

# Compliance and Enforcement Policy

Compliance and Enforcement

**Keywords:**

Policy; Compliance; Enforcement

**ID:**

VBAPOL-0000

**Version number:**

2

**Status:**

Final

**Date authorised:**

11/02/2019

**Review date:**

01/01/2020

**TRIM:**

DOC/18/347367[v2]

**Contents**

1	Regulatory context .....	3
2	Purpose of this policy .....	3
3	Consistency in the compliance and enforcement approach .....	3
4	Key areas of focus.....	4
5	Monitoring compliance .....	4
5.1	Promoting voluntary compliance and cooperation with the VBA .....	4
5.2	Identification of a breach or inappropriate conduct .....	4
5.3	Inspections and audits.....	5
5.4	State-wide cladding audit.....	5
6	Enforcement Action .....	6
7	Notification of decision .....	7
8	Previous enforcement action .....	7
9	Time limit on enforcement action .....	7
10	Review of statutory decisions.....	7
10.1	Disciplinary action against registered building practitioners.....	7
10.1.1	Internal review .....	7
10.1.2	Review by VCAT.....	7
10.2	Disciplinary action against licensed and registered plumbers.....	8
10.3	Direction to fix (building work only) .....	8
11	Publication of some enforcement actions.....	8
	Appendix 1: Relevant Building Legislation.....	9
	Appendix 2: Compliance and enforcement tools .....	10

## 1 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**), *Domestic Building Contracts Act 1995* (Vic) (**DBCA**) and associated regulations (**Regulations**), including the National Construction Code of Australia (collectively **Building Legislation**<sup>1</sup>). The VBA shares responsibility for the administration and enforcement of Building Legislation with Consumer Affairs Victoria, municipal councils, Energy Safe Victoria, Metropolitan Fire Brigade, Country Fire Authority and municipal and private building surveyors.

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 DBCA provides a scheme for consumer protection relating to domestic building work. Depending on the cost of the building work involved, the DBCA provides consumers with certain contractual protections and implied warranties.

## 2 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 breaches of Building Legislation or inappropriate conduct.

## 3 Consistency in the compliance and enforcement approach

The VBA applies a consistent approach when making decisions about licensing or registration approvals and renewals, proactive inspections and audits, reactive investigations and practitioner discipline.

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<sup>1</sup> 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.

The VBA comes into contact with practitioners during all of these activities which enables the VBA to collect information over time to understand potential risk and inform decisions which lead to proportionate regulatory responses. The VBA expects full compliance with Building Legislation and relevant standards and makes decisions to manage intolerable risk.

## 4 Key areas of focus

The VBA's primary focus is on reducing risk to the Victorian community by prioritising our efforts towards activities that pose a greater threat to health and safety or economic loss to consumers or the public. In deciding which enforcement option is the most appropriate in each case, we focus on how harm can be reduced most efficiently and effectively.

## 5 Monitoring compliance

The VBA's ability to take effective enforcement action is dependent upon robust compliance monitoring, the accuracy of intelligence and the availability of reliable evidence to support the VBA's decision making.

### 5.1 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 cooperate with industry and building owners to rectify non-compliance or inappropriate conduct. The VBA will escalate its responses where cooperation does not achieve a satisfactory outcome.

### 5.2 Identification of a breach or inappropriate conduct

The VBA becomes aware of potential breaches 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 Consumer Affairs Victoria, 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 which targets its resources efficiently and focuses 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 of non-compliance and willingness of registered building practitioners to address non-compliance in a timely fashion.

Possible outcomes may include one or more of the following:

- general compliance advice and information; or
- written warning letter issued; or

- infringement notices; or
- rectification notice issued for non-compliant plumbing work and the notice has been complied with; or
- direction to fix has been issued to a builder and complied with;
- a direction is given to a building surveyor to exercise their functions to require compliance; or
- accepting an undertaking to do specified work or take other action; or
- injunctions; or
- referral to investigation with the view to pursuing:
  - criminal prosecution through the Magistrates' Court of Victoria; and/or
  - disciplinary action through the VBA's Practitioner Disciplinary Unit.

### 5.3 Inspections and audits

The VBA conducts proactive building and plumbing inspections, as well as plumbing audits, to ensure 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 applies a risk-based framework 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 inspection rate of 10 percent of building sites.

### 5.4 State-wide cladding audit

The VBA is conducting a State-wide audit of external cladding on Victorian buildings<sup>2</sup>. The audit is conducted in two distinct phases:

- Phase 1 focuses on safety risk identification as a priority and, where necessary, requires immediate action to mitigate.
- Phase 2 involves longer-term actions to achieve rectification.

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 notice and building orders to owners to require building work or other action be taken to rectify non-compliance and address life health and safety issues.

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<sup>2</sup> The Victorian Government directed the VBA to conduct a State-wide 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.

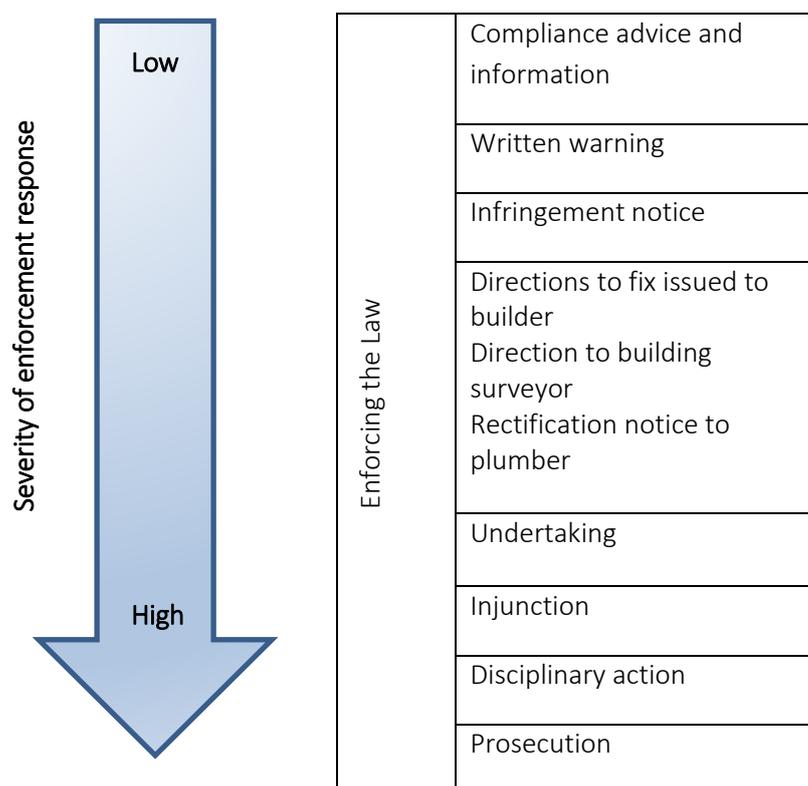
When considering appropriate enforcement action arising from the cladding audit, the VBA will have regard to this policy.

## 6 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 Figure 1 below.

Figure 1 reflects the VBA’s approach to selecting an enforcement tool or tools that have an impact and severity that is commensurate with the seriousness of the alleged breach or conduct. The seriousness of the alleged breach or conduct is determined having regard to the nature of the breach or conduct, the person’s compliance history and their response in terms of cooperating, acknowledging, rectifying and preventing ongoing non-compliance or poor conduct.

Figure 1 – The VBA’s enforcement tools



A brief description of each of the enforcement actions available to the VBA is set out in **Appendix 2**.

The VBA can take enforcement action against companies and registered building practitioners or licensed plumbers bearing responsibility for building or plumbing work, even if the work was undertaken by a sub-contractor or employee.

In the case of breaches 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.

## 7 Notification of decision

The VBA will notify each practitioner, complainant or unregistered person carrying out building or plumbing work of the outcome of its decision following an inspection, audit or investigation.

## 8 Previous enforcement action

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

## 9 Time limit on enforcement action

The VBA will not commence an investigation or take enforcement action where the alleged breach 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 after 10 years following 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.

## 10 Review of statutory decisions

### 10.1 Disciplinary action against registered building practitioners

#### 10.1.1 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.

#### 10.1.2 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 the VCAT for review of the decision. An affected person may also apply to the VCAT for review of a decision to immediately suspend, suspend or cancel their registration.

### **10.2 Disciplinary action against licensed and registered plumbers**

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

### **10.3 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 within seven (7) days of being given the direction to fix. The Building Appeals Board can be contacted at <http://www.vba.vic.gov.au/building-appeals-board>.

## **11 Publication of some enforcement actions**

The VBA publishes on its website a record of completed prosecutions and a record of disciplinary actions taken against registered building and plumbing practitioners. It also maintains a register of undertakings which may be inspected by any person at any time without charge.

## **Appendix 1: Relevant Building Legislation**

### **Acts**

*Building Act 1993 (Vic)*

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

*Domestic Building Contracts Act 1995 (Vic)*

### **Regulations**

*Plumbing Regulations 2008 (Vic)*

*Building Regulations 2018 (Vic)*

*Building and Construction Industry (Security of Payment) Regulations 2003 (Vic)*

### **Code**

National Construction Code

## 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.

### 1. 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 as a means to educate the person and correct their behaviour to ensure future compliance.

### 2. Written warning

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

### 3. 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 breach of a prescribed infringement offence and the VBA decides that an infringement notice is the most appropriate way of responding to the breach.

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

### 4. Directions

#### 5.1 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.

#### 5.2 Direction to building surveyor (building work only)

The VBA may issue a direction 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.

#### 5.3 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.

## **5. 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.

## **6. 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.

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

Disciplinary action can result in:

- formal reprimand;
- directions to do or not do a specified thing;
- requirement to successfully complete a specified course of training within a specified period;
- financial penalties;
- imposition of conditions on the practitioner's registration or licence;
- suspension of registration or licence;

- cancellation of registration or licence;
- disqualification for a specified period of up to 3 years from being registered or licensed.

## **8. Prosecution**

The VBA will commence criminal prosecutions against individuals who contravene offence provisions of the Building Legislation where it is in the public interest. The VBA will exercise its discretion to prosecute in a consistent way, by having regard to the Director of Public Prosecutions Victoria's guidelines on prosecutorial discretion and based on the facts and circumstances of each individual case.