

CITY OF MELBOURNE

SUBMISSION

# **FRAMEWORK FOR REFORM**

Modernising Victoria's  
Building System

June 2021

## Table of Contents

|  |           |
|--|-----------|
| Table of Contents .....  | 2         |
| Introduction .....   | 4         |
| The Victorian Municipal Building Surveyors Group Model .....   | 7         |
| The City of Melbourne recommends the following .....   | 8         |
| Key Principles to be addressed in the new regulatory system .....  | 9         |
| Risks and Challenges of a new regulatory system.....   | 10        |
| <br>   |           |
| <b>Practitioner Registration.....</b>  | <b>11</b> |
| How can accountability across all construction work be improved? .....   | 11        |
| Which currently unregistered practitioners should be considered for registration?.....   | 11        |
| Do you agree with developing practitioner competency frameworks to support system-wide industry competence? .....  | 12        |
| Could accreditation by industry bodies or RTOs become part of the practitioner registration and/or licensing process? .....  | 12        |
| Should the NSW approach (case study 1) to design practitioners be considered for Victoria?.....  | 13        |
| What measures could be considered to boost the number of skilled building surveyors and technical experts? .....   | 13        |
| The current lack of tertiary courses in Victoria has led to this shortage. We require improved undergraduate courses here and better access to courses in other states. ....   | 14        |
| Are there other key issues and possible improvements the panel should consider?.....   | 14        |
| <br>   |           |
| <b>Building Approvals.....</b>   | <b>15</b> |
| What do you see as the benefits and potential risks of the models described above?.....  | 15        |
| In particular, what are the implementation issues which the Panel needs to consider? .....   | 16        |
| Do you agree that a stronger regulatory framework for building approvals for complex or high-risk building work is needed?.....  | 16        |
| How should we differentiate between different types of buildings in terms of which types need greater oversight? .....   | 17        |
| Are there any other potential approaches to strengthen accountability across the building approvals process that the Panel should consider? .....                              | 17        |
| What other suggestions are there that would remove the potential for conflicts of interest between PBSs and builders, developers or design practitioners?.....                 | 19        |
| Is there merit in introducing a ‘clerk of works’ or similar oversight function into the approvals process? .....   | 20        |
| Should the NSW system of requiring the developer to notify the regulator in advance of issuing of an occupancy permit and associated enforcement measures be considered? ..... | 20        |

|   |           |
|---|-----------|
| <b>Regulatory Oversight .....</b>   | <b>21</b> |
| What changes to the functions and/or structure of the regulator(s) would improve regulatory outcomes? .....   | 21        |
| 1. Office of the State Building Surveyor .....  | 21        |
| 2. Its role and functions would include: .....  | 21        |
| 3. In order to provide the independence required by the office of the SBS, the position must: .....   | 22        |
| 4. The SBS may give delegation to PBSs to issue building permits based on prescribed criteria to the satisfaction of the SBS, provided that the PBS: .....                      | 22        |
| 5. Building Policy and Administration Authority (VBA) .....   | 23        |
| 6. Consumer Affairs Victoria .....  | 23        |
| 7. AIBS or RICS Accreditation as a Pathway to Registration: .....   | 23        |
| Will improvements to strengthen existing oversight arrangements adequately address the issues relating to regulatory oversight of the building and construction industry? ..... | 24        |
| What are the benefits and risks of establishing an independent Office of the State Building Surveyor? .....   | 25        |
| Benefits: .....   | 25        |
| Risks .....   | 25        |
| What are your views on the most effective oversight regulatory function in construction work, practitioners and consumer protection? .....                                      | 26        |
| Should there be separate regulators for practitioners and for building works? .....   | 26        |
| Should regulation of all design practitioners be brought together under one regulator? .....  | 27        |
| Are there any other key issues and possible improvements that the Panel should consider? .....  | 27        |

|   |           |
|---|-----------|
| <b>Consumer Protection .....</b>  | <b>28</b> |
| Which of the approaches outlined above would improve the consumer experience most effectively? .....                    | 28        |
| Are there innovative ways to identify systemic issues faced by consumers in building and construction activities? ..... | 28        |
| How can consumers be better represented in the building system? .....   | 28        |
| What kinds of direct consumer feedback mechanisms would work best in the building context? .....                        | 29        |
| Are there other key issues and possible improvements the Panel should consider? .....                                   | 29        |

## Introduction

The Victorian Government established the independent Building Reform Expert Panel (the Panel) to lead its review of the building legislative and regulatory system (the Review).

The Review is both welcome and overdue.

Public confidence in the building regulatory system in Victoria has plummeted over the past 20 years, as systemic failures have continued unabated, with disastrous financial consequences for many consumers.

The State's economic recovery from the COVID-19 pandemic is heavily reliant on building development, including the construction of more than 12,000 new homes and countless medium and large scale developments. Building reform is urgent.

Any building system must be designed to ensure that all work is compliant and safe. The logic behind suggestions that the low-rise domestic building industry is low risk is flawed.

People who live or invest in domestic buildings, as tenants or owners, are the most vulnerable consumers, whether in low, medium or high rise buildings. The power imbalance between builder-developers and consumers is profound and substantial.

In most instances, home-owners are making the most significant and expensive purchase in their lives. As a consequence, they will carry extensive debt for decades.

Domestic building disputes can be expensive, destructive and grind on for years without resolution. Consumers of all domestic building work, need the most protection from a strong and independent building approvals system.

Significant changes to the building regulatory system are needed to improve community safety as well as outcomes for consumers of building industry products and services.

The key objectives of the Review are to create a building regulatory system for Victoria that:

- a. delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;
- b. protects consumers and improves confidence in the industry and regulators;
- c. supports skilled and experienced practitioners to carry out compliant and safe practices; and
- d. supports regulators to enforce compliance effectively and efficiently.

In order to meet these objectives, it is critical that the reform model ultimately adopted by the State Government addresses the following fundamental problems:

- The current system has inherent and serious conflicts of interest. Private building surveyors can issue building permits, carry out inspections and issue occupancy permits and certificates of final inspection in an environment where there is little scrutiny or transparency. Their primary business interest often lies with the builder-developer who pays them, rather than with the consumer.
- Lack of industry oversight, including no targeted inspections of building work and no permit auditing by the regulator.
- Any new system must break the existing nexus between the builder-developer and the Authority which administers and enforces compliance of building permits and regulations.
- The shortcomings in the current system have placed considerable pressure on the professional indemnity (PI) insurance system. All building surveyors are required to hold PI insurance that complies with the legislation in order to hold a licence to practice and issue building permits.
- In recent years, PI insurance premiums have increased exponentially, and many private building surveyors (PBS) have either had great difficulty finding affordable insurance or have left practice due to inability to buy insurance. The result has been that a number PBS are either ceasing practice or have exit plans in place.
- The Minister for Planning has granted PI insurance exclusions which has effectively resulted in some PBSs practicing without full coverage and self-insuring. This has left consumers vulnerable because they are left with little recourse if problems then arise with their building works.
- Orphaned Building Permits. These are unresolved building permits that have been issued by a private building surveyor who is no longer in business. It is estimated that there are tens of thousands of orphaned building permits throughout Victoria, and the number is increasing. Much pressure is placed on Councils to take over these permits, with no assistance from the State Government.
- Recent evidence of regulatory and industry failures have led to incidents, such as the Lacrosse and Neo200 building fires caused by the use of combustible cladding. These highlight that our regulatory system has not kept pace with changes in housing demand and construction practices.
- There are thousands of buildings with non-compliant combustible cladding throughout Victoria. These have to be rectified at considerable cost to government, both State and local, as well as owners.

- There is also an emerging issue with leaky buildings because poorly designed and installed cladding systems do not effectively waterproof or weatherproof. Leaky buildings can suffer mould development, causing serious health issues, as well as accelerated deterioration of internal structural building elements. This issue is similar to the New Zealand leaky building syndrome.
- Many of the shortcomings of the current system have been referred to Councils and their Municipal Building Surveyors to resolve through enforcement processes. In the current system there is little revenue for Councils to carry out these functions. This has placed considerable stress on the Municipal Building Control system.

# The Victorian Municipal Building Surveyors Group Model

The Victorian Municipal Building Surveyors Group (VMBSG) proposes that Victoria move to a more centralised building approvals model where Municipal Building Surveyors play a central role in the building approvals process. The role of the Private Building Surveyor would be limited to certification of plans and building designs for building permit applications, and the provision of consultative services (design and compliance) to industry generally. See Figure 1 below for a visual depiction of this model.

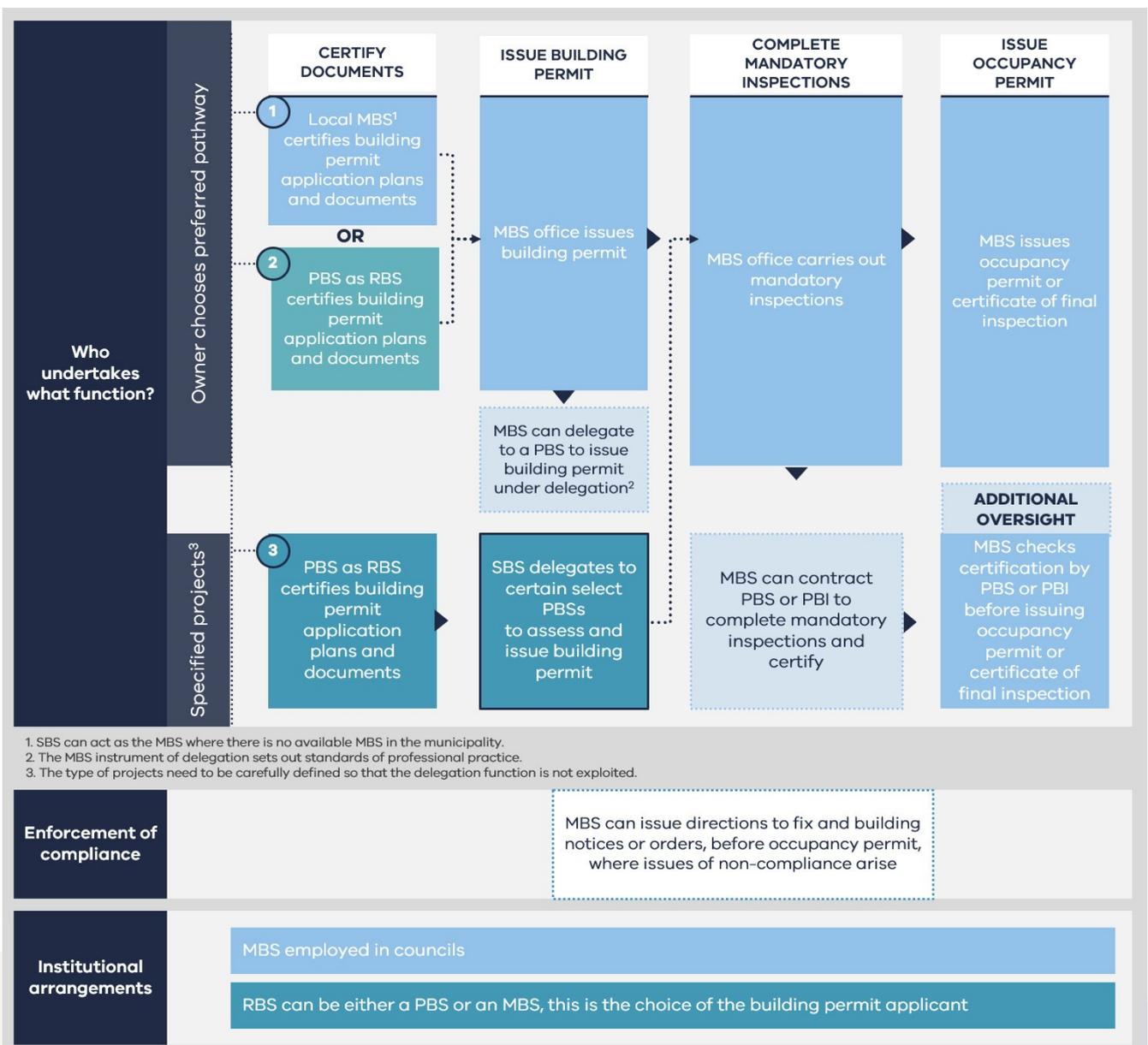


Figure 1: VMBSG model – Building Approvals Process

## The City of Melbourne recommends the following

Improved transparency, independence, separation and auditing of the building work certification and inspections functions, including all building permits be automatically subject to Council inspection.

Specifically:

- The City of Melbourne supports the Victorian Municipal Building Surveyors model of building control within the reform paper, as outlined in Figure 1 above.
- Introduction of legislated Municipal Building Control Plans for councils.
- A dedicated Government funding model to support the Municipal Building Control Plan for each council.
- Creation of other funding streams for local government building control activity.
- Establishment of an independent Office of the State Building Surveyor that reports to the relevant Minister.
- Skills and workforce planning, quality education courses and training opportunities in Local Government, private and SBS sectors to increase building surveyor numbers.
- Clear lines of responsibility for the various duties, functions and responsibilities of the authorities, including enforcement functions involved in the scheme to clearly allocate responsibility and accountability.
- Building Practitioner and Architect registrations and licensing of building trades to be centralised in Consumer Affairs Victoria (as is currently the case with Engineers) as the Consumer Protection Authority.
- Increased accountability for Building Practitioners including builders and trades generally. Licensing and registration should be mandated.
- Centralising responsibility for consumer protection functions with Consumer Affairs Victoria (CAV).
- Improved consumer protection in the form of a robust Builders Warranty for all building work. Currently only required for work over \$16,000, does not apply to buildings more than three storeys, and offers limited compensation to consumers.
- Any building should only have one Occupancy Permit at any given time (currently a building can have multiple Occupancy Permits and Certificates of Final Inspection).

- Ensure all responsibilities and functions assigned under any revised regulation are not implemented until appropriate funding mechanisms are introduced.
- Assign responsibility and funding mechanism to resolve orphaned building permits and the completion of the Relevant Building Surveyor functions.

## Key Principles to be addressed in the new regulatory system

The following key principles need to be addressed in the new regulatory system:

- A new regulatory system must be self-auditing.
- Increased accountability for Building Practitioners including builders and trades generally – licensing and registration should be mandated.
- Improved consumer protection in the form of a robust Builders Warranty for all building work. Currently only required for work over \$16,000, does not apply to buildings more than three storeys, and carries limited compensation to consumer. Currently, domestic construction has insurance of last resort. Builder has to be insolvent or dead. This is not good enough.
- Centralising responsibility for consumer protection functions with Consumer Affairs Victoria (CAV).
- Clear lines of responsibility for the various duties, functions and responsibilities of the authorities, including enforcement functions, involved in the scheme to avoid buck passing.
- The system needs to provide clear lines of funding for Councils and MBSs to carry out their building control functions.
- Establish the office of the State Building Surveyor as a statutory technical peak building authority for the State of Victoria.
- Independence and the current conflicts of interest of the Private Building Surveyor to be addressed through legislative improvement.
- Resolving the matter of orphaned building permits and who is responsible to complete the Relevant Building Surveyor functions.
- Improved transparency, independence, separation and auditing of the building work certification and inspections functions.
- Any building should only have one Occupancy Permit at any given time (currently a building can have multiple Occupancy Permits and Certificates of Final Inspection).
- Municipal Building Control Plans to be prepared in collaboration with the State Building Surveyor to guide financial, resourcing and workforce planning and for reporting purposes.

- Skills and workforce planning, quality education courses and training opportunities in Local Government, private and SBS sectors to increase Building Surveyor numbers.
- Building Practitioner and Architect registrations and licensing of building trades to be centralised in Consumer Affairs Victoria (as is currently the case with the Engineers) as the Consumer Protection Authority.
- The plumbing functions of the VBA should sit with the same authority that is responsible for gas plumbing safety – currently Energy Safe Victoria.

## Risks and Challenges of a new regulatory system

Any new building permit system that results in the return of part or all of the permit function to Local Government, will require a significant number of additional resources which needs to be factored into budgets and workforce planning.

Local Government must be provided with State Government funding to administer the building control system, and statutory fees should be introduced for building permit functions, such as mandatory inspections.

It will be difficult for Council's to find additional skilled resources. Building Surveyor and Inspector numbers have been decreasing in Victoria. This is mainly due to the lack of quality undergraduate courses at universities.

Local Government must be provided with State Government funding to manage Orphaned Building Permits. These are unresolved building permits that have been issued by a private building surveyor who is no longer in business. It is estimated that there are tens of thousands of orphaned building permits throughout Victoria, and the number is increasing.

The following sections respond specifically to the questions raised in the reform paper.

## **Practitioner Registration**

### **How can accountability across all construction work be improved?**

The new model should address the accountabilities and competencies of all practitioners and trades in the construction chain. At present, complex and high risk work can be supervised and performed by people without specialist skills.

Consumers need to know that the practitioners they are employing are qualified and competent to do the work safely and professionally. The following should be considered:

- There needs to be a building practitioner category that captures project managers, supervisors and building site foreman. These are the people who are responsible for the supervision, control and compliance of the various trades involved in carrying out building work. There also needs to be established qualifications and competencies for these people.
- All building tradespeople must be able to demonstrate they have completed a formal trade qualification (an apprenticeship or alternative pathway to qualification) and be certified as a competent tradesperson before being able to practice unsupervised. The licensing of trades will allow tradespeople to work on a building site. However, it is the builder that remains responsible and takes liability for the building work.
- The registration of all Engineers in Victoria has been moved to Consumer Affairs Victoria (CAV). The registration of all Architects, Building Practitioners, Engineers and building trades should also sit with CAV.
- CAV should be responsible for registrations and disciplinary matters. This would separate the functions of investigations into practitioner misconduct (VBA, or preferably SBS) from the body sitting in independent judgement of practitioner alleged misconduct.

### **Which currently unregistered practitioners should be considered for registration?**

There needs to be a building practitioner category that captures project managers, supervisors and building site foreman. These are the people who are responsible for the supervision, control and compliance of the various trades involved in carrying out building work. There also needs to be established qualifications and competencies for these people.

The registration of all Engineers in Victoria has been moved to Consumer Affairs Victoria (CAV). The registration of all Architects, Building Practitioners, Engineers and building trades should also sit with CAV. Architects currently have an exemption because they are registered under the Architects Act, but they should have to carry the same liability as other building practitioners, such as building surveyors. They currently do not.

Everyone from the design team should be required to be a registered Building Practitioner.

## Do you agree with developing practitioner competency frameworks to support system-wide industry competence?

There should be a comprehensive list of the competencies required for all practitioners in the building industry.

Currently building surveyors are restricted by their registration type. There is a code of conduct for Building Surveyors and they can't operate outside those competencies. If something goes wrong, a practitioner disciplinary hearing is held to demonstrate the person didn't have the competencies to make the decision. It is after the fact. It is taking a disciplinary rather than proactive approach at the front end.

Before registration, a Building Surveyor is assessed against a list of competencies. There should be categories of practitioners and trades, for instance multi-story construction, domestic, buildings, and water-proofing.

## Could accreditation by industry bodies or RTOs become part of the practitioner registration and/or licensing process?

The industry bodies Australian Institute of Building Surveyors (AIBS) and Royal Institute of Chartered Surveyors (RICS) have accreditation processes and standards of competency. Before registration as a Building Surveyor, confirmation of accreditation of competency by the professional bodies should be mandatory. In other states one is required to meet the accreditations framework criteria. This does not happen in Victoria.

The VBA conducts an examination, and, if one passes, they become a registered B-SL or BS-U in Victoria. The test is very limited in scope. The emphasis is on permits, inspections and materials, rather the full range of competencies that a Building Surveyor should hold. The AIBS and RICS criteria are more rigorous and comprehensive, addressing the full range of competencies.

We believe the industry professional bodies have a critical role to play in the registration process. If one doesn't have professional accreditation, they should be considered as ineligible for registration. The bodies have established national accreditation standards and professional standards schemes, which do not apply in Victoria.

## Should the NSW approach (case study 1) to design practitioners be considered for Victoria?

This would be a welcome reform that would assist consumers and building practitioners by providing much needed transparency and accountability at the beginning of the construction process. It would also mean the builder would have a complete set of plans to build from. At present, they often only see plans in stages.

There could be a document signed by the designer which lists and explains any proposed building work that complies with the DTS provisions of the NCC, or alternatively lists the non-compliances and those elements that require a performance or alternative solution.

## What measures could be considered to boost the number of skilled building surveyors and technical experts?

We need more postgraduate courses to stream Architects, Engineers and Building Construction graduates into Building Surveying. For example, it is reported only around 25 per cent of Architecture graduates find themselves practising in the profession. A postgraduate course of study would be an ideal fast-track approach to growing the numbers of Building Surveyors. There is too much emphasis by Department of Environment, Land, Water and Planning (DELWP) and VBA on TAFE courses, and not enough work is being done to establish undergraduate and postgraduate Building Surveying courses.

We need to consider an appropriate cadetship program in Local Government, where people can learn on the job. Ministerial approval could grant employer immunity (as happened in the past), allowing cadets to go out independently, supervised from the office. They would then be eligible for registration as they gain experience.

A key challenge for both current and future building regulatory models is the available workforce. Already struggling to fulfil key roles, it is shrinking even further.

Building surveyors, in particular, are an ageing workforce. Not enough people are being recruited to replenish those retiring or leaving the profession. This is particularly acute in Local Government, but also present in the private sector.

We need rapid action to address this. We are losing not only the current workforce, but the opportunity to mentor a new generation under the vast experience of existing building surveyors, both Municipal and Private.

The current lack of tertiary courses in Victoria has led to this shortage. We require improved undergraduate courses here and better access to courses in other states.

Tertiary courses must comply with the national accreditation framework. The two educational formats consist of a professional stream supported by an internship program, and a para-professional stream. The proposed building permit system will create a significant number of internship and career opportunities for graduates in both the public and private sectors.

In addition, the urgent enhancement of a mutual recognition system is required for building surveying professionals from other States. It is currently very difficult for building surveyors from elsewhere in Australia to become registered in Victoria.

These improvements will result in the strengthening of the building surveying profession and will ensure that building surveyors are seen as professional practitioners, who provide a valuable contribution to the building regulatory process.

## Are there other key issues and possible improvements the panel should consider?

More funding needs to be injected into Local Government so that:

- Prospective students can be employed and trained on the journey to Building Surveyor and Building Inspector registration.
- Building control can be properly administered by Local Government.

## Building Approvals

### What do you see as the benefits and potential risks of the models described above?

The benefits of the VMBSG model are that it deals with all of the key issues that are present in the current system. The propose introduction of a new system of certification, where PBSs certify building permit application plans and documents, and the Council MBS issues the building permit. Council MBSs will be required to issue building permits within a statutory time frame, depending on predetermined criteria.

Models with only minor variations on the current PBS system will not adequately resolve the shortcomings of the current system. Any new building permit system must resolve issues such as PBS conflicts of interests, lack of independence in the administration and enforcement of compliance and orphaned building permits.

Consumers of all building services, particularly domestic buildings and building work, are severely disadvantaged by any model where PBSs are engaged by builders and developers directly to issue building permits, carry out inspections and issue OP and CFI in an environment of little or no scrutiny.

Further, the primary loyalties of PBSs sit with the builder-developer, rather than the consumer, because of their need for business continuity. In addition, PBSs do not have the financial and staff resources or power to take on their builder clients, due to the substantial power imbalance that exists between the parties in the current system. The PBS model also results in orphaned building permits arising from cessation of practice because of death, illness, retirement, registration cancellation and so forth. When this occurs, consumers of their services are left without any protection, in many cases, with a half-built home with numerous defects and extra costs associated with appointing a replacement RBS. To be successful, any new system must resolve all of the shortcomings of the current PBS model.

In addition, there is now a pattern emerging where PBSs are phoenixing their company entities in order to reduce PI insurance premiums and avoid liabilities. Obviously, this has substantial consequences for consumers when they need to address serious defects and financial losses from PBS practice shortcomings. The fact that the legislation allows for this to occur highlights serious regulatory failure. Any future system must ensure that the permit authority is perpetual, reliable and responsible. The current situation, when coupled with PI insurance exclusions, results in a dysfunctional consumer protection system that is of little worth or value.

## In particular, what are the implementation issues which the Panel needs to consider?

The VMBSG and AIBS models require a transition date to be selected. The council will carry out the inspections for any permits issued after that date. Any prior permits issued are the responsibility of the PBS.

There's no change to the current system with the Panel's model because there is no change to the building permit system for dwellings. Therefore, 83 per cent of building permits continue unchanged, and 17 per cent will need SBS and MBS intervention.

Any new system must overcome current conflicts of interest and deliver continuity, perpetuity and independence in the administration and enforcement of the compliance of building work by government entities. This cannot be achieved by vesting statutory functions in the private sector. This is unlikely to ever be successful.

## Do you agree that a stronger regulatory framework for building approvals for complex or high-risk building work is needed?

The most critical approval mechanism for complex or high-risk buildings is that there should be peer review by an independent building surveyor of all engineering and performance-based designs. That way, there are two pairs of eyes certifying the documentation for compliance.

Both the VMBSG and the AIBS models suggest this.

Under the VMBSG model, two building surveyors carry out the certification before a permit can be issued by the council. We believe that the VMBSG model is the better solution because it retains control and responsibility of the permit.

Any new building system, must be designed to ensure that all work is delivered in a compliant fashion. It should be self-auditing and free from conflict of interest.

The logic behind suggestions that the low-rise domestic building industry is low risk, is flawed.

People who live or invest in domestic buildings, such as tenants or owners, are the most vulnerable consumers, whether in low, medium or high-rise buildings. The power imbalance between builder-developers and consumers is profound and substantial.

In most instances, home-owners are making the most significant and expensive purchase in their lives. As a consequence, they will carry extensive debt for decades.

Domestic building disputes can be expensive, destructive and grind on for years without resolution. Consumers of all domestic building work need the most protection from a strong and independent building approvals system.

## How should we differentiate between different types of buildings in terms of which types need greater oversight?

People can be injured or die in all buildings, whether it's a carport or a multi-storey tower.

The critical consideration is not the type of building but the approval method the building has been assessed against. Is it a Deem to Satisfy (DTS) building or a performance building?

Buildings with performance solutions require greater scrutiny, greater oversight and greater sign off at the end and throughout the whole process from design to completion.

There needs to be more oversight of those processes when we depart from the DTS provisions.

All buildings should comply with the regulations and the relevant codes and standards. Houses and smaller structures can have major defects. VCAT currently has an enormous backlog of domestic building cases relating to single houses. A new building permit system could require that complex buildings – for example, greater than 20 storeys or costing more than \$100 million – should be dual certified. All building work needs to be independently inspected and signed off.

## Are there any other potential approaches to strengthen accountability across the building approvals process that the Panel should consider?

Independent checks and balances and regulatory oversight and monitoring should be the foundations on which reform of Victoria's building regulatory system is built. Any new system must be designed to include robust checks and balances within its operation (self-auditing).

There needs to be a targeted program of inspections of building work, and targeted audits of building permit documentation, by the office of the State Building Surveyor. The new system should not rely on auditing to work properly. Audits should be the exception and not the rule.

Under the existing system, the VBA has a list of construction sites and may go to the building job before it has started, and halfway through construction. However, the inspectors are often inadequately briefed and are not made aware of the project details to effectively undertake an inspection. In other cases, they inspect after the building has been completed.

We propose that when the builder notifies the Municipal Building Surveyor (MBS) that a particular stage has been reached – for example, that the frame is ready to be inspected – the office of the

State Building Surveyor should have a program of random audit inspections. This currently does not occur.

Under the current system, the RBS issues the building permit, carries out the inspections and issues the occupancy permit or certificate of final inspection in an environment of little or no scrutiny. Any new system needs much improved transparency, independence and a program of targeted audits based upon quality control principles.

Under the VMBSG proposal, the Council through its MBS will be responsible for the inspection of building work in their municipal district. This will be carried out by building inspectors or building surveyors appointed by the Municipal Building Surveyor.

This model has inbuilt checks and balances. Every building permit issued will automatically be subject to inspection, something that does not now occur.

This will reduce the number of claims because councils will pick up mistakes by conducting mandatory inspections and because there is no inherent conflict of interest between the builder and the MBS. This will raise the bar on construction work in Victoria.

We believe there are strong justifications for the MBS to carry out the final sign-off and to issue the OP or CFI:

- There should only be one OP for a building. This permit document should be continually updated for the life of a building, as new building work is carried out. This will result in one definitive list of Essential Safety Measures (ESM's), which will help to improve the current maintenance of ESM issues. Where a CFI is applicable for building work, there may be implications on the ESMs contained within the OP for the building. The MBS should progressively review and update the OP as required throughout the lifecycle of the building, including situations to accommodate for change of use and class.
- Additional scrutiny is required at the completion of building work, to ensure that ESMs have been properly installed in a building and operate as intended.
- Where there is a Fire Engineering Report (FER) applicable to the project, the Fire Safety Engineer involved in the design must first inspect and certify that features and systems required by the FER are compliant and operational before an OP or CFI can be issued by the MBS. A full function test of integrated systems must be performed, under the supervision of the Fire Safety Engineer, before a building can be occupied or a project finalised. Consideration should be given to require the Fire Authority to be consulted in the sign-off of ESMs before the issue of an OP or CFI for larger and more complex buildings, or in cases when there is no Fire Safety Engineer involved in a project.
- Additional inspection and sign-off of Environmentally Sustainable Design (ESD) features is required. Where an ESD report is applicable to a project, the various elements must be inspected and signed off by the designer and writer of the ESD report, before the issue of an OP or CFI. This could involve periodic inspection during the construction phase, as some elements are difficult to inspect when the building has been completed. Currently, the energy efficiency installations in a building are left to the declaration of the builder.

- Under the current building permit system (in place since 1 July 1994), it is estimated that there are more than 200,000 lapsed building permits in Victoria. Centralising the issue of OPs and CFIs will provide greater visibility, and Councils are better placed to monitor the lapsing of building permits in their municipal district.
- At present there is little incentive, financial or otherwise, for a PBS to monitor the lapsing of building permits. It is widely recognised that this aspect has been a failure of the current system with the regulator continually laying blame on the PBS when it is clearly not their responsibility to apply for a Building Permit, construct a building and consider contractual obligations.
- Building Activity Management Systems (BAMS) should be developed further to accommodate all the required data and information, including inspection data and permit status reporting, and a collation of all certificates and supporting documentation for the Building Permit or OP issue. This will provide greater visibility and transparency of building permits.
- PBSs do not have access to historical BP records and usually don't seek to gain access. Many complex buildings have historical Building Appeals Board (BAB) modifications and performance-based designs of which designers and PBS do not inquire or make themselves aware in the consideration of alterations and additions to existing buildings. The MBS is best placed to access the historical records held by Council and to consider new redevelopment proposals and OPs having regard to those past decisions and design solutions.

## What other suggestions are there that would remove the potential for conflicts of interest between PBSs and builders, developers or design practitioners?

Under the model proposed by the VMBSG, the requirement for the PBSs to do any enforcement or inspections is removed and therefore the potential for conflict of interest between PBSs and other parties is removed. This model adds transparency and gives the system self-auditing functions because different professionals are involved along the way.

There are a number of advantages:

- It creates independence of inspections and removes all conflicts associated with the PBS certifier.
- It provides clarity and finality to the role of the certifier -- something that has been missing since the introduction of the Building Act 1993. A project can be constructed, inspected and finalised without dependence on the PBS certifier and eliminating the inherent conflict of interest for some PBSs.

- This will give the Certifying Building Surveyor the ability to be involved in design matters, resolving the conflict of interest issue that has in part, diminished the confidence in the private sector to deliver best outcomes for Victorian consumers.
- It should be mandatory for certain jobs, based on prescribed criteria aligned to risk and complexity, to have a consulting building surveyor and a certifying building surveyor. They would have two distinct roles. One would be to assess and certify the design documentation, and the other would be to provide design advice. This would also remove much of the current conflict of interest concerns.
- Most of the profit from private building surveying functions lies in the issuing of the building permit and most of the insurance risk lies with the inspection and certification functions. Limiting PBSs to issuing building permits or restricting them to performing inspection functions on behalf of an MBS would also help to alleviate the current crisis in professional indemnity insurance costs for the private building surveying industry.

Ultimately the only way to address the serious conflicts of interest that exist in the current system is to break the nexus between the parties. There must be separation between the builder, developer, and PBS and the authority responsible for the administration, and enforcement of compliance of building work.

## Is there merit in introducing a 'clerk of works' or similar oversight function into the approvals process?

We don't see any need to introduce a traditional clerk of works, but owners may choose to do so to protect their own interests. However, there needs to be accountabilities for those who are in control and managing the work on a building site on a day to day basis. This may be the registered builder who is contracted to do the work.

In the event that the registered builder is not on site and managing the actual build, the new model should capture the project managers, supervisors and building site foreman employed by the registered builder in a new category of building practitioner, called Building Work Manager. This would address the accountabilities and competencies of all the practitioners and trades in the production line. These are the people responsible for the supervision, control and compliance of the various trades and laborers involved in carrying out building work.

There also needs to be established qualifications and competencies for these roles. Further, all building trades should completed a formal trade qualification (apprenticeship or alternative pathway to qualification) and be certified as a competent tradesperson before being able to practice unsupervised.

## Should the NSW system of requiring the developer to notify the regulator in advance of issuing of an occupancy permit and associated enforcement measures be considered?

The system proposed by the VMBSG will address the compliance pathways for building work.

## Regulatory Oversight

### What changes to the functions and/or structure of the regulator(s) would improve regulatory outcomes?

The current functions of the Victorian Building Authority (VBA) under the Building Act 1993 should be divided into two separate authorities: the Office of the State Building Surveyor and the Building Policy and Administration Authority.

The functions associated with the registration of Architects, Building Practitioners, Engineers and building trades should sit with CAV as the consumer affairs authority, separate and independent of the SBS and VBA.

The VBA would perform administrative and policy functions and its registration powers should be transferred to Consumers Affairs Victoria.

To assist consumers and to achieve consistency, registration and licensing of Building Practitioners and Architects and building trades should be centralised in Consumer Affairs Victoria (CAV) as has happened with Engineers.

#### 1. Office of the State Building Surveyor

The head of the Building Regulation Authority would be the State Building Surveyor (SBS).

The SBS would be the “authoritative industry leader” as is stated by the Government, but which is currently not the case.

#### 2. Its role and functions would include:

- Advising on building regulatory technical matters;
- Publishing technical guidelines (including in relation to s188, 188AA & 188A matters);
- Advising the Minister with regard to matters for Directions;
- Advising on building safety and public safety matters;
- Providing high level technical advice and support in relation to building enforcement carried out by Councils;

- Providing technical advice in respect of professional conduct matters concerning registered practitioners;
- Providing technical support with regard to transfer of functions of registered building practitioners;
- Overseeing the management of registered building practitioners' businesses where that becomes necessary;
- Overseeing the implementation and amendment of each Council's Municipal Building Control Plan.

### 3. In order to provide the independence required by the office of the SBS, the position must:

- Have independence from financial and political constraints associated with the more general administration of the building system in Victoria;
- Have its own staff;
- Report directly to the Minister.
- The SBS may delegate powers to PBS to issue building permits.
- PBSs registered with CAV as building practitioners may certify documents and building work as being compliant with the Act, the regulations, the BCA and Australian Standards
- Registration with CAV as a Building Surveyor should not automatically give power to issue a building permit.

### 4. The SBS may give delegation to PBSs to issue building permits based on prescribed criteria to the satisfaction of the SBS, provided that the PBS:

- Is registered with CAV as a Building Surveyor.
- Holds prescribed PI insurance to issue BPs.
- Passes fit and proper person tests.
- Passes financial sustainability tests.
- Passes national Police Check.
- Passes review of Disciplinary History checks.
- Delegations subject to discretion of SBS, including scope and level of the delegations, including scale, cost complexity, and class of building work.
- The SBS will have power to monitor and review PBS delegations.

## 5. Building Policy and Administration Authority (VBA)

- Building levy collection.
- Policy and legislation.
- Advice to government.
- High level performance monitoring.
- Administration of BAMS.

## 6. Consumer Affairs Victoria

CAV should have the following responsibilities:

- Building practitioner registration functions.
- Practitioner disciplinary matters.
- Registration of Building Surveyors based upon prescribed criteria:
  - > Prescribed qualifications.
  - > AIBS or RICS Accreditation as a Building Surveyor.
  - > PI insurance for registration limited to PBS certification functions (PI for PBS to issue permits based on SBS delegation requirements).
  - > All practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.

## 7. AIBS or RICS Accreditation as a Pathway to Registration:

- CAV as the sole building practitioner registration body.
- CAV does not have the role of testing and accrediting Building Surveyors but is a stakeholder in the prescription of practice standards, competencies and education standards.
- AIBS and RICS permitted to have Building Surveyor Accreditations Schemes.
- Building Surveyor Accreditations schemes subject to approval and review by CAV.
- CAV accepts AIBS or RICS Accreditation schemes as evidence of suitability for registration as a Building Surveyor.

## Will improvements to strengthen existing oversight arrangements adequately address the issues relating to regulatory oversight of the building and construction industry?

Local Government plays a key role in the co-regulation of the building and construction industry.

The building control decisions concerning compliance and enforcement made by Councils and Municipal Building Surveyors (MBSs) impact all Victorians. Whether you are visiting a cafe, attending your local swimming pool, renovating or building your home, renting, operating a business or simply sitting on a park bench, these are the outcomes that affect the public and consumers the most.

The current confusion, delay and duplication will be improved if there is greater transparency and independence built into the system, whereby the practitioner performing the various elements is not the same person throughout the life cycle of the building project.

There needs to be different people who are not connected to any business interests so there are multiple sets of eyes over the building permit process.

The VMBSG model improves the current regulatory oversight arrangements by introducing self-auditing into the system. It is proposed that PBSs certify building application plans and documents, and Councils issue the building permits.

Council MBSs will be required to issue permits within a statutory time frame, depending on a pre-determined criteria.

The VMBSG model has checks and balances. Councils will be responsible for the inspection of building work in their municipal district. This will be carried out by building inspectors or building surveyors employed or contracted by the MBS. Every building permit issued will automatically be subject to inspection, something that does not occur now.

This extra layer of oversight will do much to improve the standard of construction and therefore consumer experience in Victoria.

CoM believe intervention by the State Building Surveyor should be the exception not the rule in a self-auditing, well-resourced and accountable regulatory system.

CoM consider that the function of the PBS could include certification of building design documents, which, when issued and lodged with the Council, constitutes the issue of a Building Permit and thus permission to commence building work. The role of the PBS ceases at this point. The administration and enforcement of compliance with the building permit should be a function of the MBS.

## What are the benefits and risks of establishing an independent Office of the State Building Surveyor?

### Benefits:

- SBS would be the industry leader.
- Advising on building regulatory technical matters.
- Publish technical guidelines and issue regulatory interpretation rulings similar to those issued by the ATO commissioner.
- Advise the Minister with regard to matters for Directions.
- Advise on building and safety issues.
- Provide technical advice regarding professional conduct matters concerning registered practitioners.
- Provide technical support with regard to transfer of functions of registered building practitioners.
- Oversee the management of registered building practitioners' businesses where that becomes necessary.
- Oversee the implementation and amendment of each Council's Municipal Building Control Plan.
- Take interest in and monitor significant performance determination design trends, significant BAB modifications and compliance determinations.

### Risks

- The State Building Surveyor must report directly to the Minister's office, rather than being an employee of VBA, otherwise it will not be truly independent.
- The Office of the State Building Surveyor must be properly funded and resourced and staffed by competent subject experts to fulfill the duties for which it is charged.
- Given the current shortage of building surveyors, it may be difficult to employ sufficient numbers of expert staff.

## What are your views on the most effective oversight regulatory function in construction work, practitioners and consumer protection?

Under the VMBSG model, every building permit issued will automatically be subject to mandatory independent council inspection, something that does not occur now. This extra layer of regulatory oversight will do much to improve the standard of construction, as well as introducing improved transparency into the process, and therefore consumer protection in Victoria.

For nearly two decades the VMBSG has been advocating for the State Government to legislate for councils to be required to have a Municipal Building Control Plan (MBCP) tailored to each of its communities' current and future needs.

Such a plan would guide the delivery and resourcing of the myriad duties, functions and responsibilities of the municipality and the office of the MBS.

Councils have legal duties under the Building Act 1993 (section 212) to ensure many aspects of the Act are being observed and complied with, including those covering:

- building fire safety;
- swimming pool safety;
- building stability;
- the healthiness of building environments; and specifically,
- the pursuit of prosecutions and court orders for infringements of the Act.

The SBS should sign off on the plans to ensure the council is meeting the needs of its community and fulfilling its building control obligations. This provides another level of regulatory oversight.

## Should there be separate regulators for practitioners and for building works?

- Consumer Affairs Victoria should be the registration authority for practitioners, and deal with all consumer related conduct and enforcement matters.
- Competency standards should be managed by the professional associations through their professional standards schemes in partnership with the registration authority and key stakeholders such as the Office of the SBS, CAV and VBA.
- Councils should deal with building work compliance through the office of the MBS and ultimately, the State Building Surveyor for high level issues.
- The Building Appeals Board has a role in the appeals process in any enforcement matters.

## Should regulation of all design practitioners be brought together under one regulator?

City of Melbourne's view is it would be appropriate for CAV to have that function in relation to all building industry practitioners, including designers.

The Royal Australian Institute of Architects would have a role in the professional standards scheme, competencies and practice standards, conduct and behaviours, but the administrative function of registering practitioners and maintaining registrations and dealing with conduct inquiries should sit with CAV.

Given that the practitioner category of building designer shares the same practitioner space as Architects, both practitioner groups should be subject to a common competency framework and practitioner conduct standards.

## Are there any other key issues and possible improvements that the Panel should consider?

For consistency, the plumbing functions of the VBA should sit with the same authority that is responsible for gas plumbing safety – currently Energy Safe Victoria.

## Consumer Protection

### Which of the approaches outlined above would improve the consumer experience most effectively?

- Responsibility for consumer protection should sit within CAV so it is not fragmented amongst different bodies, as is currently the case.
- The first option involving the creation of a centralised building consumer information and support service, will have the most impact but does not go far enough.
- Currently consumers are redirected amongst building practitioners, government departments and councils and it is difficult to get accurate or consistent information. For example, too often people only discover that domestic warranty insurance doesn't cover them if their building is over three storeys.

### Are there innovative ways to identify systemic issues faced by consumers in building and construction activities?

- Analysis of VCAT case data and VBA practitioner conduct inquiries should be undertaken to identify systemic issues faced by consumers in building and construction matters. The results should be shared widely within the building industry and published on the CAV website.
- A key function of the VBA in collaboration with CAV, SBS and councils should be to monitor practitioner disciplinary decisions and industry trends and behaviours, and to provide annual reports of the analysis of that data to Government with advice about issues, trends and opportunities for regulatory improvement.

### How can consumers be better represented in the building system?

- All consumer protection matters should be concentrated within CAV rather than fragmented across various authorities. Registration of all building practitioners including architects should be transferred to CAV.
- In CAV Disciplinary Conduct inquiries there should be a consumer representative.

## What kinds of direct consumer feedback mechanisms would work best in the building context?

At the end of every consumer dispute, a survey of the parties involved on the quality of the outcomes should be undertaken, so data can be gathered in the interests of further improvement. Better quality data should be collected to assist with the analysis of all matters related to building compliance and disputes, and the data required should be standardised across local government.

## Are there other key issues and possible improvements the Panel should consider?

Standard of documentation is a key issue and the cause of many compliance defects as well as building disputes. Building design documentation standards need considerable improvement.

The VBA Practice Note #62 Standards of Documentation that was issued some years ago to address this issue appears to have been withdrawn. There is an obvious message conveyed to industry by this withdrawal. The prescriptive requirements of Part 4 regulations need to be improved and clarified and the Technical Drawing standards in the AS 1100 suite adopted as forming part of the regulations.