

Policy Proposal for Reform of the Building Act 1993 Victorian Municipal Building Surveyor Group (VMBSG)

Introduction

The Building Act 1993 ('the Act') has been subject to substantial reform in recent years. Yet the system still has problems. A best practice, or at least fit for purpose system, seems elusive.

The cladding issue has resulted in the Victorian Government committing to meet the cost of rectification works. The effort will be made to make buildings safe by removing cladding from highest risk areas.

In most, or many instances, it appears that civil proceedings will not be available, or will not be taken, in order to sufficiently fund the required rectification works. Although some class actions have been commenced against manufacturers of inflammable cladding.¹

In the Lacrosse building case² the Victorian Civil and Administrative Tribunal (VCAT) found that the builder was contractually liable to the owners in relation to the cost of rectification of non-compliant cladding at the Lacrosse building.

But VCAT also found that the builder did not fail to exercise reasonable care. It was entitled to recover the overwhelming bulk of compensation awarded to the owners from other building professionals- the private building surveyor (PBS) (33%), fire engineer (39%) and architect (25%). These parties all breached their consultant agreements with the builder by failing to exercise reasonable care.

Aspects of the conduct of the PBS and fire engineer also constituted representations to the builder that were misleading and deceptive in contravention of the Australian Consumer Law. VCAT found these misrepresentations also gave rise to the breaches.

While each case will have its particular facts, it is likely that similar causes to Lacrosse will be involved in other cases of buildings afflicted by non-compliant cladding. There will be "concurrent wrongdoers". This would be consistent with a finding from the Victorian Building Authority (VBA) cladding audit report that "*No single category of practitioner involved in the design, approval or construction of those building projects audited is consistently responsible for the non-complaint use of cladding*".³

The Victorian Government may wish to provide assurances to Victorian taxpayers that the systemic issues within the Victorian building system that led to such widespread and costly breaches of the Building Code of Australia (BCA) and the Building Regulations (the Regulations) will be addressed. Government will wish to assure taxpayers that the cost to

¹ <https://www.imf.com.au/cases/register/combustible-cladding-class-action-overview>

² *Owners Corporation No.1 of PS613436T v LU Simon Builders Pty Ltd (Building and Property)* [2019]; <https://www.vcat.vic.gov.au/resources/owners-corporation-no1-of-ps613436t-owners-corporation-no-2-of-ps613436t-owners>

³ Page 13 Victorian Cladding Taskforce Interim Report

the public purse, which clearly results from regulatory failure, will not be repeated, because the underlying causes of that regulatory failure will be addressed by appropriate reforms.

The cladding issue comes on top of reports from the Victorian Auditor General's Office (VAGO), which pre-date it. The tenor of these reports has been critical of the model of privatised building surveying. This policy document urges fundamental change to that model with an enhanced role for municipal building surveyors (MBS's).

VMBSG supports proposals for a general review of the Act. We understand that such a review is a process is likely to require a number of years to complete. However, we are of the view that there are at least three critical reforms that should be enacted as soon as is practicable.

Two major structural reforms are recommended in this policy. These are:

- **Single entity for ensuring building work is compliant (single regulator reform); and**
- **Limit PBS's to issuing building permits and remove their inspection/certification role or limit it to certain classes of buildings.**

The other reform, of a less structural nature, but which VMBSG considers urgent are also recommended. This relates to Essential Safety Measures and is outlined in section 4.4 of this policy.

This policy document discusses:

1. Current functions of municipal building surveyors
2. Features of a best practice building system
3. General policy goals or principles towards a best practice system
4. Cladding taskforce recommendations
 - 4.1 Protocol between VBA and councils- Fragmentation in enforcement role
 - 4.2 Privatised building surveyor model
 - 4.3 Powers to enforce compliance post occupancy permit
 - 4.4 Reform of Essential Safety Measures
5. Discussion of policy options for single regulator reform

1. Current functions of municipal building surveyors

The functions of the MBS are set out in the Act. There are two fundamentally different types of function or role that an MBS may assume.

The first role is that MBSs, like private building surveyors (PBSs), can act as the relevant building surveyor (RBS). They can issue building permits inside their municipality and outside their municipality provided they have the permission of their council.⁴ This means

⁴ Section 216C

that, like a PBS, in the capacity of RBS an MBS can issue building permits and perform the relevant inspections and certification.⁵ Allowing a MBS to act as RBS outside their municipal district carries significant risk for council if building defects and litigation arises.

The building permit is the means by which the requirements of the BCA are incorporated into the build.

The RBS also inspects building work, or causes it to be inspected, by a building inspector, or other person registered in an appropriate class or category (E.G an engineer). This includes inspections at the mandatory inspection stages required by the Building Regulations (the Regulations). The RBS is empowered to issue directions to fix work to a builder, or to issue building notices or orders on an owner. Upon practical completion of the work, an occupancy permit (OP), or certificate of final inspection (COFI) is issued. An occupancy permit may specify conditions of occupancy and (ongoing) essential safety measures for a building.

MBSs only issue a relatively small proportion of the total of building permits issued in the state. Accordingly, the important public interest functions of issuing building permits, inspections, issuing directions to fix and issuing OP's and COFI's have largely been privatised in Victoria.

The second role is that, under the Act, councils are responsible for administration and enforcement of the building regulations in their municipalities.⁶ MBS's effectively spearhead council building control activities in relation to these administration and enforcement responsibilities.

Councils, through the MBS, deal with an array of building control functions including:

- Issuing of building notices and orders post construction, including emergency orders (only MBS's can issue emergency orders);
- Dealing with unlawful building work (work without a required building permit where a PBS may not have been appointed);
- Issuing of report and consents;⁷
- Receipt and lodgement of building permit information;
- Dealing with change of use of buildings;
- Preparing maps for 'designated special areas';
- Essential Safety Measure (ESM) compliance/enforcement
- Pool safety barrier compliance enforcement
- Building surveyor expert advice within Council on building control/regulatory matters

⁵ The building permit is the means by which the requirements of the national construction code (NCC) are incorporated into the build.

⁶ Section 212

⁷ Where an aspect of a building does not meet siting rules a report and consent may still be issued by a council if it comes within certain ministerial guidelines;

- General advice to the ratepayers and the public (counter/telephone) on building control/regulatory matters
- Applications for s.234E injunctions.
- Places of Public Entertainment (POPE) Occupancy Permits & siting consent of Prescribed Temporary Structures⁸

In many cases, the relevant building control powers vest in the position of the MBS, not with the council. For example, the power to issue emergency orders, building notices and orders, and to exercise right of entry, vests personally in the MBS. The ability to apply for court orders for (remedial) building work, or payment for same, also vests in the MBS.

Thus, without an MBS, a council has no means of meeting its statutory responsibilities for building control in its municipality. A council can appoint, employ or nominate a person as MBS, provided the person is a natural person and is registered as a building surveyor.⁹

An exception to the vesting of power in the MBS is the power to prosecute for an offence under the Act. Prosecutions are taken by a person authorised by the council.¹⁰ There will be an instrument or instruments of delegation. In practice the delegated person will normally be the MBS. However, the prosecution is brought in the name of the council and council, not the MBS, may be liable for costs if the prosecution fails.

The issuing of reports and consents, receipt and lodgement of building permit information and preparation of maps for designated special areas are also functions that are allocated to council under the Act but which, in practice are delivered by the MBS and staff.

Although section 232 provides for a person to be able to complain to council about an MBS, because the MBS exercises independent statutory powers, concerns a council might have about MBS performance of duties would not necessarily be channelled up the council chain as would occur with “normal” employees of a council. Rather, such issues, at least where serious, would likely be channelled through the Victorian Building Authority (VBA) as the body responsible for registration and discipline of the MBS as a building practitioner.

The accountability of the MBS within the council structure mainly lies in the requirement to negotiate the building services budget with council management. The budget will provide for the quantum of support staff and other resources at the MBS’s disposal for building control activity. The budget will therefore largely determine the extent to which a council’s building control activities are reactive, that is, driven mainly by complaints, or can be proactive, that is, with capacity to include proactive audits of buildings in the municipality, even in the absence of complaints.

Generally speaking, planning issues are given higher priority within councils than building control issues. Planning is almost invariably a more politically sensitive area. There is pressure on councils to issue planning permits in timely fashion and therefore this area is

⁸ section 57Plac

⁹ Section 213.

¹⁰ Section 241(1)(a)

often prioritised for budgets when compared to building control and other, less politically sensitive, council responsibilities.

The costs associated with building control are met through council's rate base with only limited opportunities for cost recovery. Unlike the VBA and Consumer Affairs Victoria (CAV), councils have no stream of funding from building permit levy revenues.

In its 2011 report,¹¹ VAGO criticised lack of proactive building control activity by councils. Some councils do engage in proactive auditing of building work in their municipalities. It is, however, the fairly consistent experience of VMBSG members that building control activities within councils may not be sufficiently resourced to facilitate as much proactive building control as the MBS would prefer.

The absence of dedicated funding for councils to undertake more proactive building control has been recognised by the Victorian Government in the recently enacted changes to the swimming pool and spa legislative and regulatory framework.

The government recognised that if a more proactive approach was to be expected of councils in relation to swimming pool barrier enforcement, it would be necessary to create a dedicated income/cost recovery stream for councils through payment of swimming pool registration and certification of compliance fees.

2. Features of a best practice building system

The features of a best practice/fit for purpose building system should include the following:

- Buildings are delivered in conformity with safety, regulatory and contractual requirements and at reasonable cost.
- Buildings are maintained and used consistent with safety/regulatory requirements.
- Unlawful building work is eliminated or minimised and is appropriately sanctioned.
- Disputes are prevented from arising as far as practicable.
- Where disputes do arise, they are resolved as early, expediently, fairly and inexpensively as practicable.
- Where building practitioners are responsible for non-compliant building work, in the first instance, responsibility for rectification must fall upon those building practitioners, not upon consumers/ owner.
- Regulatory responsibilities, requirements and processes are transparent and efficient with regulatory overlap/fragmentation removed as far as practicable.
- Insurance arrangements provide adequate protection for consumers against defective building work with due regard to the cost of premiums.
- Roles and responsibilities are clear.

¹¹ <https://www.audit.vic.gov.au/sites/default/files/20111207-Building-Permits.pdf>

3. General policy goals or principles towards a best practice system

In order to create, or step towards, a best practice building system, VMBSG supports the following policy goals or principles:

- Establish greater independence in building surveying and eliminate or ameliorate the problem of conflict of interest of PBSs;
- Enhance utilisation of the independence, expertise, local and public interest focus of the MBS and staff;
- Eliminate or ameliorate any inappropriate limits on the independent exercise of MBS statutory functions imposed by overly risk adverse council administrators;
- Eliminate or ameliorate the problems that have arisen from the existence and overlapping responsibilities of multiple regulators (VBA, PBSs and MBSs)- There should at least be a single regulator that has clear responsibility for ensuring that building work is compliant with regulations at all stages of the building process, and after completion;
- Eliminate or ameliorate problems associated with escalation in insurance premiums applying to building surveyor functions;
- Eliminate problems that have arisen in relation to the “live” building permits of a PBS who has become insolvent or who is suspended;
- Ensure that the MBS role is appropriately funded, through access to building levy revenue, including for the development of properly resourced, mandatory, proactive building control plans for each municipality or region;
- Ensure that the MBS has the appropriate range of regulatory tools to bring about compliant building work, consistent with MBS existing or revised statutory functions;
- Reform the system of Essential Safety Measures so that there is assurance that buildings are maintained in a manner that ensures ongoing safety.
- Address the growing shortage of building surveyors by establishing better career paths. The position of Chief Building Surveyor, any appropriate assistant CBS positions and the MBS, would be pinnacles in career progression, appropriately remunerated, commensurate with increased responsibilities.

This policy submission focusses on measures to advance implementation of these principles or goals.

There are, however, other areas of reform required to create or move towards a best practice building system. These are beyond the scope of this policy document. **Attachment 1** includes a high-level list of issues that we are of the view should be considered in any general review of the Act.

4. Cladding Taskforce recommendations

In general, VMBSG is very supportive of the recommendations of the co-chairs of the Cladding Taskforce. Some of the Taskforce recommendations reflect earlier recommendations from the Shergold-Weir report to the Building Minister’s forum.

For example, both the Taskforce and Shergold Weir recommendations that aim to provide enhanced site supervision. Shergold Weir recommends registration of site supervisors¹² and the Taskforce recommends that the Victorian Government consider restoration of the position of clerk of works.¹³ The Taskforce stated:

“In the past a clerk of works would oversee the construction process on behalf of either the architect or the owner, undertaking a quality assurance role in the interests of the owner. This role has largely disappeared despite the increasing complexity of construction and building products.”

The role of the relevant building surveyor is commonly regarded as equivalent to the role of a site supervisor or clerk of works. VMBSG shares the view of AIBS that a building surveyor is not a clerk of works. The building surveyor only generally inspects and certifies at the stages mandated by the regulations. Not all non-compliant work will necessarily be able to be identified at these stages.

VMBSG therefore supports early implementation of these recommendations. Alternatively, or in addition, for riskier classes of building, such as residential towers a “proof expert” appointed through the central regulator but paid for by the builder or developer could be permanently present supervising the works.

Despite generally supporting the Taskforce recommendations in VMBSG’s view some of the recommendations arguably fall short in a few important areas. These are as follows:

- The recommendation for a protocol between the VBA and councils, which sets out accountabilities, mechanisms for cooperation and communication, strategic interventions and agreed procedures for referring enforcement actions. (Rather than a protocol, VMBSG prefers a legislative solution to the problem of fragmentation of the enforcement role between VBA and councils).
- The absence of any recommendation to limit the privatised model of building surveying (VMBSG supports limiting the role of private building surveyors within the system sufficient to remove a conflict of interest problem identified by the Victorian Auditor General’s Office).
- VBA be given appropriate powers to require a builder to rectify defective building works beyond the issuing of a certificate of final inspection or occupancy permit (VMBSG agrees with extending the power but where there are complex liability issues, courts or tribunals may be required to determine them before making orders for rectification).
- Reform to the system of Essential Safety Measures (ESMs) through annual ESM reports being certified by suitably qualified persons and for maintenance contractors to be registered. (VMBSG agrees with the recommendation as far as it goes but also supports some new powers for MBS’s regarding ESMs).
- Absence of a recommendation concerning future registration of registered building practitioners who have left uninsured and non-compliant work. (VMBSG is of the

¹² Recommendation 1

¹³ Recommendation 30

view that there needs to be consequences for future individual registration where this occurs- see attachment 1).

4.1 Protocol between VBA and councils- fragmentation of enforcement role

The taskforce recommends a protocol between councils and the VBA. The aim of this recommendation is presumably to improve co-ordination, better clarify roles and to end, or reduce, the problem of duplication and fragmentation in the enforcement role.

Rather than a protocol, VMBSG supports a legislative solution to the fragmentation problem. This is through the creation of a single regulator that has clear responsibility for ensuring that building work is compliant at all stages of the building process. This is the deepest and most fundamental reform advocated in this policy submission. Options for the single regulator reform are discussed in section 5 below.

Under the current system the responsibility for ensuring compliance is fragmented as between PBS's, councils and the Victorian Building Authority (VBA).

The fragmentation problem has been implicitly recognised by the Building Regulation Advisory Committee (BRAC).

In August 2017, the chair of the BRAC wrote to the Minister seeking clarification of the roles and responsibilities of the RBS (usually a PBS), the MBS (council) and the VBA with particular reference to enforcement and compliance during construction, inspection of building work and auditing and enforcement post occupancy permit.

The taskforce recommendation in favour of a protocol is similar to recommendation 5 in the Shergold-Weir report which stated:

“That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role). “

But these recommendations are not the first time that there have been calls for improved co-ordination between the central regulator and councils including in relation to PBSs.

In its December 2011 report¹⁴ on *‘Compliance with Building Permits’* the Victorian Auditor General's Office (VAGO) recommended that the then Building Commission should develop and implement a strategy, in consultation with the local government sector, to enable more effective coordination with councils to monitor the performance of the building permit system and of PBSs. It also recommended that the Commission should clarify councils' responsibilities for monitoring and enforcing the Building Act 1993 relating to private

¹⁴ <https://www.audit.vic.gov.au/report/compliance-building-permits?section=30452--2-monitoring-the-building-permit-system-&show-sections=1#chapter-5>

building surveyors in consultation with the Department of Planning and Community Development and relevant stakeholders.

The problem with the recommendation of the taskforce is that not it is based on poor principles or aims. It is that the approach has essentially been tried before. Previous efforts have not really overcome fundamental sticking points between councils and the VBA and its predecessor- the Building Commission. The history in this regard may not have been known to the taskforce.

It is worth setting out in some detail the various manifestations of the fragmentation problem and some of the history of the less than successful efforts to overcome it.

The fragmentation problem (general)

While council has a statutory responsibility for administration and enforcement of the Regulations under section 212 of the Act, only the RBS, and more recently the VBA, have the power to direct¹⁵ a builder to bring building work into compliance during the construction phase.

While an MBS has power to issue a building notice or order both during and after the construction phase, the notices and orders can only be issued to an owner.

VMBSG has always considered that it is not generally appropriate to issue a building notice to an owner, at least during the construction phase, when responsibility for the non-compliance lies with the builder and/or other registered building practitioners and not the owner.

This view has been fortified by a recent amendment to the Act which indicates that building notices and orders are a last resort, generally only issued after the directions to fix process has been exhausted.¹⁶ The exception to this is an emergency order because only the MBS has power to issue an emergency order under the Act.¹⁷

VBA also has sole responsibility for enforcement of building orders issued by a PBS¹⁸ and has the power to direct both PBSs and MBSs in the exercise of their statutory functions.¹⁹ It has always been the only body with power to discipline registered building practitioners. More recently it has become empowered to obtain statutory undertakings from them and is the only body with this power.²⁰

Both VBA and councils are empowered to prosecute offences relevant to non-compliant building work.²¹ Only the VBA can prosecute an indictable offence.²² Both VBA and the MBS

¹⁵ Section 37

¹⁶ Section 118A

¹⁷ Section 102

¹⁸ Section 205M

¹⁹ Section 115

²⁰ Section 234B

²¹ Section 16 for example

²² Section 241

are empowered to obtain court orders requiring a person who has been involved in a contravention of the Act, regulations or building permit, to carry out building work, or to pay money, or pay money into court, for building work carried out, or to be carried out by a municipal building surveyor.²³

Attachment 2 contains a high-level summary of the compliance powers available to the VBA, councils/MBS, PBS's and Consumer Affairs Victoria and VCAT.

The VAGO's recommendations for a strategy and clarification of the role of council in monitoring the Act in relation to PBS's resulted in a working party being formed to respond to the recommendations. It was comprised of the Building Commission, the relevant government department, the Municipal Association of Victoria (MAV) and the VMBSG.

The working party wrote to VAGO clarifying that under the Act, councils had no statutory role in monitoring the Act in relation to private building surveyors. It was agreed that this role fell to the Building Commission. The working party did develop a draft strategy which was sent to councils for consideration. But it was unable to finalise a strategy as recommended by VAGO. The process revealed some fundamental differences between VMBSG and the MAV on the one hand and senior Building Commission personnel on the other, in relation to monitoring of PBSs.

VMBSG took the position that:

- The responsibility for monitoring PBS's under the Act lay fundamentally with the Commission not with MBSs/councils;
- The VMBSG already had a policy document in place, known as the VMBSG intervention filter (the filter). The filter gives appropriate risk-based guidance to MBS's on how to deal with PBSs who had been appointed to building projects within their municipalities;
- Under the filter, if there was an emergency, the MBS would issue an emergency order. In other cases, a non-compliance would be taken up with the PBS in the first instance. If it was a minor matter no further action would then be taken. If it was a more serious matter then if, after having raised the issue with the PBS, no, or insufficient action was taken by the PBS to ensure the builder brought work into compliance, the MBS would refer the issue to the Building Commission (later the VBA) for further action;
- While an MBS has power to do so if he or she chooses, absent an emergency or dangerous situation, it was not generally considered appropriate for the MBS to issue a building notice or order where a PBS had been appointed. It was the PBS role to issue a direction to fix to the builder, or building notice or order, to the owner;
- Where MBSs had written to the Commission raising problems in relation to PBSs, follow up action was not always taken by the Commission, or feedback provided back to the MBS who had made the complaint;
- The Building Commission should have a policy document complementing the approach under the filter by indicating the actions it would take when matters were referred to it by MBS's under the process in filter.

²³ Section 234E

The Building Commission ultimately took the position that:

- If a PBS failed to take sufficient compliance action the MBS had power under the Act to issue a building notice or order and that is what they should do;
- If a PBS was guilty of conduct meriting disciplinary action by the Commission, it was not sufficient for an MBS to just write a letter of complaint to the Commission. They should provide documentation to the Commission in the form of a brief of evidence;
- While it is true that the Commission had power to direct a PBS under section 205M the Commission regarded this procedure as excessively cumbersome.

A 'Statement of Intent' was eventually drafted by the VBA in 2016. This document (which is **attachment 3**) set out the roles of VBA and councils and contained general statements about compliance and enforcement being a joint responsibility of councils and VBA. Some 23 councils signed the document. The document has now expired without having been reviewed (though review was contemplated in clause 6 the document).

Clause 4.1 of the statement of intent commits the parties to:

“Develop processes and procedures that allow for easy identification of building practitioners who are repeatedly non-compliant and develop strategies for improving and/or ensuring compliance”.

If this commitment has been actioned by VBA, VMBSG is not aware of it.

Clause 4.2 of the statement recognizes that both VBA and councils have statutory powers and (joint) responsibilities to ensure compliance with the Act. It recognizes that councils/MBSs do not have the power to direct PBSs. But the document does not outline any plan or formula as to when and how the different bodies should exercise the powers that they have. Neither does it seem to contain any specific process for determining these issues.

The points of different between the VMBSG and the Building Commission, as set out above, have never really been fully resolved. While made in a spirit of co-operation, the Statement of Content does not really resolve them either. These fundamental differences in approach are unlikely to be resolved even by the “formal mechanisms” recommended by Shergold-Weir or the protocol recommended by the Cladding Taskforce unless there is a fundamental change in views of either, or both, the VBA and councils in relation to these sticking points.

VMBSG believes that a fundamental issue which has never been given sufficient weight by the VBA, or its predecessor the Building Commission, is that only the PBS, and more recently the VBA, that have the power to direct a builder to fix building work during the construction process. If it was intended that, absent an emergency, the MBS should directly intervene, during the construction phase, in relation to non-compliant building work in respect of which a PBS has been appointed, then surely the legislature would have given the MBS power to issue the direction to fix to the builder.

Save in an emergency, it is contrary to all consumer protection principles to expect an MBS to intervene by issuing a building notice or order to an owner when the fault for non-compliance lies with the builder or other registered building practitioners. This view has only been fortified by the more recent amendment to the Act which to the effect that a building notice or order should not be issued by a building surveyor unless a direction to fix had been given and not complied with, that is, as a last resort.²⁴

Further, under a privatised system of building surveying, it is arguable that it should not be the responsibility, or sole responsibility, of councils to effectively “clean up the mess” left by PBSs when it is the VBA that is responsible for registering them, monitoring them, giving them directions under section 205M, disciplining them and for enforcing their building orders.

It should be noted that one of the disciplinary sanctions available to VBA is to direct the practitioner to do a specified thing, including to rectify or complete specified building work. This sanction is available both before and after the occupancy permit has been issued. MBS’s and councils have no such power.

While councils undoubtedly have responsibilities for post construction under section 212 of the Act, depending on the extent of the non-compliance, building services within councils are not necessarily funded to meet these responsibilities. It is also the case that the Minister has power to declare the VBA to be MBS in the public interest. This has led to councils calling for VBA to be declared MBS in cases where non-compliant building work has resulted from failure to effectively regulate registered building practitioners. Of course, the most recent outstanding example of this is the declaration that VBA should act as MBS in relation to a large number of cladding non-compliant buildings. However, prior to this, proposals that the VBA should be declared by the Minister to be the MBS in relation to projects where the actions of builders and/or PBS’s had led to significant non-compliance was routinely opposed by VBA.

Attachment 4 provides a summary of a matter (the Rangeview Estate) which provides an example where a council was required to clean up a mess left by registered building practitioners for which VBA is responsible and the kinds of regulatory controversies that can result, with domestic building owners caught in the middle. This type of scenario is eliminated if MBS’s are integrated into the structures of a central regulator.

VMBSG acknowledges that, since Rangeview, the situation post-construction is more complex, especially following the Supreme Court decision in *LU Simon Builders Pty Ltd v Victorian Building Authority*.²⁵ This decision held that VBA had no power to issue a direction to fix to a builder post occupancy permit. By extension a PBS would also not have this power. Two issues then arise:

- a) Are there any actions that can be taken under the Act to ensure non-compliant building work is brought into compliance post occupancy permit apart from issuing a

²⁴ Section 118A

²⁵ <http://classic.austlii.edu.au/au/cases/vic/VSC/2017/805.html>

- building notice or order on an owner? (who likely bears no responsibility for that non-compliance); and
- b) Which body should take the action- the PBS, the VBA or local government?

The two ways in which compliance might be brought about post occupancy permit are through a disciplinary sanction requiring the builder to rectify the work or through obtaining a court order under section 234E²⁶ of the Act. Only the VBA can impose the disciplinary sanction. Either VBA or an MBS can seek court orders under s 234E.

Like its predecessor section 253²⁷, s 234E allows the VBA or an MBS to make an application to a court for orders against person who has contravened the Act, regulations or a building permit. But under section 234E, orders can also be sought against a person who has in anyway, directly or indirectly, been concerned with, or party to the contravention. The order can require the carrying out of building work, or payment of money, or payment of money into court, for building work carried out, or that may be carried out by an MBS.

MBS's have utilised section 234E, or its predecessor section, to obtain orders from the Court. Usually however this would be for relatively simple matters. It might, for example, be used to get a court order to demolish unlawful building work.

However, it would be beyond the scope and resources of a single council, or MBS, to seek such orders in relation to non-compliant cladding for example. The civil litigation in the Lacrosse case was extremely complex and expensive and any proceedings for payment of cladding rectification works under section 234E would be just as complex and costly, possibly more so.

Problems associated with fragmentation can manifest themselves in various ways.

Suspension or insolvency of a PBS

One significant issue has related to that which should occur with the "live" building permits of a PBS who has been suspended or who becomes insolvent.

The Building Commission/VBA has always been very reluctant to have itself declared MBS in order to take over these permits as the work involved is expensive and labour intensive.

In the past the Building Commission often wrote to persons to whom these permits had been issued, encouraging them to seek that the local MBS take over the permit. Councils, for insurance related reasons, and because they did not consider MBS's should be regarded as "building surveyor of last resort" under a privatised system, advised MBS's not to take on this work.

To try and assist with this problem the Act was amended to provide that the VBA could appoint a statutory manager²⁸ to manage the PBS's business in these types of

²⁶ This section is based on an equivalent section drawn from ASIC legislation

²⁷ Section 234E replaced section 253 effective 16 September 2016

²⁸ Section 83B

circumstances. The amendment was broadly based on similar provisions that apply to the legal profession.

The amendment aimed to provide a means through which the cost of administering open permits can be met, at least in part, from the PBS business. This reflects that, in a privatised system of building surveying, the risks and losses associated with the PBSs business should be quarantined in that business to the greatest extent possible.

This policy aim is not achieved where the Minister declares VBA to be the MBS for this purpose, in which case the costs are effectively transferred in their entirety, onto the taxpayer/building levy payer.

In addition, by taking over the work of the defunct private building surveyor, the risks associated with negligent work by the building surveyor are also potentially transferred to the VBA and, consequently, taxpayers.

Where PBS's are limited to issuing building permits and MBS's are integrated into the structure of the central regulator the problem described above is solved. This is because the suspended or insolvent PBS is not required to perform any functions regarding the live permit after it has been issued. Those functions pass to the MBS. So, the only result of a suspension or insolvency is that the PBS cannot issue new permits.

Dual prosecution role

The capacity of both councils and the VBA to prosecute offences under the Act can lead to confusion as to which body should prosecute and in which circumstances.

No agreement or guidelines have ever been established as between councils and VBA on this issue.

The body that prosecutes might end up depending on arbitrary factors such as the amount of publicity that attaches to an incident.

"Run of the mill" cases of unlawful building work (for example, work completed without a building permit) are normally be left to a council to prosecute. This is appropriate.

Yet when a wall which had been constructed without a building permit fell in Swanton St, tragically killing three people, VBA prosecuted the matter, presumably because of the media coverage that followed upon the deaths.

There is no suggestion that VBA leading this prosecution was inappropriate. It is just given as an example of the arbitrariness that can be associated with shared statutory powers to prosecute.

Significant policy issues can arise in relation to prosecutions. In the Swanston Street wall collapse, for example, the magistrate was clearly troubled as to whether the offence of

building without a building permit was an absolute liability, or strict liability offence. If a strict liability offence, then a defence of honest and reasonable mistake would be open. If an absolute liability offence, this defence is not available. However, there is no protocol or agreement in place between VBA and councils on the nature of the offence to ensure consistency of approach in prosecuting these matters.

Interface between discipline and prosecution

Another potentially problematic area is the interface of the powers to discipline and prosecute for an offence. When to prosecute and when to discipline is a complex enough issue to sort out even where there is a single regulator. But this situation is complicated even more where more than one regulator has the power to prosecute.

It will often be the case, that where an offender is a registered building practitioner discipline might be the preferable option. There is a far broader range of sanctions available for discipline than for offences where fines are the most likely outcome. And of course, disciplinary breaches need only be proved on the balance of probabilities, rather than beyond a reasonable doubt.

The fragmentation problem can arise in what seem on the face of it to be relatively trivial matters.

For example, on a number of occasions councils have had issues with a PBS failing to pay building permit documentation lodgement fees to council together with the building permit documentation. A quirk in the Act meant that councils could not refuse to receive the information even if the fee had not been paid. Such minor matters would seem to constitute an obvious instance where VBA should have counselled the PBS and, if he or she did not cease the practice, should have disciplined the person. But VBA took the view that these are council problems and so that councils should be required to go to the cost and trouble of criminally prosecuting the PBS, rather than the VBA intervening to modify the PBS's conduct through counselling or discipline.

Conclusion regarding the fragmentation problem

The preferable approach to fragmentation in the compliance and enforcement role is unlikely to be the "formal (consultation) mechanism" recommended by Shergold Weir or the protocol recommended by the Cladding Taskforce. Absent a change of view in either the VBA or councils on the sticking points outlined above, there is no good basis to assume that a "formal mechanism" or a protocol will resolve the unresolved issues outlined above in any sustainable way.

In any event, it is the VMBSG view that as long as there are overlapping compliance and enforcement responsibilities shared between PBS's and two other regulators, there is scope for responsibility shifting and for end users to "fall between stools."

Accordingly, the fragmentation is best resolved through legislation that removes the fragmentation- this is the single regulator reform. Options for implementing this reform are discussed further in section 5 of this policy.

4.2 Limiting the privatised building surveyor model

The taskforce report contains no recommendation to end, or sufficiently limit, the privatised model of building surveying.

The fundamental problem associated with PBS's performing inspection and certification functions is lack of independence from the builder.

As VAGO found in its 2015 report 'Victoria's Consumer Protection Framework for Building Construction'²⁹:

"The role of building surveyors is undermined by a conflict of interest arising from surveyors typically relying on builders for recurrent work."

This conflict of interest becomes an even more significant threat to the integrity of the system because the Building Code of Australia (BCA) allows departure from its stricter "deemed to satisfy" requirements through the adoption of performance solutions which are developed or approved by the PBS. The whole point of these performance solutions is usually to facilitate cost savings relative to the building work that would be required to meet the stricter deemed to satisfy standard. Cladding is but the latest example.

In VMBSG's view, the role of the PBS should be limited.

The PBS role could be limited to just issuing building permits. Alternatively, if PBS's still perform inspection and certification functions in respect of permits that they have issued this should be limited to specified classes of buildings (see further below), and/or should be performed by a PBS or inspector who has no relationship with the PBS who issued the permit.

In any event, the certification function should be transferred from the PBS to the MBS who is independent from the builder. The inspection function might also be transferred. It could however be an option for MBS's to engage PBS's or private building inspectors to perform inspection functions provided these PBS's and inspectors were different to the PBS who issued the building permit.

Alternatively, the ability to engage a PBS or private inspector to do inspections might depend on risk/class of building.

For example, the government has recently passed legislation so that swimming pool barriers can be inspected by private building surveyors or private inspectors, or a new class of pool inspector. These practitioners will report to the MBS on compliance or non-compliance of the pool barriers. This is appropriate because although non-compliant pool barriers create a risk to safety, the inspection process is not as complex as for a multi-story building. An aim here is to relieve the burden on councils from having to audit swimming pool barrier

²⁹ <https://www.audit.vic.gov.au/report/victorias-consumer-protection-framework-building-construction?show-sections=1§ion=32377--2-building-practitioner-registration-discipline-and-compliance-monitoring>

compliance themselves by utilising the services of the private sector. Ultimately however, enforcement actions in relation to non-compliant barriers remain with the council/MBS. The basic model is that the PBS or private inspector reports on compliance to the MBS who is ultimately responsible for compliance enforcement.

A sub-option requiring consideration would be what if any quality control there should be on PBS's on the issuing of the building permit?

Sub-options include:

- a) No quality control at this point (compliance of the building permit with regulations/BCA would remain entirely the responsibility of the PBS);
- b) All building permits prepared by PBS require approval by MBS, or other peer review;
- c) Certain classes of building permit would require MBS approval, or other peer review.

Of these options, VMBSG prefers sub-option c) with the requirement for MBS approval or peer review being limited to those buildings identified as higher risk. These would include, but not necessarily be limited to, higher rise residential buildings.

Certainly, any performance solution under the building code impacting upon fire safety systems, or entailing other safety risks, should be subject to be approved by the Chief Fire Officer and/or a fire safety engineer (for fire related risk) and/or other MBS or peer review (for general risk).

Where the PBS and the MBS or Chief Fire Officer disagree on the appropriateness of a performance solution there could be capacity for the decision by an MBS or Chief Fire Officer not to agree to a performance solution to be internally reviewed within the Office of the Chief Building Surveyor (CBS), possibly also with a right of appeal to the Building Appeals Board.

Post building permit PBS functions to vest in the MBS and or Building Appeals Board would include administration and enforcement of regulation 233 (Alterations), regulation 234 (Alteration affecting exits and paths to exits) and regulation 229 (Change of Use).

PBS and private building inspectors could still also be eligible to be contracted by the MBS to perform inspection functions on behalf of the MBS. The certification function might be maintained by the MBS, or certification might be performed by the PBS on behalf of the MBS. Again, this may depend on class or risk or building.

Alternatively, there might be inspection/certification by PBS's or private building inspectors for inspections other than for the occupancy permit or certificate of final inspection which might be left to the MBS.

An "Uber" type system could be introduced for inspections. When a building project had reached a mandatory inspection stage the builder could seek an inspection through an Uber type application, provided that any PBS who had issued the relevant building permit would not be eligible to perform the inspection.

Inspections by a PBS or private building inspector might follow the model adopted for the new swimming pool framework so that following the inspection, the inspector would provide a certificate of compliance or non-compliance in a prescribed form to the MBS. Where there was non-compliance these would be listed on the non-compliance certificate. The MBS would then require the builder to provide a certificate of compliance within a specified period, failing which enforcement action could be taken.

Different arrangements for building permits, inspection and/or certification might be modelled on, or draw from the German building system. This system is understood to require that, for high risk buildings (as defined but likely to include high residential blocks), the developer must engage a “proof expert” from the central regulator who is basically present throughout the entire construction period and who works with all involved to ensure compliance.

The proof expert would be involved in approving design, building permits, performance solutions etc.

One option is for the proof expert to be the relevant MBS, or MBS staff member. Alternatively, the proof expert could be a specially accredited/registered building surveyor/professional working directly out of the office of the CBS- possibly a person occupying the position of assistant CBS.

It should be noted that limiting private building surveyors to issuing building permits and eliminating or restricting their inspection functions would not necessarily be opposed by all private building surveyors or their representative organisation. In 2015, the Australian Institute of Building Surveyors (Victoria) called upon government to consider separating the building permit issuing function and inspection functions.

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. Such a system would also add transparency and give the system self-auditing functions because different professionals are involved along the way.

Limiting PBS’s to issuing building permits or restricting them to performing inspection functions on behalf of an MBS would likely alleviate the current crisis in insurance cost and access for the private part of the building surveying industry.

Consideration would need to be given to insurance for the expanded role of the MBS. If integrated into the structure of the central regulator MBS’s could become entitled to the personal immunity available to staff of the central regulator under section 127 of the Act. Any liability arising from the exercise of statutory powers by an MBS would then become a liability of the central regulator.

4.3 Powers to bring about compliance post occupancy permit

Obviously, it is important for the central regulator to have appropriate powers to ensure non-compliant building work is made compliant both during and after the construction period.

If MBS were integrated into the structure of the central regulator, as recommended by this policy, then they would want to ensure they had appropriate powers in this regard.

To this end the taskforce recommends that that the VBA be given appropriate powers to require a builder to rectify defective building works beyond the issuing of a certificate of final inspection or occupancy permit.

It is correct, as stated in the report, that the Supreme Court has found VBA has no power to issue a section 37 direction to fix to a builder after an occupancy permit has been issued.³⁰

But under section 234E of the Act where the Act, regulations or building permit have been contravened, VBA (and the MBS) has power to apply for court orders against the contravening party, or anybody, who was in any way, directly or indirectly concerned in, or party to such contravention, or who counselled or procured it.

This power is based on a combination of an earlier section that existed in the Act³¹ and powers available to regulators under federal laws such as the Corporations Law and Australian Consumer Law.

The power seems broad enough to facilitate orders against builders, but also against building surveyors, engineers or architects (all of whom carry insurance), in Lacrosse type situations.

Orders sought can be for building work or for payment into court for building work carried out or required to be carried out by the MBS. If this power is inadequate, it should be amended. To date however, the power has not been tested by VBA.

While it also seems desirable to extend the power to issue a direction to fix to a builder for a period beyond the occupancy permit, the issue arises as to whether there should be any time limit within which this power might be exercised. Is it realistic, or reasonable, to expect, for example, that an administrative order might be given to a builder 5 or 10 years after completion of building work requiring rectification worth millions of dollars, when as the Lacrosse VCAT decision shows, the builder may not be the only, or even the main, concurrent wrongdoer?

Even if it were reasonable for the section 37 direction to operate in this way it seems unlikely to be an effective tool in recovering the cost of cladding rectification from all the concurrent wrongdoers. The section 37 direction can only apply to the builder (if the builder is still in existence). Use of a section 37 direction in such a context seems more likely to just

³⁰ L U Simon Builders Pty Ltd v Victorian Building Authority [2017] VSC 805 (22 December 2017)

³¹ Old section 253

result in the builder going insolvent or to absorb the relatively minor fine involved for failing to comply with a section 37 direction.³²

Where there are complex liability issues associated with non-compliant building work, such as is the case with cladding, to be effective, whatever powers are exercised, a court or tribunal will ultimately be required to sort out liability issues first, unless they can be resolved in some other manner.

4.4 Reform of ESM's

In relation to ESM's the taskforce found:

“The ESM maintenance and reporting system operates under the expectation that owners and owners' corporations will comply and proactively maintain their fire safety systems. Building owners are required to prepare an Annual ESM Report in line with a maintenance determination or the relevant occupancy permit. The Annual ESM Report must declare that the owner has complied with ESM maintenance obligations.

Our Interim Report raised a number of concerns regarding the expertise, training and qualifications of contractors involved in ESM maintenance including sprinkler systems. Through the State-wide Cladding Audit, the VBA has continued to find buildings with ESMs that have had little to no maintenance, and owners' corporations who were unaware of their obligations to maintain these integral safety features. This issue requires further consideration to ensure those persons conducting inspections and maintaining these systems are appropriately qualified for the complexity and importance of this work. Owners corporations should not be expected to have this capacity.”

The Taskforce recommended:

- Consideration should be given to require Annual ESM Reports to be certified by a suitably qualified person.
- Consideration be given to requiring registration of ESM maintenance contractors.

VMBSG agrees with these recommendations. But it also recommends that the annual reports should be required to be submitted to the MBS under the reformed structure advocated by this policy. Buildings, or certain classes of higher risk building, should be required to register for the purposes of ESM reporting. The MBS should have appropriate new powers to:

- approve the report; and/or
- to require additional information, and/or;
- to require further inspection; and/or
- to vary the ESMs required in a particular building.

³² Maximum 2500 penalty units for a corporation

5. Reform options for single regulator reform

Three options for implementing the single regulator reform are discussed. These are:

1. MBSs to be employed by a new central regulator responsible for administration and enforcement of the building regulations throughout the state with that new regulator being constituted by the office of the CBS;
2. MBS's continue to be engaged by councils which remain responsible for administration and enforcement of the building regulations in their respective municipalities or designated regional areas but with MBS's being accountable to the CBS;
3. MBS's are employed by the VBA which otherwise largely maintains its existing structure and becomes responsible for administration and enforcement of the building regulations throughout the state.

Option 1

In general, if MBS's are to be moved from councils and integrated into the structure of a larger central regulator, they would seek two things.

The first is, as mentioned above, that MBS's would maintain their current powers to exercise independent statutory functions.

The second is that their first accountability, within the structure of the central regulator, is to a person who shares their technical expertise in relation to building control, and indeed, whose excellence means that the person has reached the pinnacle of the building surveying position in the state- Chief Building Surveyor (CBS).

VMBSG supports the creation of a new statutory entity that is responsible under section 212 of the Act for the administration and enforcement of the building regulations throughout the state both during and after the construction phase.

The new statutory authority would be constituted by the office of the CBS with MBS integrated into this structure.

MBS's would continue to act as independent statutory officers. However, in order to deliver greater consistency and transparency general guidelines might be established by the CBS following advice from a panel including MBS representatives.

MBS's and their support staff would remain located within council premises, or alternatively within regional offices, of the central regulator. This would be consistent with the goal, as outlined above, of maintaining the local presence and focus of the MBS and staff.

The funding of MBS functions would be transferred from the council rate base to the building levy revenue stream together with other appropriate cost-recovery fees including inspection and certification fees.

The MBS would be given power to issue a direction to fix to a builder during the construction process. As discussed above the power to issue a direction to fix might also be extended through legislative amendment, for a reasonable period after practical completion, that is post occupancy permit.

The VMBSG does not support any sub-option under which the position of MBS loses its independent statutory role. The decision whether to issue direction to fix, or a building notice or order should vest personally in the MBS.

The MBS should continue to be responsible for negotiation of the budget for the municipal or regional building services. This should include approval of a mandatory building control plan for each region or municipality sufficient to ensure that building control not only reacts to complaints but also encompasses proactive building audit activity based on local presence and knowledge.

The building control plan would incorporate both local priorities (as identified through the local focus and knowledge of the MBS). But it could also include state-wide priorities as identified by the central regulator and/or the minister.

Under this new system the capacity of the MBS to issue building permits outside his or her municipal or regional district would be removed.

Unlike the current situation with councils, any concerns about an MBSs performance of his or her statutory functions could be subject to performance appraisal and direction within the structure of the office of the CBS, although more serious disciplinary action might be referred to the disciplinary body.

Under this option the VBA would be abolished or, alternatively, would continue to exist, limited to performance of the functions of registration and discipline of building practitioners, continuous professional development and related functions. But VBA would cease to have any role in enforcement of the building regulations or in prosecuting offences against the Act, other than possibly those offences relating to performing building work without the required registration.

The authority to commence proceedings for offences relating to breach of the Act or regulations general provisions would lie with the CBS and/or his or her delegate (an MBS).

Whilst often initiated by the MBS at local level, all proceedings for an offence would be handled by a dedicated legal team within the office of the CBS.

In emphasising the importance of building surveyor skills and expertise within a reformed central regulator, VMBSG does not mean to undervalue the importance of a mix of skills in the central regulator- investigation, legal and administrative skills, for example, are very important. But a good investigator should understand the importance of his or her

investigation being underscored by sound building/technical expertise whenever this is required. Likewise, legal action will often need to be informed by building and technical expertise.

The registration function is time consuming and resource intensive. It will become even more so with the introduction of trade registration for both sub-contractors and employees.

Apart from the large number of personnel who may now require registration, the registration task will involve what could be potentially complex considerations around whether provisional or full registration should be granted.

The registration body must also deal with complex issues arising under mutual recognition legislation.

Although the (relatively new) VBA “show cause” process is more streamlined than the previous Building Practitioner’s Board (BPB) process it is still also resource intensive.

The VBA, or alternative registration body, could also be responsible for the issuing of certificates of consent to owner builders. This is essentially analogous to a registration function. Certificates of consent are really a means by which a person is allowed to do the things that a registered building practitioner can do on a limited basis and provided that the person is not in the “business of building”³³.

The registration body could also administer the continuous professional development scheme (with input into content from the reformed central regulator) given that completion of adequate CPD will be a condition for renewal of registration.

While further, in depth, consideration is required by the relevant department, a possible starting point for division of functions between an office of the Chief Building Surveyor and the registration and discipline body could be along the following lines:

Office of Chief Building Surveyor (incorporating MBS’s)	Registration and Discipline Body
<ul style="list-style-type: none"> • Responsibility for administration and enforcement of the Regulations in the state of Victoria • Development and funding of building control plans at municipal or regional level in conjunction with MBS • Any quality control required for building permits issued by PBS 	<ul style="list-style-type: none"> • Registration and provisional registration of building practitioners • Administration of mutual recognition requirements • Administration of building practitioner disciplinary system (with requirement to consider and respond to referrals from Office

³³ Section 25E (h)

<ul style="list-style-type: none"> • Issuing of building permit numbers • Receipt and holding of building permit information (these could continue to be kept at municipal/regional level or might be centralised) • Responsibility for inspections and certification (able to subcontract inspection to PBS/ private inspectors in appropriate cases but not to the PBS who issued the permit) • Issuing (through MBS) of directions to fix, building notices and orders • Enforcement of all directions to fix, and building orders • Prosecution of all offences • Responsibility for ensuring work is carried out by appropriately registered or licensed persons • Development of joint prosecution/disciplinary policy in conjunction with registration/discipline body • Obtaining of section 234E orders for building work or payment of money for building work where Act, regulations or permit contravened • Issuing of Occupancy permits and certificates of final inspection • Maintenance of swimming pool register and receipt of certificates of compliance and non-compliance in relation to swimming pools • Referral of practitioner disciplinary matters to registration and disciplinary body 	<p>of Chief Building Surveyor within designated timeframes)</p> <ul style="list-style-type: none"> • Issuing of consent certificates for owner builders • Administration of continuing professional development programs • Development of joint prosecution/disciplinary policy in conjunction with Office of Chief Building Surveyor
--	--

<ul style="list-style-type: none"> • Audits • Powers of entry 	
---	--

Option 2

An alternative option to the above, or possibly a transitional option, would be for the CBS to operate as an autonomous or semi-autonomous entity within the VBA, with the CBS assuming responsibility for all enforcement matters.

Under this model MBS's could still be engaged by councils. But both MBS's and PBS's would be subject to high level supervision by the CBS.

Funding arrangements for the MBS under this model would require further consideration. Options include:

- Funding from the existing building permit levy stream;
- Additional Building Permit Levy established to fund MBS functions – E.g. Municipal Building Control Levy;
- Funding from the council rate base;
- Funding from cost recovery (inspection/certification fees);
- A combination of the above.

There is some precedent for council officers being subject to supervision or direction from bodies outside of council. Under the current Act the VBA can issue a direction to an MBS in relation to his or her functions.³⁴ Under the Public Health and Well Being Act 2008 where there a serious public health risk or an emergency situation the Chief Health Officer can authorise council authorised officers to respond to that risk by exercising a public health risk power.

Potential disadvantages with this option are that that if the MBS continues to be funded by councils this could generate conflicting lines of accountability and potential conflicts between what the CBS expects of MBS's and what councils are prepared to fund. If the fragmentation problems pointed to in the paper are to be properly overcome, the source of funding and the setting of (high level) operational responsibilities should arguably lie with the same body, that is, with the CBS/ reformed central regulator.

Further the likely appeal to councils of closer integration of MBS's within a central regulator is likely to be diminished if councils still have to assume some or all of the cost of funding MBS building control activity.

³⁴ Section 205M

Option 3

VMBSG would not support any option involving integration of MBS's into the existing VBA structure. The reasons for this are partly historical and cultural. Primarily however there is a need for the central regulators enforcement and compliance functions to be led by a person who is expert in both technical and administrative aspects of matter of building control.

The perception of many MBS's of the central regulator is that it has tended to place greater emphasis on the employment of police or others with investigative or general administrative skills at the cost of employing those with technical expertise in building compliance. Where MBS's have been employed by the central regulator, the experience has been that insufficient weight is given to their technical expertise and to consultation with MBS's/councils. While this appears to be changing for the better in recent years, this historical legacy is heavy.

Further, VMBSG is of the view that independent statutory functions continuing to lie with the MBS would not sit well with an unreformed central regulator such as the VBA. It would be anomalous for MBSs within an unreformed central regulator to be able to exercise enforcement powers that exceed those of the body's CEO. Accountabilities to the Board are likely to become confused. This would not be the case if there was a clear line of accountability of MBS's to the CBS.

List of attachments

Attachment 1- list of suggested other reforms.

Attachment 2- high-level summary of the compliance powers available to the VBA, councils/MBS, PBS's and Consumer Affairs Victoria and VCAT.

Attachment 3- Statement of Intent between VBA and councils.

Attachment 4- Summary of a matter (the Rangeview Estate).