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Establishment of the Victorian Building Authority

FINAL REPORT

23 April 2013

Disclaimer

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The findings in this report are based on consultation with key stakeholders, publicly available information and analysis of available data and information provided to KPMG by the Department of Planning and Community Development, the Building Commission, Plumbing Industry Commission and the Architects Registration Board of Victoria.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by DPCD personnel and stakeholders consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

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Contents

	Page
Executive Summary	4
1. Introduction	17
2. Current state assessment	20
3. Stakeholder consultation findings	55
4. Designing the future VBA	63
5. Implementation considerations	92

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Glossary

ARBV	Architects Registration Board of Victoria
BAB	Building Appeals Board
BAC	Building Advisory Council
BACV	Building Advice and Conciliation Victoria
BC	Building Commission
BPB	Building Practitioners Board
BRAC	Building Regulation Advisory Committee
CAV	Consumer Affairs Victoria
DBI	Domestic Building Insurance
DPCD	Department of Planning and Community Development
PIAC	Plumbing Industry Advisory Council
PIC	Plumbing Industry Commission
SSA	State Services Authority
TC	Technical Committee
VAGO	Victorian Auditor General's Office
VBA	Victorian Building Authority
VCAT	Victorian Civil and Administrative Tribunal
VCEC	Victorian Competition and Efficiency Commission
VMIA	Victorian Managed Insurance Authority

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Executive Summary

Introduction and context

KPMG was engaged by the Department of Planning and Community Development ('DPCD') to provide strategic analysis on options for the organisational structural arrangements and operating model for the new Victorian Building Authority ('VBA') and to undertake supporting stakeholder consultations in order to progress the establishment of the new Authority.

Current Victorian regulatory environment for the building, plumbing and architecture sectors

The regulatory environment for the building, plumbing and architecture sectors in Victoria is complex, with multiple regulatory bodies and committees. Several independent reports and reviews published over the last decade have emphasised the need to improve regulation within these sectors, raising concerns about integrity and probity in the performance of regulatory functions. Most recently, the Victorian Auditor General's Office ('VAGO') found that the Building Commission ('BC') could not demonstrate 'that the building permit system, including the system to uphold and enforce minimum building and safety standards, was operating effectively. Further, the Victorian Ombudsman identified concerns with the vulnerability, integrity, independence and administration of the registration system for building practitioners, and recommended strengthening of internal administration, financial delegations and recruitment processes.

Announcement of the new Victorian Building Authority

In response to these reports and issues of integrity and probity, on 29 November 2012 the Victorian Government announced its intention to reform regulation of the building industry in Victoria with the establishment of the VBA, a single authority integrating regulation of architects, building practitioners and plumbers into one organisation. The Minister for Planning, the Hon Matthew Guy, indicated that the VBA will:

- Integrate the functions of the BC, Plumbing Industry Commission ('PIC') and the Architects Registration Board of Victoria ('ARBV') to provide a single point of governance for builders, architects and plumbers; and
- Be led by a CEO and constituted by an independent Board that will set strategic directions, operational policies, priorities and key performance measures in line with government policy.

It is also understood that a new Technical Committee will assume some technical functions of the Building Appeals Board ('BAB') and the Building Regulations Advisory Committee ('BRAC'), and two Advisory Councils (building and plumbing) will be retained. In addition, further foreshadowed changes impact upon the domestic building complaint resolution process and circumstances under which domestic building insurance may be claimed, broadening the functions and responsibilities accorded to the new VBA.

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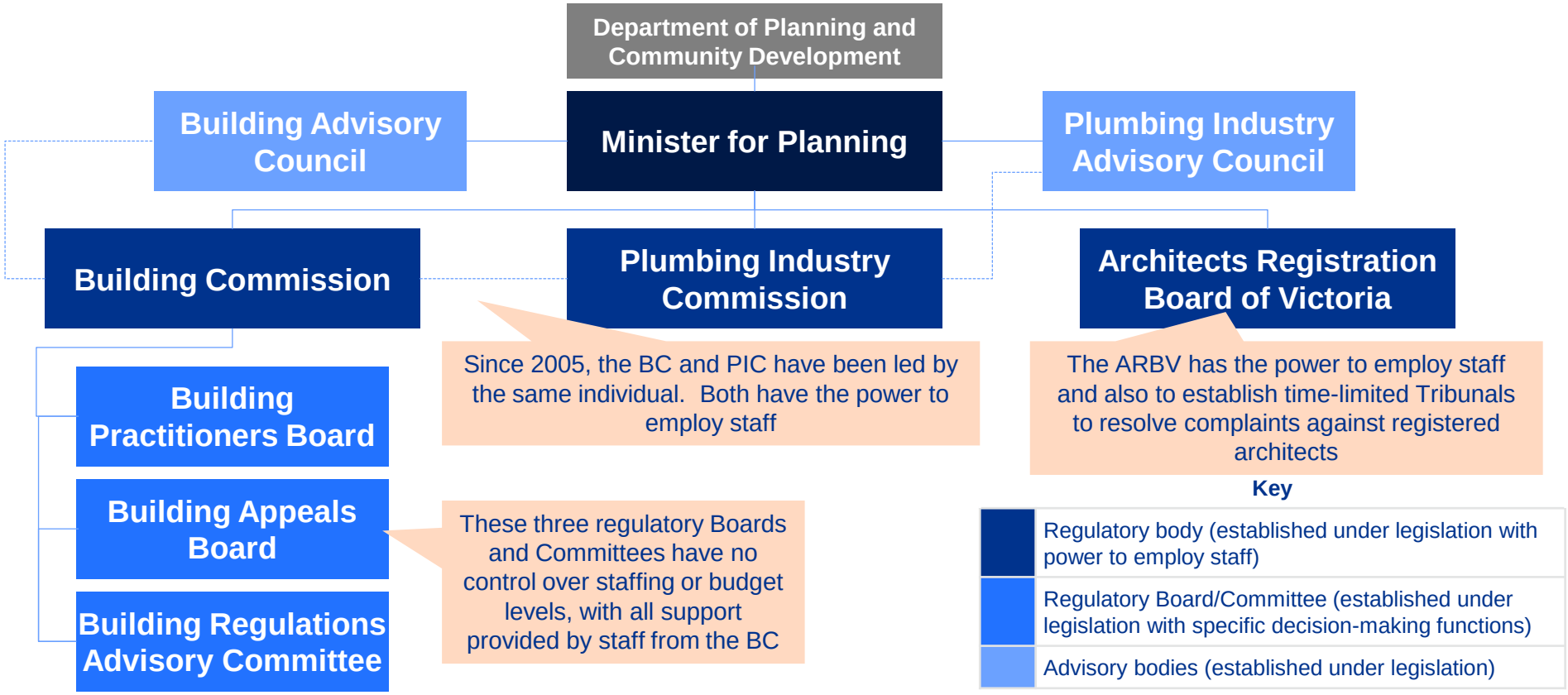
Current institutional landscape

The current institutional landscape for the regulation of the building, plumbing and architecture sectors is complex, with eight separate regulatory and advisory bodies. There are three regulatory bodies with the power to employ staff, three decision-making regulatory Boards and Committees (for the building sector), and two advisory bodies (for the building and plumbing sectors).

The three main regulatory bodies (the BC, PIC and ARBV) vary significantly in terms of size of operations. Although all three bodies have broadly similar functions, the scale of activity of each body is significantly different across different activities, particularly in relation to matters such as each body's annual revenue, staff, number of practitioners registered and complaints investigation obligations.



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Current state assessment observations

The project commenced with a current state assessment of the Victorian regulatory landscape for the building, plumbing and architecture sectors. This assessment delved into the current and projected future functions, structures, roles and responsibilities of each actor within the defined regulatory space. Key observations from the current state assessment are summarised below.

There is a complicated institutional structure across the regulatory landscape, with eight statutory bodies performing a variety of regulatory and advisory functions

This is particularly the case within the building sector, where four bodies discharge various regulatory functions despite only one body having the power to employ staff

The current regulatory regime is aligned to industry identities, with multiple opportunities for stakeholder involvement on regulatory and advisory bodies, and prescriptive financial management processes which ensure revenue is separated for each industry

As both the BPB and BAB are supported by the BC, there are concerns about the independence of the current process for appealing regulatory decisions

When compared to the BC and PIC, the ARBV is a very small organisation with limited resources. The ARBV also does not audit the conduct of the architecture profession (uses complaints based scheme)

Most recent findings of external reviews have related mainly to the internal governance of the BC (integrity and probity of regulatory operations), rather than the organisational structure

The PIC and BC have been on the path to integration since the appointment of a joint Building Commission and Plumbing Industry Commissioner in 2005

A recent organisational restructure (January 2013) has led to a greater degree of integration within the BC and PIC, although there is still clear separation of staff and functions between building and plumbing

The addition of all Building Advice and Conciliation Victoria (BACV) functions will add significant workload to the VBA, particularly in terms of responding to consumer inquiries and attempting to conciliate complaints

The organisational structure of the new VBA needs to be flexible enough to allow functions of other bodies to transition in over time, with implementation to proceed in phases

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Stakeholder consultation observations

In undertaking this engagement, KPMG consulted with a range of identified stakeholders from the architecture, building and plumbing industries to obtain views on transition and implementation issues relevant to the establishment of the VBA, along with potential options for the organisational structure and operating model for the new Authority. Key observations from stakeholder consultations include:

- The existing operating model for building regulation is considered to be dysfunctional and failing to achieve desired industry or public policy objectives. There is a lack of understanding as to the role and purpose of the BC, as well as a perceived lack of independence between the Building Practitioners Board ('BPB') and BC.
- Establishment of the VBA presents a significant opportunity to improve Victoria's building industry and increase collaboration and cooperation between the architecture, building and plumbing industries. There is a need for reform, improved compliance, accountability and transparency throughout the building industry, particularly in light of findings from VAGO and the Ombudsman.
- There is some concern regarding the amalgamation of the BC, PIC and ARBV into a single body, particularly in relation to the potential loss of industry skills, expertise and identity. Industry-specific Advisory Committees which report to the Board may provide opportunities to retain a sense of industry identity and a conduit for discussions concerning industry, the VBA and DPCD.
- There is a need to ensure that the VBA is first and foremost a regulator, rather than focusing on industry promotion or other activities. Key areas of focus may include complaints and disciplinary matters, registration and licensing, approval of specified courses and/or accreditation of Continuing Professional Development ('CPD') providers and courses.
- There are perceived embedded conflicts of interest through the use of nominated positions on various boards and advisory committees, such as the BPB and the BRAC. Nominees are appointed on the recommendation of various industry associations, are responsible for undertaking regulatory functions and reporting back to the Minister for Planning. Given this, it is unclear whether the nominee is acting in the interests of the industry, regulator, Minister or simply their own representative body.
- Several stakeholders expressed a view that the BC is particularly attentive to industry interests, rather than adopting a role focused on transparent, consistent and effective regulation. This finding would appear to be reinforced by recent findings of both VAGO and the Ombudsman.

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Evaluative criteria to guide development future options for the VBA

Drawing on relevant observations from the current state assessment and stakeholder consultations, evaluative criteria were then developed to guide assessment of potential structural options and ultimately the identification of a preferred structural option for the VBA. The evaluative criteria were also used to develop recommendations on the operating model needed to support the preferred structure.

The evaluative criteria aim to capture the key drivers behind the creation of the new Authority, potential opportunities for improvement identified during the current state assessment, and best practice organisational design principles.

Clear alignment to core regulatory functions	• Structure promotes a culture of regulatory excellence and continuous improvement, with the new VBA keeping abreast of the latest developments and best practice approaches to regulation • Pursues objective of achieving a more rigorous and consistent regulatory framework, with clear accountabilities in place • Structure enhances integrity and probity in the exercise of core regulatory functions • Staff profile aligns to core regulatory functions and key regulatory priorities • Structure seeks efficiency and effectiveness improvements by grouping together related functions to take advantage of synergies and promote adoption of leading regulatory practice
Strengthened consumer focus	• VBA enhances independence as a regulator by reducing opportunities for undue stakeholder influence • Risks of industry capture minimised through organisational design, with balanced focus including consumer interests • VBA promotes industry excellence to drive consumer confidence in the building, plumbing and architecture sectors • More accessible and outward looking structure for consumers and practitioners
Promotes early intervention and resolution	• Structure emphasises a focus on prevention and early resolution of regulatory issues • Promotes greater sharing of information and resources to deliver improved outcomes such as a reduced incidence of appeals and disputes • Clear access points in place for both consumers and practitioners to raise concerns • Staff resources allocated to promote early intervention and resolution of consumer complaints and other issues
Retention of industry expertise	• Structure emphasises the need for industry knowledge and technical skills • Is easy to understand where areas of industry expertise sit within the organisational structure • Structure is externally focused and accessible for key stakeholders
Enhancing flexibility and adaptability	• Structure incorporates flexibility to allow the Authority to adapt to changes in policy direction and regulatory approaches • Structure is responsive to potential reform directions and emerging priorities, minimising the need for future change • Improves the flexibility with which resources can be moved to address urgent or priority issues as they emerge

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Three organisational structure options were prepared

Drawing on the evaluative criteria prepared, along with observations from stakeholder consultations, three potential organisational structure options were prepared for the new VBA.

The three options were prepared to reflect different potential structural models described during stakeholder consultations. The first option seeks alignment by subject matter (or sector), where divisions are structured by way of the main areas of expertise or subject matter knowledge. The second option seeks alignment by function, with divisions or branches of the organisation created in alignment with the main categories of functions performed. The third options represents a balanced structure, combining elements of sector and functional alignment.

Note that all structural options prepared assume full implementation of reform strategies relevant to the new VBA – interim structural considerations are separately addressed in the context of implementation considerations.

Option A: Sector aligned structure

Placement of functions within identified subject matter or specialist divisions relating to the industry or sector those functions are performed for (e.g. building division, plumbing division)

Option B: Functionally aligned structure

Grouping of like functions together, regardless of subject matter or industry focus (e.g. registration division, audit and compliance division, complaints and investigations division)

Option C: Balanced structure

Combination of elements of both a functional and subject matter approach, generally tailoring the structure toward the greatest level of integration possible within different functional groupings

Source: KPMG analysis

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Each of the three options was assessed against the evaluative criteria

Based on assessment against the agreed prioritised evaluative criteria, *Option B: Functionally aligned structure* was assessed as the leading structural option for the future VBA, though with *Option C: Balanced structure* only marginally behind:

Option	Key features	Benefits	Challenges	Assessment
Option A – Sector-aligned structure	• Four divisions and separate Office of the CEO • Building Division retains all functions of BC and gains dispute resolution functions from Consumer Affairs Victoria (CAV) • Plumbing Division perform all PIC functions • Internal structures of Plumbing and Building Divisions aligned • Separate Architecture Division performs regulatory functions of ARBV	• Structure promotes retention of industry identity and expertise – likely to be more accepted by stakeholders and existing staff • Similar to current structure so will involve minimal disruption to organisation if implemented • Alignment of structures below division level should aid flexibility	• Structure retains divisions for each sector – could promote internal silos and limit flexibility Provides only limited protection for risk of industry capture • Does not fully enhance integrity and probity of core regulatory functions • Retention of sector-aligned structure limits economies of scale that can be obtained • Significant differences in divisional size	
Option B – Functionally -aligned structure	• Five divisions and separate Office of the CEO • Structure organised on functional lines • Licensing and Registration Division responsible for registration of all practitioners, with separate teams for routine and complex registrations • Compliance and Performance Division has separate audit and investigation (including discipline) teams operating across all sectors • Inquiries and Dispute Resolution Division receives all enquiries and complaints and conciliates eligible building disputes	• Structure emphasises strong functional alignment, allowing regulatory best practice to be pursued within each function • Enhanced focus on core regulatory functions with emphasis on integrity and probity • Economies of scale can be achieved through grouping like functions across sectors • New Office of the CEO provides support to Board and CEO (incl. stakeholder relations) • Enhanced flexibility with resources able to be diverted to priority activities across sectors	• May result in loss of industry expertise given focus on functional responsibilities • Structure does not take account of legislative differences in regulatory processes and procedures across sectors • Involves significant change from current structure and may be resisted by staff who perceive themselves as sector aligned • Prescription of funding arrangements in legislation may make this degree of functional alignment difficult to achieve	
Option C – Balanced structure	• Five divisions and separate Office of the CEO • Structure organised on functional lines, with four divisions focused on core regulatory functions • Sector-aligned teams remain within divisions • Building and architecture sectors grouped together into teams • Inquiries and Dispute Resolution Division has building and architecture team, with responsibility for conciliating domestic building disputes and investigating title breaches for architecture sector	• Structure promotes functional focus while still maintaining specialist sector expertise, allowing enhanced focus on core regulatory functions at the Director level and strengthened integrity and probity • Structure designed in recognition of the legislative differences in regulatory practices • New Office of the CEO provides support to Board and CEO (incl. stakeholder relations) • Likely to be more accepted by stakeholders	• Director-level structure loses industry identity – may be resisted by stakeholders. • May result in loss of industry expertise within organisation at senior levels given focus on functional responsibilities • Flexibility more limited with teams remaining separated along sectoral lines within divisions • Retention of sector-aligned teams limits economies of scale that can be obtained through grouping together similar functions	

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Accounting for the current degree of regulatory alignment across sectors

As noted on the previous page, Options B and C were both assessed as rating strongly against the evaluative criteria prepared, with *Option B: Functional structure* rating slightly higher in the longer term.

Given the close positioning of these two structural options, KPMG looked to the current practicality of implementing both structures.

We noted that implementation of Option B involves a high level of functional alignment, and as such would be reliant on the existence of similar regulatory processes and procedures being in place across all three regulated sectors. However, as noted during the current state assessment and stakeholder consultations, at present there is little integration between sectors due to a combination of historical, cultural and legislative factors.

Given current legislative arrangements and internal systems in place, we believe that *Option C: Balanced Structure* is most likely to lead to improved regulatory practices and improved outcomes for industry, consumers and the broader community in the immediate term. We do not believe that current systems, staff skills sets, and regulatory guidelines are able to facilitate movement to a fully functional structure, such as that encompassed by Option B, at this point in time. If Option B was implemented in the short term, we believe the lack of similar regulatory processes and procedures would likely see continued siloed operations within the new functional divisions. It is likely that within functional teams, unrecognised informal groupings of staff (shadow team structures) will emerge as staff continue to identify only with a specific sector (building, plumbing or architecture).

Option C provides real opportunity to share learnings and better practice across sectors, and encourages the creation of a strong single regulatory culture. Importantly however, it still places importance on industry expertise and specialist knowledge which will be essential to retain in the short term given distinct regulatory approaches and legislative frameworks will continue to operate across sectors.

While *Option C: Balanced Structure* is the best 'fit-for-purpose' model given current arrangements, we believe that it may be possible over time, and with greater alignment of legislative arrangements, internal systems and staff skill sets, to move to a more fully functional structure, as represented by Option B.

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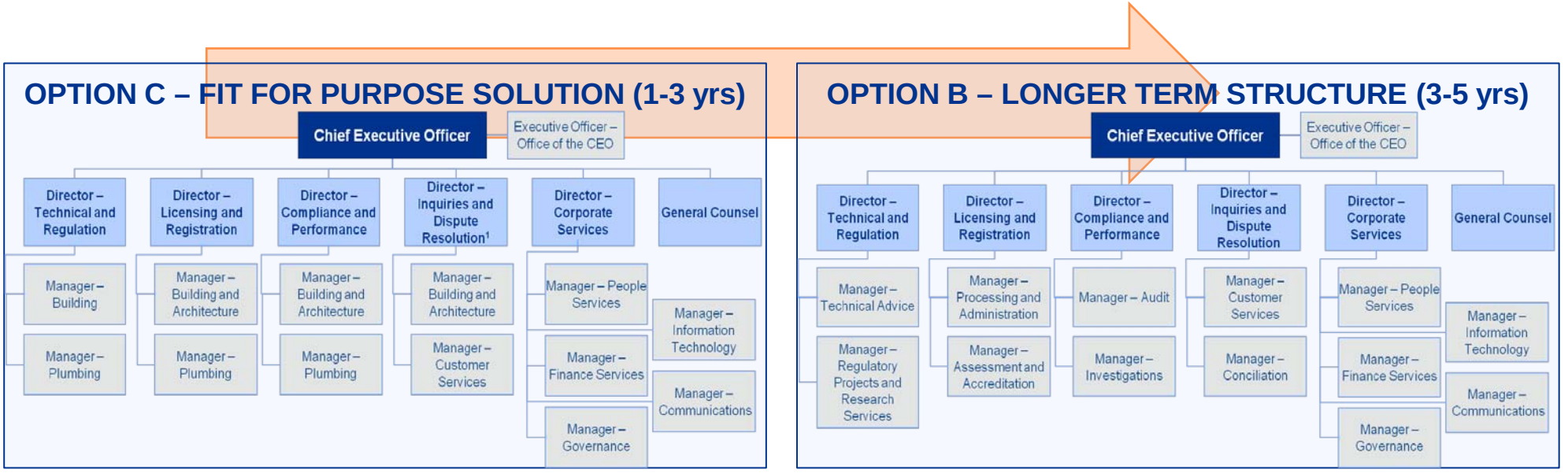
Transitioning over time to a fully functional structural option

It is recommended that Option B represent a longer term structure to which the VBA could progressively move towards as legislative frameworks and regulatory processes and procedures are aligned across sectors. The process of regulatory alignment has already commenced and will be a priority for the new VBA as the organisation seeks to move towards best practice across all sectors.

Option C provides a fit for purpose option for the new VBA to implement immediately. This balanced structure has integrated senior positions but retains sector-aligned team structures within each division.

This structure will allow for continuation of existing differences in regulatory procedures and processes across sectors (some of which are enshrined in legislation), but will allow for movement towards greater integration over the longer term.



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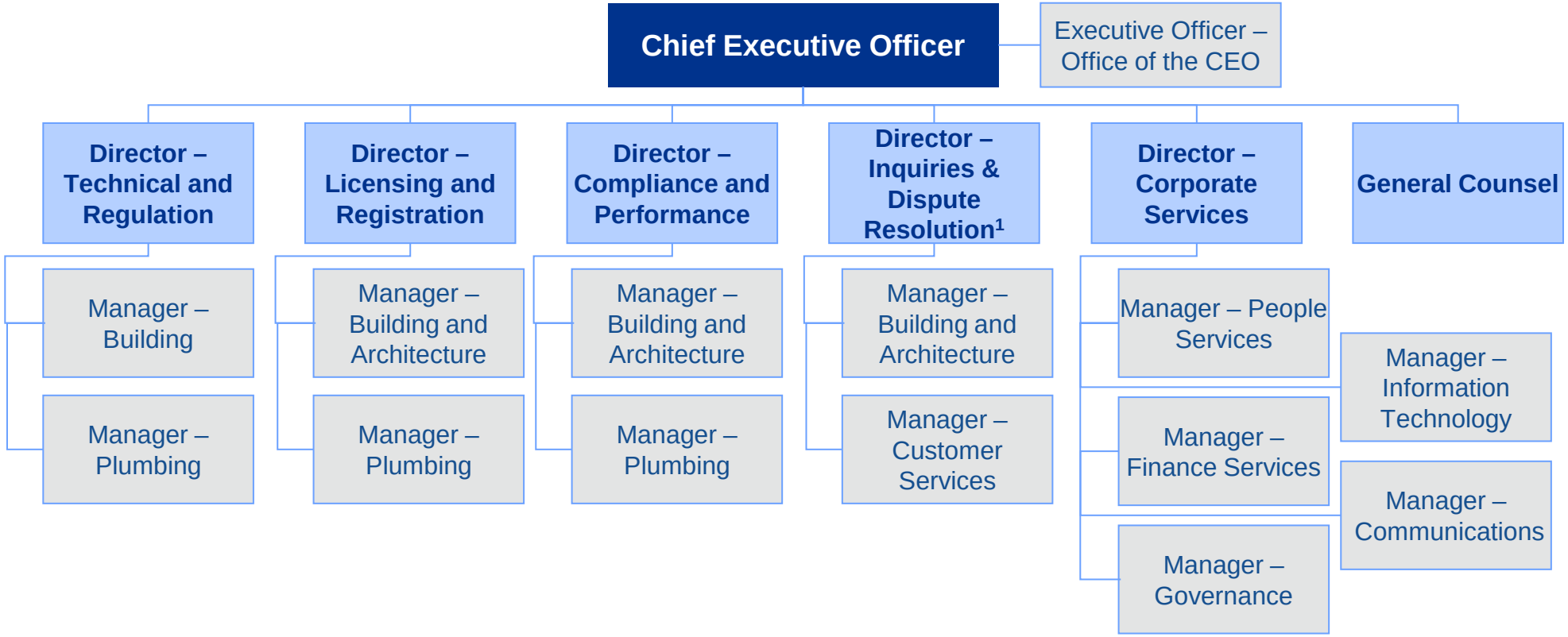
Fit for purpose solution – balanced structure

Option C – Balanced Structure is the recommended fit-for-purpose structure for the new VBA in the immediate term. In this option, divisions are organised along functional lines, but within each division there are separate building and architecture and plumbing teams. A separate Corporate Services Division and an Office of the CEO provide support across the whole of the organisation.

This option promotes integration at senior levels, but retains sector alignment at the team level within divisions.



Note: 1) For the plumbing sector, disputes received by the Customer Services team and deemed to warrant VBA resolution are sent directly to an inspector within the Compliance and Performance Division for further action. No conciliation function is performed, as exists for the building sector

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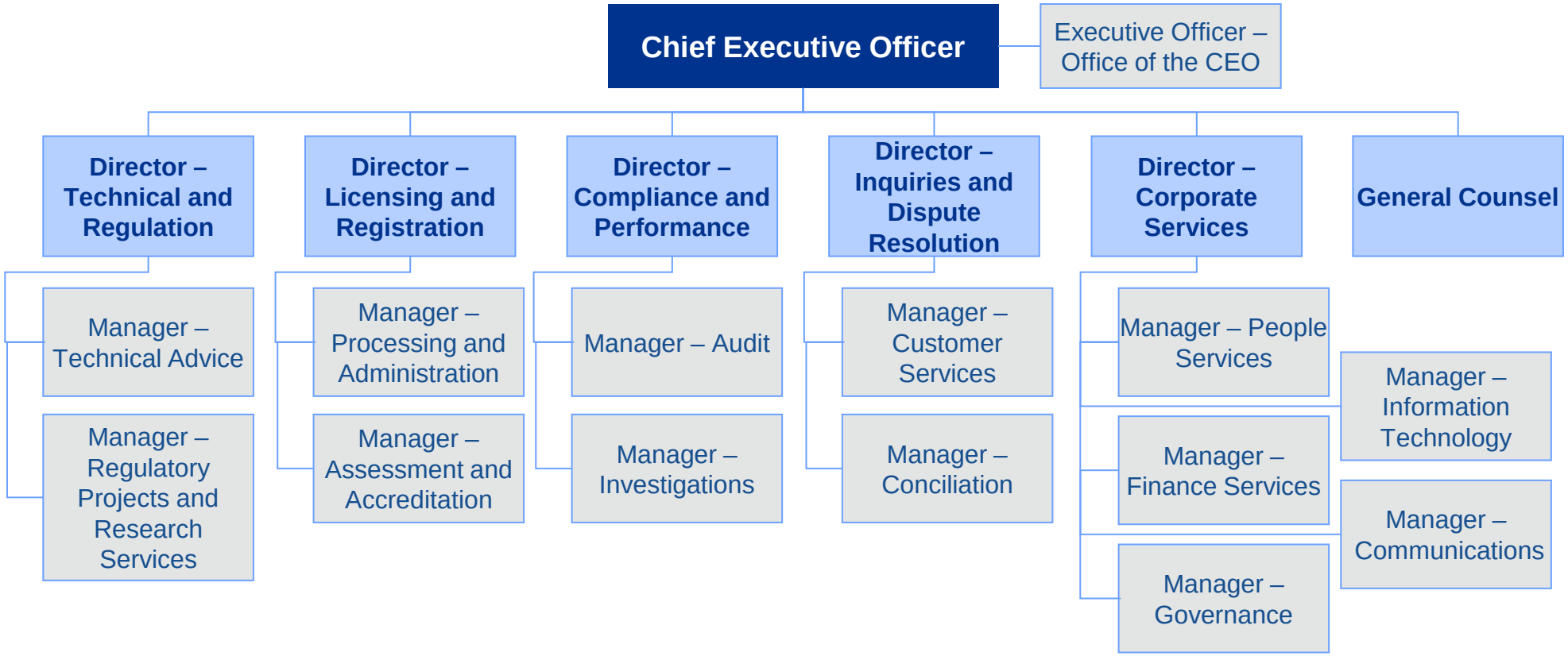
Longer term structure – functionally aligned structure

Option B, the longer-term preferred structural option, reflects a functionally aligned structure, with a higher degree of integration across the building, plumbing and architecture sectors. Divisions are prepared in accordance with the main regulatory functions performed by the new VBA, with a separate Corporate Services Division providing shared corporate services across the whole organisation:

This structure requires a high degree of consistency across the regulatory processes and procedures of each sector to be effectively implemented.



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Implementation considerations

The new VBA will only receive all intended future functions by 1 July 2014, with implementation to occur in three key phases. This phased implementation approach needs to be taken into account when considering timeframes for structural change. The structural implications observed for each phase of implementation are summarised below:

Phase 1
By 1 July 2013

- VBA is officially created; functions of BC and PIC transferred to the new Authority
- Balanced structure (Option C) implemented, although teams supporting the BPB and BAB need to be retained as both statutory bodies will continue to operate
- Architectural responsibilities and domestic building consumer dispute resolution functions remain outside the VBA, but legislative functions can be aligned to facilitate later integration

Phase 2
Early 2014

- Architectural functions are transferred to the VBA
- BAB, BPB and BRAC are discontinued, with functions transferred to the VBA or newly-created Technical Committee
- Inquiries and Dispute Resolution Division may be created with the Director appointed to assume responsibility for some architectural dispute resolution functions and prepare for receipt of the domestic building consumer dispute resolution functions in Phase 3

Phase 3
By 1 July 2014

- Domestic Building Consumer Protection functions move to the VBA; the VBA assumes sole responsibility for BACV conciliation matters
- Customer Services team moves from the Corporate Services Division to the Inquiries and Dispute Resolution Division
- Alignment and processes may be sufficiently progressed to allow movement to the longer-term structure outlined in Option B

A number of additional considerations must also be taken into account during the transition process, including (but not limited to) confirmation of Full-Time Equivalent ('FTE') numbers, staff and stakeholder support, communication and consultation methods, key decision dates and compliance with Enterprise Bargaining Agreement requirements.

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1. Introduction

Project objectives and scope

KPMG was engaged by DPCD to provide strategic analysis on options for the organisational structural arrangements and operating model for the new VBA and to undertake supporting stakeholder consultations in order to progress the establishment of the new Authority.

Project objectives

The objectives of the project were to:

- Identify the best practice operating model and organisational structure for the new VBA which establishes clarity of responsibility having regard to the need to deliver the effective and efficient regulatory outcomes and the functions of the Authority;
- Consult with and determine stakeholder views on transition and implementation issues to inform the transition from the existing regulators to the new VBA and options for the organisational and operating structure; and
- Develop an implementation plan for transition to the new operating structure.

Project scope

The project provides options for the organisational structure and operating model for the new VBA. This central objective will be supported by two secondary elements of the project: stakeholder consultation to inform design of the new model, and a high-level implementation plan to provide a pathway to achieving the target state over time.

Operating model and organisational structural arrangements	
The key purpose of the project was to design an operating model and organisational structural arrangements for the new VBA that support and reinforce best practice governance and provide a robust accountability framework	
Stakeholder consultation	**High-level implementation plan**
Analysis was complemented by consultations with identified industry stakeholders to inform the design of the new regulator	Identification of a pathway to implementing the chosen operating model and organisational structure

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Project approach

A five phase methodology was employed for this project, with a preliminary report, draft report and final report to be submitted to DPCD. An overview of the approach taken to the project is set out below:

Phase 1
Project initiation

This phase involved kicking-off the project with DPCD through the development of a shared understanding of the project scope, approach and governance (including communications and reporting logistics).

KPMG was able to further explore the objectives and strategic context for the new VBA. An agreed list of questions for the consultation phase was also developed.

This phase culminated in the validation of a project plan to guide the remainder of the engagement.

Phase 2
Current state analysis

During this phase, KPMG mapped the existing governance arrangements and regulatory frameworks, including the key roles and scope of existing regulatory bodies. This included identifying relevant contextual issues identified by previous reviews. KPMG also mapped known elements of the proposed new VBA.

KPMG also identified how relevant external factors, such as changes to building warranty insurance and handing of domestic building complaints, may influence design of the new body.

Phase 3
Consultation

The Minister committed to consulting with industry stakeholders before settling the design of the new regulator.

As part of this phase, KPMG conducted extensive consultations with identified stakeholders from industry, government, and the existing regulators to inform options for the new body.

Key issues and common themes emerging from the stakeholder consultations were collated with overarching observations identified.

Phase 4
Options analysis

Drawing on the observations from the current state assessment and stakeholder consultations outlined in this report, KPMG prepared a draft report which included options for new structural arrangements for VBA, and a high-level implementation plan to transition to the target state. A series of supporting recommendations were also made on the operating model to support the recommended organisational structure.

The options analysis drew on evidence of other jurisdictional models and best practice approaches to organisational design.

Phase 5
Final reporting

Following submission of the draft report, DPCD provided several areas of feedback to KPMG.

KPMG then incorporate feedback from DPCD on the draft report into the final report.

The final report includes the recommended future structural arrangements and operating model for the VBA.

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2. Current state assessment

Section overview

This section of the report provides an assessment of the current state of the Victorian regulatory landscape for the building, plumbing and architecture sectors. Drawing on publicly available materials and supporting documentation provided by DPCD, this section provides important foundational elements and context from which future potential organisational structures and operating models for the new VBA can be considered.

Key materials contained in the section include:

- Overview of the current regulatory landscape for the building, plumbing and architecture sectors;
- Historical evolution of the regulatory landscape;
- Exploration of the functions and roles of each of the eight institutions within the regulatory landscape;
- Detail on the organisational structures of the BC, PIC and ARBV;
- Overview of funding streams within the regulatory landscape;
- Overview of other bodies that perform functions relevant to regulation across the building, plumbing and architecture sectors (BACV – domestic building complaints and dispute resolution; Victorian Managed Insurance Authority ['VMIA'] – domestic building insurance);
- Introduction to the new VBA; and
- Proposed Domestic Building Consumer Protection Framework reform strategy.

Observations on various elements of the current state of the Victorian relevant regulatory system are made through this section. Observations aim to identify relevant issues which are worthy of consideration when designing elements of the future regulatory system, including organisational structures and operating models.

Where made, observations are presented in separate call out boxes, like the example opposite. This section concludes with a summary of the key observations made on the current state of regulatory landscape for the building, plumbing and architecture sectors.

Observations made through this section of the report will appear in call out boxes similar to this. Observations represent matters of interest that have been identified as relevant to later stages of this project.

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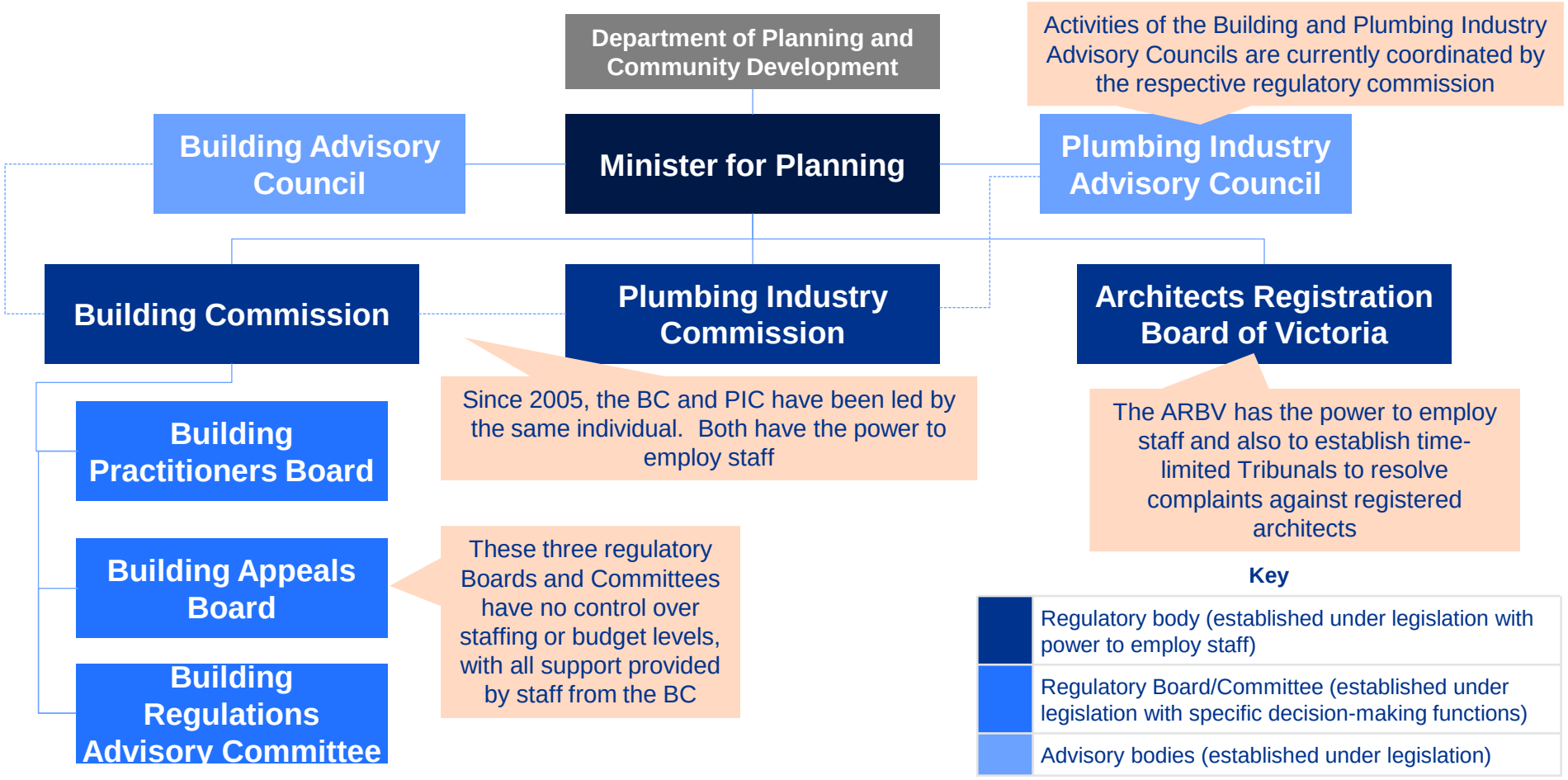
Institutional overview – building, plumbing and architecture regulation

The current institutional landscape for the regulation of the building, plumbing and architecture sectors is complex, with eight separate regulatory and advisory bodies. There are three regulatory bodies with the power to employ staff, three decision-making regulatory Boards and Committees (for the building sector), and two advisory bodies (for the building and plumbing sectors).



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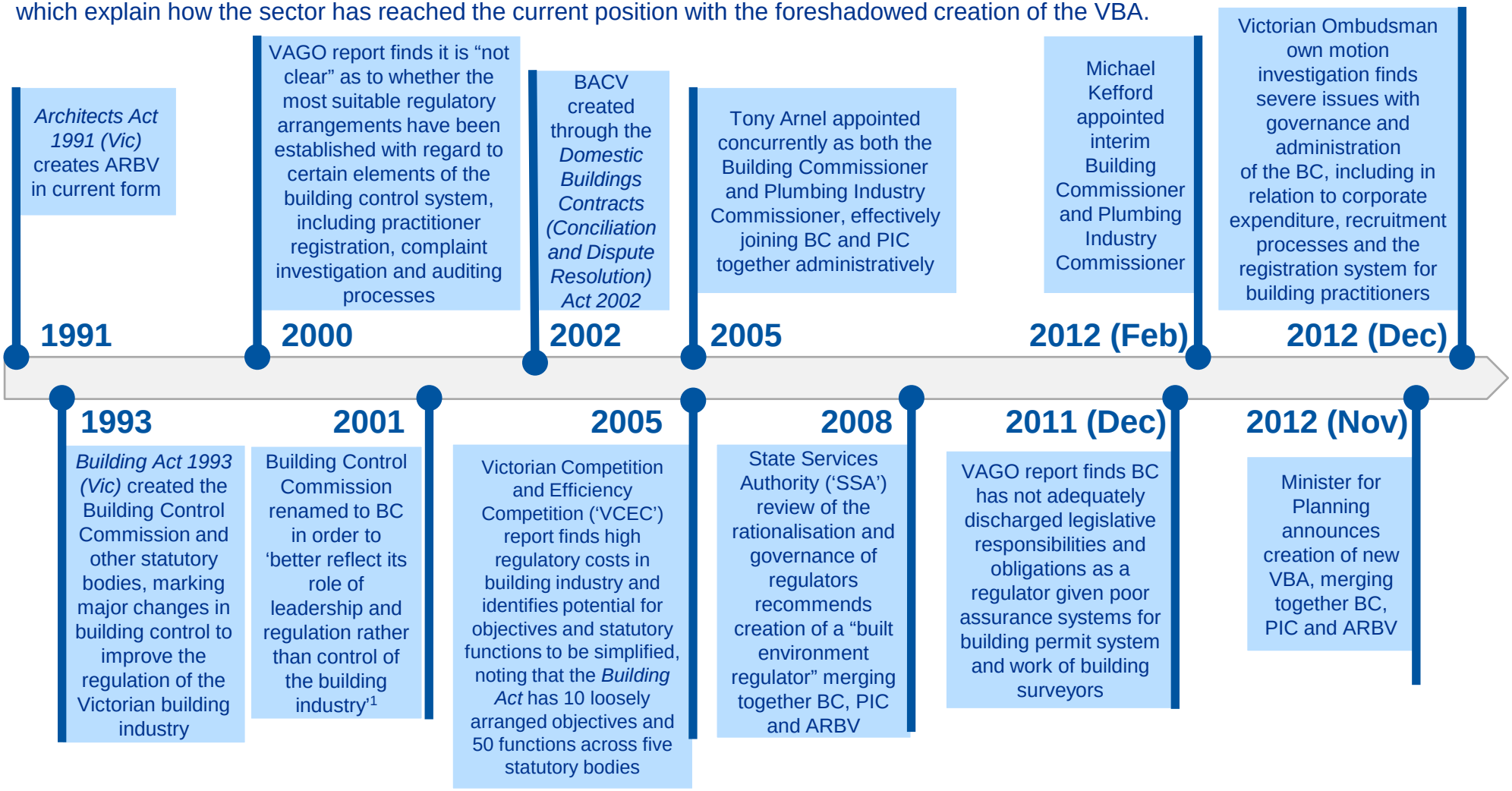
Historical developments

Over the last twenty years, the regulatory landscape has been subject to several independent reviews and other important developments which explain how the sector has reached the current position with the foreshadowed creation of the VBA.



Source: Victoria, *Parliamentary Debates,* Legislative Assembly, 21 September 2001, 763 (John Thwaites)

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Overview of three existing regulatory bodies

The three main regulatory bodies – the BC, PIC and ARBV – vary significantly in terms of size of operations. As the summary table below shows, while the three bodies have generally similar functions, the scale of activity is significantly different across activities.

Roughly the same number of builders and plumbers are currently registered by the BC and PIC

Compulsory insurance schemes operate in the building and plumbing sectors

	Legislative basis	Annual revenue	Staff	Main functions			
				Practitioners registered	Monitoring compliance	Complaints investigation	Oversight of insurance
BC	*Building Act 1993* (Vic)	$28.3m[1]	120 (headcount) 112.23 (FTE)	25,328 current registrations 2,368 new applications received	Undertaken in-house - 619 investigations; 179 domestic builder and surveyor audits	773 complaints; 141 inquiries, conduct reviews (NB: BACV also resolved 2,364 building disputes)	Limited last resort through VMIA
PIC	*Building Act 1993* (Vic) Part 12A	$15.4m	55 (headcount) 53.7 (FTE)	24,886 total practitioners (licensed and/or registered) 16,376 total licences and registrations processed	Outsourced - 20,463 audits	2,195 complaints; 1,552 investigations	Compulsory through private market
ARBV	*Architects Act 1993* (Vic)	$1.3m	4 (headcount) 3.6 (FTE)	4,513 registered architects 374 new registrations processed	Not applicable	10 architect complaints; 31 Title breach investigations	Compulsory through private market

In terms of revenue and staff numbers, the BC is clearly the largest regulatory body

The PIC performs significantly more annual audits than the BC, while the ARBV has no compliance monitoring role

Insurance is compulsory before a plumber or architect is registered

Notes: All statistics are for the 2011-12 financial year, including staff numbers (as at 30 June 2012). 1) Of this amount, $7.6m was transferred to Consumer Affairs Victoria to perform functions relevant to Building Advice and Conciliation Victoria (BACV). Sources: ARBV Annual Report 2011-12; BC Annual Report 2011-12; PIC Annual Report 2011-12

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Building Commission (BC)

The BC is a Victorian statutory authority established by the *Building Act 1993.* Together with the *Building Regulations 2006*, the *Building Act* outlines Victoria's building control system, which includes the registration and regulation of building practitioners, ensuring compliance with construction standards, building product standards, the protection of health and safety of building users, and maintaining oversight of the building and occupancy permit system.

The BC works closely with four other statutory bodies – the BPB, BAB, BRAC, and the BAC - to provide industry leadership and regulate the building industry in Victoria. Notably, the BC is the only one of these statutory bodies with the power to employ staff. This means that BC staff support all other statutory bodies forming part of the building control system to discharge their functions.

The BC plays a number of key roles, including:

- Assisting the BPB by administering the registration of Victorian building practitioners and monitoring their conduct (including through investigations);
- Assist with resolution of domestic building disputes through BACV (jointly operated with CAV);
- Informing consumers about building and renovating issues;
- Promoting improved building standards in Victoria, nationally and internationally; and
- Providing information on building activity (e.g. number of permits granted).

Functions of the Building Commission

- Monitor and enforce compliance with the *Building Act* and regulations relating to building and building practitioners (chiefly the Building Regulations)
- Participate on behalf of Victoria in the development of national building standards
- Monitor developments relevant to the regulation of building standards in Victoria
- Monitor the system of collection of the building permit levy and administer the Building Administration Fund
- Disseminate information (including to consumers) on matters relating to building standards and the regulation of buildings and building practitioners
- Provide information and training to assist persons and bodies in carrying out functions under the *Building Act* and regulations
- Charge and collect fees for information and training services provided by it
- Promote the resolution of consumer complaints about work carried out by builders
- Conduct or promote research relating to the regulation of the building industry in Victoria
- Advise the Minister for Planning and the Victorian Government on building regulatory development

- The BC plays several important regulatory functions, making decisions on actions to enforce compliance with the regulatory regime
- It performs supporting functions to the regulation of the Victorian building industry, such as informing consumers and the building industry of regulatory standards, administering the collection of the building levy, and participating in efforts to develop national building standards

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Plumbing Industry Commission (PIC)

Established under Part 12A of the *Building Act 1993,* the PIC is a statutory authority that administers the licensing and registration system for plumbing practitioners and promotes and enforces plumbing standards across Victoria.

The PIC monitors the performance of a range of plumbing practitioners, including across the water and gas supply, wastewater, heating and cooling systems, and roofing specialties. The PIC aims to promote safe, healthy and sustainable outcomes for all Victorians through an efficient and effective plumbing regulatory system.

The objectives of the PIC are listed as follows:

- Promote, monitor and maintain expertise and competencies among industry professionals;
- Work with the community to address concerns and resolve complaints about work carried out by plumbers;
- Monitor and enforce compliance with technical standards of plumbing work; and
- Work with the community, industry professionals and educators to promote better plumbing standards and sustainable plumbing in Victoria and nationally.

The PIC is solely responsible for regulation of the plumbing sector in Victoria. It is only supported by an advisory body, the Plumbing Industry Advisory Council. The PIC is the primary decision maker in registering plumbers, enforcing compliance with legislative requirements, and order rectification in the case of defective works.

Functions of the Plumbing Industry Commission

- Administer the Victorian plumber licensing and registration system created in Part 12A of the *Building Act 1993*
- Promote the maintenance of adequate levels of competence among plumbers
- Monitor and enforce compliance with relevant sections of the *Building Act* and regulations relating to plumbing practitioners
- Participate on behalf of Victoria in the development of national plumbing standards
- Monitor developments relevant to the regulation of plumbing standards in Victoria
- Provide information and training to assist persons and bodies in carrying out functions under the *Building Act* or regulations
- Provide an information service (including to consumers) with respect to plumbing
- Conduct or promote research into matters relating to the regulation of the plumbing industry in Victoria
- Promote the resolution of consumer complaints about work carried out by plumbers
- Advise the Minister for Planning and the Victorian Government on plumbing regulatory developments

- The PIC performs the functions undertaken by the BPB in respect of the plumbing industry, including licensing registration of plumbers
- Unlike the PC, the PIC has the ability to order rectification work by registered practitioners in response to consumer complaints
- The PIC also plays a range of supporting roles in disseminating information and maintaining appropriate plumbing standards

Sources: PIC Annual Report 2011-12, Building Act 1993 (Vic), s221ZZV, PIC website

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Architects Registration Board of Victoria (ARBV)

The ARBV is a self-funding statutory authority established by the *Architects Act 1991.* Under the Act, the ARBV is empowered to:

- Register architects and approve architectural companies and partnerships (including conducting examinations for registration);
- Require architects to be registered and require proof of compliant insurance cover;
- Regulate the professional conduct of architects by investigating complaints and referring serious professional conduct matters for inquiry by the Architects Tribunal;
- Investigate breaches of the title provisions of the Act and allegations of non-architects "holding out" to be architects; and
- Determine architectural qualifications and accredit courses.

Under part 9 of the Act, the ARBV can also make regulations, with the approval of the Governor-in-Council, in relation to a range of specified matters.

Members of the ARBV are appointed by the Minister for Planning following nominations from the Minister for Consumer Affairs, the architecture profession, architecture schools and allied industries. The Board is assisted by committees and panels for the administration of the examination, Tribunal enquiries and accreditation of courses.

A separate Architects Tribunal operates independently of the ARBV to hear allegations of misconduct against architects. Tribunal members are selected from a panel appointed by the Minister for Planning following nominations from the Director of CAV and the Board. The ARBV is required to enforce Determinations made by the Tribunal. The Victorian Civil and Administrative Tribunal ('VCAT') can hear appeals from the Tribunal.

Functions of the Architects Registration Board of Victoria

- Determine the qualifications and experience required for registration as an architect under the *Architects Act*
- Regulate the examination of persons applying for registration as an architect
- In association with the approved schools of architecture, assess and accredit courses in architecture
- Hold examinations and appoint examiners
- Issue or cancel certificates of registration or approval
- Suspend or cancel the registration of any person in situations identified in the Act
- In accordance with this Act, approve (architectural) partnerships and companies and cancel or suspend an approval granted to the same
- Regulate the professional conduct of architects, approved partnerships and approved companies
- Publish information relating to the operation of the Board and the Act
- Investigate and take disciplinary proceedings for offences against the Act

- The ARBV has the power to employ staff, and relies on a number of external committees to assist in performing its functions
- The ARBV does not proactively monitor the conduct of architects, but does receive complaints from members of the public
- A separate Architects Tribunal is established to hear allegations of misconduct against architects referred to it by the ARBV

Sources: ARBV Annual Report 2011-12, Architects Act 1991 (Vic) section 46 , ARBV website

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Building Practitioners Board (BPB)

The BPB is an independent statutory body established under the *Building Act* to oversee the quality and standard of professional services in the Victorian building industry, chiefly through the building practitioner registration system.

The BPB registers building practitioners, supervises their conduct and manages the approval of owner-builders. It is both a disciplinary tribunal and a registration body.

The administrative work of the BPB in terms of registering building practitioners is carried out by BC staff, but the BPB is the final decision maker in relation to building practitioner registration. There is no formal agreement between the BC and the BPB as to the level of support or budget that will be provided to support the BPB. The BPB thus has limited control over its over resourcing levels.

The disciplinary powers of the BPB are exercised through the process of inquiries into conduct. BPB investigations are carried out by an appointed person, which by convention has been a BC staff member. BPB inquiries may arise from complaints, audits, BC referrals, insurer referrals or VCAT referrals. In practice, most inquiries originate from complaints.

The BPB has no restitutionary powers and cannot compel a practitioner to perform work. The BPB can only take disciplinary action against a practitioner, including imposition of fines and, if necessary, deregistration. Note that the BC has no disciplinary powers over practitioners but may conduct criminal prosecutions.

In practice, the BPB meets on a monthly basis to make decisions on registrations and other matters relating to the conduct of practitioners. It is comprised of 11 members representing professional associations of the various categories of building practitioner, legal and consumer representatives and an independent chair.

Functions of Building Practitioners Board

- Administer a registration system for building practitioners
- Supervise and monitor the conduct and ability to practise of registered building practitioners
- Make recommendations to the Minister about the qualifications for registration (which can then be prescribed in regulations)
- Issue certificates of consent for owner-builders

- The BPB has a relatively limited range of powers – it can register builders, investigate builders, impose fines and deregister builders
- The BPB has no staff, and is supported by BC staff to discharge its registration and conduct monitoring functions. Most notably, BC staff are relied upon to conduct registration interviews and practitioner investigations on behalf of the BPB
- The BPB meets monthly to make decisions – materials are prepared for these meetings by the BC

Sources: BC Annual Report 2011-12, Building Act 1993 (Vic) s183; BPB website; Building Commission/Plumbing Industry Commission, Draft Structure Options Paper, Jan 2013

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Building Appeals Board (BAB)

Under the *Building Act 1993,* the BAB is responsible for determining appeals, disputes, requests for modifications to the building regulations and compliance applications.

An independent statutory body established under the *Building Act 1993,* the BAB is the superior appellate jurisdiction under the Act and, broadly speaking, can hear appeals against decisions of building surveyors, local councils, the BPB and the BC.

Members of the BAB are appointed by the Minister for Planning on the basis of their experience and general knowledge of the building industry. There is no limitation on the number of members. The BAB has stated that by convention the membership is around 30, with each member attending 25-30 appeal days and 11 'full' meetings each year.

The BAB chiefly performs roles under three main categories:

- Appeals - against decisions of building surveyors, registration or disciplinary decisions of the BPB, building decisions of local governments (e.g. residential siteing);
- Disputes - about whether a particular design or element of a building complies with the Regulations, Building Code or Act; about adjoining property protection work; and
- Referrals and modifications – the BAB can waive, modify or vary compliance with the Regulations, Building Code or Act so that a provision does not apply to a particular building.

The BAB aims to provide low cost and prompt adjudication in a relatively informal environment. For appeals, the BAB operates by rehearing the original decision.

Functions of the Building Appeals Board

- Appeals against local council decisions under Part 4 (residential siteing) of the *Building Regulations*
- Appeals and disputes in relation to protection of adjoining property matters; including protecting the rights of owners whose land adjoins a site where construction is to occur and assessing the level of compensation owed to an adjoining owner for loss or damage
- Determinations of compliance with the Building Regulations (including the Building Code of Australia [BCA])
- Requests for variations or modifications to the Regulations or the BCA
- Appeals against decisions of building surveyors on the amount of building levy to be paid
- Determinations of matters in relation to disability access requirements for non-domestic buildings
- Hearing applications regarding protection works
- Appeals against decisions of the BPB
- Appeals against decisions of any other decision-maker under the Act

- The BAB has a wide range of powers under the *Building Act,* including power to hear appeals from decisions of the BPB and BC
- The BAB also performs several technical functions relating to compliance with relevant building standards
- The BAB has no staff of its own, with members supported by staff from the BC to discharge their statutory responsibilities

Sources: Building Appeals Board – Draft Submission to "Independent Assessor"; Building Commission / Plumbing Industry Commission, Draft Structure Options Paper, January 2013; BC website; BC Annual Report 2011-12

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Building Regulations Advisory Committee (BRAC)

Under the *Building Act 1993* the BRAC is responsible for:

- Advising the Minister for Planning on draft building regulations, and
- The accreditation of new building products, construction methods and components or systems connected with building work.

The BRAC is made up of building industry representatives as prescribed in the *Building Act.* The Minister for Planning appoints the members of BRAC from a list of nominees from a range of industry associations.

The BRAC is also responsible for considering proposed amendments to the National Construction Code (NCC), proposed Australian Standards referenced in the NCC, and Victorian building regulation amendments.

The BRAC's product accreditation process relates to innovative building solutions that are difficult to assess for compliance by individual building surveyors. Under the NCC, building products can be assessed and accredited nationally, though there remains some scope for assessment and accreditation at the state level. The BRAC cannot consider applications for the approval of building products in circumstances where the product complies with the deemed-to-satisfy provisions of the NCC.

Functions of Building Regulations Advisory Committee

- Advise the Minister on draft regulations prepared under the *Building Act,* and in particular the extent to which they promote the objectives of the Act, are cost effective and are necessary
- Accredit building products, construction methods or designs, components or systems connected with building work for the purposes of the *Building Act* and the building regulations
- Advise the Minister on any other matters referred to it by the Minister

The BC is also able to seek the advice of the BRAC on technical, administrative and regulatory issues.

- The BRAC is established by legislation, with detail on the membership of the Committee also listed in legislation
- The BRAC performs both advisory and regulatory functions. It advises the Minister on draft regulations but can also make binding decisions on the accreditation of new building products, construction methods, components or systems. It is unusual for a body to combine both regulatory and advisory responsibilities in this manner.
- The BRAC has no staff, and is supported by staff from the BC to perform its accreditation functions

Sources: BC Annual Report 2011-12, Building Act 1993 (Vic) section 211; BC website

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Building Advisory Council (BAC)

The Building Advisory Council ('BAC') acts as a senior industry based advisory group that advises the Minister for Planning on the administration of the *Building Act 1993* and *Building Regulations 2006.* The BAC also advises the Minister on the impact of the building regulatory system and on issues relating to building permit levy and related matters.

Members of the BAC are appointed by the Minister for Planning, largely on the basis of nominations from various industry groups. The Building Commissioner and Plumbing Industry Commissioner (although both roles are currently performed by the same person) also sit on the Council.

In practice, the BAC has acted as a forum for the review of current building issues. It has provided advice on issues including:

- Builders warranty insurance reforms and the future of BACV;
- The environmental control of domestic building construction sites with the aim of promoting standardised practices across municipalities in order to improve compliance and lower costs to consumers and the building industry;
- The need to address a potential shortage of building surveyors and building inspectors, and the implications for local government; and
- The production and launch of a discussion paper relating to the reform of owner builders.

Functions of the Building Advisory Council

- Advise the Minister on:
  a) the administration of portions of the *Building Act* and *Building Regulations* relevant to the building industry
  b) the impact on the building regulatory system established by the *Building Act* of regulations made under any other Act
  c) issues relating to the building permit levy, and
  d) any matter referred to it by the Minister

- The BAC is established in legislation - legislative change will be required to alter the title, functions and membership of the Council
- Under legislation, the BAC advises the Minister for Planning, not the BC (different to the Plumbing Industry Advisory Council ['PIAC'])
- The BAC is administratively supported by the BC, including facilitation of meetings

Sources: BC Annual Report 2011-12, Building Act 1993 (Vic) section 208; BC website

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Plumbing Industry Advisory Council (PIAC)

The independent PIAC is established under Part 12A of the *Building Act 1993* to provide advice on plumbing regulatory matters to both the Minister for Planning and the PIC.

The composition of the PIAC is defined in legislation. The Council can comprise up to 14 members, including a Chair (who must have substantial knowledge and experience in the plumbing industry) the Building Commissioner, Plumbing Industry Commissioner (though they are currently filled by the same person), representatives from industry employers and employees, vocational educators, water and gas regulators, the building industry and consumers.

While the role of the PIAC is expressed broadly, with the ability to advice on any issues relevant to plumbing industry regulation, examples of areas in which the PIAC has provided advice include:

- The PIC's business and corporate planning;
- The National Plumbing Regulators Forum;
- The new National Occupational Licensing System ('NOLS'); and
- Research into water and energy savings through the plumbing and water protection systems of buildings.

Functions of the Plumbing Industry Advisory Council

- Provide advice the Minister, either at the request of the Minister or on its own initiative, the administration of Part 12A of the *Building Act* and supporting regulations relevant to the plumbing industry
- Provide advice to the PIC, either at the request of the Minister or on its own initiative, on issues relevant to the regulation of plumbers and the broader plumbing industry

- PIAC is established in legislation, and legislative change will be required to alter the title, functions and membership of the Council
- PIAC is empowered to provide advice on its own initiative, as well as at the request of the Minister or the PIC
- As opposed to the BAC, the PIAC provides advice both to the Minister and to the PIC

Sources: PIC Annual Report 2011-12, Building Act 1993 (Vic) section 221ZZXC; PIC website

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Membership of regulatory and advisory bodies

There are multiple opportunities for stakeholders to act as members of both regulatory and advisory bodies. The table below highlights the current opportunities for stakeholders to be appointed to various bodies across the building, plumbing and architecture sectors.

BAB (23 members)	BPB (12 members)	BRAC (15 members)	BAC (11 members)	PIAC (13 members)	ARBV (10 members)
• Chairperson • Deputy chairperson • Legal practitioners (currently 2) • Representatives of users of the services of building practitioners (currently 2) • Other persons experienced in the building industry or in matters related to that industry (building surveyor, architects, planners, engineer (fire safety), engineer (electrical), engineer (mechanical), quantity surveyor, engineer (civil), commercial builder, builder (domestic/commercial, architect *NB: There is no cap on the number of members of the BAB*	• Independent chairperson • Member of the ARBV • Consumer representatives (2) • Legal representative • Nominee of the Housing Industry Association • Nominee of the Australian Institute of Quantity Surveyors • Nominee of the Hire and Rental Industry Association • Nominee of the Building Designers Association of Victoria • Nominee of the Australian Institute of Building Surveyors • Nominee of the Master Builders Association of Victoria • Nominee of Engineers Australia	• Building Commissioner (Chair) • Nominee of Minister responsible for public construction • Representative of fire services (CFA, MFB) • Nominee of Melbourne City Council • Representatives of Royal Australian Institute of Architects (Victoria); Institution of Engineers Australia (Victoria); Master Builders Association of Victoria ; Housing Industry Association; Property Council; Municipal Association of Victoria ; Australian Institute of Building Surveyors Victoria (2) • Nominee with building industry experience • Legal representative • Consumer representative	• Chairperson • Building Commissioner • Nominee of the Australian Institute of Building Surveyors • Nominee of Property Council of Australia • Nominee of the Housing Industry Association • The Plumbing Industry Commissioner • Nominee of the Royal Australian Institute of Architects • Nominee of the Master Builders Association of Victoria • Representative from Institution of Engineers (Vic) • Director - Consumer Affairs Victoria • Nominee of Minister for Consumer Affairs	• Chairperson • Plumbing Industry Commissioner • Building Commissioner • Nominees of Ministers administering Water Act, Gas Safety Act, Education and Training Reform Act • Nominees of bodies that represents employers in relation to all classes of plumbing work • Nominees from bodies that represents air-conditioning contractors • Nominee from body representing fire protection contractors • 3 nominees from body representing the industrial interests of employee plumbers • Consumer representative	• Chairperson • Nominee of the approved schools of architecture • Nominee of Minister administering the Consumer Affairs Act (2) • Senior practising government architect • Nominee of bodies representing related professions: the institution of Engineers, Australia,; Institution of Surveyors; Australian Institute of Quantity Surveyors; Royal Australian Planning Institute • Nominee of Victorian Chapter of Australian Institute of Architects • Member elected by architects • Representatives of the Building Industry (2)

Sources: BC website, 'BAB Members' (as at December 2012); ARBV 'About Us', Building Act 1993 (Vic), Architects Act 1991 (Vic)

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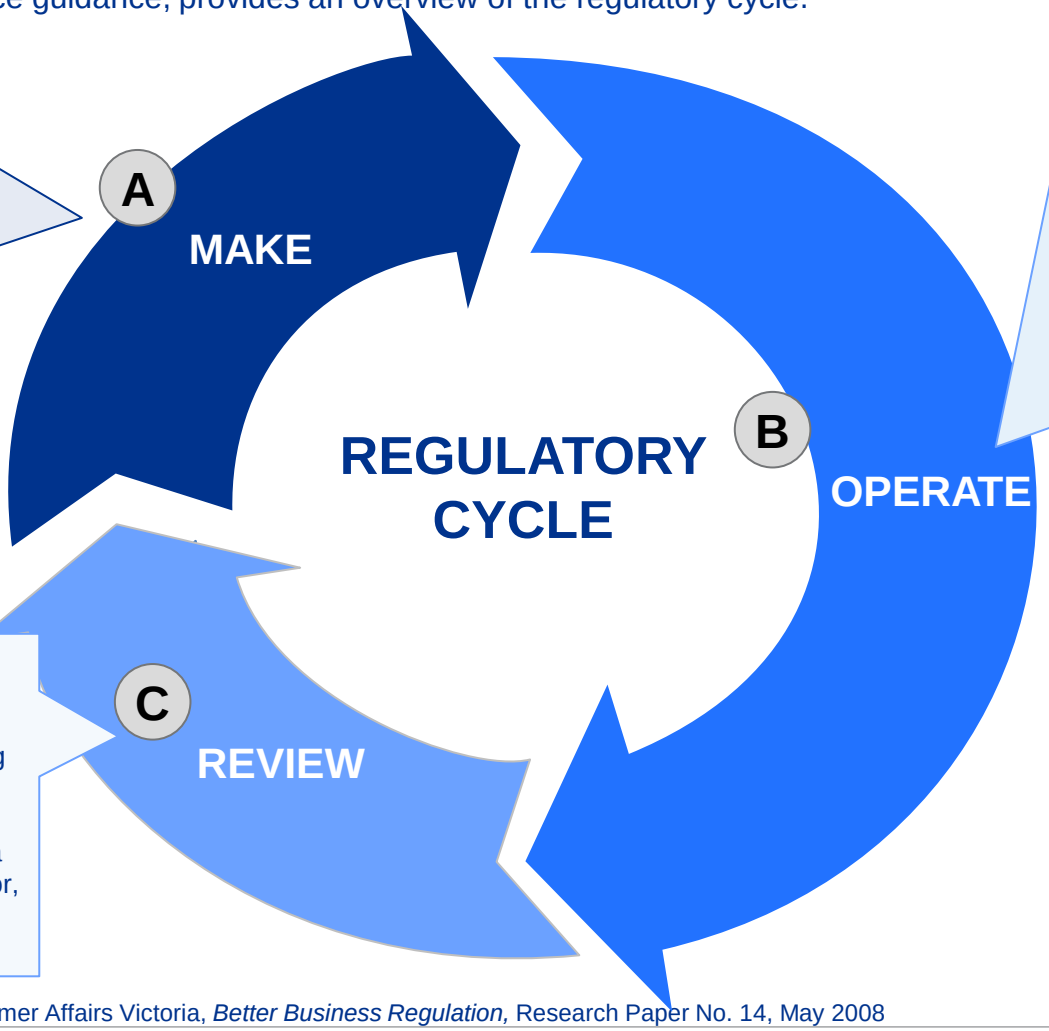
Overview of the regulatory cycle

The regulatory process can be thought of as a cycle with three main phases – make, operate, and review. The diagram below, based on Victorian Government best practice guidance, provides an overview of the regulatory cycle.

Making regulation is the process of developing government policy into legislation or other regulatory instruments. It involves identifying the objectives of intervention and assessing the case for action; considering alternatives for meeting identified objectives; evaluating the effectiveness and efficiency of varying alternatives; and turning the chosen option into a legal instrument.



Operating regulation is the process of applying the regulation day-to-day to the regulated entities to achieve the regulator's public policy objectives. Common activities include:

- informing and educating parties about obligations and rights under legislation (aiming to promote early intervention);
- registering or licensing regulated entities;
- setting prices or terms and conditions of access for essential facilities;
- promoting and monitoring compliance (including through audit programs);
- handling (including investigating) complaints; and
- enforcing compliance in the case of suspected breaches (including through disciplinary proceedings).

These activities may be complemented by other programs with the purpose of encouraging or assisting in the improvement of standards beyond minimal regulatory compliance, or other innovative approaches to improve regulatory outcomes.

Reviewing regulation considers whether particular rules are continuing to meet their specified objectives. Where the objectives of the regulation are not being met, changes to the legislation, or alternative measures, are considered. Reviewing regulation may also include a performance assessment of the regulator, a review of regulatory objectives and consideration of improvements to policy.

Sources: KPMG analysis, drawing on Consumer Affairs Victoria, *Better Business Regulation,* Research Paper No. 14, May 2008

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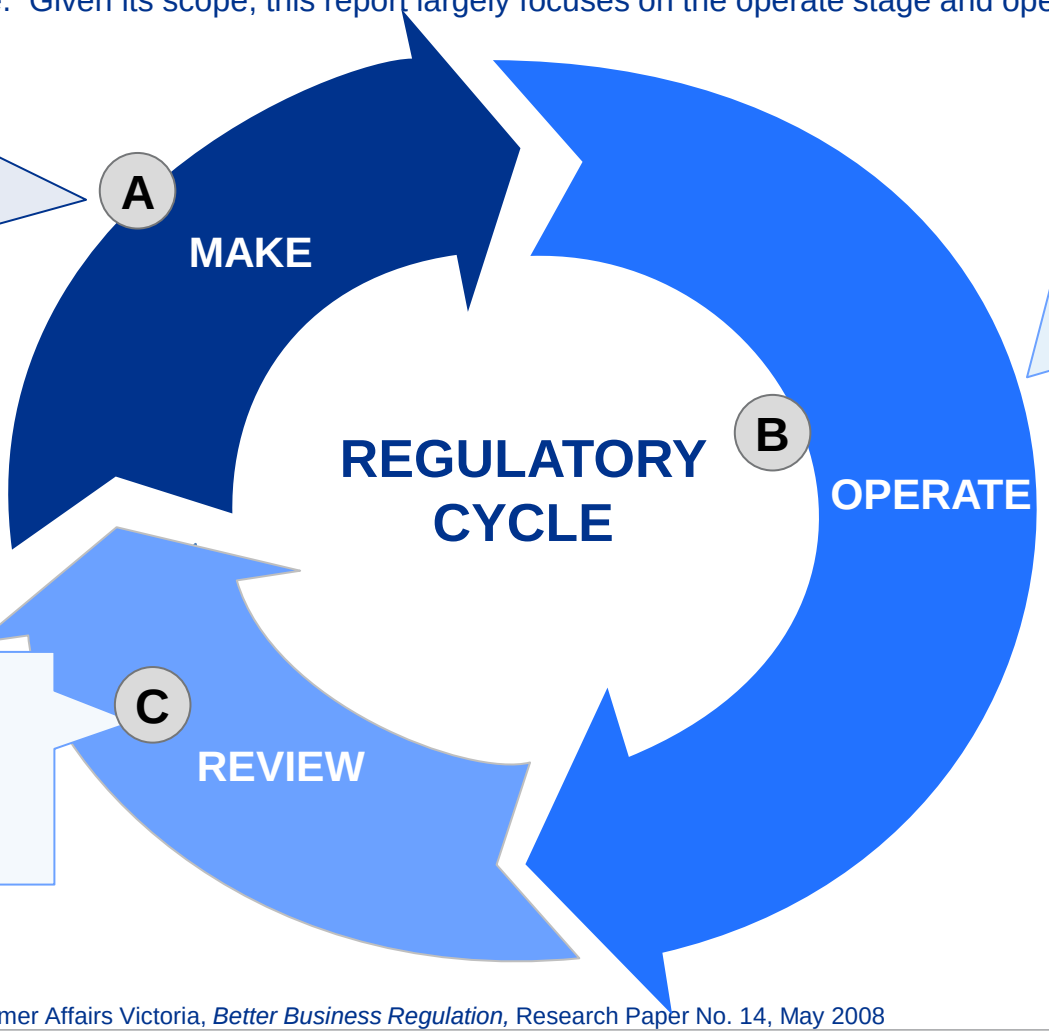
Responsibilities within the regulatory cycle

Continuing exploration of the regulatory cycle, the diagram below identifies the government entities responsible for performing functions in each stage of the regulatory cycle. Given its scope, this report largely focuses on the operate stage and operations of the six entities that have a role in this stage.

DPCD plays the lead role in making regulation, drawing on the input of other government bodies (including regulators) and key industry stakeholders, including through the BAC, PIAC and BRAC. DPCD will then provide advice to the Minister on proposed new regulation to be created.



As identified previously, across the building, plumbing and architecture sectors **there are six entities with roles and responsibilities within the operate phase** of the regulatory lifecycle.

The **BC, PIC, ARBV** all have important regulatory functions, while other decision-making bodies **(BPB, BAB, BRAC)** also perform functions identified as forming part of the operate phase.

BACV and **VMIA** also perform functions relevant to this phase.

DPCD has limited formal involvement in the operate phase.

DPCD also plays the lead role in reviewing regulation, taking into account input from specialist government bodies such as VAGO and the VCEC. Each Advisory Council would again provide input.

Sources: KPMG analysis, drawing on Consumer Affairs Victoria, *Better Business Regulation,* Research Paper No. 14, May 2008

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Categorisation of regulatory functions within the operate stage

Delving further into the detail of the regulatory cycle, regulatory functions during the operate stage can be divided into six major categories, as set out below. This functional framework will be used at stages during this report to analyse the functions performed.

Main regulatory functions during the OPERATE stage

A **Informing and educating** regulated entities and other parties (including the public) about rights and obligations under legislation

B **Registering or licensing** regulated entities, where those particular regulatory tools are used

C **Setting prices or terms and conditions of access** for essential facilities

D **Promoting and monitoring compliance** with the rules, including through inspections and an active audit program

E **Handling (including investigating) complaints** from the public about regulated entities, aiming to promote early intervention and resolution

F **Enforcing compliance** in the case of suspected breaches (including through discipline procedures)

A range of advisory functions can also be performed by regulators within the operate stage

Sources: KPMG analysis, drawing on Consumer Affairs Victoria, *Better Business Regulation,* Research Paper No. 14, May 2008

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Functions of various bodies during regulatory operations (1)

The functions of each institution can be mapped against the six main categories of regulatory functions performed during the OPERATE stage. Relevant analysis is presented both on this page and on the following page.

Main regulatory functions during the OPERATE stage

A

Informing and educating regulated entities and other parties (including the public) about rights and obligations under legislation

- **BC:** Disseminate information (including to consumers) on matters relating to building standards and the regulation of buildings and building practitioners
- **BC:** Provide information and training to assist persons and bodies in carrying out functions under the *Building Act* and regulations
- **PIC:** Provide information and training to assist persons and bodies in carrying out functions under the *Building Act* or regulations
- **PIC:** Provide an information service (including to consumers) with respect to plumbing
- **ARBV:** Publish information relating to the operation of the Board and the *Architects Act*

B

Registering or licensing regulated entities, where those particular regulatory tools are used

- **BPB:** Administer a registration system for building practitioners
- **PIC:** Administer the Victorian plumber licensing and registration system
- **ARBV:** Determine the qualifications and experience required for registration as an architect under the *Architects Act*
- **ARBV:** Regulate the examination of persons applying for registration as an architect, including by holding examinations and appointing examiners
- **ARBV:** In association with approved schools of architecture, assess and accredit courses in architecture
- **ARBV:** Issue or cancel certificates of registration or approval
- **ARBV:** Approve partnerships and companies and cancel or suspend an approval

C

Setting prices or terms and conditions of access for essential facilities

- **BC:** Monitor the system of collection of the building permit levy and administer the Building Administration Fund

- There is a high degree of overlap, with several bodies playing roles within each of the six functional groupings within the OPERATE stage
- The number of bodies involved give rises to the potential for duplication or overlap between regulatory functions, particularly for the building sector

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Functions of various bodies during regulatory operations (2)

Several existing institutions perform functions across each of the six main areas of regulatory functions listed. The overlap is particularly noticeable for the building industry, where the BC, BPB and BAB all perform related functions.

Main regulatory functions during the OPERATE stage

D **Promoting and monitoring compliance** with the rules, including through inspections and an active audit program

- **BPB:** Supervise and monitor the conduct and ability to practise of registered building practitioners
- **BC:** Monitor compliance with the *Building Act* and regulations relating to building, building practitioners
- **PIC:** Promote the maintenance of adequate levels of competence among plumbers
- **PIC:** Monitor compliance with relevant sections of the *Building Act* and regulations relating to plumbing practitioners
- **ARBV:** Regulate the professional conduct of architects, approved partnerships and approved companies
- **BRAC:** Accredit building products, construction methods or designs, components or systems connected with building work for the purposes of the *Building Act* and the building regulations
- **BAB:** Determinations of compliance with the *Building Regulations* (including the BCA)
- **BAB:** Determining requests for variations or modifications to the Regulations or the BCA
- **BAB:** Determinations of matters in relation to disability access requirements for non-domestic buildings
- **BAB:** Appeals against decisions of the BPB

E **Handling (including investigating) complaints** from the public about regulated entities, promoting early intervention and resolution

- **BC:** Promote the resolution of consumer complaints about work carried out by builders
- **PIC:** Promote the resolution of consumer complaints about work carried out by plumbers
- **BAB:** Hear appeals against local council decisions under Part 4 (residential siteing) of the *Building Regulations*
- **BAB:** Appeals and disputes in relation to protection of adjoining property matters; including protecting the rights of owners whose land adjoins a site where construction is to occur and assessing the level of compensation owed to an adjoining owner for loss or damage
- **BAB:** Appeals against decisions of building surveyors on the amount of building levy to be paid

F **Enforcing compliance** in the case of suspected breaches

- **BC:** Enforce compliance with the *Building Act* and regulations relating to building and building practitioners
- **PIC:** Enforce compliance with relevant sections of the *Building Act* and regulations relating to plumbing practitioners
- **ARBV:** Investigate and take proceedings for offences against the *Architects Act*
- **ARBV:** Suspend or cancel the registration of any person in situations identified in the *Architects Act*

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Advisory functions of existing bodies

In addition to regulatory functions, several existing bodies have legislative responsibilities to provide advice on best practice regulation within the building, plumbing and architecture sectors. In addition to the BAC and PIAC, the BC, PIC, BPB and BRAC all have roles in providing advice to the Minister on the regulation of the building and plumbing sectors.

Advisory functions for regulation of the building, plumbing and architecture sectors

Advising the Minister or other government entities on best practice regulation for building, plumbing and architecture practitioners

BC: Advise the Minister for Planning and the Victorian Government on building regulatory development
PIC: Advise the Minister for Planning and the Victorian Government on plumbing regulatory developments
BPB: Make recommendations to the Minister about the qualifications for registration (which can then be prescribed in regulations)
BRAC: Advise the Minister on draft regulations prepared under the *Building Act,* and in particular the extent to which they promote the objectives of the Act, are cost effective and are necessary
BAC: Advise the Minister on: the administration of portions of the *Building Act* and *Building Regulations* relevant to the building industry; the impact on the building regulatory system established by the *Building Act* of regulations made under any other Act; issues relating to the building permit levy; and any matter referred to it by the Minister
PIAC: Provide advice the Minister, either at the request of the Minister or on its own initiative, the administration of Part 12A of the *Building Act* and supporting regulations relevant to the plumbing industry
PIAC: Provide advice to the PIC, either at the request of the Minister or on its own initiative, on issues relevant to the regulation of plumbers and the broader plumbing industry

- A large number of bodies are also legislatively responsible for providing advice to the Minister on best practice regulation
- Of the advisory bodies, only the PIAC also provides advice to a regulatory body (the PIC)

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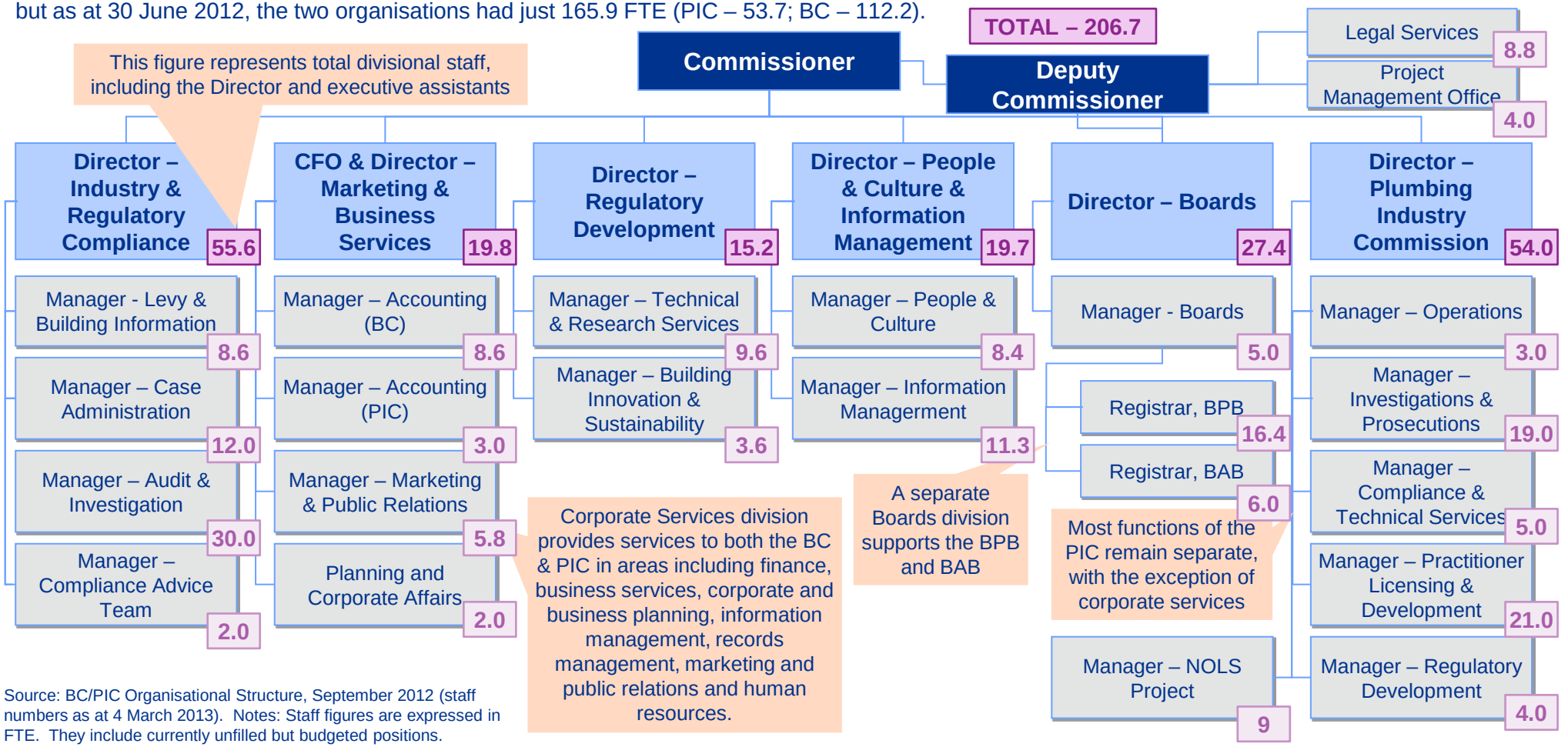
BC & PIC - Organisational structure (2012)

As noted, since 2005 the Building Commissioner has concurrently served as the Plumbing Industry Commissioner. This has enabled a degree of integration between the BC and PIC, with senior executives jointly responsible for organisational leadership of the BC and PIC and shared corporate services functions in place. The BC and PIC both have a large number of currently vacant positions – the below structure includes 206.7 budgeted FTE but as at 30 June 2012, the two organisations had just 165.9 FTE (PIC – 53.7; BC – 112.2).



Source: BC/PIC Organisational Structure, September 2012 (staff numbers as at 4 March 2013). Notes: Staff figures are expressed in FTE. They include currently unfilled but budgeted positions.

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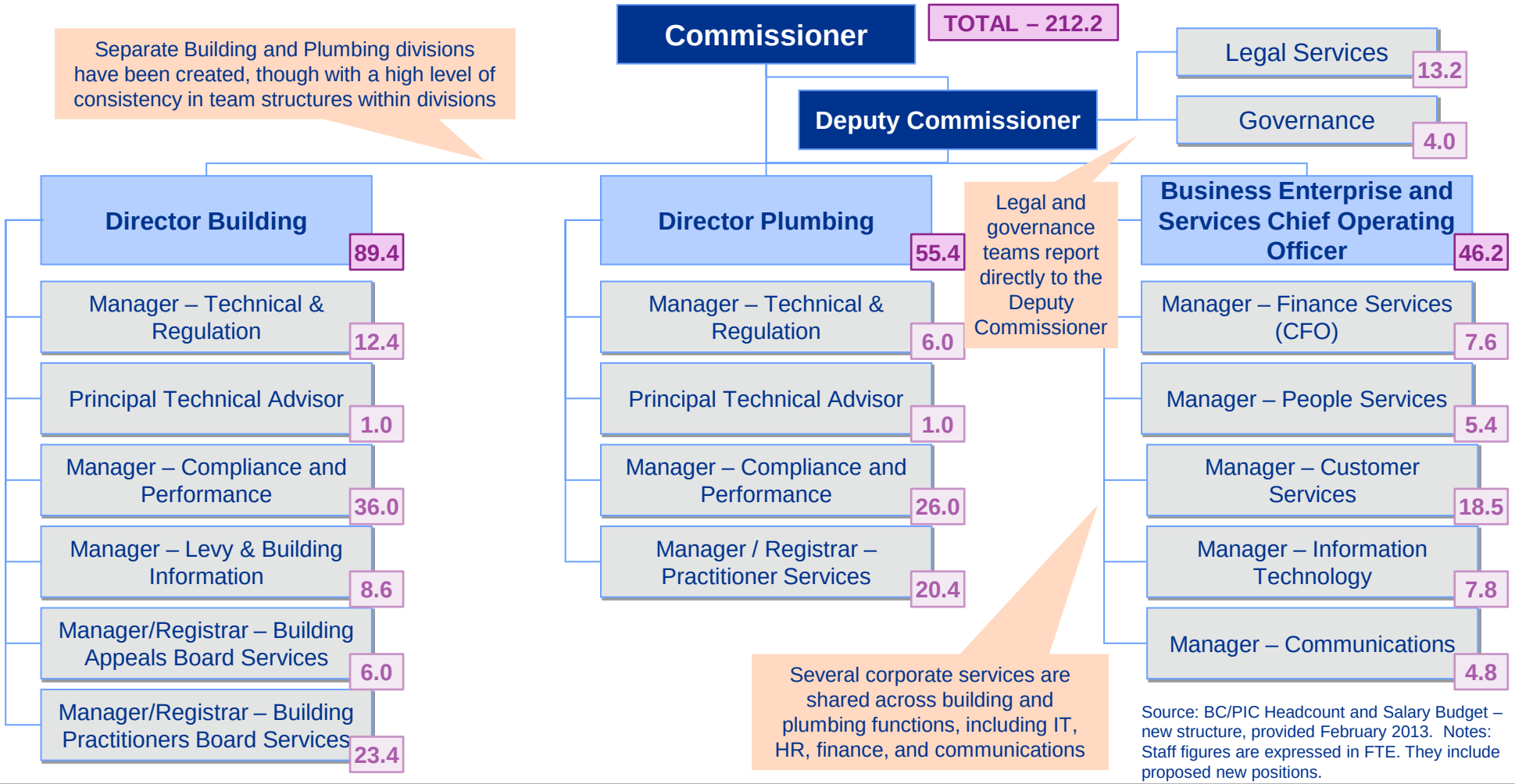
BC & PIC - Organisational structure (2013)

Following a staff consultation process, in January 2013 a revised organisational structure was introduced for the BC and PIC. This structure rationalised senior executive positions, and aimed to place the organisation in a position to transition to the new VBA.



Source: BC/PIC Headcount and Salary Budget – new structure, provided February 2013. Notes: Staff figures are expressed in FTE. They include proposed new positions.

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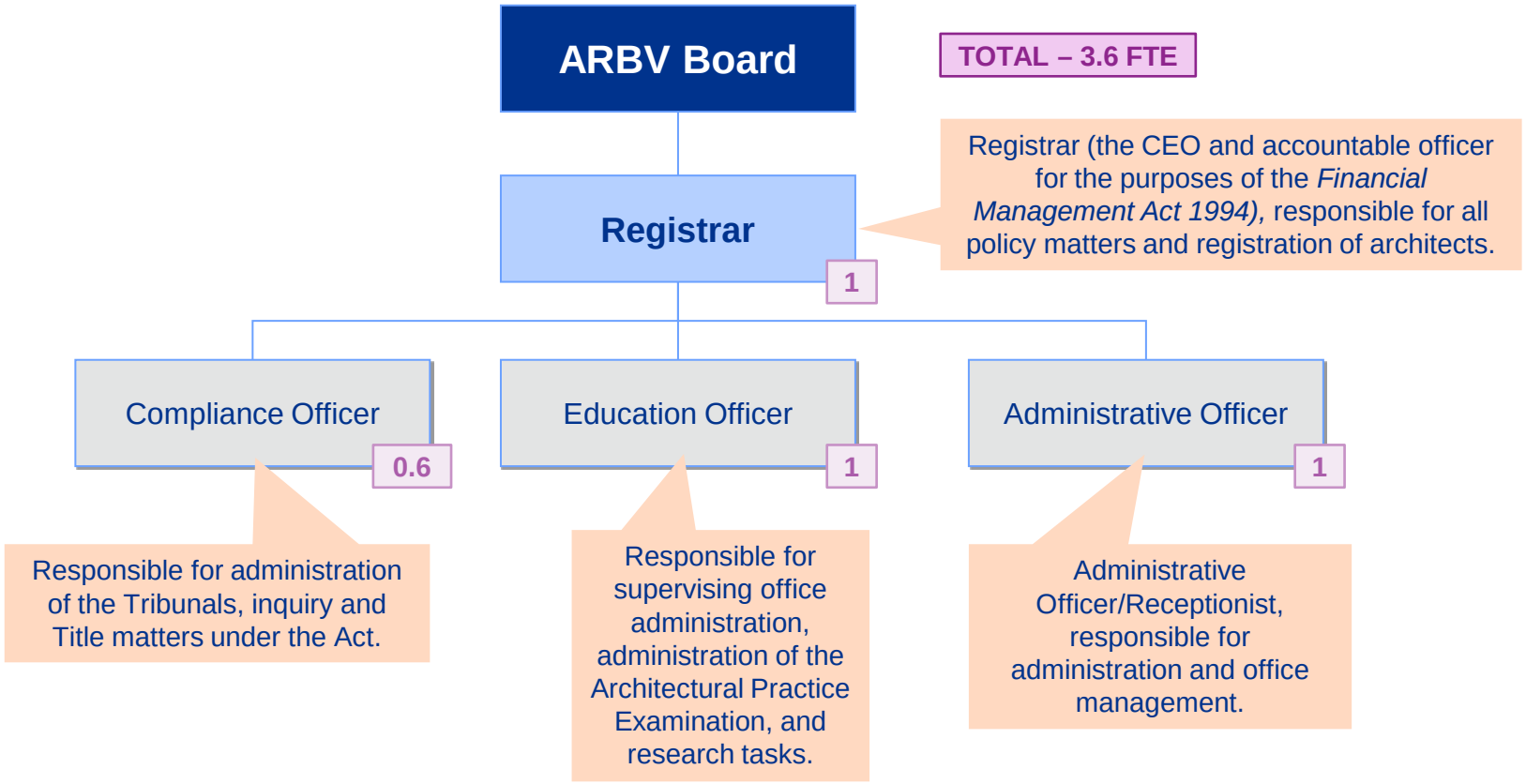
ARBV - Organisational structure

In addition to the Board itself, the ARBV has only four staff members. ARBV staff members are appointed by the Board under section 57 of the *Architects Act 1991 (Vic)*. In addition to organisational oversight, the ten member Board performs several functions, including hearing consumer complaints about architects (by forming Tribunals). Special committees and panels are also established to oversee other ARBV functions, including architecture course accreditation and the architectural practice examination.



Source: ARBV Annual Report 2011-12, ARBV Website, 'Board Members and Administration', available at http://www.arbv.vic.gov.au/Pages/members-of-the-board.aspx.

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Funding streams

All three existing regulatory bodies are self-funded, relying on a combination of practitioner registration/license fees and levies/charges on sector activity. The below table provides an overview of the main funding streams for the BC, PIC and ARBV, with the amount of revenue generated for each revenue line in 2011-12 shown.

Revenue type	BC[1]	PIC[2]	ARBV[3]
Registration / Licensing fees	• Building practitioner registration fees ($2.37m) • Owner-builder certification fees ($0.73m)	• Registration and license fees ($4.49m) • Examination fees ($0.20m) • Other fee income ($0.09m)	• Registration fees ($0.88m) • Examination fees ($0.24m) • Entrance, reinstatement and certificate fees ($0.08m)
Activity levies (including compliance certificates)	• Building permit levies ($22.50m) • Applications for modification and appeals ($0.25m)	• Certificate of Compliance fees ($8.97m) • Audit, investigation fees ($1.48m)	N/A
Fines from disciplinary action	• Prosecutions ($0.19m)	N/A	N/A
Miscellaneous	• Interest ($0.45m) • Other ($1.78m)[5]	• Publication sales ($0.002m) • Interest ($0.03m) • Other ($0.02m)	• Interest ($0.02m) • Legal fee recovery ($0.05m)
TOTAL REVENUE	**$28.3m** ($20.7m excl BACV transfer)[4]	**$15.4m**	**$1.3m**

While the PIC and ARBV maintain single accounts for all revenue received, the BC is required by legislation to maintain a Building Administration Fund which is separated into four accounts.[4] These four accounts are the general account, building permit levy account (for receipt of building permit levies), domestic building account (registration and licensing fees, fines from prosecutions), and the domestic building dispute account. Separate authorising provisions apply to enable the BC to spend money from each account.

These prescriptive financial management requirements limit the flexibility with which resources can be directed toward emerging priority areas. The requirements also promote a siloed perspective with funding streams viewed separately for each sector.

Sources: 1) BC Annual Report 2011-12; 2) PIC Annual Report 2011-12; 3) ARBV Annual Report 2011-12; 4) Building Act 1993 (Vic), section 200
Notes: 4) Of this amount, $7.6m was transferred to Consumer Affairs Victoria to perform functions relevant to Building Advice and Conciliation Victoria (BACV) 5) Other income is comprised of fees (permit, inspection, accreditation, Freedom of Information ($0.09m); fines ($0.34m); recovery of costs ($0.86m); project grants (bushfire rebuilding response, review of commercial builders insurance) ($0.46m); publication revenue ($0.002m) and miscellaneous revenue ($0.03m).

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Building Advice and Conciliation Victoria (BACV)

There are two other Victorian Government bodies which perform functions relevant to regulation of the building industry. These bodies are the BACV, a division of CAV and the VMIA, which provides compulsory statutory insurance for all domestic building work performed in Victoria. Functions of the BACV are explored below, with relevant functions of the VMIA explored next.

Building Advice and Conciliation Victoria

BACV is a specialist one-stop shop for consumers and builders providing free advice and assistance to resolve domestic building disputes. BACV is a joint service delivered by CAV and BC. CAV is the entry point for this complaints and dispute resolution process, receiving all calls/complaints from consumers and builders in relation to domestic building issues.

BACV was established following legislative changes to builders warranty insurance for domestic building contracts signed after 1 July 2002. The introduction of more limited compulsory 'last resort' insurance for domestic building works saw the introduction of BACV to help home owners and builders work together to prevent or resolve building disputes. BACV is funded from the building levy. In 2011-12, the BC Annual Report notes that it transferred $7.6m to CAV for the purposes of domestic building complaint handling and dispute resolution.

This funding allows for a total of 67.4 FTE to be employed across the whole of CAV's functions. These staffing resources include 20.3 FTE allocated to the BACV (chiefly conciliators), 2 FTE allocated to enquiries and 3.3 FTE allocated to Marketing and Education. Other functions (such as operation of the call centre) are handled on a shared services basis for all sectors supported by the CAV.

In 2011-12, CAV answered 36,849 calls to their designated building line, which provides both consumers and builders with advice and information on domestic building issues. 2,364 domestic building disputes were resolved by the BACV over the same period. 13 prosecutions and civil actions related to building were also concluded.

For disputes received, if there is evidence of defective building work, BACV can arrange technical inspections by a BC inspector to assist conciliation. If there is evidence a builder has broken the law, BACV can take action against them, including seeking redress for affected consumers. BACV may also suggest that a consumer take their dispute to VCAT if agreement cannot be reached through voluntary conciliation. BACV can also refer builders who refuse to fix defective work to the BPB for disciplinary action at the conclusion of the conciliation process.

Consumer Affairs Victoria

Source: CAV Annual Report 2011-12; Advice on staffing figures provided by CAV, 27 February 2013

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Categorisation of domestic building disputes

There are three main types of domestic building disputes which can arise – disputes around compliance with building regulations, disputes around defective building work, and disputes around compliance with terms of the building contract. Each of these potential types of domestic building disputes is explored below.

Non-compliance with building regulations

Disputes can arise if building work performed does not comply with technical building specifications (e.g. Building Code, Building Regulations). If there is evidence of defective building work, the BACV can arrange technical inspections by a BC inspector to assist the conciliation and dispute resolution process.

Example: A registered builder installs a wooden jarrah floor, but the thickness of the floor boards does not meet requirements of the Building Code.

Defective building work

The *Domestic Building Contracts Act 1995* sets out minimum terms and conditions and implied statutory warranties for all domestic building contracts. Building work that does not meet the warranties in the Act is classed as defective, and the BACV is given a statutory role to assist in resolving the dispute.

Example: The builder installs the floor poorly, with large gaps between boards. Work was not 'carried out in a proper and workmanlike manner', breaching the warranties in the Act.

Breaches of building contract

This category covers non-defective work performed in compliance with building standards but not with the terms of the building contract. While all instances of defective or non-compliant building work will also amount to a breach of contract, not all breaches of contract will be cases of non-compliant or defective work.

Example: A registered builder properly and safely installs a wooden floor, but the material used is pine instead of jarrah (as was specified in the contract).

BACV has a role in assisting in the resolution of domestic building disputes that involve non-compliance with building standards or non-compliance with provisions of the *Domestic Building Contracts Act 1995.*

Straight contractual disputes which do not involve breach of legislation or regulatory non-compliance are not within scope for the BACV.

Sources: Domestic Building Contracts Act 1995 (Vic); BACV website

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Domestic building industry insurance

All domestic building work conducted in Victoria must be covered by what is known as domestic building insurance. Under the current legislative framework, the required domestic building insurance is an insurance of 'last resort'. It only provides cover to a homeowner in cases where the builder:

- is deceased;
- has disappeared; or
- become insolvent.

and the contracted building work remains incomplete or defective.

At present the compulsory insurance scheme within the building sector is very limited, with claims able to be made only in three limited circumstances

This 'last resort' domestic building insurance used to be provided by the private insurance market. However, in early 2010 following the withdrawal of insurance provision by several commercial providers, the VMIA was assigned the responsibility of providing domestic building insurance to Victorian builders by the Victorian Government in accordance with section 25A of the *Victorian Managed Insurance Authority Act 1996*.

Since taking on this insurance role in May 2010, the VMIA has become the major provider and underwriter of domestic building insurance via its broker QBE Insurance. It now provides cover for approximately 15,000 Victorian residential builders.

In the 2011-12 financial year, the VMIA raised 51,591 domestic building insurance certificates for projects, collecting a total of $16.5m in premiums during the financial year. This covered projects with a total value of more than $10 billion. Over the same annual period, VMIA received 164 claims and paid out $2.4 million under domestic building insurance policies.

Source: VMIA Annual Report 2011-12; VMIA website, 'What is Domestic Building Insurance?', available at http://www.dbi.vmia.vic.gov.au/What-is-domestic-building-insurance.aspx

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Key contextual factors

Over the last decade, several independent reports have made recommendations relevant to the regulatory landscape for the building, plumbing and architecture sectors. An overview of these reports and their key recommendations is set out below.

Report	Brief overview	Recommendations
VAGO – Building Control on Victoria: Setting sound foundations (2000)	VAGO looked into the building regulation system seven years after it was established, finding 'it is not clear as to whether the most suitable arrangements have been established with regard to some elements of the building control system', with systemic weaknesses relating to practitioner registration, complaint investigation and auditing processes. Critically, VAGO found that 'the large number of separate bodies and the overlapping and conflicting responsibilities of some of their roles have contributed to instances where there has been a lack of integration and cohesion across certain activities'.	• Focus on key elements of building control and regulatory agenda, such as registration process, investigating complaints and performance audits
VCEC - Housing Regulation in Victoria: Building Better Outcomes (2005)	VCEC inquired into housing regulation in Victoria in 2005, concluding that current regulatory arrangements 'work reasonably well, although hard data on regulatory outcomes are surprisingly incomplete'. VCEC did note that regulatory costs were rising and were considered excessive by industry participants. VCEC noted that the *Building Act 1993* set out ten loosely arranged objectives and 50 functions across five statutory bodies, leading to the potential to simplify institutional arrangements.	• Simplify objectives and statutory functions • Better arrange institutions and allocation of tasks
SSA - Review of the Rationalisation and Governance of Regulators (2008)	The SSA looked into potential to rationalise Victorian Government regulators, finding many regulators 'are small or narrowly scoped' with 'significant scope for institutional reform to contribute to enhanced regulatory processes and outcomes'. Noting the need to provide stronger institutional structures, governance and resourcing levels, SSA identified the potential to merge regulatory activity into twelve main clusters, including one for the 'built environment', including building, plumbing and architecture.	• Establish single 'built environment' regulator, consolidating BC, PIC and ARBV
VAGO - Compliance with Building Permits (2011)	VAGO found that the BC could not demonstrate 'that the building permit system is working effectively or that building surveyors are effectively discharging their role to uphold and enforce minimum building and safety standards'. Notably, VAGO found that the BC has failed to develop a framework to monitor the effectiveness of the building control system more than 17 years since its establishment. 96 per cent of permits examined were found not to comply with minimum statutory building and safety standards.	• Expedite development of monitoring and evaluation framework • Strengthen complaint handling and investigation processes
Ombudsman (Vic) - Governance and administration of the Building Commission (2012)	In an own motion investigation, the Ombudsman found significant public funds were spent by senior BC staff on questionable entertainment, hospitality and sponsorship. The Ombudsman also identified concerns with the vulnerability, integrity and administration of the registration system for building practitioners. Further, a number of recruitment practices were found to be in breach of internal policies and Government guidelines. The Ombudsman noted that the creation of the VBA provided the opportunity to address the issues identified.	• Strengthen internal administration • Tighten recruitment processes and financial delegations

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Announcement of the new Victorian Building Authority (VBA)

On 29 November 2012, the Victorian Government announced its intention to reform regulation of the building industry in Victoria, with a new Authority, the VBA, to be established to integrate the regulation of architects, building practitioners and plumbers into one organisation. As articulated in *A Fresh Start for Building Industry Regulation,* the Minister for Planning, the Hon Matthew Guy MLC, this reform sought to respond to the VAGO findings by creating a new regulator with best practice institutional structures and governance arrangements:

Media release

The Hon Matthew Guy MLC
Minister for Planning

Thursday 29 November 2012

A fresh start for building industry regulation

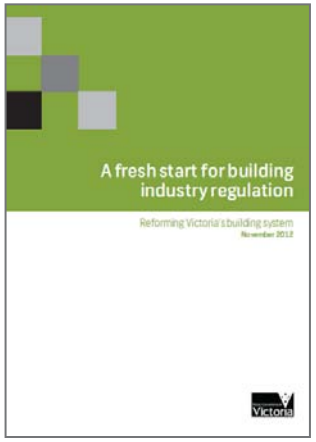
Planning Minister Matthew Guy today announced he would reform the oversight of industry regulation to meet the 21st century needs of consumers and industry parti

A new Victorian Building Authority (VBA) will be established as the single over-arch

"A new Victorian Building Authority (VBA) will be established as the single over-arching body responsible for setting and enforcing building industry regulation following an extensive review of the existing structures. The functions of the BC, PIC and ARBV will be absorbed into the proposed new Authority, which will provide a single point of governance for builders, plumbers and architects…

It is proposed that the VBA will be led by a CEO and constituted by an independent Board that will set strategic directions, operational policies, priorities and key performance measures in line with government policy."

Media Release, Minister for Planning, 'A Fresh Start for Building Industry Regulation ', 29 Nov 2012



"The government intends to establish a new Authority, the Victorian Building Authority (VBA) with an independent board to oversee Victoria's building industry…

The new VBA will integrate the functions of the Building Commission, Plumbing Industry Commission and the Architects Registration Board of Victoria to provide a single point of governance for building and plumbing practitioners and architects…

To provide greater accountability the VBA will be constituted by a Board which will set strategic directions, operational policies, priorities and key performance indicators in line with the Governments expectations of its regulators…

Sound institutional structures and governance arrangements are critical to provide a robust foundation from which to implement the VAGO recommendations and further reform and improve the building system."

Source: The Hon Matthew Guy MLC, Minister for Planning, Media Release,, 'A Fresh Start for Building Industry Regulation ', 29 Nov 2012; DPCD, A fresh start for building industry regulation

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Proposed new institutional landscape

The diagram below displays the proposed new institutional landscape for building, plumbing and architecture regulation. The VBA will become the only major regulatory body, governed by a Board. A new Technical Committee will be created, and two Advisory Councils (building and plumbing) will also be retained.

Notes: 1) Minister for Consumer Affairs and Minister for Finance to also recommend Board members for appointment and to have responsibility for relevant sections of the legislation (subject to the Premier's decision). Source: DPCD, Proposed governance framework for regulation of the built environment in Victoria (confidential draft)

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Summary of key changes proposed

The proposed new institutional landscape, centred around the creation of the new VBA, encompasses several major changes to the current institutional landscape. Key changes proposed (not all of which have been publicly released) are identified below:

BC, PIC and ARBV are merged together into the new VBA, with functions subsumed into the new entity.

The VBA will be constituted by a Board of at least five members, a Chair, Deputy Chair and at least three other members. The Board will have responsibility for building (including architecture), plumbing and consumer interests.

The VBA Chief Executive Officer will be appointed by the Board (with the consent of the Minister for Planning) with responsibility for the day-to-day operations, organisational structure and administration of the organisation.

Practitioner appeals on disciplinary matters will be considered by VCAT (instead of the BAB). The List that will hear appeals at VCAT remains to be decided, though VCAT will require additional funding (likely from the building levy) to take on this new function. This should improve independence with appeals on relevant regulatory decisions to be heard by a fully independent third party.

Building practitioner registration becomes the direct responsibility of the VBA (from the BPB), as does building practitioner discipline (from the BAB). The BAB and BPB will cease to operate.

A new Technical Committee is created, assuming some functions of the BAB and BRAC. Most importantly, the Technical Committee assumes BAB functions relating to the approval of requests for variation or amendment to the building regulations or code.

The BAC and PIAC remain in place, though are repositioned to sit more closely to the Minister, with DPCD to play the lead coordinating role. The VBA will present on occasions to both the BAC and PIAC as required.

Sources: DPCD, Proposed governance framework for regulation of the built environment in Victoria (confidential draft); Victorian Domestic Building Consumer Protection – Reform Strategy, December 2012

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Domestic Building Consumer Protection Framework Reform Strategy

In addition to the November 2012 changes announced through *A Fresh Start for Building Industry Regulation,* further reforms contained in the *Victorian Domestic Building Consumer Protection Framework* will also impact on the VBA. After a public consultation process in 2012, the Victorian Government has now approved a package of reforms to the domestic building consumer protection framework (though detail has not yet been publicly released). The reforms aim to improve consumer protection through strengthened regulatory standards, expanded disciplinary powers for the regulator, a stronger compulsory insurance regime, and a streamlined complaints resolution process.

The two key areas in which the domestic building consumer protection framework reform strategy will impact on the VBA are in the areas of complaints resolution and domestic building insurance, as explored below:

1 Complaint Resolution

The reform strategy creates a single central point for consumers in relation to building issues.

Chiefly, responsibility for the BACV (currently run jointly by the CAV and the BC) will become the sole responsibility of the VBA. Relevant legislative functions will be transferred to the Building Act and be administered by VBA, with oversight by the Minister for Consumer Affairs. CAV will retain its general consumer protection responsibilities, including under the Australian Consumer Law, as it applies to building matters.

The reform strategy notes that an additional VBA board member may be appointed with knowledge of dispute resolution and consumer issues. Under the new scheme, the VBA will have the power to appoint a building inspector during the conciliation process. The inspector will be able to make recommendations considered necessary to resolve the dispute (including ordering rectification by the builder) or can determine that the dispute is unable to be resolved by conciliation.

2 Domestic Building Insurance

On insurance, the reform strategy mandates a broader form of compulsory insurance. Under the new regime, insurance will be triggered where a project is incomplete, or there is a defect and:

- the builder (or building entity) is dead, disappears or is insolvent; or
- the VBA has certified that a rectification order has not been complied with following the building contract being completed or terminated (and the order has not been appealed); or
- the builder (or building entity) has been partially suspended, suspended or de-registered for refusing the VBA's demands to complete/rectify defective works and the insurer confirms the builder's unwillingness to address the issue; or
- the builder has been certified by the VBA as permanently and significantly incapacitated (or, for a building entity, there is no other registered builder that can complete the work).

This represents a widening of the current circumstances under which insurance can be accessed.

Sources: DPCD, Victorian Domestic Building Consumer Protection – Reform Strategy, December 2012 (not publicly released)

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Further changes encompassed by Reform Strategy

The reforms contained within the *Victorian Domestic Building Consumer Protection Framework* will also impact on the new VBA both in terms of operating model and organisational structure. The key institutional and governance changes proposed in the reform strategy are identified below:

1 Complaint Resolution

Responsibility for the BACV currently run jointly by the CAV and BC will become the sole responsibility of the VBA

The VBA will have the power to appoint a building inspector during the conciliation process

A VBA Board member with a relevant understanding of consumer issues will be appointed on the advice of the Minister for Consumer Affairs

2 Domestic Building Insurance

VBA staff members will have the ability to trigger insurance claims by making certifications about the current status of registered building practitioners

To ensure the interface between the VBA and the domestic building insurance function is effective, the VBA Board will have one member with substantial experience in the insurance industry, appointed on the recommendation of the Minister for Finance

Strong information flows between the VMIA and VBA on building activity and disciplinary matters will be needed

Together, both reforms envisage an additional VBA Board member being appointed with a level of understanding of the relevant new functions (e.g. consumer affairs and insurance). This could take the proposed number of VBA Board members to seven, thought it is also possible Board member may have skills relevant across multiple areas

Both changes will require the new VBA to have a stronger focus on consumer interests, rather than simply practitioner interests. This should help prevent future industry capture of the regulator and drive cultural change across the organisation.

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Sequencing of reforms

Given the volume of change encompassed by both *A Fresh Start for Building Industry Regulation* and the *Domestic Building Consumer Protection Framework Reform Strategy,* a phased approach to implementation has been agreed. This approach will see the institutional, governance and legislative changes required for the entirety of the reform agenda introduced in three phases, as set out below:

Phase 1
By 1 July 2013

- VBA established
- BC and PIC abolished
- Legislative functions of ARBV aligned to functions of VBA to facilitate later integration
- Provides additional disciplinary powers and functions to VBA

Phase 1 involves the creation of the VBA as a new entity with a new corporate governance structure, involving a Board and CEO

Phase 2
Early 2014

- ARBV abolished; functions transfer to VBA
- New Technical Committee (TC) created
- BAB, BPB and BRAC abolished - functions transferred to VBA or TC
- Appeals to VCAT introduced for certain decisions
- Strengthened VBA powers to monitor and discipline building practitioners, including surveyors

Phase 2 involves the bulk of the institutional change, with the VBA given most functions of the ARBV, BPB and BAB

Phase 3
By 1 July 2014

- Domestic Building Consumer Protection Framework reform strategy implemented
- Sole responsibility for BACV moves to VBA
- Domestic building insurance can be triggered through certification by VBA that rectification order has not been complied with

Phase 3 will see completion of the reform agenda with additional complaint resolution functions given to the VBA and reforms to domestic building insurance implemented

Source: Confidential briefing materials provided by DPCD

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Key observations for current state assessment

The key observations from the current state assessment are set out below. These observations represent some of the key features that relevant to the preparation of organisational structural options and supporting operating model recommendations discussed in the following section:

There is a complicated institutional structure across the regulatory landscape, with eight statutory bodies performing a variety of regulatory and advisory functions

This is particularly the case within the building sector, where four bodies discharge various regulatory functions despite only one body having the power to employ staff

When functions are compared within the OPERATE stage of the regulatory cycle, there is considerable overlap with multiple institutions performing functions against key roles across the building, plumbing and architectural sectors

As both the BPB and BAB are supported by the BC, there are concerns about the independence of the current process for appealing regulatory decisions of the BPB

When compared to the BC and PIC, the ARBV is a very small organisation with limited resources. The ARBV also does not audit the conduct of the architecture profession (uses complaints based scheme)

Most recent findings of external reviews have related mainly to the internal governance of the BC (integrity and probity of regulatory operations), rather than the organisational structure

The PIC and BC have been on the path to integration since the appointment of a joint Building Commission and Plumbing Industry Commissioner in 2005

A recent organisational restructure (January 2013) has led to a greater degree of integration within the BC and PIC, with an expanded range of shared services created and stronger alignment of internal structures

The addition of all BACV functions will add significant workload to the VBA, particularly in terms of responding to consumer inquiries and attempting to conciliate complaints

The organisational structure of the new VBA needs to be flexible enough to allow functions of other bodies to transition in over time, with implementation to proceed in phases

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3. Stakeholder consultation observations

Section overview

This section of the report provides a summary of the main observations received through consultations with key stakeholders.

The Minister for Planning publicly announced the consultation process in late 2012, stating that an independent contractor would be engaged to consult with identified stakeholders on issues relevant to the transition to the new VBA. A list of all stakeholders consulted is set out in the table opposed.

KPMG facilitated all consultation sessions, with representatives from both DPCD and the BC also in attendance at industry stakeholder consultations as observers.

The purpose of the consultation was to obtain stakeholder views on transition and implementation issues to inform the transition from the existing regulators to the new Authority and on options for the organisational and operating structure.

The early identification of issues will then inform implementation planning for a seamless transition to the new regulatory framework.

Observations from stakeholder consultations will be taken into account in the development and assessment of options for the future organisational structure and operating model for the new VBA.

Group	Organisation	Contact Name(s)	
Architects	Architects Registration Board of Victoria	David Sainsbery, Chair	Alison Ivey, Registrar
	Australian Institute of Architects	Alison Cleary David Parken Jon Clements	David Sainsbery Shelley Penn
	Architeam Cooperative	Peter Hogg, Chair	Cathi Colla
Builders	Master Builders Association Victoria	Brian Welch	Renee Dunstan-Ratcliff
	Housing Industry Association Victoria	Gil King	
	Property Council of Australia (Victoria)	Jennifer Cunich	
	Australian Institute of Building Surveyors	Wayne Liddy Gon Giazi	Maree Davenport Peter Jolly
	Building Designers Association of Victoria	Brian Morison, EO Kate Bell, EO	Giselle Grynbaum, EO
	Australian Institute of Quantity Surveyors	Michael Manikas, CEO Kalvis Jaunalksnis	Trevor Main
	Engineers Australia	Glenda Graham	John McIntosh
	Building Practitioners Board	Bill Russell, Chair	Murray Baker
	Building Appeals Board	Gerard Coutts, Chair Les Schwartz	David Barber
	Builders Collective of Australia	Phil Dwyer	
	Building Advisory Council	Bill Kusznirczuk	
	Building Regulations Advisory Committee	Geoff Woolcock	Melissa Chandler
	Building Commission	Dennis Hogan Greg Hyams	Robyn Horskins
	Victorian Municipal Building Surveyors Group	Ashley Hansen	Steven Hempenstall
Plumbers	Plumbing Industry Advisory Council	Ken Gardner, Chair	
	Plumbing Trades Employees Union	Earl Setches	Paddy McCrudden
	National Fire Industry Association	Carmel Coate	David Beaumont
	Air Conditioning and Mechanical Contractors Association of Victoria	David Eynon Peter Staedler	Sumit Oberoi
	Fire Protection Association of Australia	Matthew Wright	Andrew Mierzwa
	Plumbing Industry Commission	Gerard O'Farrell	

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Key messages

1. Most stakeholders noted that establishment of the VBA presents a significant opportunity to improve Victoria's building industry and increase collaboration and cooperation between the architecture, building and plumbing industries. Most acknowledged the need for reform, improved compliance, accountability and transparency throughout the building industry, particularly in light of findings from VAGO and the Ombudsman.
2. Notwithstanding the above, many stakeholders expressed concern regarding the process of amalgamating three discrete regulators into a single body. In particular, stakeholders acknowledged the need to share information, resources and improve the effectiveness of the ARBV, PIC and the BC, but remained concerned about the potential loss of industry expertise and identity. Significant emphasis was placed on the degree of industry-specific expertise required in undertaking audit and compliance check functions, assessing applicants for registration purposes and assessing complaints.
3. Several stakeholders noted that the development of industry-specific Advisory Committees to report to the Board of the VBA may provide opportunities to retain a sense of industry identity and a conduit for discussions concerning industry, the VBA and DPCD.
4. Stakeholders highlighted the need for the structure of the VBA to be flexible to enable the inclusion of additional professions and trades of significance to the building industry in the future. Key examples cited included the potential inclusion of the electricians, carpenters and other trades.
5. Some stakeholders noted that application of a 'siloed' structure in the new VBA is unlikely to reap the possible benefits of amalgamation of the ARBV, PIC and BC.

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Feedback on existing operating model

The existing operating model for building regulation is considered to be dysfunctional and failing to achieve desired industry or public policy objectives. Stakeholders have expressed concern that there is a lack of understanding as to the role and purpose of the BC, as well as a perceived lack of independence between the BPB and the BC.

1. Stakeholders indicated that many architects, builders and plumbers have a strong perception that the ARBV, BC and PIC are responsible for protecting the industry's interests. Moving towards a regulator-focused role demonstrates a substantial shift in both the public and industry perception of each organisation, and will need to be carefully managed and communicated.
2. The current myriad of boards, processes and appeal bodies operating in the building industry is confusing for consumers and practitioners. Particular concerns were expressed in relation to hearings by the BPB which were described as 'subjective and inconsistent' and the fact that the BAB does not receive reasons for termination(s) or decisions made, limiting the transparency and accountability of the appeals process.
3. Several stakeholders expressed a degree of concern regarding operation of the BC and, to a lesser extent, the PIC. Stakeholders frequently commented that the BC has been operating in an advocacy capacity, seeking to advance and develop the building industry's interests, rather than focusing on regulation, compliance and audit functions. This has created a degree of confusion with the building industry and the broader public as to the appropriate role of the BC, as well as its statutory body affiliates.
4. The co-location and sharing of resources and funding of the BC and the BPB contributes to a perceived lack of independence between the two bodies.
5. Stakeholders have noted that communication channels within the BC are strained. In particular, the flow of information from the Building Commissioner to other persons/bodies appears to be limited, restricting both the degree of deliberation afforded to important decisions and the people who are consulted in the decision-making process.
6. A number of stakeholders consulted expressed concern regarding the lack of regulation of Project Managers working in the building industry. Although Project Managers have traditionally operated in the commercial space, there are an increasing number operating in the domestic building industry, managing relationships between builders, architects, engineers, etc. Traditionally, this has been the role of the architect who assumes professional liability for the building process, however Project Managers undertake similar responsibilities without assuming liability.
7. Stakeholders in the plumbing and architecture industries spoke favourably of their accreditation, registration and disciplinary functions and processes, noting that they are effective, transparent and efficient, and may be used as a model for the VBA.

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Transition challenges identified

Stakeholders have generally welcomed the establishment of the VBA, though have expressed some concern regarding the potential for industry skills, identity and expertise to be lost in a 'one-stop-shop'.

1. Plumbing and architecture industry representatives expressed a degree of concern in relation to the 'might' of the building industry. Most notably, the plumbing and architecture representatives consulted noted that there are significant nuances and industry-specific issues which may be overlooked when amalgamating the ARBV, BC and PIC into a single organisation.
2. A limited number of stakeholders expressed some concern regarding the manner in which the transition and establishment of the VBA will be communicated. These stakeholders reflected on their lack of understanding regarding establishment of the VBA and indicated that future communications should be transparent, clear and comprehensive to ensure all those affected by the transition are aware of the responsibilities and obligations.
3. Several stakeholders expressed concern regarding the proposed use of funding which has, to date, been collected and used by individual regulators. Establishment of the VBA presents opportunities for funding to be 'pooled'. The larger (both in terms of members and financial contribution) building industry has expressed a strong preference that funds received through the building levy be hypothecated to activities contributing towards building regulation activities, and not used to assist the plumbing and architecture industries.
4. Several architecture industry representatives consulted indicated that traditionally, there has been a significant degree of independence between architects and builders. This is largely reflective of the fact that traditionally, architects have been responsible for representing the client during the construction process, and for managing the relationship(s) between the client and the builder and other tradespeople. There is some concern that this independence may be lost through incorporation of the BC, PIC and ARBV into a single organisation.
5. Several stakeholders expressed a view that it was important that industry 'representation' be retained on the Board of the new VBA. However, when this opinion was further tested, it was conceded that the key issue was ensuring that the VBA Board had members with substantial skills and expertise relevant to the industries being regulated, rather than acting as a 'representative' of those industries. Concerns were accepted about the dual accountability challenges that would be presented by having 'representative' Board members responsible for pursuing both the best interest of their relevant industry and the VBA more broadly.

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Opportunities for improvement under new regulatory arrangements (1)

Stakeholders emphasised the need to ensure that the VBA is first and foremost a regulator, rather than focusing on industry promotion or other activities. Going forward, it has been suggested that there is a need for the VBA to maintain and further develop relationships with similar national and international regulation, registration and accreditation bodies to ensure that existing mutual recognition of qualifications and professional networking opportunities continue.

1. Ideally, the VBA Board should seek to operate in the broader public interests (particularly in the interests of consumers), rather than adopt an industry promotion approach. Key functions of the VBA may include:
    - Complaints and disciplinary matters;
    - Registration and licensing;
    - Approval of specified courses; and
    - Accreditation of CPD providers and courses.
2. There were mixed views as to whether the organisational structure should be designed predominantly on industry lines (as is the case with the current structure) or along more functional lines, allowing greater integration and collaboration across industries. Some stakeholders noted that there is a need to maintain a degree of expertise and specialisation in respect of each of the industries being amalgamated (i.e. 'industry identity'), with one stakeholder commenting that rather than adopting a 'silo' approach, the retention of industry skills and expertise may be achieved through the use of a series of Advisory Committees who develop proposals for consideration and review by the Board.

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Opportunities for improvement under new regulatory arrangements (2)

3. One stakeholder highlighted the importance of selecting a prudent CEO who demonstrates sufficient discretion and insight to be able to discern which matters are to be brought to the Board and the need for an open and transparent relationship between the Board and the CEO. Key matters to be brought to the Board's attention may include:
    - Major projects (and their risks);
    - Programs;
    - Financials; and
    - Significant staffing issues and potential appointments.
4. Stakeholders suggested that there is a need for the VBA to focus on the 'core business' of regulation, rather than ancillary matters. 'Core business' may include (but is not limited to):
    - Enforcement, monitoring and compliance;
    - Education;
    - Health and safety matters; and
    - Amenity.
5. Some stakeholders with professional affiliations (particularly architects and engineers) noted that they maintain a number of state, national and international relationships associated with mutual recognition of qualifications, competency standards and accreditation of courses. They identified a need to maintain and further develop these relationships to ensure continued professionalism and opportunities within these industries.
6. Going forward, several stakeholders noted that the publication of deregistered practitioners/those who are subject to inquiries is likely to assist in promoting transparency throughout the industry and will further promote access to and sharing of information.

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Sector specific issues

Sector-specific issues identified focused on the distinction between 'professions' and 'trades', and the need to maintain a degree of industry identity and professionalism during the amalgamation process.

1. A number of stakeholders indicated that amalgamation of various industries into a single regulator may result in a lessening of professionalism associated with specific occupations, particularly in situations where university qualifications are required. Building Surveyors, Quantity Surveyors, architects and engineers all expressed a degree of concern that the professionalism accorded to their respective industries may be lost, along with the importance placed on CPD, adherence to Codes of Ethics/professional conduct standards, etc. which is not necessarily observed or practiced in the plumbing or building industries. Not all stakeholders, however, shared the view that the regulator should be responsible for promoting industry identity. Many commented that this was the role of industry associations.
2. The architecture industry expressed some concern that its networks and relationships with various national and international organisations may be lost following the integration of the ARBV within the VBA. Mutual recognition schemes, accreditation of university courses and setting of assessment examinations are key functions undertaken by the ARBV and in cooperation with the Architects Accreditation of Council of Australia and the Federal Government.
3. Representatives from the plumbing industry expressed some concern regarding the operation of the Plumbing Insurance Scheme in situations where plumbing work has been undertaken by a builder. Plumbing representatives noted that whilst they are not the principal operators in the building industry, frequently, they bear a greater responsibility as the Plumbing Insurance Scheme covers 'workmanship', a broader scope of work than that covered under Building Insurance.

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4. Designing the future VBA

Overview of section

This section draws on observations from the current state assessment and stakeholder consultations to consider the future organisational structure and operating model for the new VBA.

It moves to identify a preferred future organisational structure option for the VBA and a series of supporting operating model features which could be pursued to support the new structure. The three main areas covered in this section are:

Evaluative criteria

This section first outlines the evaluative criteria which guided development of potential organisational structural models. The criteria were also used to develop recommendations regarding the operating model required to support the new organisational structure

The evaluative criteria, validated through consultations with DPCD and the Minister for Planning, aimed to capture the key drivers behind the creation of the VBA and the need for best practice regulation.

Presentation and evaluation of structural options

Drawing on the agreed evaluative criteria, three organisational structural options for the new VBA have been designed.

All options draw on input received as part of the consultation process, as well as evidence of other jurisdictional models and best practice approaches to organisational design.

The key features, benefits and challenge of each option are explored, before each options is evaluated against the criteria to identify a preferred organisational structure.

Supporting operating model recommendations

Using the preferred organisational structure, this section then makes a number of supporting recommendations regarding the broader operating model which could be pursued by the new VBA.

This includes recommendations on broader administrative and internal governance issues for which potential improvements have been identified to support the new organisational structure.

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Drivers for structural change

Before moving to considering organisational structures for the new VBA, it is worthwhile considering the key drivers precipitating the need for structural change. As explored below, there are four identified drivers prompting organisational change, commencing with the creation of a brand new organisation with a revised corporate governance model and functional responsibilities.

Creation of new organisation	The VBA will be a new statutory entity with a new corporate governance model and revised functions – there is a need to revise the organisational structure to incorporate new functions and changed operating procedures, as well as promote new models of accountability aligning with the new corporate governance model
Identified deficiencies in regulatory regime	Recent identification of deficiencies (including integrity and probity concerns) in the regulatory regime (particularly for the building permit framework) provides a prompt to re-examine the structure and operating model, with a view to identifying solutions which would improve regulatory practice and promote sharing of best practice
Impact of national harmonisation agendas	Several national harmonisation projects (NOLS, introduction of National Construction Code, mutual recognition of architectural registration) have emerged in recent years – this is an opportune time to re-evaluate organisational structures and operating models to ensure alignment with national regulatory developments
Convergence between sectors	The contemporary construction landscape has seen a greater degree of convergence between sectors – for instance, building energy efficiency standards are intrinsically linked to plumbing practices. Operating models and organisational structures can be revisited to determine the need for integration and connectivity

In addition, vacancies in senior positions within the BC and PIC make this an ideal time to progress structural change

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Evaluative criteria

Drawing on relevant observations from the current state assessment and stakeholder consultations, evaluative criteria were developed to guide assessment of potential structural options and ultimately the identification of a preferred structural option for the VBA. The evaluative criteria were also used to develop recommendations on the operating model needed to support the preferred structure option.

The evaluative criteria aim to capture the key drivers behind the creation of the new Authority, potential opportunities for improvement identified during the current state assessment, and best practice organisational design principles.

Clear alignment to core regulatory functions	• Structure promotes a culture of regulatory excellence and continuous improvement, with the new VBA keeping abreast of the latest developments and best practice approaches to regulation • Pursues objective of achieving a more rigorous and consistent regulatory framework, with clear accountabilities in place • Structure enhances integrity and probity in the exercise of core regulatory functions • Staff profile aligns to core regulatory functions and key regulatory priorities • Structure seeks efficiency and effectiveness improvements by grouping together related functions to take advantage of synergies and promote adoption of leading regulatory practice
Strengthened consumer focus	• VBA enhances independence as a regulator by reducing opportunities for undue stakeholder influence • Risks of industry capture minimised through organisational design, with balanced focus including consumer interests • VBA promotes industry excellence to drive consumer confidence in the building, plumbing and architecture sectors • More accessible and outward looking structure for consumers and practitioners
Promotes early intervention and resolution	• Structure emphasises a focus on prevention and early resolution of regulatory issues • Promotes greater sharing of information and resources to deliver improved outcomes such as a reduced incidence of appeals and disputes • Clear access points in place for both consumers and practitioners to raise concerns • Staff resources allocated to promote early intervention and resolution of consumer complaints and other issues
Retention of industry expertise	• Structure emphasises the need for industry knowledge and technical skills • Is easy to understand where areas of industry expertise sit within the organisational structure • Structure is externally focused and accessible for key stakeholders
Enhancing flexibility and adaptability	• Structure incorporates flexibility to allow the Authority to adapt to changes in policy direction and regulatory approaches • Structure is responsive to potential reform directions and emerging priorities, minimising the need for future change • Improves the flexibility with which resources can be moved to address urgent or priority issues as they emerge

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Three organisational structure options have been prepared

Drawing on the evaluative criteria prepared, along with observations from stakeholder consultations, three potential organisational structure options have been prepared for the new VBA.

The three options were prepared to reflect different potential structural models described during stakeholder consultations. The first option seeks alignment by subject matter (or sector), where divisions are structured by way of the main areas of expertise or subject matter knowledge. The second option seeks alignment by function, with divisions or branches of the organisation created in alignment with the main categories of functions performed. The third options represents a balanced structure, combining elements of sector and functional alignment.

Note that all structural options presented in this section assume full implementation of reform strategies relevant to the new VBA – interim structural considerations are covered in next section in the context of implementation considerations.

Source: KPMG analysis

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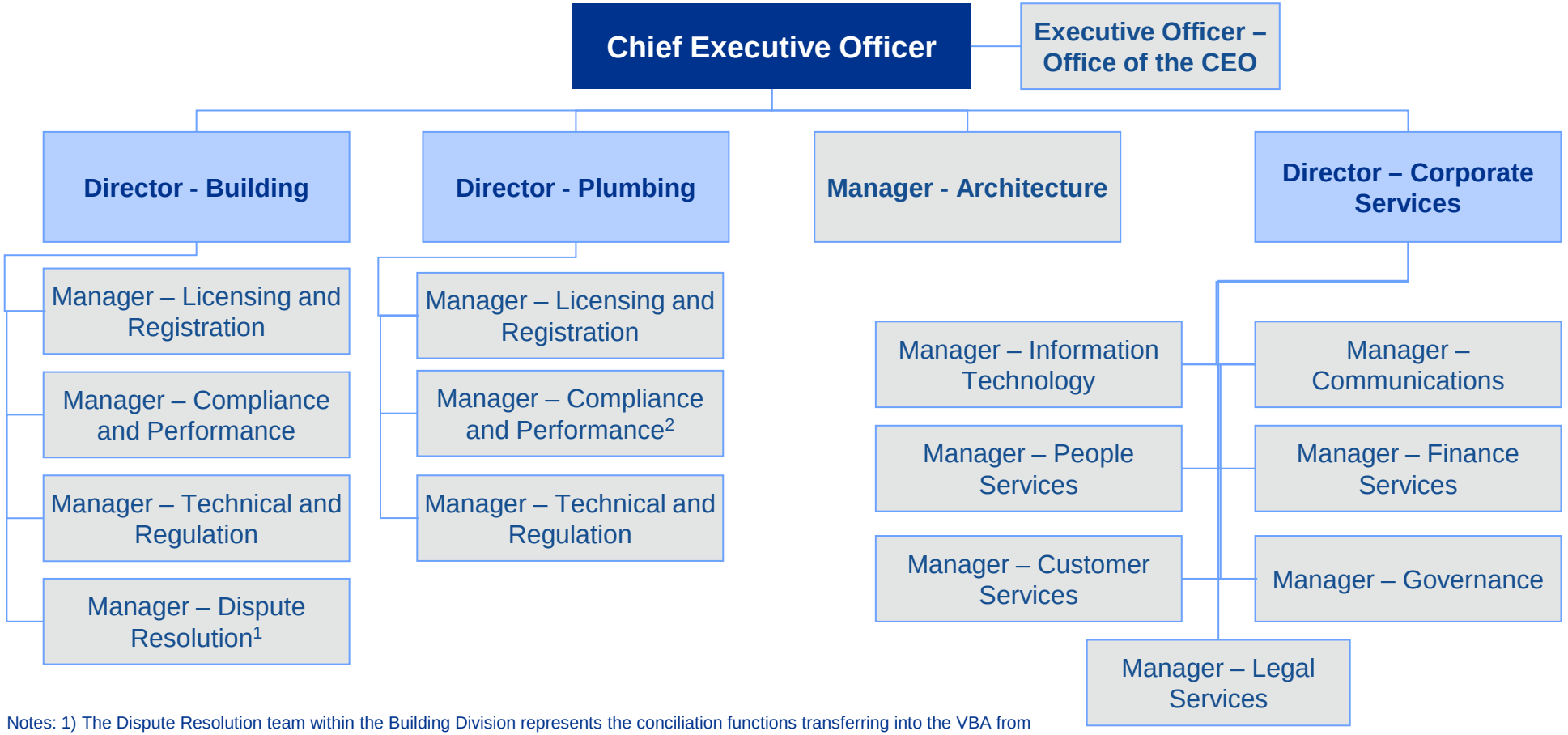
Option A – Sector aligned structure

Option A presents a sector aligned structure, with separate divisions retained for regulatory functions relevant to the building, plumbing and architecture sectors. A Corporate Services Division then provides shared corporate support to the three sector specific divisions:



Notes: 1) The Dispute Resolution team within the Building Division represents the conciliation functions transferring into the VBA from CAV. 2) The Plumbing Division does not have a separate Dispute Resolution division due to the lack of a conciliation function – disputes are directed to investigators within the Compliance and Performance team for action if warranted.

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Option A – Main roles and responsibilities

Building	Plumbing	Architecture	Corporate Services	Office of the CEO
Licensing and Registration • Registration and licensing of building practitioners • Maintain register of building practitioners • Building practitioner development, including the CPD program **Compliance and Performance** • Inspection and investigation of building practitioners to ensure compliance • Commence disciplinary proceedings against building practitioners following investigations • Oversee audit framework for completed building work • Manage BACV inspection service **Technical and Regulation** • Oversee building regulations to ensure framework delivers adequate consumer protection • Monitor and evaluate impact of regulation on the building industry • Research and development into building regulation and best practice • Provision of technical advice • Technical input to training programs • Support Technical Committee **Dispute Resolution** • Conciliation of domestic building complaints received from consumers	**Licensing and Registration** • Registration and licensing of plumbing practitioners • Managing and enhancing the registration system and process • Plumbing practitioner development, including the CPD program **Compliance and Performance** • Inspection and investigation of plumbing practitioners to ensure compliance • Discipline of practitioners • Manage audit framework for certified plumbing work **Technical and Regulation** • Oversee plumbing regulations to ensure framework delivers adequate consumer protection • Monitor and evaluate impact of regulation on the plumbing industry • Research and development into plumbing regulation and best practice • Provision of technical advice • Technical input to training programs	• Determine qualifications and experience required for registration as an architect • Assess and accredit courses in architecture • Examination of persons applying for registration as an architect • Registration of architects, including issuing and cancelling certificates of registration • Regulate the professional conduct of architects, approved partnerships and approved companies • Investigate and undertake disciplinary proceedings for offences against the *Architects Act 1991* • Approve, cancel and suspend architectural partnerships and companies • Investigate breaches of title provisions and allegations of non-architects "holding out" to be architects	**Information Technology** • IT resources and infrastructure management • Records and knowledge management **People Services** • Human resource services (payroll, employee relations, industrial relations, recruitment, performance management) • Organisational development **Finance Services** • Financial management and reporting • Accounts payable/receivable • Internal audit • Facility management (incl. fleet, premises, procurement) • Collect, analyse, audit building permit levy and building information **Communications** • Strategic communications to practitioners, consumers and stakeholders (publications, media) • Sponsorship and events • Brand management **Customer Services** • Process all incoming enquiries and complaints • Administration and advisory support to resolve or refer enquiries, complaints and case files **Governance** • Corporate and business planning • Regional services • Oversee project management framework • Oversee monitoring and evaluation framework **Legal Services** • In-house counsel • Prosecutions (including on disciplinary matters) • Manage involvement in court, VCAT proceedings	• Board secretariat support (including support to Board subcommittees) • Oversee framework for maintaining quality of briefing materials • Oversee key high-level strategic relationships with department and major stakeholders • Coordinate strategic projects

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Option A – Key features, benefits and challenges

Key features

- Organisational structure has four divisions and separate Office of the CEO, creating five direct reports for the CEO
- Building Division retains all current functions (licensing and regulation; compliance and performance (including practitioner disciplinary actions); and technical and regulation) and will gain dispute resolution functions from CAV (BACV conciliation and complaints handling)
- Plumbing Division continues to perform all existing functions of the PIC
  - Internal structures of Plumbing and Building Divisions aligned with team names made consistent
- Separate Architecture Division (headed by Manager only given size) performs former regulatory functions of the ARBV
- Corporate Services Division remains as shared service across both building and plumbing divisions, providing finance, IT, HR, legal services, communications, customer services and governance (corporate and business planning)
  - Shared services also provided to Architecture Division
  - Customer Services team is central processing point for all enquiries and complaints across all three sectors
- New Office of the CEO created. The Office will provide secretariat support to the Board, coordinate organisation-wide strategic projects, and oversee high-level stakeholder relationships, retaining close links to the CEO
- Legal Services remain within Corporate Services Division, with no direct links to the CEO

Benefits

- Structure promotes retention of industry identity and expertise – likely to be more accepted by industry stakeholders and existing staff
- Provides clear avenues for industry stakeholders to engage with VBA
- Similar to current structure so will involve minimal disruption to organisation if implemented
- Alignment of structures below division level should aid flexibility
- New Office of the CEO should strengthen support provided to the CEO and provide consistent central point for oversight of key stakeholder relationships
- Economies of scale are achieved through shared services functions across all divisions, including centralised customer services function

Challenges

- Structure retains three separate divisions for the three sectors regulated by the VBA – this could promote internal silos and limit flexibility and adaptability
- Does not promote cultural change – could be perceived as sending a message that only minimal change is required to operations and regulatory approach
- Provides only limited protection for risk of industry capture
- Does not strongly promote improvements in probity and integrity in the exercise of core regulatory functions
- Lack of clear consumer focus - industry remains focus of structure
- Retention of sector aligned structure limits economies of scale that can be obtained through grouping together similar functions
- Significant differences in size between divisions
- Building Division, especially once dispute resolution functions transfer from CAV, will be a very large division – query whether a single Director could oversee the entire range of functions to be performed

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Option A - Assessment against criteria

Evaluative criteria	Assessment	Comments
Clear alignment to core regulatory functions		• Structure remains aligned to sectors - does not promote sharing of regulatory best practice across sector lines • Senior staff likely to be appointed on basis of sector knowledge, rather than best practice regulatory functional knowledge • Does not strongly promote enhanced probity and integrity in performance of core functions • Does not encourage functional specialisation (e.g. movement towards best practice risk-based approaches) across whole organisation
Strengthens consumer focus		• Structure retains existing industry focus, and does not promote a changed mindset/culture • Consumer dispute resolution functions located within Building Division • Shared Customer Service team will provide central processing point for all consumer enquiries, and the ability to focus on best practice customer service across sectors • Separate regulatory approaches and processes for building, architecture and plumbing sector likely to continue, leading to inconsistencies for consumers and practitioners
Promotes early intervention and resolution		• Separate sector based compliance, performance and dispute resolution areas will not promote efficiencies of scale and quicker processing/resolution of problems • Customer Service team provides central processing of consumer complaints –focus on complaint handling in specialist team will hopefully promote early intervention and resolution
Retention of industry expertise		• Strong industry focus retained, with separate divisions for each sector regulated • Industry stakeholders have clear contact points within the VBA • Sector aligned structure may enhance the ability of the VBA to retain technical industry expertise within each of the Building, Plumbing and Architecture Divisions
Enhancing flexibility and adaptability		• Alignment of unit titles within Plumbing and Building Divisions will give the ability for staff to identify with other performing similar functions for different sectors • Strong sector silos still in place through three distinct divisions

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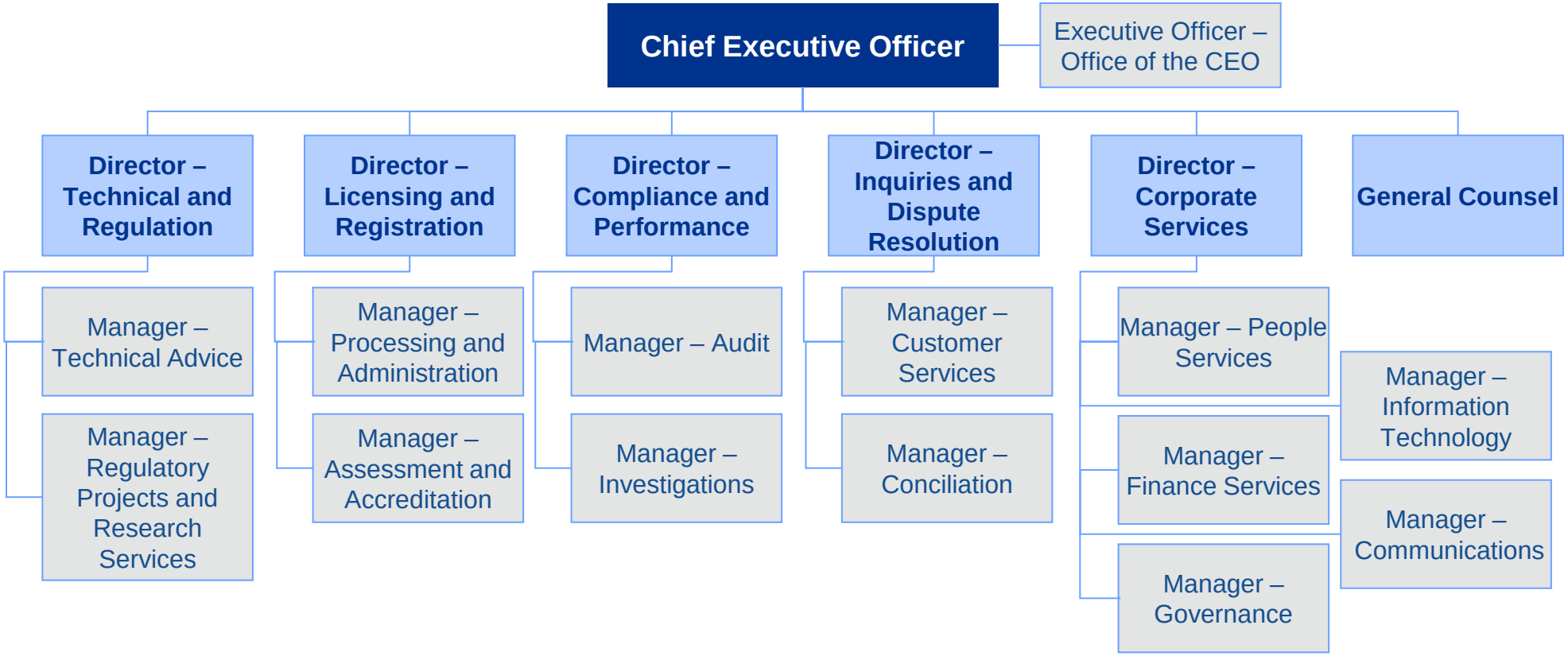
Option B – Functionally aligned structure

Option B reflects a functionally aligned structure, with a higher degree of integration across the building, plumbing and architecture sectors. Divisions are prepared in accordance with the main regulatory functions performed by the new VBA, with a separate Corporate Services Division again providing shared corporate services across the whole organisation.



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Option B - Main roles and responsibilities

Technical and Regulation	Licensing and Registration	Compliance and Performance	Inquiries and Dispute Resolution	Corporate Services	General Counsel	Office of the CEO
Technical Advice • Provision of technical advice • Technical input to training programs • Support Technical Committee • Represent Authority on national technical committees **Regulatory Projects and Research Services** • Oversee plumbing regulations to ensure framework delivers adequate consumer protection • Monitor and evaluate impact of regulation on regulated industry • Research and development of building and plumbing regulation and best practice • Regulate the professional conduct of architects, approved partnerships and approved companies	**Processing and Administration** • Process registration and licensing applications from practitioners (building, plumbing and architecture) • Maintain register of all registered and licensed practitioners • Administer examination processes (logistics, on-line tests) • Identify and refer complex licensing and registration issues to assessment team **Assessment and Accreditation** • Oversee framework for examining practitioners for competency (set tests, assess results) • Manage and enhance the registration system and process • Assess and accredit courses in architecture • Determine complex registration and licensing applications • Approve architectural partnerships and companies • Practitioner development, including CPD programs	**Audit** • Manage audit framework for certified plumbing work • Oversee audit framework for completed building work **Investigations** • Inspection and investigation of plumbing practitioners to ensure compliance • Inspection and investigation of building practitioners to ensure compliance • Manage BACV inspection service • Investigate and undertake disciplinary proceedings	**Customer Services** • Process all incoming enquiries and complaints • Administration and advisory support to resolve or refer enquiries, complaints and case files **Conciliation** • Conciliation of domestic building complaints received from consumers	**People Services** • Human resource services (payroll, employee relations, industrial relations, recruitment, performance management) • Organisational development **Finance Services** • Financial management and reporting • Accounts payable/receivable • Facility management (incl. fleet, premises, procurement) • Collect, analysis and audit building permit levy and building information **Information Technology** • IT resources and infrastructure management • Records and knowledge management **Governance** • Corporate and business planning • Regional services • Oversee project management framework • Oversee monitoring and evaluation framework **Communications** • Strategic communications to practitioners, consumers and stakeholders (publications, media) • Sponsorship and events • Brand management	• In-house counsel • Prosecutions (including on disciplinary matters) • Manage involvement in court, VCAT proceedings	• Board secretariat support (including support to Board subcommittees) • Oversee framework for maintaining quality of briefing materials • Internal audit • Oversee key high-level strategic relationships with department and major stakeholders • Coordinate strategic projects

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Option B – Key features, benefits and challenges

Key features

- Organisational structure has five divisions and separate General Counsel and Office of the CEO, creating seven direct reports for the CEO
- Structure organised on functional lines, with four divisions having distinct regulatory functional responsibilities
- Technical and Regulation Division provides technical advice and regulatory research and development across all sectors
- Licensing and Registration Division responsible for registering building, plumbing practitioners and architects
  - Processing and Administration team handles routine registrations and logistical issues
  - Assessment and Accreditation team assesses exam results and complex registrations
- Compliance and Performance Division oversees audit program for completed building and plumbing work and has central investigations function (including responsibility for practitioner discipline) across all sectors
- Inquiries & Dispute Resolution Division receives all enquiries, complaints and conciliates building disputes
  - Customer Service team is central processing point for all enquiries and complaints across three sectors
- Corporate Services Division provides shared services across all divisions, including finance, HR, corporate governance, communications and IT support
- Office of the CEO created, providing support to both the Board and the CEO
- Separate General Counsel reporting direct to CEO gives greater prominence to legal services

Benefits

- Structure emphasises strong functional alignment, allowing regulatory best practice to be pursued within each function
- Enhanced focus on core regulatory functions, regardless of sector, including stronger integrity and probity in performance of core functions
- Economies of scale can be achieved through grouping like functions across sectors
- Stronger focus on consumers through separate Inquiries and Dispute Resolution Division able to promote early dispute resolution
- New Office of the CEO responsible for overseeing stakeholder relationships across all sectors, allowing clear access point but reduced potential for industry capture
- Enhanced flexibility with resources able to be diverted to priority activities across sectors within functional divisions
- All divisions roughly equivalent in size

Challenges

- May result in loss of industry expertise within organisation given primary focus on functional responsibilities
- Structure loses industry identity – may be resisted by stakeholders
- Relies on similar processes being in place within functions across all three sectors, otherwise integration will be difficult
- Complexity of legislative/regulatory base may reduce potential economies of scale possible through full integration of functions
- Will need to retain some industry differentials within investigations and technical advice teams given different approaches across sectors
- Prescription of funding arrangements in legislation may make this degree of functional alignment difficult to achieve
- Need strong working relationships and processes in place to allow smooth transition between two licensing and registration teams
- Involves significant change from current structure and may be resisted by staff

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Option B - Assessment against criteria

Evaluative criteria	Assessment	Comments
Clear alignment to core regulatory functions		• Enhanced focus of structure on core regulatory functions, rather than industry alignment • Will allow senior VBA executive members to focus on regulatory best practice within their functional area of expertise, including promotion of integrity and probity in operations • Should promote more consistent and robust regulatory processes across sectors • Will allow sharing of regulatory best practice across sectors for key functions
Strengthens consumer focus		• Specialist Inquiries and Dispute Resolution Division created to act as central point for receipt of consumer and practitioner enquiries and complaints • Co-location of conciliation and complaint handling functions within the same division will allow holistic focus on consumer protection • Functional structure reduces the possibility for industry capture (or perception of industry capture) of sector-aligned divisions
Promotes early intervention and resolution		• Specialist Inquiries and Dispute Resolutions Division established with focus on early intervention and resolution of complaints/issues raised by consumers and practitioners • Sharing of best practice in compliance and audit functions should allow greater ability to identify and proactively address problems before complaints arise
Retention of industry expertise		• Structure does not refer to industries regulated by the organisation • Staff aligned to sectors may resist movement to functionally aligned structure • Given more generalist nature of functional alignment, may be more difficult to attract and retain industry expertise, particularly in senior roles • Stakeholders will react negatively if industry expertise is perceived to have been lost
Enhancing flexibility and adaptability		• Functionally aligned structure should allow resources to be spread across sectors depending on workloads • Reduction in sector alignment can allow staff to be more confident in working across multiple sectors, thus enhancing adaptability and efficiency • Resources can be flexibly allocated within functions to areas of priority/emerging need

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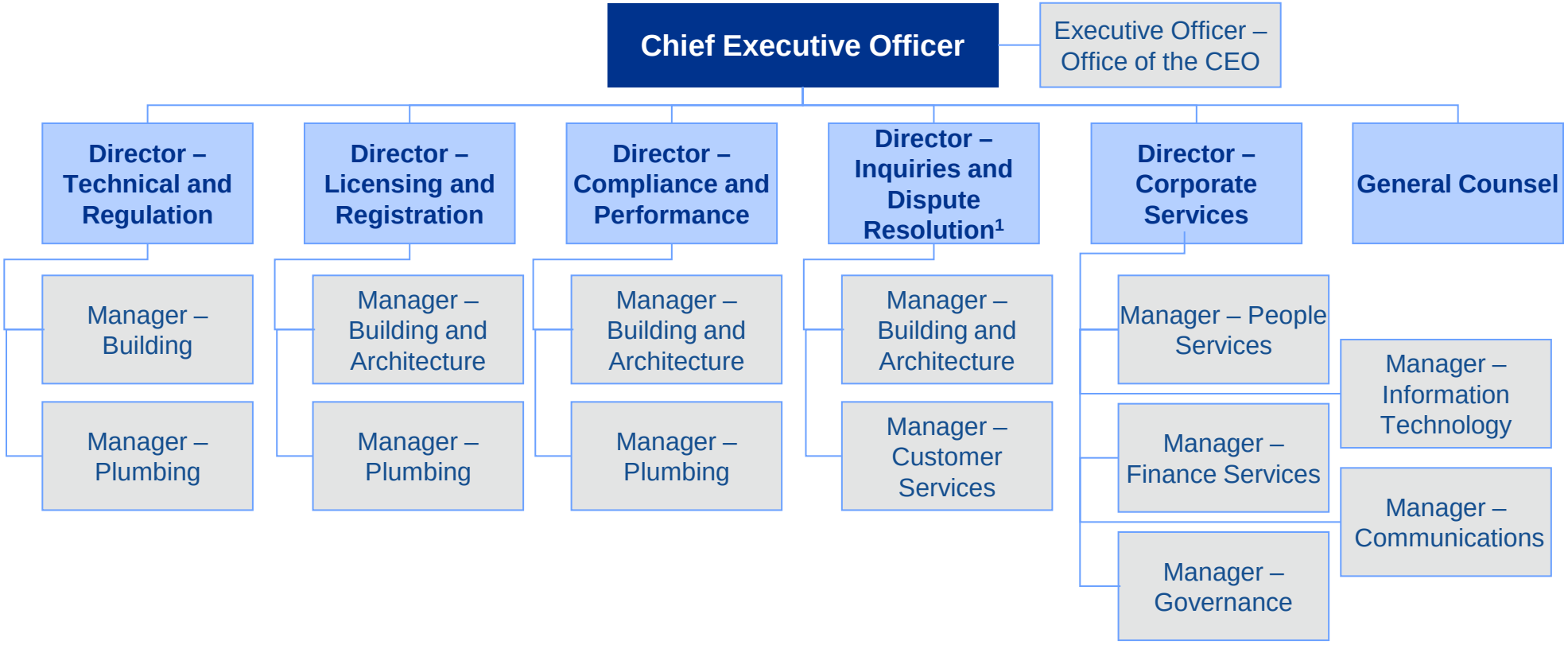
Option C – Balanced structure

Option C is a balanced structure – divisions are organised along functional lines, but within each division there are separate building and architecture and plumbing teams. A separate corporate services division and an Office of the CEO provide support across the whole of the organisation.



Note: 1) For the plumbing sector, disputes received by the Customer Services team and deemed to warrant VBA resolution are sent directly to an inspector within the Compliance and Performance Division for further action. No conciliation function is performed, as exists for the building sector

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Option C - Main roles and responsibilities

Technical and Regulation	Licensing and Registration	Compliance and Performance	Inquiries and Dispute Resolution	Corporate Services	General Counsel	Office of the CEO
Building • Oversee building regulations to ensure framework delivers adequate consumer protection • Monitor and evaluate impact of regulation on the building industry • Research and development of building regulation • Provision of technical advice • Technical input to training programs • Support Technical Committee **Plumbing** • Oversee plumbing regulations to ensure framework delivers adequate consumer protection • Monitor impact of regulation on the plumbing industry • Research and development of plumbing regulation • Provision of technical advice • Technical input to training programs • Represent Authority on NPRF and PCC	**Building and Architecture** • Registration and licensing of building practitioners • Maintain register of building practitioners • Building practitioner development, including the CPD program • Assess and accredit courses in architecture • Examination of persons applying for registration as an architect • Registration of architects, including issuing and cancelling certificates of registration • Approve architectural partnerships and companies and cancel or suspend an approval granted to the same **Plumbing** • Registration and licensing of plumbing practitioners • Managing and enhancing the registration system and process • Plumbing practitioner development, including the CPD program	**Building and Architecture** • Inspection and investigation of building practitioners to ensure compliance • Oversee audit framework for completed building work • Manage BACV inspection service • Investigate and undertake disciplinary proceedings **Plumbing** • Inspection and investigation of plumbing practitioners to ensure compliance • Discipline of plumbing practitioners • Manage audit framework for certified plumbing work	**Building and Architecture** • Conciliation of domestic building complaints received from consumers • Regulate the professional conduct of architects, approved partnerships and approved companies **Customer Services** • Process all incoming enquiries and complaints • Admin and advisory support to resolve or refer enquiries, complaints and case files	**Information Technology** • IT resources and infrastructure management • Records and knowledge management **People Services** • Human resource services (payroll, employee relations, industrial relations, recruitment, performance management) • Organisational development **Finance Services** • Financial management and reporting • Accounts payable/receivable • Facility management (incl. fleet, premises, procurement) • Collect, analysis and audit building permit levy and building information **Governance** • Corporate and business planning • Regional services • Oversee project management framework • Oversee monitoring and evaluation framework **Communications** • Strategic communications to practitioners, consumers and stakeholders (publications, media) • Sponsorship and events • Brand management	• In-house counsel • Prosecutions (including on disciplinary matters) • Manage involvement in court, VCAT proceedings	• Board secretariat support (including support to Board subcommittees) • Oversee framework for maintaining quality of briefing materials • Internal audit • Oversee key high-level strategic relationships with department and major stakeholders • Coordinate strategic projects

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Option C – Key features, benefits and challenges

Key features

- Organisational structure has five divisions and separate Office of the CEO, creating six direct reports for the CEO
- Structure organised on functional lines, with four divisions having distinct regulatory functional responsibilities
  - However, within divisions there are separate teams
- Technical Regulation Division contains different teams for building and plumbing sectors
- Licensing and Registration Division has two teams, with building and architecture registration functions performed by the same team, and plumbing registration performed by a separate team
- Separate building and plumbing teams within overarching Audit and Compliance Division (which also has responsibility for practitioner discipline)
- Inquiries and Dispute Resolution Division has single building and architecture team, with responsibility for conciliating eligible domestic building disputes and investigating title breaches for architecture sector
- Corporate Services Division provides shared services across all divisions, including finance, HR, corporate governance, communications and IT support
  - Division also contains shared customer services team, which provides central processing point for all incoming enquiries and complaints
- Office of the CEO created, providing support to both the Board and the CEO
- Separate General Counsel reporting direct to CEO gives greater prominence to legal services

Benefits

- Enhanced focus on core regulatory functions at the Director level
- Structure promotes functional focus over sector focus, allowing regulatory best practice to be pursued by Directors across each function
- New structure should promote greater integrity and probity in core functions
- Structure allows retention of industry identity and expertise at team level within Divisions – likely to be more accepted by industry stakeholders and existing staff
- Separate Inquiries and Dispute Resolution Division able to promote early dispute resolution (though limited to domestic building disputes only)
- New Office of the CEO responsible for overseeing stakeholder relationships across all sectors, allowing clear access point but reduced potential for industry capture
- All divisions roughly equivalent in size

Challenges

- Director-level structure loses industry identity – may be resisted by stakeholders. In particular, architects are likely to resist being grouped with the building sector across the structure
- May result in loss of industry expertise within organisation at senior levels given primary focus on functional responsibilities
- May require creation of additional executive positions
- Flexibility more limited than Option B with teams remaining separated along sectoral lines within divisions
- Structure retains mostly separate teams for the three sectors – will need to work to ensure that silos are not created
- Retention of sector-aligned teams limits economies of scale that can be obtained through grouping together similar functions

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Option C - Assessment against criteria

Evaluative criteria	Assessment	Comments
Clear alignment to core regulatory functions		• Encourages functional specialisation at senior levels, with Directors to promote best practice regulatory approaches within their functional areas of expertise across all sectors • Senior positions focus on core regulatory functions, rather than industry alignment • Directors can promote sharing of best practice across sectors in relation to their respective regulatory functions, including stronger focus on maintaining integrity and probity in operations
Strengthens consumer focus		• Separate Inquiries and Dispute Resolution Division established • Shared Customer Services team provides central processing point for all consumer enquiries, and the ability to focus on best practice customer service across sectors • Separate regulatory approaches and processes for building, architecture and plumbing sector likely to continue, potentially making the system harder to navigate for consumers and practitioners
Promotes early intervention and resolution		• Customer Services team provides central processing point for all consumer complaints – ability to focus on best practice enquiry and complaint handling within specialist team will hopefully promote early intervention and resolution • Separate Inquiries and Dispute Resolution Division will target early resolution of building disputes • Separate sector based compliance, investigation and dispute resolution teams will not promote efficiencies of scale and quicker processing/resolution of problems
Retention of industry expertise		• Industry focus retained at team level, with separate sector-aligned teams remaining within divisions • Retention of elements of sector focus may enhance the ability of the VBA to retain technical industry expertise within identified building, plumbing and architecture teams • Given more generalist nature of functional alignment senior positions, it may be more difficult to attract and retain industry expertise • Stakeholders may feel senior leaders do not have sufficient industry expertise
Enhancing flexibility and adaptability		• Alignment of regulatory functions at executive level may allow Directors to redeploy staff across different sectoral teams within their division/s • Strong sector silos still in place through continuation of separated teams within divisions • Staff not encouraged through the structure to learn how to perform function across multiple sectors

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Summary of assessment of options against evaluative criteria

Based on assessment against the agreed prioritised evaluative criteria, *Option B: Functionally aligned structure* was assessed as the leading structural option for the future VBA, though with *Option C: Balanced structure* only marginally behind:

Option	Key features	Benefits	Challenges	Assessment
Option A – Sector-aligned structure	• Four divisions and separate Office of the CEO • Building Division retains all functions of BC and gains dispute resolution functions from Consumer Affairs Victoria (CAV) • Plumbing Division perform all PIC functions • Internal structures of Plumbing and Building Divisions aligned • Separate Architecture Division performs regulatory functions of ARBV	• Structure promotes retention of industry identity and expertise – likely to be more accepted by stakeholders and existing staff • Similar to current structure so will involve minimal disruption to organisation if implemented • Alignment of structures below division level should aid flexibility	• Structure retains divisions for each sector – could promote internal silos and limit flexibility Provides only limited protection for risk of industry capture • Does not fully enhance integrity and probity of core regulatory functions • Retention of sector-aligned structure limits economies of scale that can be obtained • Significant differences in divisional size	
Option B – Functionally -aligned structure	• Five divisions and separate Office of the CEO • Structure organised on functional lines • Licensing and Registration Division responsible for registration of all practitioners, with separate teams for routine and complex registrations • Compliance and Performance Division has separate audit and investigation (including discipline) teams operating across all sectors • Inquiries and Dispute Resolution Division receives all enquiries and complaints and conciliates eligible building disputes	• Structure emphasises strong functional alignment, allowing regulatory best practice to be pursued within each function • Enhanced focus on core regulatory functions with emphasis on integrity and probity • Economies of scale can be achieved through grouping like functions across sectors • New Office of the CEO provides support to Board and CEO (incl. stakeholder relations) • Enhanced flexibility with resources able to be diverted to priority activities across sectors	• May result in loss of industry expertise given focus on functional responsibilities • Structure does not take account of legislative differences in regulatory processes and procedures across sectors • Involves significant change from current structure and may be resisted by staff who perceive themselves as sector aligned • Prescription of funding arrangements in legislation may make this degree of functional alignment difficult to achieve	
Option C – Balanced structure	• Five divisions and separate Office of the CEO • Structure organised on functional lines, with four divisions focused on core regulatory functions • Sector-aligned teams remain within divisions • Building and architecture sectors grouped together into teams • Inquiries and Dispute Resolution Division has building and architecture team, with responsibility for conciliating domestic building disputes and investigating title breaches for architecture sector	• Structure promotes functional focus while still maintaining specialist sector expertise, allowing enhanced focus on core regulatory functions at the Director level and strengthened integrity and probity • Structure designed in recognition of the legislative differences in regulatory practices • New Office of the CEO provides support to Board and CEO (incl. stakeholder relations) • Likely to be more accepted by stakeholders	• Director-level structure loses industry identity – may be resisted by stakeholders. • May result in loss of industry expertise within organisation at senior levels given focus on functional responsibilities • Flexibility more limited with teams remaining separated along sectoral lines within divisions • Retention of sector-aligned teams limits economies of scale that can be obtained through grouping together similar functions	

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Accounting for the current degree of regulatory alignment across sectors

As noted on the previous page, Options B and C were both assessed as rating strongly against the evaluative criteria prepared, with *Option B: Functional structure* rating slightly higher.

Given the close positioning of these two structural options, KPMG looked to the current practicality of implementing both structures.

We noted that implementation of Option B involves a high level of functional alignment, and as such would be reliant on the existence of similar regulatory processes and procedures being in place across all three regulated sectors. However, as noted during the current state assessment and stakeholder consultations, at present there is little integration between sectors due to a combination of historical, cultural and legislative factors.

Given current legislative arrangements and internal systems in place, we believe that *Option C: Balanced Structure* is most likely to lead to improved regulatory practices and improved outcomes for industry, consumers and the broader community in the immediate term. We do not believe that current systems, staff skills sets, and regulatory guidelines are able to facilitate movement to a fully functional structure, such as that encompassed by Option B at this point in time. If Option B was implemented in the short term, we believe the lack of similar regulatory processes and procedures would likely see continued siloed operations within the new functional divisions. It is likely that within functional teams, unrecognised informal groupings of staff (shadow team structures) will emerge as staff continue to identify only with a specific sector (building, plumbing or architecture).

Option C provides real opportunity to share learnings and better practice across sectors, and encourages the creation of a strong single regulatory culture. Importantly however, it still places importance on industry expertise and specialist knowledge which will be essential to retain in the short term given distinct regulatory approaches and legislative frameworks will continue to operate across sectors.

While *Option C: Balanced Structure* is the best 'fit-for-purpose' model given current arrangements, we believe that it may be possible over time, and with greater alignment of legislative arrangements, internal systems and staff skill sets, to move to a more fully functional structure, as represented by Option B.

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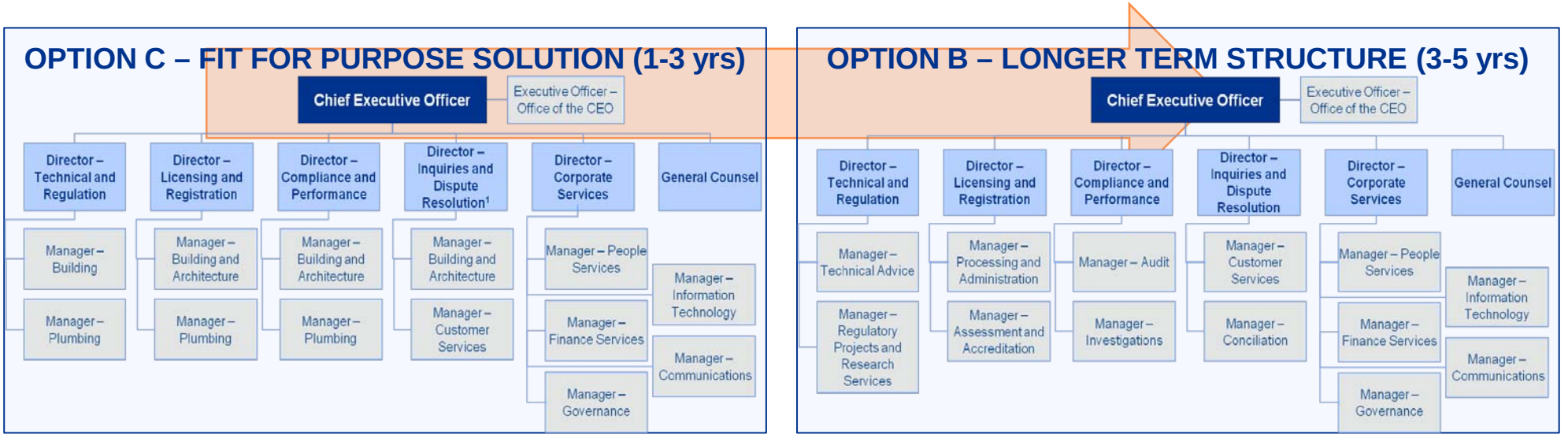
Transitioning over time to a fully functional structural option

It is recommended that Option B represent a longer term structure to which the VBA could progressively move towards as legislative frameworks and regulatory processes and procedures are aligned across sectors. The process of regulatory alignment has already commenced and will be a priority for the new VBA as the organisation seeks to move towards best practice across all sectors.

Option C provides a fit for purpose option for the new VBA to implement immediately. This balanced structure has integrated senior positions but retains sector-aligned team structures within each division.

This structure will allow for continuation of existing differences in regulatory procedures and processes across sectors (some of which are enshrined in legislation), but will allow for movement towards greater integration over the longer term.



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Location of specific functions within new structure (1)

Several specific functions that were identified during stakeholder consultations as either not sitting neatly within current structures or as being subject to a degree of confusion or overlap between multiple areas of the existing BC/PIC. Some specific functions were also identified that were unique to the existing ARBV, with concerns about how they would transition to fit within the broader VBA structure.

The table below and overleaf lists each specific functions identified, and discusses how they have been positioned within the preferred structural options.

Specific function	Positioning
Building levy and information	This function has been moved from the Building Division to sit within the Finance Services team. It was identified as chiefly a finance function (levy collection) which could benefit from a degree of independence from the Building Division as the focus of this function is on funding the VBA, rather than consumer protection.
Stakeholder Relations	High-level stakeholder relation functions have been moved to sit within the Office of the CEO. The aim is to elevate stakeholder relations to the level of the CEO, enabling strong oversight of all stakeholders and more consistent treatment across divisions. This team would also have a dual focus on both consumers and industry, providing a stronger balance between interests. Communications functions would continue to operate for both consumers and regulated practitioners within the Corporate Services Division, though with strong linkages to the Office of the CEO.
National body participation / special projects	Participation on national regulatory committees and forums and pursuit of special projects (such as NOLS and mutual recognition reform agendas) would be the responsibility of the Technical and Regulation Division. Teams within this division would draw in other expertise from across the VBA for specific projects as required.
Technical services	Technical Advice staff (including staff that currently support the BAB in approving modifications to regulations) remains within the Technical and Regulation Division, though can be called on to provide expertise to other divisions (particularly the Compliance and Performance Division). The Technical Advice team may liaise with insurers to identify emerging patterns in building defects.
Title breaches (architecture)	This function would sit within the Compliance and Performance Division, allowing this team to take a holistic focus on all offences relevant to the *Architects Act 1991.* Complaints received about potential title breaches would be forwarded to the Compliance and Performance Division for action, with input from General Counsel if required.

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Location of specific functions within new structure (2)

Specific function	Positioning
Course accreditation	Accreditation of architecture courses which can lead to registration would be performed within the Licensing and Registration Division, with VBA staff able to draw on external architectural experts to assist in making decisions.
Communications	As noted on the previous page, communications functions would be separated from high-level stakeholder relations, which would become the responsibility of the Office of the CEO. Communications would have a stronger focus on formal communications related to the VBA's statutory roles, including practice notes, interpretations of regulations, changes to legislation and the Building Code, and information about recent prosecutions.
Customer services	The consumer/practitioner call centre would sit with the Customer Services team, but would be a shared function across all sectors. This will allow specialist expertise to be developed to handle the over 30,000 calls expected annually.[1]
Education and training	The People Services team would be responsible for internal staff education and training. It is proposed that other divisions would be able to progress training initiatives for practitioners (and consumers if necessary) on issues that are deemed to warrant a specific campaign. Training expertise from the People Services team could be used to assist in designing training materials and organising logistical matters.
Practitioner database	The Licensing and Registration Division would be responsible for developing and maintaining a practitioner database containing information regarding: • General practitioner details (e.g. the practitioner's name, scope of work and other matters) which may be accessed by the public • Specifics of Rectification Orders which may be accessed by insurers and practitioners • Linkages between building practitioners and contracting entities
Insurance policy database	The Finance Services team team responsible for collecting the building levy would be required to maintain an up-to-date database containing details regarding insurance policies issued. It is anticipated that insurers would upload details of relevant insurance policies issued, and the VBA would supplement this information with details of contracting entities and associated registered builders.

Source: CAV Annual Report 2011-12

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Features of an operating model that supports the new structure

In addition to the new organisational structure, there are several features of a VBA operating model which can be pursued to help the organisation achieve its objectives as expressed through the developed evaluative criteria.

The following pages discuss a series of supporting operating model recommendations, linked against the five evaluative criteria, which have identified following stakeholder consultations and the current state assessment. An overview of the supporting operating model recommendations is presented below:

Supporting operating model recommendations

Clear alignment to core regulatory functions	• Aligning regulatory processes and procedures • Establishing a Statement of Expectations • Promoting transparent operations • Stronger audit and oversight of delegations
Strengthen consumer focus	• Improving consumer access to the VBA • Maintaining a strong working relationship with CAV • Leadership and cultural change to strengthen the consumer focus and reduce potential for industry capture
Promotes early intervention and resolution	• Improved information sharing across teams • Promoting strong interactions with insurers, including the VMIA • Clear linkages between dispute resolution and compliance teams
Retention of industry expertise	• Accessing technical expertise • Maintaining strong yet appropriate industry stakeholder relations via the CEO, rather than at multiple entry points within the organisation • Clarifying the role of Advisory Councils
Enhancing flexibility and adaptability	• Streamlining revenue streams and financial management requirements • Aligning regulatory processes and procedures • Facilitating special project teams to access expertise from across divisions

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Operating model recommendations to promote rigorous regulation

The main objective of the new VBA should be to ensure strong alignment to core regulatory functions, focusing on regulatory best practice. The operating model needs to support the organisational structure in pursuing this objective, including by way of the below three actions.

Clear alignment to core regulatory functions			
Aligning regulatory processes and procedures	**Establishing a Statement of Expectations**	**Promoting transparent operations**	**Stronger audit and oversight of delegations**
As noted previously, alignment of regulatory processes and procedures will (where appropriate) be a critical initial priority for the new VBA. By aligning processes and procedures, the VBA can promote adoption of regulatory best practice across all sectors and achieve efficiency gains through grouping together now aligned functions. Aligned processes will also help to promote consistent interactions with practitioners across each of the building, plumbing and architecture sectors. Creating an operating model with streamlined regulatory processes shared across all sectors will also allow the VBA to move to the longer-term structural option (Option B).	The Minister may direct DPCD to prepare a Ministerial Statement of Expectations to outline the performance and governance objectives of the VBA. Statements of Expectation are formal, public documents that articulate the Government's priorities and objectives for an organisation. In particular, the Statement can target specific priorities in matters of regulatory governance and practice. The first Statement of Expectations could be developed in consultation with stakeholders and the VBA itself, promoting stronger buy-in and awareness of the regulatory priorities and focus areas being set by Government for the building, plumbing and architecture sectors.	Transparency is integral to the conduct of a strong regulatory regime. Increasing transparency will both promote confidence in the regulator and should increase levels of voluntary compliance. By making available all regulatory guidelines, policies and strategies, and by publishing regulatory outcomes and priorities, the regulated industry has a greater awareness of the current focus of the VBA and what needs to be done to ensure compliance. Clear and transparent information helps VBA staff to assess and, where necessary, enforce, regulatory requirements and helps practitioners to assess the extent to which they are meeting expectations. Enhanced transparency can reduce administrative costs for the VBA through greater voluntary compliance.	Recent external reports highlighted integrity and probity concerns in existing regulatory bodies. While the new VBA and proposed organisational structure will enhance independence and limit potential for industry capture, the Board and CEO should develop a strengthened system of oversight of regulatory delegations (both decision-making and financial). This could include creation of a stronger Board Audit Committee (with an annual audit plan), a greater internal audit presence, a stronger role for the General Counsel, or enhanced internal processes and procedures to ensure appropriate oversight of regulatory decision-making.

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Operating model recommendations to strengthen consumer focus

The operating model of the new VBA will be at the forefront of strengthening the consumer focus of the organisation. Structural solutions will need to be comprehensively reinforced by strong operating model features, including the below.

Strengthen consumer focus		
Improving consumer access to the VBA	**Maintaining a strong working relationship with CAV**	**Leadership and cultural change**
Changes to the operating model will need to occur to improve consumer access to the VBA. To date, regulatory bodies (BC, PIC and ARBV) are perceived to have been largely focused on regulated practitioners, rather than the broader public. Consumer access to the VBA will particularly need to improve, given dispute resolution functions transferring from CAV. Promotion of the role of the VBA from the consumer perspective will be a critical first step, with a public campaign likely to be required. A specialised call centre equipped to be the first point of reference for all practitioner and consumer queries and complaints should be established. This call centre would have close links to specialist conciliators, aiming to promote early intervention and resolution of disputes.	The new VBA will need to develop a strong working relationship with CAV, given CAV will retain general consumer law responsibilities under the Australian Consumer Law (ACL). The ACL includes: • A national unfair contract terms law covering standard form consumer contracts; • A national product safety law and enforcement system; and • A national law guaranteeing consumer rights when buying goods and services. Domestic building consumer disputes could fall under the ACL. A Memorandum of Understanding, strong communication channels between the VBA and CAV will be necessary to ensure consumer complaints are only taken forward by one body and that no duplication occurs.	To strengthen the consumer focus and reduce the potential for industry capture, strong leadership will be required to drive cultural change across the new VBA. As noted from stakeholder consultations, there is a perception that existing regulatory bodies are very close to the industries they are regulating. Changes are required to promote a stronger consumer ethos within the new VBA, with a balancing of both consumer and industry interests. Key corporate and business planning documents could be amended to reflect this changed focus. Aligned and consistent senior leadership, particularly from the new CEO, will be necessary to strengthen the consumer focus of the organisation and avoid ongoing perceptions of industry capture.

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Operating model recommendations to promote early resolution

Promotion of early resolution of issues and disputes needs to be supported by more than just structural solutions. The operating model for the new VBA will need to reinforce the focus on early intervention and resolution, including through the three recommendations below:

Promotes early intervention and resolution		
Improved information sharing across teams	**Promoting strong interactions with insurers, including the VMIA**	**Clear linkages between dispute resolution and compliance teams**
Early intervention and resolution of issues requires greater collaboration and information sharing across divisions. In particular, the imparting of information, knowledge and/or insights ascertained by one division to other areas of the Authority can be used to identify trends, improve practices and processes and promote prompt dispute resolution. There will need to be seamless information sharing across the Licensing and Registration Division and Customer Service, Conciliation and Investigation teams on consumer complaints. Strong administrative processes and records management will assist here. All VBA staff involved in addressing consumer complaints should see themselves as part of one integrated function, rather than distinct teams.	The VBA will have to maintain strong relationships with existing insurers across the building and plumbing sectors. Most notably, as the principal insurer currently providing Domestic Building Insurance (DBI) for Victoria's building industry, a strong and collaborative relationship will need to be developed between the VMIA and VBA. Under the proposed new DBI scheme, the VBA will issue certificates which will then trigger the potential for affected consumers to claim insurance. Strong interactions between the VBA and VMIA (and other insurers that enter the market) will be necessary to promote information flows and ensure insurance issues are considered holistically. This should promote improved, consumer-focused outcomes and swift resolution of domestic building disputes.	Facilitating linkages between the dispute resolution and compliance teams enables prompt identification of trends, easy access to information and expertise regarding potential breaches, leading to increased opportunities for early intervention and resolution of issues. As noted previously, VBA conciliators and inspection staff will need to work together to promote swift resolution of disputes. While retaining the independence of inspectors, the combination of specialist technical knowledge and dispute resolution knowledge will hopefully be able to come together seamlessly for the ultimate benefit of consumers and practitioners. Formal processes and guidelines for interactions between these two areas could be drawn up to promote clear roles and responsibilities.

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Operating model recommendations to retain industry expertise

Retaining industry expertise will need to be a key focus of the operating model, given the preferred organisational structure is not as aligned to industry sectors. Three operating model recommendations which can assist the VBA to retain industry expertise are:

Retention of industry expertise		
Accessing technical expertise	**Maintaining strong yet appropriate industry relations**	**Clarifying the role of Advisory Councils**
The provision of technical expertise is of significant importance to the VBA in developing best practice approaches to building, plumbing and architecture regulation and industry practice. Moving towards a functionally-aligned or balanced structure may result in a loss of industry expertise due to the increased focus on functional responsibilities. This loss of industry expertise can be mitigated through the establishment of expert panels comprised of representatives from each industry who may be consulted on industry-specific technical matters. The VBA could call on members of the expert panel (much like the BC directs issues to the current BAB) to provide technical expertise on specific disputes or issues, though the VBA would remain the final decision-maker.	Bodies representing the interests of the architecture, building and plumbing industries and associated practitioners play a significant role in shaping the practice and regulation of these industries. However, the role and influence that these groups have must be carefully managed to ensure they do not unduly influence a transparent, consistent regulation function. Creation of an Office of the CEO responsible for managing relationships with key industry bodies will aim to maintain strong relationships while promoting the independence of the regulatory decision-making. This would promote consistency in relations across all three sectors and allow for a balancing of consumer and industry concerns at the most senior level.	We note that Advisory Councils for the building and plumbing sectors will continue to operate to facilitate input from key stakeholders on the regulatory regime. We note that the Advisory Councils will be repositioned to report directly to the Minister for Planning (through DPCD). We believe that this arrangement should clarify the role of the Advisory Councils as providing input to policy and regulatory reform processes, without providing the opportunity for stakeholders to become involved in operational matters of the VBA. It is envisaged that the Advisory Councils will continue to provide a formal, transparent means of communication and feedback to enable key issues, reform proposals and policy matters to be raised by stakeholders in an appropriate manner.

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Operating model recommendations to enhance flexibility and adaptability

Three recommendations are outlined below to assist the new VBA to enhance flexibility and adaptability across the regulatory operating model used by the organisation.

Enhancing flexibility and adaptability		
Streamlining revenue streams and financial management requirements	**Aligning regulatory processes and procedures**	**Facilitating special project teams to access expertise from across divisions**
As noted in the current state assessment, existing legislation requires the maintenance of several separate accounts for types of revenue received by the regulator. In addition, separate authorising provisions apply to enable expenditure of money from each account. These prescriptive financial management requirements limit the flexibility with which resources can be directed toward emerging priority areas. They will also increase the administrative burden on the new VBA and promote a siloed perspective with funding streams viewed separately for each sector. As discussed further on the following page, it is suggested that the opportunity be taken to streamline current financial management arrangements to enhance future flexibility and adaptability.	As previously observed, reviewing, and where appropriate and possible, aligning regulatory processes and procedures across sectors should be an initial focus of the new VBA. In addition to being able to promote convergence towards best practice regulation across each of the three sectors, Aligning regulatory processes and procedures will enhance the flexibility and adaptability of the organisation. It will also mean that VBA staff are able to work across multiple sectors. Familiar processes should allow staff to feel comfortable transitioning between sectors. This in turn will allow the VBA more flexibility in allocating resources to emerging priorities, regardless of which sector they relate to.	Flexibility and adaptability will also be furthered through the ability to establish time limited teams to progress key projects, with project team members to be assembled from across VBA divisions. It is anticipated that special project teams could be formed to address issues such as NOLS and emerging regulatory hot spots (e.g. bushfire shelters) which may require multiple skills and additional resourcing from across the organisation for defined time periods. These working groups would report directly to a specified Director for a defined period of time. This would also ensure that other staff are not distracted from ongoing regulatory activities.

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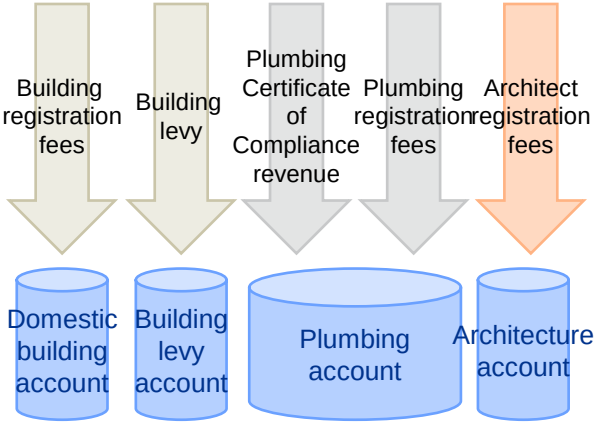
Financial management considerations

As noted in the current state assessment, the existing *Building Act* contains clear directions as to how revenue streams are to be managed by regulatory bodies. This legislative prescription limits the flexibility of the regulator to respond to emerging priorities. In the movement to a single regulator, this challenge will become more acute.

Consultations revealed strong views from certain stakeholders about the need to ensure that revenue derived from certain industries is expended only on regulatory functions relevant to that industry. There is a degree of nuance to this viewpoint however, as some stakeholders accepted that building levy revenue and plumbing certificate of compliance revenue was effectively raised from consumers, and as such could be used for broader regulatory purposes.

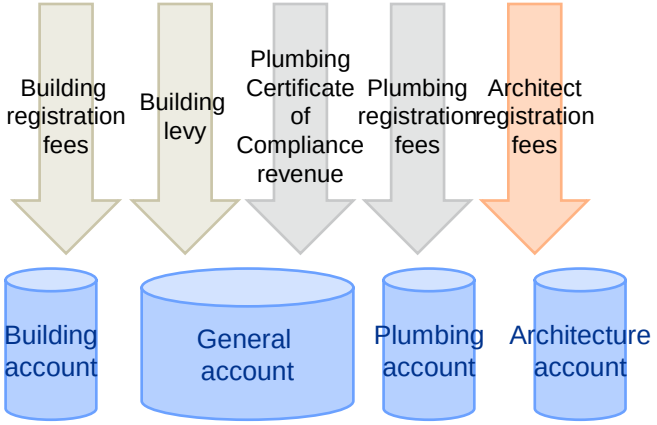
There are three options which the new VBA could consider for future financial management of revenue streams, namely:

1 – Status quo



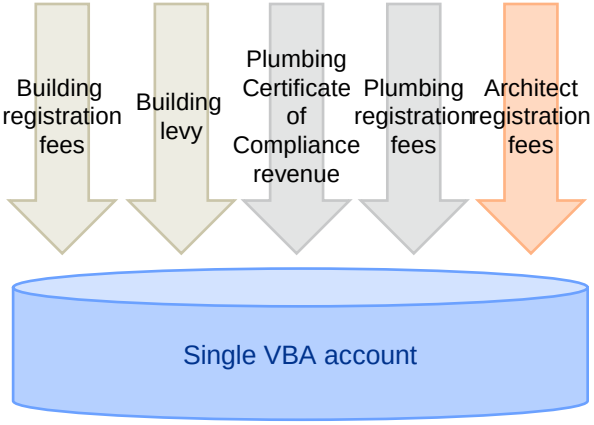
- No change from current status quo
- Will be accepted by stakeholders
- Additional administrative burden for VBA
- Does not promote integrated approach, limiting flexibility and adaptability

2 – Separate accounts for practitioner fees



- More flexibility in spending bulk of revenue
- Likely to be accepted by most stakeholders
- Administrative burden retained for VBA, with need to track funds separately
- Still constraints in place on flexibility

3 – Consolidated single account



- VBA has fully flexibility in allocating resources
- Likely to be resisted by stakeholders
- Administrative burden for VBA removed

Note: Illustration are stylistic only and do not reflect all separate revenue streams and accounts, particularly within the building sector

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5. Implementation considerations

Overview of section

This section provides an overview of the main implementation considerations that need to be taken into account in introducing a new organisational structure for the VBA. It has three main parts, namely:

- Transitional issues given the phased implementation of the new VBA;
- Key considerations in implementing structural change; and
- Ensuring lasting structural change for the new VBA.

Transitional issues

This section includes consideration of how the organisational structure might progress throughout the three phases of implementation for the new VBA. As the VBA will progressively be receiving new functions and responsibilities on its journey to full maturity, the organisational structure will evolve over time before full implementation is reached.

Practical considerations

This section also considers a number of the key considerations that should be taken into account when implementing a new organisational structure within the public sector. The practical considerations relate to the steps necessary to successfully implement structural change, ensuring strong staff and stakeholder engagement to avoid common risks.

Promoting lasting change

Finally, this section outlines a number of guiding principles which should underpin any structural change initiative, before setting out three specific actions which can be taken to secure the buy-in of new VBA leaders. Given this report has been prepared without the involvement of future VBA leaders, extra effort will be required to ensure the incoming leadership team, particularly the CEO, are aligned to the directions set out in this report.

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Sequencing of reforms

As noted previously, the new VBA will only receive all intended future functions by 1 July 2014. This staged implementation approach needs to be taken into account when considering timeframes for structural change. The illustration below provides an overview of the proposed sequencing of reforms which will eventually create a VBA will all intended future functions, with key structural implications observed for each phase:

Phase 1
By 1 July 2013

- VBA established
- BC and PIC abolished
- Legislative functions of ARBV aligned to functions of VBA to facilitate later integration
- Provides additional disciplinary powers and functions to VBA

• New Authority created
• Structures supporting BAB and BPB needs to continue, but can be aligned to preferred structure

Phase 2
Early 2014

- ARBV abolished; functions transfer to VBA
- New Technical Committee (TC) created
- BAB, BPB and BRAC abolished - functions transferred to VBA or TC
- Appeals to VCAT introduced for certain decisions
- Strengthened VBA powers to monitor and discipline building practitioners, including surveyors

• Architectural functions transition into VBA structure
• Structures supporting BAB and BPB can be removed

Phase 3
By 1 July 2014

- Domestic Building Consumer Protection Framework reform strategy implemented
- Sole responsibility for BACV moves to VBA
- Domestic building insurance can be triggered through certification by VBA that rectification order has not been complied with

• Consumer protection functions move to VBA
• Inquiries and Dispute Resolution Division fully operational

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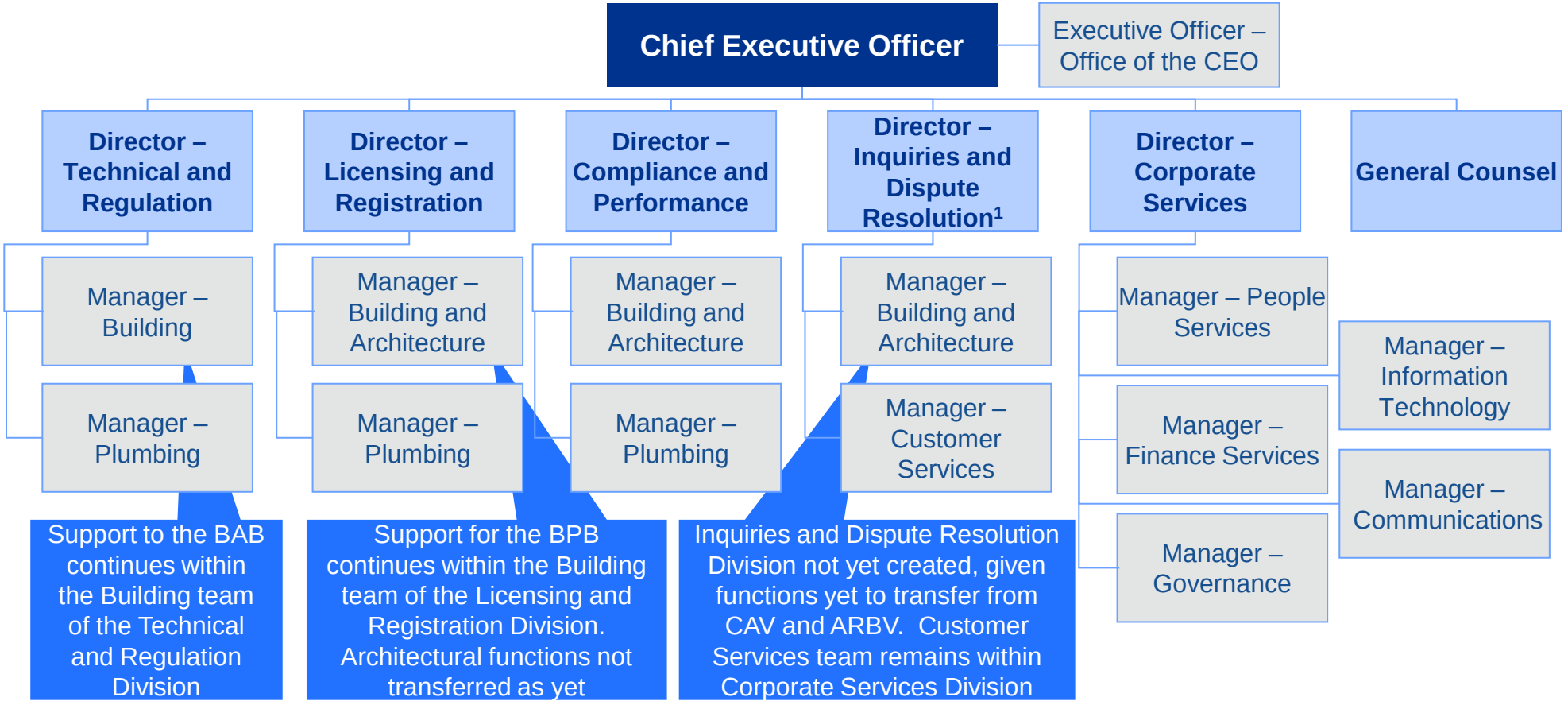
Interim structural option – phase 1

During the initial phase, the new VBA is officially created, though no new functions are transferred to the Authority. The preferred structure can be implemented, though teams supporting the BPB and BAB will need to be retained given both statutory bodies will continue to operate. Architectural responsibilities and domestic building consumer dispute resolution functions remain outside the new VBA, meaning elements of the preferred organisational structure would not be implemented during this phase, as noted below.



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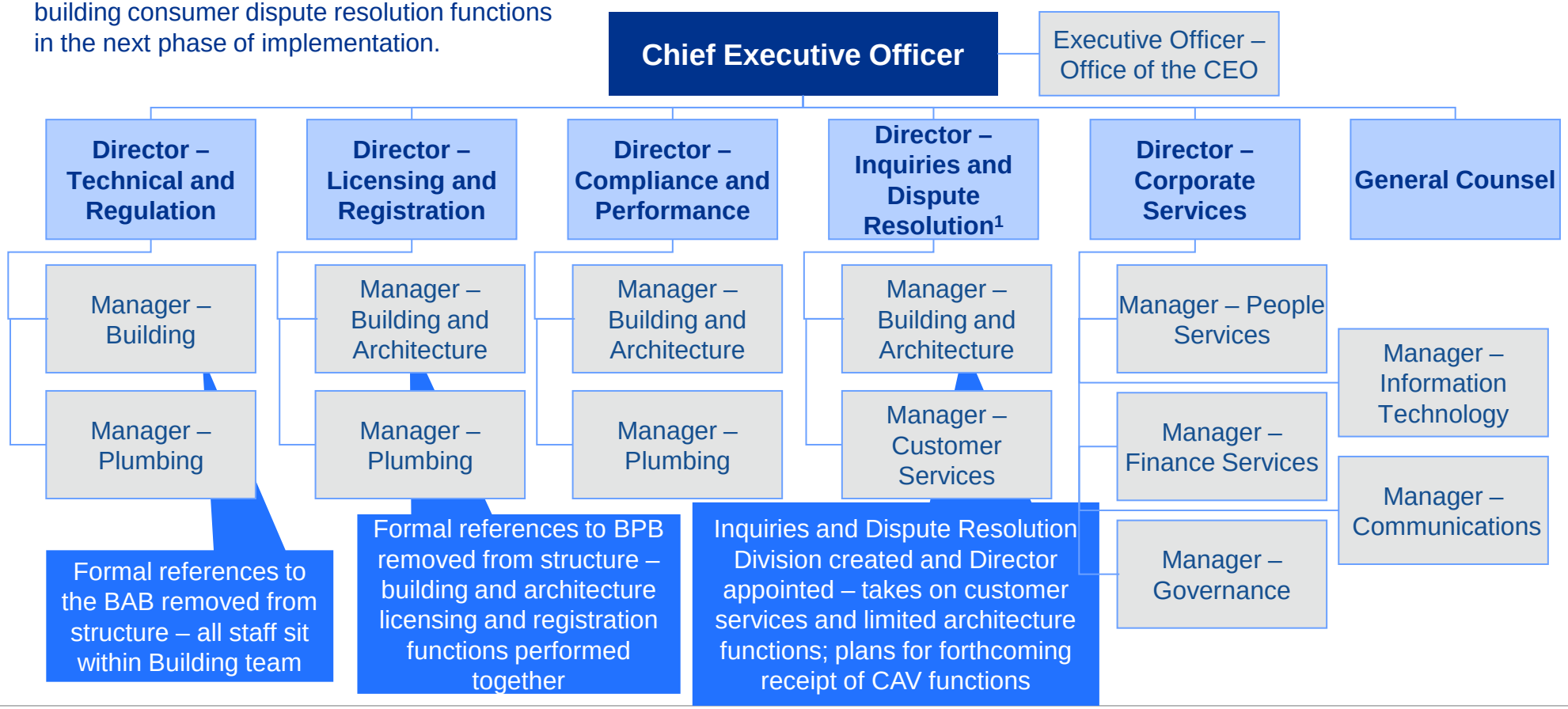
Interim structural option – phase 2

During phase two, architectural functions transition to the new VBA, and existing statutory bodies (BAB, BPB and BRAC) are discontinued, with functions transitioning to the VBA. Implementation of the preferred organisation structure progresses accordingly, with staff supporting the former BAB and BPB integrated into the broader structure, and architectural functions transitioning into relevant divisions. It is suggested that the Inquiries and Dispute Resolution Division be created during this phase (with the Director appointed) to take responsibility for customer services and some architectural dispute resolutions functions but also to prepare for the receipt of domestic building consumer dispute resolution functions in the next phase of implementation.



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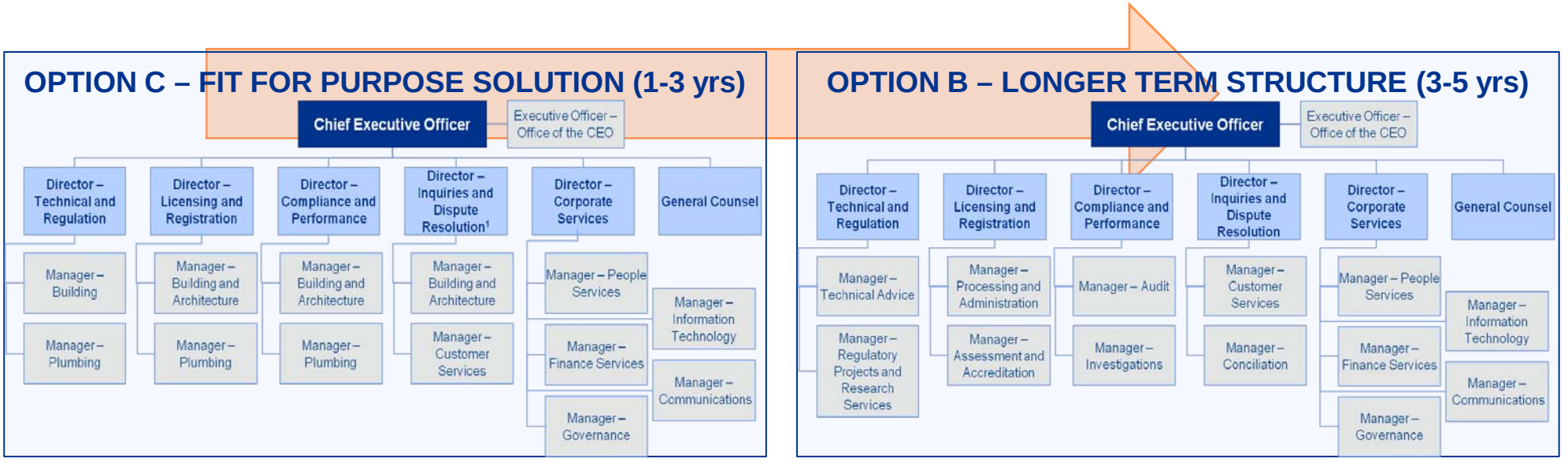
Interim structural option – phase 3

In phase 3, the VBA reaches full maturity with all intended functions now transferred to the new Authority, including responsibility for domestic building consumer protection (e.g. BACV conciliation responsibilities). The structure represented by Option C is now fully implemented, with all divisions and teams active.

However, by this stage, alignment of processes and procedures may have progressed to an extent sufficient to allow movement to the longer-term aspiration structure as represented by Option B. A decision could be made in 2014 on whether regulatory integration has progressed enough to allow implementation of this more integrated structure.

This will depend on the extent of reform that has been achieved to align regulatory processes across the architectural, building and plumbing sectors. Underlying legislative approaches, systems and staff skill sets will need to be at a level of maturity necessary for the functionally aligned structure represented by Option B to be successfully implemented.



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Progressing an organisational restructure

There are several formal considerations that need to be taken into account when implementing a new organisational structure within the public sector. There are industrial provisions which must be complied with and a broader range of considerations that should be taken into account. In preparing to implement a new organisational structure, the following high-level activities should occur prior to the commencement of the official industrial process.

1. Confirm final FTE numbers for the new structure, including at the division and team level	Ensure that FTE numbers in the revised structure contain all required positions and are within staffing budgets available for the new Authority
2. Conduct consultations with senior management to gain support	Seek Director and Manager support to the new structure, though this may need to wait until the new CEO and Board are appointed
3. Outline objectives, functions and resourcing requirements of new and redesigned divisions/teams	Clarify and finalise the detailed functional descriptions, structures, and staff numbers of each division and team
4. Consider industrial relations issues associated with change, particularly with the creation of a new body	The existing Enterprise Bargaining Agreement for the BC/PIC contains provisions relevant to structural change, and broader issues relevant to the creation of a new body will need to be considered
5. Outline additional detail and dimensions (e.g. capability requirements) of senior roles within the new structure	Ensure Directors are aware of changes to their roles and responsibilities under the new structure
6. Decide on staffing strategy related to senior roles, specifically to conduct EOIs or a matching exercise	It is anticipated that the majority of existing staff will be transitioned into new team structures, with only Director roles significantly altered
7. Identify key decision dates and timings for transitioning to new structure	Confirm the proposed date for formally moving to the new structure to provide certainty for staff and stakeholders
8. Draft initial consultation and communication plan for both internal and external stakeholders	Messages will differ between internal and external stakeholders and clear information on roles and responsibilities should be included

Source: KPMG analysis

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Structural change – guiding principles

Based on our previous experience advising public sector entities on structural change, we believe there are five guiding principles which should underpin any structural change initiative:

1 Mobilising and aligning the senior leadership team

- Senior leaders understand their roles and responsibilities in developing and executing the change and are aligned to the vision and direction of transformation
- Leaders can articulate the agreed rationale for change and approach to manage the change
- Senior leaders are working together and role modelling desired behaviours
- Leaders work towards a 'whole of VBA' solution rather than a divisional or team approach

2 Identifying change risks and key impacts

- Planning recognises the complexity of the implementation and identify organisational risks and stakeholder concerns early on in the process
- Identify key changes to positions, roles and responsibilities and use these as inputs into communications and other workforce preparation events
- Identify and mitigate program and people related risks that could threaten transition

3 Employing targeted and ongoing communications

- Developing a structured plan outlining who needs to be involved in the communication process, what needs to be communicated, when does the communication take place and what are the most suitable methods of communication
- Consistent and ongoing communication with staff during the change process

4 Engaging with and managing stakeholder expectations

- All stakeholders are identified and level of involvement assessed
- Engaging stakeholders early in the process, confirming their roles and responsibilities and any actions they need to take as part of implementation
- Manage stakeholder expectations throughout the transition and set clear expectations regarding new ways of working

5 Having a pragmatic approach to implementation, building on effective project management

- Incorporate existing VBA project management tools and leverage existing project infrastructure
- Implement an approach that allows for business as usual activity and significant strategic work to not be disrupted by change management project activity
- Ensure clear accountability for implementation among senior leaders, with a single project manager appointed (potentially Director – Corporate Services or Manager – People Services)

Source: KPMG analysis

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Securing buy-in from new VBA leaders

A unique challenge will be securing the buy-in of future VBA leaders, including the future CEO. At this stage, all senior positions within the organisation (Director level and above) are being filled on an interim or acting basis. Given this report has been prepared for the Minister for Planning, overseen DPCD rather than the VBA directly, there are concerns that the new VBA leadership team will want to develop their own organisational structure, allowing staff and stakeholders to reprosecute many of the issues explored in this report.

To assist in securing the buy-in of new VBA leaders, three key actions are proposed:

A

Clear direction from Minister to new VBA Board and executive leadership

Clear messages from the Minister should be communicated to the new VBA Board and leadership about the priorities of the new organisation. These could be linked to the five evaluative criteria developed. This messaging would steer the new leadership towards the preferred structure and operating model recommendations.

B

Transparency

This report should be made available in full to the incoming VBA leadership team, allowing them to gain full awareness of the issues raised and challenges discussed. DPCD could also be transparent with VBA about the rationale for this report being overseen by the Department, rather than the existing regulatory bodies.

C

KPMG presentation to new VBA leadership team, including CEO

KPMG would be willing to meet with the future VBA leadership team, including the Board and CEO, once appointed to provide an overview of the directions contained within this report and explain the rationale behind the preferred organisational structure and operating model.

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