

Owner-builder

Application Kit



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Introduction

Owner-builder laws exist in Victoria to provide protection for consumers, genuine owner-builders and registered building practitioners.

The information contained in this Application Kit will provide you with the necessary information to help you determine if you are a genuine owner-builder, the risks and responsibilities that an owner-builder takes and what is required to apply for a Certificate of Consent from the Building Practitioners Board.

Please carefully read the information enclosed in this Application Kit. If you have further questions, please contact the Building Commission on 1300 360 320.

What is an owner-builder?

An owner-builder is a person who carries out building work on his or her own land. This generally does not include registered builders.

If the land is owned by a body corporate or is the subject of a trust, the owner-builder must be a body corporate director or a trust beneficiary. Body corporate directors and trust beneficiaries will need written permission from the body corporate or trustees to apply for a Certificate of Consent (see *What is a Certificate of Consent?*) and to carry out any domestic building work on the property. Similarly, if the land is owned by more than one person, the owner-builder will need the written permission of all other owners.

Owner-builders take on many of the responsibilities of a builder. Depending on the circumstances, these may include:

- Obtaining all permits required
- Supervising building work and/or carrying out the work themselves
- Ensuring the work meets relevant building regulations, standards and other laws
- Arranging for building inspections as required by law at particular stages of the building work
- Obtaining an occupancy permit or certificate of final inspection from the relevant building surveyor on completion of work.

If you, as an owner-builder, contract out part of the work to a registered building practitioner or tradesperson then your responsibilities will be different (see *Engaging builders and tradespeople*). If you engage a builder

to undertake domestic building work, the builder will be responsible for that part of the building work and ensuring that the work meets relevant building regulations, standards and other laws.

As an owner-builder, you may:

- Undertake all or part of the building work yourself, except in areas that require licensed tradespeople, such as electricians and plumbers (unless you are an electrician or plumber)
- Contract out part of the work to building practitioners or tradespeople.

As an owner-builder you:

- Will need to obtain a Certificate of Consent from the Building Practitioners Board in order to obtain a building permit to carry out domestic building work where the cost is more than \$12,000
- Can only obtain a Certificate of Consent if you have not been issued with a building permit to carry out work as an owner-builder in the previous three years. The exception to this is where the permit was in relation to or ancillary to the dwelling on the same land that the application refers to
- Must reside and continue to reside, or intend to reside in the single home
- Must be the owner (Registered Proprietor on Title).

What is a Certificate of Consent?

A Certificate of Consent is written approval from the Building Practitioners Board that enables you to obtain a building permit and carry out domestic building work as an owner-builder on your own land. Obtaining a Certificate of Consent is not a guarantee that you will be issued with a building permit.

The relevant building surveyor will still need to assess the application for a building permit and ensure (amongst other things) that the proposed building work will comply with the building regulations.

For further information on Certificate of Consents, refer to the *Certificate of Consent* section on page 5.

What risks do owner-builders take?

An owner-builder assumes most of the responsibilities, risks and liabilities of a builder. The level of responsibilities, risks and liabilities of an owner-builder depends on the extent of the building work undertaken by the owner-builder.

These risks may include:

Financial risks

- Project cost increases as a result of poor estimating
- Rectification work due to faulty workmanship and/or non-compliance
- Variations from the original plans
- 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, occupational health and safety, etc)
- 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

- Cost of insuring prospective purchasers
- Claims by purchaser.

Risks are reduced if the owner enters into a major domestic building contract with a registered building practitioner for some or all of the work. Where the contract sum exceeds \$12,000 and the contractor is required to provide insurance, risks are further reduced.

As an owner-builder, you need to ensure that you have appropriate workplace and public safety insurance policies in place. You should also consider purchasing policies to protect yourself against fire and theft. When protection work is required, you must also obtain insurance for adjoining property protection during construction and for 12 months following completion.

Before you become an owner-builder you need to learn about:

- Risks associated with asbestos and renovations
- Health and safety obligations under the *Occupational Health and Safety Act 1985/2004*
- Tax law requirements related to paying contractors.

What is domestic building work?

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
- The renovation, alteration, extension, improvement or repair of a home
- The demolition or removal of a home.

For full definitions of domestic building work, refer to the *Domestic Building Contracts Act 1995* and *Domestic Building Contracts and Tribunal (General) Regulations 1996*.



Understanding the building process

Starting out on a building project

Whether you are building or renovating your home, it is important to be well prepared. For those who don't understand the building control system, there can be many pitfalls when undertaking a building project. The law relating to building is not just designed for new houses or major renovations; it covers many smaller projects such as:

- Re-stumping
- Retaining walls
- Swimming pools, spas and safety barriers
- Boundary walls and fences
- Structural alterations
- Demolitions
- Garages, carports, verandahs and pergolas

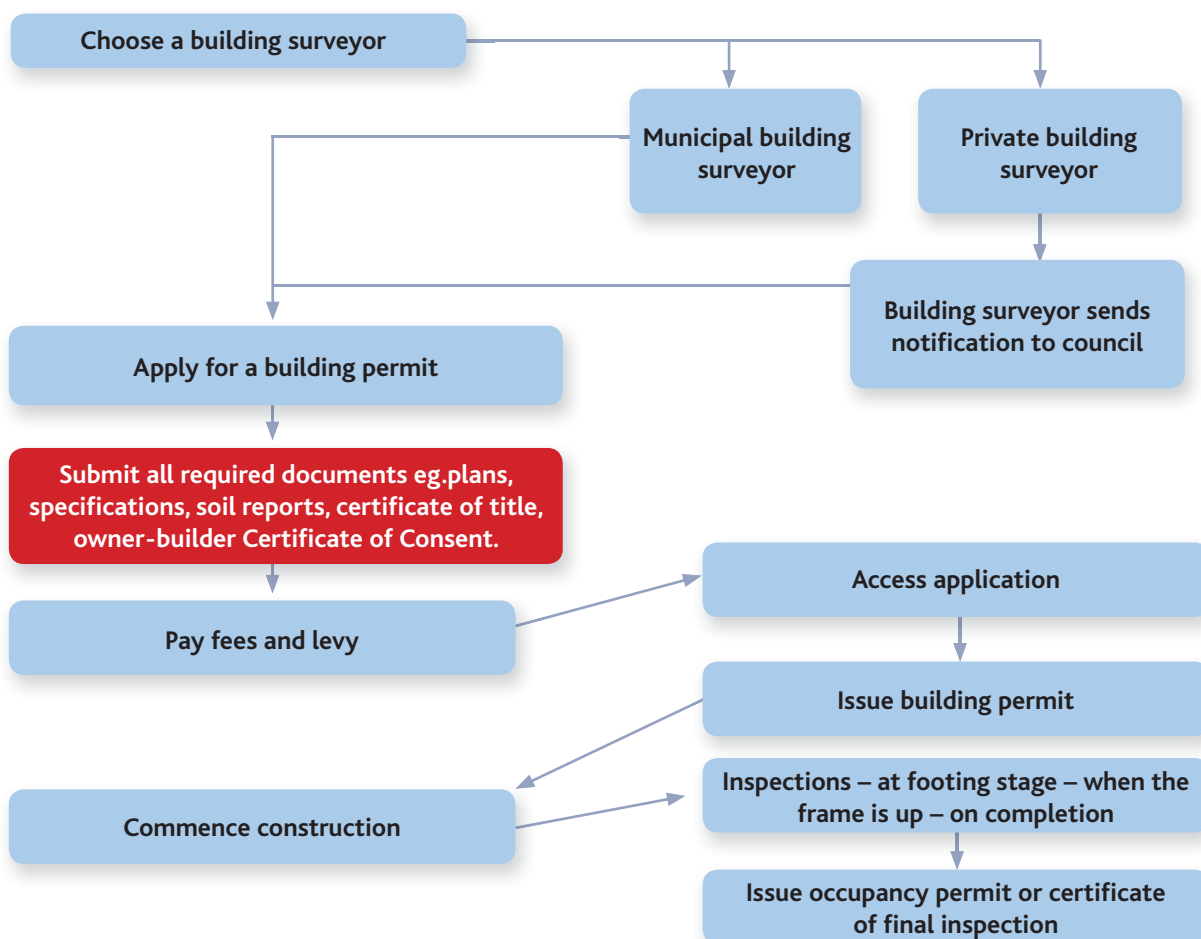
A good starting point is to read the brochure *Building and Renovating – A guide for Consumers* from Consumer Affairs Victoria. It includes information about financing your project and selecting tradesmen, and covers matters such as insurance.

This guide is designed to help you understand the laws and regulations that apply to building in Victoria. The first thing to consider is whether or not you will require a permit for your project.

The Building Permit Process

Applicant

Building surveyor



Building surveyors

A building surveyor is a professional trained in understanding and interpreting building law. He or she is authorised to assess building plans with a view to ensuring they are compliant with the Building Regulations. In addition to having recognised qualifications, a building surveyor must be registered with the Building Practitioners Board and must have appropriate insurance.

Building surveyors are responsible for ensuring buildings are safe, accessible and energy efficient and therefore have an impact on the design, planning and functionality of buildings. They are experts in building legislation, technical codes and construction standards; they detect and diagnose problems with design issues, construction techniques and materials, and undertake the inspection process from foundations through to completion.

Until 1994, local councils were the sole providers of building permits in Victoria. New legislation was introduced at that time to enable competition and allow private building surveyors to issue building permits. This system is known as 'private certification' and consumers now have the choice of engaging a private building surveyor or seeking that same service from a municipal building surveyor.

To find a building surveyor, contact your local council, the Australian Institute of Building Surveyors or look at the Building Commission website www.buildingcommission.com.au. Building surveyors must be registered with the Building Practitioners Board. You can verify if your building surveyor is registered by contacting the Building Commission.

Municipal building surveyors

Both private and municipal building surveyors have the same responsibilities in relation to the issue of building permits. However, municipal building surveyors have extensive additional functions related to community safety and the administration and enforcement of building legislation in their municipality. These responsibilities are described in more detail in the section on local government.

Private building surveyors

Private building surveyors are independent professionals, not contractors to a council. They have the same power to issue building permits and occupancy permits as municipal building surveyors. They also have the same responsibility as municipal building surveyors to administer and enforce the Building Regulations to the projects in which they have been appointed.

There are also some special requirements placed on private building surveyors that help ensure an integrated system of building control within the municipality. These include requirements for the private surveyor to notify council of their appointment on a building project within seven days of that appointment and a requirement to lodge copies of all permits and associated documentation within seven days of issue. In this way, local government maintains an up-to-date publicly accessible register of all building work in the municipality.

What does a building surveyor actually do?

Your building surveyor will have expert knowledge of the Building Regulations and so it is a good idea to get a surveyor involved early in your project. This may save you some time and money as their advice can mean that you do not have to make significant changes to your design in order to meet the regulations.

Once appointed, it is the building surveyor's role to:

- Evaluate and assess the plans
- Help you to achieve compliance within the regulations
- Issue the building permit
- Conduct periodic inspections of the building work
- Issue an occupancy permit or certificate of final inspection once the work is finished.

A building surveyor may also:

- Approve variations from the regulations provided the plans still meet the intent of the regulation
- Assist you to seek a dispensation from your local council in certain circumstances.

Permits

What permits will I need for my building project?

You may need a planning permit, a building permit or both. Your architect or builder can give you some initial advice about the permits required but it is essential to get independent advice before commencing your project. Your local council is the best place to advise whether or not you will need permits. Large fines apply if you commence building work without the correct permits and you can be compelled to demolish illegal buildings, so you should never rely on informal advice that permits are not needed.

Planning permits

The Planning and Environment Act 1987 is the legal basis for the town planning system in Victoria.

This Act requires every municipality in Victoria to establish a planning scheme to control the use and development of land. Each of these planning schemes establishes zones, such as residential zones and industrial zones, and overlays such as heritage and vegetation protection. These 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 the local council. Before undertaking any building or construction work, a good first step is to talk to a 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.

Building permits

Building law stipulates that all building work requires a building permit unless the work is specifically exempted under the regulations. A building permit is written approval from a registered building surveyor certifying that your plans comply with the Building Regulations. You must have this permit before any work can begin. The same rules apply to alterations, demolitions and removals. So always check with a registered building surveyor to see if you are going to need a building permit. Special provisions apply to owner-builders and these are discussed later.

Applying for a building permit

Before applying for a building permit, you need to choose a building surveyor. Your choice needs to be confirmed in writing - a phone call or a verbal agreement is not sufficient. To obtain a building permit, you complete an application form (this is available from any building surveyor) and submit it to your appointed building surveyor. The architect or builder can apply on your behalf for the permit but you must first authorise the architect or builder in writing to make the application. Do not sign a blank form authorising your builder to obtain all permits for you and always check that a permit has been issued before any work commences.

It is important to remember that it is the owner's responsibility to get the right permits. Regulations covering the issuing of building permits stipulate that you have to provide evidence that your builder is registered with the Building Practitioners Board if your project is worth more than \$5,000. If the work is worth more than \$12,000, you will also need to show evidence that your builder has the correct insurance. You can check if your Building Practitioner is registered by searching on the Building Commission website.

For more information please refer to the Building Commission brochure - *What you need to know about building permits*.

Certificates of Consent

When is a Certificate of Consent required?

Landowners who intend to apply for a building permit to carry out domestic building work, which costs more than \$12,000 in relation to a single home as an owner-builder, must provide a Certificate of Consent to the relevant building surveyor.

You will need to obtain subsequent Certificates of Consent for any additional building work (costing over \$12,000) on the same property. A separate Certificate of Consent is required each time you make an application for a building permit. Each application for a Certificate of Consent must be accompanied by the application fee (see enclosed insert: Owner-builder Fee Schedule & Information).

A Certificate of Consent is valid for three years from the date it is issued.

When is a Certificate of Consent not required?

If you intend to carry out domestic building work as an owner-builder that costs \$12,000 or less, you do not require a Certificate of Consent in order to obtain a building permit. You may still require a building permit to carry out this building work.

If you are a registered domestic or commercial builder, registered demolisher with the Building Practitioners Board or a registered architect with the Architects Registration Board of Victoria, you do not require a Certificate of Consent in order to carry out work as an owner-builder.

If you engage a builder for the entire project then you are not an owner-builder. The builder needs to be registered if the work costs over \$5,000 and provide domestic warranty insurance if the work is valued over \$12,000.

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

What happens if I carry out domestic building work without a Certificate of Consent?

If you carry out domestic building work valued over \$12,000 without a Certificate of Consent and/or building permit, you could be prosecuted. Maximum penalties range from around \$5,000 to \$10,000.

Applying for a Certificate of Consent

To be eligible for a Certificate of Consent you must:

- Be an individual that is either:
 - The sole owner of the land, or
 - A co-owner of the land, or
 - The director of the body corporate that owns the land and have written authority from the body corporate to apply and carry out the work¹, or
 - The beneficiary of a trust that owns the land and have written authority from each trustee to apply and carry out the work²
- Reside in the dwelling and continue, or intend to reside there.

How do I apply for a Certificate of Consent?

To apply for a Certificate of Consent, you must:

- Read the information contained in this Owner-builder Application Kit
- Complete the application form
- Sign the statutory declaration after reading the information in this Owner-builder Application Kit and completing the application form
- Submit the completed application form, with supporting documents, to the Building Practitioners Board, together with the application fee.

¹ Body corporate directors who apply for a Certificate of Consent must also reside and continue to reside in the dwelling, or intend to reside there.

² Trust beneficiaries who apply for a Certificate of Consent must also reside and continue to reside in the dwelling, or intend to reside there.

Can I appeal against a decision of the Building Practitioners Board?

You may appeal to the Building Appeals Board if the Building Practitioners Board:

- Refuses to issue you with a Certificate of Consent; or
- Fails to make a decision on your application within a reasonable time.

The Building Appeals Board will consider your appeal and in making a decision may agree with, overturn, set aside or vary the Building Practitioners Board's decision. Appeals must be made within 60 days of the decision by the Building Practitioners Board.

If the Building Practitioners Board's decision is set aside, the Building Appeals Board may:

- Put in place its own decision
- Require the Building Practitioners Board to reconsider your application in accordance with any directions or recommendations that it considers appropriate.

If the appeal is against the Building Practitioners Board's failure to make a decision on your application for a Certificate of Consent, then the Building Appeals Board may exercise the Building Practitioners Board's power to either issue or refuse to issue the Certificate of Consent.



Engaging builders and tradespeople

Requirements of an owner-builder

As an owner-builder, you may:

- Undertake all or part of the building work yourself, except in areas that require licensed tradespeople, such as electricians and plumbers (unless you are an electrician or plumber)
- Contract out some of the work to building practitioners or tradespeople.

If you enter into a contract with a person to complete any building work and the contract price is more than \$5,000, the person must be a registered building practitioner and must enter into a written Domestic Building Contract with you. The contract must include certain minimum terms, as defined under the *Domestic Building Contracts Act 1995*. There are certain tradespeople however who carry out domestic building work as a single trade only. These tradespeople do not have to provide you with a major Domestic Building Contract for work over \$5,000 (see following list).

If you engage a person to carry out any building work for which the contract price is more than \$12,000, that person must ensure that the work is covered by domestic building insurance. The details of the insurance are required to be included on the Domestic Building Contract by the Registered Building Practitioner.

If you engage this person before the building permit is issued, you must notify the relevant building surveyor when you make the application for the building permit.

If you engage this person after a building permit has been issued, you must give the relevant building surveyor written notice of the engagement within 14 days, including the building practitioner's registration details.

If you do not comply with this requirement, you may be prosecuted by the Building Commission.

Tradespeople carrying out the following domestic building work as a single trade only do not need to offer you a major Domestic Building Contract for work over \$5,000:

- Attaching external fixtures (including awnings, security screens, insect screens and balustrades)
- Draining and plumbing work³
- Electrical work
- Glazing
- Installation of floor coverings
- Insulating
- Painting
- Plastering
- Tiling (wall and floor)
- Erecting a chain wire fence to enclose a tennis court
- Erecting a mast, pole, antenna or similar structure.

However, if more than one trade is carried out by the same tradesperson for more than \$5,000 (for example, the plasterer also does the painting), they will be required to be registered and enter into a major Domestic Building Contract. For work valued over \$12,000, they must also provide domestic building insurance.

Registration details of registered building practitioners can be checked on the Building Commission website at www.buildingcommission.com.au under 'Finding an RBP' or by calling 1300 360 320 for information advice or assistance (see *How can Building Advice and Conciliation Victoria (BACV) help?*).

Disputes involving contractors

If a dispute were to arise between the building practitioner or tradesperson who has been engaged and yourself, good communication is the first step towards finding a resolution. Sometimes, all the parties need is to better understand their rights and the laws related to building.

If you have a problem with a building practitioner or tradesperson and cannot resolve it yourself, you can contact Building Advice and Conciliation Victoria (BACV) on 1300 557 559 for information, advice or assistance (see *how can Building Advice and Conciliation Victoria (BACV) help?*).

³As defined under Section 85(1) of the Building Control (Plumbers, Gasfitters and Drainers) Act 1981

How can Building Advice and Conciliation Victoria (BACV) help?

Building Advice and Conciliation Victoria (BACV) is a free, joint service provided by the Building Commission and Consumer Affairs Victoria. At any stage of your building or renovating project you can turn to BACV for information, advice or assistance in resolving disputes.

BACV services provided by Consumer Affairs Victoria:

- Enquiries staff give telephone advice
- Conciliators assist you and your builder to reach agreement and resolve the dispute
- Investigators may check to see if laws have been broken
- Solicitors may prosecute builders who have broken laws.

BACV services provided by the Building Commission:

- Technical experts provide telephone advice
- Building inspectors check for defective work and refer builders who refuse to fix work to the Building Practitioners Board for disciplinary action
- Investigators may check to see if laws have been broken
- Prosecute any person who has broken the law.

BACV has found that most disputes can be resolved quickly and cheaply with the right advice. Contact BACV if you want additional information on contractual or technical problems that can develop during your domestic building project. If you have a problem and have discussed it with your builder but still cannot reach agreement on a solution you should call BACV on 1300 557 559.

You may also seek independent legal advice from a specialist building solicitor, or take your case to the Victorian Civil and Administrative Tribunal (VCAT) (see *How can VCAT help?*).

Tips for resolving disputes

- Have realistic expectations
- Identify exactly what your problem is. Is it the workmanship, the service, an individual or a product?
- If the dispute involves several problems with different people, then deal with each of them separately if possible
- Collect all the evidence you need to back up your claim such as documents, receipts, photographs and warranties. Research your rights and responsibilities. Check the Building and Renovating web pages at www.consumer.vic.gov.au or call BACV on 1300 557 559
- Determine the outcome you want and would be willing to accept. Ask yourself if your demands are reasonable? Have you taken into account your rights and the building practitioner's rights and obligations under law?
- Act quickly on your complaint. Delays could affect your rights
- Contact the building practitioner or tradesperson involved in the dispute. It is best to make face to face or telephone contact first to find out the building practitioner's immediate reaction to your concerns. Always follow up by letter or e-mail to ensure you have written evidence of the complaint
- Wait until you are not angry or upset to make contact and think about what you want to say beforehand
- Explain the problem in as much detail as possible.
- Remain calm, don't raise your voice or become argumentative
- Offer solutions and keep an open mind about the solutions the other person offers
- Take notes of your conversation. Include the date and name of the person you spoke to
- When an agreement has been reached, be sure to attach it to your Domestic Building Contract, signed 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.

What to do if the dispute needs conciliation

If you cannot resolve a dispute, you can make a written complaint to be assessed by a BACV conciliator.

Complaint forms are available from the:

- Consumer Affairs Victoria website at www.consumer.vic.gov.au or by calling 1300 558 181
- Consumer Affairs service counter at
Consumer Business Centre
Ground Floor, 121 Exhibition Street
Melbourne VIC 3000

Once you have filled out the form, attach a photocopy of your Domestic Building Contract and other relevant details and either:

- Send it to:
Building Advice and Conciliation Victoria
Consumer Affairs Victoria
GPO Box 123A
Melbourne VIC 3001, or
- Deliver it in person to:
Consumer Affairs Victoria at the
Consumer Business Centre
Ground Floor, 121 Exhibition Street
Melbourne VIC 3000

A BACV conciliator will read your complaint and may then, if appropriate, work with you and the building practitioner to help you reach a voluntary agreement on how to resolve the dispute or advise you of other more appropriate options.

If your complaint suggests evidence of faulty work and the conciliator is unable to get a voluntary agreement to fix the work, a BACV building inspector may make a site visit to decide whether the work is defective. Building practitioners refusing to fix defects or committing breaches of legislative requirements may find themselves subject to disciplinary action or prosecution.

How long does the BACV process usually take?

The length of the BACV process depends upon your individual case, supporting information and evidence, and how willing both parties are to reach an agreement.

Many problems are resolved after advice is given or a conciliator is engaged to help. The process may take longer to work through if a building inspector is required to view and assess defective work.

How can the Building Commission help?

If you engage a registered building practitioner and believe the practitioner may have breached professional standards or the requirements of the *Building Act 1993*, you can make a written complaint to the Building Commission. The Building Commission takes all complaints seriously and may prosecute the practitioner who was the subject of the complaint or refer the case to the Building Practitioners Board for disciplinary action. Alternatively, you may refer your complaint directly to the Building Practitioners Board.

The Building Commission may also offer a domestic building inspection service that can determine whether building work performed by your contractor is defective. The *Domestic Building Contracts Act 1995* allows the Director of Consumer Affairs Victoria as part of the conciliation process to identify cases where an inspector may assist in resolving the dispute. In such cases, the Director can ask the Building Commission to undertake an inspection of the building work.

The *Domestic Building Contracts Act 1995* alternatively allows you to apply for a domestic building inspection directly from the Building Commission at any stage, either during or after completion of building work if you are party to a dispute arising under a domestic building contract. Only items in dispute will be inspected. An inspection report will be issued for the defective items and a recommendation of what should be done to rectify the defective work. The fee for a domestic building inspection under these circumstances is \$300 inclusive of GST.

In conciliation or mediation, the inspection report may help resolve your dispute as it is an independent assessment and evidence of the quality of building work.

How can the Victorian Civil and Administrative Tribunal (VCAT) help?

In addition to utilising the free BACV conciliation service, the Building Commission or the Building Practitioners Board, you have the option of having your building dispute determined by VCAT. In general, a party to a dispute will refer the matter to VCAT when a negotiated mutually agreeable outcome between the parties via BACV's conciliation service is not possible. However, it is important to note that the VCAT option is available to parties at any time in the process.

You can take disputes to VCAT at any time for up to 10 years after an occupancy permit or certificate of final inspection is issued.

VCAT hears disputes concerning Domestic Building Contracts, regardless of the amount in dispute, and has jurisdiction to hear and decide on:

- Domestic building disputes
- Disputes relating to owners' insurance claims and insurers' decisions on such claims
- Requests to stop building work that doesn't comply with the contract
- Matters referred under the *House Contracts Guarantee Act 1987*.

Further information on VCAT including the relevant application fees can be obtained by calling VCAT on 03 9628 9999 or by accessing their website at www.vcat.vic.gov.au.



Selling your property and insurance

Requirements under the Building Act

If you sell your owner-built home within six and a half years after the domestic building work has been completed (ie. from the date of issue of your occupancy permit or certificate of final inspection), you must comply with the following additional requirements under the *Building Act 1993*:

- Ensure that the contract of sale sets out the compulsory statutory warranties that you are required to give the homebuyer
- Obtain a defects report on the domestic building work prepared by a prescribed building practitioner. The report must not be older than six months
- Obtain owner-builder domestic building insurance covering the domestic building work (if within six years of completion).

These requirements ensure that current and future buyers of your home are covered if the building work carried out by you, or on your behalf, turns out to be defective.

A buyer of your home 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 building practitioner, then you may have a claim against that practitioner. Owner-builder domestic building insurance only covers situations where the owner-builder is dead, has disappeared or is insolvent.

How long are these requirements imposed?

If you sell your owner-built home within six years of completion of building work, you must provide domestic building insurance and a defects report.

If you sell your owner-built home on or after six years, but within six and a half years of completion⁴ of building work, you must provide a defects report only.

If no occupancy permit or certificate of final inspection has been issued and you sell your home within six years of commencement of building work, you must provide domestic building insurance and a defects report.

If no occupancy permit or certificate of final inspection has been issued and you sell your home on or after six years, but within seven years of commencement of building work, you must provide a defects report only.

What statutory warranties apply?

If you sell your owner-built home within six and a half years after domestic building work has been completed, it is taken that you have assured the buyer that:

- All domestic building work carried out in relation to the construction by you or on your behalf was completed in a proper and workmanlike manner
- 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, those materials were new
- The domestic building work was carried out in accordance with all laws and legal requirements, including the *Building Act 1993* and the relevant Building Regulations
- The Building Act allows a claim against a party for undertaking defective building work to be brought for up to 10 years.

The contract of sale is required to contain these warranties, although they are implied into the contract of sale, even if they are not expressly referred to in that contract.

What reports do I need to obtain?

You must obtain a defects report on the building from a 'prescribed building practitioner'. A prescribed building practitioner includes a registered architect, building surveyor, building inspector, engineer or a person recognised by the Minister under the *House Contracts Guarantee Act 1987*.

The report must not be more than six months old when you enter into the contract to sell the land and the building. You must give a copy of this report to the homebuyer.

⁴Completion dates from the issue date of your occupancy permit or certificate of final inspection.

What insurance do I need to obtain?

You must obtain domestic building insurance to cover against any claims brought against you by current and future homebuyers, based on the warranties referred to in this Application Kit. You must provide the homebuyer with a certificate of the insurance.

It is important to remember that domestic building insurance may only come into effect if you die, disappear or are insolvent. Refer to the *Useful Contacts* section for more information on insurance.

Can I be exempt from any of these requirements?

You may apply to the Victorian Civil and Administrative Tribunal (VCAT) to be exempt from these requirements if:

- There are exceptional circumstances; or
- Full compliance with these requirements is impossible and / or would cause undue hardship.

What happens if I do not comply with these requirements?

If you enter into a contract to sell your owner-built home without complying with the requirements to obtain a defects report and insurance in respect of the dwelling and set out the warranties in the Contract of Sale, the purchaser has a right to 'walk away' from the sale at any time prior to settlement. The contract of sale is not automatically void, but is considered to be 'voidable'. You may also be prosecuted, with a maximum penalty of around \$10,000. You cannot 'contract out' of these requirements. They will apply even if you and the purchaser agree otherwise.



Useful contacts

Education providers

Chisholm Institute of TAFE

Telephone 1800 444 220
www.chisholm.vic.edu.au

Department of Education and Training

www.shortcourses.vic.gov.au

Holmesglen Institute of TAFE – short courses

www.shortcourses.holmesglen.vic.edu.au

Owner Building Solutions Australia Pty Ltd

Telephone 1800 777 996
www.ownerbuilding.com.au

South West TAFE (Warrnambool)

Telephone (03) 5564 8911
www.swtafe.vic.edu.au

TAFE Virtual Campus

www.tafevc.com.au

Building information

Australian Owner builders

Telephone 1800 822 220
www.ownerbuild.com.au

Building Commission – Technical services

Telephone 1300 360 380
www.buildingcommission.com.au

Building Practitioners Board

Telephone 1300 360 320
www.buildingcommission.com.au

Home Ideas Centre

Telephone 1300 466 343
www.homeideas.com.au

Dial Before You Dig

Telephone 1100
www.dialbeforeyoudig.com.au

Timber Advisory Centre

Telephone (03) 9875 5010
www.timber.asn.au

Land Registry

Telephone (03) 8636 2456
www.land.vic.gov.au

Titles and Property Certificates

Building practitioner registration

Building Commission – Practitioner services

Telephone 1300 360 320

Building Commission – Technical services

Telephone 1300 360 380
www.buildingcommission.com.au

Energy Safe Victoria

Telephone (03) 9203 9758
www.ocei.vic.gov.au

Plumbing Industry Commission

Telephone 1800 015 129
www.pic.vic.gov.au

Building related disputes

Building Advice and Conciliation Victoria (BACV)

Telephone 1300 557 559

Building Appeals Board

Telephone (03) 9285 6400
www.buildingcommission.com.au

Consumer Affairs Victoria

Telephone 1300 558 181
www.consumer.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

www.vcat.vic.gov.au

VCAT Civil Claims List

Telephone (03) 9628 9830

VCAT Domestic Building List

Telephone (03) 9628 9999

Useful contacts

Building design

Building Designers Association of Victoria

Telephone (03) 9639 2368
www.bdav.org.au

Occupational health and safety

Workcover

Telephone (03) 9641 1555
www.workcover.vic.gov.au

Insurance

Australian Home Warranty

Telephone 1300 300 115
www.austhomewarranty.com.au

Building Industry Solutions

Telephone 1800 244 224
www.buildinginsurance.com.au

Buildsafe

Telephone (03) 9773 6777
www.buildsafe.com.au

CGIB Australia Pty Ltd

Telephone 1300 764 244
www.cgib.com.au

HIA Insurance Services
(Home Owner Warranty)

Telephone (03) 9666 0222
www.hiainsurance.com.au

Taxation

Australian Taxation Office

Telephone 13 28 66
www.ato.gov.au

Energy efficiency

Sustainability Victoria

Telephone 1300 363 744
www.sustainability.vic.gov.au

Make your home green

www.makeyourhomegreen.vic.gov.au

Asbestos

Environment Protection Authority Victoria

Telephone (03) 9695 2722
www.epa.vic.gov.au

Environmental Health Officer of your local council
Environmental Health Unit

Telephone 1300 650 172

Department of Human Services

www.betterhealth.vic.gov.au
www.dhs.vic.gov.au

Workcover

Telephone (03) 9641 1555
www.workcover.vic.gov.au

Building Standards

Australian Building Codes Board

Telephone 1300 134 631
www.abcb.gov.au

Building Act and Regulations

Information Victoria

Telephone 1300 366 356
www.dms.dpc.vic.gov.au

Glossary of terms

Body corporate: A person or group of persons with a separate legal personality typically created under Corporations Law, i.e. a company. The body corporate is not a property management company.

Building Appeals Board: An independent statutory body established under the *Building Act 1993* that determines disputes and appeals arising from the Act and *Building Regulations 2006* and deals with modifications to building legislation.

Building Practitioners Board: An independent statutory body established under the *Building Act 1993* that oversees the quality and standard of professional services in the Victorian building industry.

Certificate of Consent: Written approval from the Building Practitioners Board that enables an owner-builder to obtain a building permit and carry out domestic building work on his/her own land. Obtaining a Certificate of Consent does not guarantee you will be issued a building permit.

Co-owner: Where there are two or more people listed as owners on the certificate of title of the property.

Domestic Building Contract: Means a contract to carry out or to arrange or manage the carrying out of domestic building work other than a contract between a builder and a sub-contractor.

Domestic building work: Defined under the *Domestic Building Contract Act 1995* and includes the construction of a home, renovations, alterations, extensions, repairs or improvements to a home, demolition or removal of a home.

In relation to or ancillary to: Building or structures typically considered to be 'in relation to or ancillary to' a single home include (but are not limited to) carports, garages, pergolas, swimming pools, outbuildings which are not self-contained (i.e. have no kitchen or bathroom facilities), retaining structures, landscaping and fences.

Owner: In relation to a building, means the owner of the land on which a building is situated.

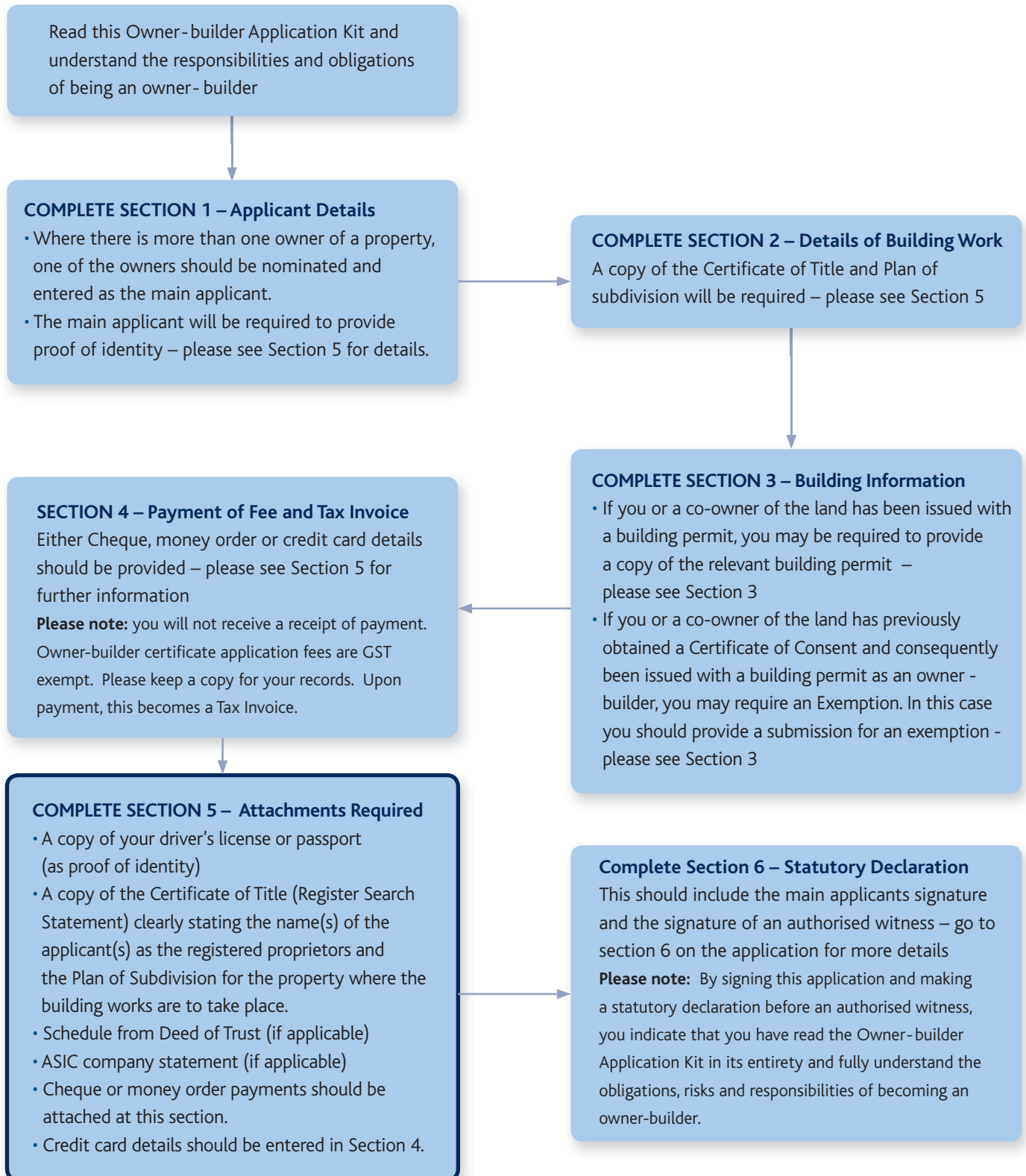
Owner-builder: A person who carries out building work on his or her own land. This generally does not include registered builders.

Registered building practitioner: A building practitioner who is registered with the Building Practitioners Board.

Trust: A relationship where property is held by one party (the trustee) for the benefit of another (the beneficiary).

Application form for a Certificate of Consent

Understanding the application process



IMPORTANT NOTES:

- If you have not completed the form, or have not provided the information requested, your application may be returned to you – please check your application before submitting.
- Complete applications will be processed within two – three weeks of receipt. Where further information is required, processing times will vary.
- All application fees are non-refundable, regardless of the outcome. Please consult your building surveyor at the outset to determine if a Certificate of Consent is required.

Application for a Certificate of Consent

SECTION 1: MAIN APPLICANT DETAILS

APPLICANT'S TITLE (circle) Mr / Mrs / Miss / Ms / Dr / Other

Given names (as shown on the property title)

Applicant's family name (as shown on the property title)

Applicant's sex (M/F)

The person who wishes to become the owner-builder is known as the 'applicant'. For natural persons, the applicant's details must appear on the property title for the property that they wish to become an owner-builder for. **Only one name is required.**

Applicant's date of birth (DD/MM/YYYY)

Proof of Identity provided (Y/N)



Attach a copy of the applicant's current driver's licence or passport as proof of identity at section 5.

MAIN APPLICANT CONTACT DETAILS

A/H Phone number

B/H Phone number

Mobile number

Fax number

Email address

MAIN APPLICANT RESIDENTIAL DETAILS (Number, Street name) Current residential address at the time of application

Suburb

State

Postcode

MAIN APPLICANT POSTAL DETAILS (Number, Street name, P.O. BOX) write 'as above' if same as residential address

Suburb

State

Postcode

COMPANY NAME (if applicable)

Complete if you are the **director** of the company that **owns** the land. Refer to the ASIC company statement (attach a copy at section 5)

Company

ACN

ABN

TRUST NAME (if applicable)

Complete if you are the **beneficiary** of a trust that the property is subject to. See page 15.

Refer to the schedule of the Deed of Trust (attach a copy at section 5).

Trust name

Trustee name

ABN

CO-OWNER(S) DETAILS (as shown on the property title) All other co-owners (except the main applicant) must be listed here. (Refer to Certificate of Title)

CO-OWNER 1

TITLE	GIVEN NAMES	CO-OWNER 1 FAMILY NAME	DATE OF BIRTH DD/MM/YYYY
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

CONTACT DETAILS OF OWNER(S)

A/H PHONE NUMBER	WORK NUMBER	MOBILE NUMBER	FAX NUMBER
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

RESIDENTIAL DETAILS OF THE CO-OWNER(S) CO-OWNER 1 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE

POSTAL DETAILS OF THE CO-OWNERS(S) (write as above if same address) CO-OWNER 1 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE OR P.O BOX

CO-OWNER 2

TITLE	GIVEN NAMES	CO-OWNER 2 FAMILY NAME	DATE OF BIRTH DD/MM/YYYY
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

CONTACT DETAILS OF OWNER(S)

A/H PHONE NUMBER	WORK NUMBER	MOBILE NUMBER	FAX NUMBER
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

RESIDENTIAL DETAILS OF THE CO-OWNER(S) CO-OWNER 2 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE

POSTAL DETAILS OF THE CO-OWNERS(S) (write as above if same address) CO-OWNER 2 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE OR P.O BOX

CO-OWNER 3

TITLE	GIVEN NAMES	CO-OWNER 3 FAMILY NAME	DATE OF BIRTH DD/MM/YYYY
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

CONTACT DETAILS OF OWNER(S)

A/H PHONE NUMBER	WORK NUMBER	MOBILE NUMBER	FAX NUMBER
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

RESIDENTIAL DETAILS OF THE CO-OWNER(S) CO-OWNER 3 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE

POSTAL DETAILS OF THE CO-OWNERS(S) (write as above if same address) CO-OWNER 3 NUMBER, STREET NAME, SUBURB, STATE, POSTCODE OR P.O BOX

SECTION 2: DETAILS OF THE BUILDING WORK

1. PROPERTY ADDRESS *(The property that is to be owner-built)*

LOT No.	UNIT No.	STREET No.	STREET NAME	STREET TYPE
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
SUBURB		STATE	POSTCODE	
<input type="text"/>		<input type="text"/>	<input type="text"/>	
MUNICIPALITY				
<input type="text"/>				

Please note: where the proposed building work will be a second home on the property - you will be required to provide a specific street address for that new home (e.g Unit 2 no 9 Smith Street). You should consult with your building surveyor or local council to obtain this information.

CERTIFICATE OF TITLE DETAILS

VOLUME	LPS/PS	FOLIO
<input type="text"/>	<input type="text"/>	<input type="text"/>

PROOF OF OWNERSHIP PROVIDED?

Attach a copy of the Certificate of Title (Register Search Statement) and plan of subdivision at section 5

2. DESCRIPTION OF ALL BUILDING WORK REQUIRED ON THE PROPERTY *(Consult your building surveyor if unsure).*

A Certificate of Consent is required for domestic building works only and must relate to a single home. *(tick all that apply)*

<input type="checkbox"/> Construction of a new home	<input type="checkbox"/> Alteration to an existing home	<input type="checkbox"/> Construction of a garage
<input type="checkbox"/> Renovation of an existing home	<input type="checkbox"/> Construction of a car port	<input type="checkbox"/> Extension of an existing home
<input type="checkbox"/> Construction of a shed	<input type="checkbox"/> Change of use of an existing building	<input type="checkbox"/> Construction of a swimming pool
<input type="checkbox"/> Re-erection of a home	<input type="checkbox"/> Completion of works to a new home	<input type="checkbox"/> Other <i>(Please fill in box below)</i>

3. PROVIDE A DESCRIPTION OF WHAT YOU ARE BUILDING ON THIS PROPERTY. *(This should correlate with the description provided in Q2).*

3A. WHAT DO YOU PROPOSE TO USE THIS BUILDING FOR?

3B. WHAT IS THE CLASSIFICATION OF YOUR BUILDING OR STRUCTURE? *(Consult your building surveyor)*

4. Are you the owner of this property?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

5. Are you the director of the company that owns this property? Do you have written authorisation from the company to make this application and carry out the proposed building work?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

6. Are you the beneficiary of the trust that the property is subject to? Do you have written authorisation from each of the trustees of the trust to make this application and carry out the proposed building work?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

7. ESTIMATED COST OF THE BUILDING WORK AS PER YOUR BUILDING PERMIT APPLICATION: *Check with your building surveyor if your estimated cost is accurate. This is the cost if you were to engage a registered building practitioner and is to include the cost of all labour, materials and GST.*

SECTION 3 – BUILDING INFORMATION

8 Are you engaging just one person to carry out all of the building work?

Yes No

9 Are you engaging a number of persons to carry out parts of the building work?

Yes No

It is an offence under the Building Act of Victoria to engage an unregistered person to undertake domestic building work over the value of \$5,000. Please refer to page 7 Owner - builder Application Kit (Engaging builders and trades people) for more information.

Question 10-15a relates to the home (new/existing) at the property address in section 2 of this application

10 Does the building work (eg .shed, swimming pool, extension, etc) relate to an existing home or dwelling at the property in section 2 of this application?

Yes No

10a If the proposed building work is the construction of a new home, is this the only home on the property?

Yes No

If no, please provide further details on a separate sheet.

11 Do you currently live in the single home or dwelling indicated in section 2 (property address) of this application? (Page 23)

Yes No

12 Do you intend to live in this single home or dwelling indicated in section 2 (property address) upon completion of works? (Page 23)

Yes No

13 Does the building work relate to a holiday home indicated in section 2 (property address) and that it is for the exclusive use of the applicant?

Yes No

14 Do you intend to rent this single home or dwelling indicated in section 2 (property address) upon completion of works?

Yes No

15 Do you intend to sell the single home or dwelling indicated in section 2 (property address)?

Yes No

15a If Yes, when do you intend to sell this single home or dwelling (eg. Upon completion of works or in 5 years, etc)?

Yes No

If yes, please provide further details on a separate sheet.

16 Are you a Registered Building Practitioner?

Yes No

If Yes, what is your registration number?

If you are a Registered Building Practitioner (commercial/domestic/demolition) or a registered architect with Architects Registration Board of Victoria (ARBV), YOU DO NOT require a Certificate of Consent in order to apply for a building permit as an owner-builder.

17 In the past 3 years, have you (the main applicant) been issued with a building permit to carry out domestic building work as an Owner builder (on a different land than in section 2 of this application) that you (either individually, or as a director of a company or beneficiary of a trust) have owned?

Yes No

If Yes, please attach a copy of the building permit(s) at section 5 (attachments)

Building permit(s) issued more than 3 years ago are not relevant.

18 Do you (the main applicant) co-own the property in section 2 of this application with another person?

Yes No

(Refer to the Certificate of Title for registered proprietors and include details of co-owners on page 22 of the application.)

19 In the past 3 years, has a building permit been issued to that person to carry out domestic building work as an Owner builder (on a different land than in section 2 of this application)?

Yes No

If Yes, please attach a copy of the building permit(s) at section 5 (attachments)

Building permit(s) issued more than 3 years are not relevant.

20 Have you co-owned land with a person that is not part of this application? (A different land than in section 2 of this application)?

Yes No

21 In the past 3 years, has a building permit been issued to that person to carry out domestic work as an Owner builder?

Yes No

If Yes, please attach a copy of the building permit(s) at section 5 (attachments)

Building permit(s) issued more than 3 years ago are not relevant

HAVE YOU ANSWERED "YES" TO QUESTIONS 17, 19, & 21?

The Building Practitioners Board may not be able to issue you with a Certificate of Consent to be an owner-builder if a building permit has been issued to you or a co-owner (for a different land/property other than in section 2 of this application) less than 3 years ago. You may apply to the Board to grant an exemption based on special circumstances that exist since the building permit was issued.

22 Based on the information provided above, are you applying for an exemption?

Yes No

23 Have you attached the details of the special circumstances?

Yes No

If yes, please attach a copy of those details at Section 5 (attachments)

THE SUBMISSION FOR AN EXEMPTION MUST INCLUDE:

- The substantial change in the circumstances of the applicant and the need for this application. Refer to previous application and the circumstances surrounding the application at the time.
- Detailed information and supporting evidence that the applicant would suffer hardship if the application was refused.
- Whether the applicants have considered the option of employing the services of a registered building practitioner to carry out the proposed work.
- Whether they are building or renovating for personal use, or for financial gain.
- All correspondence must be written and signed by the main applicant.



SECTION 4 – PAYMENT OF FEE AND TAX INVOICE

Application fee: *Please consult the Certificate of Consent application checklist insert*

\$

PAYMENT METHODS:

In person

Building Practitioners Board
Level 27, Casselden Place
2 Lonsdale Street
(Corner Spring and Lonsdale Streets)
Melbourne VIC 3001

By mail

Building Practitioners Board
PO Box 536E
Melbourne VIC 3000

Payment can be made by cheque, money order or credit card:

A cheque or money order for \$ is enclosed.

(Cheques should be made payable to: 'Building Administration Fund' and are subject to a 5 day clearance period.)



ATTACH YOUR CHEQUE OR MONEY ORDER AT SECTION 5.

PLEASE DEBIT MY CREDIT CARD:

CARD HOLDER'S NAME

CARD NUMBER

CARD TYPE

VISA

MASTERCARD

CARD EXPIRY DATE

CARD HOLDER SIGNATURE

DATE

ABN 54 503 799 763

PAYMENT NOTES:

- You will not be issued with a receipt of payment.
Owner-builder certificate application fees are GST exempt under Division 81 of the GST legislation.
- Please keep a copy of this for your record. Upon payment, this becomes a Tax Invoice.
- All application fees, regardless of the outcome, are non-refundable.
- Please refer to the application checklist before submitting your application.
- An incomplete application will be returned to you unprocessed. A complete application should take two to three weeks to complete. Where further information is required, this will add to the application processing time.

SECTION 5: ATTACHMENTS REQUIRED

ATTACH THE FOLLOWING:

SECTION 1 – PROOF OF IDENTITY

The Building Practitioners Board must be able to formally identify you as the person making the application.

This can be either:

- A copy of your current drivers license
(Your contact details on license should correlate with your residential details provided on the Owner builder application)
- Or
- A copy of your current passport

SECTION 2 – PROPERTY OWNERSHIP DOCUMENT(S)

The Building Practitioners Board must be able to satisfy itself that at the time of making this application, you are a registered proprietor of the land for which building works are proposed.

This can be either:

- A certificate of title (register search statement) clearly stating your name (the main applicant) and the name of co-owners (if any) as registered proprietors.
(A copy of this document may be obtained online. For more information, go to www.land.vic.gov.au)

OR

- Where you are unable to obtain a copy of the certificate of title in your name, you can provide written confirmation from your solicitor that you (and the co-owners) are entitled to be registered proprietor(s) on title for the property.

AND (if applicable)

- The schedule from the Deed of Trust (where main applicant is a beneficiary)
- The ASIC company statement (where main applicant is a director)

NB: A Plan of Subdivision should be provided with either the certificate of title or the confirmation letter that is submitted.

SECTION 3 – BUILDING INFORMATION

- A copy of the relevant building permit.

This information is only required if you answered "yes" to questions 17, 19, and 21 of Section 3 of this application.

- Submission for Building Practitioners Board to grant an exemption.

This information is required if you have answered "yes" to questions 17,19 and 21 of section 3 of this application.

SECTION 4 – PAYMENT

Cheque or Money Order

Credit card details should be provided on section 3 of your application.

Please note:

Failure to provide this information may result in your application being returned to you unprocessed.

Send your complete application to:
PO Box 536E
Melbourne VIC 3001

For enquiries contact:
Building Practitioners Board
Ph:1300 360 320

BE WARNED! THIS IS A LEGAL DOCUMENT.

A statutory declaration is a statement or declaration which is sworn to be true by the applicant in the presence of an authorised witness with the consequence that the applicant is subject to the penalties of perjury if that statement or declaration is proved to be false.

PERSONS AUTHORISED TO WITNESS A STATUTORY DECLARATION

For a complete list of persons authorised under the *Evidence Act 1958* to witness this statutory declaration, see page 29 or visit www.justice.vic.gov.au.

I, *(full name of applicant)* of

(full residential address of applicant)

do solemnly and sincerely declare that:

- **The information contained in this Application for a Certificate of Consent and any additional information/documents supplied are true and correct;**
- **I am the owner/registered proprietor of the land to which this application applies**
- **I have read this Application Kit in its entirety and understand the obligations, risks and responsibility of an owner-builder.**

I acknowledge that this declaration is true and correct and I make it in the understanding that a person making a false declaration is liable to the penalties of perjury.

Signature of person making declaration

Declared at *(full address including state and postcode)*

Before me, *(Signature of person authorised to witness a statutory declaration)*

Print name

Address in full *(Including state and postcode)*

Qualification / Status

On this date *(in full)*

It is a punishable offence under section 246 of the *Building Act 1993* for any person to knowingly make a false or misleading statement or to provide any false or misleading information to a person or body carrying out any function under the Act.

LIST OF PERSONS AUTHORISED TO WITNESS

The following persons are authorised under the Evidence Act 1958 to witness the signing of a statutory declaration:

- A Justice of the Peace or Bail Justice
- A Public Notary
- An Australian lawyer (within the meaning of the *Legal Profession Act 2004*)
- A clerk to an Australian lawyer
- The Prothonotary or Deputy Prothonotary of the Supreme Court, the Registrar or a Deputy Registrar of the County Court, the Principal Registrar of the Magistrates' Court or a Registrar or Deputy Registrar of the Magistrates' Court
- The Registrar of Probates or an Assistant Registrar of Probates
- The Associate to a Judge of the Supreme Court or of the County Court
- The Secretary of a Master of the Supreme Court or of the County Court
- A person registered as a Patent Attorney under chapter 70 of the *Patents Act 1990* of the Commonwealth
- A member of the police force
- The sheriff or a deputy sheriff
- A member or a former member of either House of the Parliament of Victoria
- A member or a former member of either House of the Parliament of the Commonwealth
- A councillor of a municipality
- A senior officer of a Council as defined in the *Local Government Act 1989*
- A registered medical practitioner within the meaning of the *Medical Practice Act 1994*
- A registered dentist within the meaning of the *Dental Practice Act 1999*
- A veterinary practitioner
- A pharmacist
- A principal in the teaching service
- The manager of an authorised deposit-taking institution
- A member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the National Institute of Accountants
- The secretary of a building society
- A minister of religion authorised to celebrate marriages (not a civil celebrant)
- A person employed under Part 3 of the *Public Administration Act 2004* with a classification that is prescribed as a classification for statutory declarations or who holds office in a statutory authority with such a classification
- A fellow of the Institute of Legal Executives (Victoria).



Need more information?

Telephone +61 3 9285 6400 Facsimile +61 3 9285 6464
Level 27, 2 Lonsdale Street, Melbourne, Victoria, 3000

ownerbuilder@buildingcommission.com.au
www.buildingcommission.com.au



Building Commission uses **Greenhouse Friendly™**
ENVI 50/50 Carbon Neutral Paper

ENVI 50/50 Carbon Neutral Paper is an Australian Government certified
Greenhouse Friendly™ Product.