



# Stage One

## FINAL REPORT TO GOVERNMENT

Expert Panel on Building Reform

## **Acknowledgments**

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.

ISBN 978-1-925551-69-3 (pdf)

## **Disclaimer**

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

# Contents

|            |  |    |
|------------|--|----|
| 1          | Background and context .....                                     | 6  |
| 2          | Overview of reform package .....                                 | 11 |
| 3          | Practitioner registration .....                                  | 22 |
| 4          | Consumer representation and advocacy .....                       | 31 |
| 5          | Regulatory oversight.....  | 38 |
| 6          | Building approvals .....   | 48 |
| 7          | Next steps.....  | 68 |
| Appendix A | ABCB Building Risk and Complexity Definition decision tree ..... | 69 |
| Appendix B | ABCB proposed approach to mandatory inspections .....            | 70 |
| Appendix C | Bibliography.....  | 71 |

# Foreword

The Victorian Government established the independent Building Reform Expert Panel (the Panel) to lead a review of the building regulatory system (the Review). The objectives of the Review are to ensure that Victoria's building regulatory system:

- 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.

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

The Panel is conducting the Review over three stages between 2020 and 2023. This Report is the final report for Stage One of the Review.

After extensive consultation with stakeholder groups and industry, the Review's Framework for Reform Discussion Paper (the FFR Paper) was released in April 2021, identifying a wide range of opportunities to improve Victoria's building regulatory system. The Panel hosted a comprehensive public engagement process on the Framework for Reform Discussion Paper, including a stakeholder forum, targeted workshops, meetings and submissions through the Engage Victoria website. The Panel received over 140 submissions from stakeholders including consumers, practitioners, unions, industry groups and local government. The Panel also consulted with over 40 key stakeholders in one-on-one discussions and facilitated eight workshops with different stakeholder groups. The Panel has since finalised this Report to Government (the Report) that proposes a reform package comprising 16 distinct recommendations. These recommendations have the potential to fundamentally reshape the regulatory landscape in Victoria, by strengthening regulatory oversight, enabling a risk-based approach to building approvals, increasing accountability and competency of practitioners in the system, and enhancing consumer representation and advocacy.

The Panel is grateful for the commitment of the organisations and individuals who contributed their expertise and time to identifying solutions to achieve the Review reform objectives.

Chapter 1 of this Report provides background and context, focussing on the impetus for the Panel's Review and the importance of a modern regulatory framework that is aligned with and responsive to contemporary construction practices. Chapter 2 provides an overview of the reform package, including two foundational recommendations that should be implemented as a matter of priority to improve the building regulatory system. Chapter 2 also describes the Panel's phased approach to implementation.

The next four chapters of the Report set out the Panel's recommendations, aligned to the FFR Paper and the Panel's *Terms of Reference* for Stage One:

|           |                                      |
|-----------|--------------------------------------|
| Chapter 3 | Practitioner registration            |
| Chapter 4 | Consumer representation and advocacy |
| Chapter 5 | Regulatory oversight                 |
| Chapter 6 | Building approvals                   |

Each chapter sets out the key issues facing the regulatory system and the Panel's recommendations to address them.

The *Terms of Reference* specify that the Panel comprehensively examine the legislative framework for Victoria's building, plumbing and architecture industries.

From the information provided in consultations, workshops and submissions, there is recognition of the need for reform among industry, government, and consumer stakeholders. Many stakeholders note that the Review is 'welcome', 'timely', 'well overdue' and 'absolutely necessary'. Stakeholders acknowledge the need for regulatory reform that strengthens safeguards for the built environment, prioritises increasing the safety, health and confidence of building consumers, government and industry to further enable the significant contribution of the building and construction sector to Victoria's economy.

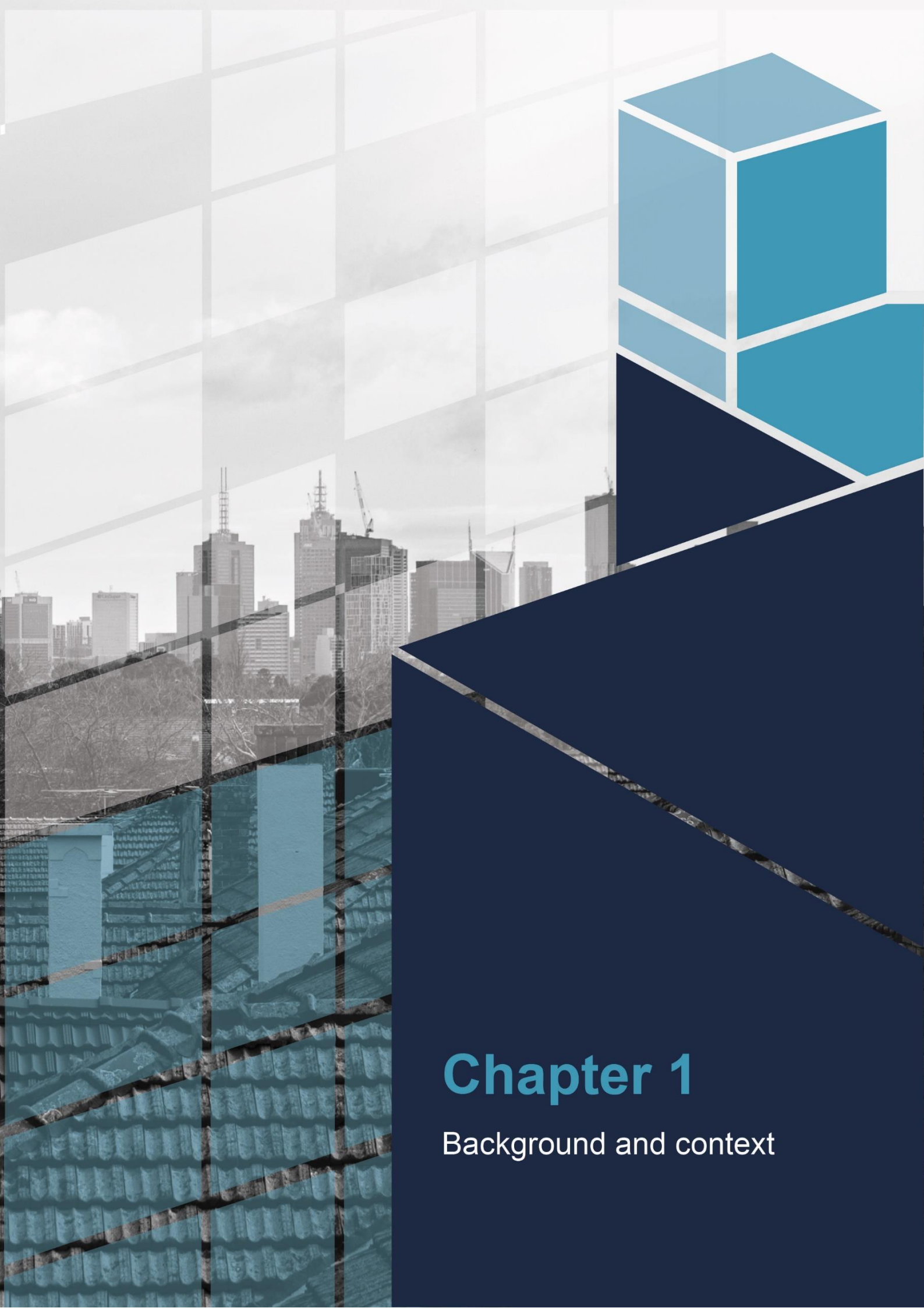
In this Report, the Panel sets out a package of reforms to address the key issues relating to Stage One of the Review. The objective of this Review is to provide for a modern dynamic building system which delivers safe, quality buildings, by a sustainable construction industry and with effective consumer representation and advocacy.<sup>1</sup> The recommendations in this Report are consistent with this goal and have the potential to deliver significant improvements to the building system that will place safety and consumers at the heart of the system.

---

<sup>1</sup> Stage Two of this review will focus on the broader suite of consumer protection mechanisms, including dispute resolution.

# Glossary

|       |   |
|-------|---|
| AACA  | Architects Accreditation Council of Australia       |
| ABCB  | Australian Building Codes Board                     |
| AIA   | Australian Institute of Architects                  |
| AIBS  | Australian Institute of Building Surveyors          |
| ARBV  | Architects Registration Board of Victoria           |
| ASU   | Australian Services Union                           |
| BAMS  | Building Activity Management System                 |
| BCA   | Building Code of Australia                          |
| BLA   | Business Licensing Authority                        |
| BCC   | Building Codes Committee                            |
| BCR   | Building Confidence Report                          |
| BRAC  | Building Regulations Advisory Committee             |
| CAV   | Consumer Affairs Victoria                           |
| CPD   | Continuing Professional Development                 |
| CRM   | Customer Relationship Management                    |
| CSV   | Cladding Safety Victoria                            |
| DBCA  | Domestic Building Contracts Act 1995 (Vic)          |
| DBDRV | Domestic Building Dispute Resolution Victoria       |
| DBLS  | Domestic Building Legal Service                     |
| DELWP | Department of Environment, Land, Water and Planning |
| DIA   | Design Institute of Australia                       |
| ESV   | Energy Safe Victoria                                |
| ESM   | Essential Safety Measures                           |
| HIA   | Housing Industry Association                        |
| MAV   | Municipal Association of Victoria                   |
| MBCP  | Municipal Building Control Plans                    |
| MBS   | Municipal Building Surveyor                         |
| MBAV  | Master Builders Association of Victoria             |
| MPV   | Master Plumbers Victoria                            |
| NCC   | National Construction Code                          |
| NRF   | National Registration Framework                     |
| OSBS  | Office of the State Building Surveyor               |
| PBS   | Private Building Surveyor                           |
| PIP   | Proactive Inspection Program                        |
| RBS   | Relevant Building Surveyor                          |
| SBS   | Statutory Building Surveyor                         |
| SCAV  | Strata Community Association of Victoria            |
| VAGO  | Victorian Auditor General's Office                  |
| VBA   | Victorian Building Authority                        |
| VCAT  | Victorian Civil and Administrative Tribunal         |
| VCT   | Victoria Cladding Taskforce                         |
| VMBSG | Victoria Municipal Building Surveyors Group         |
| VMIA  | Victorian Managed Insurance Authority               |
| WSV   | WorkSafe Victoria                                   |



# Chapter 1

Background and context

# 1 Background and context

The Victorian Government has established the independent Building Reform Expert Panel (the Panel) to lead a review of the building regulatory system (the Review). The objective of the Review is to ensure that Victoria's building regulatory system:

- 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.

After extensive consultation, the Panel has now finalised this report (the Report) to the Victorian Government that makes a series of recommendations for consideration as part of Stage One of the Review. This section provides background and context for the Review. It sets out:

- the impetus for the Review;
- the importance of the building and construction industry to Victoria;
- the staged approach the Panel has taken to the Review; and
- the Review's progress to date and the focus of recommendations included in the Report.

Each point is discussed in turn.

## 1.1 The Review aims to modernise the building regulatory system and address risks of regulatory system failure


Victoria's current building regulatory system was developed in the early-1990s and has evolved over the past thirty years through a range of amendments. Many amendments resulted from reviews that identified the need for changes to certain aspects of the building industry and the building regulatory system. The building regulatory system has not been comprehensively examined since the early-1990s. Since this time there have been significant changes to design and construction practices. These changes have led to a growing disconnect between the regulatory framework and industry practice.

Key trends that have led to a disconnect between industry practices and the regulatory system are outlined below.

### 1.1.1 The regulatory system has not kept pace with changes in construction and the living patterns of Victorians

Over the past three decades, building and construction practices have evolved considerably; driven by industry and technological innovation, changing consumer





preferences, economic growth, demographic trends, and changes in Victorians' living preferences and patterns. Significant trends include:

- growth in multi-storey residential apartment living;
- an increasingly globalised supply chain for building products, including greater reliance on imported and pre-fabricated products; and
- increases in the use of alternative contractual arrangements and practices, such as design and construct contracts.

Each of these trends presents specific opportunities and risks that require the development of a modern, responsive regulatory framework that is tailored to the underlying complexity of different types of buildings.

### **1.1.2 High profile building failures have contributed to a lack of confidence in the regulatory system**

Several high-profile building failures in Australia and around the world have reduced the public's confidence in the building regulatory system. Most significantly, the use of combustible cladding led to the 2014 fire at the Lacrosse apartment building in Melbourne's Docklands, the 2017 Grenfell fire in London, and the 2019 fire at Neo 200 building in Melbourne's CBD.

The Panel notes a broad consensus – from industry, government and consumer stakeholders – that modern, efficient, proportionate and effective regulation is required to restore confidence in the building regulatory system.

The 2018 *Building Confidence Report* (BCR) by Peter Shergold and Bronwyn Weir and the 2017 and 2019 Interim and Final reports from the Victorian Cladding Taskforce (VCT or 'Cladding Taskforce') highlighted regulatory system failures and made recommendations for improvements. The Cladding Taskforce recommended the establishment of this Review. To implement the *Building Confidence Report* recommendations the Australian Building Codes Board (ABCB) has issued a number of consultation documents and agreed to specific changes to the National Construction Code (NCC).<sup>2</sup> The reform package proposed in this Review has been considered in the context of these reviews. The Panel is cognisant of the need to align its recommendations with the ABCB to support a regulatory approach that is consistent with other jurisdictions and the proposed changes to the NCC.

### **1.1.3 The Victorian Government has recently invested in improvements to the building system**

The Victorian Government has already undertaken several reforms to improve the building system and support the building industry, including the establishment of the \$600 million Cladding Rectification Program<sup>3</sup> and the Victorian Building Authority's (VBA) development and implementation of a code of conduct for building surveyors.

There are also reforms underway to expand the practitioner registration and licensing schemes and increase accountability and strengthen the regulation of those working on building sites, including:

---

<sup>2</sup> The Building Code of Australia (BCA) Volume 1 and 2 are part of the National Construction Code series published by the Australian Building Codes Board. The Building Codes Committee (BCC) is one of the technical advisory committees that is supporting the ABCB.

<sup>3</sup> This program is overseen by Cladding Safety Victoria (CSV)

- 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 the Building Division of the Department of Environment, Land, Water and Planning (DELWP) and Department of Justice and Community Safety (DJCS) and have been considered by the Panel in the development of the reform package set out in this Report.

## 1.2 The building and construction industry is important to Victoria's economy and society

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. More than 100,000 building permits are issued annually, contributing around \$40 billion to Victoria's economy.<sup>4</sup> The sector is a substantial contributor to the state's growth, prosperity, and jobs.

Building and construction is a significant employer for the state, making up nearly 10 per cent of Victoria's jobs. Over 320,000 Victorians are directly employed in the construction industry; including architects, draftspeople-building designers, builders, building surveyors and inspectors, engineers, fire safety professionals, planners, project managers, property managers and trades.<sup>5</sup>

The Victorian Government is investing significantly in the industry as part of economic recovery from the coronavirus (COVID-19) pandemic. Initiatives include the investment of \$5.3 billion in the Big Housing Build to construct more than 12,000 new homes throughout Victoria. This investment will boost Victoria's economic recovery, generating an estimated \$6.7 billion in economic activity and supporting more than 18,000 jobs.<sup>6</sup> Commonwealth Government initiatives such as HomeBuilder have also helped to stimulate recent construction growth and will support the construction of 20,000 new homes in Victoria over the next three years.<sup>7</sup>

A modern, risk-based and effective regulatory system that enables continuous improvements in professional practice is fundamental to supporting jobs growth, strengthening Victoria's economy and restoring consumer and industry confidence. A regulatory system with appropriate safeguards will give government, consumers and industry confidence that buildings are safe, of high quality, and compliant.

<sup>4</sup> VBA, 2019, Record year for building work in Victoria as permits nudge \$40 billion,

<https://www.vba.vic.gov.au/news/news/2019/record-year-for-building-work-in-victoria-as-permits-nudge-40-billion>

<sup>5</sup> Australian Bureau of Statistics, 2020, 'Labour Force, Victoria Quarterly: Detailed labour data collected on a quarterly basis: Table 05. Employed persons by state, territory and industry division of main job (ANSIZ)

<<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016-Main%20Features~Apartment%20Living~20>

<sup>6</sup> Premier of Victoria, Victoria's Big Housing Build <[premier.vic.gov.au/victorias-big-housing-build](http://premier.vic.gov.au/victorias-big-housing-build)>.

<sup>7</sup> Master Builders Australia, *Victorian building and construction industry forecast – December 2020*, <

<https://www.mbav.com.au/news-information/news/economyfinance/victorian-building-and-construction-industry-forecasts-%E2%80%93>

## 1.3 The Panel has adopted a staged approach to the Review to deliver holistic and enduring changes

The Panel has adopted a three-stage approach to the Review to be delivered over two years from 2021. This will enable significant changes to be implemented in 2021, with further reforms to be delivered in 2022 and, finally, a new Building Act planned to be introduced in 2023 (replacing the existing *Building Act 1993 (Vic)* (the Building Act)).<sup>8</sup>

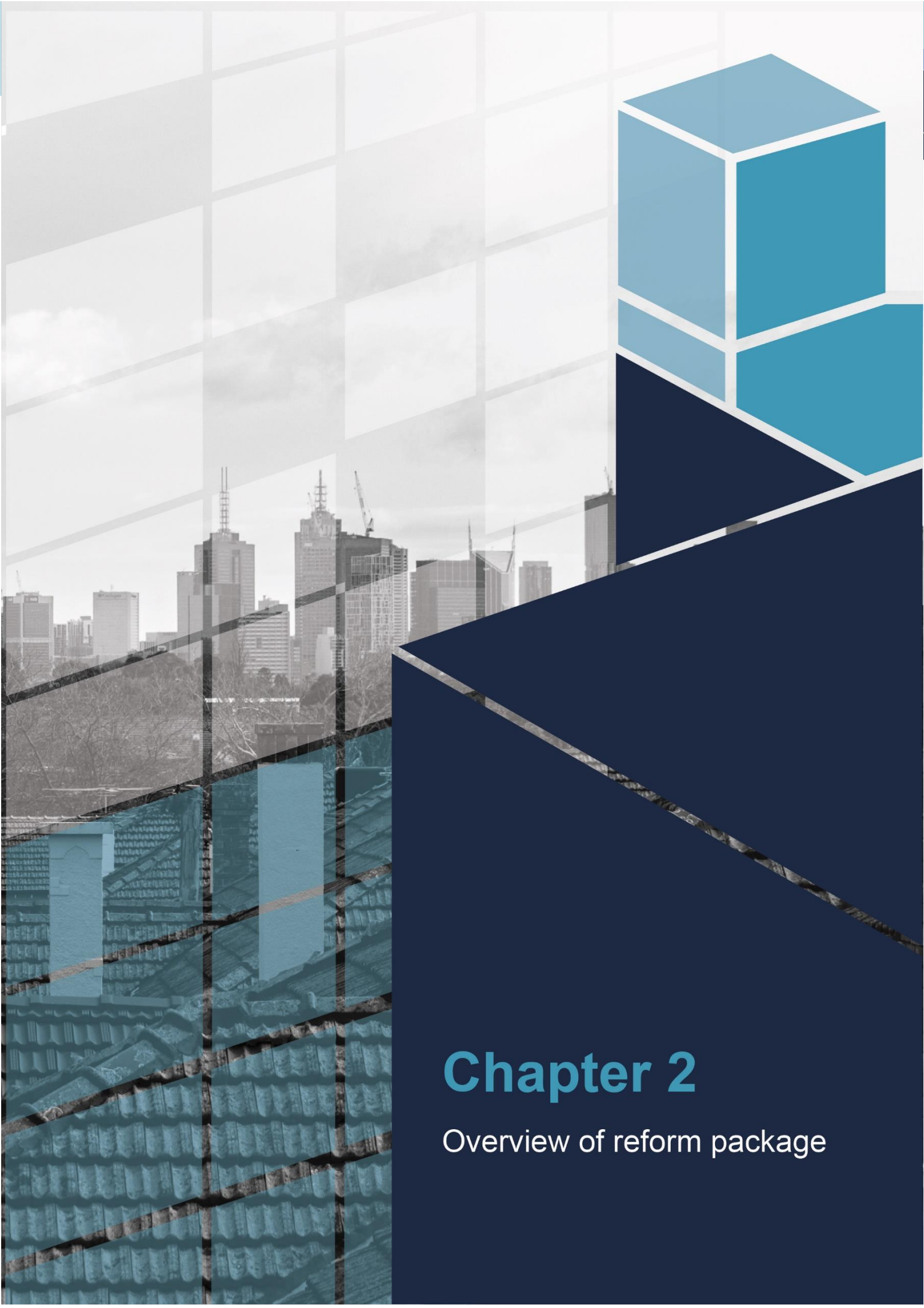
The key elements of this approach are:

- Stage One focuses on game changing improvements to the regulatory system to underpin a modern, robust, and growing building and construction sector. This stage focuses on improvements to practitioner registration, building approvals, regulatory oversight (including roles and responsibilities), and consumer protection.
- Stage Two will provide recommendations relating to improving building information, dispute resolution and building approvals, additional powers, corporate registration, and the introduction of a statutory duty of care.
- Stage Three will propose recommendations for a new Building Act.

This staged approach aims to deliver fundamental and holistic changes required for an effective, risk-based, and intelligence-led building regulatory system that encourages compliance and supports best practice. The staged approach also facilitates meaningful engagement with stakeholders throughout the reform journey.

---

<sup>8</sup> Stage Three may also consider potential improvements required to other legislation that is relevant to the building system such as the *Domestic Building Contracts Act 1995 (Vic)* (DBC Act) and the *Owners Corporation Act 2006 (Vic)*.



## Chapter 2

Overview of reform package

## 2 Overview of reform package

As part of Stage One of the Review, the Panel publicly released a Framework for Reform Discussion paper (the FFR Paper) in April 2021 that articulates key issues in the building regulatory system and possible improvements to address these issues. The Panel invited written submissions on the FFR Paper and conducted an eight-week consultation period on the issues and improvements canvassed in the Paper. The Panel received 142 written submissions from stakeholders including consumers, practitioners, unions, industry groups and local government. The Panel also engaged with over 40 key stakeholders in one-on-one discussions and facilitated eight workshops with different stakeholder groups.

This Report incorporates stakeholder feedback from the consultation process and presents 16 recommendations for the Government's consideration. The recommendations are grouped by the four key elements set out in the Panel's *Terms of Reference* and the FFR paper: practitioner registration, building approvals, regulatory oversight, and consumer representation and advocacy.<sup>9</sup> The Report also includes three *foundational recommendations* to improve data collection, information sharing and the quality of documentation across the building lifecycle. These foundational recommendations will enable whole-of-system improvements that underpin the successful implementation of the Panel's reform package and the implementation of Stage Two reforms.

Recommendations set out in this Report have the potential to reshape the regulatory landscape in Victoria, by strengthening regulatory oversight and the regulatory framework, modernising the building approvals process, increasing accountability in the practitioner licensing and registration schemes, and enhancing consumer representation and advocacy. The recommendations, taken as a whole, seek to protect consumers from poor practices of some industry participants and ensure they are empowered to understand and exercise their rights. Delivering a regulatory system that places consumers at the centre will be an ongoing focus in Stages Two and Three of the Review. Figure 1 sets out the Panel's recommendations for Stage One.

---

<sup>9</sup> The FFR and Terms of Reference refers more broadly to 'consumer protection'. The focus of the Stage One recommendations are consumer representation and advocacy. Consumer protection will be a continued focus of Stage Two.

**Figure 1 | Recommendations to the Victorian Government (Stage One of the Review)**

| STAGE 1   RECOMMENDATIONS TO GOVERNMENT |  |
|---|--|
| FOUNDATIONAL RECOMMENDATIONS            | <p><b>Recommendation 1</b>    <b>Strengthen regulators’ and agencies’ data collection, coordination and information sharing practices</b></p> <ul style="list-style-type: none"> <li>A. Remove barriers to information sharing that exist in legislation</li> <li>B. Develop an interagency information sharing agreement to reduce the complexity and rigidity of existing information sharing agreements</li> <li>C. Increase the consistency and uniformity of information that is gathered and analysed by individual agencies</li> <li>D. Define system-wide indicators for Victoria’s building regulatory system and publicly report on them</li> </ul>  |
|   | <p><b>Recommendation 2</b>    <b>Enforce and improve requirements for documentation across the building lifecycle to improve accountability and transparency</b></p>   |
|   | <p><b>Recommendation 3</b>    <b>Introduce a requirement for building owners to be provided with a building manual</b></p>   |
| PRACTITIONER REGISTRATION               | <p><b>Recommendation 4</b>    <b>Expand and refine registration and licensing schemes to strengthen accountability, regulatory oversight and consumer protection</b></p> <ul style="list-style-type: none"> <li>A. Expand the scope of industry participants required to be registered and licensed to meet identified gaps in the regulatory framework</li> <li>B. Prescribe appropriate scopes of work for each prescribed practitioner category and class</li> <li>C. Restrict prescribed scopes of work to appropriately registered and licensed practitioners</li> </ul>  |
|   | <p><b>Recommendation 5</b>    <b>Develop competence frameworks for all classes of registered and licensed practitioners</b></p>  |
|   | <p><b>Recommendation 6</b>    <b>Enable the VBA to use professional associations’ accreditation schemes as a pathway to registration and licensing decisions</b></p>   |
|   | <p><b>Recommendation 7</b>    <b>Implement the Panel’s proposed six-point plan to boost the number of building surveyors and their quality</b></p> <ul style="list-style-type: none"> <li>A. Recognise existing, and encourage the establishment of new, postgraduate and graduate bridging courses for architects, engineers, and other building practitioners to enable them to become registered as building inspectors and building surveyors</li> <li>B. Provide support for other building practitioners (e.g. builders) to undertake a building surveyors’ degree and obtain the necessary qualifications and experience to practice as a registered building surveyor</li> <li>C. Improve mutual recognition arrangements to enable competent, experienced building surveyors from other jurisdictions to work in Victoria</li> <li>D. Establish cadetship and internship arrangements within building surveying businesses and local councils to provide work experience and ongoing professional development for new building surveyors. These could be developed in partnership with professional and industry associations</li> <li>E. Develop incentives to support new building surveyor course entrants and existing building surveyors to undertake further education to underpin continued improvement. This work could also be undertaken in partnership with professional associations</li> <li>F. Support building surveyors considering retirement to play formal mentoring roles in training institutions and professional associations</li> </ul> |
| CONSUMER REPRESENTATION AND ADVOCACY    | <p><b>Recommendation 8</b>    <b>Establish a statutory Commissioner for Building Consumers to represent consumer interests within the building system</b></p>  |
|   | <p><b>Recommendation 9</b>    <b>Increase availability of consumer support and advocacy services</b></p>   |

## STAGE 1 | RECOMMENDATIONS TO GOVERNMENT

| REGULATORY OVERSIGHT            | <p><b>Recommendation 10</b></p>  | <p><b>Make the State Building Surveyor a statutory role and establish their Office as the principal source of technical advice for industry and practitioners. The Office will also include specific experts on fire, structural engineering, plumbing and other specialist areas</b></p> |
|---------------------------------|--|---|
| <p><b>Recommendation 11</b></p> | <p><b>Actively support the improvement of the VBA's capacity so that it is a contemporary best practice regulator</b></p>  |   |
| <p><b>Recommendation 12</b></p> | <p><b>Modernise legislative schemes and regulate governance and operations for architects and design practitioners to ensure alignment with best practice and that qualification requirements include a focus on compliance with current regulatory settings</b></p>   |   |
| BUILDING APPROVALS              | <p><b>Recommendation 13</b></p>  | <p><b>Introduce measures to strengthen building approvals processes for all projects</b></p>  |
|                                 | <ul style="list-style-type: none"> <li>A. A new system for auditing of building surveyors is introduced. This should focus on areas identified as significant risks, such as conflicts of interest, and the consistency and quality of building documentation. The way in which this auditing is undertaken could include recognition of professional associations' auditing systems (subject to them meeting rigorous ongoing standards)</li> <li>B. Building surveyors are required to provide consumers with a "terms of engagement" document before a project begins, that sets out the roles and responsibilities of the building surveyor</li> <li>C. Mandatory Municipal Building Control Plans (MBCPs) for each Council are introduced</li> <li>D. The VBA renew its risk-based targeted inspection audit program with a greater focus on class 2 to 9 buildings</li> <li>E. The VBA establish a priority project team to address existing orphan permits</li> <li>F. A protocol between the VBA and councils be finalised to ensure clarity of roles and responsibilities about compliance and enforcement</li> </ul> |   |
| <p><b>Recommendation 14</b></p> | <p><b>Introduce additional safeguards in the short term for more complex building projects, with an initial focus on residential apartments</b></p>  |   |
|                                 | <ul style="list-style-type: none"> <li>A. As part of the preparation for the building permit, require design practitioners to provide a compliance report and associated design declaration for consideration by the Statutory Building Surveyor</li> <li>B. Additional inspections to be prioritised for specific risks in residential apartment buildings</li> <li>C. Introduce a new process to require additional compliance checks where there is substantial variation to design documents and performance solutions after issuing of a building permit</li> <li>D. Strengthen the final compliance stage for residential apartment buildings so that the building is complete and complies with the approved building permit</li> </ul>   |   |
| <p><b>Recommendation 15</b></p> | <p><b>In the medium term, once the ABCB complexity framework is finalised, adopt it as the basis for an expansion of these safeguards to all medium, high and very-high complexity buildings</b></p>   |   |
| <p><b>Recommendation 16</b></p> | <p><b>In the medium term, enhance the role for local councils and the MBS for more complex and higher risk buildings</b></p>   |   |
|                                 | <ul style="list-style-type: none"> <li>A. Transfer accountability for causing inspections and issuing an occupancy permit or certificate of final inspection to the MBS</li> <li>B. Shift responsibility for monitoring and enforcing compliance of building works to the MBS</li> </ul>   |   |

## 2.1 The Panel recommends a package of short, medium and long term reforms

The Panel proposes that the Victorian Government adopt a phased implementation of the recommendations proposed in this Report. This will help to deliver 'quick wins' to improve industry standards and consumer outcomes and lay the foundations for the more substantial reforms.

In the short term, there are several non-legislative measures that can be implemented quickly and will uplift standards in the industry, improve regulatory practice and provide a better understanding of consumer experiences across the system. In order to meet the requirements of our Terms of Reference, the Panel suggests that as many as possible of the reforms requiring legislative change be included in the first tranche of legislation. Further legislative changes to deliver the remainder of the recommendations could be included in a second tranche of legislation in 2022.<sup>10</sup>

## 2.2 Foundational improvements to data collection, information sharing and building documentation must underpin this reform package

The reform package recommended in this Report will lead to fundamental changes for the building regulatory system. To realise the transformative potential of the reforms, investments and improvements to information sharing and documentation are essential. Across the Review, the Panel has consistently heard that two key issues present significant barriers to improving the building regulatory system and should be addressed as a matter of urgency. These are:

- inadequate data collection, access to and sharing of information; and
- poor quality documentation across the building lifecycle.

### **Inadequate data collection, access to and sharing of information limits an intelligence-led approach to regulatory activities and reforms**

Information sharing between regulators, agencies and relevant policy departments is currently sporadic and ad hoc. This limits the ability to aggregate data and effectively analyse intelligence to understand key trends and make intelligence-based regulatory and policy decisions. The Panel has heard three main concerns:

- Agencies and regulators collect information in a way that supports their specific activities and responsibilities. There are no unique identifiers<sup>11</sup> across datasets. This limits the ability to link information and obtain a comprehensive view of the system. It is not currently possible to link consumer cases, projects, and practitioner behaviour across agencies. Regulators and agencies are therefore unable to obtain a holistic picture of systemic issues and emerging trends.
- There are several key gaps in the data that is currently collected, for example:

---

<sup>10</sup> The second legislative tranche will also include recommendations relating to Stage Two of the Review.

<sup>11</sup> A unique identifier is a numeric or alphanumeric label that is used to identify a specific single entity in data so that it can be linked to other datasets with the same unique identifier.



- data about the nature and extent of defects for different building types is limited;
  - the outcomes of many issues, complaints and disputes are unknown; and
  - the activities of the 79 local government authorities are inconsistently compiled (including data relating to Occupancy Permits).
- Where data is collected and shared, the quality of data can be variable, with data often collected in open text fields and other formats that make it difficult to analyse. Where data is captured, there are significant difficulties in sharing it across the system. To share information, each agency or regulator requires an information sharing agreement. These are not consistently in place and can place significant limits on what may be shared (such as where personally identifiable information exists).<sup>12</sup>

Improvements in data collection and information sharing (specifically including data on non-compliance matters and dispute resolution outcomes) would enable more proactive co-regulatory responses to emerging issues and systemic trends that need to be urgently addressed. Data that can be linked across agencies will support regulators, agencies and DELWP to measure system-wide performance and apply an intelligence-led approach to regulation and policy development. Insights could be published to increase transparency on the key issues and trends affecting the building system and lead to better outcomes for consumers and the built environment.

### **Documentation of variable quality reduces accountability of practitioners and has adverse outcomes for consumers**

The availability and quality of building documentation across the building lifecycle – during design, construction, and maintenance – is a critical enabler of an effective building approvals process:

- Clear documentation enables the Relevant Building Surveyor (RBS)<sup>13</sup> to check the compliance of building works with the building permit, the NCC, and other legislative obligations, and ensures that certification and permitting functions provide effective safeguards for building outcomes and consumers.
- Documentation is important for design and building practitioners to carry out their roles effectively and to ensure a clear record of decisions made and accountability for those decisions. This is especially important where building plans change hands multiple times and are interpreted by many practitioners.
- Building documentation is important for building owners and residents to ensure they are well equipped to maintain buildings and exercise their rights if defects arise.

The Panel has heard that building documentation across the building lifecycle varies in quality. One cause of this is that regulatory provisions regarding documentation

<sup>12</sup> While there have been some efforts to improve interagency information sharing – such as through establishment of the Joint Building Intelligence Group – there is a confusion about what information can be shared and with whom (particularly in understanding privacy and legislative limitations).

<sup>13</sup> A relevant building surveyor is the building surveyor who has been appointed to oversee the relevant building work. The statutory functions of a relevant building surveyor are to issue building permits, conduct mandatory inspections of buildings and building work and issue occupancy permits or certificate of final inspection (if an occupancy permit is not required for that building work). AIBS, “Roles and Responsibilities of Building Surveyors and Building Inspectors; Role of the Building Surveyor”, <http://www.inlinegroup.com.au/pdf/ROLE%20OF%20BUILDING%20SURVEYOR.pdf>

requirements<sup>14</sup> lack specificity about the level of detail required (providing too much room for interpretation). There is also limited enforcement of existing requirements for documentation.<sup>15</sup> Where a document is appropriately lodged, the current management of documentation (hard copy format with either councils or building surveyors) presents significant barriers to regulators' auditing and enforcement functions. Consumers also have little oversight on what is occurring (or has occurred) in their building project due to the variability and quality of documentation. The Panel has heard that where defects or complaints arise, consumers may be unable to trace the documentation to determine the relevant responsible practitioner.

A centralised source of building design and documentation was a key recommendation from the *Building Confidence Report* which notes that a consistent approach to recording information would “enable authorised persons to access key information about the construction and approval of buildings, leading to greater transparency and auditability. It would strengthen public accountability.”<sup>16</sup>

The foundational recommendations relating to data and information sharing are urgent and vital to support the implementation of all the reform measures including those in Stage Two.

### Three foundational recommendations will improve information sharing and building documentation

There is a need for legislative change to require data sharing to enable comprehensive capture of trends and patterns in the building industry and respond appropriately. The Panel recommends that the Victorian Government implements a three-part strategy to improve communication and exchange of information across the building regulatory system and increase the transparency of documentation.<sup>17</sup> These recommendations seek to lay the foundations for a regulatory framework where system performance can be measured and transparently communicated, and where the ‘health’ of the system can be actively monitored.

This strategy is outlined in the recommendations below.

#### 2.2.1 Recommendation 1 | Strengthen regulators' and agencies' data collection, coordination and information sharing practices

The Panel recommends that the following reforms be undertaken quickly so that Victorian Government can better understand the magnitude and type of building defects and the nature of consumer issues:

- a) **Remove barriers to information sharing that exist in legislation.** For example, clarify section 259AB of the Building Act to ensure the VBA can share information with relevant agencies to support intelligence-led regulation.<sup>18</sup>

---

<sup>14</sup> The Building Act provides broad powers to make regulations around the building design process and the Building Regulations contains provisions that set out requirements for the documents that are to accompany the building permit application and that require RBSs to document performance solutions.

<sup>15</sup> R. 24 and 25 of the Building Regulations set out the detailed documentation required for a building permit application

<sup>16</sup> Shergold P & B Weir, 2018, *Building confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry*  
[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)

<sup>17</sup> This includes the establishment of the Office of the State Building Surveyor (Recommendation 10) and the Commissioner for Building Consumers (Recommendation 8), recommendations to change the role of local council MBSs for medium and high complexity building projects (Recommendation 16).

<sup>18</sup> Section 259AB outlines the VBAs information sharing powers and ability to enter information sharing agreements with other regulators and agencies.

Barriers to information sharing between the Architects Registration Board of Victoria (ARBV), Consumer Affairs Victoria (CAV), Domestic Building Disputes Resolution Victoria (DBDRV), Victorian Managed Insurance Authority (VMIA), and the VBA should also be addressed to improve coordination of disciplinary action and oversight functions between the regulators.<sup>19</sup>

- b) Develop an interagency information sharing agreement to reduce the complexity and rigidity of existing information sharing agreements.** The interagency sharing agreement could set out a common understanding of privacy principles and simplify the parameters for how information is shared across agencies.
- c) Increase the consistency and uniformity of information that is gathered and analysed by individual agencies.** This includes:
- agreement among agencies that data is collected and shared;
  - development of a consistent data dictionary and common core data collection, cleansing and processing standards across agencies;
  - development of unique identifiers so that data can be linked and shared across agencies and local councils; and
  - implementation of a process to monitor and evaluate data collection, analysis, and information sharing arrangements between regulators.
- d) Define system-wide indicators for Victoria's building regulatory system and publicly report on them.** This would build on improvements to regulators and agencies' data collection and information sharing practices and would require the development of an outcomes framework for Victoria's building system. This would include the establishment of a public dashboard of building system indicators to monitor system performance and significantly improve transparency and consumer outcomes.

Specific datapoints should also be collected to support key linkages across the system. This includes the building permit number, practitioner number, Australian Business Number and property address.

Regulators and agencies have indicated the need for clear legislative authority to share information, particularly where information relates to an individual practitioner. Legislative change will be required to support robust information sharing practices and reflect community expectations that relevant public sector agencies work together to support positive consumer outcomes. A clear legislative remit for information collection and sharing and a collective mindset that promotes the coordination of information will be integral to supporting the new entities proposed in this Report.<sup>20</sup>

### **2.2.2 Recommendation 2 | Enforce and improve requirements for documentation across the building lifecycle to improve accountability and transparency**

Information that is clear, complete, comprehensive, accessible, and up to date is the basis for a modern regulatory system. The general requirements in the existing

---

<sup>19</sup> Note this is pending the Government's preferred position with respect to Recommendation 8.

<sup>20</sup> Specifically, the Commissioner for Building Consumers and the Office of the State Building Surveyor.

legislative framework relating to building documentation are insufficient to ensure consistent quality documentation for all building projects and are currently not adequately enforced.

The Panel recommends that the ***Building Regulations 2018 (Vic) (the Building Regulations)*** be amended to provide appropriate requirements for documentation and record-keeping of Performance Solutions and better reflect the requirements set out in the NCC. This could include reintroducing a revised version of Practice Note 62 which previously provided information on minimum design documentation requirements to be submitted as part of a building permit. In addition, there should be greater enforcement of the existing obligations that building permits must contain sufficient information to show that the proposed building work will comply with the Building Act and the Regulations.<sup>21</sup>

There is also a significant opportunity to expand the recently developed Building Activity Management System (BAMS) to support a consistent approach to lodging and tracking documentation across a building project. The Panel recommends that BAMS is integrated with the VBA's other standalone systems to better enable data analysis (including practitioner registration systems, complaints, and enforcement data). This would provide comprehensive information for the VBA's activities in relation to each building permit.<sup>22</sup> In addition, the information lodged would create a dynamic framework that could be used to determine whether future legislative change is required. In the long term, the Panel considers that BAMS (or another single system) should provide a central online portal for all building information.<sup>23</sup> The central portal would include all documentation for building works for each building. Local councils would have access to the documentation relating to buildings in their municipality. The VBA would provide stewardship of the system and, together with other regulators, have access to all documents in the portal to support regulatory functions, including an improved risk-based inspection program.

### 2.2.3 Recommendation 3 | Introduce a requirement for building owners to be provided with a building manual

Currently, there are no clear processes or requirements for building information to be provided to the initial building owners and subsequent purchasers. Where documentation is collected, it is often held by multiple practitioners and/or relevant entities. Even where information is provided, owners are unable to verify its accuracy or completeness and often face difficulties in understanding how to interpret or use the information.

The Panel recommends that building owners are provided a digital building manual as a condition of a building surveyor issuing an occupancy permit.<sup>24</sup> The building manual would describe how the building is intended to operate, as well as relevant documentation relating to Essential Safety Measures (ESM) maintenance.<sup>25</sup> The

---


<sup>21</sup> Building Regulations 2018, regulation 24 and 25 prescribes the documentation that must accompany all buildings

<sup>22</sup> Currently, VBA's systems are not integrated which limits usefulness of information in identification of compliance issues and trends.

<sup>23</sup> Recommendation 3 sets out the potential for an online building manual to be provided to the building owner and local council at the end of a building project. BAMS can help to support the collection and oversight of building manuals and enable manuals to be updated 'live' as future alterations and maintenance occurs.

<sup>24</sup> A Building Manual is strongly supported by many stakeholders. Specifically, Strata Community Association of Victoria (SCAV) sees substantial benefit in the creation of a building manual and register of all strata buildings to address issues of accessibility to information by regulators and other government agencies, as well as consumers, are properly addressed.

<sup>25</sup> As a first step it is expected that the building manual would include the documentation relating to the Occupancy Permit.



purpose of the building manual is to provide building owners (including subsequent owners) with accurate and complete information about a building.

The information required in a building manual must be specific. The Panel recommends that the following requirements for a building manual are included in legislation:

- **As-built documentation** – This includes building permit documentation, copies of declarations of compliance, any documents associated with third party reviews or assessments of variations from permit, Performance Solutions, floor plans and site plans.
- **Site details** – This includes information about the site of the building such as any environmental protection orders or heritage plans.
- **Compliance and enforcement detail** – This includes inspection records and copies of any directions to fix, building notices or orders that were issued during construction.
- **Details on relevant practitioners** – This includes relevant insurance and registration or license number of the Statutory Building Surveyor (SBS) (formerly RBS)<sup>26</sup>, developer, registered designer, and building practitioner.
- **Essential Safety Measures** – This includes the maintenance schedule for ESMS, including the fire safety information.

The above requirements align with the ABCB's proposal for a building manual.<sup>27</sup> Further detailed consideration should define the specific documents that are required based on a building's risk and complexity.

The building surveyor should play a key role in overseeing and verifying the completeness and accuracy of the building manual before the occupancy permit is issued. Other relevant practitioners will have responsibility to provide accurate information to inform the building manual. Depending on the scale of a project, a project superintendent or project manager may coordinate detailed information from the relevant design and construction contractors, installers and trades. Once a building is complete, a copy of the building manual should be provided to the building owner and local council and the manual would be uploaded into BAMS.<sup>28</sup>

The building manual should be a 'live' digital document that is periodically updated at key stages across the life of any building. For example, the building manual would continue to be updated where there are any building alterations or additions.<sup>29</sup> This would enable the manual to remain relevant for future owners, fire services and/or building works.

---

<sup>26</sup> See Recommendation 13C.

<sup>27</sup> Australian Building Codes Board 2021 *Building Manuals – A response to the Building Confidence Report Discussion Paper* <[https://consultation.abcb.gov.au/engagement/building-manuals/supporting\\_documents/Recommendation%2020%20discussion%20paper.pdf](https://consultation.abcb.gov.au/engagement/building-manuals/supporting_documents/Recommendation%2020%20discussion%20paper.pdf)>. p 11.

<sup>28</sup> *Building Act 1993* (Vic), section 73. This could accompany the current requirement for the relevant building surveyor to give copies of the documents to local council (and may require a broader scope of BAMS (see recommendation 2)

<sup>29</sup> Updates to the building manual could also be triggered by change to use, occupancy rates and other impacts to the building, building maintenance that results in a material change to the construction, materials or maintenance requirements of a building element or any work that required a building permit or plumbing certificate to be issued.

## These foundational recommendations will provide better regulatory intelligence and have positive outcomes for consumers, industry and practitioners

Together, these recommendations will improve intelligence on the current building system and enable policy departments, regulators and other oversight bodies to gain a better understanding of systemic issues and emerging trends. They will also help to drive a more intelligence-led regulatory approach and stronger auditing measures and give consumers greater control and oversight of building projects.

Improvements in documentation, data and information sharing will enable the Panel's recommended Commissioner for Building Consumers to analyse and publicly report on issues affecting consumers.

The long-term shift to a centralised online portal will also have positive outcomes for consumers. Clear obligations around documentation that are complemented by an integrated online system will enable an accurate and complete understanding of the construction of any given building project. This will significantly increase the transparency of decision-making and accountabilities where defects arise and will better empower consumers to resolve disputes and have confidence in regulatory decision-making.

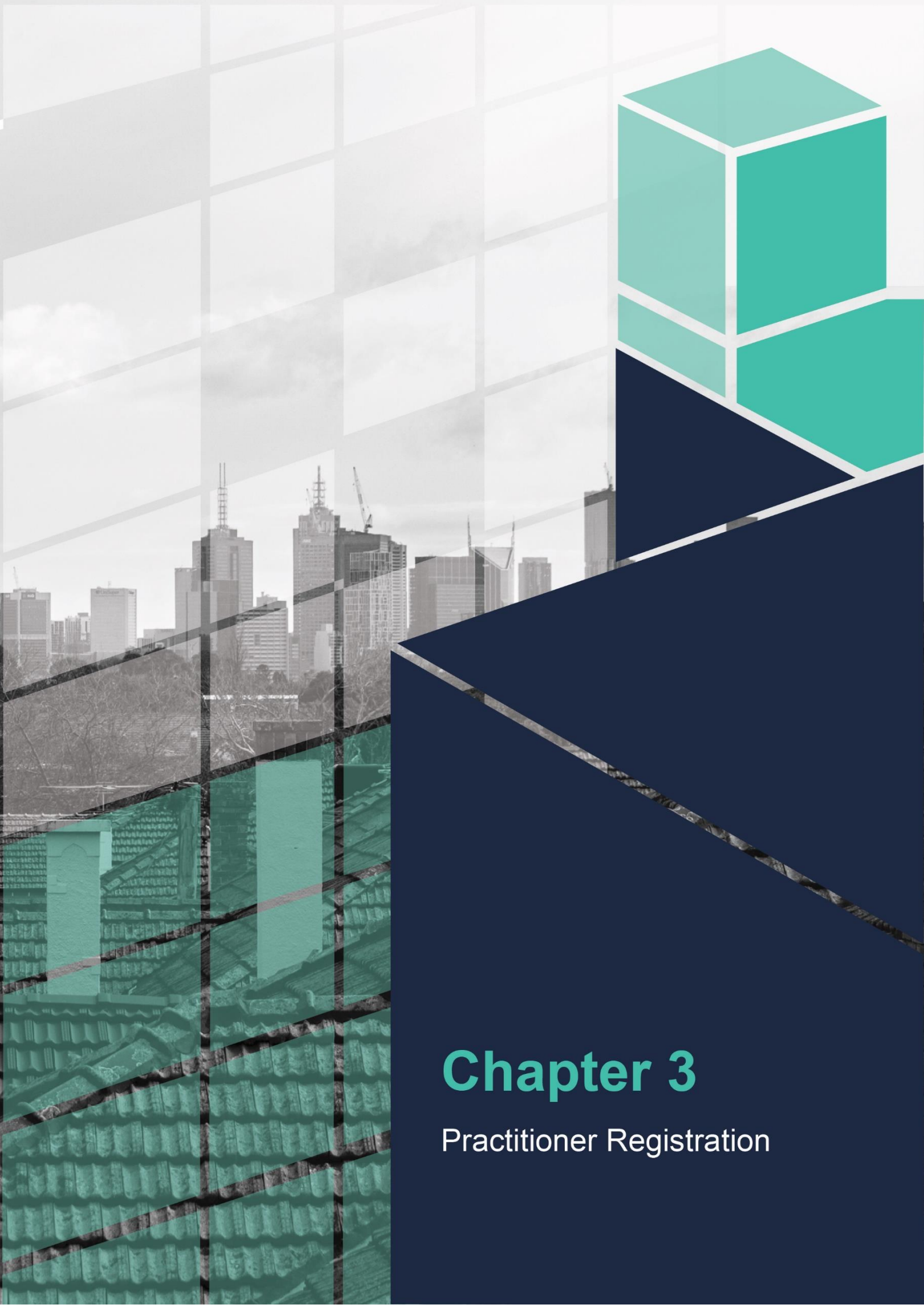
An integrated online portal underpins, and will be supported by, the introduction of building manuals for consumers (Recommendation 3). The *Building Confidence Report* recommends that a 'comprehensive building manual for Commercial buildings [class 2 to 9 buildings] that should be lodged with the building owners and made available to successive purchasers of the buildings' (Recommendation 20).<sup>30</sup> Introducing requirements for building manuals improves the transparency and accountability for consumers in understanding what has occurred during a building project. It also provides the initial building owners a transparent, collated view of the building as-built, potential points of non-compliance and ongoing ESM reporting requirements.

Alongside detailed documentation and data capture, a complete building manual will place a greater emphasis on all practitioners and consultants to turn their mind to having accurate documentation when making decisions across the building approvals process.

Accurate building documentation will provide government, regulators, local councils and fire services with comprehensive information about existing buildings to support regulatory activities.

---

<sup>30</sup> Shergold P & B Weir, 2018, 'Building confidence: *Improving the effectiveness of compliance and enforcement systems for the building and construction industry*'  
[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)



# Chapter 3

Practitioner Registration

### 3 Practitioner registration

The proper design and construction of buildings requires many different practitioners with distinct skillsets and technical expertise who are suitably qualified, experienced, and have the knowledge to perform their professional duties. An adequate supply of skilled individuals is critical to enable an effective building system and a safe, quality, and compliant built environment.

The building regulatory system seeks to promote and ensure practitioner capability through a range of mechanisms. Most significantly, registration and licensing schemes for building, plumbing and design practitioners aim to ensure that work is undertaken by people who are qualified, competent, and who meet probity requirements. Given the considerable differences in the complexity of different kinds of building work undertaken in Victoria, it is important that regulatory safeguards and mechanisms are appropriately tailored and responsive. The key issues and recommendations for this chapter are in Figure 2.



**Figure 2 | Practitioner registration - Key Issues and Recommendations**

| Key issues   |   |   |
|--|---|---|
| Registration and licensing schemes do not ensure complex and high-risk work is restricted to suitably qualified practitioners  | Practitioner competence is not adequately enabled and promoted through the regulatory framework | There are significant workforce capacity issues |
| Recommendations  |   |   |
| <p>4. Expand and refine registration and licensing schemes to strengthen accountability, regulatory oversight and consumer protection</p> <p>A. Expand the scope of industry participants required to be registered and licensed to meet identified gaps in the regulatory framework</p> <p>B. Prescribe appropriate scopes of work for each prescribed practitioner category and class</p> <p>C. Restrict prescribed scopes of work to appropriately registered and licensed practitioners</p>  |   |   |
| <p>5. Develop competence frameworks for all classes of registered and licensed practitioners</p>   |   |   |
| <p>6. Enable the VBA to use professional associations' accreditation schemes as an input to registration and licensing decisions</p>   |   |   |
| <p>7. Implement the Panel's proposed six-point plan to boost the number of building surveyors and their quality.</p> <p>A. Recognise existing, and encourage the establishment of new, postgraduate and graduate bridging courses for architects, engineers, and other building practitioners to enable them to become registered as building inspectors and building surveyors</p> <p>B. Provide support for other building practitioners (e.g. builders) to undertake a building surveyors' degree and obtain the necessary qualifications and experience to practice as a registered building surveyor;</p> <p>C. Improve mutual recognition arrangements to enable competent, experienced building surveyors from other jurisdictions to work in Victoria</p> <p>D. Establish cadetship and internship arrangements within building surveying businesses and local councils to provide work experience and ongoing professional development for new building surveyors. These could be developed in partnership with professional and industry associations</p> <p>E. Develop incentives to support new building surveyor course entrants and existing building surveyors to undertake further education to underpin continued improvement. This work could also be undertaken in partnership with professional associations</p> <p>F. Support building surveyors considering retirement to play formal mentoring roles in training institutions and professional associations</p> |   |   |

### 3.1 Key issues

**The current registration and licensing schemes do not provide sufficient safeguards and controls** to ensure that practitioners have the necessary technical skills, knowledge, and competence to undertake different kinds of design and construction work.

**Workforce capability is not adequately assured and promoted and the industry (particularly building surveyors) faces ongoing capacity constraints.** This leads to adverse outcomes for the built environment and for consumers. There are three parts to this problem that are described below.

### 3.1.1 Registration and licensing schemes do not ensure complex and high-risk work is restricted to suitably qualified practitioners

Practitioner registration and licensing schemes<sup>31</sup> are not fit-for-purpose. Registration classes and categories, and the scopes of work regulated by them, do not provide adequate assurance that practitioners undertaking work are suitably qualified to do so. The reasons for this are discussed below.

#### Registration and licensing schemes do not cover all work in contemporary construction

Building practitioner classes are not aligned with contemporary construction practices and do not reflect different risks across the construction process and building lifecycle.<sup>32</sup>

These gaps exacerbate the lack of clear and specific accountabilities in the building process. The lack of accountability for specialist, yet unregistered, work disproportionately shifts the liability and risk for non-compliance onto registered classes of practitioner who may not have the skills or qualifications to assess the work of specialist unregistered professionals.

#### High-risk work can be performed by practitioners without specialist skills

The current registration scheme for building practitioners does not effectively distinguish registration classes based on risk or complexity of work. This lack of specialisation in building practitioner registration classes allows practitioners without the necessary skills or qualifications to carry out complex or high-risk work. The Panel has heard that current categories of building practitioner (including trades) and design practitioners are not sufficiently granular to account for differences in the complexity of work, particularly in constructing multi-storey buildings. Stakeholders state that existing categories do not reflect the complexity of new building techniques. For example, some stakeholders called for a revision of the classes of building limited, to include modular building work.

#### Scopes of regulated work are not uniformly prescribed and restricted to all classes and categories of registered and licensed practitioners

Some registration and licensing classes are subject to scopes of work (and related offence provisions) that prescribe work that only a practitioner registered in the class is permitted to perform.<sup>33</sup> There are, however, many elements of design and building work that are not captured within prescribed scopes of work. There are also no regulated scopes of work for a range of occupations, including project managers, design practitioners and commercial builders. For instance, building designs do not

---

<sup>31</sup> The schemes are established in Part 11 and Part 12A of the Building Act for building practitioners and plumbers, respectively.

<sup>32</sup> Essential Safety Measures (ESMs) maintenance practitioners are not a registration and licensing class, so there is little oversight of the training, qualifications and conduct of persons involved in servicing and maintaining ESMs. Stakeholders also highlight the lack of a registration category for practitioners responsible for quality control on building sites (such as construction manager or site supervisor) as a gap in the regulatory system.

<sup>33</sup> The legislative framework gives effect to this requirement in the following ways: The Building Regulations prescribe classes of practitioner (based on categories set up in the Building Act). The Regulations (in some instances) authorise some practitioner classes to perform relevant prescribed scopes of work. The Building Act restricts the prescribed scope of work to relevant corresponding prescribed category or class of building practitioner by means of offence provisions (e.g. s169D-169F) which preclude a person from carrying out certain building work unless registered or licensed.

need to be prepared by a registered design practitioner and commercial building work does not need to be undertaken by registered commercial builders.<sup>34</sup>

### 3.1.2 Practitioner competence is not adequately enabled and promoted through the regulatory framework

There are several ways that the regulatory framework does not adequately assure and promote practitioner competence.

#### **There is limited technical advice available to practitioners to apply the NCC**

The Panel has heard that some practitioners across the building system do not understand and effectively apply the NCC.<sup>35</sup> The NCC is amended every three years to keep up with changes in the building industry and it can take significant time and effort to understand the NCC's requirements. Industry stakeholders suggest that further support is required for practitioners to understand how to comply with the NCC. This includes for building and design practitioners.

Limited understanding of performance-based solutions within the NCC is a particular concern highlighted by many stakeholders.<sup>36</sup> Performance-based solutions are intended to provide flexibility for practitioners and enable the use of innovative technologies and solutions. They can, however, create risks of poor building outcomes where they are not well understood or applied. The Building Confidence Report notes 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>37</sup>

#### **There is limited oversight of practitioner competence after registration**

Licensing and registration provide a point-in-time assessment of skills, competence, knowledge, and integrity. While practitioners are required to renew their registration or licensing every 5 years (unless determined otherwise by the VBA), this review does not involve a comprehensive assessment of practitioner conduct or competence. Stakeholders observe that regulatory oversight is disproportionately invested in the point-of-entry into the system, with a lack of emphasis on ongoing competence after registration and/or licensing. There is strong support for mandatory CPD requirements to be adopted as part of registration and licensing renewal processes. The introduction of mandatory CPD for registered building practitioners and licensed and registered plumbers is being progressed outside of this Review.<sup>38</sup> The recommendations below aim to support, and align with, the introduction of mandatory CPD.

---

<sup>34</sup> This arises because of an asymmetry between 'domestic' and 'non-domestic' building work in the legislative scheme. All domestic builders have prescribed scopes of work (and related restrictions) but there are no corresponding requirements that commercial building work must be undertaken by a commercial builder.

<sup>35</sup> Limited understanding of the NCC is a common concern raised about a range of building practitioners. Similar concerns are raised in relation to the limited training provided to architects and the design profession for understanding the NCC.

<sup>36</sup> Performance-based solutions allow practitioners to use building materials and methods that are not 'deemed to satisfy' as per prescriptive requirements within the NCC, so long as they meet relevant performance conditions.

<sup>37</sup> 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), p. 18

<sup>38</sup> DELWP has commenced development of a Regulatory Impact Statement (RIS) to consider options for mandating CPD requirements in Victoria. A framework is currently being designed in close consultation with industry, government agencies and practitioners active in the sector. The RIS and draft regulations will be released for public consultation once finalised in mid-2021. While regulations are expected to be in place by late 2021, requirements to complete CPD will be rolled out gradually.

## There are concerns with the quality of education provided to practitioners

The Panel has heard concerns about the quality of training and assessment delivered by education and training providers. A lack of confidence in the qualification process means that the VBA is duplicating assessments; resulting in delays, added costs and stakeholder frustration.

### 3.1.3 There are significant workforce capacity issues

Building surveyors play a critical safeguard role for building projects and the built environment. Through this Review, the Panel has heard that the size of the building surveyor workforce presents a growing concern for industry and the regulatory system. There is currently a shortage of building surveyors and insufficient supply to meet demand. This is likely to be exacerbated over time, given limited growth in building surveyors entering the system and an ageing building surveyor workforce. There is a need to consider diverse strategies – using both regulatory and non-regulatory mechanisms – to address workforce supply pressures.

## 3.2 Recommendations

The Panel proposes three complementary recommendations to strengthen practitioner registration and licensing schemes and enhanced practitioner competence. These are outlined below.

### 3.2.1 Recommendation 4 | Expand and refine registration and licensing schemes to strengthen accountability, regulatory oversight and consumer protection

#### Description

The Panel recommends that registration schemes for building practitioners are expanded to enhance accountability, improve regulatory oversight of practitioners, and better protect consumers. This should be achieved through the following reforms:

#### a) Expand the scope of industry participants required to be registered and licensed to meet identified gaps in the regulatory framework

At a minimum, industry participants who undertake the following work should be considered for registration:

- oversight and quality assurance of building projects (such as construction managers and site supervisors);
- specialist design services, including disability access, lighting, and plumbing design;
  - i. consultative services, such as building consultants,<sup>39</sup> consultants for ESM, energy assessors and environmentally sustainable design consultants; and
  - ii. geotechnical engineers or persons providing engineering services.

---

<sup>39</sup> A building consultant is an individual who is hired by the building owner once a building is complete to provide a defects/inspection report. Building consultants can also be engaged for a range of other consultative services, such as to act as a client's representative during construction, or to provide any pre-purchase property inspection reports.

## **b) Prescribe appropriate scopes of work for each prescribed practitioner category and class**

Scopes of work for all registered and licensed practitioners will ensure that only appropriately registered or licensed practitioners will be authorised to perform high-risk work. In the first instance:

- scopes of work should be introduced for draftspersons-building designers, project managers, and architects; and
- classes and scopes of work should be realigned for commercial builders to provide appropriate restrictions on practitioners that can undertake commercial building work.<sup>40</sup>

## **c) Restrict prescribed scopes of work to appropriately registered and licensed practitioners**

Introduce amendments to building legislation and regulations to specify work that must be undertaken by a specific practitioner category or class. At a minimum, this should include the requirements that:

- designs included in a building permit application must be completed by a registered design practitioner; and
- oversight of building work must be undertaken by a suitably registered practitioner.

This recommendation has been considered with the view to achieving consistency with other reforms that are underway for registration and licensing regimes, namely:

- Adoption of a National Registration Framework (NRF) that is being progressed by the *Building Confidence Report* Implementation Team in response to Recommendations 1 and 2 of the Report. This includes recommended scopes of work for each practitioner category included in the NRF.
- Adoption of a mandatory trades registration and licensing scheme which is currently set to be introduced in 2022.

This recommendation should be introduced alongside the development of competence frameworks (Recommendation 5). Competence frameworks will provide a comprehensive and practical means to support the introduction and implementation of new scopes of work, classes of practitioner, and the setting of targeted competence and probity requirements.

### **Rationale**

The proposed reforms to registration and licensing schemes for building practitioners seek to achieve a range of benefits, including to:

- enhance accountability for practitioners by clearly defining the scopes of work that they may perform;
- ensure a fairer and more reasonable allocation of liability and risk among building practitioners by redistributing the currently excessive liability and risk for non-compliant work on current registered classes of practitioner;

---

<sup>40</sup> There are currently defined scopes of work for domestic building work, but there are not comparable restrictions on work undertaken for commercial building work.

- increase regulatory oversight of practitioners in the building system who are currently not readily in ‘view’ of regulators;
- ensure that practitioner classes and categories, and prescribed scopes of work, are fit for purpose and reflect contemporary construction practices; and
- strengthen the assurance to consumers that practitioners are qualified to undertake work they are engaged to perform.

### 3.2.2 Recommendation 5 | Develop competence frameworks for all classes of registered and licensed practitioners

#### Description

The Panel recommends the development of competence frameworks for each class of registered and licensed practitioner that describe the specific competencies that all practitioners require to carry out their professional obligations. This should occur in consultation with industry and other stakeholders and should include specific competencies in understanding and applying the NCC. These competence frameworks would be incorporated into legislative requirements for practitioners to be registered and/or licensed and would inform mandatory CPD requirements.

The competence frameworks should:

- align practitioner classes’ roles and functions with competence requirements, responsibilities, and accountabilities;
- encompass a broad suite of competencies, including technical skills (such as knowledge of the NCC), understanding of the law, understanding and carrying out of professional standards and duties, and (where applicable) business-related skills; and
- enable the regulator to identify and measure practitioner performance against the relevant competencies.

When developing competence frameworks, DELWP should consider the appropriate tools, products and services needed to communicate the competence frameworks to different practitioner groups and other stakeholders, including educators, industry, government and the public.<sup>41</sup> This could include:

- a digital information tool for industry to draw on to understand practitioner functions, responsibilities, competence criteria and accountabilities;
- a regulatory tool to assist the VBA to measure practitioner performance; and
- an education tool to inform and evaluate courses offered by training and educational institutions.

Implementation of this recommendation should align with reforms that are currently underway to update the Building Regulations to include mandatory CPD requirements for all registered and licensed practitioners. Competence frameworks would be used as a tool to inform CPD requirements, including the type and quantity of CPD units required as a condition of maintaining a license and/or registration.

---

<sup>41</sup> Competence frameworks should consider existing training and competency materials and consult with relevant industry bodies, these include: Housing Industry Association (HIA), Design Institute of Australia (DIA), the Architects Accreditation Council of Australia (ACA), Master Builders Association Victoria (MBAV) and Master Plumbers of Victoria (MPV).

## Rationale

Competence frameworks will assure regulators, consumers, and practitioners about the expected competencies of each prescribed class of building, plumbing and design practitioner. This recommendation will:

- enable practitioners to better understand and meet their obligations, and ensure the alignment of obligations and responsibilities with modern construction practices;
- inform consumers and the community about what they can expect from practitioners;
- inform and support the development of industry education initiatives;
- inform the development of course content by training providers, including to raise the quality and consistency of training providers' course content and delivery; and
- enable the regulator to measure practitioners' performance.

### 3.2.3 Recommendation 6 | Enable the VBA to use professional associations' accreditation schemes as a pathway to registration and licensing decisions

#### Description

The Panel recommends that professional associations' accreditation schemes be recognised as an input to the VBA's registration and licensing processes.

Recognition of professional association accreditation schemes would create a streamlined pathway for practitioners to meet registration and ongoing conduct requirements, where professional membership of an accredited association satisfies some of the requirements for VBA's registration and licensing scheme. Professional accreditation schemes would provide a pathway to support – not a substitute for – the VBA's registration, licensing and ongoing practitioner accountability processes.

This recommendation seeks to support efficient regulatory decision-making without compromising the safeguards of robust registration and licensing schemes. The Panel recommends that the VBA monitors all accreditation schemes to ensure they continue to provide appropriate assurance of a practitioner's competence, experience and knowledge.

#### Rationale

This recommendation would shorten registration and licensing decision times without compromising the standard of those decisions, by drawing on alternative quality assurance schemes for practitioner knowledge and competence.

Recognition of industry accreditation schemes would also create a shared responsibility with industry to strengthen the culture of practitioner compliance, by recognising the role of professional associations' accreditation schemes to lift standards and assure practitioner quality.

By supporting and complementing the regulatory oversight functions of the VBA at the point of a practitioner's entry into the system and removing duplication, the VBA will be better able to focus resources on proactive monitoring and enforcement across the building lifecycle. Professional associations would also support the ongoing regulation of practitioners, including by auditing of members.

### 3.2.4 Recommendation 7 | Implement the Panel's proposed six-point plan to boost the number of building surveyors and their quality

#### Description

The Panel recommends that the Victorian Government implement, as a priority, the following six-point plan to enhance the workforce supply of building surveyors:

- a) recognise existing, and encourage the establishment of new, postgraduate and graduate bridging courses for architects, engineers, and other building practitioners to enable them to become registered as building inspectors and building surveyors;
- b) provide support for other building practitioners (e.g. builders) to undertake a building surveyors' degree and obtain the necessary qualifications and experience to practice as a registered building surveyor;
- c) improve mutual recognition arrangements to enable competent, experienced building surveyors from other jurisdictions to work in Victoria;<sup>42</sup>
- d) establish cadetship and internship arrangements within building surveying businesses and local councils to provide work experience and ongoing professional development for new building surveyors. These could be developed in partnership with professional and industry associations;
- e) develop incentives to support new building surveyor course entrants and to support existing building surveyors to undertake further education to underpin continued improvement. This work could also be undertaken in partnership with professional associations; and
- f) support building surveyors considering retirement to play formal mentoring roles in training institutions and professional associations.

The Panel has been impressed by the efforts of AIBS to improve its own professional development and requirements for membership as part of its Professional Standards Australia Accreditation. The continued involvement of AIBS in developing an implementation plan for these initiatives will be worthwhile.

#### Rationale

There are significant shortages of building surveyors which poses ongoing risk to building safety and the regulatory system. This recommendation seeks to address workforce supply issues by increasing the pipeline of prospective surveyors with the capability and experience to fulfil their professional obligations.

---

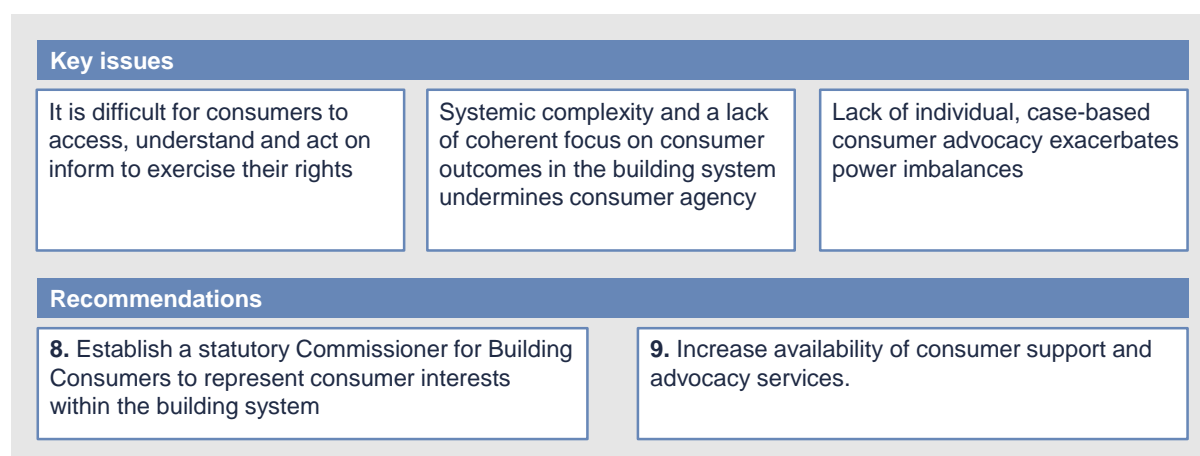
<sup>42</sup> Implementation of this recommendation should consider the introduction of the national automatic mutual recognition (AMR) scheme which has been implemented in Victoria, New South Wales, the Northern Territory and the Australian Capital Territory from 1 July 2021. Building surveyors are not currently within scope of the AMR scheme but may be included in the future. Depending on implementation, this could lead to improved labour mobility and support an increase in the availability of building surveyors across Victoria.



## 4 Consumer representation and advocacy

The decision to build, purchase or renovate a home is often one of the most financially and emotionally significant decisions in a person’s life. As the Panel’s *Terms of Reference* make clear, consumer protection should be a central focus of Victoria’s building regulatory system and this reform agenda. Consumers should be entitled to expect that the goods and services they purchase are safe and fit for purpose. The recommendations set out in this Report, taken as a whole, seek to ensure that consumers are protected from poor practices of some industry participants while lead to unsafe and non-compliant buildings, and that they are empowered to understand and exercise their rights. This chapter specifically addresses improvements to consumer representation and advocacy. Consumer protection will be a continued focus in Stage Two which will include a review of dispute resolution in the building system. The key issues and recommendations for this chapter are in Figure .

**Figure 3 | Consumer representation and advocacy - Key Issues and Recommendations**



### 4.1 Key issues

Through consultations undertaken as part of the Panel’s review and submissions received in response to the FFR paper, it is clear that Victoria’s building regulatory system does not adequately meet consumers’ needs. While consumers need to be reasonably informed when deciding to build, buy or renovate a home, the current building regulatory system is overly complex and limits consumers’ ability to effectively engage in the system. Consumer issues identified during building, renovations, repairs and maintenance are widespread and costly. A recent survey of building consumers undertaking a residential building project estimates that 28 per cent of projects experience an issue, amounting to 28,000 building projects per year which are worth around \$9.5bn in consumer spend.<sup>43</sup> The growth in apartment

<sup>43</sup> Department of Environment Water Land and Planning 2021, ‘*Victorian Building System - Review Evidence Improvement Project*’ (internal document); issues is defined broadly and is not limited to non-compliance issues, it may also include contractual complaints and/or issues regarding timeliness of project delivery. “Residential property” includes homes,

accommodation, particularly off the plan purchases, creates greater complexity and risk for consumers.

**Consumers are not adequately supported, empowered and represented in the building system. This compromises their ability to engage confidently and make informed decisions in their best interests.** There are several elements to this problem that are described in turn below.

#### 4.1.1 It is difficult for consumers to access, understand and act on information to exercise their rights

Many aspects of building design and construction are technically complex and beyond the reasonable understanding of a layperson. The information asymmetries inherent in the building system create a power imbalance that is exacerbated when consumers are not aware of their rights and obligations under the legislation, or where they cannot get support to understand and exercise their rights.:

A range of different entities provide information to consumers and help to resolve disputes. When seeking information, consumers are often directed from one regulator or agency to another, without receiving clear information or understanding the role of each body or the service it provides. Research commissioned by DELWP indicates that in preparation for a project, only 50 per cent of consumers who experience an issue consulted official sources (such as the CAV or VBA website).<sup>44</sup> This is partly due to the complexity and fragmentation of available information. The complexity of information in the system adversely affects consumers' abilities to understand what steps should be taken to avoid a problem, or how to prudently enter a contract or engage a practitioner.<sup>45</sup> This has a range of impacts for the system which could be addressed through improved support and information. For instance:

- Many consumers are not familiar with the actual costs of carrying out building work and are often surprised when engaging practitioners. Even consumers who carry out some form of tender process, or obtain multiple quotes, may select a practitioner based purely on price, rather than on appropriate skills and experience. This is because transparent, trusted information about skills, credentials and experience is not currently available, and consumers are not supported to properly interpret the information that is available (such as the Disciplinary Register).
- Many consumers lack a basic understanding of key concepts and components of Victoria's building regulatory system, such as what constitutes a defect, the protections offered by Domestic Building Insurance, and the roles and responsibilities of practitioners. This can lead to disputes with practitioners that are based, for example, on mistaken perceptions that quality issues are evidence of non-compliance. This can present a significant resource impost for dispute resolution bodies. A recent survey of practitioners estimated that 21% of building

---

apartments, townhouses, and any other place where people live. Please consider any property that you bought/ built/ renovated to either personally live in, as an investment property or on behalf of a family member

<sup>44</sup> Department of Environment Water Land and Planning 2021, 'Victorian Building System - Review Evidence Improvement Project' (internal document)

<sup>45</sup> For example, information relating to a practitioner sits across multiple sites. The VBA provides a practitioner registration where you can search a practitioners registration and licence details, and any disciplinary action that has occurred. However, details on whether your builder has the requisite insurance exists on the VMIA website.

issues are attributable to consumers not understanding the roles and responsibilities of each practitioner or trade on site.<sup>46</sup>

- Unregistered building practitioners are being engaged by consumers, often without being aware of the risks. This increases the likelihood of disputes and perpetuates a market of industry participants who are not within view of the regulator.<sup>47</sup>
- Consumers who purchase properties (including residential apartments) may not be aware of their rights and responsibilities.<sup>48</sup>

A common theme from consultation is the need to simplify, consolidate and improve consumer information, advice and support through a single-entry point to make it easier for consumers to access and act on information. This issue is the subject of an Early Initiative recommended by the Panel to Government to establish a centralised building consumer information and support program.

#### **4.1.2 Systemic complexity and a lack of coherent focus on consumer outcomes in the building system undermines consumer agency**

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 some organisations represent specific sub-sectors of building consumers (including consumers in strata properties), there is no overarching peak body or dedicated organisation representing Victorian building consumers. 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 not considered in key decisions made about building industry regulation. This contrasts with other industries where there is a dedicated systemic representative for consumers' interests.<sup>49</sup>

Limited collection and sharing of data (discussed above in 2.2.1) further reduces the ability to gather evidence, understand, report on and respond to emerging trends and systemic issues facing consumers.<sup>50</sup> The lack of systemic representation and transparent publication of issues and trends has contributed to consumers' inability to engage effectively with the building system.

#### **4.1.3 Lack of individual, case-based consumer advocacy exacerbates power imbalances**

Stakeholders also report that there is a gap in individual advocacy and support services for consumers. When a consumer is struggling to address a building issue, it can be very difficult to find an organisation, service or adviser who can act on their behalf to help resolve the problem. While Domestic Building Dispute Resolution Victoria (DBDRV) is designed to facilitate dispute resolution without the need for

---


<sup>46</sup> Department of Environment Water Land and Planning 2021, 'Victorian Building System - Review Evidence Improvement Project' (internal document)

<sup>47</sup> The VBA does have the power to prosecute unregistered builders under s.169A, 169B, 169C of the Building Act.

<sup>48</sup> Evidence improvement project indicates that 63 per cent of consumers with an issue did not take reasonable steps to protect their interests such as obtain quotes or check practitioner registration.

<sup>49</sup> For instance, the Commissioner for Residential Tenancies (first appointed in 2018) identifies and advises the Victorian Government of emerging systemic issues within the rental sector and makes recommendations around renting laws, programs and services.

<sup>50</sup> Recommendation 14 sets out the Panels view on how to strengthen data collection, coordination and information sharing across the system.



legal assistance, there will, for some consumers, also be a need for case management support and assistance from an advocate to help navigate the complexities of the system. Currently, the Domestic Building Legal Service (DBLS) is the only subsidised case management provider for building consumers and is limited in the support it can provide.<sup>51</sup>

## 4.2 Recommendations

The Panel proposes two distinct recommendations to increase systemic representation of consumers in the building system and increase the scope for consumers to access individual advocacy services. These are outlined below.

### 4.2.1 Recommendation 8 | Establish a statutory Commissioner for Building Consumers to represent consumer interests within the building system

#### Description

The Panel recommends the establishment of a statutory Commissioner for Building Consumers. The Commissioner should report directly to the Minister for Planning and have the following legislated functions:

- advise the Minister on matters relating to consumer protection in the building system and advocate for consumers on issues that require reform;
- prepare regular public reports on critical issues affecting consumers in the building system;
- audit and report on existing consumer information published by relevant agencies;
- represent consumer interests at relevant forums and to Government;
- collect data and information from across the building industry to understand the consumer experience and emerging issues and trends; and
- draw on emerging issues and trends to work with consumer representatives and case managers, regulators, dispute resolution bodies, and industry groups to develop and promote materials and strategies that prevent or mitigate potential negative consequences.

To be effective in executing its functions, the Commissioner should have the following powers:

- make formal requests to Agency Heads and Public Authority Heads to provide advice, support reporting requirements and the collection of information;
- establish an advisory committee, to be chaired by the Commissioner, including representatives of consumers, case management services, practitioners and

---

<sup>51</sup> Currently, DBLS is only available to building owners where there has been an unsuccessful conciliation and they are preparing for litigation at VCAT.

industry so that the Commissioner has ready access to advice about emerging and systemic issues<sup>52</sup>; and

- publish reports on emerging and systemic issues of concern for building consumers.

The Panel recommends that data collection and information sharing should be consistent between the Commissioner, Office of the State Building Surveyor (OSBS)<sup>53</sup>, VBA, VMIA, DBDRV, VCTA, CSV and CAV to facilitate system-wide analysis of building issues.

## Rationale

The Commissioner will enhance a whole-of-system understanding of the consumer experience, and identify key issues and trends specifically relating to building consumers. Public reporting by the Commissioner will increase transparency for consumers on the issues affecting the industry and building projects. The Commissioner will also play an active role in lifting the quality of information tools to educate consumers on the building system and on their rights and responsibilities. The success of the Commissioner is reliant on the successful implementation of the foundational recommendations.

As outlined in 4.1.2, there is no formal overarching ‘peak body’ for consumers in the building system. This limits consumer input in key policy decisions. The Commissioner’s role in advising the Victorian Government will ensure that consumer experiences directly inform policy development and legislative reform.

In these ways, the Commissioner will address a significant gap in the existing regulatory system.

### 4.2.2 Recommendation 9 | Increase availability of consumer support and advocacy services

## Description

The Panel recommends providing increased access to case management support for building consumers. These case management service providers would be represented in the Commissioner’s Advisory Committee so emerging and systemic issues can be brought forward. This could include expanding the availability and flexibility of legal services to apply prior to conciliation at DBDRV<sup>54</sup> It could also include increased funding for other individual advocacy and support services. These issues will be further explored in Stage Two of the Review which will include a focus on dispute resolution.

## Rationale


The complexity of the building system cannot be resolved through enhanced information alone or through systemic representation. Where issues arise between consumers and builders (or other practitioners) or developers, improved access to a broader range of individual support services would help consumers better navigate

---

<sup>52</sup> In the FFR Paper, the Panel considered the establishment of a Consumer Reference Group as a separate recommendation. The Panel is of the view that this is best achieved within the context of a Commissioner for Building Consumers.

<sup>53</sup> See Recommendation 10

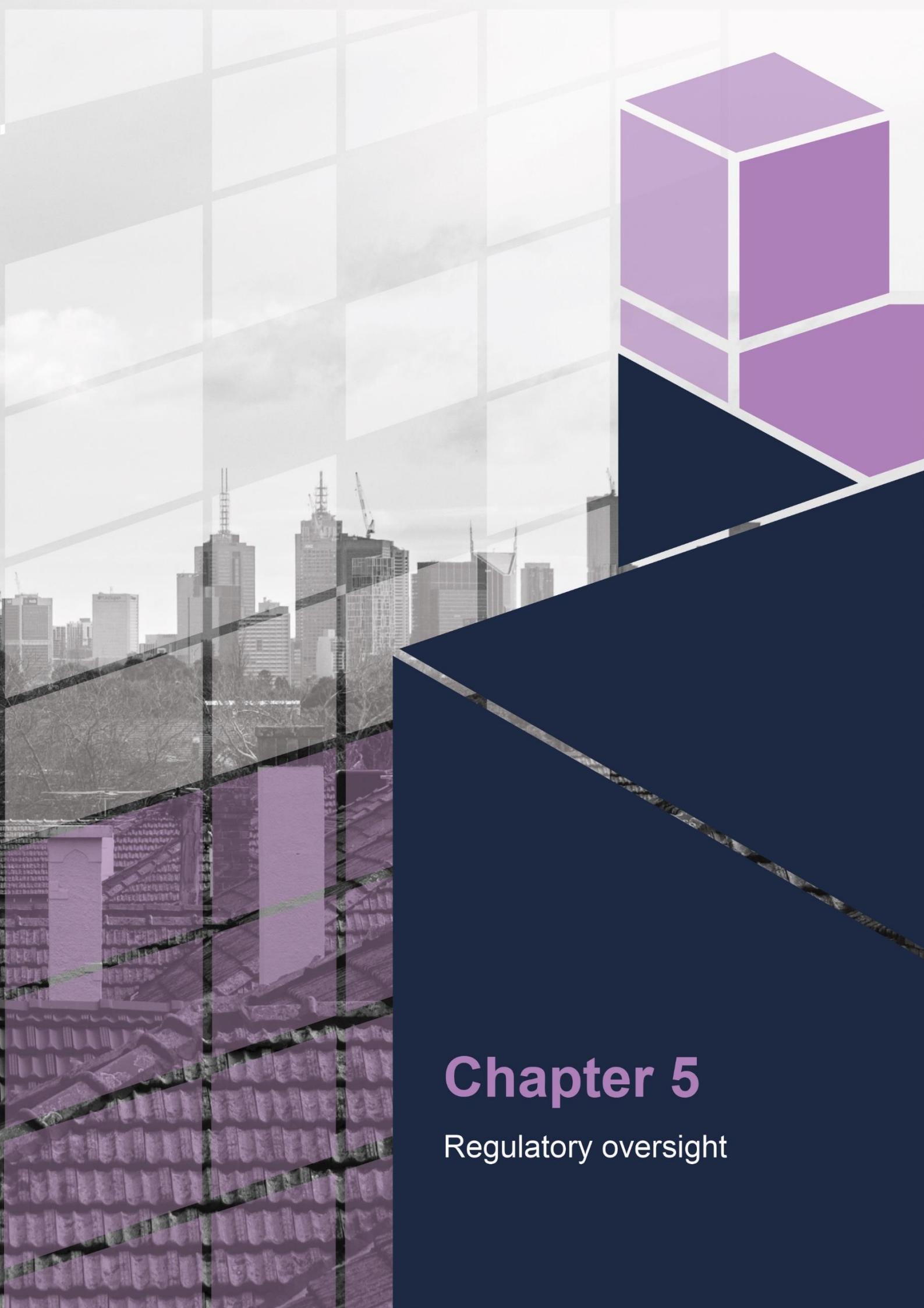
<sup>54</sup> Currently, DBLS is only available to building owners where there has been an unsuccessful conciliation and they are preparing for litigation at VCAT.



the relevant processes. Increased support for existing support and advocacy services can mean building owners are:

- given advice earlier in the process about their prospects of success; and/or
- better supported to identify a preferred approach to dispute avoidance or resolution.

This could result in a reduction in the number of matters requiring resolution by DBDRV or the Victorian Civil and Administrative Tribunal (VCAT) and reduce current resource imposts on dispute resolution bodies.



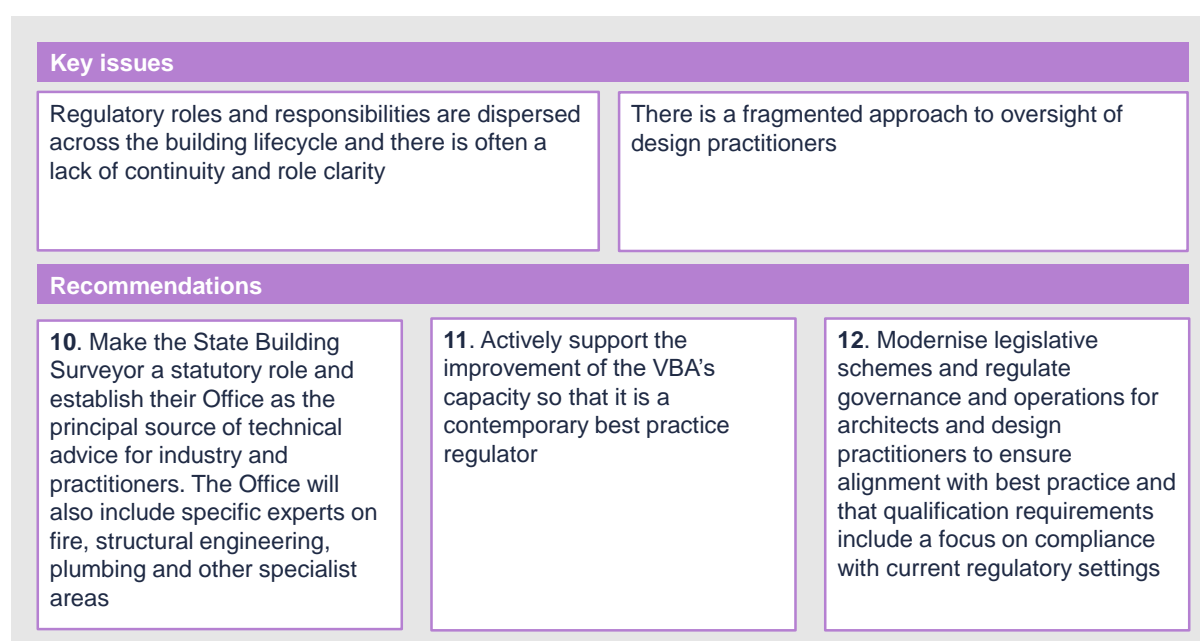
# Chapter 5

Regulatory oversight

## 5 Regulatory oversight

Regulatory oversight of building practitioners, design practitioners, building projects and the built environment is primarily the responsibility of three regulatory oversight bodies – the VBA, local councils, and the ARBV. Each has oversight, compliance and enforcement functions. In addition, there is a broad range of bodies with oversight responsibilities for aspects of the building regulatory system, including CAV, DBDRV, VMIA, Fire Rescue Victoria (FRV), WorkSafe Victoria (WSV), Building Regulations Advisory Committee (BRAC), and Energy Safe Victoria (ESV). The key issues and recommendations for this chapter are set out in Figure .

**Figure 4 | Regulatory oversight - Key Issues and Recommendations**




### 5.1 Key issues

Over the last decade there has been increased scrutiny of Victoria's building regulatory system. The Cladding Taskforce more recently noted that submissions received on its Interim Report were critical of the investigation, enforcement and discipline processes that are currently in place to ensure compliance and linked these to a '*culture of non-compliance in the building industry*'.<sup>55</sup> Both the Cladding Taskforce and the *Building Confidence Report* identified gaps in regulatory oversight.

Legislative reforms introduced in recent years have sought to strengthen powers of regulators, particularly the VBA. The VBA has also delivered operational improvements to its regulatory oversight. Many stakeholders, however, express the need for further reform to improve targeted regulatory oversight of practitioner conduct and the building approvals process.

<sup>55</sup> 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)





The current **regulatory oversight of the building system** in Victoria, which has emerged over many decades, **does not reflect contemporary best practice regulation**. A combination of **institutional design and regulatory practice issues contribute to fragmentation, duplication, and a lack of continuity**. There are several components to this problem, outlined below.

### 5.1.1 Regulatory roles and responsibilities are dispersed across the building lifecycle and there is often a lack of continuity and role clarity

The Panel has heard that co-regulatory responsibilities in the building system are not well coordinated and that this contributes to duplication and gaps in oversight across the building lifecycle. This is partly a result of overlap and lack of clarity in the functions and powers of regulators, which reflects both sub-optimal institutional arrangements for oversight *and* shortcomings in regulatory practice.

Through the consultation period, stakeholders have brought several issues to the Panel's attention:

- Currently in the Building Act, both local councils and the VBA have a role in compliance and enforcement (see section 212 and section 197(a)). The Panel has heard that there is a lack of continuity between the VBA and local councils in understanding whose responsibility it is to take action and what their respective roles are in relation to enforcement.
- Enforcement action for non-compliance of building works is not currently well implemented. The RBS must refer non-compliance with a direction to fix or building order to the VBA for further enforcement or disciplinary action, but concerns have been raised about the timeliness of the VBA's responses and the quality of documentation provided by building surveyors.
- Regulatory oversight of completed buildings can also be poorly coordinated. After a building project is complete, the RBS usually ceases their involvement and enforcement of maintenance provisions are the responsibility of local councils and fire authorities. There is often poor documentation prepared for maintenance of completed buildings, which can lead to difficulties in monitoring and enforcing compliance with ongoing ESM requirements.<sup>56</sup>

### 5.1.2 There is a fragmented approach to oversight of design practitioners

Design practitioners encompass a wide range of professionals involved in design work, including architects, draftsperson-building designers and engineers. There is currently fragmented regulatory oversight of design practitioners. The VBA has oversight of draftsperson-building designers (under the Building Act). From 1 July 2021 engineers will be registered by the Business Licencing Authority (BLA) (under a new legislative scheme and engineers working under the Building Act requirements will need to be endorsed by the VBA). Architects are registered and regulated by the ARBV under a separate legislative scheme; the *Architects Act 1991 (Vic)*.<sup>57</sup>

---

<sup>56</sup> Poor documentation across the building system is a key concern for the Panel and is addressed through recommendation 1.

<sup>57</sup> The Panel has met with various architect stakeholders including the Architects Institute Australia and the Architects Accreditation Council of Australia

A fragmented approach to regulation of design practitioners does not align with best practice regulation and contributes to a range of adverse system outcomes:

- There are efficiencies to be gained in regulating design practitioners working on building construction under consistent schemes, both because economies of scale in regulatory activity can be appropriately realised and because practitioners competing in the same markets for work would be subject to the same oversight requirements.
- The current fragmented approach to regulating design practitioners reinforces siloes in regulation and, in practice, leads to limited sharing of information relevant to registration, compliance and enforcement decisions. In part this reflects different budgets and technologies; for example, it is not straightforward to share information between the Customer Relationship Management (CRM) used by the VBA and ARBV.
- Contemporary best practice governance is not reflected in the current composition requirements of the ARBV Board. Consideration needs to be given to modernising and strengthening governance arrangements to enable the Board to undertake its responsibilities effectively.
- The current arrangements do not align with the national reform agenda to drive consistency in practitioner regulation. For instance, the *Building Confidence Report* notes that ‘*accountability and regulatory oversight of architects should be consistent with other categories of building practitioners and aligned with the recommendations in this report ... [which means that] changes are required to legislation regulating architects.*’<sup>58</sup>

## 5.2 Recommendations

The Panel proposes three recommendations to strengthen the regulatory oversight framework. They are to establish an Office of the State Building Surveyor (OSBS) with statutory functions, build on improvements to the VBA’s regulatory practice and modernise the legislative scheme for architects and design practitioners. Each is described below.

### 5.2.1 Recommendation 10 | Make the State Building Surveyor a statutory role and establish their Office as the principal source of technical advice for industry and practitioners. The Office will also include specific experts on fire, structural engineering, plumbing and other specialist areas


#### Description

The Panel recommends that the existing State Building Surveyor position is formalised as the OSBS within the VBA to provide a clear source of technical expertise and guidance for the building industry. The OSBS and its role and functions should be formalised and specified in legislation.<sup>59</sup>

---

<sup>58</sup> 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), p. 16

<sup>59</sup> This recommendation builds on the Early Initiative by the Panel to strengthen the role of the SBS.



The core function of the OSBS should be to provide authoritative advice and guidance to industry in relation to technical matters. The OSBS should also be responsible for monitoring developments and trends in the building industry and providing advice to the Minister for Planning on strategic and regulatory issues. Working with other parts of the VBA, local councils, and other parties will ensure that the OSBS has a system-wide perspective on industry performance and the administration of the Building Act. The OSBS should continue to have key advisers, such as the Principal Structural Engineer, Principal Plumbing Specialist and Principal Fire Safety Engineer to support the accurate provision of technical advice to industry.<sup>60</sup>

The OSBS should report to the VBA Board including on technical advice, building standards and other relevant matters.

The OSBS should also broadly monitor the performance of the building surveying profession and provide support and guidance to improve industry practices. The OSBS could also have a role in monitoring local councils' delivery of their building control functions, including through the monitoring of the Municipal Building Control Plans (MBCP) (see Box 2) or other mechanisms to encourage a more consistent approach across the 79 local councils.

To effectively perform its functions the OSBS requires clear established lines of responsibility regarding its engagement and interaction with other parts of the VBA and in particular the compliance and enforcement division.

At a minimum, the Panel recommends the OSBS has a range of functions enshrined in the Building Act. These are set out in the box 1 below.

---

<sup>60</sup> Victorian Building Authority, Organisational Chart – March 2021, <  
[https://www.vba.vic.gov.au/\\_\\_data/assets/pdf\\_file/0007/127699/March-VBA-chart.pdf](https://www.vba.vic.gov.au/__data/assets/pdf_file/0007/127699/March-VBA-chart.pdf)>.

## Box 1 | Core functions of the OSBS

### **Provide expert technical advice and guidance to building surveyors and the broader building industry**

A core function of the OSBS will be to act as a trusted source for authoritative technical advice and guidance on technical building requirements. Aside from advice on technical matters, the OSBS should also provide guidance to building surveyors on carrying out their functions, including on how to execute compliance and enforcement functions.

### **Publish binding interpretation on the requirements of Building Act and Regulations**

The OSBS should be able to issue binding guidance to building practitioners on the interpretation of technical requirements. This power could be used in instances where there is ambiguity in the technical requirements (including in interpretation of NCC requirements). Binding guidance would provide an authoritative interpretation that industry would be obliged to follow. Failure to comply with an OSBS interpretation would be a disciplinary offence.

### **Monitor developments and trends relevant to building standards, building work and the building surveying profession**

The OSBS should be required to engage with other entities within the regulator system, including local councils and industry organisations. The OSBS would need appropriate data gathering and information sharing powers to facilitate these interactions.

### **Advise the Minister for Planning in relation to significant strategic and regulatory issues within the building sector**

The OSBS should have the legislated function to provide advice to the Minister for Planning in relation to significant building matters. This could include the provision of advice on the potential issuing of guidelines (section 188) or directions (section 188AA) under Part 12 of the Building Act. This could be either at the request of the Minister or on its own initiative. The OSBS could also be given specific reporting obligations regarding certain matters.

### **Represent Victoria in the development of national building standards**

The OSBS should be a Victorian representative on bodies developing national building standards, such as the Building Codes Committee (BCC). The OSBS should also participate on the Building Regulations Advisory Committee (BRAC). To support the OSBS, BRAC could be given a specific role to engage with the OSBS to provide and exchange information and advice on industry issues.

### **Provide support and advice to local councils on their building control functions and monitor local councils' MBCPs**

The OSBS should be responsible for preparing and publishing regulatory objectives and performance indicators for MBSs and local councils. Local councils could also be required to report/supply certain documentation to the OSBS to enable consistent oversight of local councils building control activities.

This could be carried out in the context of oversight of council's MBCPs. This was recommended by the Panel as an Early Initiative in the FFR Paper. This suggested that the State Building Surveyor (in its current form) should monitor MBCPs.

### **In partnership with industry and professional associations provide training and education to industry practitioners**


The OSBS should provide training and education to industry on technical matters or matters relating to functions performed by building surveyors. This could include webinars, seminars and presentations at industry forums. The OSBS should work closely with the VBA to ensure that training and education offered aligns to competence frameworks and CPD requirements.

## Rationale

Many stakeholders criticise the lack of technical expertise in the current system and cite the difficulties that practitioners experience in obtaining clear advice on building technical requirements. Formalising the role of the State Building Surveyor in legislation will enable a more focused delivery of the critical functions outlined above and consequently provide better support for industry practitioners.

Establishing the OSBS as the authoritative source of technical expertise provides all industry participants with a clear path for guidance on technical matters, thereby supporting improved technical capacity across industry.

The OSBS will be positioned to support local councils and the MBSs in their building control functions as well as encouraging a consistent approach across all municipalities.



The OSBS would be viewed as having the independence necessary to critically examine and facilitate discussions relating to overall administration of the Building Act and Regulations. The OSBS would have statutory functions and be part of the VBA's operational structure to enable economies of scale, support information sharing and avoid further fragmentation.

### **5.2.2 Recommendation 11 | Actively support the improvement of the VBA's capacity so that it is a contemporary best practice regulator**

#### **Description**

The Panel recommends that the VBA continue to build on recent improvements and investments to lift its performance to meet contemporary standards for a best practice regulator.

Specifically, the Panel recommends that the VBA take steps to:

- further develop transparent public reporting on achievements against targets for key priorities, such as its inspection, registration and disciplinary functions – this would build on its recent publishing of Quarterly Proactive Inspection Reports;
- enhance responsiveness for both proactive compliance and non-compliance and disciplinary matters referred to it, by publishing performance targets and reporting on achievements;
- further invest in a risk-based and intelligence-led audit and inspections regime which includes a renewed approach to the auditing of building surveyors<sup>61</sup>; and
- improve the collecting and sharing of information with other bodies with co-regulatory responsibilities.<sup>62</sup>

The Panel notes that many of these improvements can be undertaken without the need for legislative amendments.

The Panel has heard that the VBA currently struggles to sustainably resource its regulatory activity. This also reflects feedback from industry about the VBA's regulatory approach; particularly relating to the number of targeted, risk-based inspections and its responsiveness in addressing matters referred to it. This recommendation suggests several improvements to the VBA's regulatory practices. Increased resources will be required to enable the VBA to improve its regulatory approach.

Through the Victorian Government's regulatory reform program, the VBA is currently receiving additional support for improvements including with:

- the implementation of quick wins including online exams and piloting digital licences;
- the Better Approvals Program; and
- the Regulator Improvement Program.

---

<sup>61</sup> See Recommendation 13A on short term reforms to building approvals for further detail.

<sup>62</sup> See Recommendation 1

These initiatives will help the VBA to deliver improvements but the Panel notes that further support will be needed and considers that the VBA's funding mechanisms should be reviewed.

### Rationale

A best practice regulator is focused on achieving regulatory practice by being:

- **Effective** in delivering its legislative requirements;
- **Efficient** in doing so at a minimum cost;
- **Proportionate** in how it responds to risks and threats;
- **Flexible** to keep pace with modern technology and society;
- **Consistent** and able to treat similar situations fairly; and
- **Clear** so it can be understood and followed.<sup>63</sup>

The Panel recognises that the VBA has a diverse range of regulatory functions and responsibilities. Many of these functions have been gradually added to the VBA over time and the regulator has had to adapt its capabilities and resourcing levels to meet these new demands.

Despite these efforts, stakeholders express ongoing concerns with the VBA's regulatory approach, priorities, responsiveness, and level of technical expertise. The Panel believes that some of these concerns have started to be addressed and can be further improved through formalising the role of the OSBS. The Panel also recommends that the VBA builds on the programs and initiatives underway that have been highlighted by stakeholders as improvements such as better targeting of the Proactive Inspection Program (PIP) program to more complex and high-risk residential apartments.

### 5.2.3 Recommendation 12 | Modernise legislative schemes and regulate governance and operations for architects and design practitioners to ensure alignment with best practice and that qualification requirements include a focus on compliance with current regulatory settings

#### Description

The Panel recommends that the legislative scheme governing the registration and regulation of architects and design practitioners be modernised to ensure alignment with contemporary best practice regulatory settings. Modernising the legislative framework and institutional arrangements should be informed by several key principles.

The regulatory framework for architects should provide for:

- clear lines of accountability for practitioners undertaking design work;
- appropriate institutional and governance mechanisms to ensure independence of regulatory decision-making from industry;

---

<sup>63</sup> Department of Treasury and Finance 2016, 'Toolkit 1 - purpose and types of *regulation*', <https://www.dtf.vic.gov.au/funds-programs-and-policies/victorian-guide-regulation>

- improving ability to share information and regulatory intelligence to support risk-based and intelligence-led regulatory decision making;
- robust measures to monitor and enforce compliance with statutory requirements;
- regulated competence requirements relating to NCC compliance and contractual arrangements (such as design and construct); and
- regular mandatory CPD on the NCC.

The Panel considers that this recommendation should be implemented through the following changes:

- Improvements to the ARBV's regulatory practice. This would include adoption of systems, resources, intelligence, and processes to meaningfully embed a risk-based approach to regulatory practice. This would also include broadening the focus of compliance and enforcement activity and strengthening information sharing with other regulators and agencies. This should align with the Minister's 2019 Statement of Expectations<sup>64</sup> and ensure that changes recommended have been fully implemented. Further it is important that the composition of the ARBV Board is skills based.
- Require architects registered with the ARBV working on medium, high and very-high complexity building projects to be endorsed by the VBA to enable monitoring and enforcement of compliance (akin to the new registration scheme for engineers).<sup>65</sup> This subset of architects would then be subject to regulatory oversight and discipline under the Building Act for work undertaken on residential apartment building projects.<sup>66</sup>

The Panel also recommends the Victorian Government consider further longer-term changes to support a modernised legislative framework that enables a consistent regulatory approach for all design practitioners. These could include:

- Expanding the endorsement requirements (proposed above) to all registered architects. This would introduce a co-regulatory model for architects where ARBV would retain its role in registration of architects, approvals and course accreditation. The VBA would undertake compliance monitoring and enforcement functions relating to architects under the Building Act.
- Undertaking a review of the Architects Act to consider the legislative framework regulating architects and whether it meets contemporary expectations and practice.<sup>67</sup>
- The consideration of the benefits of integrating the ARBV's functions into the Building Act with the VBA taking over the responsibility for registration, monitoring and enforcement of architects.

---

<sup>64</sup> The Ministerial Statement of Expectations is dated 17 August 2019 and provided a series of expected improvements, the last of which were due to be implemented by 30 June 2021. It is available at: [https://www.vic.gov.au/sites/default/files/2020-02/ARBV\\_2019-21-Statement-of-Expectations.pdf](https://www.vic.gov.au/sites/default/files/2020-02/ARBV_2019-21-Statement-of-Expectations.pdf)

<sup>65</sup> *Professional Engineers Registration Act 2019* (Vic)

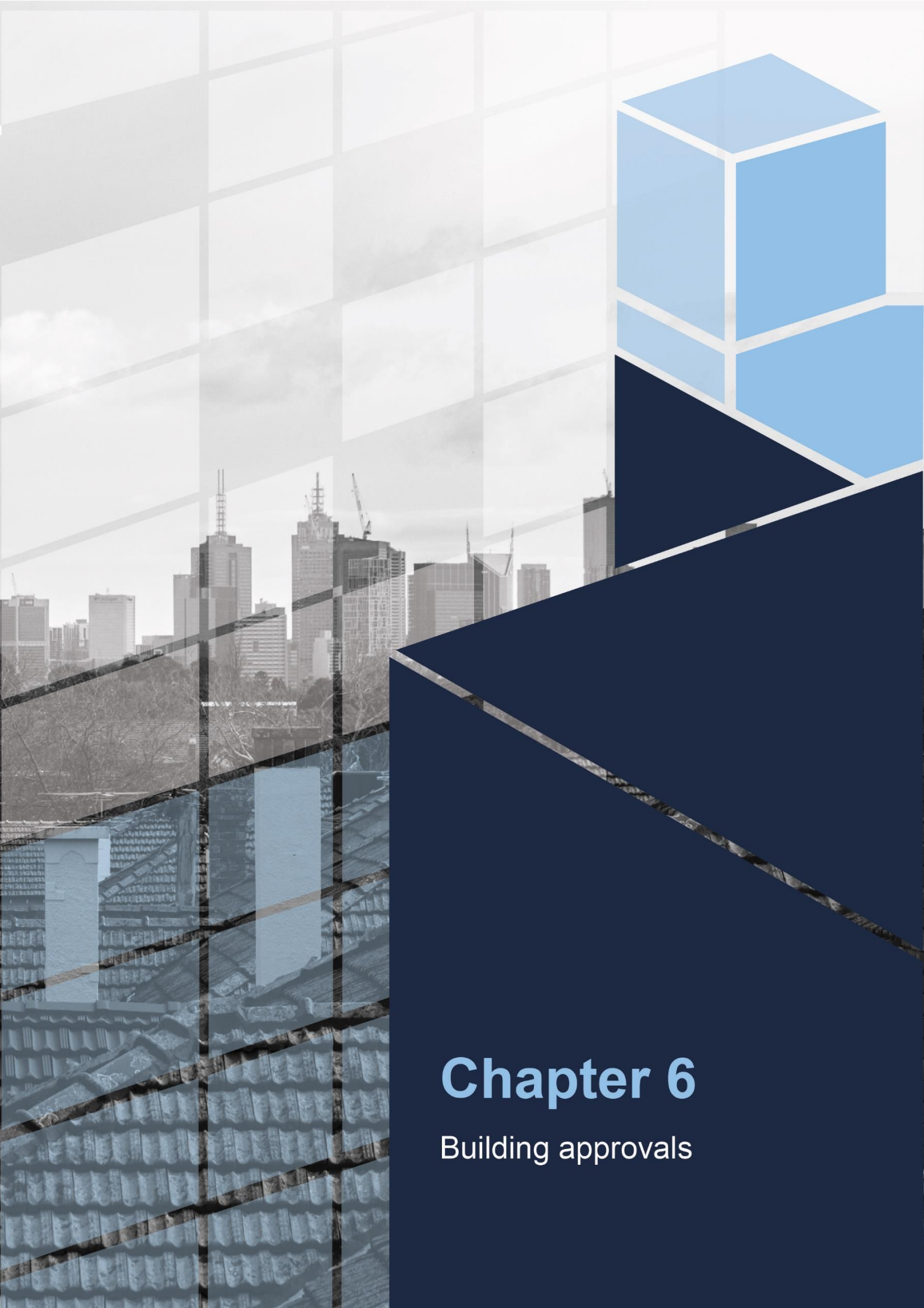
<sup>66</sup> This approach is similar to changes to the Design and Building Practitioners Act 2020 (NSW) where design practitioners working on class 2 buildings are required to be registered under the building regulatory framework (even where already registered under other registration schemes, such as Architects).

<sup>67</sup> Currently the Architects Act prevents non-registered individuals from representing themselves as architects or as providing architectural services, architectural design services or architectural design. This is achieved through provisions to restrict use of particular expressions (see section 8).

## Rationale

The current fragmented approach to the regulation of design practitioners has a range of adverse impacts, as noted in section 5.1.2. Modernising the legislative framework and institutional arrangements for architects could support improved regulatory outcomes by breaking down regulatory siloes and ensuring a regulatory framework that reflects increasingly connected design and construction industries. This could also enable improved sharing of information and reduce administrative inefficiencies that result from fragmented arrangements.





# Chapter 6

Building approvals

## 6 Building approvals

Building approvals are regulatory processes which aim to ensure that building works comply with relevant legislation, regulations and meet prescribed standards of building safety and quality. The approvals process includes several safeguards across the building lifecycle<sup>68</sup> that provide checks and balances at key stages during building design, construction, and maintenance. These safeguards play a crucial role in ensuring that the built environment in Victoria supports the safety and health of people who live in and use buildings. The key issues and recommendations for this chapter are in Figure .

---

<sup>68</sup> These include documentation certification; building permits; mandatory inspections; occupancy permits or certificates of final inspection, and essential safety measures.

**Figure 5 | Building approvals - Key Issues and Recommendations**

| Key issues   |  |  |  |
|--|--|--|--|
| The building regulatory system does not clearly and reasonably apportion accountability for building projects and outcomes   | The building approvals process is not sufficiently tailored to building complexity | The private building surveyor role can give rise to a conflict of interest | There are no clear processes for regulating changes to approved design documentation |
| Recommendations  |  |  |  |
| <p><b>13.</b> Introduce measures to strengthen building approvals processes for all projects (including that)</p> <ul style="list-style-type: none"> <li>A. A new system for auditing of building surveyors is introduced. This should focus on areas identified as significant risks, such as conflicts of interest, and the consistency and quality of building documentation. The way in which this auditing is undertaken could include recognition of professional associations' auditing systems (subject to them meeting rigorous ongoing standards)</li> <li>B. Building surveyors are required to provide consumers with a "terms of engagement" document before a project begins, that sets out the roles and responsibilities of the building surveyor</li> <li>C. Mandatory Municipal Building Control Plans (MBCPs) for each Council are introduced</li> <li>D. The VBA renew its risk-based targeted inspection audit program with a greater focus on class 2 to 9 buildings</li> <li>E. The VBA establish a priority project team to address existing orphan permits</li> <li>F. A protocol between the VBA and councils be finalised to ensure clarity of roles and responsibilities about compliance and enforcement</li> </ul> |  |  |  |
| <p><b>14.</b> Introduce additional safeguards in the short term for more complex building projects, with an initial focus on residential apartments</p> <ul style="list-style-type: none"> <li>A. As part of the preparation for the building permit, require design practitioners to provide a compliance report and associated design declaration for consideration by the Statutory Building Surveyor.</li> <li>B. Additional inspections to be prioritised for specific risks in residential apartment buildings</li> <li>C. Introduce a new process to require additional compliance checks where there is substantial variation to design documents and performance solutions after issuing of a building permit</li> <li>D. Strengthen the final compliance stage for residential apartment buildings so that the building is complete and complies with the approved building permit</li> </ul>  |  |  |  |
| <p><b>15.</b> In the medium term, once the ABCB complexity framework is finalised, adopt it as the basis for an expansion of these safeguards to all medium, high and very-high complexity buildings</p>   |  |  |  |
| <p><b>16.</b> In the medium term, enhance the role for local councils and the MBS for more complex and higher risk buildings</p> <ul style="list-style-type: none"> <li>A. Transfer accountability for causing inspections and issuing an occupancy permit or certificate of final inspection to the MBS</li> <li>B. Shift responsibility for monitoring and enforcing compliance of building works to the MBS</li> </ul>  |  |  |  |

## 6.1 Key Issues

The current building approvals process is not fit-for-purpose given modern construction practices and does not adequately assure safe, quality, and compliant buildings. This is for several reasons outlined below.

### **6.1.1 The building regulatory system does not clearly and reasonably apportion accountability for building projects and outcomes**

The responsibility for building approvals decisions primarily rests with the RBS who plays a significant statutory role in building approvals. The RBS undertakes a wide range of roles, including:

- assessing and approving building designs;
- inspecting building works;
- issuing of occupancy permits and certificates of final inspections;
- assessing compliance with regulatory requirements;
- approving changes to the use of buildings; and
- issuing directions to fix and building notices and orders where non-compliance is detected.

The Panel has heard that in the absence of effective oversight and accountability the concentration of responsibility for decision-making about compliance by the RBS role alone is inappropriate, onerous, and can lead to poor building outcomes. The Panel heard multiple reasons for this including:

- The breadth and depth of expertise required of the functions currently performed by the RBS are unreasonable to expect of one person. Stakeholders note that RBSs do not receive appropriate technical advice and support to assure compliance, and that fees paid to the RBS do not reflect work required to comprehensively check building works and associated documentation.
- There are no requirements for independent oversight to check decisions made by the RBS. Certificates of compliance that feed into the permit approvals, or final decisions on permits by the RBS are not, generally, reviewed by an independent party unless subject to ad-hoc inspection and auditing by the regulator.

The Panel has also heard from some stakeholders that concentration of responsibility on the RBS is an important element of the current system and must be supported by improved accountability and oversight by all participants including designers.

### **6.1.2 The building approvals process is not sufficiently tailored to building complexity**

The existing building approvals process is not sufficiently tailored and responsive to different levels of complexity involved in the design and construction of modern buildings. The Panel considers that there needs to be different assessment processes for different levels of building complexity. For example, the Building Regulations currently prescribe the same five mandatory notification stages for inspections for all building types. The Panel has heard that despite the RBS having the discretion to require additional inspections, this power is rarely applied. Given the weaknesses in regulatory oversight of industry and commercial realities, the RBS may be reluctant to impose additional inspections and costs out of fear the developer or owner could choose a different building surveyor on future projects. As a result, the current approvals process does not address complexities specific to certain building types, such as those related to multi-storey residential apartment buildings.

### 6.1.3 The private building surveyor role can give rise to a conflict of interest

Since the establishment of the private building surveyor (PBS) role in Victoria in the early-1990s, the proportion of assessment work undertaken by PBSs has grown such that currently they do most of the of building surveying work in Victoria. The PBS role has helped to enhance expertise, workforce supply and timeliness of building approvals. However, this role also gives rise to conflicts of interest where a PBS has a commercial relationship with practitioners whose work they are responsible for approving.<sup>69</sup> This conflict of interest can be difficult for the PBS to manage. The *Building Confidence report* observes this conflict and recommends ‘tightening of government oversight of the building approvals process’ to mitigate against the conflict more effectively.<sup>70</sup>

Many stakeholders argue that conflicts of interest can affect the scrutiny that a PBS brings to bear on a building project.<sup>71</sup> Stakeholders note that while recent legislative changes that require RBSs to be appointed by building owners, not builders, have been a positive step, further steps could be taken to reinforce the independence of the building surveyor. In practice, builders, developers and design practitioners continue to play an active role in appointment of building surveyors.

### 6.1.4 There are no clear processes for regulating changes to approved design documentation

Building designs are often refined or altered substantially during construction. This is not necessarily a concern as many factors can influence how a building is constructed that could not be foreseen during initial design stages.<sup>72</sup> However, the current regulatory framework does not provide for adequate regulatory oversight of changes to design documentation after the issuing of a building permit.

Stakeholders generally agree that greater clarity is required around processes for amending an approved building permit and the required documentation.<sup>73</sup> This issue

---

<sup>69</sup> Reports on poor building outcomes due to conflicts of interest between the PBS and builders, developers or design practitioners have been widely noted in reviews since at least 2000. Recently, the *Building Confidence report*, for instance, notes that “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.”


<sup>70</sup> 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)

<sup>71</sup> For example, the Panel has heard through stakeholder submissions and consultation that a private building surveyor may be reluctant to refuse a building permit where the surveyor is dependent on a builder, developer and/or designer for future work. This dynamic can also play out in the thoroughness a building surveyor applies when undertaking mandatory inspections or issuing an occupancy permit. For example, a key finding from a 2015 report from the Victorian Auditor-General’s Office (VAGO) into *Victoria’s Consumer Protection Framework for Building Construction* is that the role of building surveyors is undermined by a conflict of interest arising from surveyors typically relying on builders for recurrent work. The report cites building surveyors’ disproportionately high representation in Building Practitioner Board inquiries, registration suspensions and cancellations, and reoffending.

<sup>71</sup> Under many commercial arrangements such as design and construct contracts it is common practice for design documents to be further developed during construction).

<sup>72</sup> Under many commercial arrangements such as design and construct contracts it is common practice for design documents to be further developed during construction).

<sup>73</sup> The current provisions of the Building Act relies on an owner/builder to notify an RBS if change has occurred with the process then relying on the ultimate discretion of an RBS to assess that change, seek review of that change independently if required, and then formally approve and register that documentation as an addendum to the original permit before the proposed building work can be legally progressed.



is particularly acute where new or altered Performance Solutions are prepared during construction.<sup>74</sup> Currently, the lack of a clear and transparent process in the Building Act and Regulations can place pressure on the RBS to retrospectively approve Performance Solutions that may not comply with the original building permit.

## 6.2 Recommendations

Through consultation the Panel has heard that reforms to strengthen the building approvals process are essential to reduce the incidence of defects and enhance consumers' confidence in building safety, quality, and compliance. The Panel recommends that a broad range of measures are introduced to improve building approvals processes through enhanced oversight of building work documentation and practitioners that work on building projects. Some reforms can be implemented quickly and will deliver benefits in the short term to improve approvals processes and building outcomes. These will be reinforced by earlier recommendations to improve practitioner competence, consumer representation and advocacy and regulatory oversight. Other reforms are medium-term and will require investment to ensure that all participants can play their part in the new contemporary approvals approach being proposed which will tailor oversight to risk and complexity of building projects.

The Panel proposes a suite of recommendations, underpinned by two phases of reform, to deliver a risk-based, graduated approvals model. This is outlined in **Figure** and explained in more detail below.

**Figure 6 | Phased implementation approach to new building approvals model**

---

<sup>74</sup> The *Building Confidence Report's* authors found that documentation relating to Performance Solutions is poor in general. They observed that 'there is a lack of basic information on matters such as the relevant Performance Requirements and the assessment methods applied'.

|  | SHORT TERM CHANGES<br><i>From 2021 (TBC)</i>  | MEDIUM TERM<br><i>from 2023 (TBC)</i>  | ONGOING EVALUATION &<br>CONTINUOUS IMPROVEMENT  |
|--|---|--|---|
| LOW COMPLEXITY<br><small>Class 1 &amp; 10 buildings</small>      | Low-complexity buildings will benefit from foundational changes to regulatory oversight, auditing, consumer representation and advocacy, practitioner competence, information sharing and documentation and additional short term measures. All buildings will also benefit from the Early Initiatives recommended by the Panel.  | Better analysis of data relating to low-complexity buildings will enable clear alignment of risk and any additional oversight requirements. Low-complexity buildings will continue to benefit from implementation of reforms to practitioner registration and regulatory oversight.  | Determine whether additional safeguards introduced for medium, high and very-high complexity buildings should be introduced for class 1 and class 10 buildings. |
| MEDIUM AND HIGH COMPLEXITY<br><small>Class 2-9 buildings</small> | More complex buildings will benefit from changes to all buildings and additional safeguards, initially prioritised for <b>residential apartments</b> . This includes:<br><ol style="list-style-type: none"> <li>1. Introduce improvements to design documentation</li> <li>2. Clear guidance for additional inspection triggers</li> <li>3. Greater oversight of design variations</li> <li>4. Strengthen final compliance stage</li> </ol> | Expand safeguards to broader range of medium, high and very-high complexity buildings and enhance local government's role:<br><ol style="list-style-type: none"> <li>1. Introduce the ABCB complexity definition and systems to support building surveyors to apply criteria.</li> <li>2. Expand application of the additional safeguards to all medium, high and very-high complexity buildings as determined by the criteria.</li> <li>3. Enhance role for the MBS in causing inspections, issuing occupancy permit and monitoring and enforcing compliance of building projects.</li> </ol> | Evaluate the additional safeguards to medium, high and very high-complexity buildings and determine if changes, or further safeguards are required.             |

In the **short term**, all building projects will benefit from the broader suite of recommendations included in previous chapters of this Report. These include changes to practitioner registration and competence requirements, regulatory oversight, auditing practices, consumer representation and advocacy, as well as the foundational changes to documentation and information sharing. In the short term, the Panel also recommends a two-part approach to enhancing oversight of building approvals:

- For all building projects, introduce three reforms to increase oversight and integrity of the building surveyor profession and emphasise the statutory obligations of this role (see Recommendation 13).
- For residential apartments, introduce five additional safeguards that enhance oversight, from initial design to the completion of a building project (see Recommendation 14). The Panel recommends an initial focus on residential apartments as there is compelling evidence that they present substantial risks.<sup>75</sup>

<sup>75</sup> Recent examples of non-compliance leading to significant destruction of property and harms to consumers have largely occurred in residential apartment buildings. This includes concerning cases such as Lacrosse and Neo200 building fires and the use of combustible cladding.

In addition, defect data from the Victorian Managed Insurance Authority (VMIA) indicates that multi-dwelling issues commonly reflect more complex, prolonged and costly defects including non-compliant cladding and waterproofing.

Other features of multi-storey residential apartments indicate cause for concern, for instance:

- Purchasers have little role in selecting or overseeing the builder or building surveyor and there is limited bargaining power in building contract negotiations (where standard forms are deployed with little appetite to vary terms against large developing companies).
- 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.

It should be noted that all changes in the short term will be underpinned by the Panel's Early Initiatives which support a more robust and accountable building approvals process.<sup>76</sup>

In the **medium-term**, the Panel recommends adopting a structured approach to assessing the complexity and associated risks of building projects and expanding additional safeguards to a broader range of more complex and higher risk buildings (see Recommendation 15). There has been recent significant work done nationally, by the ABCB, to develop a multi-factor complexity definition to categorise building complexity and risk. The Panel recommends that the ABCB Building Risk and Complexity Definition (ABCB definition) (and accompanying support to apply the criteria) should be introduced in Victoria. This will support the move to a nationally consistent definition for building complexity. The Panel recommends that additional safeguards proposed above for residential apartments are rolled out to all medium, high and very-high complexity buildings using the ABCB definition.

In this phase, the Panel also recommends enhancing the role for local councils and MBSs in the approvals process for more complex and higher risk buildings to increase oversight and scrutiny, and better address risks relating to conflicts of interest (see Recommendation 16). Introduction of this recommendation will be considered after expansion of additional safeguards to ensure that there is sufficient capacity, capability and resourcing in local councils to effectively implement the model.

The phased approach to improving building approvals seeks to prioritise the introduction of additional safeguards for building projects that pose the greatest risk to the health and safety of inhabitants and occupants, while ensuring sufficient time for industry and government to adapt to changes. As part of a phased implementation approach, the Panel recommends a dedicated focus on **monitoring, evaluation and continuous improvement**. This will help to determine – based on the emerging evidence-base and improved data collection – how the model should be expanded or refined over the longer-term. This includes consideration of:

- Whether aspects of the safeguards proposed for more complex and higher risk buildings should be introduced for lower risk, less complex buildings (including class 1 and 10 buildings), and
- Whether safeguards for medium, high and very-high complexity buildings should be refined or expanded to ensure that risks are adequately addressed and harms mitigated by the regulatory system.

The recommendations to support a phased transition to a risk-based, graduated model for building approvals are outlined in detail below.

### 6.2.1 Recommendation 13 | Introduce measures to strengthen the building approvals process for all projects

#### Description

The Panel recommends a series of changes to begin in the short term. In conjunction with Recommendations 1-12 above – particularly those to enhance

---

<sup>76</sup>The Panel's Early Initiatives are: Establish a centralised building consumer information and support service, consider a pathway to project-based insurance in Victoria, promote consumer awareness about building consultants, strengthen the role of the State Building Surveyor and support higher education and training system reform.



practitioner accountability, document quality, information sharing and regulatory oversight – these changes will help to provide improvements in the short term to the building approvals process for all projects.

Specifically, the Panel proposes that:

- a) a new system for auditing of building surveyors is introduced. This should focus on areas identified as significant risks, such as conflicts of interest, and the consistency and quality of building documentation. The way in which this auditing is undertaken could include recognition of professional associations' auditing systems (subject to them meeting rigorous ongoing standards);<sup>77</sup>
- b) building surveyors are required to provide consumers with a “terms of engagement” document before a project begins, that sets out the roles and responsibilities of the building surveyor;<sup>78</sup>
- c) mandatory Municipal Building Control Plans (MBCPs) for each Council are introduced (see Box 2 below);
- d) the VBA renew its risk-based targeted inspection audit program with a greater focus on class 2 to 9 buildings;
- e) the VBA establish a priority project team to address existing orphan permits;<sup>79</sup> and
- f) a protocol between the VBA and councils be finalised to ensure clarity of roles and responsibilities about compliance and enforcement (see Box 3).

The Panel also supports a formal change in the name of Relevant Building Surveyor (RBS) to Statutory Building Surveyor (SBS) in the new Act. For the purposes of this report, Statutory Building Surveyor (SBS) is used throughout this section of the Report.

## Rationale

These reforms would provide short term improvements to building approvals through greater oversight of building surveyors and consumer awareness about their roles and responsibilities. Specifically:

- The proposed auditing approach would help to:
  - enhance accountability of building surveyors;
  - improve regulators' intelligence and enable an adaptive approach based on real-time data;
  - create opportunities to identify and educate underperforming building surveyors;

---

<sup>77</sup> On 1 July 2021 the AIBS Professional Audit Program commenced.

<sup>78</sup> Currently, under section 29A of the *Domestic Building Contracts Act*, builders are required to give consumers a copy of the Domestic Building Consumer Guide. The guide aims to inform consumers about their rights and responsibilities and to understand responsibilities of builders and building surveyors. The proposed 'terms of engagement' should expand on information in this guide and importantly, be issued by the building surveyor not the builder.

<sup>79</sup> Orphaned building permits arise where the appointed PBS who issued building permits can no longer complete the building project because they have retired, died, or had their registration cancelled. The building owner must then appoint a new building surveyor. This can not only be difficult to do, but can occur at significant expense to the owner. Australian Services Union (ASU) submission to the Framework for Reform Discussion paper. [https://www.asuvictas.com.au/wp-content/uploads/2021/05/ASU\\_VICTAS\\_-\\_submission\\_into\\_Building\\_reform\\_in\\_Victoria-004.pdf](https://www.asuvictas.com.au/wp-content/uploads/2021/05/ASU_VICTAS_-_submission_into_Building_reform_in_Victoria-004.pdf). According to the VMBSG's estimates, there may be as many as 5 500 orphaned building permits across the State.

- introduce a method for continuous improvement where issues can be identified, reviewed, and acted on to reduce risks; and
- identify those building surveyors with unsatisfactory performance so that their registration could be limited or ceased.
- Mandating the provision of a “terms of engagement” would help to raise consumers’ understanding of the roles and responsibilities of surveyors and their respective rights and responsibilities.

## Box 2 | Municipal Building Control Plans

### Municipal Building Control Plans

The Panel recommends that each council be required to produce and maintain a Municipal Building Control Plan (MBCP). A MBCP would outline expectations for the council and the municipal building surveyor (MBS). The MBCP would be a statutory requirement for councils and will:

- Identify building control requirements and risks for the municipality<sup>83</sup>
- Set out priorities, targets and reporting requirements for the municipality
- Set out staffing, resourcing & funding
- Identify how current funding will be applied to resource the various statutory functions, bearing in mind the identified priorities, risks and any funding shortfalls.
- Establish review and report performance criteria.
- Be able to be amended or updated where required to respond to changing circumstances or a particular situation or crisis.

The benefits of MBCPs are that they will ensure compliance with the requirements of the Local Government Act 2020, the Building Act 1993, and with the mandatory requirements of the Building Surveyors’ Code of Conduct in Victoria. MBCPs could be monitored by the OSBS (see Recommendation 10).

## Box 3 | Protocols between the VBA and local councils

### Protocols between the VBA and local councils

Both VBA and councils have responsibilities for enforcement of building regulations under the Building Act.<sup>84</sup> Under the proposed Stage One changes roles are clarified in relation to medium and high complexity buildings because MBS’s will assume responsibility for causing inspections and enforcing compliance of building work for these buildings. In the meantime, and also for low-complexity buildings after Stage One, the roles of VBA, local councils/MBSs and PBS’s need to be clarified.

The Panel recommended finalisation of the protocol between VBA and councils to provide role clarity as an early initiative. The protocol is under development although it has not yet been finalised.

The general principle should be that enforcement action to bring building work into compliance should be undertaken by the regulator or regulators consistent with the powers given to each regulator under the Building Act.

The Panel is of the view that, given the principle outlined above, the VBA should, until the MBS are given additional powers, take responsibility for enforcement of non-compliant building work and any disciplinary issues where a private building surveyor has been appointed as the RBS. The reasons for proposing this approach are:

- Currently MBS’s have no power to give a direction to fix (DTF) to a builder when a PBS is appointed RBS, whereas the VBA does.<sup>85</sup>
- MBS’s have power to issue building orders to owners even where a PBS has been appointed as RBS for the work. However, the Building Act makes it clear that these orders should be a “last resort” and the first resort should be a DTF. It therefore follows that building orders should only be issued if it is clear that a DTF will not be complied with or it is not possible or appropriate to give the DTF.<sup>86</sup>
- MBS’s have no power to direct a PBS to perform a function under the Act (such as issue a DTF). The VBA has this power.<sup>87</sup>
- Both VBA and MBS’s are empowered to seek Court orders for performance of building work<sup>88</sup> against any person who has contravened the Building Act or Regulations, or a permit, notice, direction or order made under the Building Act.<sup>89</sup>
- The VBA also has the power to adjourn disciplinary proceedings where an enforceable undertaking<sup>90</sup> is given and to impose a requirement to perform building work as part of a disciplinary sanction.<sup>91</sup>

Further, the recommendation for an enhanced role for MBSs in the building approvals process for medium, high and very-high complexity buildings will require effective resourcing on building control activities in local councils.

The Panel recommends that the protocol is finalised and implemented as soon as practicable

## 6.2.2 Recommendation 14 | Introduce additional safeguards in the short term for more complex building projects, with an initial focus on residential apartments

The Panel has considered opportunities to significantly improve oversight and accountability through changes to the building approvals system. In the short term, the Panel believes that the focus for increased oversight and accountability needs to be on the buildings where we know the risks are greatest: residential apartment buildings. Although there are significant data constraints in terms of precise information about the risks of different types of buildings, as has been noted elsewhere in this report, the evidence we have (including from the work of Cladding Safety Victoria) points to the substantial risks associated with residential apartment buildings. We are, therefore, recommending that new oversight requirements for these buildings be put in place as soon as possible. Following the implementation of these short term measures, the Panel is recommending a new system for approvals of all buildings which will be based on the new complexity criteria which have been developed by the ABCB and agreed at the Building Ministers' Meeting (see Recommendation 15).

For the short term, to be introduced as soon as possible, the Panel recommends five additional safeguards for residential apartment buildings. These are summarised below (Recommendations 14A -14D).

### **Recommendation 14A | As part of the preparation for the building permit, require design practitioners to provide a compliance report and associated design declaration for consideration by the Statutory Building Surveyor**

#### **Description**

The first additional short-term safeguard for residential apartment buildings, involves a new requirement for relevant design documentation to be declared compliant as part of the building permit approval process. These design declarations should be provided to the statutory building surveyor for consideration.

It is important to note that this recommendation would not abrogate the responsibilities of the Statutory Building Surveyor in assessing compliance of the design and the reliability of any design declaration.

The Panel recommends that the relevant designers provide a compliance report and associated design declaration for consideration by the Statutory Building Surveyor as part of the assessment of a building permit. The same process would also apply where there are substantial variations and/or substantial changes to a performance solution during the construction process (see Recommendation 14C). They can also be requested at any time by the Statutory Building Surveyor.

These design documents could include:

- any fire safety systems for a building;
- external waterproofing of a building;
- the structural adequacy of a building, including any internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it;
- any component of a building that is part of the building enclosure; and

- the design of, and aspects of the mechanical, plumbing, and other requirements for a building that are required to achieve compliance with the NCC.

The Panel recommends that in the medium term, the engagement of a lead designer as proposed by the ABCB<sup>89</sup> be considered. The lead designer<sup>90</sup> would review the submitted designs from different design practitioners involved in a building project and assess whether, collectively, the designs comply with the NCC, Building Act and Regulations<sup>91</sup>, and ensure that each element of the design works together as a whole. They could prepare a final ‘principal compliance declaration’ on behalf of all practitioners as part of submitting documentation for consideration by the Statutory Building Surveyor.

### Rationale

The aim of this recommendation is to ensure that:

- comprehensive, compliant designs are submitted as part of the building permit assessment process to minimise additional work and change that is needed throughout the course of construction;
- comprehensive design documentation provided to the Statutory Building Surveyor enables them to make a fully informed assessment of a building permit application; and
- there is increased accountability of design practitioners submitting documentation that is assessed and certified by the SBS.

### Recommendation 14B | Additional inspections to be prioritised for specific risks in residential apartment buildings

#### Description

Many stakeholders raised with the Panel additional specific risks which relate to the construction of certain aspects of residential apartment buildings. The Panel recognises these risks and considers that additional inspections for the following areas should be a priority (formerly known as ‘lock-up’ inspections):

- **Pre-plaster/wall-lining** – This would include inspection of thermal and acoustic insulation/sarking, plumbing, fire stopping, shaft linings and fire barriers, weatherproofing and condensation mitigation measures. It also ensures that the frame, which was approved in a previous inspection, has not been adversely affected by the installation of these other components and services.
- **Wet area construction** – This would occur at the pre-tiling stage and include checking compliance with NCC requirements and relevant Australian Standards, including for membranes.

The Panel considers that this recommendation could be implemented by:

- amending regulation 167 in the Building Regulations to introduce new mandatory inspections for residential apartment buildings; and

<sup>89</sup> 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/supporting\\_documents/Building%20Design%20Acceptance%20Recommendations%2013%20%2016.pdf](https://consultation.abcb.gov.au/engagement/building-design-acceptance/supporting_documents/Building%20Design%20Acceptance%20Recommendations%2013%20%2016.pdf) >. p 16.

<sup>90</sup> This could include architects, engineers, draftsperson-building designers and/or a consultant building surveyor.

<sup>91</sup> This would occur in a similar process to how a building surveyor can assign additional mandatory inspections to a project. The owner/builder would ultimately contract the lead designer and bear the cost.

- the OSBS providing guidance for statutory building surveyors in their determination of whether further additional inspections are required in certain circumstances. This could be delivered through Practice Notes or targeted education initiatives.

As noted below, for the medium term, the Panel supports the ABCB's approach to setting out additional inspections based on building complexity.<sup>92</sup>

### Rationale

Inspections are a crucial safeguard to ensure that building work is compliant and suitable for people to occupy or use. Through its Review, the Panel has received many submissions supporting the need for additional inspections during the construction process to ensure compliance is achieved. The Panel has heard that existing inspection stages are not sufficient for certain types of buildings and that, while the RBS may specify additional mandatory notification stages to cause an inspection<sup>93</sup>, in practice this rarely occurs.

The Panel has also heard, however, that the process for mandating inspections in the Building Regulations needs to be more flexible to respond to changing industry requirements and to address risks as they arise. Inspections should be linked to the trends and issues that arise through data captured from inspections and audits. This will involve collaboration across agencies, between state government and local government, and with statutory building surveyors.

### **Recommendation 14C | Introduce a new process to require additional compliance checks where there is substantial variation to design documents and performance solutions after issuing of a building permit**

#### Description

The Panel has heard from a number of stakeholders that important oversight requirements can be compromised when there is substantial variation to design documents and performance solutions after a building permit has been issued. Given that, particularly in the case of residential apartment projects, design variations and changes to performance solutions are often required, the Panel considers that it is necessary to require additional compliance checks.

Under section 16 (2) of the Building Act building work is required to comply with the Building Act, Regulations and the building permit. As part of this recommendation, additional compliance checks during the construction process should take place where there are proposed substantial variations to design and/or substantial changes to performance solutions. To support this, the Office of the State Building Surveyor would issue clear guidance to enable the Statutory Building Surveyor to determine the threshold for requiring additional compliance checks.

The aim of this would be to provide regulatory oversight of *substantial* changes to building designs or performance solutions that occur after a building permit is issued. The Panel recommends that the following procedure be explored to implement this recommendation:

- The builder, project proponent or their agent should be responsible for notifying the statutory building surveyor when there are variations to the approved plans or

---

<sup>92</sup> See Appendix B for detail on the ABCB's proposed minimum mandatory inspections

<sup>93</sup> *Building Act 1993* (Vic), section 35.

supporting documents (such as a performance solution) prior to the work being carried out.

- The statutory building surveyor should determine whether the change materially affects the way the building complies with the original permit, regulations and the NCC, and whether it significantly changes the original building approval. This would be supported by guidance material prepared by the State Building Surveyor.
- If the statutory building surveyor determines that a variation is required, the owner (developer)/builder should document how the variation complies and how the variation affects original approved designs. Depending on the nature and scope of the variation, this may require additional independent review as nominated by the statutory building surveyor, and a new design compliance report (as noted in Recommendation 14A).
- The building surveyor would need to approve any variation prior to building work being carried out. Recorded changes could be approved through the BAMS portal.

This recommendation should be accompanied by an appropriate audit program led by the VBA that monitors compliance of documentation and approval of variations. It should also be accompanied by relevant offence provisions in legislation to encourage compliance of building practitioners and the building surveyor.<sup>94</sup> There could also be an additional offence provision specifically targeting any failure by a builder to inform the Statutory Building Surveyor or Statutory Building Surveyor failure to inform MBS/VBA of variations to that building permit.

## Rationale

This recommendation seeks to ensure appropriate regulatory oversight of significant changes to building design following the issuing of a building permit which is especially pertinent for contemporary construction practices – such as design and construct projects – where there are often substantial changes to approved plans during the construction process. These changes can adversely affect building outcomes.

## Recommendation 14D | Strengthen the final compliance stage for residential apartment buildings so that the building is complete and complies with the approved building permit

### Description

The Panel recommends strengthening the process and documentation requirements relating to an application for an Occupancy Permit. It would involve a more thorough check, and could include pre-occupancy permit inspections, in order to compare as-constructed building against approved building permit documentation and other statutory requirements.

The Panel considers that the best way of strengthening the occupancy permit stage is to involve the relevant MBS with other relevant, registered (or endorsed) experts (e.g. fire safety engineer or ESM consultants) to provide an additional assessment of the building's compliance and function prior to the issuing of the occupancy permit.

---

<sup>94</sup> *Building Act 1993 (Vic)*, section 16 (2), section 16 (2) of the Building Act currently applies where building work does not comply with the building permit.

The relevant MBS would 'cause' the pre-occupancy permit compliance assessment (meaning that the MBS could do this themselves or delegate this requirement to an approved statutory building surveyor). The MBS would charge for these services directly.

The Statutory Building Surveyor would remain responsible for issuing the occupancy permit but would need to incorporate the outcome of the pre-occupancy permit assessment by the MBS (and other relevant information).

When suitable for occupation the building owner will be provided with a building manual including all relevant building documentation (as outlined in Recommendation 3).

Given that, in the medium term it may be necessary to introduce a new post occupancy permit 'completion inspection' for residential apartment buildings, it is recommended that legislative changes for Stage One include the provision of a 'head of power' to facilitate this additional inspection. This new inspection could be undertaken by the Statutory Building Surveyor at the completion of all building work.

### **Rationale**

The completion of building work is a critical juncture in the building approvals process. Currently, an occupancy permit provides assurance that a building is fit for occupation, not that building work is complete and compliant. This has been identified by some stakeholders as a gap in the regulatory system and an area where consumers have limited understanding. A compliance assessment, caused by the relevant MBS, for residential apartment buildings, would ensure independent oversight prior to the issuing of the occupancy permit.

### **6.2.3 Recommendation 15 | In the medium term, once the ABCB complexity framework is finalised, adopt it as the basis for an expansion of these safeguards to all medium, high and very-high complexity buildings**

#### **Description**

The Panel recommends that the ABCB definition is adopted and is used to develop a fit for purpose tool to triage building permits into an appropriate category of complexity (very-low, low, medium, high and very-high – referred throughout as 'complexity'). Once this tool is developed, the five additional safeguards outlined above should be introduced for all medium, high and very-high complexity building projects.

A detailed explanation of the ABCB definition is provided at Box 4, with further information in Appendix A.

The Statutory Building Surveyor would input key characteristics of proposed building works into BAMS<sup>95</sup> that could automatically generate a complexity score. The building's score would set out the appropriate regulatory pathway and any additional safeguards required across the project.

---

<sup>95</sup> BAMS (the Building Activity Management System) is an online platform developed by the VBA to issue building permit numbers and manage the levy payments process. See Recommendation 2 for improvements to the existing BAMS system

The ABCB definition currently sets out five tiers of complexity – very-low, low, medium, high and very-high. A description of each tier of complexity is set out in Figure 7 below.

Additional safeguards outlined in Recommendation 14 would be applied to medium, high and very-high complexity building projects. This would also include making the lead designer mandatory for medium, high and very high complexity buildings and embedding the role of the MBS in all final compliance and function assessments.

**Figure 7 | Description of each tier of complexity, according to the ABCB framework**

|                  |   |
|------------------|---|
| <b>VERY LOW</b>  | This tier includes building that do not fulfill any of the complexity criterion and includes standard single-storey residential dwellings that are not in a fire-prone area with a complexity risk score of zero.         |
| <b>LOW</b>       | This tier includes standard residential dwellings (non-strata), low-rise, low-density commercial and industrial buildings.  |
| <b>MEDIUM</b>    | This tier includes any small- to medium-sized residential apartment buildings (between 3 and 7 storeys), moderately sized commercial and industrial buildings, health and community care facilities and public buildings. |
| <b>HIGH</b>      | This tier includes multi-storey residential apartment buildings (between 7 and 20 storeys approx.), large aged care facilities, very large commercial buildings.  |
| <b>VERY HIGH</b> | This tier includes some multi-storey residential apartment buildings , buildings that are essential to post disaster recovery such as large hospitals, and buildings that are associated with hazardous facilities.       |



## Box 4 | Description of ABCB definition

The ABCB definition sets out five criteria which reflect an increase in the likelihood of non-compliance and risk to safety and/or health of individuals. A project receives a higher classification of risk and complexity based on an increase in the number of criteria that it meets. The criteria are:

### Attributes of the building design or construction

Certain attributes increase the complexity of the building. A building project has an attribute which increases its risk / complexity if it meets one of the following:

- building is an effective height of more than 25 metres;
- designs include one or more Performance Solutions used to demonstrate compliance that relate to material and systems for structural safety and fire safety; and
- building is in an area prone to natural disaster or adverse environmental conditions.

### Class 2 over three storeys

All or part of the building project is a class 2 building that is three or more storeys.

### Occupant numbers

The proposed building will be occupied by more than 100 people. This could be limited to buildings that have 100 occupants, or it could instead be expanded to include 100 residents (long-term and short-term) and visitors.

### Occupant characteristics

The building will be occupied by over 10 residents who will require assistance to evacuate. This criterion specifically applies to buildings that are designed for vulnerable occupants, including hospitals, childcare centres, and retirement villages. An expanded definition could include building projects where the building designs anticipate that the building will have over 10 vulnerable residents and, for example, includes specific accessibility related designs, it could fulfill this criterion.

### Building Importance Level 4

This is a specific subset of emergency buildings and essential facilities, such as police stations, designated emergency shelters, or buildings containing hazardous materials.

The number of criteria that any given building has will determine if the building is low, medium, high or very-high risk. This is described in Box 3.

The system for applying additional safeguards to more complex projects needs to be responsive to emerging risks in the market. Implementation of the ABCB definition should consider how the tool can be regularly evaluated to ensure it continues to reflect the complexities presented by new building materials and ways of constructing.

## Rationale

Stakeholders strongly support a tiered approach to building approvals that reflects the underlying complexity of a building project. Stakeholders generally are also of the view that risk and complexity assessment require a multi-factor approach and cannot be described simply in terms of building class. Since 2019, the Building Ministers Meeting (BMM) led reforms on a nationally consistent definition for building complexity (now referred to as the ABCB definition). There has been significant consultation on the ABCB definition for building complexity and it is largely supported by all jurisdictions. Adopting the ABCB definition as a tool to determine building complexity supports a consistent regulatory approach across jurisdictions.

The ABCB definition is also advantageous in providing a set of objective thresholds that, if met, increase complexity and associated risk score of a building project. Reducing discretion in defining the risk score will help to ensure consistent application of the ABCB definition by the Statutory Building Surveyor. The Statutory Building Surveyor is an appropriate party to apply the ABCB definition to a building

project as they have relevant expertise and a detailed understanding of the building permit documentation. Integrating the tool with BAMS would help to facilitate and record the assessment by the Statutory Building Surveyor.

#### **6.2.4 Recommendation 16 | In the medium term, enhance the role for local councils and the MBS for more complex and higher risk buildings**

In the medium term, the new system should involve greater participation in the approvals system from local councils. This will require clarity about the roles and responsibilities of local councils in the new building documentation and approvals systems. In particular the role of Municipal Building Surveyors in the approvals system will be expanded to medium, high and very high complexity buildings (as defined by the ABCB – see Recommendation 15).

It is important that local councils are supported to discharge the responsibilities they have, particularly so for buildings of identified risk levels, in the building approvals system to further mitigate conflicts of interest and improve oversight. It is also important that councils increase their participation in the building system which can be achieved through the implementation of municipal building control plans (see Recommendation 13) and appropriate resourcing.

The Panel recommends an expanded role for local councils and the MBS for medium, high and very-high complexity buildings to increase oversight and scrutiny. This should be achieved through the following.

#### **Recommendation 16A | Transfer accountability for causing inspections and issuing an occupancy permit or certificate of final inspection to the MBS**

##### **Description**

The Panel recommends that, in the medium term, oversight of causing inspections for more complex and higher-risk work should be undertaken by an MBS at the local council where the project is taking place. The Panel also recommends that the MBS become responsible for issuing occupancy permits or certificates of final inspection for these building projects. The intent of this recommendation is to separate the existing RBS role into pre-building permit and post-building permit phases.

The model recommended by the Panel would include the following features:

- Following the Statutory Building Surveyor's decision to issue a building permit (with or without conditions) all relevant information would be submitted into BAMS and responsibility for the permit would be transferred to the relevant council's MBS where the project is located.
- The MBS would review the permit decision, confirm the required inspection stages, including whether additional inspections are required (including any necessary protection works).
- The owner (developer)/builder would be required to notify the MBS prior to the appropriate inspection stage. The MBS would cause the inspection.

would be able to undertake an inspection in person, engage another qualified person to carry it out on their behalf.<sup>96</sup>

- Prior to the conclusion of a building project, the owner (developer)/builder will make an application for an occupancy permit. As noted in Recommendation in 14D, the builder must notify the MBS (at a time to be determined) prior to when the occupancy permit is expected to be issued, to establish what will be required prior to consideration of the occupancy permit. The MBS would be able to undertake the functions themselves or engage another surveyor or suitably qualified professional to undertake this assessment on their behalf.<sup>97</sup>

## Rationale

This recommendation aims to address problems described above in relation to adverse building outcomes arising from conflicts of interest. Placing responsibility for causing inspections and issuing an occupancy permit or certificate of final inspection and the completion assessment with the MBS reduces likelihood of inadequate oversight of the building approvals process. In addition, separating the SBS' (currently the RBS) role into pre- and post-building permit stages (with separate oversight) would help to mitigate risks of the concentration of responsibility and decision-making for building approvals. Enabling the MBS to cause an inspection (by assigning this function to another suitably qualified individual) would increase oversight without creating a significant additional resourcing burden on the system.

The Panel recommends this change be introduced as part of the medium-term reforms.

## Recommendation 16B | Shift responsibility for monitoring and enforcing compliance of building works to the MBS

### Description

The Panel recommends that responsibilities for monitoring and enforcing compliance of building works for medium, high and very-high complexity building projects is amended to align with changed role for the MBS proposed in Recommendation 16A. This recommendation would be achieved through the following changes:

- Make the MBS responsible for issuing directions to fix, building notices and orders during building approvals (these powers currently sit with the Statutory Building Surveyor).<sup>98</sup>
- Enable the MBS to delegate responsibility for issuing initial oral directions to fix for follow up by the Statutory Building Surveyor (or other qualified individual)

---

<sup>96</sup> There are divergent stakeholder perspectives on whether the MBS should be able to assign the statutory building surveyor who originally issued the permit or whether this opens opportunities for conflicts of interests by insufficiently separating the issuing of the permit from the inspection process.

<sup>97</sup> In the case of a certificate of final inspection, the MBS (or the individual assigned by the MBS) would be responsible for undertaking a final inspection of the completed project to ensure the final constructed building matched relevant permit documentation, collect any certificates of compliances and lodge all documentation on BAMS. In the case of an Occupancy Permit, the MBS (or its delegate) would be required to undertake similar procedure which forms the certificate of final inspection, review any permit documentation (such as essential safety measure schedules) and decide whether to issue an occupancy permit, with or without conditions, or refuse to grant an occupancy certificate.

<sup>98</sup> The MBS as MBS can issue an emergency order at any time there is an emergency. The MBS as MBS also has power to initiate the building notice and order process at any time there is non-compliant building work but in practice, under the VMBSG intervention filter, do not do so when a PBS is acting as RBS/SBS.

during inspections. Alternatively, this could be left to the MBS' discretion whether they give the building surveyor or inspector authority to give an oral or written direction (or both) or just report back to the MBS to issue compliance and enforcement notices or directions.

- Require the Statutory Building Surveyor to notify the MBS of any matters identified and actions taken during inspections.
- Make clear that – where there is non-compliance and/or directions to fix or building notices and orders are not complied with – the MBS will generally be responsible for undertaking further enforcement action through injunctions and prosecutions.
- Retain and consider strengthening the VBA's power to take enforcement actions in specified circumstances.

In order to implement the Panel's recommendations regarding the MBS' role in relation to monitoring and enforcement of compliance for medium, high and very-high complexity buildings, amendments to the Building Act should include a power for the MBS to issue directions to fix to the person named as builder on the building permit.<sup>99</sup> Extending the powers of regulators to require rectification through an administrative order post occupancy permit will be considered in Stage Two of the reforms.

### **Rationale**

Clear delineation of roles and responsibilities in compliance monitoring and enforcement for medium, high, and very-high complexity building projects will clarify everyone's regulatory responsibilities to enforce compliance and align with proposed changes in Recommendation 16A. Placing responsibility for enforcement clearly with the MBS (and local council) will reduce the likelihood that inadequate monitoring and enforcement activity by private surveyors occurs due to conflicts of interest, and will better ensure that appropriate action is taken in response to non-compliance.

In addition, the Panel has heard through consultation that enforcement action with respect to design and construction forms of procurement is often poorly coordinated. There is a lack of clear and consistent understanding about the roles of local councils and the VBA in relation to enforcement. This can lead to referral of matters between the VBA and local councils with no resolution. Clarifying that the primary role for enforcement lies with the MBS and local councils will clarify responsibilities and reduce duplication and inefficiencies between the VBA and local councils. The Panel considers that the overarching roles and responsibilities for compliance monitoring and enforcement could eventually be implemented for all building approvals.

The Panel recommends this change be introduced as part of the second tranche of reform of building approvals. This recommendation and Recommendation 16A

---

<sup>99</sup> In Victoria the power to issue directions to fix currently lies exclusively with the relevant building surveyor and the VBA. Further, the Supreme Court has held that directions to fix can only be given prior to the issuing of the occupancy permit. In other states there is a capacity for regulators to issue orders requiring builders to rectify non-compliant building work on an administrative basis post occupancy permit.

NSW has recently introduced laws for class 2 buildings that allow the central regulator to give a building work rectification order to a developer, which includes both the person who arranged the work and the person responsible for carrying out the work. The orders only apply to serious defects (as defined) and are subject to a right of appeal. The regulator can also serve a compliance cost notice on the developer requiring them to pay rectification and associated costs to the regulator.

require a revision of local council resourcing.<sup>100 101</sup> This is described in the box 5 below.

### **Box 5 | Recommendation 16A and 16B will require a consideration of local council resourcing**

#### Councils require improved capability, capacity and appropriate resourcing to implement the above recommendations

The recommendations in this Chapter envisage a transition to a graduated, risk-based building approvals model with new roles for local councils and the MBS. Through the Panel's consultation and submission process, stakeholders observe that many local councils currently are not sufficiently resourced to fully undertake their existing regulatory functions under the Building Act.

These recommendations will require:

- investment to lift local councils' capability to undertake existing and new functions;
- further work to understand current capacity constraints and future workforce supply needs;
- substantial reform to provide a consistent stream of funding to local councils to assist their role in building approvals; and
- the implementation of Municipal Building Control Plans to enable local councils to deliver its role set out in the Building Act.



---

<sup>100</sup> Municipal Association Victoria (MAV) in their submission to the Framework for Reform paper indicated council experience resource constraints to fill existing regulatory functions and that the addition of further functions would place substantial strain on local councils without further resourcing avenues.

<sup>101</sup> Consider whether councils unable to employ a suitably qualified person should be able to fulfil their responsibility by engagement of a building surveyor through a contract directly or jointly with other councils for on demand service provision.

## 7 Next steps

The Panel has recommended that the comprehensive reform of the building system be delivered over three stages. This will enable significant changes to be implemented in 2021, with further reforms to be delivered in 2022 and, finally, a new Building Act planned to be introduced in 2023 replacing the existing Building Act. The focus of this Report is the final recommendations to Stage One.

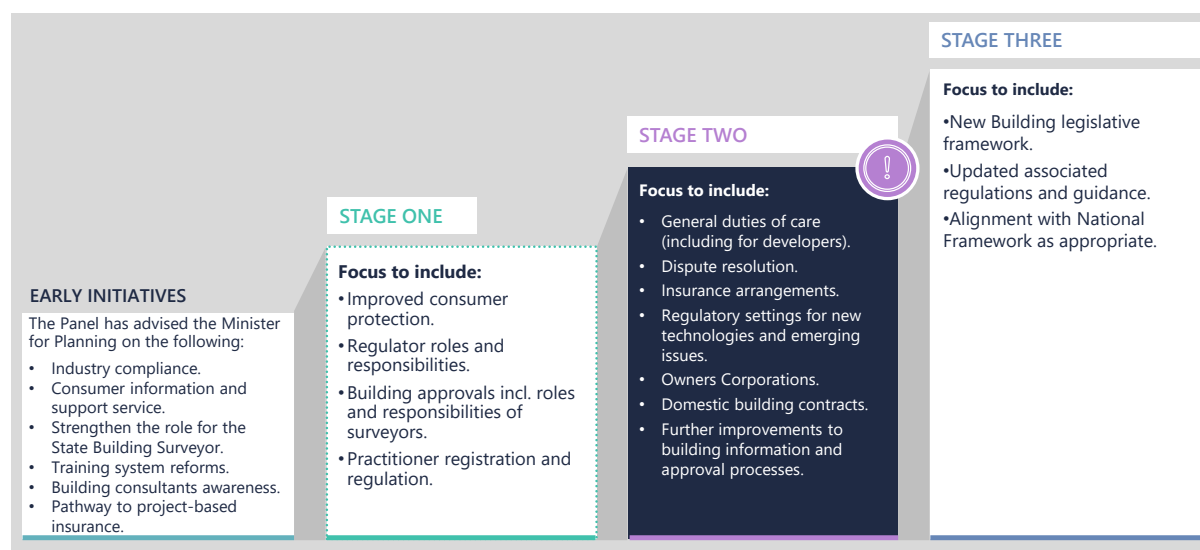
The Panel will soon begin development of the discussion paper for Stage Two of the reform program. Following consultation on Stage One, the Panel has emphasised the importance of the role of developers, emerging risks related to coronavirus, new building technologies as well as issues affecting Owners Corporations and domestic building contracts. The Panel's proposed focus for Stage Two's includes:

- general duties of care (including for developers);
- dispute resolution;
- insurance arrangements;
- regulatory settings for air conditioning, ventilation and lifts;
- regulatory settings for new building technologies and innovations (including pre-fabrication);
- relevant Owners Corporations Act and Domestic Building Contract Act issues; and
- further improvements to building information and approval processes including powers to direct rectification post occupancy.

Stage Three of the reform program will include advice on the development of a new Building Act, national harmonisation as appropriate.

The staged approach is set out in Figure 2.

**Figure 2 | Staged approach to the reform program**



# Appendix A ABCB Building Risk and Complexity Definition decision tree

The ABCB definition sets out a clear decision tree process for determining what category of risk and complexity any given building project is classified as. Some examples of how this decision tree can be applied are detailed below. Figure 3 applies the ABCB definition to multi-storey residential apartments between 3 and 7 storeys.

**Figure 3 | Application of the ABCB definition for medium-complexity buildings (multi-storey apartments between 3 and 7 storeys)**

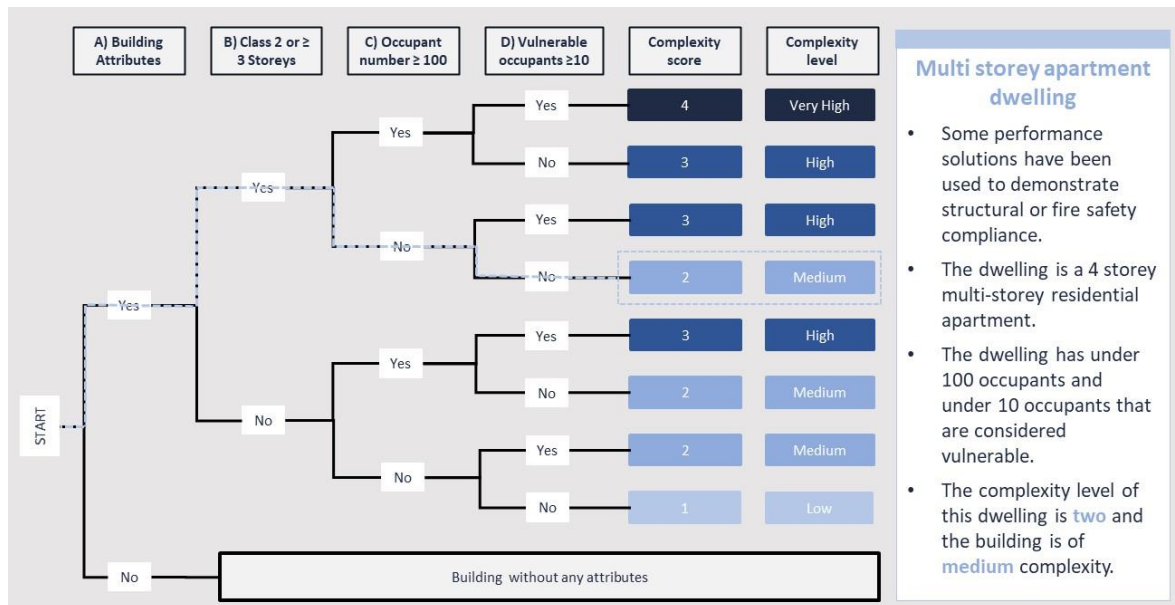
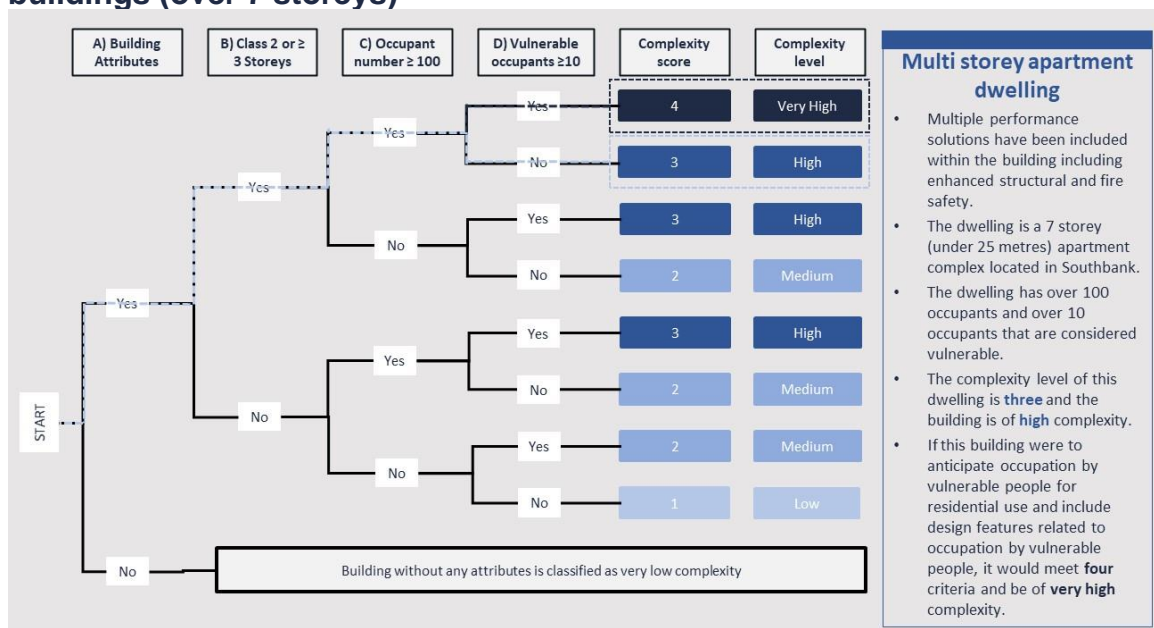


Figure 4 applies the ABCB definition to multi-storey residential apartments (over 7 storeys)

**Figure 4 | Application of the criteria for high and very-high complexity buildings (over 7 storeys)**



## Appendix B ABCB proposed approach to mandatory inspections

Recommendation 18 of the *Building Confidence Report* proposes that each jurisdiction requires mandatory on-site inspections of building work at identified notification stages. The ABCB *Discussion Paper Mandatory Inspections - A Response to the Building Confidence Report* sets out a risk-based approach to determining what minimum inspections are required for a project, depending on its level of complexity. This approach is described in the table below.

**Table 1 | Draft ABCB model for minimum mandatory inspections depending on building complexity**

| Very long building complexity   | Low or medium building complexity   | High or very high building complexity   |
|---|---|---|
| Foundations   | Foundations   | Foundations   |
| Structural frames, including roof construction                        | Structural frames, including roof construction  | Structural frames, including roof construction  |
| In situ reinforcement in footings/slabs and other structural elements | In situ reinforcement in footings/slabs and other structural elements   | In situ reinforcement in footings/slabs and other structural elements   |
| Pool barriers, including in situ reinforcement for pools              | Pool barriers, including in situ reinforcement for pools  | Pool barriers, including in situ reinforcement for pools  |
| Waterproofing of wet areas  | Waterproofing of wet areas  | Waterproofing of wet areas  |
| Final post completion of all work                                     | Any specific construction requirements relating to Performance Solutions  | Any specific construction requirements relating to Performance Solutions  |
|   | Façade and cladding installations   | Façade and cladding installations   |
|   | Fire detection and suppression systems  | Fire detection and suppression systems  |
|   | Pre-plastering/wall-lining including (where required by the NCC) <ul style="list-style-type: none"> <li>• thermal and acoustic insulation;</li> <li>• sarking, cavities, and other weatherproofing and condensation mitigating measures; and</li> <li>• non-compliance elements.</li> </ul> | Pre-plastering/wall-lining including (where required by the NCC) <ul style="list-style-type: none"> <li>• thermal and acoustic insulation;</li> <li>• sarking, cavities, and other weatherproofing and condensation mitigating measures; and</li> <li>• non-compliance elements.</li> </ul> |
|   | Fire- rated compartmentation including external walls, floors, shafts, separation between buildings and protection of opening   | Fire- rated compartmentation including external walls, floors, shafts, separation between buildings and protection of opening   |
|   | Final post completion of all work   | Witness testing of fire safety systems and emergency evacuation systems in operation  |
|   |   | Final post completion of all work   |



## Appendix C Bibliography

Australian Bureau of Statistics, 2020, 'Labour Force, Victoria Quarterly: Detailed labour data collected on a quarterly basis: Table 05. Employed persons by state, territory and industry division of main job (ANSIZ)

Australian Building Codes Board 2021, 'Discussion paper: Building Manuals - A Response to the *Building Confidence Report*'  
<https://consultation.abcb.gov.au/engagement/building-manuals/>

Australian Building Codes Board 2021, 'Discussion paper: Building Design Acceptance - A Response to the *Building Confidence Report*'  
<https://consultation.abcb.gov.au/engagement/building-design-acceptance/>

Department of Environment Water Land and Planning 2021, 'Victorian Building System - Review Evidence Improvement Project'

Department of Treasury and Finance 2016, 'Toolkit 1 - purpose and types of regulation', <https://www.dtf.vic.gov.au/funds-programs-and-policies/victorian-guide-regulation>

Master Builders Australia, Victorian building and construction industry forecast – December 2020, <https://www.mbav.com.au/news-information/news/economyfinance/victorian-building-and-construction-industry-forecast>

NSW Government – Fair Trading, 2020, 'Eligibility criteria for Design and Building Practitioners', <https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/design-and-building-practitioners/eligibility-criteria%23designpractitioner>

Premier of Victoria, Victoria's Big Housing Build,  
<https://www.premier.vic.gov.au/victorias-big-housing-build>

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)

VBA, 2020, VBA Annual Report 2019-2020,  
[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)

## Legal references

| JURISDICTION | REFERENCE                                    |
|--------------|--|
| Australia    |  |
| Federal      | National Construction Code                   |
| Victoria     | Architects Act 1991                          |
|              | Building Act 1993                            |
|              | Building Regulations 2018                    |
|              | Domestic Building Contracts Act 1995         |
|              | Occupational Health and Safety Act 2004      |
|              | Owners Corporation Act 2006                  |
|              | Professional Engineers Registration Act 2019 |
| NSW          | Design and Building Practitioners Act 2020   |