



## **Inquiry into Western Australia's Home Indemnity Insurance Arrangements**

### **Response to the 4<sup>th</sup> April 2013 ERA Draft Report**

#### **Draft Report Conclusions**

The draft report considers five models with a focus on a regime of private insurance for the construction period with industry supplement to deal with the long tail.

The research to form these conclusions appears to stem from data provided by insurers and the experience of the major States.

#### **Clarity of the background**

Royal and Sun Alliance (RSA) together with HIA concocted the Last resort regime in 2001 under the guise of the (10 point plan as attached). They encouraged the Governments of Victoria and NSW to work in harmony and the Last Resort scheme was implemented in these States on 1<sup>st</sup> July 2002.

This consortium presented a press conference in Melbourne on the 29<sup>th</sup> September 2003 and explained their roles **in the formation and the specific structure of the Last Resort scheme** we are dealing with today and the Builders Collective purchased a copy of the transcript from Rehome Monitoring where all the players described in their own words the roles they played and what the increased benefits to industry and consumers would be under this new scheme. (Rehome transcript attached)

On 15<sup>th</sup> October 2001 a recommendation was made to the Regulation and Ordinance Committee of the Senate that resulted in the Home Building Insurance product (warranty Insurance) becoming a wholesale product that effectively removed all regulatory oversight of the product within the nation and this was enacted on the 17<sup>th</sup> April 2002. (ASIC letter attached)

## Reliability of data and information

Controversy has surrounded this product from inception and with good reason as both RSA (later Vero) and particularly HIA have denigrated all who have had an alternate view to them and carefully suggested the scheme was delivering a benefit but without any evidence to support their positions.

In 2006 Vero justified their in camera evidence to the VCEC inquiry by producing a public document titled "Home Warranty Insurance Facts and Statistics" (*attached above*) and from this document Vero State: Between 1 July 2002 and 30 June 2005, Vero Warranty has **settled** approx. 10,000 claims, **6,000 of which were reported on or after 1 July 2002**.

This facts and stats document were the primary reason for Vero to exit the market as they were compelled to appear before the Victorian Upper House Inquiry and such an appearance would have exposed them to extreme brand damage that could not have been avoided and an exit was more desirable.

However in 2008 the Financial Ombudsman Service released a report that showed there were 186,522 Warranty Insurance Policies issued with 2,876 warranty claims made and 1,310 were rejected which is a **45% rejection rate** compared to aviation and motor insurance at less than 1%. (*Attached above*)

Further the Essential Services Commission released their very first report in September 2009 (*attached above*) on the performance of Victoria's BWI regime from inception in **2002 to 2008** at the beginning of the Victorian Upper House Inquiry showing on page 36 a total of **273** claims paying a total of **\$9,099.055** to consumers.

This ESC report was then followed by the sudden release of a further report showing a greater level of claims because the main insurers advised ESC they had updated their claims portfolio that reflected the true and current position.

We note in your draft response you refer favorably to the paper presented to the Institute of actuaries by Daniel Smith of Taylor Fry who is the same person we asked to consider the first of the New South Wales data issued in 2008 (*Taylor Fry Letter attached*) and there is no doubt he has cast a significant shadow over the reliability of the data provided.

More recently the Victorian Auditor General (VAGO) released a report on Compliance with Building Permits followed by a second Report on the 17<sup>th</sup> April 2013 titled Consumer Protection. The Ombudsman released his report December 2012 and between these three reports any reliability on any data out of Victoria could not be remotely considered. Overall the reports showed corruption, collusion, and misuse of funds together with questionable data and statistics, poor processes and practices, and incorrect annual reporting. (*The three reports will be sent in a separate email due to size*).

This Last Resort product initially concocted by Royal & SunAlliance and the Housing Industry Association (HIA) more than a decade ago has seen our industry lurch from crisis to crisis as Governments grapple with the market

failure of this insurance product as the revolving door of private insurers coming and going with some adopting questionable behaviour that has seen them fail and in the courts. At the demand of insurers builders provided securities to insurers and years later and well beyond the statutory period they are yet to be returned Secondly compliance has been ignored in many cases and these issues have contributed to the massive decline in consumer confidence and non compliance that now sees an industry in distress from this point of view in every state and territory except Queensland.

The Last Resort insurance product has failed both the consumers and the building industry, and created continual controversy through its draconian, and undemocratic criteria while our industry has paid massive sums to achieve the insurers criteria and meet the premium costs but far more than half these premiums go to private interests in the first instance leaving little to benefit the consumers if they were able to make a claim under Last Resort.

In 2008 the Productivity Commission referred to builders warranty insurance as a running sore since inception while CHOICE see it as making a mockery of consumer protection and the policies as JUNK insurance not worth the paper they are written on. In fact the Australian Consumers Association wrote to Minister Kobelke in 2005 and their position remains the same today (*Kobelke Letter attached*)

## **Background a necessity**

For the past 40 years the States of New South Wales and Victoria have determined the shape of all but one of the consumer protection regimes and the smaller States have then generally followed their lead and adopted their schemes, as was the case with the current scheme.

In most cases the various consumer protection regimes have been structured and put together by the traditional trade associations which was the case when the Housing Industry Association (HIA) established Victoria's first builders warranty scheme in 1972. The scheme offered homeowners a basic completion and defects guarantee. In 1974 the HIA made the scheme mandatory for HIA members. The Master Builders Association (MBAV) established a similar scheme for its members.

These schemes were not successful and eventually they were merged by Government in 1984 to form the Housing Guarantee fund (HGFLtd) a public company and although it was not Government owned, the Government appointed the chairperson and some of the other directors, and in 1987 it gave the arrangements a legislative basis.

The HGFLtd was a First Resort model and not dissimilar to the Queensland First Resort scheme, was self-funding, transparent, and successful as it delivered the intended purpose of consumer protection through until 1996 without any trade association involvement other than it required builders to be members of either the HIA or MBA.

It was the constant lobbying of HIA and MBA that saw the first of the private

insurers enter the market in 1997 with a First Resort model, and while the mandatory membership of HIA and MBA was removed the associations instead became the commissioned brokers to facilitate the product. Initially this new scheme was reasonably accepted but it started causing many problems for a lot of builders around 2000 as the dominant insurer (HIH) was determining who could, and could not work.

The HIH criminal collapse was on the 15th March 2001 and as a result the only insurer left was Royal and SunAllaince (RSA) with HIA as the only broker and many builders struggled to meet the HIA criteria for the compulsory warranty insurance resulting in upheaval and turmoil for our industry. This circumstance was further compounded by the events of 9/11/2001, which further tightened the already stringent requirements to obtain the mandatory insurance and in the meantime the duopoly of RSA and HIA were developing the Last Resort regime we have today as they now had the perfect platform.

The only reason this regime has sustained under these circumstances and the 43 inquiries/reviews to date is the fact the powerful insurance lobby supported by the politically savvy HIA have been able to present an illusion in the past of benefit however this regime is devoid of any reliable data and or proof of benefit due to the change to the Corporations regulation in 2002.

HIA have grown to a substantial business through the introduction of the Last Resort regime and I would ask you to consider the attached graph titled (*HIA financial history 2000 to 2005*)

### **Ability to respond to the draft report**

The key elements to provide an informed submission have been blacked out in the draft report as they are commercial in confidence and we are only left with limited information.

This position borders on insult considering this issue is based on a public policy of consumer protection whereby the consumers and the builders provide every cent to fund all compliance issues of the industry and the complete policy of the consumer protection regime for the building industry.

The track record of the insurers and trade associations in this arena has been dismal for the building industry and its consumers as the rationale and application has only delivered self-interest with scant regard to the true beneficiaries, and to suggest preserving this lucrative and legislated income stream via a mandatory policy that is veiled in secrecy and dubious claims on behalf of private vested interests must cease.

### **Observation**

The Western Australia building industry should not present a difficult environment for a Government to manage as some 64% of the States building is undertaken by only 20 builders with another 1480 odd delivering the balance but a disturbing fact is a large number of builders some 240 exit the industry each year, but no reason is provided for these departures, and we should establish why.

A fact could be the severe Government intrusion into builders businesses and the fact the Last Resort Insurer on behalf of Government controls the builders business, and only gives him annual tenure in his profession, which restricts his growth and the principle of self-employment and a democratic society.

Secondly the large builders who dominate the WA industry contribute precious little to the maintenance of a consumer protection regime on a per house basis that unfairly gives them a significant market/financial advantage.

## **ERA Reason to dismiss First Resort**

Is based on a perception that consumers may make an excessive amount of nuisance claims, and that builders may reduce their building standards knowing that the consumer has first resort insurance to protect them.

This observation we find is a bewildering assessment of a First Resort system and demonstrates the urgent need for accurate and informed knowledge of how a First Resort consumer protection regime may operate in the West Australian building industry.

We are available to provide the basic principles of a First Resort regime and its operation and this can be achieved by correspondence and or we can attend your office for a presentation that will take you through the entire processes.

## **Conclusion**

The last resort insurance scheme over the past decade has unsurprisingly seen a loss of consumer confidence in our industry together with a perception that Government is incapable of managing one of the most important industries in the State because they have abrogated that fundamental responsibility to private companies and trade associations who have a deep financial interest in keeping everything exactly as it is without funding a cent.

This principle must change and Government must accept their responsibility on behalf of our industry, and if we are to provide consumer protection then it must be genuine and of a first resort nature keeping in mind we the consumers/builders are funding every cent of the industries compliance and its consumer protection but at the same time keeping in mind it is the vast majority of smaller builders who carry the burden of the funding.

The ERA conclusion favoring/suggesting a mix of private insurers and trade associations is to ensure the controversy will dramatically escalate, as it will double the processes of now for builders, and increase red tape to an unacceptable level just to satisfy what might be seen as a political agenda without delivering any benefit to the intended beneficiaries.

Because of the constant criticism of Last Resort significant exposure in the form of official material has come to light in recent years and more recently the three scathing reports relating to the conduct surrounding the originators of

Last Resort and the methods they applied against builders and consumers to suppress maintain the Last Resort status quo in Victoria.

The HIA still support the retention of their Last Resort model as is while many of the MBA's now support the introduction of First Resort based on the principles of the Queensland model which is and has been the position of the Builders Collective over the past decade.

There is no doubt more will be exposed in the near future by those agencies charged with the power to investigate wrongdoing as to the roles and conduct of those in the establishment and maintenance of a mandatory policy. Secondly consumers see the Warranty Insurance failure as potential class action to claim for compensation that will see Governments defending what many see as the indefensible.

Governments have a direct responsibility in this arena if industry is prepared to fund the compliance and consumer protection however industry may no longer be prepared to fund the private interests when there is no need for their involvement as a genuine First Resort product can be delivered seamlessly through a computer program and its cost comfortably met for the same cost of the current Last Resort regime.

This approach is realistic, factual, available, and has been delivered to a much larger building jurisdiction for many decades with out any cost to Government or the taxpayer.

I received a letter from the South Australian Premier The Hon Jay Weatherill on Friday 10<sup>th</sup> May 2013 advising they are undertaking a review and we have been invited to provide a written submission. This will be the 44<sup>th</sup> inquiry into the HIA Last Resort product.

Yours Faithfully

Phil Dwyer  
National President  
13.05.2013

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## ***New Model for Builders' Warranty Insurance in NSW/Victoria***

1. The threshold for compulsory home warranty insurance will be raised to \$12,000.
2. The minimum period of cover for structural defects will be 6 years.
3. The minimum period of cover for non-structural defects will be 2 years
4. The mandatory requirement for builders of high-rise residential buildings is to provide builders warranty insurance will be removed. Owners of high-rise dwellings will have access to a last resort catastrophe fund which is to be funded by builders and insurers.
5. The maximum cover (i.e. excluding legal costs) for non-completion claims will be 20 per cent of the original building contract amount.
6.
  - A. A homeowner will be able to claim under a home warranty insurance policy when their builder:
    - Is dead
    - Has disappeared; or
    - Is insolvent.
  - B. Insurers and NSW and Victorian agencies will agree procedures which will provide insurers with an opportunity to meet consumer needs for settlement of a claim prior to the 6A trigger points being reached
7. The minimum amount of cover will be \$200,000 (inclusive of legal and other costs).
8. New South Wales and Victoria will use their best endeavours to harmonise their builders' warranty insurance products and the specified processes to be followed by all parties (insurers, builders and homeowners).
9. Insurers' liability in respect of claims above \$10 million arising from the death, disappearance or insolvency of any single builder will be capped. The catastrophe fund referred to at 4 above will also be available to meet claims liabilities in excess of \$10 million.
10. New South Wales and Victoria will use their best endeavours to harmonise the reporting requirements for insurers between the two States.

*(As provided by Mr Jeff Norton Policy Director of the Victorian Building Commission)*



12 January 2005

The Hon J Kobelke MLA  
Minister for Consumer and Employment Protection  
20th Floor, 197 St George's Terrace  
PERTH WA 6000

### Home Indemnity Insurance

Dear Minister

As you are aware the Australian Consumers' Association (ACA) has expressed concern about the operation of the Home Indemnity Insurance (HII) scheme in Western Australia, along with all the similar schemes in other states.

Mr Phil Dwyer of the Builders' Collective has advised ACA that you have stated:

"The statement made in the August edition of Choice Magazine, that the current system of HII makes a mockery of consumer protection, does not appear to be an accurate representation of the situation in Western Australia. From the outset, the HII scheme in WA has been one of 'last resort' and I do not consider it to be the role of insurance companies to become involved in disputes between builders and homeowners. You may not be aware that the Consumers Association of Western Australia has consistently supported the retention of compulsory HII".

ACA would like to clarify its position and certain matters in regard to HII. We would agree with you that insurers are not the most appropriate bodies to become involved with consumer-builder disputes. This type of arrangement commenced in NSW some years ago and led to a lot of uncertainty and duplication of efforts and certainly led to the type of scheme where insurers are in a last resort position everywhere except Queensland.

We are also aware of the operations of the Builders Registration Board (BRB) in Western Australia, and much of its work is similar to that of the Building Services Authority in Queensland (QBSA). The key difference is that the QBSA operates a statutory insurance scheme rather than using private insurers, and is able to access these funds on behalf of consumers at a much earlier stage – that is, not as a last resort.

This is the major change ACA would like to see take place in regard to HII in Western Australia, and based on the Queensland experience this can actually cost consumers and builders less than the current private insurance scheme while delivering better consumer protection. And, importantly, not costing government any extra.

We are aware that the Consumers Association of Western Australia has expressed support for the BRB and the maintenance of mandatory insurance and we have been in contact recently with their officers. That support however doesn't mean that they do not want to see that insurance and consumer protection in Western Australia improved.

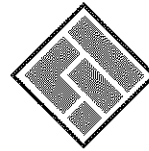
Perhaps your government might like to consider reviewing its BRB/HII scheme with close attention to the QBSA scheme with a view to determining if it might be possible to

improve the support and protection given to Western Australian consumers in this critical area.

We would be happy to meet with you to discuss this matter further prior to the forthcoming election as we intend to be in Perth to be involved in the shopping hours referendum.

Yours sincerely

Norm Crothers  
Deputy Chief Executive Officer  
Australian Consumers' Association.



**ASIC**

Australian Securities & Investments Commission

ANGUS DALE-JONES  
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30 September 2007

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**BY EMAIL TO: [dwyerbld@bigpond.net.au](mailto:dwyerbld@bigpond.net.au)**

Dear Phil

### **BUILDERS WARRANTY INSURANCE**

I refer to your correspondence and discussions with me over recent weeks, in particular your emails of 7, 14 and 20 September and our meeting in Melbourne on 12 September. I also note your various discussions and correspondence with ASIC over the last few years, including over ten complaints about industry practices.

First, my thanks to you for bringing these matters to our attention, and for the helpful detail you have provided. I appreciate that this will have consumed a not inconsiderable amount of time, and your efforts have provided us with a clearer understanding of the issues.

We have now concluded a thorough re-review of all the matters you have brought to ASIC's attention. As foreshadowed in my telephone conversation with you on 19 September, I can now confirm that based on the information you have provided to us and extensive information from other sources, we have identified no breaches of the companies and financial services provisions in the Corporations Act that warrant regulatory intervention.

As discussed, *Corporations Regulation 7.1.12(2)* specifically provides that a home building insurance product, as regulated in the financial services provisions of the

Corporations Act, "*does not include insurance ... that relates to building or construction work in relation to a home building*". This is a specific decision of Parliament and ASIC must act within its mandate under the law.

Although my internal ASIC discussions about the possible use of our consumer protection powers are not yet finalised, it is unlikely that we will have jurisdiction to take much, if any, action in regard to the issues you raise. Generally ASIC does not enter into correspondence with complainants about the further action it may take on a matter. If we require more information we will contact you.

It is a matter for you as to whether you obtain legal advice in relation to any of the issues you raise. Although ASIC may not be able to assist in taking action on the points you raise, particularly those in your email of 20 September, independent legal advice may help you ascertain whether there were sufficient grounds to obtain successful legal remedies.

Yours sincerely

**ANGUS DALE-JONES**  
**REGIONAL COMMISSIONER**



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# PERFORMANCE OF VICTORIA'S DOMESTIC BUILDING INSURANCE SCHEME

SEPTEMBER 2009



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## 1.1 The Commission's approach

The Commission was asked by the Minister for Finance to examine and report on the performance of Victoria's Domestic Building Insurance (DBI) scheme. The DBI scheme is Victoria's compulsory home warranty insurance scheme. Home warranty insurance covers the home-owner for non-completion and defects in building work.

DBI is compulsory for all residential building works carried out by a licensed builder in excess of \$12 000 in Victoria. Owner-builders are also required to obtain DBI if the building is sold within six years of completion.

DBI is essentially third party insurance because the policy is taken out by the builder in favour of the home-owner. The policy covers loss of damage resulting from non-completion of the work, loss of deposit or breach of statutory warranty if the home-owner cannot recover compensation from the builder because of death, disappearance or insolvency. These events act as triggers for a claim to be made under the DBI scheme.

The Commission was required to collect data on policies and claims from insurers operating in the DBI market. In developing its approach to collecting and analysing this data the Commission considered the:

- impact on insurers, in terms of whether they would have or be able to access the data in the format required
- time available for developing a set of performance indicators and the associated data requirements
- Government's objective of harmonising reporting requirements between Victoria and NSW.

The OFT (NSW) already collects a range of policy and claims data and has developed a set of templates and a database. Since September 2005, insurers operating in the NSW Home Warranty Insurance scheme have provided data to OFT on a quarterly basis.

The OFT provided the Commission with the templates and database and agreed to them being used as the basis for collecting data for this exercise. There are a number of advantages in using the OFT's templates and database:

- The NSW and Victorian schemes are broadly similar, with the same insurers operating in both markets, such that adopting the NSW templates and database ensures consistency with the Government's objective of harmonising reporting requirements.

- The NSW templates and database have been used for a number of years, with well established data definitions and extensive edit checks in place to ensure minimal data quality issues.
- Insurers are familiar with the specifications and requirements of the NSW system which should assist insurers in supplying better quality data in a shorter timeframe.
- There was insufficient time for insurers to be able to change their systems to supply data in a different format.

The Commission made minor amendments to the OFT templates and database to reflect the Victorian context. In particular, the Commission excluded the complaints and self assessment templates. These templates reflect the requirements of NSW Market Practice Guidelines and Claims Handling Guidelines and are not relevant in the context of the current Victorian scheme.

## 1.2 Overview of the data

The Commission asked the insurers to provide policy and claims data on a quarterly basis from 1 July 2002 to 30 June 2008. In summary, the Commission sought:

Eligibility data — type of cover, turnover, type of security or indemnity, value of security or indemnity, date of application and date of approval.

Policy data — type of cover, number of project certificates issued, value of project certificates and written premium.

Claims data — date of loss, principal cause of loss, date of notification, date claim received, payments to claimant and third parties, third party recoveries, liability status, claim status and net incurred costs.

The Commission formally requested data by issuing Section 37 notices to the following insurers:

- Vero
- Calliden<sup>1</sup>
- CGU
- Lumley
- QBE
- Exporters Insurance.

The Commission also requested data from the Building Commission, the Victorian Managed Insurance Authority, the Victorian Civil and Administrative Tribunal, the Insolvency and Trustee Service Australia, the Australian Bureau of Statistics and

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<sup>1</sup> Calliden also provided data on eligibilities and claims for Australian Unity. Australian Unity's general insurance business was acquired by Calliden in August 2007.

Consumer Affairs Victoria to assist it in its analysis of the data provided by insurers.

### 1.2.1 Cautions in interpreting the data

In considering the information provided in this Report it is important to note that:

- This was the first time that insurers operating in the Victorian market have been asked to provide data on the DBI scheme and that the Commission has been required to analyse such data. The data collection process was undertaken under relatively tight timeframes and insurers were asked to provide significant amounts of historical data.
- Although a number of validation checks have been conducted to ensure internal consistency of the data there has been no independent auditing of the data provided by insurers. Where possible, the Commission has attempted to verify the data provided by the insurers by comparing it to publicly available information (collected by agencies such as the Building Commission, Australian Bureau of Statistics and the Insolvency and Trustee Service Australia), however this verification has been limited.
- The Commission has attempted to provide some comparisons with other jurisdictions and relevant industry benchmarks. This exercise was limited by data constraints.

Caution needs to be taken in interpreting and drawing conclusions from the data collected. The last resort DBI scheme has only been in place since 2002 and given the 'long-tail' nature of home warranty insurance it is difficult to draw robust conclusions about the performance of the scheme based on the data that is currently available. The long-tail nature of DBI creates uncertainty because:

- there may be a significant delay between the date a project certificate is issued and the commencement of the project
- the duration of building projects will vary
- coverage remains in place for six years after completion of the project
- it may take time for owners to identify a loss, lodge a claim with an insurer and for the insurer to assess and otherwise accept or reject the claim.

It is also important to note that the information provided relates only to claims that have been notified to insurers. It does not include claims that have yet to be reported to insurers or reflect any provisions that individual insurers might have in their financial accounts.

The financial performance of the DBI scheme can only be assessed by comparing the premiums collected by insurers with all the relevant costs incurred over the life of DBI cover. The ultimate liability associated with any claim is subject to the outcomes of events that could occur at any time over the period of coverage, for example the likelihood of an insured loss occurring, the propensity of a claimant to make a claim and the size of the claim.

However, the data collected as part of this exercise should form the basis for an effective ongoing performance monitoring framework which will allow more robust conclusions to be made as the scheme matures. It should also assist the

Department of Treasury and Finance in developing its policy responses for the DBI scheme.

## 2 | BUILDER ELIGIBILITY

The ability of builders to access domestic building insurance (DBI) is an issue that has been raised in a number of reviews. Accessibility of DBI was a significant issue following the collapse of HIH. Without DBI, builders are unable to obtain registration and so it has been argued that there may be implications for the supply of builders. The Commission asked insurers to provide a range of eligibility information including information on turnover bands and financial securities. Insurers were asked to provide eligibility information on a quarterly basis.

Most were unable to do so and provided eligibility data for the June 2008 quarter only. Consequently, the Commission is unable to undertake any analysis of the eligibility data over time.

### 2.1 Number of builder eligibilities

Under the DBI scheme builders can apply to an insurer for eligibility. Eligibility is a form of pre-approval for the issue of a project certificate (policy). In theory, builders can hold eligibility with more than one insurer.

Table 2.1 Number of builder eligibilities by turnover cover band  
June 2008 quarter (\$ of the day)

<i>Turnover (\$)</i>	<i>Total</i>
0-0.5m	668
0.5-1.0m	1316
1.0-2m	3595
2.0-3.0m	3063
3.0-5.0m	1999
5.0-20m	623
20m+	106
Unlimited	2
Change requested	0
Total	11 372

**Note** The total turnover for which the builder has eligibility from the insurer at the end of the quarter. Excludes builders with eligibility pending. Includes builders who may have eligibility with more than one insurer at the time of reporting. Excludes owner-builders. **np** Not provided.

As at 30 June 2008, the total number of builder eligibilities was 11 372. 12 per cent of builders held multiple eligibilities (see table 2.1).<sup>2</sup> This compares with 14 per cent in NSW. 74 per cent of builder eligibilities fall within the \$1 million to \$5 million turnover cover band.

## 2.2 Securities and indemnities

In some circumstances insurers may require a security or indemnity of some form before granting eligibility to a builder. Insurers were asked to provide information on their use of bank guarantees, indemnities, other securities and multiple securities. The Commission did not collect any information on how long securities are held by insurers.

For the June 2008 quarter, insurers reported holding 5 211 forms of security or indemnity. This represents 44.5 per cent of builder eligibilities for the quarter. Indemnities are the most common form of security required by insurers, followed by bank guarantees (see table 2.2). One insurer has since indicated that there may be an issue with the data they submitted. However, even if this insurer is excluded the requirement for builders to provide securities is still relatively high in Victoria (23 per cent).

By comparison the insurers operating in the NSW home warranty insurance scheme required some form of security from 11 per cent of builder eligibilities for the June 2008 quarter.

Insurers held a total value of \$64.5 million in securities and indemnities for the June 2008 quarter (see table 2.3). The average value of securities held by insurers is set out in table 2.4.

Table 2.2 Number of securities and indemnities by insurer  
June 2008 quarter

	<i>Bank guarantee</i>	<i>Indemnity</i>	<i>Other security</i>	<i>Multiple securities</i>	<i>Total securities</i>	<i>Total eligibilities</i>	<i>Per cent of builder eligibilities</i>
Total	747	4 239	96	129	5 211	11 703	44 <sup>a</sup>

<sup>a</sup> One insurer has indicated that there may be an issue with the data they submitted. If this insurer is excluded 24 per cent of eligibilities require some form of security or indemnity.  
**np** Not provided.

<sup>2</sup> That is the builder had eligibility with more than one insurer.

Table 2.3 Dollar value of securities and indemnities held by insurers  
June 2008 quarter (\$ of the day)

	<i>Bank guarantee</i>	<i>Indemnity</i>	<i>Other security</i>	<i>Multiple securities</i>	<i>Total securities</i>
	\$'000	\$'000	\$'000	\$'000	\$'000
Total	60 577	0	3481	401	64 459

**Note** Insurers are not required to report a value for indemnities.

Table 2.4 Average value of securities and indemnities held by insurers  
June 2008 quarter (\$ of the day)

<i>Insurer</i>	<i>Bank guarantee</i>	<i>Indemnity</i>	<i>Other security</i>	<i>Multiple securities</i>
	\$'000	\$'000	\$'000	\$'000
Total	81.1	na	4.2	27.0

**Note** Insurers are not required to report a value for indemnities. **na** Not applicable.





## 3 PROJECT CERTIFICATES AND PREMIUMS

The insurer issues a builder a project certificate in respect of a project before building commences. The project certificate is evidence of the DBI contract. The Commission asked insurers to provide information on the number of project certificates issued during each quarter and the number of project certificates for projects still in progress (current) at the end of the quarter. In some cases, insurers will be making assumptions about whether or not a project is still in progress because builders do not always inform them when individual projects are complete.

The Commission also asked insurers to provide information on premiums.

### 3.1 Number and value of project certificates — builder

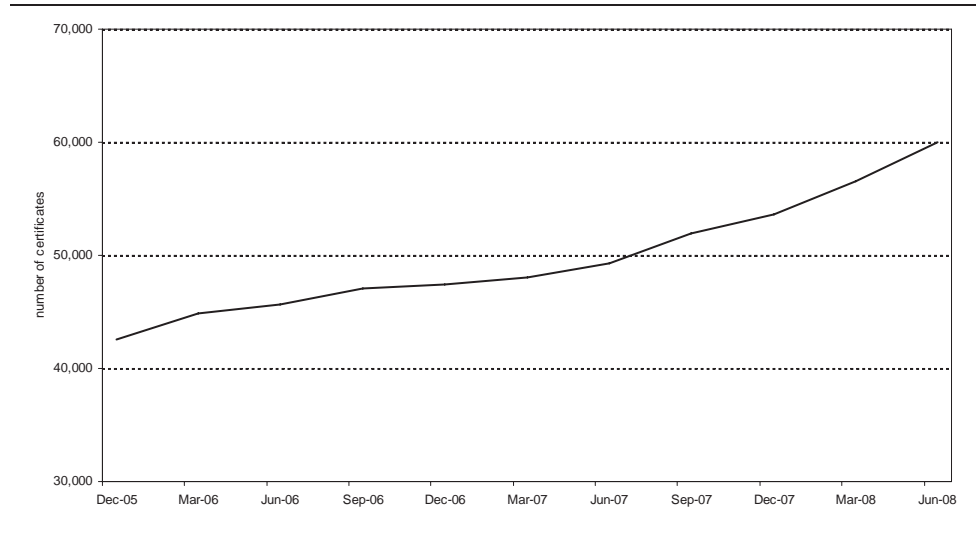
The number of builder project certificates still in progress at the end of each quarter was relatively stable over the quarters for which insurers provided data. The number of current builder projects increased in the March 2008 and June 2008 quarters. As at June 2008 there were 59 966 builder project certificates in force (see table 3.1 and figure 3.1).

Table 3.1 Number of project certificates in force at end of each quarter — builder as at June 2008

	<i>Total</i>
December-2005	42 555
March-2006	44 897
June-2006	45 674
September-2006	47 121
December-2006	47 449
March-2007	48 025
June-2007	49 316
September-2007	51 946
December-2007	53 661
March-2008	56 528
June-2008	59 966

**Note** Number of current project certificates as at the end of each quarter where the insurer knows or assumes that the building work is still in progress. One insurer provided annual data for 2005, 2006 and 2007. An even growth rate has been applied to interpolate the certificates in force between these dates. **na** Not applicable. **np** Not provided.

Figure 3.1 Total number of current project certificates — builder as at June 2008



**Note** Number of current project certificates as at the end of each quarter where insurer knows or assumes that the building work is still in progress. One insurer provided annual data for 2005, 2006 and 2007. An even growth rate has been applied to interpolate the certificates in force between these dates.

Tables 3.2, 3.3 and 3.4 and figures 3.2 and 3.3 set out the number and value of builder project certificates issued during the quarter, reduced by the number (or value) of builder project certificates cancelled during the quarter. A cancellation occurs when a project certificate is terminated because the project did not commence.

Of the different types of cover listed: 'New single dwelling' is for one house; 'new multi-dwelling (less than or equal to three stories)' is for residential buildings and includes units, duplexes and villas; 'alterations/additions' is for a typical major renovation and includes work where the majority of the work is structural; and 'renovations' is for situations where the majority of work is non-structural and includes kitchens and bathrooms. Insurers were also asked to provide data for all cover types, that is where the project certificate covers all types of cover listed. None of the insurers reported that they provide project certificates that cover all types.

For the June 2008 quarter, insurers issued 13 868 builder project certificates. More than half of the builder project certificates issued for the June 2008 quarter were for new single dwellings. 19 per cent of certificates were issued for alterations and additions (where the majority of the work is structural) and 8.5 per cent for renovations (including kitchens and bathrooms and other non-structural work).

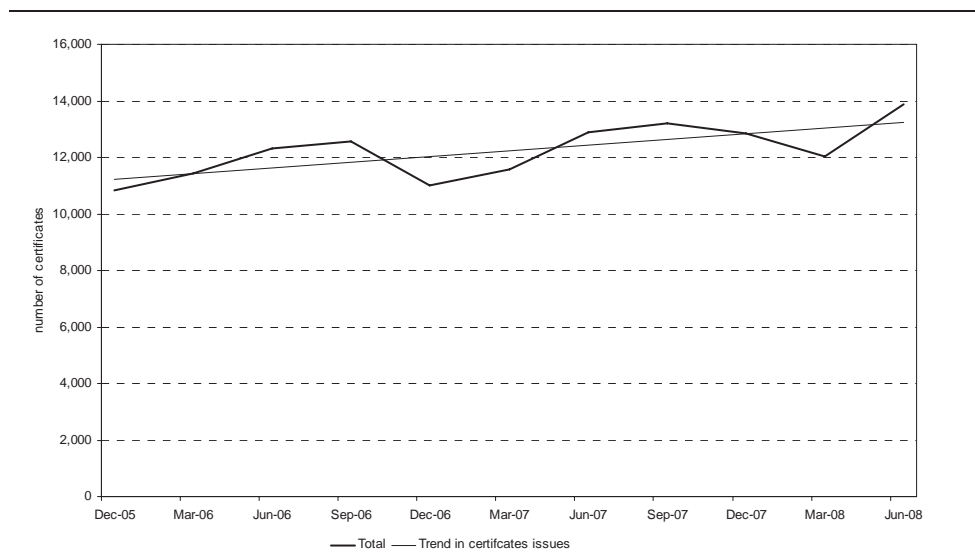
For the June 2008 quarter, the value of builder project certificates totalled \$2.5 billion (see table 3.3).

Table 3.2 Number of project certificates issued by type of cover — builder as at June 2008

	<i>New single dwelling</i>	<i>New multi dwelling ≤3</i>	<i>Alterations/additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
December-2005	5628	1443	2014	756	901	94	10 836
March-2006	5644	1537	2347	875	932	94	11 429
June-2006	6428	1646	2392	824	948	88	12 326
September-2006	6101	1702	2806	888	986	93	12 576
December-2006	5227	1399	2579	686	1021	94	11 006
March-2007	5812	1577	2699	578	837	75	11 578
June-2007	6859	1474	2749	746	978	66	12 872
September-2007	7144	1089	2819	984	1120	64	13 220
December-2007	6901	1271	2567	1019	1016	66	12 840
March-2008	6572	1155	2245	1042	951	76	12 041
June-2008	7754	1149	2636	1073	1173	83	13 868

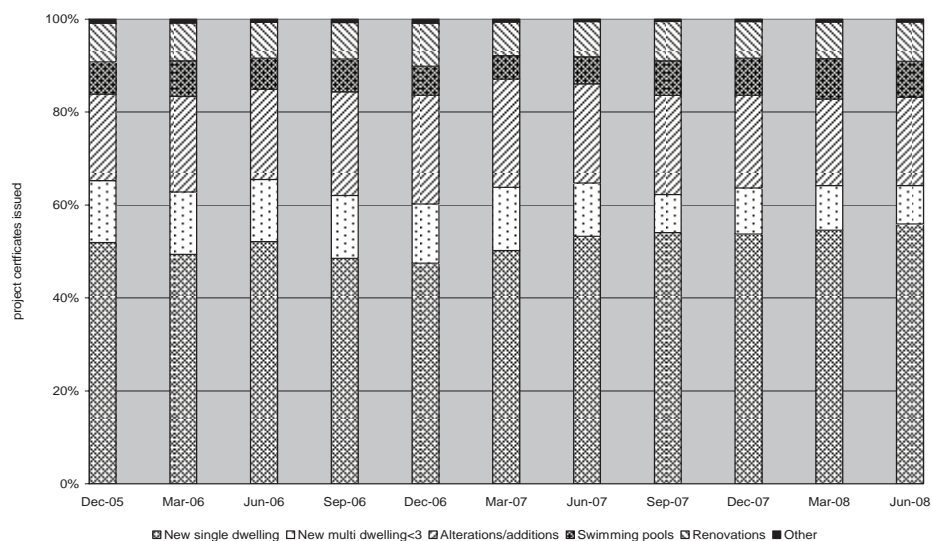
**Note** One insurer provided annual December data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Figure 3.2 Total number of project certificates issued during each quarter — builder as at June 2008



**Note** One insurer provided annual December data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year.

Figure 3.3 Mix of project certificates issued by type of cover builder as at June 2008



**Note** One insurer provided annual December data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year.

Table 3.3 Value of project certificates issued by type of cover — builder  
\$ million (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling ≤ 3</i>	<i>Alterations / additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
December-2005	1313	262	250	28	27	7	1888
March-2006	1331	251	344	34	37	9	2004
June-2006	1417	317	378	35	28	7	2182
September-2006	1343	282	318	37	40	8	2027
December-2006	1224	236	293	29	33	6	1821
March-2007	1312	255	342	24	27	5	1965
June-2007	1551	240	377	33	37	4	2242
September-2007	1605	177	382	44	46	4	2258
December-2007	1613	264	309	41	36	4	2268
March-2008	1534	224	287	44	33	6	2129
June-2008	1847	253	327	51	52	6	2534

**Note** One insurer provided annual December data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.4 Average value of project certificates issued by type of cover — builder  
\$ 000 (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling ≤3</i>	<i>Alterations /additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
December-2005	233	182	124	37	30	79	174
March-2006	236	163	147	39	39	94	175
June-2006	221	193	158	42	29	76	177
September-2006	220	166	113	41	40	83	161
December-2006	234	169	114	42	32	67	165
March-2007	226	162	127	42	32	69	170
June-2007	226	163	137	44	38	62	174
September-2007	225	163	136	45	41	63	171
December-2007	234	208	120	41	35	63	177
March-2008	233	194	128	43	35	81	177
June-2008	238	220	124	47	44	68	183

**Note** One insurer provided annual December data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

### 3.2 Number and value of policies — owner-builder

The Commission also asked insurers to provide information on policies issued to owner-builders. An owner-builder is a person who carries out domestic building work on their own land and who is not in the business of building. From 14 June 2005, amendments to the Building Act 2004 introduced new requirements relating to the activities of owner-builders. The legislation requires an owner-builder who is undertaking domestic building work to obtain a Certificate of Consent from the Building Practitioners' Board prior to obtaining a building permit.

A Certificate of Consent is written approval from the Building Practitioners' Board that enables an owner-builder to obtain a building permit and carry out domestic building work valued at more than \$12 000 on their land. A limit of one certificate in any three year period is imposed. Domestic building insurance is required only when the owner sells the building within six years from the building's completion. The insurance cover becomes effective from the point at which the property is sold and is valid for six years from the date of the building's completion.

Table 3.5 sets out the number of policies issued to owner-builders. Table 3.6 sets out the number issued by type of cover and tables 3.7 and 3.8 set out the value of policies issued by type of project.

For the June 2008 quarter, a total of 756 owner-builder policies were issued. The majority of new owner-builder policies issued were for new single dwellings (56 per cent) and alterations/additions (42 per cent) (see table 3.5). The value of owner-builder policies issued for the June 2008 quarter totalled \$134 million (see table 3.6).

As expected the owner-builder market is much smaller than the builder market (value of \$2.5 billion for the June 2008 quarter).

Table 3.5 Total number of policies issued each quarter — owner-builder as at June 2008

	<i>Total</i>
December-2005	841
March-2006	1052
June-2006	1102
September-2006	1004
December-2006	1029
March-2007	981
June-2007	1045
September-2007	1133
December-2007	972
March-2008	826
June-2008	756

**Note** Two insurers provided annual data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. **np** Not provided.

Table 3.6 Number of new policies issued by type of cover for each quarter — owner-builder as at June 2008

	<i>New multi</i>		<i>Alterations</i>	<i>Swimming</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
	<i>New single dwelling</i>	<i>dwelling ≤3</i>					
December 2005	100	6	714	2	15	4	841
March-2006	339	18	665	2	20	8	1052
June-2006	331	18	719	2	26	6	1102
September-2006	320	18	652	4	8	2	1004
December-2006	322	18	669	6	12	2	1029
March-2007	281	9	680	7	4	0	981
June-2007	309	9	701	6	19	1	1045
September-2007	310	9	780	5	27	2	1133
December-2007	314	9	631	5	13	0	972
March-2008	435	0	360	10	18	3	826
June- 2008	420	0	319	9	8	0	756

**Note** Two insurers provided annual data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural.

<sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.7 Value of new policies issued — owner-builder  
\$ million (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling</i>		<i>Alterations /additions</i>	<i>Swimming pools</i>	<i>Renovations<sup>a</sup></i>	<i>Other</i>	<i>Total</i>
		<i>≤3</i>	<i>≥3</i>					
December 2005	19	1	110	0	1	0	132	
March-2006	67	3	99	0	2	1	172	
June-2006	60	3	112	0	3	1	179	
September-2006	59	3	102	0	1	0	166	
December-2006	60	3	103	1	1	0	168	
March-2007	57	2	103	0	0	0	162	
June-2007	62	2	107	0	2	0	174	
September-2007	62	2	118	0	3	0	185	
December-2007	67	2	92	0	1	0	162	
March-2008	99	0	32	0	2	0	133	
June- 2008	100	0	32	0	1	0	134	

**Note** Two insurers provided annual data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.8 Average value of project certificates issued by type of cover — builder  
\$ 000 (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling</i>		<i>Alterations /additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
		<i>≤3</i>	<i>≥3</i>					
December-2005	193	146	155	25	78	89	157	
March-2006	199	187	148	26	87	72	163	
June-2006	180	187	155	36	125	140	162	
September-2006	184	187	157	25	110	61	165	
December-2006	187	187	153	91	78	61	163	
March-2007	202	194	151	33	84	0	165	
June-2007	202	194	153	33	96	15	166	
September-2007	202	194	151	31	94	83	163	
December-2007	213	194	145	31	94	0	166	
March-2008	227	0	88	28	102	113	161	
June-2008	239	0	100	39	110	0	177	

**Note** Two insurers provided annual data for 2005, 2006 and 2007. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

### 3.3 Comparisons with public data

The Commission did not independently audit the data provided by the insurers. However, it engaged its consultants to verify some of the data provided using

publicly available data to test for reasonableness. Table 3.9 compares the total number of project certificates issued for new dwellings of three storeys or less as reported by insurers with Australian Bureau of Statistics (ABS) data on numbers of new residential approvals in Victoria (excluding flats, units and apartments with four or more storeys). The ABS data is compiled from:

- permits issued by local government authorities and other principal certifying authorities
- contracts let or day labour work authorised by commonwealth, state, semi-government and local government authorities and
- major building approvals in areas not subject to normal administrative approval (such as building on remote mine sites).<sup>3</sup>

Table 3.9 Number of project certificates issued for new dwellings  
Registered and owner-builder \$ million

	<i>Project certificates and policies<sup>a</sup></i>			<i>Value of units of dwellings approved in Victoria<sup>b</sup></i>	<i>Insurance coverage(%)</i>
	<i>New single dwelling</i>	<i>New multi dwelling ≤ 3 storeys</i>	<i>Total new dwellings</i>		
December-2005	5,728	1,449	7,177	8,264	87
March-2006	5,984	1,555	7,538	8,305	91
June-2006	6,760	1,664	8,423	8,779	96
September-2006	6,422	1,720	8,141	9,661	84
December-2006	5,550	1,417	6,966	8,158	85
March-2007	6,093	1,586	7,678	7,901	97
June-2007	7,168	1,483	8,650	8,813	98
September-2007	7,454	1,098	8,551	9,902	86
December-2007	7,215	1,280	8,494	9,536	89
March-2008	7,007	1,155	8,162	9,046	90
June-2008	8,174	1,149	9,323	9,950	94

<sup>a</sup> Two insurers provided annual December 2005, 2006 and 2007 data. It is assumed policies were written uniformly throughout each year. <sup>b</sup> Australian Bureau of Statistics Catalogue no 8731.0 Building Approvals, Australia, Table 23. Dwelling Units Approved in New Residential Buildings, Number and Value, Original - Victoria. Includes houses, semi-detached dwellings, and units/apartments ≤ 3 storeys.

Table 3.9 shows that the number of DBI project certificates and policies issued over this period has averaged approximately 90 per cent of the number of all new dwelling approvals in Victoria. It is reasonable for this figure to be less than 100 per cent because the ABS data includes items such as semi-detached dwellings with

<sup>3</sup> Australian Bureau of Statistics September 2008, *8731.0 Building Approvals Australia Explanatory Notes*, <http://abs.gov.au/Ausstats/abs@.nsf/exnote/8731.0> (accessed 18 November 2008)



four or more storeys and building approvals for works under \$12,000 for which DBI cover is not required. Allowing for this, the data suggests a high degree of compliance with the requirement to obtain DBI for new residential building work.

Figure 3.4 shows the total number of project certificates issued for new dwellings of 3 storeys or less as reported by insurers and the total new residential building approvals in Victoria sourced from the ABS. There is a clear indication of seasonality and the overall growth in building activity can be seen consistently in both the insurer data and the ABS data, suggesting that there should be reasonable confidence with the insurer data.

Figure 3.4 New dwelling approvals Victoria

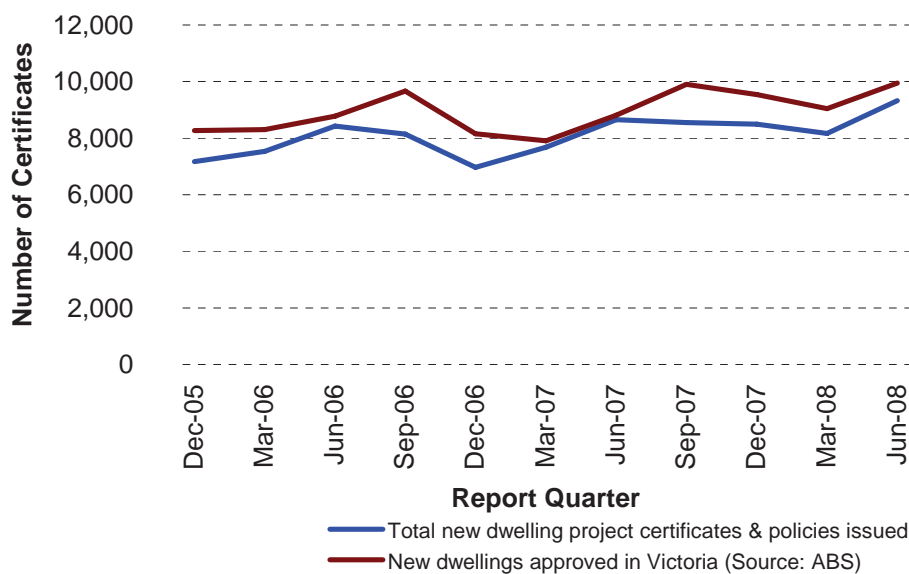


Table 3.10 compares the total value of projects for which certificates were issued for new dwellings of 3 storeys or less as reported by insurers, with ABS data on the value of new residential building approvals in Victoria (excluding flats, units and apartments with 4 or more storeys).

Table 3.10 shows a similar relationship between insurer and ABS data, which is further evidence to suggest a high degree of compliance with DBI requirements.

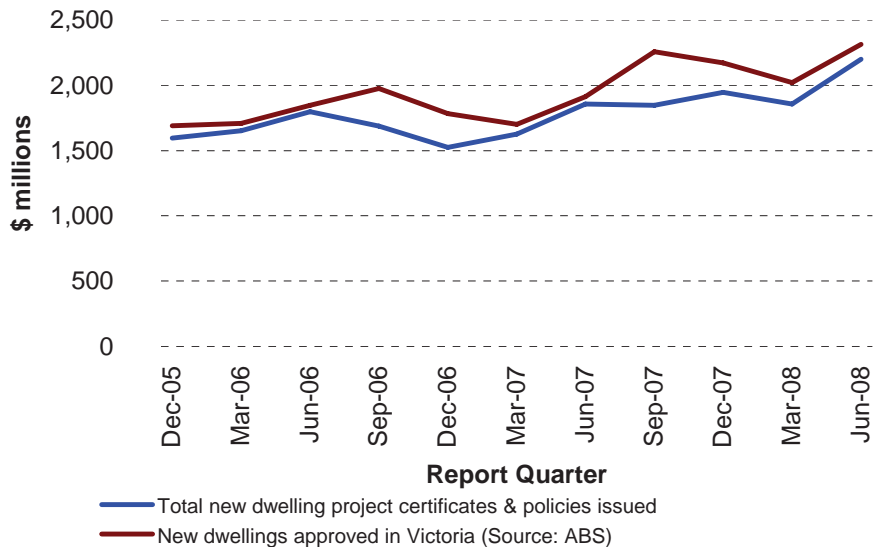
Figure 3.5 shows the total value of project certificates issued for new dwellings of 3 storeys or less as reported by insurers, and the total value of new residential building approvals in Victoria as reported by the ABS. Again, there is a clear indication of seasonality, but the overall growth in building activity can be seen consistently in both the insurer and ABS data.

Table 3.10 Value of project certificates issued for new dwellings registered and owner-builder \$ million

	Project certificates and policies <sup>a</sup>			Value of units of dwellings approved in Victoria <sup>b</sup>	Insurance coverage (%)
	New single dwelling	New multi dwelling ≤ 3 storeys	Total new dwellings		
December-2005	1,332	263	1,596	1,690	94
March-2006	1,398	254	1,652	1,708	97
June-2006	1,477	320	1,798	1,846	97
September-2006	1,402	285	1,687	1,977	85
December-2006	1,284	240	1,524	1,784	85
March-2007	1,369	257	1,626	1,702	96
June-2007	1,613	242	1,855	1,913	97
September-2007	1,667	179	1,846	2,259	82
December-2007	1,680	266	1,946	2,171	90
March-2008	1,633	224	1,857	2,020	92
June-2008	1,947	253	2,200	2,313	95

<sup>a</sup> Two insurers provided annual December 2005, December 2006 and December 2007 data. It is assumed policies were written uniformly throughout each year. <sup>c</sup> Australian Bureau of Statistics Catalogue no 8731.0 Building Approvals, Australia, Table 23. Dwelling Units Approved in New Residential Buildings, Number and Value, Original - Victoria. Includes houses, semi-detached dwellings, and units/apartments ≤ 3 storeys.

Figure 3.5 Value of new dwelling approvals Victoria \$ million



Data source: Australian Bureau of Statistics.

### 3.4 Premiums

Insurers provided information on the premium charged for the project certificates issued to builders and owner-builders. Data on premiums was collected both inclusive and exclusive of charges. 'Charges' refers to all commissions and government and other charges (including GST, stamp duty, government levies and credit card surcharges). Premium including charges represents the amount that is paid by the builder including all statutory charges and excluding any fees charged by brokers or intermediaries in addition to the insurer's premium.<sup>4</sup> Premium excluding charges represents the amount that insurers have available to pay claims and meet other expenses.

#### 3.4.1 Premiums — builder

Tables 3.11, 3.12, and figure 3.6 set out total written premiums for builder project certificates issued for each quarter. It is evident that income from total written premiums has remained relatively stable over the period (despite exhibiting some annual cyclical variation), suggesting that the DBI market may have recovered from the shock caused by the HIH collapse in 2001.

Table 3.11 Total written premium (including charges) for project certificates issued — builder  
\$'000 (\$ of the day)

	<i>Including charges</i>	<i>Excluding charges</i>
December-2005	8 809	6 766
March-2006	9 214	7 096
June-2006	10 424	7 502
September-2006	9 624	7 337
December-2006	8 418	6 380
March-2007	8 617	6 488
June-2007	9 546	7 109
September-2007	9 620	7 088
December-2007	9 017	6 611
March-2008	8 558	6 274
June-2008	9 485	6 952

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges.

For the June 2008 quarter, the total written premium (including charges) for builder project certificates issued was 9.5 million, an increase of 11 per cent on the March 2008 quarter. Total written premium excluding charges for the June quarter 2008

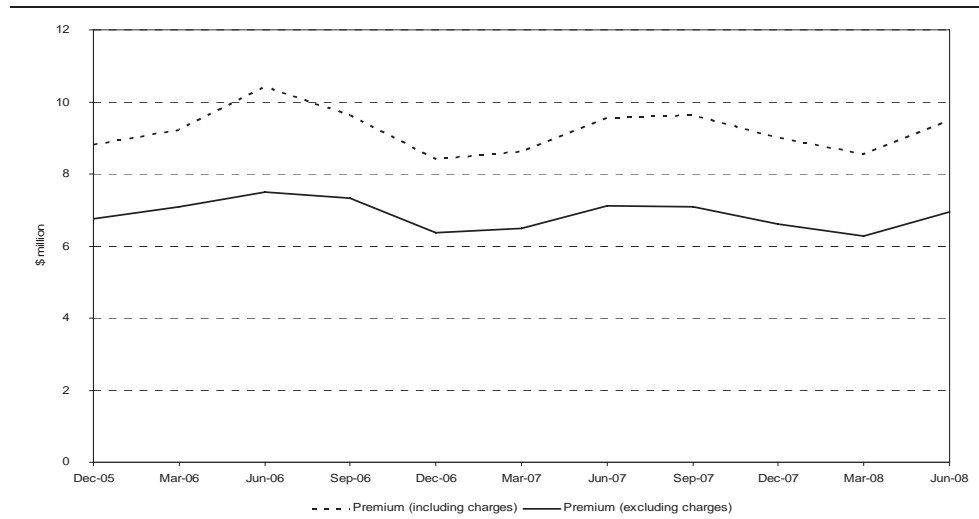
<sup>4</sup> Information provided by NSW insurers to the OFT suggests that brokerage fees are generally a flat dollar amount per certificate ranging from \$50 to \$400 depending on the volume of business between the broker and the builder.

was \$6.9 million. 71 per cent of the total written premium (including charges) was for project certificates for new single dwellings (see table 3.12).

The data provided by insurers would suggest that the value of average premiums has fallen from December 2005 to June 2008, by some 16 per cent (see table 3.14). This fall corresponds to an increase in the number of insurers operating in the Victorian market, suggesting that competition is one factor in causing premiums to fall.

The average premium for the June 2008 quarter was estimated as \$684 per project certificate or \$3.74 per \$1000 of project value. This compares with an average premium for NSW of \$699 or \$4.98 per \$1000 of project value.

Figure 3.6 Trend in total written premium (\$million) — builder as at June 2008



Note Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges.

Table 3.12 Total written premium (including charges) for project certificates issued during quarter by cover type — builder  
\$ of the day

	<i>New single dwelling</i>	<i>New multi dwelling ≤3</i>	<i>Alterations /additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
December-2005	5019	1275	1865	380	206	66	8809
March-2006	4962	1466	2112	395	199	80	9214
June-2006	6079	1507	2167	359	264	48	10 424
September-2006	4899	1652	2335	419	262	59	9624
December-2006	4387	1308	2075	326	265	56	8418
March-2007	4569	1417	2143	251	193	44	8617
June-2007	5356	1302	2278	325	249	37	9546
September-2007	5612	960	2293	422	297	36	9620
December-2007	5321	1087	1907	412	247	42	9017
March-2008	5157	896	1804	406	248	48	8558
June-2008	5764	947	1986	425	315	48	9485

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. One insurer provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.13 Average premium (including charges) for project certificates by cover type — builder (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling ≤3</i>	<i>Alterations /additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Average per certificate\$</i>
December-2005	892	883	926	502	228	698	813
March-2006	879	954	900	452	213	858	806
June-2006	946	916	906	435	279	544	846
September-2006	803	970	832	471	265	631	765
December-2006	839	935	805	475	259	602	765
March-2007	786	899	794	433	231	583	744
June-2007	781	883	829	435	255	557	742
September-2007	786	881	814	428	265	563	728
December-2007	771	855	743	404	243	642	702
March-2008	785	776	803	390	260	631	711
June- 2008	743	824	753	396	269	574	684

**Note** Average premium calculated by dividing total written premium by number of project certificates issued for each quarter. One insurer provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.14 Average premium (including charges) per \$000 of project certificates issued — builder \$ of the day

	<i>New single dwelling</i>	<i>New multi dwelling ≤3</i>	<i>Alterations /additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Average per \$000 project value \$</i>
December-2005	3.82	4.86	7.47	13.55	7.51	8.87	4.67
March-2006	3.73	5.85	6.14	11.69	5.45	9.16	4.60
June-2006	4.29	4.75	5.73	10.32	9.57	7.20	4.78
September-2006	3.65	5.86	7.33	11.39	6.62	7.65	4.75
December-2006	3.58	5.53	7.08	11.40	8.09	8.96	4.62
March-2007	3.48	5.55	6.27	10.33	7.26	8.40	4.38
June-2007	3.45	5.41	6.05	9.90	6.77	8.94	4.26
September-2007	3.50	5.42	6.00	9.59	6.42	8.88	4.26
December-2007	3.30	4.11	6.18	9.98	6.91	10.14	3.98
March-2008	3.36	3.99	6.29	9.13	7.50	7.81	4.02
June- 2008	3.12	3.74	6.08	8.40	6.11	8.45	3.74

**Note** Average premium calculated by dividing total written premium by value of project certificates issued for each quarter. <sup>a</sup> One insurer provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

### 3.4.2 Premiums — owner-builder

Tables 3.15, 3.16, and figure 3.7 set out total written premiums for owner-builder project certificates issued for each quarter. Total written premium for owner-builders was variable over the period.

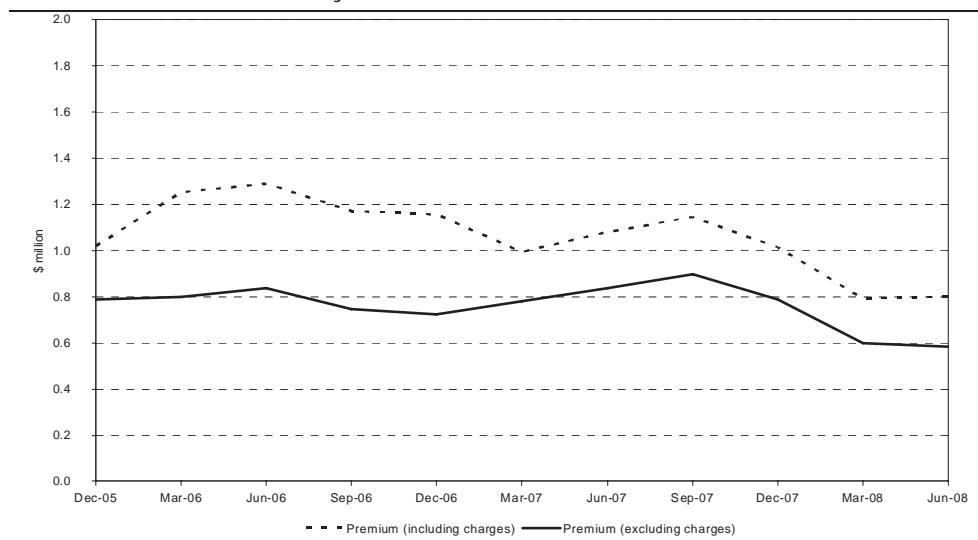
The average premium for the June 2008 quarter was estimated as \$1059 per project certificate or \$6.02 per \$1000 of project value (see tables 3.17 and 3.18). This compares with an average premium for NSW of 1630 or \$6.94 per \$1000 of project value.

Table 3.15 Total written premium (including charges) for policies issued — owner-builder  
\$ of the day

	<i>Including charges</i>	<i>Excluding charges</i>
December-2005	1020	787
March-2006	1253	799
June-2006	1290	836
September-2006	1171	748
December-2006	1156	725
March-2007	994	781
June-2007	1080	838
September-2007	1146	898
December-2007	1015	788
March-2008	793	598
June-2008	801	582

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. Two insurers provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year.

Figure 3.7 Trend in total written premium — owner-builder  
\$ of the day



**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. Two insurers provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year.

Table 3.16 Total written premium (including charges) by cover type — owner-builder ((\$'000 (\$ of the day))

	<i>New single dwelling</i>	<i>New multi dwelling&gt;3</i>	<i>Alterations/additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Total</i>
December-2005	163	7	826	2	17	5	1 020
March-2006	452	22	748	2	21	9	1 253
June-2006	416	22	818	2	27	5	1 290
September-2006	400	22	736	3	9	1	1 171
December-2006	408	22	704	7	14	1	1 156
March-2007	330	10	644	5	5	0	994
June-2007	372	10	677	4	16	1	1 080
September-2007	368	10	740	4	21	2	1 146
December-2007	378	10	613	4	10	0	1 015
March-2008	505	0	262	10	13	3	793
June- 2008	527	0	258	8	6	0	801

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. Two insurers provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.

Table 3.17 Average premium (including charges) per project certificate— owner-builder (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling&gt;3</i>	<i>Alterations/additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Average per certificate \$</i>
December-2005 <sup>c</sup>	1 629	1 125	1 157	909	1 140	1 343	1 213
March-2006	1 333	1 252	1 124	755	1 036	1 137	1 191
June-2006	1 255	1 252	1 137	855	1 036	919	1 171
September-2006	1 250	1 252	1 128	765	1 164	558	1 167
December-2006	1 266	1 252	1 053	1 131	1 180	558	1 124
March-2007	1 173	1 229	947	724	1 153	0	1 014
June-2007	1 204	1 229	965	698	861	776	1 034
September-2007	1 186	1 229	949	670	793	1 169	1 011
December-2007	1 203	1 229	972	670	759	0	1 044
March-2008	1 160	0	729	973	737	1 008	960
June- 2008	1 256	0	810	918	803	0	1 059

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. Two insurers provided December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.



Table 3.18 Average premium (including charges) per '\$000 value of policy — owner-builder (\$ of the day)

	<i>New single dwelling</i>	<i>New multi dwelling &gt;3</i>	<i>Alterations/ additions<sup>a</sup></i>	<i>Swimming pools</i>	<i>Renovations<sup>b</sup></i>	<i>Other</i>	<i>Average per \$000 project value \$</i>
December-2005	8.46	7.71	7.48	35.79	14.69	15.04	7.72
March-2006	6.71	6.70	7.57	28.76	11.92	15.71	7.29
June-2006	6.96	6.70	7.32	23.59	8.28	6.56	7.21
September-2006	6.77	6.70	7.19	30.50	10.60	9.18	7.06
December-2006	6.76	6.70	6.87	12.46	15.07	9.18	6.89
March-2007	5.79	6.35	6.28	21.90	13.69	0.00	6.15
June-2007	5.96	6.35	6.30	21.32	8.98	51.73	6.23
September-2007	5.88	6.35	6.29	21.36	8.39	14.05	6.20
December-2007	5.64	6.35	6.69	21.36	8.07	0.00	6.28
March-2008	5.11	0.00	8.29	34.37	7.24	8.90	5.97
June- 2008	5.25	0.00	8.11	23.55	7.27	0.00	5.99

**Note** Charges includes all commissions as well as government and other charges, such as GST, stamp duty, government levies and credit card surcharges. Two insurers provided annual December 2005, 2006 and 2007 data. It has been assumed that policies were written uniformly throughout the year. Vero has not issued any owner-builder policies since the September 2005 quarter. <sup>a</sup> Majority of the work is structural. <sup>b</sup> Majority of the work is non-structural, for example, kitchens and bathrooms.



In Victoria, a claim can be made for DBI once a trigger is activated. That is, a home-owner with a home which is not completed or has structural or non-structural defects can, subject to certain time limits being met, make a claim for monetary compensation from their insurer where their builder is found to be either disappeared, dead or insolvent.

Insurers were asked to submit quarterly data relating to claims for the period 2002-2008.

#### 4.1 Claim numbers and value of claims

Figure 4.1 and table 4.1 set out the number and value of claims paid by insurers since 2002. Since the scheme commenced, 1 363 claims have been reported and the average claims size is about \$27 400 (excluding claims with liability denied, notification only claims and claims finalised at no cost).

Figure 4.1 Number of claims by certificate quarter as at June 2008

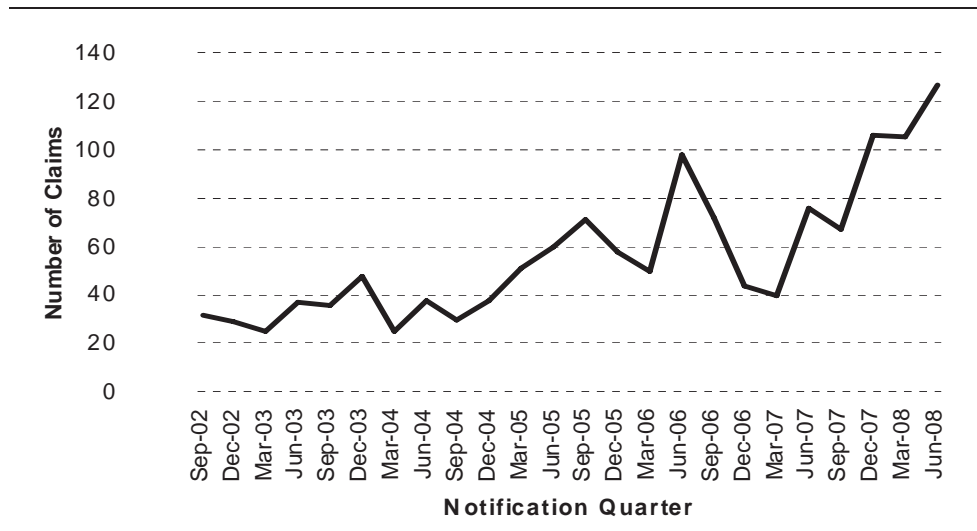


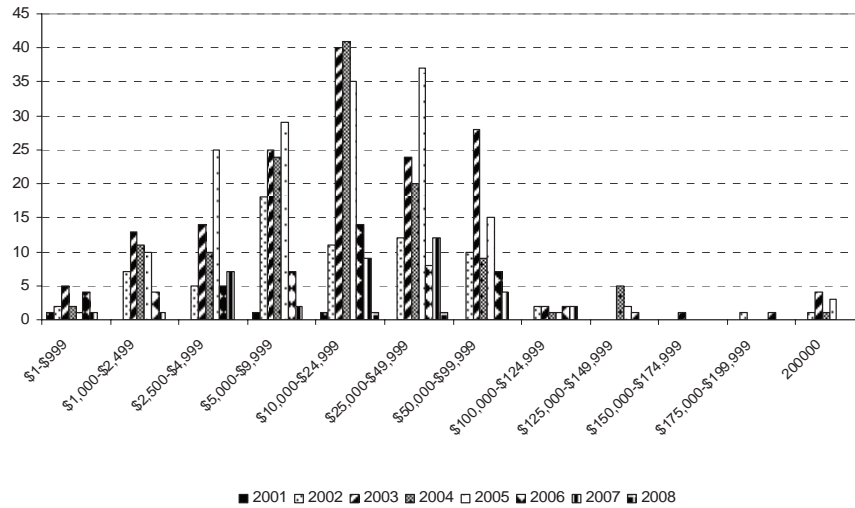
Table 4.1 Number of claims by notification quarter  
as at June 2008 (\$ of the day)

<i>Notification quarter</i>	<i>Number of claims</i>	<i>Net incurred costs<sup>ab</sup></i> <i>(\$)</i>	<i>Average claim size<sup>abc</sup></i> <i>(\$)</i>
September-2002	32	435 646	15 022
December-2002	29	244 669	11 121
March-2003	25	324 203	16 210
June-2003	37	580 872	20 030
September-2003	36	718 510	27 635
December-2003	48	1 360 352	34 009
March-2004	25	280 900	16 524
June-2004	38	376 129	17 911
September-2004	30	146 774	11 290
December-2004	38	958 439	33 050
March-2005	51	1 131 692	35 365
June-2005	60	862 360	30 799
September-2005	71	1 360 634	31 643
December-2005	58	646 628	20 859
March-2006	50	407 483	17 717
June-2006	98	2 061 999	31 242
September-2006	72	1 303 644	28 970
December-2006	44	1 427 938	47 598
March-2007	40	713 413	32 428
June-2007	76	1 552 268	29 288
September-2007	67	2 404 761	46 245
December-2007	106	2 801 855	37 358
March-2008	105	1 917 006	23 378
June-2008	127	1 445 475	15 712
Total	1 363	25 463 651	27 380

<sup>a</sup> Net incurred costs includes third party costs on claims with liability denied. <sup>b</sup> Includes adjustment for GST on case estimates. <sup>c</sup> Average claim size calculated as net incurred costs, divided by claim numbers (excluding claims with liability denied, notification only claims and claims finalised for no cost).

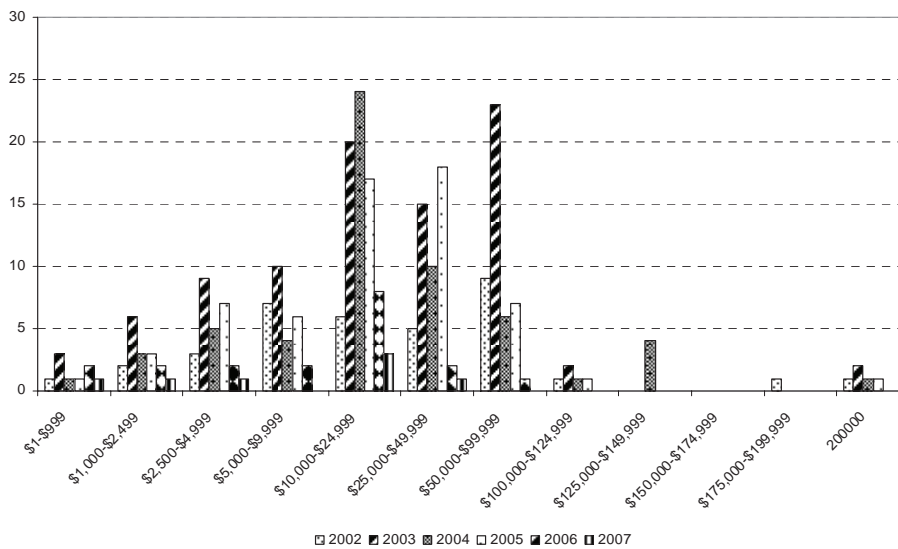
Figure 4.2 classifies all claims made to insurers (including notifications and claims being assessed) into a relevant 'claim band', to demonstrate the distribution of claims being made in Victoria. The data shows that, throughout the period 2002 to 2008, there were less than 5 per cent of claims with incurred costs greater than \$100 000.

Figure 4.2 All claims size distribution as at June 2008 (\$ of the day)



**Note** Year refers to the year in which the project certificate was issued.

Figure 4.3 Finalised claim size distribution as at June 2008 (\$ of the day)



**Note** Year refers to the year in which the project certificate was issued.

Figure 4.3 shows the distribution of all finalised claims (i.e. claims where liability has been accepted and an amount has been paid to claimants) for the period 2002-2008. 'All claims size distribution' shows the consumer's perspective on possible claims because it includes claims notified by claimants and those still being assessed by insurers which may not result in acceptance. 'Finalised claim

size distribution' relates to the insurer's view of known claims because it excludes those not eligible for a DBI claim (claims classified as 'notified' or 'assessment pending' are excluded).

## 4.2 Claims Experience

Table 4.2 and figure 4.4 provide a summary of the reasons for a claim being denied by the insurer.

Table 4.2 Reasons claims declined — builder as at each report quarter

	<i>Incorrect insurer</i>	<i>Out of time</i>	<i>Builder found</i>	<i>Builder not dead</i>	<i>Builder not insolvent</i>	<i>Not deemed a defect</i>	<i>Total</i>
December-2005				1	30		31
March-2006			3	1	43		47
June-2006	2		3	1	59		65
September-2006	2		3	2	81		88
December-2006	2		3	2	84	1	92
March-2007			3	2	88	5	98
June-2007			5	2	89	7	103
September-2007			5	2	90	14	111
December-2007	1		5	2	93	24	125
March-2008	1		5	3	100	30	139
June-2008	2	22	16	3	159	76	278

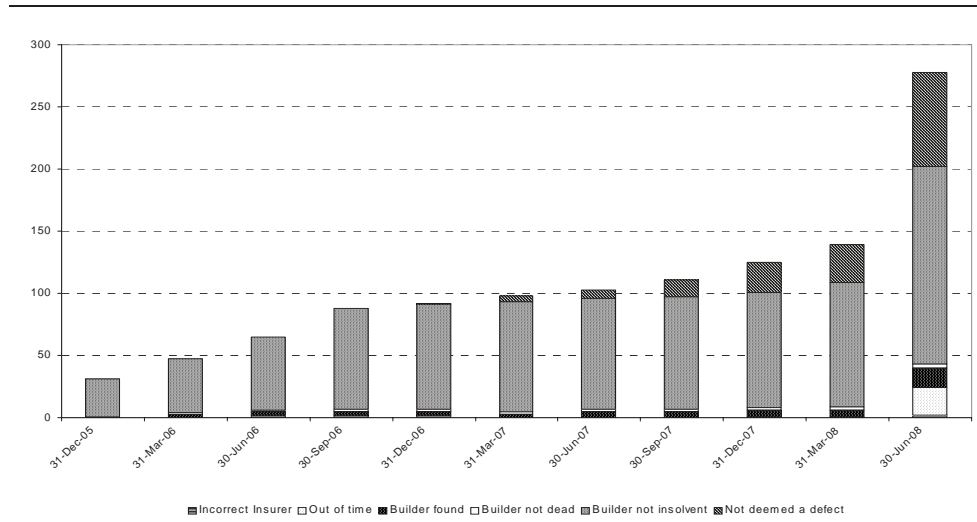
'Incorrect insurer' means the claimant has lodged their claim with the wrong insurance company. 'Builder found' means the builder has been located and has therefore not disappeared. 'Builder not insolvent' means the builder does not meet the insolvency definition. 'Builder not dead' means the builder has been located and therefore does not meet the criteria of being dead. 'Not deemed a defect' means the claim does not meet the definition of a defect and therefore is not liable for compensation.

The data suggests that the majority of claims are rejected by insurers due to the builder being found to not be insolvent.

Table 4.3 sets out a summary of claims experience by principal cause for the 2002 to 2008 period. Claims are classified by the relevant DBI trigger (i.e. dead, disappeared or insolvent).

The data shows that insolvency was the principal cause for a DBI claim in Victoria during the period 2002-2008. With the economy slowing down, it is expected that insolvencies will increase, such that claims related to insolvencies will continue to dominate all claims made.

Figure 4.4 Reasons claims declined — builder as at each report quarter



The data shows that the numbers of claims made due to the ‘disappearance’ trigger are quite low. This could be due to a combination of factors:

- During the period between 2002-2008 Victoria has experienced an economic boom, such that the likelihood of a builder choosing to ‘disappear’ rather than finish their work is reduced;
- Insurers are better equipped than consumers to locate ‘disappeared’ builders such that those formerly classified as ‘disappeared’ could now fall into the ‘insolvent’ category (or are not eligible for a DBI claim by virtue of being found).

The data relating to ‘cause not yet determined’ relates to those claims where insurers are yet to assess which trigger is appropriate for the claim to be classified.

Of the different types of cover listed: ‘New single dwelling construction’ is for one house; new multi-dwelling (greater than three stories) is for high rise residential buildings (and includes units, duplexes and villas);<sup>5</sup> ‘new multi-dwelling (less than or equal to three stories)’ is for residential buildings and includes units, duplexes and villas; ‘alterations/additions’ is for a typical major renovation and includes work where the majority of the work is structural; and ‘renovations (including kitchens and bathrooms)’ is for situations where the majority of work is non-structural. Insurers were also asked to provide data for all cover types, that is where the

<sup>5</sup> The removal of mandatory DBI on multi-storey residential buildings came about from 1 July 2003. Expectation of data relating to the quarters March 2002 – June 2003 inclusive led to the inclusion of this data item in the templates sent to insurers. There is a possibility that claims relative to these policies will still be made up to and beyond 2009 given the long-tail nature of the scheme.

project certificate covers all types of cover listed. None of the insurers reported that they provide project certificates that cover all cover types.

Table 4.3 Claims experience by principal cause – builder as at June 2008 (\$ of the day)

	<i>No. of claims</i>	<i>Sum of paid to claimant<sup>a</sup></i>	<i>Sum of paid to third parties<sup>b</sup></i>	<i>Total gross paid</i>
		\$	\$	\$
Insolvency	262	8 982 078	1 100 261	10 082 339
Death	7	96 592	28 176	124 768
Disappearance	3	19 235	2 589	21 824
Cause not yet determined	1	1 150	858	2 008
Total	273	9 099 055	1 131 884	10 230 939

**Note** Claims experience for finalised accepted claims. Includes GST. <sup>a</sup> Includes all payments to the claimant or to suppliers involved in the rectification of the works. <sup>b</sup> Includes payments to investigators, loss adjusters, legal expenses, etc but not insurer's claims handling expenses (overheads).

Table 4.4 details the type of claim being made for project certificates issued during the period 2002-2008. In Victoria, 'failure to commence' and 'failure to complete' claims are capped at twenty per cent of the original contract amount. Non-completion claims generally arise within the first year or two of the issue of the project certificate. For structural defects, the minimum amount of cover is \$200 000 in Victoria, inclusive of legal and other costs. 'Other loss' refers to non-structural defects which are covered for two years, whereas 'structural defects' are covered for six years and arise after completion of a home.

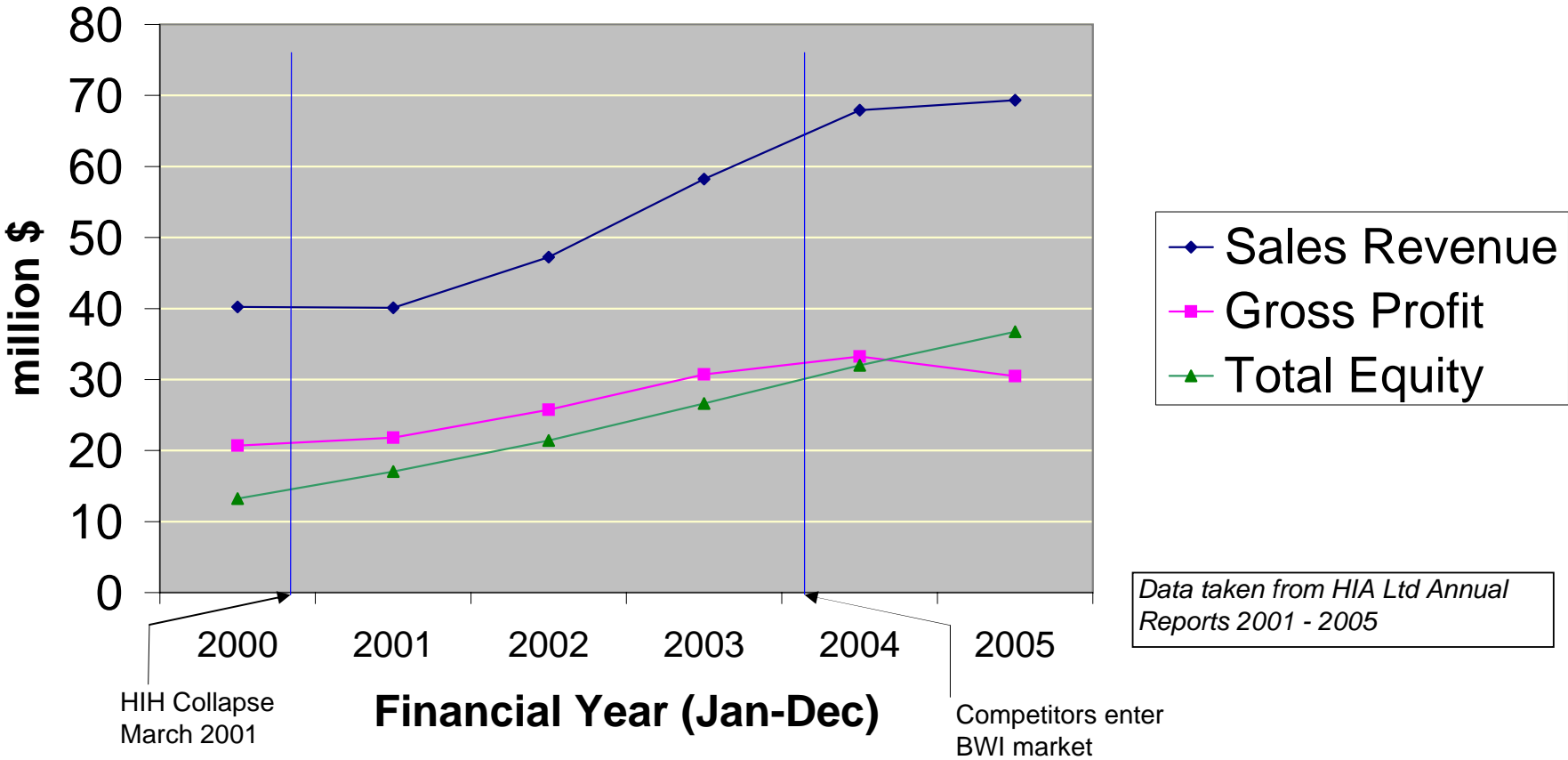
Table 4.4 Claims experience by claim code – builder as at June 2008 (\$ of the day)

	<i>No. of claims</i>	<i>Sum of paid to claimant<sup>a</sup></i>	<i>Sum of paid to third parties<sup>b</sup></i>	<i>Total gross paid</i>
		\$	\$	\$
Failure to commence	11	284 275	16 375	300 650
Failure to complete	109	4 765 334	601 353	5 366 686
Structural defect	15	235 196	15 816	251 012
Other loss	138	3 814 250	498 341	4 312 591
Total	273	9 099 055	1 131 884	10 230 939

**Note** Claims experience for finalised accepted claims. Includes GST. <sup>a</sup> Includes all payments to the claimant or to suppliers involved in the rectification of the works. <sup>b</sup> Includes payments to investigators, loss adjusters, legal expenses, etc but not insurer's claims handling expenses (overheads).



# HIA Financial History





## General Insurance Code of Practice

### OVERVIEW OF THE 2007-2008 FINANCIAL YEAR

#### Executive Summary:

The Code requires IOS to monitor participating companies' compliance with the Code's service standards and it does this by:

- Conducting on-site reviews of each participating company's compliance; and
- Investigating reports of alleged non-compliance with the Code.

By the end of the reporting period, the Code was adopted by 138 participating companies. A current list of participating companies is attached at Appendix A.

Other key outcomes for the period include:

- The general insurance industry faced an extremely challenging year due to the impact of a number of severe weather events.
- Consumers lodged 3,675,105 claims and companies accepted liability for 3,596,799 claims. As a result, the insurance industry paid 98% of claims received.
- Consumers raised 18,978 internal disputes with participating companies, across commercial and personal lines of insurance business.
- Participating companies resolved 19,044 internal disputes, with 7,115 internal disputes, or 37%, resolved in favour of consumers.

## Introduction:

The Code requires IOS to “prepare annual public reports containing aggregate industry data and consolidated analysis on Code compliance”. As a consequence, the observations contained in the following report are based on the:

- Statistical data provided by participating companies attached at Appendix B; and
- Outcomes of IOS reviews of participating companies’ compliance with the Code and investigations of reports of alleged non-compliance attached at Appendix C.

## Monitoring Code Compliance:

### NON-COMPLIANCE OUTCOMES

IOS conducted compliance reviews of 88 participating companies which revealed that 66 companies had not complied with all requirements of the Code. These results were not unexpected given that half of the companies reviewed were participating in this Code for the first time. IOS also conducted a further 93 investigations in response to reports received of alleged non-compliance with the Code, of which 58 were in response to reports received from IOS staff members or Decision Makers, with the balance from sources external to IOS. It was concluded that in 54 matters, participating companies had not complied with aspects of the Code’s service standards.

The majority of these matters involved multiple instances of non-compliance with the Code, and the reasons were varied and included:

- Misunderstanding how a service standard applied to general insurance operations;
- Underestimating the time required to implement the service standards;
- Applying the service standards in practice but failing to document the underlying compliance requirements appropriately or at all; and
- Failing to adhere to established systems and processes.

In total, there were 372 instances of non-compliance with the Code during the reporting period, and following bedding down of Code-compliant processes and systems by new entrants to the Code, a significant improvement in the level of compliance during the 2008-2009 reporting period is expected.

Some of the types of non-compliance found are discussed in further detail below and the specific results are recorded in Appendix C of this report.

### OUR RESPONSE TO NON-COMPLIANCE

Once satisfied that a participating company had failed to comply with the Code’s service standards, steps were taken to:

- Identify the cause of each failure.
- Determine the duration of each failure.
- Determine whether similar failures had occurred previously.
- Assess the adequacy of existing compliance arrangements.
- Determine whether there were any consumers disadvantaged as a result of the failure.
- Liaise with the participating company to determine the nature of the action required to address the non-compliance.
- Monitor the participating company’s progress to ensure that corrective measures are implemented within agreed timeframes.

In order to determine whether corrective action implemented by a participating company is adequate, it was asked to:

- Describe what action was taken.
  - Provide appropriate documentary material relating to the action implemented.
  - For example by providing extracts from its claims handling manual, its Internal Dispute Resolution register or its training records.
  - Consider and comment on whether non-compliance is isolated or occurring more widely within its business.
- This is an important step because of:
- » Issues relating to whether the matter may amount to a significant breach of the Code (as defined).
  - » Whether there are other consumers that may have been disadvantaged by the non-compliance and the need to address this disadvantage.

- » Whether non-compliance discloses an issue concerning the adequacy of training provided to staff and/or Authorised Representatives, or the procedures employed by Service Providers.

If a company concludes that the matter is isolated, then it is expected to explain how it reached that conclusion.

Similarly, when a participating company asserts that it has complied with the Code's requirements in response to our enquiries, it is asked to:

- Explain the basis of its conclusion that it has complied with the Code's requirements.
- Provide appropriate evidence in support of its conclusions.
- For example, if a company advises that it has met the claims handling standards, it should provide copies of its file notes and/or telephone logs, together with a chronology of its dealings with the consumer, in support of its conclusion.

## SOME EXAMPLES OF NON-COMPLIANCE

While the types of non-compliance covered all areas of the Code, some were prominent:

- **Section 7.2:** 33 instances of non-compliance.  
This requires a participating company to have appropriate systems and processes in place to enable it to monitor its compliance with the Code, and have a governance process in place to report on its Code compliance to its Board of Directors or Executive Management.
- **Section 7.3:** 24 instances of non-compliance.  
This requires a participating company to have a process in place which will enable it to report an identified significant breach of the Code to IOS within 10 business days.
- **Section 6.1.1:** 24 instances of non-compliance.  
This requires a participating company to provide timely complaints handling.

- **Section 5.2:** 22 instances of non-compliance.  
This requires a participating company to either directly or indirectly make readily available to consumers information about general insurance, the required level of home/motor insurance cover, insurance premiums and/or the Code and its operations.
- **Section 6.9:** 17 instances of non-compliance.  
This requires a participating company to respond to a dispute in writing, giving reasons for its decision, and information about how to access external dispute resolution and the timeframe within which this must be done.
- **Section 3.12:** 16 instances of non-compliance.  
This requires a participating company to provide information to a third party about its complaints handling procedures, and the existence of the Australian Financial Counsellors and Credit Reform Association (AFCCRA), in the event a dispute about the repayment of a debt arises.

As noted above, there were various reasons for non-compliance such as:

Participating companies commonly had not documented established practices underlying compliance with a particular Code standard. For example:

- A participating company failed to comply with the Code because while it was aware of, and applied in practice, the claims handling timeframes described in sections 3.1 and 3.2 of the Code, it had not amended its existing claims procedures manual to include these.  
It addressed this issue by amending its claims procedures manual to include the Code's claims handling timeframes and distributing it to claims staff. It also modified its monitoring systems to measure claims handling timeframes against the Code's benchmarks.

- A participating company had failed to document its procedure for reporting on its compliance with the Code to its Managing Director. It explained that as the operation was small, there was direct and regular reporting to the Managing Director who was kept apprised of all developments. It addressed this issue by establishing a documented process for reporting on Code compliance, consisting of quarterly internal audits with results reported formally to the Managing Director.

While the application of the Code's service standards in practice is central to the successful operation of the Code, it is equally important that each participating company has documented its compliance systems and processes. This will enable the participating company to:

- » Monitor its own compliance with the Code's service standards;
- » Identify deficiencies and take appropriate measures to address these; and
- » Ensure that its employees, Authorised Representatives and Service Providers are aware of the Code's service standards, how and when to apply them, and to do so consistently, notwithstanding changes in management and staff within the participating company's insurance and/or compliance operations.

Participating companies either misunderstood how a particular Code standard applied or failed to adhere to documented compliance procedures. For example:

- **Section 6.1.1:** In some instances the participating company was aware of the 15 business day timeframe applicable to an internal review of a complaint or a dispute. However it extended the timeframe, as it needed more time to finalise its review, but it did so without the consumer's consent.

- **Section 3.12:** In a number of instances although a dispute about the repayment of a debt had arisen, the participating company failed to recognise this and did not provide information about its complaints handling procedures to the third party. As a result, the third party was unable to gain access (at that time) to its internal dispute resolution process.

### FINANCIAL HARDSHIP – THIRD PARTIES RECOVERIES

This year IOS investigated multiple instances of non-compliance with the financial hardship third parties recoveries provisions of the Code, involving one participating company.

Our investigations found that the company's recoveries employees and service providers did not adequately understand the operation of the third party recovery financial hardship provisions of the Code. This was particularly evident in relation to the circumstances in which section 3.12(a) of the Code applied, which requires a company to provide a third party with information about its complaints handling procedures when it is unable to reach an agreement with them about the repayment of a debt. In each of these instances, the company failed to apply section 3.12(a) of the Code when a disagreement about the repayment of a debt had arisen. As a result the affected third parties were unable to access its Internal Dispute Resolution (IDR) process at that time.

To address the non-compliance, the company implemented a number of corrective measures to ensure that its recoveries staff and service providers comply with the third party financial hardship provisions of the Code at all times, including:

- A review and update of internal debt recovery training guidelines.
- A review and update of standard recovery letters including those used by service providers.
- Specific training for recoveries staff.
- A review of collection agents' compliance with the Code.

In addition, it was required to conduct an audit of its recoveries files (both internally and externally handled matters) to satisfy that these had been managed in accordance with the Code's requirements.

Given the difficulties that some participating companies encountered with the application of section 3.12 of the Code during this reporting period, it is worthwhile discussing this in more detail and including two case studies to illustrate its operation.

The purpose of section 3.12 is clear – it requires a participating company to make available to a third party its IDR process, in the event that they are unable to reach an agreement about the repayment of the debt. In addition, it requires it to provide information about the AFCCRA to the third party, so that the third party may consider seeking the assistance of a free community-based financial counsellor who may be able to help them with a debt negotiation.

It is important to recognise that section 3.12 is triggered by an inability to reach an agreement with the third party about the repayment of the debt. Its application is independent of both section 3.10 and section 3.11 of the Code and it applies even though the third party is not in financial hardship.

## Case Study One:

A participating company had referred the recovery of a debt to its collection agent. The third party explained that neither she nor her husband was employed and that they were in receipt of benefits, with a young family. The debt exceeded \$6000 but the collection agent reduced this to \$5000 and wrote to the third party asking whether she could repay the debt at the rate of \$50 per month.

The third party sought assistance and her representative wrote to the collection agent asking it to consider waiving the debt, in view of the third party's financial hardship. The third party completed a financial statement, and this was provided to the collection agent.

On reviewing the file, the collection agent decided not to pursue recovery of the debt and closed its file. It advised the representative of its decision and said that a decision to waive the debt could only be made by the company. As a result, the representative wrote to the company asking it to waive the third party's debt given her financial hardship, and refer the matter to its IDR process.

About one month later, the company contacted the representative and advised that it would be referring the debt to the same collection agent for consideration of the debt. The representative wrote to the company and reiterated their request to refer the dispute about the repayment of the debt to the company's IDR process. As there had been no reply, a month later the representative wrote again. Subsequently, the representative contacted IOS for assistance as they had not received a reply from the company.

IOS raised this matter with the company and it conceded that it should have referred the representative's debt waiver request to its IDR process; and that it should not have referred the debt back to its collection agent. Upon reviewing the matter through its IDR process, it decided to waive the third party's debt.

## Case Study Two:

A third party had entered into an agreement with a participating company to repay a debt by way of instalments. At the time the third party agreed to this arrangement he was employed but he did not make any instalment payments. As a result, the company referred the debt to its collection agent who commenced legal proceedings. The third party contacted the collection agent and queried the cost of repairs and was advised that he should lodge a Notice of Defence.

The third party subsequently sought legal advice and his representative wrote to the collection agent advising that while liability for the debt was accepted, the third party did not have any capacity to repay the debt. The representative asked the collection agent to consider waiving the debt given the third party's financial hardship, and noted that the third party would be willing to complete a financial statement if required. The representative also asked that any further legal action against the third party be suspended, until the matter had been considered under the company's IDR process.

A financial statement was subsequently provided to the collection agent, which showed that the third party's expenses exceeded his income. As a result, it referred the matter to the company's IDR process so that consideration could be given to waiving the debt.

The company's claims officer reviewed the file but did not refer the dispute about repayment of the debt to the company's IDR process, and decided there was no financial hardship as the third party was employed and had previously agreed to an instalment arrangement. As a result the collection agent advised the representative that the company was not prepared to enter into any further negotiations and that if full payment of the debt was not received within 10 days, judgment would be entered against the third party without further notice.

The representative wrote to the collection agent and repeated their request to have the dispute about repayment of the debt referred to the company's IDR process. The collection agent in turn referred the matter to the company. However, the company's claims officer did not refer the dispute to the company's IDR process and instructed the collection agent to proceed with the recovery action and obtain default orders from a local court.

The representative sought the assistance of IOS and it raised this matter with the company, which immediately referred the dispute to its IDR process. The company determined that the debt should not be waived because the third party had a future capacity to repay the debt, but it accepted that he had no current capacity to repay the debt. As a result the company agreed to suspend recovery action for a specific period of time, and to review the third party's financial circumstances at the end of that period.

The company also conceded that it had not handled this matter in accordance with section 3.12(a) of the Code. As there had clearly been a failure to reach an agreement about the repayment of the debt, the claims officer should have referred the dispute to the company's IDR process, before the court action proceeded any further. As a result, it arranged for the default orders to be set aside at its expense.

## The Code Statistics:

The Code requires participating companies to provide an annual report to IOS on their compliance with the Code, which includes the provision of various statistics about their products (as defined) on a class by class basis. The statistics are detailed in Appendix B and cover:

- Total new business and renewals in force as at 30 June 2008;
- Total claims;
- Total rejected claims; and
- Internal Dispute Resolution (IDR) statistics.

### TOTAL NEW BUSINESS & RENEWALS – COMMERCIAL AND PERSONAL LINES:

Of the 36,092,906 general insurance policies in force this year, 86.8% consisted of personal insurance policies, and 13.2% consisted of commercial insurance policies.

The data show that *Motor* vehicle policies represent 37% of all personal insurance policies, followed closely by *Home* policies at 36.3%.

The largest proportion of commercial policies is represented by Business policies at 43.9%, followed by *Liability* policies at 19.8%.

For an explanation of what *Motor*, *Home* and *Liability* include, please refer to the explanatory notes in Appendix B.

### CLAIMS AND REJECTED CLAIMS

There has been a 9% increase in total claim numbers to 3,675,105 claims, compared with 3,369,748 claims during the previous reporting period. The increase is mainly due to the impact of several significant weather-related events during this reporting period.

Importantly, the general insurance industry consistently accepts liability for 98% of all claims, whether the claims arise from commercial or personal lines of business.

#### • Commercial Lines:

There were 502,566 commercial claims lodged and 493,693 claims, or 98%, were paid by participating companies.

*Commercial Motor* had the largest number of claims with 219,092, followed by 171,913 claims for *Business policies*.

Less than 1% of *Aviation* and *Commercial Motor* claims were rejected, with the highest rate of rejected claims found in relation to *Builders Warranty* at 45%.

For an explanation of what *Business* includes, please refer to the explanatory notes in Appendix B.

#### • Personal Lines:

There were 3,172,539 claims lodged against personal lines of insurance, and 3,103,106 claims, or 98%, were paid by participating companies.

*Motor* attracted the largest number of claims with 1,600,237, followed by 1,029,971 for *Home*. *Motor* also had the lowest rate of rejected claims at less than 1% and *Consumer Credit* the highest with 17%, followed by *Travel* at 8%.

For an explanation of what *Motor* and *Home* include please refer to the explanatory notes in Appendix B.

# Internal Dispute Resolution (IDR) Statistics

The Code has established standards of service for the handling of complaints and disputes. The standards relate to Internal Dispute Resolution (IDR) and the External Dispute Resolution (EDR) processes. The Code requires a participating company to respond to a complaint and a dispute respectively within 15 business days, and to notify customers of the available EDR options at the conclusion of the IDR process. The Code also requires a company to make available information about its complaints handling procedures when a claim is denied or in response to a complaint and/or dispute.

There has been an 11% increase in internal disputes received by companies, with 18,978 disputes received this year, compared with 17,066 disputes last year. The increase in disputes was not unexpected given the increase in claims. As noted above, the general insurance industry was impacted by several severe-weather events during this year.

In terms of IDR outcomes for this year, companies resolved 19,044 internal disputes with:

- 7,115 disputes, or 37%, resolved by companies in favour of customers, an increase from 34% last year; and
- 11,929 disputes, or 63%, resolved in favour of companies.

#### • **Commercial Lines:**

Participating companies received 1005 internal disputes raised by consumers, arising from commercial lines of business, consistent with the previous reporting period's result. This year companies resolved 987 commercial disputes, and of these 332 (34%) disputes were resolved in favour of commercial customers, and 655 (66%) disputes were resolved in favour of companies.

The largest number of disputes arose in relation to *Business* with 567 disputes, representing 56% of commercial disputes, followed by *Commercial Motor* with 165 (16%) disputes.

For an explanation of what *Business* includes, please refer to the explanatory notes in Appendix B.

#### • **Personal Lines:**

There were 17,973 internal disputes raised by consumers, arising from personal lines of business, an increase of 12% on last year's figure. Participating companies resolved 18,057 disputes this year with:

- 6,783, or 38%, resolved in favour of customers, an increase from 34% last year; and
- 11,274 disputes, or 62%, resolved in favour of companies this year.

Notwithstanding the number of disputes resolved by companies in their favour, IOS received only 2,170 dispute referrals from consumers this year. IOS also reported that 2,038 disputes were finalised this year, with 39% resolved in favour of customers (including settlements), consistent with the proportion of personal lines disputes internally resolved in favour of consumers by companies.

*Motor* generated the largest number of personal lines disputes this year at 8,649, or 48% of total personal lines disputes received this year, noting that *Motor* business accounts for 37% of all personal lines business. *Home* had 5,874 disputes, or 33% of total personal lines disputes received this year, followed by 2,419 (13.5%) disputes for *Travel*.

For an explanation of what *Motor* and *Home* include please refer to the explanatory notes in Appendix B.

#### **EMPLOYEES AND AUTHORISED REPRESENTATIVES:**

Participating companies were asked to identify how many employees and Authorised Representatives they had as at 30 June 2008. However it is difficult to be precise about numbers, as a result the figures provided below can only be regarded as approximate.

Companies reported employing 34,762 individuals within the general insurance industry, but this figure does not fully take into account casual or temporary staff. Companies also utilised the services of 20,914 Authorised Representatives and 1,258 corporate Authorised Representatives throughout Australia, but not all companies were able to identify the number of individual Authorised Representatives employed by a corporate authorised representative.

## In Conclusion

I would like to thank all participating companies for their professionalism and commitment to the Code, and to the Code Secretariat for so successfully performing its compliance monitoring role during what has been another challenging year for the general insurance industry.

It is our firm undertaking to continue to work closely with participating companies to uphold the service standards established by the Code since its introduction in July 2006.

**Sam Parrino,**  
**Insurance Ombudsman**



## Appendix A

# The General Insurance Code of Practice - Participating Companies

Aioi Insurance Co Ltd  
 Allianz Australia Insurance Limited  
 American Home Assurance Company (AIG)  
 Ansvar Insurance limited  
 ARGIS Limited (formerly known as Farmers' Mutual Insurance Limited)  
 Assetinsure Pty Ltd  
 Australian Alliance Insurance Company Limited  
 Australian Associated Motor Insurers Limited  
 Australian International Insurance Limited and Australian Underwriting Services Limited  
 Auto & General Insurance Company Limited  
 Calliden Limited  
 Calliden Insurance Limited (formerly known as Australian Unity General Insurance Limited)  
 Catholic Church Insurance Limited  
 CGU Insurance Limited  
 Chubb Insurance Company of Australia Limited  
 Combined Insurance Company of Australia  
 Commonwealth Insurance Limited  
 Credicorp Insurance Pty Ltd  
 Cumis Insurance Society Inc  
 Defence Service Homes Insurance Scheme  
 Elders Insurance Limited  
 FM Insurance Company Limited  
 Fortron Insurance Group Limited  
 Genworth Financial Mortgage Insurance Pty Ltd  
 Gerling Australia Insurance Company Pty Ltd  
 GIO General Limited  
 Great Lakes Re-insurance (UK) PLC  
 Guild Insurance Limited  
 Hallmark General Insurance Company Limited  
 HBF Insurance Pty Ltd  
 ING General Insurance Pty Ltd  
 Insurance Australia Limited  
 Insurance Manufacturers of Australia Pty Limited  
 Lawcover Insurance Pty Limited  
 Lloyd's Australia Limited (see below for Coverholders and External Claims Administrators)  
 Lumley General Insurance  
 Medical Insurance Australia Pty Ltd  
 Mitsui Sumitomo Insurance Co Ltd

MTA Insurance Limited  
 Mutual Community General Insurance Proprietary Limited  
 NTI Limited  
 Nipponkoa Insurance Company Ltd  
 QBE Lenders' Mortgage Insurance Limited  
 QBE Insurance (Australia) Limited  
 RAA Insurance Limited  
 RAC Insurance Pty Limited  
 RACQ Insurance Limited  
 RACT Insurance Pty Ltd  
 Sompo Japan Insurance Inc  
 St Andrew's Insurance (Australia) Pty Ltd  
 Suncorp Metway Insurance Limited  
 Sunderland Marine Mutual Insurance Company Limited  
 Swann Insurance (Aust) Pty Ltd  
 Territory Insurance Office  
 The Tokio Marine & Nichido Fire Insurance Co Ltd  
 Vero Insurance Limited  
 Virginia Surety Company Inc  
 Wesfarmers Federation Insurance Limited  
 Westpac General Insurance Ltd  
 Westport Insurance Corporation  
 XL Insurance Co. Ltd  
 Youi Pty Ltd  
 Zurich Australian Insurance Ltd  
 Zurich Financial Services Australia Ltd

**Lloyd's Australia Limited: Coverholders and External Claims Administrators**  
 AFA Pty Ltd  
 AIS Insurance Brokers Pty Ltd  
 Altiora Insurance Solutions Pty Ltd  
 AON Risk Services Australia Ltd  
 Asia Mideast Insurance & Reinsurance Pty Ltd  
 ASR Underwriting Agencies Pty Ltd  
 Austbrokers RWA Pty Ltd  
 Austbrokers Sydney Pty Ltd  
 Australian Professional Underwriting Agency Pty Ltd  
 Australis Group (Underwriting) Pty Ltd  
 Axis Underwriting Services Pty Ltd  
 Capita Insurance Services  
 Catlin Australia Pty Ltd  
 Cerberos Brokers Pty Ltd  
 Cerberus Special Risks Pty Ltd  
 CKA Risk Solutions Pty Ltd  
 ClaimsActive Pty Ltd  
 Corporate Services Network Pty Ltd  
 Coverforce Professional Risks Pty Ltd  
 Crawford & Company (Australia) Pty Ltd  
 DA Constable Syndicate Pty Ltd  
 DCS Asia Pacific Pty Ltd  
 DLA Phillips Fox  
 Dolphin Insurance Pty Ltd  
 E Group (Australia) Insurance Services Pty Ltd  
 EBM Insurance Brokers  
 Echelon Claims Services  
 Epsilon Underwriting Agencies Pty Ltd  
 Fenton Green & Co  
 Fitton Insurance (Brokers) Australia Pty Ltd  
 Fleetrisk Technologies Pty Ltd  
 Freeman McMurrick Pty Ltd  
 Gallagher Bassett Services Pty Ltd  
 Genesis Insurance Brokers Australia  
 Gow-Gates Insurance Brokers Pty Ltd  
 Guardian Underwriting Services Pty Ltd  
 Herbert Insurance Group Limited  
 High Street Underwriting Agency Pty Ltd  
 Horsell International Pty Ltd

HW Wood Australia Pty Ltd  
 Indemnity Corporation Pty Ltd  
 Insurance Advisernet Australia Pty Ltd  
 Insure That Pty Ltd  
 International Underwriting Services Pty Ltd  
 Jardine Lloyd Thompson Pty Ltd  
 JMD Ross Insurance Brokers Pty Ltd  
 JUA Underwriting Agency Pty Ltd  
 Logan Livestock Insurance Agency Pty Ltd  
 London Australia Underwriting Pty Ltd  
 Magic Millions Insurance Brokers Pty Ltd  
 Mansions of Australia Ltd  
 Manufactured Homes Insurance Agency Pty Ltd  
 Marsh Pty Ltd  
 Millenium Underwriting Agencies Pty Ltd  
 Miller & Associates Insurance Broking Pty Ltd  
 Miramar Underwriting Agency Pty Ltd  
 Momentum Underwriting Management Australia Pty Ltd  
 National Underwriting Agencies Pty Ltd  
 Newmarket Insurance Brokers Pty Ltd  
 Nova Underwriting Pty Ltd  
 Online Insurance Brokers Pty Ltd  
 Pacific Underwriting Corporation Pty Ltd  
 PAL Australia Pty Ltd  
 PI Direct Insurance Brokers Pty Ltd  
 Proclaim Management Solutions Pty Ltd  
 Professional Risk Underwriting Pty Ltd  
 QBE Placement Solutions Pty Ltd  
 Resource Underwriting Pacific Pty Ltd  
 Richard Oliver Underwriting Managers Pty Ltd  
 Ryno Insurance Services  
 SLE Worldwide Australia Pty Ltd  
 Sportscover Australia Pty Ltd  
 SRS Underwriting Agency Pty Ltd  
 Sterling Insurances Pty Ltd  
 Transcorp Underwriting Agency Pty Ltd  
 Underwriting Agencies of Australia Pty Ltd  
 Universal Underwriting Agencies Pty Ltd

Appendix B

## General Insurance Code of Practice: New Business & Renewals, Claims and Rejected Claims Statistics & Results of Internal Dispute Resolution Monitoring: 1 July 2007 to 30 June 2008

	Total New Business & renewals (in force as at 30/6/08)	Total Claims	Total Rejected Claims	INTERNAL DISPUTES						Total received	Disputes finalised in favour of Code Member	Disputes finalised in favour of Customer	Total resolved disputes
				1. Authorised Representatives	2. Employees	3. Buying Insurance	4. Insurance Claims	5. Responding to Catastrophes and Disasters	6. Other relating to Code				
<b>TOTALS</b>													
<b>Grand Total for Personal &amp; Commercial</b>	<b>36,092,906</b>	<b>3,675,105</b>	<b>78,306</b>	<b>20</b>	<b>630</b>	<b>3,343</b>	<b>14,706</b>	<b>100</b>	<b>179</b>	<b>18,978</b>	<b>11,929</b>	<b>7,115</b>	<b>19,044</b>
<b>Total Personal</b>	<b>31,334,975</b>	<b>3,172,539</b>	<b>69,433</b>	<b>14</b>	<b>619</b>	<b>3,300</b>	<b>13,768</b>	<b>100</b>	<b>172</b>	<b>17,973</b>	<b>11,274</b>	<b>6,783</b>	<b>18,057</b>
<b>Total Commercial</b>	<b>4,757,931</b>	<b>502,566</b>	<b>8,873</b>	<b>6</b>	<b>11</b>	<b>43</b>	<b>938</b>	<b>0</b>	<b>7</b>	<b>1,005</b>	<b>655</b>	<b>332</b>	<b>987</b>
<b>PERSONAL CLASSES</b>													
Total Motor	11,602,411	1,600,237	9,212	6	344	2,077	6,144	5	73	8,649	5,382	3,322	8,704
Total Home	11,363,851	1,029,971	33,672	6	254	1,120	4,312	93	89	5,874	3,992	1,858	5,850
Travel - Personal	3,505,105	189,922	16,208	1	7	39	2,369	0	3	2,419	1,224	1,261	2,485
Consumer Credit	926,455	21,325	3,606	0	0	7	60	0	0	67	46	20	66
Total Sickness &/or Accident	417,185	54,082	622	1	0	3	200	0	0	204	118	76	194
Total Valuables	925,881	42,510	2,090	0	0	3	54	0	4	61	47	17	64
Pleasurecraft	323,925	10,930	172	0	0	3	80	0	0	83	31	44	75
Total Caravan, Mobile Homes &/or Trailers	329,234	14,669	388	0	0	15	80	0	3	98	63	36	99
Other Classes	1,940,928	208,893	3,463	0	14	33	469	2	0	518	371	149	520
<b>Total for Personal</b>	<b>31,334,975</b>	<b>3,172,539</b>	<b>69,433</b>	<b>14</b>	<b>619</b>	<b>3,300</b>	<b>13,768</b>	<b>100</b>	<b>172</b>	<b>17,973</b>	<b>11,274</b>	<b>6,783</b>	<b>18,057</b>
<b>COMMERCIAL CLASSES</b>													
Total Business	2,090,500	171,913	3,673	4	1	10	551	0	1	567	384	179	563
Total Builders Warranty	186,522	2,876	1,310	0	2	1	22	0	0	25	13	13	26
Total Liability	940,609	31,843	749	0	1	3	55	0	0	59	45	10	55
Total Commercial Motor	612,747	219,092	1,913	1	5	5	149	0	5	165	95	64	159
Total Farm	409,733	45,012	388	1	2	4	79	0	0	86	50	30	80
Contractors All Risks	34,981	3,401	121	0	0	0	34	0	0	34	21	13	34
Industrial Special Risks	58,833	18,582	501	0	0	0	31	0	0	31	24	10	34
Total Marine	27,724	4,872	61	0	0	0	7	0	0	7	5	2	7
Total Aviation	9,773	749	6	0	0	0	3	0	0	3	3	0	3
Other Classes	386,509	4,226	151	0	0	20	7	0	1	28	15	11	26
<b>Total for Commercial</b>	<b>4,757,931</b>	<b>502,566</b>	<b>8,873</b>	<b>6</b>	<b>11</b>	<b>43</b>	<b>938</b>	<b>0</b>	<b>7</b>	<b>1,005</b>	<b>655</b>	<b>332</b>	<b>987</b>

**PERSONAL LINES:**

Motor: consists of Motorcycle, Motor Private, Motor Vehicle Comprehensive, Motor Vehicle Third Party Fire & Theft, Motor Vehicle Third Party Property Damage and Third Party Property Damage Fire & Theft.

Home: consists of Home Building, Home Contents, and Home Building & Contents.

Other: consists of Accidental Damage, Asset Protection and/or Extended Warranty, GAP, Extended Motor Vehicle Warranty, Landlord, Legal Liability, Motor Equity, Movables/Household Goods in Transit, Personal Liability, Residential Strata/Body Corporate and Payment Protection.

**COMMERCIAL LINES**

Business: consists of Accidental Damage and/or Fire and Perils, Bloodstock, Business Interruption and/or Loss of Profits, Business Pack, Casualty, Commercial Strata/Body Corporate, Computer and Electronic Breakdown, Construction, Credit Enhancement, Employee Dishonesty, Energy Insurance, Engineering, Fidelity Guarantee, General Property, Glass, Heavy Motor, Land Transit, Machinery Breakdown, Mobile Plant, Money, Motor Trades, Office Package, Sickness and/or Accident, Small Business, Tax Audit Cover, Theft/Burglary, Travel.

Liability: consists of Broadform Liability, Directors and/or Officers Liability, Employment Practices, General Liability, Legal Liability, Personal Liability, Professional Indemnity, Property Liability, Public and/or Products Liability.

Farm: consists of Aquaculture, Country Insurance, Crop, Farm, Farm Motor, Farm and/or Rural Package, Feedlot Cattle and Livestock.

Other: consists of Lenders Mortgage and Miscellaneous products.

## The General Insurance Code of Practice: Non-compliance outcomes – 1 July 2007 to 30 June 2008

Section	Non-compliance results	Description of Code section
<b>2</b>		<b>Buying Insurance</b>
2.1.1	2	Take into account relevant application information.
2.1.2	4	Access to information about application for cover, opportunity to correct errors and release of information.
2.1.5	11	Reasons for declining cover and information about alternatives.
2.3	9	Availability of information about Code and/or insurance products.
2.4.1	2	Sales conduct of Employees and/or Authorised Representatives.
2.4.4	1	Expertise of Employees and/or Authorised Representatives.
2.4.5	3	Providing adequate training to Employees and/or Authorised Representatives.
2.4.6	13	Areas of training for Employees and/or Authorised Representatives.
2.4.7	6	Keeping training records of Employees and/or Authorised Representatives.
<b>3</b>		<b>Insurance Claims</b>
3.1	5	Timeframe for making decision on simple claim and/or notifying customer of decision.
3.2.1	10	Timeframe for initial contact with customer following receipt of claim.
3.2.2	2	Notifying customer of appointment of Service Provider.
3.2.3	9	Keep customer informed of progress of claim.
3.2.4	5	Responding to customer's routine requests for information.
3.2.5	6	Making decision on claim and/or notifying customer of decision.
3.3	1	Agreeing reasonable alternative timeframes with customer.
3.4.1	11	Conduct of claims handling.
3.4.2	2	Taking into account relevant claim information.
3.4.3	3	Access to information about claim, opportunity to correct errors and release of information.
3.4.4	1	Taking immediate action to correct error/mistake.
3.4.5	10	Written reasons and/or information about complaints handling procedures on denial of claim.
3.6.1	15	Conduct of claims handling for Employees and/or Service Providers.
3.6.2	3	Service Providers to notify participating company of complaints.
3.6.3	2	Service Providers to contact customers.
3.6.4	2	Expertise of Employees and/or Service Providers.
3.6.5(a)	14	Current licences if required for Employees and/or Service Providers.
3.6.6	2	Adequate training of Employees.
3.6.7	10	Areas of training for Employees.
3.6.9	1	Measuring effectiveness of training.
3.6.10	2	Service Providers to obtain approval for sub-contracting.

Section	Non-compliance results	Description of Code section
3.7	3	Financial hardship - customer.
3.8	1	Financial hardship - notify financial institutions.
3.10	10	Financial hardship (third parties recoveries) - ACCC & ASIC debt collection guidelines.
3.11	3	Financial hardship (third parties recoveries) - debt repayment options.
3.12	16	Financial hardship (third parties recoveries) - providing information about complaints handling procedures and/or AFCCRA.
3.13	1	Repair workmanship and materials.
<b>4</b>		<b>Responding to Catastrophes and Disasters</b>
4.4	8	Internal processes for responding to catastrophes and disasters.
4.5	2	Information about review of catastrophe/disaster claim and/or complaints handling procedures.
<b>5</b>		<b>Information and Education</b>
5.2	22	Information about general insurance and/or level of cover and/or premiums and/or the Code.
<b>6</b>		<b>Complaints Handling Procedures</b>
6.1.1	24	Conduct of complaints handling.
6.1.2	9	Make available information about complaints handling procedures.
6.1.4	2	Access to information about complaint, opportunity to correct errors and release of information.
6.2	7	Timeframe for response to complaints.
6.3	2	Agreeing reasonable alternative timeframes with customer.
6.4	2	Keeping customer informed of progress of response to complaint.
6.5	3	Provide information about review of response to complaint.
6.6	13	Review of dispute.
6.7	1	Agreeing reasonable alternative timeframes with customer.
6.8	1	Keep informed of progress of review of dispute.
6.9	17	Providing written reasons for decision and/or information about available EDR schemes and/or timeframe for registering dispute with EDR scheme.
<b>7</b>		<b>Code Monitoring and Enforcement</b>
7.2	33	Appropriate systems and processes for monitoring Code compliance and/or reporting on Code compliance to Board of Directors or Executive Management.
7.3	24	Identifying and/or reporting significant breaches of the Code to IOS.
7.4	1	Code breach if Employees, Authorised Representatives or Service Providers fail to comply with the Code.
<b>Total</b>	<b>372</b>	



INSURANCE OMBUDSMAN SERVICE

## Contacting us

On 1 July 2008 IOS merged with the Banking and Financial Services Ombudsman and the Financial Industry Complaints Service to form the Financial Ombudsman Service, with the following contact details:

Telephone 1300 78 08 08

Fax (03) 9613 6399

Web [www.fos.org.au](http://www.fos.org.au)

Email [info@fos.org.au](mailto:info@fos.org.au)

Mail GPO Box 3, Melbourne Vic 3001



**Date:** 03 October 2003.

**To:** Phil Dwyer

**At:** Builders Collective

**Pages:** 17

**Fax:**

<b>EVENT</b>	Press Conference
<b>LOCATION</b>	Kooyong Road, Armadale
<b>DATE</b>	29 September 2003
<b>TIME</b>	1.00pm
<b>SUMMARY</b>	<p>A new home warranty insurance initiative will shorten building waiting lists and provide better security to new home buyers and renovators.</p> <p>Speakers: Ron Silberberg, HIA; Victorian Minister for Finance and Consumer Affairs John Lenders; Nick Kirk, Royal &amp; SunAlliance.</p>
<b>REHAME CONTACT</b>	Nicholas Hayes 03 9646 6966

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**CONVENOR:**

It's a milestone day in terms of warranty insurance for this country and we've got a number of speakers who are going to outline some wonderful new moves forward on the warranty insurance front.

The very first speaker today is our managing director of HIA, Dr Ron Silberberg. Would you please welcome Ron.

[Applause]

**RON SILBERBERG - HIA:**

Thanks, John ...

**MALE SPEAKER:**

Excuse me a minute, please. Could you face this way please. Can you come around here. Thank you.

**SILBERBERG:**

The Honourable John Lenders, Victorian Minister for Finance and Consumer Affairs; Peter Grigg, HIA's national president; Glenn Eagles, HIA's Victorian president (ph.sp.); Nick Kirk, general manager of Royal SunAlliance [sic]; Greg Donovan, national manager, Aon; other staff members of HIA; Members and representatives of the media.

As John said, this is a very positive day for the Australian housing industry and importantly for new home buyers and home renovators. It marks a turning point for home warranty insurance following the collapse of HIH some two years ago and the subsequent withdrawal of the underwriting agency Dexta from the Australian home warranty insurance market.

Today's announcement marks the beginning of the new home warranty environment that recognises the financial strength and management capacity and professionalism of the industry, as well as the need for cost effective protection of new home buyers.

Despite the turbulence over the past two years, HIA, through its insurance partnerships Royal & SunAlliance and Aon, has been able to retain the availability of home warranty insurance in Australia, and that has enabled the industry to lift the level of new home construction and home renovations by about twenty billion dollars a year. A thirty per cent increase in the value of expenditure on new dwellings and home renovations helps to put into perspective the suggestions that the industry has been grinding to a halt due to the alleged lack of warranty insurance.

The spectacular growth of residential building activity has been a credit to all who have worked so hard on providing solutions for home warranty. And naturally I am particularly proud of the staff in HIA who have worked assiduously with Royal & SunAlliance and Aon to provide those solutions for home warranty.

It's also a testament to Australia's home builders, who've demonstrated the financial and management capacity to operate successfully at greatly increased levels of home building activity compared with a couple of years ago. It is also very important to mention the role of the state governments, whose reforms of home warranty have created a far more positive regulatory environment, not just for existing underwriters but for potential entrants to the home warranty market.

The successful expansion of industry activity over the past couple of years with, notably, a significant reduction in the incidence of builder failure, combined with a supportive regulatory environment, has made possible the new deal for home warranty that we are announcing today.



In the aftermath of the HIH collapse there was an understandable move by other underwriters to wish to underwrite each and every domestic building project. But the imposition of detailed assessment was not only painful for many builders, it did stretch the service delivery capacity of our broker Aon and Royal & SunAlliance.

Now, in response to legitimate issues raised by HIA's builder members, the association together with Royal & SunAlliance and Aon, began the path of creating a new business model for the future delivery of home warranty insurance to Australia's housing industry. The guiding principles driving the new warranty package have been enhanced service delivery for builders; the financial viability of a private home warranty market; and the integrity of the essential consumer protection.

Under the new home warranty package the vast majority of small home builders will be able to operate with much expanded turnover profiles, supported by a simplified fast track eligibility assessment and light touch assessment reviews. The upgraded turnover profiles applying under the simplified new warranty product will benefit about eighty per cent of the nation's smaller home builders. That represents about twenty four thousand smaller builders.

For existing category one, two and three HIA members insured with Royal & SunAlliance through HIA insurance services, the changes will mean an automatic upgrade of turnover profile to two million dollars for house builders; town house and villa unit builders; renovation and extensions builders; kitchen fabricators; bathroom renovation builders; pool contractors and landscape contractors.

There will also be an automatic upgrade of an individual project profile to three hundred and fifty thousand dollars for new homes, renovations and additions,

unless a business has a higher value profile. There'll be an automatic upgrade of individual project profiles to fifty thousand dollars for pool builders, kitchen and bathroom fabricators and contractors, and home improvements.

In addition, there will be a simplified eligibility assessment which will eliminate unnecessary accounting and compliance costs for smaller businesses. The new, simplified home warranty insurance initiative has the potential to double the aggregate activity levels of Australia's smaller builders, currently at nine billion dollars, but they'll be able to lift their turnover to almost eighteen billion dollars a year.

Thousands of individual builders will have the opportunity to expand their turnover without having to inject additional capital into their businesses. It means small to medium sized builders will have an enhanced opportunity to bid for an even greater share of the nation's very strong new homes market and renovations sector.

For new home buyers and people wanting to undertake renovations and additions, it has the potential to significantly shorten wait times. These improvements to the system have come about because HIA have listened to the people we represent, namely Australia's builders, and we have addressed their needs when and where they've identified them.

They also have come about because of the recognition by state governments and particularly the Victorian state government that the industry is a responsible one and a very important one for the nation's economy. It also is recognition from governments that we can be trusted to run our own affairs and that we understand how closely the fortunes of the industry are linked to the fortunes of our customers.

Today's announcement is not only good news for builders, it's also great news for new home buyers and renovators. Thank you.

[Applause]

**CONVENOR:**

Thank you very much Ron. I think a couple of points that Ron made are very clear. This is a response to members; there's two important members here today, Peter Grigg, our national president, and Glenn Eagles, our Victorian state president, two people who are very aware of what troubles we've had over the last little bit, and this is our response to it.

As Ron said, the response wouldn't have come without support from the Victorian government and, in more specific terms, from Minister Delahunty and Minister Lenders. Minister Lenders is a great friend of HIA's and we really admire the work that he's done on the insurance front generally, as well as warranty. So could you join with me in welcoming Minister John Lenders, the Minister for Finance and Consumer Affairs. Welcome.

[Applause]

**JOHN LENDERS – VICTORIAN MINISTER FOR FINANCE AND CONSUMER AFFAIRS:**

Thanks John for those very kind words and also Ron, your words, thanking the Victorian government. I guess ... I'd like to acknowledge, also, Peter Grigg, the national president, and Glenn Eagles, the state president of the HIA; Greg Donovan from AON; Nick Kirk from Royal & SunAlliance, and, of course, John Gaffney from HIA.

Look, for me this has been, I guess, a journey that I've been on with all of you, in a sense that the day I became finance minister in February last year, the Premier called me into his office to meet with John Gaffney and Shane (ph.sp.), here, to discuss the builder's warranty issue. So the first day in the job, and I guess, in one sense, one of the most frightening things is you're told, you know,

insurance is about to walk and what are ... how are you ... or what are we, as a government, going to be doing towards that.

And I guess the journey we've been on has been one where myself, Mary Delahunty, the Planning Minister, have walked with the HIA in trying to find solutions to what was a problem. So that is the first thing I would like to say here today, this has been a cooperative venture to get where we were.

Now, we started that with the ten point plan to bring ... to keep builders' warranty going, and through both the market we were in and also the collapse of HIA ... HIH, not HIA, very strong and vibrant ...

[Laughter]

... that the two of those together were the things ... obviously, the catalysts that put us in the position we were in. And the things that we were trying to do with HIA, operating nationally, was to also work with obviously the other great player in this, being the New South Wales government, to have a joint approach from the two major states which covered seventy per cent of the construction industry so that we could keep this important product of builders warranty insurance alive.

Now, we went through the teething problems, we went through the early days, and it was incredibly difficult for the industry. And it was difficult for a whole lot of reasons, and that was that those who were left to pick up the pieces copped a lot of the anger in an industry that was incredibly disappointed with the departure of HIH, and was looking for easy solutions. And if there were easy solutions and there was a magic wand that anyone had in their briefcase, I'm sure with this collection of people on this building site today someone would have pulled it out.

I should say to you, Glenn, it's probably the first time you've had so many people in suits on one of your sites, so perhaps if you got us more appropriately dressed next time, we could actually assist at the end of the media conference.

So it's been a long journey, in that sense, for people coming together, and it hasn't been easy. And it hasn't been easy to get that going.

So the ten-point plan we got into legislation and regulation, so that was in place as the fabric in both states. We went through all the exit of Dexta from the market and all the difficulties that that caused in having two competitors ... having two people providing.

And through all of this, Royal & Sun have actually been a great supporter of builders warranty insurance in being here at a time when a lot of people didn't want anything ... didn't want to know us or know anything about the product. So a big tribute to Royal and Sun for being here today and sticking through with all of us in taking us through that period.

I guess this is a logical progression in a sense. We got through the crisis where there was no insurance and we went through the teething process of how do you make it a better product. And again, a tribute to the three players here today, in trying again that next level which is the customer service of keeping this product going. And the message that HIH was ... HIA was hearing from its members ... God, I've got to use another series of letters ...

[Laughter]

They've got me worried now John. But the message that HIA was receiving from its members, and for that matter the other industry association, the government, everybody, was that we wanted a far quicker, more expedient sort of one stop shop for people to get their insurance. It was a process that no one liked, and I think this is a great tribute to three partners that come up with

something that expands the coverage, makes it more quickly accessible to people and particularly the way you have targeted, so that those with the least risk, you have increased their level and made it more quicker for them, is a real tribute to you.

I guess have one anecdote about that. I was not aware how close you were to the conclusion of this and a constituent of mine – and we all pay a lot of attentions to our constituents – whose a builder, I had dinner with him awhile ago and I just asked him, well how's it going in the building industry, you know, how's it going with your builders warranty insurance, expecting to get, you know, sort of a ... quite a diatribe about how slow it was.

And he said he'd actually gone into the HIA office to renew an insurance policy and thought this would take him a long time and he bought a whole stack of work along. And was basically expecting to sit there for a long time. And he was actually stunned that he was out in five or ten minutes. So I guess that was the first alert that I got that things were actually changing; when a builder goes in with an expectation of a delay and comes out pleasantly surprised. So that again is a tribute to you.

I think there's one final thing that I guess I'd like to say. Clearly, if you look at the grief that a lot of builders have had through this process, of how they've structured their own affairs, insurance was short. As a package a whole lot of people put things together. One of the challenges that I've put out to the accounting industry, in meetings with them in recent times, is that the advice that they offer also I think needs to be tuned, far more attuned, to the current needs of builders. The issues of is there sufficient capital that is available to have as a security.

One of the issues ... the accounting advice that's often given is that builders are divested of assets or they're in ways that don't suit the current insurance need and there's got to be some balance through the middle. And I'm pleased to say

that the accounting groups that I've talked to are putting some priority of theirs so that the advice that they offer becomes part of a seamless set of advice across all levels of industry that we can deal with it.

So I'd like to conclude, John, by actually saying that it would be easy for all of us to just said it's all too hard in February last year. We could have all have walked away, tried to blame each other, blame everybody and say, well you know, there's a problem, why can't we just sort of pull out a magic wand and fix it? I think it's tribute to the stakeholders here today in two states and across a number of ... across, obviously, Aon, across HIA, and of course, Royal and Sun, have actually tried to fix ... to put it into place. These things are always slow, but this is actually a great tribute today, that we have the next step along in making builders warranty insurance affordable and available, which were the two tests we originally put in place. And I'd like to congratulate all the players here today for the wonderful work in getting this product online. Thankyou.

**CONVENOR:**

Thank you very much Minister. And there's no doubt, as I said in the introduction, that without this minister and this government, we couldn't have got some of these reforms and these new products on the market.

Now, Glenn did tell me earlier there's one ... having so many suits on site, Glenn, might be useful, there's one apartment left in the middle is there?

**GLENN EAGLES – HIA:**

One for sale.

[Laughter]

**MALE SPEAKER:**

About two mill. They can't do much bricklaying, but we might be able to get the chequebook out with some of these people.

Our ... there are two more important partners in this announcement today, Royal SunAlliance and Aon, and we have Greg Donovan here, who's going to take some questions later. But before we have question time, we've got Nick Kirk, our final speaker. Nick is the general manager of specialty services for Royal & SunAlliance. Nick has become a friend of HIA and an important friend in us keeping this product alive and keeping the marketplace going, as Ron mentioned.

Could you please join with me in welcoming Nick.

[Applause]

**NICK KIRK – ROYAL & SUNALLIANCE:**

Yep, thank you John. I'd really like to just to echo the words of the previous speakers, to say that I think this is a really positive day both for the Australian home building industry but also for Australian consumers.

Today's announcement is also a significant event for Royal and Sun, because we believe it heralds the start of a new, more positive era for home warranty insurance in Australia.

The foundations of today's announcements were really those reforms that were put in place by the Victorian and New South Wales governments last year, that's the foundation which today's announcement has been built. But the announcement would not have taken place if the HIA hadn't tirelessly worked to improve the process of gaining home warranty insurance. So they built on those original foundations.

I think that's a great example of where industry associations, governments, and insurers can work positively together for a much better outcome for their members and consumers. So today's announcement is a real positive and



stands in contrast to some of the more negative and sometimes misleading stories on home warranty that have been about over the past few months. And I think it's a great credit to the HIA that they have worked very tirelessly for their members to actually get real improvements in the whole process.

So as a leading Australian insurer, we're very active listeners when it comes to the HIA, and we're very proud to be part of today's announcement, because we believe it's good for Australian builders and good for Australian consumers.

Thank you.

[Applause]

**CONVENOR:**

Thank you very much Nick. That concludes today's proceedings other than for the media people here, Greg Donovan, Nick, the minister, I hope, and Ron are all keen to take some questions, and have a good day, what's left of it. Thank goodness it didn't rain. Thank you.

**END OF SEGMENT**





## Home Warranty Insurance Facts and Statistics

- With regards to the comments of home warranty insurance not working effectively and not providing consumer protection please note the following:
  - a. Some 20 previous government inquiries/reviews of home warranty insurance across Australia have reaffirmed the consumer protection value of HWI.
  - b. Consumer protection for homeowners is more about how many claims are avoided in the first place by ensuring builders do complete their projects.
  - c. Eligibility criteria for home warranty insurance is there to ensure builders have enough equity in their business to be successful.
  - d. The scheme is there to provide a solution when the builder “can not” (instead of “will not”) return to fix any defects.
- The ICA has previously stated that home warranty insurers have dealt with thousands of claims since July 2002.
- Estimated premium income Australia-wide for 2005 is about \$100 million.
- Premium rates have also decreased subsequent to home warranty insurance scheme reforms with Vero’s average premium:

2003	-	\$730
2004	-	\$760
2005	-	\$680
2006	-	\$660 (April)

(Looking at a rate chart just gives a one-dimensional view - the average premium combines such factors as contract value, builder category and contract type.)

- Insolvency numbers (including death and disappearance) for Vero are as follows:

<u>Calendar Year</u>	<u>Insolvency Claims</u>	<u>No. of Insolvent builders</u>
2000	1,000	165
2001	1,050	155
2002	650	110
2003	580	90
2004	670	95
2005	550	95
2006 YTD	300	50

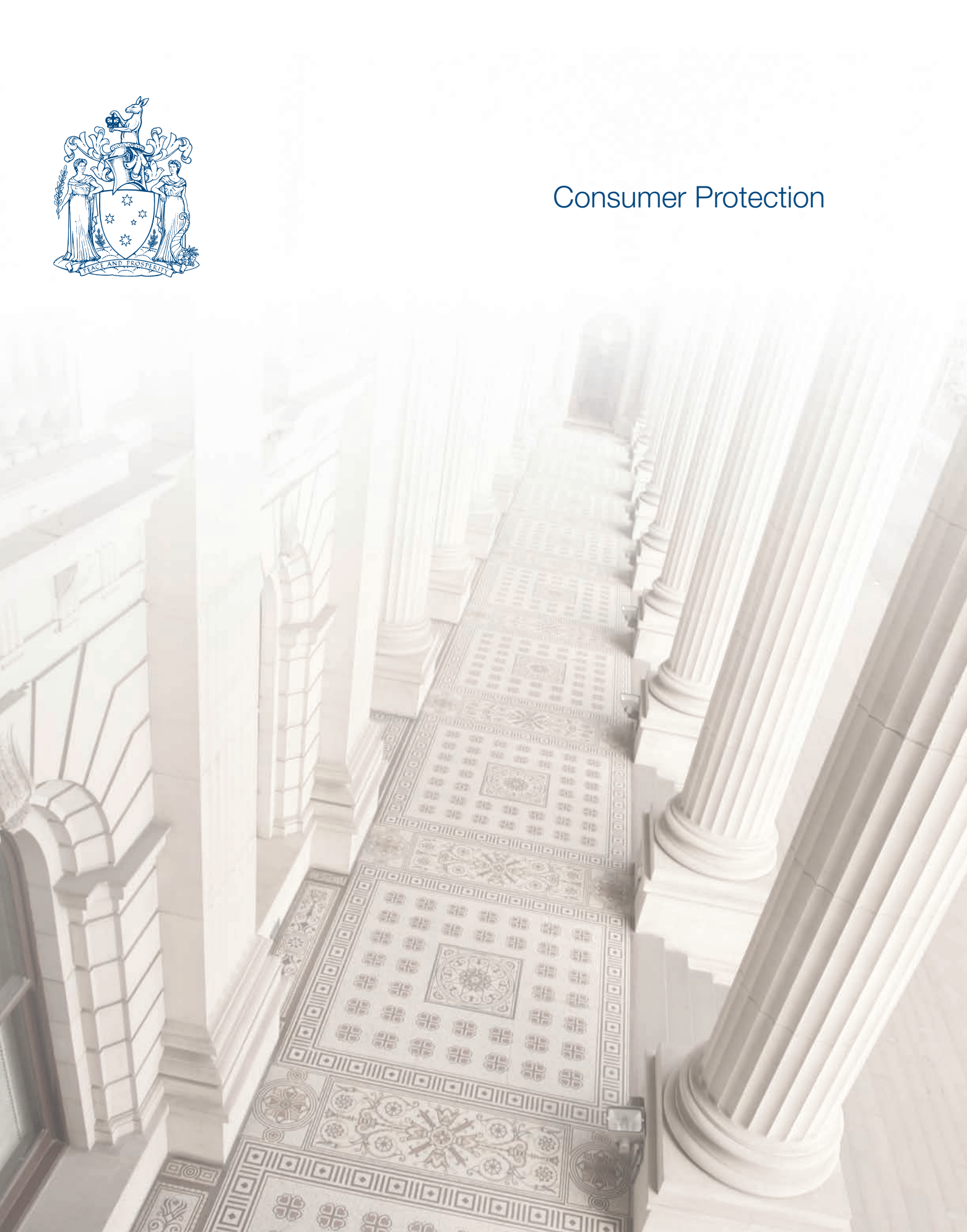
The claims figures are all claims reported in that particular year. They only refer to numbers of deaths, insolvencies and disappearances. This means that nationally **Vero is currently advised of two builder insolvencies every week**. Between 1 July 2002 and 30 June 2005, Vero Warranty has **settled** approx. 10,000 claims, 6,000 of which were reported on or after 1 July 2002.

6. Each builder under State or Territory legislation is obliged to warrant his workmanship and building materials. Home warranty insurance underpins that warranty.
7. Insurers do not insist on security or counter guarantees, they are offered as an option for builders to consider in order to meet Vero's eligibility criteria. Vero holds securities for less than 5% of its builders and, over the last 12 months, securities have been taken for less than 1% of builders for whom eligibility has been issued.
8. Securities in the form of bank guarantees are often more effective for the builder than recapitalising. To use an example, if a builder's turnover is \$2m per annum, the bank guarantee is for 10% of turnover or \$200,000 and the fee is 2% of the security or \$4,000. At an average contract value of \$160,000, the number of contracts in a year would be approx. 12.5 and the cost of the bank facility spread across these contracts would be \$320 each. Set against the opportunity cost of having \$200,000 in net assets, the price is not onerous – and one reason why builders choose to use securities.
9. Home warranty insurers exist partly to take the risks inherent in building processes and materials away from homeowners and to ensure their builder applies effective risk management.
10. Owner-builders need to be aware that they still require a home warranty insurance certificate if they are going to sell their property within seven years.
11. In 2003, Vero introduced a new product specifically designed for new builders, called First Assess. There is no requirement for a financial assessment in the first 12 months. At that point they can apply to step up to a mainstream home warranty insurance product.
12. Homeowners still contact their insurer with a builder complaint in the first instance. At Vero we still manage the complaint up front. Early intervention works to minimise the cost and distress of disputes and claims for both the builder and homeowner.
13. Primary Drivers of Home Warranty Insurance:
  - Protect consumers
  - Improve financial strength of builders
  - Raise standards and industry confidence through effective licensing/enforcement
  - Reduce the likelihood of claims

14. Home Warranty Insurance Timeline
  - a. 2000/01 - GST related boom/bust
  - b. March 2001 - HIH collapse
  - c. June 2002 - Allan Inquiry (National)
  - d. July 2002 - legislative reforms ('first resort' v 'last resort')
  - e. Q4 2002 - Dexta (Allianz) withdrawal
  - f. 2002-2003 - housing boom coincides with HWI market contraction
  - g. Sept 2003 - Grellman Inquiry (NSW)
  - h. Q4 2003 - ACT & Tas implement 'last resort'
  - i. Q2 2004 - CGU & Lumley enter HWI market
  - j. Q4 2005 - NSW completes Grellman package of reforms
  - k. 2005 - Victoria, Tasmania and WA home building reviews
  
15. Vero approved around 900 new builders (either first timers, re-entering or reconstituted) during 2005. Around 100 were builders applying for HWI eligibility for the first time using our First Assess product.
  
16. Vero's claims by builder size:
  - ❑ Small Builders (\$2m under) – 60%
  - ❑ Large Builders (\$10m and up) - 5%
  
17. 70% of Vero's claims are settled by using a rectifying builder (not the original builder).



# Consumer Protection





VICTORIA

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Victorian  
Auditor-General

# Consumer Protection

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*Auditing in the Public Interest*

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Parliament House  
Melbourne

The Hon. Ken Smith MP  
Speaker  
Legislative Assembly  
Parliament House  
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on the audit *Consumer Protection*.

Yours faithfully

—  
Dr Peter Frost  
*Acting Auditor-General*

17 April 2013



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# Audit summary

Consumer protection is an important and widespread system of laws designed to safeguard the rights of consumers and promote fair trade and truthful information in the marketplace. It aims to protect consumers from:

- **unfair trading practices**—by educating consumers about their rights and obligations
- **losses or damage**—by enforcing consumer laws against unscrupulous traders
- **unsafe products**—by regulating and enforcing product safety standards.

Consumer protection also aims to prevent unlawful trade practices by educating traders about their rights and responsibilities and protecting the marketplace from the unlawful practices of other traders.

Consumers in Victoria are protected by a range of Victorian laws, however, the overarching consumer legislation is the *Australian Consumer Law and Fair Trading Act 2012* (ACL). ACL is a single national consumer law that provides uniform consumer rights throughout Australia. ACL and other consumer laws are administered and enforced by Australia's national, state and territory consumer regulators.

Consumer Affairs Victoria (CAV), a division within the Department of Justice, is Victoria's consumer regulator. CAV regulates diverse industries including motor car trading, legal brothels, retirement villages and the retail sector.

## Conclusion

CAV is undertaking compliance activities designed to identify and deter noncompliance, encourage voluntary compliance and protect consumers. This includes inspections, education and enforcement activities. These are supported by a compliance framework to guide CAV's compliance and enforcement officers in the activities they undertake, and to inform those it regulates.

However, a range of administrative weaknesses undermine the effectiveness and efficiency of elements of CAV's compliance activities and its compliance framework. None of the 16 badged compliance and enforcement officers spoken to during this audit—out of a total of 45—were aware of more than two of CAV's 14 compliance and enforcement guides and procedures. These officers should know what policies and procedures exist, even if they do not need to know the specific details of each one. This lack of knowledge increases the risk that compliance functions are not undertaken in line with the principles of consistency, transparency and proportionality—particularly for compliance and enforcement officers who are required to perform functions that are unfamiliar to them.

Weaknesses with its compliance data, and an underdeveloped performance monitoring and reporting framework, means that CAV cannot be assured about the reliability of its reported performance data. CAV also cannot determine how effective, efficient and economical it has been in performing its regulatory functions, or whether it is achieving its stated goals.

CAV has started to address some of the issues this audit has identified, but needs to do more so that both consumers and traders can have confidence in it.

## Findings

### Compliance framework

CAV has developed a framework to guide its compliance and enforcement officers and the activities they undertake, and to inform those it regulates. The framework is based on an integrated compliance approach where the action the regulator takes depends on the level and pattern of noncompliance. It includes a comprehensive compliance policy and procedures, and details the risk-based approach CAV takes for compliance. However, the framework is undermined by a lack of awareness among some compliance and enforcement officers about the policy and procedures.

#### Compliance policies and procedures

CAV has a comprehensive compliance policy, which is publicly available and transparently outlines its approach to regulating traders and protecting consumers.

Supporting CAV's compliance and enforcement policy are internal procedures and guidance. These include regional operations manuals, investigation guides and procedures which cover compliance activities such as affidavit preparation, briefs of evidence, and property and exhibit handling.

#### Issues relating to compliance policies and procedures

While CAV has internal procedures and guidance, there are issues around their currency and approval, resulting in uncertainty about their status.

The usefulness of the policy and procedures has also been undermined because not all badged compliance and enforcement officers were aware of the framework and policy, while others differed in their understanding and application of them.

This raises doubt about whether badged compliance and enforcement officers effectively and efficiently undertake compliance and enforcement activities in a way that is consistent, transparent and proportionate.

Before the commencement of this audit, CAV developed a draft Inspectors' Manual, which contained comprehensive guidance for compliance and enforcement officers. CAV's Strategic Management Group endorsed the manual in January 2013, during the conduct of this audit.

## Risk identification and prioritisation

CAV has a sound risk identification and prioritisation framework that should enable it to identify areas to focus its compliance activities.

While CAV has a generally transparent approach to detailing how it identifies its risks, the process of translating those risks into priorities is less transparent. The lack of any documented procedures on CAV's prioritisation process means that it is not possible to assess whether CAV has effectively identified known risks and acted to address them.

## Performance reporting

CAV has a performance monitoring framework to assess its performance. CAV also has objectives to guide its actions that are outlined in its corporate plan. However, weaknesses in CAV's performance measures mean that its performance monitoring does not provide a fair representation of its actual performance.

CAV's performance is reported through its annual report, the Department of Justice's annual report and Budget Paper No. 3 (BP3).

### *Consumer Affairs Victoria's annual report*

CAV's annual report includes information about its activities, but does not provide an adequate assessment of its performance. There are no targets or benchmarks against which to compare performance, and it is therefore not possible to assess how effectively or efficiently CAV has performed.

The annual report does not include measures to assess performance against CAV's objectives. The information presented also differs each year, making it impossible to analyse trends.

Given the freedom that CAV has with the reporting format and content of its annual report, there are significant opportunities to improve the quality and transparency of its public reporting to fairly and better represent its actual performance.

### *Department of Justice's annual report*

The Department of Justice's annual report is required by the *Financial Management Act 1994* and must contain performance indicators related to its objectives. It contains performance information on the quantity, quality, timeliness and cost of services that the department provides. The same performance information appears in BP3. The department has six output indicators to assess the performance of CAV. These indicators, which have remained generally consistent over the past five years, are identical across both reports.

CAV's three quantity measures are generally consistent with its objectives. This is because:

- information and advice would contribute to empowerment
- inspections, monitoring and enforcement would contribute to protections
- registration and licensing would contribute to a well-functioning market economy.

However, despite being consistent over a period of time and allowing trend analysis, the measures do not in themselves provide sufficient information about whether CAV has achieved its objectives.

While the cost measure reflects the costs of CAV's activities on an output basis, both the timeliness and customer satisfaction measures are not appropriate. There is inadequate information to determine which services were, and were not, provided within agreed time frames. There is also inadequate information in relation to which services customers were, or were not, satisfied with. As we discuss below, customer service measures only a small part of CAV's activities and services.

### Reliability of reported data

Inadequate data collection and reporting practices have resulted in errors in reported data, which diminishes confidence in the accuracy of CAV's reported performance.

CAV's performance measure relating to inspections, compliance monitoring and enforcement activities produces unreliable data. Until recently, CAV's case management system could not differentiate between these activities which meant that CAV used unreliable manual stand-alone databases to count and report on activities in its annual report. CAV has recognised these limitations and is working to improve the way it collects and reports data to reflect its current business requirements.

Aggregating the three components into one measure also diminishes transparency. Without targets for each element, it is not possible for Parliament or the public to determine how CAV is performing in relation to each of the compliance and enforcement activities CAV has determined should be reported.

There are weaknesses in relation to CAV's quality measure, which assesses customer satisfaction. Data reported in BP3 over the past two years is inaccurate. This is because CAV used incorrect survey results—surveys from earlier years that had already been reported—to inform its reported performance. As a consequence, the results were higher than they should have been and meant that CAV reported that it has met its targets for customer satisfaction when it had not.

While the difference in reported data is not material, at issue is the inadequacy of the systems and processes supporting BP3 reporting that enabled this to occur, and the absence of transparent information explaining the results.

In addition, there are weaknesses in the sampling approach CAV uses to measure customer satisfaction. There has been a significant decrease in the number of people and business areas surveyed. The number of CAV customers surveyed decreased from 1 850 in 2008–09 to 200 in 2011–12 and the number of CAV business areas surveyed decreased from seven in 2008–09 to one in 2011–12. CAV has not acknowledged its limitations in sample selection in any of its reporting. Some areas within CAV have a demonstrated ability to achieve greater performance outcomes than others—licensing, the area surveyed in 2011–12, is one of those areas.



## Information management

CAV has a case management system, Resolve, to capture compliance-related information, but the data it contains is unreliable and inaccurate. CAV also maintains manual stand-alone databases to supplement data in Resolve. However, the lack of effective quality control over these databases exacerbates reliability issues.

CAV accepts that there is an increased risk of error in reporting from manual databases but advised that resource constraints have limited investment in more comprehensive data management systems.

## Compliance activity business rules

CAV has developed business rules to provide a consistent approach to the capture and reporting of compliance activity data, and to meet its reporting obligations. However, issues with how CAV staff interpret the business rules diminish confidence in the reported compliance activity data.

Despite the importance of a consistent approach, CAV only developed its business rules in January 2012. Before this CAV did not have any documented controls in place to manage the collection and reporting of activity data.

The business rules detail the nature of the compliance activity, including what each activity entails, and how compliance and enforcement officers should record them.

Some regional office staff were not aware that there were business rules on how to count compliance visits to traders—a business activity that commenced in January 2012. Discussions with staff in the CAV head office on how they recorded visits demonstrated there was confusion about whether certain activities were counted as one or two visits. This confusion means that different areas within CAV are recording visits differently, which further exacerbates issues with data reliability.

## Compliance activities

### Urgent response to serious risk

A core part of CAV's role is regulating product safety, and responding to urgent risks to public health and safety. Under ACL, CAV can place interim bans on consumer goods or product-related services if there is a risk they may cause serious injury, illness or death. Bans make it unlawful to supply, offer to supply, manufacture, possess or have control of the consumer good.

When product safety matters arise, CAV has been swift to act in obtaining interim bans of products through its minister.

## Investigations

As part of its compliance activities, CAV undertakes investigations of possible breaches.

CAV has detailed processes in place to manage the decision to proceed with an investigation. However, despite assessment and review by multiple groups, decisions were not adequately documented so there is a lack of clarity about why some decisions to investigate proceeded and others did not.

In the course of this audit, CAV has sought to establish better communication procedures.

## Education

CAV's education activities are guided by an overall education strategy, and specific strategies for priority areas. It routinely reviews all its education strategies to assess their effectiveness and recommends whether they should continue. Although these reviews are limited to an internal assessment of the success of individual activities, they allow CAV to more effectively direct its limited education resources.

## Enforcement

CAV's documented approach to enforcement actions aligns with better practice. Specifically, this includes:

- actions that are proportionate to consumer detriment and the seriousness of the breach
- a consistent approach with the aim of consistent outcomes
- transparency
- targeting enforcement actions based on risk.

While CAV's compliance and enforcement officers generally perform these actions in line with the compliance framework and policy, there are weaknesses in documenting decisions, which results in a lack of transparency around its enforcement actions.

Staff—particularly compliance and enforcement officers—would benefit from guidelines that set out the key documentation required to be kept on Resolve. In addition, a quality control or quality assurance process would assist CAV in maintaining an appropriate level of consistency and transparency across all Resolve files.

## Monitoring enforcement actions

Timeliness measures are important for determining whether matters are being dealt with expeditiously. This includes the timeliness of progressing cases through to enforcement, and on to court action. It also helps to limit consumer detriment by stopping a noncompliant trader from offering goods and services in the marketplace.

CAV has no targets or measures to track the progress of cases through to enforcement action, including the time taken for cases to proceed to court. It is not able to provide data on how long it takes a case to proceed from an initial complaint or finding through to documentation being lodged in court. Without this information, CAV's ability to plan its enforcement priorities, strategies and use of resources is hampered. Consequently, CAV is not in a position to assure itself, Parliament or the community that cases are being dealt with in a timely and efficient manner.

## Training

CAV has strong legislative powers to undertake inspections. These powers are administered through compliance and enforcement officers who are appointed by the Executive Director of CAV.

To be appointed, the Executive Director must be satisfied that the person is appropriately qualified or has successfully undertaken appropriate training.

CAV provides its compliance and enforcement officers with appropriate training to be certified as inspectors. However, there is no advanced operational training that covers key activities, such as taking evidence, the seizure of goods, prosecution and situational awareness. While some CAV compliance and enforcement officers may have a strong background in undertaking inspections, there are others who would benefit from formal training.

CAV provides regular legislative training to compliance and enforcement officers, however, this is only one aspect of the training required. CAV needs to provide all compliance and enforcement officers regularly with situational awareness training to mitigate the risks associated with hostile situations when undertaking inspections.

## Recommendations

Number	Recommendation	Page
	Consumer Affairs Victoria should:	
1.	assess the status and currency of its compliance and enforcement policy and procedures, and update as required	20
2.	establish processes to routinely provide compliance and enforcement officers with information about its policies and procedures, including testing their awareness	20
3.	document the process of translating compliance risks into priorities, including the allocation of resources	20
4.	develop output and outcome measures that are relevant, appropriate and provide a fair representation of performance	20
5.	improve the performance reporting in its annual report so that actual performance is reported against predetermined targets, and comparisons can be made over time	20
6.	strengthen controls around the use of data to inform performance reporting, to avoid the incorrect use of data	20

## Recommendations – continued

Number	Recommendation	Page
	Consumer Affairs Victoria should:	
7.	provide additional information in Budget Paper No. 3 for customer satisfaction to make the method and sample size transparent	20
8.	establish robust information management systems, including quality assurance mechanisms that provide it with assurance around data reliability.	20
9.	inform all Consumer Affairs Victoria and regional office compliance and enforcement officers of its business rules for counting activities	34
10.	re-evaluate its current case progression process for investigations to identify and implement areas to improve efficiency	34
11.	establish guidelines and a quality control process about maintaining inspection and investigation files on Resolve	34
12.	establish data collection processes to measure time frames for investigations, and utilise that data to formulate investigation targets	34
13.	formalise ongoing vocational staff training for its compliance and enforcement officers	34
14.	establish a set of outcome measures for its education program and implement a performance measurement strategy.	34

## Submissions and comments received

In addition to progressive engagement during the course of the audit, in accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to Consumer Affairs Victoria and the Department of Justice with a request for submissions or comments.

Agency views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report. Their full section 16(3) submissions and comments are included in Appendix A.



# 1 Background

## 1.1 Consumer protection

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Consumer protection is a system of laws targeted at protecting the rights of consumers, and promoting fair trade and truthful information in the marketplace.

The system aims to protect the most vulnerable consumers in our society from physical and financial harm, including:

- **unfair trading practices**—by educating consumers about their rights and obligations
- **loss or damage**—by enforcing consumer laws against unscrupulous traders
- **unsafe products**—by regulating and enforcing product safety standards.

Consumer protection also applies to traders, by providing education about their rights and responsibilities under various consumer laws. It also works to protect the marketplace from unfair disadvantage and unlawful practices of other traders, such as price fixing or the creation of monopoly companies that have the potential to dominate the marketplace.

### 1.1.1 Consumer rights and fair trading

Consumers in Australia have legal rights when purchasing goods and services. Laws require that these goods and services meet certain standards and are subject to guarantees, warranties and refunds where appropriate.

Consumer rights are protected through a range of Victorian legislation, and most notably through the *Australian Consumer Law and Fair Trading Act 2012* (ACL).

ACL creates a single, national consumer law that provides consumers with the same rights regardless of where in Australia they purchase goods or services. ACL contains:

- protection against unfair contract terms
- consumer rights provisions on the purchase of goods and services
- a product safety and enforcement system
- unsolicited consumer agreement laws
- simple lay-by agreement rules
- penalties, enforcement powers and consumer redress.

Competition and unfair contract laws also protect consumers and traders from unfair trade practices and protect consumers from unfair sales practices. In some industries, such as motor car trading, real estate and legal brothels, the law requires that traders be licensed so that government can regulate the industry, and provide a higher level of protection to consumers.

ACL is enforced and administered by the Australian Competition and Consumer Commission (ACCC), the Australian Security and Investments Commission (ASIC) and each state and territory's consumer regulator.

## 1.2 Consumer Affairs Victoria

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Consumer Affairs Victoria (CAV) is Victoria's consumer regulator. CAV administers and enforces specific Victorian consumer protection laws and also enforces ACL in Victoria. CAV is a division within the Department of Justice (DOJ), and provides services to businesses and consumers. DOJ's eight regional offices also perform regulatory functions on behalf of CAV.

CAV's vision is for 'responsible, confident and informed businesses and consumers'. In 2012–13 CAV set the following goals to help it achieve its vision:

- to empower consumers and businesses to know their rights and responsibilities
- to promote a well-functioning market economy
- to protect vulnerable and disadvantaged consumers
- to reinvigorate the organisation (CAV).

To achieve its vision and goals, CAV delivers a range of services to the community and to government. These include:

- providing information, advice and dispute resolution services to consumers, traders, tenants and landlords
- registering and licensing businesses and occupations through the Business Licensing Authority and managing tenancy bonds
- providing policy advice to government, preparing legislation relating to consumer affairs and administering and enforcing 31 Acts of Parliament
- collaborating with the ACCC, ASIC and other interstate consumer regulators on national consumer projects.

### 1.2.1 Compliance and enforcement

For compliance to be effective, consumers need to know their rights to be able to assess whether they have been dealt with unfairly. Conversely, traders need to understand how to comply, need to have the capacity to comply, and also be willing to comply.

To achieve compliance in the marketplace, CAV uses an integrated compliance approach. This is a model that regulators commonly use. The integrated compliance approach aims to provide a range of tools to achieve the goal of increased compliance. The tools used to deal with noncompliance are matched to the level and pattern of noncompliance by a particular trader or an industry.

CAV focuses on managing compliance through three core activities:

- **encouraging compliance**—through education, information and support to consumers and traders
- **monitoring compliance**—through regular and random inspections, audits, ‘environmental scans’, and intelligence gathering
- **responding to noncompliance**—by investigating suspected contraventions of the law and enforcing the law by issuing warnings, infringement notices, enforceable undertakings, placing conditions on licences, and prosecution.

Figure 1A shows a number of compliance and enforcement tools available to CAV and the frequency with which they have been used over the past five years.

**Figure 1A**  
**Compliance and enforcement activity**

Activity	2007–08	2008–09	2009–10	2010–11	2011–12
Warning letters issued	n.a.	332	n.a.	508	487
Infringement notices issued	130	77	119	50	29
Enforceable undertakings signed	73	41	28	27	16
Unsafe products seized	9 800	22 163	30 815	49 006	11 164
Actions before the courts	273	71	80	89	81

Source: Victorian Auditor-General’s Office.

## 1.2.2 Funding and activities

In 2011–12, CAV’s total revenue was around \$151 million. Of this:

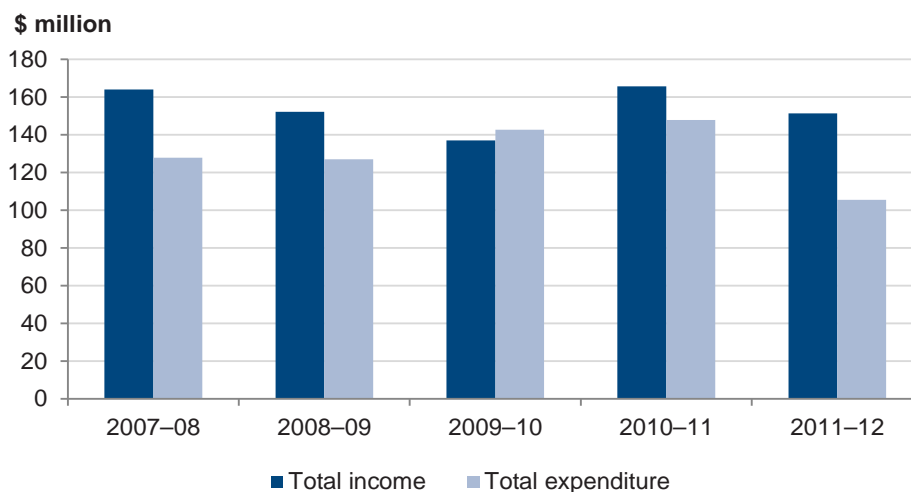
- \$70 million came from estate agent and conveyancer accounts and residential tenancy bonds
- \$31 million came from appropriations
- almost \$20 million came from interest income—trust fund and residential bonds investment
- about \$19 million came from fees income, including fees paid for licences
- \$9 million came from the building levy, which the Building Commission Victoria administers
- around \$2 million came from recoveries, penalties and transfers.

CAV’s total budget expenditure was around \$105 million.

Figure 1B shows CAV’s income and expenditure between 2007–08 and 2011–12. The reduced expenditure in 2011–12 reflects a reduction in CAV grants of around \$48 million.



**Figure 1B**  
**Consumer Affairs Victoria's income and expenditure**



Source: Victorian Auditor-General's Office.

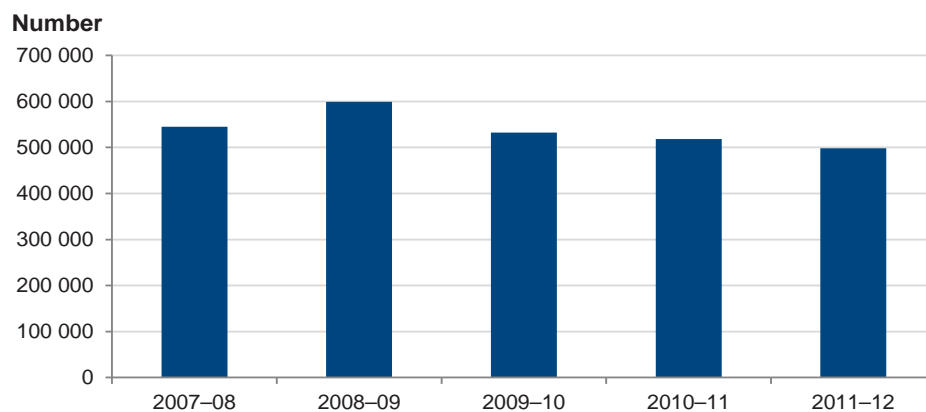
### Consumer Affairs Victoria's activities

In addition to its core compliance and enforcement activities, CAV undertakes other activities including dealing with consumer and trader enquiries, providing education, and dispute resolution:

- Over the past five years, CAV has answered, on average, over 500 000 calls each year for information and advice, peaking at around 600 000 in 2008–09.
- Counter visits can be made by consumers and traders at the Victorian Consumer and Business Centre or at DOJ regional offices. Visits have been consistent at around 40 000 each year, peaking at 43 000 in 2009–10.
- Over the past two years, the number of community education presentations given by CAV has declined. This is primarily due to CAV shifting its priorities to referring consumers to information online and focusing its education on traders through compliance assistance, rather than consumers. From 1 January 2012—the date CAV commenced counting compliance assistance visits—to 31 December 2012, CAV conducted 5 942 compliance assistance visits. In 2011–12, CAV received 1 468 779 visitors to its website.
- An important part of CAV's work is mediating and resolving disputes between consumers and traders. CAV finalises approximately 12 000 disputes per year, with building disputes accounting for around 2 000 disputes each year, and the remainder typically 'general' disputes.

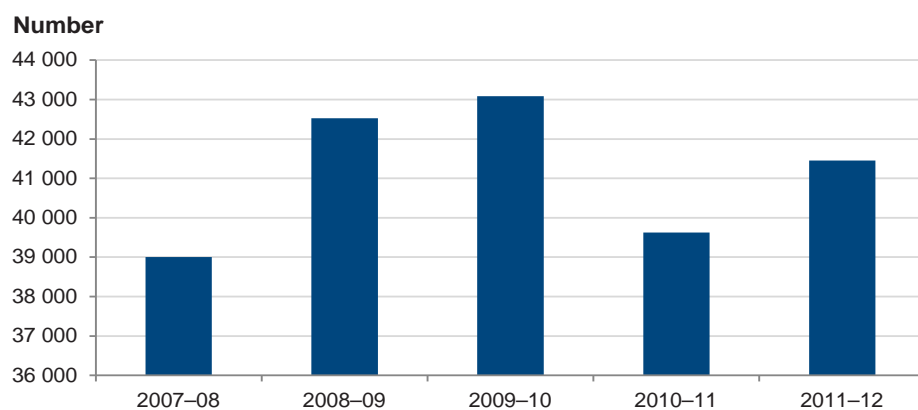
Figures 1C–1F show trends over time in these key activity areas.

**Figure 1C**  
**Telephone enquiries received by Consumer Affairs Victoria**



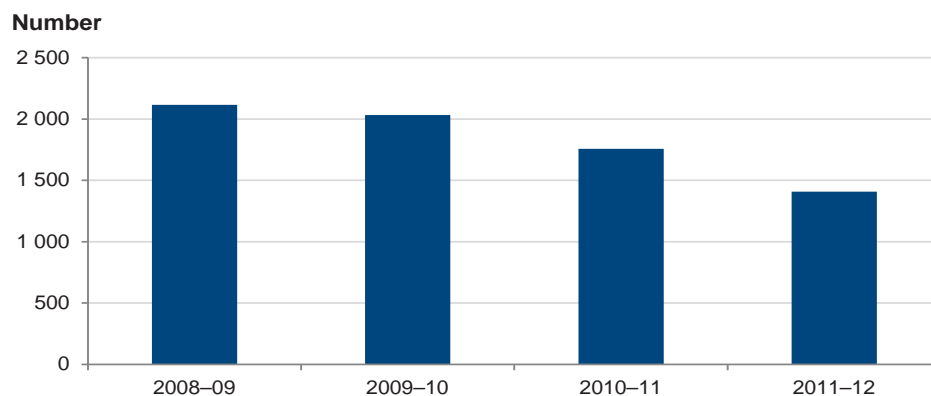
Source: Victorian Auditor-General's Office.

**Figure 1D**  
**Counter visits received by Consumer Affairs Victoria**



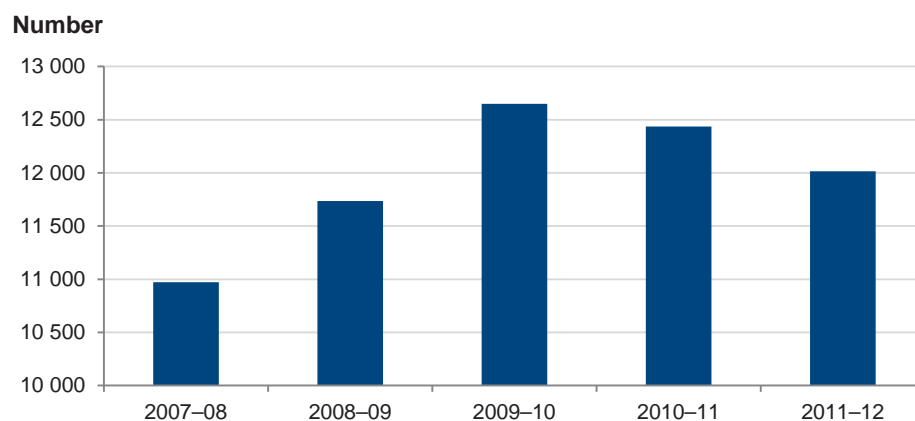
Source: Victorian Auditor-General's Office.

**Figure 1E**  
**Community education presentations given by Consumer Affairs Victoria**



Source: Victorian Auditor-General's Office.

**Figure 1F**  
**Number of disputes finalised by Consumer Affairs Victoria**



Source: Victorian Auditor-General's Office.

### 1.3 Audit objective and scope

The audit's objective was to determine the extent to which CAV's compliance activities effectively and efficiently protect consumers.

In particular, the audit sought to determine whether CAV has:

- applied a sound framework for carrying out compliance and enforcement actions
- adequately assessed its performance to demonstrate its effectiveness in regulating consumer affairs.

This audit reviewed CAV's approach to protecting consumers during the past five years, focusing on CAV's education, inspection and enforcement functions with a particular focus on the high-risk areas of rooming houses, motor car traders, unsafe products and sex work.

### 1.4 Audit method and cost

The audit was performed in accordance with section 15 of the *Audit Act 1994* and the Australian Auditing and Assurance Standards. Pursuant to section 20(3) of the *Audit Act 1994*, unless otherwise indicated any persons named in this report are not the subject of adverse comment or opinion.

The total cost was \$340 000.

# 2 Compliance framework

## At a glance

### Background

For Consumer Affairs Victoria's (CAV) compliance activities to be delivered effectively, consistently and proportionately they need to be underpinned by a transparent organisation-wide framework.

### Conclusion

CAV has developed a framework to guide its compliance and enforcement officers. However, it is undermined by a lack of awareness among over a third of compliance and enforcement officers, a performance framework that cannot provide CAV with the information it needs to reliably assess its performance, and weaknesses in how it manages its information.

### Findings

- CAV has a comprehensive and transparent compliance policy that outlines better practice elements and procedures.
- The usefulness of the policy and procedures has been undermined because over a third of compliance and enforcement officers are unaware of the majority of them.
- It is unclear what guidance some compliance and enforcement officers follow and how they assure themselves that they are adhering to rules and procedures.
- Weaknesses with CAV's performance monitoring means its reported performance is not a fair representation of its actual performance.
- CAV has limited controls over its information management systems and is consequently unable to assure its reliability.

### Recommendations

Consumer Affairs Victoria should:

- assess the status and currency of its compliance and enforcement policy and procedures, and routinely inform compliance and enforcement officers
- develop output and outcome measures that are relevant, appropriate and provide a fair representation of performance
- establish robust information management systems, including quality assurance mechanisms that provide it with assurance around data reliability.

## 2.1 Introduction

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As a regulator, compliance activities constitute a significant part of Consumer Affairs Victoria's (CAV) functions. To enable these activities to be performed effectively and consistently—and for enforcement actions to be proportionate—they need to be underpinned by a transparent, organisation-wide framework. Typically, an effective compliance framework:

- defines an organisation's regulatory responsibilities
- establishes a compliance policy
- describes a risk-based approach to prioritising compliance activities and resources
- establishes a performance management framework to inform the regulator about how effective it has been.

In addition to a framework, regulators need to have reliable compliance information to inform activities and assessments of their effectiveness.

## 2.2 Conclusion

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CAV has developed a generally comprehensive framework to guide its compliance and enforcement officers and the activities they undertake, and to inform those it regulates. The framework is based on an integrated compliance approach, includes a comprehensive compliance policy and procedures, and details the risk-based approach CAV takes to compliance.

However, the framework is undermined because at least one third of compliance and enforcement officers are unaware of the majority of policy and procedures. While elements of a performance framework are evident, these are not sufficient to provide CAV with all the information it needs to determine its effectiveness, efficiency and economy. This is exacerbated by weaknesses in how CAV manages its information.

## 2.3 Compliance framework

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A compliance framework provides regulators with both principles and processes to guide and manage their compliance work. A framework also helps to align the compliance effort of multiple regulators. In the case of consumer protection, the Department of Justice's (DOJ) eight regional offices perform regulatory functions on behalf of CAV, as the regulator.

CAV has based its compliance framework on the concept and practice of integration. This is a principle-based approach that generally aligns with better practice, and is consistent with compliance models used by many regulatory bodies within Australia and around the world.

CAV has developed guidance for its staff on the integrated model, which includes detailed information to support each principle. Additionally, the guidance details the tools available to compliance and enforcement officers, the purpose of the tools and how to apply them with consideration for integration—using compliance tools from across CAV's business units that are most appropriate to the task.

### 2.3.1 Compliance policy and procedures

A compliance policy is fundamental to effective compliance. It guides and directs a regulator to perform its responsibilities consistently and transparently, and to be accountable for its performance. The policy also guides the regulated community on the regulator's approach to securing compliance, typically describing its:

- objectives and principles
- responsibilities under legislation
- approach to supporting and monitoring compliance, and responding to noncompliance
- enforcement powers and criteria for using them
- commitment to publishing compliance and enforcement information.

It also provides whole-of-organisation principles and approaches for making decisions and allocating resources—its risk-based approach to compliance.

CAV has a comprehensive compliance policy, which is publicly available and transparently outlines its approach to regulating traders and protecting consumers. Specifically, the policy outlines a range of better practice elements, including:

- a focus on encouraging voluntary compliance
- the principles that underpin its compliance, including being risk based and outcomes focused
- its approach to enforcement when voluntary compliance cannot be achieved, including the enforcement criteria it applies
- the processes it follows in selecting matters for investigation and enforcement
- the compliance tools and enforcement options available to CAV compliance and enforcement officers
- its internal and external accountability mechanisms.

CAV's transparent approach to compliance is enhanced through publicly available information relating to how it decides to proceed with an investigation, its compliance priorities, enforcement tools and infringement notices. CAV also publishes information on recent enforceable undertakings and public warnings, as well as information about legislation that it administers.

Supporting CAV's compliance and enforcement policy are a range of internal procedures and guidance. These include regional operations manuals, investigations guides and procedures covering a range of compliance activities such as affidavit preparation, briefs of evidence, and property and exhibit handling.

### Issues relating to compliance policies and procedures

While the suite of guidance and procedures is generally comprehensive, there are issues around their currency and approval, resulting in uncertainty about their status. For example, of the 14 guides and procedures identified, nine had not been approved by CAV's enforcement committee, as required. It was therefore unclear if, or to what extent, these were in use. Also, none had been updated to reflect legislative changes to the *Evidence Act 2008*, as well as the introduction of the *Australian Consumer Law and Fair Trading Act 2012 (ACL)*, and many were still draft documents. This creates obvious operational challenges, particularly for compliance and enforcement officers who require up-to-date information on laws, rules and procedures in order to carry out their duties efficiently and effectively.

The usefulness of the policy and procedures has also been diminished by a lack of awareness across all compliance and enforcement officers. Of 16 randomly selected compliance and enforcement officers—out of a total of 45—not all were aware of the framework and policy, while others differed in their understanding and application of them. This included what compliance and enforcement tools to use and when to use them.

The 16 compliance and enforcement officers were aware of only two of the 14 guides and procedures. It was unclear what guidance these compliance and enforcement officers followed and how they assured themselves that they had adhered to the rules and procedures that CAV has developed. Given the importance of the guidance to staff performing compliance activities, this raises doubt about the ability of these compliance and enforcement officers to effectively and efficiently undertake activities in a way that is consistent, transparent and proportionate.

Since the commencement of this audit, CAV has developed an Inspectors' Manual, which contains comprehensive guidance for compliance and enforcement officers. CAV's Strategic Management Group endorsed the manual in January 2013, during the conduct of this audit.

It is important that CAV comprehensively train all compliance and enforcement officers on the use of the Inspectors' Manual and that it is kept up-to-date with relevant legislative and procedural changes.

### 2.3.2 Risk identification and prioritisation

Risk management is integral to good governance and effective regulation. It involves identifying, assessing, and prioritising threats to achieving a legislative objective or corporate outcome, and then applying limited resources to manage the highest risks of noncompliance. This includes those risks that decrease the ability or willingness of the regulated community to comply.

CAV has a sound risk identification and prioritisation framework that should enable it to identify areas on which to focus its compliance activities. It obtains information from a range of sources at the corporate level, including:

- government election commitments and priorities
- minister's priority areas
- departmental long-term strategies and specific initiatives
- national commitments and initiatives
- market intelligences on market trends, global challenges and emerging issues
- evidence of consumer detriment
- stakeholder consultation feedback.

CAV's framework also obtains information about risks of noncompliance from its Planning, Monitoring and Assessment (PMA) business unit. PMA undertakes regular environmental scanning and monitoring of complaints made to CAV to identify issues and trends in consumer complaints. PMA produces regular reports and ad hoc reports as required. These include weekly reports, industry specific reports and reports on CAV priorities.

While CAV has a generally transparent approach to detailing how it identifies its risks, the process of translating those risks into priorities is less transparent. For the 2012–13 financial year, CAV set the following enforcement priority areas:

- unlicensed motor car traders
- builders in breach of the *Domestic Building Contracts Act 1995* where there is considerable consumer detriment or vulnerability
- unfair contract terms, particularly identified online traders
- product safety matters, especially targeting wholesalers of unsafe toys
- travelling con men as part of the national priority
- property trust account issues and unlicensed traders
- health claims
- energy marketing representations
- rogue rooming house operators
- landlords who do not lodge bonds
- debt collectors.

A lack of any documented procedures within CAV on the prioritisation process means that it is not possible to assess whether CAV has effectively identified and acted to address known risks.

### 2.3.3 Performance reporting

A comprehensive performance management framework is integral to demonstrating that compliance activities are effective and contribute to the achievement of legislative objectives and corporate outcomes. It also enhances transparency and accountability for those affected by regulation and the broader community.



An effective compliance performance management framework should contain the following elements:

- **compliance performance information**—complete and accurate quantitative or qualitative information
- **compliance performance measures**—measures providing relevant, appropriate and fair representation of performance
- **compliance performance assessment and reporting**—performance information is analysed against performance measures to assess the program/service against appropriateness, effectiveness and efficiency, and the findings are reported.

CAV has a performance monitoring framework to assess its performance. CAV also has objectives to guide the organisation's role that are outlined in its corporate plan. Its regulatory and compliance roles have three objectives:

- empower consumers and businesses to know their rights and responsibilities
- promote a well-functioning market economy
- protect vulnerable and disadvantaged consumers.

However, weaknesses in its measures mean that CAV's performance monitoring does not provide a fair representation of its actual performance.

## Annual reports of performance

CAV reports its performance through its annual report, the DOJ's annual report and Budget Paper No. 3 (BP3).

### *Consumer Affairs Victoria's annual report*

Under the ACL, CAV must submit an annual report on the operation of the Act to the Minister for Consumer Affairs, who must table it in Parliament. This report is called CAV's Annual Report. It is the main source of information available to the public on CAV's performance and activities.

CAV's annual report is not a report of the department, and consequently does not need to adhere to the requirements of the *Financial Management Act 1994*. Regardless, an annual report provides an opportunity to report meaningfully on, and be held accountable for, performance.

CAV's annual report includes information about its activities, including information on the number of calls answered, the number of visitors to its website and the number of compliance and enforcement activities undertaken. However, the report does not provide an adequate assessment of CAV's performance. While it includes information on its performance, it details only the number of delivered outputs. There are no targets or benchmarks against which to compare performance, and it is therefore not possible to assess how effectively or efficiently CAV has performed.

The annual report does not include any other performance-related information, such as performance measures, to assess CAV's performance against its objectives. The information presented in the annual report also differs each year, and there is no clear rationale for what information is included. For example, in 2008–09, 2009–10 and 2011–12, CAV provided detailed information on its building industry activities, such as the number of prosecutions completed, fines, penalties and consent orders, and compensation for consumers. However, in 2010–11, it only provided a figure for the number of audits/inspections. The variation in information included each year makes it impossible to perform analysis of trends.

Given the freedom that CAV has with the reporting format and content of its annual report, there are significant opportunities to improve the quality and transparency of its public reporting so that it fairly represents its actual performance.

#### *Department of Justice's annual report*

In addition to the CAV annual report, DOJ also reports publicly on the performance of CAV in its annual report and also in BP3.

DOJ's annual report is a requirement under the *Financial Management Act 1994* and must contain performance indicators related to its objectives. BP3 is the government's key report on agency service delivery. It contains a range of performance information related to the quantity, quality, timeliness and cost of services that departments provide. Both reports include the same performance information.

DOJ has six output-related indicators to assess the performance of CAV. The indicators, which have remained generally consistent over the past five years, are identical across both reports. Figure 2A shows CAV's performance measures for 2011–12.

**Figure 2A**  
**Department of Justice's annual report and Budget Paper No. 3 measures for Consumer Affairs Victoria, 2011–12 targets and actual**

	2011–12 target	2011–12 actual
<b>Quantity</b>		
Information and advice provided to consumers and traders delivered by CAV	606 350	590 449
Inspections, compliance monitoring and enforcement activities delivered by CAV	9 075	9 417
Registration and licensing transactions delivered by CAV	600 000	650 002
<b>Quality</b>		
Customer satisfaction with services provided	90.0%	95.0%
<b>Timeliness</b>		
Services provided within agreed time frames	90.0%	87.7%
<b>Cost</b>		
Total output cost	\$114.2m	\$117.9m

Source: Victorian Auditor-General's Office.

To provide a reliable and accurate assessment of CAV's performance, measures that are both relevant and appropriate are needed. A relevant measure is one that has a logical and consistent relationship to the entity's objectives. An appropriate measure is one that enables assessment of achievements against objectives, outcomes and outputs, including assessing trends over time against benchmarks.

CAV's three quantity measures are generally consistent with its objectives, and therefore likely to be relevant measures. This is because:

- information and advice would contribute to empowerment
- inspections, monitoring and enforcement would contribute to protections
- registration and licensing would contribute to a well-functioning market economy.

However, while the quantity measures are consistent with CAV's objectives, they are not appropriate to assess performance against the objectives. Despite being consistent over a period of time to allow trend analysis, the measures do not in themselves provide sufficient information about whether CAV has achieved its objectives.

While the cost measure reflects the costs of CAV's activities on an output basis, neither the timeliness nor customer satisfaction measures are appropriate. There is inadequate information provided in the annual report to determine which services were, and were not, provided within agreed time frames, or even what the service-specific time frames were. There is similarly inadequate information in relation to which services customers were, or were not, satisfied with. As we discuss below, customer service measures only a small part of CAV's activities and services.

While the *Financial Management Act 1994* and associated guidance provides minimum standards for performance reporting, there is nothing preventing DOJ from including measures that would more fairly represent actual performance in relation to CAV's objectives. Together with the lack of meaningful performance information in CAV's annual report, the weaknesses in DOJ's performance monitoring and reporting represent a significant gap in CAV's compliance framework. Developing indicators that are relevant, appropriate and fairly represent actual performance should be a priority for CAV.

## Reliability of reported data

### *Quantity measure*

CAV's second quantity measure, relating to inspections, compliance monitoring and enforcement activities produces unreliable data. While the measure seeks to count the aggregate number of activities, until recently, its case management system was unable to record these activities. Instead, CAV counted all activities as investigations, which is a different activity to inspections, compliance monitoring and enforcement under CAV's compliance framework. It is therefore unclear how CAV accurately counted and reported something its system did not support.

To report this measure, CAV relies on the manual data collections maintained by the metropolitan and regional offices, as well as data from its case management system, Resolve. Given the risk of error in this approach and the lack of quality controls, discussed in Section 2.4, it is likely that the reported results are not a reliable account of actual performance.

Aggregating inspections, compliance monitoring, and enforcement activities into one measure also diminishes transparency. Without targets for each element, it is not possible for Parliament or the public to determine how CAV is performing in relation to each of the activities CAV has determined should be reported.

### *Quality measure*

There are weaknesses in relation to CAV's quality measure, which assesses customer satisfaction. Data reported in BP3 over the past two years is inaccurate. This is because CAV incorrectly used survey results—already reported from earlier years—to inform its reported performance. This led to results for 2009–10 that were higher than they should have been and meant that CAV reported its performance had met its targets for customer satisfaction, which it had not. This incorrect data for 2009–10 was used again in the following two Budget papers.

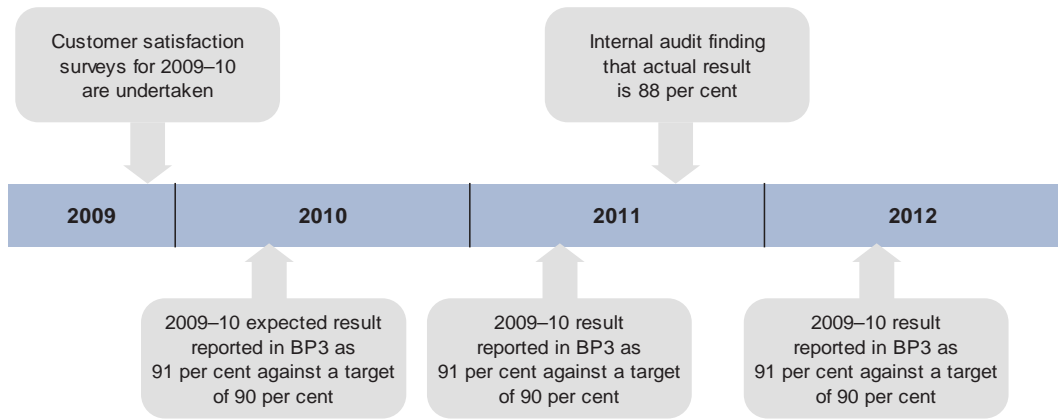
Had the correct surveys been used, CAV would not have met its customer satisfaction target—achieving 88 per cent instead of the reported 91 per cent. While the difference in reported data is not material, at issue is the inadequacy of the systems and processes supporting BP3 reporting that enabled this to occur, and the absence of transparent information explaining the results.

These issues were identified through an internal audit in September 2011, yet timely action was not taken to address them. Despite knowing about the issue, CAV continued to report the incorrect figures. It is unclear how such a fundamental breakdown in CAV's internal controls was able to occur.

Figure 2B shows that:

- in the second quarter of 2011, CAV incorrectly reported that the customer satisfaction survey result for 2009–10 was 91 per cent
- in the third quarter of 2011, an internal audit found that the actual result for the 2009–10 survey was 88 per cent
- despite the findings of an internal audit, CAV still reported the 2009–10 survey result as 91 per cent in the second quarter of 2012.

**Figure 2B**  
**Customer satisfaction survey**



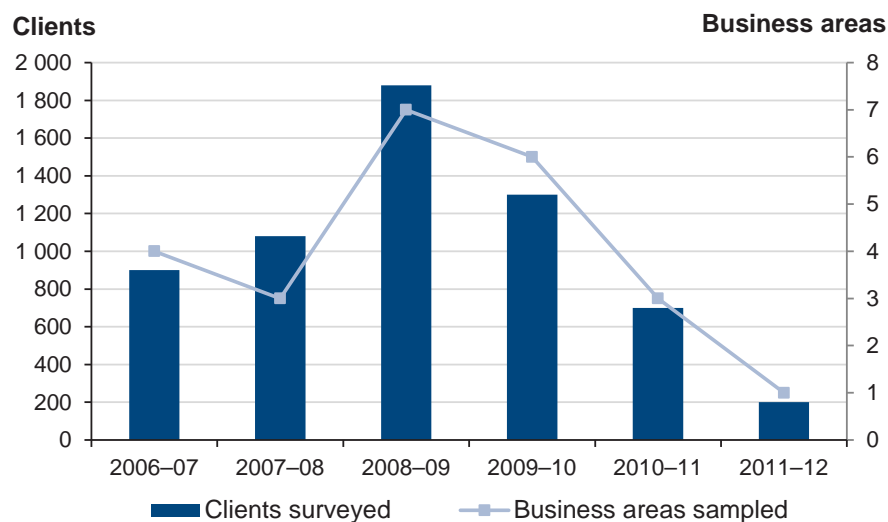
Source: Victorian Auditor-General's Office.

### *Customer satisfaction*

In addition to these issues, there are weaknesses in the approach CAV uses to measure customer satisfaction. The sample size for 2011–12 was 200 traders who dealt with CAV's licensing area. It included only new licensees and was made up of 106 real estate agents, 44 second-hand dealers, 20 licensed motor car traders, 16 brothel licensees/managers, eight travel agents and six conveyancers. This survey is limited to only one of CAV's functions and consequently is not a fair or accurate representation of the quality of CAV's services as a whole.

As Figure 2C shows, there is a significant decrease on previous years, in both the number of people and business areas surveyed. The number of CAV customers surveyed decreased from 1 850 in 2008–09 to 200 in 2011–12, a difference of 1 650, or 89 per cent. Similarly, the number of CAV business areas covered in the customer satisfaction surveys decreased from seven in 2008–09 to one in 2011–12, which represents an 86 per cent decrease.

**Figure 2C**  
**Survey sampling for Consumer Affairs Victoria's**  
**Budget Paper No.3 quality measure**



Source: Victorian Auditor-General's Office.

CAV does not consider the limitation of survey area has affected survey outcomes because the results have maintained a similar percentage score of between 88 and 95 per cent from 2006-07 to 2011-12. However, CAV's current approach to surveying—focusing on one already high performing area—has the potential to produce results that do not fairly reflect its actual performance.

The area surveyed in 2011-12—licensing—had an overall customer satisfaction level of 97 per cent in its previous survey in 2009-10, and the area to be surveyed in 2012-13—enquiries—had an average level of customer satisfaction of 94.3 per cent for the 2008-09, 2009-10 and 2010-11 financial years. The selection of these areas gives CAV greater assurance that it will achieve its target outcome of 90 per cent.

CAV's selection also reduces the incentive to address the poorer performance of areas that do not achieve its 90 per cent target. CAV's Estate Agents Resolution Service had a customer satisfaction level of 77 per cent in 2009-10, the last year it was surveyed. During that year, this area was surveyed in conjunction with five other areas of CAV. The combined results for that year meant that CAV reported an overall customer satisfaction level of 91 per cent.

While deciding who to survey is an operational decision for CAV, given its overall reported quality performance is based on this result, there needs to be much greater transparency in its public reports around how it determines quality.

CAV's survey framework also includes neutral responses—neither satisfied nor dissatisfied—in its calculation of satisfied customers. This practice increases CAV's performance outcome percentage. CAV does not disclose this method of calculation in its BP3 report. The method that CAV uses to calculate its performance also needs to be transparent.

## 2.4 Information management

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CAV's compliance framework relies on effective information management. Its information systems provide it with a rich source of compliance data and the ability to identify trends to inform its compliance activities. CAV's information management systems also provide it with data around its compliance activities and enforcement actions, which also informs its performance management.

Given the importance of CAV's information management systems to performing its functions, it is essential that the management systems are effective and the data they contain is reliable.

While CAV has a case management system, Resolve, to capture compliance-related information such as complaints and compliance activities, the data it contains is unreliable and inaccurate. CAV also maintains a range of manual stand-alone databases to supplement data in Resolve. However, the lack of effective quality control over these databases exacerbates reliability issues.

### 2.4.1 Resolve case management system

CAV's core information management system, Resolve, is primarily a case management system that CAV uses to monitor cases, although the data it contains also contributes to reported performance data.

Prior to October 2012, Resolve had limited scope to record the types of activities undertaken. Inspections were recorded as investigations because Resolve did not provide the functionality to differentiate. An inspection is a visit to a premise for the primary purpose of monitoring a trader's compliance. Whereas, an investigation is a process of trying to find out all the facts to ascertain whether there has been a breach of the law. Including both as an investigation creates the impression that CAV is undertaking more resource intensive investigations than it actually is.

Further, Resolve did not count other activities that CAV requires its staff to report on each month, such as compliance assistance and education assistance delivered to traders. These visits were recorded as 'Information' in Resolve, and therefore did not accurately reflect CAV's compliance activities.

Since the commencement of this audit, and in line with new compliance activities, CAV has made improvements to Resolve by adding additional case type functionality. Resolve now records inspections, proactive investigations and compliance activities separately. However, CAV continues to use manual data collection rather than utilising Resolve's improved reporting capacity.

Functionality limitations and a lack of effective quality controls mean that Resolve also contains a range of duplicated data. Resolve contains multiple entries for the same trader, albeit in a way that does not readily identify it as the same trader. In these cases there were between four and 10 different entries for the same trader. The different entries contained different spelling, the addition of a suburb or abbreviations of the name.

Figure 2D demonstrates the different types of input styles used by CAV, which results in the same trader being recorded as a separate entity for each complaint received.

**Figure 2D**  
**Resolve information input styles**

Trader name	Street address	Suburb	Telephone number
Trader name (suburb)	Street address		Telephone number
Trader name (Trading as)	Street address	Suburb	Telephone number
Tr'der name (abbreviated)	Street address	Suburb	Telephone number
Trader name	PO Box	Suburb	Telephone number
Tradr name (misspelt)	Street address	Suburb	Telephone number
Trader name (Pty Ltd)	Street address	Suburb	Telephone number
TRADER NAME (capitalised)	Street address	Suburb	Telephone number

Source: Victorian Auditor-General's Office.

Resolve has the capacity to list the same trader once, record separate complaints against that trader and extract data on the number of complaints made. However, CAV's current practice of data input, as outlined above, precludes such a ready extraction of data. This is because CAV has no effective controls in place to identify and remedy data quality issues. This impedes CAV's ability to correctly identify trends with particular traders, and consequently its ability to reliably assess the risk of noncompliance.

## 2.4.2 Stand-alone databases

Resolve's limitations have led to CAV staff maintaining stand-alone spreadsheet databases to record the activities undertaken.

CAV staff use different methods to collect the data that is collated into CAV reports. Head office staff reported they used their own spreadsheets for data collation. Regional office staff receive a report from CAV's head office, generated from Resolve, on the activities of the particular regional office, and supplement this with data from their own spreadsheets to report on activities. This manually collected data is used for BP3 reporting, annual reporting, providing information to the minister and dealing with ad hoc requests.



CAV staff responsible for collecting and reporting on this data are not required to, nor do they, assure themselves about the quality of the data. CAV has no mechanisms to provide its senior management with assurance around data reliability. Collating data manually significantly increases the risk of error, particularly where there are no effective quality controls over the stand-alone databases.

CAV accepts that there is an increased risk of error in reporting from manual databases but advised that resource constraints have limited investment in more comprehensive data management systems.

## Recommendations

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Consumer Affairs Victoria should:

1. assess the status and currency of its compliance and enforcement policy and procedures, and update as required
  2. establish processes to routinely provide compliance and enforcement officers with information about its policy and procedures, including testing their awareness
  3. document the process of translating compliance risks into priorities, including the allocation of resources
  4. develop output and outcome measures that are relevant, appropriate and provide a fair representation of performance
  5. improve the performance reporting in its annual report so that actual performance is reported against predetermined targets, and comparisons can be made over time
  6. strengthen controls around the use of data to inform performance reporting, to avoid the incorrect use of data
  7. provide additional information in Budget Paper No. 3 for customer satisfaction to make the method and sample size transparent
  8. establish robust information management systems, including quality assurance mechanisms that provide it with assurance around data reliability.
-

# 3 Compliance activities

## At a glance

### Background

Compliance and enforcement activities provide a regulator with a framework to deter and address noncompliance.

### Conclusion

Consumer Affairs Victoria's (CAV) compliance framework is theoretically sound. However, CAV cannot provide assurance that its enforcement procedures are efficient and effective.

### Findings

- It is not possible to understand the frequency and coverage of CAV's inspections from publicly available information.
- CAV performs a comprehensive range of compliance education activities.
- CAV does not provide adequate procedural guidance to compliance and enforcement officers.
- CAV does not have measures to track the progression of enforcement cases.

### Recommendations

Consumer Affairs Victoria should:

- inform all Consumer Affairs Victoria and regional office compliance and enforcement officers of its business rules for counting activities
- re-evaluate its current case progression process for investigations to identify and implement areas to improve efficiency
- establish guidelines and a quality control process about maintaining inspection and investigation files on Resolve
- establish data collection processes to measure time frames for investigations, and utilise that data to formulate investigation targets
- formalise ongoing vocational staff training for its compliance and enforcement officers
- establish a set of outcome measures for its education program and implement a performance measurement strategy.

## 3.1 Introduction

---

Compliance and enforcement activities aim to deter and address noncompliance, and provide both the regulator and the community with assurance about how well regulations are being met.

Better practice approaches use a combination of activities for promoting and monitoring compliance, as well as responding to and deterring noncompliance. Activities range from supporting voluntary compliance through education and licensing, to monitoring compliance and prosecuting serious offences. These activities can be both planned, such as education campaigns and targeted compliance monitoring, and reactive, in response to compliance breaches or other incidents.

## 3.2 Conclusion

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Consumer Affairs Victoria (CAV) is undertaking a range of compliance activities designed to identify and deter noncompliance, encourage voluntary compliance and protect consumers. Key activities include inspections and education, complemented by a range of enforcement activities.

While compliance activities do occur, there is no reliable understanding of the extent of these activities due to issues around how CAV collects and reports its activity data. Administrative weaknesses diminish the effectiveness and efficiency of some compliance and enforcement activities.

## 3.3 Compliance activity business rules

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The Department of Justice's regional structure means that, in addition to CAV, there are eight other offices performing regulatory functions. Given this, it is essential that there is clear and consistent guidance on how to collect information and report on compliance activities.

CAV has developed business rules to provide a consistent approach to the capture and reporting of compliance activity data, and to meet its reporting obligations. However, there are issues with the awareness and interpretation of the business rules that diminish confidence in the reported compliance activity data.

### Business rules development

Despite the importance of a consistent approach, CAV only developed its business rules in January 2012. Before then, CAV did not have any documented controls in place to manage the collection and reporting of activity data. Without documented controls in place, it is unclear how the regional offices compiled their data reliably and accurately.

## Business rules awareness and interpretation

CAV's business rules detail the nature of the compliance activity, including what each activity entails, and how compliance officers should record them. They cover three broad areas—education, compliance assistance and inspections/investigations.

The business rules also detail that some visits can be counted as multiple activities, for example:

- if a compliance and enforcement officer visits a retail store to provide an education pack but also checks the trader's refund signage and layby policy, and provides advice, both education and compliance assistance activities are recorded
- when a CAV officer visits a motor car trader for compliance assistance, this activity can also be recorded as a visit to a small business.

At least one-third of regional office staff were not aware that there were business rules on how to count compliance visits to traders—a business activity that commenced in January 2012. Discussions with staff at head office on how they recorded visits demonstrated there was confusion about whether these activities were counted as one or two visits. This confusion leads to areas within CAV recording activities differently, which exacerbates issues with data reliability.

CAV has taken on responsibilities, such as rooming houses, as part of its regulatory role. As highlighted in Figure 3B, CAV has undertaken a substantial number of visits to properties suspected of being rooming houses, and recorded these as inspections.

However, based on CAV's business rules, 'each visit, where a case officer (compliance and enforcement officer) has formally presented their inspection badge and an entry power under the Act (*Australian Consumer Law and Fair Trading Act 2012*) has been used, is to be recorded as one inspection'.

Of the 24 inspections sampled for this audit, which CAV undertook in 2011–12:

- no compliance and enforcement officer gained entry to the property being inspected
- seven inspections were registered as taking one minute or less to complete
- in five, the compliance and enforcement officer spoke to a resident at the address
- nine properties were suspected to be rooming houses, however, seven were marked as having 'no further action required'
- two properties suspected of being rooming houses were checked with the Residential Tenancy Bond Authority
- one case was reported to the local council as an unregistered rooming house.

In some instances in other financial years, the addresses inspected were residential properties, businesses or vacant blocks of land. While these visits should constitute an activity, it is not an inspection as defined by CAV's business rules.

CAV has recognised this issue with the business rules, and is proposing amendments to the inspection definition so that all visits are reported as legitimate activities that contribute to the rooming house program's objectives.

## 3.4 Compliance activities

### 3.4.1 Compliance inspections

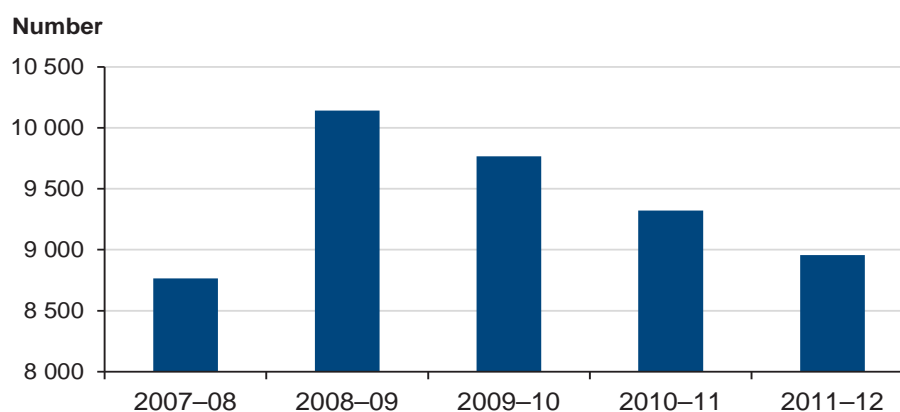
Compliance inspections are a key regulatory function of CAV. They typically involve a visit to a business or residential address to assess whether there is compliance with the legislation or regulations that CAV administers.

It is not possible to determine the number, frequency and coverage of CAV's inspections from publicly reported data. Given the issues with the reported performance data combining three compliance related activities, as described above, as well as the data reliability issues discussed in Part 2, the following data should be considered, at best, as indicative.

Data from a range of CAV's stand-alone spreadsheet databases, shown in Figures 3A to 3E, indicates that:

- Compliance inspections generally relate to CAV's stated priorities.
- Since peaking at 10 141 in 2008–09, the number of compliance inspections has steadily decreased to 8 956 in 2011–12. This reflects a shift in CAV's focus towards compliance assistance activities, of which it conducted 5 942 between 1 January 2012—the date it commenced counting the activity—to 31 December 2012.
- Product safety had the second largest number of inspections, with 2 978 conducted. This represents 6.3 per cent of all inspections.
- Rooming houses had the most significant change in the number of inspections, increasing from 42 in 2008–09 to 610 in 2011–12. This represents an increase of around 1 352 per cent.

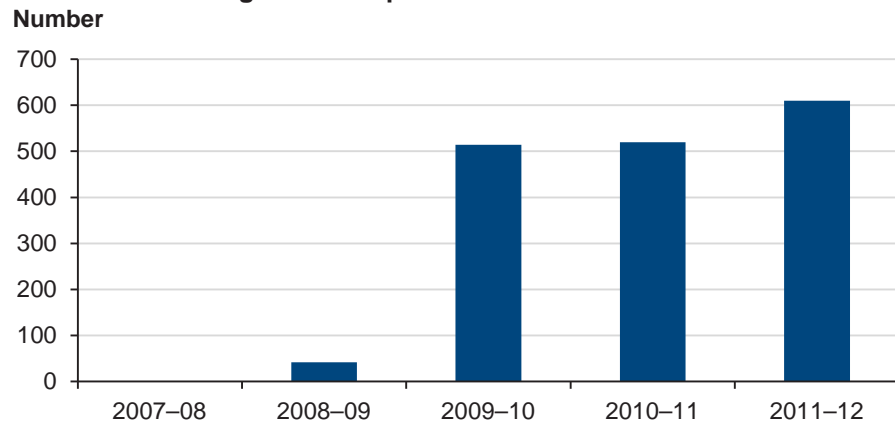
**Figure 3A**  
Total compliance inspections 2007–08 to 2011–12



Source: Victorian Auditor-General's Office.

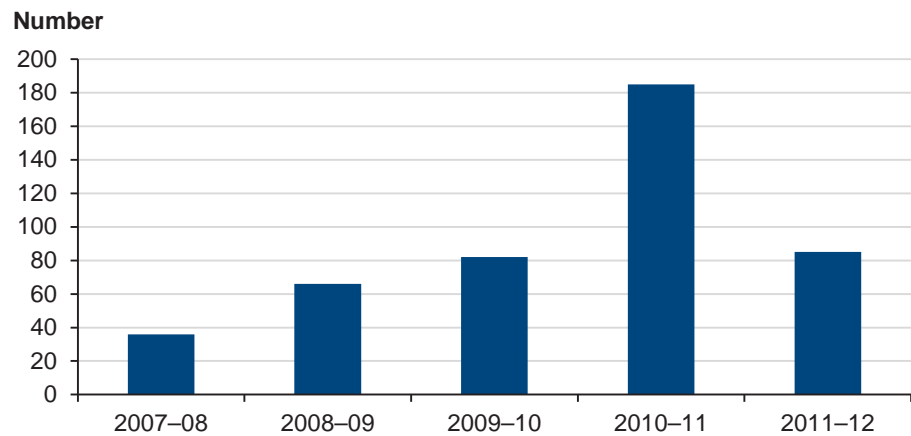
The majority of CAV's inspections relate to residential tenancies, representing around 81 per cent of all inspections. Figure 3B to 3E relate to the other types of inspections conducted by CAV.

**Figure 3B**  
**Rooming house inspections 2007–08 to 2011–12**



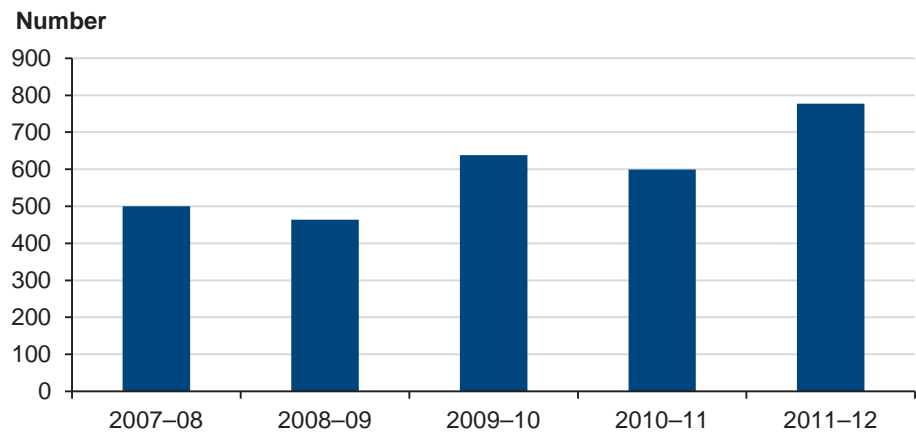
Source: Victorian Auditor-General's Office.

**Figure 3C**  
**Licensed brothel inspections 2007–08 to 2011–12**



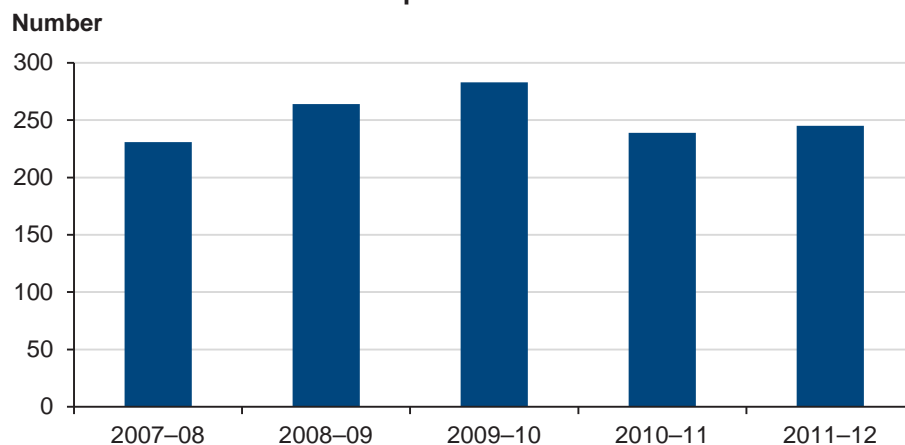
Source: Victorian Auditor-General's Office.

**Figure 3D**  
**Product safety inspections 2007–08 to 2011–12**



Source: Victorian Auditor-General's Office.

**Figure 3E**  
**Motor car trader inspections 2007–08 to 2011–12**



Source: Victorian Auditor-General's Office.

It is difficult to compare the figures over time due to the changing nature of CAV's business and recording methods. CAV has also refocused its education and information provision activities to online services—in 2011–12 it received 1 468 779 visitors to its website.

CAV has also changed its recording methods over time. For example, prior to January 2012, CAV counted all activities as inspections, including trader walks, visiting locations of suspected rooming houses and education visits.

### Urgent response to serious risk

A core part of CAV's role is regulating product safety, and responding to urgent risks to public health and safety. Under the *Australian Consumer Law and Fair Trading Act 2012*, CAV can place interim bans on consumer goods or product-related services if there is a risk they may cause serious injury, illness or death. Bans make it unlawful to supply, offer to supply, manufacture, possess or have control of the consumer good.

There are two types of bans:

- **interim**—imposed by the responsible minister of either the Commonwealth, state or territory
- **permanent**—imposed by the Commonwealth minister.

The supply of a consumer product is banned when all of the following criteria are met:

- it has been established that the product is being (or will be) distributed within Victoria
- the product is dangerous, that is, likely to cause death or serious injury to the body or health of any person, whether directly or indirectly
- there is no consumer product safety standard that would adequately protect the community from unreasonable risk of injury
- the product is not voluntarily withdrawn from the marketplace
- the Commonwealth minister has not introduced an interim ban
- there is a particular need for rapid action.

When CAV is satisfied that an interim ban is required, it requests the Minister for Consumer Affairs to impose the ban as soon as practicable. CAV then issues media releases and posts information on its website to communicate details of the ban to the public.

As Figure 3F shows, CAV undertakes a significant number of product safety activities.

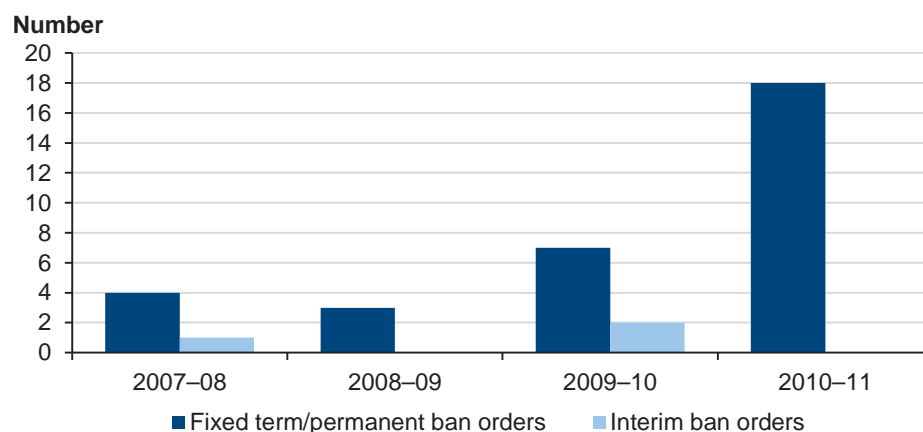
**Figure 3F**  
**Product safety activities**

Product safety activity	2007–08	2008–09	2009–10	2010–11	2011–12
Products seized	9 800	22 163	30 815	49 006	11 164
Products destroyed	19 000	0	>20 000	0	40 000
Products investigated	n.a.	180	247	n.a.	n.a.
Premises inspected	500	464	638	599	777
Companies/directors prosecuted	3	9	1	2	0
Civil proceedings	0	1	2	7	3
Parties signed to enforceable undertakings	14	3	10	2	12

Source: Victorian Auditor-General's Office.

Figure 3G shows the number of fixed term/permanent and interim ban orders issued by CAV. There were no bans issued by CAV in 2011–12 as the responsibility for permanent ban orders transferred that year to the Australian Competition and Consumer Commission (ACCC). There are currently 22 permanent ban orders in Victoria.

**Figure 3G**  
**Ban orders issued**



Source: Victorian Auditor-General's Office.



When product safety matters arise, CAV has been swift to act in obtaining interim bans. The case study in Figure 3H illustrates CAV's effectiveness in this area:

**Figure 3H**  
**Case study: high powered magnets**

High powered magnets may be used in a variety of ways including in toys, games, puzzles and jewellery. Although these items are marketed to adults, they can cause serious injury or death if swallowed or inhaled by children.

In response to one death and several serious injuries to children in other states, CAV urgently obtained an interim ban order on 23 August 2012, which was effective, via an extension of operation, until 23 December 2012. CAV's action provided protection for Victorian consumers until the Commonwealth's permanent ban came into effect on 15 November 2012.

Source: Victorian Auditor-General's Office.

### 3.4.2 Investigations

The purpose of a CAV investigation is to discover if there has been a breach of an Act and to gather evidence to prove the breach or contravention.

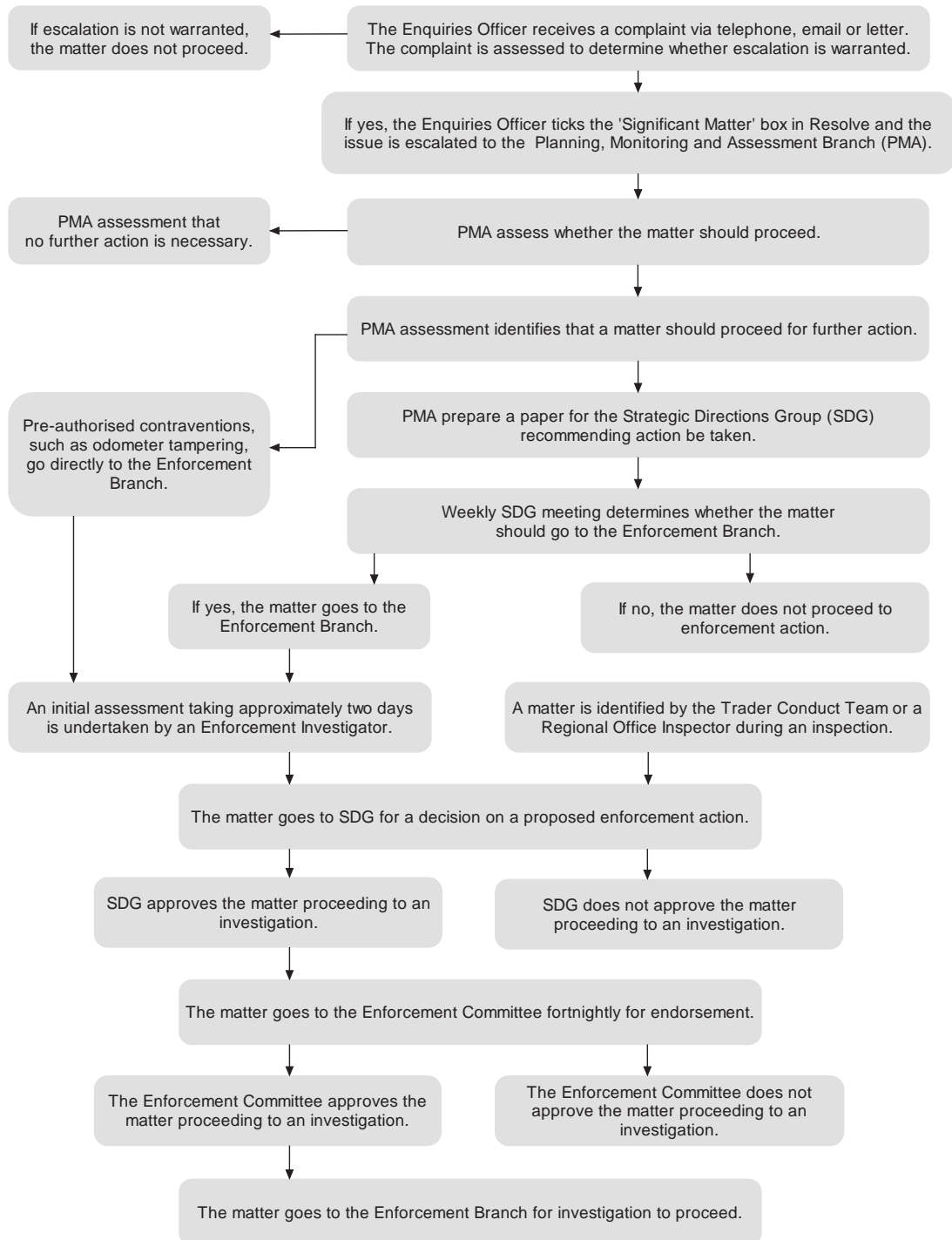
Investigations are conducted by CAV's compliance and enforcement officers who are based at its head office. These officers have a variety of experience and qualifications—some are lawyers or have law degrees and some are former police officers. Once a decision has been made to investigate a matter, the case is allocated to a compliance and enforcement officer based on the complexity of the case and the officer's level of experience.

Investigations can focus on any conduct within CAV's jurisdiction, from unlicensed motor car traders to unscrupulous builders. There are a number of considerations, including the extent of the consumer detriment, the seriousness of the conduct and the history of the alleged offender.

CAV was unable to quantify the number of investigations it has undertaken over the past five years. It does not report this information publicly. It was also unclear how CAV managed the number of investigations underway at any given time.

CAV has detailed processes in place to manage the decision to proceed with an investigation. This includes having the matter assessed by its Planning, Monitoring and Assessment Branch (PMA), as well as further review by the Strategic Directions Group (twice), senior management, and the Enforcement Committee. Figure 3I shows CAV's decision-making process.

**Figure 3I**  
**Enforcement flowchart for serious matters**



Source: Victorian Auditor-General's Office.

Despite assessment and review by multiple groups, decisions were not adequately documented and there is therefore a lack of clarity about why some decisions proceeded to investigation and others did not.

In addition, the compliance and enforcement officers responsible for the investigation did not receive written information about whether to proceed with a case. Information came from managers and at times it was not clear what steps the Strategic Directions Group had decided to take.

Since this was raised during the audit, CAV has sought to address the issue by:

- having compliance and enforcement officers attend Strategic Directions Group meetings to discuss their cases
- improving the quality of meeting minutes and including reasons for why decisions to proceed or not proceed to enforcement were made
- circulating the meeting minutes more widely.

### 3.4.3 Education

Education is fundamental to effective compliance, and enables those being regulated to understand what they need to do to comply with legislation and regulations. It also provides information to consumers about their rights and responsibilities.

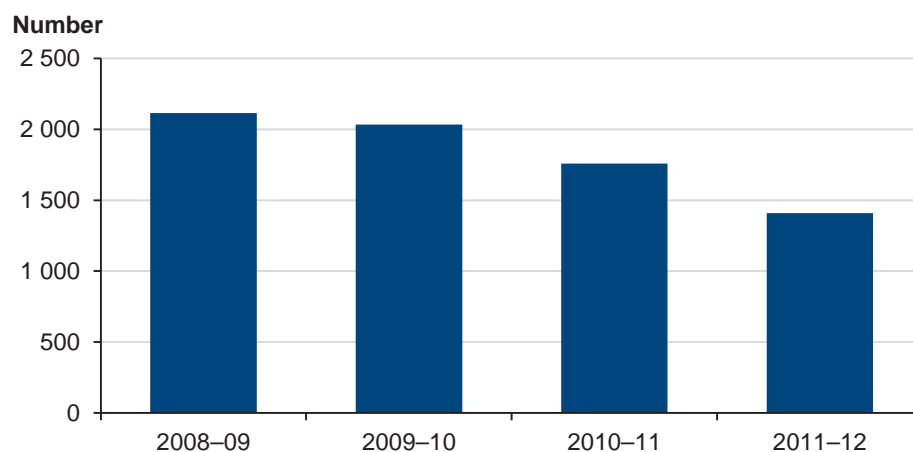
CAV's education activities are underpinned by an overall education strategy, with specific education strategies for priority areas. It currently has education strategies for motor car trading, product safety, sex work and rooming houses.

CAV performs a comprehensive range of education activities to provide information to both consumers and traders on their rights and obligations on a wide variety of consumer issues including unsafe products, small businesses, owners' corporations and retirement villages. These include:

- **information sessions**—conducted for both consumers and traders
- **the provision of literature**— pamphlets and booklets on CAV's website
- **compliance assistance visits**—visits to traders by CAV staff to provide them with information about their obligations and assistance to help them comply.

Figure 3J demonstrates that CAV has carried out a significant number of information sessions in the past four years, peaking at 2 115 in 2008–09. This number has steadily declined to 1 409 in 2011–12. This decline occurred due to a strategic shift towards compliance assistance visits and referring consumers to information available online.

**Figure 3J**  
**Information sessions**



Source: Victorian Auditor-General's Office.

CAV routinely reviews its education strategies to assess the effectiveness of individual activities and to recommend whether they should continue. The reviews are limited to an internal assessment on the success of individual activities, but allow CAV to target its limited education resources.

### 3.4.4 Enforcement

Enforcement actions are a key part of an effective compliance framework, and provide a regulator with the tools to deal with any noncompliance. CAV undertakes a range of enforcement actions when its compliance and enforcement officers identify noncompliance during an inspection.

CAV's compliance and enforcement policy identifies civil, administrative and criminal actions that it may undertake, depending on the objectives of the enforcement action. Typical enforcement actions include:

- giving the trader a warning, both verbal and written
- issuing an infringement notice
- signing parties to enforceable undertakings
- court action.

CAV's documented approach to enforcement actions also aligns with better practice. Specifically, this includes:

- actions that are proportionate to consumer detriment and the seriousness of the breach
- a consistent approach with the aim of consistent outcomes
- transparency
- targeting enforcement actions based on risk.

While CAV's compliance and enforcement officers generally perform these actions in line with the compliance framework and policy, there are weaknesses in documenting decisions, which results in a lack of transparency.

In cases where CAV took action, there was no supporting documentation in its case management system, Resolve, to explain why the decision to pursue a matter had been made. One contributing factor to this is a lack of guidance for CAV staff about what documentation should be kept. In addition, there are no routine quality control processes to examine whether adequate documentation is kept on file.

Case files in Resolve are reviewed by CAV on an ad hoc basis prior to their closure—rather than during the process—and even at this point the process was not consistently applied.

Staff, particularly compliance and enforcement officers, would benefit from guidelines that set out the key documentation that should be kept on Resolve. In addition, a quality control or quality assurance process would assist CAV to maintain an appropriate level of consistency and transparency across its Resolve files.

### Monitoring enforcement actions

Timeliness measures are important to make sure that matters are being dealt with expeditiously, including the progressing of cases through to enforcement, and on to court action. This helps to limit consumer detriment by stopping a noncompliant trader from offering goods and services in the marketplace.

CAV has no targets or measures to track the progress of cases through to enforcement, including the time taken for cases to proceed to court. It is not able to provide data on how long it takes a case to proceed from an initial complaint or finding through to documentation being lodged in court. Without this information, CAV's ability to plan its enforcement priorities, strategies and use of its resources is hampered. Consequently, CAV is not in a position to assure itself, Parliament or the community that cases are being dealt with in a timely and efficient manner.

Managers of the enforcement team have processes to monitor cases, including a manual spreadsheet that lists cases and progress. Investigation plans also include time frames. There were also regular team meetings where the progress of cases was discussed. However, the usefulness of this data is limited without targets against which to compare actual performance. CAV reports that its Enforcement Committee examines progress and will seek information on cases it considers are delayed. CAV advised that it does not monitor the time it takes to progress a case to court because it considers that all cases are different and cannot be compared for the purpose of setting time frames. However, since this audit, CAV advised that it now accepts that there is benefit to measuring the overall time cases have taken, providing it is not the sole indicator of effectiveness and efficiency of enforcement actions.

This approach would be consistent with other regulators, such as ACCC, which includes timeliness as a guiding principle. Its purpose is to have the 'investigative process and the resolution of enforcement matters...conducted as efficiently as possible to avoid costly delays and business uncertainty'. CAV would benefit from considering ACCC's practices so that it is in a position to be as efficient and economical as possible with its public funding.

## 3.5 Training

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CAV has considerable power under legislation to undertake inspections. A CAV appointed compliance and enforcement officer can:

- enter and search a premise
- seize goods in relation to an alleged contravention
- take samples of an item related to an alleged contravention
- require documents to be produced for examination
- copy or remove documents
- take photographs.

The Executive Director of CAV appoints and authorises compliance and enforcement officers when satisfied that the person is appropriately qualified or has successfully undertaken appropriate training.

CAV provides its compliance and enforcement officers with appropriate training to be certified as inspectors. The training course covers theoretical and practical situations that may arise for CAV officers, and is supplemented with practical case experience.

The training is provided by an appropriately qualified trainer and gives CAV staff a basic understanding of their powers and the types of processes they must undertake when attending an inspection.

However, there is no advanced operational training that covers key activities, such as taking evidence, the seizure of goods, prosecution and situational awareness. While some CAV compliance and enforcement officers have come from law enforcement agencies and may have a strong background in undertaking inspections, there are others, particularly at more junior levels, that do not have that experience and would benefit from formal training.

CAV provides regular legislative training to compliance and enforcement officers, however, this is only one element of the training required. CAV needs to regularly provide all compliance and enforcement officers with situational awareness training to mitigate the risks associated with hostile situations when undertaking inspections.

Managers within CAV developed their own training for compliance and enforcement officers so that staff had some training. These managers also attended inspections with staff to observe their practices and provide them with feedback. This is an area of good practice in the absence of formal training. However, this approach relies on those providing the additional training having the appropriate knowledge and skills.

## Recommendations

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Consumer Affairs Victoria should:

9. inform all Consumer Affairs Victoria and regional office compliance and enforcement officers of its business rules for counting activities
  10. re-evaluate its current case progression process for investigations to identify and implement areas to improve efficiency
  11. establish guidelines and a quality control process about maintaining inspection and investigation files on Resolve
  12. establish data collection processes to measure time frames for investigations, and utilise that data to formulate investigation targets
  13. formalise ongoing vocational staff training for its compliance and enforcement officers
  14. establish a set of outcome measures for its education program and implement a performance measurement strategy.
-

## Appendix A.

# *Audit Act 1994* section 16— submissions and comments

### Introduction

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In accordance with section 16(3) of the *Audit Act 1994* a copy of this report was provided to Consumer Affairs Victoria and the Department of Justice with a request for submissions or comments.

The submissions and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.



**RESPONSE provided by the Acting Secretary, Department of Justice on behalf of  
Consumer Affairs Victoria**



**Department of Justice**

Acting Secretary



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- 2 APR 2013

Our ref: CD/13/99813

Dr Peter Frost  
Acting Auditor-General  
Victorian Auditor-General's Office  
Level 24, 35 Collins Street  
MELBOURNE VIC 3000

Dear <sup>Peter</sup> Dr Frost

**Performance Audit - Consumer Protection**

Thank you for providing me with the audit report on Consumer Protection. The department welcomes the report's findings and recommendations. Consumer Affairs Victoria's (CAV) operating environment has undergone significant changes over the past three years that have led to the introduction of new services and new approaches.

The audit has occurred at a time of significant transition and renewal in consumer protection policy, particularly with the introduction of the Australian Consumer Law. In the new multi-regulator environment, CAV has taken a lead role in national consumer trader education and has lead several major national compliance projects.

It is pleasing that the audit report acknowledges the existence of important elements underpinning CAV's strategic management approach, including:

- A comprehensive compliance framework based on an integrated compliance approach and a documented approach to enforcement action that aligns to better practice;
- A comprehensive compliance policy and procedures and risk based approach underpinning the compliance framework;
- Internal procedures and guidance supporting CAV compliance and enforcement policy, including regional operations manuals, and investigation guides and procedures;
- A sound risk identification and prioritisation framework to enable CAV to identify areas to focus its compliance activities;
- A performance monitoring framework to assess CAV performance; and
- Business rules to provide a consistent approach to the capture and reporting of compliance activity data and meet reporting obligations.



**RESPONSE provided by the Acting Secretary, Department of Justice on behalf of  
Consumer Affairs Victoria – continued**

The audit finds that there is more work needed in communicating, implementing and systemising these compliance frameworks, policies and procedures and in improving the reporting of CAV performance. In this regard, the constructive comments in the audit report provide the impetus for CAV to continue its ongoing organisational change and process improvement program.

CAV is currently undertaking a number of projects that address the VAGO recommendations. These include:

- Improving the communication procedures and the documentation of decisions made in relation to investigations so that staff better understand the decision making processes;
- Completing the review of CAV's performance reporting framework that commenced in 2011-12;
- Implementing new ICT governance arrangements within CAV and developing a new ICT Strategy that will prioritise improved data capture, analysis and reporting; and
- Incorporating more ongoing vocational staff training for all compliance and enforcement officers in the Learning and Development Strategy.

These, and other changes CAV is making in response to the changing environment, will ensure efficient and effective consumer protection regulation for Victoria.

Yours sincerely

**Dr Claire Noone**  
Acting Secretary



# Auditor-General's reports

## Reports tabled during 2012–13

Report title	Date tabled
Carer Support Programs (2012–13:1)	August 2012
Investment Attraction (2012–13:2)	August 2012
Fare Evasion on Public Transport (2012–13:3)	August 2012
Programs for Students with Special Learning Needs (2012–13:4)	August 2012
Energy Efficiency in the Health Sector (2012–13:5)	September 2012
Consumer Participation in the Health System (2012–13:6)	October 2012
Managing Major Projects (2012–13:7)	October 2012
Collections Management in Cultural Agencies (2012–13:8)	October 2012
Effectiveness of Compliance Activities: Departments of Primary Industries and Sustainability and Environment (2012–13:9)	October 2012
Auditor-General's Report on the Annual Financial Report of the State of Victoria, 2011–12 (2012–13:10)	November 2012
Public Hospitals: Results of the 2011–12 Audits (2012–13:11)	November 2012
Water Entities: Results of the 2011–12 Audits (2012–13:12)	November 2012
Port of Melbourne Channel Deepening Project: Achievement of Objectives (2012–13:13)	November 2012
Portfolio Departments and Associated Entities: Results of the 2011–12 Audits (2012–13:14)	November 2012
Local Government: Results of the 2011–12 Audits (2012–13:15)	November 2012
Prison Capacity Planning (2012–13:16)	November 2012
Student Completion Rates (2012–13:17)	November 2012
Management of the Provincial Victoria Growth Fund (2012–13:18)	December 2012
Learning Technologies in Government Schools (2012–13:19)	December 2012
Addressing Homelessness: Partnerships and Plans (2012–13:20)	February 2013
Implementation of School Infrastructure Programs (2012–13:21)	February 2013
Rating Practices in Local Government (2012–13:22)	February 2013
Management of Unplanned Leave in Emergency Services (2012–13:23)	March 2013
Management of Freshwater Fisheries (2012–13:24)	March 2013

Report title	Date tabled
Managing Traffic Congestion (2012–13:25)	April 2013

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# **VICTORIAN** **ombudsman**

**Own motion investigation into  
the governance and administration  
of the Victorian Building Commission  
December 2012**

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# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report of an investigation into the governance and administration of the Victorian Building Commission.

G E Brouwer  
**OMBUDSMAN**

10 December 2012



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## Executive summary

1. In March 2012 my office received information from several sources in relation to concerns regarding the Victorian Building Commission (the Commission), the statutory authority that oversees the building control system in Victoria. These concerns related to the governance and administration of the Commission and in particular, the manner in which it expends monies generated from its regulation of the building industry and included that the Commission:
  - incurred significant expenditure for investigative services provided by external investigators engaged as contractors
  - was several million dollars over budget on an information technology project
  - employed former police officers as investigators with little or no building experience.
2. As a result I decided to conduct an own motion investigation into the Commission. During this investigation, I identified a number of additional matters relating to the core functions of the Commission and the Building Practitioners Board, including its registration system for building practitioners, which I also investigated.

### The registration process

3. My investigation identified concerns with the vulnerability, integrity and administration of the registration system for building practitioners. This system is overseen by the Building Practitioners Board (the Practitioners Board) with administrative support from the Commission.
4. The registration process creates risk and opportunities for maladministration and misconduct to occur, including:
  - applicants who fail core stages of the competency assessment were allowed to advance to the final assessment stage, and were often granted registration as a licensed builder
  - poor administration of the competency assessment process with applicants sitting the wrong type of test or not sitting a test at all
  - a lack of evidence of the assessment process such as the absence of results of individual tests recorded on practitioner files
  - the former Registrar of the Practitioners Board failed to declare a number of business interests in the building industry that he and his wife had
  - the former Registrar of the Practitioners Board assessed and approved applications, including for persons known to him, without oversight from the Practitioners Board or any other third party

- the Practitioners Board failed to scrutinise many applications before it. In the majority of cases the Practitioners Board relied solely on the recommendations provided to it by Assessors and the Registrar, which in effect made them the default decision makers. The Practitioners Board therefore added little value to the registration process.
5. I am of the view that, as a result of these concerns, the Practitioners Board could not have confidence that only competent, suitably qualified and experienced practitioners were registered to undertake building works in Victoria. This represents a substantial risk to public safety.

## **Governance and administration**

6. Prior to the appointment of the new Commissioner in February 2012, significant public funds were spent by Senior Executives of the Commission on questionable entertainment, hospitality and sponsoring industry bodies' events and awards. Examples of this expenditure included:
- over \$200,000 on meals and entertainment over a three-year period
  - over \$100,000 spent in 18 months on entertaining at sporting events such as the AFL and Australian Open Tennis
  - a policy that allowed staff to spend up to \$500 on meals and hospitality before management approval was required
  - over \$300,000 incurred by the former Commissioner and another Director over a three-year period on overseas travel connected to the former Commissioner's involvement with the Green Building Council of Australia and the World Green Building Council
  - nearly \$950,000 expended in less than four years on sponsoring various events and awards run by bodies such as the Master Builders Association of Victoria and Housing Industry Association of Victoria.
7. I do not see any justification for the Commission to spend significant public funds on meals and entertainment for external stakeholders or its staff. In my view there is an inherent conflict in the Commission providing this entertainment when its core function is the regulation of the people it is entertaining.
8. This investigation identified excessive expenditure by the Commission to implement its information technology program 'e-toolbox', from an initial contract amount of \$698,000 to over \$4.65 million. My investigation identified that the project was plagued with poor planning, insufficient resources and the Commission's decision to engage an employee of the vendor, at around \$24,000 per month to manage the project and represent its interests.

## Recruitment

9. There were a number of recruitment practices involving both contractors and internal staff that were in breach of the Commission's policies and Government procurement guidelines. For example:
  - the appointment of a contractor to a number of executive positions within the Commission over a three-year period without a competitive tender process. This included a 12-month engagement when he performed duties including Acting Deputy Commissioner for which he was paid nearly \$350,000
  - the engaging of external investigation contractors without competitive tender process, and for six years, without formal contracts at a cost to the Commission of \$3.15 million
  - re-engaging a former internal investigator as a contractor three days after he left the Commission. The former employee earned nearly triple his previous annual salary in his first 12 months as a contractor.
10. Examples of cronyism were also identified within the Commission's Audit and Investigation Unit, resulting in the unit being staffed almost exclusively with former Victoria Police officers. Examples include:
  - a former manager knowingly employing a former police officer with a questionable background including criminal records
  - a manager and director failing to take appropriate action upon learning that a probationary employee was under investigation by his former employer, Victoria Police, for theft and drug possession offences
  - a failure by the Commission to conduct criminal records checks as part of their recruitment processes which would have identified matters of concern in the backgrounds of a number of employees
  - a manager editing the key selection criteria of an applicant to assist him and subsequently forwarding it on to HR before the applicant was formally interviewed for the position
  - a practice within the Audit and Investigation Unit where some applicants for positions were 'informally' interviewed over coffee by Commission staff before the proper recruitment process.
11. My investigation also identified that a sum of \$124,978 was paid to the former Building Commissioner Mr Tony Arnel following his resignation on 30 January 2012 which was significantly over and above that provided for in his contract.
12. In February 2012 the state government appointed Mr Michael Kefford as the new Building and Plumbing Industry Commissioner. A number of the staff who oversighted the practices and issues highlighted in my investigation have now left the Commission. However, there are still a number of aspects of the governance and administration of the

Commission and the processes for which it is responsible that continue to require attention to ensure that the same issues do not arise again. The current Commissioner has taken steps to address many of these issues.

## Recommendations

13. I made a number of recommendations to the Commission, the Practitioners Board and Department of Planning and Community Development, including that the Practitioners Board:
  - set a threshold score for each stage of the assessment process which must be achieved before an applicant can progress to the next stage; and require applicants who fail any stage of the assessment to reapplyAnd that the Commission:
  - review its practice of providing meals and entertainment to external stakeholders, particularly those who are members or representatives of the industry practitioners it regulates
  - require new employees to undergo a criminal records check to be completed by way of finger printing as part of the pre-employment process
  - require employees to complete and sign a statutory declaration in relation to their prior work history, including whether they are, or have ever been, the subject of an investigation by a law-enforcement agency or current/former employer for any matter whether criminal or disciplinary.
14. In response to my draft report Mr Kefford stated:

I would like to assure you that I take the issues you have highlighted within your draft report very seriously and in some cases have already initiated actions within my control to address these and others where I have had prior opportunity to observe inappropriate practices.
15. On 29 November 2012, the Minister for Planning the Hon Matthew Guy MLC announced the Government's proposal to reform regulation of the building industry by absorbing the functions of the Building Commission, the Plumbing Industry Commission and the Architects Registration Board into a new body: the Victorian Building Authority. The establishment of a new structure and new body provides an opportunity to consider the conduct and processes described in this report, and the recommendations I have made, so as to establish a system that addresses the defects identified during this investigation.

# Background

## Introduction

16. In March 2012 my office received information from several sources in relation to concerns about the Victorian Building Commission (the Commission). These concerns included that the Commission:
  - paid contractors significant amounts for investigative services
  - contracted external investigators who were former Commission staff
  - made significant payments to external investigators based upon invoices which lacked detail about the amounts charged
  - employed former police officers as investigators with little or no building experience
  - poorly managed an information technology project which was several million dollars over budget
  - operated at a significant deficit.
17. As a result of these concerns, I decided to conduct an own motion investigation into the governance and administration of the Commission.
18. On 20 March 2012 I wrote to the Minister for Planning, Mr Matthew Guy and the Building Commissioner, Mr Michael Kefford advising them of my decision to conduct the investigation.
19. During the investigation additional issues were identified. These included significant expenditure by Commission staff on hospitality and entertainment and concerns about the administration and integrity of the registration system for building practitioners.

## The Building Commission

20. The Commission was established under the *Building Act 1993* as a statutory authority to oversee the building control system in Victoria. The Commission commenced operations in 1994.
21. The role of the Commission includes:
  - monitoring and enforcing compliance with the provisions of the Building Act and the Building Regulations relating to building and building practitioners
  - contributing to the development of national building standards
  - monitoring developments relevant to the regulation of building standards in Victoria.
22. The Building Act also sets out the following objectives:
  - protect the safety and health of people who use buildings and places of public entertainment

- enhance the amenity of buildings
  - promote plumbing practices which protect the safety and health of people and the integrity of water supply and waste water systems
  - facilitate the construction of environmentally and energy efficient buildings.
23. To fund the building control system, the Commission derives its revenue from a levy on building permits and from fees it charges to register building practitioners.
24. In the 2011-12 financial year, building permit activity in Victoria was valued at \$23.2 billion, a 4.5 per cent decline on the value of building permit activity for 2010-11.<sup>1</sup>
25. Similarly, the Commission's total revenue decreased 5.7% from \$30 million in 2010-11 to \$28.3 million in 2011-12.

## Structure of the Commission

26. The Commission and Plumbing Industry Commission were originally separate entities, overseen by separate Commissioners. Whilst some separation between the Commissions remains, in 2005 a decision was taken by the then state government to appoint Mr Arnel as both the Building Commissioner and Plumbing Industry Commissioner. Both Commissions have developed a shared model in respect of corporate services since that time.
27. The current Building Commissioner and Plumbing Industry Commissioner, Mr Michael Kefford, commenced in the role on 13 February 2012. Mr Kefford was appointed for a one-year term following the resignation of his predecessor, Mr Arnel.<sup>2</sup>
28. The Commission and Plumbing Industry Commission have approximately 200 staff, provide support to five statutory boards and share a number of resources including finance, marketing, corporate services, human resources and information management.

## Statutory boards

29. There are five statutory bodies under the Building Act:
- Building Practitioners Board** (Practitioners Board) – is responsible for the management of the registration of building practitioners (except architects) and monitors their conduct. The Practitioners Board is also responsible for the issuing of certificates of consent to owner builders and for advising the Minister for Planning on qualifications for registration.
- Building Appeals Board** – hears appeals and disputes if any doubt, difference or dissatisfaction arises in relation to building control matters, including decisions made by the Practitioners Board.

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<sup>1</sup> *Building Commission Annual Report 2011-12*, page 37.

<sup>2</sup> Mr Arnel was the Building Commissioner from August 2000 – February 2012.

**Building Advisory Council** – advises the Minister for Planning on the administration of the Building Act and Building Regulations 2006.

**Building Regulations Advisory Committee** – provides advice to the Minister for Planning on draft building regulations and accredits building products, construction methods and components or systems connected with building work.

**Plumbing Industry Advisory Council** – a senior industry advisory group established under the Building Act, to provide advice to the Minister for Planning and the Plumbing Industry Commission on matters related to legislation and the plumbing industry.

30. These statutory bodies are considered independent of the Commission. Members of the Practitioners Board and Building Appeals Board are appointed by the Governor in Council on the Minister’s recommendation. The Practitioners Board has 12 members who represent various categories of building practitioners.
31. The investigation focused primarily on matters relating to the Commission however this report also addresses matters that relate to the Plumbing Industry Commission and the Practitioners Board.

## Investigation methodology

32. In investigating this matter, my officers:
  - reviewed internal records of current and former Commission staff
  - summonsed bank records
  - examined Commission policy and procedures and internal documents
  - interviewed 26 witnesses including current and former Commission staff.
33. Twenty four witnesses attended my office for interview voluntarily and two witnesses were summonsed to attend. All witnesses were offered the opportunity to be legally represented or to be accompanied by a support person. No witness chose to be accompanied by legal representation or a support person.
34. Individuals subject to adverse comments in this report were provided the relevant sections of a draft of this report to respond to, and given an opportunity to be heard in this matter, prior to the finalisation of this report.



## Registration of building practitioners

### Key issues

The investigation identified that the registration process for building practitioners was poorly administered and contained a number of gaps and integrity risks. As a result the Practitioners Board could not assure itself that only practitioners with appropriate qualifications and experience obtain registration in the building industry. In particular, an applicant's performance in the assessment process is not routinely recorded on file nor made available to board members when deciding to approve or reject an application. In addition:

- Applicants who fail stages of the competency assessment process are still allowed to progress and obtain registration.
- The decision whether an applicant for registration as a Domestic Builder should be registered largely rests with a subjective assessment made by contracted assessors following a face-to-face interview with the applicant. The interviews are neither audio-recorded nor sufficiently documented.
- An industry exists where applications and supporting documentation are completed by third parties for a fee and then provided to applicants to submit for registration.
- Until recently, the Registrar liaised with applicants and assessed and approved their applications without oversight from the Practitioners Board.

### The Application process

35. The following building practitioners are required to be registered with the Practitioners Board:
- building surveyors
  - building inspectors
  - engineers
  - quantity surveyors
  - draftspersons
  - erectors of temporary structures
  - builders (commercial, domestic and demolisher).
36. In 2011-12 the Practitioners Board received 2,368 applications for registration as a building practitioner, and issued 1,076 new registrations. There are currently 25,318<sup>3</sup> registered building practitioners in Victoria across all four practitioner categories.

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<sup>3</sup> *Building Commission 2011-12 Annual Report, page 27.*

37. The Practitioners Board has different requirements and prerequisites for different building registrations. My investigation focused on the registration of domestic builders because this category of registration represents nearly 60 per cent (14,837<sup>4</sup>) of all building practitioners currently registered in Victoria.
38. Domestic builders can be registered in the following three different categories:
1. Domestic builder – Unlimited category (DB-U) allows builders ‘... [to] personally carry out or manage or arrange for sub-contractors to carry out, all components of domestic building work’.<sup>5</sup>
  2. Domestic builder – Limited category (DB-L) allows builders to carry out, manage or arrange to carry out works which are outlined in their Certificate of Registration.
  3. Domestic builder – Manager category (DB-M) allows builders to manage or arrange for domestic builders in the limited or unlimited categories to conduct works outlined in their Certificate of Registration.
39. Registration with the Practitioners Board is not required if a domestic builder is performing work with a value of \$5,000 or less.<sup>6</sup>
40. DB-U registrations account for 11,592 or just over 78 per cent of all Domestic Builders registered in the state of Victoria, followed by DB-L (2,035 or 13.7 per cent) and DB-M registrations (1,210 or 8.1 per cent).
41. In 2011-12 the Practitioners Board considered 882<sup>7</sup> applications across these three Domestic Builder categories. DB-U and DB-L’s registrations accounted for 738 (or 83.7 per cent) of the applications considered, with DB-M registrations accounting for the remaining 144 (16.3 per cent).

### Applications for registration

42. Applicants are required to submit an application form to the Practitioners Board including proof of:
- professional development and training
  - relevant insurance<sup>8</sup>
  - personal details
  - qualifications such as any degree, diploma, certificate, accreditations, training or examination.
43. The Commission’s website provides the following guidance as to the documents an applicant can provide to demonstrate their knowledge and experience to the Practitioners Board:

4 *Building Commission 2011-12 Annual Report*, page 89.

5 Building Commission, *Domestic Builder – overview booklet*, January 2009, page 1.

6 Building Commission, *Registration Policy Manual*, section 3.5, page 14.

7 Building Practitioners Board meeting minutes July 2011 – June 2012.

8 The required insurance differs depending on the registration type.

- technical references [demonstrating an applicant's experience]
  - site plans and working drawings
  - business and financial planning
  - major domestic building contracts
  - quality assurance documents
  - site photographs.<sup>9</sup>
44. The Commission's website also states that 'as the above documents relate to your experience, it is expected that you have personally prepared them or that you have had significant involvement in their preparation'.
45. My officers asked the Manager of Boards why this level of supporting documentation needed to be provided with an application. In an email dated 23 July 2012 he stated:
- The purpose of requesting a business plan and other documents with a registration application is to allow the Board (via written report from a Board member and/or contracted assessor or a staff member) to make a judgement, using suitable follow up questions, about the ability of the applicant to operate as a registered practitioner. The Building Act requires the Board in each case to make a decision about the level of practical experience demonstrated.
- ... It is expected that an applicant would have compiled the documents personally and they would reflect the applicant's experience, knowledge and ability. At the least, the applicant should have been closely involved even if a third party assisted with writing the document ... The Board uses the submitted documents as a basis for further questioning and assessment of the applicants' skills, abilities and experience.
46. During the investigation, my officers reviewed 27 registration files. A number of applications contained proforma documents where the only difference between the applications was the name of the applicant and their company name.
47. These documents often included around 100 pages of information supporting the application, including details of previous building experience. The similar appearance and almost uniform content of these documents raised doubts as to whether they were personally prepared by the applicants.
48. However, as the Practitioners Board does not require applicants to declare that they have received external assistance in preparing their application/supporting documents, my investigation was unable to determine the full extent of this practice.
49. The Acting Registrar, Practitioners Board said at interview regarding the use of proforma documents in an application for registration:
- ... this is no joke [applicants] can put in paperwork like this [proforma documents] but it's all rubbish because they've actually downloaded things from the web or they've got someone else to actually formulate their application ... with their business plan and their safe work method statement and their induction plan ... [it is] when you actually get to the face-to-face interview that you actually know whether a person actually

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<sup>9</sup> Educational material *Applying for Registration* available on the Commission's website.

knows what's in their file and a lot of the time they'll have things in their plan that reflects that it is someone else's information.

50. Section 221V of the Building Act makes it an offence for a person to provide false information to the Commission in an application for a licence or registration.
51. The application form for building practitioners also states that it is an offence to provide false or misleading information in an application for registration to the Practitioners Board. Despite this, my investigation identified that the Practitioners Board has never rejected an application or refused to grant a registration on the basis of false or misleading documentation being submitted by an applicant.
52. This was confirmed by the Manager, Boards who said:
- ... I cannot recall a case of a person being refused registration on the grounds of providing a false business plan but the circumstances are unlikely to arise ... if the person has been able to demonstrate acceptable levels of skill and experience, good computer-based scores ... and obvious hands-on knowledge and experience. The Board's power to register in the first instance is a discretionary power.
53. The following case study relates to an applicant who has been identified as overstating his building experience and submitted supporting documentation with his application containing fictitious building works.

#### **Case study 1: Mr Syed Shah's application**

In 2010, Mr Syed Shah, Director, Universal Technical Institute (UTI) submitted an application to the Practitioners Board for registration as a Domestic Builder – Unlimited.

Among the 80 plus pages of information submitted with his application were documents relating to the construction of two properties purportedly built by Mr Shah.

Searches conducted by my officers confirmed that the properties listed in these documents did not exist.

At interview, Mr Shah said that the purpose of submitting these documents was to demonstrate that he had the ability to complete the required paperwork, rather than purporting to have conducted the works himself. He said:

... I was told that ... they [the Practitioners Board] needed a template, it doesn't have to be a contract ... it is [to show] ... how to fill it [the documents] out ... this is an example ...

Mr Shah further said:

... this is a template ... it's not a project we're running ... it could be Indian street ... [it] could be XY street, they're not real things ... it's not fact, they're just hypothetical things ...

... it's not the ... project you've done, it is to demonstrate your ability to produce documents which will help while you are running a project ...

Mr Shah acknowledged at interview that he had 'overstated' his work experience in his resume, submitted with his application. For example, in his resume Mr Shah describes himself as:

[A] Construction manager with a 25-year record of success overseeing all phases of multimillion-dollar construction, infrastructure, superfund and environmental projects for government and private-sector clients.

However at interview Mr Shah described his building experience as being limited to building the frame for his own house in 2002 and helping with the construction on 'a couple of other projects'. He also said:

[My] Resume was just made up ... With [a] resume you just add whatever you want you know ... maybe some things are overstated.

In his application to the Practitioners Board, Mr Shah said he had achieved the qualification of Certificate IV in Occupational Health and Safety from his own company, UTI. He stated that he had no other formal qualifications in building.

Mr Shah's application was approved by Mr Peter Brilliant, former Registrar of the Practitioners Board and he was subsequently registered as a Domestic Builder - Limited in September 2010. Mr Brilliant's note on Mr Shah's file recommended that, pending the submission of his insurance documentation, Mr Shah could be approved for a Domestic Builder - Unlimited registration.

54. In responding to the draft report, Mr Shah stated:

I said at interview that I may have exaggerated **some** of the content in my resume but I did not **fabricate** anything at all in my application ... I said that I **may have** overstated some content in the resume [Mr Shah's emphasis].

...

When answering the question [regarding building experience] I was comparing my local experience with my overseas experience. There is a big difference in my experience overseas and in Victoria. In comparison my Victorian experience is limited as compared to my overseas experience but still more than enough to run any construction project in Victoria.

55. On the issue of proforma documents Mr Brilliant said:

Application documents presented are templates and 'mocked up'. This is not unusual and occurs in many thousands of applications, particularly for domestic builders. Mocked up documents are prepared and discussed at the assessment. This is the way it has been done for years and is well known to the BPB [Building Practitioners Board] and everybody involved in the registration process and the industry. Over the years I have given lectures and spoken to thousands of applicants and they are instructed to do this. Industry bodies, such as the HIA [Housing Industry Association of Victoria] and the MBAV [Master Builders Association Victoria], RTO's [registered training organisations] and other organisations all take the same approach. All of these bodies regularly meet with the BPB on matters relating to the preparation of applications and the development of template type documents. To assert otherwise is false.

56. This does not address the inherent quality concerns that this practice raises in the registration process.

57. In response to my draft report the Chairman of the Building Practitioners Board stated:

I would certainly agree that the practice [of presenting false information] is reprehensible, and it cannot be a true reflection of experience ... the Board does not encourage or condone any form of assistance with documentation

...

... this is not a practice the Board endorses. In a free market, they [third party assistance] are probably inevitable unless use of such 'consultants' is to be made an offence. This is quite different from your point about false statements being made, which I agree is a serious matter and on which I intend the Board will act with alacrity.

58. The Practitioners Board also requires that applicants submit two character references with their applications which are 'no more than six months old'.
59. By comparison, the New South Wales Office of Fair Trading requires that applicants for registration as building practitioners submit references in the form of a statutory declaration which carries a criminal penalty if false or misleading information is provided. The Practitioners Board does not require references to be submitted in this form and, as such, applications may be embellished and include misleading statements.
60. On the issue of practitioner reference checks, the Chairman of the Practitioners Board stated:
- My understanding is that at present, the policy is that 100% of building surveyor references are checked, and that a sample check is done for domestic builders, and in all cases where an applicant applies for registration where he/she in the application form identifies they have had a past criminal record a police check is also required.
61. In the 27 registration files reviewed, my officers only found one (3.4 per cent) example of the Practitioners Board seeking to verify an applicant's reference.

## The Assessment process

62. Applications are assessed by a Registrations Officer to determine if the applicant meets the required prerequisites concerning qualifications, experience and training. If the application satisfies these prerequisites, applicants in all three domestic builder categories are required to undertake a three-stage assessment. Other registration categories, including commercial builders are not required to sit an assessment.
63. The domestic builder assessment process<sup>10</sup> comprises:
1. a computer-based closed book test involving 50 multiple choice questions
  2. a written test where applicants are required to identify faults on two building plans
  3. a face-to-face interview with a Competency Assessor.

<sup>10</sup> Refers to all Domestic Builder - Unlimited and Domestic Builder - Manager registrations, and some Domestic Builder - Limited registration types.

## Computer-based test

64. A multiple choice computer-based test was introduced for domestic builders in March 2010. At interview, the Acting Registrar discussed the rationale for introducing this test:
- ... we identified that our [registration] process may not have been as robust as it could have been ... we wanted to lift the benchmark a little bit and what the Board decided to do was implement a computer-based test as the first component of the application ...
65. The computer-based test questions are hosted on a system maintained by an external provider.<sup>11</sup> It is a one hour test conducted at the offices of the Commission or, in the case of regional applicants, at a regional location.
66. An Assessment Coordinator oversees the testing process and reviews practitioner results.
67. Although the computer-based test was introduced to test the competency of applicants and make the registration process more robust, the test is not a 'hurdle requirement'. There is no pass or fail mark and all applicants are allowed to proceed to the next assessment stage, regardless of their score.
68. At interview the Manager, Boards, confirmed this. He said:
- ... currently, however bad someone scores on the [computer-based] test, they will pass through to the [next] assessment stage ... and they will be assigned to a domestic builder assessor [who will conduct the face-to-face interview].
69. At interview, the Acting Registrar explained why passing the computer test was not a mandatory requirement for building practitioners. She said:
- ... say for example if someone didn't go well they might have been nervous, there's all sorts of factors ... it's [the computer test and the written test] just to give us an idea of the strengths and weakness that a person has. ... so when the assessor sits down with you [at the face-to-face interview] they can concentrate on those areas.
70. Applicants' results for the computer-based test for the period, October 2011–July 2012 were:
- for DB-U there were 489 tests, of which 19 achieved a score less than 50 per cent (4 per cent of the applicants)
  - for DB-M there were 110 tests, of which 11 achieved a score less than 50 per cent (10 per cent of applicants).
71. At interview, the Chairman of the Building Practitioners Board said that the Practitioners Board had introduced a requirement that Domestic Builder applicants must achieve 60 per cent on the computer-based test before they can progress to the next stage of assessment. He later clarified that this new requirement would apply to applications received after 1 November 2012. In response to my draft report he Chairman also stated:

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<sup>11</sup> Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010, page 14.

'Pass and fail' concepts are being progressively introduced and the Board has recently been concerned to fix the required levels. It is important to appreciate that the prescribed qualifications (which are prescribed by the regulations and not the Board) is not in all cases 'an examination'. Therefore, depending on the specific nature of the application, 'pass/ fail' is not necessarily the best descriptive concept ... In many cases, the Board is actually using the test, together with the interview, to obtain a view of the practical experience of the person.

...

The Board and the Commission are working to extend this to all other DB-Ls (where this is justified by numbers) and commercial builders. A test process for demolishers and temporary structure erectors is intended to be brought into operation early in 2013. This is a major long term project involving investments in computer programming and the development of a very extensive bank of secure test questions.

## Written test

72. The written test requires applicants to identify faults on two mock building plans, such as the correct dimensions for bathroom waterproofing.<sup>12</sup> This test is often conducted on the same day as or directly before the face-to-face interview, is supervised by the Assessment Coordinator and conducted at the Commission's offices.
73. The Assessment Coordinator records the result obtained by an applicant in the written test and the computer-based test on an assessment sheet. The sheet is placed on the applicant's file and provided to the Competency Assessor who conducts the face-to-face interview.
74. As with the computer-based test, applicants who fail the written test progress and undertake the face-to-face interview.
75. For the period of January-March 2012, 105 DB-U applicants completed the written test for domestic builder registrations. Sixty applicants were granted registration (45 applicants were not granted registration). Of the 60 who were granted registration, 16 applicants (27 per cent) failed the written test.<sup>13</sup>
76. For this same period, 18 applicants for the DB-M category completed the written test. Five were granted registration (13 applicants were not granted registration). Of those five applicants, two (40 per cent) failed the written test.
77. In total, 18 applicants failed the written test in the period January-March 2012, yet were subsequently registered as domestic builders. Sixteen of those 18 applicants were registered DB-Us without any limitations on the type of domestic buildings they are licensed to build.

## Face-to-face interview

78. Board appointed Domestic Builder Competency Assessors conduct the face-to-face interviews.

<sup>12</sup> Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010.

<sup>13</sup> Applicants who received a score less than 50 per cent.



79. A set of approximately 200 core questions are asked in every interview. The interview takes approximately three hours and is not audio-recorded.
80. A Competency Assessor can be:
- a Board member experienced in the category of registration relevant to the application
  - a Competency Assessor engaged on contract by the Commission
  - a person delegated by the Practitioners Board.<sup>14</sup>
81. In response to a draft of this report, Mr Brilliant said:
- Some assessors, BC staff and Board members have no understanding of the legislation, including the registration and assessment process. I have heard present assessors asking junior registration staff about registration and what they should do. This indicates a severe lack of knowledge, training and ability on the assessors to perform their duties.
82. Both the Manager, Boards, and the Acting Registrar said that the assessors use the results of the computer and written tests to identify a practitioner's strengths and weaknesses, and to determine the questions to ask at interview.
83. The investigation did not identify evidence of any assessment of a practitioner's strengths and weaknesses on the 27 registration files reviewed. A copy of the specific questions asked during the interview was also not on the files.
84. At interview the Manager, Boards, said that following the face-to-face interview the Competency Assessor's Assessment Report is placed on the applicant's file. The report includes a recommendation to the Practitioners Board on whether or not the practitioner should be registered.
85. In responding to this issue and my draft report the Chairman of the Building Practitioners Board stated:
- The current practice is for the assessor report to be held on the file and this process is audited on a monthly basis by the Registrar and Manager Boards.
86. My investigation identified that as the other two stages of the assessment are not 'hurdle requirements', the decision of whether an applicant should be registered is largely left to the Assessor conducting the face-to-face interview. At interview, the Manager, Boards acknowledged the shortcomings of such a system. He said:
- ... Look obviously we rely on the integrity and probity of the assessors ... any system that really is substantially dependent on what at the end of the day are, I suppose a fairly subjective judgement [by the Assessor] based on an interview - you've got that doubt.
87. My investigation was informed of the following concerns around practitioner assessments, particularly in regional areas:

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<sup>14</sup> Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010.

- face-to-face interviews being conducted in practitioner's homes and at local cafes
- an instance where an assessor was allegedly assaulted whilst conducting an assessment in a practitioner's home
- assessors are often known to applicants before the face-to-face interview.

88. In response to the above issues, the Chairman of the Building Practitioners Board stated:

To my knowledge, face to face interviews have not taken place in cafés or similar places since 2010. It is a requirement of the assessor contract that interviews take place at an approved location. The single assault incident did not occur at a practitioners' home but took place at an approved location, a commercial office... The procedures and the assessor contract are quite clear on the need to avoid any conflict of interest.

## Coaching of applicants

89. My investigation identified an industry whereby building associations, private companies and registered training organisations provide support, training and guidance to persons seeking to obtain building registration. This support includes:

- the provision of both formally accredited training and qualifications as well as unaccredited lower level certificates to applicants
- assisting applicants to fill in the application form, or completing an application on the applicant's behalf and mailing it to them for a fee
- providing applicants with proforma documentation to submit in support of their application for registration
- providing coaching on the Practitioners Board's assessment process
- conducting pre-assessment reports to determine whether applicants have the required knowledge and experience to be granted registration.

90. The Practitioners Board and its staff are well aware of this industry and the level of assistance it provides to applicants. At interview, the former Commissioner Mr Arnel said:

Look it's an interesting one ... on the one hand Victoria prided itself on having the most stringent requirements in the country which involved this testing arrangement ... other states didn't have that arrangement ... I always took the view that, properly run, this resulted in a better quality of practitioner that they had to go through these extra checks and balances but as you can see there is the potential that an industry develops around that and people get coached and assisted in a certain way which is a good thing ... but ... I guess the concern that I always had was that there was the potential for ... people to get information and otherwise get through their tests in an unfair way ...

91. By email to my office dated 23 July 2012, the Manager, Boards said:
- The Practitioners Board is aware of the existence of consultants who will assist registration applicants for a fee. The Practitioners Board do not endorse or recognise these consultants and do not advise applicants that using such services provides any benefit. It should be noted that several registered training and industry organizations effectively market courses as required for builder registration. The Practitioners Board runs its own monthly registration awareness sessions to provide applicants with an opportunity to hear what is required to be submitted for registration.
92. Case studies 2 and 3 provide examples of coaching available to applicants from the private sector without oversight or regulation by the Practitioners Board.

**Case study 2: The Universal Technical Institute (UTI) and its Director Mr Syed Shah**

UTI was a registered training organisation with the Victorian Registration & Qualifications Authority (VRQA) between 2006 and January 2012.

In 2010, the same year he applied for registration as a domestic builder, Mr Syed Shah, the Director of UTI wrote to the former Commission employee and Registrar of the Building Practitioners Board, Mr Peter Brilliant, offering to provide courses for recognition by the Practitioners Board for the purpose of practitioner registration.

Until June 2012 UTI promoted itself on its website as a 'fully accredited RTO [registered training organisation]' providing 32 courses relating to the building industry, including:

- Certificate IV in Occupational Health and Safety
- Advanced Diploma in Building and Construction
- Certificate III in Construction.

My officers were advised that the staff supporting the Practitioners Board had verified UTI's proposed courses with the VRQA and agreed to endorse the courses for registration.

My officers reviewed VRQA files in relation to UTI and identified that:

- UTI never had any student enrolments
- UTI was only accredited by the VRQA to provide courses in hospitality, information technology and Asian cookery
- UTI was not accredited by the VRQA to provide any building industry or occupational health and safety courses.

My investigation identified three examples where applicants had presented qualifications from UTI such as a Certificate IV in Occupational Health and Safety in support of their applications for registration as building practitioners.

Despite his lack of formal building qualifications my investigation identified that Mr Shah also provided coaching to prospective applicants for registration with the Practitioners Board. At interview, Mr Shah said:

... we were coaching students, anyone who wants to come make an application for the building commission ... if they did need coaching I was charging them myself. I was charging \$100 an hour so I can train you... they were not actual students from a college because I cannot enrol them [at UTI] as they are not on my scope [of what training the VRQA accredited the UTI to provide].

Mr Shah described the assistance he provided to applicants:

... what happens is that someone comes to me and says I need to prepare my application for building [registration] I have these sorts of experience ... so I say ok we can provide you this service and this is the fee we'll charge because business plan cost[s] \$500, fee is \$680, you provide a reference to us and we make business plan for you and then a simple basic form for you to fill it out and go and lodge it ...

Mr Shah stated that he had also used another private company to prepare a business plan for his clients, at a cost of between \$500 and \$800 per plan. He also said at interview that it was 'so easy' for an applicant to get registered, especially if an applicant took lessons with him. He said:

If I give you the questions and you read it ... you'll answer it, it's not hard questions at all

...

You [can] teach anybody underpinning knowledge ... if you come with me [and after] two hours, three hours study with me, you'll go and you'll pass an exam [for registration].

When asked how many applicants he had provided this assistance to, Mr Shah said:

I don't remember. Could be hundreds of people.

UTI was deregistered by the VRQA in January 2012 following significant failings in an audit completed by an independent auditor. These failings included:

- UTI's Director Mr Shah had not provided the required evidence that he met the 'fit and proper person' requirement
- UTI's website listed a wide range of qualifications that it was not accredited to deliver including courses in business and construction
- there was no evidence of UTI having any students or having employed any trainers.

93. In response to my preliminary concerns, Mr Shah said that he had recently provided the VRQA with a copy of his 'fit and proper person' statement. In relation to the 32 courses advertised by UTI that it was not accredited to provide, Mr Shah stated:

Any course promoted on the UTI Website was conducted in **partnership arrangement** [Mr Shah's emphasis] with other Registered Training Organisations in Australia.

94. In this regard I note the remarks of VRQA's independent auditor in her report that UTI had 'misrepresented this arrangement' on its website, and had implied that UTI was the provider of these courses.

95. Mr Brilliant said:

I recall UTI developed an OH&S training course which was put before the Board and agreed to. This was not an official qualification per se, but was OH&S training in line with the Board's requirements for builders. This was not a national qualification and was designed to suit OH&S requirements for Victorian builders. A similar situation occurred in respect to 'sustainability'; a number of bodies developed independent 'sustainability' training for the Board's requirements. As far as I am concerned everything was done properly and in accordance with administrative requirements.

... I wish to comment that numerous persons, RTO's and organisations perform these services and have for a number of years.

### **Case study 3 – Business relationships of the wife of the former Registrar**

In early 2010 the wife of the then Registrar of the Practitioners Board, Mr Peter Brilliant, was contracted by Mr Shah to provide administrative assistance while Mr Shah was coaching applicants for the purpose of registration with the Practitioners Board.

In response to a draft copy of this report, the wife of the then Registrar stated:

He [Mr Shah] was looking for clients and resources for his business. I would research the Building Commission's website, other websites, local leader newspapers and yellow pages. I would get together resource information regarding builders or tradesmen that might be interested in the services Mr Shah provided.

The wife of the then Registrar also contracted a private company which assists applicants to obtain registration with the Practitioners Board. The private company provides the following services to prospective applicants:

- two-hour sessions on application preparation and the process of becoming a registered builder (Cost: \$150)
- four-hour sessions on the assessment process (Cost: \$300)
- three day Intensive Registration Workshops on application preparation and the assessment process (Cost: \$1,195)
- preparation of documents for a registration application (Cost: \$995)
- the supply of templates for applicants to fill in themselves (Cost: \$595)
- the supply of individual documents
- one-on-one coaching sessions on the assessment process (\$130 per hour).

The private company advertises on its website that it will provide 'your Business Plan, OH&S Policies and Checklists, Quality Control Checklists ... Projects Schedule ... Work History. We provide everything complete to put into the BPB [the Practitioners Board]'. It also states that in 10-15 days a 'professionally prepared application is received in the mail'.

The wife of the then Registrar said at interview that she assisted the private company in the collation, booking and liaison of clients for these services. In response to the draft report she stated:

I didn't meet any of the people, I didn't train them, I didn't 'coach' them. I would only tell them what information they should get together for [the private company] ... I clearly explained to anybody we dealt with that there were no short cuts to registration and they would have to be approved by the Building Practitioners Board.

...

I never sought Peter's [Peter Brilliant's] help with anything I was doing. He was busy with the Building Commission and I was able to do my administration work without his help. I have never seen any exam papers (I didn't even know there was one), and I have never mentioned Peter's name, title, or that he worked at the Building Commission to anybody.

Mr Brilliant also said:

I do recall that [my wife] had referred some applicants to ... [the private company] to assist them in preparation of registration documents and training. I see nothing improper in this ... [the private company] as with numerous other providers, has been doing this for years. The activities of [the private company] ... as well as a number of other providers was done with the knowledge and agreement of the board. To put some negative connotation on this is mischievous and wrong.

96. This arrangement raises concerns about a conflict of interest. I deal with this further in my conclusions.
97. On the issue of coaching the Chairman of the Building Practitioners Board stated in his response to my draft report:
- ... the Board view is that this practice, which is unnecessary, is not nevertheless improper, unless it results in the applicant actually making a false statement.
- ...
- I consider coaching as something we will encounter in all our professional lives and one I personally do not condemn.

## The Approval process

98. Once an applicant for registration as a domestic builder has completed the three assessments and submitted all relevant documentation, their details are presented to the Practitioners Board for review at its monthly meeting.
99. The report to the Practitioners Board includes a recommendation from the assessor/Registrar as to whether the application should be approved. In some instances an applicant may be granted a lesser registration type than that applied for, rather than a rejection of their application.
100. Under section 170 of the Building Act, the Practitioners Board must:
- (1) ... register an applicant in each category or class applied for if it is satisfied that the applicant –
- (a) has complied with section 169; and
- (b) either –
- (i) holds an appropriate prescribed qualification; or
- (ii) holds a qualification that the Practitioners Board considers is, either alone or together with any further certificate, authority, experience or examination equivalent to a prescribed qualification;
- and

(c) is of good character; and

(d) has complied with any other condition prescribed for registration in that category or class.

(2) The Building Practitioners Board may refuse to register an applicant if the requirements of subsection (1) are not met.

101. My investigation received conflicting advice as to whether individual registration files and assessments were subject to any further scrutiny before being presented to the Practitioners Board for a decision.
102. According to the Practitioner Boards' *Domestic Builders Competency Assessment Manual*, DB-M applications are reviewed by an individual board member before consideration by the full Practitioners Board. No specific processes are outlined in relation to applications for DB-U or DB-L registration.
103. At interview, the Manager, Boards, said:
- All the DB-U files are viewed by Domestic Builder board member, who, if he's happy with them will pass them back to the Registrar and the approval or refusal will go on the report to the [Practitioners] board at the end of the month.
104. The Manager later said however:
- ... the files will have been or should have been looked at by the board member, although that might be only a cursory review because you are dealing with dozens of these files every month.
105. The Acting Registrar said:
- ... after the interview takes place and a recommendation is made by the assessor the files will come back ... the Practitioners Board get the report of everyone in their [practitioner registration] category ... the files are always available for the Practitioners Board to look at and sometimes the Practitioners Board have done that ...
106. In the three years, 2010 – 2012, the Practitioners Board considered 3,468 applications for registration, or around 100 applications per month.
107. While the Practitioners Board has the discretion to request the assessment files of any practitioner seeking registration, the Chairman of the Building Practitioners Board said at interview that it was rare for the Practitioners Board to review any more than 1 or 2 (1-2 per cent) application files out of the 100 or so applications it considered at each monthly meeting. Several witnesses said that the Practitioners Board rarely reviewed individual application files and where a file was requested, it 'may be a cursory review' only.
108. In responding to my draft report, the Chairman pointed to the number of registrations received in 2011-12 (2,368) compared to the number of registrations granted by the Practitioners Board (1,076) as evidence that 'the [Practitioners] Board is very stringent with their assessments'. He also stated:
- As an 'expert' Board and tribunal, it is not possible for the Board to entirely eliminate the subjective aspects of consideration of whether a person has sufficient practical experience for entry to the register of building practitioners. I agree that the reduction of avoidable

subjectivity should be an aim of the Board and the Commission in working on future processes. However, interview assessment has, I believe, been at the foundation of an application system that is seen as one of the most stringent in Australia.

...

The Board has made significant changes and improvements to its assessment, audit and control processes in the past two years.

109. The Chairman also provided statistics demonstrating that between November 2011 and October 2012 the Practitioners Board refused 46.8 per cent of DB-U and DB-L applications and 65.1 per cent of DB-M applications. As noted earlier, only DB-M applications are required to be assessed by an individual member of the Practitioners Board as part of the assessment process.

### The role of the Registrar

110. The Registrar of the Practitioners Board reports to the Manager of Boards at the Commission. From 1998 to March 2012<sup>15</sup>, the Registrar was Mr Peter Brilliant.
111. The Registrar presents a report of prospective applicants each month to the Practitioners Board with a recommendation on whether applications should be approved or rejected.
112. The Registrar's duties include:
- managing the practitioner registration system
  - issuing practitioner certificates of registration on behalf of the Practitioners Board
  - maintaining a register of building practitioners in accordance with the building regulations
  - preparing and presenting registration appeal matters at the Building Appeals Board on behalf of the Practitioners Board.<sup>16</sup>
113. In some instances the Registrar can also be the de facto decision-maker in relation to certain applications for registration. Under section 186A (2) of the Building Act the Practitioners Board can delegate its power to approve applications for registration to the Registrar.
114. At interview, Mr Brilliant described the rationale behind the Practitioners Board's delegation power:
- ... if there's a requirement for somebody to get their registration, [and] they're suitable for registration ... rather than wait four or so weeks for the Practitioners Board to get it ... it'd be signed off under delegation [by the Registrar].
- ...
- It might be the person's ... got a job waiting to start ... they've been mucked around in the past ... I know of occasions when an applicant has been, has applied to us on more than one occasion and their application has supposedly been misplaced ... so sometimes yes ... I will say can we fast track that one.

<sup>15</sup> Mr Brilliant was on leave or on alternative duties for a number of months during 2010-12 during which times Acting Registrars were appointed.

<sup>16</sup> Building Commission, *Registrar of the Building Practitioners Board*, Position Description, 2010.



115. Records relating to 3,468 applications considered by the Practitioners Board between 2010 and 2012 were analysed to determine how frequently the Registrar was delegated this authority. The analysis identified that:
- on average 22 per cent of the total applications received by the Practitioners Board each month were considered and approved by the Registrar under delegation
  - in some months up to 93 per cent of applications received were delegated to the Registrar for approval. My investigation was unable to identify any guidelines, policies or procedures outlining the circumstances in which the Registrar can approve an application under delegation without prior reference to the Practitioners Board.
116. The Registrar is able to determine which matters are approved under delegation without any authorisation or oversight from the Practitioners Board. For example, Mr Brilliant often exercised his delegated authority in relation to matters that he considered should be decided upon before the Practitioners Board's next monthly meeting. Case officers also have discretion to notify the Registrar that a file requires delegated approval without prior notification to the Practitioners Board.
117. In these instances the application is approved and the practitioner is notified of the decision. The Practitioners Board is advised of all applications approved by the Registrar at its next monthly meeting. The Practitioners Board receives a report outlining the practitioner name, qualifications, registration class and the Registrar's recommendation or decision.
118. At interview, Mr Brilliant was asked whether the Practitioners Board checks all applications before delegating matters to the Registrar. He said:
- No they [the Practitioners Board] can't, it would be put on a list. They can call for any [application files] ... it's just ... impossible to check everyone.
- The registration file for each person should have recorded either a Board member approval or the Registrar's authorisation [to be granted registration].
119. This explanation does not address the difficulty that, under this practice Mr Brilliant was both assessor and ultimate decision-maker and the need for these roles to be separated to minimise the opportunity for a conflict of interest to occur.
120. In response to my draft report Mr Brilliant stated:
- I believe that I have always dealt with delegations in an appropriate manner.
121. At interview, the Chairman of the Building Practitioners Board said that from July 2012, a Board member will review each delegated decision by the Registrar before the Registrar's list of delegated approvals is tabled at the monthly Board meeting. He also said that no registration applications are currently being delegated to the Registrar for approval.

## Conflict of interest

122. Commission staff, including those serving the Practitioners Board, are bound by the *Code of Conduct for Victorian Public sector employees* (the code of conduct). In relation to conflict of interest, the code states:
- Public sector employees declare and avoid conflicts of interest to help maintain community trust and confidence.
- A conflict of interest can be actual, potential or perceived. This relates to circumstances where the employee is or could be directly influenced or where it is perceived the employee might be influenced.
- Public sector employees ... [should] seek to ensure the interests of family members, friends or associates do not influence or could be perceived to influence their performance in the job.
123. My investigation identified that the former Registrar Mr Brilliant would at times conduct face-to-face interviews of applicants himself, and then approve the same application citing the authority delegated to him as Registrar by the Practitioners Board.
124. When asked at interview why he conducted these assessments Mr Brilliant said:
- ... I just did it to keep my hand in basically ... it was probably more relevant or more done over the last few years because I was off sick ... [and] it was part of my duties ... that I would do it [the assessments].
125. Mr Brilliant later stated:
- As Registrar and manager of the area I kept myself involved and experienced in all facets of the areas' duties. Over the years I have also from time to time administered practitioners files, prepared and presented appeals before the Building Appeals Board, prepared and presented discipline Inquiry hearing matters, administered Owner-builder consent applications, administered assessed and presented section 176(5) (application for exemption from registration) applications to the Board. The reasons for these are many, including; time and resource limitations, [and] that my position descriptions and performance plans required me to do this ...
126. While the Registrar is bound by the code of conduct, members of the Practitioners Board and Competency Assessors are required to consider if they have a conflict for each application allocated to them before conducting a face-to-face interview or considering an application at each monthly Board meeting.
127. At interview, the Manager, Boards, confirmed that the Registrar had in the past been involved in the practitioner assessment process whilst also approving applications under delegation. He said:
- ... the Practitioners Board can effectively delegate those functions if it wants to ... I don't think it was an ideal arrangement because it effectively brought someone who's responsible for the administrative process into the assessment process ...
128. The Manager, Boards, also told the investigation that he had requested Mr Brilliant to cease conducting applicant assessments in March 2010 as he did not consider a person responsible for administering the registration process should also be conducting assessments.

129. Commission data shows that Mr Brilliant conducted a further 14 assessments after the Manager, Boards, requested him to cease doing so in March 2010.
130. In response to my draft report Mr Brilliant stated:
- I disagree that [the Manager, Boards] asked me to cease conducting assessments in march 2010. From my recollection it was specifically part of my performance plan and temporary performance plan. At times during this period I was on alternative duties which included carrying out assessments ... When it was discussed with [the Manager, Boards] that I do other alternative duties, not including assessments, I ceased doing them and performed tasks I was directed to do.
131. At interview, Mr Brilliant was asked whether his role as assessor and decision-maker had placed him in a position of conflict. He said:
- ... it probably shouldn't be done that way... see you're not making a recommendation but it would be kind of like making a recommendation and then also signing off on it yourself and so it could be seen as inappropriate. Whilst I don't really see that it is, I could see that it could be seen as that.
132. My investigation also identified instances where Mr Brilliant knew the applicants whose face-to-face interviews he conducted, and whose applications he approved under delegation. In each case, Mr Brilliant failed to declare these conflicts.
133. For example, in the following case study, Mr Brilliant had a prior relationship with an applicant and was closely involved in the processing of his application for registration.

#### **Case study 4 - Mr A**

Mr A applied for a domestic builder-unlimited registration in May 2011.

In an email between Mr Brilliant and Mr A on 24 May 2011, Mr Brilliant stated:

I haven't been able to locate your recent application, but not to worry.

I will be making a recommendation to the Practitioners Board members that your application for DB-M [Domestic Builder - Manager] to DB-U [Domestic Builder - Unlimited] should be agreed to, in that I have assessed you and you meet all the requirements. So until I find out otherwise can you just give me a filled out application ... with the fee. You won't need to put any other documents with it other than the required warranty insurance.

Any queries give me a call.

Mr A submitted his application direct to Mr Brilliant's Commission email address several hours later.

The investigation found evidence of meetings and appointment bookings between Mr A and Mr Brilliant on 2 December 2010, 14 April 2011, 17 May 2011 and 21 July 2011 titled 'licence meeting', 'lunch [ with Mr A], 'Catch up meeting Peter [Brilliant] and [Mr A]' and '[Mr A] ... Coffee re - DB-U'. These meetings occurred both prior to and during the assessment of Mr A's application for registration.

At interview, Mr Brilliant was asked about his involvement with Mr A's application:

I'd met [Mr A] ... he'd come in and made an application ... I'd met him on a number of occasions, he was alright. I think he'd ... had knowledge of one of the Practitioners Board members or he was also involved with the Master Builders Association... he'd been complaining to the Practitioners Board and the Masters Builders Association and he sought an audience with myself ... look I've had coffee with him and it would only be to talk about ... his application ...

In response to whether this interaction placed him in a position of conflict when he assessed Mr A, Mr Brilliant said:

Yeah I don't see that there was anything wrong with [meeting with Mr A] ... because he was only working around the corner ... but if you're alluding to some kind of impropriety here there isn't, or some collusion it isn't ... he [Mr A] would say ... can we discuss this ... I would say yes ... I call it a business catch-up and I would have coffee with people [applicants] all the time ...

A further email from Mr Brilliant dated 24 May 2011 to two Practitioners Board members on behalf of Mr A stated:

We have had a recent applicant, [Mr A] ... provide his documentation for registration as a DB-U. ... The problem is that [Mr A] ... has put in his application documents on 2 occasions and each time they have gone missing. I know it sounds suspicious, but the last time he attended I checked all of his documents and they were lodged at front counter.

I took particular interest and control over [Mr A's] ... file after he said that he had lodged his first application and it couldn't be located. I have assessed [Mr A] ... on 10 May and he is fine as far as I am concerned will [sic] all aspects required of a DB-U.

... I have asked [Mr A] ... to complete another application form only at this stage and provide a further letter of eligibility. It would be a bit embarrassing to make him re-submit another full application. ... I have no concerns about his qualifications, knowledge or experience for DB-U; if I did I would request he re-submit another full application and just take the criticism on the chin.

There was no record of Mr Brilliant's face-to-face interview on Mr A's registration file.

Mr A was registered by the Practitioners Board as a Domestic Builder – Unlimited in November 2011.

134. In response Mr Brilliant stated:

I would like to make it quite clear that I am widely known within the building industry in general and to those involved in the education and training areas. It would be very difficult for me to interact with anybody that I didn't know directly or through someone else. I don't see anything wrong with this ...The *relationship* [Mr Brilliant's emphasis] between [Mr A] and myself was nothing more than that of him being an applicant.

...

I can say that [Mr A] was not given preferential treatment and was deserved of his registration. I believe that I acted appropriately taking into account all the circumstances of the matter.

...

I wish to point out that at no time during my employment with the BC [Building Commission] was any 'conflict of interest' ever brought to my attention.

## Secondary employment

135. The *Building Commission and Plumbing Industry Commission* [Enterprise Bargaining] Agreement 2010 (the agreement) states:

Employees are expected to work under an exclusive arrangement with the Commission. An employee is not to be engaged, directly or indirectly, in any other paid business or occupation or hold offices as Director of any board or company without the prior consent of their Director.<sup>17</sup>

136. The code of conduct states in relation to 'other employment':

Public sector employees only engage in other employment where the activity does not conflict with their role as a public sector employee. Employment includes a second job, conducting a business, trade or profession, or active involvement with other organisations ... Victorian Public Service employees are required to seek approval to engage in any other paid employment.

137. My investigation identified that Mr Brilliant was actively involved in several property development 'businesses' during his employment with the Commission. Mr Brilliant is the Director of a family trust which has been involved in property development since 2009 and, a property development company with his wife and son-in-law. Despite the requirements outlined in both the agreement and the code of conduct Mr Brilliant said at interview that he was not aware of any requirement to declare his interest in these companies. He said:

No I don't think so, nothing that I know of.

138. The Commission became aware of Mr Brilliant's interest in these companies some time before his resignation in March 2012, but did not take any action on Mr Brilliant's failure to declare his conflict of interest. An email dated 25 June 2012 from the Manager of People and Culture to the Deputy Commissioner states:

As for Peter Brilliant, we were aware that he was actively running a family property development business and there was suspicion of participating in a training centre. I distinctly recall looking for any advice from Peter [Brilliant] advising if he had informed us of any conflict of interest, and I checked with [the then Director, IRC] and [the Manager, Boards] at the time, of which there was none. This investigation was put on hold as we finalised several other investigations for Peter. He resigned prior to the Conflict of Interest investigation starting.

139. In his response to the draft report, Mr Brilliant stated:

... I did not have any 'secondary employment'. [The family trust] is a family trust including several members of my family. The trust invested in a property development in Epping. I see nothing wrong with me, or any other person from the Commission being involved [in] any such arrangement.

The second matter being my involvement with [the property development company] is that it was intended to be a family business including my wife, daughter and son-in-law. My intention was that when and if I left the Commission I would have an involvement in the company. As far as I am concerned these were not secondary employment and to say otherwise is a gross exaggeration. In any event it appears the Commission were aware of these for some time but never mentioned them or expressed any concern.

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<sup>17</sup> *Building Commission and Plumbing Industry Commission Agreement 2010*, section 10.3.

140. The wife of the former Registrar also said in response to a draft of this report:

[The property development company] is a company of which I am a Director with my son-in-law, ... We started the company and if Peter left the Building Commission at any stage he could join us.

### **Allegation of kickbacks being received by the Registrar**

141. On 8 June 2011, the Commission received allegations from an anonymous source that Mr Brilliant was receiving cash bribes from the Director, of the Universal Technical Institute (UTI), Mr Syed Shah in exchange for ensuring UTI applicants were granted registration by the Practitioners Board. It was alleged that cash payments were provided by applicants and then shared between Mr Brilliant and Mr Shah. It was also alleged that a Competency Assessor was involved.

142. An audit and risk management firm [the firm] was engaged by the Commission to conduct preliminary enquiries into these allegations. In August 2011 the Commission was provided with the firm's draft report and determined that no further action was warranted in respect to the allegations. Other matters raised in the report relating to the use of inappropriate emails were pursued and upon the request of the Commission, the report was provided as a final by the firm in February 2012.

143. My officers reviewed the firm's report and identified some concerns with the scope and detail of the investigation and the Commission's acceptance of the report's investigation methodology and findings. For example:

- the report found no evidence of cash bribes being accepted or offered to Mr Brilliant however the firm only reviewed Mr Brilliant's emails and telephone records for a period of less than three months in early 2011<sup>18</sup>
- the report found no evidence of cash bribes being offered to or accepted by the Competency Assessor. It found no evidence that a Competency Assessor by that name had been employed by the Commission. The Commission had employed another Competency Assessor on contract with a very similar name for a number of years. The Commission failed to point out this similarity to the firm. As a result, the Competency Assessor I identified was not considered in the firm's investigation.

144. As a result of these concerns and the seriousness of the allegations, further enquiries were made by my investigators and Mr Brilliant's bank statements were examined. These were documents that the firm did not have access to. The statements detailed deposits made into a joint account Mr Brilliant held with his wife from Mr Shah and/or UTI throughout 2010, outside the period of the firm's audit. References were also made in these payments to a business that the former Registrar's wife has been a director of this since 2009.

<sup>18</sup> Mr Brilliant's emails were reviewed for the period 1 April-22 June 2011 and his phone records for the period 23 March-22 June 2011, respectively.

145. Details of the payments identified by this investigation are as follows:
- 10 payments were deposited into the joint account between 22 February to 27 October 2010
  - the deposits relating to UTI and Mr Shah ranged from \$1,000 to \$5,000 each, totalling \$29,000.
146. Mr Brilliant, his wife and Mr Shah were all interviewed about these payments. All three witnesses stated that Mr Brilliant's wife had been engaged in business with Mr Shah through her business to assist him to provide training to building practitioner applicants.
147. Mr Brilliant later stated:
- The payments were made to [Mr Brilliant's wife] and not me, I can't recall the exact reason they were paid into a joint account.
148. Mr Shah said at interview that he had engaged the wife of the former Registrar from February 2010 for six to seven months. When asked how he came to meet her, Mr Shah said:
- When I was speaking to Peter [Brilliant] at that time I said 'Peter I need these resources [to get accredited by the VRQA for the building and construction courses he wished to provide for the Practitioners Board]', he [Mr Brilliant] was a nice person [and] he was guiding me [as to] what could be done ... [Mr Brilliant] mentioned to me that 'my wife is working as a consultant there with [another training provider] and you know, I can ask her if she can provide you with some assistance' ... she was giving me an invoice for \$100 per hour ...
149. On this issue Mr Brilliant stated:
- I am not sure how [Mr Brilliant's wife] came to meet Shah, it is probable that I referred her to him.
150. When asked what assistance his wife provided to Mr Shah, Mr Brilliant said at interview:
- ... help them with their applications, help them with placing them with training ...
- ...
- It was more or less organising the trainers, putting them onto your [a training provider] or elsewhere, getting them to people like [the private company] ... that's all.
151. Mr Brilliant said at interview that the level of support he provided his wife was minimal, stating:
- Not very much ... but I would give her support and she would ask me questions on what happens here.
152. The wife of the former Registrar said at interview that her husband had no involvement in business ventures, she said:
- ... I've never asked my husband to do [anything], I've never mentioned his name, his title, never tried to get any influence, anything I've got has been through public knowledge of internet, yellow pages, local paper, speaking to people. I have not done anything inappropriate whatsoever and my husband hasn't either.

153. She was also asked whether she considered that her involvement with Mr Shah and the private company placed her husband in a position of conflict with his duties as Registrar. She said:
- I didn't feel because Peter worked at the Commission that I shouldn't be able to do the admin in this field ...
- ... we can't control what people say out there ... I feel some people are making this a muddy situation where it looks like something that happened and it just didn't.
154. Mr Brilliant said:
- My wife has every right to work within the industry without fear or favour. I saw no need to discuss this with the Board or any other person.
155. My investigation identified that Mr Brilliant had also formed a business relationship with Mr Shah in early 2010, around the same time his wife began working for Mr Shah's company UTI.
156. Mr Shah said at interview that while Mr Brilliant was working for the Commission, Mr Brilliant had proposed to Mr Shah:
- ... projects for financing ... to use my networks ... one was a project in Epping [the development of a 24 apartment complex] ... at that time he was in the Commission.
157. In May 2010, Mr Brilliant conducted a face-to-face interview with Mr Shah for a Domestic Builder registration. Mr Brilliant approved this application under delegation on 29 September 2010 and Mr Brilliant was also involved in approving Mr Shah's commercial builder registration on 2 July 2011.
158. At interview, Mr Brilliant was asked about his understanding of conflict of interest. He said 'If I was ... previously in business with somebody ... it would be [a conflict of interest]'.
159. Both Mr Brilliant and Mr Shah told my officers that they were currently in negotiations about a new business venture involving the building industry. Mr Brilliant later stated that:
- In early 2012, when I was contemplating resignation from the Commission, I contacted Mr Shah about possible business opportunities.
160. On 14 February 2012 the Commission advised Mr Brilliant that it proposed to terminate his employment without notice following an investigation into a number of staff for sending and receiving inappropriate emails. Mr Brilliant subsequently resigned from the Commission in March 2012.
161. In response to the draft report, Mr Shah said:
- I have done nothing wrong and only developed a **closer** [Mr Shah's emphasis] relationship with Peter Brilliant after he resigned from the building commission.
162. Mr Brilliant said:
- I cannot recall when I first met Mr Shah, but there was nothing improper about my 'relationship' with Mr Shah, even though my wife might have been doing some work for him ... I cannot recall specifically referring



Mr Shah to any specific projects or opportunities. However I don't see it as improper as mentioning possible opportunities to any person. The decision to take up on any opportunities, or not, is up to the individual.

## Audits and reviews of the registration system

163. Two audits have been conducted in relation to the registration systems which have identified concerns. Further detail on these audits are outlined below:

### Victorian Auditor-General's report

164. The Victorian Auditor-General's (VAGO's) 2011 report *Compliance with Building Permits* found:

- the Practitioners Board's assessment process for registering building surveyors is extensive, but not well documented, nor is it supported by clear guidelines, criteria or quality review standards<sup>19</sup>
- the Practitioners Board has no documented guidelines or criteria for evaluating the practical experience of building surveyors, and similarly has no guidelines to decide a 'pass' or 'fail' in relation to the competency examination and practical assessment.<sup>20</sup>

### Deloitte's report

165. In late 2011, the Commission engaged Deloitte to conduct an audit of the registration system. In March 2012, Deloitte completed its report: *Building Commission Internal Audit of the Domestic Builder Licence Assessment Process*. The report addressed:

- the three tiers of the assessment process: computer-based test, written test and face-to-face interview
- the retention of records from the assessment process
- the storage and confidentiality of assessment materials.

166. The report selected a sample of 10 applications for registration during a 15-month period (2010-2012). It identified that:

- 40 per cent of applicants had not completed the computer-based test
- one applicant was recorded as having achieved a result of 71 per cent on the computer-based test, having only completed seven of the 50 questions
- 50 per cent of applications did not have their computer-based test results accurately documented in the Assessment Coordinator's report
- in 40 per cent of applications the type of computer-based test completed by the applicant did not correspond with the registration class the applicant had applied for

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<sup>19</sup> Victorian Auditor General's Office, *Compliance with Building Permits*, 7 December 2011, page 7.

<sup>20</sup> *ibid*, page 7.

- in 30 per cent of applications it could not be determined if the applicant had completed the written test
  - in 50 per cent of applications it could not be determined if the applicant had a face-to-face interview
  - in 90 per cent of applications concerns were noted about the completeness of the Competency Assessor's report
  - in one instance, an applicant who was refused a Domestic Builder – Manager registration was subsequently granted a Domestic Builder – Limited registration and issued with a letter from the Practitioners Board for both a Domestic Builder – Manager and Domestic Builder – Limited registration. The applicant remains registered in both these categories.
167. The Deloitte's report also concluded that all three stages of the assessment process could be improved, in particular:
- the purpose of the computer-based test and written test and their contribution to the assessment process for domestic builder registration is unclear
  - there was limited rotation of the computer-based test questions
  - there was no formal requirement for Assessors to ask and document the answer to every question on the checklist during the face-to-face interview.
168. At interview the Chairman of the Building Practitioners Board said that he had no knowledge of the Deloitte's audit report. In response to the draft report, he said:
- I confirm I was not involved in this report nor was the report issued to the board or any of its subcommittees. This is very disappointing considering the board is responsible for the registration of practitioners and many of the assessments are carried out by board members or co-op board members.
- In reviewing the Deloitte's findings the board would have welcomed the opportunity to have commented on the issues raised and confirmed the reliability thereof (in reading some of their findings I have grave questions as to their reliability and accuracy) and where necessary taken the corrective action.
169. My officers conducted an audit of the assessment and approval process in 27 registration files held by the Practitioners Board. Nineteen of these files were domestic builder applications.
170. The audit identified gaps in the assessment process and in the Practitioners Board's decision-making. For example:
- an instance where the domestic builder/commercial builder checklist was not included in the file. This checklist records and assesses the information submitted by an applicant in their registration application to the Practitioners Board
  - 13 files were missing confirmation of the decision by the Practitioners Board or the Registrar of whether a registration had been granted or refused

- two instances where the Assessor's report was not dated by the Assessor
  - in two instances the Assessor's report was missing from an applicant's file. The report records an applicant's assessment results and a recommendation for approval or refusal of registration
  - in two files the core questions checklist detailing the questions asked during the face-to-face interview was missing
  - 11 files did not include evidence that the applicant had sat the computer-based test or the written test or details of test results (58 per cent of the files examined). Three further files had incomplete assessment results
  - 16 of 19 domestic builder files were missing a conflict of interest declaration form, which is required to be filled out by Assessors for every application assessed.
171. My office was informed in June 2012 that, in response to the Deloitte report, the Practitioners Board were considering:
- introducing computer-based testing for the Domestic Builder - Limited category
  - a review and update of the structure, content and frequency of change of the computer-based testing questions
  - defining the purpose of the computer-based testing and its contribution to the overall assessment of applicants for domestic builder registration.
172. The current Commissioner, Mr Kefford has prepared several proposals to improve the registration process, noting that at present registration remains the responsibility of the Practitioners Board.

## Conclusions

173. Despite audits, reviews and attempts to improve its integrity, the current registration system for building practitioners remains of concern.
174. The testing process aims to assess the competency of applicants. However it is ineffective and inefficient to have two separate tests to assess applicants if they are allowed to fail the test, yet still progress through the assessment process and, in many instances, gain registration. While the Practitioners Board has advised that it will introduce a threshold score that applicants must achieve before advancing past the computer test, there is still no requirement as regards the written test. Applicants who fail any stage of the assessment process should, in my view, not be allowed to continue with the assessment and be required to re-apply.
175. The registration files reviewed demonstrate a lack of evidence and consistency in the Practitioners Board's decision-making process and, how an applicant had satisfied the requirements for registration. The evidence demonstrates the vulnerability of the system to corruption.

176. The decision as to whether a practitioner is registered is largely a subjective one, based on decisions made by contracted Assessors and the Registrar. This is unsatisfactory and leaves the system open to abuse.
177. The Practitioners Board rarely scrutinises applications which come before it and therefore relies heavily on the recommendations provided to it by assessors and the Registrar. While individual board members are required to review the recommendations made on DB-M files, there is no such formal requirement with regards to DB-U and DB-L registrations. As noted earlier in my report these two registration types accounted for 86.7 per cent of domestic builder applications considered by the Practitioners Board in 2011-12.
178. The issues identified with the registration files audited by my investigation and others demonstrate that the Practitioners Board's practices in relation to the review of these files are deficient.
179. In response to my draft report the Chairman of the Building Practitioners Board advised:
- Board members in fact review the vast majority of individual files and check the assessment. It is manifestly impossible for the Board member, who is not a paid employee or contractor, to check them all in depth. To the extent that no Board members were involved, the structure of the staffing team that allowed this to occur was changed in 2010.
180. Recent external reviews and audits have found serious flaws and risks in the registration process. As a result the Practitioners Board cannot state with any confidence that only competent and suitably qualified and experienced practitioners have been registered to build in Victoria. This represents a substantial risk to the public and the integrity of the licensing regime.
181. The suggestion by the Acting Registrar that applicants should be given the benefit of the doubt regarding an unsuccessful test result due to potential nervousness is of concern.
182. In recent years an industry has evolved, separate to traditional tertiary institutions, to coach and support applicants through the registration process. Some of the services offered by these bodies are inappropriate; for example, the provision to applicants of a completed application form and supporting documentation for a fee.
183. There is confusion among Commission staff servicing the Practitioners Board regarding the supporting information to be provided with an application, who should prepare this information, and whether examples provided should be real or hypothetical. My investigation identified instances where applicants have submitted documents and information which were false or misleading, and not personally prepared by the applicant. Several senior Commission staff involved in the registration process acknowledged that this practice was widespread.
184. It is concerning that, despite this knowledge and the Practitioners Board having a statutory power to reject applications where false or misleading documentation has been submitted, it has not taken any action to address this practice.

185. I consider that the role of the Registrar and the delegation by the Practitioners Board of its authority to the Registrar to approve applications requires definition and greater oversight and supervision. Significant risks exist where one employee can control all elements of a process i.e. the liaison, assessment and approval of an applicant's registration. This creates the potential for conflicts of interest and corruption to arise.
186. In response to my draft report, the Chairman of the Building Practitioners Board stated:
- I agree with this and improved arrangements are now in place ... **all** [his emphasis] delegations must be reviewed by the Board or the Boards' registration subcommittee. Prior to introducing a policy that all registrations need to be approved by the Board or its subcommittee it was policy that a nominated Board member had to review the Registration file of all delegations and agree it was suitable or otherwise for registration.
187. As noted earlier in my report, my investigation identified examples where the former Registrar has in the past approved applications under delegation without review or oversight by a nominated board member.
188. I consider that the Registrar should only be able to approve matters under delegation in exceptional circumstances, and only after approval from the Practitioners Board or one of its members, has been formally received and recorded.
189. Despite the assertions of Mr and Mrs Brilliant, I consider that Mrs Brilliant's role in assisting applicants with the registration process has, at the very least, placed Mr Brilliant in a position of conflict concerning his role as Registrar. Mrs Brilliant's work has a direct correlation with the responsibilities of the Registrar. Mr Brilliant's failure to declare these conflicts to the Practitioners Board raises serious concerns about his judgement.
190. Mr Shah's evidence to my investigation, that he provided misleading statements and fictitious documentation regarding his building knowledge and experience in his domestic builder application, raises concerns about his competency to be registered as a building practitioner.
191. The fact that Mr Brilliant personally assessed and approved Mr Shah's application at the same time he and his wife had developed business relationships with Mr Shah, raises concerns about the integrity of Mr Shah's assessment.
192. The Commissioner, Mr Kefford, has prepared several proposals to improve the registration process. It is important that the concerns identified in my investigation are addressed to ensure that the processing of applications and the registration of practitioners demonstrates transparency and is effective.

## Recommendations

I recommend that the Practitioners Board:

### Recommendation 1

Review the registration process for all categories of registration and:

- develop minimum standards for qualifications and experience of applicants
- clearly identify the supporting documentation to be submitted with an application, including whether examples of experience cited can be hypothetical or must be real
- set out threshold scores for each stage of the assessment process which must be achieved before an applicant can progress to the next stage
- articulate the documentation that must be retained on a practitioner's file as a record of each stage of the assessment process
- ensure that it receives detailed information including the results of applicants for each stage of the assessment to inform its consideration of applicants for registration.

### Building Practitioners Board response

A number of the specific requirements are contained in regulations. I agree the Board and the Commission (with the Minister) should urgently discuss adjustments to the regulations necessary to give effect to your suggestions and make other improvements.

### Recommendation 2

Ensure that face-to-face interviews of applicants are audio-recorded and retained in support of an applicant's assessment.

### Building Practitioners Board response

Agree in principle. The Commission would be required to provide the necessary resources.

### Recommendation 3

Conduct regular audits of the audio recordings of face-to-face interviews to monitor the performance of its Domestic Builder Competency Assessors.

### Building Practitioners Board response

Agree in principle. This audit could be conducted in conjunction with the monthly audit currently being conducted.

#### **Recommendation 4**

Consider whether the Practitioners Board should meet more frequently than once a month to consider registration applications.

#### **Building Practitioners Board response**

This can be discussed by the Board and the Commission. We have already implemented that registrations, that have in the past required delegation, are now reviewed by a Board subcommittee which in effect means registration is now being reviewed twice monthly.

#### **Recommendation 5**

Develop a policy concerning the approval process for a registered training organisation proposing qualifications to the Practitioners Board for the purpose of registration. This should include obtaining formal advice from the VRQA or its national equivalent to ensure that the courses offered are accredited.

#### **Building Practitioners Board response**

Agree. While this additional scrutiny of the training sector may be desirable, legislative change and a consideration of extra Board resources would be needed to give it effect. The Board has no powers to recognise or approve (or refuse) RTOs. Registration of RTOs is the responsibility of the Victorian Registration and Qualifications Authority.

#### **Recommendation 6**

Require that the Assessment Co-ordinator, Competency Assessors and the Registrar complete a conflict of interest declaration for each application considered and that:

- any conflict is discussed with an appropriate manager and recorded on the applicant's file
- where a conflict is identified, ensure that the staff member is unable to have further involvement with the application.

#### **Building Practitioners Board response**

Agree. This is already a stipulation in the Commission assessor contract. Board members must declare any conflicts at meetings.

#### **Recommendation 7**

Ensure that the Registrar is not involved in the assessment of applicants for registration.

#### **Building Practitioners Board response**

Agree. Already a current practice.

## **Recommendation 8**

Introduce tighter controls to ensure the integrity of practitioner registration applications, including:

- requiring applicants to complete a statutory declaration that they have personally prepared all documentation submitted to the Practitioners Board
- requiring that applicants provide two technical referees by way of a statutory declaration.

## **Building Practitioners Board response**

Agree. This is desirable but it may require some amendments to the governing legislation.

I recommend that the Commission:

## **Recommendation 9**

Review all registration applications which have been:

- submitted by the Universal Technical Institute or Mr Syed Shah in light of this report
- approved under delegation by Mr Peter Brilliant and take appropriate action where practitioners have been registered without appropriate qualifications or experience.

## **Commission response**

Recommendation accepted.



## Governance and administration

### Key issues

This investigation identified that:

- Significant public funds were spent by the Commission on industry bodies This included:
  - over \$200,000 on meals and entertainment over a three-year period
  - over \$100,000 in 18 months on entertaining at sporting events
  - over \$300,000 incurred by the former Commissioner and another Director over a three-year period in relation to overseas travel
  - nearly \$950,000 expended in less than four years on sponsoring various events and awards of bodies such as the Master Builders Association of Victoria and the Housing Industry Association of Victoria.
  - a substantial increase in the cost of developing the Commission's e-toolbox customer relationship management system – from an initial contract amount of \$698,000 to over \$4.65 million.

### Use of corporate credit cards

193. My investigation identified a culture of extravagant spending at the Commission, particularly in relation to meals and entertainment.
194. Under the previous Commissioner, Mr Arnel and Senior Commission Executives each had a monthly credit card limit of \$5,000 and financial delegations of up to \$25,000 for non-capital or operational expenditure.
195. In this regard Mr Arnel stated:

I do not recall any discussion about setting monthly credit card limits while I was Commissioner. It is possible that the credit card limit was something that predated my employment ... had I put my mind to the issue, I would not have considered such a high limit as necessary. Nonetheless, I recall that credit card expenditure was always subject to audit and I do not recall any adverse audit findings in relation to the misuse of credit cards.

... As to the financial delegations ... I do recall that this amount was reviewed from time to time. My recollection is that this financial delegation was consistent with the level of financial delegation given to people of a like seniority and roles elsewhere in the Victorian public sector.

### Hospitality and entertainment

196. The Commission's Hospitality/Entertainment Expenses policy states that:

Funds for Official Hospitality are provided for, but not limited to, entertaining external stakeholders, diplomatic and foreign government officials, and fellow employees. Hospitality includes food and beverages provided in the workplace, seminars and conferences, restaurant or at home.

... Working meals would normally involve participation of persons outside the organisations or, on occasions, employees from within the organisation, for example, where for practical reasons participants can only meet during the normal daily meal periods.

... Official Hospitality expenses should only be incurred to advance public business in the interest of the Building Commission. The event to which the charge is related must have a direct relationship with the employee's duties.

Where the anticipated cost of hosting each...event/function exceeds \$500 GST inclusive the expenses must be approved, in advance by the responsible Manager ...

197. The policy further states that:
- ... subject to the purpose of the event being for a legitimate official purpose ... alcohol may be supplied for consumption ...
198. In response to the draft report, Mr Arnel stated that he did 'not recall how the \$500 limit came to form part of the policy'.
199. Between July 2009 and March 2012 Commission staff, including the former Commissioner, Mr Arnel, spent \$94,485.68 on meals. Over \$17,000 of this expenditure was accrued by one employee, the then Director of Strategic Projects.
200. At interview the Director said:
- ... I've taken a lot of stakeholders out ... I think my expenses would probably show that but I saw that as part of my role as Director of Strategic Projects is talking to stakeholders, talking about issues and seeing if we can work out things, and I think, my attitude towards it, and I think it would be the same as Tony's [Arnel] is that the benefit that we got in sorting out issues for the cost of a lunch or whatever far outweighed the cost of the lunch.
201. The Director said that he had the appropriate financial delegation to incur this expenditure.
202. Individual expenditure on meals incurred by Commission executives and managers was often in the hundreds of dollars, and in several instances, in excess of \$1,000.
203. The restaurant most frequented by Senior Executives was Bamboo House. Between July 2009 and February 2012 the Commission expended \$11,964.24 on meals at this venue.
204. In response to the draft report, Mr Arnel said:
- I accept that the Bamboo House was used frequently - it was particularly chosen because it had a private room which was suitable for some of our functions.
205. Commission staff would regularly dine and entertain external stakeholders, including the representatives of industry bodies such as the Housing Industry Association of Victoria (HIAV) and Master Builders Association of Victoria (MBAV). This included farewell dinners for the outgoing Presidents of the MBAV in May 2009, and the HIAV in June 2008, at a cost to the Commission of \$1,765 and \$1,655 respectively.

206. In response to my draft report, Mr Arnel stated that:

The HIA and the MBAV are the principal industry bodies the Commission worked with.

207. Of the \$1,655 accrued by the 13 attendees at the dinner for the outgoing HIAV President, \$463.70 was spent on alcohol. Of the \$1,765 the Commission spent on farewelling the former MBAV President, \$722 was spent on alcohol, including three bottles of wine at \$120 each.

208. Mr Arnel also said:

... Because of the need to work closely with these people [HIAV and MBAV] over a long period of time, and the need to resolve contentious and complex issues, I believe that dealing with these people socially facilitated dialogue and was in the interests of the Commission and the Government.

...

The outgoing HIA and MBAV Presidents in question had both made significant contributions to the industry and under their leadership both organisations had effective relationships with the Commission. I thought it important for the Commission to acknowledge their service and their contribution to cementing ongoing relationships within the industry. In my experience, functions which recognise such relationships, and the achievements of significant people, are a common practice both within the private sector and the public sector.

209. The investigation also identified Green Building Council of Australia Audit Committee Luncheons held at Grossi Florentino that were charged to the Commission. This included a luncheon on 2 November 2009 which was attended by the then Commissioner Mr Arnel and the Chief Finance Officer where \$1,009 was expended on six people. This included \$210 and \$135 bottles wines.

210. In response to the draft report, the Chief Finance Officer stated:

The bottles of wine referred to ... were as a result of a member of the GBCA [Green Building Council of Australia] Audit Committee requesting these from a waiter and having them opened, without consultation or approval. I specifically remember this occurrence as the gentleman concerned thought it a humorous exercise and one that I was personally embarrassed by. I was particularly displeased knowing that it was going onto my credit card.

211. On this issue, Mr Arnel stated:

I accept that the circumstances did not warrant anything more than a modest lunch to recognise work done by external members of the Committee.

212. When questioned at interview why the Commission would host and pay for such events, Mr Arnel said:

Part of the Commission's responsibility ... was to promote the industry, and to engage with the industry and build industry confidence. So I took the view and I certainly often discussed it with Ministers that it was very important for us to be seen to be collaborating with industry stakeholders and industry partners, and the idea that we would have certain events, could be awards nights, could be lunches, could be dinners with the Minister. To me this was a very normal part of both Commissions' operations ...

...

I didn't think there was anything unusual about that in fact we were congratulated on it by all of our industry partners across the building side and plumbing industry side ...

213. This investigation also identified that the Commission would meet the cost of meals when staff met for:

- staff de-briefs
- performance reviews
- 'team' and 'working' luncheons
- Christmas and celebratory meals
- 'relationship meetings' between two Directors.

214. When questioned whether such events met the intention of the Commission's meals and entertainment policy, Mr Arnel said:

I'm not aware of that happening but I would have thought that that would need to be engaged in a sparing way.

215. Mr Arnel also said:

I believe that there is a place for an occasional meal to be paid for by the Commission as recognition of the work that staff undertake.

216. The following table outlines examples of hospitality expenditure by Commission staff:

**Table 1 - Hospitality expenditure incurred by Commission staff**

Date	Card holder	Description	Venue	Cost (\$)
2 Dec 2009	Chief Finance Officer	Commission Audit Committee luncheon	Grossi Florentino	1,009.00
22 Dec 2009	Chief Finance Officer	Goods Shed North Celebratory luncheon	The Nixon	831.10
19 Jan 2010	Chief Finance Officer	Goods Shed North Celebratory luncheon	The Nixon	875.50
17 Sep 2010	Director, People & Culture	People & Culture Team Luncheon	The Nixon	409.00
30 Nov 2010	Chief Finance Officer	Commission Audit Committee luncheon	Grossi Florentino	622.00
Dec 2010	Director, Industry Regulation and Compliance	Christmas lunch for Industry Regulation and Compliance Managers (IRC)	Red Spice Road	440.50
22 Dec 2010	Chief Finance Officer	Finance & Business Services End of year Break-up lunch	Langham Hotel	1,531.76
24 June 2011	Director, Industry and Regulatory Compliance	Meeting & Handover from Director, IRC to Director, Boards (including the Chairs of the Practitioners Board and Building Appeals Board)	Bobs Steak & Chop House	518.00

Source: Information from Commission records.

217. The Chief Finance Officer stated that two of the luncheons in the above table were paid for on his corporate credit card 'as the Building Commissioner, Mr Arnel did not have a corporate credit card ... and he directed me to make these payments on his behalf'. The Chief Finance Officer also stated:

All Director and staff related expenditure incurred by myself was done with [the] authority given to me as a Director by the Building Commissioner and under programs endorsed by the Building Commissioner and was only incurred where approved and considered appropriate to achieve business objectives within that delegated authority.

218. In relation to the luncheons that the former Director, IRC, attended, he stated that 'the expenditure was well within my authority. It was properly incurred and documented. It was never the subject of question, query or criticism.'

219. On the issue of stakeholder entertainment, the then Director of Strategic Projects said:

In the early 2000s the then Building Control Commission held an industry summit bringing together a wide range of stakeholders including the then Minister for Planning. A key outcome of the summit was an agreement that the Commission would actively engage and collaborate with all stakeholders. The Commission's Corporate Plans for the next 10 years reflected this outcome, as did work performance plans.

220. In relation to credit card expenditure, the Chief Finance Officer said:

Building Commission internal auditors ... have reviewed corporate card expenditure as part of their annual internal audit and have not reported any inappropriate use by any corporate card holders.

### **Corporate hospitality**

221. For the period August 2009 and January 2012 the Commission also expended \$209,502.50 on corporate hospitality. This included the hosting of industry bodies at sporting events such as AFL games and the Australian Open tennis.
222. Appendix 1 shows that in 18 months from January 2010 to July 2011 the Commission spent \$101,336.45 entertaining external stakeholders at sporting events. At interview Mr Arnel confirmed that the Commission had been regularly providing entertainment to external stakeholders at sporting events since 2003.
223. Commission staff interviewed confirmed that representatives from industry bodies including the Master Builders Association of Victoria (MBAV) and Housing Industry Association of Victoria (HIAV), AIBS<sup>21</sup> and IPAA<sup>22</sup> were regular attendees at such events. Documents also showed that Mr Arnel and his wife were often the hosts of such events, and that partners of stakeholders were also invited.

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<sup>21</sup> The Australian Institute of Building Surveyors.

<sup>22</sup> Institute of Public Administration Australia.

224. When asked why the Commission hosted these events, Mr Arnel said:
- I would meet with the Minister for Planning on a regular basis, it could be every fortnight or every month and I would talk about who I'd met with, who I'd had an event with ... [it was] part of our business planning on an annual basis that we would effectively engage with industry, partner with industry and collaborate and work with them. And this was, in my view, a very successful part of what was at least 11 good years of the building commission.
225. Mr Arnel also stated:
- The expenditure on corporate hospitality, like expenditure on meals, was intended to improve our communications with our stakeholders.
226. Mr Arnel was asked whether inviting attendees' partners and the hosting of such events by him and his wife could give the impression that the purpose of these functions was more social than business. He said:
- Partners were always invited ... clearly it was a social event but the fact that there were senior people involved in my mind still made it a business event.
227. In relation to the Commission's entertainment of external stakeholders, the Chief Finance Officer said:
- ... it was expected that we would develop relationships and maintain relationships with key people and peak industry bodies ... you maintained relationships so that these organisations would work with you in developing services and delivering things for consumers and the industry, not against you.
228. My investigation also identified two examples where Mr Arnel hosted personal acquaintances in AFL corporate boxes organised and paid for by the Commission in May 2010 and September 2011. My officers did not identify any business relationship between either of these persons and the building industry. They are not builders and are not involved in industry associations. They are friends of Mr Arnel.
229. Mr Arnel confirmed this and said:
- ... [The invitees] had no connection within the industry, I accept that this is the case and that they should not have been invited. Having said this, these two invitations represent two invitations out of around 200 invitations over 6 or 7 years.
230. The Commission also spent \$108,166.05 on 'Official Functions' in the period July 2009 and February 2012. These functions included dinners hosted for the MBAV, the HIAV and the Property Council of Australia, as well as the Commission's sponsorship of various industry awards, conferences and golf days.
231. The Commission's combined expenditure for the period 2009-2012 on meals, official functions and entertainment at sporting events was \$303,988.18.
232. In response to my conclusions on entertainment and hospitality, Mr Arnel stated:

I accept that I was responsible for the appropriate use of public money and that some instances excessive expenditure have been identified [sic] ... My observation is that standards are difficult to define in this area... My judgement was that the Commission should maintain close links at senior levels with the industry and that these links should be both formal and informal.

## Travel and accommodation expenditure

233. Between July 2009 and February 2012 the Commission expended a total of \$524,913.96 on travel and accommodation, including:

- \$349,659.19 on overseas travel
- \$175,254.77 on interstate travel.

234. Of the \$349,659.19 on overseas travel, \$302,408.70<sup>23</sup>, or just over 86 per cent was expended by two staff members, Mr Arnel and the then Director of Strategic Projects (now Director, Boards).

235. Mr Arnel's travel costs arose from 13 overseas trips ranging from two to 23 days in duration. Almost all of the travel undertaken by Mr Arnel and the then Director, Strategic Projects, was in relation to meetings and events for the Green Building Council of Australia (GBCA) and its international equivalent, the World Green Building Council (WGBC).

236. In response to the draft report the Director of Boards said:

International travel was a critical element to assist in the development of the green building councils under the WGBC umbrella. Many countries, including China and India, government [sic] expect to engage with a government representative when dealing with international delegations.

...

The \$300,000 spent by the Commission to support its Government endorsed involvement in both the GBCA and WGBC represents only .34% of 1% of the Commission's expenditure over the same period. The involvement of 4 staff, Commissioner included, who was chair of both councils at the time, on even a full time basis (which it was not) also represents less than 3% of total staff which is hardly disproportionate.

237. In response to my preliminary concerns, Mr Arnel advised that, on several overseas trips, he had been invited by overseas governments and delivered keynote addresses. He also stated:

... on every occasion, my travel was approved by the Secretary ... I would often discuss with Ministers my overseas travel. While I was not seeking approval, the Ministers indicated their support for the work I was doing on these trips.

... I received many invitations to speak at international events ... For the most part I declined these invitations on the grounds that the time taken would have impinged on my responsibilities as Commissioner.

... Some of the [13] trips were paid for in full or in part by the organisations sponsoring the trips.

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<sup>23</sup> This expenditure is net of reimbursements received from other bodies that sponsored the travel.

## Green Building Councils

238. During his time as Commissioner Mr Arnel held the position of Chair of both the World Green Building Council (WGBC) and Green Building Council of Australia (GBCA).
239. One of the objectives of the Building Act is to 'facilitate the construction of environmentally and energy efficient buildings'.
240. Since 2002 Mr Arnel has had a significant involvement in both councils. The WGBC provides green building organisations with support in influencing national bodies, including governments, to transform the building industry to one with a greater focus on green initiatives, such as changing regulations and standards to reflect environmentally and socially responsible building practices.
241. Since his resignation from the Commission Mr Arnel has maintained an involvement in both organisations, and is currently a Director of the WGBC and Chair of the GBCA. Whilst the Commission has continued as a member of the GBCA, none of its staff, including the Commissioner, Mr Michael Kefford, are currently individual members of either council.
242. In addition to the travel expenditure related to the green councils, my investigation identified that considerable Commission resources, both financial and human, have until recently been committed to supporting Mr Arnel in his roles with the green councils. For example:
- \$974,041 was spent to support and sponsor events, dinners and projects over a five-year period; around \$18,000 of this expenditure was reimbursed by the green councils
  - the hiring in July 2010 of a second executive assistant for Mr Arnel, at around \$50,000 per annum to deal exclusively with his WGBC and GBCA commitments<sup>24</sup>
  - the use of other Commission staff to assist in matters related to the GBCA, including the Chief Finance Officer and the Director, Strategic Projects.

Recent information obtained by my investigation indicates that the Commission's total expenditure in support of the green councils since 2002 may be considerably more than the above figures.

243. Mr Arnel stated that 'the work undertaken by these people was proportionate to the work commitments identified in the Commission's business plans and corporate plans and did not detract from their other work'.
244. At interview, Mr Arnel disagreed that his role with the councils served as a distraction from his responsibilities as Commissioner and stated that his involvement in the green building councils had full support from the Minister:

... it was subject of discussion with the Minister of the day ... and the view was that this was a progressive thing to do and very consistent with the role of the Commission in developing building standards ...

<sup>24</sup> The assistant was engaged by the Commission for 11 months.



...  
 ... the implication that the Commission was acting beyond its mandate in participating in the GBCA and the World Green Building Council (WGBC) is misplaced; these activities were encouraged by various Planning Ministers throughout the period of the ... [previous] Governments.

## Sponsorship

245. Between July 2008 and March 2012 the Commission provided funds of \$949,237.99 to sponsor various events and awards, including golf days run by industry bodies such as the MBAV, HIAV, Australian Institute of Building Surveyors and the Australian Institute of Architects.
246. Table 2 lists the top four industry bodies provided the most sponsorship by the Commission since 2008-09.

**Table 2 – Sponsorship of industry bodies by the Commission**

Industry body	2008-09	2009-10	2010-11	2011-12	Total (\$)
Master Builders Association of Victoria	79,950.00	56,136.36	58,654.55	10,290.91	205,031.82
Housing Industry Association of Victoria	12,133.62	73,700.00	105,500.00	454.54	191,788.16
Australian Institute of Building Surveyors	25,799.99	38,181.82	33,000	28,636.37	125,618.18
Australian Institute of Architects	10,000	25,000	26,636.36	Nil	61,636.36

Source: Information provided by the Commission.

247. At interview Mr Arnel explained why the Commission provided the sponsorships:

It was expected of us ... when I became Commissioner and we developed a plan in relation to how we'd proceed under our corporate plan, industry engagement was a huge plank ... as I've said before on the building side there is something like 15 categories and the stakeholders included the Master Builders, the HIA, the engineers, the building surveyors, the building designers, the quantity surveyors – and each of those entities would have awards ... and they looked to us to assist them, in terms of promoting the industry and promoting leadership and promoting good practice, you know the commission was always very keen to promote the whole idea of awards and still does, and did before I got there.

248. In 2010, the Commission also agreed to sponsor a private catholic school in Hawthorn. Mr Arnel sponsored the school's 'Open House' event, for \$5,000 a year, over a three-year period after being approached by a friend involved with the school.<sup>25</sup>

<sup>25</sup> This person is also referred to the Corporate Hospitality/Official Functions section of my report as having received hospitality from the Commission.

249. At interview, Mr Arnel was asked about the reasons he had agreed to provide sponsorship to a private school, and how this related to the core business of the Commission. He said:

... as I recall it, I was approached by one of the board members who I knew ... and they were very keen to promote sustainable living and promote the 5-star standard and also promote water saving, and they presented a written submission to the Commission ...

...

My view was that this was being supported by major other entities like 3AW and Jellis Craig, it was a big event promoting energy efficiency and water designs in building and the commitment I thought was good value for money.

250. The Commission has advised that it did not renew this sponsorship arrangement after it expired in March 2012.

251. In response to the draft report, Mr Arnel stated in relation to this issue:

... [The school board member] approached me on behalf of the school board. The school did not receive any special treatment. I do accept, however, that I should not have been part of the decision making process given [his friend's] involvement. The fact that the sponsorship arrangement has now ceased is simply an indication of the short term nature of the arrangement rather than an acknowledgement that it was inappropriate.

## e-toolbox system

252. In November 2008 the Building and Plumbing Industry Commissions jointly advertised a request for tender for a Customer Relationship Management system (known as e-toolbox) to transfer the majority of their transactions with practitioners and consumers to an online environment.

253. In March 2009 the Commissions awarded the contract for the development of e-toolbox to a technology and consulting firm (the IT consultancy) for \$698,000. Under the contract, by 2 October 2009 e-toolbox was to be operational allowing building and plumbing practitioners to perform online the functions outlined in table 3.

**Table 3 - Functions of the e-toolbox system**

Building practitioners	Plumbing practitioners
Renew their registration	Renew their licence or registration
Report Continuing Professional Development	Purchase, lodge and retrieve Compliance Certificates
Maintain their contact information	Book drain or recycled water inspections
Re-order lost registration cards	

Source: Information provided by the Commission.

254. The system also allows consumers to search building practitioners across all registration types to confirm that they are registered.

255. In my November 2011 *Own motion investigation into ICT-enabled projects*<sup>26</sup> I identified the following common themes which led to projects in the Victorian Public Sector exceeding time and cost estimates:

- lack of leadership and accountability
- poor planning
- poor probity and procurement arrangements
- poor project management.

256. My investigation identified that the development of the Commission's e-toolbox system was also affected by similar issues. The cost of e-toolbox has increased more than five times, from the initial contract amount of \$698,000 in March 2009, to over \$4.65 million (including project management fees) as at September 2012 with no variations to the contract. In addition the original completion date for the project was extended from October 2009 to July 2010. While the e-toolbox system went 'live' in July 2010, there were still some unresolved issues at the time the warranty period ended 12-months later. At interview, an IT contractor<sup>27</sup> to the Commission said:

There was a list of about 30 of them [issues] that ... were defects or enhancements and that was agreed that we disagreed and it just never sort of got resolved

...

It is working. I don't know that they've gotten everything that they were planning to get but it is working for them.

257. One of the internal sponsors of the project, the former Director, Plumbing Industry Commission, said:

... the scope of the project changed at various points particularly as options to take up additional functionality were considered. Significantly more functionality was delivered than was represented in the original scope of work or included as part of the \$698,000.

258. My investigation was not able to identify this 'additional functionality'.

259. At interview, the Chief Finance Officer raised concerns about the effectiveness of the contractual arrangements, and in particular the business requirements document, which he said [the IT consultancy] were able to 'shoot holes in' and which resulted in a number of variations and increased costs. He also raised concerns about the initial scoping of the project and the resources it was allocated. He said:

I think that the first thing I'd say is that those who were running the project were short-sighted in not thinking about everything that needed to be done ... they took the attitude of - that the people who were managers and staff who were doing their day-to-day work were also going to do these other things, which was a big call. And I think that what that meant was that in developing the Business Requirements document it came up short.

260. Mr Arnel agreed that the project had been under-scoped, but expressed a view that the increase in costs corresponded with an increase in functionality. He said at interview:

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<sup>26</sup> Victorian Ombudsman, *Own motion investigation into ICT-enabled projects*, November 2011.

<sup>27</sup> The IT contractor was not employed by the IT consultancy.

There were a couple of occasions where [the project sponsor] reviewed the budget and based on the scope of the works changing a bit there was some budget adjustments ...

261. My investigation identified that three project managers were engaged by the Commission at various stages of the project to represent the Commission's interests. All three project managers were from the system's vendor, the IT consultancy.
262. The IT consultancy contractors cost the Commission \$1,450 a day, or around \$24,000 per month in addition to the original contract price. These fees are included in the total cost of the project – \$4.65 million.
263. Several witnesses raised concerns about the appropriateness of employing a consultant from the system's vendor to represent the Commission's interests. At interview a senior executive of the Commission said:

At one stage we were in so much trouble with this e-toolbox project and things were just going from bad to worse, it was deemed we needed to hire a project manager ... the person they hired ... was working sitting there doing the [the IT consultancy] project, she was an [the IT consultancy] person and they hired her to represent the Commission to oversight the project.

...

To me it was like putting Dracula in charge of the blood bank.

264. An IT contractor to the Commission also expressed surprise at this arrangement. At interview the contractor said:

You do see quite often that projects that are being commissioned by a client will have a contractor as a project manager but I've never seen it from the same company [as the vendor] ...

265. In response to the draft report, Mr Arnel stated:

While I accept that the degree of separation from [the IT consultancy] does not appear to be ideal, based on the advice given to me, the project manager was competent and represented the Commission's interests appropriately. I see no evidence in the draft report that the project manager (or her successor) in fact acted in the interests of [the IT consultancy] and against the interests of the Commission. The alternative would have been to engage someone we knew less about and who would not have been familiar with our requirements.

## Conclusions

266. I can see little justification for managers and directors of a public authority to have access to credit cards with monthly limits of up to \$5,000 for non-operational expenditure. I support the decision taken by the new Commissioner to significantly reduce these limits, along with the financial delegations held by his staff.
267. I consider that the expenditure on meals and alcohol by Senior Executives, including the former Commissioner was extravagant and a misuse of public funds.
268. There is an inherent conflict where the Commission provides entertainment to stakeholders when its core function is the regulation of the very persons they are entertaining.

269. It is concerning that a public body such as the Commission could consider it appropriate to have a policy which allows staff to entertain external stakeholders, and indeed each other, at a cost of up to \$500 without any formal consent being required. I do not consider public funds should be expended by staff to meet with each other in the performance of their duties.<sup>28</sup>
270. Although Mr Arnel has stated that his involvement in green councils was as a representative of the Commission and not as an individual, I note that his involvement with both councils has continued since his resignation from the Commissioner role. I also note that the current Commissioner has no involvement with either council.
271. The willingness with which the Commission has in the past provided sponsorship to industry bodies, especially those whose members it also regulates is concerning. I do not consider that there is a need for a statutory authority to enter into sponsorship agreements in order to promote itself. I consider that the Commission's justification for sponsoring industry groups in the past to be misguided.

## Recommendations

I recommend that the Commission:

### Recommendation 10

Review its practice of providing:

- hospitality including meals, and entertainment
- sponsorship to external stakeholders, particularly those whom the Commission has a responsibility to regulate
- general funding to external associations; and

Review its hospitality and entertainment policy, in particular the \$500 expenditure threshold in light of my report.

### Commission response

Recommendation accepted.

### Recommendation 11

Seek an audited statement on how monies paid by the Commission to the Green Building Council of Australia and World Green Building Council since their inception have been spent.

### Commission response

Recommendation accepted.

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<sup>28</sup> I have recently raised concerns about the use of gifts and hospitality in the *Investigation into allegations of improper conduct involving Victoria Police - Whistleblowers Protection Act 2001*, October 2012.

# Recruitment, termination and contractors

## Key issues

This investigation identified:

- consultants and contractors were engaged by the Commission and paid up to \$350,000 a year without competitive or open tender processes
- managers and directors knowingly employed people with questionable backgrounds and a criminal history
- a failure by the Commission to conduct criminal records checks as part of their recruitment processes
- examples of cronyism with regards to the staffing of the Audit and Investigation Unit (AIU) almost exclusively with former police officers
- favouritism and assistance being provided to preferred applicants
- the re-engagement of a former staff member as a contractor three days after his resignation. The former staff member earned nearly triple his previous annual salary in the ensuing 12-month period
- contractor invoices, often in the tens of thousands of dollars paid by the Commission with little to no detail regarding the work being billed for.

## Contractors

272. My investigation identified a number of contractors that were engaged by the Commission without a competitive tender process and at significant expense to the Commission, as follows:

### Mr B

273. Mr B was a former ANZ Bank and Melbourne City Council Executive. At interview Mr Arnel confirmed that he knew Mr B from his previous work in the public service.

274. Mr B was engaged by the Commission as a contractor on a number of occasions and in several different roles, commencing in early 2009. Mr B's roles included:

- Director, Industry and Regulatory Compliance – 4 May 2009-22 December 2010
- Acting Deputy Commissioner – February-November 2011 and Acting Commissioner – 14 June-11 July 2011
- Director (no department assigned) – November 2011-10 February 2012.

275. Mr B was paid between \$1,500 and \$2,500 a day at the Commission, totalling of \$677,345.55 between March 2009 and February 2012. On several instances, he was paid in excess of \$40,000 a month.
276. Mr Arnel said that in January 2011 he approached Mr B in relation to the Deputy Commissioner role which had been vacant since December 2010. A number of applicants, including executives from both the Building and Plumbing Commissions had been interviewed for the role in December 2010; none were considered suitable by Mr Arnel.
277. In a letter to Mr Arnel dated 7 January 2011 Mr B wrote:
- Further to our recent discussions, the following outlines my proposal for undertaking the role of Deputy Commissioner on a contract basis for an agreed period.
- ...
- ... it is anticipated that I will be available in the Commission offices for 4 days each week, however there will be some occasions where my availability will be restricted to 3 days each week.
- ...
- ... given the duration and commitment offered and required of this role, my daily rate for the assignment would be reduced to \$2,250.00 plus GST.
278. The letter further outlines Mr B would be initially engaged in the role for six months.
279. At interview Mr Arnel confirmed that he was responsible for engaging Mr B for each of the contracts he held with the Commission. In relation to Mr B's engagement as Acting Deputy Commissioner Mr Arnel said:
- At the end of 2010 when my previous deputy ... resigned we went through an executive recruitment process ... that proved to be unsuccessful and I think it was about in January of 2011 I said to [Mr B] would you mind doing the job for about 6-months whilst I re-visit this executive recruitment process and that was really the basis of it. He was clearly a person who could do the job, very well equipped, very well-credentialed, very experienced in large organisations, complex organisations and had an existing relationship with the relevant directors at the time so it was my professional view that he was well positioned to do that job.
280. Mr B was Acting Deputy Commissioner from February 2011 until the position was filled in November 2011. Mr B was paid \$348,287 for the 12 months he spent at the Commission, including nine months as an Acting Commissioner, at an average of around \$29,000 a month.
281. The Commission's procurement policy<sup>29</sup> states that if the expenditure for any 'services or works' exceeds '\$100,000, tenders must be invited publicly unless the Building Commissioner certifies that it is not practical or expedient to do so'.
282. Mr Arnel confirmed at interview that Mr B was not engaged via a public tender process for any of this contract work for the Commission.
283. Mr B's remuneration for this nine-month period was well in excess of both the limit set out in the procurement policy and Mr Arnel's own annual salary as Commissioner. When questioned on this, Mr Arnel said:

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<sup>29</sup> Building Commission, *Procedures for ordering/purchasing contract and non-contract goods and services*, 24 May 2011.

Well in hindsight, as I said, I wasn't sure whether this was going to last for three months or four months or six months. I mean it was a matter of getting the right person. If it had been for three months it would have been less than my salary but it was just one of those circumstantial things ... I really want to emphasise this. I'm concerned that the assertion here is that I went against what were the policies of the day but that wasn't the intention here, the intention was to get somebody in to do this job on an interim basis and it took much longer than I thought to get somebody.

284. When questioned why he chose to engage Mr B at the above rates Mr Arnel said:

He charged on a daily basis, my view was that based on 10hr days you know that was \$220 an hour ... it was my view it was a reasonable amount to pay for what was essentially a short term assignment. It worked out to be a month or two longer because of the fact that the new guy ... couldn't start but I don't resile for one minute from having appointed him, it was right at the height of the Auditor-General's reports which were obviously causing some internal concern and part of my remit to him was to manage that exercise in a professional way.

285. Mr Arnel also stated:

In my view, [Mr B] had excellent credentials for the position, he was familiar with the Commission's business and he was available for a short term assignment.

### Outsourcing of investigations and technical advice

286. Since 2004 the Commission has engaged eight external investigation firms at a total cost of over \$3.15 million to conduct investigations.

287. Over the past five years the Commission has conducted on average around 588<sup>30</sup> investigations annually.

288. In his December 2011 audit report *Compliance with Building Permits* the Victorian Auditor-General found that 64 per cent<sup>31</sup> of the Commission's investigations conducted in 2010-11 were undertaken by four external investigators. The remaining 36 per cent were undertaken by the Commission's 12 investigation staff in the Audit and Investigation Unit (AIU).<sup>32</sup>

289. My investigation identified that:

- external investigators were initially subject to a tender process, however, the works have not been re-tendered in accordance with the Commission's procurement policy since 2004
- the Commission had not entered into formal contracts with its external investigators for the period 2004-2010.

<sup>30</sup> *Review of Processes, Recruitment, On-boarding and Capacity Development for Building Commission Investigators (Internal and External Panel)*, Janis McFarland 22 December 2011, page 8.

<sup>31</sup> Victorian Auditor General's Office, *Compliance with Building Permits*, 7 December 2011, page 46.

<sup>32</sup> In addition to investigations, investigators in the Audit and Investigation Unit are required to conduct performance audits of building practitioners and some local councils.



290. In response to these issues, the former Manager, AIU, said:

Prior to mid-2011, I was never made aware of any Commission procurement policy. I do not recall undergoing any formal management induction, and I did not receive any training or instruction in procurement, corporate governance, or contract management. To put it simply, I was never made aware that works and services to a value in excess of \$100,000 were required to be put out to tender.

291. Mr Arnel also stated:

I accept that this is the case and also accept that steps should have been taken sooner to ensure that the engagement of investigators was subject to a competitive process.

292. The cost of external investigators to the Commission has risen significantly. In 2009-10 the Commission paid a total of \$381,301 to three external investigators; in 2010-11, \$878,569<sup>33</sup> was paid to four external investigators.

293. By comparison, the number of internal investigation staff employed by the Commission has only risen by one since 2004.

294. The former Manager, AIU, said in relation to this issue:

Since 2004, each manager including me raised the issue of increasing the number of internal investigation staff in order to deal with the workload and control the cost of contract investigations. However, due to an apparent ceiling on Commission staff numbers, the policy from senior management seemed to be that the only way to deal with the workload was to pay contractors.

295. The former Director, IRC stated:

Throughout 2006-2012 I personally importuned the Commission to employ appropriately technically qualified staff to create a dedicated audit team.

...

Investigators were engaged on an investigation by investigation basis ... there was and is a very small pool of experienced, professional and appropriately skilled investigators available to the Commission to undertake important complex investigations.

... I also wish to make it clear that during my tenure as manager of the Audit and Investigations Unit (AIU), I did not recruit any external investigative service providers.

296. In 2010-11 the four external investigators engaged by the Commission were each paid in excess of \$190,000 per annum. One external investigator was paid in excess of \$225,000 by the Commission for around nine months' work.

297. The Director and Principal Investigator of that company, Mr C, a former employee of the Commission was employed in the Commission's Audit and Investigation Unit for over 10 years. Mr C resigned from the Commission on Friday 3 September 2010 and returned as a contractor on the following Monday, 6 September 2010.

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<sup>33</sup> *Review of Processes, Recruitment, On-boarding and Capacity Development for Building Commission Investigators (Internal and External Panel)*, Janis McFarland 22 December 2011, page 19.

298. Mr C confirmed at interview that he was not required to submit to a tender process in securing his contract with the Commission. At interview he said that he had been provided with confirmation that he would be re-engaged as a contractor several weeks prior to leaving the Commission:
- It was made clear to me at the time that I couldn't come straight on as a sub-contract investigator, there had to be some sort of break, they didn't want the perception of an employee leaving and then coming back on as a sub-contract investigator earning a lot more money ... and about 2 weeks before I was due to resign I was told that the Commission were prepared to put me straight on as a contract investigator.
299. When asked at interview why Mr C was re-engaged as a contractor three days after his resignation took effect, the former Manager, AIU, said:
- He came back on the panel, well because Tony Arnel said to, that's the bottom line ... When he resigned I got told give him work.
300. When questioned about his involvement in the decision to re-engage Mr C as a contractor, Mr Arnel said:
- I wasn't involved. But on the one hand I was disappointed to see him go, he was one of the best investigators and when he returned after a period of time as an external investigator I wasn't too fussed about that. I think there's plenty of examples around the public sector where people have left and have come back but that's after a cooling off period ... it wasn't entirely surprising that he returned after a period of time.
301. When advised that Mr C had in fact returned to the Commission three days after he had resigned, Mr Arnel said:
- It wasn't an area that I was particularly focusing on but I think it would have been desirable to have a bit more time in that respect.
- ...
- I recall that I suggested to the Director that we needed someone who was very experienced and who was able to devote a significant amount of time to it. I said we would probably need someone from the [external investigators] Panel and that [Mr C] might be a good prospect. To the best of my recollection, this is the only involvement I had in [Mr C] being reengaged as a contractor.
302. In addition, the former Director IRC stated:
- ... I do not know who told [Mr C] prior to his resignation that he would be engaged after his resignation, if he was in fact told this ... I did not advise [Mr C] that on his resignation that he would be contracted for 12 months.
303. My investigation identified a confidential memorandum dated 19 August 2011 from the Manager, People and Culture, recording a discussion regarding external investigators between her and the then Manager, AIU. Of particular interest were the following issues noted by the Manager:
- There is no formal recruitment process, no expressions of interest or tenders for companies. There is no public advertisement. Historically the company directors are known to the Manager, Audit and Investigation.

- [Mr C] was advised on resignation from the BC [Building Commission] that he would be given a 12 month contract.
  - There is no induction process
  - There are no formal procedures for conducting an investigation.
  - There is no performance management.
304. In response to the draft report, Mr Arnel stated that he had no knowledge of the above memorandum and:
- As far as I was aware these investigators were performing their roles in a professional manner and were highly regarded in the industry.
- ... In the Commission's experience, a skilled investigator was more valuable to the Commission than a person who was familiar with the building industry but had no experience undertaking investigations in a law enforcement context.
- I received no indication that there were any issues with the competence or integrity of the investigators.
305. In addition to external investigators, the Commission has a panel of 20 technical experts. The technical experts perform a range of functions including:
- inspections on behalf of the Commission in accordance with the *Domestic Building Contracts Act 1995*
  - provision of technical reports and advice in relation to investigations conducted by the Audit and Investigation Unit
  - site audit inspections.
306. In the period July 2004 and June 2012 the Commission spent over \$1.5 million on technical experts.
307. A number of witnesses said that the Commission's internal and external investigators would often require the assistance of technical experts as the investigators themselves did not generally have extensive building experience or knowledge.

## Invoicing

308. There were deficiencies in the invoicing practices established between the Commission and its external investigators.
309. Invoices submitted by external investigators and examined by my officers showed that:
- invoices contained scant detail: they only listed case file numbers and a total amount charged for their services; some invoice amounts totalled in the tens of thousands of dollars
  - invoices did not contain any particulars of services provided on the individual cases listed, such as hours claimed or kilometres travelled for each investigation.<sup>34</sup>

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<sup>34</sup> An hourly rate and a travel allowance per kilometre are outlined in the external investigators contracts.

310. The role of managing the external investigators, including the allocation of files and receipt and review of final investigation briefs is the responsibility of the Audit and Investigation Unit's three team leaders. However, notwithstanding this oversight role, the team leaders had no involvement in the checking of invoices submitted by the external investigators.
311. Instead, a practice existed where the external investigators would send their invoices direct to the then Manager, AIU, and he would forward them to finance for payment without making any enquiries with his Team Leaders as to the accuracy of the amounts claimed. At interview Mr C said of his time at the Commission:
- The invoices don't go in the files, they are emailed. And they were going directly to [the former Manager, AIU] ...
312. At interview, an AIU team leader said:
- A few years ago [the former Manager, AIU] changed the process where they were directly emailed to him so I never saw them ... he's never approached me about that [the invoices]
313. My officers interviewed five of the external investigators engaged by the Commission in the last three years. They all agreed that the lack of detail in invoices accepted by the Commission could be 'taken advantage of'. When asked at interview what information he was required to provide the Commission in his invoices, Mr C said:
- Not a lot. Up until I think it was the start of February, [we provided] a covering invoice which lists the file numbers, the subject name, and a total amount, that was it.
- ...
- There was no requirement [for] accountability. It should have been a lot tighter.
314. A former contracted investigator to the Commission was asked at interview whether the Commission's previous invoicing practice placed a large amount of trust in the honesty of external investigators. He said:
- That's right because they didn't know if you put in a file, 10 files and your invoice was \$15,000, one of those files might be worth \$3,500 because you've had to spend two weeks on it and the other one might be worth \$900. They didn't know from that invoice that you provided them.
315. When questioned at interview regarding the amount of information provided in the external investigator invoices and whether there was sufficient information to determine whether the claim was accurate, the former Manager, AIU, said:
- In hindsight, particularly after VAGO came through we started talking about how these things should be done, it was brought to my attention that you really should be looking at these things closer.
316. The former Manager also stated:
- As far as I am aware, the information on invoices was the same as had always been in place from 2004, and I inherited the systems of at least three previous managers - I did not change the invoicing practice of contract investigators. Given adequate procurement and contract

training, I (or one of the previous managers) may have earlier identified a need for better and more testable particulars on invoices and more stringent vetting processes.

...

Nobody, from the Director to anybody in the Finance unit ever questioned the information that was on any invoice or suggested that the information on them was inadequate for checking purposes.

317. The former Director IRC stated that:

There was ... regular contact between external investigators and one or other of the management group. As a result of day-to-day contact with external investigators, the management group within the AIU were intimately familiar with the work being done at any time on any file and so were able to audit accounts related to files as the accounts were rendered.

...

The material with which I have been provided contains ... no examples of inappropriate, inflated, unsubstantiated or improper billing.

...

In or about late 2011, I raised the issue of a lack of detail on some invoices with the AIU Manager and required more information to be included in the invoices submitted to the commission by the external contractors. This instruction was implemented.

318. The current Commissioner has advised my officers that the practice of assigning investigative work to external contractors ceased in August 2012.

## Corruption risks

319. One of the Commission's statutory functions is to investigate allegations of breaches of the Building Act and associated legislation, including the Regulations. This includes complaints about the professional conduct of registered building practitioners.<sup>35</sup>

320. The Commission undertakes this function through its Audit and Investigation Unit (AIU). Briefs of evidence and investigation reports are prepared by AIU investigators and considered by AIU Management.

321. Where it is considered that there is evidence of a breach, a decision is made by AIU management to refer the practitioner either to the Practitioners Board for a disciplinary hearing, or to the Magistrates court for matters requiring formal prosecution.

322. The AIU consists of 12 staff: four regional and eight metropolitan-based investigators.

## Recruitment

### ***Failure to conduct background checks***

323. My investigation identified that the Commission does not require internal applicants for employment to undergo a criminal records check. This is despite concerns having been raised in the past by senior managers as to the backgrounds of a number of its staff, particularly in the AIU.

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<sup>35</sup> Building Commission, *Investigation policy*, page 4.

324. Ten (83 per cent) of these investigators are former Victoria Police officers, as were the former Director and Manager of the AIU.
325. My investigation identified internal emails and memorandums where concerns were raised with the then Director and Manager of the AIU, and the former Commissioner Mr Arnel, regarding the backgrounds of some of the former Victoria Police officers and the need for staff to undergo a criminal records check. I have outlined two examples in the case studies below:

#### **Case study 5 – Mr E**

Mr E resigned from Victoria Police on 6 November 2010 and commenced with the Commission on 8 November 2010 as an Investigator in the AIU. Mr E was not required to undergo a criminal records check as part of the application process.

In December 2010, shortly after Mr E's commencement, concerns were raised regarding the circumstances in which he left Victoria Police. When approached, Mr E confirmed that he was being investigated for alleged theft by his former employer, Victoria Police, and that he'd also had a past history of cocaine use.

Despite still being on probation the Commission did not terminate Mr E's employment. Instead his probation was extended for a further three months while the Victoria Police investigation continued. It was not until April 2011, following a complaint that Mr E had been drinking with a builder he was inspecting, and had also accepted pain medication from the builder, that Mr E agreed to resign.

In June 2011 Mr E was found guilty and fined \$468.10 in relation to one count of theft and received a six month good behaviour bond for charges relating to use and possession of heroin.

#### **Case study 6 – Mr F**

Mr F commenced with the Commission on 2 May 2011 and is still employed there. Mr F had previously worked for an external investigator contracted to the Commission and held a Private Inquiry Agents Licence, under the *Private Security Act 2004*.

Prior to this Mr F had been a Senior Constable with Victoria Police until his resignation in September 2008. My investigation confirmed that in October 2008 Mr F had been found guilty and fined \$12,000 without conviction in relation to offences of possessing prohibited weapons and a firearm offences he was charged with whilst in the Victoria Police.

Mr F said at interview that the charges related to an old air rifle, equipment relating to his martial arts training (knives, batons and nunchucks) and chinese fire crackers.

In March 2011 Mr F was advised by Victoria Police of changes to the eligibility criteria for licences under the *Private Security Act 2004* that meant that effective July 2011, the offences he had been found guilty of in 2008 were now considered 'disqualifying' offences. Mr F was advised that his private security licence would therefore be cancelled.

Two weeks after receiving this notification Mr F submitted an application for an investigation position with the Commission. Despite the application being 10 days late it was accepted by the then Manager, AIU.

Mr F was not required to undergo a criminal records check as part of the application process. Both Mr F, and the then Manager of the AIU did however confirm that they had discussed Mr F's criminal record prior to him being awarded the position.

The then Manager, AIU confirmed at interview that he did not discuss Mr F's criminal record with anyone else until after Mr F had been employed, when the issues were identified by the Commission's human resources area. Despite still being on probation at the time, Mr F was allowed to remain at the Commission.

326. By comparison, the Commission requires persons applying for registration as a building practitioner to answer questions regarding criminal charges and convictions. For example:
1. Have you, within the last 10 years as an adult or the last five years as a child, been convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence involving fraud, dishonesty, drug trafficking or violence?
327. My investigation obtained criminal and disciplinary records for a number of current and former Commission staff who had previously been employees of Victoria Police including the two staff mentioned in case studies 5 and 6. I identified the following charges, both criminal and disciplinary, that resulted in findings of guilt and/or convictions on the records of five Commission employees examined:
- drug offences such as possession and use of heroin
  - offences concerning accepting bribes, theft and unjustified charges
  - weapon related offences such as carry and possess unregistered or prohibited weapon
  - motor vehicle offences such as dangerous driving, drink driving and speeding.
328. The employees were predominantly employed as investigators in the Commission's AIU, but also included a Manager from its Registration area. One of them is still employed by the Commission.
329. My investigation confirmed that had criminal records checks been conducted as part of the Commission's recruitment process, details of criminal charges and/or convictions would have been available for at least two of these employees. Four of the five employees were also under investigation for other offences at the time they resigned from Victoria Police and as a result of their resignations, the disciplinary charges were not pursued by Victoria Police.
330. I note that Victoria Police requires applicants wishing to obtain a licence to conduct investigations in the private security industry to answer questions in relation to their criminal history such as whether they have been convicted of any offence in Australia or overseas or found guilty of an offence without a conviction being recorded.

331. At interview the Commission's Director, People & Culture said that she had raised concerns about the need to conduct criminal records checks on applicants wanting to work at the Commission, with Mr Arnel. She said:

I went to ... the Commissioner, and I said 'they've done it again, they've replaced like with like' ... we really should bring in Police checks', but it fell on deaf ears, he really wasn't interested.

332. When asked at interview why the Commission did not require applicants to submit to criminal record checks during his time as Commissioner, Mr Arnel said:

Look I really don't know. The People and Culture policies were designed to keep up with public sector policies, and if it was a public sector policy that required that well there should have been a matching arrangement.

333. Mr Arnel denied that concerns had been raised with him about the Commission's failure to conduct such checks. At interview he said:

I don't recall that. I mean if somebody had brought that to me, and once again to be perfectly blunt about it, if somebody had come to me and said I think in this case we should do a police check why would I go against that idea ... I don't recall that having ever been brought to my attention and if it was I would have said well let's do it.

## Favouritism

334. During the course of my investigation, concerns were raised in relation to what could be perceived as favouritism regarding the employment of former police officers within the Commission's AIU.

335. At interview the Director, People & Culture said:

It seems that a number of my frequent flyers are ex-VicPol. So much so that for probably three of four years I've had a number of discussions with Tony Arnel that we should not be hiring ex-VicPol ... there is an invisible sign that says 'Bad coppers this way' and we always seem to pick them up ... and I've always been unsettled about this and how these people were engaged.

...

I don't believe the recruitment process is open and transparent. I believe we have cleaned up the process for all the rest of the Commission except for this one area. And the problem with this one area is that it seems that even in interviews ... I'm told by my staff, that they seem to know the person [interviewed] ...

336. In response to this issue, the former Director, IRC, himself a former Victoria police officer, said:

Ex-Victoria Police engaged by the Commission had undergone that expensive training ... Such a skill set is very rare and, as the results show, was a great advantage to the Commission ... Those with investigative training and experience can be easily taught the workings of the building industry; the reverse is simply not true.

337. My investigation identified questionable practices in relation to a number of internal recruitment processes involving the Commission's AIU. I have outlined two such examples below.



### ***Appointment of Mr F***

338. As noted earlier in case study six, Mr F applied for an investigator role with the Commission on 21 March 2011, forwarding his application via email to the then Manager, AIU.

339. Later that morning the former Manager, AIU, sent an email to the Commission's Human Resources department with Mr F's application attached advising that he had 'agreed to accept the late application; please add him [Mr F] to the shortlist for interview'.

340. In a separate email sent to Mr F 24 minutes later the former Manager, AIU wrote:

Thanks [Mr F],

I have forwarded your application to HR to organise an interview.

I hope you don't mind, but I made a couple of very minor adjustments to the KSC document so that it's in line with Commission expectations.

Give me a call if you would like a coffee to discuss.

341. In response Mr F wrote:

[the former Manager, AIU],

Your assistance is appreciated, please feel free to do anything you deem necessary.

I would very much like to catch up during the week, just to say G'day.

...

I will ring in a couple of days, unless you feel that a coffee is important to have quickly.

342. When asked at interview what adjustments he had made to Mr F's key selection criteria, the former Manager, AIU said:

I've got no idea what they were. I've used the term very minor so I assume they were very minor, might have been spelling I don't know. I certainly wasn't going to write a KSC for him.

343. The former Manager denied that his editing of Mr F's job application was indicative of a predetermined outcome, but agreed that it could be perceived that way.

344. At interview, the Director, People & Culture spoke of her concerns regarding the recruitment practices in the AIU area. She said:

... it appears that there was this 'other' recruitment process that [the Manager, People and Culture] and I were suspicious about where [the former Manager, AIU] has coffees with people outside of the building ... for me it's just too cosy, it's far too cosy.

345. In response to this issue in my draft report Mr F stated:

The only direct assistance I was ever aware of receiving from [the former Manager, AIU] was his facilitation of forwarding my application to People and Culture for consideration.

346. The former Manager, AIU also stated:

No 'recruitment' process existed that I am aware of other than the formal application process managed by People & Culture. I often had coffee meetings with people outside the building as did most staff, especially managers; if anybody perceived that as some sort of recruiting process, then they have a flawed perception.

...

I did not have any kind of a relationship with [Mr F] prior to this incident, and had no reason to predetermine an outcome in his favour...there was no intent in my mind to assist [Mr F] with his application or to improve his chances of succeeding in his application ... given the same circumstances again, I would not alter any application in any way.

347. In March 2012 the former Manager, AIU, received a demotion and first and final warning in relation to an internal investigation into the receiving and forwarding of inappropriate emails by Commission staff.

348. In August 2012 the Commission informed my office that it had identified further evidence of the former Manager having assisted another applicant prepare his application for an advertised investigator position. The Commission advised that on the basis of this, it had terminated the former Manager's employment.

### ***Appointment of Mr G***

349. On 24 August 2010, the then Director, IRC forwarded an application from Mr G, a former Leading Senior Constable with Victoria Police, to the Commission's HR department. The email read:

A late application of which I am quite prepared to accept given the calibre of the applicant.

Regards,

350. The former Director, IRC, confirmed at interview that he had not been the contact for applicants for this, or any other advertised position at the Commission.

351. My investigation identified a calendar entry in the former Director's emails dated 26 August 2010 for a 'Meet & Greet- [Mr G]. Other invitees included AIU two Team Leaders, one of whom was on the interview panel for the position Mr G was applying for.

352. The former Director denied that information was provided to Mr G in this meeting to assist him with the interview process or that the selection process was predetermined. He stated:

I can assure you that there is nothing sinister in that at all. If someone wanted to meet me and discuss a role that they were going to apply for at the Commission I would meet them. I'm not about to go and say no I can't, unless I'm on the selection panel, and then I definitely would say no.

353. My officers pointed out to the former Director that one of the AIU team leaders at the meeting was on the interview/selection panel for Mr G. He said:

Well that surprises me if they were on the selection panel ...

354. The AIU team leader did not wish to respond to a draft copy of this report.
355. When questioned as to whether he had met other applicants previously, the former Director said:
- Yeah, as I said that happened with [a current AIU Team Leader]. I mean it's like any job interview, if you are interested in putting in for vacancy you want to go find out about what the job entails. I don't think there is anything wrong with that, it's probably good.
356. The former Director, IRC, stated:
- I had not met [Mr G] prior to 26 August 2010. His application indicated his considerable calibre. I do not want the Commission to miss the opportunity of employing such a candidate simply on the basis that the application was late ... I did not advocate for him to be employed.
- ... I was not involved in making a decision about whether to employ Mr G and provided him with no information about any potential interview. Put simply, it was not something I knew anything about – I was not involved in it. My conduct was completely appropriate.
- ...The meeting [with Mr G] was anything but clandestine – it was held in the Commission office and plainly referred to in my diary.
357. The former Director resigned from the Commission in April 2012 after being advised by the new Commissioner Mr Kefford that his contract would not be renewed.

## Termination payment

358. On 30 January 2012 the Secretary, Department of Planning and Community Development (the department) wrote to the then Commissioner Mr Arnel stating:
- Further to our recent discussions, this letter is to confirm your intention to resign from the role of the Building Commissioner and Plumbing Industry Commissioner with a notice period of 5 months. The notice period will become effective 5 February 2012 and conclude Monday 9 July 2012.
- I do not require you to work your notice period and you will be paid 5 months in lieu of notice and a one-off allowance of \$10,000 in lieu of your outplacement and career development services. In addition, I have further agreed to you continuing the use of your existing motor vehicle until the conclusion of your 5 month notice period.
359. The five months' salary and \$10,000 outplacement and career development payment made to Mr Arnel totalled \$124,978 (before tax).
360. My investigation identified that Mr Arnel's payout was not in accordance with the terms of his executive contract with the department. Under this contract Mr Arnel was required to give four weeks' notice and was entitled to a payout for the same period.
361. In contrast, had his employment been terminated Mr Arnel would have been entitled to four months' notice or a payment in lieu of this notice. He would also have been entitled to 'up to four months reasonable outplacement support and counselling during the notice period' and not a lump sum amount of \$10,000. There is also no provision in Mr Arnel's contract for him to retain the use of the Commission's motor vehicle when he received a payment in lieu of notice.

362. At interview, Mr Arnel was asked if his decision to resign was of his own volition. He said:

Yes it was ... the government had changed and I felt that after twelve years it was time for me to do something different ... I had spoken to [the Minister for Planning] on a couple of occasions, I had twelve months of my contract left and I'd said to him that I was thinking of doing something else, and subsequent to the Auditor-General's report, and there was a lot of publicity about it, I thought no it's time for me to do something different. And I spoke to the Secretary of the Department of Planning and Community Development and on the basis of the 12 months contract that I had left he was prepared to negotiate.

363. In response to the above issues, Mr Arnel stated:

The Secretary, for whatever reason, offered me terms on which I would leave my employment which I accepted. As to the car, had I worked out the period of notice, I would have had access to the car for the entire period including the benefit of the value of the private use of the car. I do not consider that I should have been worse off simply because the Secretary elected not to require me to work out my period of notice.

364. In light of my concerns I wrote to the Secretary of the department outlining the above evidence and recommending that it review its human resources practices to ensure that executives do not receive resignation or termination payments outside the entitlements contained in their employment contracts.

365. The Acting Secretary of the department responded by accepting my recommendation.

## Conclusions

366. The Commission has failed to conduct adequate checks or set minimum standards in relation to the criminal history of its staff, and in particular, its investigators. As a result it has employed a number of staff with backgrounds and a record of behaviour that represented a risk to the Commission's integrity and reputation.
367. The Commission's decision not to undertake criminal record checks, require applicants to make a declaration about any convictions or antecedents, or assure itself of the integrity of its employees, means that a higher threshold is set for the integrity of building practitioners than the people charged with regulating them.
368. In one instance, management at the Commission made a decision to employ Mr F knowing that he had been deemed unsuitable by the Chief Commissioner of Police to perform the same role in the private industry due to his criminal record.
369. I consider that the internal recruitment processes for investigators have not been conducted in an open and transparent manner, and have been influenced by cronyism that existed in the Commission's AIU.

370. The staffing of the AIU predominantly with former Victoria police officers has meant that a gap has been created in relation to building knowledge and experience in the unit. As a result reliance is placed on external technical contractors, not only for advice and support on investigations, but also to carry out the Commission's responsibility to conduct audits on building surveyors. This has occurred at significant cost to the Commission.
371. The Commission's outsourcing of 64 per cent of its investigations into practitioner conduct to external contractors is, in my view, costly and reflects a failure to adequately resource one of its core functions.
372. The decision taken by the Commission to extend the probation period of Mr E following his admission of past cocaine use and that he was under investigation for theft and drug possession offences by his former employer, Victoria Police was wrong. In view of the seriousness of the alleged offences and Mr E's role, I consider that the Commission had more than sufficient grounds to terminate his employment. Its decision to extend his probation period was inappropriate.
373. The information required by the Commission in relation to invoices from its external investigators has been poor. Until recently the Commission accepted without challenge or regular vetting, invoices of up to \$30,000 despite their being scant detail of the services provided. This combined with the failure to put in place formal contracts with its investigators for six years has left the Commission exposed to inappropriate billing practices and the risk of inflated claims.
374. The terms settled on by the department and Mr Arnel with regard to his resignation as Building Commissioner were considerably more generous than the entitlements set out in his executive contract. I do not see any justification for this payment over and above contractual terms. I have recently raised concerns about this practice in another investigation.<sup>36</sup>

## Recommendations

I recommend that the Commission:

### Recommendation 12

Strengthen its recruitment practices by requiring successful applicants to:

- undergo a criminal records and finger-print checks
- complete and sign a statutory declaration in relation to their background including any criminal history and antecedents, as well as whether they are, or have ever been the subject of an investigation by a law enforcement agency or current/former employer.

### Commission response

Recommendation accepted.

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<sup>36</sup> Victorian Ombudsman, *Investigation into allegations of improper conduct involving Victoria Police - Whistleblowers Protection Act 2001*, October 2012.

### **Recommendation 13**

Review the criteria for investigator positions to ensure that appropriate emphasis is placed on investigative experience as well as technical knowledge/experience of the building/plumbing industry.

#### **Commission response**

Recommendation accepted.

### **Recommendation 14**

Introduce specific training for investigators to ensure an adequate standard of technical knowledge.

#### **Commission response**

Recommendation accepted.

### **Recommendation 15**

Review Mr F and Mr G's suitability for continued employment with the Commission in light of this report.

#### **Commission response**

Recommendation accepted.

I recommend that the Department of Planning and Community Development:

### **Recommendation 16**

Review its human resources practices to ensure that executives do not receive payments upon their resignation or termination outside the entitlements set out in their employment contracts.

#### **Department response**

Recommendation accepted.

# Summary of recommendations

I recommend that the Practitioners Board:

## Recommendation 1

Review the registration process for all categories of registration and:

- develop minimum standards for qualifications and experience of applicants
- clearly identify the supporting documentation to be submitted with an application, including whether examples of experience cited can be hypothetical or must be real
- set out threshold scores for each stage of the assessment process which must be achieved before an applicant can progress to the next stage
- articulate the documentation that must be retained on a practitioner's file as a record of each stage of the assessment process
- ensure that it receives detailed information including the results of applicants for each stage of the assessment to inform its consideration of applicants for registration.

### Building Practitioners Board response

A number of the specific requirements are contained in regulations. I agree the Board and the Commission (with the Minister) should urgently discuss adjustments to the regulations necessary to give effect to your suggestions and make other improvements.

## Recommendation 2

Ensure that face-to-face interviews of applicants are audio-recorded and retained in support of an applicant's assessment.

### Building Practitioners Board response

Agree in principle. The Commission would be required to provide the necessary resources.

## Recommendation 3

Conduct regular audits of the audio recordings of face-to-face interviews to monitor the performance of its Domestic Builder Competency Assessors.

### Building Practitioners Board response

Agree in principle. This audit could be conducted in conjunction with the monthly audit currently being conducted.

#### **Recommendation 4**

Consider whether the Practitioners Board should meet more frequently than once a month to consider registration applications.

##### **Building Practitioners Board response**

This can be discussed by the Board and the Commission. We have already implemented that registrations, that have in the past required delegation, are now reviewed by a Board subcommittee which in effect means registration is now being reviewed twice monthly.

#### **Recommendation 5**

Develop a policy concerning the approval process for a registered training organisation proposing qualifications to the Practitioners Board for the purpose of registration. This should include obtaining formal advice from the VRQA or its national equivalent to ensure that the courses offered are accredited.

##### **Building Practitioners Board response**

Agree. While this additional scrutiny of the training sector may be desirable, legislative change and a consideration of extra Board resources would be needed to give it effect. The Board has no powers to recognise or approve (or refuse) RTOs. Registration of RTOs is the responsibility of the Victorian Registration and Qualifications Authority.

#### **Recommendation 6**

Require that the Assessment Co-ordinator, Competency Assessors and the Registrar complete a conflict of interest declaration for each application considered and that:

- any conflict is discussed with an appropriate manager and recorded on the applicant's file
- where a conflict is identified, ensure that the staff member is unable to have further involvement with the application.

##### **Building Practitioners Board response**

Agree. This is already a stipulation in the Commission assessor contract. Board members must declare any conflicts at meetings.

#### **Recommendation 7**

Ensure that the Registrar is not involved in the assessment of applicants for registration.

##### **Building Practitioners Board response**

Agree. Already a current practice.



## **Recommendation 8**

Introduce tighter controls to ensure the integrity of practitioner registration applications, including:

- requiring applicants to complete a statutory declaration that they have personally prepared all documentation submitted to the Practitioners Board
- requiring that applicants provide two technical referees by way of a statutory declaration.

### **Building Practitioners Board response**

Agree. This is desirable but it may require some amendments to the governing legislation.

I recommend that the Commission:

## **Recommendation 9**

Review all registration applications which have been:

- submitted by the Universal Technical Institute or Mr Syed Shah in light of this report
- approved under delegation by Mr Peter Brilliant and take appropriate action where practitioners have been registered without appropriate qualifications or experience.

### **Commission response**

Recommendation accepted.

## **Recommendation 10**

Review its practice of providing:

- hospitality including meals, and entertainment
- sponsorship to external stakeholders, particularly those whom the Commission has a responsibility to regulate
- general funding to external associations; and

Review its hospitality and entertainment policy, in particular the \$500 expenditure threshold in light of my report.

### **Commission response**

Recommendation accepted.

### **Recommendation 11**

Seek an audited statement on how monies paid by the Commission to the Green Building Council of Australia and World Green Building Council since their inception have been spent.

#### **Commission response**

Recommendation accepted.

### **Recommendation 12**

Strengthen its recruitment practices by requiring successful applicants to:

- undergo a criminal records and finger-print checks
- complete and sign a statutory declaration in relation to their background including any criminal history and antecedents, as well as whether they are, or have ever been the subject of an investigation by a law enforcement agency or current/former employer.

#### **Commission response**

Recommendation accepted.

### **Recommendation 13**

Review the criteria for investigator positions to ensure that appropriate emphasis is placed on investigative experience as well as technical knowledge/experience of the building/plumbing industry.

#### **Commission response**

Recommendation accepted.

### **Recommendation 14**

Introduce specific training for investigators to ensure an adequate standard of technical knowledge.

#### **Commission response**

Recommendation accepted.

### **Recommendation 15**

Review Mr F and Mr G's suitability for continued employment with the Commission in light of this report.

#### **Commission response**

Recommendation accepted.

I recommend that the Department of Planning and Community Development:

**Recommendation 16**

Review its human resources practices to ensure that executives do not receive payments upon their resignation or termination outside the entitlements set out in their employment contracts.

**Department response**

Recommendation accepted.

## Appendix 1 – Expenditure by the Commission on sporting events, January 2010 – July 2011

Transaction date	Venue	Type of event	Amount \$
28 Jan 2010	Melbourne Cricket Club	AFL	1,795.45
			1,975.00
			1,795.45
			1,975.00
31 Jan 2010	Melbourne Stadiums Ltd	AFL	14,545.45
			16,000
	Melbourne Cricket Club	AFL	3,409.09
			3,409.09
30 Jun 2010	Tennis Australia	Australian Open	2,631.82
			2,895.00
<b>Total 1/1/10 – 30/6/10</b>			<b>\$50,431.35</b>
21 Jul 2010	Melbourne Stadiums Ltd	AFL	1,545.45
			1,700.00
25 Feb 2011	Melbourne Stadiums Ltd	AFL	9,181.82
28 Feb 2011	Melbourne Cricket Club	AFL	2,154.45
			2,370.00
23 Mar 2011	Melbourne Cricket Club	AFL	2,154.45
			2,370.00
25 Mar 2011	Melbourne Stadiums Ltd	Corporate Suite packages	6,681.82
			7,350.00
12 Apr 2011	Melbourne Stadiums Ltd	AFL	2,091.00
			2,300.00
23 May 2011	Melbourne Stadiums Ltd	Corporate Suite packages	2,500.00
			2,750.00
31 Jul 2011	Ticketek Pty Ltd	Australian Open	2,740.91
			3,015.00
<b>Total 1/7/10 – 31/7/11</b>			<b>\$50,905.10</b>
<b>Total</b>			<b>\$101,336.45</b>

Source: Information provided by the Commission.

# Ombudsman's Reports 2004-12

## 2012

*Whistleblowers Protection Act 2001* Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by CenITex officers  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct involving Victoria Police  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria  
April 2012

*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
March 2012

Investigation into the storage and management of ward records by the Department of Human Services  
March 2012

## 2011

Investigation into the Foodbowl Modernisation Project and related matters  
November 2011

Investigation into ICT-enabled projects  
November 2011

Investigation into how universities deal with international students  
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)  
October 2011

Investigation into the Office of Police Integrity's handling of a complaint  
October 2011

SafeStreets Documents – Investigations into Victoria Police's Handling of Freedom of Information request  
September 2011

Investigation into prisoner access to health care  
August 2011

Investigation into an allegation about Victoria Police crime statistics  
June 2011

Corrupt conduct by public officers in procurement  
June 2011

Investigation into record keeping failures by WorkSafe agents  
May 2011

*Whistleblowers Protection Act 2001* Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee  
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff  
March 2011

The Brotherhood – Risks associated with secretive organisations  
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment  
February 2011

*Whistleblowers Protection Act 2001* Investigation into the failure of agencies to manage registered sex offenders  
February 2011

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a councillor at the Hume City Council  
February 2011

## 2010

Investigation into the issuing of infringement notices to public transport users and related matters  
December 2010

Ombudsman's recommendations second report on their implementation  
October 2010

*Whistleblowers Protection Act 2001* Investigation into conditions at the Melbourne Youth Justice Precinct  
October 2010

*Whistleblowers Protection Act 2001* Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace  
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
June 2010

Own motion investigation into Child Protection – out of home care  
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
April 2010

*Whistleblowers Protection Act 2001* Investigation into the disclosure of information by a councillor of the City of Casey  
March 2010

Ombudsman's recommendations – Report on their implementation  
February 2010

## 2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program  
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
November 2009

Brookland Greens Estate – Investigation into methane gas leaks  
October 2009

A report of investigations into the City of Port Phillip  
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
July 2009

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
June 2009

*Whistleblowers Protection Act 2001* Investigation into the alleged improper conduct of councillors at Brimbank City Council  
May 2009

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

## 2008

*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services  
August 2008

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
March 2008

Conflict of interest in the public sector  
March 2008

## 2007

Investigation into VicRoads' driver licensing arrangements  
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre  
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007  
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint  
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
February 2007

## 2006

Conditions for persons in custody  
July 2006

Review of the *Freedom of Information Act 1982*  
June 2006

Investigation into parking infringement notices issued by Melbourne City Council  
April 2006

Improving responses to allegations involving sexual assault  
March 2006

## 2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
December 2005

*Whistleblowers Protection Act 2001* Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper  
May 2005

Review of complaint handling in Victorian universities  
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton  
March 2005

Discussion paper on improving responses to sexual abuse allegations  
February 2005

## 2004

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria  
June 2004



## Home Warranty Insurance Facts and Statistics

- With regards to the comments of home warranty insurance not working effectively and not providing consumer protection please note the following:
  - a. Some 20 previous government inquiries/reviews of home warranty insurance across Australia have reaffirmed the consumer protection value of HWI.
  - b. Consumer protection for homeowners is more about how many claims are avoided in the first place by ensuring builders do complete their projects.
  - c. Eligibility criteria for home warranty insurance is there to ensure builders have enough equity in their business to be successful.
  - d. The scheme is there to provide a solution when the builder "can not" (instead of "will not") return to fix any defects.
- The ICA has previously stated that home warranty insurers have dealt with thousands of claims since July 2002.
- Estimated premium income Australia-wide for 2005 is about \$100 million.
- Premium rates have also decreased subsequent to home warranty insurance scheme reforms with Vero's average premium:

2003	-	\$730
2004	-	\$760
2005	-	\$680
2006	-	\$660 (April)

(Looking at a rate chart just gives a one-dimensional view - the average premium combines such factors as contract value, builder category and contract type.)

- Insolvency numbers (including death and disappearance) for Vero are as follows:

<u>Calendar</u> <u>Year</u>	<u>Insolvency</u> <u>Claims</u>	<u>No. of Insolvent</u> <u>builders</u>
2000	1,000	165
2001	1,050	155
2002	650	110
2003	580	90
2004	670	95
2005	550	95
2006 YTD	300	50

The claims figures are all claims reported in that particular year. They only refer to numbers of deaths, insolvencies and disappearances. This means that nationally **Vero is currently advised of two builder insolvencies every week**. Between 1 July 2002 and 30 June 2005, Vero Warranty has **settled** approx. 10,000 claims, 6,000 of which were reported on or after 1 July 2002.

6. Each builder under State or Territory legislation is obliged to warrant his workmanship and building materials. Home warranty insurance underpins that warranty.
7. Insurers do not insist on security or counter guarantees, they are offered as an option for builders to consider in order to meet Vero's eligibility criteria. Vero holds securities for less than 5% of its builders and, over the last 12 months, securities have been taken for less than 1% of builders for whom eligibility has been issued.
8. Securities in the form of bank guarantees are often more effective for the builder than recapitalising. To use an example, if a builder's turnover is \$2m per annum, the bank guarantee is for 10% of turnover or \$200,000 and the fee is 2% of the security or \$4,000. At an average contract value of \$160,000, the number of contracts in a year would be approx. 12.5 and the cost of the bank facility spread across these contracts would be \$320 each. Set against the opportunity cost of having \$200,000 in net assets, the price is not onerous – and one reason why builders choose to use securities.
9. Home warranty insurers exist partly to take the risks inherent in building processes and materials away from homeowners and to ensure their builder applies effective risk management.
10. Owner-builders need to be aware that they still require a home warranty insurance certificate if they are going to sell their property within seven years.
11. In 2003, Vero introduced a new product specifically designed for new builders, called First Assess. There is no requirement for a financial assessment in the first 12 months. At that point they can apply to step up to a mainstream home warranty insurance product.
12. Homeowners still contact their insurer with a builder complaint in the first instance. At Vero we still manage the complaint up front. Early intervention works to minimise the cost and distress of disputes and claims for both the builder and homeowner.
13. Primary Drivers of Home Warranty Insurance:
  - Protect consumers
  - Improve financial strength of builders
  - Raise standards and industry confidence through effective licensing/enforcement
  - Reduce the likelihood of claims



14. Home Warranty Insurance Timeline
  - a. 2000/01 - GST related boom/bust
  - b. March 2001 - HIH collapse
  - c. June 2002 - Allan Inquiry (National)
  - d. July 2002 - legislative reforms ('first resort' v 'last resort')
  - e. Q4 2002 - Dexta (Allianz) withdrawal
  - f. 2002-2003 - housing boom coincides with HWI market contraction
  - g. Sept 2003 - Grellman Inquiry (NSW)
  - h. Q4 2003 - ACT & Tas implement 'last resort'
  - i. Q2 2004 - CGU & Lumley enter HWI market
  - j. Q4 2005 - NSW completes Grellman package of reforms
  - k. 2005 - Victoria, Tasmania and WA home building reviews
  
15. Vero approved around 900 new builders (either first timers, re-entering or reconstituted) during 2005. Around 100 were builders applying for HWI eligibility for the first time using our First Assess product.
  
16. Vero's claims by builder size:

%	Small Builders (\$2m under)	- 60%
%	Large Builders (\$10m and up)	- 5%
  
17. 70% of Vero's claims are settled by using a rectifying builder (not the original builder).