

# ***Victoria's Consumer Protection Framework for Building Construction***

Tabled 28 May 2015

The Auditor-General provides assurance to Parliament on the accountability and performance of the Victorian Public Sector. The Auditor-General conducts financial audits and performance audits, and reports on the results of these audits to Parliament.

On 28 May 2015, the Auditor-General tabled his performance audit report, *Victoria's Consumer Protection Framework for Building Construction*.

## Overview

- Home building/renovating is a major investment for consumers and a significant economic driver.
- 28% of building consumers reported experiencing a problem—disputes can have profound financial, social and health impacts for consumers.
- Previous VAGO audits have highlighted serious issues.
- The current framework does not adequately protect consumers.
- Domestic building insurance provides limited protection and costs more than it needs to.

**Urgent reform is needed and agencies need to tackle known gaps and issues in current framework**

Building or renovating a house is usually the single biggest investment in an individual's lifetime, and while not everyone experiences problems, a significant number do.

Serious problems with building regulation in Victoria have previously been identified in a series of reviews, including two reports issued by VAGO in 2000 and 2011.

This audit found the existing framework still does not adequately protect consumers and urgent reform is needed.

## Key agencies and roles

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### Building policy

Department of Environment, Land, Water and Planning (DELWP)

#### Regulation, compliance and monitoring

Victorian Building  
Authority (VBA)

#### Registration and discipline

Building Practitioners  
Board (BPB)

#### Disputes, compliance and enforcement

Consumer Affairs  
Victoria (CAV)

### Domestic Building Insurance (DBI)

Victorian Managed Insurance Authority (VMIA)—delivery  
Department of Treasury and Finance (DTF)—policy  
Essential Services Commission (ESC)—reporting

The current consumer protection framework for building construction is complex. As this slide shows, the system comprises multiple agencies with various responsibilities.

## Focus of this audit

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### The audit assessed whether:

- VBA, BPB and CAV are effectively performing respective functions
- VMIA's provision of DBI is effectively and economically managed.

### Audit scope

- VBA, BPB, CAV, VMIA, DTF, DELWP.
- Focused on three+ year period since the release of VAGO's *Compliance with Building Permits* report in December 2011.



The audit assessed whether key elements of the current domestic building consumer protection framework are effectively managed, including whether:

- the Victorian Building Authority (or VBA), the Building Practitioners Board (or BPB) and Consumer Affairs Victoria (or CAV) are performing existing functions and powers effectively
- the Victorian Managed Insurance Authority's (or VMIA's) provision of domestic building insurance (or DBI) is effectively and economically managed
- and whether the recommendations from VAGO's 2011 *Compliance with Building Permits* audit have been addressed.

## Practitioner registration

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- Purpose—to ensure only qualified, experienced practitioners of good character trade.
- Registration is essentially permanent once granted.
- Lack of objective guidance or standards for registration assessments and poor documentation of decisions.
- Assessment of financial and business skills lacking.

**Registration does not provide consumers assurance all registered builders are competent, qualified and of good character.**

The practitioner registration system is managed by the BPB and aims to assess competence, business acumen, character, and work history. Registration is permanent once granted, subject to the payment of an annual fee and insurance premium. There is no requirement for practitioners to demonstrate their ongoing competency.

Our audit found deficiencies in the standards and process for assessing applications. The registration system does not provide consumers assurance all registered builders are competent, qualified and of good character.

## Monitoring and compliance

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- Surveyors have key role in building compliance—they issue building permits and conduct stage inspections, but face a conflict of interest.
- VBA is developing a risk-based performance audit program and field compliance program.
- Poor coordination between agencies on compliance and enforcement reduces effectiveness.

**Monitoring and compliance does not provide consumers assurance surveyors are acting in their best interests and that problems will be promptly discovered and addressed.**

Building surveyors play a crucial role in building regulation—they issue building permits and conduct stage inspections to ensure homes are built to minimum standards.

However, this important role is undermined by a conflict of interest that arises because surveyors are typically engaged by builders, rather than owners, and they are therefore reliant on builders for ongoing work. This limits the surveyor's independence to challenge noncompliant work.

VBA has recently begun risk-based performance audit and field-compliance programs, but it can't yet tell if they are effective because it does not have an evaluation framework in place. Monitoring and compliance does not provide consumers assurance surveyors are acting in consumers best interests and that problems will be promptly discovered and addressed.



## Practitioner discipline

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- No efficiency or timeliness standards for disciplinary functions.
- Disciplinary register not prominent on VBA's website, and its use is not monitored.
- Building surveyors over-represented in inquiries/findings of misconduct.
- Disciplinary sanctions appear ineffective.

**Consumers cannot have confidence that they are protected from misconduct, and that practitioners will be appropriately sanctioned when they offend.**

BPB is responsible for disciplining building practitioners and can order an inquiry into a registered building practitioner's conduct or ability to practise.

It maintains a disciplinary register on the VBA's website that should enable consumers to check the record of practitioners. However, the register is not prominent.

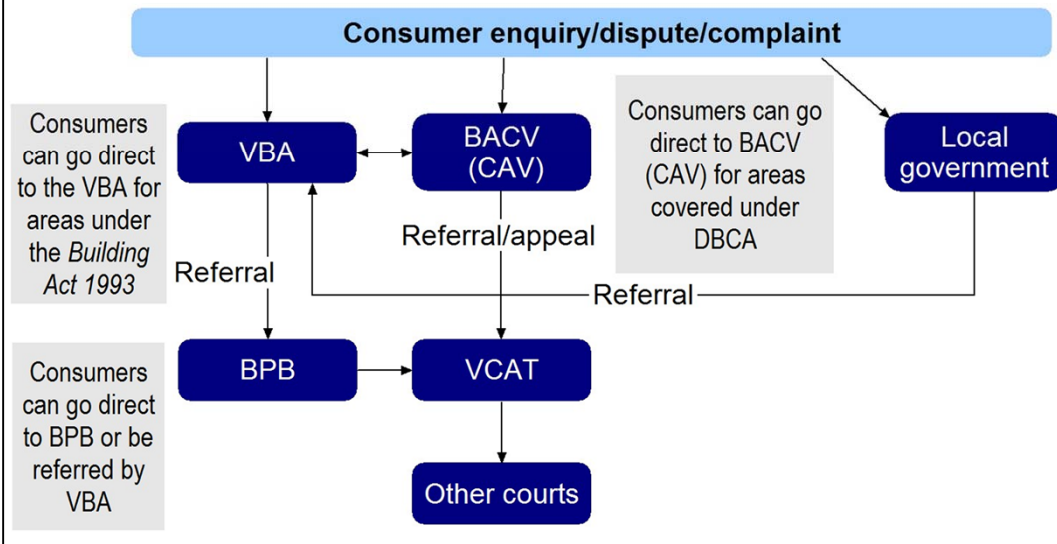
Building surveyors are over-represented in misconduct inquiries and findings. Between January 2009 and December 2013 nearly 10 per cent of building surveyors appeared before the BPB with all found guilty of at least one offence. The effectiveness of current sanctions is questionable—over 27 per cent of offending surveyors appeared at disciplinary inquiries more than once within the same year.

Consumers cannot have confidence that they are protected from misconduct, and that practitioners will be appropriately sanctioned when they offend.

## Dispute handling

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### Pathways for domestic building disputes



This slide shows the various pathways that consumers and builders can follow when seeking to resolve their disputes. While CAV receives most complaints about domestic building, consumers also go to their local council and BPB.



## Dispute handling – *continued*

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- Limited consumer protection—conciliation participation is voluntary and outcomes unenforceable.
- CAV has advised government repeatedly on the legislative limitations of the current framework.
- CAV does not measure its performance in conciliation.
- Ultimate consumer outcomes not known.

**Consumers cannot rely on dispute resolution to provide a satisfactory, timely and cost effective outcome.**

CAV assesses complaints and will not attempt conciliation unless it believes there is a 'reasonable likelihood of resolution'. It reports a resolution rate from its dispute conciliation services of 68 per cent, but its definition of 'resolved' does not necessarily mean that parties to the conciliation are satisfied.

CAV only accepts a complaint for conciliation if both parties agree to participate. Conciliation is not mandatory.

Any agreed outcomes, such as building repairs or payments, are unenforceable. CAV has repeatedly advised government on the limited protection afforded to consumers by voluntary conciliation and advised making conciliation mandatory with enforceable outcomes.

Critically, CAV does not follow up or monitor actions agreed by parties during conciliation, so the ultimate outcomes are not known.

If consumers aren't satisfied by the outcomes achieved in the conciliation process they can go to VCAT which may be time consuming and costly.

Consumers cannot rely on dispute resolution to provide a satisfactory, timely and cost-effective outcome.

## Domestic building insurance

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- Mandatory 'last resort' insurance with limited cover.
- Most common trigger—builder insolvency.
- Misunderstood by consumers.
- Consumers have paid an additional \$21 million over four years for DBI under the current model.

**DBI does not provide value for money and its adequacy and cost need to be addressed.**

DBI is mandatory for builders when undertaking domestic building works over \$16 000 and eligibility is a requirement for registration.

DBI is 'last resort' and only available when a builder fails to complete works and has died, disappeared or become insolvent within six years of completion.

DBI is widely misunderstood by consumers who may not be aware of the limited pay-outs and triggers.

Government intervened in 2010 directing VMIA to provide DBI when private insurers exited the market.

The delivery model for DBI includes an agent and brokers even though there is only one insurance provider.

This means that the model is significantly more costly than if it did not include intermediaries, and has cost consumers an estimated additional \$21.6 million over the past four years.

DTF and VMIA need to provide comprehensive advice to government on opportunities to improve the cost effectiveness and consumer protection offered by DBI.

## Key recommendations

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	Accept
1. That the DELWP and the BPB, in consultation with the VBA, reviews the practitioner registration and discipline regimes, and advises government accordingly so that only suitable, qualified and competent practitioners can trade.	✓
2. That DELWP reviews the regulatory arrangements governing the engagement of building surveyors to ensure they support the independent and objective performance of their function to provide appropriate independent oversight of building and the building system.	✓
3. That the VBA reviews its monitoring and compliance framework, and takes action, including advising the DELWP where necessary, to identify poor practitioner performance and appropriately prosecute and/or refer for discipline.	✓

The following two slides include a series of recommendations that focus on the key areas requiring improvement.

Addressing these recommendations will go a long way to providing an appropriate level of consumer protection and tackling the well acknowledged gaps and issues in the current framework.

**Key recommendations – continued**

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		Accept
4.	That CAV reviews its dispute resolution and conciliation activities, advising government to ensure they are easy to access, low cost, simple, timely, objective and outcome-focused.	✓
5.	That CAV and the VBA review their consumer education and awareness activities to ensure consumers have access to straightforward and timely information and advice to facilitate them to understand the consumer protection framework and make informed decisions.	✓
6.	That DTF works with the VMIA to review the adequacy and cost of the current insurance scheme and advises government on options to lower premiums and/or enhance coverage.	✓
7.	That VMIA obtains certainty about its ongoing role in domestic building insurance provision and implements the most efficient delivery model.	✓

Agencies involved in the audit have all accepted the recommendations and outlined actions they will undertake to address them.

## Key messages

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**Registration does not provide consumers assurance all registered builders are competent, qualified and of good character.**

**Monitoring and compliance does not provide consumers assurance surveyors are acting in their best interests and that problems will be promptly discovered and addressed.**

**Consumers cannot have confidence that they are protected from misconduct, and that practitioners will be appropriately sanctioned when they offend.**

**Consumers cannot rely on dispute resolution to provide a satisfactory, timely and cost effective outcome.**

**DBI does not provide value for money and its adequacy and cost need to be addressed.**

This slide highlights the key messages from the audit. Key aspects of the existing framework need to be improved.

## Overall message

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**The current consumer protection framework in building construction is not adequate. Urgent reform is needed and agencies need to tackle known gaps and issues in current framework.**

There is a need to urgently reform the existing framework and tackle known gaps to adequately protect consumers.



## Relevant audits

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- *Building control in Victoria: Setting sound foundations, 2000*
- *Compliance with Building Permits, December 2011*

Previous relevant audits are shown on this slide.

## Contact details

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