

VICTORIA

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Auditor-General  
of Victoria

**PERFORMANCE AUDIT REPORT No. 64**

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**BUILDING CONTROL  
IN VICTORIA**

**Setting sound foundations**

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The President  
The Speaker  
Parliament House  
Melbourne Vic. 3002

Sir

Under the provisions of section 16 of the *Audit Act* 1994, I transmit Performance Audit Report  
No. 64, *Building control in Victoria: Setting sound foundations*.

Yours faithfully

J.W. CAMERON  
*Auditor-General*

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# Foreword

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As a sequel to my recent performance audit of the State's planning system, this Report titled *Building control in Victoria: Setting sound foundations* provides a timely appraisal of the building control system that commenced operation nearly 6 years ago.

The findings in the Report are aimed at providing an informed analysis of an important aspect of community activity. The recommendations are designed to lead to the introduction of cost-effective arrangements in the public interest and, where feasible, identify risks before they occur. In the building industry, it needs to be recognised that many of the risks are of a long-term nature.

This performance audit was the first contracted to the private sector under the contestability arrangements introduced by the previous Government. While I was satisfied with the quality of the services provided by the contractor, it is worth mentioning that the arrangement added substantially to the time and costs of the audit, particularly in respect of the following aspects:

- the tendering phase;
- transfer of knowledge between my Office and the contractor; and
- monitoring the work of the contractor.

This experience will be taken into consideration in determining the most cost-effective manner in which to undertake large and significant audits such as this in the future.

J.W. CAMERON  
*Auditor-General*

# Part 1

## Executive summary

# Part 1.1

## Overall audit conclusion

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### Basis for the audit

**1.1.1** The Building Control Commission and the related statutory bodies perform an important regulatory function over the building industry in Victoria. This industry has experienced substantial growth during the 1990s with the value of building activity in the public and private sectors totalling \$8.9 billion for 1998-99.

**1.1.2** Given the size of the industry and its dependence on the quality of work performed by building practitioners, it was my view that value could be added by providing an assurance to the Parliament and other stakeholders on the way in which these statutory bodies have undertaken their respective roles since their establishment approximately 6 years ago.

### Background

**1.1.3** Regulatory controls over building activity are aimed at ensuring the design, construction and use of safe and habitable buildings. The State plays an active role in establishing building standards to achieve these aims and is responsible for making sure those standards are met.

**1.1.4** One of the key controls requires the majority of new building proposals to be granted a building permit before construction can commence and an occupancy permit before it can be occupied. Building surveyors are responsible for granting such permits.

**1.1.5** The *Building Act* 1993 made substantial changes to the way building control operated in Victoria. It removed the monopoly of local councils granting building and occupancy permits. Owners or their agents such as builders can now choose between private and municipal building surveyors. Currently, around 70 per cent of permits are issued by the private sector. However, councils retain certain responsibilities for enforcement of public safety and illegal building work as well as record-keeping activities.

**1.1.6** The new Act also introduced compulsory insurance as well as a registration system for building practitioners to provide greater protection to the community.



**1.1.7** To manage these new arrangements for building control, the Act established 5 statutory bodies reporting to the Minister for Planning. These bodies and their responsibilities are:

- *Building Control Commission*, to provide and oversee the building regulatory system;
- *Building Practitioners Board*, to administer the registration of building practitioners and monitor their conduct;
- *Building Appeals Board*, to determine applications for modifications to the use of building regulations and to hear appeals arising from the Act;
- *Building Regulations Advisory Committee*, to advise the Minister on draft regulations; and
- *Building Advisory Council*, to advise the Minister on the administration of the Act.

**1.1.8** These organisations are funded by a building levy on all new construction projects, fees for registration and other services. The levy, which totalled \$5.6 million in 1998-99, is payable by owners prior to the issue of the building permit based on the overall contract price.

#### Audit coverage

**1.1.9** My Office examined the efficiency and effectiveness of certain processes these organisations have put in place to implement the new regulatory system and achieve their legislated objectives. The audit also assessed whether organisational arrangements and priorities were conducive to the respective organisations efficiently meeting their legislative responsibilities.

#### Overall synopsis

**1.1.10** The Building Control Commission and the related statutory bodies are a dynamic group with an aim of positioning themselves as a leader in their field of expertise. Building control activities have been conducted in accordance with the requirements of the relevant legislation.

**1.1.11** The success of the Commission in implementing a completely new regulatory regime, and particularly one as innovative as this one, warrants significant recognition. The Commission's research projects have been used to not only substantiate changes to legislation but also have been instrumental in changing construction techniques and practices which, according to the Commission, have saved the building industry and the Victorian community millions of dollars annually. In addition, research done by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) confirms the success of the Victorian building control system.

**1.1.12** It is also noted that the Commission provides funding to the Victorian Civil and Administrative Tribunal and the Australian Building Codes Board on behalf of the State, and conducts domestic building inspections under the *Domestic Building Contracts Act 1995*.

**1.1.13** Based on the outcome of my Office's examination, I have outlined various suggestions for improvement after examining the way in which some aspects of the building control framework have been established and administered in Victoria. The potential ramifications of the key findings mean that it is not clear as to whether the most suitable arrangements have been established with regard to some elements of the building control system. Examples relate to practitioner registration, complaint investigation and auditing processes. Many of the weaknesses disclosed in the key findings are systemic in nature but are either permitted by, or not covered by, the legislation.

**1.1.14** It is commendable that a range of positive initiatives has been introduced to improve the efficiency and effectiveness of operations. The findings in this Report are designed to build on these achievements with a view to improving resource and risk management practices involved in building control for the long-term benefit of the community at large. A series of recommendations for government and the statutory bodies addressing these concerns are suggested in Part 1.3 of this Report. A summary of all recommendations arising from the audit is included in Appendix A.

## Practitioner registration

**1.1.15** The building practitioner registration process should play an important role in building control, although it is recognised that registration alone cannot guarantee continuing professional conduct in all cases. In using registered practitioners on building sites, owners and the community should be entitled to expect a certain minimum level of competence and have recourse to compensation in the event of building defects.

**1.1.16** The examination showed, however, that the registration assessment procedures applied by the Building Practitioners Board did not, and may not in the foreseeable future, provide adequate assurance that only suitably qualified and experienced practitioners were, or will be, permitted to practise. The fact that all registered practitioners have insurance cover provides some consumer protection against faulty workmanship and domestic builders not satisfactorily completing work due to financial difficulties, but does not prevent these events from occurring.

**1.1.17** While it is acknowledged that sound initiatives have recently been introduced to strengthen the registration system, such as new competency-based assessments for domestic builder registration, it is my view that the following features of the system, many of which are recognised by the Board and the Commission, could be strengthened to provide greater protection to the Victorian community over the provision of safe and habitable buildings:

- The 20 600 existing building practitioners, registered under transitional arrangements between July 1994 and June 1997, have not been assessed for suitability in terms of qualifications, skills or experience. In my opinion, the decision of the previous Government for the Board to “grandfather” in such a large number of practitioners was an expedient process for the Board to follow in the circumstances. According to advice received from the Building Control Commissioner, most of these practitioners transferred from prior systems which required varying assessments of capability, qualifications and experience;
- As the building industry has been subject to rapid technological change and the granting of insurance to practitioners is not an adequate indicator of competency by itself, the failure to subsequently assess their continuing suitability to practise reduces the level of assurance that can be placed on registration as a protection against incompetent practitioners. In order to undertake such an assessment as part of the annual renewal of registration, legislative amendment may be required;
- The renewal process, which is essentially an administrative process to confirm that practitioners have obtained insurance coverage, cannot in its present form be used as part of a wider quality assurance approach to registration;
- The lack of restrictions placed on the number of domestic buildings an owner-builder may build and then sell and the failure by some owner-builders to comply with the requirement to use registered building practitioners for building work in excess of \$5 000; and
- Notwithstanding that in the process of assessing new applications for registration, proposals would have been examined by a Board member and other nominated individuals, the Board did not adequately comply with some of its procedures which called for:
  - reference checks to be undertaken; and
  - domestic builders to be assessed by an expert assessor prior to registration.

### Monitoring, investigations and enforcement

**1.1.18** My Office found that there was scope for advancing the strategies applied by the Building Control Commission in conducting investigations and performance audits, and managing the prosecution process. Similarly, there was room for improving the management of the Building Practitioners Board’s inquiry function.

### Complaint investigations

**1.1.19** While the investigative process for individual complaints was basically sound, strategies to manage the complaint workload were not robust enough to ensure the increasing number of complaints were dealt with in a timely manner. Although the Commission has devoted significantly increased resources to complaint investigation in recent years, timeliness has not improved. Excluding those cases referred to the Victorian Civil and Administrative Tribunal, it takes a year, on average, for a complaint to be investigated.

**1.1.20** It was encouraging to find that the Commission had streamlined its procedures for minor complaints in some areas. We support the widespread adoption of priority-setting strategies to concentrate available resources on more serious complaints.

### Performance audits

**1.1.21** We concluded, as did the Commission, that the initial strategies used to implement performance audits in 1998 were not sufficiently targeted to offer a rigorous and cost-effective mechanism to identify unprofessional conduct. In addition, these strategies did not meet the legislative intent for performance audits which expected the examination to include scrutiny of practitioners' work, not just their administrative record-keeping, in order to ensure that the work has been competently carried out and does not pose any risk of injury or damage to any person.

**1.1.22** During the audit, the Commission was in the process of developing a targeted approach that offered the prospect of increased efficiency and effectiveness. At the date of audit, sufficient resources had not been directed at enhancing the performance audit function which adversely affected full implementation.

### Prosecutions

**1.1.23** Prosecutions were managed by the Commission in a consistent, timely and cost-efficient manner. There was a high success rate and external legal costs have been kept to a minimum. It was less clear, however, whether the Commission's strategy of prosecuting all breaches was sound and cost-effective in the context of an overall enforcement strategy.

### Inquiries

**1.1.24** Until recently, inquiries were not supported by sound strategies to provide sufficient evidence of persistent unprofessional conduct of building practitioners. This lack of information restricted the ability of the Board to undertake an effective monitoring role.

**1.1.25** This was due, in part, to the level of resources and mechanisms within the Commission's Audit and Investigations Unit to identify and collect such information. It also reflected the different focus of the Commission's investigation effort. In this regard, the concentration of effort was devoted to the investigation of individual complaints and the prosecution of individual breaches of the Building Act, rather than on the Board's need for a more extensive investigation to collect evidence of persistent misconduct.

**1.1.26** It was encouraging to find that the Commission and the Board had adopted improved operational relationships and procedures in recent times. These included the fostering of closer working arrangements with each other, the accumulation of case histories on individual persistent offenders and the development of a new approach to identifying these offenders through performance audits. It is too early to conclude on the impact of these new arrangements.

### Determinations and appeals

**1.1.27** The determination and appeal processes of the Building Appeals Board were transparent, fair and equitable. These processes were found to operate quickly and efficiently. Achieving consistency of decision-making was harder to demonstrate. We were satisfied, however, that the Board had taken appropriate steps to improve consistency through concentrating decision-making among a core group of experienced members and, more recently, by establishing a database of determinations and reasons for reference purposes.

### Building Control Commission's responsibilities as a municipal building surveyor

**1.1.28** The Commission complied with its legislative responsibilities in relation to issuing building and occupancy permits at the prescribed places of entertainment, enforcing building orders issued by private building surveyors and issuing occupancy permits for temporary structures. Giving further attention to the following areas could result in improvements to the overall effectiveness of the Commission's role in overseeing the administration of the Victorian building control framework:

- Apart from the 6 Australian Football League venues, the Commission in its regulatory capacity is not legally required to monitor building risks relating to other places of public entertainment, for example, those associated with the Melbourne Cup and the Australian Tennis Open as well as smaller venues such as nightclubs and cinemas that fall under the jurisdiction of municipalities.
- The question of whether an occupancy permit should be issued for specific events at the prescribed Australian Football League venues to cover issues including occupancy numbers, crowd control and evacuation procedures needs to be clarified by the Commission;
- Following-up in a timely manner outstanding action contained in certain building orders referred to it by private building surveyors for enforcement where owners have not satisfactorily complied with such orders;
- As building surveyors can be dependent on the builder for future engagements, it is conceivable that such arrangements may adversely impact on their independence in terms of challenging building work that may not comply with building standards or building permits. Given this relationship and the small number of building orders referred to the Commission for enforcement by private building surveyors, the Commission should take a more pro-active monitoring role in this regard; and

**Organisational arrangements and priority setting**

- The inherent conflict between the Commission having an operational control function as a municipal building surveyor in terms of issuing permits for certain structures, while also acting as industry regulator, meant that the Commission could not undertake a monitoring and enforcement role on itself, i.e. in relation to investigating complaints against itself or prosecuting itself.

**1.1.29** There are some features of the structural framework for building control in Victoria, together with certain management practices employed in strategic priority setting as well as particular priorities themselves, that are not conducive to the system operating in the most efficient and effective manner.

**1.1.30** In a structural sense, the large number of separate bodies and the overlapping and conflicting responsibilities of some of their roles have contributed to instances where there has been a lack of integration and cohesion across certain activities.

**1.1.31** In terms of priority setting, some of the statutory bodies have not focused their attention on what I would consider to be key elements of building control. The absence of a co-ordinated approach to long-term strategic planning has also exacerbated this situation.

**1.1.32** Certain structural changes are required to provide better oversight of building activity across the State. At a strategic planning level, the Commission needs to give greater attention to focusing on key elements of its building control and regulatory agenda in setting priorities such as improving the registration process, investigating complaints and conducting performance audits. This would allow, among other things, the targeting of its resources to the management of the most significant risks facing the building industry and the community.

# Part 1.2

## Summary of major findings

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### PRACTITIONER REGISTRATION

Page 31

- The qualifications, skills and experience of all building practitioners, initially “grandfathered” into the registration scheme between July 1994 and June 1997, have not been assessed by the Building Practitioners Board. It will only be after many of the current generation have retired that all registered building practitioners would have been through the Board’s new competency-based assessment process. This will take at least 10 years for most practitioner groups and twice as long for builders.  
*Paras 3.14 to 3.15*
- The recently developed registration procedures introduced by the Board provide an appropriate framework for determining the suitability of new applicants.  
*Para. 3.18*
- As Board staff become more familiar with the new assessment process, the period involved in registering domestic builders of nearly 4 months, which is twice as long for other practitioner categories, should reduce.  
*Para. 3.23*

## MONITORING, INVESTIGATIONS AND ENFORCEMENT

Page 47

- Of the 528 complaints received in 1998-99, around half concerned builders and building surveyors. Typical complaints related to unsatisfactory building work and building either without, or not in accordance with, a permit.  
*Para. 4.4*
- The backlog of 253 complaints outstanding at 30 June 1999 increased by a third in the following 2 months. Of the 347 complaints under investigation at 1 September 1999, nearly half were a year or more old. This backlog has been compounded by an increase in the level of complaints by almost a half since 1996-97.  
*Paras 4.10 and 4.11*
- Performance targets to monitor the backlog in complaints had not been established, progress on individual cases had not been tracked and management had not monitored trends in waiting and investigation times.  
*Para. 4.12*
- Building surveyors attracted a significantly higher proportion of complaints than other practitioner categories. The ratio of complaints to the number of building surveyors was 1 to 3.  
*Para. 4.18*
- Nineteen per cent of registered building surveyors and 6 per cent of domestic builders were covered as part of the 729 performance audits undertaken from their inception in February 1998 to September 1999. These audits conveyed a minimalist approach in that they took no more than half a day to complete. Fifteen resulted in prosecution and/or an inquiry.  
*Paras 4.19, 4.20, 4.21 and 4.23*
- The Building Control Commission has proposed a suite of improvements to its performance audit approach, including the carrying out of site inspections to complement paperwork reviews and having a more targeted coverage of a wider range of practitioners.  
*Paras 4.24 to 4.25*
- Of the 57 building practitioners prosecuted in 1998-99 (8 in 1996-97), 56 cases were proven with only one dismissed.  
*Para. 4.28*
- The Building Practitioners Board, in increasing its coverage of inquiry activities, conducted 28 inquiries of registered building practitioners in 1998-99, a four-fold increase on previous years. Building surveyors and domestic builders represented 80 per cent of those who appeared before the Board.  
*Para. 4.36*
- There are likely to be 4 times as many suspensions and cancellations of registration from inquiries held in 1999-2000 than in the previous year.  
*Para. 4.37*



MONITORING, INVESTIGATIONS AND ENFORCEMENT - *continued*

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- The Building Practitioners Board is constrained in fulfilling its legislative responsibility to monitor the conduct and ability of building practitioners to practise due to a lack of resources. It relies on evidence gathered by Building Control Commission investigators in adjudicating on practitioner conduct at inquiry hearings.

*Para. 4.39*

- While the Commission has an objective of completing investigations into complaints and other cases in the earliest feasible time, it has not established targets, time lines or priorities between complaint handling, inquiries and performance audits.

*Para. 4.45*

- There is insufficient information to enable the management of the Commission and the Board to effectively plan, conduct and co-ordinate their efforts between investigations, performance audits and inquiries.

*Para. 4.53*

## DETERMINATIONS AND APPEALS

Page 65

- Applications for determinations were generally heard within 2 to 3 weeks and the determination communicated to the applicant within 2 weeks of the hearing.

*Para. 5.6*

- There was no backlog of appeals waiting to be heard. On average, the appeal process took 3 weeks to complete.

*Para. 5.14*

- In 1998-99, a small number of cases were referred to the Building Control Commission by private building surveyors for enforcement which represented around one in 600 building permits issued (half of which were from the same surveyor).  
*Para. 6.5*
- A potential conflict of interest arises when a building surveyor is engaged by the builder, as agent of the owner, rather than the owner.  
*Paras 6.11, 6.12 and 6.19*
- A recent survey showed that 70 per cent of respondents viewed the builder as the client of the building surveyor. In contrast, only 17 per cent regarded the building owner as the client.  
*Para. 6.13*
- The Commission complied with its procedures for undertaking its responsibilities in relation to temporary structures.  
*Para. 6.25*
- The Commission has responsibility for monitoring building control matters in its capacity as the municipal building surveyor, as well as overall building control responsibilities as the industry regulator to enforce breaches of legislation. These dual roles create a potential conflict within the Commission in adequately discharging its range of responsibilities.  
*Para. 6.46*
- Six Australian Football League (AFL) venues were prescribed as places of public entertainment, whereby the Commission was given a direct role in terms of building control. Since then there has not been a review of the need for the Commission to have a similar role in a range of new or other major places of public entertainment.  
*Paras 6.31, 6.32 and 6.58*
- Since 1997, the Commission should have been more active in terms of pursuing with the AFL the need to expedite the completion of safety works covered in the 1994 agreement between the Commission and the AFL.  
*Paras 6.35 and 6.53*
- The Commission has only issued occupancy permits under Division 2 of the Building Act at one AFL venue, namely, Victoria Park. Permits have yet to be issued in relation to the other 5 venues, although football matches and special events have been held at these venues.  
*Para. 6.49*
- The Commission's capacity to act as an effective industry regulator is compromised by a lack of information relating to the enforcement role undertaken by municipal councils over other places of public entertainment, such as nightclubs and cinemas.  
*Para. 6.62*

- The organisational arrangements for building control in Victoria differ from structures in other States in many respects. In Victoria, for example, there are a larger number of separate statutory bodies with a stronger focus on industry representation and a lesser emphasis on community representation. The relatively large number of separate statutory bodies for a comparatively small regulatory function makes it difficult to achieve an integrated approach to building control.  
*Paras 7.4 and 7.11*
- Some of the positive features of the organisational arrangements relate to the efficiency of the appeals process through the creation of a quasi-judicial body, and the opportunity provided to owners to select a building surveyor of their choice from the private sector or a municipal council.  
*Para. 7.6*
- The Building Control Commission's discretion in deciding on future initiatives without reference to key stakeholders and certain weaknesses from an accountability viewpoint compromise the adoption of sound corporate governance.  
*Para. 7.9*
- In performing the role of industry regulator, a potential conflict of interest could arise from the Commission also having an operational role in undertaking the work of a municipal building surveyor.  
*Para. 7.16*
- Given that there is a significant overlap and ambiguity between the responsibilities of the Building Advisory Council and the Commission and the Council has provided very little advice to the Minister on building control issues in recent times, it is my view that the future role of the Council is questionable.  
*Paras 7.18, 7.21 and 7.22*
- The level of attention devoted to the following functions was not consistent with their relative importance to building control and should have been afforded a greater priority:
  - registration of building practitioners;
  - monitoring the conduct of registered practitioners;
  - management information relating to enforcement activity, particularly concerning the role of municipal councils; and
  - reviewing effectiveness.

*Paras 7.30 to 7.47*

# Part 1.3

## Summary of major recommendations

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### PRACTITIONER REGISTRATION

Page 31

- Avenues to strengthen safeguards in relation to owner-builders, such as placing a restriction on the number of buildings that may be constructed in any given period, should be examined.  
*Para. 3.9*
- Risk assessments need to be conducted to determine which practitioner categories and classes have the greatest risk to public safety or may cause substantial financial loss to consumers through practitioner misconduct. The competence of practitioners in these categories and classes should then be assessed on a progressive basis. The capability to undertake this initiative may require legislative amendment.  
*Paras 3.17 and 3.39*
- Minimum standards be established for professional development within high risk categories and classes and continuous professional education be incorporated as a pre-condition of registration renewal to improve the standard of workmanship across the building industry .  
*Para. 3.39*

### MONITORING, INVESTIGATIONS AND ENFORCEMENT

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- A comprehensive strategy setting priorities, formulating performance targets and requiring the monitoring of performance against those targets by management needs to be developed for complaint investigations.  
*Para. 4.13*
- A formal prosecution policy based on an assessment of the merits of prosecution compared with other sanctions, such as referral of the matter to the Building Practitioners Board for disciplinary action, should be established.  
*Para. 4.32*

- The enforcement framework over the work performed by building surveyors needs to be strengthened by:
  - placing a higher priority on resolving building orders referred to the Building Control Commission by private building surveyors for enforcement;
  - monitoring by the Commission on the extent to which municipal councils have adequately discharged their enforcement role; and
  - prohibiting the builder from appointing a building surveyor on behalf of the owner.

*Paras 6.14 to 6.19*
- The Commission's responsibilities for approving temporary structures and performing the role of municipal building surveyor for prescribed places of public entertainment should be assigned to building surveyors with the necessary expertise in order to remove the potential conflict between the Commission performing this operational role and its monitoring and enforcement activities as industry regulator.

*Paras 6.29 and 6.46*
- The Commission should co-ordinate a risk assessment of public safety in relation to places of public entertainment.

*Paras 6.56 to 6.61*
- As industry regulator, the Commission should be given the legislative authority to monitor public safety in places of public entertainment that pose a significant risk to the community, through an expansion of the information it collects.

*Paras 6.62 to 6.64*

## ORGANISATIONAL ARRANGEMENTS AND PRIORITY SETTING

Page 89

- To upgrade corporate governance, consider the establishment of a co-ordinating forum with access to community representation to set strategic direction and long-term policies, finalise budget allocations to the respective statutory bodies and ensure accountability requirements are met.  
*Paras 7.12 and 7.13*
- The Building Regulations Advisory Committee should be reconstituted as an advisory body to the Building Control Commission, given that the Commission is the body principally responsible for overseeing any changes to regulations.  
*Para. 7.15*
- To address any potential conflict of interest that may occur, abolish the role of the Commission as a municipal building surveyor.  
*Para. 7.17*
- As we are not convinced that there is a demonstrated need for the Building Advisory Council to exist, we support the view expressed by the Council to the former Minister that its role be reconsidered.  
*Para. 7.18*
- For the purpose of measuring effectiveness, an evaluative framework needs to be established in order for the Commission, as the building industry regulator, to provide an assurance to the Minister and the community as to the degree to which the building control system has promoted the design, construction and maintenance of safe, habitable and energy efficient buildings.  
*Para. 7.47*
- The Commission should reassess the existing agreement with the Overseas Projects Corporation of Victoria for the Commission to provide technical services in relation to overseas projects as the prospect of the Commission generating significant benefit to Victoria from this initiative or recovering its costs is unlikely to be achieved in the foreseeable future.  
*Paras 7.50 to 7.59*

*Note:* A consolidated listing of all recommendations contained throughout this Report, together with applicable references, is summarised in Appendix A.

❑ **RESPONSE** provided by Building Control Commissioner

**Part 1 - Executive Summary**

*Para. 1.1.6*

*It should be noted that consumer protection insurance is only relevant for domestic building work and is the responsibility of Consumer and Business Affairs Victoria under the Domestic Building Contracts Act 1995. It is not the direct responsibility of the Commission.*

*Para. 1.1.16*

*The reference to the insurance scheme under the Building Act 1993 only relates to consumer protection in relation to domestic building defects.*

*The reference to financial difficulties of domestic builders is not relevant to the Commission or the Building Practitioners Board as their brief relates only to competency and professional performance, not financial security. Ongoing financial viability is one of the core responsibilities of insurers who provide insurance to allow builders to maintain their registration.*

*Para. 1.1.19*

*It is claimed that on average it takes the Commission one year to investigate a complaint. There is no explanation in the Report of why this may be the case.*

*Para. 1.1.26*

*The Commission and Board have concerns that very few of the decisions made by the Victorian Civil and Administrative Tribunal or investigations undertaken by Consumer and Business Affairs Victoria (formerly the Office of Fair Trading and Business Affairs) are provided to the Commission or Board for their information and possible action.*

*Para. 1.1.28*

*In relation to dot point 3, the Commission has placed a priority on high-risk matters relating to private building surveyor notices and orders. The Commission investigates as a matter of high importance issues such as swimming barrier non-compliance and smoke detection installation.*

*The conflict that has arisen in relation to temporary structures as mentioned in dot point 5 was inherited from the Department of Health following the inception of the Commission. As such, the review of the Commission's role in relation to temporary structures would be welcomed.*

□ **RESPONSE** provided by Building Control Commissioner - continued

*Para. 1.1.32*

*This comment implies the Commission does not focus on key elements in setting agendas and in allocating resources. This is an unfair and unsubstantiated assertion. The Commission is, of course, always looking at improving this process.*

*The last sentence suggests that the Commission's resources should all be targeted at the most significant risks facing the industry – that the role of the Commission is risk management. Such a comment places a restrictive interpretation on the functions of the Commission. The objectives of the Commission as detailed in the Act go significantly beyond risk management. The Commission has a clear mandate for adopting pro-active measures that, for example, improve industry efficiency – measures, which may not be targeted at correcting a perceived industry risk.*

**Conclusion**

*The Commission is pleased to receive many of the constructive comments made by the Auditor-General in the Report as the Commission sees them as intrinsically valuable in relation to the operations of the Commission, and the ongoing review of the effectiveness of the Building Act 1993 and Building Regulations 1994.*

*My responses to specific issues raised by the Auditor-General are contained throughout the relevant parts of the Report.*

□ **RESPONSE** provided by Chairman, Building Practitioners Board

*As Chair of the Building Practitioners Board, I wish to indicate my broad support for the recommendations made in the Report and, more particularly, support the recommendations specific to the Building Practitioners Board.*

*Certain of the recommendations contained in the Report are issues that the Board has endeavoured to address from time-to-time, but has been constrained by not having at its disposal, appropriate resources. This is particularly important in the area of monitoring the conduct and ability to practise of registered building practitioners and the establishment of minimum standards for continuous professional development, which has been clearly identified as essential elements in the Report.*

*Implementation of the proposed recommendations contained in the Report will enhance the ability of the Board to discharge its responsibilities to the community and to the building industry in accordance with the Building Act 1993.*

*I wish to thank you for the opportunity to peruse the Report. I also wish to place on record my appreciation for the courteous and professional approach adopted by Deloitte Touche Tohmatsu and by your officers.*



□ **RESPONSE** provided by Chairman, Building Advisory Council

*The following responses from the Chairman of the Building Advisory Council do not necessarily represent the views of the Council, as the Report has not been released to the members other than the Chairman prior to its publication.*

*Building control regulations are a form of consumer protection. It would assist the conduct of building control activity if the identity of the consumers were kept constantly in mind. Some examples of relevant consumers are:*

- *the lawful occupants of a building both now and in the future;*
- *persons invited onto the premises from time-to-time by the lawful occupants;*
- *the owners and occupants of adjoining buildings; and*
- *those attending places of public entertainment.*

*It will be noted that the owner of the building is not a relevant consumer unless also an occupant, however, it is the owner of the building who pays the levy which supports the Victorian building control system. This gives the owners a direct interest in the efficiency of the system, which they pay for to protect the interests of others (many of whom are owed a duty of care by the owners).*

*It is surely worth remarking upon that those who pay for the system and those whose interests the system is established to protect appear to be almost totally unrepresented on the various bodies established under the Act. This appears to be anachronistic in the days when there are lay members of many professional review and disciplinary bodies.*

*My responses to specific issues raised by the Auditor-General are contained throughout the relevant parts of the Report.*

# Part 2

## Background

## REFORM OF BUILDING CONTROL IN VICTORIA

**2.1** Building control is about ensuring the design, construction and use of safe and habitable buildings.

**2.2** On 1 July 1994 significant reform of building control in Victoria was introduced with the promulgation of the *Building Act* 1993 and Building Regulations 1994 which brought together all aspects of building control and use under one piece of legislation. All buildings and places of entertainment, including public buildings, are now covered by this legislation.

**2.3** The objectives of the Act include the requirement to:

- establish, maintain and improve standards for the construction and maintenance of buildings;
- facilitate the adoption and efficient application of national uniform building standards, and the accreditation of building products;
- enhance the amenity of buildings and protect the safety and health of people who use places of public entertainment; and
- provide an efficient and effective system for issuing building and occupancy permits.

**2.4** In terms of achieving these objectives the Building Code of Australia 1996 has been adopted as the technical requirements for building control matters for new building work and certain existing buildings in Victoria. The building code is performance-based in order to promote innovation, reduce unnecessary building costs, provide safer buildings and promote national and international trade. The former prescriptive Building Code of Australia 1990 essentially remains within the new code as the “deemed to satisfy” provisions which are an avenue to achieve compliance, thereby providing surety and certainty for existing construction methods and practices. The *Building Act* 1993 provides the legislative authority for the Building Regulations 1994 to incorporate the Building Code of Australia 1996 and this occurred on 1 August 1997. The administrative requirements for buildings and permits, places of public entertainment and maintenance of buildings are contained within the Building Regulations 1994.

## BUILDING APPROVAL PROCESS

**2.5** All building work, including new buildings, alterations or additions to existing buildings or change of use of existing buildings require a building permit prior to the work commencing, unless exempted under the regulations. Exemptions include repair work, small outbuildings, pergolas, certain building work less than \$5 000 in value (this is the threshold for consumer protection provisions under the *Domestic Building Contracts Act 1995*), some temporary buildings and certain fences and signs. The relevant building surveyor issues the building permit if the application complies with the Act, regulations and the building code including the requirement that all relevant building practitioners involved are registered with the Building Practitioners Board. The building surveyor also determines whether an occupancy permit or certificate of final inspection is required and undertakes certain mandatory inspections during the building work.

**2.6** If the building works fail to comply with regulations and Australian Standards, the building surveyor can issue notices and orders requiring compliance and, ultimately, can refer matters for legal enforcement.

**2.7** Building surveyors are, therefore, the key front line control on the work of other building practitioners. Any disputes on their interpretation of building codes and regulations can be appealed to a higher authority known as the Buildings Appeals Board. The Board also makes determinations on requests for modifications to building regulations.

## CHANGES INTRODUCED BY THE BUILDING ACT 1993

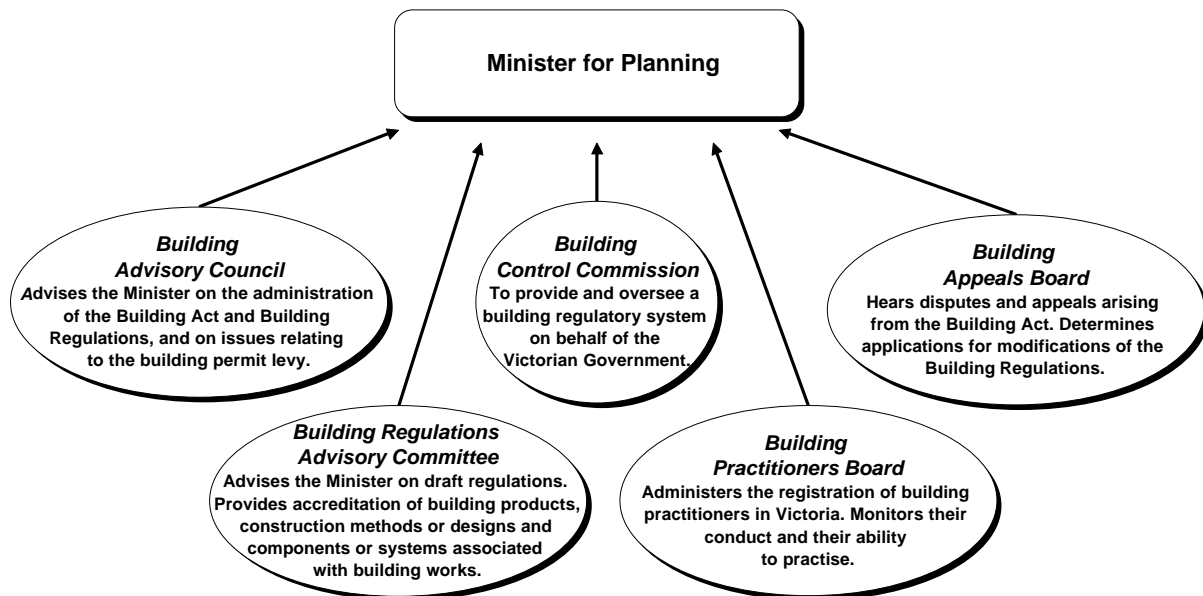
**2.8** The *Building Act 1993* introduced major changes in the responsibilities, structures and financing to support building control.

**2.9** It established a privatised building approval system for the first time in Australia. Previously, building approvals could only be obtained from local government. From 1994, building approvals could also be granted by privately practising building surveyors. This was intended to introduce competition and improve the timeliness of the approval process. In 1999, over 70 per cent of building approvals were given by private building surveyors.

**2.10** The Building Act introduced compulsory insurance and a registration process for categories and classes of building practitioners, including domestic builders, to provide greater protection for the public employing them. The registration process established minimum standards of skills and experience for all practitioners. In 1999, there were over 18 000 registered practitioners, in some 20 categories and classes.

**2.11** To implement these new arrangements, the Act established a new structure comprising 4 statutory bodies together with a Building Control Commission, reporting to the Minister for Planning. Chart 2A outlines the organisation arrangements.

**CHART 2A  
ORGANISATIONAL ARRANGEMENTS**



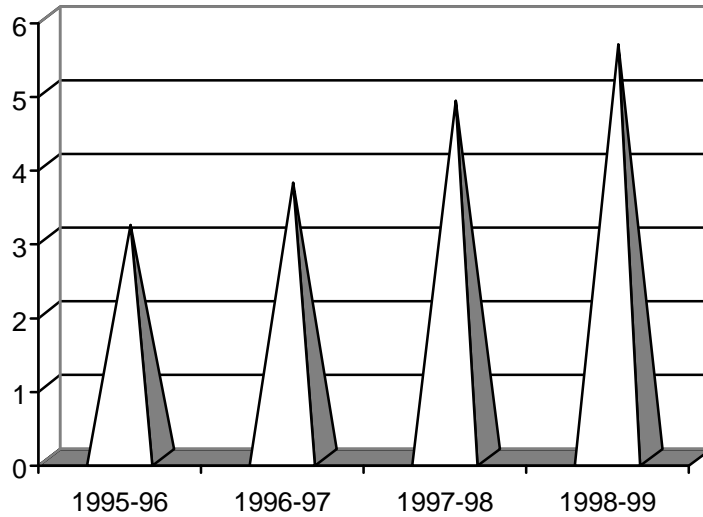
**2.12** The Building Control Commission has a central role in these arrangements. Its responsibilities include:

- to monitor compliance with relevant provisions of the Building Act and Building Regulations, and to take appropriate action;
- to review the administration and effectiveness of the Building Act and the Building Regulations; and
- a support role to the other statutory bodies, providing staffing, systems and accommodation to allow them to function.

**2.13** This structure is financed largely by a levy of 0.064 per cent on the value of all building work over \$10 000. The levy is collected by the Commission through the building surveyor who issues the building permit. At the same time, the Commission receives and publishes up-to-date information on building activity across the State.

**2.14** Chart 2B shows income derived from the collection of the building permit **levy**. With the growth in building activity over the past 5 years, income from the levy has risen steadily from \$3.1 million in 1995-96 to \$5.6 million in 1998-99.

**CHART 2B**  
**INCOME DERIVED FROM BUILDING PERMIT LEVY,**  
**1995-96 TO 1998-99**  
 (\$million)

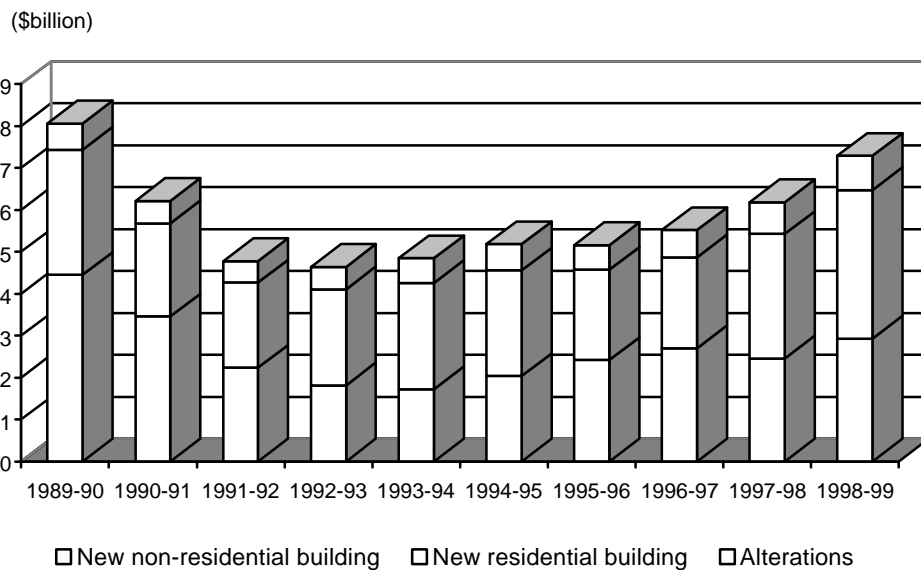


Source: Annual Reports of the Building Control Commission, 1998 and 1999.

**BUILDING ACTIVITY IN VICTORIA**

**2.15** Chart 2C indicates that building activity tends to be cyclical over the longer term.

**CHART 2C**  
**TRENDS IN THE VALUE OF NEW BUILDINGS IN VICTORIA,**  
**1989-90 TO 1998-99**



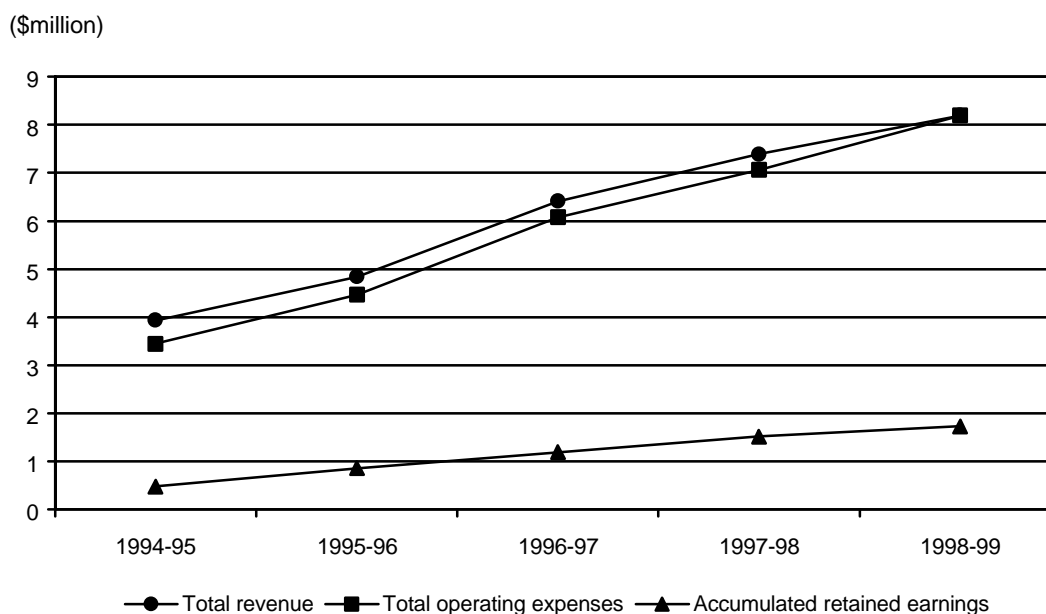
Note: Values are expressed in constant 1989 dollars.

Source: Audit analysis of Australian Bureau of Statistics Building Activity (Victoria) monthly reports 1989-90 to 1998-99.

## COST OF OPERATIONS

**2.16** As illustrated in Chart 2D below, the cost of operating the Building Control Commission and the other statutory bodies from 1 July 1994 to 30 June 1999 has increased at approximately the same rate as total revenue. Retained earnings of the Commission provide a buffer to cover the financing of building control operations in the event of future downturns in building activity, and hence reductions in its revenue stream. This fund now amounts to \$1.7 million.

**CHART 2D**  
**BUILDING CONTROL COMMISSION**  
**GROWTH IN REVENUE, EXPENDITURE AND RETAINED EARNINGS,**  
**1994-95 TO 1998-99**



Source: Annual Reports of the Building Control Commission.

**2.17** The costs of operating the Building Control Commission, Building Practitioners Board and Building Appeals Board for 1998-99 were approximately \$6.6 million, \$760 000 and \$700 000, respectively. The growth in income has enabled the Commission and the other statutory bodies to increase staff from 33 in 1995 to 62 in 1999.

# Part 3

## Practitioner registration



## INTRODUCTION

**3.1** One of the major aims of the *Building Act* 1993 was to strengthen the safeguards for building owners from the risks of incompetent building practitioners. It did this by introducing:

- Mandatory insurance to replace the previous insurance arrangements, which may have discouraged some practitioners to insure because of the costs involved, leaving consumers unprotected. The new arrangements encouraged the insurance industry to provide more affordable schemes;
- A registration scheme for building practitioners, with minimum qualifications and experience for each type of practitioner. To be registered, practitioners also need to be insured. By selecting a registered practitioner, owners and the community at large could expect a certain minimum level of competence. In terms of the insurance arrangements relating to domestic builders, having recourse is also provided to rectify poor workmanship and provide financial protection against a domestic builder experiencing financial difficulties;
- A requirement to use only registered building practitioners for key supervisory activities in the building process. However, registration was not mandatory for all activities. Many trades were not included in registration and within the largest registered category, domestic builders, some exemptions were allowed. Unregistered builders can undertake work as owner-builders, for owner-builders in circumstances where work is valued under \$5 000 or where they are supervised by a registered builder. Registration is, therefore, a less restrictive control than licensing, which operates for some other professions, like plumbing, where it is an offence for an unlicensed practitioner to carry out any work; and
- Monitoring, investigation and enforcement procedures to examine whether the minimum standards of competence and insurance cover were maintained by registered practitioners, and identify and take appropriate action in relation to any instances of misconduct by building practitioners.

**3.2** These new safeguards recognise that registration alone cannot guarantee continuing professional conduct in all cases. The inclusion of insurance, monitoring and enforcement arrangements are intended as additional safeguards once registration has been granted.

**3.3** The Building Practitioners Board was established under the Act to develop and administer these new arrangements. The Board's objectives are to:

- “administer a registration system for building practitioners;
- “supervise and monitor the conduct and ability to practice of registered building practitioners;
- “make recommendations to the Minister regarding qualifications for registration; and
- “perform any other function conferred by the Act or the regulations”.

## SCOPE OF REGISTRATION

**3.4** The practitioners covered by registration include a wide range of professions and trades, with vastly different numbers in each category and class. On the one hand there are over 9 000 domestic builders, while in some other classes such as fire safety engineers there are only 24 practitioners. Members of certain practitioner classes also typically belong to industry bodies, e.g. builders are also members of the Master Builders' Association and the Housing Industry Association. Table 3A shows the spread.

**TABLE 3A**  
**CATEGORY, CLASS AND NUMBER OF**  
**REGISTERED BUILDING PRACTITIONERS, AT JUNE 1999**

<i>Item</i>	<i>Number registered</i>
Building Surveyor	438
Building Inspector – Unlimited	394
Building Inspector – Limited	6
Draftsperson – Architectural	1 496
Draftsperson – Interior	90
Draftsperson - Services	144
Engineer – Civil	992
Engineer – Electrical	190
Engineer – Mechanical	279
Engineer – Fire Safety	24
Quantity Surveyor	87
Commercial Builder – Unlimited	3 492
Commercial Builder – Limited	362
Commercial Builder – Low rise	102
Demolisher – Low rise	79
Demolisher – Medium rise	45
Demolisher – Unlimited	24
Supervisor (Class 1 Temporary structures)	44
Supervisor (Class 2 Special structures)	88
Domestic Builder - Limited	553
Domestic Builder – Unlimited	9 214
Domestic Builder – Manager	250
<b>Total</b>	<b>18 393</b>

Source: Building Control Commission, 1998-99 Annual Report.

### Owner-builders

**3.5** Owner-builders generate a significant proportion of building activity in Victoria. In 1999, they were responsible for 29 per cent of all domestic building permits comprising 22 per cent of the value of all domestic building work. According to the Building Control Commission, these figures overstate the extent of owner-builder work because of the widespread practice of owners seeking building permits (as owner-builders) before appointing their builder, who may be registered. The Commission does not maintain any detailed information on this issue, nor on the number of “genuine” owner builders, i.e. those who are building a house to live in themselves, rather than those building multiple houses for resale.

**3.6** In Victoria, as in other States, they cannot sell within 6.5 years without arranging insurance to cover faulty workmanship for the residue of the period. This insurance coverage is based on a site inspection by a “prescribed building practitioner” such as a building surveyor, architect, building inspector or engineer engaged by the owner.

**3.7** Owner-builders do not need to be registered in Victoria. They are required, however, to use registered building practitioners in those cases where the value of building work exceeds \$5 000. There are also additional safeguards whereby building surveyors issue building and occupancy permits in relation to this building work. In other jurisdictions such as New South Wales and Queensland, owner-builders require a permit from the responsible authority. In Queensland, the permit requires an owner-builder to undergo training in project management.

**3.8** We have a number of reservations associated with the arrangements for owner-builders which are explained below:

- Unlike the situation in other States, there is no restriction in Victoria on the number of houses that can be built or sold by an owner-builder. In Queensland, owner-builders may build no more than one house in 6 years. In New South Wales, they must “intend to live in the completed home”;
- Based on the large volume of building activity generated by owner-builders and the low number of registered building practitioners within designated classes relating to the work of owner-builders, there are clearly a number of owner-builders who have failed to use registered practitioners where the value of building work exceeds \$5 000;
- As owner-builders are not registered in Victoria, the Building Practitioners Board has no jurisdiction over their activities;
- The Commission lacks sufficient information to fulfil its responsibilities to administer and monitor the effectiveness of the Building Act in this area; and
- The Commission provides limited information and guidance on the rights, responsibilities and risks associated with operating as, or with, an owner-builder.

**3.9** Applying the full assessment and registration process to genuine owner-builders may not be cost-effective as the building activities undertaken are a “one-off” exercise. However, the Board, in conjunction with the Commission, need to consider other ways of strengthening safeguards on the use of the owner-builder provisions. These could include:

- Restricting the number of buildings owner-builders may build in any given period;
- Issuing more detailed guidance to owner-builders on their obligations, particularly in relation to complying with the legislative requirement to engage only registered practitioners for building works in excess of \$5 000; and
- The Commission recording the names of owner-builders on its levy database and monitoring their activities. While the Commission receives such information from the levy forms submitted by building surveyors on each building permit, it does not store or analyse this information.

❑ **RESPONSE** provided by Building Control Commissioner

*Restricting owner builders from acting as developers is currently being considered by the Commission in consultation with Consumer and Business Affairs Victoria.*

*Consumer and business Affairs Victoria produce a comprehensive book for owner builders to which the Building Control Commission contributed by way of editorial matter and comment on drafts. The definition of domestic builder, which is a key element of the issue of who an owner builder is and what they can do, is established by the Domestic Building Contracts Act 1995. The Commission has limited jurisdiction and this should be understood and acknowledged.*

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*As this issue crosses the line between the responsibilities of the Building Control Commission and the Building Practitioners Board, there is no established forum for the discussion to be brought to a conclusion.*

**MINIMUM STANDARDS FOR REGISTRATION**

**3.10** For practitioners in categories covered by registration, the process involves submitting an application to the Building Practitioners Board outlining qualifications and experience with references. The Board assesses applications for each practitioner category against minimum standards set by the Minister on advice from the Board. Table 3B gives examples of the standards to be met in terms of qualifications and experience for certain categories and classes of building practitioners.

**TABLE 3B  
STANDARDS FOR VARIOUS CATEGORIES AND CLASSES OF PRACTITIONERS**

<i>Item</i>	<i>Prescribed qualifications and experience</i>
Building Surveyor	<ul style="list-style-type: none"> <li>• A degree or diploma in building surveying from a university within the meaning of <i>Tertiary Education Act 1993</i>, and 4 years practical experience to the satisfaction of the Board.</li> </ul>
Commercial Builder - Unlimited	<ul style="list-style-type: none"> <li>• A degree, diploma or associate diploma of building from a university or TAFE college within the meaning of the <i>Tertiary Education Act 1993</i>, and 3 years practical experience to the satisfaction of the Board.</li> </ul>
Building Inspector – Unlimited	<ul style="list-style-type: none"> <li>• An associate diploma of applied science (building inspection) from a course accredited under the <i>Vocational Education and Training Act 1990</i>, and 3 years practical experience to the satisfaction of the Board.</li> </ul>
Domestic Builder – Unlimited	<ul style="list-style-type: none"> <li>• A degree, diploma or associate diploma of building from a university or TAFE college within the meaning of the <i>Tertiary Education Act 1993</i>, and 3 years practical experience to the satisfaction of the Board; or</li> <li>• Successful completion of the “Course in Builder Registration” accredited under the <i>Vocational Education and Training Act 1990</i>, and 3 years practical experience to the satisfaction of the Board; or</li> <li>• A certificate issued by the Board, after examination of the applicant, certifying that the applicant has adequate knowledge and experience to carry out, manage, or arrange to carry out all components of domestic building work.</li> </ul>

**TABLE 3B**  
**STANDARDS FOR VARIOUS CATEGORIES AND CLASSES OF PRACTITIONERS -**  
*continued*

<i>Item</i>	<i>Prescribed qualifications and experience</i>
Domestic Builder – Limited	<ul style="list-style-type: none"> <li>• A certificate issued by the Board, after examination of the applicant, certifying that the applicant has adequate knowledge and experience to carry out, manage or arrange to carry out the components of domestic building work specified in the certificate.</li> </ul>
Engineer – Fire safety	<ul style="list-style-type: none"> <li>• A degree in fire safety engineering from a university within the meaning of the <i>Tertiary Education Act 1993</i>, and 3 years practical experience to the satisfaction of the Board; or</li> <li>• A current certificate of registration as a fire safety engineer on the National Professional Engineers Register.</li> </ul>

Source: Building Regulations 1994.

**3.11** The Act allows the Board to register a practitioner if it considers his/her qualifications, either alone or supplemented by other factors such as experience, to be equivalent to the prescribed qualifications.

**3.12** Checking applications against these standards is relatively straightforward for categories and classes of building practitioners, mainly in professional groups, where qualifications are the major pre-requisite, e.g. civil engineering and quantity surveying. This process is largely an administrative function undertaken by Board staff and then reviewed by the Board member responsible for that practitioner category.

**3.13** However, checking experience and competence is more judgemental than confirming qualifications and requires a greater level of expertise. This is particularly applicable to domestic building classes. Given that this is the largest group of practitioners, this is a substantial task. In November 1998, the Board implemented a competency-based assessment process for new applicants within these classes to establish a standardised and cost-effective approach which includes input from specialist assessors.

## TRANSITIONAL ARRANGEMENTS FOR REGISTRATION

**3.14** When practitioner registration was introduced, the only practical means of dealing with the 20 600 existing building practitioners, which included around 18 000 builders and demolishers, was to “grandfather” them into the initial base of registered practitioners on a progressive basis between July 1994 and June 1997. None of these practitioners were assessed for suitability on entry in terms of qualifications, skills and experience, nor subject to a subsequent assessment process. Based on advice from the Building Control Commissioner, we acknowledge that under previous systems these practitioners would have been subject to an assessment process, to varying degrees, prior to registration.

**3.15** Although the competency-based assessment process for new registrants offers the prospect of achieving universal minimum standards of skills and experience among registered practitioners, this will take a considerable amount of time. If all practitioners were to be assessed on a competency basis, the assessment will only be completed when the current generation of practitioners has retired and been replaced by those subject to assessment under the new process. Based on the current rate of retirements and new registrations, it will take at least 10 years in most practitioner groups for the majority of practitioners to be assessed and twice as long for builders.

**3.16** The Commission and the Building Practitioners Board believe that the vast majority of the “grandfathered in” practitioners are competent and will undertake their respective roles in the building industry in an appropriate manner. In their opinion, the fact that these practitioners were practising and had been accepted under earlier, albeit less rigorous, registration schemes, reduced the risk of “grandfathering in” incompetent practitioners. The fact that these practitioners continue to be granted insurance lends support to this view. However, the increasing number of successful prosecutions and inquiries of practitioners that the Commission and the Board have undertaken suggests there is a minority whose competence could be questioned by a rigorous assessment process.

**3.17** In our opinion, the Board needs to be satisfied that there are no ongoing risks involved in the “grandfathering” arrangements. Risk assessments should be undertaken to identify those practitioner categories and classes that constitute the greatest risk to public safety or whose actions may result in substantial financial loss to consumers. The competence of practitioners in these categories and classes should then be assessed on a progressive basis. The capability to undertake this initiative may require legislative amendment.

□ **RESPONSE** provided by Building Control Commissioner

*Domestic builders were transferred over to the new system under a “grandfathering” provision that was in response to a government directive to ensure a smooth and timely transition. The “grandfathering” of practitioners in 1996 was not a decision of the Commission or the Board. Superseded Boards or associations had previously assessed the eligibility of the vast majority of these people and therefore these assessments were honoured. Furthermore, there is an obligation of insurers to determine and to continually assess a person’s suitability to have insurance and this subsequently acts as a secondary filter to the Commission’s auditing program in relation to removing unsuitable practitioners. There is no evidence submitted that the “grandfathering” process has had an adverse effect.*

*The transition period allowed for a vetting process where there had been substantiated misbehaviour as shown by Office of Fair Trading and Business Affairs and/or Housing Guarantee Fund records.*

*As a result, a small number of builders were denied registration on the basis of their lack of good character. No builder with a substantiated bad record was transferred. There was some anecdotal information, but no hard evidence, about a few other builders but there is no evidence that they have been the cause of any subsequent complaints.*

*There is no evidence that the grandfathering has protected bad builders. The contrary appears to be the case as the overall number of domestic builders dropped from 14 000 under the old system to just 11 100. This is indicative of a weeding out of part-time and less professional builders who previously held registration.*

❑ **RESPONSE** provided by Building Control Commissioner - continued

*As acknowledged in the Report the insurance system is a constant source of filtering of unreliable builders because insurability is a prerequisite for continuing registration.*

*The Commission is working with Builders Licensing Australia to develop stringent nationally consistent registration and insurance requirements for domestic builders as recommended by the Bell Task Force.*

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*As well as legislative amendment, this risk assessment will also require additional resources, which are controlled by the Building Control Commission. There is no forum for the resolution of legislative priorities or resource allocation conflicts.*

## REGISTRATION PROCEDURES FOR NEW APPLICANTS

### Framework for determining suitability of practitioners

**3.18** We found that the Building Practitioners Board’s documented procedures provided, in broad terms, an appropriate framework for determining the suitability of practitioners in that:

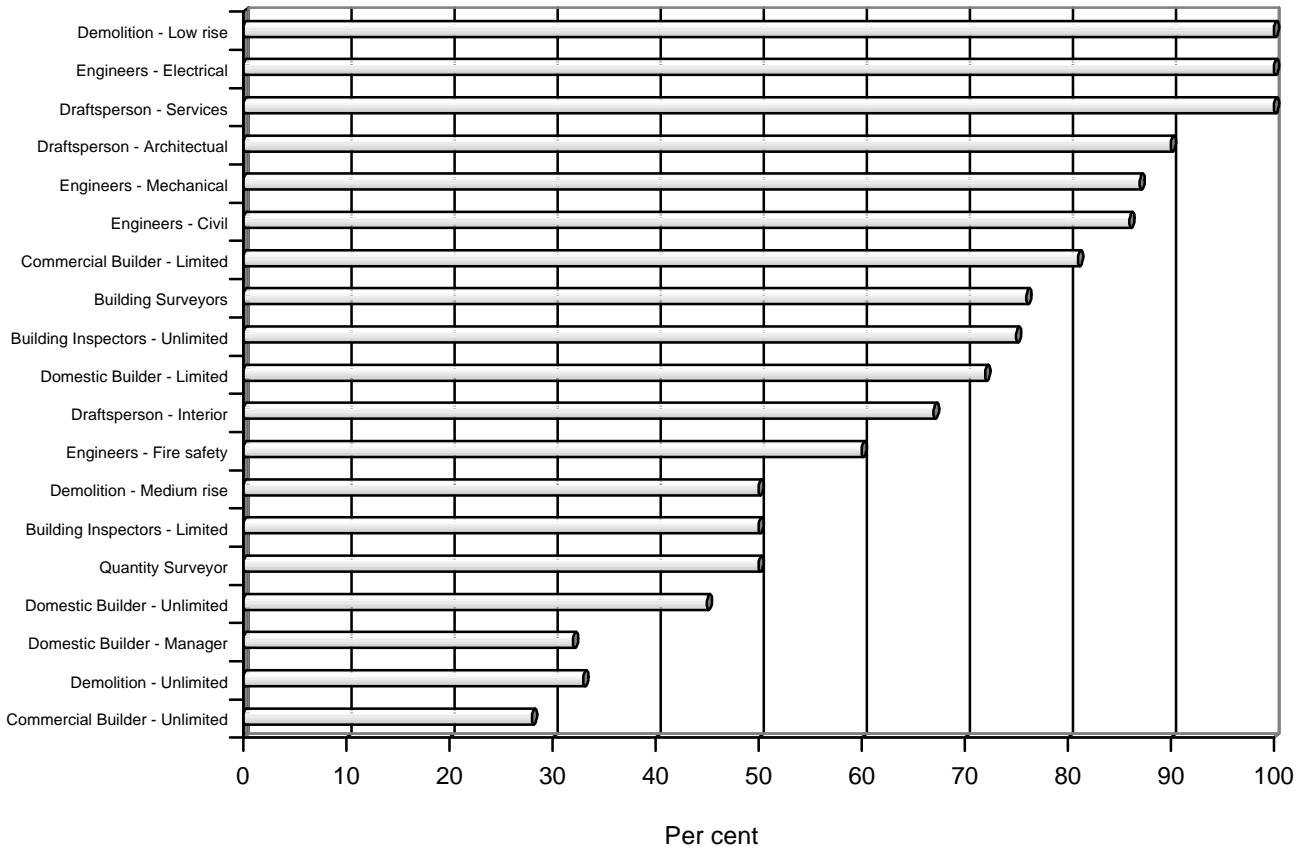
- The requirements for qualification and experience are specified for each category and class. However, “practical experience to the satisfaction of the Board” is not defined which leaves considerable discretion with the Board and particularly the Board member assessing each application;
- Each application is to be referred to a person on the Board with experience in that profession to assess and make recommendations. Board members are experienced practitioners nominated by appropriate professional or trade associations;
- The process includes checks to verify the evidence supporting the application, including the checking of references and details of work history where appropriate; and
- The principles of natural justice are preserved by adopting a range of measures which include:
  - publishing minimum standards for each category and class;
  - for domestic building practitioners, distributing self-assessment guides that provide full details to all applicants of what is required and assistance to complete an application;
  - allowing any applicant to appeal the decision of the Building Practitioners Board to an independent review body, namely, the Building Appeals Board; and
  - allowing the Building Appeals Board to consider new evidence as part of the appeal process.

### Approval rates for initial registration

**3.19** Chart 3C sets out the application success rate for various practitioner categories and classes. As the chart indicates, registration is not an automatic process.

**CHART 3C  
REGISTRATION SUCCESS RATE,  
MARCH TO AUGUST 1999**

<i>Item</i>	<i>Total applicants</i>	<i>Successful applicants</i>
Demolition - Low rise	7	7
Engineers – Electrical	7	7
Draftsperson - Services	6	6
Draftsperson - Architectual	74	67
Engineers - Mechanical	8	7
Engineers – Civil	35	30
Commercial Builder - Limited	67	54
Building Surveyors	21	16
Building Inspectors - Unlimited	8	6
Domestic Builder - Limited	28	20
Draftsperson – Interior	9	6
Engineers - Fire safety	8	5
Demolition - Medium rise	4	2
Building Inspectors - Limited	2	1
Quantity Surveyor	4	2
Domestic Builder - Unlimited	262	118
Domestic Builder - Manager	28	9
Demolition - Unlimited	3	1
Commercial Builder - Unlimited	46	13



Source: Audit analysis of data maintained by the Building Practitioners Board.



## Assessment procedures

### *Assessment of practitioners other than domestic builders*

**3.20** For practitioner categories and classes other than domestic builder, our testing found that the specified procedures were generally followed. We identified 2 areas of weakness:

- Reference checks were only undertaken on rare occasions. Administrative staff and assessors relied almost entirely on material provided in the application. For some applicants, a more wide-ranging level of experience over a shorter period may be regarded as sufficient, but in the absence of reference checks, we consider it is questionable how assessors could make informed judgements with any degree of confidence; and
- The summary information presented to the Board in relation to experience, a key factor for consideration in the approval of applications, was sometimes inaccurate or ambiguous. For some applications, the years of experience conveyed to the Board was less than the minimum required by the regulations e.g. one schedule examined indicated 4 applicants to be registered as building surveyors only had one year's experience, whereas the regulations required 4. Nevertheless these applications were approved by the Board. While there were no explanatory comments included on the schedule, we were advised that the relevant experience for each applicant would have been discussed at the Board meeting by the assessing member. In relation to these 4 applications, we found that:
  - The years of experience included time prior to obtaining qualifications, whereas the information presented to the Board only recorded post-qualification experience. As a consequence, 3 of the 4 applicants in actual fact had 4 or more years experience; and
  - One applicant only had 3 years experience in total. The record of the decision at the Board meeting did not justify why this application was approved, despite the applicant apparently not possessing the required experience.

**3.21** We accept that the regulations enable judgement to be exercised in applying the minimum standards. We also recognise that the quality of experience can vary significantly between building projects. Nevertheless, without clear guidelines and documenting the reasons for any departure from the standards, there is a likelihood that consistency of assessment could be compromised and standards reduced.

**3.22** Since experience is a key factor in the decision to grant registration, it is essential that information submitted to the Board be accurate in order to ensure that only suitably qualified applicants are registered. We recommend guidelines and procedures be strengthened by:

- requiring documentation presented to the Board to record the applicant's total relevant experience, including that gained prior to obtaining formal qualifications;
- detailing the type of experience considered necessary in different circumstances to facilitate consistency and appropriateness of decision-making;
- requiring references to be checked; and
- ensuring that any approvals that depart from minimum standards be justified and documented.

### *Assessment of domestic builders*

**3.23** For domestic builders we established that the registration process took nearly 4 months to complete; twice as long as for other practitioners. This was due to the more time consuming assessment process, some unfamiliarity with the new competency-based system among applicants and staff, and a higher rate of appeals. We recognise that the period of time to process applications should reduce as familiarity increases with the new system.

**3.24** We recommend the Board sets time targets for decisions on applications and monitors progress against those targets to improve timeliness of the registration process.

**3.25** Between January and July 1999, although applications were examined by a Board member and other nominated individuals, the following significant departures from established procedures were found to occur in the cases examined:

- No cases were assessed by an expert assessor;
- In half the cases, there was no evidence that references had been authenticated. We were advised that the Board used its discretion to check references;
- In one instance, an application did not include any written references. The process calls for at least 2 technical and 2 character references for each application; and
- The assessment had not been endorsed in half the cases by the member of the Board or the Registrar, who is responsible for the Board's administrative processes.

**3.26** Despite the above shortcomings, the applications for registration were approved. As a consequence we conclude that, in relation to the initial implementation of the newly introduced competency-based assessment process for domestic builders, there was a risk that some domestic builders may have been registered without adequately meeting the necessary requirements in terms of knowledge and experience.

**3.27** We discussed these concerns with the Board in August 1999. It was aware of some of the shortfalls identified and agreed to initiate improvements whereby:

- all domestic builder applications are to be processed by an external assessor, as originally intended;
- external assessors' recommendations are now documented in a report to the Board; and
- all applicants are interviewed and given an opportunity to provide examples of their work.

**3.28** These shortcomings in the initial implementation of the assessment process for domestic builders need not detract from the potential that the new registration system offers as a means of establishing the competence of builders. The Board should continue to monitor implementation closely to ensure that the potential of the new system is realised. A quality assurance process would assist, supported by a post-implementation review.

## RENEWAL OF REGISTRATION

**3.29** Registration covers a period of one year, unless a practitioner is suspended by the Building Practitioners Board or their insurance is withdrawn. Annual renewals involve applications submitted to the Board with evidence of insurance and payment of the annual registration fee.

**3.30** We found that renewal of registration is a short, purely administrative process. Administrative staff take no more than 5 minutes to check that insurance paperwork is in order. Providing the insurance is current and in accordance with the Ministerial Orders, which indicate the date on which the insurance requirements for the various categories and classes of building practitioner are to be met, registration is renewed. Our testing found that the renewal process was applied in accordance with the straightforward procedures laid down by the Board.

**3.31** The Commission has recently introduced arrangements for outsourcing the processing of renewal documentation for domestic builders to 2 insurance companies on a fee-for-service basis. Such an arrangement reinforces the Commission's position that the current renewal process is no more than a check on insurance. The Board was not supportive of the decision to outsource on the grounds that it would reduce its capacity to monitor and review practitioner conduct at the renewal stage. We believe, however, that under this outsourcing arrangement, the Board would still retain the decision-making capability to determine whether a practitioner's renewal of registration should proceed.

**3.32** An additional safeguard in the renewal process is that insurance companies occasionally refuse insurance cover to existing practitioners. The Board receives about 40 suspended insurance cover notices each year, prompting suspension of registration.

**3.33** Of these, only 4 on average were suspended indefinitely, suggesting that practitioners can find insurance elsewhere or meet the conditions that the companies set for reinstating cover in most cases. In addition, the Board has suspended or cancelled only 2 practitioners in each of the past 2 years through the separate inquiry process. In 1999-2000, however, there have been 7 suspensions and 2 cancellations in the first 7 months of this year.

**3.34** We conclude that the threat of suspension or cancellation of registration is rarely invoked. Indeed, the Board has a policy of seeking alternatives, whereby suspension is only used as a last resort in extreme cases.

**3.35** In our opinion, a major weakness in the current system is that a quality assurance process to review the continuing suitability of building practitioners to practise is not in place. The Board has not:

- Developed a system to test the continuing competence of practitioners;
- Recorded details of complaints, investigations and internal performance audits on registered practitioners' files to assist in providing a basis for an informed decision about continuing competence; and

- Established minimum standards for continuous professional development, although some professional bodies, whose members are covered by the registration process, require these practitioners to demonstrate continuous professional development as part of their membership renewal. We were advised by the Chairperson of the Board that a policy position supporting continuous professional development had been established, however this was not supported by the previous Government.

**3.36** While the Board has indicated its agreement to the need to address the above criticisms, it has not been resourced to undertake these functions.

**3.37** In our view, there is an opportunity for introducing a review mechanism to assess, on a regular basis, the suitability of registered building practitioners to practise. This quality assurance process would need to be developed as part of a wide risk-based approach. The Board's first priority should be to undertake an accelerated program of assessments of practitioners in those categories and classes that pose the greatest risk to the community. By doing so, greater assurance would be provided as to the competence of these practitioners.

## OVERALL RECOMMENDATIONS

**3.38** We recognise the substantial resource implications of including all practitioners in a comprehensive assessment program. We also recognise that re-assessment alone may not highlight all practitioners who have fallen behind minimum practice standards.

**3.39** We, therefore, recommend an approach which combines targeted assessment and re-assessment, with incentives and sanctions, as follows:

- The Building Practitioners Board arranges for a risk assessment to be undertaken to determine which practitioner categories and classes have the greatest impact/risk to public safety and financial loss to consumers through practitioner misconduct. These should include those with a high intrinsic risk, e.g. fire safety engineers, demolishers, temporary structure erectors, building surveyors as well as those practitioner categories and classes where qualifications and experience in the past have not prevented complaints of a serious nature such as domestic builders;
- The Board establish an immediate program to progressively assess the competence of practitioners in these categories and classes, particularly those who were "grandfathered in" as part of the transitional arrangements. This may require legislative amendment;
- The Board assemble information on the work history of practitioners, including details of any complaints and the outcome of their investigations. This information would form the basis for the targeting of practitioners for priority assessment;

- In consultation with relevant industry and tertiary institutions, the Board develop and periodically update minimum standards for professional development within high-risk categories and classes;
- The Board require these practitioners to demonstrate continuous professional development as a pre-condition of registration renewal; and
- The Board allow a transitional period to provide the opportunity for any practitioner to meet continuous professional development standards.

# Part 4

## Monitoring, investigations and enforcement



## INTRODUCTION

**4.1** The Building Control Commission and the Building Practitioners Board play a key role in “policing” the Building Act. Their respective roles are described below:

- the Commission investigates complaints regarding breaches of the Act, undertakes performance audits into the conduct of building practitioners and prosecutes legislative breaches; and
- the Board undertakes inquiries into the conduct of building practitioners.

**4.2** Our examination compared current procedures in relation to the above areas of activity, where considered appropriate, with a good practice framework for complaints handling published by the Standards Association of Australia. The objective of this association is to facilitate the preparation, publication and adoption of Australian Standards. The key elements of this framework relate to:

- commitment;
- fairness;
- resource adequacy;
- visibility and access;
- timeliness and responsiveness;
- data collection and analysis;
- accountability and reporting; and
- review efficiency and effectiveness.

## COMPLAINT INVESTIGATIONS

### Investigative approach

**4.3** The Building Control Commission receives and investigates complaints about breaches of the Building Act. Complaints received on other issues are referred elsewhere, mainly to the Victorian Civil and Administrative Tribunal.

**4.4** A total of 528 complaints were received by the Commission in 1998-99. Over half were directed at builders and building surveyors, and involved concerns surrounding unsatisfactory building work and building either without a permit or not in accordance with the permit.

**4.5** Complaints are investigated by the Commission’s Audit and Investigations Unit. Cases are assigned, generally in the order in which they are received, to individual investigators. The Executive Management Group, a committee of senior staff of the Commission, reaches a decision on each complaint after considering the investigator’s recommendation. Each investigator has an annual caseload of approximately 40-45 complaints as well as undertaking performance audits and enforcement work.



## Comparison with good practice

**4.6** There is currently no Australian Standard for investigative procedures. The New South Wales Ombudsman is, however, in the process of developing guidelines for investigations. We have used the Complaints Handling Standard published by the Standards Association of Australia as the good practice framework because the majority of investigations undertaken by the Commission result from the receipt of a complaint. The Complaints Handling Standard sets out the essential elements of a complaints handling system.

**4.7** The results of our examination of the procedures followed in a number of investigations compared with the good practice framework are summarised in Table 4A. Generally, the investigative procedures implemented by the Commission in response to complaints was thorough in their application.

**TABLE 4A**  
**ASSESSMENT OF INVESTIGATIVE PROCEDURES**

<i>Essential elements of good practice</i>	<i>Audit assessment of current approach</i>
Commitment	The Commission has an objective to resolve complaints as early as possible. However, this is not carried through into a written operational policy on the management of complaints to guide staff on how to achieve this objective.
Fairness	Evidence is collected from interviews and documentation in a consistent manner. Persons who are the subject of complaints are warned that what they say may be used in evidence.  The interviews with persons who are the subject of complaints are not taped. The investigator takes notes of these interviews, but those handwritten notes do not appear on the file. Neither the investigator nor the interviewee signs and dates the typed statement as representing a true and correct record.  The Commission does not have a policy document on the rights and remedies available to the complainant and the subject of the complaint.
Resource adequacy	The Commission has recruited experienced investigators, and is broadening the team with more building technical support staff. However, there are increasing backlogs indicating that either investigation resources are insufficient or there is not an effective priority-setting process in place. While the Commission's move to increase the number and skill mix of the investigative staff is supported, effective priority setting is also needed to effectively address the workload.
Visibility and access	The Commission educates building practitioners at trade nights on the role of the Commission, but there is limited publicity for its complaint handling service among consumers of the building industry.
Timeliness and responsiveness	Letters of complaint are usually acknowledged in writing within 14 days. A letter is also sent to the complainant at the conclusion of the matter outlining the outcome.  The Commission does not collect data on the time taken to resolve a complaint. There are no timeliness targets and no "complaints charter" to indicate to complainants and those subject to complaint what they can expect in terms of service, timeliness and feedback. We estimate the investigation of complaints takes on average a year to complete.

**TABLE 4A**  
**ASSESSMENT OF INVESTIGATIVE PROCEDURES - continued**

<i>Essential elements of good practice</i>	<i>Audit assessment of current approach</i>
Data collection and analysis	The Commission has a database for recording and monitoring complaints. Statistics are kept on each source of complaint and subject, but not the type or seriousness of the complaint. The current database information does not provide statistical analysis to assist in the identification and management of recurring problems.
Accountability and reporting	Regular reporting on the operation of the process against documented performance standards does not occur within the Commission. There are no written performance standards. An investigation checklist appears on the inside cover of some files, however, it is not completed in practice.  The Executive Management Group is an appropriate independent group to review the results of investigations. This group does not document the reasons for their decision to prosecute or refer a matter for inquiry to the Board. Consequently the decision-making process lacks transparency and accountability.
Efficiency and effectiveness reviews	The complaints handling process has been subject to regular review by the Commission and improvements in operating procedures and increases in staff have occurred steadily since 1997.

**4.8** As indicated in the above table, there is a need for the public to be better informed on the Commission's complaints investigation process. It is our view that a complaints charter should be developed to improve the public's understanding, use and expectations of this process. It should be provided as a matter of course to all participants in a complaints investigation and cover:

- the process including the Commission's discretion not to undertake a full investigation;
- the rights and responsibilities of the parties involved;
- time targets for completing each stage of the process and when participants will be informed of progress and outcome; and
- the nomination of a contact officer.

**RESPONSE** provided by Chairman, Building Advisory Council

*The requirement to give complainants access to an external complaints handling procedure, as is required for managed investments, for example, would lead to a more transparent and accountable process. In addition, if the Commission was continually accountable to a body which reviewed the complaints register regularly, the process would be improved.*

**4.9** Furthermore, given the important concerns identified in the above table relating to fairness, accountability and reporting, the Commission needs to strengthen the documentation of its investigation processes by:

- ensuring all investigation files include original interview notes and signed records of interviews;
- implementing a consistent approach to case management, with checklists completed on all case files and information collated and reported on progress against time targets; and
- recording reasons for decisions made by Executive Management Group on finalised cases.

### Backlog in investigations

**4.10** The limitations listed above in the investigations process are partly a reflection of the caseload of complaints that the Audit and Investigations Unit has been faced with in recent years. Cases received have exceeded the Branch's capacity to deal with them, resulting in an increasing backlog of cases. Table 4B shows over the past 3 financial years the increasing number of complaints (an increase by almost half) and where they originate from, while Table 4C illustrates the outcome from investigations and the increase in the investigations backlog over recent years.

**TABLE 4B  
SOURCE OF COMPLAINTS**

<i>Complaints received by source</i>	<i>1996-97</i>	<i>1997-98</i>	<i>1998-99</i>
Building surveyor	71	110	122
Property owner	88	191	194
Adjoining owner	66	69	74
Building Control Commission (a)	49	14	41
Other practitioners	44	60	44
Others	35	74	53
<b>Total</b>	<b>353</b>	<b>518</b>	<b>528</b>

(a) The Building Control Commission may initiate its own investigation.

**TABLE 4C  
OUTCOMES FROM INVESTIGATIONS**

<i>Outcomes from complaint investigations</i>	<i>1996-97</i>	<i>1997-98</i>	<i>1998-99</i>
Dismissed or noted	206	116	61
Refer to the Board for inquiry	24	12	24
Refer to prosecution	30	44	24
Commission to give direction to building surveyor	6	3	1
Referred to other bodies	23	112	165
<b>Total finalised</b>	<b>289</b>	<b>287</b>	<b>275</b>
Complaints under investigation or pending (the backlog)	101	231	253

Note: Figures for 1996-97 apparently include outcomes relating to complaints received in the previous year.

Source: Figures in Tables 4B and 4C extracted from the Building Control Commission 1998-99 Annual Report.

**4.11** The backlog at the end of 1998-99 was the equivalent of one year's work for the Audit and Investigations Unit. It has increased further since. An analysis of the 347 complaints under investigation at 1 September 1999, which excludes cases referred to the Victorian Civil and Administrative Tribunal, indicated that nearly half were a year old or more and 14 were more than 2 years old. Such delays are unsatisfactory for all concerned. They create uncertainty and disappointment for complainants, may contribute to the loss of evidence and, if conduct is indeed unsatisfactory, the public may not be well protected if these complaints are not addressed in a timely manner.

❑ **RESPONSE** provided by Building Control Commissioner

*This is not a typical period and in any case the process involves more than investigations and includes hearings and prosecutions.*

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*This is a clear example of a corporate governance issue.*

**4.12** Despite the size of the backlog, there is little management information in the form of performance targets to monitor the backlog, to chart progress on individual cases or to summarise trends in waiting and investigation times. Such information is neither provided regularly to the Executive Management Group nor published in the annual report. Although detailed management information is limited, the Commission has introduced the following approaches to address the backlog:

- A doubling of staff in the Audit and Investigations Unit since 1996, although this has had the effect of only curtailing the rise in the number of complaints outstanding without reducing the overall size of this backlog; and
- In 1999, the Audit and Investigations Unit commenced the screening of complaints concerning building surveyors which formed approximately one-third of the total caseload. Under the new system, where the screening check suggests that the complaint constitutes only a minor breach of the Act, initial inquiries are handled by correspondence. If the Executive Management Group is satisfied with the building surveyor's response, the matter is noted against the building surveyor's record and no further action is taken. If a number of subsequent complaints are received regarding the particular building surveyor, the pattern of conduct contained in these complaints may then be subject to an investigation or performance audit.

**4.13** It is important that the Commission develops a comprehensive strategy for complaints investigations with priorities, performance targets and management information reported against those targets. The development of such a strategy would assist the Commission in meeting its objective to ensure that all complaints and appeals are dealt with at the earliest possible date by the appropriate resolution mechanism.

**4.14** We recognise there are difficult choices to be made between treating all complainants equally and the cost-effective use of the limited resources involved in the investigations process. Our interpretation of the Act is that the Commission has some discretion in conducting complaint investigations. In our view, not all complaints require the involvement of a trained investigator or need to be investigated individually. The wider interests of building control justify the Commission concentrating resources on high priority or high impact cases.

**4.15** We support the Commission’s recent initiative in adopting a screening and priority-setting approach in dealing with complaints regarding building surveyors. The Commission needs to consider extending this initiative to other types of complaints. This would enable resources to be devoted to the more important cases. Conversely, it would also allow some minor complaints to be investigated collectively (for example, as a component of a performance audit) rather than individually.

## PERFORMANCE AUDITS CONDUCTED BY THE COMMISSION

### Commission’s approach to performance audits

**4.16** The Building Act was amended on 1 August 1997 to introduce “performance audits”. These audits allow the work of building practitioners to be examined, even when a complaint has not been received by the Building Control Commission. The Commission’s investigators undertake performance audits in addition to their complaint investigation caseload.

**4.17** The audit process involves selecting practitioners at random from a target class of building practitioner. The officer conducting the audit visits each building practitioner and checks compliance on a sample number of jobs with legislation and reporting requirements. Serious breaches of the Act are either referred to the Building Practitioners Board for inquiry or recommended for prosecution by the Commission.

**4.18** The Commission’s Audit and Investigations Unit commenced undertaking performance audits in February 1998 on building surveyors and domestic builders. These practitioner categories traditionally generate high levels of complaints. Table 4D sets out for each class of practitioner the ratio of complaints to registered practitioners.

**TABLE 4D  
RATIO OF COMPLAINTS TO REGISTERED  
PRACTITIONERS, 1998-99**

<i>Practitioner Class</i>	<i>Number of registered practitioners for each complaint received per annum</i>
Building Surveyor	1:3
Demolisher	1:25
Building Inspector	1:33
Domestic Builder	1:50
Engineer	1:210
Commercial Builder	1:330
Draftsperson	1:430

*Note:* The continuing high complaint rate for building surveyors (a ratio of 1:2 in 1997-98) is a reflection, in part, of their policing role in the privatised building control process.

*Source:* Information supplied by the Audit and Investigations Unit of the Commission.

□ **RESPONSE** provided by Building Control Commissioner

*Reference is made to the fact that building surveyors account for one in every 3 complaints received by the Commission. There is no statement, however, qualifying why this could be the case. It is the Commission's submission that based on the fact that the building surveyor is the apex of the building control system that this is not an unreasonable result as every customer complaint has the potential to involve the relevant building surveyor.*

**4.19** From February 1998 to September 1999, 729 performance audits were undertaken covering 19 per cent of registered building surveyors and 6 per cent of domestic builders, with small numbers of demolishers and commercial builders included in this coverage.

**4.20** Performance audits, as originally implemented, were short paperwork reviews using checklists to ensure a consistent approach. The majority of these audits were completed in no more than half a day. The checklists focused on compliance with administrative requirements of the Act, e.g. submission of permits on time. They made no provision for inspections of building work and investigators rarely examined this fundamental aspect.

**4.21** This minimalist approach does not satisfy the primary legislative intention for performance audits which is to:

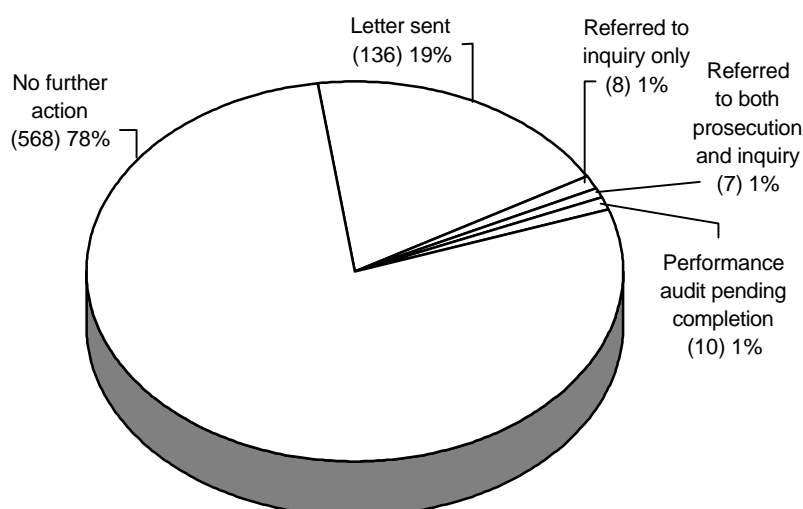
*"... examine work carried out by registered building practitioners to ensure that the work has been competently carried out and does not pose any risk of injury or damage to any person ...".*

**4.22** Given the limited scope of performance audits conducted by the Commission, the essential elements of good practice applicable to complaint handling were not regarded as an appropriate standard to assess the Commission's performance in this area.

### Outcome of performance audits

**4.23** Our examination found that performance audits undertaken by the Commission rarely identified major problems. Between February 1998 and September 1999, 15 of the 729 performance audits resulted in further proceedings in the form of a prosecution and inquiry or an inquiry only. Most generated no further action. Chart 4E depicts the action taken as a result of these audits as at March 2000.

**CHART 4E  
OUTCOME OF PERFORMANCE AUDITS  
FEBRUARY 1998 – SEPTEMBER 1999**



Source: Building Control Commission's Audit and Investigations Unit.

**4.24** The Commission identified a number of shortcomings in its performance audit approach in its review of the first year of conducting performance audits. In March 1999, it proposed a more targeted approach involving visits to councils to inspect documentation submitted by building surveyors including building and occupancy permits, building notices and building orders. This approach was aimed at identifying for further attention those building surveyors with persistent poor conduct such as the provision of late or incomplete submissions and builders in frequent dispute with building surveyors. This more targeted approach could be augmented by identifying scenarios where there could be an increased potential for registered practitioners to fail to adequately discharge their responsibilities, such as where municipal building surveyors are engaged in relation to municipal-owned buildings or places of public entertainment within the municipality. At the date of audit, some 2 years since the Commission was given a legislative mandate to conduct performance audits, this targeted approach was yet to be fully implemented.

**4.25** We were also advised by the Commission that further changes are planned including:

- adding a site inspection to the paperwork review (the Audit and Investigations Unit has recently increased its technical staff to be able to undertake inspections of building works);
- developing a database on each registered building surveyor to record breaches and other information as a basis for targeting performance audits;
- increasing the range of practitioners subject to performance audits to include building inspectors and municipal building surveyors; and
- drafting new audit checklists.

**4.26** The improvements in client information that we recommended in relation to complaints investigation should also be extended, in the form of a charter, to practitioners subject to performance audits. The charter should include the rights and obligations of those practitioners subject to a performance audit.

## PROSECUTIONS

### Background

**4.27** The number of matters referred for prosecution by the Building Control Commission stems directly from the investigation of complaints or occasionally from performance audits. The Executive Management Group makes the initial decision to prosecute on each case, based on a recommendation from the investigator.

**4.28** Table 4F shows the trend in building-related prosecutions since 1996-97.

**TABLE 4F  
NUMBER AND OUTCOME OF PROSECUTIONS,  
1996-97 TO 1998-99**

<i>Judgement</i>	<i>1996-97</i>	<i>1997-98</i>	<i>1998-99</i>
Prosecutions	8	30	57
Case dismissed	-	-	1
Case proven	8	30	56
Results of cases (a) -			
Good behaviour bond	2	6	16
Fine	6	25	36
Costs only	-	-	4
Total amount of fines	\$29 850	\$67 000	\$153 500
Average fine imposed	\$4 975	\$2 680	\$4 264

(a) These figures include total judgements. A judgement may include a good behaviour bond and a fine.

Source: Figures in table extracted from the Building Control Commission's 1998-99 Annual Report.

**4.29** Of the 57 building practitioners referred by the Commission for prosecutions during 1998-99, 56 cases were proven while only one was dismissed. In relation to the 30 most recent matters referred by the Commission for prosecution as at February 2000, 24 were for serious breaches of the Act. For the purpose of the audit, we have defined serious breaches to be those which incurred penalties of \$5 000 or more.

**4.30** The majority of the serious breaches related to:

- builders undertaking work without a permit or not in accordance with the permit; or
- domestic builders operating without insurance.

### Assessment of prosecution procedures

**4.31** The results of a comparison of a sample of prosecution files with the essential elements of good practice established by the Standards Association of Australia, that are relevant to the conduct of prosecutions, are summarised in Table 4G. The Complaints Handling Standard has been used as a framework as most prosecutions result from an investigation of a complaint made to the Commission.



**TABLE 4G**  
**ASSESSMENT OF PROSECUTION PROCEDURES**

<i>Essential elements of good practice</i>	<i>Audit assessment of current approach</i>
Commitment	The Commission has no written prosecution policy, but has been committed to enforcing the Act through prosecutions. It prosecutes all cases where there is compelling evidence that a breach of legislation has occurred. The number and outcomes of prosecutions are used as the key measure of investigation performance for annual reporting.
Fairness	The material presented in the files examined and the successful outcome in virtually all cases indicate that the court is satisfied with standards of investigation and evidence gathering in these cases.
Resource adequacy	The Commission uses external legal advisers to present cases in court. The average cost per case of such legal services fell from \$14 500 in 1995-96 to \$2 464 in 1997-98, largely due to more preliminary work undertaken in-house by the Commission's investigators.
Visibility and access	The Commission publicises the outcomes of prosecutions in its newsletter titled <i>INFORM</i> which is forwarded to registered building practitioners and other subscribers, however, there are no other mechanisms to inform the public.
Timeliness and responsiveness	After the decision to prosecute has been made by the Executive Management Group, it takes at least 2 months for external legal advice to be finalised. Once this advice is received by the Commission, it takes at least 5 weeks before the matter is heard before a court. These intervals are largely outside the Commission's control.
Accountability and reporting	The successful outcome of cases justifies the decision to prosecute. The level of fines provides a broad measure of the seriousness of the cases brought before the court. The increase in the number of cases prosecuted in 1998-99 was related to comparatively more serious cases than in 1997-98, based on the increase in average fines imposed by the courts.
Efficiency and effectiveness reviews	The Commission has reduced the legal cost of prosecution by increasing the level of preliminary work undertaken in-house and through the use of the Government's legal service rather than private law firms. There has been no review of the impact of the Commission's approach to prosecution on practitioner behaviour generally.

**4.32** In our opinion, it is not clear whether the practice of prosecuting all breaches of legislation is the optimal strategy. The Commission has not assessed the impact of this approach on practitioner behaviour generally. We recommend that the Commission needs to establish a written prosecution policy based on the results of such an assessment. Rather than prosecuting all breaches, it is our view that a strategy of selectively prosecuting only the more serious offences or multiple offenders or referring the matter for inquiry and disciplinary action, could be a more cost-effective use of resources. This would need to be reflected in performance indicators that measured the seriousness as well as the quantity of prosecutions, and other disciplinary action. A prosecution charter should also be developed which outlines the rights and obligations of those practitioners who have been prosecuted.

□ **RESPONSE** provided by Chairman, Building Advisory Council

*It is difficult to see how this recommendation can be implemented without the Commission being accountable to itself for the prosecutions it undertakes. Selective prosecution needs to be an extremely transparent procedure.*

## INQUIRIES

### Assessment of inquiry procedures

**4.33** Under the Building Act, the Building Practitioners Board can conduct inquiries in the form of hearings into the conduct of registered building practitioners or their ability to practice. Inquiries usually result from complaints of a serious nature received by the Board or the Building Control Commission. These complaints are subject to investigation by the Commission prior to the Board conducting the inquiry. Occasionally, the results of a performance audit can also be referred to the Board for inquiry.

**4.34** The results of an examination of the procedures applied by the Board for the conduct of inquiries, compared with the essential elements of good practice established by the Standards Association of Australia, are summarised in Table 4H. The Complaints Handling Standard has been used for comparative purposes as the majority of inquiries arise from a complaint.

**TABLE 4H  
ASSESSMENT OF INQUIRY PROCEDURES**

<i>Essential elements of good practice</i>	<i>Audit assessment of current approach</i>
Commitment	<p>The Board's commitment to monitoring the conduct of practitioners was limited before 1998-99, with less than 10 inquiries held annually. It has increased to nearly 30 in 1998-99.</p> <p>The Board's capacity to inquire into practitioner behaviour has been hampered to some extent by the ability of practitioners to de-register themselves to avoid appearing before an inquiry (the Board may only inquire into the conduct of registered practitioners). In the last 6 months of 1999, for example, 4 practitioners (10 per cent of referrals) de-registered themselves to avoid an inquiry. This compares with 4 practitioners who had their registration suspended or cancelled as a result of inquiries by the Board in the same period.</p>
Fairness	<p>Practitioners are routinely informed of their rights to legal representation and the appeal process. All hearings are taped. A transcript of the hearing is available to the practitioner who is subject to the inquiry. However, the availability of the transcript is not routinely notified to the practitioner.</p> <p>While a manual of procedures for the conduct of inquiries had not been developed, the Board was in the process of selecting a legal firm to prepare a manual.</p>
Resource adequacy	<p>The Board has no staffing capacity to conduct investigations to support inquiries; it relies on the Commission's investigators for such support. Although the Board has sought to establish a service level agreement with the Commission to ensure adequate resources are available for its needs, it has expressed a preference for its own dedicated investigators.</p>
Visibility and access	<p>The low level of inquiries until 1998-99 in our opinion did not contribute to the Board having a high profile in the community. The increase in the number of inquiries between the last 2 years and the associated publicity has contributed to an increase in the number of cases referred directly to the Board.</p>

**TABLE 4H**  
**ASSESSMENT OF INQUIRY PROCEDURES - *continued***

<i>Essential elements of good practice</i>	<i>Audit assessment of current approach</i>
Timeliness and responsiveness	It generally takes at least 4 months for the Board to complete an inquiry; 2 months before the preliminary hearing when notices are issued and evidence gathered; and a further 2 months from the preliminary hearing to the final hearing which allows both sides to prepare their cases. The Board's view is that the 4 month timeframe for completing inquiries could be reduced to 3 months, but it is dependent on external investigation and legal services to prepare matters for inquiry, hence the delays are often outside the Board's control. In our view, a period of 3 months to have a matter heard is reasonable.  Complainants are informed of the outcome at the end of the process, but are not kept informed of the progress of their complaint by the Board.
Accountability and reporting	Reasons for proceeding with an inquiry are not given in Board minutes, nor are they conveyed to the practitioner subject to the inquiry. However, the Board's decision-making can be subject to appeal at the Building Appeals Board.  The Board has sought to develop a service level agreement with the Commission to increase the accountability of the Commission's investigators when undertaking work on behalf of the Board.
Efficiency and effectiveness reviews	The Board has sought to focus inquiries on cases involving consistent patterns of poor conduct by practitioners. It has not conducted any reviews of the impact of the inquiry process on practitioner behaviour. Given the low number of inquiries undertaken until recently, this is understandable.

### Number and outcome of inquiries

**4.35** The number and outcome of inquiries undertaken between 1996-97 and 1998-99 are disclosed in Table 4I.

**TABLE 4I**  
**NUMBER AND OUTCOME OF INQUIRIES,**  
**1996-97 TO 1998-99**

<i>Inquiries by Board</i>	<i>1996-97</i>	<i>1997-98</i>	<i>1998-99</i>
Total inquiries held	7	6	28
Case proven	7	6	28
Results of cases -			
Reprimand	1	3	21
Fine	5	3	21
Condition placed on registration	1	-	1
Registration suspended	3	1	1
Registration cancelled	1	1	1

*Note:* Not all matters referred by the Commission to the Board have, in the Board's view, warranted an inquiry, hence the difference between the numbers shown in Table 4C. In other cases, inquiries are based on complaints made directly to the Board rather than the Commission, or as a result of a performance audit.

Cases proven may result in more than one penalty.

*Source:* Figures in table extracted from the Building Control Commission's 1998-99 Annual Report.

**4.36** As Table 4I indicates, all complaints heard by the Board have been proven. In 1998-99 one verdict was overturned on appeal to the Building Appeals Board. Table 4I also shows the Board conducted 28 inquiries of registered building practitioners in 1998-99; a four-fold increase on previous years. Building surveyors and domestic builders formed 80 per cent of those who appeared before the Board. Figures for the first half of 1999-2000 obtained during the audit suggest that the number of inquiries for the full year will be comparable to 1998-99. As an indicator of increasing coverage, the number of inquiries now equates to 6 per cent of complaints compared with 2 per cent 2 years ago.

**4.37** Moreover, the recent outcome of inquiries indicate the Board is considering cases where there is evidence of more serious or persistent improper conduct. Based on the results of the first half of 1999-2000, there are likely to be 4 times as many suspensions and cancellations of registration from inquiries held in 1999-2000 than in the previous year. This is mainly due to the compilation in recent times of case histories of persistent offenders and an increase in complaints received directly by the Board. In addition, while only one inquiry has resulted from a performance audit conducted by the Commission's Audit and Investigations Unit, recent changes to the performance audit methodology involving a more targeted and rigorous approach are also likely to increase the number of inquiries and severity of penalties invoked.

**4.38** Given the concerns previously expressed in Part 3 of this Report regarding the limitations of the processes adopted to ensure only suitable practitioners are registered, it is encouraging to observe the adoption of a more robust approach to the identification and treatment of persistent offenders by the Commission and the Board.

## DIVIDED RESPONSIBILITIES FOR MONITORING PRACTITIONERS

**4.39** The Building Practitioners Board has a legislative responsibility for monitoring the conduct and ability to practise of building practitioners. However, as mentioned earlier in this Part of the Report, it has not been allocated resources to fulfil this responsibility. It is only resourced to adjudicate on practitioner conduct based on evidence presented to inquiry hearings, as it is reliant on evidence assembled by Building Control Commission investigators.

□ **RESPONSE** provided by Building Control Commissioner

*There is criticism directed at the Commission in relation to the provision of separate investigative resources to the Building Practitioners Board. It is the Commission's view that this removes the possibility of duplication which is a criticism levelled elsewhere in the Report. The Commission also submits that this process has increased the level of efficiency in relation to audits and investigations. The use of a single budget program was in line with accepted practice and ensures the ongoing viability of this important function.*

□ **RESPONSE** provided by Chairman, Building Advisory Council

*The resources stemming from both registration and the levy are controlled by the Building Control Commission. There is no forum for the resolution of competing claims for resources.*

**4.40** The Commission's focus has been on investigating individual complaints and on prosecuting individual breaches of the Act. This focus, and the considerable workload of its Audit and Investigations Unit, has not enabled the collection of evidence required to demonstrate persistent misconduct. Consequently, the Board is not in a position to exercise its ultimate sanction, namely, suspension or cancellation of registration with the majority of inquiries resulting in a reprimand. As mentioned previously, there has only been one suspension and one cancellation in each of the last 2 years until 1999-2000 when this rate has increased substantially.

**4.41** Before finalising proceedings, under the present division of responsibilities provided under the current organisational arrangements, the Commission should consult with the Board on all investigations which may prompt inquiries and conversely, the Board should consult with the Commission on all inquiries which could lead to prosecutions, in order to minimise any unnecessary duplication.

**4.42** We welcome the efforts made by each organisation to establish closer working arrangements in the past year. The finalisation of a service level agreement between the 2 organisations would help cement these arrangements. The Board should also use this as an opportunity to clarify and strengthen its procedures involved in conducting inquiries in terms of:

- specifying the type and standard of evidence required to meet its requirements to establish a consistent pattern of practitioner misconduct;
- developing timeliness targets;
- preparing a charter outlining the rights and obligations of all parties;
- keeping the Board, complainants and the subjects of complaints informed on the progress of each matter, and providing the reasons for decisions to relevant parties; and
- documenting decisions.

## RESOURCING ISSUES

### Workload and priority setting

**4.43** Despite the engagement of additional resources in the Audit and Investigations Unit of the Building Control Commission in recent years, the expansion of functions and case loads has resulted in the continuation of high workloads in this area of the Commission's operations. In 1998-99, each of the 9 investigators was responsible on average for:

- undertaking between 40 and 45 complaints investigations;
- completing 50 performance audits; and
- dealing with smaller numbers of enforcement notices, prosecutions and inquiries for the Building Practitioners Board.

**4.44** We do not believe a caseload of this size is sustainable, given the level of detail required by legislation and the need to comply with acceptable practices and codes of behaviour. The difficulties in coping with the present workload would, to some extent, be alleviated if certain minor or intractable cases are handled administratively with minimal investigator supervision, as occurs with minor matters involving building surveyors. However, this requires a clear priority setting mechanism and early communication with complainants to manage expectations. Neither are well-developed at present.

**4.45** A business objective of the Commission is to complete complaints and other cases in the earliest feasible time. However, this is not translated into targets or time lines for individual cases or for particular groups of cases (e.g. priorities between complaint investigations, inquiries and performance audits). There is also limited case management system support to assist in tracking progress and deadlines.

**4.46** We, therefore, recommend that guidelines and targets be established to set clearer priorities for investigators across their major responsibilities. The guidelines could include:

- conducting an initial screening system to prioritise, cull and allocate cases;
- agreeing target completion dates for various stages with the supervisor for each case;
- conducting regular reviews of caseloads with the manager to identify cases no longer worth pursuing; and
- developing strategies for culling or combining cases (e.g. into performance audits) to reduce delays to manageable levels.

**4.47** These targets and actual performance achieved should also be reported in the annual report.

## Resource allocation

**4.48** We support the general emphasis towards a more pro-active approach instead of operating in a reactive mode, such as recent initiatives in requiring performance audits to concentrate on the high risk areas which offer the prospect of greatest long-term benefits. However, this requires the Commission, the Board and the other statutory bodies to form a clear view on building control risks and the monitoring, preventative and enforcement measures most appropriate to address these risks. An optimal balance of effort needs to be achieved between complaint investigation and performance audits, between prosecutions and inquiries, and more generally between effort directed at investigations compared with practitioner education and registration.

**4.49** A long-term strategic plan is needed as a framework for such resource allocation decisions. For further comment, refer to Part 7 of this Report.

□ **RESPONSE** provided by Chairman, Building Advisory Council

*This requires a level of co-ordination that is not possible under the current system. There is no-one responsible for producing a co-ordinated approach.*

## MANAGEMENT INFORMATION

**4.50** The Audit and Investigations Unit of the Building Control Commission maintains separate administrative databases for complaints, performance audits and its enforcement work. Simple reports can be generated on any of the fields present in the database, but none are produced regularly for management purposes, either from an individual database or across the databases.

**4.51** Management information produced on the work of the Audit and Investigations Unit, apart from information contained in the Commission's annual report, is limited to a monthly statistical report prepared for the Executive Management Group. The report does not contain information in a narrative form, nor statistical information that would assist management in priority setting or cost/resource allocation. There is no information, for example, on trends in caseloads or completion times within or across the various activities of investigations, performance audits and enforcement.

**4.52** The Building Practitioners Board maintains a relatively simple database of inquiries. It is notified of the status of an inquiry each month. However, the report does not contain any dates and as a consequence the tracking of timeliness of matters is not possible. There are no links between databases maintained by the Audit and Investigations Unit of the Commission and the Board.

**4.53** We conclude that there is insufficient information to enable the management of the Commission and the Board to plan, conduct and co-ordinate their efforts in undertaking investigations, performance audits and inquiries in an optimal manner. To address this, the agencies need to develop improved information systems that allow better analysis and reporting of investigations, performance audits and other aspects of their caseload, both individually and in summary form.

**4.54** The following specific information enhancements should be considered:

- recording the source and nature of the complaint for planning purposes;
- recording of names associated with each complaint to monitor patterns of behaviour;
- producing information on budgets, resources and time lines on a per case or average case basis and in summary form; and
- providing information on outcomes from each process such as investigations and performance audits.

# Part 5

## Determinations and appeals



## INTRODUCTION

**5.1** The Building Appeals Board was established as part of the *Building Act* 1993, although an appeals process has applied to building regulations in Victoria for over 50 years under the Building Referees Board and its predecessors. The procedures adopted by the Board have built on the experience of these earlier bodies.

**5.2** Applications for determinations and appeals on building issues are heard by the Board. In 1998-99, the Board made 650 determinations and heard 249 appeals.

**5.3** *Determinations* involve the Board deciding for specific proposals whether a provision of the Building Regulations should either apply or not apply with modifications. The Board may also be asked to make a determination as to whether a particular building design or building element complies with a performance-based regulation of the Building Code of Australia 1996.

**5.4** *Appeals* are effectively rehearings by the Board of decisions made during the course of the approval process on specific building works. By way of example, property owners can appeal against decisions not to grant a building or occupancy permit or conditions placed on building notices and orders. It also hears appeals against decisions of the Commission and the Building Practitioners Board on appointment of building surveyors and registration of building practitioners, respectively.

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*This Part of the Report does not distinguish those matters which are heard by the Victorian Civil and Administrative Tribunal (VCAT) and the potential savings from better co-ordination with VCAT. Given that approximately \$1 million from the levy is set aside annually for VCAT, this is a significant omission from the Report.*

## DETERMINATIONS

### Assessment of procedures involved in making determinations

**5.5** The results of our assessment of determination procedures adopted by the Building Appeals Board, which were measured against criteria covering transparency, procedural fairness and consistency of decision-making, are summarised in Table 5A.

**TABLE 5A  
ASSESSMENT OF DETERMINATION PROCEDURES**

<i>Criteria</i>	<i>Satisfactory documentation of procedures</i>	<i>Satisfactory implementation of procedures</i>	<i>Comment</i>
<b>Transparency</b>			
Straightforward and clearly written procedures	Yes	Yes	
Procedures consistent with the Act	Yes	Yes	
Provision of clear advice to the parties	Yes	Yes	
Reasons included with decisions	No	No	Upon request only
<b>Procedural fairness</b>			
Fees do not restrict access unduly	Yes	Yes	Recent reduction in fees in February 1999
Accessibility issues addressed	Yes	Yes	
Complete and appropriate information to parties	Yes	Yes	Customer feedback surveys now being undertaken
Decisions communicated promptly to applicant	n/a	Yes	Within 2 weeks
Appropriate composition of panel	Yes	Mostly	New members need to gain experience
Avoidance of conflicts of interest on panel	Yes	Yes	Conflicts of interest declared and managed
Confidentiality maintained	Yes	Yes	
Hearings follow due process	Yes	Yes	
<b>Consistency of decision-making</b>			
Decisions refer to act and regulations	Yes	Yes	
Decisions give reasons and precedents	Partly	Partly	Reasons recorded but not precedents (database of precedents to be established)
Panel members have previous experience in the determination process and relevant building experience	Yes	Mostly	New members experience some difficulties

**5.6** The determination process was found to work quickly and efficiently. Applications are heard within 2 to 3 weeks of receipt and the determination is communicated to the applicant within 2 weeks of the hearing. Any delays are due to receiving advice from third parties or site visits on more complex cases.

**5.7** Appropriate mechanisms were in place to provide transparency of processes and procedural fairness and, to some extent, consistency. Some improvements are needed in terms of promoting consistency of decision-making.

## Consistency of decision-making

**5.8** Support systems to facilitate greater consistency of decision-making are limited. The staff member who prepares a case for a determination hearing records the building codes and technical information applicable, but does not provide the panel with information relating to previous cases. Technical support staff of the Appeals Board have limited experience and expertise in this regard and do not have a database of decisions to assist them.

**5.9** The Appeals Board has recognised that more information on previous determinations would enhance current processes. It has commissioned a software consultant to upgrade the current administrative system to provide a database of decisions by type, with reasons where specific building regulations were deemed not to apply or to apply with modifications. Where applicable, such information should support the determination made and enable reasons to be provided to applicants that refer, where relevant, to previous decisions in order to improve transparency of decision-making.

**5.10** Consistency of decision-making will continue to depend largely on the experience and knowledge of panel members of the Board. Consequently, the Board has sought to use a core of experienced staff wherever possible to maximise consistency, with the Chairperson or Deputy Chairperson attending all cases.

**5.11** When new members, who may have limited knowledge of the work of the panels and may lack the experience required in some areas of responsibility, are appointed to the Appeals Board, a short induction course is provided for their benefit. The formalisation of the current informal mentoring system for the first 6 months of a new member's appointment would further enhance this area.

## APPEALS

### Assessment of procedures involved in hearing appeals

**5.12** The results of our examination of the approach adopted by the Building Appeals Board in relation to appeal hearings, compared with criteria relating to transparency of processes, procedural fairness and consistency of decision-making, are summarised in Table 5B.

**TABLE 5B  
ASSESSMENT OF APPEAL PROCEDURES**

<i>Criteria</i>	<i>Satisfactory documentation of procedures</i>	<i>Satisfactory implementation of procedures</i>	<i>Comment</i>
<b>Transparency</b>			
Straightforward and clearly written procedures	Yes	Yes	
Procedures consistent with the Act	Yes	Yes	
Provision of clear advice to parties	Yes	Yes	
Reasons for decisions communicated	No	n/a	Upon request
<b>Procedural fairness</b>			
Adequate notice to all parties and hearings heard on time	Yes	Yes	Some delays on “busy” hearing days
Fees do not restrict access unduly	Yes	Yes	
Accessibility issues addressed	Yes	Yes	New video conferencing facilities available to applicants who reside in remote locations
Complete and appropriate information to parties	Yes	Yes	Customer feedback surveys introduced in late 1999 to identify areas for improvement
Decisions communicated promptly to appellants	n/a	Yes	Does not specify, but generally within 2 weeks
Appropriate composition of panel	Yes	Yes	Legal experience increased in recent years
Avoidance of conflicts of interest on panel	Yes	Yes	
Confidentiality maintained	Yes	Yes	
Hearings follow due process	Yes	Yes	Tape recording of more serious appeals such as the de-registration of practitioners
Clear separation of roles and location between Building Appeals Board, the Building Control Commission and the Building Practitioners Board.	Clear separation of roles  The need for confidentiality is stressed but no specific guidelines included to handle co-location	Yes	The co-location of the Building Practitioners Board and Building Appeals Board staff may give the appearance of a lack of a clear separation. However, as staff of the Building Practitioners Board are not involved in advising on appeals, there is very little risk associated with these arrangements

**TABLE 5B**  
**ASSESSMENT OF APPEAL PROCEDURES - continued**

<i>Criteria</i>	<i>Satisfactory documentation of procedures</i>	<i>Satisfactory implementation of procedures</i>	<i>Comment</i>
<b>Consistency of decision-making</b>			
Decisions refer to act and regulations	Yes	Yes	
Decisions supported by reasons	Yes	Yes	Reasons recorded on file
Decisions give precedents	No	No	Not provided
Panel members have previous experience in the appeal process and matters under consideration	Yes	Yes	

**5.13** From our examination of appeals, we are satisfied that the appeal process has appropriate mechanisms in place to provide adequate transparency over its operations and procedural fairness to all parties.

**5.14** The appeals process works quickly and there is no backlog of cases waiting to be heard. The average time from submission to completion of the appeals sampled was 3 weeks. Longer completion times were generally due to the need to obtain further information or where a site visit was requested.

**5.15** Decisions have been made in a timely manner partly due to the Board finalising cases at the initial sitting without adjournment. This includes implementing processes to ensure all documentation is available before a hearing is set and checking to confirm all key participants can attend. The Appeals Board also offers a fast-track service at extra cost. Our findings mirror those of a recent external review of the appeals process titled *Privatisation and Performance - based Building Regulations: Are they Cost-Effective?* CSIRO, 1999 which, as indicated below, showed participants appreciated these arrangements:

*“The pro-active nature of the Building Appeals Board was also noted, with the Board often contacting the building surveyor and/or builder of potential problems or issues, allowing them time to prepare a response before the hearing. This saved time wasting at the hearing and often removed the need to resubmit to the Building Appeals Board.”*

**5.16** As with determinations, certain enhancements could be made to promote consistency of decision-making. There is no database of previous appeal decisions for reference by Board members when hearing appeals. They rely on their own experience and the experience of Board staff when reaching decisions. This places a heavy reliance on the knowledge and experience of Board members and staff to achieve consistency of decision-making.

**5.17** Given the large number of Board members comprising 32 in total and the fact that relevant experts are not always available, such consistency may be difficult to achieve on all occasions. The Board has sought to minimise this risk by developing a core of experienced members covering all major building specialties, including legal experts. We support this approach, although there is no conclusive evidence of its success. As was the case with determinations, we suggest the establishment of a database of previous decisions would provide a mechanism to assist the Board in reaching consistent decisions and provide some assurance for participants and the public.

**5.18** Building Appeals Board staff have indicated that the wide range of appeals and decisions would make a database difficult to assemble and therefore question its value. Given these reservations, once the database for determinations has been evaluated, the Board should assess the feasibility of developing a similar database for appeals to record decisions by type, together with the reasons for each decision.

# Part 6

## **Building Control Commission's responsibilities as a municipal building surveyor**

## INTRODUCTION

**6.1** The Building Act, together with the Building Regulations, makes provision for the Building Control Commission in specific circumstances to perform certain duties normally provided by a municipal building surveyor. In practice, the Commission is required to undertake only 3 of these responsibilities which are described below:

- When requested to do so, take action where appropriate to compel relevant parties to comply with building orders issued by private building surveyors;
- Issue occupancy permits for temporary structures such as tents, certain prefabricated buildings, seating stands and stages over a specified size; and
- Act as municipal building surveyor for prescribed places of public entertainment. The legislation enables the Commission to be appointed as building surveyor for certain buildings prescribed by the Minister. In this regard, the building regulations required the Commission to act as the municipal building surveyor for 6 venues used by the Australian Football League for its matches. In recent times, some venues are no longer used for this purpose.

## ENFORCING BUILDING ORDERS ISSUED BY PRIVATE BUILDING SURVEYORS

### Referral process

**6.2** In cases where, for example, a builder has failed to comply with a building permit, a building surveyor issues a building notice to the builder. The building notice requests the builder to show cause and, if the explanation is acceptable, the building surveyor may cancel the notice. If the explanation is not accepted, a building order can be issued by the building surveyor. Building orders require the owners or occupiers of a building to take action to attend to the non-complying or dangerous matters. Where there is a risk to life or property, a municipal building surveyor may also issue an emergency order, demanding action within 48 hours.

**6.3** While municipal building surveyors have powers to enforce building and emergency orders including powers to prosecute, the Building Act does not give private building surveyors any power to enforce building orders. The Act requires such cases to be referred to the Commission which, as an independent body, performs the enforcement function.

**6.4** In addition, the restrictions on an owner dismissing a building surveyor once appointed, are intended to bolster the independence of private building surveyors, particularly in situations where they are in dispute with their client on building control issues.



**6.5** A total of 103 cases were referred to the Commission by private building surveyors for enforcement in 1998-99 (72 in 1997-98). The number of referrals represents around one in 600 building permits issued. Our audit examination also found that around half of the referrals in the past 2 years were from one surveyor, while many others did not make a single referral. While we acknowledge that various factors could have contributed to this low level of referrals, there is a risk that some private building surveyors may not have ensured that lapses in building standards, which may pose a risk to public health and safety, were brought to the notice of the Commission.

**6.6** The Commission should use the improvements in investigation and performance audit processes outlined in Part 4 of this Report to assess the extent of this potential risk as a basis for future action.

## ENFORCEMENT ACTION

**6.7** The Commission's Audit and Investigations Unit is responsible for dealing with orders referred by private building surveyors for enforcement. Its first action is to write to the owner of the property involved seeking an explanation and outlining the possible action that may follow.

**6.8** The threat of such action is often sufficient to resolve the issue. Approximately half of the orders referred to the Commission in the past 2 years were cancelled or complied with without the need to instigate an investigation or other action.

**6.9** Most referrals are resolved within 3 months. However, some have taken longer with 7 cases from 1998-99 remaining unresolved as at February 2000. These long-term cases resulted mainly from of a lack of response by the owner to Commission letters and phone calls requesting information and a lack of follow-up by the Commission. The Commission does not conduct site visits and seeks to avoid prosecutions in these cases. In fact, no prosecutions have occurred to date. Table 6A summarises the outcome, as at February 2000, of all orders referred to the Commission over the past 2 years.

**TABLE 6A  
OUTCOME OF ORDERS REFERRED TO THE COMMISSION,  
AT FEBRUARY 2000**

<i>Outcome of orders</i>	1997-98	1998-99
Cancelled/withdrawn	19	31
Complied with	30	43
Case dismissed after investigation	10	13
Unable to take action (including owner in receivership)	3	2
Investigation suspended after lapse of building permit	7	6
Dismissed prior to investigation	2	1
Unresolved	1	7
<b>Total</b>	<b>72</b>	<b>103</b>

**6.10** From a risk assessment perspective, the lower priority given to this aspect of the Commission's responsibilities in the past is reflected in the absence of accurate management information on building order referrals and regular management reporting on their outcomes. Reporting these outcomes in the Commission's annual report, including details of unresolved cases, should be adopted to maintain a focus on enforcement, both internally and externally.

## POTENTIAL CONFLICT OF INTEREST

**6.11** A report prepared for the Commission in September 1999 by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) indicated that the introduction of private building surveyor arrangements had achieved important benefits through improvements in timeliness and a better understanding of regulatory requirements by the design and construction team associated with large building projects. However, several of the building practitioners interviewed expressed concerns regarding the perceived or actual conflict of interest which could arise if the building surveyor's independence was to be compromised by the close and ongoing working relationship with a builder.

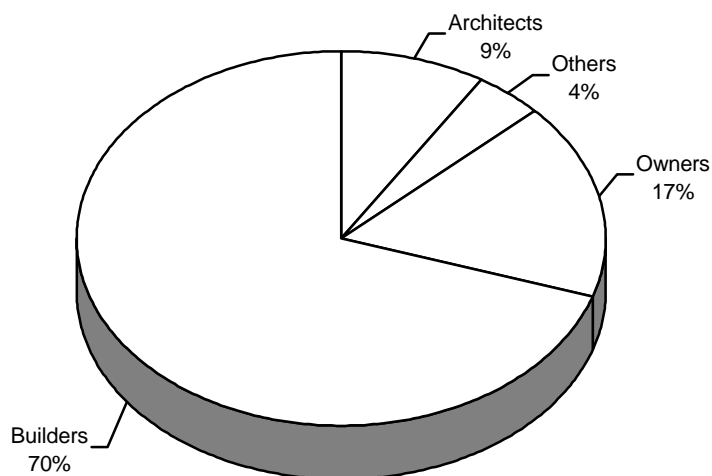
**6.12** In our opinion, the risk of such a conflict increases where the building surveyor is engaged by the builder, acting as the owner's agent, rather than the owner. In these circumstances, the building surveyor is dependent on the builder for future engagements, which may inhibit the building surveyor's independence to challenge any building work not consistent with standards or permits.

□ **RESPONSE** provided by Chairman, Building Advisory Council

*The independence of the building surveyor is exacerbated by the agency clause in standard building contracts which appoints the builder as the agent of the owner to appoint the building surveyor. While the building owner is not necessarily a consumer, it is vital for the integrity of the system that the building surveyor is manifestly independent from the builder.*

**6.13** The report identified that, according to the results of a survey, the majority of respondents viewed the builder as the building surveyor's client rather than the building owner. This perception works against the development of an independent relationship between the private building surveyor and the builder whose work is reviewed by the building surveyor. This may be a factor leading to the low number of cases referred to the Commission from private building surveyors for enforcement of Building Orders. A summary of responses to a question on these client relationships is set out in Chart 6B.

**CHART 6B**  
**WHO DO YOU PERCEIVE AS BUILDING SURVEYORS' CLIENTS?**



Source: Privatisation and Performance-based Building Regulations: Are they Cost-Effective? CSIRO for Building Control Commission, September 1999.

## NEED FOR STRENGTHENED OVERVIEW ROLE

**6.14** Given the potential risks within the current framework, the Building Control Commission needs to take a more active role in enforcement to fulfil its role of administering and reviewing the effectiveness of the Building Act.

**6.15** The Act requires building surveyors to provide the relevant local council with a copy of any building permits, occupancy permits, building notices, building orders and emergency orders that they have issued. This information should be subject to examination by the Commission. The low and uneven referral rates from private building surveyors do not provide the Commission with a comprehensive picture of enforcement action by councils.

**6.16** In my recent Performance Audit Report No. 62 - *Land use and development in Victoria: The State's planning system*, I identified that in a substantial number of cases building surveyors had not lodged building permits and plans with councils within the prescribed timeframe.

**6.17** The Commission needs to identify any shortfalls in this area with a view to strengthening the current enforcement framework and encouraging the maintenance by councils of more reliable and comprehensive information.

**6.18** In order to promote a more effective enforcement function, the Commission should also consider whether there is a need for improved consumer education to alert building owners of their obligation to appoint a building surveyor and the independent role that building surveyors are required to play in enforcing compliance of building works with the relevant Act and regulations.

**6.19** The owner's responsibilities could be reinforced through clarification of the Building Act which currently provides for the property owner *or the owner's agent* to appoint a building surveyor. In our opinion allowing the builder, whose work is subject to inspection, to be the owner's agent, as is the case in the majority of instances, generates a potential conflict and should be prohibited. The owner's responsibilities could be further reinforced by requiring them to sign a form attesting to the fact that, as owner, they fully understand the responsibilities of the building surveyor in protecting their interests.

## RESPONSIBILITIES IN RELATION TO TEMPORARY STRUCTURES

### Legislative provisions

**6.20** By their nature, temporary structures are potentially hazardous, partly due to their specialised structures, location and use. The legislation reflects this by requiring temporary structures used in places of public entertainment to be specifically approved before use.

**6.21** Under the Building Act, the Building Control Commission has exclusive responsibility for:

- assessing applications for an occupancy permit for prescribed classes of temporary structures to be erected anywhere in Victoria; and
- issuing an occupancy permit in appropriate cases.

**6.22** The Building Regulations prescribe the various types of temporary structures such as marquees, stages and seating stands for more than 20 people.

**6.23** Many temporary structures owned by companies are hired for use at varying venues. The 2-staged process to provide control over such arrangements involves:

- the Commission providing a long-term general occupancy permit for the structure; and
- a municipal building surveyor providing the short-term, site-specific approval wherever the structure is located.

### Commission procedures

**6.24** The procedures adopted by the Commission to fulfil its obligations can be summarised as follows:

- hire companies or owners of venues submit an application to the Commission for an occupancy permit to use a particular temporary structure at an unspecified location;
- a specialist team within the Commission reviews details such as the drawings and computations for the particular structure; and
- if satisfied, the Commission issues an occupancy permit which contains any conditions that may be appropriate, including duration of the permit and specific siting factors.

**6.25** The prescribed procedures were found to be followed in the cases we examined.

**6.26** As indicated in Table 6C, which summarises the permits approved over the past 4 years, the number of temporary structures for which the Commission issued occupancy permits was not extensive.

**TABLE 6C  
TEMPORARY STRUCTURES APPROVED**

<i>Year</i>	<i>Occupancy permits issued</i>
1995-96	43
1996-97	13
1997-98	17
1998-99	40

*Source:* Building Control Commission Annual Reports.

**6.27** Given the small numbers and the specialist nature of the structures, assigning responsibility for approving such structures to a small number of experienced staff, as is the case at the Commission, is a logical and efficient arrangement to maintain consistency and expertise.

**6.28** However, this responsibility creates the potential for conflicts with the Commission’s primary role as regulator of building control for temporary structures. In such circumstances, there is no organisation to investigate and prosecute any failure in the control process for temporary structures, as the Commission obviously could not investigate itself.

**6.29** On balance, we are of the view that the potential for conflict with the Commission’s primary role as regulator outweighs the benefits that arise from locating the approval of temporary structures with the Commission. These conflicts could be removed by assigning the Commission’s responsibilities for approving such structures to building surveyors with the necessary expertise.

**6.30** The Commission’s monitoring activities in relation to controls over temporary structures and their enforcement should be strengthened through the provision of regular reports on approvals by municipal building surveyors for specific siting of temporary structures, and the Commission reviewing compliance with conditions laid down in occupancy permits.

**RESPONSIBILITIES IN RELATION TO PLACES OF PUBLIC ENTERTAINMENT**

**Background**

**6.31** The Building Act requires the Building Control Commission to be appointed as the building surveyor for certain places of public entertainment prescribed by the Regulations. These places of public entertainment were 6 Australian Football League (AFL) venues that were in operation at the time the Regulations came into effect. These are listed below:

- Melbourne Cricket Ground;
- Optus Oval (formerly Princess Park);
- Shell Stadium (formerly Kardinia Park);

- Waverley Park;
- Western Oval; and
- Victoria Park.

**6.32** Prior to 1994, buildings and grounds were controlled under the Public Building Regulations 1985 made under the *Health Act* 1958, and other applicable regulations. The Public Building Regulations were rescinded in 1994 which meant that grounds and open spaces were not subject to regulation. Under the Building Regulations 1994, the AFL venues are the only places of public entertainment controlled through this legislation.

### History of the Commission's responsibilities for the 6 AFL grounds

**6.33** In 1989, 96 people died in a tragic fire in a grandstand at a soccer ground in Bradford, England. The entire tragedy was captured on film and the publicity caused great concern among sports ground administrators around the world. The subsequent public inquiry in England made a number of recommendations to improve public safety at such grounds.

**6.34** In Victoria, at the request of the then Minister for Planning, the AFL commissioned a review of safety at all its venues in the light of the English inquiry recommendations. The review was undertaken by a firm of private building surveyors and its findings were reported in 1991. The review identified a schedule of upgrade works necessary at each ground to fully comply with the safety recommendations arising from the inquiry.

**6.35** In 1993, when the Building Act was passed, some progress had been made in upgrading safety, but many of the more expensive works had not been completed. In 1994, the Building Control Commission and the AFL signed an agreement in which the AFL agreed to complete works deemed necessary by the Commission at these grounds, once a further survey and plan had been prepared. No deadlines were included in the agreement.

**6.36** In 1995, the AFL commissioned the same firm of building surveyors to complete a follow-up survey and identify the outstanding work necessary. The AFL developed a plan of management for building work at the grounds, which included closure of some, with safety improvements incorporated in new construction at the remainder.

**6.37** Approximately \$12.5 million was spent by the AFL between 1995 and 1999 on capital improvements, with safety as a major consideration, under the supervision of private building surveyors appointed by the Building Control Commission. The Commission engaged these building surveyors under contract to undertake its responsibilities for prescribed places of public entertainment. The safety survey, which was repeated in 1996 and 1997, showed progress in building works at all grounds.

### Appointment of private building surveyors for work at AFL venues

**6.38** Unlike its other building surveyor responsibility for temporary structures, the Commission has not undertaken the detailed technical work itself in relation to the AFL venues. Instead, the Commission has established a panel of building surveyors to perform this role under its direction.

**6.39** The panel of private building surveyors was appointed in 1996 by means of public advertisement and tender. The following selection criteria were used in assessing suitability:

- extensive experience in the processing of building and occupancy permits for major public buildings, preferably including prior involvement with large open spectator stands;
- be available on-call; and
- be able to provide a comprehensive certification package, including all structural work and building services.

**6.40** Cost or value for money of the service was not a selection criterion. The general fee scale recommended by the Commission was adopted.

**6.41** A selection panel of 3 Commission staff, including the Commissioner, reviewed the applications. We found no ratings against the individual criteria, but an overall assessment was documented for each applicant. The 6 selected were shown to be the only candidates that had the necessary experience and a proven track record. They included the firm that conducted the reviews of AFL venues between 1991 and 1997, and the 2 municipal building surveyor groups from the council areas in which the grounds are located – Melbourne and Geelong.

**6.42** Each of these private building surveyors entered into a contract with the Building Control Commission to be available “on-call” to provide services over an initial 3 year period. This period expired in August 1999. The original contract provided for any extension to be effected by written notice at least 90 days prior to the expiration of the initial term. At November 1999, the Commission had not yet taken any action to extend the term.

**6.43** These contracts are now overdue for renewal or re-tendering. If the current framework is to continue, the Commission should consider including an independent member on the selection panel to ensure impartiality and probity, given that the firms with experience now have a relationship with the Commission, often at many levels, since their staff are frequently members of the Building Appeals Board (one is currently the Chair) and the other statutory bodies. It should also consider incorporating in any re-tendering process more explicit selection criteria including cost or value for money.

### **Role of the Building Control Commission as building surveyor for AFL venues**

**6.44** The role of the Commission in site work is minimal. Commission staff review documentation presented, but rarely undertake site inspections to verify the work undertaken or the recommendations made.

**6.45** In practical terms, we concluded that the building surveying arrangements were little different from those operating for other buildings in the State. However, as the Building Control Commission retains ultimate responsibility, these arrangements still present a potential conflict with their role as a regulator of building control. The recent scoreboard fire at the Melbourne Cricket Ground on 27 August 1999 illustrates such conflicts. The report of the investigating fire authority referred to a range of matters including unapproved building works, inadequate fire control equipment, a lack of inspection of fire equipment, and poor emergency procedures and training. These were issues for which the Commission as building surveyor had ultimate responsibility, but also which it would have been expected to investigate in its role as industry regulator to satisfy itself there had been no breaches of the Building Act.

**6.46** Unless changes are made to the Building Act and Regulations to remove the Commission from having responsibilities as building surveyor for prescribed places of public entertainment, we are of the view that the current arrangements are incompatible with the Commission's primary role as a regulator of building control for the State.

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*The conflict of interest could be ameliorated if the Commission was responsible to a competent and appropriately resourced board. The minutes of the board would clearly document internal control measures and separation of duties.*

## Occupancy permits

**6.47** In addition to the standard building permit and occupancy permit required for new building work under Division 1 of the Act, there is also a requirement at places of public entertainment for a second occupancy permit under Division 2. The Division 1 occupancy permit is issued once a new building is complete, confirming that it is suitable for occupation generally. The Division 2 permit for places of public entertainment allows specific events to be held at these venues and governs occupancy matters such as requirements for temporary seating, occupancy numbers, crowd control and evacuation procedures.

**6.48** This dual requirement emanates from the time before the Building Act was introduced in 1993, when such permits were issued for entertainment in public buildings and open spaces under the Public Health Act. Incorporating these provisions into the *Building Act* 1993 alongside Division 1 occupancy permits has created a very complex and, in places, ambiguous legislative framework. These ambiguities include whether separate Division 2 occupancy permits are needed for each event or each type of event, for example AFL games, cricket matches and concerts, and whether the new requirements apply to places of public entertainment that existed before the Act was in force.

**6.49** In practice, although the Building Control Commission has issued occupancy permits under Division 1 for all new building works undertaken at the 6 prescribed AFL venues since 1994, it has only issued occupancy permits under Division 2 at one ground, Victoria Park, in 1998. The other grounds have had no such occupancy permits issued, although AFL games and special events have been held there.



□ **RESPONSE** provided by Building Control Commissioner

*The Report states that the Commission has only issued an occupancy permit under division 2 of the Building Act 1993 for one AFL ground. This is the case for all existing buildings (many of which have never had occupancy permits issued). The Commission has, however, issued the appropriate approvals for all new work that has occurred at AFL grounds to the best of its knowledge since 1994.*

**6.50** According to the Building Control Commission, although the building works have generally been completed, the other grounds have not yet fully complied with all the public safety works specified in the agreement between the Commission and the AFL in 1994 and in subsequent surveys.

**6.51** There is also some uncertainty at the Building Control Commission as to whether places of public entertainment operating before the Act was passed in 1993 are required to have an occupancy permit under Division 2. The granting of such a permit at Victoria Park suggests, however, that the Commission will provide a permit if requested to do so when the arrangements for events at these grounds meet all safety standards.

**6.52** Our examination revealed that, until 1997, the Building Control Commission had been active in pursuing with the AFL the need to expedite the safety works covered by the 1994 agreement. For example:

- After each annual survey, the last of which was completed in 1997, the Commission followed up with the AFL what action was underway to complete the outstanding matters identified;
- The 1996 survey recommended the action required to be taken on a number of issues and the time lines for finalisation. Most of these matters were scheduled for completion prior to the commencement of the 1997 football season. The Commission followed-up these matters with the AFL in July 1996; and
- In March 1997, the Commission expressed renewed concern with the AFL in relation to the non-completion of the outstanding works.

**6.53** Since March 1997, the Commission has not been as active in ensuring the AFL resolved the outstanding matters. We recognise that considerable improvements, including safety works, have been undertaken at the grounds since the 1994 agreement was reached. Nevertheless the Commission's actions, by not issuing an occupancy permit under Division 2 for the remaining grounds, could have indicated that it believed outstanding matters were still significant. In pursuing this matter with the Commission in March 2000, we were advised that:

- the AFL and the ground managers have primary responsibility for the safety works;
- while it was not aware of the exact position of outstanding works relating to public safety at the grounds due to changes in buildings, usage and safety management since the safety surveys were completed in 1996 and 1997, it was of the view that only a small number of safety matters remained outstanding which were of a relatively minor nature;
- it was seeking to provide Division 2 occupancy permits for those grounds no longer used for AFL fixtures, prior to transferring the associated building surveying function to municipalities;

- with regard to current grounds, the AFL held the view that such permits should be issued, even though it was unclear whether they were required by the Act; and
- the results of the recently commissioned safety surveys that were in progress at the respective grounds at the date of finalising this Report would not be available for at least a month.

**6.54** Given the reasons for prescribing these entertainment venues originally, we consider that public confidence in safety at the remaining AFL venues would be enhanced if outstanding safety management issues are resolved with the utmost urgency and each was granted an occupancy permit under Division 2. This would serve to confirm that the AFL obligations under the 1994 agreement had been fulfilled.

## COMMISSION'S ROLE IN RISK MANAGEMENT FOR PLACES OF PUBLIC ENTERTAINMENT

**6.55** The AFL is continuing its strategy of centralising Melbourne games in fewer venues, notably the Melbourne Cricket Ground and the new Colonial Stadium, and concentrating investment in ground improvements. Three of the 6 prescribed grounds hosted their last AFL games in 1999 or earlier (Western Oval). For consistency, the Building Control Commission is proposing that the Colonial Stadium be included on the list of prescribed venues. As a result of these changes, the current list of prescribed venues is out of date.

**6.56** In addition to matters relating to the management of risks associated with AFL venues, there are wider issues about risk management, namely, whether the Government should continue to legislatively prescribe those places of public entertainment where the Commission acts as building surveyor. Alternatively, the Government may choose to no longer prescribe any particular places of entertainment to be the direct responsibility of the Commission and to rely instead on the normal processes whereby each venue owner engages a preferred building surveyor. If this alternate approach was adopted, it could be supported by a new system of assessment and management of safety risks by the Commission for places of public entertainment in general in its role as industry regulator. We support the latter approach.

**6.57** As far as we can establish, the AFL venues were not prescribed as a result of a systematic review of risk in places of public entertainment in Victoria but rather in response to the Bradford, England disaster and the lack of coverage in the Building Regulations 1994 over areas associated with buildings such as grounds surrounding buildings. Since then, new places of public entertainment have been built such as the Albert Park complex hosting the Grand Prix, Colonial Stadium and the Crown Casino. Existing venues have also continued to attract large crowds such as Flemington Racecourse where the Melbourne Cup is run, Flinders Park Tennis Centre which hosts the Australian Open tennis championship and Olympic Park which caters for rugby league matches. For these venues, occupancy permits are issued by building surveyors rather than by the Building Control Commission. There is a specific exclusion clause in the *Australian Grands Prix Act 1994* that exempts works at the Grand Prix from the provisions of the Building Act and other legislation.

**6.58** A wider review of risk to public safety at these venues by the Commission would lead to more informed decisions about the appropriate risk management framework at each venue. If the Grand Prix is to fall within the ambit of the Commission's responsibilities, we recognise that changes would be required to existing legislation.

**6.59** During the audit, a number of influencing factors in identifying and assessing areas of greatest risk have been suggested to us, namely, venue, size, degree of enclosure, age, construction material, nature of the events held and risk management measures in place. We recognise, however, that there is no simple formula to measure public safety risk. For example, the risk to public safety in an enclosed basement dance club housing 200 people may be higher than for 100 000 patrons attending Flemington Racecourse on Melbourne Cup day.

**6.60** The interaction of these factors, which produces a complex and changing pattern of risk, suggests that responsibility for ongoing assessing and managing risks should be assigned to experts in the field, rather than by way of a static prescription in legislation.

**6.61** While it is acknowledged that places of public entertainment, other than prescribed AFL grounds, are the responsibility of municipal councils, in our opinion, the Commission should have a heightened level of interest in these other places of public entertainment. In doing so priority should be given to the Commission co-ordinating a public safety risk assessment with a view to capturing industry expertise on risks for places of public entertainment and tailoring building controls and other risk management arrangements accordingly. This assessment could be used as a basis for reviewing the provisions of the Building Act and the Commission's role in this area.

**6.62** The Commission's capacity to act as an effective industry regulator is compromised by deficiencies in available information and a lack of specific legislative responsibility to monitor public safety in places of public entertainment such as night clubs, dancehalls, cinemas and other stadia, other than prescribed AFL venues. Responsibility for issuing Division 2 occupancy permits for these types of venues rests with municipal councils and, in particular, Melbourne and Stonnington Councils where most of these venues are situated. For example, the Commission has no information on the number of these venues and the state of their occupancy permits. In addition, the Commission does not know whether each council has maintained such information for its own area of responsibility.

**6.63** To support this wider monitoring role, the Commission should expand its collection of information on building control activity to match the information on building activity that it already collects as part of levy collection. This will require legislative amendment. Information on building notices and building orders and on the work of municipal building surveyors in relation to occupancy permits and emergency orders would provide valuable information to assist the Commission to fulfil its responsibilities for monitoring the efficiency and administration of the Building Act.

**6.64** We also consider that some strengthening of the Commission's monitoring arrangements be considered for places of public entertainment including:

- clarification of the ambiguities in the current Act relating to the coverage of occupancy permits under Division 2;
- requiring a building surveyor to review and re-issue the occupancy permit annually at each place of public entertainment; and
- reviewing the coverage by municipalities in issuing occupancy permits for places of public entertainment.

# Part 7

## Organisational arrangements and priority setting

## ORGANISATIONAL ARRANGEMENTS

### Role and functions of the Building Control Commission and related statutory bodies

**7.1** Effective building control requires a number of regulatory functions to work together to protect owners and users of buildings. The *Building Act 1993* sought to bring these functions together under a single piece of legislation. It contains controls on building practitioners, on the work they do and on the products they use. It also provides mechanisms to have building complaints investigated and appeals heard if parties are not satisfied with the decisions made.

**7.2** A summary of respective legislative roles of the bodies involved in the building control framework is outlined below:

- *Building Control Commission*

Provides and oversees a building regulatory system which involves undertaking the following functions:

- reviewing the effectiveness of the Act and Regulations, and proposing changes;
- conducting research on building activities, disseminating information and promoting better building standards both nationally and internationally;
- carrying out various administrative activities including monitoring the system for collecting the building permit levy and advising the Minister as to the effectiveness of the system;
- carrying out performance audits involving an examination of the work of registered practitioners;
- completing investigations into complaints and, if warranted, initiating prosecutions for breaches of the Act; and
- performing the role of municipal building surveyor in relation to the construction of temporary structures, prescribed places of public entertainment and the enforcement of building orders.

The Commission also controls funding allocations and provides staff, accommodation, financial services, administration and information technology support for the other related statutory authorities.

- *Building Practitioners Board*

Administers the registration of building practitioners and monitors their conduct and ability to practise through undertaking inquiries into practitioner behaviour.

- *Building Appeals Board*

Makes determinations which involve deciding whether the application of the Building Regulations for specific projects does apply or applies with modifications, and to hear disputes and appeals arising from the operation of the Building Act and Regulations.

- *Building Advisory Council*

Advises the Minister on the administration of the Building Act and Building Regulations, and also on issues relating to the building permit levy.

- *Building Regulations Advisory Committee*

Advises the Minister on draft regulations and provides accreditation of building products, construction methods or designs and components or systems associated with building works.

**7.3** With the exception of the Building Control Commission, each of the other statutory bodies has a Chairperson and members. The Commission comprises a Commissioner supported by a senior management team. The Commissioner also undertakes the role of Chairperson of the Building Regulations Advisory Committee and is a member of the Building Advisory Council. The Commissioner and the various Chairpersons report directly to the Minister for Planning.

### Distinguishing features of the Victorian building control model

**7.4** A number of distinguishing features in the Victorian building control model, compared with structures in other States, are described below:

- Unlike the situation in other States, a large number of separate bodies have been created by legislation, each with responsibility for undertaking elements of building control;
- These bodies operate through a self-funding mechanism derived from a levy on new building activity paid by owners, and by registration fees paid by practitioners. Revenue received from these sources is paid into the Building Administration Fund administered by the Building Control Commission. In other States, funding is predominantly through the public purse or through professional associations; and
- Apart from the Building Control Commission, regulation is conducted to a large extent through the involvement, as prescribed in legislation, of representatives from specific building industry groups. There are no consumer representatives on any of the statutory bodies. This industry focus is in contrast with some other States, such as Queensland, which has a strong consumer orientation.

❑ **RESPONSE** provided by Building Control Commissioner

*Criticism is directed at the Commission for not consulting with the community or having community representation on Boards and Committees.*

*The Commission submits that a considerable amount of community representation does form part of the role of the members of Boards and Committees who are representatives from State and local government.*

□ **RESPONSE** provided by Chairman, Building Advisory Council

*The great advantage of the Victorian funding method over parliamentary appropriation is the ability to allocate resources through the economic cycle. Parliamentary appropriation is, by legal necessity, an annual affair, with future appropriations always in doubt until appropriation bills are given royal assent. By contrast, the Victorian system allows for strategic resource planning in an industry renowned for volatility in activity. Unfortunately, the proper structure to utilise this strategic planning potential has not yet been established.*

**7.5** Responsibility for dealing with complaints on building matters is divided between the above building control bodies and the Victorian Civil and Administrative Tribunal (which is partially funded by practitioner registration fees from the Building Administration Fund). Complaints of breaches of building legislation are dealt with by the various building control statutory bodies whereas complaints regarding building contracts are referred to the Tribunal.

### Positive features of the Victorian framework for building control

**7.6** The current legislative framework that establishes the organisational arrangements for building control:

- assigns specific functions to individual statutory bodies that are accountable to the Minister;
- maximises the involvement of experienced practitioners from industry bodies and professional associations;
- establishes an efficient mechanism for the prompt resolution of appeals through the creation of a quasi-judicial body, namely, the Building Appeals Board;
- minimises the duplication of administration across the various statutory bodies by centralising these resources in the Commission; and
- provides owners with the choice to engage a building surveyor from the private sector or a municipal council.

### What weaknesses exist in the current framework?

**7.7** Comments follow relating to various conflicts or dilemmas arising from the framework that work against an efficient and sound regulatory regime. These issues are separated between inter-agency issues and those matters that are agency-specific.

#### *Inter-agency issues*

***Do the current organisational arrangements promote a sound approach to corporate governance, particularly in establishing sound accountability mechanisms?***

**7.8** Corporate governance is concerned with procedures associated with high-level decision-making, assessing performance and maintaining control of an organisation, providing structures to give overall direction to the organisation and satisfying reasonable accountability expectations of external parties.



**7.9** We identified several matters that led us to question whether the existing building control organisational framework contributes to sound corporate governance. These matters included:

- the Commission’s total discretion in deciding on future initiatives and funding priorities submitted to the Minister for approval, without formal reference to other key stakeholders such as the Building Practitioners Board; and
- the limited reporting on the effective use of these funds by the Commission and no requirement to separately disclose the financial operations of the individual statutory bodies.

□ **RESPONSE** provided by Building Control Commissioner

*The Commission was surprised to be informed that it was considered that the Commission did not consult with key stakeholders on key issues. The Commission does where appropriate, keeping in mind its primary responsibility to serve the Victorian community, provide the Boards, Committee and Council updates and proposals on Commission initiatives as well as other government departments and agencies.*

*The comment “compromise the adoption of sound corporate governance” in Part 1.2 of this Report suggests that there is a bias in the resource allocation. The Commission submits that no such bias has been substantiated.*

*The Commission would like it to be recorded that it does consult with the other statutory Boards and Committees in relation to budgetary needs and that the Building Practitioners Board was the only Board or Committee which requested to have its own budget separate from the Commission.*

*The Commission also considered the possibility of having a separate budget for the Building Practitioners Board, however, this was rejected by the previous Government.*

*The Building Control Commission is required by the Act to administer the Boards and Committees associated with the Building Act 1993.*

□ **RESPONSE** provided by Chairman, Building Advisory Council

*While annual reporting is appropriate, it is inevitably well after the fact and some form of continuous disclosure and reporting should be considered.*

**7.10** The legislation allows for the Commission to be sued in its own name. The risks associated with any litigation action strengthens the case for improved corporate governance arrangements to provide additional safeguards to the Government and community.

***Does the current configuration of statutory bodies and allocation of responsibilities foster an integrated approach to building control?***

**7.11** The relatively large number of statutory bodies involved in a comparatively small regulatory function makes achieving an integrated approach to building control more difficult. We found that:

- There is no mechanism for the Commission to consider the various views of the statutory bodies as part of an integrated approach to strategic planning for building control; and

- The Commission’s control of the finances and staffing of the other statutory bodies means that it has a dominant position in the organisational arrangements for building control. While there may be efficiency reasons for these organisational arrangements, those statutory bodies resourced by the Commission do not have a role in determining the level of funding allocated to the respective statutory functions even though the bodies have specific roles in legislation.

**7.12** In view of the importance of building control to the Victorian economy and the associated risks, we are of the view that corporate governance arrangements should be upgraded. Consideration could be given to the establishment of a co-ordinating forum which brings together the Chairpersons of the respective bodies to set the strategic direction and long-term policies, agree on final budget allocations to the relevant statutory bodies and generally ensure that accountability requirements are met. This forum should be chaired by an independent Chairperson. Communication protocols would need to be established as part of this process.

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*This recommendation is unsatisfactory. There is a clear imbalance, with the Building Control Commissioner being a sole commissioner (not a chairman of a multi member body), a full-time officer, as opposed to part-time, and having complete command of all staff and resources. There must be a body with a charter of resolving issues of strategy and resource allocation between the statutory bodies in accordance with that strategy.*

**7.13** To address earlier comments regarding the lack of a community focus in the Victorian building control model, we believe that an advisory body including community representation should be convened to provide input to the deliberations of the co-ordinating forum.

*Impacts on individual statutory authorities*

**Building Regulations Advisory Committee**

***Is the current role of the Committee as a statutory body appropriate given the nature of its operations?***

**7.14** The membership of the Building Regulations Advisory Committee, made up of building industry representatives, is charged with providing technical advice to the Minister on draft regulations as one of its main functions.

**7.15** We consider the Commission also benefits from this level of expertise in carrying out its responsibilities for overseeing changes to regulations and enforcing these regulations through its role as the building industry regulator. While the Building Regulations Advisory Committee nominally advises the Minister, we are also of the opinion that given the detailed technical advice provided, the Committee would be more appropriately reconstituted as an advisory body to the Commission.

❑ **RESPONSE** provided by Chairman, Building Advisory Council

*This recommendation places the Commission in the position of both making and policing the regulations. This is generally held to be undesirable public practice in this day and age. There is a clear distinction between, say, the Justice Department and Police, Treasury and the Taxation Commissioner, and so on.*

### ***Building Control Commission***

#### ***Do the legislative responsibilities of the Commission result in any actual or potential conflicts of interest?***

**7.16** In our opinion, a potential conflict of interest exists where the Commission performs the operational role of a building surveyor in relation to temporary structures and prescribed places of public entertainment, while it also has an enforcement role as the overall industry regulator in monitoring breaches of the Act and taking appropriate enforcement action. In these circumstances, it is not possible for the Commission to undertake any independent enforcement activity, i.e. the Commission cannot investigate or prosecute itself for any breaches of legislation.

**7.17** To address this concern, we suggest that the role the Building Control Commission plays as a municipal building surveyor in relation to temporary structures and prescribed places of public entertainment be eliminated in order to remove any conflict with that of its enforcement role.

□ **RESPONSE** provided by Building Control Commissioner

*The establishment of the Commission as municipal building surveyor was a decision of the then Government which introduced the Building Bill.*

### ***Building Advisory Council***

#### ***Do the organisational arrangements enable the Council to provide an effective role as an industry-based advisor to the Minister?***

##### *Future role of the Building Advisory Council*

**7.18** Given the extent of overlap and ambiguity between the responsibilities of the Council and Commission, and the minimal advice provided to the Minister in recent times, we are not convinced that there is a demonstrated need for the Council to exist in its current form. As such, we support the view expressed by the Council to the former Minister that its role be reconsidered.

□ **RESPONSE** provided by Chairman, Building Advisory Council

*The key weaknesses of the Building Advisory Council are:*

- *the members are nominated by the various industry interest groups and therefore the body is not in a position to make independent judgements or give impartial expert advice;*
- *until recently, the Chairman was the Building Control Commissioner;*
- *consumers and those who pay the levy are not represented;*
- *the representatives do not have the necessary skills – for example, the representatives of the major builders' associations are not themselves builders, the representatives of the professional bodies may not be members of the relevant professions and there are limited legal and financial skills;*
- *the body cannot give advice to the Commission, other than through the Minister;*
- *the resources available are at the discretion of the Commission, as with the other statutory bodies; and*
- *all the members are part-time, whereas the Commissioner is full-time.*

### Parallel advisory roles of the Council and the Commission

**7.19** The Council, as an advisory body, has certain parallel responsibilities with the Commission. Table 7A, which sets out the respective responsibilities, illustrates the level of duplication of responsibilities between the 2 bodies.

**TABLE 7A  
COMPARISON OF ADVISORY RESPONSIBILITIES BETWEEN  
THE BUILDING ADVISORY COUNCIL AND THE BUILDING CONTROL COMMISSION**

<i>Council advisory responsibilities</i>	<i>Commission advisory responsibilities</i>
To advise the Minister on the administration of the Act and the Regulations.	To keep under regular review the administration and effectiveness of the Act and the Regulations.
To advise the Minister of the impact on the Building Regulations established by the Act of regulations made under any <u>other</u> Act.	To advise the Minister on the impact on the building industry of other Acts and Regulations.
To advise the Minister on issues relating to the building permit levy.	To monitor the system of collection of the building permit levy and advise the Minister about its effectiveness.
To advise the Minister on any matter referred to it by the Minister.	To advise the Minister on any matter referred to it by the Minister.
Advice to the Minister to be provided by Building Advisory Council members who comprise representatives of the building industry.	To seek the views of the building industry and other interested groups on the effectiveness of the Act and its Regulations.

**7.20** Members of the Council have themselves expressed dissatisfaction with its limited and ambiguous role. Proposals for change have been a major topic of discussion at their meetings for most of the past year. In July 1999, the Council conveyed to the previous Minister a proposal to review its own role.

### Extent of advice provided

**7.21** The Building Advisory Council has, in recent times, provided very little advice to the former Minister on building control issues. Since August 1998, advice provided to the Minister related to the redefinition of the Building Control Commission's "profits" as "surpluses", the timing of reviews of the Building Act and Architects Act, and a proposal for the Council to review its own role. The Council's overlapping responsibilities with those of the Commission could have been a contributing factor.

**RESPONSE** provided by Chairman, Building Advisory Council

*While the Auditor-General may adhere to the opinion that it is proper to designate the excess of a compulsorily collected levy over expenditure as "Operating Profit", the Building Advisory Council believes that the term "Surplus" more correctly describes the situation. More importantly, the term alerts all those concerned that they are dealing with taxes collected with the backing of legislated sanctions and not income, reflecting the consumers' views of the value of the services they provide. It is worth noting that the Building Control Commission thought the issue significant enough to argue against the change.*

**7.22** Conversely, the minutes of Council meetings indicate that the former Minister had sought little advice from the Council. One request related to the Council extending its mandate to include consumer protection issues in building control.

□ **RESPONSE** provided by Building Control Commissioner

*As the Commission recalls there was considerable discussion when the Auditor-General's Report was being drafted in relation to the role of the Building Advisory Council (BAC). The Commission submits that the BAC has little or no ongoing role to play in relation to the administration of the Building Act 1993, the Commission or advising the Minister for Planning.*

*The Commission also submits that the original role envisaged for the BAC has now become redundant with the implementation of Regulatory Impact Statements as they have essentially fulfilled the consultative and reporting role that was originally intended for the BAC.*

*The Report recommends a review of the role of the BAC. Paragraph 7.18 goes further to note that "... we support the view expressed by the Council to the former Minister that its role be reconsidered".*

*These comments could be interpreted as support for the BAC submission made to the Minister (and to the Auditor-General's Office) that the role of the BAC be amended to one where it effectively operates as a Board of Directors with Executive power over the Commission.*

*While the Commission gives due consideration to the ideas and recommendations of the BAC, the Commission believes that allowing the building industry to run a government agency, which is responsible for the spending of money derived from the building permit levy and other provisions of the Building Act 1993 would be irresponsible and would create serious community concern about the Commission's independence.*

*The proposal as it stands would essentially allow the industry to be self-governing and concern must be raised about the pecuniary interest created by the industry controlling a government agency and having access to the taxation revenue base of that agency. Consideration was given to this model when the original Building Bill was being drafted and the Committee at the time raised grave concerns about allowing industry to run the Commission and effectively control expenditure of the building permit levy.*

*The BAC proposal should be explicitly rejected because of its capacity to undermine confidence in the independence of the statutory bodies operating under the Building Act 1993 and the building control system in particular. The Commission submits that a specific recommendation for an amalgamation of BAC with the Building Regulations Advisory Committee should be adopted for administrative and financial efficiency reasons and given their similar roles.*

## PRIORITY SETTING

### Implementing the Building Act 1993

**7.23** The Building Act introduced fundamental changes to arrangements for building control. These included:

- new organisations such as the Building Control Commission and the Building Practitioners Board;
- new funding arrangements involving the introduction of the building levy; and

- new roles covering practitioner registration, complaints handling, monitoring responsibilities of the Commission and the Board, and the introduction of private building surveyors to compete with municipal building surveyors.

**7.24** The implementation of these new arrangements required the prompt development of core systems and procedures to address:

- the collection of the building levy;
- the development of financial management systems;
- the finalisation of insurance arrangements;
- staffing and accommodation needs; and
- the preparation of manuals for all procedures.

**7.25** The Building Practitioners Board's initial priority was on establishing a registration process for all practitioners, with registration standards and an assessment process for new applicants. The Building Appeals Board largely continued with procedures put in place by its predecessor, namely, the Building Referees Board. We are satisfied that initial implementation priorities were appropriate, given the resources and time scales available.

**7.26** During this initial phase, the monitoring responsibilities of the Building Control Commission and the Building Practitioners Board were not given as high a priority which was evident by the Commission's limited capacity to handle complaints and to enforce building orders, and the lack of inquiries undertaken by the Board. The Commission recommended legislative amendments to address shortcomings identified in the Act's initial implementation, including the introduction of performance-based standards, performance audits and the inclusion of public buildings under the auspices of the Act.

**7.27** There have been major developments on a number of fronts since then with:

- the introduction of a new assessment system for the registration of builders;
- a major expansion in the Commission's complaints investigation and performance audit capacity;
- the upgrading of financial and building levy systems;
- the establishment of an overseas consultancy services function;
- the conduct of major research projects; and
- the creation of a technical information service for registered practitioners and public awareness campaigns.

**7.28** A steady increase in revenue from the building levy has enabled the Commission and the other statutory bodies to implement these developments.

## Current priorities

**7.29** In examining current priorities of the Commission and the other statutory bodies with reference to coverage, performance measures and expenditure on major legislative responsibilities, we are satisfied that:

- all functions performed by these bodies were within their legislative mandates; and

- the attention given to most of the major legislative responsibilities was consistent with their contribution to building control.

**7.30** In particular, we found the Commission's and the other statutory bodies' concentration of expenditure on major legislative responsibilities such as investigations, registration, appeals, policy and research was consistent with their obligations to ensure controls are placed over practitioners and the work they perform as well as reviewing the effectiveness of the Act. However, in our opinion, the level of attention devoted to certain functions was not consistent with the relative importance of those functions to building control generally.

**7.31** We identified the following areas where some reconsideration of priorities is warranted:

- the need to give greater emphasis to the following:
  - the initial registration and renewal process;
  - monitoring the conduct of registered practitioners;
  - management information covering the enforcement of building controls by councils and the Commission;
  - reviewing the administration and effectiveness of the Act;
- the need to assign a lower priority towards:
  - the provision of overseas consultancies administered through Building Australia International and;
  - the Building Activity Statistical Information System known as BASIS.

#### *Initial registration of new applicants and renewal process*

**7.32** In Part 3 of this Report, we disclosed that the existing building practitioners were progressively "grandfathered-in". This process commenced in 1994-95 without specific checks by the Building Practitioners Board on their suitability to practise. Since then, there had been no ongoing assessment of their competence prior to renewing their registration, and no obligations have been placed on these practitioners to update their skills to retain registration. Under the current legislative framework, there is no provision to undertake such an assessment as part of the renewal process. A record of practitioners' work performance, held on the registration system to monitor continued suitability to practise, had not been maintained by the Board.

**7.33** We also concluded that, in broad terms, an appropriate registration framework had been developed by the Board for determining the suitability of new applicants. It was not until 1999 that a competency-based system was established for new applicants in the largest practitioner group, domestic builders. As a result, the majority of registered practitioners have not been assessed in terms of their competency to practise.

**7.34** The restricted coverage of the assessment process and the limited quality assurance processes in place, signified that insufficient priority has been given to realising the potential of these processes to assist in building control. We recommended greater attention needed to be given to implementing a review mechanism aimed at assessing the suitability of registered building practitioners to practise.

### *Monitoring the conduct of practitioners*

**7.35** In Part 4 of this Report, comment was made regarding long delays by the Commission in investigating complaints in relation to the conduct of practitioners. Despite past increases in investigative staff, investigations take on average more than a year to complete. These concerns regarding the ability of the Commission to examine the conduct of practitioners in a timely manner are exacerbated by shortcomings in the performance audit process such as the lack of targeting of audits to high risk areas and the absence of on-site visits to supplement the file review.

**7.36** One of the difficulties the Commission faces in monitoring the conduct of practitioners to identify poor performance is the absence of a single source of information concerning the work undertaken by individual practitioners and any related disputes. Current information is fragmented between local council records, the Commission's Audit and Investigations Unit, the Commission's Levy Collection Unit and Victorian Civil and Administrative Tribunal. It is ironic that the Building Practitioners Board, which has the legislative responsibility for monitoring the conduct of practitioners, is not resourced to discharge this responsibility and, therefore, is not in a position to maintain any information to undertake this role.

**7.37** The Commission does not provide information to the public on a practitioner's work history or competence, apart from whether the practitioner is registered. By contrast, the equivalent body in Queensland, the Building Services Authority, maintains a work history of all licensed practitioners and the Queensland legislation includes all building trades under a single licensing regime. This work history includes the number and size of jobs undertaken by each practitioner, any licence restrictions and a record of any "Directions to Fix" issued by the Authority to rectify defective or faulty work. This information is accessible to the public, for a small fee, to assist them select an appropriate practitioner.

**7.38** Monitoring the conduct of building practitioners is an important control mechanism in the absence of a fully effective registration system, which has limitations in terms of its capacity to fully assess the suitability of all practitioners. It is in this context that we have formed the view that the current monitoring arrangements, although improving, are not afforded sufficient priority to ensure effective controls on building practitioners. Experience in Queensland suggests the development of more integrated and accessible databases on practitioner work may offer a way forward for Victoria. We recommend the Commission and the Board in Victoria consider this as part of a review of priorities for monitoring practitioners' work.

### *Management information covering the enforcement of building controls*

**7.39** In Part 6 of this Report, we noted the lack of information at the Commission in relation to the issuing of occupancy permits by councils for places of public entertainment, other than the 6 prescribed AFL venues which currently remain the responsibility of the Commission. In addition, there is also a lack of information maintained by the Commission on other key areas of the councils' building enforcement responsibilities such as the extent to which councils are adequately monitoring whether:

- owners of buildings are keeping adequate records of maintenance checks and reports of essential services as required by legislation;



- regular inspections are carried out by municipal building surveyors or fire brigade chief officers;
- approvals have been granted for the specific siting of temporary structures and the conditions laid down in occupancy permits have been complied with; and
- adequate records are maintained of all building permits and building and emergency orders issued as part of normal building approval processes.

**7.40** Although the Commission’s Audit and Investigations Team accessed this information on certain occasions, it has not sought to access this information on a regular basis to assist in monitoring the quality of applications submitted by building surveyors and the level of enforcement activity undertaken. Legislative change may be required for this to occur. In Part 6 of this Report, we recommended that the Commission expand the extent of information held to include relevant details of building control activity .

### *Measuring overall effectiveness*

**7.41** The *Building Act* 1993 introduced major changes to the administration of building control with:

- the introduction of private building surveyors and a new process for issuing building and occupancy permits;
- a changed role for councils in these matters;
- the need for practitioners to be registered;
- the requirement for compulsory insurance; and
- the creation of various new statutory bodies.

**7.42** According to the Building Act, one of the functions of the Building Control Commission is “... *to keep under regular review the administration and effectiveness of the Act and its regulations.*”

**7.43** A number of related legislated functions are set out below:

- “*to seek views of the building industry and other interested groups on the effectiveness of the Act;*
- “*to advise the Minister on amendments to improve the administration and effectiveness of the Act; and*
- “*to conduct or promote research into matters relating to the regulation of the building industry*”.

**7.44** The Commission has not established a formal process or timetable for reviewing the effectiveness of the Act or its key components. It keeps the operation of the legislation under review through its attendance at the meetings of the Building Regulations Advisory Committee, Building Appeals Board, Building Practitioners Board and Building Advisory Council, and through examining issues emerging from complaints investigations and performance audits. In recent times, it has also undertaken specific evaluation initiatives, notably the 1999 study *Privatisation and Performance- based Building Regulations: Are they Cost Effective?* which it commissioned from the Commonwealth Scientific and Industrial Research Organisation (CSIRO). In 1999, there have also been reviews of the work of building consultants and customer satisfaction surveys relating to the Appeals Board.

**7.45** Although the recent review by the CSIRO is encouraging, the Commission has not adequately fulfilled its mandate to review the administration and effectiveness of the Act in terms of measuring outcomes. For example, there has been little review of the impact of registration on practitioner behaviour and on the level of customer awareness of this function. There has also been little examination of the adequacy of the enforcement role of municipal and private building surveyors under the new arrangements. This is especially important given the concerns expressed in Part 6 of this Report relating to the risk of a master-servant relationship between builder and building surveyor compromising the latter's independence. A number of respondents in the CSIRO study alluded to this risk, but the study's focus was on the benefits in timeliness and service provided by the closer working relationship; not in relation to any lack of independence and possible ramifications associated with the engagement of building surveyors.

**7.46** In addition, we noted in Part 6 of this Report, the Commission lacks information to oversee key aspects of building control administered by councils such as the level of monitoring maintenance of essential services.

**7.47** We conclude that the Commission has not given sufficient priority to monitoring and evaluating the effectiveness of the Act. We suggest that for the purpose of measuring effectiveness, an evaluative framework needs to be established in order for the Commission, as the building industry regulator, to provide an assurance to the Minister and the community on the degree to which the building control system has promoted the design, construction and maintenance of safe, habitable and energy efficient buildings.

#### *Priority given to secondary functions*

**7.48** The Building Act is primarily concerned with regulating the building process in Victoria and the conduct of relevant practitioners. While it is acknowledged that all responsibilities contained within legislation are important, it is our view that those tasks directly related to building regulation and practitioner conduct within Victoria are central to the prime role of the Commission in the context of building control. On this basis, we consider that secondary but related responsibilities of the Commission in promoting building standards internationally and supplying information and advice to the industry to be examples of functions of secondary importance.

**7.49** In these secondary areas, more than perhaps in its core regulatory functions, the Commission has acted in a pro-active manner. In particular, the development of an overseas consultancy capacity established through Building Australia International and the Building Activity Statistical Information System has sought to transfer the skills and information available within the Commission to a wider market.

### *Building Australia International*

**7.50** Building Australia International is a joint venture between the Commission and the Overseas Projects Corporation of Victoria. Building Australia International is a registered business name, not a company. The use of the name is simply a marketing strategy to enhance the prospect of securing overseas consultancy projects.

**7.51** Building Australia International was established with Ministerial approval in September 1998 to market Victoria's building control and regulatory systems to overseas countries. Under these arrangements, the Corporation visits the particular country where there is a prospect for building control services to be provided to determine the feasibility of proceeding with a potential project. If the consultancy is to proceed the Commission, through Building Australia International, provides the technical services.

**7.52** The joint venture was justified by the prospect of providing benefits to the Commission and to the Victorian building industry from overseas projects. The Corporation's business plan for the venture in July 1998 suggested its initial set-up costs of \$270 000 could be recovered in 2 years and generate profits thereafter.

**7.53** In actual fact, this will not be achieved. As at November 1999, costs to the Commission have been higher than originally anticipated and Building Australia International has yet to secure a significant paying contract.

**7.54** We estimate the Commission's expenditure for the venture, including the costs of seconding a staff member to the Corporation and the involvement of an External Projects Manager on this venture to be in the vicinity of \$450 000. The External Projects Manager does not have a full breakdown of overheads and travel costs attributable to Building Australia International to enable a more accurate figure to be calculated.

**7.55** Building Australia International has been active in developing contacts and submitting proposals, including undertaking preliminary studies at no cost. Five substantial proposals were still awaiting decisions at the end of 1999. They offer the prospect of over \$500 000 turnover in the short-term and double that in the long-term. However, even if they are successful, the net return to the Commission is less than 10 per cent of turnover and the risk of further delay on funding and selection of such projects is high.

**7.56** In our opinion, the original business plan and the ongoing status reporting have not provided a full picture of the potential costs or the returns to the Commission, either of the Building Australia International venture as a whole or of individual projects.

**7.57** The Building Control Commission remains optimistic as evidenced by the following quote from its 1998-99 Annual Report:

*“The groundwork has been laid for Victoria and its building industry to benefit from activities with Building Australia International, not only directly by means of net profits that will accrue from projects, but due to the enhanced transportability of Victorian goods and services to those projects where projects have been undertaken”.*

**7.58** Despite the Commission’s optimism, we contend that, even if some of the current consultancy proposals are successful, the prospect of the Commission generating significant benefit to Victoria from the Building Australia International initiative or recovering its costs is unlikely to be achieved in the foreseeable future. We were advised by the Building Control Commissioner that it was always intended that the joint venture would not continue after the end of the current agreement if it was not financially viable.

**7.59** We, therefore, consider that the Commission should reassess whether the extension of the existing agreement with the Corporation for the provision of technical services for overseas projects is in the best interests of the Victorian building industry.

□ **RESPONSE** provided by Building Control Commissioner

*The role of the Commission’s overseas consulting arm Building Australia International (BAI) was questioned. A cost of \$450 000 was attributed to this venture. A more accurate figure is in the region of \$270 000 because not all of the allocated budget was spent and neither of the 2 Commission staff assigned to BAI operated in a full-time capacity. The Commission submits that the promotion of the Victorian style of reforms is of great benefit to Victoria and will provide opportunities for the State’s building industry, both nationally and internationally, by promoting national and international consistency. This allows for an easier exportation of Victorian building materials, expertise and practices into other countries and jurisdictions by way of uniform standards and practices.*

### Building Activity Statistical Information System

**7.60** The Building Activity Statistical Information System stores and distributes primarily building activity information rather than building control information. While it provides monthly summary information at no cost, including regional breakdowns, fees are charged for more specific requests. Given the restricted market for this information, the limited sales to date and the fact that similar information is available over a longer timeframe from the Australian Bureau of Statistics, the priority given to this initiative over the development of information needs relating to the Commission’s core building control activities is questionable.

### Planning and budgeting processes

**7.61** The Building Act in effect gives the Building Control Commission responsibility for overall priority setting by including in its role a requirement to “keep under regular review the administration and effectiveness of the Act” and “to administer the Building Administration Fund”. The Commission has a planning and budgeting process to allocate funds to each of the functions generally in proportion to their contribution to the effectiveness of building control overall.

### Overall strategic and business planning

**7.62** The Commission operates a 3 year planning cycle. The first 3 year plan covered the period 1996 to 1999. The Commission's second 3 year plan was completed in July 1999 covering the period to 2002. The plan, which identifies strategic objectives for the Commission, did not set out any changes to the priority areas that are to comprise the key focus of activity over the ensuing term. The emphasis in the plan is on short-term, organisational initiatives, similar to those contained in a business plan rather than those of a strategic nature which would address wider changes in the building control framework. These initiatives involve reviews and development of existing functions to improve efficiency and effectiveness. An example of a strategic objective contained in the 3 year plan is to "*examine existing methods of service delivery and consider alternatives*" with the only recorded action as "*to re-examine the balance between audit and investigation activities*".

**7.63** The process for developing the latest strategic plan involved identifying the organisation's strengths, weaknesses, opportunities and threats. However, the threats or risks to building control have not been considered in a systematic way as part of the strategic planning process. For example, there is no consideration given to the self-funding nature of the Commission's operations and the risk of revenue reductions. There is no reference to such contingencies in the plans, although we are aware that the Commission has, with government approval, accumulated reserves in the current growth phase of the building cycle to allow full operations to continue through a typical building downturn.

**7.64** While the current plan has a 3 year horizon, the implementation timeframes are for the first year. Most initiatives are recorded as "ongoing" after the first year. In our opinion, there is a need for a longer-term timeframe to be adopted than the 3 year period, due to the long-term nature of many of the objectives, initiatives and controls that the Commission and the statutory bodies are responsible for, including:

- registration as a means of improving building practices;
- building regulations as a means of enhancing safety and amenity;
- prosecution policy and its impact on practitioner behaviour;
- research projects and their long lead time before they translate into changes to building regulations; and
- public awareness campaigns and demonstrating their impact.

**7.65** The strategic initiatives should then be used as a framework to develop business plans for the major organisational groupings, including staff resourcing requirements to support the statutory bodies. Each business plan should include actions, performance indicators, responsibilities and timeframes.

**7.66** The planning process within the Commission involved no formal consultation with the Chairpersons or members of the other statutory bodies, although the registrars of the Building Practitioners Board and the Building Appeals Board, who are employees of the Commission, were part of this process. Separate business plans have not been developed for these other bodies, although the Building Appeals Board has developed an "action plan" subsequent to, and consistent with, the Commission's plan. No formal consultation occurred with the Minister in terms of setting strategic priorities at the outset until the plan was submitted for approval.

**7.67** Our examination also disclosed that the 3 year strategic plan and its business plans are not supported by financial projections of the cost of the initiatives proposed over its 3 year life, nor are resourcing options included under different revenue assumptions. This is despite what appear to be significant resource implications for a number of the actions proposed, including education programs, software upgrades and a corporate profile development campaign.

**7.68** Currently, there are significant initiatives planned by the Commission that are not included within the strategic plan such as the outsourcing of registration renewals to insurance companies and other information technology developments such as enhancements to the computer systems for the Building Appeals Board. The strategic plan is not used as a basis for determining information technology or research priorities.

**7.69** To address these weaknesses we recommend:

- the planning timeframe be extended to allow the longer-term building control and research initiatives to be included with the strategic plan and their impact evaluated;
- resource implications be included in a parallel financial plan, including contingency arrangements;
- the formal inclusion of the other statutory bodies as part of the planning process;
- formal agreement be obtained from the Minister, after advice from key stakeholders, on the strategic objectives of the Commission and the other statutory bodies after the strategic plan is prepared; and
- formal approval of the final strategic plan be sought from the Minister, along with the relevant funding proposals to meet priorities.

### *Budget formulation*

**7.70** The annual budget-setting process does not explicitly refer to the strategic or business plans. Each year, cost-centre managers are invited to submit bids with supporting justifications. These are considered by the Executive Management Group of the Commission in the context of the overall financial position of the Building Administration Fund, however, the Chairpersons of the other statutory bodies are not involved in this process. This group agrees on priorities and funding is allocated accordingly. The final high level budget is presented to the Minister for approval and then to the other statutory bodies for their information.

**7.71** In our opinion, given the separate statutory responsibilities of the Building Practitioners Board and the Building Appeals Board and the level of expenditure involved in undertaking these responsibilities, the Chairs of these Boards should have input into the budget-setting process.