

Compliance & Enforcement: Our approach



For further information about the messages in this document, see our Compliance and Enforcement Policy Framework, available at: www.vba.vic.gov.au/about/compliance-and-enforcement

The Victorian Building Authority respectfully acknowledges the Traditional Owners and custodians of the land and water upon which we rely. We pay our respects to their Elders past, present and emerging. We recognise and value the ongoing contribution of Aboriginal peoples and communities to Victorian life.

We embrace the spirit of reconciliation, working towards equality of outcomes and an equal voice.

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The Victorian Building Authority ('the Authority') regulates the building and plumbing industries. This document summarises our compliance and enforcement approach for industry and consumers, which is applied to deliver on our **Regulatory Policy Statement**.



What is compliance and enforcement?



'Compliance' means adherence by practitioners to the *Building Act 1993* (the Act), Building and Plumbing Regulations 2018 and applicable standards.



'Enforcement' is our use of statutory powers under the *Building Act 1993* to achieve or compel compliance.

We operate in a shared regulatory environment

Our compliance and enforcement roles are part of a broader regulatory environment, shared with other parties who have statutory duties or regulatory roles. Important parties include private building surveyors (PBS) in their capacity as statutory building surveyors, and local government and their Municipal Building Surveyors (MBS). For plumbing, licensed plumbers have a self-certification role that is underpinned by a plumbing insurance scheme.

For consumer contracts, there are mechanisms to resolve disputes and hear claims for compensation, such as through Domestic Building Dispute Resolution Victoria (DBDRV) and the Victorian Civil and Administrative Tribunal (VCAT).

These parties and agencies have essential frontline roles in administering and enforcing plumbing and building work.

We are responsible for the oversight of practitioners.

Our functions include monitoring the professional conduct and ability to practice of registered or licensed practitioners, and monitoring and enforcing compliance with the Act and the Regulations.

Overall, we work proactively to improve the compliance and performance of building and plumbing practitioners and act where their obligations have not been met. This includes working with the building surveying profession to ensure consistent, legally sound, and robust use of their statutory powers.

Complementary roles within a shared environment

We oversee practitioners through robust registration and licensing processes, targeted reviews of practitioner performance, and appropriate corrective or disciplinary actions.

We address issues including:

- The suitability of practitioners to obtain or hold a licence or registration.
- Referrals from building surveyors for failure of builders or owners to comply with Directions to Fix or building orders.
- Opportunities to improve the performance of private building surveyors.
- Serious life safety matters or ongoing contraventions that require a firm response.

Our oversight supports and builds on key responsibilities of other parties, for example:

- PBS, who issue building permits, conduct mandatory inspections of building work, enforce compliance and issue occupancy permits and certificates of final inspection.
- MBS, who oversee aspects of building work in their municipalities.
- Councils, who prosecute matters identified by the MBS, and who provide the resources for the MBS to perform their functions.



Our compliance and enforcement objectives

We carry out our regulatory role to protect consumers and are committed to building safety in Victoria.

We focus on tackling the greatest risks within our remit, using our resources to achieve maximum positive impact on industry compliance. This includes addressing rogue or poor-performing practitioners, targeting harms arising from non-compliant work and focusing on emerging building practices with the highest risks of harm.

We enforce the building and plumbing regulations and standards, within the legal scope of our role.

Our role does not extend to addressing purely contractual defects or obtaining financial compensation.

We address patterns of misconduct and non-compliance strategically and effectively. We discipline – and as necessary, remove – rogue practitioners, and also engage with building and plumbing businesses that work at scale across Victoria. We also raise awareness of relevant issues for consumers and practitioners.

In the Victorian system, practitioners and building and plumbing businesses are obliged to deliver compliant work, maintain current knowledge of standards and compliance, understand their regulatory obligations and adequately supervise those working under them.

We support industry to meet these obligations, by directing our regulatory effort to where it is most likely to reduce risk, and to address and deter non-compliance.

Working at scale and with industry

Our regulatory tools are focused on managing the entry of practitioners into the industry (through licensing and registration) and the oversight and enforcement of obligations applying to specific practitioners.

We build on these to ensure an industry-wide approach to regulation.


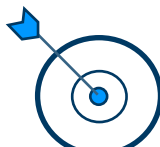



This includes measures such as:

- Targeting audits and campaigns to higher-risk plumbing or building businesses, or developers.
- Holding builders or plumbers to account for the work they are required to supervise.
- Bringing consumer and community attention to practitioners who show disregard for their obligations.
- Recognising where industry associations or professional bodies effectively provide support to practitioners to drive compliance.



Our compliance and enforcement principles

We administer the *Building Act* 1993, having regard to its objectives and the functions of the Authority specified in the Act. Our compliance and enforcement principles put the Act's objectives into practice.

	Proportionate	Our compliance and enforcement responses reflect the seriousness of the conduct and the strategic impact of our actions.
	Targeted	We target our resources to the areas of greatest harm and our published regulatory priorities.
	Intelligence-led	We make decisions based on the best available data and intelligence.
	Consistent	Similar circumstances will lead to similar approaches.
	Transparent	We publish clear and easy to understand information about our activities.

Our commitment

These principles reflect our commitment to delivering our regulatory role and the standard of conduct that we deliver. They apply to enforcement decision-making and how we coordinate our efforts and functions, to deliver a safe and well-built environment for the Victorian community.



Applying a risk-based approach

We monitor and proportionately respond to all non-compliances, whilst concentrating effort to where the potential harm is greatest, and where regulatory action can have the most impact. This means:

Considering practitioner track records and practices	When prioritising effort, we consider the potential severity of harms, including potential for undetected, long-term risks, alongside practitioner past performance.
Directing proportionate action towards the greatest risks	We consider risk to prioritise our efforts in compliance monitoring, in responding to reports, in how we prioritise alleged breaches and when applying sanctions for non-compliances.
Taking targeted disciplinary action to ensure maximum impact	The cases escalated for formal investigation are based on our risk criteria and strategic objectives. We are most likely to act on breaches of the Act where the practices involve serious life, health, safety or structural issues or there is a pattern of non-compliance to address.
Acting on other matters where they are of strategic value	We will address issues where swift action is possible and helps to protect the integrity of the regulatory system, or to take visible action against wilful non-compliance.
Accounting for industry engagement	Our enforcement responses consider how practitioners and industry respond to our requests. Cooperation matters.
Recognising industry leadership in risk control	Industry associations and building and plumbing businesses influence risk across the sector. We work with industry to manage risk.



We take past performance and engagement into account

We monitor for all significant risks to consumers and the built environment. We consider current and emerging risks and concentrate our resources and efforts in line with our strategic objectives. Within our approach, we account for the demonstrated performance and engagement of practitioners and businesses, as follows.

We will focus less on practitioners who...

	Demonstrate the capability and capacity to comply.
	Actively engage in continuing professional development (CPD) and demonstrate knowledge of obligations and standards.
	Cause a minor or an isolated incident of minor technical/administrative non-compliance.
	Demonstrate a history of strong performance, including involvement in industry associations or peak bodies that offer support and guidance.

For businesses this includes those which...

	Understand the knowledge and skills required to perform certain kinds of work and ensure they work within their area of capability.
	Demonstrate robust project coordination approaches with complex builds (e.g. Class 2 buildings), including clear roles and responsibilities between all parties.
	Maintain relevantly skilled staff to deliver on their projects.
	Have fit-for-purpose policies and procedures to ensure performance and follow through on these.
	Document and can explain their practices and are responsive and transparent.
	Show a culture of improvement in acting on issues raised.



We will focus more on practitioners who...







	Have demonstrated an incapability or incapacity to comply.
	Do not have robust systems to ensure quality.
	Engage in serious or repeated minor non-compliances or give rise to multiple consumer reports.
	Have repeated incidents of technical or administrative non-compliance, such as failure to lodge certificates or other required information or data reporting.
	Fail to engage in CPD.
	Have not demonstrated knowledge of current standards.
	Are subject to new or changed regulatory requirements or scope of activity.
	Have business relationships that may compromise independent decision-making or oversight.
	Fail to quickly rectify non-compliant work.
	Fail to provide necessary information and documentation to consumers such as insurance information.

For businesses this includes those which...

	Do not adequately oversee work and practitioners and tolerate poor understanding or capability by employees or supervised staff.
	Use poor outsourcing practices such as engaging unqualified practitioners or those with a poor compliance history.
	Have inadequate document control or project management for complex works.



We will escalate attention and enforcement action on those who...

	Refuse to cooperate with us including demonstrating vexatious, threatening, coercive or intimidating behaviour towards our staff.
	Are subject to serious incidents or reports made.
	Have a history of failure to obtain appropriate licences or approvals, choosing to operate outside of the law.
	Promote services for which they are not registered or licensed to perform.
	Associate with rogue practitioners, as identified through our intelligence.
	Fail to report or engage with us, in order to hide illegal or fraudulent practices.
	Engage in misleading or deceptive practices (e.g., licence lending).

Engaging with us

We expect practitioners to engage with their regulatory obligations openly and constructively. This can be in field interactions, providing clear and transparent information when responding to requests, in showing cooperation when we are investigating a matter, and when acting in a timely way to rectify their mistakes. Those who breach the Act and standards and then fail to cooperate or work towards a positive outcome can expect a more severe outcome than those who cooperate with us.



Compliance oversight and industry duties

Practitioners have a range of significant accountabilities and duties under the Act.

These central obligations are supported and enabled by a range of legislated duties.

Our actions help to ensure that industry meets these duties. Key duties include:

Owners of buildings

Must ensure that building work carried out on their land has a building permit and that building work is overseen by a building surveyor as required.

Registered builders

Must ensure that building work under a permit is carried out in accordance with the Act, regulations, and permit. Must follow directions or orders of the RBS or MBS, including Directions to Fix.

Nominee directors

The director of a body corporate registered as a building practitioner must ensure that they and the body corporate comply with the requirements of the Act and regulations.

Licensed plumbers

Must issue compliance certificates for most plumbing work and notify the Authority. They must also carry out or adequately supervise the plumbing work they sign off.

Relevant building surveyors

Have a range of duties including being satisfied that building work and the building permit will comply with the Act and regulations, to act on non-compliances they observe by issuing a Direction to Fix (DTF) or taking other building enforcement measures, and to have regard to the Act's objectives in decision-making.

All regulated practitioners

Have a professional obligation to cooperate with us and must also meet conditions in their licence or registration, and follow relevant guidance, codes or standards issued by us.

In a rapidly changing sector, the obligations of contracted builders, licensed plumbers supervising work, and directors of building businesses are increasingly important for protecting consumers.

We will therefore act strategically to ensure these entities fulfill their obligations, while also monitoring the performance of individual practitioners.



Our overall approach: responsive enforcement action

We take a graduated approach to enforcement action based on the level of risk or harm posed by non-compliance. This approach is summarised in figure 1.

Figure 1: Summary of the VBA's Compliance and Enforcement approach.

Increasing risk of harm or actual harm	<p>Practitioner behaviours</p> <p>Doing the wrong thing – decided not to comply</p> <p>Examples of practitioner behaviour:</p> <ul style="list-style-type: none"> Practitioner is not appropriately registered/ licensed. Practitioner is engaged in fraudulent conduct relating to their scope of practice. Practitioner does not follow regulations. Practitioner makes no effort to comply or to rectify errors/ failures. 	<p>Approach to compliance</p> <p>Enforce the law</p> <p>Remove non-compliant practitioners from the industry or assist them to become compliant where possible.</p>
	<p>Willing but not always able to comply</p> <p>Example of practitioner behaviour:</p> <ul style="list-style-type: none"> Practitioner has performed non-compliant work and faces legitimate barriers to rectifying the issue. 	<p>Visible monitoring</p> <p>Assist and as necessary direct practitioners to address compliance barriers or to rectify the work to make it compliant.</p>
	<p>Willing and able</p> <p>Examples of practitioner behaviour:</p> <ul style="list-style-type: none"> Practitioner is engaged and willingly participates in addressing compliance concerns. Practitioner may require additional support to comply or understand requirements. 	<p>Support compliance</p> <p>Equip and support practitioners to continue doing the right thing and remain compliant.</p>
	<p>Doing the right thing – fully compliant</p> <p>Examples of practitioner behaviour:</p> <ul style="list-style-type: none"> Practitioner is accredited with the Authority and complies the Act, regulations and standards. Practitioner attends seminars/engages with the Authority for information/guidance. Practitioner or firm displays best practice. 	<p>Encourage continued performance</p> <p>Enable and support practitioners to continue being compliant, and recognise and encourage best practice.</p>

The aim of our graduated actions is to encourage and drive the right behaviours. This can include using our powers requiring corrective actions of practitioners to secure compliance outcomes.

Enforcement action may be appropriate at first instance when warranted, or where a consultative approach has been unsuccessful.



Driving compliance: key commitments

We commit to driving industry compliance through a range of key approaches. These approaches help put our principles into practice and demonstrate how enforcement tools are applied.

For industry

We regulate two industries for common

objectives: We recognise the differences between the plumbing and building sectors, including the knowledge required and the structure of regulatory obligations, and account for this in our workforce and our regulatory approach.

We support industry: Through measures such as registration screening, guidance, and constructive in-field advice, we provide appropriate support to each industry sector. Our support is limited and restricted and we do not take on the accountabilities of practitioners. Our primary focus is on practitioners with responsibilities to oversee work to ensure it is compliant.

Working with industry to support compliance

We seek to foster effective relationships with industry in the spirit of shared responsibility for delivering a safe and compliant built environment. This includes recognising the important primary role that industry associations and professional bodies play in ensuring member practitioner capability and awareness.

We support industry associations and professional bodies to equip their members by providing regulatory information to help increase compliance and prepare industry before any regulatory change.

For consumers

Within our scope, we address consumer issues:

We apply a risk-based approach to prioritising building and plumbing non-compliance reported by consumers. Our functions include promoting the resolution of consumer complaints about noncompliant work and providing information and advice to consumers. Our role is concerned with compliance and enforcement of practitioner conduct, considering the broader public interest. If there are available opportunities to secure rectification for consumers, we may apply these. For consumers seeking dispute resolution and/or compensation, the appropriate pathways are DBDRV, VCAT or civil action.

We act against unlawful work to protect

consumers: Unlawful work such as by unregistered building or plumbing practitioners will always be a focus of our regulatory activities. We draw on intelligence from peer regulators, consumers, registered practitioners and industry, to identify and act firmly as appropriate on unlawful work.

Building intelligence from all reports

Consumer reports about practitioner conduct and non-compliances are assessed and prioritised in line with our risk-based approach. We take proportionate action on reports within our jurisdiction.

Some consumer harms from building or plumbing are not within our jurisdiction, including general issues of poor-quality work where there are no compliance or safety or building integrity risks, or general contract disputes. We do not directly act on standalone cases of this nature.

However, all consumer reports are valuable sources of intelligence. We appreciate the effort made by consumers to report issues as this helps us to detect patterns of risk. This can include detecting lower-level repeat offences or patterns of conduct that should be escalated for firmer enforcement action or referred to regulatory peers and partners.



In regulatory practice

We consistently act to require compliance:

Practitioners have important obligations that underpin the operation of the regulatory framework. In many cases, other parties such as the Relevant Building Surveyor act to enforce these obligations and may escalate non-compliance to us. Our default position on these obligations is to act to ensure the compliance outcome where possible and to discipline the non-compliance in each instance.

We ensure remedy of problems where practicable:

When faced with non-compliances, our primary role is to discipline practitioners to promote the resolution of non-compliances and drive future improved conduct. However, we also have scope to require or encourage remedy or rectification of problem work in some circumstances. Where feasible and appropriate – having regard to our powers and the role of other protections – we will require or encourage practitioners to bring their work into compliance.





How we deliver

We commit to delivering on our objectives through the effective and tactical use of our powers and tools, in line with the following approaches.

We use regulatory tools and powers for maximum positive impact

We use our regulatory tools and powers in a considered way that accounts for their effect on individual practitioners and overall industry performance. This includes:

- Intentional and consistent use of different disciplinary tools including education, suspensions, cancellations, disqualifications, monetary penalties, review of licences and registrations, and other tools.
- How we communicate disciplinary outcomes and legal proceedings to inform consumers and other practitioners.

We will further develop registration and licensing as an oversight framework

We will impose conditions on a registration or licence that we consider appropriate. Broadly, these conditions may:

- **Restrict** the type of work that a practitioner can perform, or the circumstances in which they perform it.
- **Specify** how they perform work, engage with other parties, or manage records.
- **Inform** us of activity such as key events in construction, to facilitate compliance monitoring.

We will develop a system for how we use conditions. Enhanced conditions can improve information exchange between practitioners and consumers, reinforce obligations, enable more efficient compliance monitoring and risk assessment, and improve scrutiny of high-risk practitioners.

We use information requests and powers to ensure transparency

Under the Act, our authorised staff can issue a notice requiring a person to provide information or documents they hold. This can be done:

- Where the authorised person suspects an offence has occurred
- To determine compliance with the Act and the Regulations
- To assist in the enforcement of safety.

This power may be used to address compliance issues with individual practitioners, or businesses. It helps to ensure that the right parties are held to account for compliance, by working out what may have gone wrong, who was involved, and how they managed compliance.



We take action through regulatory partnerships

We share intelligence and partner with peer regulators so that the full force of the law can be applied to problem and rogue practitioners. This delivers consumer protection and ensures problems are directly addressed by the most appropriate means.

For example, we will report relevant risks or non-compliances to our regulatory peers including local government, Consumer Affairs Victoria, Energy Safe Victoria, the Environment Protection Authority, the Victorian Registration and Qualifications Authority, and WorkSafe Victoria.

Where practitioners show a pattern of misleading or deceptive conduct presenting risks of consumer harm, Consumer Affairs Victoria may address this through enforcement actions including public warnings, when it is in the public interest to do so.





Compliance tools and powers

Our Compliance and Enforcement policy framework, and subordinate policies and resources, explain our regulatory tools and how we will apply them. Key tools and powers include the following:

Registration and licensing of practitioners:

Provides the Victorian public with confidence that the practitioner they have engaged is competent and appropriately qualified to carry out the work. Conditions, including restrictions, can be applied to support overall industry performance, information transparency, and target the greatest regulatory risks.

General advice and targeted information: We advise and inform a person that engages in low-risk non-compliance to correct the behaviour to ensure future compliance.

Practitioner education: The Office of the State Building Surveyor delivers a proactive program to develop and publish guidance and educational materials on how practitioners should comply.

Plumbing rectification notices: We may issue a rectification notice to a plumber who has carried out non-compliant plumbing work.

Plumbing notices and orders: We can issue a plumbing notice and subsequent order to the owner or occupier of a property where non-compliant plumbing work has been identified.

Building Directions to Fix: These are ordinarily issued by Relevant Building Surveyors to address non-compliant work. We *may* issue a Direction to Fix (DTF) to a builder where we are of the opinion the building work does not comply, and the non-compliance is identified before the issue of an occupancy certificate. However, in the first instance we will normally encourage the RBS to issue the DTF. Failure by a builder to comply with a DTF without reasonable excuse will be regarded as a serious breach irrespective of the non-compliant building work.

Directions to building surveyors: We may issue a direction to a Municipal Building Surveyor (MBS) or a Private Building Surveyor (PBS) to carry out their functions. This is most relevant where a project is approaching completion and there is a risk of a significant non-compliance being handed over to the owner.

Infringement notices: We may issue an infringement notice where there is a contravention of a prescribed building or plumbing infringement offence, and we decide that an infringement notice is the most appropriate way of responding to the breach. Repeated non-compliances against infringement offences are likely to result in an escalation to disciplinary processes or prosecution.

Enforceable undertakings: Enforceable undertakings are a form of binding agreement with a practitioner. They are used when the seriousness of the conduct means that cautioning the practitioner or placing them on notice would not be a sufficient response, but where the conduct is not serious enough to warrant disciplinary action or prosecution. The engagement of the practitioner is also taken into account when considering this option.

Injunction: Where a person has engaged in conduct that contravenes the Act, we can apply to a Court for an appropriate order. An injunction is a Court order that requires a party to do something, or to refrain from doing something. Orders that could potentially be made by a Court include a requirement to rectify building work or contribute to the cost of rectification. We may seek these as a standalone action, or within a prosecution process.



Disciplinary action

Disciplinary action is one of the key enforcement tools to hold practitioners to account and improve overall consumer outcomes. We may take disciplinary action where a registered or licensed practitioner has engaged in conduct that raises significant concerns about that practitioner's competency, professionalism, or compliance with legislation.

Outcomes of disciplinary action may include:

- Reprimands
- Requirements for further training
- Imposition of financial penalties
- Placement of conditions on registration or licence
- Requirements to do building work or take other specified actions, in defined circumstances
- Suspension, cancellation, or disqualification of registration or licence
- Additional audits.

Immediate suspension: Immediate suspension of a registered practitioner pending disciplinary action is a form of protective action. An immediate suspension is made in response to serious non-compliance and where that action is necessary to protect the public. Such action is only taken where a substantive suspension or cancellation of a registration or licence is proposed in a show cause notice. The immediate suspension acts as an interim protection measure.

Substantive full suspension: A substantive suspension (for up to three years) may be applied at the outcome of a full investigation and disciplinary process. Because a suspension denies an individual the ability to earn income, this action is reserved for the most serious of non-compliances or offences under the Act, or to address patterns of wilful misconduct. Some offences in the act, including repeat offences, will receive a full suspension as a default action.

Substantive partial suspension: A partial suspension is used where it is necessary to protect the public from risk of serious practitioner misconduct, but it is in the public interest that they continue to operate to rectify a current issue or non-compliance.

Cancellation: Cancellation, coupled with a period of disqualification, is our most serious disciplinary tool and generally reserved for cases where we form the view that conduct is so serious or public safety threatened to such an extent that only cancellation is appropriate.

Cancellation will, in very serious cases, be preceded by an immediate suspension to remove the practitioner from the system to prevent ongoing safety concerns.

Disciplinary Register: We maintain a public register of disciplinary action taken against registered building and licensed plumbing practitioners in Victoria. This register is available on our website.

