralised oversight over the exercise of the MBS functions as well as control over resourcing of these critical positions. This may be particularly useful in ensuring that at all councils across Victoria (including in regional and rural areas) have an MBS in place or that additional resources are accessible to assist with carrying out the functions when required.

There are several governance arrangements under which an Office of the SBS could be established. It is likely that the SBS would be directly accountable to the Minister for Planning, in line with the intention to create an independent expert advisor that is separate from the

other regulators in the system. Examples provided by other Victorian public sector offices viewed to be similar in function could be assessed for guidance on the appropriate legal form and governance arrangements. These include the Office of the Surveyor General and the Office of the Victorian Government Architect.

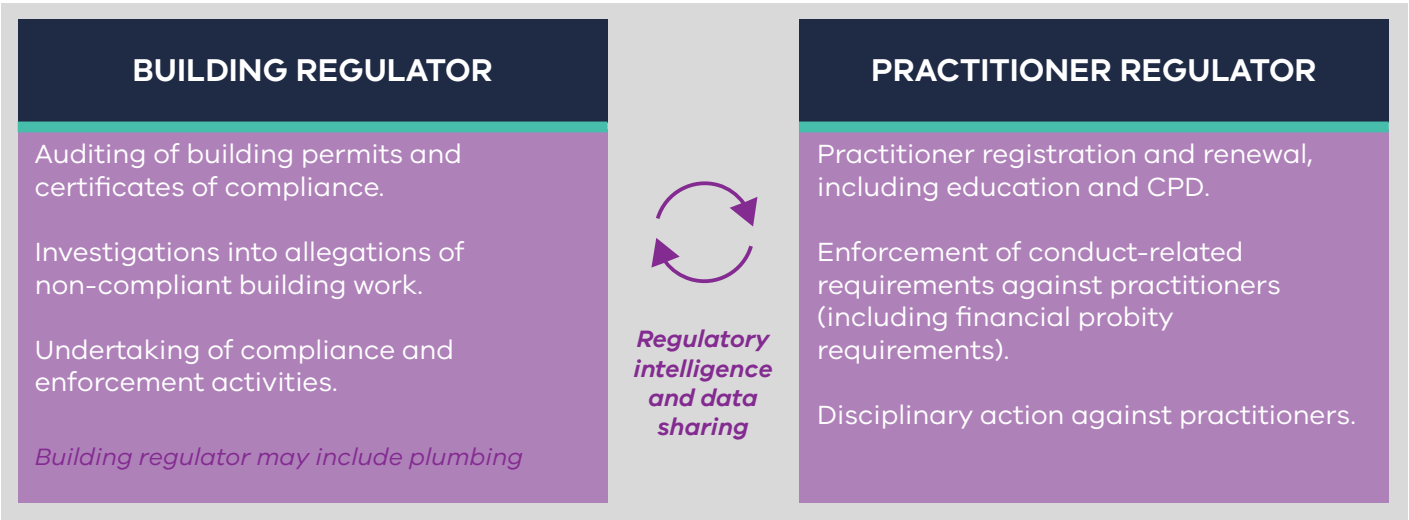
### 8.3.3 Consider reform to the structure of the existing regulatory oversight framework

Structural reform to the governance of regulators may be one approach to address persistent failures in regulatory oversight. One option considered by the Panel is separating the regulation of building works from registration and oversight of building practitioners through the establishment of two entities:

- Building (and Plumbing) Regulator – responsible for overseeing building work and plumbing work compliance.
- Practitioner Regulator – responsible for practitioner registration and licensing and practitioner conduct.

Figure 17 sets out how the functions could be allocated between the two regulators.

Figure 17 | Possible improvements to regulatory oversight



The separation of functions between two separate regulatory bodies may introduce greater efficiency and effectiveness of oversight. A narrowly focused role for each regulatory body could enable each regulator to prioritise resources and activities, in a way that is targeted and streamlined.

The Victorian Cladding Taskforce recommended that:

“ **the Department of Environment Land Water and Planning and the VBA review the current legislative and regulatory provisions relating to the disciplining of building, plumbing and architecture professionals with a view to reducing delays and improving transparency of the processes. This could be progressed as part of a package of broader reform.**<sup>128</sup> ”

Creating a separate practitioner regulator with a greater focus on registration, conduct and disciplinary action could reduce delays and improve transparency of processes.

This possible improvement would involve a broader reconsideration of the roles and functions played by all regulators in the system. Implementation considerations would ensure the current identified issues relating to fragmentation of regulatory oversight and lack of role clarity were not exacerbated or repeated.

Relevant work being progressed as part of the Panel's recommended Early Initiatives (including the development of a protocol and municipal building control plans set out at [Appendix E](#)) will also assist in addressing the issue of fragmentation. Any changes to the regulatory oversight structure would be complemented by a consideration of regulatory powers and tools.

## Establishing a separate Building Regulator

The Building Regulator would be the key technical regulator in the system for building work and compliance. The primary role of the Building Regulator would be to monitor and enforce compliance of building works.<sup>129</sup> This would include functions such as auditing of building work, investigating allegations of non-compliant building work and undertaking enforcement action.

The Building Regulator's responsibilities would extend to compliance and enforcement for work undertaken by all registered practitioners. This could include plumbers, architects and others determined in the review of mandatory practitioner classes discussed in [section 6.3.1](#).

The Building Regulator would require staff with technical skills and expertise to oversee the range of works undertaken by different registered practitioners.

The SBS could act as the Building Regulator, however, consideration would need to be given to its current function as a technical expert adviser for industry. Issues may arise if the SBS were responsible for providing technical advice in addition to overseeing compliance. For example, a scenario may arise where a builder acts on the advice of the SBS, and is later issued with a direction to fix, or referred for disciplinary action for non-compliance. On the other hand, merging the two functions (technical advice and compliance) within the one regulator can enable better clarity of information and identification of trends to inform enforcement and education practices. The Panel is keen to obtain stakeholder views on this point.

## Establishing a Practitioner Regulator

The Practitioner Regulator would oversee the conduct of building and plumbing practitioners. It would be responsible for registering and licensing practitioners and enforcing conduct-related registration and licensing requirements. This includes, for example, where a practitioner does not meet their financial and personal probity requirements or is carrying out work outside the scope of their registration or licence. The Practitioner Regulator would also be responsible for education and CPD of building and plumbing practitioners.

The Practitioner Regulator would also be responsible for

hearing and determining disciplinary actions against practitioners. Where there are allegations of non-compliant work, the Building Regulator would investigate the allegations, determine whether a breach has occurred and then refer the matter to the Practitioner Regulator for disciplinary action. This approach would require clear legislative and regulatory measures to ensure that matters are appropriately referred from the Building Regulator to the Practitioner Regulator.

As noted, there are a number of regulators with different functions which impact on the building and construction sector. This fragmentation can create uncertainty about overlapping roles and responsibilities and affect the effectiveness of the overall regulatory framework. This could be addressed by considering whether to bring together these functions. For example, the practitioner regulator functions of the VBA could be expanded to include architects and the current functions of the ARBV. This option is also consistent with recommendations in the Building Confidence Report to achieve greater consistency in the regulation and oversight of design practitioners and building industry participants across the construction process. Decisions about the structure and composition of the regulator need to be guided by what delivers the most effective regulatory settings in regard to approvals and practitioner standards.

Consideration could also be given to merging the regulatory functions of Consumer Affairs Victoria which impact on the building industry and those which impact on building consumers into the building regulator. In this scenario, there could be merit in considering whether oversight of the regulatory system for major domestic building contracts and building dispute resolution under the DBC Act should be brought together with oversight of the building regulatory system under the Building Act.

A more integrated regulator model would bring a system-wide approach to regulation of practitioners and oversight of building, plumbing and design work to provide consistent practice and procedure and leverage economies of scale by reducing duplication.

The Panel looks forward to stakeholder views about the most effective structure of the different regulatory frameworks for building approvals, practitioners and certain current functions of CAV. We are keen to obtain stakeholder insights about whether there would be benefits in bringing together broader functions to create a more integrated regulatory oversight model.

As noted on page 38, the new registration requirements for engineers will commence on 1 July 2021 and will extend beyond those engineers that engage in building work.

## SUMMARY

### The key issues relating to regulatory oversight are:

1. overlap of the functions and powers of the regulators leads to lack of clarity in the system;
2. fragmented regulatory approach to oversight of design practitioners;
3. inadequate access to, transparency and sharing of data, among regulators hinders regulatory functions; and
4. ongoing criticism of building regulator.

### The possible improvement are:

- strengthen oversight arrangements within existing structures;
- establish an independent Office of the State Building Surveyor; and
- consider reform to structure of the current regulatory oversight framework.



### KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER

- What changes to the functions and/or structure of the regulator(s) would improve regulatory outcomes?
- Will improvements to strengthen existing oversight arrangements adequately address the issues relating to regulatory oversight of the building and construction industry?
- What are the benefits and risks of establishing an independent Office of the State Building Surveyor?
- What are your views on the most effective oversight structures for the regulatory functions in construction work, practitioners and consumer protections?
- Should there be separate regulators for practitioners and for building works?
- Should regulation of all design practitioners be brought together under one regulator?

Are there other key issues and possible improvements that the Panel should consider?

## 9. CONSUMER PROTECTION

As the Review's Terms of Reference make clear, consumer protection and the safety and health of people who use buildings need to be central to the building regulatory system. People should be protected from unsafe and non-compliant buildings through the regulation of building and plumbing work, standards, practitioners, products and materials. In addition, consumers should be protected from unscrupulous industry participants and have access to information and support they need to engage participants to undertake building work and manage any issues that arise. In cases where the building approvals process and regulatory oversight have not adequately addressed non-compliance, the building legislative framework sets out systems for dispute resolution.

Reforms proposed in prior sections, as well as this one, work in an integrated way to strengthen the accountability of industry participants in the building system and address the disproportionate level of risk and costs that consumers have faced. Empowered consumers who are able to exercise their rights will, in turn, build trust and confidence in the construction industry and increase competition for the provision of quality building services.

This section provides an overview of current consumer protection and dispute resolution mechanisms and sets out possible improvements to protect consumers and improve confidence in the industry and regulators. Specific improvements to the dispute resolution system will be addressed by the Panel in Stage Two of the Review (discussed in section 10.2). The key issues and possible improvements in this section specifically address consumer empowerment and representation.

### 9.1 Overview of consumer protection mechanisms

CAV and the VBA provide information and advice to consumers on the building processes and how to seek help when things go wrong. Although information is provided on many aspects of the building regulatory system and the building process, the Panel heard that consumers continue to find the building journey difficult to understand and navigate due to the complexity of the system.

Systemic complexity, inadequate information, poor experiences when consumers reach out for assistance, along with a lack of public transparency of consumer outcomes, create significant power imbalances which often lead to poor outcomes for consumers. These issues are discussed further in this section.

When things go wrong, consumers can seek recourse from two key dispute resolution entities – DBDRV and VCAT. This section describes:

- information provided to consumers by the VBA;
- information and services provided to consumers by CAV; and
- the current dispute resolution framework.



### 9.1.1 The VBA provides information on building processes

The VBA website includes information targeted at consumers about building and plumbing matters, including home renovations, safety guidance and problems and complaints. The website also provides general information on the building industry and the role of building surveyors. There are also two practitioner registers, one which lists registered practitioners and another which lists practitioners who have been subject to disciplinary action.

The VBA helpline number is available for consumers to ask questions about technical aspects of building work and to seek information on how to address potential building problems and how to lodge a complaint.

The focus of the VBA, however, is compliance, practitioner conduct, and illegal building or plumbing work. The VBA is not the only organisation which deals with the consumer experience: others are CAV, DBDRV and the VMIA. The fragmentation is frustrating for consumers, who are often 'handballed' from one entity to another when seeking information.

### 9.1.2 CAV has developed some tools to support consumers

CAV provides information for consumers on the critical steps in a building project and guidance on how to plan and manage building projects in compliance with the DBC Act.

**Building tool** – This tool is available on the CAV website and operates as a 'decision tree' to support consumers to navigate the building system to find relevant information. The tool typically receives a low level of traffic. Recent work has been undertaken to redevelop CAV's broader building content, with the goal of phasing out the building tool. It also provides information about how to raise a dispute and helps consumers enforce their right to a repair, refund or other compensation under the ACL:

**Building Information Line** – This phone line service is operated by CAV and provides 'free and impartial advice and information' to help consumers resolve domestic building disputes.

While CAV and the VBA provide information, as regulators their role does not include systemic representation of consumers, or advocacy for consumer interests.

### 9.1.3 There are two key dispute resolution entities in the building regulatory system

The core dispute resolution mechanisms specific to the building system that support consumers to enforce their rights are set out under the Building Act and DBC Act. The Minister for Consumer Affairs, Gaming and Liquor Regulation has responsibility for the DBC Act, which incorporates warranties (described below) in relation to the standard of building work which are outlined below. If the builder has not met the requirements, then legal action can be taken for a period of up to ten years after the completion of the building works.

In some circumstances, consumers can also enforce their rights using broader consumer protection mechanisms that are not specific to the building system, for example by seeking recourse under the ACL (see discussion on the ACL described below).

The two main dispute resolution entities in the building system are DBDRV and VCAT. Building owners may seek advice and support from Justice Connect's Domestic Building Legal Service (DBLS), which advises individual building owners on their rights and the best course of action to take to resolve their dispute.



## **WARRANTIES UNDER THE DBC ACT ARE COMMONLY RELIED ON FOR DOMESTIC BUILDING DISPUTES**

The DBC Act includes a resolution process for domestic building disputes between builders and consumers that can involve DBDRV, CAV and VCAT. Domestic building disputes frequently relate to non-compliance with the [section 8](#) warranties in the DBC Act. These are:

- the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
- the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act and Building Regulations made under that Act;
- the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;
- if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed; and
- the work and any material used in carrying out the work will be reasonably fit for the purpose for which the work is required.

## **DBDRV is the first port of call for most disputes between building owners and builders**

DBDRV is an independent government agency which resolves domestic building disputes. It commenced operations in 2017. The establishment of DBDRV created a new process for conciliation and resolution of disputes to reduce the time and cost of dispute resolution.

DBDRV resolves matters that relate to defective or incomplete building work, delays, and issues with payment or about the domestic building contract. Before a building owner or building practitioner can access DBDRV services, they are legally required to attempt to resolve the dispute directly with the other party.

If a dispute is considered eligible for DBDRV's services, the following process occurs:

- initial assessment to determine whether the dispute is suitable for conciliation;
- building assessment may be required to examine the disputed building work by an independent assessor to determine whether the work is defective or incomplete; and
- conciliation with both parties to resolve the dispute. The purpose of conciliation is to resolve disputes in a non-adversarial way.

There are generally three outcomes from this conciliation:

1. Dispute is resolved through agreement by parties.
2. A binding dispute resolution order is made against one or both parties by the Chief Dispute Resolution Officer.
3. A certificate of conciliation (dispute not resolved) is issued to the parties if the dispute is unable to be resolved. The parties are then entitled to make an application to VCAT.

DBDRV has the power to make dispute resolution orders that require rectification or completion of work, and can also issue payment orders against a builder to compensate or reimburse a building owner.<sup>130</sup> Failure to comply with a rectification order may result in the issuing of a breach of dispute resolution order notice. Where a breach notice is issued, the Chief Dispute Resolution Officer is required to give written notice to the VBA. The VBA is then required to issue a 'show cause' notice to the builder, with suspension of registration one of the disciplinary actions available to the VBA.<sup>131</sup>

## **VCAT can hear disputes from a building owner only after the matter has progressed through DBDRV**

Where a building owner is one of the parties, the matter cannot progress to VCAT until it has been through DBDRV. There are some exceptions to this rule, for example where the matter:

- is expedited because an injunction is needed to immediately stop another party from doing something (or to compel them to do something); and/or
- cannot be addressed by DBDRV as it falls outside the jurisdiction of the DBC Act.

A complainant can apply directly to VCAT where the dispute does not involve the building owner. This includes matters that relate to commercial building works. A complainant can also apply to VCAT to review a decision by DBDRV or by some other relevant entity in the building system, for example, the VBA or a warranty insurer.

## THE ACL OFFERS GENERAL CONSUMER GUARANTEES THAT CAN APPLY TO BUILDING WORK

Outside the protections in the industry-specific legislation described above, the ACL also offers general 'consumer guarantees' which require building practitioners to meet certain obligations when undertaking building work and provide a legal basis for resolving disputes that arise. These include the requirement for a supplier to:

- exercise due care and skill in providing a service;
- provide services within a reasonable time; and
- provide services that are reasonably fit for purpose (note this does not apply to professional services provided by an architect or engineer).

If a building owner identifies a problem with a product or service that means it does not meet a consumer guarantee, they can take legal action.

In certain scenarios where the work in question falls outside the remit of DBDRV, but where the ACL consumer guarantees apply, consumers may be able to take the matter directly to VCAT. This includes disputes that relate to a 'single trade' contract, where the building owner has directly engaged only one trade from a specified list<sup>132</sup> (for example, plumbing or painting) and the work is not part of more extensive domestic building work.

In situations where a consumer has an option to use the ACL consumer guarantees to address a dispute, there are often features of their application that mean the dispute cannot be resolved early, quickly and economically. Stakeholders indicate that consumers rarely take legal action to enforce their rights under the consumer guarantees for several reasons, including:

- claims can be difficult to prove, especially actions for misleading and deceptive conduct; and
- consumers may misunderstand the options available to them and attempt to use pathways in the ACL that are not entirely suitable. This can prove particularly problematic when consumers are self-represented in forums such as VCAT.

In many cases, the costs of legal action are likely to exceed the value to the consumer of having an issue remedied.

Access to justice, including the use and applicability of the ACL in the building context and specific challenges that arise in disputes that impact multi-occupancy units managed by owners' corporation, will be a focus of Stage Two (see [section 10](#)).

## 9.2 Key issues relating to consumer empowerment and representation

Consumer issues during building, renovations, repairs and maintenance are widespread. Gaps in Victoria's consumer protection mechanisms and support services expose consumers to both personal and financial risk, and enable builders and practitioners involved in building problems to avoid accountability. The Panel has identified three key issues relating to consumer empowerment and representation:

- difficulties for consumers accessing and acting on information to exercise their rights;
- lack of transparent information about consumer harms and systemic risks; and
- lack of formal systemic representation and individual advocacy support for consumers.

As noted earlier in this section, these key issues are being addressed in two stages. Stage One explores ways to improve consumer representation and identify systemic barriers to consumers exercising their rights

and accessing effective dispute resolution. Stage Two will investigate ways to reduce systemic complexity for consumers in navigating dispute resolution processes, improve consumer agency, experiences and outcomes.

### 9.2.1 There are difficulties for consumers accessing and acting on information to exercise their rights

There are many different entities involved in regulating the building and construction industry and resolving consumer disputes. When seeking information, consumers are often directed from one regulator or dispute resolution body to another, without receiving clear information or understanding the role of each body or the service it provides.

Stakeholders consider that systemic complexity and lack of effective information, advice and support for consumers are key sources of problems in the building system and that improving consumer empowerment can drive broad system benefits, including building trust and confidence.

### 9.2.2 There is a lack of transparent information about consumer harms and systemic risks

In addition to the difficulties consumers face in accessing and acting on information and navigating support services, there is an absence of system-wide reporting of consumer outcomes and experiences at the aggregate level.

Data is fragmented across different regulators and services and is often not recorded in a way that enables regular systematic analysis. Information is not collected in comparable formats or held in a central repository. This means that insights are not able to be gathered and key emerging issues and trends are often not identified or published. A lack of a central transparent repository on system-wide consumer trends in building hinders consumers ability to actively engage in the building process and understand what to look for. It also hinders the work of policymakers and regulators designing interventions to improve consumer experiences and outcomes.

### 9.2.3 There is a lack of formal systemic representation and individual advocacy support for consumers

There is a lack of systemic consumer representation in the building system. Building practitioners and other industry participants are well represented by peak bodies and other industry associations. While there are some organisations that represent specific sub-sectors of building consumers (including consumers in strata properties), there is no formal overarching 'peak body' for consumers or organisation representing Victorian building consumers specifically.

As a result, the building system is designed in a way that does not consider consumers' needs, abilities or experiences at a systemic level, and consumer voices are absent in key decisions made about the building industry's operation.

In addition to the lack of systemic representation, stakeholders also report that there is a gap in individual advocacy or support services for consumers. That is, when a consumer is struggling to address a building issue, it is difficult or impossible to find an organisation, service or advisor that can act on their behalf to help resolve the problem.

## 9.3 Possible improvements to consumer empowerment and representation

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Without effective representation of consumer needs and interests, it is difficult to ensure that the building regulatory system provides adequate consumer protection. The focus of Stage One of the reform program is to address existing gaps and consider possible improvements to address the key issues outlined above through:

- improving existing advocacy and support services for individual consumers;
- establishing a consumer representative body; and
- establishing a consumer reference group or advisory mechanism.

The three improvements are a priority focus of Stage One of the reform program and are designed to work together to facilitate better representation of consumers' needs and interests across the building regulatory system.

They will also be supported by two key initiatives already underway, outlined on the following page:

- an Early Initiative to establish a centralised building consumer information and support service; and
- the Evidence Improvement Project.

### **AS AN EARLY INITIATIVE, THE PANEL RECOMMENDED THE ESTABLISHMENT OF A CENTRALISED BUILDING CONSUMER INFORMATION AND SUPPORT SERVICE**

As noted earlier in this Paper, the Panel has proposed a number of Early Initiatives. One of these initiatives, establishment of a centralised building information and support service, would simplify consumers' access to information and make their interactions with the building regulatory system more streamlined and efficient.

The centralised service would support consumers by:

- providing a single, easily accessible first point of contact;
- assisting them to navigate the building system by directing them to the correct organisation more efficiently;
- cutting down delay, misinformation, and unnecessary referrals; and
- providing easy access to basic information about the building system, targeted to the consumer's particular circumstances.

It would provide centralised access to information that must currently be sought from a variety of agencies, including:

- ARBV;
- CAV;
- DBDRV;
- ESV;
- VBA; and
- VMIA.

The service could also provide information for consumers on the importance of regular building maintenance.

This Early Initiative would have a number of benefits, including increasing consumer confidence, addressing information asymmetry and improving consumer awareness and education effectively and efficiently in accessing the construction industry.

### **EVIDENCE IMPROVEMENT PROJECT WILL ENABLE A GREATER SYSTEMIC UNDERSTANDING OF CONSUMER ISSUES AND COMPLAINTS**

DELWP has conducted an Evidence Improvement Project to develop an evidence base around consumer issues and complaints, and practitioner non-compliance and performance issues. The project has aimed to ensure baseline qualitative and quantitative data is readily available to assess the effectiveness of Victoria's building regulatory system and inform the Review.

The project is assisting DELWP and the Panel to identify best practices for coordinated data collection and storage across participating organisations: ARBV, CAV, DBDRV, DBLS, the VBA, VCAT, the VMBSG, and the VMIA, drawing on work already undertaken by these organisations.

PricewaterhouseCoopers (PwC) was appointed to deliver the project, which includes:

- analysis of existing point-in-time data (2014-15 to 2019-20) currently collected by participating organisations to gain new insights;
- market research with consumers;
- practitioner surveys and interviews; and
- journey mapping with consumers and practitioners to contribute new data.

The project combines existing and new data to enable the Panel and DELWP to better understand the problems and risks faced by the industry and consumers.

## **9.3.1 Improve existing advocacy and support services for individual consumers**

There are existing organisations that provide advocacy or support services to individual consumers who are working through building issues, complaints or disputes. These existing services could be strengthened to improve current consumer experiences, including by supporting consumers to access and act on information.

Advocacy or support services operate independently from dispute resolution bodies such as DBDRV and VCAT, which must adopt a neutral stance and attempt to resolve a dispute while taking into account all parties' perspectives. Advocacy or support services can work with the individual consumer's interests as a priority and help them to enforce their rights.

For example, Justice Connect's DBLS helps building owners in disputes with their builders to access free legal advice services. However, they only provide support where a building owner meets specific criteria, including that they have been unable to resolve their dispute through DBDRV. The service could be expanded to:

- offer advice and case support to a wider range of building consumers earlier in the dispute process; and
- introduce innovative and digital solutions to make the service easier for consumers to find and engage with.

This would increase access to free or low-cost legal advice and assistance throughout the building lifecycle. For example, not just after a dispute has already been underway for a considerable period of time.

Bolstering existing advocacy or support services for individual consumers would take advantage of the expertise and in-depth understanding of current consumer issues that these services already have. It would also provide an avenue for greater collection and analysis of data related to consumer experiences and protection.

Implementation of this improvement is likely to see an increase in consumer engagement in current services and would require additional resourcing to reduce the potential burden on already busy services.

### **9.3.2 Establish a consumer representative body to address systemic consumer building issues**

A specialised body could be established to represent consumers in relation to systemic matters to be addressed across industry, giving a direct voice to consumer experiences. The body could:

- seek advice from research bodies, owners' corporations, legal services, and individual consumers to identify critical and common consumer issues;
- advocate on behalf of consumers as a cohort (not individually) at a system wide level and make evidence-based reform recommendations to government and relevant regulatory bodies; and
- operate independently to effectively represent consumer needs (however, it may be positioned within an existing statutory body).

The body would also engage with organisations that represent specific sub-sections of building consumers, such as the Strata Community Association (SCA), a member-based organisation for the strata property sector that represents and advocates for strata industry professionals, building owners and tenants of strata buildings. The body would not represent individual building owners or tenants in disputes (like the above

improvements to consumer advocacy and support services) but rather focus on systemic matters that are repetitive and significant in nature. The purpose of this body would be to:

- enable the presentation of evidence-based consumer perspectives to government and regulators;
- construct a dialogue about achieving better outcomes between consumers and industry groups; and
- provide direct input from consumers about issues they experience in the building system, so that consumer needs are better understood and addressed.

The consumer representative body could also develop and implement intelligence-led consumer education and awareness activities by:

- publishing emerging issues and trends with regulators and industry groups and using this to collaboratively develop consumer awareness materials and strategies;
- focussing resources on issues where consumer awareness is particularly low or has harmful effects such as leading to disputes or dissatisfaction. This could include the risks of working with unregistered builders, dispute resolution processes and the limits of a building surveyor's oversight role and functions; and
- partnering with other consumer and community organisations with specialist experience in delivering consumer education and awareness programs.

These education and awareness activities would enable consumers to ask questions of those involved in construction and engage more actively in the building process. System-wide reporting would require improvements in how data is collected and shared among regulators and services.

The Panel has discussed some different approaches which could be used for the establishment of body that could represent and advocate on behalf of consumers at a systemic level.

One option is to design a body based on the Commissioner for Residential Tenancies model (see page 92) whereby a Commissioner would be appointed to represent consumer interests in building at relevant forums and to Government. Such an approach would improve the representation of building consumer issues to Government and industry on systemic and emerging issues.

The Panel has also considered a 'Commissioner Plus' model based on the role of the Commissioner for Residential Tenancies with additional data gathering and collection functions to support their role in consumer monitoring and issues identification. The Commissioner Plus model would have a greater role and input into the legislative and regulatory process through formalised



requirements to advise government on systemic risks to consumers. This model would support ongoing improvements in the consumer experience and complement the other practitioner, industry and regulator improvements as part of Stage One.

### **THE COMMISSIONER FOR RESIDENTIAL TENANCIES IS A MODEL THE PANEL IS CONSIDERING**

Victoria's first Commissioner for Residential Tenancies was appointed in September 2018. The Commissioner provides independent advice to the Victorian Government to recommend changes to renting laws, programs and services to improve the renting rights, practices and tenant experiences across Victoria.

The Commissioner listens to the first-hand experiences of renters, renter advocacy groups and key stakeholders to identify community issues and advocate for opportunities for change to Government.

The Commissioner:

- exposes market practices and regulatory gaps that erode the rights of renters;
- furthers initiatives to increase renters' understanding and knowledge of their rights;
- pursues opportunities to strengthen the rights of renters and improve market practices;
- supports the development of improved dispute resolution processes and other mechanisms to better enable renters to exercise their rights;
- assists in the implementation of the amendments to the Residential Tenancies Act 1997 (Vic) to ensure the reforms improve renter experiences as intended; and
- works collaboratively with government and rental sector stakeholders for their consideration and action.

Tenants in private rentals (as well as residents of rooming houses, caravan parks and residential parks, and specialist disability accommodation) can share their experiences with the Commissioner through contact with her office or by engaging in public consultation.

The Commissioner does not provide legal advice or individual dispute resolution services, or accept complaints about government services. The role includes working collaboratively with government and rental sector stakeholders to make recommendations for their consideration and action.

### **9.3.3 Establish a consumer reference group or other advisory mechanism**

A consumer reference group or other advisory mechanism could be a source of critical information to inform complaint and dispute resolution services and help to build trust with consumers who have negative experiences with the construction industry. This possible improvement would seek to address the lack of formal representation of consumer perspectives in the building regulatory system. An advisory mechanism for consumers would aim to:

- ensure consumer experiences are communicated directly, so that issues are not diluted or misinterpreted by decision-makers; and
- provide opportunities for consumers to engage directly with the Government and regulatory bodies and feel their experiences are being listened to and action is taken as appropriate.

Some possible models include consumer reference groups or formalised annual forums. The group could potentially be established by the proposed new Commissioner, if such a body is ultimately developed. One example consumer reference group the Panel has considered is the Consumer Panel established by the Victorian Legal Services Board (VLSB) (see description below).

#### **VLSB – CONSUMER PANEL**

The VLSB established a Consumer Panel in March 2020 to better understand consumer needs and expectations of the legal profession. It has seven members with experience in consumer research, customer and disability advocacy, consumer policy and regulation and change management.

Its purpose is to help improve outcomes for consumers by:

- finding out what consumers think, expect and need;
- bringing the consumer voice and experiences to the VLSB;
- helping the VLSB to protect vulnerable consumers; and
- improving trust and confidence in, and access to legal services.

The Consumer Panel ultimately works to provide advice and guidance to assist in the work of the VLSB and the Victorian Legal Services Commissioner to ensure they are responsive to consumer needs.

The Panel has also considered how consumers can be better reflected in the legislative objectives of the Building Act (see description below for further detail).

### **THE PANEL PROPOSES A POSSIBLE IMPROVEMENT TO THE LEGISLATIVE OBJECTIVES OF THE BUILDING ACT**

The Review's Terms of Reference state that the Panel will seek stakeholder feedback on options for improving the legislative objectives of the Building Act.

Instead of proposing a series of new legislative objectives at this stage, the Panel seeks to firstly finalise the improvements that enable the building regulatory system to more effectively meet both current and strengthened objectives of the Building Act. A set of additional objectives will be considered in Stage Three under the new Building Act.

The Panel does, however, at this stage, suggest the inclusion of one new objective relating to consumers. A key focus of this Paper is to present possible opportunities that strengthen the building regulatory system and promote consumer safety and fair outcomes. The Panel considered that the current objectives of the Building Act do not adequately reflect the priority of consumer protection in the building regulatory system. The objectives could be updated to more explicitly reflect consumer protection as an objective of the Building Act.

## **9.4 The next priority focus areas for consumer protection**

Following the implementation of the above possible improvements, the Panel will finalise its advice on:

- a tool to enable consumers to differentiate based on quality; and
- improvements to current insurance arrangements.

### **9.4.1 Develop a tool or scheme to enable consumers to differentiate based on quality**

The Panel will consider the development of new tools to enable consumers to make informed choices when engaging in a building project. The tool could provide performance-based information on building practitioners and other industry participants and enable ready comparison, led by government or market. The information would be publicly available, via a rating tool or some other consumer friendly form. This tool would increase consumer understanding of who they are engaging in building works and may help consumers to better understand why different practitioners offer different price points.

Some examples of consumer tools in other jurisdictions that will be considered are set out in the case studies below (case studies 3 and 4).

### **CASE STUDIES 3 AND 4 | United Kingdom 'TrustATrader' and New South Wales Model**

There are two models that may be considered in developing consumers' access to information:

#### **The United Kingdom 'TrustATrader'**

'TrustATrader' is a web-based tool operating in the United Kingdom (UK) that aims to operate like a personal recommendation, connecting

consumers with local, reliable tradespeople who have at least two years' experience in their field and are members of the relevant trade

association. An online directory, TrustATrader also has a 'Leave a Review' facility allows that allows a consumer to rate the work of the tradesperson or business they have used. As well as supporting consumers to make informed choices, the website offers skilled tradespeople an opportunity to advertise their work as reliable and high quality. At 15 October 2020, the site advised visitors to the website made 698,278 searches each month.

#### **The New South Wales model**

NSW is considering the introduction of a rating system in a similar format, that will create a risk profile for every planned project based on the track record of professionals involved in the development. The suggested model will assess key measures including financial position, previous illegal phoenix activity, complaints and dispute history and safety record.



## 9.4.2 Improve current insurance arrangements

The Panel will consider the role insurance arrangements play in the building system. There are a number of key issues with current insurance arrangements, including:

- significant risk for lot owners and owners' corporations in multi-storey residential strata schemes;
- exclusion creep in practitioner policies increasing risk exposure for practitioners and consumers; and
- a lack of information sharing across stakeholder groups impeding the ability to manage risks.

It is important to note that insurance settings are influenced by how well the regulatory and professional frameworks are performing.

The significant changes to the regulatory system proposed for Stage One of the reform program will deliver improvements to the insurance settings for building practitioners. This is because the more confidence the insurance industry has that risks in the building system are well-managed through strong and effective regulatory frameworks and efficient and effective regulators, the less risk insurers will attach to different practitioners' insurance policies.

There are also opportunities to strengthen the current insurance framework by broadening the potential applications of building insurance products.

Some jurisdictions have introduced insurance models which are of interest to the Panel. Two examples are outlined in the case study below (see case study 5).

## CASE STUDY 5 | Insurance models in other jurisdictions that may be considered by the Panel in Stage Two

The Panel has advised the Victorian Government to consider a pathway to project-based insurance (PB insurance) in Victoria (Early Initiatives are set out at Appendix E).

### PB insurance

France's building insurance is underpinned by Decennial Liability Insurance (DLI) and Inherent Defects Insurance (IDI) – both are forms of PB insurance that offer a 'first resort' form of cover. Introducing some form of PB insurance product, as a mandatory requirement within building legislation, could deliver meaningful consumer protection and improved building quality for some types of new buildings in Victoria. However, PB insurance policies are not a solution to the broad insurance issues currently facing the construction industry. The coverage that PB insurance products provide is narrow and does not replace any existing insurance products – critically, PB insurance would not replace the need for practitioners to hold professional indemnity insurance, and introduction of a mandatory product such as DLI or IDI would not replace DBI. Further, it would not be possible, particularly initially, to introduce PB insurance for all types of building work, due to the cost, complexity, and additional burden on practitioners of this type of product. Significant consultation and analysis would be required to successfully introduce PB insurance in Victoria.

### Defects Bonds Scheme

In NSW, a Defects Bond Scheme (DBS) was introduced in 2018 – the NSW Strata Building Bond and Inspections Scheme (SBBIS). The SBBIS is intended to incentivise early identification and rectification of building defects. SBBIS requires developers (of new residential strata buildings four storeys and higher) to lodge a building bond equal to 2% of the contract price with NSW

Fair Trading and to appoint an inspector to prepare an interim report on any defects and then a final inspection and report. After two years, the bond may be used to pay for any identified rectification work the developer has failed to complete. While not an insurance product, DBS interacts with the insurance framework and should be considered alongside it. DBS is intended to provide a financial incentive for developers to deliver compliant buildings.

## SUMMARY

### **The key issues relating to consumer empowerment and representation are:**

1. difficulties for consumers accessing and acting on information to exercise their rights;
2. a lack of transparent information about consumer harms and systemic risks; and
3. a lack of formal systemic representation and individual advocacy support for consumers.

### **The possible improvements to address these**

#### **key issues are:**

- improve existing advocacy and support services for individual consumers;
- establish a consumer representative body to address systemic consumer building issues; and
- establish a consumer reference group or advisory mechanism.

### **Following implementation of the above possible improvements, the Panel will finalise its advice on:**

- a tool to enable consumers to differentiate based on quality; and
- improvements to current insurance arrangements.



### **KEY QUESTIONS FOR STAKEHOLDERS TO CONSIDER**

- Which of the approaches outlined above would improve the consumer experience most effectively?
- Are there innovative ways to identify systemic issues faced by consumers in building and construction activities?
- How can consumers be better represented in the building system?
- What kinds of direct consumer feedback mechanisms would work best in the building context?

**Are there other key issues and possible improvements that the Panel should consider?**

## 10. STAGE TWO OF THE REVIEW

In Stage Two, as a focus, the Panel will consider the introduction of statutory duties of care and recommend actions to improve dispute resolution, building approvals (including mandatory inspections) and building information.

### 10.1 Statutory duties of care introduced in other jurisdictions will be considered by the Panel

The Victorian Cladding Taskforce recommended that the Victorian Government consider introducing a statutory duty of care on industry participants. The Victorian Cladding Taskforce notes such a duty “...would require all parties involved in the construction of a building, including architects, designers, building surveyors, fire engineers and builders, to take reasonably practicable safety measures”.<sup>133</sup>

Other jurisdictions such as Queensland and NSW have introduced reforms that aim to increase responsibility across the building system for defective products and work and thereby enable consumers to seek remedy where defects arise. Examples from recent reforms in Queensland and NSW are set out in case studies 6 and 7.

“Building practitioners do not currently have an express positive statutory duty to ensure the safety of a building and compliance with the code.

**Victorian Cladding Taskforce Interim Report p.28**

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### CASE STUDY 6 | Queensland Chain of Responsibility

#### Queensland chain of responsibility reforms strengthen accountability for non-conforming building products

In 2017, Queensland introduced amendments to the *Queensland Building And Construction Commissioner Act 1991* (QLD) (QBCC Act) to broaden the chain of responsibility for overseeing non-conforming building products.

Non-conforming building products are products that, if used in the possible building work, will not be safe, fit for purpose, or perform to the standard represented by someone. Products that do not comply with the relevant regulatory provisions or the NCC requirements are also categorised as non-conforming building products.

The new chain of responsibility imposes a primary duty on a range of people in the supply chain to ensure that building products are compliant, safe and fit for purpose. The chain of responsibility includes designers, manufactures, importers, suppliers, the builder or installer and the architect, or engineer who specified the use of the product in the design. The QBCC Act details specific requirements for each person in the chain of responsibility with respect to ensuring that products used are conforming. For example, the builder who installs the product must provide the building owner information on the suitability of the product and its intended use. A person within the chain of responsibility also has a duty to notify the Queensland Building Commissioner where they become aware of the use of non-conforming products.

The second reading speech noted that the chain of responsibility was introduced to prevent the use of unsafe imitation products, like the aluminium cladding that lead to the Lacrosse fire. The introduction of a chain of responsibility was intended to ensure that consumers have confidence in the safety in their buildings.

## CASE STUDY 7 | The NSW model for a statutory duty of care

NSW has recently introduced a statutory duty of care for a broad range of practitioners in building Classes 1, 2, 3 and 10. This duty was introduced in part in response to recent high-profile defects (including Sydney Opal Tower) and limited common law protection to safeguard consumers against negligent builders.

The purpose of the duty of care is to provide consumers greater access to seek remedies in response of defective building work. Under the new duty, any person involved in construction work has a duty to avoid defects that would require the consumer to pay to repair the defect. The statutory duty extends to each building owner and subsequent owner of the land for which the work was carried out, irrespective of any contractual arrangement. Construction work is defined in the *Design and Building Practitioners Act 2020* to include, building work, preparation of regulated building designs, and the manufacture or supply of building products used in building work. The breadth of the duty aims to lessen the current focus of accountability for defects held by builders and certifiers to a range of practitioners that impact building safety. As a result, consumers who are left with defective property are able to seek remedies from a broader range of people who were involved in causing the defect.

As recommended by the Victorian Cladding Taskforce, the Panel will consider a statutory duty of care model in Victoria, as part of the Stage Two reform.

### WHAT PERSPECTIVES DO STAKEHOLDERS HAVE ON THE NSW AND QLD REFORMS IN RELATION TO ACCOUNTABILITY OF DEVELOPERS?

## 10.2 Strengthening dispute resolution services will be a key focus

Disputes between consumers and building practitioners can arise for several reasons, both during and after completion of a building project. The statutory warranties set out in [section 8](#) of the DBC Act are one mechanism that endeavours to protect consumers (see [section 9.1.3](#)). The warranties are implied into all domestic building contracts, providing a comprehensive suite of protections for consumers (including subsequent owners) against the builder. Consumers may also pursue the builder or other building practitioners using alternative avenues, for example under the ACL (see page 88).

However, consumers may find it difficult to enforce their rights, due to:

- potential for long, complex and costly litigation that may exceed the value of the claim;
- difficulty in proving a claim (for example, due to lack of evidence); and/or
- misunderstanding the options available or attempting to pursue unsuitable causes of action, particularly where consumers are self-represented in forum such as VCAT.

Conciliation services provided through DBDRV are intended to reduce the complexity and cost for consumers and builders in resolving their dispute. However, DBDRV has seen an increase in the number of complex disputes, involving multi-storey high-rise apartments. Large and complex residential buildings have greater potential for serious defects and multiple affected parties. Currently, DBDRV may not be well-equipped with sufficient resources or technical expertise to deal with more complex matters, which may lead to an increase in disputes that are inappropriate for conciliation and require litigation.

Owners of units in multi-storey apartments face additional challenges when accessing dispute resolution services, including:

- off the plan purchasers do not have a role in selecting the builder or building surveyor, limited bargaining power in building contract negotiations or off the plan contracts (where standard forms are deployed with little appetite to vary terms) and often have no expertise to ensure that the completed product accords with the product the purchaser contracted to buy;
- there is no mandatory DBI (for buildings 3 storeys or greater);
- there are potential difficulties in obtaining special resolutions from building owners' corporations in order to pursue litigation (in so far as it applies to common areas); and/or
- in some circumstances, multi-storey apartments may represent a lower price point for entry into the housing market and therefore attract more vulnerable consumers.

In Stage Two, the Panel will identify opportunities to strengthen dispute resolution services. Possible improvements will be informed by work currently underway to develop a central data source that provides a sound evidence base on the issues consumers are experiencing around access to dispute resolution services. Evidence gathered will include data that identifies how consumers move through the building system when they need to address a problem with a building project – including identifying critical pain points.

## 10.3 Improvements to building approvals (including mandatory inspections) will build on Stage One feedback

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Once feedback is received from this Paper on each of the models outlined in [section 7.3](#), the Panel will consider possible improvements to the design of the building approvals processes (including inspection and certification stages which may differ for different construction projects). These may include:

- Requirements for additional mandatory inspections where additional inspections are tailored to building complexity and risk and informed by risk-based audits (such as for waterproofing, fire safety and electrical).

- For complex buildings, introduction of a new oversight practitioner (such as a clerk of works/proof expert) could be required on site to check compliance at all stages of construction and to report to the building surveyor to inform mandatory inspections.
- Requirements for compliance declarations from design and building practitioners to declare that building work complies with the requirements of the NCC prior to issuing an occupancy permit, which may include a requirement for lodgement of 'as-built' design plans that can be accessed by the building owner, regulator and future practitioners.

## 10.4 Better information and data sharing will increase availability of information between regulators

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The Panel will consider reforms that increase the availability and quality of information available to regulators. These could include:

- increasing the reporting requirements of practitioners to ensure regulators have up-to-date, relevant information relating to ongoing building work;
- enhancing reporting obligations relating to high-risk work to ensure the VBA has up to date information about activities on site;
- requiring regulators to share information in a consistent format with other agencies;
- developing a data dictionary for use by all industry participants;
- developing a central data repository of relevant information that is accessible by all regulators and agencies;
- requiring the preparation and lodgement of an electronic building manual, or similar document, that enables information, plans and other documents to be easily accessed by building owners into the future and assists with maintenance obligations; and
- reforming information and data sharing to support more effective regulatory practice and better quality published data to enable consumers to actively engage in the building regulatory system.

## Building Information Modelling (BIM)

The creation of a digital set of records for high rise residential development that documents each project from design through construction to operation including specification of ongoing essential safety measures and other maintenance requirements would improve building safety and compliance and will be considered by the Panel.

The UK Independent Review of Building Regulations and Fire Safety by Dame Judith Hackitt recommended mandating BIM for design, construction and operation of all high-rise residential buildings over 10 storeys.

The Victorian Digital Asset Strategy (VDAS) has proposed a standard approach to use of BIM for government projects. As in the UK, BIM has been mainly used for government infrastructure projects not for residential construction.

BIM allows all aspects of design performance to be simulated and assessed before it is built and to document all aspects of a project throughout the project life cycle and beyond.

BIM 'as built' model includes product details, maintenance and operation manuals, specifications, warranty information, manufacturer information and construction design and delivery including structural, mechanical, electrical and plumbing design.

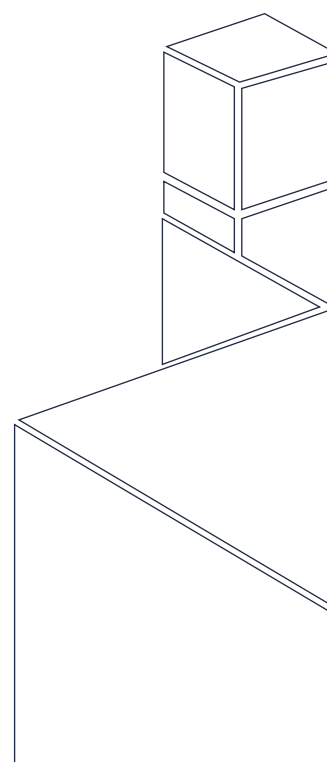
As noted by the Cladding Taskforce's 2019 Final Report, other emerging issues which require attention and will be address as part of Stage Two include:

- Wiring;
- defective glazing;
- plumbing;
- structural issues;
- inadequate ventilation; and
- fire protection systems.

## 10.5 Continuing reform in Stage One areas as part of Stage Two:

Key areas for consideration and advice based on implementation of Stage One will also be further developed in Stage Two. These possible improvements are described in the sections above:

- a consistent approach to regulation of design practitioners;
- a stronger corporate registration scheme;
- a tool to enable consumers to differentiate building practitioners based on quality; and
- opportunities to improve current insurance arrangements.



## 11. NEXT STEPS

The Panel is seeking stakeholder input on the possible improvements and feedback on the questions presented throughout this Paper. Following the consultation period, the Panel will finalise its recommendations in the Stage One final report to Government.





# APPENDIX A – OUTCOMES OF PAST INQUIRIES INTO THE BUILDING REGULATORY SYSTEM IN VICTORIA AND NATIONALLY

Table 8 sets out the past inquiries in Victoria and nationally into the building regulatory system. It explains the catalyst for each review and the legislative changes that occurred in response.

Table 8 | Catalyst and legislative changes from inquiries and reviews into Victoria’s building regulatory system

REVIEW, AUDIT OR INQUIRY	CATALYST	LEGISLATIVE CHANGES
<b>VAGO (2000), Building control in Victoria: Setting sound foundations<sup>134</sup></b>	This audit examined the effectiveness of the Building Commission in regulating the practitioner registration system and building compliance. The audit found that the Commission was insufficiently monitoring and enforcing the Building Act, and that there were opportunities to strengthen the registration and licensing process for practitioners.	The <i>Building (Further Amendment) Bill</i> 2002 <sup>135</sup> was introduced to address issues raised by the Auditor-General but was not passed. <sup>136</sup>
<b>Victorian Competition and Efficiency Commission (VCEC) (2005), Housing regulation in Victoria: Building Better Outcomes<sup>137</sup></b>	This inquiry focused on the impact, benefits and cost of housing construction regulation. The inquiry was driven by the need to undertake a state-based study of the regulatory system that was, at the time, 10 years old. The findings of the inquiry were that transparency of regulator functions could be improved including improved performance reporting. It further held that the objectives and functions of the Act could be simplified to “ <i>accord with good regulatory principles, and to reduce compliance costs</i> ”. <sup>138</sup>	The <i>Building Amendment Act</i> 2007 <sup>139</sup> clarified the purpose and objective of the Building Act as well as the functions and powers of the Building Commissioner. The Building Amendment Act 2008 <sup>140</sup> was also in response to VCEC (2005) and provided the Building Practitioners Board (BPB) stronger powers to suspend, cancel and disqualify practitioners. It also created two classes of building surveyors (limited and unlimited).
<b>Inquiry into the Australia’s Mandatory Last Resort Home Warranty Insurance Scheme (2008) <sup>141</sup></b>	This inquiry arose as a result of issues around adequacy of consumer protection in relation to Australia’s mandatory Last Resort Home Warranty Insurance. The primary recommendation was the pursuit of a nationally consistent and harmonised best practice approach to consumer protection.	The principal recommendation of inquiry was not implemented nationally.

REVIEW, AUDIT OR INQUIRY	CATALYST	LEGISLATIVE CHANGES
<b>Legislative Council (2010), Inquiry into Builders Warranty Insurance<sup>142</sup></b>	This inquiry initiated during a time of significant uncertainty with the private domestic building insurance market. During the Inquiry, the Victorian Government replaced the privately-run scheme whereby the government body VMIA is the predominant supplier of insurance.	There were no legislative amendments made in response to the legislative inquiry. The Government has already taken steps to amend the Building Act and establish VMIA as a designated insurer. From 2010 to 2013 there were no significant amendments to the Building Act.
<b>VAGO (2011), Compliance with Building Permits<sup>143</sup></b>	This audit was initiated as part of VAGO's strategy to review public services across the state. The review focused on the PBS role in response to the growth of permits issued by the private sector. The audit found systemic issues of non-compliance with permits and ineffective performance monitoring by the Building Commission.	<p>The <i>Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013</i><sup>144</sup> was in response to the sustained criticism of the Building Commissioner raised in VAGO (2011) and Ombudsman (2012). Key legislative changes included:</p> <ul style="list-style-type: none"> <li>• establishment of the VBA and abolition of the Building Commission and the Plumbing Commission;</li> <li>• introduction of police records checks and the previous 'good character test' to be replaced by a fit and person assessment; and</li> <li>• additional disciplinary powers provided to the BPB, including the power to impose conditions on practitioner registration and licensing.</li> </ul>
<b>Ombudsman (2012)<sup>145</sup></b>	This report was in response issues of poor regulatory and governance practices by the Building Commission. Concerns raised included inadequate training of investigators and inappropriate use of funds. The report held that practitioner registration and licensing did not ensure that only qualified and skilled persons were registered. It also highlighted circumstances of financial misuses and administrative poor practice.	As outlined above.

REVIEW, AUDIT OR INQUIRY	CATALYST	LEGISLATIVE CHANGES
<b>VAGO (2015), Victoria's Consumer Protection Framework for Building Construction</b> <sup>146</sup>	<p>This report was initiated from reports that 28 per cent of consumers experienced building or renovation problems.<sup>147</sup> It examined whether key regulatory entities (the VBA, BPB and CAV) were effective in supporting the domestic building consumer protection framework. This audit found problems remained with the robustness of registration in ensuring skilled and qualified practitioners. It highlighted issues with the dispute resolution framework and the VBA's use of monitoring and enforcement powers.</p> <p>This report expressed particular concern regarding the potential conflicts of interest that exists for PBSs' charged with assessing the work of other building practitioners while also relying on them for work.</p>	<p>A series of legislative amendments were introduced in response to this audit report.<sup>148</sup> Key legislative changes included:</p> <ul style="list-style-type: none"> <li>• establishment of DBDRV for domestic building disputes;</li> <li>• introduction of a 5-year time limit for practitioner registration and licensing;</li> <li>• introduction of the registration and licensing of corporations as building surveyors or also as corporations entering a major domestic building contract;</li> <li>• inclusion of show cause provision for disciplinary action;</li> <li>• inclusion of stronger entry and information gathering powers provided to the VBA;</li> <li>• limitation on the categories of person authorised to undertake inspections and imposed a duty on inspectors to provide records of inspection to the VBA, the MBS and owner if requested;</li> <li>• establishment of the Register of Building Practitioners to publish information on the registration and disciplinary action taken against builder practitioners; and</li> <li>• abolishment of the BPB and transferred its registration and licensing and disciplinary functions to the VBA to further the original intent of the 2013 reforms.</li> </ul>
<b>Victorian Cladding Taskforce (2017), Interim Report</b> <sup>149</sup>	<p>In response to the use of combustible cladding seen in the disaster of Grenfell Tower and the Lacrosse and Neo200 building fires, the Government established the Victorian Cladding Taskforce. The <i>Interim Report</i> recommended that development of a State-wide cladding audit of privately owned, residential, multi-unit buildings of three storeys and above and all public-use buildings two storeys and above. It also noted that although the 2016 legislative amendments had prevented the RBS being appointed by builders, they continued to be appointed by developers.</p>	<p>The <i>Building Amendment (Registration of Trades and Other Matters) Act 2018</i><sup>150</sup> provided key legislative changes in response to this report. Key legislative changes included:</p> <ul style="list-style-type: none"> <li>• provision of Ministerial power to declare a prohibition on high-risk cladding products;</li> <li>• introduction of stronger powers for the VBA to immediately suspend building practitioners on public interest grounds; and</li> <li>• introduction of powers for an 'authorised person' to destructively test building products or materials.</li> </ul>

REVIEW, AUDIT OR INQUIRY	CATALYST	LEGISLATIVE CHANGES
<b>Shergold &amp; Weir (2018), <i>The Building Confidence Report</i><sup>151</sup></b>	After a suite of building incidents in Australia and internationally that resulted from poor building compliance the BMF commissioned independent experts Peter Shergold and Bronwyn Weir to undertake an assessment of the building regulatory compliance and enforcement systems across Australia.	<p>The <i>Building Amendment (Registration of Trades and Other Matters) Act 2018</i><sup>152</sup> addressed some of the recommendations of the <i>Building Confidence Report</i>. The amending Act also included the development of a framework for the registration and licensing of trades and subcontractors, although this was not a recommendation of the <i>Building Confidence Report</i>.</p> <p>The VBA has also developed a mandatory code of conduct for building surveyors to enhance oversight and compliance, which commenced on 1 January 2021.</p>
<b>Victorian Cladding Taskforce (2019), <i>Final Report</i><sup>153</sup></b>	<p>This report presented the outcomes of the State-wide cladding audit work. The Victorian Cladding Taskforce noted that the use of combustible cladding reflected a combination of three issues – “the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues.”</p> <p>It also provided an update on legislative and policy changes made in response to the use of combustible cladding. The Taskforce recommended the establishment of a cladding rectification program and new body to oversee the program.</p>	<p>In July 2019, the Government announced the cladding rectification program and the establishment of CSV. The <i>Building Amendment (Cladding Rectification) Act 2019</i> was passed to further cladding rectification work across the state. It created an additional cladding levy for certain building permits to fund rectification work. The Act also provided the VBA with the powers to implement the cladding rectification program.</p> <p>The <i>Cladding Safety Victoria Act 2020</i> (Vic) continues these reforms to establish CSV as a separate entity to successfully implement the cladding rectification program.</p>

# APPENDIX B – RECOMMENDATIONS FROM THE VICTORIAN CLADDING TASKFORCE REPORTS

**The Victorian Cladding Taskforce made a series of recommendations in its *Interim and Final Report* to strengthen and modernise Victoria's building regulatory system, these are detailed below.**

## Recommendations from the Interim Report

The Victorian *Cladding Taskforce Interim Report* made the following recommendations:

1. That the Taskforce continues its work at the Minister's discretion and oversees with DELWP the Statewide audit and audit of all Victorian Government buildings until completion.
2. That the Minister for Planning implement as a priority measures to prevent the use of aluminium composite panels with a polyethylene core (as agreed at the BMF) and expanded polystyrene cladding, for class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys. These measures should be highlighted in a product safety alert and remain in place until he is satisfied with compliance with new testing standards and a permanent labelling system is introduced.
3. That the Taskforce oversee the completion of pilot audits in six local councils to inform final inspection and assessment processes, including the finalisation of the Taskforce's Risk Assessment Tool.
4. That the Government act as an exemplar and undertake a comprehensive audit of its own assets and leased buildings, overseen by the Taskforce.
5. That the Government uses its procurement powers to stop future use of aluminium composite panels with a polyethylene core on government buildings.
6. That the VBA lead a Statewide audit overseen by the Taskforce of privately owned, residential, multi-unit buildings, three storeys and above and all public-use buildings two storeys and above.
7. That a State Building Inspector or State Building Surveyor is established within the VBA to provide authoritative compliance advice, provide technical guidance and provide interpretations of relevant standards.
8. That the Taskforce complete the development of a rectification standard, to be used by the VBA in its audit as well as fire safety engineers and private building surveyors. The rectification standard will set out appropriate action for rectifying buildings with non-compliant external wall cladding based on a safety risk assessment, stakeholders will be asked to promote it as part of the voluntary activation of the private sector.
9. That the Taskforce work with the Department of Treasury and Finance to further consider and research options for financing building rectification.
10. That the Taskforce oversees an independent review of the VBA's post-Lacrosse audit and its findings.
11. That the VBA:
  - a. increase its compliance and enforcement activities to deter future breaches – review and consolidate its current compliance, enforcement and prosecution policies to more clearly reflect a risk-based compliance and enforcement approach
  - b. ensure that private building surveyors do not have prohibited exclusions from their professional indemnity insurance policies
  - c. work to ensure practitioners have greater understanding of the NCC and building legislation so compliance is taken more seriously
  - d. resource planned improvements to its data collection and analysis capabilities
  - e. develop a resourcing model and business case to allow it to effectively discharge these functions.
12. That bodies responsible for disciplinary action against professionals in the building industry, including the Architect Registration Board Victoria, Building Practitioners Board and the VBA ensure that hearings take place expeditiously into matters of professional conduct.
13. That consideration be given to amending the Building Act to ensure building surveyors and fire safety engineers act independently, supported by a code of conduct developed by the VBA.
14. That the Minister for Planning advocate nationally to develop a standard that would define and restrict the use of "FR" (Fire Resistant, Fire Retardant or Fire Rated) in the marketing of products.

15. That relevant authorities collaborate to educate the community on risks associated with excessive occupancy levels and to undertake enforcement where appropriate.
16. That the regime for establishing, maintaining and ESMs and the qualifications of those inspecting such systems, in multi-storey buildings be strengthened.
17. That the Taskforce further explore options for low-cost financing be explored to allow owners' corporations to fund works and allow for any long-term costs that are borne by building owners to be distributed over time.
18. A series of longer-term reforms, that DELWP develop a discussion paper and undertake consultation on:
  - a. introducing a statutory duty of care on building practitioners (including architects and designers) to protect occupants and consumers in the residential strata sector
  - b. introducing shared responsibility legislation that would apply to manufacturers, importers and suppliers of building products along similar lines to product safety legislation introduced in Queensland in August 2017
  - c. introducing compulsory warranty insurance for residential multi-unit developments and insurance by commercial builders
  - d. introducing a requirement to seek approval of significant variations to plans, and to lodge drawings and specifications with local councils that reflect building plans and specifications 'as built'.
19. That consideration also be given to:
  - a. the restoration of role of Clerk of Works to oversee building works and provenance of building products
  - b. improvements to the current private surveyor model in Victoria to ensure an effective and efficient model that would improve levels of compliance, the rigour of inspection and clarify and improve the effectiveness of enforcement of building laws
  - c. reconsidering and clarifying the role of the VBA relative to local government and the MBS. That DELWP review the compliance and enforcement powers in the Building Act to ensure that regulators are equipped with a suite of comprehensive, fit for purpose tools that allow for quick, responsive, robust interventions.
  - d. That DELWP, with input from the VBA, analyse the penalties under the Building Act and consider whether maximum penalties and sentencing practices are adequate.
20. That the Government consider measures to strengthen of the requirements for fire safety designs to be independently reviewed, inspected and approved:
  - a. requiring that fire safety related performance-based solutions be peer reviewed by a second fire safety engineer who is truly independent to the design process
  - b. requiring that a registered fire safety engineer inspect and approve the works carried out pursuant to their fire safety designs at specific mandatory notification stages
  - c. introducing an additional mandatory inspection stage for fire safety designs
  - d. expanding the scope of fire safety matters that require the report and consent of the Chief Officer increasing the time allowed for the Chief Officer to make a determination on an application for report and consent
  - e. prescribing additional matters that would require the Chief Officer's consent and that the Minister promote through the BMF the adoption of the rectification standard as a national model
  - f. that the Minister continue to encourage the BMF and the ABCB to improve the clarity and readability of the NCC
  - g. that the Minister write to the Commonwealth Minister urging the Commonwealth to make arrangements that would allow Australian Standards to be made available free of charge
  - h. that the Taskforce continue to work with peak bodies and professional associations to disseminate its advisory notes to building owners.

## Recommendations from the Final Report

The Victorian *Cladding Taskforce Final Report* made the following recommendations:

1. That the VBA and City of Melbourne complete their comprehensive audits of priority buildings by the end of 2019, and continue to identify, inspect and assess buildings that may not have been captured in the initial priority list.
2. That the risk assessment tool developed for domestic buildings be made available for use in commercial and industrial buildings with any necessary modifications and with adequate training.
3. That consideration be given to requiring Annual ESM Reports to be certified by a suitably qualified person.
4. That consideration be given to requiring registration of ESM maintenance contractors.
5. That the VBA engage with commercial and industrial building owners and the insurance industry to develop a strategy for identifying non-residential buildings containing combustible cladding and a process for rectification.
6. That consideration be given to the development and implementation of a protocol between the VBA and local councils, which sets out accountabilities, mechanisms for cooperation and communication, strategic interventions and agreed procedures for referring enforcement actions.
7. That the VBA be given the appropriate powers to require a builder to rectify defective building works beyond the issuing of a certificate of final inspection or occupancy permit.
8. That the Department of Environment, Land, Water and Planning and the VBA review the current legislative and regulatory provisions relating to the disciplining of building, plumbing and architecture professionals with a view to reducing delays and improving the transparency of the processes. This could be progressed as part of a package of broader reform.
9. That DELWP closely monitors and assesses the effectiveness of the VBA's increased inspection and enforcement activity.
10. That the VBA continuously improves its approach to compliance activities, including implementation of a risk-based approach for targeting inspections.
11. That the VBA commence a program of random inspections to complement the proactive inspection program that aims to drive an ongoing increase in compliance across the building industry.
12. That the VBA develop a strategy for oversight of building surveyors including potential auditing against a code of conduct.
13. That the Victorian Government establish a dedicated authority to support building owners and occupants through the rectification process, including:
  - a. providing funding for rectification works;
  - b. providing project management support;
  - c. ensuring proposed solutions are carried out in a timely and effective manner to bring buildings to an acceptable level of risk; and
  - d. educating building owners about how to mitigate fire risks until the cladding on their buildings is rectified.
14. That should the new authority be established within the VBA, any perceived conflict of interest should be managed appropriately.
15. That if rectification is to be achieved through partial removal of cladding and a performance solution, the solution be independently approved by the Building Appeals Board.
16. That the Government implement a process to seek recovery of costs of rectification from responsible parties.
17. That DELWP oversee a process of rectification of Government buildings with combustible cladding to ensure that rectification is completed in a timely, cost effective manner that achieves safety outcomes.
18. That should a new entity be created to drive rectification of buildings, oversight of the government rectification program should be transferred to that entity to ensure a joined-up, coordinated approach that minimises market impacts.
19. That the Government negotiate with insurers to make a substantial contribution to the cost of rectification.
20. That the Government seek a contribution to the management and cost of the program from the Commonwealth Government.
21. That the Victorian Government take a risk-based approach to prioritising buildings for funding in the program of rectification of private buildings.
22. That should a rectification authority be established, it develop a comprehensive communications and engagement strategy in consultation with relevant agencies, which includes:
  - a. engagement with and communications for both building owners and occupants of buildings to



- promote short-term fire safety measures ahead of rectification; and
- b. ongoing communications and engagement throughout the rectification process.
23. That consideration be given to strengthening disclosure requirements, including requirements of owners to inform tenants if there is non-compliant combustible cladding on their building. This includes a requirement that residential leases contain information regarding any risk from combustible cladding present on the building.
  24. That a risk-based demand management strategy be developed and implemented to ensure that the highest risk projects are expedited and resourced appropriately.
  25. That a framework be developed and implemented to monitor, record and manage rectification costs.
  26. That Victoria continues to play a leading role in reaching a national approach to dealing with combustible cladding.
  27. That building industry bodies, practitioners and professionals proactively seek to improve the culture within the construction industry.
  28. That the Government consider introducing a statutory duty of care on building practitioners to protect occupants and consumers.
  29. That all practitioners be required to undertake compulsory CPD on the National Construction Code.
  30. That the Government give consideration to the restoration of the role of the clerk of works as part of its long-term reform strategy for the construction industry.
  31. That the requirements around the use of performance solutions be strengthened, including provision for third party review of proposed performance solutions.
  32. That the Government advocate for a national approach led by the Commonwealth Government to addressing building insurance and Professional Indemnity Insurance issues.
  33. That Government undertake negotiations with insurers with a view to maintaining the market for Professional Indemnity Insurance.
  34. That the Commonwealth and Governments explore fall-back options for providing Professional Indemnity Insurance.
  35. That the VBA take a proactive interest in identifying emerging systemic issues.
  36. That the Victorian Government work with the Commonwealth Government and other jurisdictions to establish the extent of any emerging systemic issues and to consider both solutions and future prevention measures.
  37. That further reforms are undertaken to address key policy issues and place safety and consumer protection at the heart of the system that:
    - a. The key objective of a review should be to provide a regulatory system that:
      - i. delivers safe, compliant, durable and sustainable buildings in an efficient and effective manner
      - ii. protects consumers and improves confidence in the industry and regulators
      - iii. supports skilled and experienced practitioners to carry out compliant and safe practices
      - iv. supports regulators to robustly and efficiently enforce compliance.
    - b. The review should focus on achieving the following outcomes and features:
      - i. a regulatory system that addresses market failures, with appropriate incentives and penalties to influence behaviour change
      - ii. buildings are delivered in conformity with regulatory and contractual requirements at reasonable cost
      - iii. buildings are maintained and used consistently with regulatory requirements
      - iv. disputes are prevented from arising, as far as practicable
      - v. where disputes do arise, they are resolved early, expediently, fairly and inexpensively
      - vi. regulatory responsibilities, requirements and processes are transparent and efficient
      - vii. roles, responsibilities and accountabilities are clear.

# APPENDIX C – IMPLEMENTATION OF THE BUILDING CONFIDENCE REPORT

An implementation team has been established within the ABCB and has since released multiple discussion papers for consultation on proposals to implement recommendations from the *Building Confidence Report*.

## National Registration Framework (NRF)

A discussion paper on a draft NRF for Building Practitioners has been developed in response to the *Building Confidence Report* recommendations 1 and 2.<sup>154</sup> The draft NRF sets out, at a national level, the core classes of building practitioners. It covers core disciplines in the fields of building production (design, checking, construction and inspection), building approval (approval to build, approval to occupy) and coordination (project management) and is based on registration and licensing categories, with specific disciplines within each category. Any reform to Victoria's practitioner classes and categories will consider those possible in the NRF.

## Auditing and Compliance Publication Framework

The *Building Confidence Report* identified there were regulatory and compliance deficiencies in the regulatory oversight of the construction of commercial buildings in Australia. In response to recommendation 7, the ABCB released a proposed high-level principles-based framework to guide reporting on auditing for consultation.<sup>155</sup>

## Building design acceptance

The *Building Confidence Report* recommended that there be a statutory duty on design practitioners to prepare documentation that demonstrates compliance with the NCC. It also recommended a more robust approach to third party review of designs, and to the documentation and approval of performance-based solutions and design variations. The ABCB released a discussion paper proposing reforms to implement recommendations 13 to 16 of the *Building Confidence Report*.<sup>156</sup>

## Independent third-party review

The *Building Confidence Report* noted that building surveyors are not always competent to review and confirm compliance of all building design documentation, particularly for complex and high-risk fire safety and structural designs. Building surveyors may rely on the competence of the designer with no detailed review being undertaken, which introduces a significant risk of non-compliance. The ABCB released a discussion paper outlining a draft model process for independent third-party review for consultation.<sup>157</sup>

## Mandatory inspections

The *Building Confidence Report* notes that there are significant differences across jurisdictions in the number of inspections required and the notification stages. The ABCB released a discussion paper that proposes a draft model process that prescribes an approach for minimum inspections proportionate to building complexity (risk) as a means of improving building outcomes through greater regulatory compliance. The risk-based approach would also determine additional inspection stages such as those relating to specific Performance Solutions or complex commercial buildings.<sup>158</sup>

## Model Code of Conduct for Building Surveyors

At their November 2020 meeting, Building Ministers agreed to release the National Model Code of Conduct for Building Surveyors. The Code has been developed in response to Recommendation 10 of the *Building Confidence Report*. It is intended to be used by, or inform, State and Territory building administrations in the development and review of Codes of Conduct that apply to building surveyors who perform statutory functions.<sup>159</sup>

## Definition of Building Complexity

In 2019, Ministers agreed that a key focus of the BMM led reforms would be on building complexity. It was agreed that a nationally consistent definition for building complexity and risk would be developed to provide the basis for developing further system reforms to deliver greater safeguards for design, construction and certification of buildings. The ABCB previously released a 'Building Complexity Exposure Draft' outlining the possible definition and classification system. This definition was endorsed on 27 November 2020. The ABCB will include the new definition in the NCC 2022.<sup>160</sup>

## Product Quality and Safety

The ABCB is also currently undertaking a review of the CodeMark Certification Scheme and investigating options for developing a product assurance scheme.

## Integrity of PBSs and their role in enforcement

Recommendations 9 and 11 of the *Building Confidence Report* relate specifically to PBSs and aim to mitigate conflicts of interest, increase transparency in engagement and statutory responsibilities and provide enhanced supervisory powers and require mandatory reporting. The ABCB has released a discussion paper to facilitate input into the content of the model guidance that will underpin 10 principles regarding necessary statutory controls and supporting measures required in each jurisdiction's building approval process.<sup>161</sup>

## Building Manuals

The *Building Confidence Report* noted that owners of Class 2 to 9 buildings do not always receive complete information about their buildings. This affects their ability to properly maintain their buildings and make informed decisions about their use, as well as potentially impacting the safety of building users. Recommendation 20 provided that there be a mandatory requirement for a comprehensive building manual for Class 2 to 9 buildings that should be lodged with the building owners and made available to successive purchasers of the buildings. The ABCB has released a discussion paper on this proposal.<sup>162</sup>

# APPENDIX D – THE PANEL TERMS OF REFERENCE

**The Victorian Government’s comprehensive review of the building system is underway with the establishment of the Expert Panel to lead the Review of the building sector’s legislative framework, all relevant regulators and related issues.**

The Government is committed to a building system which delivers safe, quality buildings, by a sustainable construction industry and with effective consumer protections. There are many indications that the current building system is not fit for purpose, a fact that has been highlighted in numerous reviews, such as the *Cladding Taskforce Reports*, and the *Shergold Weir Building Confidence Report*.<sup>163</sup>

There are several areas where urgent action is needed, and the Government is already taking steps to deliver on these. This includes establishing the \$600 million Cladding Rectification Program, introducing a power for the Minister for Planning to ban dangerous cladding products, working with the Victorian Building Authority to prepare a code of conduct for building surveyors, changing professional indemnity insurance requirements so that practitioners are no longer required to hold a policy free of cladding exclusions, and developing options for mandatory continuing professional development schemes for practitioners.

At the same time, the Panel has commenced its work to lead a comprehensive examination of the legislative framework for Victoria’s building, plumbing and architecture industries that will place safety and consumer protection at the heart of the system. The Panel will advise the Government throughout the building system review. It will undertake research, consultation and analysis to produce recommendations for reform.

## Panel Membership

The Panel is being chaired by the Commissioner for Better Regulation, Anna Cronin.

Other members of the Panel are:

- Dame Judith Hackitt
- Dr Gerry Ayers
- Professor Ian Bailey AM SC
- Lauren Solomon
- Melanie Fasham.

Collectively, the Panel has decades of international and domestic experience in engineering, occupational health and safety, law, consumer protection, best practice regulation and building design, safety and quality.

## Objectives of the Review

To provide a regulatory system that:

- delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;
- protects consumers and improves confidence in the industry and regulators;
- supports skilled and experienced practitioners to carry out compliant and safe practices; and
- supports regulators to effectively and efficiently enforce compliance.

## Scope of the Panel’s work

The Panel will initially identify and advise the Minister for Planning on Early Initiatives that can be undertaken by Government. These initiatives will focus on changes which can improve the way the current system works, which can be quickly implemented, and which do not prejudice the fundamental reforms which need to be made to Victoria’s building system.

To advise on the more fundamental building system reforms the Panel will:

- evaluate the current building regulatory system and identify key challenges facing consumers and industry;
- establish overarching principles to guide the building system; and
- outline possible improvements to address the key reform areas.

As part of its work, the Panel will consider what changes are necessary to the legislation and subordinate instruments that regulate the building and plumbing industries. The work of the Panel will address both the issues surrounding the existing stock of buildings in Victoria and establishing a framework for future buildings.

## **A staged approach to reform**

The Panel's advice to Government will be staged. This enables progressive implementation of reforms and meaningful engagement with stakeholders. The Panel will consider stakeholder feedback through a public consultation process before finalising recommendations to be provided to the Minister for Planning.

### **Stage One**

In a discussion paper released in early 2021, the Panel will seek stakeholder feedback on options for improving:

- consumer protection;
- practitioner registration and regulation;
- regulator powers, roles, responsibilities and structure; and
- legislative objectives.

### **Stage Two**

In a discussion paper released in mid-2021, the Panel will seek stakeholder feedback on options for improving:

- building information;
- statutory duties of care;
- dispute resolution; and
- approval processes.

Recommendations for a new Building Act are to be considered by the Panel as part of the third stage. This would include a restructuring of the legislative framework and subordinate instruments to align with recommendations in Stages One and Two.

# APPENDIX E – EARLY INITIATIVES

**As requested in the Terms of Reference, the Panel has advised the Minister for Planning on some Early Initiatives to improve the building system.**

## **Establish a centralised building consumer information and support service**

There are five key Victorian government agencies which interact with consumers of building services:

- ARBV;
- CAV;
- DBDRV;
- VBA; and
- VMIA.

Consumers often find it difficult to identify which body they should contact to seek information, make a complaint, or resolve a dispute.

The centralised service would support consumers by:

- providing a single, easily accessible first point of contact;
- assisting them to navigate the building system by directing them to the correct organisation more efficiently;
- cutting down delay, misinformation, and unnecessary referrals; and
- providing easy access to basic information about the building system, targeted to the consumer's particular circumstances.

The service could also provide information for consumers on the importance of regular building maintenance.

This initiative would have a number of benefits, including increasing consumer confidence, addressing information asymmetry and improving consumer awareness and education effectively and efficiently in accessing the sector.

## **Consider a pathway to project-based insurance in Victoria**

PB insurance policies can provide a single, first resort,

insurance instrument that unites the interests and strengthens the accountability of all parties involved in a single building project such as owners, financiers, consultants, designers, engineers, surveyors, builders, other trades. PB insurance models are common in other jurisdictions such as Europe and can include decennial liability or inherent defects insurance. Currently, Victoria has last resort DBI for buildings up to and including three storeys and is over reliant on the PI insurance of building surveyors. For class 2 buildings, including residential high rise above three storeys, there is no DBI.

The Panel advised that the Government to investigate the viability of adopting first resort project-based insurance models for the Victorian building regulatory system.

## **Promote consumer awareness about building consultants**

Building consultants are engaged by consumers to check on quality at defined stages of the build. Alternatively, they can be engaged post-occupation to investigate potential defects in a building. They are not a registered category of practitioner, although some may be registered as, for example, builders or architects. These consultants, whether registered practitioners or not, are not subject to regulatory oversight since they are not carrying out building work as defined under the Building Act.

The rise in use of building consultants as third-party quality checkers in part stems from an increasing lack of trust in building professionals. Consumers can fear unscrupulous builders will take shortcuts and leave them with a need to remedy defective work. Building consultants can exploit this lack of confidence by advising their potential clients an independent consultant is needed to protect their interests. In some cases, consultants issue reports that detail potential non-compliance issues with little or no reference to the breaches of the NCC or Standards.

The Panel advised the Minister that a consumer awareness campaign was necessary to improve consumer knowledge about building consultants and to help consumers avoid unnecessary disputes over building work. In addition, it was suggested the Government investigate options for registration or licensing of building consultants, including the potential development of a code of conduct.

## Strengthen the role of the SBS

The Panel identified and advised that the role of the SBS could be strengthened to provide greater clarity, advice and guidance on the roles and responsibilities of the building surveyor. The role of the SBS could be expanded to include:

- monitoring and reporting on the performance of building surveyors and compliance with their regulatory duties;
- provision of technical advice and guidance to the surveying profession including on areas that have been recommended in the *Building Confidence Report*;
- acting as decision maker (under delegation) when the VBA is declared a Municipal Building Surveyor (MBS) for certain buildings;
- acting as the decision maker (under delegation) in cases where an application has been made to the VBA for termination of the appointment of a PBS; and
- obtaining agreement on a protocol which clarifies roles and responsibilities and facilitates effective compliance and enforcement activity between the VBA and local councils/MBSs and PBSs.

To implement this change in a meaningful and effective manner, the role of the SBS would need to be clarified, strengthened and enhanced. Initially, this could be partially achieved by refining the specifications of the role and having this approved by the VBA Board. In addition, the Government's view on the role and responsibilities of the SBS could be set out in the Minister's Statement of Expectations provided to the VBA. It may be of benefit to also consider if a degree of autonomy within the VBA's operational structure would result in the more effective discharging of the SBS' strengthened functions, and how this could be achieved.

## Support higher education and training system reform

The Panel considered the need to increase current pipeline of qualified building surveyors to be one of the most acute skills issues confronting the sector. The Panel therefore proposed a suite of short-term changes to the training system in Victoria that would increase the supply of building surveyors to meet current and future needs and help support occupational mobility. This early initiative advised the Government to consider working with the Victorian Skills Commissioner and universities to: develop bridging courses and a pilot Recognition of Prior Learning (RPL) project for appropriately qualified building professionals (e.g., architects and engineers) who are interested in completing building surveyor qualifications

and removing the Building Regulations which do not recognise building surveyors' and inspectors' qualifications unless they have completed courses at either Holmesglen or Victoria University;

- develop a pathway for experienced builders who would like to qualify as registered building surveyors;
- remove the barriers to accessing Free TAFE assistance if a potential student already has a degree or has commenced and not completed a degree course;
- recognise a broader suite of appropriate qualifications that are acceptable to register as a building surveyor or inspector in Victoria; and
- work with universities to promote building surveyor post graduate courses to attract architects, engineers and other professionals to a career in building surveying.

The Panel also advised that a supervised practical training scheme could be established for both TAFE and post graduate building surveying graduates.

## The Panel has also made recommendations to support industry compliance

In response to persistent concerns of non-compliance across the industry, the Panel suggested that improvements to industry compliance could be supported through:

- The VBA publishing guidelines and inspection checklists to be used and certified by RBSs and inspectors for mandatory inspections.
- The VBA publishing existing checklists and ongoing findings from their Proactive Inspection Program (PIP).
- The ABCB and the VBA prioritising NCC usability enhancement projects and improving access to and understanding of Australian Standards.



# APPENDIX F – DETAIL ON THE LEGISLATIVE FRAMEWORK OF VICTORIA'S BUILDING REGULATORY SYSTEM

This Appendix sets out further detail on the Victoria's building legislative framework:

- the Building Regulations 2018;
- the Plumbing Regulations 2018; and
- the NCC.

## The Building Regulations prescribe standards for design, construction and use of buildings and places of public entertainment

The Building Regulations provide for the practical implementation of the Building Act. The Regulations came into effect on 2 June 2018, superseding the previous *Building Regulations 2006* (Vic).<sup>164</sup> All regulations are required to undergo a comprehensive review every 10 years to ensure they remain fit-for-purpose and meet objectives.<sup>165</sup>

The objectives of the Building Regulations are to prescribe standards in relation to a variety of matters – including building works, maintenance and the use of places of public entertainment, fire safety and safety measures, accreditation of building products and methods, registration and licensing requirements for practitioners (including minimum experience and qualification requirements) – and to regulate these matters.

The Regulations provide for adopting the NCC, including the classification system for ten building classes used by the NCC (Part 2). It is the role of the state to maintain the Building Regulations and amend where required to be consistent with the NCC.

## Plumbing Regulations 2018 prescribe standards for plumbing work

The current Plumbing Regulations commenced in November 2018, replacing the previous *Plumbing Regulations 2008*. These Regulations undergo a comprehensive review every ten years to ensure they remain fit-for-purpose and continue to meet their intended objectives.

The Plumbing Regulations aim to specify plumbing work to which the Building Act applies, specify qualifications and experiences required for practitioners to be licensed or registered, incorporate the Plumbing Code of Australia and prescribe standards that plumbers must comply with.

## The state framework incorporates the NCC which includes technical provision for the performance of buildings

The NCC sets the technical standards and performance requirements for buildings and plumbing work in Australia into a single code. The NCC aims to ensure that all building and plumbing work meets nationally approved standards for the design, construction, performance and liveability of buildings through the three volumes of building codes. The primary goals of the codes are to enable the achievement of nationally consistent, minimum necessary standards of health, safety (including structural safety and safety from fire), amenity and sustainability objectives efficiently.

The ABCB develops and administers the NCC. The ABCB is established by an Inter-Government Agreement signed by the Australian Government and State and Territory Ministers and is comprised of the BCA and Plumbing Code of Australia (PCA). The NCC is adopted by each Australian jurisdiction in its building legislative framework, thereby setting nationally consistent technical standards across Australia. However, each jurisdiction has its own laws governing the implementation of the NCC.

The NCC is split into three volumes. These are the BCA Volumes 1 and 2 – which collectively set the performance standards for all ten building classes in the NCC – and PCA Volume 3 which covers plumbing and drainage standards.

Under the NCC there are 10 difference classes of buildings:

- **residential buildings** (both homes and high-rise apartments) – Class 1, 2 and 3 buildings;
- buildings that facilitate or are for **commercial purposes** (e.g. office buildings, warehouses, carparks and factories) – Class 4, 5, 6, 7 and 8 buildings;
- buildings of a **public nature** (e.g. hospitals and schools) – Class 9 buildings; and
- buildings which are **non-habitable**, general structures (e.g. sheds, pools or walls) – Class 10 buildings.

The class of the building determines the requirements set by the NCC for how the building should be constructed.

The NCC is a 'performance-based' building code; this means it sets mandatory minimum performance requirements for buildings with which practitioners must be able to demonstrate compliance.

There are four levels in the NCC that demonstrate how objectives – such as health, safety, amenity – are translated into standards for the construction of buildings.

# APPENDIX G –

## THE VBA HAS RECENTLY DELIVERED IMPROVEMENTS TO ITS REGULATORY OVERSIGHT

**This Appendix details improvements to regulatory oversight that have been undertaken by the VBA in the last few years. The improvements listed below were provided to the Panel by the VBA.**

### Consumer protection and building safety initiatives

- Supported the establishment of the Government's Cladding Rectification Program to fast track cladding rectification and building occupant safety, including the establishment of Cladding Safety Victoria and its governance, policies and procedures.
- Developed the Cladding Acquittal Guidelines and Enforcement Guide for local councils released to help municipal building surveyors consistently acquit building safety and provide certainty to consumers and industry on rectification standards.
- Collaborated with local councils and key stakeholders to develop an enhanced framework for ESMs.
- Released a series of ESMs webinar, In Safe Hands podcast, and new Guideline on roles and responsibilities to increase consumer knowledge and industry understanding of safety obligations in maintenance of ESMs.
- Launched a campaign to raise consumer awareness of risks of using unlicensed or unregistered practitioners through online platforms and apps, and how they can use available tools on the VBA website to check if a person is registered or has a disciplinary history.
- Completed research reports on full scale façade testing of rendered expanded polystyrene, Industry Update, and Practice Note released to support practitioner understanding, with local, national and international interest
- Published the VBA research to address systemic issues, drive resolution of problems and improve consumer confidence in the industry, and the VBA research grant program launched to promote quality research and contribute to the evidence base for regulatory interventions.

- Continued promotion of education materials and consumer information to raise consumer awareness and promote safety messages (such as safety of decks and balconies, preparing for the bushfire season and checking gas heaters).
- Continuing to respond to the relevant ABCB Building Confidence Recommendations discussion papers and options for national reforms, including via direct engagement or via the Building Regulators Forum, ABCB Board and technical committees.

### Industry and practitioner initiatives

- Annual Building Surveyors' Conferences with eminent international and local keynote speakers and diverse program to inform, educate and upskill building surveyors, with record attendances each year (600 to 700 attendees).
- Responded to industry needs and improving safety outcomes by introducing a restricted class of building surveyors and building inspectors for Class 1 & 10 buildings and new registration pathways for restricted classes of plumbing work for routine servicing of wet fire safety systems.
- Developed Victoria's first Code of Conduct for Building Surveyors released to strengthen integrity of the building system, developed in close collaboration with industry and public consultation.
- Released a video series on practical aspects of the Building Surveyor Code of Conduct, including panel discussion to address practitioner questions, with positive post evaluation satisfaction scores received.
- Introduced Victoria's first ever jointly organised building surveyor graduate program (cadetship) launched with VMIA and DBDRV, expediting entry to the industry and better preparing graduates for their important regulatory roles.
- Designed a carbon monoxide and gas safety program to improve community outcomes and practitioner competencies (jointly delivered with Energy Safe Victoria and Master Plumbers Association) with webinars attended by 1,402 practitioners (2019-20).

- Provided fee relief for building and plumbing practitioners during pandemic, for fees payable from 30 Sept 2020 to 30 June 2021: to date the VBA has granted more than 1,000 applications from building practitioners (equal to over \$250,000 in waived registration fees).
- Accelerated participation in digital technologies to resolve systemic problems in industry, through research partnership in Building 4.0 Cooperative Research Centre and cross-agency collaboration in a Digital Twin project to fast track housing approvals.
- Enhanced transparency and accountability to industry, government and the public through publication of enforcement and practitioner discipline outcomes (including names, description of offence and sanctions) in the VBA Annual Report 2019-20.
- Implemented a pilot of virtual plumbing audits that expedite rectification by advising practitioners about issues to be addressed, resulting in timeliness of work being fixed and protecting consumer safety - over 1,000 virtual plumbing audits were completed between August and December 2020.
- Commenced an investment program in technology to develop systems and technology changes that are future focused, agile and in tune with the expectations of industry and consumers, underpinned by high quality data.
- Appointed a new Chief Commissioner to lead the VBA strategic direction and regulatory agenda, and lift performance and culture of the VBA as regulator.
- Restructured and recruited a key Executive roles: a new management structure to invest in new skills required to strengthen the VBA strategic focus as a modern regulator and reinforce trust and integrity in the regulator.
- Launched IntegrityVBA, an independently managed complaint resolution point available online or by telephone 24/7 to allow practitioners, suppliers and the community to record and resolve complaints about conduct of the VBA employees, services, and the handling of complaints by the VBA, aimed at transparency and lifting culture.

## **The VBA people, process, culture and communications initiatives**

- Implemented the BAMS: single largest reform to centralise the building permit process, increase oversight of building approvals, and reduce administrative burden for surveyors.
- Increased early intervention through proactive inspections to help industry take corrective action, protecting consumers and industry from lengthy and costly dispute processes (a 43% increase in proactive inspections in 2019-20 compared to 2018-19).
- Shared findings and insights from the VBA proactive inspections program with industry to highlight emerging trends and areas for early intervention, with an interactive website and detailed reports now issued on a quarterly basis.
- Continued regular promotion of compliance / enforcement actions including proactive inspections, plumbing activities, disciplinary show cause notices and prosecutions via weekly updates on website and social media, achieving significant positive industry feedback about the effectiveness of the VBA messaging to protect industry and consumers.
- Continued the progressive shift to online interviews and online examinations for building and plumbing, unlocking valuable time savings (such as reducing the need to travel to the CBD for face-to-face assessments) and benefits to the Victorian economy.

These initiatives are in addition to the VBA's ongoing permit, registration, compliance, enforcement, research, and stakeholder engagement activities (including providing support and guidance for municipal and private building surveyors).

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<b>Victoria</b>	Architects Act 1991
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11. Victorian Cladding Taskforce, 2019, 'Report from the Co-Chairs', page 46, [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0019/426034/DELWP0124\\_Victorian\\_Cladding\\_Taskforce\\_Final\\_Report\\_July\\_2019\\_v9.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0019/426034/DELWP0124_Victorian_Cladding_Taskforce_Final_Report_July_2019_v9.pdf)
12. Shergold P & B Weir, 2018, 'Building confidence', [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)
13. Victorian Cladding Taskforce, 2017, Interim Report [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf)
14. Ibid.
15. Now referred to as the Building Ministers Meeting
16. Shergold P & B Weir, 2018, 'Building confidence', [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)
17. Building Legislation Amendment (Consumer Protection) Act 2016
18. Building Amendment (Enforcement and Other Measures) Act 2017; Building and Environment Protection Legislation Amendment Act 2020
19. Building Amendment (Registration of Building Trades and Other Matters) Act 2018
20. Building Amendment (Enforcement and Other Measures) Act 2017
21. Building and Environment Protection Legislation Amendment Act 2020
22. Building Amendment (Registration of Building Trades and Other Matters) Act 2018
23. Building Legislation Amendment (Consumer Protection) Act 2016
24. Building Legislation Amendment (Consumer Protection) Act 2016; Building Amendment (Registration of Building Trades and Other Matters) Act 2018; Building and Environment Protection Legislation Amendment Act 2020
25. Building Amendment (Enforcement and Other Measures) Act 2017
26. Building Amendment (Enforcement and Other Measures) Act 2017; Building and Environment Protection Legislation Amendment Act 2020
27. Building and Environment Protection Legislation Amendment Act 2020
28. Building Legislation Amendment (Consumer Protection) Act 2016
29. Building Amendment (Enforcement and Other Measures) Act 2017
30. Ibid.
31. Building Legislation Amendment (Consumer



Protection) Act 2016

32. Building Amendment (Enforcement and Other Measures) Bill 2016

33. Cladding Safety Victoria Act 2020

34. Building Regulation Victoria, 2019, Planning and Building Approvals Process Review – Discussion Paper, [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/6115/7188/4742/Discussion\\_paper\\_-\\_planning\\_and\\_building\\_process\\_review.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/6115/7188/4742/Discussion_paper_-_planning_and_building_process_review.pdf)

35. Department of Environment, Land, Water and Planning, 2020, Building Victoria's Recovery Taskforce, <https://www.planning.vic.gov.au/policy-and-strategy/building-victorias-recovery-taskforce>

36. Victorian Government, 2021, Big Housing Build <https://www.vic.gov.au/homes-victoria-big-housing-build>

37. Australian Government, The Treasury, 2020, Economic response to Coronavirus, HomeBuilder <https://treasury.gov.au/coronavirus/homebuilder>

38. Australian Government, National Construction Code – Victoria, [https://ablis.business.gov.au/service/vic/national-construction-code-ncc-/24176#:~:text=National%20Construction%20Code%20\(NCC\)%20%2D%20Victoria&text=This%20Code%20contains%20technical%20provisions,aspects%20of%20health%20and%20amenity](https://ablis.business.gov.au/service/vic/national-construction-code-ncc-/24176#:~:text=National%20Construction%20Code%20(NCC)%20%2D%20Victoria&text=This%20Code%20contains%20technical%20provisions,aspects%20of%20health%20and%20amenity)

39. Australian Building Codes Board, 2020, National Registration Framework for Building Practitioners, Discussion Paper, <https://consultation.abcb.gov.au/engagement/dp-national-registration-framework/>

40. Australian Building Codes Board, 2020, Auditing and Compliance Publication Framework, <https://consultation.abcb.gov.au/engagement/auditing-and-compliance-publication-framework/>

41. Australian Building Codes Board, 2020, Building Design Acceptance – A response to the Building Confidence report. Discussion Paper. <https://consultation.abcb.gov.au/engagement/building-design-acceptance/>

42. Australian Building Codes Board, 2020, Independent Third Party Review – A response to the Building Confidence Report, <https://consultation.abcb.gov.au/engagement/independent-third-party-review/>

43. Australian Building Codes Board, 2020, Mandatory Inspections – A response to the Building Confidence Report, <https://consultation.abcb.gov.au/engagement/mandatory-inspections/>

44. Australian Building Codes Board, 2020, National Model Code of Conduct for Building Surveyors, <https://www.abcb.gov.au/Resources/Publications/Corporate/National-Model-Code-of-Conduct-for-Building-Surveyors>

45. Australian Building Codes Board, 2020, Definition for building complexity, <https://consultation.abcb.gov.au/engagement/definition-for-building-complexity/>

[engagement/definition-for-building-complexity/](https://consultation.abcb.gov.au/engagement/definition-for-building-complexity/)

46. Australian Building Codes Board, 2020, Integrity of private building surveyors and their role in enforcement, <https://consultation.abcb.gov.au/engagement/copy-of-discussion-paper-integrity-of-private-build/>

47. Australian Building Codes Board, 2020, Building Manuals, <https://consultation.abcb.gov.au/engagement/building-manuals/>

48. Victorian Cladding Taskforce, 2019, Report from the Co-Chairs, page 46, [https://www.planning.vic.gov.au/data/assets/pdf\\_file/0019/426034/DELWP0124\\_Victorian\\_Cladding\\_Taskforce\\_Final\\_Report\\_July\\_2019\\_v9.pdf](https://www.planning.vic.gov.au/data/assets/pdf_file/0019/426034/DELWP0124_Victorian_Cladding_Taskforce_Final_Report_July_2019_v9.pdf)

49. Bronwyn Weir is a legal practitioner specialising in government regulation and the founder of Weir Legal and Consulting Pty Ltd. She was a co-author of The Building Confidence Report. Bronwyn was engaged by DELWP to assist with consultation on the role of building surveyors.

50. Building Act 1993 (Vic)

51. Consumer guarantees apply where the good or service is under 40,000 or the more than 40,000 and are a kind of good or service ordinarily acquired for domestic, household or personal use or consumption, Competition and Consumer Act 2010, Schedule 2 (Australian Consumer Law), s 3

52. The responsible building surveyor is the term used for a municipal building surveyor or private building surveyor, once engaged or appointed by the owner for the building approvals process.

53. Victorian Building Authority, Disciplinary Register, <https://www.vba.vic.gov.au/tools/disciplinary-register>

54. The Building and Environmental Protection Legislation Amendment Act 2020 amended the good character requirement for registration under s 10(a) of the Architects Act 1991. Registered architects will be required to be 'a fit and proper person to be registered having regard to the probity matters (set out in the new inserted section 10A. These amendments will come into force 1 July 2020.

55. Building Act 1993, section 197(a) gives the VBA powers of entry/information gathering, injunction powers. The VBA can also be declared an MBS for existing buildings.

56. The role of the PBS as an RBS is noteworthy as it is a regulator in the system with statutory functions and responsibilities under the Building Act, that are discharged for commercial gain.

57. Authorised persons are those listed in section 228 of the Building Act 1993

58. Building inspectors sit under building surveyors, a building inspector is a registered practitioner who is employed to carry out work under the supervision and on behalf of a building surveyor.

59. An 'authorised person' is a person who is listed in the

Building Act 1993 to have specific powers and functions relating to oversight of building works (section 228 and 227F).

60. Victorian Building Authority, 2020, Code of Conduct for Building Surveyors in Victoria, [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0015/114351/VBA-Code-of-Conduct-for-Building-Surveyors.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0015/114351/VBA-Code-of-Conduct-for-Building-Surveyors.pdf)

61. Architects Regulations 2015, section 10

62. Noting that this will change with the introduction of PERA and is not a focus of this review.

63. P Shergold & B Weir, (2018) Building Confidence Report', pp. 15.

64. Department of Environment, Land, Water and Planning (2018) Victorian Cladding Taskforce Interim Report, p 35, available at: [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf).

65. Shergold & Weir (2018) Building Confidence Report, 18.

66. Building Regulations 2018 (Vic), sch 9

67. Nicole Johnston and Sacha Reid, 2019, An examination of building defects in residential multi-owned properties, < [https://www.griffith.edu.au/\\_data/assets/pdf\\_file/0030/831279/Examining-Building-Defects-Research-Report.pdf](https://www.griffith.edu.au/_data/assets/pdf_file/0030/831279/Examining-Building-Defects-Research-Report.pdf)>.

68. Ibid.

69. Department of Environment, Land, Water and Planning, 2018, Victorian Cladding Taskforce Interim Report, page 30, [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf)

70. Shergold & Weir (2018) Building Confidence Report, 18.

71. Department of Environment, Land, Water and Planning (2020), Continuing Professional Development for Builders and Plumbers – Consultation paper <[https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage/files/6815/9055/5494/Consultation\\_Paper\\_Continuing\\_Professional\\_Development\\_for\\_Builders\\_and\\_Plumbers.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage/files/6815/9055/5494/Consultation_Paper_Continuing_Professional_Development_for_Builders_and_Plumbers.pdf)>.

72. An assessment of design practitioner categories will aim to address recommendation 13 from the Building Confidence Report that each jurisdiction requires approval documentation to be prepared by appropriate categories of registered practitioners.

73. Australian Building Codes Board, 2020, National Registration Framework for Building Practitioners, Discussion Paper, <https://consultation.abcb.gov.au/engagement/dp-national-registration-framework/>

74. Shergold P & B Weir, 2018, Building confidence, [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

75. A clerk of works oversees the construction process on behalf of either the architect or the owner, undertaking a quality assurance role in the interests of the owner. The Victorian Cladding Taskforce final report recommended 'that the Victorian Government give consideration to the restoration of the role of the clerk of works as part of its long-term reform strategy for the construction industry.' The role of a clerk of works is being considered in response to this recommendation. See Department of Environment, Land, Water and Planning (2018) Victorian Cladding Taskforce Interim Report, p 8.

76. Shergold P & B Weir, 2018, Building confidence, [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

77. NSW Department of Finance, Services and Innovation (2019) Building Stronger Foundations [https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0020/532730/Building-Stronger-Foundations-Discussion-Paper.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0020/532730/Building-Stronger-Foundations-Discussion-Paper.pdf)

78. Reporting authority means a body or person (other than a municipal building surveyor or private building surveyor to whom an application is made) that is required by the Building Act or Building Regulations or by any other Act or regulations to report on or consent to an application for a permit.

79. Some building work does not require a building permit including, some repairs, renewals or maintenance of existing buildings, fences, signs, and freestanding sheds. A range of exemptions from building permit requirements are included in Schedule 3 of the Building Regulations.

80. This Paper uses the term 'owner' when referring to developers, individual building owners and their representatives who engage with the building process as a consumer

81. MBSs are not 'appointed to become the RBS. In the context of an MBS the building permit application is made to the relevant council and then an MBS is allocated to act as the decision maker for the building approvals process.

82. Building Act 1993, s 18AA

83. A Report and Consent is the process for consulting with and obtaining the approval of a reporting authority (such as a fire authority) when building work may affect particular assets or cause particular risks; Building Regulations 2018, r. 129.

84. Building Act 1993, section 33

85. Building Regulations 2018, r.167

86. Prescribed persons may be another registered building surveyor or a registered building inspector.

87. Concrete member is a technical term referencing structural elements of the building, including concrete columns and slabs and is referred to in the Building

Regulations.

88. Building Regulations 2018 (Vic), r.170

89. Building Act 1993 (Vic), s. 37

90. Building Act 1993 (Vic) s. 106 – 107; s. 111 – 113.

91. Building Act 1993 (Vic), s.102.

92. Building Act 1993 (Vic), s.46.

93. Building Act 1993 (Vic), s.43.

94. Building Act 1993 (Vic), s.39.

95. Building Regulations 2018 (Vic), r. 187.

96. Building Regulations 2018 (Vic), r. 49 – 51; r. 202-205.

97. Building Ministers' Meeting Communique – 27 November 2020 <https://www.industry.gov.au/sites/default/files/2020-11/building-ministers-forum-communique-november-2020.pdf>

98. MBSs do not require individual professional indemnity insurance when acting as the RBS because they are covered by a broader insurance policy obtained by the council that employs them.

99. Victorian Building Authority, 2019, Professional indemnity insurance changes ease restrictions on building surveyors, inspectors, <https://www.vba.vic.gov.au/news/news/2019/professional-indemnity-insurance-changes-ease-restrictions-on-building-surveyors-and-inspectors>

100. Victorian Auditor-General's Office, 2011, Compliance with Building Permits, page 77, <https://www.audit.vic.gov.au/report/compliance-building-permits>

101. An agent acting on behalf of the building owner can also appoint the RBS.

102. The Hon. Richard Wynne MP, 2019, Statement of Expectations for the Victorian Building Authority, [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0012/102702/VBA-2019-21-Statement-of-Expectations.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0012/102702/VBA-2019-21-Statement-of-Expectations.pdf)

103. Australian Building Codes Board, 2021, Integrity of private building surveyors and their role in enforcement – A response to the Building Confidence Report, [https://consultation.abcb.gov.au/engagement/copy-of-discussion-paper-integrity-of-private-buil?utm\\_source=NCC+subscription+list+%5BAll%5D&utm\\_campaign=2ff2450132-EMAIL\\_CAMPAIGN\\_2020\\_11\\_30\\_01\\_10\\_COPY\\_02&utm\\_medium=email&utm\\_term=0\\_5e6389f8aa-2ff2450132-80570664](https://consultation.abcb.gov.au/engagement/copy-of-discussion-paper-integrity-of-private-buil?utm_source=NCC+subscription+list+%5BAll%5D&utm_campaign=2ff2450132-EMAIL_CAMPAIGN_2020_11_30_01_10_COPY_02&utm_medium=email&utm_term=0_5e6389f8aa-2ff2450132-80570664)

104. AIBS refers to the first step in the current approvals process as 'assesses', this is referred to in the other models as 'certifies'.

105. Clause A2.2(4) of NCC BCA 2019 Volume 1 Amendment 1

106. However the design practitioners must be competent

and hold appropriate insurance for performance design if a consultant building surveyor is not engaged. Consultant building surveyors must be competent, appropriately qualified and holds requisite professional indemnity insurance cover. A registered private building surveyor would meet the requirements to act as a consultant building surveyor.

107. The consultant building surveyor is required to have input as a stakeholder during the design, performance based design brief, and performance based design report stages of the process of documenting performance solutions. This would, for example, provide greater scrutiny of performance solutions for fire safety and wet areas/ waterproofing.

108. Independent assessment could be completed by the MBS if they are not acting as the RBS.

109. Victorian Building Authority, 2019-20 Annual Report, page 27, [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0008/119825/VBA-Annual-Report-2019-20.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0008/119825/VBA-Annual-Report-2019-20.pdf)

110. Ibid.

111. Victoria State Government, 2020. Victorian Building Authority Annual Report 2019–20, page 23, [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0008/119825/VBA-Annual-Report-2019-20.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0008/119825/VBA-Annual-Report-2019-20.pdf)

112. Victoria State Government, 2020. Victorian Building Authority Annual Report 2019–20, page 29, [https://www.vba.vic.gov.au/\\_data/assets/pdf\\_file/0008/119825/VBA-Annual-Report-2019-20.pdf](https://www.vba.vic.gov.au/_data/assets/pdf_file/0008/119825/VBA-Annual-Report-2019-20.pdf)

113. Building Act 1993, section 212.

114. Under the Building Act, destructive testing means the testing of a building material or product that will or is likely to cause the destruction of the material or product.

115. A Tribunal is established on an as needs basis under the Architects Act, the ARBV will constitute a Tribunal to conduct inquiries in relation to architects. The Tribunal must include one practising architect, one person who is not an architect and one person who is a representative of consumer interests. Section 19 – 21 of the Architects Act 1991.

116. Architects Registration Board of Victoria, 2020, Annual Report 2019-20, page 26, [https://www.arbv.vic.gov.au/wp-content/uploads/2020/12/ARBV-Annual-Report\\_2019-2020.pdf](https://www.arbv.vic.gov.au/wp-content/uploads/2020/12/ARBV-Annual-Report_2019-2020.pdf)

117. MAV 2020 'Building a better system: discussion paper on reforms to Victoria's building regulatory system'; Section 212 of the Building Act states 'a council is responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building Regulations in its municipal district.'

118. MAV 2020 'Building a better system: discussion paper on reforms to Victoria's building regulatory system'; Section 212 of the Building Act states 'a council

is responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building Regulations in its municipal district.'

119. Noting that from 1 July 2021, responsibility for the registration of engineers will shift to the Business Licensing Authority under PERA.

120. Shergold P & B Weir, 2018, Building confidence, recommendation 13, [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

121. Shergold P & B Weir, 2018, Building confidence, recommendation 13 - 15, [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

122. Victorian Auditor-General's Office, 2011, Compliance with Building Permits, <https://www.audit.vic.gov.au/report/compliance-building-permits>

123. Victorian Auditor-General's Office, 2015, Victoria's Consumer Protection Framework for building construction, <https://www.audit.vic.gov.au/sites/default/files/20150528-Consumer-Protection.pdf>

124. Victorian Ombudsman, 2012, Own motion investigation into the governance and administration of the Victorian Building Commission, <http://www7.austlii.edu.au/au/other/VicOmbPRp/2012/12.pdf>

125. Department of Environment, Land, Water and Planning, 2018, Victorian Cladding Taskforce Interim Report, page 23, [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0012/110316/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf)

126. See Table 1 for detail.

127. Recommendation 5 of the Building Confidence Report proposed that each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).

128. Victorian Cladding Taskforce, 2017, Interim Report [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf)

129. This may depend on the preferred possible improvement to the building approvals process.

130. Domestic Building Contracts Act, s 49B(1)

131. Ibid, s 49U(5)

132. Under the Domestic Building Contract Regulations 2017 (Vic) reg 7, 'single trade' contracts for the following type of work fall outside the jurisdiction of the DBCA:

attaching external fixtures (including awnings, security screens, insect screens and balustrades); electrical work; glazing; installing floor coverings; insulating; painting; plastering; plumbing work, tiling (wall and floor); erecting a chain wire fence to enclose a tennis court; erecting a mast, pole, antenna, aerial or similar structure.

133. Victorian Cladding Taskforce, 2017, Interim Report [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0016/90412/Victorian-Cladding-Taskforce-Interim-Report-November-2017.pdf)

134. Auditor-General of Victoria, 'Building Control in Victoria setting sound foundations' Performance Audit Report No. 64, May 2000, <https://www.audit.vic.gov.au/sites/default/files/20000530-Special-Report-64-Building-%2520control-in-Victoria-Performance.pdf>

135. Building (Further Amendment) Bill 2002 (Vic)

136. Victorian Parliamentary Debates, Legislative Assembly fifty-fourth parliament first session, 14/May/2002, page no. 1440 < <https://www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Autumn%202002/Assembly%20Parlynet%20Extract%2014%20May%202002%20from%20Book%207.pdf>>

137. Victorian Competition & Efficiency Commission, 'Housing regulation in Victoria: Building Better Outcomes', July 2005, <https://www.dtf.vic.gov.au/sites/default/files/2018-02/housing-regulation-in-victoria-building-better-outcomes-inquiry.pdf>

138. Victorian Competition and Efficiency Commission, 2005, 'Housing regulation in Victoria: building better outcomes', <https://www.dtf.vic.gov.au/sites/default/files/2018-02/housing-regulation-in-victoria-building-better-outcomes-inquiry.pdf>, xiv.

139. Building Amendment Act (NO. 54) 2007 (Vic)

140. Building Amendment Act (NO. 36) 2008 (Vic)

141. Standing Committee on Economics, 'Australia's mandatory Last Resort Home Warranty Insurance scheme', November 2008, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed\\_inquiries/2008-10/home\\_warranty\\_08/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-10/home_warranty_08/report/index)

142. Standing Committee on Finance and Public Administration, 'Inquiry into Builders Warranty Insurance', 13th Report, 2010, [https://www.parliament.vic.gov.au/images/stories/documents/council/SCFPA/BWI/Final\\_version.pdf](https://www.parliament.vic.gov.au/images/stories/documents/council/SCFPA/BWI/Final_version.pdf)

143. Victorian Auditor-General's Office, 2011, Compliance with Building Permits, <https://www.audit.vic.gov.au/report/compliance-building-permits>

144. Building and Planning Legislation Amendment (Governance and other matters) Act (NO. 34) 2013 (Vic)

145. Victorian Ombudsman, 'Own motion investigation into the governance and administration of the Victorian

Building Commission', December 2012

146. Victorian Auditor-General's Office, 2015, Victoria's Consumer Protection Framework for building construction, <https://www.audit.vic.gov.au/sites/default/files/20150528-Consumer-Protection.pdf>

147. Ibid.

148. Building Amendment (Enforcement and Other Measures) Act 2017, Building Legislation Amendment (Consumer Protection) Act 2016

149. Victorian Cladding Taskforce, Interim report, November 2017, <https://apo.org.au/sites/default/files/resource-files/2017-12/apo-nid121606.pdf>

150. Building Amendment (Registration of Building Trades and Other Matters) Act (No. 46) 2018

151. Shergold P & B Weir, 2018, Building confidence, [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf)

152. Building Amendment (Registration of Trades and Other Matters) Act 2018 (Vic)

153. Victorian Cladding Taskforce, 2019, Report from the Co-Chairs, [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0019/426034/DELWP0124\\_Victorian\\_Cladding\\_Taskforce\\_Final\\_Report\\_July\\_2019\\_v9.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0019/426034/DELWP0124_Victorian_Cladding_Taskforce_Final_Report_July_2019_v9.pdf)

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155. Australian Building Codes Board, 2020, Auditing and Compliance Publication Framework, <https://consultation.abcb.gov.au/engagement/auditing-and-compliance-publication-framework/>

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