VICTORIAN BUILDING AUTHORITY

BUILDING CONFIDENCE

OWNER-BUILDER INFORMATION & STUDY GUIDE

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VICTORIA State Government

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Introduction

An owner-builder is someone who takes responsibility for domestic building work carried out on their land and is legally responsible for the project from start to finish.

An owner-builder assumes the responsibilities, risks and liabilities of a 'professional builder'. Some of these responsibilities last for ten years after completion of the building work.

Before deciding to become an owner-builder it is important to understand the role and responsibilities you would be taking on.

Reforms to the regulation of owner-builders in Victoria were introduced by the *Building Legislation Amendment (Consumer Protection) Act 2016* and the *Building Legislation Amendment (Enforcement and Other Measures) Act 2017*.

Key objectives of the reforms include to:

- strengthen the regulation of owner-builders by better equipping them to understand their key duties and obligations; and
- enhance protection of consumers who purchase a home from an owner-builder.

The information in this document incorporates references to the updated regulatory framework for owner-builders.

Purpose of this document

This document provides prospective owner-builders in Victoria with a practical resource so they have all the information they need to decide whether to become an owner-builder.

It explains the knowledge areas that will be tested as part of the owner-builder eLearning assessment which must be undertaken before applying to the Victorian Building Authority (VBA) to become an owner-builder. Persons seeking to become an owner-builder are encouraged to prepare for the eLearning assessment by becoming familiar with the information in this document.

This document is divided into two parts.

It is important to understand the role and responsibilities of an owner-builder.

Understanding this document

Common references

This document makes reference to the:

- *Building Act 1993* (the Act)
- *Domestic Building Contracts Act 1995* (the DBC Act)
- *Building Regulations 2018* (the Regulations)
- *Domestic Building Contracts Regulations 2017* (the DBC Regulations).

Owner-builders are encouraged to familiarise themselves with these laws by visiting legislation.vic.gov.au.

This document also makes reference to monetary penalties expressed in penalty units. A penalty unit determines the amount a person is fined when they commit an offence.

The value of a penalty unit is $158.57 (as at 1 July 2017). The value is set annually by the Department of Treasury and Finance, and is updated on 1 July each year in accordance with the *Monetary Units Act 2004*[1].

PART 1 Owner-builder information

Part 1 contains general information about becoming an owner-builder to assist a reader to decide whether or not they want to become an owner-builder.

This Part is designed to assist a reader to understand:

- eligibility
- the application process
- some of the key obligations associated with being an owner-builder
- how the VBA administers compliance with owner-builder obligations.

PART 2 Owner-builder study guide

Part 2 includes information about the key knowledge a person wanting to become an owner-builder must have.

This Part is designed to assist a reader to understand the knowledge areas that will be tested as part of the owner-builder eLearning assessment. The assessment must be successfully completed to become an owner-builder.

After reading this Part, a potential owner-builder should have sufficient information to be able to undertake the assessment.

[1] dtf.vic.gov.au/Victorias-Economy/Economic-policy-and-guidelines/Indexation-of-fees-and-penalties

PART 1 Owner-builder information

To be an owner-builder you must satisfy requirements regarding land ownership, intended land usage, and how you will go about building.

Who is an owner-builder?

Owner-builders are not in the 'business of building' but set out to undertake domestic building work for themselves.

Typical domestic building work includes:

- The erection or construction of a home, including any associated work, such as landscaping, paving, retaining walls, driveways, garages, carports, swimming pools and spas; and
- The renovation, alteration, extension, improvement or repair of a home.

For a comprehensive definition of 'domestic building work', refer to the VBA Practitioner Guide *What is Domestic Building work?* (August 2016)[2], the DBC Act and the DBC Regulations[3].

To be an owner-builder you must satisfy certain requirements regarding land ownership, intended land usage, and how you will go about building.

Ownership

- You must own (or co-own with others) the land on which building work is to be carried out (i.e. you are the registered proprietor on the certificate of title)
- If the land is owned by a body corporate (company) or is the subject of a trust, the person who applies to be owner-builder must be a director of the company or a beneficiary of the trust
- Company directors and trust beneficiaries will need written permission from the company or trustee, respectively, to apply to be an owner-builder
- Similarly, if the land is owned by more than one person, the owner-builder will need the written permission of all the other owners to apply to be an owner-builder.

[2] vba.vic.gov.au/__data/assets/pdf_file/0018/44550/What-is-Domestic-Building-work.pdf
[3] legislation.vic.gov.au

Intended land usage

- You must not intend to sell or rent the property, and must reside (or intend to reside) in the home.

Managing your building

- You may undertake all or part of the domestic building work – except in areas that require licensed or registered tradespeople – unless you are appropriately licensed or registered and authorised to carry out all of the work.
- You may arrange and contract out part or parts of the building work to qualified tradespeople such as licensed plumbers and electricians or registered domestic builders authorised to perform that particular type of work.

If you engage a number of domestic builders to construct various parts of the work and also do some small components yourself, you will be an owner-builder.

You are not an owner-builder if you engage one builder to do all the domestic building work.

If you intend to undertake domestic building work with a value of over $16,000 then you must apply to the VBA for a certificate of consent. Certificates of consent are discussed further below.

You are not an owner-builder if you engage one builder to do all the domestic building work.

What are the risks associated with being an owner-builder?

An owner-builder assumes the responsibilities, risks and liabilities of a 'professional builder'.

These responsibilities, risks and potential liabilities depends on the extent of the building work being undertaken.

These risks may include:

Financial risks
- Project cost increases
- Rectification work due to faulty workmanship and/or non-compliance
- Loss by theft or fire on the site
- Site protection costs (security, safety)
- Occupational health and safety claims
- Adjoining property owner claims

Quality risks
- Adequacy of drawings and specifications
- Standard of workmanship by others
- Compliance with regulations (building standards, planning requirements, occupational health and safety, environmental protection standards)
- Technical ability to direct and assess workmanship

Time risks
- Identification and engagement of suitable tradespeople
- Coordination and continuity of work
- Completion of work

Future risks
- Costs of insuring prospective purchasers
- Claims by a purchaser

Specialised risks
There may also be specialised risks associated with a particular area, for example:
- Asbestos and renovations
- Health and safety obligations
- Contractual requirements
- Building in a bushfire prone area
- Building a swimming pool
- Insurance

Reducing risks

Risks can be reduced by ensuring you have appropriate contracts and insurance policies in place. This may include:

- entering into a major domestic building contract with a registered domestic builder
- making sure your registered domestic builder has domestic building insurance cover
- obtaining insurance policy cover from an insurance provider.

This is discussed further in **Part 2** under *Entering into a major domestic building contract, Liability insurance* and *Engaging a registered domestic builder.*

Who might I need to liaise with as an owner-builder?

To be able to undertake domestic building work as an owner-builder, and manage your owner-builder project, you may need to liaise with a range of people.

In addition to VBA staff (e.g. Customer Service Officers and Building Inspectors), these people might include your local council planning officer, a draftsperson, architects, engineers, building surveyors, registered domestic builders, licensed plumbers and licensed electricians.

Applications for planning permits are made to your local council. A helpful first step is to talk to your council planning officer.

Your local council planning officer

The Planning and Environment Act 1987 provides for a town planning system in Victoria.

As part of the town planning system, every municipality in Victoria maintains a planning scheme to control the use and development of land.

Each of these planning schemes apply zones, such as residential zones and industrial zones, and overlays such as heritage and vegetation protection.

These zones have a bearing on the kinds of buildings and uses the municipality allows within its different areas.

Many new buildings, additions and renovations require a planning permit as the first step in the construction process. In some circumstances, even simple projects such as fences may require planning permits.

Applications for planning permits are made to your local council. Before undertaking any building or construction work, a helpful first step is to talk to your council planning officer. It is the planning department in your local council that determines whether or not you are going to need a planning permit. To find your local council, visit the Know Your Council website[4].

Building surveyors

A building surveyor is a professional trained in understanding the building control process. They must be registered with the VBA and have certain qualifications. Building surveyors are authorised to assess building plans with a view to ensuring they comply with Victorian building laws.

An owner-builder may choose whether to appoint a municipal building surveyor who works for a local council or a private building surveyor. To find a building surveyor, contact your local council[5], the Australian Institute of Building Surveyors[6] or search the VBA's website[7].

Whether you choose to appoint a private building surveyor or a municipal building surveyor, you must have a building surveyor appointed throughout your entire project.

Once appointed, the building surveyor will:

- Consider an application for a building permit and if appropriate, issue one
- Conduct inspections of the building work during construction
- Issue an occupancy permit or certificate of final inspection once the work is finalised if appropriate.

4 knowyourcouncil.vic.gov.au
5 As above
6 aibs.com.au
7 vba.vic.gov.au

Your building surveyor may also deal with variations to your building permit and assist you to seek an exemption from local council requirements in certain circumstances.

More information regarding appointing a building surveyor is available on the VBA's website[8], and when you will need a building permit and how to apply for one is discussed in **Part 2** *Building permits*.

Registered domestic builders

If you seek to engage a domestic builder to perform aspects of the building work for your owner-builder project, they must be registered with the VBA if they perform domestic building work that costs more than $10,000 (including labour and materials), the exception being where they are undertaking a single trade only for certain types of work.

You will commit an offence unless you have taken reasonable steps to ensure that the person you contract with is a registered building practitioner whose registration authorises them to carry out the work you have contracted them to do. A maximum penalty of $9,514 applies for a first offence and $19,028 in the case of a second or subsequent offence.

You can check whether a domestic builder is registered with the VBA and authorised to perform the type of building work you are engaging them to do, as well as whether they have been the subject of any disciplinary action by searching the VBA's online 'Find a Practitioner' tool[9].

Licensed plumbers

Plumbing work in Victoria can only be performed by plumbers who are:

- licensed by the VBA
- registered by the VBA (or have provisional registration) and working under the supervision of a licensed plumber
- are in training under the supervision of a licensed plumber.

An owner-builder cannot do their own plumbing or gas-fitting work, unless they are already appropriately licensed or registered by the VBA to carry out this type of work.

A plumber needs to be appropriately registered or licensed in each class of plumbing work that they intend to do. For more information about the classes of plumbing work that a plumber can be registered for, see the VBA's website[10].

You can search to see whether your plumber is registered or licensed by searching the VBA's online 'Find a Practitioner' tool[11].

Licensed electricians

Only electricians who are licensed by Energy Safe Victoria can do electrical wiring work in Victoria. This means that an owner-builder cannot do their own electrical work, unless they are already licensed by Energy Safe Victoria to carry out this type of work. For more information, visit Energy Safe Victoria's website[12].

[8] vba.vic.gov.au/consumers/building-for-consumers/building-surveyor
[9] vba.vic.gov.au
[10] As above
[11] As above
[12] esv.vic.gov.au/For-Consumers/Choosing-and-using-a-tradesperson

Certificates of consent to become an owner-builder

If you intend to undertake domestic building work on you own land and the value of the work is more than $16,000, then you will need a certificarte of consent from the VBA[13].

How long does a certificate of consent last?

A certificate of consent is valid for:

- 12 months from the date of issue; or
- If a building permit is obtained, until the permit lapses.

Restrictions to being an owner-builder

The VBA can only issue a certificate of consent to an owner-builder if they, or someone they co-own property with or have co-owned property with for example, have not been issued with a building permit within the last five years. An exception is where an applicant is applying for a certificate of consent for the same home, for example, if undertaking multiple extensions on their home.

This restricts owner-builders to obtaining a certificate of consent once every five years in respect of more than one home.

The VBA has the power to grant an exemption from this restriction in special circumstances.

Special circumstances may arise where for example:

- there has been a substantial change in the circumstances of the applicant
- the applicant would suffer hardship if the application were refused.

The VBA will not issue a certificate of consent if it finds that an applicant has at any time entered into a contract to sell an owner-built home without obtaining the required insurance.

The VBA will use mechanisms within the owner-builder regulatory regime, including assessment of knowledge and the public register, to ensure owner-builders understand their insurance obligations and to assist potential purchasers to check if a vendor has the requisite insurance.

Information on owner-builder projects that relate to certificates of consent issued from 1 September 2016 is available on a public register accessible via the VBA's website[14].

The information on the register includes the address and details of building work. This is discussed further in **Part 2** under *Selling an owner-built home.*

You will need a certificate of consent from the VBA when the value of your domestic building work will be over $16,000.

[13] vba.vic.gov.au
[14] As above

Owner-builder duties and obligations

Knowledge areas
The knowledge areas include:

- Building permits
- Inspections and certification of building work
- Entering into a major domestic building contract
- Engaging a registered domestic builder
- Planning and preparing for building
- Understanding plans
- Protection work
- Site and worker safety
- Ensuring competency and compliance
- Defective and incomplete work
- Selling an owner-built home
- Liability (including the risks associated with being uninsured or underinsured)
- Resolving disputes

Knowledge requirement
To be able to issue a certificate of consent, the VBA must be satisfied that the applicant has knowledge of the duties and responsibilities an owner-builder takes on.

How will the VBA evaluate an applicant's knowledge?
To assess whether an applicant possesses knowledge of the duties and responsibilities of an owner-builder, the VBA will require applicants to undertake an eLearning assessment.

The assessment is accessible for free from the VBA's website[15].

To be able to complete the assessment and proceed to the next step of applying for a certificate of consent, persons who undertake the assessment must answer all questions accurately (i.e. achieve a 100% mark). A person's mark will have currency for 12 months.

Evidence of successfully completing the assessment will form part of the owner-builder application form, with applicants making a declaration as part of their application that they personally completed the test.

How will the VBA verify applicants taking the eLearning assessment?
The VBA will use a range of methods to ensure the person undertaking the eLearning assessment is the same person who has applied for the certificate of consent.

In particular, as part of the assessment, applicants will be required to register by identifying themselves by providing certain personal information.

After completing the assessment, applicants may be contacted by the VBA, or its authorised representatives, to confirm their knowledge.

Knowingly providing false or misleading information to the VBA attracts 120 Penalty Units (a monetary penalty of approximately $19,028 as at 1 July 2017).

Site and worker safety
Applicants whose domestic premises will become a 'workplace' for the purposes of Occupational Health and Safety legislation, will be required to provide evidence of having completed Construction Induction training in order to demonstrate the requisite knowledge in respect of site and worker safety. Construction Induction training must be undertaken and must be offered by a Registered Training Organisation (RTO). For a list of RTOs recognised in Victoria, who can offer this training visit the WorkSafe Victoria website.

Applicants whose premises will not become a 'workplace' will be required to complete questions as part of the assessment.

More information about when your property becomes a workplace and when Construction Induction Training must be completed is discussed in **Part 2** under *Site and worker safety*.

[15] vba.vic.gov.au

Obligation to comply with Victorian building laws

The VBA can enter the premises or land of an owner-builder to inspect the site and verify whether building work is in accordance with Victorian building laws (including the Act, Regulations and your building permit).

Failure to comply with Victorian building laws attracts:

- For individuals, 500 Penalty Units (a monetary penalty of approximately $79,285 as at 1 July 2017)
- For companies, 2,500 Penalty Units (a monetary penalty of approximately $396,425 a at 1 July 2017).

If the VBA finds non-compliance with Victorian building laws, the VBA may consider taking action in accordance with its *Compliance and Enforcement Policy*[16].

Applying for a certificate of consent

You must apply to the VBA for an owner-builder certificate of consent.

To make an application you will need to submit to the VBA:

- a completed application form
- evidence of land ownership
- evidence of completing the eLearning assessment
- evidence of having completed Construction Induction training if required, in the form of a WorkSafe Victoria white card or a current Construction Induction card issued by an equivalent WorkSafe counterpart.
  (This is discussed in **Part 2** under *Site and worker safety*).

You will also need to pay the non-refundable application fee. More information about how to submit your application and complete the eLearning assessment for a certificate of consent is available from the VBA's website[17].

You should comply with the Act, Regulations and your building permit at all times.

Seeking review of the VBA's decision

Should the VBA refuse your application for a certificate of consent, you may apply to the Victorian Civil and Administrative Tribunal (VCAT) to seek a review of the VBA's:

- decision to refuse to issue you with a certificate of consent
- failure to make a decision on your application within a reasonable time.

VCAT will consider your application for review and in making a decision, may agree with, set aside, or vary the VBA's decision.

Applications for review should be made within 60 days of the decision by the VBA.

If the VBA's decision is set aside, VCAT may:

- put in place its own decision
- require the VBA to reconsider your application in accordance with any directions or recommendations that it considers appropriate.

If the application for review is about the VBA's failure to make a decision on your application for a certificate of consent within a reasonable time, the VBA may subsequently make a decision to either issue or refuse to issue a certificate of consent. In the event the VBA determines to refuse to issue a certificate of consent, that decision may be reviewed by VCAT.

VCAT's Review and Regulation List can be contacted on (03) 9628 9755 or www.vcat.vic.gov.au.

[16] vba.vic.gov.au/about/policies-and-procedures
[17] vba.vic.gov.au/consumers/owner-builders

PART 2 Owner-builder study guide

In order to assess whether an applicant has the required knowledge of the duties and responsibilities of an owner-builder, the VBA requires applicants to undertake an eLearning assessment.

The assessment is accessible for free from the VBA's website[18]. The remainder of this part sets out the knowledge areas for assessment.

Before undertaking the assessment you should read and understand the sections below.

UNDERSTANDING THE BUILDING PROCESS

Building permits

A building permit gives the owner-builder permission to carry out the work set out in the permit.

What is a building permit?
Once an owner-builder has been issued with a certificate of consent, they must obtain a building permit before they can, or authorise someone else to, commence building work.

A building permit gives the owner-builder permission to carry out the work set out in the permit and may be issued subject to compliance with certain conditions.

When do I need a building permit?
Most types of building work requires a building permit, however there are exemptions for some types of work that are minor in nature.

Examples of exemptions may include:

- certain types of pergolas associated with houses
- garden sheds, carports or garages with a floor area less than 10m^2
- repair work done for maintenance purposes, such as replacing rotted weatherboards.

[18] vba.vic.gov.au

A certificate of consent does not guarantee that you will be issued with a building permit.

For a description of work that is considered minor in nature: see the VBA Practice Note *When is a building permit required?* (January 2016)[19] and Schedule 3 of the Regulations.

How can I obtain a building permit?

You can apply for a building permit by making an application to either a private building surveyor, or a municipal building surveyor who works for a local council.

Whether a private or municipal building surveyor is engaged for a project, that person becomes the relevant building surveyor for the purposes of the Act and Regulations.

When making an application for a building permit to a building surveyor you will be asked to provide your certificate of consent as evidence that you are an owner-builder.

To make your application, you will need to pay the appropriate fee and building permit levy and submit at least three copies of drawings, specifications and allotment plans along with the completed application form and other prescribed information.

A certificate of consent does not guarantee that you will be issued with a building permit.

A building surveyor must not issue a building permit if:

- a planning permit is required and has not been obtained
  (More information about planning permits is discussed in **Part 1** under *Who might I need to liaise with as an owner-builder?*)
- the building work will not comply with the Act or Regulations.

How do I ensure I comply with my building permit and applicable Victorian building laws?

An owner-builder should not sign a blank form authorising another person to obtain permits on their behalf.

It is the responsibility of the owner-builder to obtain a building permit and to know what work they have been permitted to do.

You should check whether your permit is in place before commencing or authorising the commencement of any building work.

If you start building work without a building permit you may be subject to a penalty under the Act:

- For individuals, 500 Penalty Units (or a monetary penalty of approximately $79,285 as at 1 July 2017)
- For companies, 2,500 Penalty Units (or a monetary penalty of approximately $396,425 as at 1 July 2017).

As an owner-builder you must make sure all building work is authorised under your building permit, and that you comply with the Act and the Regulations during the life of your building project.

Failure to do so will attract similar penalty amounts as those for starting building work without a permit.

If you change plans after you have been issued with a building permit you will need to discuss your plans with you building surveyor. You may need to:

- amend the building permit levy payable
- apply to amend your permit
- apply for a new permit.

[19] vba.vic.gov.au/__data/assets/pdf_file/0016/21085/PN-32-2014-When-is-a-Building-Permit-Required.pdf

Inspections and certification of building work

What are my obligations to have my building work inspected?
An owner-builder must notify a building surveyor at certain mandatory stages during the life of a building project, so the building work can be inspected. Mandatory stages are specified in the Building Permit.

This is to ensure the building work meets certain building standards.
If a building surveyor finds that the building work does not meet the requirements of the Act or Regulations they can direct an owner-builder to fix the building work.

Failure to notify a building surveyor of an inspection at a mandatory stage attracts a penalty of 120 Penalty Units (or a monetary penalty of approximately $19,028 as at 1 July 2017).

An owner-builder must notify the building surveyor at certain mandatory stages during the life of a building project.

When do I need to get my building work inspected?
It is the responsibility of an owner-builder to understand when an inspection is required.

Stages at which an owner-builder **MUST** notify a building surveyor for the purposes of inspection include:

- Prior to placing a footing *(footing stage*)
- Prior to pouring an in situ reinforced concrete member nominated by the building surveyor (*slab*)
- Completion of framework (*framework*)
- Upon completion of all building work (*final).*

You may also wish to talk to a building surveyor about whether it would be advantageous to have additional voluntary inspections (e.g. at the pre-plastering stage and waterproofing stage) to give you added assurance that your building work is compliant with relevant building standards.

The VBA also recommends that every three years, owner-builders have their pool, spa and safety barrier inspected by a building surveyor to ensure it continues to comply with the Regulations and does not pose a risk.

Certification following the completion of building work
The building permit will set out whether a certificate of final inspection or an occupancy permit is needed on completion of the building work.

- A certificate of final inspection is issued for extensions or alterations to existing homes to signify that building work is complete
- An occupancy permit is issued when a building surveyor has approved an owner-builder's building as being suitable for occupation (it is applicable to new dwellings).

On inspection at the **final** mandatory notification stage, a building surveyor must issue either:

- the certificate of final inspection once the owner-builder has complied with all directions (if any) given by the building surveyor
- the occupancy certificate, if satisfied the building is suitable for occupation.

It is an offence to occupy a building, including a home or apartment without an occupancy permit. To do so may also void your insurance.

Entering into a major domestic building contract

When do I need a major domestic building contract?
As an owner-builder, you may:

- do some of the building work yourself, except when licensed tradespeople or registered domestic builders are required, unless you are licensed or registered and authorised to carry out the work
- contract out some of the work to a registered domestic builder or to other tradespersons.

Whenever you contract out domestic building work over $10,000 in value (including labour and materials), you must enter into a major domestic building contract.

An exception applies however where a tradesperson is undertaking a **single trade only** to do any of the following:

- Attaching external fixtures (including awnings, security screens, insect screens and balustrades)
- Electrical work
- Glazing
- Installation of floor coverings
- Insulating
- Painting
- Plastering
- Plumbing work
- Tiling (wall and floor)
- Erecting a chain wire fence to enclose a tennis court
- Erecting a mast, pole, antenna or similar structure.

Only a registered domestic builder can enter into a major domestic building contract with an owner-builder.

Where the same tradesperson carries out more than one type of trade, and the combined value of these trades exceeds $10,000 (for example, the tradesperson does plastering and painting work), a major domestic building contract is required.

Only a registered domestic builder can enter into a major domestic building contract with an owner-builder. You will commit an offence unless you have taken reasonable steps to ensure that the person you contract with is a registered building practitioner whose registration authorises them to carry out the work you have contracted them to do. A maximum penalty of $9,514 applies for a first offence and $19,028 in the case of a second or subsequent offence.

Before engaging a registered domestic builder an owner-builder should undertake a free search of the VBA's practitioner register (available on the VBA's website[20]) to ensure the person is appropriately registered and authorised to undertake the domestic building work.

An owner-builder may enter into a major domestic building contract with a corporation if reasonable steps have been taken to ensure that at least one of the directors of the corporation is a registered domestic builder whose registration authorises the director to carry out that work.

[20] vba.vic.gov.au

Owner-builders should not engage tradespersons who seek to avoid their major domestic building contract obligations.

What is a major domestic building contract?

A major domestic building contract must be set out in writing, be signed and contain certain information regarding the nature of the work being undertaken.

A major domestic building contract provides owner-builders with certain minimum terms and consumer protections, such as:

- cooling off rights after signing the contract
- warranties as to quality of workmanship and materials
- limits on when progress payments must be made to the builder
- an ability for you, the owner-builder, to end the contract if, for unexpected reasons, there are lengthy delays (i.e. the work takes 1.5 times longer than contracted) or cost increases (i.e. the cost is greater than 15% of the contracted price).

More information about major domestic building contracts is available on the VBA's website[21] and Consumer Affairs Victoria's website[22].

What should I be aware of when entering into a major domestic building contract?

Owner-builders should be cautious about engaging tradespersons who seek to avoid their major domestic building contract obligations.

For example, you should be cautious of any tradesperson who tries to split trades so they fall below the $10,000 value threshold, or who tries to split contracts (e.g. by creating a pre-construction contract worth $4,000 and a main contract worth $8,000).

Owner-builders should also check whether the tradesperson is a registered builder and authorised to carry out the type of work that you are engaging them for.

[21] vba.vic.gov.au
[22] consumer.vic.gov.au

Engaging a registered domestic builder

What are my obligations to engage a registered builder?

When engaging someone to help with your building project you must consider whether you need to engage a registered domestic builder.

You should be aware that only a registered domestic builder can undertake certain specialised building work – for example restumping or demolition work.

As discussed above under *Entering into a major domestic building contract*, if you are engaging someone to undertake domestic building work valued at over $10,000 (including labour and materials) then, unless an exception applies, you must engage a registered domestic builder who is authorised to do the work and enter in a major domestic building contract.

Where the work is valued at $10,000 or less you should still enter into a written domestic building contract with the person you are engaging. Similar to a major domestic building contract, your contract must include certain minimum terms and consumer protections.

How can I check whether a builder is registered?

The VBA is responsible for registering builders in Victoria. Domestic builders may be registered with the VBA to undertake different types of building work.
You should check to see whether the person you are engaging is registered with the VBA and authorised to perform the type of building work you are engaging them to do, as well as whether they have been the subject of any disciplinary action by searching the VBA's online 'Find a practitioner' tool[23].

The VBA also issues all registered domestic builders with an ID card that you can ask to see.

Why should I check whether the builder is registered?

A key benefit of engaging a registered builder is that, if your contract price is over $16,000, they must have domestic building insurance to cover the work they are doing for you. This insurance protects you in the event the builder goes missing, dies or becomes insolvent. Make sure to check that the builder named in the contract is an exact match to the name of the builder on the certificate of insurance required in relation to the building work otherwise the insurance may not protect you.

A registered builder must set out the details of their domestic building insurance in your contract. If you engage an unregistered domestic builder they will not have domestic building insurance and you may be unable to obtain insurance cover when it comes time to sell your owner-built home. Your obligations to obtain insurance before you can sell are discussed below at *Selling an owner-built home*.

My obligations to notify a building surveyor of the builder I have engaged

It is an owner-builder's responsibility to notify the building surveyor of the details of the different domestic builders and tradespersons engaged at various stages of the life of a building project.

At the time of applying for a building permit, you must notify the building surveyor of any registered domestic builders you have engaged.

If you engage a registered domestic builder after your building permit is issued, you must give the building surveyor written notice of the engagement within 14 days, including the domestic builder's registration details.

Failure to notify within 14 days attracts a monetary penalty of approximately $7,900 as at 1 July 2017.

[23] vba.vic.gov.au

PREPARING TO BUILD

Planning and preparing for building

Planning ahead will increase your chance of remaining on time and on budget. This is critical to the success of your owner-builder project!

What should I plan for?
Owner-builders should carefully plan and prepare for their owner-builder project. As an owner-builder you must be able to think ahead and plan for and coordinate the flow of building work.

This involves thinking about the timing of work and what tasks must be undertaken before the next can begin. If using sub-contractors this will also involve thinking about when you should engage people.

Planning ahead will increase your chance of remaining on time and on budget. This may be critical to the success of your owner-builder project.

As an owner-builder, you should also ensure that you have adequate finances to do the work and include a buffer in your budget to accommodate the unexpected.

When determining what level of finances you will need for your build it is a good idea to factor in:

- potential increases in the cost of building materials and labour that may occur during the life of your owner-builder project
- the costs of managing each of the risks summarised in **Part 1** (p 7)
- the cost of self-insuring or taking out insurance cover to manage relevant risks (discussed below at *Liability insurance*)
- the cost of engaging experts and professionals to properly manage certain risks (e.g. to dispose of asbestos).

More information and tools to help you to plan and prepare for your owner-builder project are available on Consumer Affairs Victoria's website[24].

What specific matters should I consider?
Specific matters you should consider at the early planning stage include:

- How will I manage key risks? (See the risks summarised in **Part 1**, p 7)
- How will I comply with the 6 Star Standard?
- Am I building in a bushfire prone area?
- Do I have asbestos in my home?

[24] consumer.vic.gov.au

All new homes and renovations must meet the 6 Star Energy Standard.

How will I comply with the 6 Star Standard?

The building of all new homes, home renovations, alterations and additions, that require an owner-builder to obtain a building permit, need to comply with the 6 Star Standard in the *National Construction Code.* Complying with this Standard is discussed further below at *Ensuring competency and compliance*.

Key steps to consider at the planning stage include:

- Carefully selecting your site so your home's orientation takes advantage of solar energy. This can improve your rating by adding up to 1 star
- Talking with your building practitioner (your designer, or an accredited energy rater) at the earliest possible opportunity to consider the best ways to achieve a 6 Star rating
- Considering building design options that go beyond minimum regulatory requirements: it may pay in the long run and improve the value of your home.

Am I building in a bushfire prone area?

Victoria has mapped bushfire prone areas. Publically accessible maps of Bushfire Prone Areas (BPA) are accessible online[25].

You should check to see whether you are building in a bushfire prone area at the planning stage of your project.

Key steps to consider at the planning stage include:

- ensuring an appropriate building site location
- using suitable building materials (discussed further below at *Ensuring competency and compliance*)
- ensuring proximity to independent water resources (or if you have a rainwater tank near your home, ensuring it is accessible)
- managing vegetation surrounding the building and clearing debris close to the building (e.g. removing any overhanging tree branches, taking out shrubs over one meter high next to or below windows, keeping grass short and cleaning up other debris near your building site or home that could easily catch fire).

It is also important to ensure your property is accessible for emergency vehicles and has a water supply for firefighting.

Do I have asbestos in my home?

You should think about whether the home you are working on contains asbestos.

If your home was built before 1990, it is likely to contain asbestos.

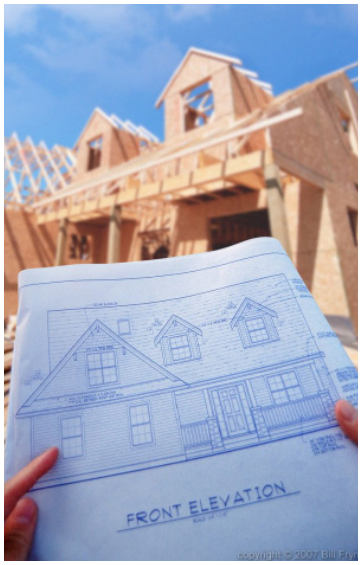
If you are unsure of whether there is asbestos in your home, you should err on the side of caution and take steps to identify whether you have asbestos.

More information on how to find, manage, remove and dispose of asbestos is available online[26].

Complying with your obligations to handle, remove and dispose of asbestos is discussed further at *Ensuring competency and compliance*.

[25] land.vic.gov.au
[26] asbestos.vic.gov.au

Understanding plans



Interpreting plans, drawings and specifications
Being able to interpret plans, drawings and specifications will help you manage your project better and complete the work on time and within budget.

In particular, you should be able to recognise the differences between different types of drawings and that they may serve different purposes – they may include:

- initial sketches at the early concept stage
- preliminary and final drawings and plans from architects and engineers that may provide details about building materials and construction requirements.

To be able to properly interpret plans and specifications, owner-builders should familiarise themselves with:

- commonly used symbols and abbreviations on drawings
- be able to identify key features of the site to be retained or removed, easements, retaining walls, and service connection points.

What do I have to do to prepare my site?
You should ensure that your site is prepared according to your plans and specifications.

This may require undertaking tasks such as putting in proper foundations and soil testing.

You must also ensure that:

- signage is installed on site that sets out the owner-builder's name and contact details along with the details of the building surveyor, building permit number and issue date
- a copy of the building permit and one set of approved plans, specifications and documents relating to the permit are available for inspection at the building site.

> **You should be able to recognise the differences between different types of drawings and that they may serve different purposes.**

Protection work

When is protection work necessary?
For some building projects, protection work may be needed to ensure an adjoining property is not damaged.

Typical examples of this may include when doing excavation work near close-standing properties, or when two properties share an adjoining wall. A building surveyor is responsible for determining whether protection work is needed.

An owner-builder should speak with the building surveyor about the protection work process if protection work is needed. Penalties apply for non-compliance with the protection work process required by the Act.

What is the process for undertaking protection work?
If protection work is needed, an owner-builder must follow the process provided for under Part 7 of the Act.

This includes serving a notice on the adjoining property owner (e.g. neighbours) who will be affected. The notice needs to set out the details of the proposed building work and protection work.

The party affected has 14 days to:

- notify the owner-builder that they agree with the proposed protection work; or
- notify the owner-builder and the relevant building surveyor that they disagree with the proposed protection work or require further information to enable further consideration of the proposal.

More information about the protection work process is available on the VBA's website[27] and in the VBA Practice Note *Protection work process* (June 2016)[28].

Do I need to reimburse or compensate an adjoining owner in relation to protection work?
An owner-builder must pay all costs and expenses of an adjoining owner necessarily incurred by them in assessing proposed protection work and in supervising the carrying out of protection work in respect of their property.

An owner-builder must also compensate an adjoining owner or adjoining occupier for inconvenience, loss or damage suffered in connection with the carrying out of protection work.

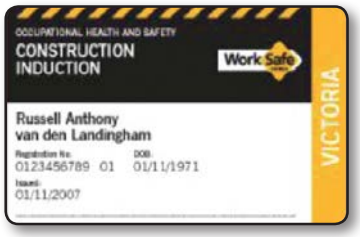
An owner-builder must also ensure that their contract of insurance covers any damage arising from the protection work during construction and for 12 months following completion of the building work.

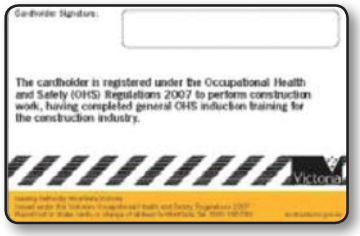
If protection work is needed an owner-builder must follow the process provided for under Part 7 of the Act. This includes servicing notice on the adjoining owner.

[27] vba.vic.gov.au/consumer-resources/building/pages/protection-of-adjoining-property#how_do_you_know_if_protection_work_is_required_
[28] vba.vic.gov.au/__data/assets/pdf_file/0018/21078/PN-20-2006-Protection-Work-Process.pdf

MY OBLIGATIONS WHEN BUILDING

Owner-builders may have additional legal obligations under Victorian occupational health and safety laws if their premises, becomes a 'workplace'.





Site and worker safety

Has my premises become a 'workplace'?
Owner-builders who erect any structure (including building a new home, doing renovations, alternations or additions, and building a pool, spa or garage) may have additional legal obligations under Victorian occupational health and safety (OH&S) laws if their domestic premises where the construction occurs becomes a 'workplace'.

If you are not erecting any structure (for example you are only laying pavers in your driveway), you will not be doing building work that is relevant to whether your premises becomes a workplace.

Your domestic premises where construction occurs will become a 'workplace', if the owner-builder:

- engages or oversees one or more contractors (e.g. a plumber, electrician or brick layer) who will enter the site to do the work; and/or
- does **some** (but not **all**) of the building work his or her self.

What are my obligations if my premises becomes a workplace?
If your premises becomes a workplace, you will need to undertake Construction Induction training, sometimes known as 'white card' training to be able to be able to obtain a Construction Induction card issued by WorkSafe Victoria or an equivalent WorkSafe counterpart.

The Construction Induction training must be offered by a 'Registered Training Organisation' (RTO). WorkSafe Victoria provides a list of RTOs who offer Construction Induction training and who are recognised in Victoria[29]. You should always check whether the organisation offering the training is an RTO.

To be able to apply for an owner-builder certificate of consent from the VBA, an applicant will be required to submit evidence, a copy of both sides, of their current Construction Induction card, also referred to as a WorkSafe Victoria white card. The VBA will accept a current Construction Induction card issued by an equivalent WorkSafe counterpart.

The VBA will not accept any statement of attainment as evidence of having completed current Construction Induction training.

The VBA will not accept a Victorian 'red card' issued prior to 1 July 2008, as evidence of having completed current Construction Induction training.

If your premises becomes a workplace, under Victorian occupational health and safety laws, you will also need to ensure that anyone you have employed to perform construction work is provided with a site induction before they start work, within the meaning of the Occupational Health and Safety Regulations 2007 (Vic).

The aim of a site induction is to make sure that workers are familiar with OH&S rules and procedures, for example emergency procedures, the arrangements for supervision of work, and any issues specific to the site.

A checklist to help you conduct the site induction is available on WorkSafe Victoria's website[30].

[29] worksafe.vic.gov.au/safety-and-prevention/your-industry/construction/how-to-comply/induction-training
[30] worksafe.vic.gov.au/safety-and-prevention/your-industry/construction/your-legal-duties/faqs/employers

What are my obligations if my premises is not a workplace?
If your home is not a workplace, you should ensure you develop and maintain a site safety plan.

This should be reviewed at key stages of your building project, or if a safety incident occurs, to ensure your plan continues to be effective.

Key features of a site safety plan may cover:

- Is the site secure (e.g. fenced off, and displaying danger or warning signs)?
- Do you have a first aid kit, fire extinguisher and an emergency system in place?
- Do you have suitable personal protective equipment (e.g. eye protection, gloves, hard hat, hearing protection, safety footwear)?
- Has the site been checked for relevant hazards (e.g. asbestos, electrical safety, storage or removal of debris and excavations)?

Ensuring competency and compliance

What do I have to do to ensure my building work is completed safely and competently?
You should never do your own electrical or plumbing work (unless you are a licensed electrician or plumber).

There may be some limited exceptions, for example, when changing your own tap heads.

Both electricians and plumbers must be licensed and give owner-builders a certificate to confirm their work is compliant.

Using a licensed electrician:
Energy Safe Victoria regulates electricians through licensing and Certificates of Electrical Safety.

Owner-builders should always ask to see an electrician's licence before they start work.

Victorian electrical safety laws administered by Energy Safe Victoria require that a Certificate of Electrical Safety be issued for all electrical installation work. For more information on the Certificate of Electrical Safety see the ESV website[26].

If you have not received a Certificate of Electrical Safety or your electrician refuses to provide you with one, you can complain to Energy Safe Victoria.

More information about how to complain is available on Energy Safe Victoria's website[26].

Using a licensed plumber:
The VBA regulates the plumbing industry through licensing and Compliance Certificates.

Owner-builders should ensure they have sighted a plumber's licence card before they commence work.

Only licensed plumbers can issue a Compliance Certificate on the completion of plumbing work.

[26] esv.vic.gov.au

It is compulsory for plumbers to issue a Compliance Certificate for:

- All work carried out on below ground sanitary drains
- All work involving the installation, relocation, replacement or conversion of any gas-using appliance
- All work involving the installation, modification or relocation of consumer gas piping
- Any other plumbing job over $750 in value (including for any materials and appliances, labour and GST). You should be aware that even if you purchase and supply the materials yourself, their value must be included in the $750 amount.

As an owner-builder, you should ensure you are aware of when Compliance Certificates are required and always choose a licensed plumber.

Note
When building a shed or garage, the installation of sheeting, flashings, guttering and downpipes on a shed, regardless of scale, must be carried out by a licensed plumber if they are connected to a stormwater collection or disposal system.

Make sure you get a Compliance Certificate from a plumber for work on sanitary drains, gas appliances and piping, or work over $750.

What do I have to do to supervise and ensure my building work complies with Victorian building laws?

An owner-builder is responsible for ensuring all building work complies with the standards required by Victorian building laws.

Standards of compliance generally seek to ensure that building work is safe in terms of design, materials, and building features.

Other standards of compliance may seek to ensure your home meets 'best practice' in terms of being energy efficient and being able to withstand bushfires.

The particular standards that you must comply with may depend on the nature of your owner-builder project.

These standards are referred to in the Regulations, and may be found in:

- The National Construction Code[32]
- standards of compliance issued by Standards Australia[33]
- your local council's laws.

Complying with the 6 Star Standard:
The 6 Star Standard applies to the thermal performance of a home, renovation or addition and includes the installation of either a solar hot water system or a rainwater tank for toilet flushing.

A 6 Star energy efficiency rating applies to your home's building envelope – its roof, walls, floor and windows.

Six Star requirements also include efficiency standards for lighting but not plug in appliances.

The benefits of complying with the 6 Star Standard include increased comfort, saving money on energy bills and making your home more resilient to climate change.

Site selection at the planning stage to take advantage of solar energy can also improve your star rating.

Six Star homes are projected to use 24 percent less energy through heating and cooling compared to 5 Star homes. This will see Victorians with 6 Star homes potentially saving a further $100 off their energy bills each year. This is only an average saving, with residents who use their energy features in their home saving even more.

[32] vba.vic.gov.au
[33] standards.org.au

Complying with the Bushfire Attack Level (BAL):
The residential building standard for bushfire protection is set out in Australian Standard AS 3959 – 2009 *Construction of buildings in bushfire prone areas*.

The aim of the residential building standard for bushfire protection is to improve the ability of a building to withstand a bushfire attack. This will provide greater protection for occupants who may be sheltering inside while the fire front passes. A great deal of scientific modelling has gone into the standard.

The Bushfire Attack Level (BAL) determines the type of construction required. The BAL takes into consideration a number of factors including the Fire Danger Index, the slope of the land, types of surrounding vegetation and its proximity to any building.

You should select building materials that are appropriate for the conditions and your BAL.

You should be aware that even if your BAL is low, the construction requirements must still meet a minimum of BAL 12.5 as detailed in AS 3959 – 2009.

Complying with the safety standards for swimming pools and spas:
New swimming pools and spas in Victoria must be built according to certain safety standards that are prescribed by the Regulations.

These include standards that require safety barriers be installed, in accordance with the National Construction Code and Australian Standard AS 1926.1 – 2012 *Swimming Pool Safety*.

'Safety barrier' refers to a fence, wall, gate or screen, and includes gates, windows, locks, latches, hinges and self-closing devices attached to them.

Safety barriers are required for swimming pools and spas (whether in-ground, in-door or above-ground, and including inflatable and relocatable pools), hot tubs and jacuzzis that are capable of holding water greater than 300mm in depth. Safety barriers must meet certain design and construction specifications and requirements. These are discussed on the VBA's website[34].

Owner-builders who are constructing a new swimming pool or spa are required to:

- have a safety barrier (including a temporary barrier until a permanent barrier is installed) for all swimming pools and spas capable of containing a depth of water greater than 300mm
- complete the barrier within 6 months of building work commencing on the swimming pool or spa
- maintain the barrier and any self-closing and self-latching gates in good working order (all gates have to have a self-closing, self-latching device – regardless of when the pool was built)
- never prop open any gate providing access to the swimming pool or spa
- ensure that indoor swimming pools and spas have self-closing, self-latching doors that swing away from the pool area.

Non-compliance, risks lives and may attract a penalty of up to 50 Penalty Units (approximately $7,937.50 as at 1 July 2017).

To ensure you are compliant your building surveyor must inspect your swimming pool or spa and take any necessary steps so that the surveyor can issue a certificate of final inspection.

[34] vba.vic.gov.au/consumer-resources/building/pages/swimming-pools

You should be aware that you must ensure you safely remove construction wastes and building materials from sites and must not pollute the environment (including land, water and air).

What do I have to do to ensure construction is undertaken according to safety and environmental legislation?

When carrying out all building work:
The Environment Protection Authority Victoria (EPA) is responsible for administering Victorian environmental protection laws.

Owner-builders should be aware that under the *Environment Protection Act 1970* and the *Environmental Protection (Residential Noise) Regulations 2008* you have certain legal obligations to ensure that you safely remove construction wastes and extra building materials from sites and do not pollute the environment (including land, water and air).

Owner-builders also have legal obligations to ensure that their building work is conducted within certain hours so as not to cause unreasonable noise to neighbours.

More information regarding the EPA and the laws they administer are available on the EPA's website[35].

You should also check to see whether the local council in which you reside has by-laws regarding noise levels, on-site burning, the removal of refuse and the use of council footpaths.

When dealing with asbestos:
If you have found there is asbestos in your home, you must handle and dispose of the asbestos in a certain way.

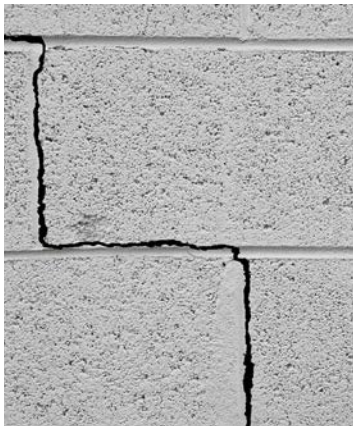
Only licensed removalists can handle and remove certain types of asbestos.

If you are unsure of what to do, you should engage a licensed asbestos removalist to do the work. More information and tools on how to handle and remove asbestos including how to find a licensed removalist is available online[36].

The EPA also regulates the safe disposal of asbestos.

[35] epa.vic.gov.au
[36] asbestos.vic.gov.au

Defective and incomplete building work



What do I have to do if my building work is found to be defective or incomplete?

If building work does not comply with the building permit, Act or Regulations an owner-builder may be directed (verbally or in writing) to fix the building work. This may require making the building work compliant, or stopping non-compliant building work. If the owner-builder does not comply with a written direction issued by a building surveyor, it is an offence, and the building surveyor must notify the VBA. The VBA may also issue written directions to fix.

The written direction will set out what has to be done to comply and by when.

Owner-builders should take steps to comply and if you do not understand the direction, you should contact the relevant building surveyor (or the VBA) to ask questions.

If the written direction is not complied with, a building notice or building order may be issued. Building notices and building orders will be used as a last resort.

Building orders require you to either stop work or to undertake work to address an issue.

If you receive a building order, you should take it very seriously and take steps to comply.

Failure to comply with a building order attracts:

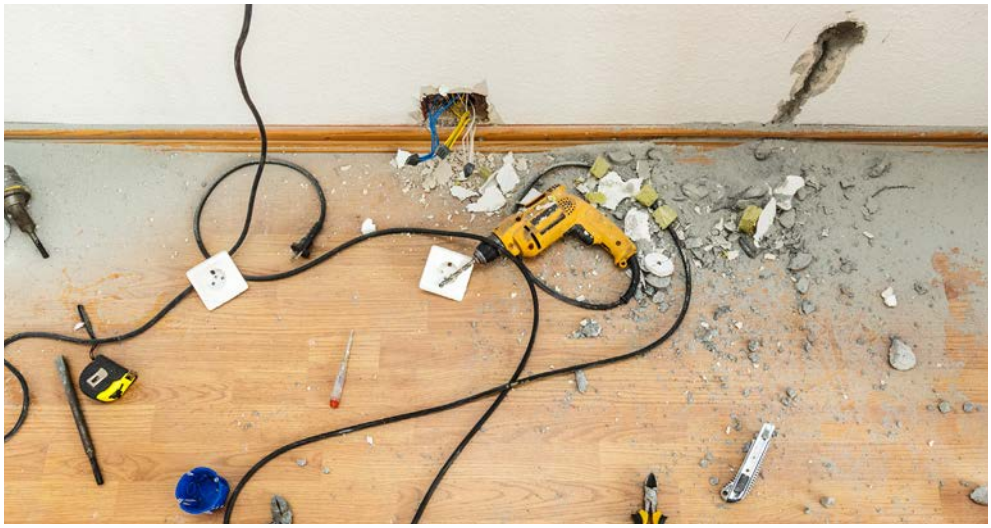
- for an individual, 500 Penalty Units (or a monetary penalty of approximately $79,285 as at 1 July 2017)
- for a company, 2,500 Penalty Units (or a monetary penalty of approximately $396,425 as at 1 July 2017).

Emergency orders can also be made to secure a building if it is unsafe or may pose a risk to life or property. Similar penalties apply for failure to comply with an emergency order.

If an owner-builder wishes to contest a written direction, building notice, building order or emergency order, they can appeal to the Building Appeals Board.

Information about appealing to the Building Appeals Board is available on the VBA's website[37].

If you receive a direction or order to fix building work, you should take it seriously and comply.



[37] vba.vic.gov.au

MY OBLIGATIONS TO OTHERS AND RESOLVING DISPUTES

Selling an owner-built home

When selling within six and a half years you must meet certain obligations.

If you sell your owner-built home within six and a half years after the domestic building work is completed (i.e. from the date of issue of your occupancy permit or certificate of final inspection), you have certain obligations under Victorian building laws.

Defects report
You must obtain a defects report from a prescribed practitioner regarding the domestic building work.

The defects report must not be older than six months and a copy must also be provided to the homebuyer.

An owner-builder does not need to provide a defects report if they sell their home on or after six and a half years from the completion date of the works.

Domestic building insurance
An owner-builder may also need to obtain domestic building insurance that covers the domestic building work and provide the purchaser with a certificate of insurance.

When selling an owner-built home within six and a half years, an owner-builder must have domestic building insurance cover that protects the purchaser. You should contact an appropriate insurance provider for more information on this process.

The VBA will not provide a certificate of consent to an owner-builder if it is satisfied that the applicant has, at any time, entered into a contract of sale without obtaining the insurance required of an owner-builder.

An applicant will be required to declare this as part of their application. Monetary penalties apply for knowingly making a false or misleading statement to the VBA, or knowingly providing the VBA with false or misleading information.

Warranties
If an owner-builder sells their home within six and a half years after the domestic building work was completed, the contract of sale must contain certain warranties:

- an assurance that all domestic building work carried out in relation to the construction by the owner-builder or on their behalf was completed in a proper and workmanlike manner
- an assurance that all materials used during domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract of sale, those materials were new
- an assurance that the domestic building work was carried out in accordance with all laws and legal requirements, including the Act and the Regulations.

You may apply to VCAT for an exemption from any of these requirements if:

- there are exceptional circumstances; or
- full compliance with these requirements is impossible and/or would cause you undue hardship.

You should also be aware that your domestic building insurance must also cover the purchaser for any loss or damage arising from a failure to comply with the warranties.

A purchaser who finds defective building work that did not appear on the required defects report can make a claim against you for breach of statutory warranties.

If the defective work was carried out by a registered domestic builder, then you may have a claim against them.

Owner-builder domestic building insurance only covers situations where the owner-builder has disappeared, died, or is insolvent.

An owner-builder should be aware that engaging an unregistered domestic builder may invalidate domestic building insurance cover. This may expose the owner-builder to personal liability for any defects.

If an owner-builder enters into a contract of sale for your owner-built home without obtaining a defects report, insurance in respect of the dwelling and without setting out the warranties in the contract of sale, the sale could be at risk.

The potential purchaser may seek to have the contract of sale treated as 'voidable', which essentially undoes the sale. Failure to comply attracts 100 Penalty Units (or a monetary penalty of approximately $15,800 as at 1 July 2017).

Please be aware that you cannot 'contract out' of your warranties. They apply even if you and the purchaser otherwise agree.

Potential purchasers can identify owner-builder projects that relate to a certificate of consent issued after 1 September 2016 by accessing a public register via the VBA's website.

Public Register

Owner-builders should be aware that potential purchasers of their property are able to identify owner-built projects that relate to certificates of consent issued after 1 September 2016 by accessing a public register via the VBA's website[38].

This means purchasers will be able to check whether a home was owner-built so they will then know whether they need to make enquiries as to whether the vendor has met their obligations when selling, for example, whether they have the appropriate insurance.

Information on the public register includes:

- The date of issue of the certificate of consent
- The certificate number
- The property address
- The type of building work.

Information will remain on the Owner-Builder Public Register for 10 years.

[38] vba.vic.gov.au

Liability insurance

How an owner-builder may be exposed to liability risk
Exposure to liability is a key risk owner-builders should be aware of and properly plan for as part of your owner-builder project.

Failure to properly manage exposure to liability can be costly in terms of unexpectedly having to pay monetary compensation.

Having to pay a monetary amount unexpectedly in response to liability, can be highly stressful and may affect your ability to successfully complete your project.

In some cases, if the monetary amount owing is significant, an owner-builder may find themselves out of pocket and potentially in debt.

Owner-builders can manage exposure to liability risk by taking out an insurance policy that appropriately covers you for that particular type of liability risk.

More information on liability insurance is available on the Insurance Council of Australia's Understand Insurance website[39].

If you do not take out an insurance policy, or your cover is inadequate, you may have to pay out of your own pocket.

How can I obtain appropriate insurance to manage liability risk?
An insurance policy is a special type of contract between an insurer and the insured (an owner-builder) to provide cover for certain types of risk.

An owner-builder can obtain a suitable insurance policy by shopping around – different insurers may offer different policies.

The VBA encourages owner-builders to shop around to find the best insurance policy that suits your needs. What is suitable may depend on the nature of your owner-builder project and the level of risk you are willing to take on.

The VBA recommends that owner-builders check and make sure you understand the terms and conditions of the insurance policy you are signing up for.

For example, you should make sure you understand:

- What is the price of the insurance premium that needs to be paid for the insurance policy to be in place (usually for 12 month periods)?
- Are there any caps on the amount that the insurer may pay out under the insurance policy? (For some policies, you may be able to tailor the policy to better suit your needs, by paying a higher premium for more comprehensive cover, or to reduce an excess (i.e. a threshold amount that may apply before an insurance payout is made.)
- What types of liability risk does the insurance policy cover? (It is important to check the nature of any exclusions for which there will be no cover.)
- What must an owner-builder do to make a valid claim on the insurance policy? (For example, an owner-builder may be required to submit a written claim, with supporting evidence, for the insurer to consider before a payout can be made.)
- Are there any events which automatically invalidate the insurance policy? (e.g. failing to make proper disclosure, or bankruptcy)

If you do not take out an insurance policy, or your cover is inadequate, you may have to pay out of your own pocket.

[39] understandinsurance.com.au

What types of risks might an insurance policy cover?
There are a range of risks an owner-builder should be insured against before commencing an owner-builder project.

These include:

- Theft
- Hazards (fire and storm damage)
- Personal injury
- Public risks and accidents.

> **There are a range of risks an owner-builder should be insured against before commencing an owner-builder project.**

Theft:
An insurance policy that covers theft may protect against the risk of another party stealing an owner-builder's building materials, other property or money.

Hazards (fire and storm damage):
An owner-builder's property may be located in a region that may be prone to certain hazards such as fire, flood or storm.

Additionally, there may be a risk that another party, whether accidentally or intentionally, causes fire or water damage to the building or premises. This could occur, if for example there is an electrical or plumbing fault.

An insurance policy that covers for these types of hazards, and/or natural disasters, may assist an owner-builder to proceed or complete your project.

You should also check whether the policy covers your home contents.

More information about taking out insurance to protect against this risk is available on ASIC's MoneySmart website[40].

Personal injury:
A party (or their estate) who is injured or dies as a result of an owner-builder's building work, may take legal action against the owner-builder for compensation. The amount of compensation sought could be a significant amount.

Depending on the nature of the building project, an owner-builder should consider insuring against this risk.

The insurance policy may cover the cost of defending a legal claim in court if the owner-builder is sued for compensation, as well as covering the amount of compensation payable.

Public risks and accidents:
Public liability insurance generally covers the costs associated with legal action if a person is found liable for death or injury, loss or damage of property, or economic loss resulting from negligence.

The amount of compensation sought may be for a significant amount.

Do I need to join the Workcover insurance scheme?
If an owner-builder's domestic premises becomes a 'workplace' (discussed above at *Site and worker safety*), you may also need to ensure that you have joined the Victorian worker's compensation scheme that protects workers who suffer a workplace injury or disease in the course of their work.

More information regarding the Workcover scheme and how to join is available on Workcover's website[41].

[40] moneysmart.gov.au
[41] worksafe.vic.gov.au

Resolving disputes

How may an owner-builder become involved in a domestic building dispute?
Building projects are complex and can be stressful to undertake.

Sometimes disagreements about whether work undertaken by a domestic builder has been completed to a sufficient standard of quality or specification, or within cost estimate, can lead to a dispute.

Disputes can be time-consuming and costly to resolve.

The VBA encourages owner-builders to act quickly.

A dispute may be easier to resolve at an earlier, rather than at a later, stage particularly if the dispute becomes protracted. Also, an owner-builder's rights may be affected by delays.

It is important to understand how disputes can be resolved efficiently and effectively so that a project is not disrupted or delayed.

The VBA encourages owner-builders to research your rights and responsibilities. Consumer Affairs Victoria provides helpful information for persons thinking of 'building or renovating' on their website[42].

The VBA also encourages owner-builders to wherever possible, seek independent legal advice, especially if you are unsure of your legal rights and obligations or if the dispute involves highly complex legal issues.

Owner-builders should act quickly to resolve a dispute. An owner-builder's rights may be affected by delays.

How may I resolve my domestic building dispute?
Owner-builders have a range of avenues available to them for resolving domestic building disputes under the DBC Act.

These avenues include:

- informal resolution
- conciliation with Domestic Building Dispute Resolution Victoria (DBDRV)
- review by VCAT
- other legal action in the courts.

Informal resolution:
This involves communicating with the other person with whom an owner-builder has a dispute (e.g. a domestic builder), at the earliest available opportunity to informally discuss concerns and reach a resolution.

Talking informally over the phone or face-to-face is the best way to gauge the immediate reaction of the other person, with whom an owner-builder may have a dispute.

Often, an owner-builder will be able to make progress, and hopefully reach a resolution if you can talk respectfully, and clearly explain your concern and your preferred outcome to resolve the dispute.

It is best to remain calm, and not raise your voice or become argumentative. So the other party understands your concerns, it is always helpful to refer to any supporting evidence or information available. Having a clear understanding of the timeline of events can also be helpful.

[42] consumer.vic.gov.au

If an agreement to resolve your dispute is reached, you should put it in writing and attach it to your domestic building contract, signed and dated by all parties involved.

Supporting evidence or information an owner-builder can refer to may include:

- any relevant documents (e.g. contracts, reports, building plans or drawings, photographs, quotes, receipts or emails)
- notes of telephone conversations an owner-builder has made (including the date, persons involved and the nature of the discussion).

It is always a good idea to follow up on conversations with a letter or email to record and confirm the discussion and any agreement reached. This can help avoid any misunderstandings.

If a resolution agreement is reached, an owner-builder should attach it to their domestic building contract, signed and dated by all parties involved. It should include the action that will be taken, who will do what, how it will be done, the timeframe and agreed payment.

Conciliation:
In the event an owner-builder unsuccessfully tried to reach an informal negotiation, or the other party was unwilling to come to the negotiating table, an owner-builder can seek the help of an independent third party to assess and conciliate the dispute.

The Domestic Building Dispute Resolution Victoria (DBDRV) offers a free, independent assessment and conciliation service. more information about the service is available on Consumer Affairs Victoria website[43].

Attempting conciliation using this service is a mandatory first step before a dispute can be brought to VCAT.

Most cases will be handled by a conciliation officer on behalf of the Chief Dispute Resolution Officer, who can assist the parties to come to a negotiated resolution. In some cases, the DBDRV may assess the dispute as being 'unsuitable' for conciliation.

[43] consumer.vic.gov.au

As part of the conciliation service, the Chief Dispute Resolution Officer of the DBDRV can issue a binding Dispute Resolution Order.

The Dispute Resolution Order can:

- require rectification of defective work or damage caused by work, or require completion of the work
- require payment to a builder or payment into a trust fund pending completion of rectification work
- in more extreme cases, compel the builder to meet the cost of rectification by an alternative builder where the building work was so poor it would be unreasonable to allow the original builder to attempt rectification.

VCAT:
If a Dispute Resolution Order is not complied with by the domestic builder, an owner-builder can terminate the domestic building contract.

An owner-builder can apply to VCAT for a review of a Dispute Resolution Order if the owner-builder is unsatisfied with the outcome.

Owner-builders should be aware that if you seek a review of a Dispute Resolution Order by VCAT, VCAT can order that you pay the other party's costs if:

- the owner-builder refused to participate, or did not participate in the DBDRV conciliation in good faith
- VCAT finds that the owner-builder's application for review was vexatious, frivolous or lacking in substance, or if the owner-builder did not get a better outcome compared with that offered under the Dispute Resolution Order.

Other courts:
Depending on the nature of the dispute, an owner-builder may also be able to taken other legal action in a court.

Want to know more?
Please submit an enquiry or call us on 1300 815 127.

Victorian Building Authority
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