

## Compliance with Building Permits





VICTORIA

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Victorian  
Auditor-General

# Compliance with Building Permits

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Ordered to be printed

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VICTORIAN  
GOVERNMENT PRINTER  
December 2011



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ISBN 978 1 921650 98 7

The Hon. Bruce Atkinson MLC  
President  
Legislative Council  
Parliament House  
Melbourne

The Hon. Ken Smith MP  
Speaker  
Legislative Assembly  
Parliament House  
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on the audit, *Compliance with Building Permits*.

Yours faithfully



D D R PEARSON  
*Auditor-General*

7 December 2011



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# Audit summary

## Introduction

Victoria's building industry is a significant component of the state's economy, employing almost 7 per cent of the work force and generating over \$24 billion in domestic and commercial building work in 2010–11. These works are governed by the *Building Act 1993* (the Act), the *Building Regulations 2006* (the regulations), and the *Building Code of Australia* (BCA) that aim to assure buildings are safe and meet minimum standards.

The state introduced the competitive building permit system in 1994 as part of reforms designed to speed up the building approval system which, up to that time, had been administered by local councils.

The new system removed municipal building surveyors' monopoly on issuing building permits and opened the market to private building surveyors, who have to be registered and insured to protect the public's interests. By 2009–10 they were issuing around 85 per cent of permits worth 93 per cent of the total value of approved building works.

These reforms also established the Building Commission (the commission), as a new statutory authority to oversee building control, including the competitive building permit system.

The commission's functions are to:

- enforce compliance with the Act and regulations
- participate in the development of national building standards
- monitor developments relevant to the regulation of building standards in Victoria
- monitor the building permit levy collection system
- administer the Building Administration Fund
- inform and train the industry
- resolve disputes
- advise the minister on the carrying out of its functions and powers under the Act.

It administers four statutory bodies including the Building Practitioners Board (the board) which registers building practitioners, and supervises and monitors their conduct.

Local councils are also responsible for administering and enforcing parts of the Act, and for appointing municipal building surveyors who, along with their private counterparts, authorise and oversee building works to assure they are safe and comply with requisite building standards. Municipal building surveyors also have additional responsibilities for community safety and for enforcing statutory building requirements in their municipality.

This audit assessed the effectiveness of the building permit system in assuring that approved works meet requisite building and safety standards. It examined how effectively the commission regulates the activities of municipal and private building surveyors, and how effectively councils enforce compliance with the Act. It also analysed a sample of building permits issued by private and municipal building surveyors to determine if they complied with the Act, the regulations and the BCA.

## Conclusions

The commission cannot demonstrate that the building permit system is working effectively or that building surveyors are effectively discharging their role to uphold and enforce minimum building and safety standards.

The commission has failed to develop a framework to monitor the effectiveness of the building control system more than 17 years since its establishment, and notwithstanding this fundamental issue being raised over 11 years and six years ago. It also has ineffective controls for assuring all building permit levies due are collected. Additionally, its powers to audit private building surveyors who are responsible for over 85 per cent of the more than 100 000 permits issued each year have not been adequately exercised.

These shortcomings are significant and mean the commission has not adequately discharged its responsibilities under the Act, and its obligations as a regulator. This means the building control system in Victoria depends heavily on 'trust', which is neither guided nor demonstrably affirmed by reliable data on the performance of building surveyors.

Ninety-six per cent of permits examined did not comply with minimum statutory building and safety standards. Instead, our results have revealed a system marked by confusion and inadequate practice, including lack of transparency and accountability for decisions made. In consequence, there exists significant scope for collusion and conflicts of interest.

This audit highlights the need for the commission and the board to purposefully assure ongoing compliance with minimum capability standards and to appropriately educate practitioners.

In the absence of leadership, guidance and rigorous scrutiny from the commission, councils have adopted a largely reactive approach to enforcing the Act that offers little assurance of compliance within their municipalities. Together with private surveyors, they apply varying interpretations of what the Act requires of them, resulting in further confusion and ad hoc practices.

Consequently, there is little assurance that surveyors are carrying out their work competently, that the Act is being complied with, and the risk of injury or damage to any person is being minimised.

## Findings

### Monitoring the building permit system

The commission has statutory monitoring responsibilities relating to the building permit system, but has yet to develop a framework to evaluate its performance more than 17 years since its establishment and 11 and six years respectively since two external reviews raised this fundamental shortcoming.

Specifically, it has no defined targets, standards or documented arrangements for monitoring and assessing the system's effectiveness, including whether building surveyors effectively discharge their statutory responsibilities to enforce technical building and safety standards.

The commission's monitoring and public reporting is limited to such activities as the number of complaints received against building practitioners, the number of audits undertaken, and consumer perceptions of building practitioners and their building experience. However, these measures offer little insight into the impact of the commission's regulatory efforts, or the extent to which building surveyors adequately discharge their statutory responsibilities.

Our 2000 audit, *Building Control in Victoria: Setting sound foundations* concluded that the commission had not given sufficient priority at that time to monitoring and evaluating the effectiveness of the Act in assuring the building control system was working. This was again noted by the Victorian Competition and Efficiency Commission (VCEC) in 2005 as part of its inquiry into *Housing Regulation in Victoria: Building Better Outcomes*.

VCEC similarly observed that many of the commission's indicators did not relate to its performance as a regulator and recommended it review its framework to assure it reflected how well it was performing against the outcomes sought by the Act.

Notwithstanding, this framework has yet to be established.

The commission has advised it is now in the process of developing this framework, however considerable work remains to further clarify its parameters and the implementation approach.

### Review of the regulation of building surveyors

In October 2009 the commission set up a working group to identify ways of addressing problems with the operation of the Act concerning the regulation of building surveyors. By 2011, the working group produced a discussion paper summarising key issues and options for amending the Act to improve the regulation of building surveyors and the building permit system.

While positive, the commission's discussion paper demonstrates the need for more regular and comprehensive reviews of the system's effectiveness as many of the issues it identifies are longstanding in nature.

## Monitoring building permit data and levies

The commission is responsible for monitoring the system for collecting building permit levies. It does not, however, have adequate arrangements for assuring it receives all levies due.

The Act requires building surveyors to calculate, collect and deposit levies in the commission's Building Administration Fund each month. The levy payable in respect of an individual building permit is determined by the building surveyor and is based on the value of the building works covered by the permit. Currently, the integrity and accuracy of levies deposited depends entirely on the vigilance of the building surveyor and there are no controls to assure the reliability and regularity of this process.

Building surveyors are not required to become qualified valuers or quantity surveyors or to demonstrate that their calculation of levies payable is soundly based. Further, their failure to report all levies owed to the commission is not an offence, except if they provide false information.

Additionally, the commission does not systematically monitor that surveyors accurately estimate the levies they do report, which means it has no assurance it is receiving all levies due.

This lack of transparency and accountability over building surveyors' decisions, coupled with the commission's inadequate monitoring and enforcement controls means that surveyors could collude with clients to minimise their exposure to fees with little risk of detection. There is also no restriction on building surveyors using collected levies as working capital, until they deposit them in the Building Administration Fund each month.

The commission's 2011 discussion paper proposes further options to address protection of revenue through amending the Act. These options could assist in minimising future losses. Nevertheless, the commission already has extensive powers to audit whether building surveyors accurately estimate the levies they do report, but has to date not done so.

## Council monitoring and enforcement

Councils are responsible for enforcing the Act in relation to their municipal districts but lack clarity on how their role extends to private surveyors. Further, their monitoring is limited and reactive in nature offering little assurance that all buildings and associated works in their municipalities meet requisite standards.

Councils do not have a statutory obligation to proactively monitor compliance with the Act, but can do so at their own discretion to gain assurance it is being administered and enforced effectively within their municipal districts.

Councils do not systematically review permit documentation lodged with them by private building surveyors or inspect associated works, considering this to be the role of the commission. Councils therefore only investigate matters if there is a complaint from the public.

Feedback from the councils examined indicates that this reactive approach has arisen due to limited resources, lack of clarity over how far their powers extend to private building surveyors, and a reluctance to pursue enforcement action due to liability concerns.

Councils have access to significant information relating to building permits lodged by private building surveyors, but there are no documented arrangements in place between the commission and councils to monitor surveyors' performance and the system's overall effectiveness.

Thus significant opportunities exist for councils and the commission to work together more effectively to monitor the building permit system.

## Compliance of building permits with the Act and regulations

The Act requires a building surveyor to determine if proposed works comply with all statutory requirements before issuing a permit. However, significant gaps exist in council records to demonstrate that surveyors have adequately discharged this statutory obligation, and that approved works meet requisite building and safety standards.

Specifically, there was inadequate information on file for 96 per cent of the 401 permits examined to assess compliance with these requirements.

The regulations require an application for a building permit to contain sufficient information to show that the building work, if constructed as proposed, will comply with the Act and regulations. Hence this information should be evident in the documentation lodged by the surveyor with each permit at the relevant council. A failure to lodge this information is an offence under section 30 of the Act.

However, 72 per cent of domestic permits and 76 per cent of commercial permits did not contain sufficient information to demonstrate compliance with five or more required building technical or safety standards. Similarly, approximately 12 per cent of domestic permits and 27 per cent of commercial permits failed to show compliance with respect to 10 or more requisite standards.

In addition to these critical information gaps, there was also insufficient evidence in 89 per cent of the 80 permits subsequently selected for more detailed examination to determine whether building surveyors had thoroughly assessed all lodged information.

Therefore, there is little systemic documentation that surveyors had sufficient information upon which to form a reasonable view that proposed building works complied with the Act and regulations prior to issuing the permits.

## Regulating building surveyors

### Approach to regulation

The absence of targeted, risk-based technical audits of building surveyors means the commission is unable to provide reasonable assurance of the integrity and reliability of the building control system.

### Performance audit program

The commission's performance audit program has not provided adequate scrutiny over the effectiveness of building surveyors' work. Audits are not risk-based, targeted or sufficiently informed by rigorous analysis of reliable data on the performance of building surveyors.

The function of a performance auditor under the Act, is to examine work carried out by a registered practitioner, to ensure it has been competently carried out, does not pose any risk of injury or damage to any person, and to assure that the Act and the regulations have been complied with. However, the commission's audit program neither comprehensively examines nor explicitly concludes on such matters.

Specifically, audits primarily cover municipal building surveyors, whereas private building surveyors who issue the vast majority of permits each year are not routinely examined. Additionally, the audits focus almost entirely on administrative matters, while compliance with the more critical safety and technical issues is not systematically assessed. Hence, contrary to their intent, these audits do not comprehensively assess compliance with the Act, the competence of surveyors, or whether any safety risks have been satisfactorily mitigated.

These issues were previously raised by our 2000 audit. That audit similarly found the commission's performance audits were 'paperwork reviews focused on administrative compliance that did not meet their statutory intent and thus rarely uncovered major issues'.

In the intervening 11 years little has changed.

In 2005 VCEC similarly found the rationale for the commission's monitoring and enforcement strategy was unclear and that its effectiveness and efficiency could not be assessed based on publicly available information.

VCEC recommended the commission publish its rationale in annual reports but it has not done so.

Additionally, the commission is not meeting its public target to audit each municipal building surveyor once every two years, and has no targets for auditing private building surveyors who issue the vast majority of building permits. Its lack of focus on these latter practitioners is a very significant gap in its audit program.

During this audit the commission asserted that it audited 98 per cent of all councils in the past three years, but had no evidence to substantiate this. Information available only shows 53 per cent of councils were audited.

Late into the conduct of this audit, the commission also advised that its targets are based on its 'audit continuum' concept, which seeks to audit councils once every two-year block, instead of once every two years. However, this concept misrepresents the commission's performance relative to its public target, because it allows for up to four years to elapse between successive audits.

Further, the commission's performance auditors are not registered building surveyors. They are generalist investigators, typically drawn from the police, who do not come with, nor are they trained in, the technical skills needed to effectively audit the competency of building surveyors. The commission also had no policy to guide these investigators on the conduct of performance audits and there are no review and quality assurance arrangements to assure the effectiveness and quality of completed audits.

The commission initiated action to enhance its audit program during this audit.

## Complaints management

Although the commission has a complaints policy and documented procedures, they do not detail sufficient arrangements for prioritising complaints or for improving the complaints system. There are no quality assurance standards for handling complaints and no performance measures. Further, the roles and responsibilities for monitoring and reporting on complaints management are unclear. The computerised complaints handling system has limitations and staff cannot use it effectively.

Almost two-thirds, 64 per cent, of complaint investigations are outsourced to generalist investigators but there are no clear guidelines, documented standards or procedures to assure the investigations are effectively handled.

There is also no evidence the commission reviews completed investigations regularly against defined quality standards. While external legal reviews of active investigations typically occur in 45 per cent of cases, there is insufficient assurance this is adequate in the absence of defined quality assurance and performance standards.

The commission commenced a strategic review of its complaint management processes in 2011 following a review of its management of an investigation into a complaint, and of the board's subsequent inquiry in 2009. This review concluded that the complainant was failed by the advice received from the commission and associated investigation, and also by the board's handling of the inquiry.

Both the commission and the board have since initiated action to address these matters.

## Practitioner capability, registration and renewal

The board's assessment process for registering building surveyors is extensive, but not well documented, nor is it supported by clear guidelines, criteria or quality review standards.

Specifically, while its processes for assessing surveyor competence could lead to a thorough examination, existing gaps in guidance and documentation reduce accountability for decisions, including assurance that assessments are soundly based.

The board has no documented guidelines or criteria for evaluating the practical experience of building surveyors, and similarly has no guidelines to decide a 'pass' or 'fail' in relation to the competency examination and practical assessment. The board agrees that better definition of 'pass' or 'fail' for assessment is necessary and intends to address this as a priority. The board has, however, also indicated that assessment may not always be best determined by a single threshold figure.

The Act does not require a practitioner to demonstrate they have maintained their skill and capability to the level necessary to competently discharge their duties. This is a gap in the current regulatory framework. Capability is assessed only at the initial application stage, and a surveyor will remain registered for life on payment of the annual fee and insurance cover, unless the board deregisters them or their insurance cover lapses or is withdrawn.

The Department of Planning and Community Development is currently reviewing if there is a need to introduce compulsory continuing professional development for practitioner registration. This audit provides strong evidence in support of such an approach.

Greater scrutiny of the professional conduct of building surveyors, and better adherence by them to minimum competency standards and statutory requirements is required.



## Recommendations

Number	Recommendation	Page
1.	<p>The Building Commission should:</p> <ul style="list-style-type: none"> <li>expedite development of its monitoring and evaluation framework and clarify the targets, standards and arrangements for assessing the building permit system's effectiveness, and the impact of related monitoring and enforcement efforts</li> <li>conduct a fundamental review of the building permit system's effectiveness to identify and resolve the longstanding and other system-wide performance issues</li> <li>develop guidance for building surveyors on the process for determining and documenting the value of building works and thus for accurately estimating the levy payable to the Building Commission</li> <li>implement controls to prevent building surveyors from using levies collected as their working capital</li> <li>systematically audit surveyors' estimates of the value of building works to gain assurance they are soundly based and that it is mitigating financial losses arising from any incorrect valuations</li> <li>develop and implement a strategy, in consultation with the local government sector, to enable more effective coordination with councils to monitor the performance of the building permit system and of building surveyors</li> <li>clarify councils' responsibilities for monitoring and enforcing the <i>Building Act 1993</i> relating to private building surveyors in consultation with the Department of Planning and Community Development and relevant stakeholders.</li> </ul>	20
2.	<p>Councils should review and, where relevant, strengthen their monitoring and enforcement strategies to assure:</p> <ul style="list-style-type: none"> <li>they are risk based, targeted and sufficiently informed by reliable data on the performance of the local building permit system and of the surveyors operating within it</li> <li>that building works and associated permits comply with the <i>Building Act 1993</i>, the <i>Building Regulations 2006</i> and the <i>Building Code of Australia</i> within their municipal districts.</li> </ul>	20
3.	<p>The Building Commission, in consultation with stakeholders should:</p> <ul style="list-style-type: none"> <li>develop standard templates and procedures to require building surveyors to adequately document their assessment approach and basis of their decisions</li> <li>require building surveyors to demonstrate, using these templates and procedures, their consideration and acquittal of mandatory safety and technical requirements.</li> </ul>	33

## Recommendations – continued

Number	Recommendation	Page
4.	<p>The Building Commission should strengthen its performance audit program to assure:</p> <ul style="list-style-type: none"> <li>• it meets its legislative remit to provide assurance that the work carried out by a registered practitioner has been competently carried out, does not pose any risk of injury or damage to any person, and to assure that the <i>Building Act 1993</i> and the <i>Building Regulations 2006</i> have been complied with</li> <li>• it is informed by rigorous analysis of reliable risk-based data on the performance of building surveyors</li> <li>• it includes a clear rationale and annual targets for ongoing comprehensive technical audits of both municipal and private building surveyors performed by qualified practitioners</li> <li>• it offers reliable information on whether building surveyors operating in both the domestic and non-domestic sectors effectively discharge their obligations to enforce compliance with the <i>Building Act 1993</i> and the <i>Building Regulations 2006</i></li> <li>• it regularly undertakes and clearly documents reviews of both the program's and individual audit's effectiveness against defined quality standards.</li> </ul>	50
5.	<p>The Building Commission should comprehensively assess, clearly document, and target via audit all identified major risks related to surveyors' administration of the building permit system.</p>	50
6.	<p>The Building Commission should strengthen its complaints handling and investigation processes to assure:</p> <ul style="list-style-type: none"> <li>• complaints are systematically prioritised according to the risk of non-compliance with safety and technical building standards, and that this is clearly documented</li> <li>• they are governed by clear standards of effectiveness and efficiency, and that adherence to these requirements is regularly reviewed and monitored by senior management</li> <li>• investigators receive sufficient training to enable them to form appropriate judgments about technical building matters</li> <li>• clear quality assurance standards and effective controls are established for technical reports sourced from the Building Commission's external panel to assure they have been competently prepared.</li> </ul>	50
7.	<p>The Building Practitioners Board should:</p> <ul style="list-style-type: none"> <li>• develop criteria and guidelines for evaluating the competency of applicants to be registered as building surveyors and clearly document the basis of all of its related decisions</li> <li>• systematically verify a sample of the character declarations supplied by applicants for registration to gain reasonable assurance they are reliable.</li> </ul>	55

## Recommendations – continued

Number	Recommendation	Page
8.	<p>The Department of Planning and Community Development, in consultation with stakeholders, should:</p> <ul style="list-style-type: none"> <li>• seek approval from the Minister for Planning to introduce a system of compulsory continuing professional development for building surveyors</li> <li>• seek approval from the Minister for Planning to prepare an amendment to the <i>Building Act 1993</i> to make registration renewal contingent on building surveyors satisfying minimum compulsory continuing professional development requirements.</li> </ul>	55

## Submissions and comments received

In addition to progressive engagement during the course of the audit, in accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, were provided to the Building Commission, the Building Practitioners Board, the Department of Planning and Community Development, Latrobe City Council, Melton Shire Council, Mitchell Shire Council and Monash City Council with a request for submissions or comments.

Agency views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report. Their full section 16(3) submissions and comments however, are included in Appendix B.



# 1 Background

## 1.1 Building activity

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Building activity in Victoria has a significant economic, social and environmental impact on the community. The industry provides employment, housing, commercial and social infrastructure and contributes to community wellbeing and amenity.

In 2010–11 the industry employed about 190 200 people or 6.9 per cent of the state's labour force. Although 2010–11 saw a 6 per cent drop in the number of building permits issued from 113 670 in 2009–10 to 106 788, their value rose 2 per cent to \$24.3 billion. This represents a 25 per cent increase from 2008–09 levels.

Building permits for housing make up the majority of permits issued, and account for \$13.1 billion of approvals. Victoria led all states and territories in terms of value of building activity, contributing 32 per cent of national building approvals.

## 1.2 Building control framework reforms

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The current building permit system was introduced in 1994 as part of reforms to increase its efficiency and effectiveness by allowing competition into the market. The option for building permits to be issued by private building surveyors was introduced, enabling them to compete with municipal building surveyors on the basis of timing and cost. Prior to the reforms, all building permits were issued by municipal councils.

Compulsory insurance and a registration process for practitioners were also introduced to improve protection for the public who engaged building practitioners.

The practice of councils issuing permits was widely considered to be lengthy and inefficient. The new system was expected to improve the skills of building surveyors and the speed of the approval of building permits.

Data is not collected on the time it takes to obtain a building permit, but it is generally accepted across the building industry that there has been a significant reduction in building permit approval times.

The number of permits issued by the private sector has grown steadily. In 1997, private building surveyors issued 57 per cent of the total number of building permits, representing 73 per cent of the total value of approved building work. By 2009–10 these had increased to 84 per cent and 93 per cent respectively.

## 1.3 The legislative and regulatory framework

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### Model Building Act

The Victorian legislative framework is based on the National Model Building Act, a project initiated in 1990 through the Australian Uniform Building Regulatory Coordinating Council, now the Australian Building Codes Board. This model, completed in late 1991, was intended to serve as the basis for legislative development to facilitate best practice and uniform building regulation in the states and territories. The framework of Victorian controls, the *Building Act 1993*, was established as part of these national competition-related reforms.

### *Building Act 1993*

The *Building Act 1993* (the Act) sets out the legal framework for regulating building construction, building standards and the maintenance of specific building safety features. The Act requires that a building permit must be issued prior to carrying out building work and sets penalties for failing to do so.

The objectives of the Act include 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 buildings
- facilitate and promote the cost-effective construction of buildings
- provide an efficient and effective system for issuing building and occupancy permits.

### *Building Regulations 2006*

The *Building Regulations 2006* (the regulations) are derived from the Act and set out the requirements for building permits, building inspections, occupancy permits, regulatory enforcement and maintenance of buildings. The regulations use the *Building Code of Australia* (BCA) as a technical reference that must be complied with.

### *Building Code of Australia*

The BCA is a national set of technical provisions for the design and construction of buildings and other structures. The BCA is performance based, which means that it defines the way to achieve a specified outcome without prescribing a particular method. The BCA allows states to add requirements or cater for their own community expectations.

All building work is required to comply with the Act, the regulations and the BCA unless exempted.

## Other legislation

Other legislation impacts on the building control system in Victoria, including the *Domestic Building Contracts Act 1995* and the *Local Government Act 1989*.

### 1.3.1 Building permit system

The building permit system is an important control for regulating the construction and maintenance of domestic and commercial building works and certifying compliance with building regulations. The purpose of the system is to ensure that all building works meet minimum standards and safety requirements.

Building permits are required for most building work such as construction, alterations, removals and demolition. Permits cover items such as the siting of most single dwellings, protection of adjoining property during construction, structural adequacy, light, ventilation and drainage. Undertaking building work without the necessary permit is a serious offence and can result in penalties of up to \$10 000.

Building permits provide assurance that proposed building works comply with building legislation prior to work commencing and that:

- the building practitioners are registered and carry insurance
- adequate documentation is prepared to support construction of buildings
- independent review of building documentation occurs
- key stages of building work are independently inspected
- buildings are independently assessed as suitable for occupation.

#### Obtaining a permit

To obtain a building permit, a property owner or their appointed agent must apply to the appointed building surveyor. The appointed building surveyor can be either a municipal building surveyor or a private building surveyor. The building surveyor is required to notify the relevant council of their appointment.

The application identifies the nature and cost of the building work and must include three sets of drawings, certificate of title, specifications, allotment plans, and any computations or reports deemed necessary to demonstrate that the building work will comply with the Act and regulations.

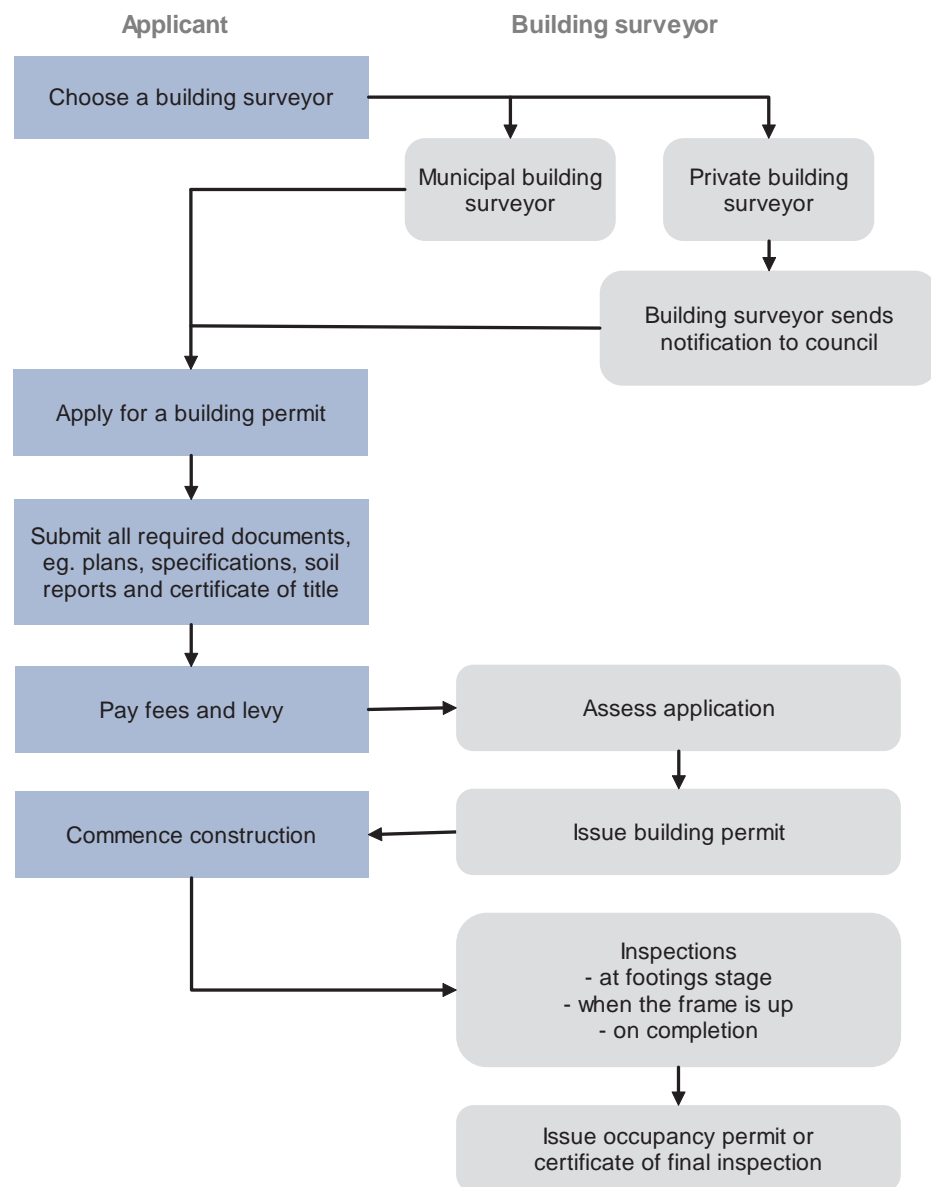
The building surveyor must assess the information within 15 days of receipt to determine if it complies with the regulations and lodge the documentation at the council. The building surveyor can issue a permit with or without conditions, or refuse to issue one.

The applicant pays the appointed surveyor a fee for issuing the building permit and a government levy which the building surveyor forwards to the Building Commission (the commission). When the permit is approved, building work can start.

The building surveyor must inspect the work at the end of each mandatory stage, including before footings are placed, when the frame is up, and when work is completed. The surveyor may also inspect at other times deemed necessary.

At the final inspection, the building surveyor issues either an occupancy permit or a certificate of final inspection. An occupancy permit means that the building is suitable for occupation. A certificate of final inspection is for extensions or alterations to existing buildings. The building permit process is summarised in Figure 1A.

**Figure 1A**  
**The building permit process**



Source: *Building in Victoria: a consumer's guide*, Building Commission and Victorian Municipal Building Surveyors Group, 2005, p.4.



## 1.3.2 Regulatory roles and responsibilities

### Building Commission

The commission is a statutory authority established in 1994 to oversee building control in Victoria. The main functions of the commission as set out in the Act are to:

- monitor and enforce compliance with the provisions of the Act and the regulations relating to building and building practitioners
- participate on behalf of Victoria in the development of national building standards
- monitor developments relevant to the regulation of building standards in Victoria
- monitor the system of collection of the building permit levy
- administer the Building Administration Fund
- disseminate information, including to consumers, on matters relating to building standards and the regulation of buildings and building practitioners
- provide information and training to assist persons and bodies in carrying out functions under the Act or the regulations (except part 12A and the regulations under that part)
- promote the resolution of consumer complaints about work carried out by builders
- conduct or promote research relating to the regulation of the building industry in Victoria and to report on the outcomes of this research in its annual report
- advise the Minister for Planning on the carrying out of the commission's functions and powers under this Act and on any other matter referred to it by the minister.

The commission administers four statutory bodies to provide industry leadership and regulate building quality. These are:

- Building Practitioners Board (the board)
- Building Advisory Council
- Building Appeals Board
- Building Regulations Advisory Committee.

### *Building Practitioners Board*

The board oversees the quality and standard of professional services in the building industry. It is responsible for almost 25 000 registered builders and building professionals and for supervising and monitoring their conduct and ability to practice. The commission may refer builders who refuse to fix defective work to the board for disciplinary action. The board can suspend registration for several reasons, including when the practitioner is not insured or refuses to comply with the insurer's reasonable direction to complete or rectify defective work.

The board can also hold an inquiry into the conduct of registered building practitioners or their ability to practice. It can do so on its own initiative, on referral by the commission, the Victorian Civil and Administrative Tribunal, an insurer, or on the recommendation of someone it has appointed. Following an inquiry, it can discipline the practitioner with a reprimand, by awarding costs against them, or suspending or cancelling registration.

The board and the commission are central to overseeing the performance of building surveyors and their compliance with the Act. The commission conducts performance audits, investigates building practitioners based on complaints, and prosecutes legislative breaches. The board administers practitioner registration and conducts inquiries into the conduct of building practitioners.

### *Building Advisory Council*

The Building Advisory Council is an industry-based advisory body to the Minister for Planning. It also advises the minister on the impact of the building regulatory system under the Act and regulations, the building permit levy and any other matter referred by the minister.

### *Building Appeals Board*

The Building Appeals Board determines disputes and appeals arising from the Act and the regulations and deals with amendments to building legislation. It can determine whether a particular design or element of a building complies with the Act and regulations. It also hears appeals against decisions or actions of private and municipal building surveyors.

### *Building Regulations Advisory Committee*

The Building Regulations Advisory Committee is a committee of building industry representatives that advises the Minister for Planning on draft building regulations and accredits building products, construction methods and systems.

## Department of Planning and Community Development

The Department of Planning and Community Development is responsible for building policy and legislation. This includes development and management of the regulatory framework and implementation of national standards. The department also provides strategic policy advice on insurance and consumer protection, the national reform agenda, sustainability and national licensing relating to the building and plumbing industries.

## Local government

Municipal councils are responsible for the administration and enforcement of parts 3, 4, 5, 7 and 8 of the Act and the whole of the regulations within their municipal district. They are also required to appoint a municipal building surveyor responsible for administering and enforcing parts of the Act and the regulations within the municipal district. The Act provides councils with the same powers of enforcement whether a municipal or private building surveyor has issued the building permit.

## Private and municipal building surveyors

Building surveyors play a pivotal role in the implementation, enforcement and monitoring of the building standards prescribed by the Act and the regulations. They authorise and oversee building work and are responsible for assuring that buildings are safe, accessible and energy efficient.

Private and municipal building surveyors have statutory obligations to administer and enforce the Act, even though private building surveyors are private businesses. Both are responsible for issuing building permits, including:

- assessing applications
- conducting mandatory inspections of building work
- making compliance orders when appropriate
- verifying that works have been completed according to permit conditions
- issuing occupancy permits and certificates of final inspection.

Municipal building surveyors have extensive extra functions related to community safety and administering and enforcing building legislation in their municipality.

Municipal and private building surveyors must collect building permit levies from building owners and forward them to the commission, basing the levy on the value of works covered by the building permit. Private surveyors also have extra reporting requirements. They must notify the relevant council of their appointment on a building project within seven days and lodge copies of building permits and associated documentation within seven days of issue. This reporting helps local government maintain a public register of all building work in the municipality to support building control.

## 1.4 Previous audits and reviews

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VAGO's 2000 performance audit of the building control system, *Building Control in Victoria: Setting sound foundations* examined the efficiency and effectiveness of aspects of the building regulatory system administered by the commission and its associated statutory bodies.

The audit identified weaknesses in the commission's monitoring role, including its identification of building control risks and targeting of monitoring and enforcement activities. The audit also found there were opportunities for improving the rigour and suitability of registration and renewal processes and recommended the commission give greater priority to the development of an evaluation framework to measure the effectiveness of the Act.

### Victorian Competition and Efficiency Commission inquiry into housing regulation in Victoria

In 2005, the Victorian Competition and Efficiency Commission (VCEC) conducted an inquiry into *Housing Regulation in Victoria: Building Better Outcomes*.

The inquiry found that, while the regulatory framework for housing regulation had served Victorians reasonably well, there was significant opportunity for improvement, particularly in establishing a more closely defined regulatory environment and improved performance reporting to enhance transparency and accountability. Specifically, the inquiry identified the need for the commission to improve its performance reporting obligations, and recommended that it publish the rationale behind its monitoring and enforcement strategy and performance indicators.

## 1.5 Audit objective and scope

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### 1.5.1 Audit objective

This audit, first identified in our 2009–10 Annual Plan and initiated in December 2010, assessed the effectiveness of the building permit system in assuring approved works meet requisite building and safety standards. Specifically the audit examined how effectively:

- the Building Commission regulates the activities of municipal and private building surveyors
- councils enforce compliance with building permits.

To address the audit objective, the audit criteria assessed whether:

- building permits issued by municipal and private building surveyors comply with the *Building Act 1993*, the *Building Regulations 2006* and the *Building Code of Australia*
- councils' monitoring and enforcement practices provide reasonable assurance that building works and associated permits comply with the *Building Act 1993*, the *Building Regulations 2006* and the *Building Code of Australia*
- the Building Commission's monitoring and enforcement activities are risk-based, targeted and sufficiently informed by rigorous analysis of reliable data on the performance of building surveyors
- the Building Commission's arrangements for monitoring, reporting on, and improving the performance of the building permit system are effective.

### 1.5.2 Scope

The audit examined the arrangements in place for monitoring and enforcement by the Building Commission and Building Practitioners Board of the performance of both private and municipal building surveyors.

The audit also examined the systems in place for monitoring and enforcing compliance with building permits and the Act at the following councils:

- Latrobe City Council
- Melton Shire Council
- Mitchell Shire Council
- Monash City Council.

### 1.5.3 Method

The audit was performed in accordance with the Australian Auditing and Assurance Standards.

### 1.5.4 Cost of the audit

The total cost of the audit was \$645 000.

# 2 Monitoring the building permit system

## At a glance

### Background

The Building Commission (the commission) is responsible for assuring that the building control system is working effectively, by monitoring and enforcing statutory building and safety standards. Councils also have statutory responsibilities to administer and enforce parts of the *Building Act 1993* and the *Building Regulations 2006* within their municipalities.

### Conclusion

The commission cannot reliably assure the Minister for Planning or the community that the building permit system is working effectively as there is no framework in place either to evaluate the system or to assess whether building surveyors effectively enforce the *Building Act 1993* or the *Building Regulations 2006*.

### Findings

- The commission has yet to implement adequate arrangements for monitoring the effectiveness of the building permit system, 17 years since its establishment and 11 and six years respectively since two reviews raised this fundamental shortcoming.
- The commission, while responsible for the levy collection system, does not assure itself that all levies due have been received.
- Councils' monitoring and enforcement activities are limited, reactive in nature, and offer little assurance that all building permits and associated works within a municipality meet statutory requirements.

### Recommendations

The Building Commission should:

- expedite development of its monitoring and evaluation framework and comprehensively review the integrity of the building permit system in operation
- develop guidance for building surveyors for determining the value of building works and accurately estimating the levy payable to the commission
- clarify councils' responsibilities for monitoring and enforcing the *Building Act 1993* relating to building surveyors.

Councils should review and strengthen monitoring and enforcement strategies so they can assure building works and associated permits comply with the *Building Act 1993* and the *Building Regulations 2006*.

## 2.1 Introduction

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A measure of the building permit system's effectiveness is how well it controls the construction of proposed buildings and assures compliance with building and safety standards. The *Building Act 1993* (the Act) and the *Building Regulations 2006* (the regulations) specify these standards and how they apply to buildings and the building permit process.

As the principal regulator of the building control system, the Building Commission (the commission) has a statutory responsibility to monitor and enforce the Act and the regulations relating to buildings, building practitioners and the building permit system.

Similarly, councils are required to administer and enforce the Act and the regulations as they relate to building permits within their municipal districts.

To discharge these functions effectively, both the commission and councils need access to accurate and reliable information on how well the building permit system is working to assure works comply with the Act and the regulations. They also need to know how well building surveyors are administering the building permit process and enforcing mandatory building and safety standards.

This information is core to enabling the commission to effectively target its regulatory activities concerning building surveyors, and for reliably assessing and improving its own performance as a regulator.

This Part of the report examines how effectively the commission and councils monitor the performance of the building permit system.

## 2.2 Conclusion

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The commission cannot reliably assure that the building permit system is working effectively as it has no framework against which to reliably evaluate it, or assess whether building surveyors are effectively enforcing the Act and the regulations.

This means the commission cannot presently assure the Minister for Planning or the community that approved works meet requisite building and safety standards, that building surveyors are effectively discharging their statutory functions, or that its current approach to regulating surveyors is working.

Along with councils' monitoring and enforcement activities, which are limited and reactive in nature, there is little assurance that all building permits and associated works meet statutory requirements.

This is a significant gap in the commission's regulatory framework, first raised by this office in 2000 and reiterated more recently by the Victorian Competition and Efficiency Commission (VCEC) in 2005.

## 2.3 System-wide monitoring arrangements

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The commission has statutory monitoring responsibilities relating to the building permit system. Specific functions under the Act include:

- monitoring and enforcing compliance with the provisions of the Act and the regulations relating to building and building practitioners
- monitoring developments relevant to the regulation of building standards
- monitoring the system of collection of the building permit levy.

However, the commission's existing monitoring arrangements do not enable it to effectively carry out these functions. While it has procedures in place for individual audits, there are no defined targets, standards or documented arrangements for monitoring and assessing the effectiveness of the building permit system.

The commission's monitoring is limited to public reporting of activities such as the number of complaints received against building practitioners, the number of audits undertaken, and consumer perceptions of building practitioners and of their building experience. These measures are drawn from the commission's internal records and from its *pulse* database derived from ongoing surveys of consumers and practitioners. They offer little insight into the extent to which building surveyors adequately discharge their statutory responsibilities or the impact of the commission's monitoring and enforcement effort.

Our 2000 audit, *Building Control in Victoria: Setting sound foundations*, concluded that the commission had not given sufficient priority to monitoring and evaluating the effectiveness of the Act for assuring the building control system promoted the design, construction and maintenance of safe, habitable and energy efficient buildings.

Subsequently, VCEC noted our conclusion in its 2005 report on its inquiry into *Housing Regulation in Victoria: Building Better Outcomes*, and similarly observed that many of the indicators based on the commission's *pulse* data were not related to the commission's objectives and performance as a regulator. Accordingly, VCEC recommended the commission review its reporting framework to assure it indicates how well it is performing against the outcomes sought by the Act.

This framework has yet to be developed, 17 years since the commission was established, and 11 and six years respectively since the above two reviews raised this fundamental shortcoming.

The commission asserted that because responsibility for building policy was transferred to the Department of Planning and Community Development (DPCD) in 2007, this meant that it no longer had responsibility for evaluating the Act. However, this is at odds with the commission's current statutory monitoring functions, which clearly show that it retains primary responsibility for monitoring the Act in relation to the building control system.

The commission, however, commenced developing a monitoring framework in 2009. As outlined in Figure 2A, this is a long-term project, presently scheduled for implementation in June 2012.

**Figure 2A**

**Proposed monitoring and evaluation system for regulatory decision-making**

The commission is in the process of establishing a new integrated monitoring and evaluation (M&E) system to support its regulatory decision-making.

The new M&E system aims to assist the commission to monitor and evaluate the effectiveness and efficiency of the regulatory framework, and make improvements where necessary.

The commission intends to conduct a regulatory risk assessment as part of the system's implementation phase. The aim of this assessment is to inform future priorities and direction for monitoring and evaluation.

The system is being designed so that it can be applied to the:

- performance of the regulations
- performance of the commission
- monitoring of industry performance.

Accordingly, the commission envisages that the M&E system will inform its future strategic and operational planning and that it will achieve the following outcomes:

- increased efficiency and effectiveness of regulation
- increased efficiency and effectiveness of commission operations
- reduced burden to business and consumers.

Source: Building Commission.

While the commission's initiative to start developing the framework is positive, considerable work remains to further clarify its parameters and implementation approach.

### 2.3.1 Review of the regulation of building surveyors

In the absence of an effective performance monitoring framework, the commission is unable to reliably evaluate the operation of the building permit system, and therefore its effectiveness as a regulator is fundamentally compromised.

In October 2009, the commission set up a working group to identify ways of addressing problems with the operation of the Act in regulating building surveyors. The group produced a discussion paper in 2011 summarising key issues and options for changing the Act that could improve the regulation of building surveyors and the building permit system.



Specifically, the paper identifies a number of deficiencies in the way the Act applies to building surveyors that effect the commission's regulatory activities:

- Building surveyors are required to assess the amount of building permit levy payable to the commission, to collect these payments and deposit them in the Building Administration Fund monthly. However, there are no provisions to enforce accurate reporting, nor sufficient guidance on how to accurately assess the levies payable to the commission.
- The commission lacks powers to enforce building surveyors' statutory reporting obligations, which further impedes its ability to track levies and building activity reliably.
- Inadequate provisions for enabling a surveyor to take over work arising from permits 'left open' by the suspension and/or deregistration of the original building surveyor, exacerbated by surveyors' reluctance to do so due to liability concerns.
- No provisions in the Act to transfer or delegate the functions of a registered building surveyor if they become temporarily unavailable, which can lead to delays in completing building works, in occupying dwellings and associated inconvenience to consumers and builders.
- The Act and regulations assume that a natural person enters into a contract for carrying out the functions of a registered building surveyor, but the widespread use of corporate structures inhibits determining the identity of surveyors responsible for projects.
- Gaps in the current framework enable suspended or deregistered building surveyors to continue accepting new appointments during the 60-day period until the cancellation of their registration takes effect.
- Difficulties in managing the safety risks and information gaps arising from incomplete and uncertified building works associated with large numbers of 'lapsed' building permits each year.
- Private building surveyors' use of unregistered building inspectors to carry out inspections because of the high volume of permits, and limited capacity of surveyors to undertake inspections required.

While positive, the commission's discussion paper exemplifies the need for more regular and comprehensive reviews of the system's effectiveness, and of the commission's actions to achieve this, as many of the issues it identifies are longstanding.

### 2.3.2 Monitoring building permit data and levies

The commission is responsible for monitoring the system for collecting building permit levies, but it does not have adequate arrangements for assuring it receives all levies due.

The Act requires building surveyors to calculate, collect and forward to the commission each month the building permit levy payable for the proposed building works for which they are the appointed relevant building surveyor. The levy depends on the value of the works covered by the permit.

The commission relies completely on the surveyor to accurately estimate the value of proposed building works. There are no controls governing this process and building surveyors are not required to become qualified valuers or quantity surveyors.

In the absence of authoritative guidance and systematic monitoring by the commission there is no assurance that surveyors are accurately estimating the value of building works and that all levies due are being recovered.

This absence of adequate controls within the levy collection system means that surveyors could collude with clients to minimise their fees. In addition, there are no restrictions on surveyors using levies as their own working capital until they deposit them in the Building Administration Fund.

At present, the integrity, accuracy and thus sufficiency of the levy collected and reported to the commission relies entirely upon building surveyors. There are no penalties for non-compliance with reporting requirements in the Act, only a general penalty for providing false information

### Potential conflict of interest

Although the 'owner' technically engages the private surveyor, it is widely acknowledged that in practice this is usually arranged by the builder who may also have a longstanding arrangement with the surveyor. This situation introduces the potential for a conflict of interest to arise. The desire to achieve repeat business with builders, particularly large builders, may reduce the incentive for the surveyor to strictly enforce the requirements of the Act and accurately estimate the value of building works.

The commission has not given this issue adequate attention in its risk assessment and auditing program and therefore has not satisfactorily mitigated this risk.

### Levy audits

The commission's Levy and Building Information Unit reconciles and analyses data reported by surveyors to identify trends and anomalies. It uses the results to audit registered building surveyors for levies. These audits aim to resolve immediate or outstanding issues about the data reported to the commission, to improve the surveyor's data collection system and educate the practitioner on the levy submission process.

While the levy audits are a positive initiative for resolving obvious anomalies in information reported, they are not able to detect unreported levies collected by surveyors because the commission presently has no means of ascertaining this information.

The commission's discussion paper highlights its difficulties in collecting accurate building permit levies. These are summarised in Figure 2B.

**Figure 2B**  
**Challenges in collecting building permit levies**

The commission's 2011 discussion paper notes that, under the Act, building surveyors are required to report building activity information to both the commission and local councils. However, the payment of building permit levies to the commission depends entirely on self-reporting by building surveyors based on the reported number of building permits they have issued. If building surveyors do not advise the commission of permits issued, their failure to pay levies owed to the commission is unlikely to be detected.

The discussion paper notes that previous investigations into the conduct of a number of private building surveyors highlighted failures to provide accurate building permit levy returns. In 2008 alone, more than \$300 000 was unpaid to the commission in connection with building permits not reported during that year, and since 1997 more than \$800 000 in levy revenue was unpaid.

The discussion paper reports that one unregistered practitioner had failed to remit hundreds of thousands of dollars in levy payments over a number of years. This data is based on known isolated cases and therefore the actual and potential financial losses to the commission are likely to be significantly higher, the full extent of which remains unknown.

A 2011 review of open and lapsed building permits conducted by the commission, further highlighted significant inconsistencies in reporting of permit data by private building surveyors based on a comparison of commission data with a sample of regional and metropolitan council databases. The discussion paper also highlights additional problems with the Act regarding the calculation of the building permit levy because the meaning of 'cost of building work', upon which the levy amount is calculated, is unclear.

These issues are further compounded by the lack of adequate enforcement powers. Failure of building surveyors to meet their statutory obligations for reporting permits issued, prescribed building activity data and collected levies to the commission each month, or their failure to remit all levies received are not offences.

*Source:* Victorian Auditor-General's Office.

The commission's 2011 discussion paper proposed options to address these issues, requiring legislative amendment. Notwithstanding, the paper does not consider how the commission's existing performance auditing powers could be used in the interim to reduce these financial losses. This is another missed opportunity to address this longstanding risk to revenue.

As discussed in Part 4 of this report, the commission's statutory performance auditing functions give it wide discretion to examine the competency of any aspect of a building surveyor's work. This can include the soundness of the building surveyor's approach to determining the value of building works and therefore the accuracy of levies remitted. The commission's lack of attention to this issue as part of its performance audit program is a significant missed opportunity.

Options canvassed in the commission's discussion paper include the commission taking administrative responsibility for issuing the building permit, or allowing building surveyors to issue permits only after it had given them a reference number. In either scenario, the appointed building surveyor would remain responsible for the permit assessment, but tracking of data and levies would be enhanced.

Another alternative identified in the paper is to transfer all prescribed reporting on levies to councils who then would periodically inform the commission. However, the paper considers this would require significant reforms to existing funding arrangements and administrative responsibilities.

The discussion paper does not identify the preferred option, which the commission advised will be determined following stakeholder consultation. The options it does canvass, however, could assist to minimise future financial losses and improve data accuracy and reliability regarding building activity in Victoria.

## 2.4 Council monitoring and enforcement

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Under section 212 of the Act, a council is responsible for administering and enforcing parts 3, 4, 5, 7 and 8 of the Act, and the whole of the regulations within its municipality, except where the Act expressly assigns responsibility to another party. While the Act does not explicitly 'obligate' councils to monitor building works and private building surveyors, it does enable them to monitor whether building surveyors have adequately discharged their functions without assuming their responsibilities for doing so.

### 2.4.1 Proactive monitoring versus reacting to complaints

For councils to effectively acquit their responsibilities to enforce the Act, knowledge of an offence is required. Receiving complaints from the public is one way a council can become aware of such circumstances, while proactive monitoring presents another option. While proactive monitoring is not a statutory obligation, it is a good administrative practice that can offer reasonable assurance to council that the Act is being administered and enforced effectively within its municipal district.

Councils advised, however, that they are limited in their capacity to undertake proactive monitoring and enforcement activities, as they are not funded from building permit levy revenues to do so. Consequently, councils' monitoring and enforcement activities are limited, reactive in nature, and offer little assurance that all building permits and associated works within a municipality adequately meet all statutory requirements.

### 2.4.2 Role of councils in scrutinising private surveyors

Among the councils examined, there was also a lack of clarity on the extent to which their role to administer and enforce the Act within their municipalities extends to private building surveyors. For example, Monash expressed a belief that because municipal building surveyors in some circumstances can compete with private building surveyors, it would therefore be inappropriate for them to audit the private building surveyor in those circumstances. However, this issue is not relevant to a council's statutory enforcement role under section 212 of the Act because this responsibility rests with the council and not with the municipal building surveyor.

Notwithstanding, the Act precludes a municipal building surveyor from competing with a private building surveyor in respect of any project to which that private surveyor has been appointed as the relevant building surveyor to administer parts 3, 4, 5, 7 and 8 of the Act, and the regulations. Therefore, neither a municipal building surveyor nor council can compete with a private surveyor under these circumstances.

Monash advised that competition exists in so far as owners and their agents can choose which surveyor to appoint. It suggested that if a private building surveyor is appointed to act as the relevant building surveyor, and that surveyor's work is scrutinised by the municipal building surveyor, the private building surveyor could perceive this as the municipal building surveyor seeking to undermine them and thereby encouraging the owner or agent to appoint the municipal building surveyor for future projects.

However, while it is possible that a private building surveyor may form such a perception, the design and operation of the building control system, including governance and operating context of councils renders this risk low and insignificant in practice.

First, councils operate within strict competitive neutrality obligations that preclude them from operating their building departments in a way that undermines the commercial practices of a private building surveyor. Second, the municipal building surveyor is an employee of council and thus is subject to greater governance, accountability and oversight provisions than a private building surveyor is. Further, the *Local Government Act 1989* prohibits a municipal building surveyor from exercising any delegated powers, duties or functions of the council if they have a conflict of interest. The *Building Act 1993*, in affording the municipal building surveyor additional special monitoring and enforcement powers clearly envisages this. Further, as most councils do not operate their building departments commercially and for a profit, the risk of such a conflict occurring in practice is not significant.

All councils indicated that they do not have an obligation to 'monitor' private building surveyors, as the Act does not expressly state that they have this function. Councils contrasted their functions with the explicit powers given to the board and the commission to perform this role.

However, the Act does not exempt a council from discharging its statutory enforcement role when it is aware that a private building surveyor has not complied with his or her responsibilities under these provisions. This demonstrates the councils view is at odds with their statutory obligations.

### 2.4.3 Reviewing permits lodged by private surveyors

It was evident that the councils examined did not systematically review permit documentation lodged with them by private building surveyors or inspect associated works to gain assurance the Act is being administered effectively within their municipalities.

However, while the Act does not oblige councils to review lodged documentation it also does not prohibit them from doing so. Further, such a voluntary practice is not only permitted by the Act, but is also entirely appropriate for supporting a council to exercise its related statutory responsibility to administer and enforce the Act. For example, the systematic review of this information by a council at its own discretion can provide it with important intelligence on potentially non-compliant activities that may require enforcement action.

Additionally, if as the result of an examination, a council determines there is sufficient cause to believe the Act or regulations have been breached, this could present reasonable grounds for the council to seek to enact its statutory powers of entry to inspect associated works to gather evidence of an offence. Therefore, voluntary, proactive monitoring can provide important assurance to a council that the Act is being appropriately administered and enforced in its municipality.

Councils advised that they usually only investigate matters if there is a complaint from the public. It is widely acknowledged, however, that members of the public do not generally have the technical knowledge to determine whether building works comply with the Act, regulations and technical provisions of the *Building Code of Australia*. While the role of building surveyors is to make such determinations on behalf of the public, the Act in establishing the commission as the regulator, the board as a disciplinary body, and in affording enforcement powers to councils, also clearly envisages that building practitioners operating within municipalities may not always act appropriately. Hence relying on consumer complaints alone is not a reliable basis for detecting deficiencies with a practitioner's conduct.

#### 2.4.4 Issues impeding council monitoring

Feedback from the councils examined indicates that this reactive approach has arisen principally because of limited resources, their reluctance to pursue enforcement action due to liability concerns, and a general lack of clarity about how councils' powers to administer and enforce the Act within their municipality extends to private building surveyors. Some councils advised that this indicates a need for greater clarity in the Act, including related guidance from the state on the exercise of their statutory enforcement powers.

Monitoring by councils is generally limited to specific issues such as pool safety and the periodic inspection of essential safety measures. While these activities are positive, they are not adequate as a councils' statutory responsibility for administering and enforcing the Act extends to all buildings covered by parts 3, 4, 5, 7 and 8 of the Act and associated regulations. All councils included in the audit indicated it would be difficult for them to substantially increase their current levels of proactive enforcement due to the limitations of their staffing and other available resources. Therefore, responding to complaints was effectively the only compliance action being undertaken.

In 2003, the Victorian Municipal Building Surveyors Group developed guidance, known as the *Municipal Building Control Intervention Filter*, for councils for responding to complaints involving private building surveyors. It advocates councils taking immediate action in respect to public safety matters, but that they refer other cases involving private building surveyors to the board and the commission.

All councils, except Mitchell, used the *Municipal Building Control Intervention Filter* as a risk assessment tool to assist in determining the appropriate action when investigating these complaints. The guidance is useful but the approach it advocates is limited by its over-reliance on consumer complaints rather than proactive monitoring by the council of the effectiveness of the building control system in its municipality.

### Collaboration with the Building Commission

It is evident that significant opportunities exist for councils and the commission to work together more effectively to monitor the performance of private building surveyors and the overall effectiveness of the building permit system.

Councils' statutory powers to administer and enforce the building permit system within their municipalities, coupled with their access to information lodged by private building surveyors about individual permits, present obvious opportunities for reviewing and using lodged information in consultation with the commission to improve administration of the local and broader building permit system.

There is no statutory requirement for councils to provide this information to the commission, unless requested by it during an audit. There are also no documented procedures, agreements, or arrangements in place between the commission and councils to monitor the performance of private building surveyors and the effectiveness of the municipal and broader building permit system. This situation is compounded by councils' lack of clarity concerning how their enforcement powers apply to private building surveyors.

A more strategic approach involving better coordination between the commission's and councils' monitoring activities in this respect would significantly enhance system-wide monitoring and future audit activities.

Despite the absence of such arrangements, councils noted they already provide the commission with access to information it requests during audits to carry out its functions and monitor the performance of building practitioners and the building control system. Some also indicated they already liaise informally with the commission through their involvement with peak bodies representing building surveyors. There is little evidence, however, these avenues effectively inform the commission's risk assessments and performance audit program, including broader monitoring and enforcement functions.

## Recommendations

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1. The Building Commission should:
    - expedite development of its monitoring and evaluation framework and clarify the targets, standards and arrangements for assessing the building permit system's effectiveness, and the impact of related monitoring and enforcement efforts
    - conduct a fundamental review of the building permit system's effectiveness to identify and resolve the longstanding and other system-wide performance issues
    - develop guidance for building surveyors on the process for determining and documenting the value of building works and thus for accurately estimating the levy payable to the Building Commission
    - implement controls to prevent building surveyors from using levies collected for their working capital
    - systematically audit surveyors' estimates of the value of building works to gain assurance they are soundly based and that it is mitigating financial losses arising from any incorrect valuations
    - develop and implement a strategy, in consultation with the local government sector, to enable more effective coordination with councils to monitor the performance of the building permit system and of building surveyors
    - clarify councils' responsibilities for monitoring and enforcing the *Building Act 1993* relating to private building surveyors in consultation with the Department of Planning and Community Development and relevant stakeholders.
  2. Councils should review and, where relevant, strengthen their monitoring and enforcement strategies to assure:
    - they are risk based, targeted and sufficiently informed by reliable data on the performance of the local building permit system and of the surveyors operating within it
    - that building works and associated permits comply with the *Building Act 1993*, the *Building Regulations 2006* and the *Building Code of Australia* within their municipal districts.
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# 3 Compliance of permits with the Act and the regulations

## At a glance

### Background

Building permits assure that proposed building works will comply with the *Building Act 1993* (the Act) and the *Building Regulations 2006* (the regulations). The Act prohibits building work from proceeding until a building permit has been issued. The Act requires building surveyors to assess permit applications to determine whether proposed works comply with regulatory requirements before issuing a permit.

### Conclusion

There are significant gaps in the documentation lodged by building surveyors at councils. This absence of documentary evidence to support assessments provides little assurance that surveyors have carried out their responsibilities effectively and that they are adequately upholding and enforcing building and safety requirements.

### Findings

- There was inadequate documentation for 96 per cent of the 401 permits reviewed to assess compliance with critical provisions of the Act, the regulations and the *Building Code of Australia*.
- In 89 per cent of the 80 permits examined in detail, there was insufficient evidence to determine whether building surveyors had thoroughly assessed all lodged information and had gained reasonable assurance that proposed works complied with statutory building and safety standards as required prior to issuing the permit.
- Across all permits examined, commercial buildings had higher levels of non-compliance based on documentation lodged at councils.

### Recommendation

The Building Commission, in consultation with stakeholders should develop standard templates and procedures and require building surveyors to adequately document their assessment decisions and the acquittal of mandatory safety and technical requirements.

## 3.1 Introduction

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### 3.1.1 Building permit process

A building permit authorises the construction, alteration, removal or demolition of a structure if the proposed building works comply with the requirements of the *Building Act 1993* (the Act) and the *Building Regulations 2006* (the regulations). The Act prohibits building work from proceeding until a building permit has been issued and the works must be carried out in accordance with the conditions approved by the relevant building surveyor (RBS).

The RBS has a critical role in carrying out a thorough analysis of the information provided in the building permit application. The Act requires the RBS to assess the information to determine whether proposed works comply with regulatory requirements before issuing a permit.

The Act also requires the RBS to provide the relevant council with a copy of the issued permit and any plans and other documents lodged with the application, within seven days of issuing the permit.

The regulations stipulate that an application for a building permit must contain sufficient information to show that the building work, if constructed in accordance with the permit documentation, will comply with the Act and regulations, and hence this information should be evident in the documentation lodged by the RBS with the relevant council.

### 3.1.2 Audit of building permits

We examined 401 building permits and the associated documentation lodged at the four selected councils, Latrobe, Melton, Mitchell and Monash, by municipal and private building surveyors, to determine whether they were able to demonstrate that proposed building works complied with the Act, the regulations and the *Building Code of Australia* (BCA).

The permits were randomly selected from each council's building permit register and were evenly split between permits issued for commercial and domestic building works and covered a cross-section of BCA occupancy classes.

The reviewed permits had been issued by approximately 25 per cent of all registered building surveyors in Victoria.

The audit involved a desktop assessment by independent registered building surveyors of the documentation lodged with each permit by the RBS at the council, against the requirements of the Act, the regulations and the BCA. The assessments were supervised by technical specialists. The Building Commission (the commission) was consulted in the course of selecting the technical specialists.

Specifically, the audit focused on:

- determining if all prescribed and other documentation for each permit had been lodged by the RBS as required, and was sufficient to enable the RBS to carry out a proper assessment of the proposed building works. This aspect of the audit covered all of the 401 randomly selected permits
- reassessing all lodged documentation for a subset of the above permits against the requirements of the Act, regulations and BCA to determine whether the proposed works complied with these requirements and if there was sufficient grounds to support the issuing of the permit by the original RBS. This latter technical reassessment covered 80 of the above 401 permits, 20 chosen from each of the four councils. These permits were randomly selected from those where there was sufficient documentation to enable a technical assessment to occur.

Consistent with broader industry practice, the vast majority of all permits examined, 87 per cent, were issued by private building surveyors. As permits were not routinely issued by the municipal building surveyors at Latrobe and Melton, permits examined at these councils were issued by private building surveyors only. Appendix A provides further details of the audit methodology.

This Part of the report details the results of our audit and provides an opinion on the effectiveness of the permit system in operation.

### Limitations of the audit

As the *Audit Act 1994* does not authorise the Auditor-General to carry out site inspections of private building works or of completed buildings associated with the permits reviewed, these inspections were not undertaken. While the commission has the power to do site inspections, it does not routinely do this as part of its audits of building surveyors, thus highlighting a further weakness in its approach to regulating them. This is discussed further in Part 4 of this report.

Consequently, our analysis of issued building permits focused on reviewing how effectively RBSs carried out their statutory responsibilities to administer the building permit process up to the point of issuing a permit, and whether their decision to do so was reasonable, based on the documentation reviewed by the RBS as lodged at the council.

Since we could not perform building inspections for the permits examined, it was not possible to determine how any issues associated with the building surveyor's assessment affected a building's actual compliance with building and safety standards during or after construction.

Building permits include mandatory inspection stages during the construction process, and the RBS has opportunities at these stages to identify works that are non-compliant. Notwithstanding, an RBS is required to be assured that all proposed building works will comply with the Act, regulations and BCA prior to issuing a permit.

Similarly, the *Audit Act 1994* also does not authorise the Auditor-General to audit information held at the offices of private building surveyors. Therefore it is possible that information missing in documents lodged at councils may exist in some form on a file located at a private building surveyor's office.

Failure to lodge all the prescribed and other documentation necessary to demonstrate proposed building works will comply with the Act and regulations at councils is an offence under section 30 of the *Building Act 1993*. Its absence also offers little assurance that the building permit process has been effectively administered by the RBS.

## 3.2 Conclusion

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There are significant gaps in council records to demonstrate that building surveyors are adequately discharging their statutory obligations, and that approved works meet requisite building and safety standards.

For the vast majority of permits examined, building surveyors are not fulfilling their statutory obligation to adequately document whether an application for a building permit contains sufficient information to show that building works will comply with the Act and regulations prior to issuing a permit.

The lack of documentation and supporting reasoning for surveyors' assessments makes holding them accountable for their decisions difficult, and creates an environment in which the inherent risks of collusion and conflicts of interest in the relationships between builders and building surveyors can go undetected.

These risks are significant, particularly given the commission's deficient approach to regulating private building surveyors and to monitoring the effectiveness of the building permit system and associated controls. These risks are magnified by councils' limited, reactive approach to enforcing the Act and the regulations within their municipal districts and the lack of clarity over their enforcement role applicable to private building surveyors.

## 3.3 Audit results

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### 3.3.1 Quality of documentation lodged at councils

There was inadequate information for 96 per cent of the 401 permits reviewed to demonstrate compliance with critical provisions of the Act, the regulations and the BCA.

The regulations require an application for a building permit to contain sufficient information to show that the proposed building work will comply with the Act and regulations. Section 30 of the Act also requires the RBS to give a copy of the issued permit, and any plans and other prescribed documents lodged with the permit application, to the relevant council.

Across all permits examined, those for commercial buildings demonstrated higher levels of non-compliance and accounted for eight of the 10 least compliant permits reviewed, based on the documentation lodged with council.

The degree to which permits failed to demonstrate compliance varied. Specifically, 72 per cent of domestic permits and 76 per cent of commercial permits did not contain sufficient information to demonstrate compliance with five or more required building technical or safety standards. Approximately 12 per cent of domestic permits and 27 per cent of commercial permits failed to do so in relation to 10 or more requisite standards.

Eight of the 10 least compliant permits were for commercial building works. In each case, the documents lodged with each permit were not sufficient to show they complied with between 16 and 18 of the required building technical or safety standards. The least compliant permit overall was a domestic permit which failed to show adherence with 22 required provisions.

The extent of missing or inadequate information in the documentation lodged by building surveyors at councils offers little comfort that they had sufficient information upon which to form a reasonable view that proposed building works complied with the Act and regulations prior to issuing the permits.

The following sections highlight the most common gaps in information identified.

### Insufficient assurance of adherence with planning requirements

Section 24(1)(c) of the Act requires a building surveyor to refuse to issue a permit unless satisfied that any relevant planning permit has been obtained.

In 94 of 191 domestic permits and 48 of 153 commercial permits reviewed, there was no evidence that appropriate enquiries had been made regarding town planning permit requirements, or that the building surveyor had gained assurance that these requirements had been properly acquitted by the owner/builder, in relation to the proposed building works prior to issuing the permit.

### Deficient site plans

In 108 of 144 commercial permits and 59 of 175 domestic permits examined, lodged site plans were inconsistent with the dimensions of allotments and easements shown on the title plan or plan of subdivision. These plans are important for assuring that proposed building works and associated permits are legally valid, relate accurately to the building site, and will not inappropriately obstruct easements without the necessary approvals from relevant authorities, and that the RBS can accurately determine whether protection work in relation to adjoining property is required.

### Inadequate descriptions of site levels and floor plans

Site levels were not clearly indicated on drawings in 74 of 162 domestic permits and 103 of 159 commercial permits reviewed, and floor plans were not fully dimensioned or to the required scale in 44 of 176 domestic permits and 66 of 185 commercial permits examined.

Site levels are required for the RBS to understand how proposed building work relates to actual site conditions and whether the proposed works accord with any town planning requirements. Similarly, floor plans should be fully dimensioned and to the required scale to accurately describe the building work being proposed and to allow the RBS to make a proper assessment. Accurate plans are also important for preserving the integrity of building records for future owners and developers.

### Failure to obtain necessary reports and consents

There was no evidence that reports and consents were sought and obtained from prescribed reporting authorities in 48 of 71 commercial permits reviewed for stormwater discharge points, in 8 of 9 commercial permits examined for septic tank installations, and in 5 of the 9 commercial permits assessed for proposed works over easements. The absence of this information meant there was little assurance that these works had been properly reviewed and approved by the requisite external authorities and therefore complied with these legislative requirements.

### Inadequate documentation concerning glazing elements

There was a lack of documentation concerning window schedules and associated glazing elements in 77 of 116 domestic permits and 52 of the 98 commercial permits examined. This information is needed to enable the RBS to assess compliance with requisite safety and energy efficiency standards.

### Absence of documentation needed to assess structural integrity

Roof truss designs and associated computations were absent in 52 of 73 domestic permits involving prefabricated trusses, and bracing details were lacking in 114 of 148 domestic permits. This meant there was little evidence the RBS had properly assessed the structural integrity of the proposed building prior to issuing the permit, and whether the planned bracing was adequate to support the proposed structure.

### Inadequate documentation of adherence with pool safety requirements

The drawings submitted with permit applications for swimming pools were deficient in 10 out of 11 cases examined. Specifically, seven permits failed to show the location of swimming pool fencing and gates, whereas 10 permits contained insufficient fencing height, type and gate locking details. This information is necessary to enable the RBS to determine, prior to issuing a permit, whether adequate safety measures are in place to prevent the accidental drowning of young children.

### Lack of details on proposed protection works

Detailed drawings of required protection works and their relationship to the structure of adjoining properties were absent in 21 out of 23 commercial permits reviewed. These details are needed to allow the RBS to determine whether planned protection works will adequately mitigate risks to public safety and/or adjoining property.

## 3.3.2 Adequacy of surveyors' technical assessments

In addition to these significant information gaps, there was also insufficient evidence in 89 per cent of the 80 permits subsequently selected to demonstrate that building surveyors had thoroughly assessed all lodged information and had gained reasonable assurance that proposed works complied with all statutory building and safety standards, as required prior to issuing the permit.

For these permits the issues ranged from the absence of sufficient evidence that the surveyor had gained reasonable assurance of compliance prior to issuing a permit, to matters which, based on the information that had been submitted, were demonstrably non-compliant, thus indicating an inadequate or incorrect assessment by the RBS.

The Act requires a building surveyor, prior to issuing a permit, to verify that proposed building works, associated construction materials, and related designs satisfy statutory technical and safety requirements.

While this is intended to assure that non-compliance issues are identified by the building surveyor prior to construction commencing, the audit has found it is common industry practice for building surveyors to inappropriately abdicate some of their technical assessments to third parties, or to defer assessing the compliance of some proposed works until after construction has commenced, which is contrary to the building permit process as set out in the Act and regulations.

These issues were most evident in relation to assessments against the fire safety provisions of the BCA, the compliance of structural timber frames and associated bracing with required standards, and of proposed protection works required by the RBS to mitigate risks to adjacent building and public safety from the proposed building works.

## Insufficient evidence of compliance with fire safety standards

In most cases where the fire safety provisions of the BCA applied, the documents lodged with permits examined did not demonstrate sufficient compliance and therefore did not support the building surveyor's decision to issue a permit.

The main shortcomings were:

- Critical data needed to assess compliance of the fire hazard properties of combustible materials with the BCA was not evident in 10 of 16 commercial permits reviewed where this applied and therefore there was no evidence the building surveyor had considered this during assessment.
- There was no evidence the building surveyor had obtained reasonable assurance that openings in external walls required to resist the spread of fire, such as doorways and windows, were protected in accordance with the requirements of the BCA in three of the five permits assessed where this was relevant.
- In five out of 19 permits examined, swinging doors forming part of a required exit were not configured to swing in the direction of egress as required by the BCA.
- There was insufficient detail in 14 of the 24 commercial permits reviewed to demonstrate that doors in a required exit, or in the path of travel to a required exit, could be readily opened with a single action and without a key as required by the BCA.
- Insufficient detail was provided in eight of the 20 permits examined to demonstrate compliance with the BCA of installations in exits or paths of travel that assured hazards were minimised for building occupants when attempting to exit a building.
- The architectural or engineering drawings associated with nine of the 22 commercial permits reviewed, where it was deemed necessary, did not sufficiently detail the fire fighting system to enable the building surveyor to determine if it met the requirements of the BCA and thus if it will operate as intended when required.
- Water pressure and flow details needed to properly assess the compliance of proposed fire hydrants, hose reels and sprinklers with the fire safety provisions of the BCA were not evident in 11 of 16 commercial permits assessed. This meant there was insufficient assurance the proposed fire fighting equipment was fit for purpose.
- In 10 of 18 commercial permits examined there was insufficient evidence to demonstrate the proposed installation of fire hydrants complied with the BCA. Key issues included location of proposed external fire hydrants, and a failure to accurately assess whether the coverage of proposed hydrants meets requisite Australian standards and, therefore, if it was fit for purpose.
- In eight out of 17 commercial permits examined, proposed internal fire hose reels did not comply with the BCA requirement to be located within four metres of an exit, nor with the installation requirements of the requisite Australian standard.
- In 10 out of 24 commercial permits examined, proposed portable fire extinguishers did not meet the installation requirements of the BCA. Specifically, the type and location of proposed extinguishers was not specified on plans submitted with the permit application meaning the RBS was unable to assess compliance.



The potential impact of the failure to meet critical fire safety provisions can obviously be significant, and the above issues demonstrate there was insufficient assurance of compliance with the 'deemed to satisfy' fire safety provisions of the BCA based on the permits and associated information lodged by building surveyors at councils. There was also no evidence of approved alternative solutions needed to mitigate the issue identified in each case.

While it is possible that some or all of these matters were subsequently corrected during construction, this was not evident in the lodged documentation and therefore offers little comfort that the building surveyor properly considered and acquitted key fire safety risks, either prior to or after issuing the permit.

Advice from building surveyors during the audit indicated that the above issues mainly affected smaller commercial projects, where limited resources often meant technical specialists such as fire engineers with the expertise necessary to oversee fire safety requirements and identify suitable alternative solutions were not engaged. They also advised that it is common industry practice for fire safety equipment to be installed by sub-contractors once construction is complete and that, because of this, information on the proximity and layout of exits and fire fighting equipment was often not obtained either prior to the permit being issued or during building works.

As stated earlier, this was evident in numerous cases and therefore indicates that building surveyors in these cases have inappropriately issued permits without obtaining the necessary assurance of compliance with fire safety requirements.

The commission does not presently afford sufficient scrutiny to this issue as part of its audit program as it does not systematically audit commercial building works.

### Insufficient evidence of adequate precautionary measures for demolition works

In five out of six building permits where it was required, there was insufficient detail to demonstrate necessary precautionary measures were taken when building work involved demolition. The regulations require precautions to be taken before and during demolition work, and for those to be detailed in accordance with the relevant Australian standard. Specifically, details of built structures to be demolished and demolition procedures are to be provided to the RBS to assess whether the proposed protection work will be sufficient to protect the safety of individuals and adjacent property.

Accordingly there was little evidence that proposed demolition works complied with regulatory requirements and that the building surveyor in each case had properly considered and assessed these issues.

Advice from building surveyors during the audit indicates that the common practice for some builders to consistently work with the same RBS means there is a risk that this relationship can lead to the building surveyor not strictly enforcing requirements on builders to sufficiently document their precautionary measures and submit them for the building surveyor's scrutiny and approval.

Not only does this potential practice pose an obvious risk to buildings and public safety, but it is also clearly inconsistent with the RBS's statutory responsibility to enforce compliance with the Act. It was unclear to what extent this issue influenced the observed deficiencies in the building surveyor's assessment.

### Poor documentation and assessment of protection work and precautionary measures for other building and safety risks

Aside from demolition, other proposed building works can also pose risks to adjacent buildings or properties, and in these circumstances the RBS may also determine that suitable protection works are necessary to mitigate these risks during construction. Where the RBS deems that public safety could be put at risk by proposed building work, protection works which are referred to as 'precautionary measures', must be taken.

In these instances, the applicant is required to detail the nature and purpose of proposed protection or precautionary works and to submit them to the building surveyor for approval prior to construction commencing. Proper administration of this process by the surveyor and builder assures that adjoining property owners are notified and are able to respond, that there are clear processes for dealing with disagreements, and that work cannot proceed until conditions are met.

We found the rationale used by building surveyors to determine where and when such works are required was not clearly documented and there was no consistent approach taken in determining the nature of any protection or precautionary works required.

Specifically, 11 of the 20 commercial permits reviewed where the RBS had indicated protection of the general public was required were lodged without the necessary details of the proposed precautionary measures and evidence they were approved by the RBS. This situation offers little assurance that the need for protection works is being properly considered and enforced by building surveyors.

This is concerning given the previously stated inherent risk of conflicts of interests in the relationships between building surveyors and builders, which, when coupled with the absence of transparency of building surveyors' decisions creates opportunities for building surveyors to avoid diligently enforcing required protection work, particularly when it has financial implications for builders and project costs.

This is exacerbated because the commission's performance audit program does not systematically examine this risk. This is discussed in Part 4 of this report.

### Insufficient evidence of compliance with room ventilation requirements

Approximately one-third of the 21 commercial permits reviewed could not demonstrate compliance with the requirements of the BCA on room ventilation. The BCA requires that any habitable room occupied by a person for any purpose without natural ventilation, must have specified mechanical ventilation or an air conditioning system installed in accordance with the BCA to meet health and amenity requirements essential for habitability.

While the files examined commonly noted that mechanical drawings would be provided at a later date, there was no evidence that this occurred.

### Inadequate assessment of site details

The audit found that 65 per cent of commercial permits and 46 per cent of domestic permits examined did not clearly indicate site levels on site plans or other drawings submitted.

This information is required to enable the surveyor to check the relationship between the proposed building works and the site, including adjoining property, and can impact on town planning requirements, footing design and protection of both people and property. Therefore, these permits did not demonstrate that the RBS had considered and gained sufficient assurance these matters were addressed prior to issuing the permit.

It was evident that RBSs, without due review, were accepting the documentation submitted by an applicant and prepared by a third party, that site levels met the specified requirements. This situation is at odds with the surveyor's role under the Act, which is to independently check and verify that the proposed works will, if constructed as planned, meet all regulatory requirements.

### No evidence of assessments of timber framing and bracing

The RBS is required to determine whether the proposed bracing meets the relevant Australian standard required by the BCA and is appropriate for the building works proposed. However, lodged plans commonly contained a general aspirational statement that the bracing 'would meet compliance requirements' without providing further detail or evidence of such compliance.

We observed that common industry practice is to gain assurance that the proposed bracing is adequate during inspection following installation and based on third party attestation of compliance with standards, rather than by a documented independent assessment of the suitability of proposed bracing by the building surveyor demonstrating compliance with requirements.

The absence of a detailed bracing plan, where relevant, supporting the lodged application prevents the proposed design from being checked for compliance prior to construction, or for it to be subsequently inspected against pre-approved standards. There was also no evidence of the building surveyor's assessment of the suitability of proposed bracing in the absence of these plans.

### Inadequate assessment of glazing elements

Glazing components are critical safety matters in building work as they contribute to the incidence and effects of glass breakage and potential associated injury.

Approximately 67 per cent of domestic permits and 53 per cent of commercial permits reviewed did not include window schedules and failed to provide sufficient details of glazing thickness and type to enable the RBS to adequately assess them against the energy efficiency and safety requirements of the BCA. Therefore, there was little evidence to indicate the surveyor had adequately considered these matters prior to issuing the permit.

Under the regulations, the RBS is required to check glazing components to be satisfied they comply with the BCA, prior to issuing the permit. For most construction, this is a straightforward analysis outlined in the BCA, while for more complex projects, a registered structural engineer should be engaged to design and authorise the glazing requirements. However, in practice, RBSs commonly rely on the general statements shown on plans that glazing 'will meet required standards' without seeking additional information and conducting the required assessment to approve the type and location of glazing proposed.

Building surveyors also advised that it is common practice for an RBS to rely on a certificate from the glazier or builder at the end of the building project confirming they have met the requirements. However neither is qualified to provide these attestations and the certificates are not governed by any standards. Therefore, this common industry practice neither acquits nor accords with the building surveyors' statutory responsibilities for independent assessment.

### Observations from building surveyors

Discussions with building surveyors during the audit revealed a commonly held perception that many of the assessment issues identified by the audit are due to the shortage of building surveyors and resulting high workloads for existing practitioners.

There was also a strong view that the Act imposes an onerous compliance checking regime on building surveyors and there was a need to review existing provisions to improve clarity to building surveyors' about their requirements, and also to streamline and simplify their assessment responsibilities.

Many observed that the audit provided a valuable opportunity to reflect on the building surveyor's role, including the utility of, and need for, the existing range of statutory compliance checking requirements. Surveyors indicated that there would be substantial benefits in the commission undertaking these reviews, in consultation with the industry, on a periodic basis.

Building surveyors also advised that skills shortages and the day-to-day pressures of dealing with high workload demands has led them to seek practical, efficient approaches to assessment.

This, however, neglects their underlying obligation to observe statutory requirements. It also points to a need for greater leadership from the commission to address the challenges raised by building surveyors and to authorise, where appropriate, any related departures in practice from mandatory requirements.

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## Recommendation

3. The Building Commission, in consultation with stakeholders should:
    - develop standard templates and procedures to require building surveyors to adequately document their assessment approach and basis of their decisions
    - require building surveyors to demonstrate, using these templates and procedures, their consideration and acquittal of mandatory safety and technical requirements.
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# 4

## Regulating building surveyors

### At a glance

#### Background

As the primary regulator of the building control system, the Building Commission (the commission) is responsible for auditing practitioners' performance, investigating complaints against them and prosecuting breaches of the *Building Act 1993* (the Act) and the *Building Regulations 2006* (the regulations).

#### Conclusion

The commission cannot demonstrate it is monitoring and enforcing the activities of building surveyors adequately to assure their work complies with the Act and regulations. Its recent improvement initiatives during this audit are positive first steps, but will need to be purposefully implemented as these issues have been repeatedly raised over the last decade.

#### Findings

- The commission's audit program does not achieve adequate coverage and scrutiny of building surveyors' work.
- There is little evidence audits effectively target major risks, as the commission's staff report risk informally and do not adequately document their assessments.
- The commission's approach to regulating surveyors has not been effective and should be revisited.
- The commission's staff do not have sufficient guidance on how to investigate complaints, and there are no standards for reporting on the effectiveness of investigations.
- The commission has initiated actions during this audit to improve its audit, risk assessment, complaints management and investigations procedures.

#### Recommendations

The Building Commission should:

- strengthen its performance audit program to assure it meets its legislative intent
- comprehensively assess, document, and audit all identified major risks in the building permit system
- strengthen its complaints handling and investigation processes.

## 4.1 Introduction

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The *Building Act 1993* (the Act) provides for registered practitioners to be audited to ensure they have carried out their work competently, that their work does not pose a risk of injury or death and that they have complied with the Act, the *Building Regulations 2006* (the regulations) and the *Building Code of Australia* (BCA).

As the primary regulator of the building control system, the Building Commission (the commission) is responsible for auditing practitioners' performance, investigating complaints against them and prosecuting breaches of the Act and regulations.

The Building Practitioners Board (the board) also has a statutory function to supervise and monitor the conduct and ability to practice of registered building practitioners. As a disciplinary body, the board can hold an inquiry into their conduct on referral from the commission and can suspend and/or deregister them.

To discharge its functions adequately as a regulator, the commission needs access to accurate and reliable information on the performance of practitioners and the building permit system to target its monitoring and enforcement activities effectively. Such information relies on rigorous auditing of practitioners' conduct, and sound risk assessment procedures, including complaints and investigation processes.

This Part examines how well the commission regulates and monitors building surveyors.

## 4.2 Conclusion

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The commission cannot demonstrate it is adequately regulating the activities of private and municipal building surveyors to assure that their work complies with the Act and regulations. The commission's audits, and risk and complaints management processes are ad hoc and marked by poor documentation and lack of guidance.

Recent initiatives to review complaints handling processes, as well as actions taken during this audit to address some of the issues identified are positive first steps to redress this situation. They will, however, need to be purposefully implemented, a key challenge given the core shortcomings which have been repeatedly raised by internal and external reviews and audits over the last decade.

## 4.3 Performance audit program

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The commission's performance audit program does not provide for effective scrutiny of the effectiveness of building surveyors' work.

The function of a performance auditor, as defined by the Act, is to examine work carried out by a registered practitioner, to ensure it has been competently carried out, does not pose any risk of injury or damage to any person, and to assure that the Act and the regulations have been complied with. However, performance audits neither comprehensively examine nor explicitly conclude on these matters.



Performance audits to date have focused mainly on selected administrative activities of municipal building surveyors (MBS). 'Hot Spot' audits which assess compliance with specific regulatory matters of interests in the industry are also undertaken and can cover aspects of registered building surveyors' work. Building permit levy and other selected administrative data held by private surveyors is also audited.

However these audits centre largely on administrative issues and do not examine whether building surveyors' work complies with the Act or whether any associated risks of injury or damage have been satisfactorily mitigated.

The commission aims to audit each MBS once every two years but does not have similar targets for private building surveyors who issue over 85 per cent of all building permits. These practitioners are not routinely audited.

Further, there is little evidence to show that performance audits target major risks appropriately. Staff report risk informally and do not clearly document associated assessments.

Although these issues were previously raised in our 2000 audit, the commission has not addressed them satisfactorily. That audit similarly found minimal performance auditing, which did not comply with the Act's intent. It also found that the audits were basically paperwork reviews that centred on administrative compliance and therefore rarely uncovered major issues.

Since that 2000 audit, little has changed.

In 2005 the Victorian Competition and Efficiency Commission's (VCEC) inquiry into *Housing Regulation in Victoria: Building Better Outcomes* also found that the rationale for the commission's monitoring and enforcement strategy was unclear. Based on publicly available information it could not assess its effectiveness or efficiency.

VCEC recommended the commission publish its rationale in annual reports but it has not done so.

The commission initiated action during our audit to review its performance audit program. It advised its new audit procedures would complement other planned improvements to its risk framework also initiated in response to our audit, and will involve a three-tiered approach of escalating its audits in future from administrative, to technical, and then if necessary to onsite inspections.

### Audit coverage and scope

MBS audits to date have examined municipal and private building surveyor permits at councils and according to the commission, are a good opportunity to liaise with MBS and other staff, gather information for future audits and offer feedback to councils and MBSs on their practices.

Although audits of council MBSs have covered permits issued by private building surveyors, the reviews were limited to checking documentation or administrative compliance.

All the commission's audits have focused primarily on domestic building work. The commission does not systematically audit commercial building work because it believes the risk of non-compliance is significantly lower by comparison as non-domestic building works are subject to commercial controls and practices not present in the domestic building industry.

The commission has little evidence or any documented rationale, however, to support its view that these controls and practices are operating effectively.

#### *The commission's rationale for limiting audits of non-domestic works*

The commission advised that its belief the commercial sector presents a much lower risk of injury or damage to the public is based on its opinion that:

- controls and associated practices are effectively and efficiently regulating practitioners in the commercial sector
- the commercial forces inherent in this sector mean that 'owners' or 'consumers' often have the same technical knowledge, bargaining power and resources as builders, and thus are well equipped to ensure practitioners engaged by them perform their obligations satisfactorily
- procurement practices in the commercial sector incorporate comprehensive strategies to manage risk of non-compliance with the Act and regulations, which can include the engagement of consultants to specifically assess compliance with the BCA
- commercial building projects are often designed by teams of registered practitioners who are obliged to produce compliant work, and they are also commonly inspected by persons appointed to administer the building contract to ensure compliance with the design
- commercial building and associated finance contracts contain far stronger incentives on commercial builders to comply with their statutory obligations compared to domestic contracts.

These opinions, however, do not constitute sufficient and appropriate audit evidence. While it is possible that the above provisions could, if operating effectively, reduce the risk of non-compliance with the Act and regulations, the commission does not systematically audit the compliance of commercial building works and thus does not have a substantive basis to demonstrate its opinions are accurate and soundly based.

As a regulator, the commission needs to target its audit activities appropriately based on reliable data about emerging risks instead of simply relying on unverified beliefs. In the absence of reliable data there is a significant risk the commission's audits are misdirected.

The commission considers its complaints management role, its collection of data via the *pulse* survey and its consultations with the industry enable it to monitor and identify issues in both the commercial and domestic sectors.

It further asserted that its success in regulating the commercial sector is supported by the following indicators:

- 21 out of 782 complaints during 2010–11 were related to non-domestic works
- four out of 149 inquiries by the board between 2009 and 2011 related to non-domestic work
- three out of 66 prosecutions between 2009 and 2011 related to non-domestic builders
- two out of 22 inquiries about surveyors between 2009 and 2011 related to non-domestic work
- premiums for non-domestic building insurance, which covers structural defects, have fallen by 70 per cent due to low claims.

These indicators however, have inherent limitations and are neither sufficient nor reliable for assessing the commission's effectiveness in regulating commercial works.

Specifically, they do not directly measure the extent of compliance of commercial building works with the Act and the regulations, as this can only be reliably determined through a technical compliance audit.

There is no direct evidence the fewer complaints for non-domestic works, including low insurance claims, necessarily reflects better compliance with building and safety standards. Instead, they may simply reflect the preference and capacity of commercial consumers for utilising their own substantial resources to resolve issues and disputes rather than rely on the commission or insurers.

It is not surprising, therefore, that complaints in the domestic sector are comparatively higher as these consumers are usually home owners with a greater emotional investment in their building works, and without access to the much greater resources of commercial consumers. They do not have the same capacity to resolve issues on their own and are more likely, therefore, to call upon the commission for assistance.

Further, as the board's inquiries and the commission's prosecutions are driven mainly by complaints received, it is also not surprising that the number of inquiries and prosecutions is much lower in the commercial sector in line with the lower number of complaints.

Therefore, the commission's current indicators are not considered sufficient to accurately assess its performance in regulating the commercial sector.

The results of our audit of building permits, described in Part 3 of this report, contradict the commission's view that the risks inherent in the non-domestic sector are low. Those results indicate the commission needs to fundamentally reassess its current approach to regulating all building works, including those in the non-domestic sector.

The commission advised that files selected as part of its MBS audits include commercial building projects. However, it was unable to demonstrate that it systematically targets commercial work in its audit program.

The commission revised its MBS audit procedures during our audit, which now require its auditors to review two to three commercial files as part of all future MBS audits. However, the rationale behind this number of commercial files is not evident or documented and thus there can be little confidence that the sample will serve to assure compliance with building and safety regulations.

### Auditor capability

The investigators who conduct the performance audits for the commission are not registered building surveyors. They do not have the technical capability, skill and qualifications to judge whether building permits should have been issued by the relevant building surveyor or if they meet the technical specifications of the BCA.

This lack of technical expertise means auditors are unable to effectively execute their functions under the Act to assure that practitioners have competently carried out their work, that this work does not pose any risk of injury or damage to any person, and to ensure that the Act and the regulations have been complied with.

### Audit procedures and guidance

The commission had no policy on the conduct and quality of its performance audits but initiated action to develop one during this audit. Although its procedures were documented they did not contain detailed guidance for staff on how to audit.

The commission has updated its procedures during this audit, which now give more guidance on file selection at councils, how to advise MBSs of their rights and obligations and what documentary evidence they need to provide assurance on some audit findings.

However, the updated procedures do not guide staff on how the questionnaire for interviewing MBSs at councils should be used to determine if they adequately carry out their functions. Hence, the purpose and aim of this part of the audit remains unclear.

As noted in Part 2 of this report, the councils examined during this audit were also confused about the precise nature and extent of their role in regulating the building permit system within their municipality.

### Quality assurance for performance audits

The commission does not regularly review its performance audit approach and there are no documented quality assurance standards for assessing and reporting to senior management on the effectiveness and efficiency of performance audit activity.

The commission advised that audit results are reviewed for quality at the end of each audit however there is little evidence the reviews are against defined efficiency and effectiveness standards or that all audits are systematically reported to senior management against these standards.

The commission advised that high-risk cases are reported to the executive leadership team but could not produce documentation to demonstrate that this occurs. Thus, reporting depends on the vigilance of individual staff.

The commission further advised that it reviewed its performance audit program regularly, the last being in February 2011. However, there is no evidence of the nature or frequency of earlier reviews and the results of the 2011 review are not documented.

Nevertheless, information supplied indicates the 2011 review focused mainly on audit templates and documentation and did not consider strategic matters such as the overall effectiveness of the program to date or the adequacy of links between complaints management, investigations and inquiries, and how these could be better used to target the audit program.

### Effectiveness of the audit program to date

As the commission's audit program focuses primarily on administrative issues there is no evidence to demonstrate it is effective in assuring building works and practitioners comply with the Act or regulations, including technical building and safety standards.

#### *Performance against annual audit targets*

The commission is not meeting its publicly stated target of auditing each MBS once every two years, and has no targets for auditing private building surveyors who issue the vast majority of building permits.

The commission advised its targets for MBS audits are designed to reflect its obligation to government and the community to use its resources responsibly. Its 2009–10 Highlight Report states, 'Twenty-six Municipal Building Surveyor (MBS) audits were conducted in 2009–10 ... [which] met the target of ensuring that every MBS is audited once every two years'. In addition, individual performance plans for the commission's metropolitan and regional based investigators contain an annual target to audit all allocated MBSs 'at least once every 2 years'.

The commission has produced no evidence to support its claim that 98 per cent of all councils were audited in the last three years. Commission information available instead shows that MBSs were audited at only 53 per cent of councils in the last three financial years.

The commission advised late into the conduct of this audit that its MBS audits and related targets are based on its 'audit continuum' concept, which seeks to audit councils once every two-year block, rather than once every two years. This concept however, misrepresents the commission's performance relative to its public target to audit councils once every two years because it allows for up to four years to elapse between successive audits.

The commission also advised it has introduced measures to assure it meets its two-year target more consistently in the future. Specifically, it has scheduled 31 councils for an MBS audit over the next year. It is not clear, however, how this will meet the target of auditing every council once every two years.

### *Coverage of private building surveyors*

The commission has not set similar targets for auditing private building surveyors who issue most permits each year, nor does it have a clear and documented rationale for not having such an audit program. Its lack of focus on these practitioners is a very significant gap in its audit program. It advised it cannot audit private building surveyors regularly as it does not have the technical in-house skills or the resources to do so.

While 14 audits of private building surveyors were undertaken between 2009–10 and 2010–11, these predominantly focused on compliance with administrative rather than technical requirements. Further, a registered building surveyor was not in attendance as required and thus the audits were not executed in accordance with established procedures.

The commission acknowledged this, and advised the intent of its procedures was to assure that a practitioner with a high level of relevant expertise would oversee technical audits of surveyors. However, the commission indicated this requirement was redundant in the cases examined because they did not involve technical audits of the private surveyors.

Ten of the 14 audits were in one municipality during what was termed an ‘audit blitz’. The stated purpose was to identify if private surveyors were discharging their duties in ‘lapsed’ building permits. The commission advised that the audits arose from data supplied by its Levy and Building Information Unit concerning ‘open permits’, and suggested this demonstrated proactive targeting of audits based on risk.

The evidence instead suggests the audits were initiated nine months after a private building surveyor was deregistered and, in the wake of, local councils and the press raising concerns with the commission about the status of numerous open and lapsed permits from the deregistered surveyor.

The available information indicates the audits were primarily a reaction to these issues and while data from the Levy and Building Information Unit was used to focus the audits after the decision was made to conduct them, it was not the impetus for them.

There is no evidence of purposeful proactive auditing of private building surveyors or similar blitzes before or after the 10 audits of 2009–10.

While the commission has the power to carry out site inspections, it does not generally do so when auditing building surveyors. This compromises its ability to fully assess the competency of building surveyors’ work and thus highlights a further weakness in its approach to regulating them.

The commission advised it initiates technical audits depending on the severity of non-compliance identified. However, its audits are mostly administrative in nature, which limits its capacity to identify non-compliance issues. No technical follow-up audits of building surveyors were evident among the files we examined.

### 4.3.1 Approach to regulation

The absence of targeted, risk-based technical audits of building surveyors means the commission is unable to reasonably assure the integrity and reliability of the building control system.

The commission asserted during the audit that the state's regulatory framework for building control is decentralised and does not envisage the commission or board playing a specifically 'interventionist' role in monitoring practitioner performance. Figure 4A further details the basis of the commission's view, including our assessment of it.

**Figure 4A**  
**Rationale for the commission's approach to regulation**

The commission asserted during the audit that the statutory powers vested in the commission and board by the Act are restricted, which it claims demonstrate that an interventionist role was never intended by Parliament. For example, the commission claimed:

- it has no powers to issue notices and orders for the enforcement of safety and building standards, and thus to intervene and take action to prevent non-compliant building work from continuing
- the Act does not require registered practitioners to routinely provide the commission with information essential for taking an interventionist approach
- it was not intended to assess building permits and whether building work is being carried out in compliance with them.

These assertions are at odds with the commission's functions as a regulator, and the extensive and significant powers afforded to it under the Act. Specifically these powers include:

- section 196 of the Act which establishes the commission's functions to monitor and enforce compliance with the Act and regulations relating to building and building practitioners, monitor developments relevant to the regulation of building standards, and the system for collection of building permit levies
- section 198(2) of the Act which empowers the commission to direct a municipal or private building surveyor to carry out their functions under the Act or regulations, if it considers it necessary for the proper administration of the Act
- sections 227A and 227B of the Act which empowers the commission to appoint performance auditors to examine, in its absolute discretion, any work carried out by registered practitioners to ensure the works have been competently carried out, are safe, and comply with the Act and regulations
- section 227C of the Act which provides the commission's auditors with legal right of entry to any residence, land or other property and the powers to obtain any document or information in relation to any work the auditor is examining.

Further, in addition to its above-stated powers, the commission can also assume the functions of an MBS in relation to any matter referred to it under part 8 of the Act.

Section 112, within part 8 of the Act, empowers the commission under such circumstances to make a building order that requires an owner or other person to stop building work if such work, for example, contravenes the Act or regulations, or if it poses damage to life, health or safety.

These significant statutory powers vested in the commission are entirely at odds with its claim that it has 'no power to intervene or take action'.

*Source:* Victorian Auditor-General's Office.

The commission further asserted that our findings that it should strengthen its audits of building surveyors would result in additional layers of administration and regulation contrary to the Act's intent and the state's aim of reducing the regulatory burden.

Our findings, however, relate to the commission's exercise of its current statutory functions and thus do not entail any additional layers of administration or regulation beyond those currently envisaged by the Act. Purposefully applied, there would be minimal overall resource implications to obtain reasonable assurance regarding the integrity and reliability of the regulatory framework in operation.

There are no restrictions to the commission's regulatory activities. Similarly, the state's goal of reducing the regulatory burden simply means achieving effective regulation while minimising overheads for industry.

## 4.4 Risk management

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The commission does not systematically record and analyse issues arising from its complaint investigations, audits and the board's inquiries to inform risk assessments.

It regularly updates its risk register with issues raised by staff. However, staff reporting is ad hoc and staff have not clearly documented the basis for identified risks. This offers little assurance the commission adequately and systematically analyses and understands all major risks in the building permit system or that it has effective controls in place to mitigate them.

The commission advised that it targets its monitoring and enforcement activities by assessing the likelihood and impact of non-compliance, gathering information from industry consultations and analysing building activity and permit levy data.

However, these assessments have not been adequately documented. There is no basis to assess whether they systematically occur, are comprehensive and soundly based.

The commission initiated actions to strengthen its risk assessment procedures during this audit. Specifically it advised it has developed new procedures for documenting risk assessments that it was testing in October 2011 and due for completion in November 2011.

It also advised that it has developed a draft compliance and enforcement policy designed to improve risk assessments and enable better targeting of emerging risks through its audits and investigations.

## 4.5 Complaints management

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The commission has a complaints policy and documented procedures in place to guide staff in the management of complaints, however, they do not provide a sufficiently robust framework for overseeing the complaints handling function.



There is no evidence complaints are being prioritised based on an assessment of the impact and likelihood of non-compliance and the commission does not have adequate practices for systematically reviewing and improving complaints handling and for informing future monitoring activities and risk assessments.

### The complaints management system

The commission's complaints policy outlines the direction and aims of the complaint handling system, however the roles and responsibilities for monitoring and reporting on performance in complaints handling and its quality assurance standards are not clear.

There is no evidence to support the commission's claim that complaints are systematically prioritised. Rather, complaints that fall within the commission's jurisdiction are dealt with in the order they are received and are not triaged or otherwise prioritised according to risk or any documented rationale.

The commission advised that its Case Assessment Unit clarifies and reviews the status of each complaint fortnightly. It also stated that the Unit regularly assures quality, which leads to updated procedures. However, the commission has no documented quality assurance standards for its complaints management activities and there is no evidence of systematic reviews of complaint handling against such standards.

The limitations of its complaints management information system FOCUS also mean staff cannot use it systematically to analyse and review data.

In late 2010 the commission commenced a strategic review of the consumer complaints management process. The aims of the review include developing an overarching strategy for consumer complaints management, identifying and implementing improvements, developing an audit strategy to reduce complaints and setting key performance measures and reporting requirements.

The commission advised it has since drafted a new complaints policy and associated procedures, including guidelines for triaging complaints, and that it was testing these in October 2011. It also advised they were drafted based on the Victorian Ombudsman's *Good Practice Guide on Complaint Handling for Victorian Public Sector Agencies*, and to complement its updated compliance and enforcement policy. The commission had yet to finalise the procedures at the time of writing of this report. It advised this would occur in November 2011 following consultation with stakeholders.

### Investigating complaints

There is limited guidance for staff on how to investigate complaints, and no documented standards for assessing and reporting on the effectiveness and efficiency of investigations. Consequently, quality assurance processes are inadequate. Further, there is no routine reporting to senior management on the effectiveness of investigations.

### *The investigators*

The commission's investigators are recruited from police or other investigative backgrounds and thus have extensive experience in conducting investigations. Generalist investigatory experience in itself, however, does not mean that staff can adequately investigate the specialist activities of building surveyors.

The technical and specialised nature of building surveyors' work establishes a strong imperative for clear guidelines, documented standards and procedures to assist generalist investigators navigate this complex area.

Without such standards and procedures the commission is not well placed to know if the investigators are adequately assessing building surveyor compliance with the Act and whether cases should be referred for inquiry or prosecution.

The need for clear quality assurance standards and procedures is particularly critical given that a majority of investigations, 64 per cent, are outsourced to external firms.

The commission initiated action during the audit to improve its quality assurance practices for investigators. Improved procedures were due for completion in October 2011. At the time of finalising this report the commission had yet to complete the procedures pending further consultation with stakeholders in November 2011.

### *Internal review of investigations*

The commission says that it assesses and reviews completed investigation files fortnightly, and the Audit and Investigations Unit leadership group often amends reports before they are finalised so the content satisfies the burden of proof required in a court of law.

However, there is no evidence of regular reviews against defined quality assurance standards or that there is systematic reporting to senior management on the effectiveness of investigations against such standards.

### *Legal review of investigations*

The commission also advised that briefs of evidence prepared by investigators are reviewed and assessed independently against the relevant law by external legal advisors once a file is referred for advice. It says this process offers continuous feedback and training to investigators.

However, the majority of investigations files, 55 per cent, are not referred for legal advice and therefore are not subject to this form of review. Further, the case study detailed below shows there is little assurance that this review process, when it occurs, is always effective.

### *Investigator training*

The commission advised its investigators are continually gaining relevant experience and knowledge through their work, and that some have tertiary qualifications in building and are constantly being mentored by the commission's technical staff.

Investigators attended a 2009 seminar on the *Building Act 1993* including new requirements under the *Evidence Act 2008*. Further, in 2010 three staff attended a seminar on the *Criminal Procedure Act 2009*, which covered how to start court proceedings, serving documents and preparing briefs. Apart from these, there have been limited training opportunities.

In the absence of clear investigative guidelines, the training undertaken collectively is not sufficient to develop generalist investigators to be able to reliably form judgements on technical building matters.

### *External technical advice*

External practitioners supply technical reports for investigations but they are not asked to interpret and advise on the implications of identified breaches, which limits investigators' scope to make informed judgements on technical issues. The commission advised that this was because the purpose of the reports is to advise only on whether a breach has occurred.

There are also no quality assurance standards or associated controls for the technical reports, so there is little assurance they are competently prepared. Further, the practitioners recruited to the technical panel are not screened for minimum capability standards, which the commission began remedying during this audit.

### Case study: Customer complaint

The example of a consumer complaint, detailed in Figure 4B, indicates a number of problems in the current system, which both the commission and the board have initiated action to address.

The case study refers to key findings from a report into the matter later commissioned and accepted by the Building Commissioner.

**Figure 4B**  
**Case Study: Customer complaint**

#### ***The complaint***

In August 2006 the complainant engaged a registered domestic builder to build their home. In August 2008, the party laid a complaint with the commission asking for an inquiry into the builder's conduct and ability to practice. The complaint alleged multiple transgressions, including failure to complete works in a timely manner, poor workmanship, failure to rectify defects and faults, failure to properly supervise works, and carrying out works he was not qualified to perform.

#### ***The inquiry***

The Building Practitioners Board held the inquiry in 2009, finding the practitioner guilty of three allegations. He received a \$500 financial reprimand and was directed to pay costs of \$464. The practitioner was suspended from the register prior to the inquiry hearing due to a failure to renew his registration. The commission's report noted the complainant was dissatisfied with how the matter had been dealt with by both the commission and the board.

**Figure 4B**  
**Case Study: Customer complaint – *continued***

Specifically, the report noted that the complainant was concerned about:

- the failure to be given notice of the inquiry hearing date where the complainant's rights could be represented
- the failure to fully consider the extent and severity of the allegations made in the complaint
- the conduct of the board hearing
- the perceived leniency of the inquiry outcomes and penalty.

***The 2010 internal review***

In response, the Building Commissioner called for an internal review which concluded that the complainant had been failed by the commission's advice before and after lodging the complaint, by its management and investigation processes and by the board's handling of the inquiry.

More specifically it found that:

- The commission's advice to the complainant before lodging the complaint was inadequate and not the best course of action.
- The complainant received disjointed and inconsistent information over 15 months from about nine commission staff members with differing responsibilities.
- Despite repeated requests to be informed of the inquiry date so they could attend, and assurances by commission staff that this would occur, the complainant was unaware that the inquiry had taken place.
- The commission's investigation into the complaint was inadequate resulting in two minor allegations being considered at the inquiry bearing little resemblance to the full scope of matters identified in the complaint.
- Despite legal advice that the investigation should have been reopened, it was not.
- The inquiry lacked discipline and some comments made by the then Chair were inappropriate and could be perceived as compromising the board's independence and being biased toward the practitioner.
- The inquiry panel members did not include a consumer representative as required by board policy.
- The culture of the board needed addressing to ensure that members act independently and made decisions based on natural justice for all parties at all times.

*Source:* Victorian Auditor-General's Office based on information supplied by the Building Commission.

***The commission response to the internal review***

The commission's review of the board's inquiry into the practitioner complaint recommended:

- a major overhaul of the dispute and complaints management process, to occur alongside work previously initiated by the board to streamline and manage its inquiries more efficiently
- all board members and co-opted members participate in training regarding the roles and responsibilities of the board and the manner in which inquiries are conducted

- the board appoint another consumer representative member, expand its pool of co-opted consumer representatives and implement its policy to consistently include consumer representatives on inquiry panels
- current restrictions on the board's access to evidence be reviewed, such as the investigator's report or legal advice, when considering draft allegations before holding the inquiry.

The commission accepted the recommendations and in early 2011 commissioned the strategic review of its consumer complaints management process noted earlier. This positive action by the commission demonstrated its commitment to addressing the issues identified by its internal review.

### *The board response to the internal review*

Before the commission's review, the board had already started a review of its administration and sub-committee structure to reduce the backlog of complaints and improve the efficiency of the inquiry process.

As part of this general review, the board agreed to several changes to the way it conducts inquiries. This included the creation of a revised sub-committee structure which established dedicated groups of permanent and co-opted members to assume recurring roles on either the registration or inquiry sub-committees.

It also advised that all permanent and co-opted board members who sit on the board's inquiry sub-committee attended professional development seminars between October 2010 and March 2011. These sessions focused on the conduct of disciplinary inquiries, including legal principles and procedural matters, requirements of natural justice, making determinations and the application of penalties. The board also advised it intends to refresh this training once a year and is planning for the next session to occur in February 2012.

The board stated it does not have the power under the Act to appoint permanent board members as these are Governor in Council appointments. However, it noted that additional co-opted consumer members have been appointed to the board since late 2010 and that it amended its *Sitting in Panels: Policy and Procedure* during the course of this audit to reflect this change.

The board advised it intends to hold a workshop to address the matters raised in the review in consultation with the commission. It acknowledges the review showed deficiencies in the management of a complaint but notes that because the complainant did not appeal the board's decision, there is no evidence that individual members had failed to provide natural justice.

However, the report into the matter notes that the complainant did appeal but later withdrew it because of a belief that justice would not be possible.

The board advised it is committed to respecting the interests of all those involved in the practitioner disciplinary process and that it has improved its performance on inquiries, appointing more co-opted members, creating more specialised sub-committees to oversee the process, and holding training sessions.

## Recommendations

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4. The Building Commission should strengthen its performance audit program to assure:
    - it meets its legislative remit to provide assurance that the work carried out by a registered practitioner has been competently carried out, does not pose any risk of injury or damage to any person, and to assure that the *Building Act 1993* and the *Building Regulations 2006* have been complied with
    - it is informed by rigorous analysis of reliable risk-based data on the performance of building surveyors
    - it includes a clear rationale and annual targets for ongoing comprehensive technical audits of both municipal and private building surveyors performed by qualified practitioners
    - it offers reliable information on whether building surveyors operating in both the domestic and non-domestic sectors effectively discharge their obligations to enforce compliance with the *Building Act 1993* and the *Building Regulations 2006*
    - it regularly undertakes and clearly documents reviews of both the program's and individual audit's effectiveness against defined quality standards.
  5. The Building Commission should comprehensively assess, clearly document, and target via audit all identified major risks related to surveyors' administration of the building permit system.
  6. The Building Commission should strengthen its complaints handling and investigation processes to assure:
    - complaints are systematically prioritised according to the risk of non-compliance with safety and technical building standards, and that this is clearly documented
    - they are governed by clear standards of effectiveness and efficiency, and that adherence to these requirements is regularly reviewed and monitored by senior management
    - investigators receive sufficient training to enable them to form appropriate judgments about technical building matters
    - clear quality assurance standards and effective controls are established for technical reports sourced from the Building Commission's external panel to assure they have been competently prepared.
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# 5 Practitioner capability, registration and renewal

## At a glance

### Background

The Building Practitioners Board (the board) is an independent statutory body that plays an important role in registering building practitioners, including building surveyors and in monitoring their conduct and ability to practice.

### Conclusion

Although extensive, the board's assessment process for registering building surveyors is not well documented, nor is it supported by clear criteria and standards. Gaps in guidance and documentation reduce accountability for decisions and do not provide assurance that assessments are soundly based. The absence of a legislative requirement for surveyors to demonstrate they continue to meet minimum capability standards is a gap in the current regulatory framework.

### Findings

- There are no documented criteria or guidelines for evaluating the practical experience of building surveyors.
- While some assessments are extensive and could lead to a thorough examination of competence, they are not consistently documented or reviewed against defined standards.
- Practitioners do not have to demonstrate they have maintained their skill and capability to the required level in order to renew their registration.
- The Department of Planning and Community Development has a project examining the need for compulsory continuing professional development.

### Recommendations

- The Building Practitioners Board should develop criteria for assessing building surveyors' competence.
- The Department of Planning and Community Development should seek the Minister for Planning's approval to amend the *Building Act 1993* to introduce a system of compulsory continuing professional development for building surveyors, linked to registration renewal.

## 5.1 Introduction

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The Building Practitioners Board (the board) is an independent statutory body established under the *Building Act 1993* (the Act) to oversee the quality and standard of professional services in the Victorian building industry.

It administers a registration system and monitors the conduct and ability to practice of registered building practitioners. The Act requires most practitioners, including building surveyors, to be registered with the board. The *Building Regulations 2006* outline the categories and classes of building practitioners.

The ability to be registered is based upon the nature and extent of qualifications and experience. The board, therefore, plays an important role in assessing the competency of applicants to be registered as building surveyors and practitioners.

This Part examines how effectively the board conducts these assessments, and the adequacy of current arrangements for assuring that practitioners' maintain minimum competency standards.

## 5.2 Conclusion

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Although extensive, the board's assessment process for registering building surveyors is not well documented, nor is it supported by clear criteria, guidelines or quality review standards.

While the board's current processes could lead to a thorough examination of a surveyor's competence, existing gaps in guidance and documentation reduce accountability for decisions, including assurance that assessments are soundly based.

The absence of a legislative requirement for surveyors to demonstrate they continue to meet minimum capability standards, represents a gap in the current regulatory framework.

The shortcomings in surveyors' performance, as identified by this audit, points to the need for greater ongoing scrutiny of their conduct by the board, and for more effective arrangements than those that presently exist for assuring surveyors' maintain minimal professional standards.



## 5.3 Registration of building surveyors

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There are no documented criteria or guidelines for evaluating the practical experience of building surveyors. The Act requires this experience to be 'to the satisfaction of the board' but does not define it further, therefore giving considerable discretion to the board member assessing the application.

Applicants for the 'limited' and 'unlimited' building surveyor categories need to satisfy the board they have enough practical experience and technical capability, have requisite qualifications and insurance, and that they are of good character. They sit an online examination and practical assessment then are interviewed by a board or co-opted member to ascertain their competence. More recently applicants have had to complete the registered building inspector assessment before being assessed as a building surveyor.

The assessment process is extensive and could lead to a comprehensive and thorough examination of the applicant's competence. However, assessments are not documented in a consistent and structured way and there is no evidence they are reviewed for quality against defined standards. This situation reduces accountability for decisions and provides little assurance that assessments are soundly based and consistent.

The examination and practical assessment have no guidelines to decide a 'pass' or 'fail' nor is there guidance for the assessor on how to use the results to conduct and evaluate the applicant's interview.

The board agrees that better definition of 'pass' or 'fail' for assessment is necessary and intends to address this as a priority. However, it also indicated that assessment may not always be best determined by a single threshold figure.

The *Building Practitioners Board Registration Policy Manual* notes the evaluation or assessment process should follow a set procedure and be well documented so that if a legal challenge is made there is appropriate evidence about how the matter was considered. However, such evidence is not on file.

The board advised that it is reviewing its registration policy to introduce a greater element of objectivity into the assessment process. Nevertheless, it considers that a subjective approach that takes into account the experience of the applicant and permits discretion to the board member remains essential to the process.

Further, the board relies on the practitioner's own declarations that they are of good character and does not systematically verify declarations.

The Act requires applicants to supply character information to the board and makes it an offence to supply false or misleading information. The Act also enables the board to ask for further information before making a decision. Consequently, the board has the power to verify an applicant's character declaration but generally does not do so. This could be achieved practically by focusing on a sample of applicants each year.

## 5.4 Registration renewal and practitioner capability

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To renew their registration, a practitioner does not have to demonstrate they have maintained their skill and capability to the level that they can discharge their duties. The Act does not require evidence of ongoing professional development, which is a gap in the current regulatory framework.

A practitioner's capability is decided only at the initial application, and a practitioner will remain registered for life on payment of the annual fee and maintenance of insurance cover, unless the board deregisters them. A practitioner's registration will only be reassessed if registration is suspended by the board for three years.

The board, however, could monitor practitioner capability outside the renewal process, for example through a system of voluntary continuing professional development (CPD), but it does not currently do so.

The Building Commission (the commission) has had a voluntary CPD program in place for all registered building practitioners since 2004. Data provided by the commission shows that self-reporting by building surveyors of participation in CPD activities is generally high, at over 90 per cent. However, the commission notes that many more practitioners report participation than those who have actually met the minimum requirements to qualify for a certificate of completion of the voluntary CPD program. Data supplied by the commission shows that approximately 80 per cent of registered building surveyors had not achieved the minimum CPD requirements of the voluntary program as at September 2011.

The board generally supports CPD for surveyors. Specifically, it agrees that there is merit in considering the ongoing suitability for registration of building practitioners, and particularly building surveyors, given their pivotal role in building regulatory compliance.

The Department of Planning and Community Development (DPCD) advised that it is undertaking a project in partnership with the commission to gather evidence to support the preparation of a regulatory impact statement for compulsory CPD.

Information from the department indicates the project is seeking input from stakeholders, and is examining the operation of the commission's voluntary CPD program, and related information on complaints, inquiries, prosecutions and practitioner performance.

It further notes that compulsory CPD schemes, linked to renewal of registration, have been implemented for domestic building practitioners and pool and spa builders in New South Wales, and for all registered building practitioners in Tasmania. DPCD indicates that its review is considering the CPD requirements for each practitioner category separately, including the existing and proposed requirements of other Australian jurisdictions.

A key focus of the review is to consider whether there is any evidence to support the introduction of compulsory CPD for practitioner registration.

We therefore refer DPCD and the commission to the results of this audit, which clearly demonstrate a need for greater scrutiny of the professional conduct of building surveyors, and the need for better adherence to minimum statutory requirements.

Further, notwithstanding good participation rates, our findings also indicate the commission's current voluntary CPD program, in place since 2004, has not been effective in assuring surveyors achieve these minimum requirements.

### Monitoring 'grandfathered' practitioners

When the Act was introduced in 1994 it entitled qualified building surveyors registered under previous arrangements to be issued with a certificate to practice subject to their supplying proof of insurance. They were 'grandfathered' into the current system and thus were not required to have their competence assessed against current standards.

Neither the board nor the commission have assessed the risks arising from grandfathering as they do not monitor practitioner capability.

The board advised the only way this can presently occur in the absence of legislative change, is through the commission's performance audit program. It also advised it has agreed with the commission to take into account the length of time after registration that a practitioner should receive such a monitoring audit, which would cover 'grandfathered' practitioners.

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## Recommendations

7. The Building Practitioners Board should:
  - develop criteria and guidelines for evaluating the competency of applicants to be registered as building surveyors and clearly document the basis of all of its related decisions
  - systematically verify a sample of the character declarations supplied by applicants for registration to gain reasonable assurance they are reliable.
8. The Department of Planning and Community Development, in consultation with stakeholders, should:
  - seek approval from the Minister for Planning to introduce a system of compulsory continuing professional development for building surveyors
  - seek approval from the Minister for Planning to prepare an amendment to the *Building Act 1993* to make registration renewal contingent on building surveyors satisfying minimum compulsory continuing professional development requirements.



# Appendix A.

## Building permit review methodology

### Audit approach

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This audit examined 401 building permits issued by municipal and private building surveyors, and the associated documentation lodged by the relevant building surveyor (RBS) at the four selected councils, Latrobe, Melton, Mitchell and Monash, to determine whether it demonstrated that proposed building works complied with the *Building Act 1993* (the Act), the *Building Regulations 2006* (the regulations) and the *Building Code of Australia* (BCA).

The documentation lodged with each permit was subjected to a desktop assessment against the requirements by independent registered building surveyors. Experts endorsed by the Building Commission supervised the assessments.

The Act, regulations and BCA detail the specific matters to be considered by an RBS in determining whether a permit should have been issued. These requirements are usually extensive and can vary depending on the nature of the proposed building works and their intended purpose. A working checklist that assured these differences were carefully considered and acquitted by assessors guided the audit methodology.

Specifically, the audit focused on:

- determining if all prescribed documentation for each permit had been lodged by the RBS as required, and if the lodged documentation was sufficient to enable the RBS to carry out a proper assessment of the proposed building works. This aspect of the audit covered all of the 401 randomly selected permits
- independently assessing all lodged documentation for a subset of the above permits against the requirements of the Act, regulations and BCA to determine whether the proposed works complied with these requirements and if there was sufficient grounds to support the issuing of the permit by the original RBS.

The latter technical re-assessment covered 80 of the 401 permits—20 from each of the four councils. These permits were randomly selected from those where there was sufficient documentation to enable a technical assessment to occur.

Consistent with broader industry practice, the vast majority of permits examined, 87 per cent, were issued by private building surveyors. As permits were not routinely issued by the municipal building surveyors at Latrobe and Melton, permits examined at these councils were issued by private building surveyors only.

As the BCA is extensive, the checklist included a large number of items reflecting these requirements to assure assessors considered them. Consistency in approach was also assured through progressive meetings with assessors during the audit conduct phase to moderate technical matters. However, not all of the extensive BCA and checklist requirements were relevant to each examined permit in the final analysis. Those that were considered relevant are discussed in this report.

While the checklist assured there was a common framework to guide audit decisions, each assessor was empowered to exercise their own discretion in determining whether the lodged documentation sufficiently demonstrated whether proposed works and associated permits complied with the Act, the regulations and the BCA.

### Sampling approach

The examined permits were randomly selected from each council’s building permit register and were evenly split between permits issued for commercial and domestic building works. The BCA classifies buildings, or parts of buildings, based on the purpose for which the building is constructed and intended to be used. These classifications, associated definitions and numbers of permits examined relating to each class are set out in Figure A1.

**Figure A1**  
**Building Code of Australia permit classes**

Occupancy class	Description	Profile of permits examined
1a	Single dwelling, such as a detached house or one or more attached houses, separated by a fire resisting wall, such as a terrace house, town house or villa unit.	141
1b	Boarding house, guest house, hostel, or the like, where not more than 12 people reside and floor space not exceeding 300sqm.	3
2	Building with two or more sole occupancy units with each being a single dwelling.	–
3	Residential building, not class 1 or 2, which is a common place of long-term or transient living for unrelated persons, such as a boarding house, hostel, backpackers accommodation, etc.	–
4	Dwelling in a class 5, 6, 7, 8 or 9 building if it is the only dwelling in the building.	–
5	Office building used for professional or commercial purposes excluding class 6, 7, 8 or 9.	43
6	A shop or other building for the sale of goods by retail or the supply of services direct to the public, such as a café, restaurant, hairdressers, service station, retail store.	40
7a	A car park.	8
7b	Buildings for the storage or display of goods or produce for sale by wholesale.	19

**Figure A1**  
**Building Code of Australia permit classes – continued**

Occupancy class	Description	Profile of permits examined
8	Laboratory or building in which manufacturing, assembly, repair, packaging or cleaning of goods or produce for sale or trade occurs.	12
9a	A health care building.	3
9b	An assembly building in a primary or secondary school, including a trade workshop, laboratory or similar.	79
9c	An aged care building.	–
10a	A private garage, carport, shed or the like.	107
10b	A structure, being a fence, mast, antenna, wall, swimming pool or the like.	21
<b>Total</b>		<b>476</b>

*Note:* The total number of permits in Figure A1 exceeds the total in Figure A2, as multiple occupancy classes can be approved in a single building permit.

*Source:* Victorian Auditor-General's Office.

The BCA is a two-volume document that considers specific building classifications as follows:

- BCA, Volume One: Class 2 to 9 Buildings.
- BCA, Volume Two: Class 1 and 10 Buildings Housing Provisions.

Our analysis of 'domestic' permits relates to those works associated with BCA classifications 1 and 10 as found in BCA Volume Two. Similarly, our analysis of 'commercial' permits relates to those works relating to BCA classifications 2 through 9, which are contained in BCA Volume One. Due to the low number of permits typically issued for classes 2, 3 and 4, no buildings of these occupancy classes were included in the sample.

Consistent with broader industry practice, the vast majority of all permits examined, 87 per cent, were issued by private building surveyors. As permits were not routinely issued by the relevant municipal building surveyors at Latrobe and Melton, permits examined at these councils were issued by private building surveyors only.

The audit reviewed permits issued by approximately 25 per cent of all registered surveyors in Victoria and selected permits covered a cross-section of BCA occupancy classes. A further breakdown of the permits examined by the type of surveyor and category of occupancy class is set out in Figure A2.

**Figure A2**  
**Number of permits examined at each council by type**

	Latrobe	Melton	Mitchell	Monash	Total
<b>Number of permits by building class</b>					
Domestic	50	50	50	51	<b>201</b>
Commercial	50	50	50	50	<b>200</b>
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>101</b>	<b>401</b>
<b>Number of permits by issuer</b>					
Private building surveyor issued	99	100	58	90	<b>347</b>
Municipal building surveyor issued	1	0	42	11	<b>54</b>
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>101</b>	<b>401</b>

Source: Victorian Auditor-General's Office.

### Limitations of the audit

As the *Audit Act 1994* does not authorise the Auditor-General to carry out site inspections of private building works or of completed buildings associated with the permits reviewed, these inspections were not undertaken. This is consistent with the Building Commission's usual approach to auditing building surveyors.

As a result, our analysis of issued building permits focused on reviewing how effectively RBSs carried out their statutory responsibilities to administer the building permit process up to the point of issuing a permit, and whether their decision to do so was reasonable on the basis of the documentation reviewed by the RBS as lodged at the council.

As we could not perform building inspections for the permits examined, it was not possible to determine how any issues associated with the building surveyor's assessment effected a building's actual compliance with building and safety standards during or after construction.

Building permits include mandatory inspection stages during the construction process, and the RBS has opportunities at these stages to identify works that are non-compliant. Notwithstanding, an RBS is required to be assured that all proposed building works will comply with the Act, regulations and BCA prior to issuing a permit.

Similarly, the *Audit Act 1994* also does not authorise the Auditor-General to audit information held at the offices of private building surveyors. Therefore, it is possible that information missing in documents lodged at councils may exist in some form on a file located at a private building surveyor's office.

Failure to lodge at councils all of the prescribed and other documentation necessary to demonstrate that proposed building works will comply with the Act and regulations is an offence under section 30 of the *Building Act 1993*. Its absence also offers little assurance that the building permit process has been effectively administered by the RBS.



## Appendix B.

# *Audit Act 1994* section 16— submissions and comments

### Introduction

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In accordance with section 16(3) of the Audit Act 1994 a copy of this report was provided to the Building Commission, the Building Practitioners Board, the Department of Planning and Community Development, Latrobe City Council, Melton Shire Council, Mitchell Shire Council and Monash City Council with a request for submissions or comments.

Responses were received as follows:

The Building Commission.....	62
The Building Practitioners Board.....	65
The Department of Planning and Community Development.....	66
Mitchell Shire Council.....	69
Monash City Council .....	70

Further audit comment:

Auditor-General's response to the Building Commission .....	64
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The submission and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

## Submissions and comments received

### RESPONSE provided by the Building Commission

Office of the Commissioner



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25 November 2011

Mr D D R Pearson  
Auditor-General  
Victorian Auditor-General's Office  
Level 24  
35 Collins Street  
MELBOURNE VIC 3000



Dear Mr Pearson,

#### Compliance with Building Permits

Thank you for your letter dated 11 November 2011 and the provision of the final draft Audit Report *Compliance with building permits*. I welcome the opportunity to provide a response for inclusion in the report, pursuant to section 16(3) of the *Audit Act 1994*.

I will limit my response to those matters directly relevant to the Commission. The Commission agrees with the audit recommendations 1, 3, 4, 5 and 6.

Steps are already being taken to implement those recommendations that fall within the powers of the Commission. However, as some of these require legislative change and/or agreement with other parties, the Commission will work with the Department of Planning and Community Development and other key participants in the regulatory framework with a view to their full implementation.

As observed by VAGO, the Commission initiated reviews of its complaints handling processes and monitoring of building surveyors prior to the commencement of the VAGO audit. Fully implemented, the resulting enhancements will address key recommendations made by VAGO, in particular the need for risk-based prioritisation of complaints and improved monitoring of the building permit system.

Opportunities identified by VAGO to review procedures for auditing permit documentation have also been actioned. A new audit program has been announced and is supported by relevant stakeholders.

VAGO recommends that the Commission expedite the development of its new monitoring and evaluation framework, an evolving field of regulatory expertise. It is anticipated that from mid-2012, the implementation of this new and comprehensive framework will drive key enhancements to the Commission's monitoring and evaluation activities as a priority in the forthcoming corporate planning cycle.

The Commission is working with relevant government agencies, including DPCD and the VCEC, to ensure the new monitoring and evaluation framework reflects best practice regulatory principles.



**RESPONSE provided by the Building Commission – continued**

The Commission welcomes the VAGO recommendations and VAGO's acknowledgement that work is underway at the Commission to address these issues. We do, however, remain disappointed at how some of the conclusions and findings are presented in the report.

In particular, VAGO suggests that the Commission's performance audits remain 'paperwork reviews focused on administrative compliance' rather than assessments of critical safety and technical issues. The Commission queries this statement, which is used to support the suggestion that 'little has changed' since VAGO's 2000 audit.

As part of its performance audit program, the Commission conducts on-site inspections to determine whether building works comply with the technical standards prescribed by the Act. The Commission's technical panel was established in 2002 and on-site audits commenced thereafter. The Commission has conducted over 500 on-site audits over the past five years to ensure that buildings are compliant and pose low levels of risk to public health and safety

The Commission maintains that the onsite compliance of Victoria's building stock is an important indicator of whether the building permit system and building surveyors are achieving their primary objective under the Act (i.e the protection of the safety and health of people who use buildings and places of public entertainment). This component of monitoring undertaken by the Commission, we contend, is relevant to VAGO's audit objective, namely to determine the effectiveness of the 'building permit system' in ensuring that approved building work meets requisite building and safety standards.

As acknowledged in the report, VAGO's audit was confined to a narrow part of the Commission's activities in the building regulation space. The Commission agrees with the need to improve documentation and procedures, but readers of the report would be unjustified to conclude that new building works are unsafe given the full range of checks and balances in the system.

The audit recommendations will provide useful input into the Commission's ongoing efforts to maintain a sound regulatory framework that is well supported by documentation and administrative procedures.

As requested, a copy of my letter has been emailed to Steven Vlahos.

Yours sincerely,



Tony Arnel  
**Building Commissioner**

Cc: Mr Steven Vlahos. Director Performance Audit

## Auditor-General's response to the Building Commission

Readers of this report should understand this audit specifically reviewed those with statutory responsibility for administering and regulating the building permit system—namely building surveyors and the Building Commission (the commission).

Building surveyors play a crucial role by monitoring and enforcing building standards prescribed by the *Building Act 1993* and the *Building Regulations 2006*. They also authorise and oversee the work of builders and are responsible for assuring buildings are safe, accessible and energy efficient.

The commission's onsite audits of domestic building works are audits of builders—not of building surveyors.

Further, the commission's performance audit program does not provide adequate scrutiny over the effectiveness of building surveyors' work as it focuses mainly on administrative rather than on technical building and safety aspects. This led to the conclusion that little has changed since our previous 2000 audit.

While the commission's onsite audits of domestic building works are designed to 'ensure' the compliance of buildings, it has not provided evidence demonstrating their impact and extent of compliance of Victoria's broader building stock with technical building and safety standards.

In 2010–11, 106 788 building permits were issued by over 500 building surveyors. The commission, however, only conducted 40 onsite audits. Similarly, 46 onsite audits were undertaken in 2009–10 compared to over 113 000 permits issued. The results of these audits are not reported publicly by the commission and, collectively, are insufficient in number to reliably indicate the effectiveness of the broader system.

Further, the commission accepts that it does not yet have a framework to reliably demonstrate the effectiveness of the building permit system and of its related 'checks and balances'.

**RESPONSE provided by the Building Practitioners Board**



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25 November 2011

Mr D D R Pearson  
Auditor-General  
Victorian Auditor-General's Office  
Level 24  
35 Collins Street  
MELBOURNE VIC 3000

Dear Mr Pearson,

**Compliance with Building Permits**

I refer to your letter dated 11 November 2011 and the provision of the final draft Audit Report *Compliance with building permits*. I will use the opportunity to provide a submission for inclusion in the report, subsequent to section 16(3) of the *Audit Act 1994*.

The Building Practitioners Board (the Board) will limit its response to those matters directly relevant to the Board as covered in Section 5 of the report - Practitioner capability, registration and renewal.

For matters raised within the Board's scope the Board accepts these and has already taken steps to implement recommendations through the Quality Assurance process and enhancements to the assessment process. The Board also supports the finding for more systematic checks. These have already been introduced and documented in the procedures manual. The Board sees advantage in the introduction of compulsory Continuing Professional Development (CPD) for building surveyors as a regime to ensure capabilities remain relevant over time.

As requested, a copy of my letter has been emailed to Steven Vlahos.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Bill Russell".

**Bill Russell**  
Chair  
Building Practitioners Board

Cc: Mr Steven Vlahos. Director Performance Audit



**RESPONSE provided by the Department of Planning and Community Development**



**Department of Planning and Community Development**

Ref CSEC003037

25 NOV 2011

Mr D D R Pearson  
Auditor General  
Victorian Auditor Generals Office  
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Dear Mr Pearson

**AUDIT ACT 1994, S16(3)- PROPOSED AUDIT REPORT COMPLIANCE WITH BUILDING PERMITS**

Thank you for your letter of 11 November 2011 and the opportunity to comment on the proposed report on *Compliance with building permits*.

I would like to make the following general comments:

As identified by Audit, the building industry is a significant contributor to the economy, generating over \$24 billion in domestic and commercial building work in 2010-11. A total of 113,670 building permits were issued in the 2010-11 financial year.

While the building permit system introduced in 1994 has provided Victoria with a more effective and efficient system than its predecessor, I note with concern the comments and recommendations in the audit report. It is important to assess how any system that has been in place for a long period of time meets current day requirements. Your report reinforces this view.

DPCD notes that the Building Commission has a number of projects underway which respond to the 2011 VAGO recommendations including:

- A review of complaints management policy and procedures;
- Improvements to monitoring and evaluating the performance of building surveyors and the building permit system;
- Enhanced compliance, investigations and enforcement policies and procedures.

DPCD has commenced working with the Building Commission and other key stakeholders to review the policy, legislative and regulatory framework for the building permit system. This review will address the issues raised by the Audit.

We welcome the acknowledgement by VAGO of the limitations of the 'desk top assessment audit.' In particular we note that the *Audit Act 1994* does not authorise the Auditor General to carry out site inspections of private building works or of completed buildings associated with the permits reviewed or of the information held in the offices of private building surveyors.

Given the limitations of the audit, DPCD agrees that it is not possible to determine the actual compliance with building and safety standards during or after construction for the 401 permits that were the subject of the desk top audit.



**RESPONSE provided by the Department of Planning and Community  
Development – continued**

DPCD also notes Audit's acknowledgement "that information missing in documents lodged at Councils may exist in some form on a file located at a private building surveyor's office".

DPCD will, in addition to the recommendations in the Building Commission paper on reforms to the building permit process, consider further potential legislative or regulatory changes. This will address issues raised in the audit report and identify ways of ensuring the transparency and independence of private building surveyors in the exercise of their functions.

DPCD will review the building permit systems in other jurisdictions to identify best practice, and to consider checks and balances which might introduce greater accountability into the Victorian system. This will include consideration of the relationship between builders and building surveyors. DPCD will also review offences and penalties as part of this process.

As it is critical to maintain public and industry confidence in the building system, DPCD will, together with the Building Commission develop a timetable for implementation of each of its responses to the audit recommendations. The Building Commission will be requested to report monthly on the achievement of milestones for each of its responses.

In relation to the recommendations which directly reference DPCD, we respond as follows:

**Recommendation 1**

*The Building Commission should*

- expedite development of its monitoring and evaluation framework and clarify the targets, standards and arrangements for assessing the building permit system's effectiveness, and the impact of related monitoring and enforcement efforts.
- conduct a fundamental review of the building permit system's effectiveness to identify and resolve the longstanding and other system-wide performance issues.
- develop guidance for building surveyors on the process for determining and documenting the value of building works and thus for accurately estimating the levy payable to the Commission.
- implement controls preventing building surveyors from using levies collected for their working capital.
- systematically audit surveyors' estimates of the value of building works to gain assurance they are soundly based and that it is mitigating financial losses arising from any incorrect valuations.
- develop and implement a strategy, in consultation with the local government sector to enable more effective coordination with councils to monitor the performance of the building permit system and of building surveyors.
- clarify councils' responsibilities for monitoring and enforcing the Act relating to private building surveyors in consultation with the Department of Planning and Community Development and relevant stakeholders.

**Response**

It is noted that this recommendation is directed to the Building Commission. DPCD will take a lead role in the development of advice to address the final part of this recommendation which relates to clarifying Council responsibilities for monitoring and enforcing the Act relative to private building surveyors. DPCD will in consultation with relevant stakeholders clearly delineate the respective roles and responsibilities of the Building Commission and Councils for monitoring and enforcing the Act in relation to private building surveyors.

DPCD will also support the Building Commission to develop and implement a strategy in consultation with local government to enable more effective coordination of the administration and enforcement of the building permit system and building surveyors.

2

**RESPONSE provided by the Department of Planning and Community Development – continued**

Recommendation 2

*Councils should review and, where relevant, strengthen their monitoring and enforcement strategies*

*to assure:*

- *they are risk based, targeted and sufficiently informed by reliable data on the performance of the local building permit system and of the surveyors operating within it.*
- *that building works and associated permits comply with the Act, the regulations and the BCA within their municipal districts.*

Response

It is noted that this recommendation is directed to Councils, however DPCD in consultation with the MAV will provide guidance to Councils on Council roles and responsibilities in relation to the Building Act and regulations and the BCA to assist with its implementation.

Recommendations 3,4,5,6

It is noted that each of these recommendations are directed to the Building Commission which I understand will respond separately.

Recommendation 7

It is noted that this recommendation is directed to the Building Practitioners Board which I understand will respond separately.

Recommendation 8

*The Department of Planning and Community Development, in consultation with stakeholders, should:*

- *seek approval from the Minister for Planning to introduce a system of compulsory continuing professional development (CPD) for building surveyors*
- *seek approval from the Minister for Planning to prepare an amendment to the Building Act 1993 to make registration renewal contingent on building surveyors' satisfying minimum CPD requirements.*

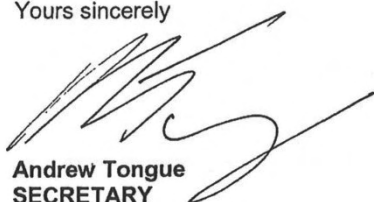
Response

As noted in the audit report DPCD has a project underway to gather evidence to inform a cost benefit analysis to determine whether compulsory CPD should be introduced for different classes of building practitioners.

Priority will be given to completing the cost benefit analysis for building surveyors. The evidence in this audit report will assist DPCD to expedite the completion of this project.

DPCD agrees with the intent of this recommendation and will include information from the audit report in the cost benefit analysis which will need to be completed before compulsory continuing professional development for building surveyors can be implemented.

Yours sincerely



**Andrew Tongue**  
**SECRETARY**



**RESPONSE provided by the Chief Executive Officer, Mitchell Shire Council**



Please quote our reference in your reply  
Our Ref: FN/08/008 - KB:dd  
INW11/15771

28 November 2011

Mr Des Pearson  
Auditor General,  
Victorian Auditor General's Office  
Level 24, 35 Collins Street  
MELBOURNE 3000



Dear Mr Pearson

**AUDIT REPORT – COMPLIANCE WITH BUILDING PERMITS  
MITCHELL SHIRE COUNCIL**

Thank you for providing Council with a copy of the draft *Audit report – Compliance with Building Permits*. Council acknowledges that these audits provide a useful benchmark against which its performance should be measured.

Council agrees that there is a greater need for it and other Councils to work more closely with the Building Commission to more effectively monitor the building permit system and the performance of building surveyors, both in the public and private sector. Council notes the recommendations of the report and acknowledges that resource constraints preclude it from monitoring compliance of private building surveyors work except on a reactive basis. If this mandatory requirement were to be introduced then the cost and legal implications of such a change would need to be examined carefully. In addition, Council considers that probity issues would arguably exist where Council is required to review the permits of private sector building surveyors who are effectively competitors with Council in the market place.

In reference to Council's own practices, Council does acknowledge that its own administrative practices with respect to building approvals needs improvement and provides a commitment that through our own internal audit process the deficiencies identified in the draft Audit Report will be addressed within the organisation.

Yours faithfully

A handwritten signature in black ink, appearing to read "D. Keenan".

**DAVID KEENAN**  
**CHIEF EXECUTIVE OFFICER**

---

*Together with our community, create a sustainable future.*

**Mitchell Shire Council**  
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**RESPONSE provided by the Acting Chief Executive Officer, Monash City Council**

PK/KME/FIN15 (359)

23 November 2011

Mr Des Pearson  
Auditor-General  
Victorian Auditor-General's Office  
Level 24  
35 Collins Street  
MELBOURNE VIC 3000



Dear Mr Pearson

**PROPOSED REPORT ON COMPLIANCE WITH BUILDING PERMITS**

Council welcomes the opportunity to provide a Management Response to the Report on Compliance with Building Permits.

In so far as the recommendations relate to Council, they are considered by Council to be reasonable. Efforts will be made to follow those recommendations and to participate, where appropriate, in the implementation of recommendations by others. This will be done with regard to Council's express statutory obligations and its capacity to resource any proposed changes to the carrying out of its functions.

Council welcomes the VAGO's acknowledgement that the Act does not expressly require Councils to 'monitor' building works or building surveyors. Council does not have the resources to proactively monitor and VAGO notes that there is a shortage of building surveyors in Victoria.

Councils do not receive a share of the building permit levies collected by the Commission in relation to building permits issued in the State. The Building Department's activities are paid for predominantly from the rates collected by Council or from the fees payable in relation to the performance of its administrative functions (which are set under the Building Regulations 2006).

Whilst the VAGO have considered responses made by Council during its development of the report, the commentary in part 2.4.2 of the report could have been clearer in distinguishing between the statutory roles of Councils and the Municipal Building Surveyor and issues facing Councils in relation to complaints it receives about private building surveyors with whom it may compete for business.

Continued .....

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**RESPONSE provided by the Acting Chief Executive Officer, Monash City Council  
– continued**



The fact that the Act provides for Councils, the Building Commission and the Building Practitioners Board to each have a role in the regulation of the work of private building surveyors results in a lack of clarity and has been the source of many discussions between Councils and the Commission over the years. Council welcomes the recommendation that the Commission clarify Councils' responsibilities for monitoring and enforcing the Act relating to private building surveyors in consultation with the Department of Planning and Community Development and relevant stakeholders. Whilst Council will cooperate with the Commission and other stakeholders in seeking to clarify these statutory responsibilities, Council believes ultimately that clarity must be given by the State Government via an amendment to the Act after due consultation.

With regard to the building permit review undertaken by VAGO as part of the Report, Council notes that the conclusions reached suggest that there is room for significant improvement in the practices of private building surveyors when issuing building permits. It will also be incumbent on designers, engineers, draftspersons and architects to improve the standard of documentation that is being submitted as part of the building permit process. These deficiencies support the recommendations regarding the development of templates and procedures to assist private building surveyors and the need for improved auditing by the Commission.

Poor quality documentation at the permit issuing stage is unacceptable; however, it will not necessarily result in a poor standard of building work. Work is usually carried out or supervised by registered building practitioners. Inspections during the work and the issue of a certificate of final inspection or an occupancy permit provide opportunities to ensure that building work complies with the Act and Regulations.

It is clear that the VAGO has committed significant resources to this report and Council commends those efforts and thanks the VAGO for the various opportunities it has been given to participate in the development of the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Kearsley', written over a light blue horizontal line.

PAUL KEARSLEY  
Acting Chief Executive Officer



# Auditor-General's reports

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Report title	Date tabled
Biotechnology in Victoria: the Public Sector's Investment (2011–12:1)	August 2011
Developing Cycling as a Safe and Appealing Mode of Transport (2011–12:2)	August 2011
Road Safety Camera Program (2011–12:3)	August 2011
Business Planning for Major Capital Works and Recurrent Services in Local Government (2011–12:4)	September 2011
Individualised Funding for Disability Services (2011–12:5)	September 2011
Supporting Changes in Farming Practices: Sustainable Irrigation (2011–12:6)	October 2011
Maternity Services: Capacity (2011–12:7)	October 2011
Procurement Practices in the Health Sector (2011–12:8)	October 2011
TAFE Governance (2011–12:9)	October 2011
Auditor-General's Report on the Annual Financial Report of the State of Victoria, 2010–11 (2011–12:10)	November 2011
Public Hospitals: Results of the 2010–11 Audits (2011–12:11)	November 2011
Water Entities: Results of the 2010–11 Audits (2011–12:12)	November 2011
Portfolio Departments and Associated Entities: Results of the 2010–11 Audits (2011–12:13)	November 2011
Local Government: Results of the 2010–11 Audits (2011–12:14)	November 2011
Victorian Institute of Teaching (2011–12:15)	December 2011
Managing Contaminated Sites (2011–12:16)	December 2011

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