

Compliance & Enforcement Policy Framework



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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Purpose of this document

The Victorian Building Authority ('the Authority') regulates the building and plumbing industries. This Compliance and Enforcement (C&E) Policy Framework describes what practitioners, and the community can expect from us. It sets out how we use regulatory powers and functions to bring about compliance and improve the performance of building and plumbing practitioners, building surveyors, and the building industry overall.

This policy framework supports and builds on the Regulatory Policy Statement, which explains how we deliver on our role within the building and plumbing regulatory system. We apply it accounting for our Regulatory Priorities, which set out areas of focus aimed at addressing significant harms in the built environment. This policy framework provides the basis for ongoing policy development and practice reforms.

Who this policy is for

This policy framework sets out our commitment to practitioners and the community regarding our approach to compliance and enforcement. It explains what to expect from us in our efforts and exercise of powers – and what we expect of all participants in the building industry. This includes the behaviours expected of industry, and how we take these behaviours into account.

For consumers, this policy explains how our approach to enforcement promotes positive consumer outcomes in the broader public interest. It also explains our use of discretion in taking regulatory action.

What is compliance and enforcement?



In this policy framework, '**compliance**' means adherence by practitioners to the *Building Act* 1993 (the Act), Building and Plumbing Regulations 2018 and applicable standards. Compliance is an ongoing process where practitioners maintain competency and remain diligent to meet their technical and legal obligations.



'**Enforcement**' is our use of statutory powers under the *Building Act* 1993 to achieve or compel compliance. We focus our compliance monitoring and enforcement activities on building and plumbing safety and not on matters of service quality or contractual obligations between parties, which are primarily addressed by Domestic Building Dispute Resolution Victoria (DBDRV).



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. This policy addresses our compliance and enforcement role within this context.

Our interactions with other regulators can be complex and depend on authorising legislation. Therefore, we may issue subordinate policies to explain how we will address specific situations and enforcement issues.

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, such as failure to act on non-compliances or to perform their statutory functions.
- Serious life safety matters or ongoing contraventions that require a firm response through prosecution, an injunction, or immediate practitioner suspension.

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 through Directions to Fix and building notices and orders and issue occupancy permits and certificates of final inspection.
- MBS, who oversee aspects of building work in their municipalities, such as addressing illegal work, addressing noncompliant essential safety measures in buildings and swimming pools, addressing changes in use of buildings, and issuing notices and orders to owners for non-compliance arising from building work or wear and tear.
- The MBS is responsible for issuing emergency orders where there is a danger to life or property arising out of the condition or use or proposed use of a building.
- Councils, who prosecute matters identified by the MBS, and who provide the resources for the MBS to perform their functions.
- The Minister for Planning, who may declare that the Authority carries out functions of an MBS for certain matters, and who may issue directions relating to MBS or PBS functions.



Our compliance and enforcement objectives

We carry out our regulatory role to protect consumers and are committed to building safety in Victoria. Our role is to oversee all building and plumbing practitioners and the building industry overall, in terms of compliance with the Building Act, regulations and applicable standards.

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 work on the sources and drivers of risk, including practitioner capability gaps, shortcomings in oversight by building or plumbing businesses, and key building and plumbing practices that drive key harms.

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

Our enforcement action aims to ensure that work is brought into compliance. Our role does not extend into addressing purely contractual defects or obtaining financial compensation.

We address patterns of misconduct and non-compliance strategically and effectively, and **our enforcement activities reinforce our broader functions** as set out under the Act. These functions include monitoring industry developments, providing advice to industry and consumers, and gathering information to enable regulatory oversight of building and plumbing.

In addition, the State Building Surveyor is appointed under the Act to improve technical capability across industry and support practices resulting in safer, compliant and durable buildings.

Our primary enforcement activities therefore **provide essential insights** to equip broader regulatory activities, to inform the State Building Surveyor to discharge their role, and to shape building standards and broader industry practices that influence risk.

We apply a proportionate approach that educates practitioners to ensure they have appropriate and current knowledge. We discipline – and as necessary, remove – rogue practitioners, and 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.

Through this approach, we help to ensure that harms to consumers are minimised and that other parties in the shared regulatory environment are supported.



Working at scale and with industry

Our regulatory tools are largely 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.
- Requesting or requiring building or plumbing businesses to provide information that explains their supervision and oversight arrangements.
- 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.
- Providing authoritative advice on standards, including binding determinations issued by the State Building Surveyor.
- Recognising where industry associations or professional bodies effectively provide support to practitioners to drive compliance.
- Fostering partnerships and collaboration within industry around raising compliance and best practices, in the spirit of shared responsibility for building outcomes.
- Focusing on the causes of building and plumbing defects, including in design and development, and participating in the development of plumbing and building standards.


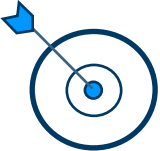







Our compliance and enforcement principles

We administer the *Building Act 1993*, having regard to its objectives and the functions of the Authority specified in the Act. These include the protection of public health, safety, and amenity in the built environment, and aiding the achievement of an efficient and competitive building and plumbing industry. A primary function of the Authority is to monitor and enforce compliance with the Act and regulations.

Our compliance and enforcement principles put the Act's objectives into practice.

	Proportionate	<p>Our compliance and enforcement responses reflect the seriousness of the conduct and the strategic impact of our actions.</p> <p>We focus on non-compliances that pose a significant risk of harm to consumers and the built environment, or which are important to the integrity of the regulatory framework. Our enforcement actions account for the significance of the non-compliance and actual or potential harm posed by it, and we deliver credible disciplinary and prosecution actions to reduce consumer risk across industry.</p>
	Targeted	<p>We target our resources to the areas of greatest harm and our published regulatory priorities.</p> <p>Whilst monitoring all significant risks, we concentrate our effort and coordinate our activities on practices and practitioners who pose the greatest risk to consumers, regardless of the sector (building or plumbing). We tackle the drivers of harm and act where we can have the greatest impact, accounting for the broader deterrent effects of our actions.</p>
	Intelligence-led	<p>We make decisions based on the best available data and intelligence.</p> <p>Our decisions are supported by intelligence, drawing on data and insights from a variety of sources such as consumer reports, inspections, and stakeholder input. We use this intelligence to direct our efforts and ensure that patterns of misconduct are addressed.</p>
	Consistent	<p>Similar circumstances will lead to similar approaches.</p> <p>We empower and equip our people to deliver consistent enforcement responses. We also reserve the right to single out key issues or problem practitioners for specific, escalated action where justified.</p>
	Transparent	<p>We publish clear and easy to understand information about our activities.</p> <p>We provide a transparent account of the way we regulate, our operations and the decisions that we make to industry and the community. We ensure that practitioners understand their rights and options for review of decisions.</p>

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.

We will apply these principles when exercising discretion and using powers and tools. They guide our leadership and staff in our daily work 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, in line with the following objectives.





Considering practitioner track records and practices	When prioritising effort, we account for the potential severity of safety and financial impacts for consumers and the built environment, including potential for undetected risks with long-term consequences. Major risks of concern defined as 'harms,' are described through our regulatory priorities . We also account for the past performance and engagement of practitioners and businesses when prioritising attention.
Directing proportionate action towards the greatest risks	We prioritise our compliance monitoring and enforcement actions across our operations. <ul style="list-style-type: none">• In compliance monitoring, this includes the targeting and depth of inspections and audits of compliance.• When responding to reports from community or industry, this includes when reports are escalated and how we engage with practitioners to address non-compliance.• When applying sanctions for non-compliances, actions can range from formal warnings through to disciplinary action such as mandating training, imposing financial penalties, imposing full or partial suspensions, cancellation, disqualification, or prosecution (generally of unregistered practitioners).
Taking targeted disciplinary action to ensure maximum impact	The cases escalated for investigation and sanctions are based on our risk criteria and strategic objectives. The reports from consumers or industry tip-offs most likely to warrant intervention include those where there is non-compliance with the Act and: <ul style="list-style-type: none">• The work involves serious life, health, safety or structural issues.• The problem is linked to identified harms and regulatory priorities.• There are systemic issues with a practitioner such as repeat offences, or failures to follow directions.• There is a failure by a building surveyor to discharge their fundamental obligations such as acting on non-compliances.• There is a pattern of industry risk that must be addressed.• There is an identified need to act to prevent future non-compliance.
Acting on other matters where they are of strategic value	We will address issues where swift action is possible and helps to improve the integrity of the regulatory system, such as where a registered practitioner engages in aggressive or unprofessional behaviour or breaches a code of conduct, or to take visible action against wilful non-compliance.
Accounting for industry engagement	We account for the level of risk or potential harm to consumers in building or plumbing work. We also consider the engagement and attitude of practitioners and industry in our resource targeting and decision-making.
Recognising industry leadership in risk control	Industry associations and building and plumbing businesses influence risk across the sector. For example, through training and education, accreditation requirements, project management, and quality assurance. 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. In essence, the practitioner who signs off on plumbing or building work is responsible for ensuring it is compliant. Relevant Building Surveyors (RBS) must also be satisfied that building work complies with the permit, the Act, and the Regulations. For all parties, any approval or certification must be accurate, complete, and properly documented.

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

Our actions help to ensure that industry meets their 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 the building work under a permit is carried out in accordance with the Act, regulations, and the building permit (s16(4A)). 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 (s174).

Licensed plumbers

Must issue a compliance certificate for most plumbing work and notify us of the compliance certificate within 5 days. This certifies that the work complies with plumbing laws. Must also provide insurance information to consumers.

Must carry out or supervise the plumbing work associated with their issued compliance certificate. Supervision includes providing sufficient instruction and being sufficiently present, having regard to the nature of the work and the experience of the person doing the work (s221B (3)).

Relevant Building Surveyors

Must only issue permits for building work they are satisfied will comply with the Act and the Building Regulations. Must act on non-compliance they observe, through the issue of Directions to Fix or taking other building enforcement measures. Must have regard to the objects of the Act in decision-making, including when approving performance solutions (considering the protection of safety and health and building amenity).

All regulated practitioners

All practitioners have a professional obligation to cooperate with us, our inspectors and other staff and all other persons performing regulatory functions, engaging with the courtesy and respect required to safely complete their jobs.

Practitioners may be subject to conditions of registration or licence imposed by us as we consider appropriate. These conditions may reinforce or build on the primary duties in the Act.

Practitioners may also be subject to obligations as set out in instruments such as codes of conduct for building practitioners, which are clarified or explained in guidance issued by us. Key obligations may be further clarified through Binding Determinations, issued by the State Building Surveyor. These can interpret technical standards or prescribe how to, or how not to perform a duty or role or achieve a technical standard.

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.



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





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 provide support to 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 those practitioners with responsibilities to oversee work to ensure it is compliant.

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.

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 – we will require or encourage practitioners to bring their work into compliance.



We regulate two industries for common objectives

Our approach to regulating plumbing and building differs in line with the duties and obligations of each scheme, in line with the following objectives.

The differences between plumbing and building are respected	We recognise the critical importance of both the building and plumbing industries to deliver a safe and compliant built environment for consumers. We respect that skills, knowledge and practices involved in each industry differ, and retain experienced knowledgeable staff to engage with each sector.
Both sectors can present serious risks that require oversight	Building work has the potential to create serious structural or other equivalent health and safety harms. Plumbing also poses risks including wide-scale public health risks, exposure to harmful substances, and extensive water damage. Our approach recognises the full spectrum of risks posed by both building and plumbing work.
The different nature of duties shapes the approach to regulation	We recognise the fundamental differences in how obligations, including oversight obligations, are set out in legislation for builders and plumbers. For example: <ul style="list-style-type: none">• Plumbers are responsible for self-certification of their work, with an insurance scheme in place to allow consumers to make claims if work is later found to be defective.• Building work that requires a permit is carried out under a statutory oversight scheme, where the RBS inspects work at key stages to ensure it meets requirements.• Specific obligations apply to owner-builders, who must perform work within their regulated scope and obtain appropriate insurance if they intend to sell their property within a certain timeframe.
Different approaches to oversight reflect the different obligations	The different regulatory models are supported by differences in oversight approach, with a common outlook to ensuring consumers are protected. For example: <ul style="list-style-type: none">• We perform an audit and 'quality assurance' role for plumbing work, by checking against selected issued plumbing compliance certificates based on risk. This helps to ensure integrity in the overall plumbing self-certification system and supports the insurance system.• For building work, we perform risk-based inspections to support and complement the role of the RBS before work is completed.
The scope for rectification of non-compliance has key differences	Our scope and powers for rectification or remedy of non-compliances differs across regulatory schemes. This reflects who has primary responsibility and the mechanisms available to ensure these responsibilities are met. This includes actions outside of those available to us, such as plumbing insurance and dispute resolution processes.



We support industry

Construction activity in Australia is dynamic and evolving, with changes in practices and technology, investment priorities, technical standards, and regulatory obligations. Accordingly, the nature of industry and the composition and skills of the workforce continue to evolve, and maintaining currency and capability for all practitioners is a pressing challenge.

Therefore, we acknowledge the importance of enabling practitioners with reasonable access to information about how to perform well in the Victorian regulatory context. In practice this includes:

- The roles of the SBS as the primary source of technical expertise and guidance with the power to issue Binding Determinations, and of VBA communications and services, in educating practitioners about their obligations and about technical requirements.
- Registration and licensing, which acts as an important gatekeeper function when practitioners seek to operate in new fields.
- Engagement with the trades training sector to ensure suitable levels of awareness of Victorian regulatory requirements.
- Giving verbal advice or directions, or compliance advice, for lower-level non-compliances where an educational approach is warranted to achieve a compliance outcome.
- Supporting those who are willing and able to comply.
- Giving suitable levels of support, to those who are willing to comply but face capability or communication barriers for a specific issue.

Ultimately, compliance with building standards is essential to protect the community, irrespective of the capability barriers faced by an individual. Therefore, the level of support we provide is approached from the view of ensuring compliance.

In complex projects with multiple practitioners, this generally means a **focus on the practitioner who will sign off the work, and who should have oversight of the project** including subcontracted or employed workers. Therefore, contracted builders and plumbers, and nominee directors, can expect more regulatory attention from us. If a practitioner appears to be falling short of their obligations to ensure the capability of all practitioners involved in their projects, we may conduct inspections or issue directions to provide information.

Working with industry to support compliance

We will 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 can play in ensuring member practitioner capability, awareness, business performance and resilience; and the importance of working with industry to disseminate information. We support industry associations and professional bodies to equip their members by providing regulatory information to help increase compliance and prepare industry for any regulatory change.

Where appropriate, we will account for the quality assurance and integrity benefits provided by industry groups as an important risk minimisation measure – and will explore options to provide greater autonomy and flexibility where regulatory performance can be assured through these parties.



Within our scope, we address consumer issues

Consumer reports about non-compliant building or plumbing work are an important source of intelligence for us and will be appropriately acted on and within our enforcement role, in line with the following objectives.

Applying risk-based criteria to selecting cases for escalation	We escalate consumer reports for formal investigation and sanctions in line with our risk-based approach. This generally means a focus on non-compliances with the Building Act that present serious life, safety, or structural risks, are breaches of key obligations, or are associated with a history of non-compliance or pattern of issues across industry.
Delivering effective sanctioning through enforcement, not compensation	Our activities are geared towards delivering proportionate and effective consequences for practitioners, and rectification of non-compliant building or plumbing work where practicable. Financial compensation to owners for non-compliant work is not one of our functions but is addressed through third-party conciliation and contractual claim processes.
Recognising the lead role of dispute resolution bodies	<p>Consumer rights are primarily protected by established building dispute mechanisms and building contract law. We provide information to help consumers identify the most appropriate body to assist with a dispute. In many cases, this is the DBDRV, or VCAT where conciliation has not been successful.</p> <p>These bodies have the power to make orders for payment of money or orders relating to the rectification of work by practitioners, in certain cases. Our compliance powers arise from non-compliance with the Building Act and do not extend to enforcing contracts or compelling compensation.</p>
Providing appropriate feedback	<p>Following a report to us, we may request that consumers provide further evidence or make statements. These help to establish evidence for enforcement action, whether related to that report, or to establish a pattern of wrongdoing for future escalated enforcement.</p> <p>We endeavour to inform consumers of the outcomes of actions that they may have an interest in, when these are finalised.</p>
Taking a pragmatic approach to rectification	<p>Enforcing compliance can help prevent or resolve disputes between owners and practitioners. This is a further benefit of enforcement action.</p> <p>We take a pragmatic approach to addressing disputes within disciplinary processes. This includes accounting for whether rectification is still practicable, the nature of the risk, who is accountable and if accountabilities are clear between parties, and the legal tools available in the circumstances (which may be limited, particularly after building occupancy).</p>



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 value consumer reports because they help us 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.





We act against unlawful work to protect consumers

Unlawful work by unregistered building or plumbing practitioners, or by practitioners acting outside of their scope, will always be a focus of our regulatory activities. In particular, we draw on intelligence from consumers and registered practitioners to identify and act firmly against conduct that undermines safety and integrity in the built environment.

We do not act on contractual matters between consumers and unregistered practitioners over their work. Disputes and requests for compensation caused by work of this nature may be resolved at DBDRV or through civil action. However, where we are alerted to issues such as a pattern of predatory or misleading trade practices by an unregistered practitioner, we work closely with Consumer Affairs Victoria. We regularly share intelligence with Consumer Affairs Victoria, who have powers to issue public warnings or take further action against such behaviour, where it is in the public interest.

Where unlawful building work is intentional and involves illegal building work without the required building permit, we are likely to investigate having regard to the seriousness of the conduct and the harm caused. We are also likely to act on other building or plumbing work of similar severity (such as significant hygiene or health risks). Repeat offenders are also an enduring enforcement priority. With enforcement actions such as prosecutions, we will publicise outcomes to alert the community and other practitioners to these bad actors and the need to avoid dealing with them.

We may be alerted to unlawful work by consumers, registered practitioners, or other agencies such as local government. When investigating these issues, we may direct practitioners and building owners to provide information relating to the contracting and procurement of unregistered work, or other compliance matters.

If unregistered building or plumbing work is identified but is low risk, we may issue a warning in the first instance, and monitor for repeat offending.

We focus on persons in the business of building who may reoffend. Relevant councils take enforcement action on illegal building work by property owners who are not registered practitioners.

Irrespective of the level of risk, it is important for us to be alerted by industry and consumers to unregistered work.

When we receive reports, we look at the evidence provided to us. Reports must be supported with actionable evidence for us to investigate.

We account for risk when assessing reports, and while not every report will be investigated or referred for enforcement, it is the best way to detect patterns of behaviour that should be prioritised.



We consistently act to require compliance

Practitioners have an important set of obligations that underpin the operation of the regulatory framework. In many cases, other parties such as the RBS oversee these obligations and will refer non-compliance to us as a point of escalation.

For these specific obligations, our default position is to act by securing a compliant outcome where practicable, and disciplining non-compliance in each instance. This means that **practitioners should expect consistent consequences if they fall short in meeting their core obligations, and escalation to more serious sanctions if they ignore their obligations or fail to engage with us about their shortcomings.** Areas where we will rarely deviate from a sanction include acting on the following matters.

Failure to follow a Direction to Fix issued by an RBS

We step in to enforce compliance with DTF, to reinforce and support the important primary role of the RBS. The VBA generally takes disciplinary action in such cases, with the strongest penalties reserved for unfixed work that raises serious safety or amenity concerns, and for builders with prior failures to fix work.

Failure to report to the RBS that building work has reached a mandatory inspection stage

At each mandatory stage of a building permit, a builder must report on the status of their building work to the RBS, allowing inspection of core components to ensure compliance with the Act, regulations, and the building permit. Failure of a builder to report at these stages is viewed as an evasive practice that will not be tolerated, for the health and integrity of the building system.

False and misleading practices

These include fraudulent actions around Domestic Building Insurance, building permits, or falsely holding out to have a registration or a licence. We will continue to act forcefully on these reports and on false and misleading information submitted in registration and licensing applications, such as fraudulent information about experience, or collusion between parties in an attempt to mislead us.

Non-compliance with determinations from VCAT

If a matter has progressed to a determination at VCAT under the Building Act or Domestic Building Contracts Act, all reasonable opportunities to contest matters around the non-compliant nature of the work have been followed. Accordingly, if a non-compliance with a VCAT determination is referred to us, this will in most cases result in disciplinary action such as a significant penalty or partial or full suspension.

Failures by a licensed plumber to meet their core obligations

Licensed plumbers have a set of core obligations around drain inspections, compliance certificates, providing insurance information, and other matters defined as infringeable offences. These are likely to receive an infringement notice as a starting point, progressing to more serious discipline or prosecutions for repeat offences. First time offences may receive a caution or warning as appropriate in the circumstances.

Breaches of dispute resolution orders issued by DBDRV

These will result in prompt partial suspension as a default action, to limit the ongoing activity of the builder whilst ensuring they remain available to see through the project under dispute resolution.



For many of these non-compliances, we may also issue public communications to other practitioners and the community, to bring attention to problem practitioners to and protect people from future harms.

This occurs either at the commencement of legal proceedings, or at the conclusion of a disciplinary process, including where a matter is referred to VCAT. We retain the right to exercise our enforcement discretion in all these matters, accounting for the severity of the non-compliance, the level of timely cooperation, the facts and timing of any referral, and the public interest in taking action.

We ensure remedy of problems where practicable

When faced with non-compliances, our primary role is to discipline practitioners, such as through issuing financial penalties and suspensions. These actions help to deter repeat non-compliance by individual practitioners and encourage compliance for practitioners in general. However, we also have scope to require or encourage remedy, or rectification, of noncompliant work in some circumstances.

As appropriate – having regard to our powers – we require or encourage practitioners to bring their work into compliance.

In general, this is done where:

- The practitioner has a clear-cut legal obligation to correct the work.
- The owner consents to the practitioner returning to site to rectify.
- It is in the consumer and public interest for the practitioner to fix the problem in preference, or in addition, to sanction or punishment.

Requiring remedy is a corrective action to enforce obligations.

The availability of remedial options depends on the type of work and the timeframes in which it is reported to us. When considering whether to act or not to act, and the way in which we do so, we account for the other statutory mechanisms and roles in place to ensure compliance and assess whether our action can make a difference. In practice this means the following approaches.

Routine issue of Plumbing Rectification Notices to bring about compliance

As a default position, we will issue **Plumbing Rectification Notices** to plumbers whose work is identified as non-compliant during proactive audits and inspections. The notice requires the work be brought into compliance. This action may be taken in parallel to sanctioning measures, as it is a non-punitive action, to ensure that the plumber meets their self-certification obligations.

Complementing, not duplicating, the role of plumbing insurance

In disciplinary decisions, we account for the role of **plumbing insurance**. The plumbing scheme enables consumers to make insurance claims for defective or non-compliant work. Practitioners must provide consumers with insurance information for work that requires a compliance certificate. We may not take enforcement action for consumer reports about plumbing work if it is unlikely to secure a more effective outcome than what is available through insurance. Our disciplinary actions generally prioritise disciplining patterns of conduct.

Using the appropriate approach to fixing active building work

When encountering non-compliant building work before a certificate of occupancy has been issued, we have the option to issue a **Direction to Fix** to the builder, specifying the non-compliance and the works required to remedy it. Alternatively, we may work with or direct the RBS to ensure that they deliver on their role to secure the compliance outcome. We are more likely to issue a Direction to Fix for serious non-compliances, where the builder has a history of non-compliance, or where a project is approaching completion and there is a risk of the non-compliance being handed over to the owner.



Using injunctions to secure compliance against building orders

When referred a non-compliance of a building owner with a **Building Order**, we will consider the facts of the case and may seek a court issued **injunction** to bring the issue into compliance. Where there is non-compliant building work, we may join the responsible builder, or other responsible building practitioners, as parties to the injunction proceedings.

Offering enforceable undertakings to achieve outcomes

When in receipt of a report or in preliminary investigations, we may offer an **enforceable undertaking** to a responsible practitioner to help secure rectification. Where a builder voluntarily fixes the issue before our action, or cooperates through an enforceable undertaking, this can help to avoid the need for sanctioning or reduce the penalty imposed.

How we deliver





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 licencing 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.



We use our tools and powers for maximum positive impact

Our approach to using regulatory tools and powers is designed to achieve the greatest improvements to non-compliance, across the following areas.

We require corrective action where appropriate

We apply Directions to Fix (s 37B) to builders to remedy non-compliant building work, Directions to Building Surveyors (s205M), Plumbing Rectification Notices (s221ZW) and injunctions where appropriate to the circumstances, and in line with this policy (see '**securing remedy of problems** where practicable').

Our approach to these tools will be described through subordinate policies.

We use discipline to change behaviour and protect consumers

We take proportionate disciplinary action relevant to the nature of the non-compliance and the public interest. Actions include directions to complete training, restricting scope of practice, suspensions, disqualifications, and financial penalties.

A direction to successfully complete training is part of the educational framework for building and plumbing.

Mandating training, generally in conjunction with a formal reprimand and a monetary penalty, is an important measure for achieving compliant and consumer-oriented performance where the cause of non-compliance relates to shortcomings of knowledge and skills.

The requirement to successfully complete training, which is published on the disciplinary register, signals to consumers and other practitioners that the person has failed to meet their core obligation to maintain knowledge and skills, that such shortcomings are not acceptable, and that the practitioner has been given the choice to improve knowledge and skills or else face further action in the form of suspension until completion is achieved.

Where appropriate, we will also restrict the scope of practice through registration conditions where, in a discipline process, the VBA believes that the practitioner should not perform certain work.

In very serious matters requiring a period of suspension or disqualification, we will add a requirement for training to be completed before re-entering practice.

We publish and publicise results to enable and inform all parties

It is important for consumers and practitioners to be aware of builders or plumbers who choose to not comply with the law, and who threaten public safety outcomes. Accordingly, we:

- ensure that all disciplinary outcomes are recorded and accessible on our disciplinary register, for a period of 5 years.
- inform the community through public media of significant disciplinary actions or where we commence proceedings.
- for significant breaches of the Act, ensure prominent, accessible information about other disciplinary matters is available to the community and practitioners, such as through social media and industry bulletins.

These breaches relate to the specific obligations on practitioners that underpin the operation of the regulatory framework (see '**consistently acting to ensure key obligations are upheld**'), or other cases involving significant risks, failure to cooperate or predatory behaviour.

Actions to inform or alert the public are taken at the earliest of the following events:

- When the practitioner is immediately suspended.
- When the disciplinary process is concluded.
- When a disciplinary matter is put into the public domain by referral to VCAT.
- When we commence proceedings in court.

Before these stages, practitioners are subject to investigation and natural justice rights as part of disciplinary processes, and it is not appropriate to disclose these matters to the public.

Our disciplinary register is important resource for practitioners and the community to exercise their due diligence when engaging practitioners.



We safeguard outcomes through our suspension powers

The ability to suspend practitioners from operating is an important part of the disciplinary framework and may be applied in specific circumstances. In general, we may:

- **Immediately suspend** a practitioner from operating pending a show cause process, where necessary to protect the public. This action is only taken where a substantive suspension or where more serious action is an appropriate consequence. The immediate suspension is followed promptly by a show cause notice.
- Apply a **substantive full suspension** (for up to three years) or **cancellation and disqualification** at the conclusion of a full investigation and disciplinary process. This action is generally reserved for the most serious of non-compliances, or to address patterns of wilful misconduct.
- Apply a **substantive partial suspension** where it is in the public interest that they continue to operate to rectify a current issue or non-compliance (such as a non-compliance with directions to fix or dispute resolution orders). These may also be applied where the partial suspension would allow ongoing jobs that are compliant to be completed, whilst preventing the practitioner from taking on any new work until all non-compliances are rectified.

The processes around suspensions have essential safeguards and review rights in place, including the option to seek an external review by VCAT. Where a matter is appealed to VCAT, there can be a stay of the suspension. However, we may publicise the appeal to alert consumers and practitioners.

To enable ready access to suspensions to protect the public and deter wrongdoing, we will:

- Publish frameworks to help explain where we may apply suspensions, particularly partial suspensions for certain kinds of breaches of the Act or patterns of misconduct.
- Ensure that our investigative processes 'fast track' clear non-compliances that may receive a partial suspension.

We ensure that penalties are well understood, credible, and proportionate

To promote consistent and proportionate decision-making in discipline, we will publish frameworks that explain the range of disciplinary actions that are most likely in given circumstances, accounting for the non-compliance and the nature of the conduct. This includes the cases where maximum penalties or suspensions can be applied.

We will also explain our approach to prosecutions in our **prosecutions policy**, which sets out processes and public interest considerations in taking matters to court.

Through publishing this information, practitioners and consumers will know what type of action may be applied, including how matters are escalated with patterns of non-compliance or refusal to cooperate.

In our disciplinary frameworks, we retain discretion about what is an appropriate action in the circumstances, and when a reduction in penalty or agreeing to an undertaking may be considered, such as where a practitioner proactively acknowledges the issue and takes steps to fix it.



We appropriately review and revoke licences and registrations

The discipline process is primarily intended to drive behaviour change to achieve the expected level of performance and quality of conduct by practitioners. This also protects future consumers from harm.

For serious matters we act to ensure that the practitioner cannot continue to operate in a licensed or registered capacity. This can be done for serious standalone conduct or repeated or habitual lower-level non-compliant conduct. In these cases, we will propose and follow through on action to suspend, cancel or disqualify the practitioner.

When we are considering the renewal of a practitioner's registration, we account for their past performance and conduct. If a practitioner is unsuitable to continue to operate, we will refuse renewal of their licence or registration.

Given the impacts of a revocation or refusal to renew an individual's registration, practitioners have significant legal rights in law, including external review rights.

We prosecute the most significant matters

We prosecute significant offences including those where discipline is not available.

Our decisions to prosecute will consider matters including the public interest, the prospects of a conviction, the risk or harm caused by the breach, and its effect on the integrity of the regulatory framework and on the consumer.

Our **prosecutions policy** sets out our approach to commencing legal proceedings.



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 to support:

- Improved information between practitioners and consumers, such as disclosure or explaining important facts to consumers to help them make informed decisions when engaging practitioners for given work.
- Reinforcement of obligations in the Act and regulations, to ensure these are well understood, consistently followed, and carry clear consequences where not met.
- More efficient compliance monitoring and risk assessment, by providing information to us around key activities in a construction project, or in periodic reporting.
- Increased supervision and scrutiny, by imposing conditions on practitioners who fall within higher-risk categories.

Conditions may relate to:

- Record keeping and retaining access to relevant technical information.
- Disclosure to consumers such as when a practitioner has been disciplined or providing a full copy of their registration or licence to show the scope of their practice.
- Disclosure to us of relevant offences in other jurisdictions.
- Key administrative steps or due diligence requirements to support meeting Act obligations.

- Summary reporting by the director of a body corporate registered as a building practitioner, about the overall performance of the body corporate against obligations.
- Informing us when high-risk works are underway, to enable more effective and higher value targeting and oversight of these activities.

We will develop our use of licence and registration conditions in consultation with industry and will describe our approach in relevant external policies. The approach to applying conditions will ensure:

- Transparency and predictability about the basis for imposing conditions and the circumstances in which they will be applied.
- Proportionality and due regard for the administrative costs of conditions.
- How conditions such as reporting to us will be used and acted on.
- Appropriate policy settings around variation and removal of conditions, to ensure consistent application by class or circumstance.
- Implementation in line with administrative law principles and good regulatory practice.
- Clarity about the consequences of non-compliance, including warnings, penalties or full or partial suspension.



We use information requests and powers to ensure transparency

We have considerable scope to compel parties to provide information relating to compliance with the Act and Regulations. Under section 227G of 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.
- To assist in the enforcement of safety.

This important 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 building and plumbing compliance, by working out what may have gone wrong, who was involved, and how they managed compliance.

For example, when:

- Investigating a case of suspected non-compliance, notices may be issued to help establish the facts of the case. This may be done before, or as part of, a formal investigation.
- Conducting audits or programs that review performance in a sector or large building or plumbing company, notices may be used to understand how that company manages compliance across its contracting, staff oversight, and project management practices.
- Assessing performance before key signoff stages, we may issue a notice if we are concerned that plumbing work that is underway is unlikely to achieve necessary outcomes for signoff of a compliance certificate.

The use of information gathering powers is not in itself a punitive measure. It can provide businesses the opportunity to show how they are managing risks, and for us to understand the risk profile of different entities and adjust our approach accordingly. We may not need to compel parties to provide documents where they are cooperative and share information willingly.

These powers also support us to perform our functions in line with the objectives of the Act, including functions set out under sections:

- 197(ac): to supervise and monitor the conduct and ability to practice of builders and plumbers
- 197(g): to provide information and training to assist persons and bodies in carrying out functions under the Act or regulations.
- 197(h): to promote the resolution of consumer complaints.
- 197(j): to collect the building permit levy.

There are important indicators of risk at a plumbing or building business level that may be explored through information gathering. These include how businesses meet Act requirements under sections:

- 174(1): that a nominee director of a registered body corporate must ensure that the body corporate complies with the requirements of this Act and the regulations, which may be defined through policies and processes relating to contracting and oversight.
- 221B(3): that licensed plumbers must adequately supervise work that they will sign off, such as through their systems of work and documented training and oversight practices.

Accordingly, if we observe work that is, or is at risk of being, non-compliant, we may issue an information notice to a business to understand the underlying processes and practices they employ.

Where a practitioner or body corporate is unable to show how it manages compliance risk, this may give cause for further investigation or action by us. Also, where a person fails to appropriately respond to an information gathering notice, this may give rise to disciplinary action.



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, in our inspections and audits, we may detect risks or non-compliances of interest to our regulatory peers. Regulatory peers include local government, Consumer Affairs Victoria, Energy Safe Victoria, the Environment Protection Authority, the Victorian Registration and Qualifications Authority, and WorkSafe Victoria. We also work with professional and occupational associations.

We share intelligence with our peers. We also conduct joint inspection programs with peer regulators to address problem practitioners.

In some areas, there are important synergies between our role and the role of other regulators. For example, 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





We can apply a range of tools to define, drive or ensure compliance. Some of these tools are described below. Detail on these tools, the circumstances of their use, and administration including review processes, may be described in subordinate policies or on our website.

Permissions

Registration and licensing

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. The Authority will only register, and license qualified and experienced people who are then legally allowed to undertake certain kinds of building or plumbing work.

Conditions, including restrictions, can be applied to support overall industry performance, information transparency, and target the greatest regulatory risks.

Education

General advice and targeted information

We may provide general advice and information to a person that engages in low-risk non-compliance to correct the behaviour to ensure future compliance. We also respond to queries from practitioners.

In our field interactions, targeted advice, education, and feedback may also be provided to assist a person to comply.

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 with Regulations and National Construction Code requirements, with participation and feedback from industry informing the program.

Modification of the regulations

Plumbing

If a plumber considers that the work they intend to carry out cannot comply with the requirements of the plumbing regulations, they can apply to us for a modification of the regulations.

Building

If a builder considers that the work, they intend to carry out cannot comply with the requirements of the building regulations, they can apply to the Building Appeals Board for a modification of the regulations.



Enforcement action

Where we identify non-compliance we may use a remedial direction, notice or order to bring building or plumbing work into compliance or direct a duty holder to carry out their functions. These actions may be exercised within, or separate to, disciplinary processes.

Caution and On Notice

Where non-compliance warrants less severe enforcement action, any individual or company who has contravened the legislation or engaged in inappropriate conduct may be issued with a written Caution. A practitioner may also be placed *On Notice* of a pending investigation should a repeat consumer report be received. All interactions with us form part of a practitioner's history to identify repeat behaviour and risk for monitoring.

Plumbing Rectification Notice

We may issue a rectification notice to a plumber who has carried out non-compliant plumbing work. Failure to comply with a rectification notice may result in prosecution and/or disciplinary action.

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. If an owner fails to comply with a plumbing order, we may prosecute the owner or occupier and/or seek recovery of any costs (incurred in carrying out the work).

Building Directions to Fix

Directions to Fix are ordinarily issued by Relevant Building Surveyors to address non-compliant work.

We *may* issue a Direction to Fix to a builder where, after inspection, we are of the opinion the building work does not comply with the Act, building regulations or the building permit, 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 before determining whether to issue a DTF ourselves.

We are more likely to issue a Direction to Fix for serious non-compliances, where the builder has a history of non-compliance, or where a project is approaching completion and there is a risk of the non-compliance being handed over to the owner.

An RBS or the VBA can currently only issue a DTF to a builder before the issue of an occupancy permit or certificate of final inspection.

Failure by a builder to comply with a validly issued DTF without reasonable excuse will be regarded as a serious breach irrespective of the extent, or the nature of the non-compliant building work. This is because a failure of the builder to comply with the DTF demonstrates conduct that signals the builder is an ongoing risk to consumers. Accordingly, this may result in disciplinary action including partial suspension of the builder so that the builder focuses on rectifying the non-compliant building work before entering contracts for new 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 in accordance with the legislation or within a specified period. 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, and there are indications that the PBS may be impeded from fully acting on their obligations.

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. If a person chooses not to expiate the infringement, this may result in a prosecution. We may also take disciplinary action against a registered or licensed building or plumbing practitioner.

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.

Enforceable undertakings can apply both to practitioners (registered or licensed) and unregistered persons. Examples of undertakings include to:

- Refrain from performing particular work.
- Undertake specified training.
- Comply with an agreement by a particular date.
- Undertake corrective actions.
- Comply with a dispute resolution order by a particular date.

If the person fails to comply with the undertaking, we may apply to a court for an order directing the person to comply with the undertaking, carry out building work or pay an amount reflecting any financial benefit gained or other appropriate order.

Injunction

Where a person has engaged in conduct that contravenes the Act, building regulations, directions, orders, or other instruments made under the Act, or has been an accessory to such contravention, 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 will generally contemplate whether to seek court orders in circumstances that include at least one of the following:

- The regulatory non-compliance is of a serious nature.
- The injunction is an appropriate tool to secure corrective action or to prevent future harms.

- There appears to be multiple wrongdoers involved in the non-compliance so that the Court may have to establish liability issues before determining the party or parties against which it will make an order.
- The circumstances raise important questions of law or principle, or industry practice, that merit determination by a Court.
- The circumstances indicate that it might be appropriate for the Court to lift the corporate veil (e.g., inappropriate, or unlawful use of phoenix companies or where there may have been insolvent trading).

Before filing an injunction application, we may give the person the opportunity to give an enforceable undertaking in the same or similar terms to the injunction that would be sought in the absence of the undertaking.

An injunction may either be sought as a standalone action, or within a prosecution process. We seek an injunction when we consider it as the appropriate measure to effectively bring a matter into compliance or to prevent a person from ongoing activity that poses a risk to the public or the built environment.



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.

Disciplinary proceedings are not subject to any limitation period. As a guide, we will not generally commence an investigation or disciplinary action where the alleged contravention or conduct occurred more than 10 years ago.

If the substantiated conduct is also an offence, disciplinary action can be taken instead of, or in addition to, a prosecution.

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. It complements the disciplinary action we may take in cases of significant risk to public safety or property, where there have been multiple instances of offending or it is otherwise in the interests of the public.

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, and it can only be activated once we are ready to give the show cause notice. The immediate suspension acts as an interim protection measure.

There are also listed circumstances where immediate suspension is available: these mainly relate to practitioner insolvency, insurance, conviction for serious criminal matters or loss of licence or registration in another jurisdiction.

Substantive full suspension

A substantive suspension (for up to three years, or lesser in some circumstances) 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 following lower-order discipline.

Some offences in the Act, including repeat offences, will receive a full suspension as a default action. For example, repeated offences concerning plumbing compliance certificates will receive a suspension, where these occur within defined timeframes, under s221ZZZK of the Act.

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 (such as non-compliance with directions to fix and dispute resolution orders) or allowing ongoing jobs which are compliant to be completed or transferred to minimise the disruption to consumers.

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.

