



# Master Builders Association of Victoria

## Submission Domestic Building Consumer Protection Framework

Brian Welch  
Executive Director  
Ph: 9411 4501  
Fax: 9411 4507  
Email: [bwelch@mbav.com.au](mailto:bwelch@mbav.com.au)

Tim Salathiel  
Policy and Communications Manager  
Ph: 9411 4515  
Email: [tsalathiel@mbav.com.au](mailto:tsalathiel@mbav.com.au)

Master Builders Association of Victoria  
332 Albert St  
EAST MELBOURNE VIC 3002



## THE STATE OF VICTORIA'S DOMESTIC BUILDING INDUSTRY

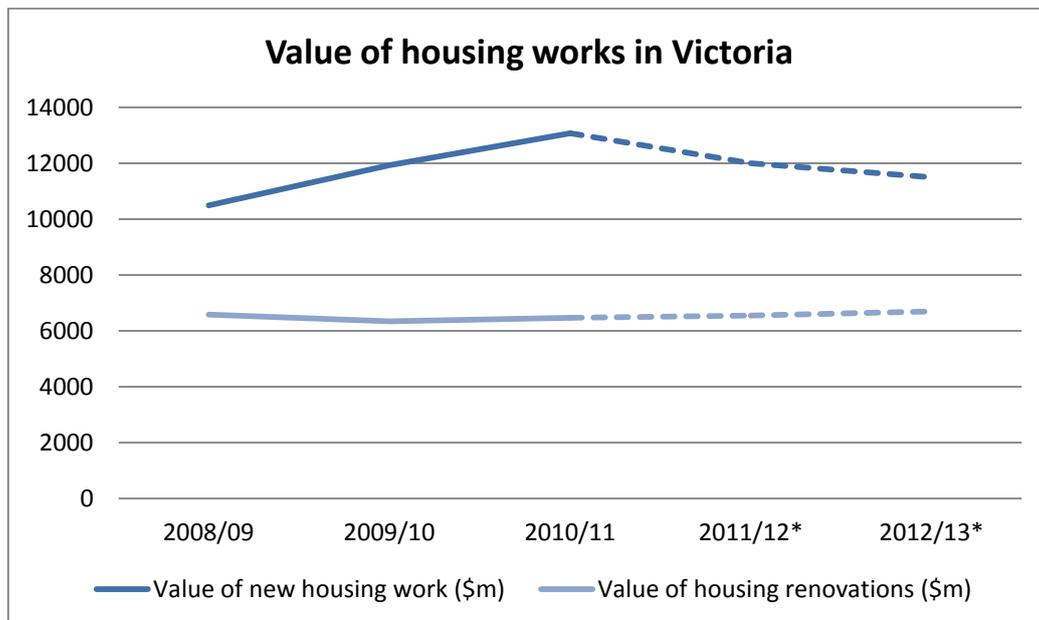
Domestic builders across Victoria face a challenging economy, with a significant drop in the volume of work taking place across the state.



\* denotes forecasts

Source: ABS, Master Builders

As these statistics show, the number of new housing starts in Victoria fell from 59,170 in 2010/11 to an anticipated 47,620 in 2011/12 – a drop of 19.5 per cent. Master Builders current projections forecast a further decline of 5.9 per cent in 2012/13.



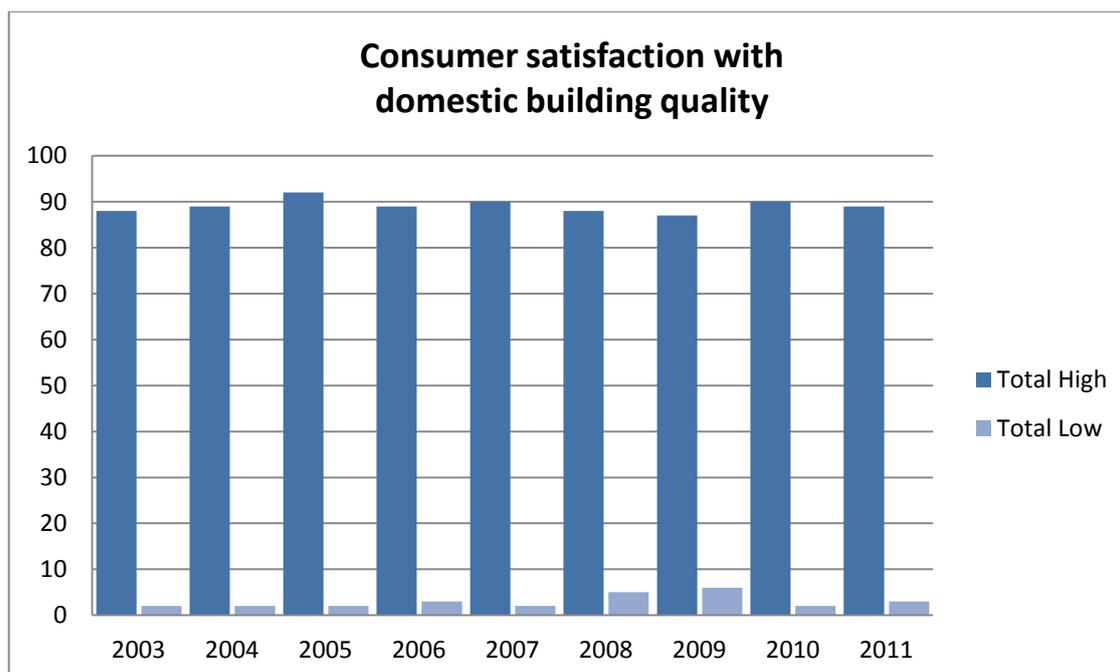
\* denotes forecasts

Source: ABS, Master Builders

The value of work done on new housing in Victoria has also declined over the same period, by 8.2 per cent in 2011/12 and a forecasted 4.2 per cent further in 2012/13. A modest increase is, however, anticipated in the housing renovations market.

Therefore, as the level of work for residential builders declines, it is imperative that efforts be made to cut red tape and support jobs and investment growth for the industry.

While there has been a significant change in the economic conditions for Victoria's residential building market, building consumers have consistently provided a strong endorsement of the quality of work of the state's domestic builders. Over the past decade, research undertaken by the Victorian Building Commission has continually demonstrated that around nine in ten consumers rate the quality of the domestic projects they commission as either very high or high, including 89 per cent of survey respondents in 2011 (compared to three per cent providing a low or very low rating).



Source: Building Commission Pulse data

The number of domestic building disputes is also relatively low as a proportion of works undertaken. As the Victorian Domestic Building Consumer Protection Framework Public consultation paper demonstrates, Consumer Affairs Victoria was involved in building disputes for just 2.2 per cent of all domestic permits issued in 2010-11.

Our industry has an important role in supporting Victorians to achieve the 'great Australian dream' of owning their own home. It also plays a vital role in supporting existing homeowners to boost the equity in the largest asset – their home. The Master Builders Association of Victoria welcomes the opportunity to comment on the matters raised in the discussion paper and believes that by working together, we can help to support jobs and investment in this vital industry.

**Brian Welch**  
**Executive Director**

July 2012

## **OVERVIEW OF MASTER BUILDERS ASSOCIATION OF VICTORIA**

The Master Builders Association of Victoria (“Master Builders”) is the peak body representing employers in Victoria’s building and construction industry. Our membership consists of more than 9,500 builders, subcontractors, manufacturers/suppliers and students. More than 50 per cent of our members are small businesses with an annual turnover of \$2 million or less.

Master Builders provides a range of services to members. Many of these would be cost prohibitive if not offered by a not-for-profit group that supports builders, particularly those in small businesses, including:

- Legal advice on matters such as preparing domestic building contracts and resolving building disputes;
- OHS advice, including delivering the Small Business OHS Consultancy Program in partnership with WorkSafe;
- Advice on the interpretation of building legislation and the technical provisions of the National Construction Code;
- Training services including Diploma, Certificate level and short courses designed to meet the needs of the various sectors within the industry;
- A-Link, our go to support and advisory centre offering a range of services including placements, Industrial Relations and OHS advice for apprentices, apprenticeship service providers and those seeking a career in the building and construction industry to help reduce the attrition rate of apprentices and to raise the profile of the industry as a provider of rewarding career pathways;
- Our award-winning Virtual Office cloud-based system providing members access to services including e-contracts, e-permits and monitoring of CPD points;
- Assisting members in preparing applications to become registered builders.

Given our close contact with building businesses, from large to small, on day-to-day regulatory and business concerns, Master Builders is uniquely placed to comment on the issues raised in the Victorian Domestic Building Consumer Protection Framework Public consultation paper.

## **CONTENTS**

Domestic Builders in Victoria	2
Overview of Master Builders	4
Summary of Recommendations	6
Regulation of Building Occupations	7
The Building Permit System	11
Empowering Consumers – information and education	11
Contract Management and Dispute Resolution	11
Insurance	13
Strengthening the current institutions	14
Transitional Arrangements	15

## SUMMARY OF RECOMMENDATIONS

- Recommendation 1: Master Builders calls for the existing framework being retained, with more regular audits.
- Recommendation 2: Master Builders calls for efforts to boost voluntary continuous professional development training and reduce red tape for small businesses in Victoria.
- Recommendation 3: Master Builders calls for Victoria to withdraw from the National Occupational Licensing Scheme.
- Recommendation 4: Master Builders calls for action to be taken on Owner-Builder activity including -
- a) Requiring Owner-Builders to complete a mandatory course and exam to ensure they have the competence to build quality housing;
  - b) Requiring a time period of six years to have elapsed before an Owner-Builder can be recertified to carry out works on another property;
  - c) Empowering the Building Commission to more effectively monitor Owner-Builder activity; and
  - d) Undertaking research aimed at identifying whether Owner-Builder built housing is done to an acceptable quality to ensure consumer protection.
- Recommendation 5: Master Builders calls for the performance of local councils in the building permit system to be publicly released.
- Recommendation 6: Master Builders calls for the website to provide tips for consumers, but that a public, searchable database is not required.
- Recommendation 7: Master Builders calls for the introduction of a quicker, more cost-effective domestic building disputes process that empowers appropriately trained inspectors.
- Recommendation 8: Master Builders calls for a definition of 'practical completion' to be inserted into the *Domestic Building Contracts Act 1995*.
- Recommendation 9: Master Builders calls for the VMIA to retain its role in offering DBI products to builders.
- Recommendation 10: Master Builders calls for the State Government to retain a mandatory last resort DBI system and review the disappearance and insolvency triggers.
- Recommendation 11: Master Builders calls for the Building Commission to act as a 'one-stop-shop' for the building industry.
- Recommendation 12: Master Builders calls for clear timelines and continued consultation with the industry in the event of any reforms being made to the existing framework.

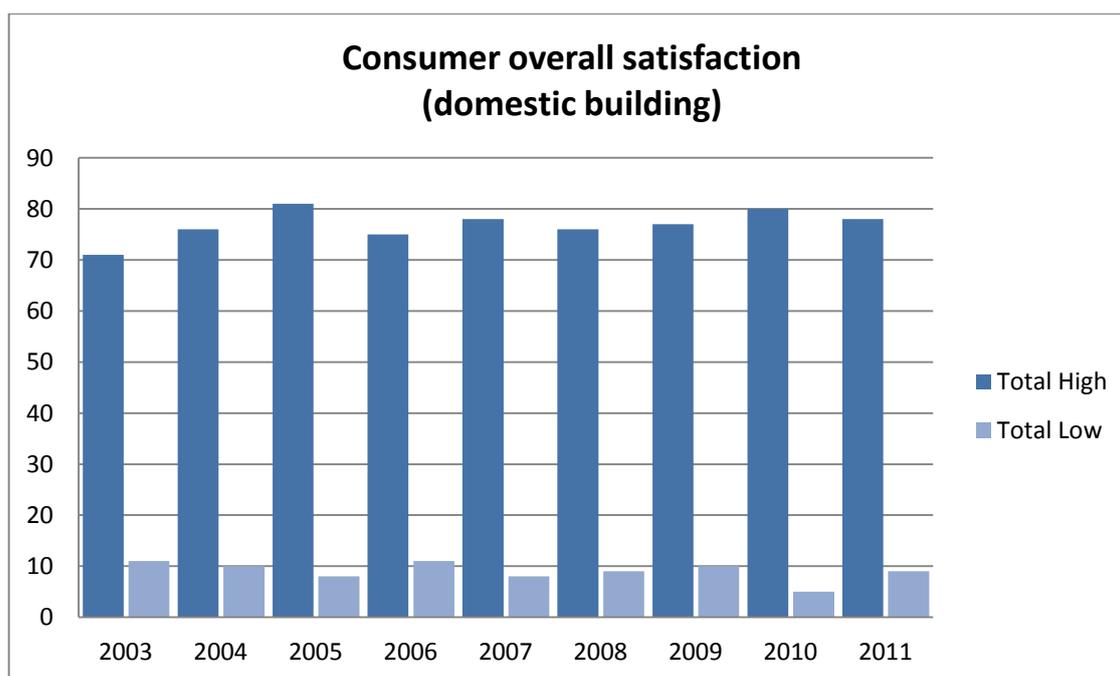
## REGULATION OF BUILDING OCCUPATIONS

This section of the Victorian Domestic Building Consumer Protection Framework Public consultation paper (“the paper”) discusses the regulation of building occupations, whether existing regulatory measures are effective, the adequacy of State Government agencies’ disciplinary powers and whether the existing systems provide appropriate balance between the needs of homeowners and home builders.

### *Regulatory Mechanisms for Consumer Protection*

The Victorian Government has retained significant control over the registration of builders through legislative and regulatory instruments including the *Building Act 1993* and the *Domestic Building Contracts Act 1995* (“the DBCA”), which also provide a range of consumer protection measures to help ensure building projects are delivered to high quality.

Research from the Building Commission demonstrates that domestic building consumers have consistently reported a high level of satisfaction with the work undertaken by our industry. In 2011, 78 per cent of domestic building consumers reported either a very high or high satisfaction level compared to 9 per cent providing a low or very low rating.



Source: Building Commission Pulse data

Similar levels of satisfaction have been recorded over recent years, indicating that Victoria’s domestic builders are overwhelmingly delivering high quality products in line with the expectations of their consumers.

The paper also supports this view with the number of disputes involving Consumer Affairs Victoria (CAV) being very low for domestic building permits issues. Of the 107,000 domestic building permits issue in 2010-11, CAV was involved in finalising 2356 disputes, representing 2.2 per cent of all permits.

Over the same period, the Building Practitioners Board completed 89 inquiries and disciplined 65 builders. This was in an environment where some 15,000 domestic builders were registered in Victoria at the end of 2011.

It is clear that the current system provides significant consumer protection measures. Penalties such as fines, registration suspensions and terminations can also be applied through the *Building Act 1993* and consumers are protected by the existing mandatory insurance provisions in the event that a builder dies, disappears or becomes insolvent.

Furthermore, as builders must have registration in order to deliver building works worth more than \$5,000 in value (which we recommend should be raised to \$20,000 to account for changes in modern building costs over the past two decades), Master Builders believes additional imposts would create significant regulatory burdens on builders, a large proportion of which are small businesses.

Based on these statistics, there is a lack of evidence demonstrating large scale issues with building projects. Master Builders believes that the existing framework is sufficient in this area, but support more regular audits for builders where the Building Commission believes it is warranted.

**RECOMMENDATION 1: Master Builders calls for the existing framework being retained, with more regular audits.**

#### *Reducing Red Tape*

Master Builders notes the commitment by the Victorian Government to reduce red tape to business, raising concerns about the proposal to make training compulsory, which would add a regulatory burden to small businesses. The Building Commission's Pulse Data demonstrates that domestic builders did an average of 34 hours of professional development in 2011. Whilst Master Builders is supportive of builders obtaining the training they require, this should not be forced on them, as there is no evidence to prove that there is a causal link in training to insolvencies. More importantly, we support strategies that encourage more appropriately qualified people to enter the industry by examining the barriers currently preventing entry.

**RECOMMENDATION 2: Master Builders calls for efforts to boost voluntary continuous professional development training and reduce red tape for small businesses in Victoria.**

#### *The National Occupational Licensing System*

The previous Victorian Labor Government committed to implementing the National Occupational Licensing Scheme to create a nationally consistent registration process across all states for a number of occupations, including builders and building trades. Master Builders believes the proposed scheme will place a disproportionate burden on small businesses in the building industry by requiring builders to undertake a Certificate IV in Building and Construction.

We are concerned that elements of the proposed scheme would erode standards while increasing compliance costs for builders. The changes would have particularly adverse consequences on small businesses.

Victoria has a very comprehensive registration process. It is the only state that requires applicants for registration in the building trades to provide both documented evidence of their competencies, and to undertake a lengthy interview process. The interview process is a means of verification that the applicant's experience matches what they have put forward on paper.

The current Victorian system is also focused on competency and recognises the variety of career pathways that can lead to accreditation. This is in contrast to many other states, which rely purely on a "paper audit" of an application, supported by a requirement that the applicant have undertaken a Certificate IV in Building and Construction.

The proposed model for the national scheme currently under development contains a requirement for a Certificate IV, and removes the interview process. Master Builders is very concerned with the impact requiring a Certificate IV will have on cost of registration and the quality of the skills base.

Requiring all builders to undertake a Certificate IV would be both time consuming and costly. Imposing such a requirement on builders would require that they spend approximately 200 hours (or 22 days face-to-face and costs in excess of \$2,500). The cost and time away from work will particularly penalise small businesses in the building industry, as the time involved translates into lost income. This is particularly the case for small businesses where the loss of one skilled person for a three-week period will have a significant impact on scheduled work.

Master Builders is particularly concerned about the impact that this requirement would have if imposed on all builders. Many older and more experienced workers who run small businesses will simply choose to retire rather than undertake classroom based learning that is not relevant to them. The current process of mutual recognition is already servicing the needs of the builders and tradesmen, therefore any perceived benefit from harmonisation of licensing arrangements would not outweigh the consequences for the industry.

**RECOMMENDATION 3: Master Builders calls for Victoria to withdraw from the National Occupational Licensing Scheme.**

#### *Owner-Builders*

Master Builders also seeks to highlight the reduced burdens placed on Owner-Builders, who put at risk the quality of Victoria's housing stock and legislated consumer protection regime, reducing the amount of work available to small businesses employing register builders who abide by the law.

The Building Commission's Pulse Data indicates that more than 27 per cent of new homes built in Victoria in 2011 were completed by Owner-Builders. These builders do not face the same checks and balances that registered builders do. Owner-Builders are not required to undertake training or hold certain insurances that registered builders must have and there is minimal scrutiny of their activity. They are only required to sign a document affirming that they have read a "kit" of fewer than 40 pages.

Master Builders has undertaken research and found that the total cost (including textbooks and documents, training costs, application fees for builder registration) is

\$18,396, not accounting for lost income due to time off work. The total cost of obtaining a Certificate of Consent to become an Owner Builder is just \$83.30.

In all Australian states, persons who own land are able to act in the capacity of a registered builder in relation to that land provided that they meet certain requirements. Victoria has the most permissive requirements in relation to Owner-Builders, who are not required to undertake an approved course or exam, as is the case in New South Wales (NSW), Queensland (QLD) and Western Australia (WA). Moreover they can take out a certificate for a new project every three years (every six years in WA and QLD and every five years in NSW).

While there are many legitimate Owner-Builders building on land they own, we suspect a great number are utilising Victoria's relaxed legal framework to bypass the safeguards in the Building Commission's registration process, using the Owner-Builder regime to perform works for other people at their own commercial benefit.

The only effective quality assurance on work undertaken is the building laws that require Owner-Builders to engage registered DBL's for particular specialised work done over the value of \$5,000. Unfortunately there is no proactive supervision of this requirement, although non-compliant Owner Builders are denied consumer protection Warranty Insurance.

Master Builders has long advocated that a tightening up of requirements to become an Owner-Builder, and an effective auditing of the requirement to use registered builders should be undertaken as a matter of urgency.

Therefore, we believe there should be more stringent measures to qualify as an Owner-Builder and effective monitoring measures must be established. Victorian Owner-Builders should be required to undertake an approved course and sit an exam. The ability to receive an Owner-Builder certificate every three years should also be lengthened, as is the case in other jurisdictions, to prevent illegitimate Owner-Builders profiting at the expense of registered builders.

<p><b>RECOMMENDATION 4:</b></p>	<p><b>Master Builders calls for action to be taken on Owner-Builder activity including -</b></p> <ul style="list-style-type: none"><li><b>a) Requiring Owner-Builders to complete a mandatory course and exam to ensure they have the competence to build quality housing;</b></li><li><b>b) Requiring a time period of six years to have elapsed before an Owner-Builder can be recertified to carry out works on another property;</b></li><li><b>c) Empowering the Building Commission to more effectively monitor Owner-Builder activity; and</b></li><li><b>d) Undertaking research aimed at identifying whether Owner-Builder built housing is done to an acceptable quality to ensure consumer protection.</b></li></ul>
---------------------------------	---

## THE BUILDING PERMIT SYSTEM

This section of the paper discusses the recent Victorian Auditor-Generals Office investigation, which made a number of recommendations for the Building Commission, including that complaints handling and investigation processes be strengthened.

Master Builders welcomes the investigation, noting that historically there appears to have been little audit on the performance of building surveyors.

We also believe that the Building Commission and local governments should continue to have a role in the building permit system, but recommend that the performance of councils be publicly released to ensure their obligations in undertaking inspections are met.

<b>RECOMMENDATION 5:</b> <b>Master Builders calls for the performance of local councils in the building permit system to be publicly released.</b>
--

## EMPOWERING CONSUMERS

This section of the paper considers whether changes should be made to provide consumers with more information regarding domestic building projects. An option is that a public, searchable database be created and made available on the website that would provide information on a builder's disciplinary history, dispute handling information and tips for hiring a builder.

Master Builders agrees that the most effective method for making this information available to consumers, who generally select a builder through recommendations of other clients they know, is through online mechanisms.

A publicly searchable database available through the government however, is not necessary and would fail to empower consumers. Instead, it would encourage consumers to seek quotes for an unreasonable number of builders, placing an undue burden on the industry.

A number of publicly available databases already exist to help guide consumers including the Master Builders 'Find a Master Builder' online service, which received 54,404 visits over the past 12 months.

The website should however provide tips for consumers regarding the questions they should ask a builder they are thinking of using, which includes checking with recent clients, confirming if they are registered, if they have access to relevant insurance and if they are a member of a building association.

<b>RECOMMENDATION 6:</b> <b>Master Builders calls for the website to provide tips for consumers, but that a public, searchable database is not required.</b>
--

## CONTRACT MANAGEMENT AND DISPUTE RESOLUTION

This section of the paper considers potential reforms to the domestic building disputes resolution process, including whether there is a need for a Building

Ombudsman, what power inspectors' reports should have and what role the Victorian Civil and Administrative Tribunal (VCAT) and other government institutions should play in this process.

#### *Domestic Dispute Resolution Process*

For some time there has been dissatisfaction on the part of both builders and owners in Victoria around the process for resolving domestic building disputes, particularly where these turn on the technical question of whether there is a defect that needs rectification.

Master Builders believes the current process under Building Advice and Conciliation Victoria (BACV) jointly administered by CAV and the Building Commission fails to meet the needs of builders and consumers. With consent of both the builder and the consumer, the process involves an on-site conciliation and a technical report from a Building Commission Inspector as to the existence of a defect. However, the Inspector's findings are not authoritative and there is no incentive for either party to follow the Inspector's recommendations. If there is no agreement the only recourse is through VCAT. Defending a VCAT dispute where there is only an allegation of defect(s) can run into many thousands of dollars, resulting in few disputes being resolved in a timely, conclusive or cost-effective manner. As the DBCA permits homebuyers to withhold the final 10 per cent of payment until a building is completed, many builders choose to just carry out additional works demanded by the consumer, even where they believe there is no defect to avoid the costs of progressing to VCAT.

We also note that while existing processes operate to support consumers, there are little options for builders when consumers fail to pay or make vexatious claims. A significant proportion of builders in Victoria are small businesses and unnecessary delays to payments pose significant impediments to their operation, particularly in the current economic environment.

Master Builders submits that an alternative process for resolving domestic building disputes is needed. In New South Wales for example, a more productive disputes resolution process exists where an independent Building Inspector determines if works are required and can issue a Rectification Order which lists the work that is to be rectified and the date of completion, with consequences for failure to comply. The powers of the Building Inspector should also include requiring the client to make the final payment of moneys owing to a builder where work is deemed complete or non-defective.

We believe a similar process should be in place in Victoria, with appropriately qualified inspectors with a formal connection to the Building Commission, making quick and binding determinations following on-site inspections, with the power to compel consumers to make the final payment being withheld because of an alleged defect.

#### *Definition of 'completion'*

Master Builders is concerned about the lack of statutory definition of project 'completion' in the legislation governing domestic building contracts.

As noted in the previous section, under the DBCA an owner is not liable to pay the builder the final payment due under a major domestic building contract (usually being 10 per cent of the overall contract value) until the building works are completed. As there is no definition of completion in the DBCA, in many cases builders will carry out

additional work demanded by an owner that is over and above contract requirements, in order to receive final payment. For a small business failing to do so can mean loss of the profit margin for many months of work and the concerns about the costly, time consuming VCAT process.

The DBCA should be amended to eliminate doubt as to the meaning of completion. Several jurisdictions, including Queensland include a definition of practical completion, which provides clarity and prevents builders from being held to ransom.

<b>RECOMMENDATION 7:</b>	<b>Master Builders calls for the introduction of a quicker, more cost-effective domestic building disputes process that empowers appropriately trained inspectors.</b>
--------------------------	--

<b>RECOMMENDATION 8:</b>	<b>Master Builders calls for a definition of ‘practical completion’ to be inserted into the <i>Domestic Building Contracts Act 1995</i>.</b>
--------------------------	--

## **INSURANCE**

This section of the paper looks at the current Domestic Building Insurance (DBI) regime, whether DBI should be extended to cover more than when a builder dies, disappears or becomes insolvent and what role the State Government should play in providing insurance.

Since May 2010, the Victorian Managed Insurance Authority (VMIA) has played a vital role in offering DBI. This was done at the instruction of the previous State Labor Government and has created stability and certainty for the residential building industry.

The current system ensures that both homebuilders and homeowners have access to affordable insurance. It followed the withdrawal of a number of insurance providers prior to 2010. Had the government-of-the-day not acted, it is quite possible that Victoria’s domestic building industry could have come to a grinding halt.

Master Builders firmly believes that this recent experience has exposed an inability for the private sector to offer an insurance product that is required by law in Victoria for any significant residential building works. Further, Master Builders is firmly of the view that the VMIA has carried out its duties in offering DBI services in an exemplary manner.

As a result of the recent market failure, it is imperative that the Victorian Government ensure a viable and affordable DBI product be available for builders and consumers. Master Builders believes the only sensible outcome regarding this matter is for the Government, through the VMIA, to maintain its current insurance role within our industry.

The paper also compares the various models of DBI operating across the country. It shows Victoria’s current system is largely consistent with the vast majority of other Australian jurisdictions.

### Domestic building insurance schemes in Australia

	Mandatory or voluntary	Government or market	Last resort or first resort
Victoria	Mandatory	Government/Market	Last resort
New South Wales	Mandatory	Government	Last resort
Queensland	Mandatory	Government	First resort
Western Australia	Mandatory	Market	Last resort
South Australia	Mandatory	Market	Last resort
Tasmania	Voluntary	Market	N/A
Northern Territory	Mandatory	Government	Last resort
ACT	Mandatory	Market	Last resort

*Source: Victorian Domestic Building Consumer Protection Framework Public consultation paper*

Master Builders supports the retention of a mandatory last resort insurance system. A voluntary system would lead to some consumers left with no protection for their largest asset – their home. The current system, with Government playing its role, has been successful and no evidence has been provided in the paper to suggest that it has either significant failures or an inadequate ability to protect consumers. The paper also fails to justify what additional benefits would be attained for either homeowners or homebuilders by switching the compulsory DBI model to another form. In fact, it is our belief that any move towards first resort insurance would lead to further issues with the insurance industry, as was evidenced in the lead up to the creation of the current system around 2002.

With this in mind, Master Builders believes that no additional DBI triggers beyond the existing triggers of death, disappearance and insolvency, are required. As only one of these three triggers are definitive, however, we would support moves to review the disappearance and insolvency triggers to ensure they adequately meet the needs of homeowners.

We should also be aiming at making the definition of ‘insolvency’ and ‘disappearance’ clearer to all parties, particularly the consumer, so that they know exactly when a builder could be considered as such.

A Professional Indemnity extension under a third party liability policy or a separate professional indemnity policy is definitely not an alternative to Home Warranty insurance, particularly due to the way that PI policies are structured in Australia, whereby a builder would have to buy ‘run off’ cover every year after they retire or close their business, in order to maintain protection for themselves on a long tail product like Warranty insurance. It would also be considerably more expensive.

**RECOMMENDATION 9: Master Builders calls for the VMIA to retain its role in offering DBI products to builders.**

**RECOMMENDATION 10: Master Builders calls for the State Government to retain a mandatory last resort DBI system and review the disappearance and insolvency triggers.**

## **INSTITUTIONS**

This section of the paper considers the governance arrangements for the building industry.

Master Builders believes that the Building Commission, as the body empowered to register builders with the necessary deregistration powers and industry expertise should be the primary government agency involved in all aspects of the industry. This would create a 'one-stop-shop' for builders and consumers and remove duplication with CAV.

**RECOMMENDATION 11: Master Builders calls for the Building Commission to act as a 'one-stop-shop' for the building industry.**

## **TRANSITIONAL ARRANGEMENTS**

This section of the paper considers the transitional issues that may arise if changes to the existing regulatory and consumer protection framework are made.

In relation to any reforms to the existing framework, Master Builders requests that clear timelines are established for implementation and that Government work with the sector through industry associations to ensure the best possible outcomes are achieved.

**RECOMMENDATION 12: Master Builders calls for clear timelines and continued consultation with the industry in the event of any reforms being made to the existing framework.**