Regulatory Approach

The Victorian Building Authority’s strategy to regulate the Victorian building and plumbing industries
1 Introduction

The Victorian Building Authority’s (VBA’s) Regulatory Approach establishes our strategy to regulate Victoria’s building and plumbing industries and sets out the goals and outcomes we are committed to working towards.

Our Regulatory Approach provides industry, the public, other regulators, government and our staff with a clear statement of how we aim to perform our role and what Victorians can expect from the VBA.

It outlines our operational approach to delivering our core legislative responsibilities and the program of work in our Corporate Plan 2014-18.

The Regulatory Approach also guides how we set priorities, make resource allocation decisions and develop policies that guide our operations.

Figure 1: How our Regulatory Approach is positioned within the context of our key documents and activities

- The legislative requirements that the VBA must meet are prescribed in the...
- Building Act 1993 (Vic)
- Building and Construction Industry Security of Payment Act 2002 (Vic)
- Related regulations and the National Construction Code
- The VBA receives greater clarity on how it should meet these legislative requirements in a way that is consistent with Government policies and objectives through the...
- The VBA details the program of work it will undertake to meet these legislative requirements through its...
- Minister’s Statement of Expectations
- VBA Corporate Plan 2014 - 18
- These framework documents are operationalised through our...
- Regulatory approach
- ...which builds on and informs...
- Our whole-of-organisation approach to achieving outcomes, working collaboratively, and forming and maintaining productive working relationships with stakeholders within Government and externally
2 Our mission and outcomes

VBA is the lead regulator in the plumbing and building industry whose role is to ensure that Victorians enjoy a quality built environment.

Our purpose is to build confidence, and we communicate this to stakeholders through our mission and vision:

- Our mission is to regulate for a quality built environment in Victoria.
- Our vision is for:
  - A trusted regulator
  - A respected industry
  - An informed community

In practice, by achieving our mission and vision we seek to achieve a range of key outcomes that are outlined in our Corporate Plan 2014-18 and consistent with the Building Act 1993 (the Act):

- Community outcomes
- Consumer protection outcomes
- Industry outcomes

In striving to meet these outcomes, we aim to deliver the following benefits to consumers, industry and the wider economy:

- Improving health and safety
- Reducing costs to the community (e.g. costs associated with rectification, dispute costs, and insurance premiums)
- Lowering the cost of doing business by reducing red tape
- Increasing consumer satisfaction and confidence
- Improving environmental and amenity outcomes

It is our – and the community’s – expectation that we perform our role in the most efficient and effective way. In order to be efficient and effective, we target our efforts towards those activities which will minimise the risk of a harm occurring at the lowest cost.

Our primary focus is on reducing risk. When we talk about risk, we mean the harmful outcomes that the community cares about and that we have a legislative responsibility to contribute to preventing. Our priorities include minimising the risks of:

- Fires in buildings
- Building collapses
- Gas explosions
- Contaminated water supply
- By adherence to the legislation and regulations

Our Regulatory Approach recognises that in some cases we contribute to, but do not control, the delivery of these benefits (for example, increasing consumer satisfaction and confidence), while in other cases we control benefits more directly (for example, lowering the cost of doing business, including by reducing red tape).
We recognise that the community has expectations of us as the building and plumbing regulator, and we undertake to work with our co-regulators, related regulators and industry wherever possible to contribute to the delivery of the above benefits.

The quality and safety of buildings requires a wide range of people to do their jobs well to ensure buildings function smoothly as a whole. The VBA shares responsibility for regulation of the built environment with other organisations, such as Energy Safe Victoria, local government and water authorities. Section 5 outlines how we work within the VBA, with our regulatory partners and industry.

All of our activities are targeted towards achieving these benefits, and we evaluate our key programs of work to make sure that they demonstrably benefit the community in the way that we, and the community, expect them to. Section 6 describes how we evaluate our work.
3 Our approach to setting priorities

We operate in a complex and dynamic regulatory environment. To fulfil our role in building confidence, we have a consistent approach to prioritising and balancing our efforts between responding to immediate risks and addressing emerging or future risks.

Responding to immediate risks

Through our day to day work we may identify issues that require immediate attention. For example, consumers submitting complaints about risks of harm, or practitioners notifying us of serious instances of non-compliance.

In many of these instances we have limited discretion in how we can respond, while in other cases we have scope to respond using various tools. These immediate requests involve a wide range of matters and we prioritise acting on those that pose the highest risks of harm to the public while identifying the most appropriate way of responding to lower risks of harm.

Through our Regulatory Approach, we recognise when we have discretion to respond to immediate issues, and tailor our responses according to the significance of the relevant issue.

Addressing emerging or future risks

While stakeholders are impacted by immediate risks, an important part of our work is to identify and address emerging or future risks that may impact stakeholders in the future. For example, practitioners and consumers may be unaware that a builder has used non-conforming materials. However, we have a role in maintaining confidence in the industry by taking steps to identify and address this serious risk, for example, by educating practitioners on the risk, before it results in harm.

The VBA will monitor practitioners and practices to identify emerging risks and trends. The VBA will also undertake research to inform itself of emerging risks and how best to deal with them as a regulator.

Our Regulatory Approach recognises that we design and implement projects that identify and address emerging or future risks of harm, drawing on the best available evidence and data collected in the course of our activities.

Our balanced approach

In order to best perform our role, our Regulatory Approach balances our effort between responding to immediate risks, while also ensuring that we appropriately design and implement projects that manage emerging or future risks.

Case study: proactive inspections

The Proactive Inspection Program uses risk-based analysis to select buildings under construction for inspection and enables the VBA to engage with owners, builders, tradespeople, relevant building surveyors and municipal building surveyors. The program involves conducting inspections to:

- Encourage higher performance by practitioners
- Inform and educate industry on compliance, particularly for common issues encountered during inspections
- Monitor actions, where necessary, to ensure compliance at building sites

The information and intelligence collected from the Proactive Inspection Program will help the VBA identify and respond to immediate and emerging risks.
4 The principles that guide our work

To ensure that across the VBA we have a consistent approach to achieving the benefits outlined in the previous section, we apply six principles to guide our work. These principles reflect the best examples of the way that we currently work together and our aspirations for the way that we will work together in the future. The principles provide a benchmark for what the community, industry and other regulators should expect from us.

Figure 2: The principles of our Regulatory Approach

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
<th>Examples</th>
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<tbody>
<tr>
<td>Evidence-based</td>
<td>We make decisions based on the best available data and intelligence</td>
<td>• We use evaluations of our programs of work to ensure that we are targeting the areas of highest risk to the community</td>
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<td>• Our decisions are always supported by evidence, using intelligence from a variety of sources such as customer complaints, inspections and stakeholder input</td>
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<td>Consistent</td>
<td>We provide the same output, both in terms of quality and accuracy, regardless of which area is responsible</td>
<td>• We provide the same level of service to all stakeholders, regardless of whether they are a small business operator or a large multinational</td>
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<td>• We are joined up internally, which means that stakeholders will get the same response from us regardless of which area of the VBA they interact with</td>
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<td>Effective</td>
<td>We focus on achieving real-world outcomes that warrant our regulatory interventions</td>
<td>• We will focus on making a difference for the benefit of consumers and industry, rather than on bureaucratic processes</td>
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<td>• We recognise that we are ultimately funded by consumers and practitioners and must be able to demonstrate our value to consumers and practitioners</td>
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<td>Transparent</td>
<td>We publish information on our activities, and make sure that this information has an impact</td>
<td>• We gather and report information on our efficiency and effectiveness, to make sure we can be held to account</td>
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<td>• We present information in a way that is easily understandable and clearly shows our performance</td>
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<td></td>
<td>• We recognise that in addition to making information available, we must be active in informing our stakeholders</td>
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<td>Targeted</td>
<td>We are known for targeting our limited resources to the areas of the greatest harm</td>
<td>• We recognise that we operate in a resource-constrained environment, and as such we prioritise our resources towards addressing risks of greatest harm</td>
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<td>• We do not dedicate our scarce resources towards addressing issues unless there is evidence of a risk of harm</td>
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<td>Collaborative</td>
<td>We collaborate with all relevant parties, especially with co-regulators</td>
<td>• We go out of our way to form relationships and work with our regulatory partners to achieve the best outcomes for industry and consumers, regardless of whether it is in our jurisdiction</td>
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<td>• We work closely with industry, but we recognise that we must independently exercise our discretion and make objective decisions</td>
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5  An integrated approach to regulation

We recognise that the community has expectations of us as the building and plumbing regulator to deliver the desired outcomes. To achieve these in a manner that is consistent with our six principles, we will take an integrated approach to regulation, including:

- Using our regulatory tools in an innovative way
- Collaborating internally
- Actively collaborating with, and seeking the input of, our co-regulators, related regulators and industry wherever possible

5.1 Regulatory tools

The VBA has a range of regulatory tools it can use. While these tools are used to prevent and react to non-compliance we must also coordinate, consult and share information with our co-regulators, industry and related government and regulatory bodies.

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**Case study: taking a joined-up approach**

We recognise that to achieve our goals we need to work collaboratively with our stakeholders.

On 25 November 2014 the Lacrosse building in Latrobe Street, Docklands became the scene of a fire which required the evacuation of all residents. While nobody was harmed, the incident brought to our attention an emerging risk to health and safety.

We collaborated with the local council and the Metropolitan Fire Brigade (MFB) to create a working-group to enable a sequenced and joined-up response. The MFB identified it was the non-compliant use of the building’s external cladding material that contributed most to the spread of fire.

The significance of the fire event, associated with the non-compliant use of an external wall cladding material, prompted the question, “How many buildings in Melbourne have utilised external wall cladding material in a non-compliant manner?” The VBA established audit criteria which resulted in the identification and audit of some 170 high rise residential and public buildings in central Melbourne and surrounds.

Using this information council building surveyors provided an evidence-based opinion about whether the buildings were safe to occupy. We used our media strategy to ensure transparency by publishing the outcome of inspections on our website and communicating with the media.

Our findings were used to inform and educate consumers and practitioners of the potential for problems with external wall cladding and the risks involved in using non-compliant building materials. We also worked with the national body responsible for writing the building code to set standards that make the requirements for using fire resistant external cladding clearer.

We will continue to monitor the industry to evaluate whether our actions were effective in dealing with this emerging risk and therefore improving the safety of buildings and Victorians who use them.
5.1.1 How we use our regulatory tools
We do not have a prescriptive process for how we respond to risks of harm. Instead, we ensure that our use of regulatory tools is fit for purpose and:

- **Sequenced:** We address risks of harm by first using light handed regulatory tools (e.g. education, awareness) wherever possible and as much as possible. We only escalate our regulatory response to more formal and severe regulatory tools to address greater risks or incidents of harm.

- **Joined-up:** We ensure that we coordinate the timing and the approach in using our different regulatory tools and ways that we address risks of harm. This means working across the VBA to ensure we are coordinated, and that we work with regulatory partners and industry to achieve our outcomes. For example, we use intelligence gathered from complaints and other internal sources to identify and respond to emerging risks before they become more serious.

5.1.2 Our regulatory tools and operating model
Our operating model is sequenced and risk-based, where we deal with the risk of non-compliance with increasing formality and severity.

*Figure 3: The “Regulatory O” which illustrates the spectrum of regulatory tools we use to achieve benefits to the community, consumers and industry*

5.2 Whole of VBA approach
The VBA’s organisational structure is aligned to an integrated service model to better respond to the needs of consumers and practitioners. We structure our organisation into four functional/operational divisions and two supporting divisions.

This structure ensures our proactive approach to identifying emerging risks is embedded as part of business as usual and that information collected by one division can be used by another to identify emerging risks and the continual improvement of regulation.
### Regulatory tools - proactive, responsive and targeted

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<tr>
<th>Enforcement</th>
<th>Description</th>
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<tr>
<td>Criminal prosecution</td>
<td>We can seek criminal prosecutions when the conduct of a building or plumbing practitioner is serious in nature and/or where the breach was conscious and deliberate and where an individual does not have the appropriate licence/registration.</td>
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<tr>
<td>Notice/order</td>
<td>For plumbing, we can issue a notice and subsequently an order to the owner or occupier of a property where a plumbing installation contravenes plumbing law. For building, we work with the Registered Building Surveyor or Municipal Building Surveyor to issue an order.</td>
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<tr>
<td>Disciplinary action</td>
<td>We can investigate and take disciplinary action against practitioners licensed or registered in Victoria. For registered building practitioners, we can issue a show cause notice asking them to provide information to help determine whether we need to take any further action. For licensed and registered plumbing practitioners we can hold a disciplinary inquiry into their conduct.</td>
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<tr>
<td>Infringement notices</td>
<td>We can issue infringement notices where the breach is a prescribed offence; these are generally used when it is not deemed to be of a level that requires a court appearance or disciplinary action.</td>
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<tr>
<td>Directions to fix (building)</td>
<td>Private Building Surveyors (PBS) is required to issue a direction to fix non-compliant building work. Where the PBS does not take the appropriate action, the Municipal Building Surveyor and/or VBA may take further action, including VBA issuing directions to fix in certain circumstances.</td>
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<tr>
<td>Rectification notices (plumbing)</td>
<td>We may issue plumbers (who carried out work or supervised work) with a written rectification notice to make work compliant. Rectification notices are used to resolve matters before taking other forms of enforcement action.</td>
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<tr>
<td>Written warning</td>
<td>We may issue written warnings if breaches are low risk and/or there are mitigating factors, including length of time the provider has been involved in the industry and the number of incidents of non-compliance.</td>
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<tr>
<td>Monitoring compliance</td>
<td>We can accept and register an undertaking from a registered building practitioner and enforce such undertakings in court. We monitor risks of harm in our regulatory environment by auditing and/or inspecting work undertaken or in progress. We prioritise our monitoring activities to target the greatest risks of harm. Some compliance monitoring takes place in response to heightened levels of complaints on particular matters.</td>
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### Regulatory tools - ongoing

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<tr>
<th>Activity</th>
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<tr>
<td>Supporting to comply</td>
<td>We provide specific advice and guidance to support individual practitioners in understanding compliance obligations and how to manage the risks of their activities. Where this highlights the need for general advice, it informs our activities described above as ‘informing and educating’.</td>
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<tr>
<td>Setting standards</td>
<td>We ensure that practitioners are appropriately licensed and/or registered to carry out certain works.</td>
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<tr>
<td>Informing and educating</td>
<td>We work with other relevant government partners, practitioners and consumers to develop policy and statutory requirements, reforms to the National Construction Code and new standards.</td>
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<tr>
<td>Encourage higher performance</td>
<td>We raise consumer and practitioner awareness to the regulatory requirements for practitioners and the VBA’s role and jurisdiction. While we have an important role to play in ensuring a quality built environment in Victoria, we also recognise that our investigation will not be required in all matters and may be referred to our regulatory partners or co-regulators. And even when we don’t need to intervene, there is no formal regulatory action required, we still encourage higher performance.</td>
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5.2.1 Recent examples of how each of our Divisions is leading projects that apply the Regulatory Approach

**Enquiries, Inspections and Complaints**

The Enquiries, Inspections and Complaints Division undertakes plumbing inspections in accordance with a risk-based framework. The framework considers whether the work being undertaken could cause a high level of harm (e.g. hot water scalding), the compliance history of the practitioner doing the work, and how long it has been since the VBA last conducted an inspection of the practitioner’s work. This information forms part of our decision making process ensuring we use our finite in the most effective way.

**Licensing and Registration Division**

Following on from the recent Process Improvement Project, the Licensing and Registration Division has developed materials to support our staff to manage the application process, including assessment frameworks, checklists and template letters. These materials have a range of benefits for applicants. For example, they help to ensure our interactions with the applicants are timely and efficient, consistent across applicants, based on a set of transparent requirements, and appropriately informed by evidence. This process also helps to ensure that higher risk applicants are reviewed accordingly.

**Technical and Regulation Division**

The Technical and Regulation Division has established a Research and Evaluation team to ensure that our research program is targeted towards addressing higher risk matters in collaboration with teams across our organisation. Over time, our research priorities will further develop our evidence base, and both the research program and its outcomes will be shared publicly in a transparent manner.

**Compliance and Performance Division**

The Compliance & Performance Division utilises a combination of reactive and proactive tools to monitor and enforce compliance with the law. The audit program is an example of a proactive tool used to identify levels of non-compliance within the industry, and monitor overall compliance in relation to a specific issue or area. The investigation function is primarily used to respond to specific incidents or issues.

**Office of the CEO**

The Office of the CEO (OCEO) provides other Divisions with some of the necessary tools and structures to enable us to be an effective regulator. The OCEO has developed guidance to ensure that our interactions with stakeholders are collaborative and consistent. In addition, the OCEO also coordinates reporting on the VBA’s efficiency and effectiveness to ensure we are transparent and effective.

**Corporate Services Division**

The Corporate Services Division enables us to deliver many aspects of our Regulatory Approach. For example, Corporate Services is currently leading the Business Systems Transformation Project that will provide a data platform that supports our evidence gathering and analytical capabilities. This will enable us to target our decisions based on areas of greatest risk.
5.3 How we work with our partners

To deliver our outcomes, we work collaboratively and effectively with a range of regulatory and non-regulatory partners. We do this because we recognise that we do not control all of the factors that affect industry behaviour and that ultimately determine whether we achieve our benefits.

We look for opportunities to gain the input of regulators who influence or can provide assistance in achieving our outcomes.

We recognise that industry associations and industry members are a valuable source of data and communications. We continually engage with industry and actively seek their input to improve our activities.

We have established a Stakeholder Engagement Framework which outlines our approach to creating a well-informed stakeholder group that has a clear understanding of what the VBA does, where it is going and why it should be valued and trusted. It details our approach to working with:

- Co-regulators (e.g. Consumer Affairs Victoria, Victorian Managed Insurance Authority, Building Practitioners Board, Building Appeals Board)
- Industry stakeholders
- Related government and regulatory bodies (e.g. Interstate industry regulators, local councils, WorkSafe, Victorian Registrations and Qualifications Authority).

Case study: Evaluating the effectiveness of the regulations

The principles outlined in section 4 guide our day-to-day practice and have informed our work to support the evaluation of the Building Regulations 2006.

Regulations outline the set of requirements that regulated entities must meet. Making sure that they operate efficiently (minimising industry red tape) and effectively (outlining effective fire performance requirements) is important to how we achieve our benefits.

To ensure that we are providing accurate and insightful evidence to support the evaluation of the regulations, we have collaborated internally across VBA’s divisions, and externally by actively seeking the input of the Department, co-regulators, related regulators, industry and consumer associations, and practitioners.

Our analysis and research aims to support policymakers to make recommendations that allow regulations to better target areas of greatest risk.

Our analysis and research will inform the preparation of policy documents by the Department. The VBA will be transparent and publish its research and seek comment on its findings.

This work has involved extracting data from many business units, which will be used to improve the quality and consistency of information collection and how we evaluate our performance.
6  Evaluating our performance

Our Monitoring and Evaluation Framework (MEF) is our whole-of-organisation approach to understanding our performance in achieving the benefits of our operations. It enables us to determine the effectiveness of our activities, and use this evidence to inform our decisions about future activities.

The MEF uses a range of indicators that show us, and the community, at a high level how we are going in achieving our outcomes. We are currently developing and testing our indicators.

All of our activities will be linked to at least one of our indicators. While each of our activities will have only a small impact on the overall achievement of our benefits, we will use this link to demonstrate that all of our activities are aligned with the benefits that we seek to achieve.

For a small number of key projects each year, we also formally measure the impact of our activities. Figure 5 below demonstrates our cycle of evaluating projects and initiatives.

Figure 5 Our evaluation cycle

By using this type of feedback loop, we aim to ensure that lessons learned are shared across the organisation, that improvements in our planned activities, implementation and delivery are made, and that we continue to build a solid evidence base to demonstrate the impact of our initiatives and activities.
We collect data on the performance of the building and plumbing industries from a number of sources, including:

- Complaints received by the VBA
- The frequency and type of non-compliance detected in our inspections, audits and investigations
- Environmental scanning and monitoring of new and emerging issues.

Using this evidence, the VBA can identify and target trends in non-compliance and potential risks of harm.

For example, through our levy audit levy program the VBA can identify practitioners who may not be meeting their financial obligations. This type of risk can be analysed with other VBA data to determine whether the practitioner is an individual participating in risky behaviour or there is a broader issue affecting a wider number of practitioners.

We can then target our activities to the risks that we identify, whether that is a focussed effort on a single practitioner or engaging industry through practice notes, public communications, audits, inspections or investigations.

We would then monitor compliance to see whether our strategies were effective.
Appendix A: Relevant legislation

The VBA administers the following Acts and regulations, which collectively form its legislative framework.

Acts
- Building Act 1993 (Vic)
- Building and Construction Industry Security of Payment Act 2002 (Vic)

Regulations
- Plumbing Regulations 2008 (Vic)
- Building Regulations 2006 (Vic)
- Building and Construction Industry (Security of Payment) Regulations 2003 (Vic)

Related legislation
- Domestic Building Contracts Act 1995
- Domestic Building Contracts Regulations 2007

Guides
- Guide to Standards and Tolerances 2015

Code
- National Construction Code

The National Construction Code (NCC) is an initiative of the Council of Australian Governments (COAG). It was developed to incorporate all onsite requirements for building and plumbing across Australia into a single reference point.

Codes are used as a reference point to establish whether or not particular works meet a documented and agreed standard.