

Compliance and Enforcement Policy

Board Approved Policy

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Owner	Director, Compliance & Enforcement		
Author	Rosemary Martin, Director, Compliance and Enforcement		
Contacts reference	Michael.hickey@vba.vic.gov.au		

Regulatory context

The Victorian Building Authority (VBA) is Victoria's principal regulator of building and plumbing practitioners.

The VBA has responsibility for monitoring and enforcing compliance with the Building Act 1993 (Vic) (Act and associated regulations (Regulations), including the National Construction Code of Australia and Code of Conduct for Building Surveyors in Victoria (collectively Building Legislation¹). Consumer Affairs Victoria (CAV), municipal councils, Energy Safe Victoria, Fire Rescue Victoria, and municipal and private building surveyors also have key roles in regulating the building and construction industry.

The Building Legislation provides for plumbing and building work to be carried out so that it meets minimum standards of safety, health and amenity. It requires people and companies undertaking building and plumbing work to be registered building or licensed/registered plumbing practitioners. It also provides for various enforcement tools to be used where individuals and companies fail to comply with the requirements of Building Legislation. The VBA uses enforcement tools against both registered and unregistered practitioners acting unlawfully. Where the VBA's Compliance and Enforcement Policy refers to registered practitioners, this means any category of building or plumbing practitioner required to be registered by the VBA. For example, registered building practitioners includes, but is not limited to, domestic and commercial builders, private and municipal building surveyors, building inspectors and draftspersons.

The Domestic Buildings Contracts Act 1995 (Vic) provides a scheme for consumer protection relating to domestic building work. Depending on the cost of the building work involved, this provides consumers with certain contractual protections and implied warranties. These remedies are typically pursued through the Victorian Civil and Administrative Tribunal (VCAT), with CAV the agency responsible for compliance and enforcement.

¹ For a more comprehensive list of all relevant Acts and Regulations under which the VBA has some compliance and enforcement obligations, refer to Appendix 1 of this policy



Purpose of this policy

The purpose of this Compliance and Enforcement Policy (Policy) is to outline the VBA's approach to its compliance and enforcement functions. This document should be read in conjunction with the VBA's Regulatory Approach.

The VBA's compliance and enforcement decisions are made in relation to its:

- proactive work in monitoring and detecting non-compliance and emerging risks in Victoria's building and plumbing industries; and
- responses to complaints about alleged contraventions of Building Legislation or inappropriate conduct.

Consistency in the compliance and enforcement approach

The VBA acts without fear or favour when making decisions about licensing or registration approvals and renewals, proactive inspections and audits, investigations and practitioner discipline.

The VBA works with consumers, practitioners and industry to collect information over time, to understand potential risk and inform decisions which lead to proportionate regulatory responses. The VBA expects compliance with Building Legislation and relevant standards.

Key areas of focus

The VBA's primary focus is on reducing risk to members of the Victorian community by prioritising our efforts towards activities that pose a greater threat to their health and safety or economic loss. To achieve this, the VBA's risk based regulatory model enhances the VBA's capability firstly to identify risk, and then to fully understand the factors contributing to that risk, in order to decide where best to focus regulatory intervention.

In deciding which enforcement option is the most appropriate in each case, we focus on how risk can be reduced most efficiently and effectively.

Monitoring compliance

The VBA's ability to take proportionate and risk-based enforcement action is informed by threshold principles of the rules of evidence and natural justice. Wherever suitable, the VBA uses mobile digital technology tools to supplement existing processes, which enhance our compliance monitoring and evidence gathering capability across audit, inspection and investigation activities.

Promoting voluntary compliance and cooperation with the VBA

A primary objective of the VBA's approach is to develop a strong culture of compliance and cooperation among Victorian building and plumbing practitioners. The VBA's preferred approach is to provide industry and practitioners (including designers and building inspectors) with an opportunity to rectify non-compliance or inappropriate conduct. The VBA will escalate its responses where this does not achieve a satisfactory outcome.

Identification of a breach or inappropriate conduct

The VBA becomes aware of potential contravention of Building Legislation or inappropriate conduct through:

- complaints from consumers, practitioners, industry bodies and members of the public.
- referrals from other regulators and bodies, including CAV, Domestic Building Dispute Resolution Victoria, WorkSafe, municipal councils and interstate industry regulators; and
- the VBA's own monitoring and supervision activities, including via audits and inspections.



When the VBA becomes aware of a potential breach or inappropriate conduct it will apply a risk-based approach to triage matters and target its resources efficiently and focusing on risks that pose greater potential for harm to the community. Risk is assessed by reference to factors such as likelihood of non-compliance, consequences or potential consequences of non-compliance and willingness of licensed or registered practitioners to address non-compliance in a timely fashion.

This risk-based assessment and prioritisation will inform VBA's decision whether to investigate an individual matter.

Inspections and audits

The VBA conducts proactive building and plumbing inspections, as well as building and plumbing audits, to assure that works are completed in accordance with the requirements of the Building Legislation. Proactive inspections focus on building and plumbing work during the construction phase.

The VBA's inspection and audit activities operate under a risk-based regulatory model. Intelligence is informed by the VBA's compliance activities, complaints, and its engagement with industry, the community and other regulators. The VBA utilises its intelligence to determine which sites to inspect or audit and the scope of those inspections or audits.

The VBA will focus on proactive inspections of buildings during construction and is committed to achieving and maintaining an annual inspection rate of 10 percent of building work associated with new, issued building permits.

The VBA may also undertake intelligence led, proactive investigations to target broader systemic issues and patterns of conduct or non-compliance.

Statewide cladding audit

The VBA is conducting a Statewide audit of external cladding on Victorian buildings.²

Where it is in the public interest, the VBA may be appointed by the Minister of Planning to carry out the functions of a municipal building surveyor for some buildings. In these cases, the VBA's compliance and enforcement tools include the issuing of emergency orders, building notices and building orders to owners to require building work or other action be taken to rectify non-compliance and address safety issues.

When considering appropriate enforcement action arising from the cladding audit, the VBA will have regard to the Cladding Compliance and Enforcement Policy.

Enforcement Action

The VBA has a range of tools it can use to discharge its compliance and enforcement functions. Enforcement tools may be used independently or jointly. These tools are summarised in Appendix 2, along with the VBA's approach to ensuring that enforcement outcomes are proportionate to the seriousness and wider impact of the alleged breach or conduct.

The appropriate enforcement action is determined having regard to the nature of the contravention or conduct, the person's compliance history and their response in terms of genuinely cooperating, acknowledging, rectifying and preventing ongoing non-compliance or poor conduct.

² The Victorian Government directed the VBA to conduct a Statewide Cladding Audit (SWCA) in response to recommendation 6 in the interim report published by the Co-Chairs of the Victorian Cladding Taskforce (VCT) in December 2017. The scope of the audit covers privately owned class 2, 3 and 9 buildings constructed since 1997, with Class 2 and 3 buildings limited to three storeys and above and class 9 buildings limited to two storeys and above.



The VBA can take enforcement action against registered practitioners even where the offending conduct is attributable to an employee or contractor.

In the case of contravention of Building Legislation involving building owners, unlicensed or unregistered people, the enforcement tools available to the VBA include issuing a written warning, seeking an injunction, accepting an undertaking and/or prosecution.

Enforcement action is undertaken to promote broader compliance and good practice. It is not undertaken for the benefit of a given complainant.

Notification of enforcement decision

The VBA will notify each building or plumbing practitioner, complainant or unregistered person carrying out building or plumbing work of the outcome of its enforcement decision.

Previous enforcement action

Any previous enforcement action taken against a practitioner or other person will be taken into consideration by the VBA when making decisions about alleged contravention or poor conduct by those parties.

Time limit on enforcement action

In the normal course, the VBA will not commence an investigation or take enforcement action where the alleged contravention or conduct occurred more than 10 years ago. Exceptions may be made where there are concerns about public safety or other exceptional circumstances.

This approach is consistent with section 134 of the Act which prevents the bringing of civil building actions more than 10 years after the completion of building work.

Where alleged conduct could be an offence, section 241 of the Act limits the time within which a prosecution can be commenced to 3 years from the date of the offence or 2 years from the date on which the VBA became aware of the offence, providing that the prosecution is commenced within 10 years.

Review of statutory decisions

Disciplinary action against registered building practitioners

Internal review

A person directly affected by a VBA decision to impose disciplinary action is entitled to apply for internal review of that decision within 28 days of the decision. An affected person cannot apply for internal review of a decision to impose disciplinary action made by the VBA Chief Commissioner or Chief Executive Officer. See VBA website about internal review for more information.

Review by VCAT

A person who is not entitled to seek internal review of a disciplinary decision, or who wishes to seek review of an internal review decision, has a right apply to VCAT for review of the decision. An affected person may also apply to VCAT for review of a decision to immediately suspend, suspend or cancel their registration.

Disciplinary action against licensed and registered plumbers

A person may apply to VCAT for a review of a VBA decision to impose disciplinary action.



Direction to fix (building work only)

A builder has the right to appeal a decision to issue a direction to fix to the Building Appeals Board (BAB) within seven (7) days of being given the direction to fix. The BAB can be contacted at <http://www.vba.vic.gov.au/building-appeals-board>.

Publication of prosecutions, inquiries and disciplinary actions

The VBA publishes both in its annual report and on its website a record of completed prosecutions, plumbing inquiries (when a publication order is made) and disciplinary action. This record of disciplinary actions taken against registered building and plumbing practitioners is made public by the VBA. VBA also maintains a register of undertakings which may be inspected by any person at any time without charge (<https://www.vba.vic.gov.au/building/complaints-compliance-enforcement/disciplinary-register>).



Appendix 1 Relevant building legislation and VBA Policy

Acts

Building Act 1993 (Vic)

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

Domestic Building Contracts Act 1995 (Vic)

Regulations

Plumbing Regulations 2018 (Vic)

Building Regulations 2018 (Vic)

Building and Construction Industry (Security of Payment) Regulations 2013 (Vic)

Code

National Construction Code

Code of Conduct for Building Surveyors in Victoria

VBA Policy

Cladding Compliance and Enforcement Policy



Appendix 2: Compliance and enforcement tools

The VBA has a range of tools at its disposal to respond to non-compliance with the Building Legislation. Each of these enforcement tools is described briefly below.

Compliance advice and information

The VBA may provide general advice, information and access to educational programs to a person that engages in low risk non-compliance to educate the person and correct their behaviour to ensure future compliance.

Written warning

Where non-compliant work warrants less severe enforcement action, any individual or company that is alleged to have contravened the Building Legislation or engaged in inappropriate conduct may be issued with a written warning.

Infringement notices

An infringement notice can be issued by the VBA for prescribed infringement offences. They enable the VBA to impose a fine on a person without needing to go to court.

The VBA will issue an infringement notice where there is a contravention of a prescribed infringement offence and the VBA decides that an infringement notice is the most appropriate way of responding to the breach. Plumbing infringements may be issued in accordance with section 221ZZE of the Act while building infringements may be issued in accordance with section 255.

Non-payment of the fine set out in an infringement notice may result in a prosecution and/or disciplinary proceedings to be taken by VBA if the infringement notice was issued to a registered or licensed building or plumbing practitioner.

Directions

Direction to fix (building work only) - The VBA may issue a direction to fix building work to a builder prior to the issue of an occupancy permit where appropriate. Failure to comply with a direction to fix issued by the VBA may result in prosecution and/or disciplinary action.

Direction to building surveyor (building work only) - The VBA may issue a direction to a municipal building surveyor or a private building surveyor to carry out his or her functions in accordance with the Building Legislation or within a specified period.

Rectification notice/plumbing notices and orders (plumbing work only) - The VBA may issue a rectification notice to a plumber who has carried out non-compliant plumbing work. Failure by a registered or licenced plumber to comply with a rectification notice may result in prosecution and/or disciplinary action.

The VBA can also issue a plumbing notice and subsequent order to the owner or occupier of a property where non-compliant plumbing work has been undertaken. If an owner fails to comply with a plumbing order, the VBA may prosecute the owner or occupier and/or seek recovery of any costs incurred in carrying out the work from the owner or occupier.

Undertakings

The VBA may accept a written undertaking given by a person in connection with a matter in relation to which the VBA has a function under the Act.



If the person fails to comply with the undertaking the VBA 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

The VBA may apply to the court for an injunction to:

- restrain a person from doing something or engaging in a certain type of behaviour; or
- require a person to do something, such as bringing non-compliant building work into compliance.

Disciplinary action

Disciplinary action is one of the VBA's key enforcement tools to hold registered building or plumbing practitioners to account and to enforce compliance with the Building Legislation.

The VBA will take disciplinary action where a registered practitioner is alleged to have engaged in conduct that raises significant concerns about that practitioner's competency, professionalism and/or compliance with Building Legislation including illegal Phoenixing activity. If the alleged conduct is also an offence, disciplinary action can be taken instead of, or in addition to, a prosecution.

A practitioner's licence can be impacted in the following ways, either alone or in combination: suspension, cancellation, and/or imposition of conditions.

Immediate suspension of either a registered builder or a registered/licensed plumber is a form of protective action which complements the disciplinary action the VBA may take in cases of significant risk to public safety or property, where there has been multiple offending or otherwise in the interests of the public.

Prosecution

The VBA may commence criminal prosecution against unregistered or registered individuals who contravene offence provisions of the Building Legislation where it is in the public interest. The VBA will ensure it prosecutes in a consistent way, by having regard to the Director of Public Prosecutions Victoria's guidelines. These guidelines provide direction to VBA on prosecutorial discretion, ensuring decisions are based on the facts and circumstances of each individual case