



# Auditing and Compliance Publication Framework

Draft

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Enquiries about this publication can be sent to:

Australian Building Codes Board  
GPO Box 2013  
CANBERRA ACT 2601  
Phone: 1300 134 631  
Email: [ncc@abcb.gov.au](mailto:ncc@abcb.gov.au)  
Web: [abcb.gov.au](http://abcb.gov.au)

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# Preface

The Building Confidence Report (BCR)<sup>1</sup>, published in April 2018, made 24 recommendations to Building Ministers to address systemic issues in the Australian building industry. Building Ministers established the BCR Implementation Team within the Australian Building Codes Board (ABCB) to work with states and territories to respond to the recommendations.

BCR Recommendation 7 is “that each jurisdiction makes public its audit strategy for regulatory oversight of the construction of commercial buildings, with annual reporting on audit findings and outcomes”.

The BCR defined commercial buildings as Class 2 – 9 buildings. Class 2 buildings are apartment buildings, recognised as presenting new risks and challenges for regulators.<sup>2</sup>

The BCR Implementation Team was asked by the ABCB to work with the Building Regulators’ Forum (BRF) to develop this **Auditing and Compliance Publication Framework** (the Framework) in response to the second aspect of the BCR recommendation. States and territories are responsible for developing and making public their auditing strategies and associated supporting material.

This document will assist jurisdictions by acting as a checklist for regulators to:

- develop consistent and timely reporting on auditing and compliance,
- provide accessible and understandable general information about auditing and compliance to industry and the public, and
- increase industry’s ability to deliver safe buildings through empowering it to take on a greater role in recognising and responding to auditing and compliance trends.

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<sup>1</sup> Available at:  
[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building\\_ministers\\_forum\\_expert\\_assessment\\_-\\_building\\_confidence.pdf](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf).

<sup>2</sup> Queensland Audit Office, Licensing builders and building trades Report 16: 2019–20, available at:  
<https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T978.pdf>.

# Contents

<b>The Auditing and Compliance Publication Framework.....</b>	<b>1</b>
Purpose .....	4
Application and limitations .....	4
Review.....	6
<b>Auditing and Compliance Publication Framework Part 1: Reporting principles .7</b>	<b>7</b>
Principle 1:.....	7
Principle 2:.....	9
Principle 3:.....	10
Principle 4:.....	11
Principle 5:.....	12
Principle 6:.....	14
<b>Auditing and Compliance Publication Framework Part 2: Explanation of the development of the Principles.....</b>	<b>15</b>
Principle 1:.....	15
Principle 2:.....	23
Principle 3:.....	26
Principle 4:.....	29
Principle 5:.....	36
Principle 6:.....	39
<b>Appendix A Case study – Extended .....</b>	<b>43</b>

## REMINDER

This Framework is written in generic terms and it is not intended that the content of the Framework counteract or conflict with the legislative requirements, any references in legal documents, any handbooks issued by the Administration or any directives by the Appropriate Authority.

# The Auditing and Compliance Publication Framework

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**Regulation is critical to ensuring that building work in Australia meets the minimum standards set by the National Construction Code (NCC), state and territory legislation and Australian, or other, Standards<sup>3</sup>. In Australia, the public expectation is that buildings purchased, owned, tenanted and/or used meet these standards of construction and are maintained. This protects occupant safety. When buildings are found not to have met these standards, confidence in the building industry decreases.**

Auditing, one aspect of regulation, may be seen as a commitment by government to the public that the building regulatory system meets its expectations of compliant and safe buildings<sup>4</sup>.

Building regulators, although part of the building industry, have a distinct role as they are responsible for protecting the public and industry from harm. This is through modification of undesirable behaviours that produce non-compliance with the NCC, state and territory legislation and Australian Standards.

Reporting on auditing by building regulators is expected to increase industry compliance with minimum standards, which is expected to increase public confidence in the building industry.

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<sup>3</sup> This Framework references Australian Standards, noting that regulation may call up other referenced documents, including international standards.

<sup>4</sup> Australian Institute of Building Surveyors Policy – Building Regulatory Reform in Australia, available at: [https://aibs.com.au/Public/News/2017/AIBS\\_Policy\\_-\\_Building\\_Regulatory\\_Reform\\_in\\_Australia.aspx](https://aibs.com.au/Public/News/2017/AIBS_Policy_-_Building_Regulatory_Reform_in_Australia.aspx).

Figure 1 Infographic showing key survey results and principles

# Auditing and Compliance Publication Framework

From 29 June to 14 July 2020, the ABCB surveyed regulators, building industry practitioners and the public about their views on reporting on auditing of the construction of Class 2–9 buildings. This page shows some of the survey results that were drawn on to develop the Auditing and Compliance Publication Framework.

## Principle 1:



### Auditing information is clear and concise

Information about auditing should be easy to find, accessible and use unambiguous language. Regulators should include definitions of essential terms and use visual aids such as flow charts, diagrams and infographics, where appropriate, to engage with the broadest range of industry participants. Regulators should provide opportunities for industry participants to engage in-person and online.

For the jurisdictions in which respondents undertake the most work,

**42%**  
reported a low level of awareness of auditing strategies

**43%**  
a low level of awareness of auditing activities, and

**47%**  
a low level of awareness of auditing outcomes

This was despite 32% reporting they had either been audited at least once or conducted at least one audit within the last two years.

**66%**  
would like engagement by regulators on auditing activities and outcomes in addition to written reporting.

## Principle 2:

### Regulators to promote and discuss auditing



Regulators should use formal reporting combined with interactive communication channels such as their websites and social media to encourage continuous conversation with industry and the public about auditing activities and outcomes. Communications should focus on benefits to industry, prevention of non-compliance, learning from case studies and education and training.

**86%**  
believe that reporting on auditing would reduce non-compliance.

**75%**  
believe that reporting on auditing may discourage industry participants from 'taking shortcuts'.

## Principle 3:

### Regulator performance to be publicly reported



Regulators should report on whether they met auditing targets and/or delivered on their auditing strategies. Regulators should report on how their performance is measured and how they are held accountable. They should explain whether they view auditing outcomes reported as regulatory 'success' and if not, what they define as regulatory 'success'.

**74%**  
take an interest in reporting from government regulators about their enforcement activities.

**18%**  
believe regulatory oversight of the construction of commercial buildings has changed significantly since the publication of the Building Confidence Report in April 2018, while 55% believe it has not.

## Principle 4:

### Data collection to support reporting and continuous improvement



Data collection should be designed to support reporting measures that enable a story to be told, including of long-term trends. Regulators should be transparent about the sources and limitations of their data. Regulators should regularly review data collection and analysis and adapt reporting measures. Data should be used to inform education and training requirements, and the development of forward auditing strategies.

**87%**

believe reporting on auditing will benefit industry.

**87%**

believe reporting on auditing will benefit building owners, tenants and users.

**97%**

believe that regulators should report on the overall use of at least one statutory power in response to non-compliance identified through auditing activities.

## Principle 5:

### Enforcement action to be published



Reporting and discussions about auditing should demonstrate proportionate responses to issues identified through auditing, including strong responses where appropriate. States and territories should establish public registers of enforcement action taken against any registered practitioners and report additions to the register using a range of communication tools including social media.

**84%**

believe establishing public registers of enforcement action against registered practitioners would reduce non-compliance.

## Principle 6:

### Regulators to collaborate within and across jurisdictions



Regulators within each jurisdiction and, where appropriate, across jurisdictions should collaborate and communicate about auditing regularly.

**83%**

think it is 'very important' or 'important' for auditing outcomes to be comparable across states and territories.

**67%**

believe that reporting on auditing may assist the regulator to identify patterns of inadvertent non-compliance and work with stakeholders to provide additional guidance, clarification or training.

## Purpose

This Framework has been developed to assist state and territory regulators overseeing the construction of Class 2 – 9 buildings.

It aims to improve outcomes for owners and users of Class 2 – 9 buildings by increasing compliance of newly built Class 2 – 9 buildings with the NCC, state and territory legislation and Australian Standards. We anticipate this will be achieved by:

- assisting regulators to communicate the importance of their auditing activities to industry and the public, fostering confidence in regulatory actions and supporting increased efficiency,
- assisting regulators to build a collaborative relationship with industry that can be drawn on to address compliance trends,
- assisting regulators to report on auditing outcomes with greater consistency across jurisdictions, supporting analysis of trends and enabling the impacts of regulatory or policy changes to be identified, assessed and addressed,
- increasing industry's ability to deliver safe buildings to building owners and users through empowering it to take on a greater role in recognising and responding to emerging trends shown in public reporting on auditing, and
- encouraging industry to value compliance and increasing its awareness of the consequences of non-compliance.

Over time, it is anticipated that the Framework will facilitate some comparative performance monitoring<sup>5</sup>.

## Application and limitations

There are two aspects to this Framework –

1. the principles; and
2. the explanation of their development and inclusion.

When using this Framework, jurisdictions should consider:

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<sup>5</sup> Safe Work Australia's Comparative Performance Monitoring reports are a potential model. They are available at: <https://www.safeworkaustralia.gov.au/collection/comparative-performance-monitoring-reports>. Safe Work Australia is responsible for analysing trends in Work, Health and Safety and workers' compensation scheme performance across Australia and New Zealand.

- whether there are any issues unique to their jurisdiction which are not considered in this Framework such as legislative limitations, including disclosure limitations,
- whether in a period, the numbers being reported are so small as to allow re-identification of a party that was supposed to be protected from identification,
- how the Framework will complement existing internal reporting mechanisms, and
- how the Framework can best be used to support a collaborative relationship with industry in that jurisdiction.

Jurisdictions should also note this Framework was developed in the absence of known auditing strategies.

### **Associated strategies**

It is recommended that this Framework is associated with an auditing strategy and an education strategy. It may also complement a communications or stakeholder engagement strategy. As with this Framework, associated strategies should be proactive, prioritised and capable of responding to trends.

Where the Framework is associated with an auditing strategy, the auditing strategy should ensure auditors have consistent approaches to auditing to ensure that data reported reflects genuine trends in the building industry rather than a lack of consistency in approaches to audits.

### **Resourcing**

Appropriate resourcing is key to effective auditing. To ensure that reporting on auditing achieves desired outcomes, regulators should consider allocating specific resources to analysis and communication of auditing activities and outcomes.

### **Definition of commercial buildings**

This Framework uses the definition of commercial buildings used in the BCR. “Commercial buildings’ refers to Class 2 – 9 buildings, which includes multi-storey residential buildings and public buildings. The term captures both public and privately-owned buildings, including those intended to be occupied by vulnerable people, such as aged care facilities, hospitals, childcare centres and low-cost accommodation.”

While this framework was developed to support regulators to report on auditing to industry, given the inclusion of Class 2 buildings in the BCR definition of commercial buildings, regulators should consider potential Class 2 building owners and users in public reporting.

### Definitions relevant to auditing

This Framework uses the following definitions:

- **auditing strategies** are strategies that guide decisions on the scope, purpose and focus areas of audits, how and when audits are conducted,
- **auditing activities** are the audits as conducted (which may be different from as-planned), and
- **auditing outcomes** are the findings and recommendations for improvement that stem from the auditing activities.

### Review

This Framework should be reviewed at least once every two years, or as agreed by the BRF.

# Auditing and Compliance Publication Framework Part 1: Reporting principles

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## Principle 1:

### Auditing information is clear and concise.

Information about auditing should be easy to find, accessible and use unambiguous language. Regulators should include definitions of essential terms and use visual aids such as flow charts, diagrams and infographics, where appropriate, to engage with the broadest range of industry participants. Regulators should provide opportunities for industry participants to engage in-person and online.

#### Anticipated outcomes:

- Industry views auditing as part of its 'business as usual'. The industry norm is that participants understand the purpose and importance of auditing and its impact in ensuring the delivery of buildings that are compliant with the NCC, state and territory legislation and Australian Standards.
- Industry is able to access, understand and share accurate information about auditing. All participants, including those whose primary language is not English, are able to understand the role of the regulator, their own obligations, how and why their conduct or work may be audited, the range of regulatory responses to identified instances of non-compliance and when these are likely to be used.
- Industry interacts with the regulator about auditing and participants feel their engagement is meaningful and beneficial.
- Industry has confidence that auditing is guided by appropriate frameworks ensuring fair and transparent decision-making.

#### How Principle 1 looks in practice:

- Regulators should use plain English and ensure language is inclusive<sup>6</sup>.
- Regulators should ensure accessibility of content e.g. through providing subtitles for videos<sup>7</sup>.
- Where it is particularly important to communicate certain information with industry, regulators should consider additional use of visual aids such as flow charts, diagrams and infographics. The Safe Work Australia Comparative Performance Monitoring framework, for example, conveys complex findings

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<sup>6</sup> The Australian Government's Content Guide provides information about accessibility at <https://guides.service.gov.au/content-guide/accessibility-inclusivity/>.

<sup>7</sup> Further information about accessibility is available at: <https://www.w3.org/WAI/fundamentals/accessibility-principles/>.

including Work, Health and Safety trends and outcomes of compliance and enforcement activities through a traditional reporting style, however key findings are also summarised at the beginning of reports using infographics<sup>8</sup>. This draws attention to key findings in a way that is easily understandable and engaging for most people.

- Regulators should also consider providing opportunities for participants to engage in-person as well as online. Data about auditing trends should be used to target engagement opportunities to ensure industry participants are reached regardless of access to specific technologies, use of social media or geographic location. Regulators should also consider ways to make it as easy as possible for industry participants to increase or refresh their understanding of auditing.
- Each regulator should establish and maintain a page on its website about its auditing strategies (if applicable), auditing activities and auditing outcomes. The page should contain or link to all the regulator's information about auditing including:
  - the role and importance of auditing in regulation,
  - the regulator's role in auditing,
  - how the regulator's role relates to that of other significant regulators in the jurisdiction e.g. fire services, local governments or private surveyors,
  - a definition of auditing, auditing strategies, auditing activities and auditing outcomes and/or the categories used by the regulator to describe its auditing program,
  - how auditing outcomes shape guidance, education, training, and regulatory or policy changes,
  - industry participants' rights and obligations if their conduct or work is audited,
  - an overview of the regulator's processes for conducting an audit, including steps after the completion of an audit such as a decision to re-audit. If the process varies in response to the specific trigger for the audit e.g. complaint or audit strategy, the overview should clearly show each process,
  - policies and frameworks that determine the range of possible regulatory responses to issues identified through auditing. Ideally, possible regulatory responses should be shown on a scale in order of consequence or severity for the regulated party, where one end of the scale may be a requirement to complete additional training and the other end may be cancellation of the practitioner's licence,
  - how the regulator determines a regulatory response to an identified instance of non-compliance,
  - formal reporting on auditing, such as annual reports,

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<sup>8</sup> Safe Work Australia's Comparative Performance Monitoring reports are available at: <https://www.safeworkaustralia.gov.au/collection/comparative-performance-monitoring-reports>.

- information about how to attend upcoming events related to auditing,
- resources for industry such as brochures, videos, posters, PowerPoint presentations, links to additional training and education and/or FAQs,
- case studies and 'real-life examples' showing the importance of compliance and/or the impacts of non-compliance,
- advice for industry practitioners who want to address non-compliance,
- links to the auditing pages of other regulators,
- links to relevant legislation, and
- contact details to seek further auditing information from the regulator.



## Principle 2:

### Regulators to promote and discuss auditing

Regulators should use formal reporting combined with interactive communication channels such as their websites and social media to encourage continuous conversation with industry and the public about auditing activities and outcomes. Communications should focus on benefits to industry, prevention of non-compliance, learning from case studies and education and training.

#### Anticipated outcomes:

- Industry views auditing and compliance as part of 'business as usual' and an ongoing conversation. Education and training should be seen as positive opportunities to increase compliance.
- Reporting on auditing outcomes is seen as a benefit to industry.
- Insights gained from auditing outcomes are used to inform continuous improvement.
- Regulators establish and/or maintain collaborative relationships with industry and can draw on these relationships to address emerging issues quickly, if necessary.

#### How Principle 2 looks in practice:

- While formal reporting, such as annual reports, is important, communication about auditing should be multi-channel, interactive and regular. It should aim to involve industry in a continuous conversation about increasing compliance of new buildings with the NCC, state and territory legislation and Australian Standards, including through ongoing education and training opportunities.
- Regulators should release formal reports annually at minimum, however should consider reporting certain measures quarterly. Reporting consistent measures quarterly provides industry a snapshot of compliance and a starting point for discussions about increasing compliance.
- Regulators should consider quarterly release of case studies at minimum. These could relate to trends pertinent to that quarter's auditing reporting.
- Communications should largely focus on preventing non-compliance. This should include through promoting education and training.



### Principle 3:

#### Regulator performance to be publicly reported

Regulators should report on whether they met auditing targets and/or delivered on their auditing strategies. Regulators should report on how their performance is measured and how they are held accountable. They should explain whether they view auditing outcomes reported as regulatory 'success' and if not, what they define as regulatory 'success'.

#### Anticipated outcomes:

- Industry and the public understand that all parties involved in the construction of buildings have responsibilities and are accountable for their actions, including regulators.
- Industry has confidence that the regulator's auditing activities are guided by appropriate strategies and/or frameworks guiding fair and transparent decision-making, and are designed to support the achievement of the regulator's purpose.
- Industry and the public understand how the regulator measures its own performance and understand that the regulator is accountable for its actions.
- Industry and the public understand the relationship between auditing activities and outcomes and the regulator's performance.

#### How Principle 3 looks in practice:

- Regulators should report on their own performance against auditing targets and their auditing strategies more generally. Regulators could also explain how their auditing targets were developed and the impacts of not meeting the auditing targets, if appropriate.
- Regulators explain how their own performance is measured including any Key Performance Indicators and any mechanisms that ensure accountability. This may be through annual reports that are tabled in parliament or auditing by another government agency, such a peak state government auditor. Where auditing of the regulator's activities is an accountability mechanism, the outcomes of audits should be made public, if possible, along with the regulator's responses to the outcomes of the audit.
- The regulator should explain what regulatory 'success' looks like and how the auditing measures it reports publicly relate to its success. If the regulator reports, for example, that seven per cent of buildings it audited in a period contained identified instances of non-compliance with a particular requirement of the NCC, it should also explain whether it considers this to have met its expectations of regulatory success and why. Key context could include whether this is an increase or decrease on previous periods, whether it follows an education campaign targeting compliance in this area and/or whether this finding was as a result of auditors specifically targeting compliance in this area. If the regulator considers the result was poor and does not meet its idea of regulatory success, it could report on measures to increase compliance in this area through development of additional education and training.



## Principle 4:

### Data collection to support reporting and continuous improvement

Data collection should be designed to support reporting measures that enable a story to be told, including of long-term trends. Regulators should be transparent about the sources of their data and any limitations of the data. Regulators should also regularly review data collection and reporting measures and adapt them, if necessary, to ensure they remain relevant and continue to inform collaborative conversations with industry about auditing.

#### Anticipated outcomes:

- Regulators are able to identify and analyse short-term changes and long-term trends to tell a story about auditing that is relevant to industry and assists it to proactively and meaningfully address issues.
- Regulators are able to compare trends across jurisdictions, particularly to analyse the impacts of regulatory or policy changes.
- Regulators understand and respond to industry needs, including by adapting or increasing reporting measures.
- Industry views reporting measures as reliable and transparent indicators of issues and uses them to inform discussions within industry about the importance of compliance.
- Insights gained from auditing outcomes are viewed as a part of identifying opportunities for, and implementing, continuous improvement to auditing strategies and activities.

#### How Principle 4 looks in practice:

- Regulators discuss reporting measures through the BRF and, where possible, align reporting measures across jurisdictions and maintain that alignment through discussing future proposed changes at the BRF. Measures that could be considered include:
  - overall number of auditing activities
  - number of audit activities undertaken at different phases of construction (e.g. post building approval, during construction or post-construction)
  - the type of audit activities e.g. on-site or desktop
  - number of instances of non-compliance found per audit
  - the types of non-compliance (e.g. instances of non-compliance with fire safety requirements, waterproofing or structural integrity etc.)
  - whether non-compliance was related to Deemed to Satisfy provisions or Performance Solutions
  - the parties involved in audit activities (e.g. local governments, state/territory government regulators, fire authorities or a combination of these), and
  - the focus areas of audits.
- Regulators should also report on how they respond to the outcomes of auditing activities, including on:

- additional education or training products or videos developed to prevent common types of non-compliance from occurring, and
- the outcomes of audit activities including methods for addressing identified instances of non-compliance e.g. proportion of instances of non-compliance that resulted in a practitioner being required to undertake additional training/education, issuing of fines, court action etc.
- Reporting should demonstrate proportionate responses to non-compliance.
- Where regulators have used statutory powers, they should consider reporting on the overall use of these including:
  - auditing the performance of registered practitioners
  - using powers to take immediate disciplinary action in high-risk cases
  - issuing rectification orders or ordering that reasonable actions are taken in response to issues identified
  - issuing infringements and using powers to prosecute or require additional training, undertakings and fines
  - taking disciplinary actions on practitioner registration, including suspension or cancellation, and
  - disqualifying directors to prevent their involvement in other building companies.
- Reporting measures should aim to be consistent across periods to enable analysis by non-regulators of published information. Additional reporting measures may need to be designed in response to targeted or unusual auditing campaigns. Reporting measures should always be specific to the intent of an auditing activity.
- Balanced with consistency across reporting periods is the need for regulators to be responsive to stakeholder needs, including to adapt or increase reporting measures.
- Annual or biennial surveys of stakeholders could inform auditing reporting and/or communications about auditing, including targeting communications at specific groups. These surveys could be run by individual regulators or by the BRF on behalf of all state and territory regulators. Regular reviews of the reporting measures should also take into account any legislative, regulatory or policy changes.
- Regulators should work with data analysis experts to ensure that adapting reporting measures does not impact their usefulness.
- Where using statistics in public reporting, regulators should disclose how the statistics were generated or sourced, and any limitations. This provides industry and the public key context and the ability to draw more reliable inferences to support development of responses.



### Principle 5:

#### Enforcement action to be published

Reporting and discussions about auditing should demonstrate a range of proportionate responses to issues identified through auditing, including

strong responses where appropriate. States and territories should establish public registers of enforcement action taken against any registered practitioners and report additions to the register using a range of communication tools including social media.

### Anticipated outcomes:

- Industry understands the range of regulatory responses possible and the circumstances in which they may be used by the regulator.
- Industry understands that where the regulator needs to take strong, decisive action, it has the capacity and willingness to do so and that the action supports the regulator's purpose.

### How Principle 5 looks in practice:

- Reporting should cover the range of responses taken by regulators. If possible, regulators should provide a breakdown of regulatory responses by building classification or other pertinent factors. This is based on anecdotal evidence suggesting certain types of construction method and building classes may be associated with higher levels of non-compliance. Where strong action has been taken by the regulator in response to repeated deliberate non-compliance, the regulator could consider publicising this action as a deterrent. This would also increase consumer awareness of the issue, particularly if it relates to a Class 2 building.
- Regulators could make case studies available on their websites and include case studies in reporting and conversations about auditing. These case studies should be sensitive to the causes of non-compliance and the circumstances of the individuals involved. That is, where the regulator has identified repeated and deliberate non-compliance, a case study of the actual occurrence could be used however if developing a case study where non-compliance was the result of a lack of experience and appropriate supervision, a fictionalised case study could be developed.
- Public registers of enforcement should be online and include details such as the name and registration number of the practitioner, the date of inquiry or investigation, the allegation against the practitioner and the finding and/or disciplinary action taken including details of fines, costs and/or licence conditions. The Victorian Building Authority's Disciplinary Register provides a good example<sup>9</sup>. The register should be searchable by any of these fields, easy to use, accessible and enable assistive technologies.
- Regulators should consider the need for registers of enforcement to detail action against non-registered practitioners e.g. those whose registration has lapsed, been cancelled or suspended or who have never obtained registration.

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<sup>9</sup> Available at: <https://www.vba.vic.gov.au/tools/disciplinary-register>.



## Principle 6:

### Regulators to collaborate within and across jurisdictions

Regulators within each jurisdiction and, where appropriate, across jurisdictions collaborate and communicate about auditing regularly.

#### Anticipated outcomes:

- Regulators within each jurisdiction and, where appropriate, across jurisdictions collaborate and communicate about auditing. This may include sharing auditing strategies, activities and outcomes with each other and collaborating with industry, where appropriate, to develop auditing strategies, activities and information campaigns.
- Industry understands the role of all regulators within a jurisdiction and that they may share information with each other to enable targeted auditing.

#### How Principle 6 looks in practice:

- Principle 6 is designed for regulators to implement with flexibility. State and territory building regulators should determine the scope of their collaboration and communication, noting the significant potential benefits including better use of limited resources and faster responses to identified issues.
- Given the consumer protection aspect to Class 2 buildings particularly, regulators should consider engaging with consumer protection agencies to develop or update education campaigns based on the outcomes of auditing activities.

# Auditing and Compliance Publication Framework Part 2: Explanation of the development of the Principles

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## Principle 1:

**Auditing information is clear and concise.**

Information about auditing should be easy to find, accessible and use unambiguous language. Regulators should include definitions of essential terms and use visual aids such as flow charts, diagrams and infographics, where appropriate, to engage with the broadest range of industry participants. Regulators should provide opportunities for industry participants to engage in-person and online.

### Why Principle 1 was developed

#### Key survey results

Regulators, industry and the public were surveyed about reporting on auditing<sup>10</sup>. The survey results show respondents are most likely to rate their awareness of auditing strategies, activities and outcomes as low.

This is despite 24.1 per cent of respondents reporting that they have conducted at least one audit within the last two years. This group of respondents were also more likely to report their awareness as high. By contrast, respondents who reported that they have been audited at least once within the last two years make up only 7.5 per cent of survey respondents.

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<sup>10</sup> ABCB Consultation Hub, available at: <https://consultation.abcb.gov.au/engagement/reporting-on-the-auditing-of-commercial-buildings/>.

Figure 2 Respondents' involvement in audits within the last two years

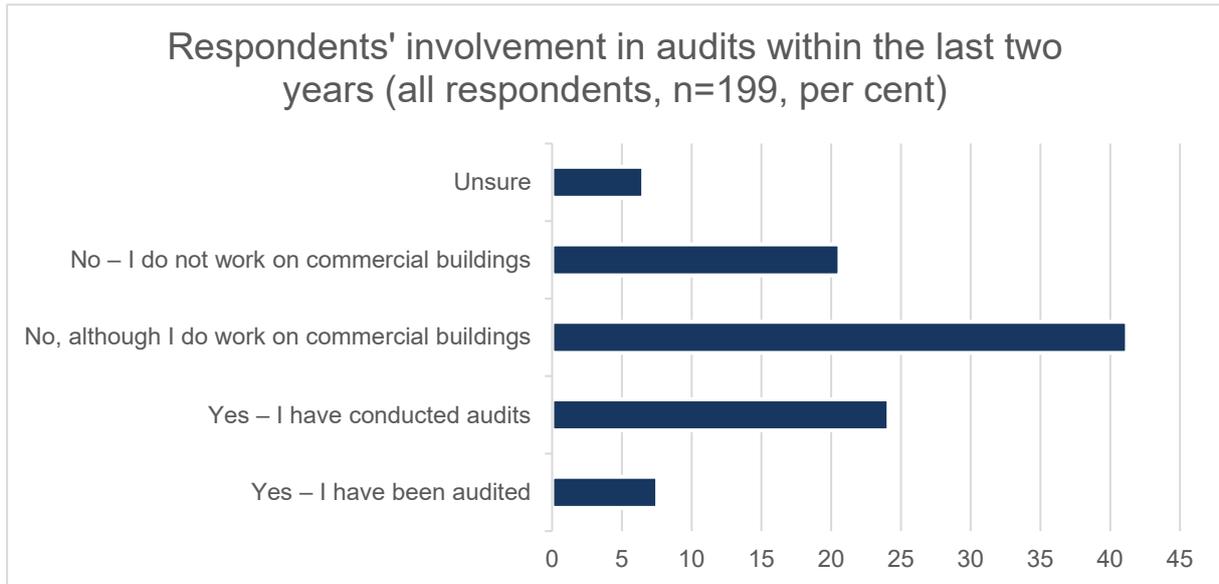
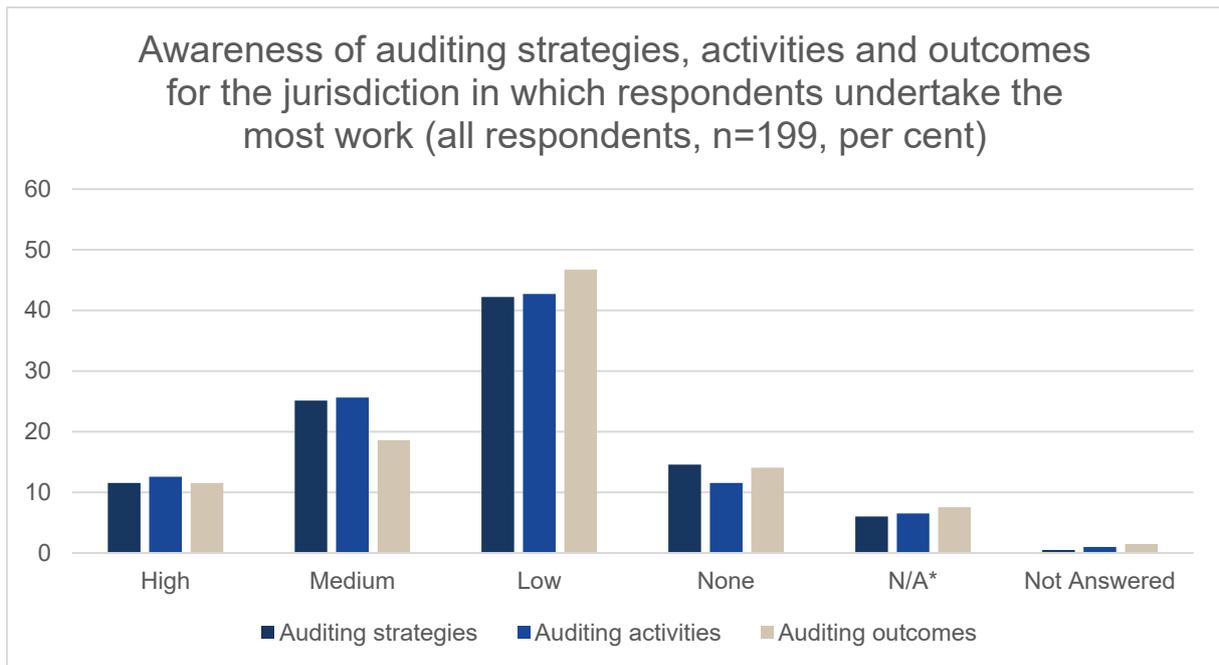
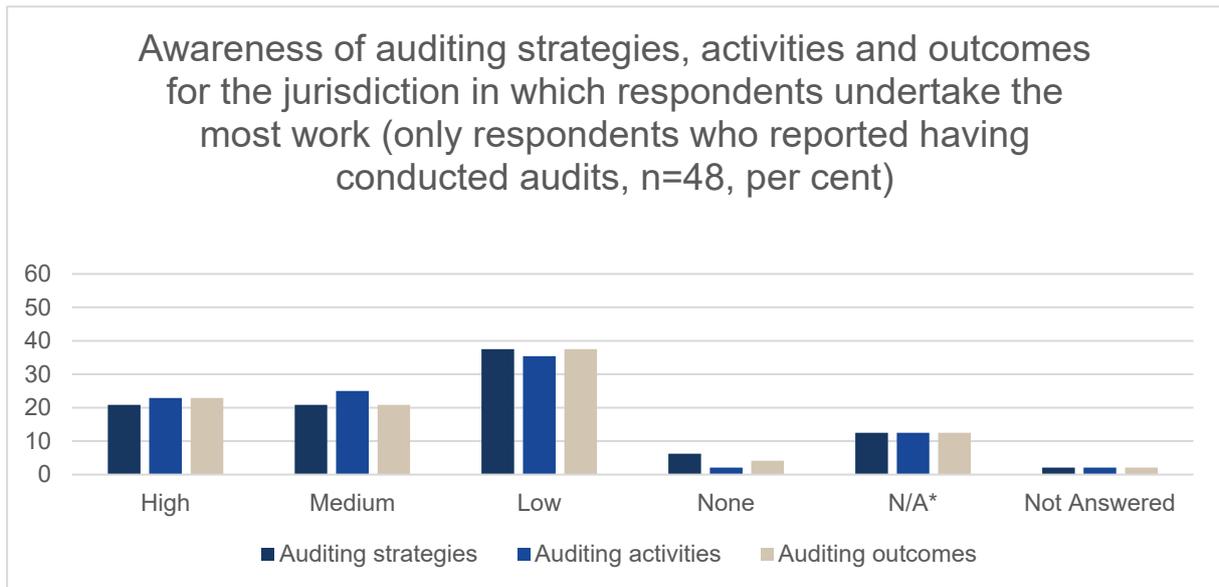


Figure 3 Respondents' awareness of auditing strategies, activities and outcomes

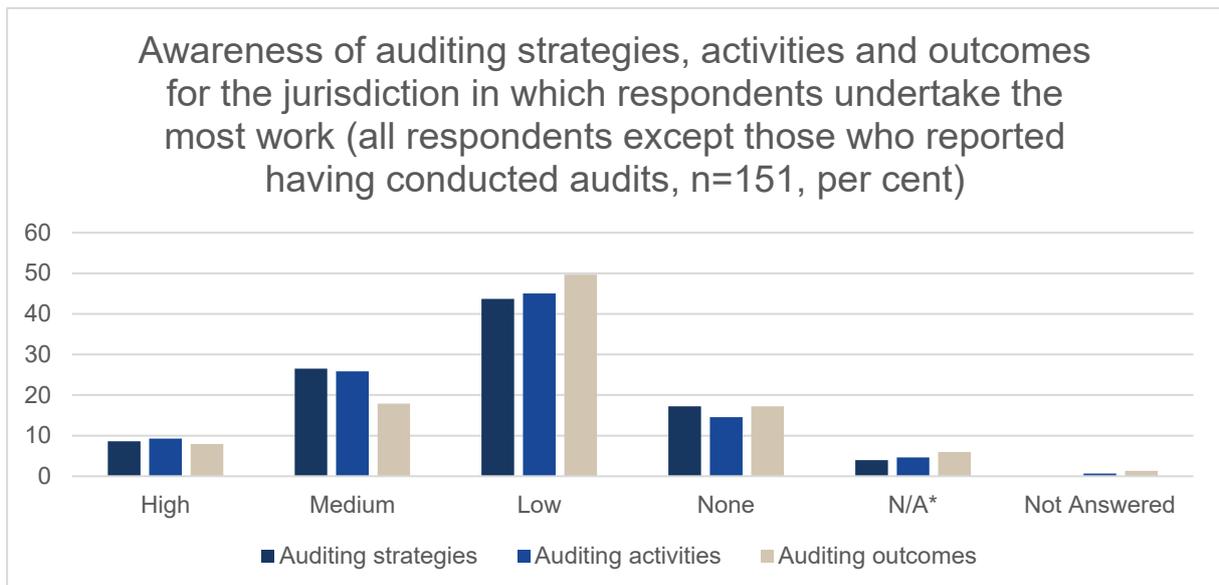


Below, the results for survey respondents who reported having conducted at least one audit within the last two years are contrasted with the results for all other respondents.

**Figure 4 Awareness of auditing strategies, activities and outcomes of respondents who reported having conducted audits**

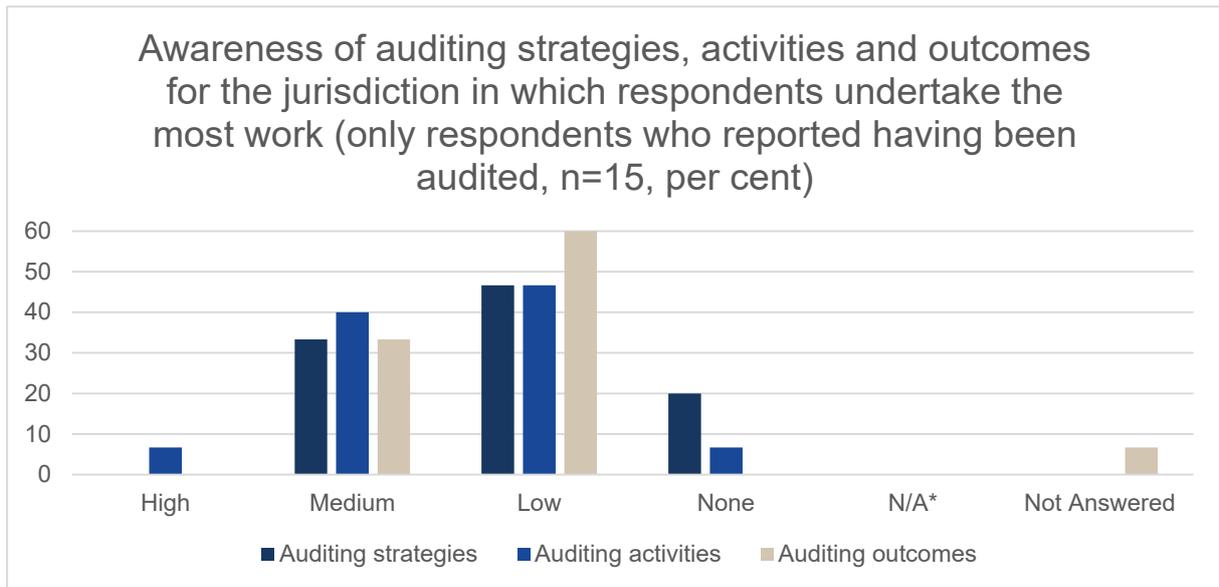


**Figure 5 Awareness of auditing strategies, activities and outcomes of all respondents except those who reported having conducted audits**



Respondents who reported having been the subject of an audit were more likely to report having a low level of awareness of auditing outcomes than other respondents. The survey did not explore why respondents reported high or low levels of awareness. Possible reasons for this could include that people who were audited weren't notified of the outcomes of the audit they participated in or that audit participation made them more aware of their lack of knowledge of auditing outcomes.

**Figure 6 Awareness of auditing strategies, activities and outcomes of respondents who reported having been audited**



The survey also asked participants about how they acquired knowledge of auditing strategies, activities and outcomes. Eighty-two per cent of respondents who reported high levels of awareness for all three aspects of reporting, a group more likely to have conducted audits, reported communications from a government regulator increased their knowledge. In contrast only 38 per cent of respondents who reported low levels of awareness for all three aspects of reporting reported this increased their knowledge.

Figure 7 Where respondents who reported a "low" level of awareness gained their knowledge

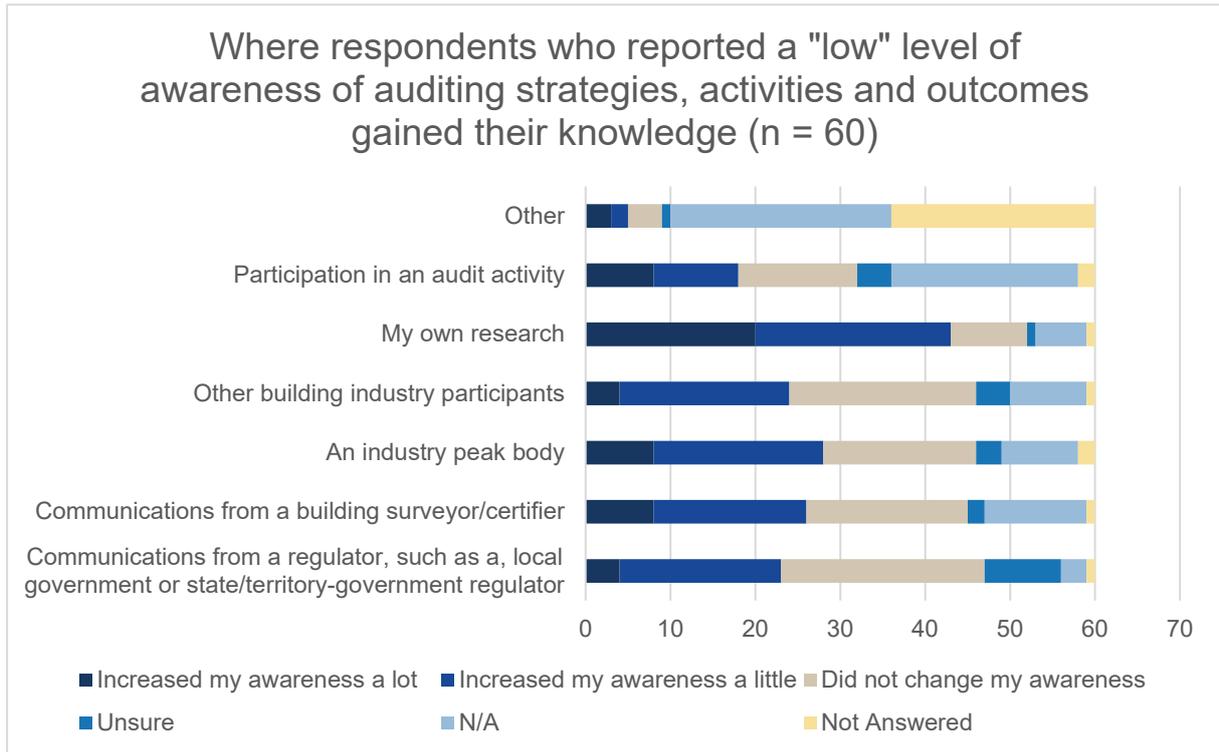
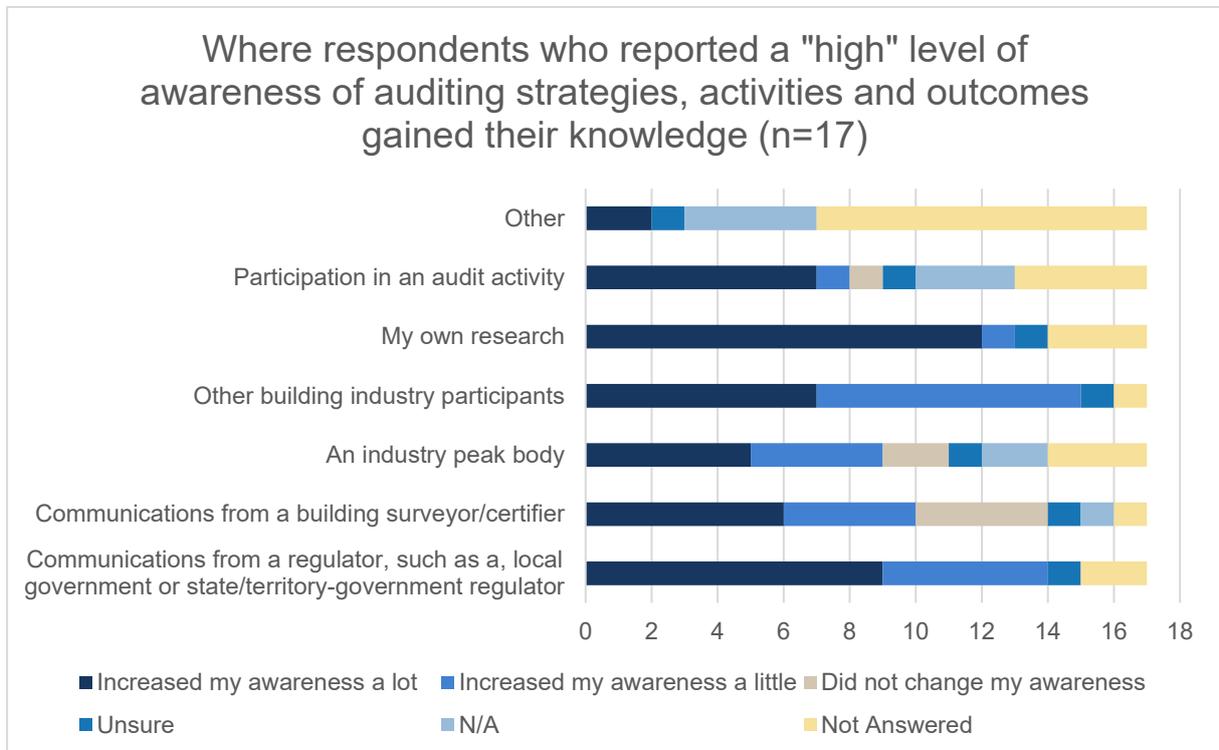


Figure 8 Where respondents who reported a "high" level of awareness gained their knowledge



Survey results show the majority of respondents are interested in reporting from, and engagement with, regulators and believe it is important that building regulators report

on auditing activities and outcomes. This shows there is opportunity for regulators to provide such information and for it to be valued and used by industry.

The survey, and consultation to inform the survey questions, also revealed some confusion about the definition of auditing including whether an audit must take place at a particular stage, take a particular form or cover certain information. Some stakeholders have the perception an audit means a desktop activity focused on documentation, whereas others have the perception it means an on-site inspection. This may reflect differences in building legislation across jurisdictions. By providing jurisdiction-specific information about auditing, state and territory regulators can better inform and educate industry and prevent confusion that may stem from accessing information about auditing from another jurisdiction.

### **Recognising and responding to stakeholder needs**

The building and construction industry is a culturally and linguistically diverse industry. In 2015, 52 per cent of the industry's workforce was born overseas compared with 25 per cent of the broader Australian population. Thirty-nine per cent of the industry's workforce were born in a non-English speaking background country<sup>11</sup>. Anecdotal evidence suggests that limited ability to understand English can affect a practitioner's ability to understand and meet their obligations. Differences in education, experience, accessibility requirements, communication preferences, access to technology and geographic location could also impact a practitioner's ability to access and understand information.

Regulators should not assume a base level of knowledge but should make it easy for a person interested in auditing to learn basic concepts and terms and build up their knowledge in a manner suitable for their role. By making information readily available, accessible and easy to understand, regulators increase the ability of a regulated party to comply. It also ensures regulated parties understand the range of consequences for non-compliance.

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<sup>11</sup> University of NSW, available at: <https://newsroom.unsw.edu.au/news/art-architecture-design/workforce-diversity-key-construction-innovation>.

**Case study:**

Between 2015 and 2018, the Civil Aviation Safety Authority (CASA) increased stakeholder engagement, including on the development of regulation. The Aviation Safety Advisory Panel was established to seek industry input to the development and refinement of regulations. CASA's efforts are reflected in stakeholder satisfaction survey results. In 2015, CASA stakeholders rated the statement "Regulations covering my activities are easy to understand" an average 3.2 out of 10. By 2018, the average rating had increased to 5.4. Over the same period, stakeholders reported their confidence in their ability to comply with regulations increased from 5.8 in 2015 to 7.4 in 2018.

Regulators should be conscious that the public may also have an interest in information about auditing, given the regulator role in protecting their interests and managing risks.

Finally, survey results showed industry practitioners acquire information about auditing from each other. Given the most common response to level of awareness of auditing strategies, activities and outcomes was 'low', it is important that regulators inform as many industry participants as possible so that the information shared between practitioners is accurate. Regulators could explore the application of nudge theory here, particularly the tendency people show to "accept defaults passively"<sup>12</sup>.

**Case study:**

In 2016, the Victorian Department of Transport (DoT) reviewed ticketing compliance and enforcement on public transport in Victoria following concerns from stakeholders about the fairness of the system<sup>13</sup>. The review identified that transparency (both in relation to information and DoT's actions as a regulator) and the ability to appeal decisions made by the regulatory body were important characteristics of best practice regulation and enforcement. In relation to transparency, it stated that rules "should be clear to users, as should the processes surrounding the enforcement of these requirements. Ticketing compliance should be promoted through the provision of public information." In relation to the ability to appeal decisions, it determined there should be transparent and robust

<sup>12</sup> Benartzi et al., 'Should governments invest in more nudging?' Available at: <https://journals.sagepub.com/doi/full/10.1177/0956797617702501>.

<sup>13</sup> The Review of Victoria's ticketing enforcement and compliance is available at <https://transport.vic.gov.au/getting-around/public-transport/public-transport-ticketing-and-fares/public-transport-fines>.

**Case study:**

mechanisms to appeal against decisions made by a regulatory body, something it considered key to “fairness”.

In response to the review’s findings, DoT implemented a new fairer policy framework and approach to enforcement, modifications to its infringements system, ticketing and system improvements, and measures to improve training and support for authorised officers. The DoT’s website was updated to provide clear information relating to compliance and enforcement activities<sup>14</sup>. This information covers:

- the importance of fare compliance and the contribution of fares to network maintenance and upgrades,
- the objectives in relation to compliance and enforcement,
- an explanation of measures to facilitate compliance,
- an explanation of the enforcement strategy,
- a high-level outline of the DoT’s prosecutions policy, and
- how to request a review or legal assistance after receiving a fine.

The DoT also removed complex legislative terms from letters sent to people who have received fines and instead used plain English. By using plain English across its communications, the DoT made it easier for public transport users to understand their obligations, why they are important and why they may receive a fine for not complying.

The DoT completed its reforms over 15 months, receiving positive feedback from key stakeholders including the Victorian Ombudsman, the Public Transport Ombudsman, and legal and social advocacy groups. Key outcomes included:

- complaints to the Public Transport Ombudsman declined by 30 per cent in the twelve months to November 2017 and further declined the following year<sup>15</sup>,
- the vast majority of cases involving a potentially vulnerable person are now dealt with prior to court action, reducing impacts of compliance activities on vulnerable people and producing efficiencies and cost savings for the Victorian Government, and
- the DoT is able to protect revenue essential to maintain and upgrade essential public transport infrastructure.

<sup>14</sup> The Victorian Department of Transport’s ‘Public Statement on the Government’s Strategy for Compliance and Enforcement of Public Transport Ticketing’ is available at <https://transport.vic.gov.au/getting-around/public-transport/public-transport-ticketing-and-fares/public-transport-fines>.

<sup>15</sup> Kate Maddern, former head of Victorian Public Transport Regulatory Operations, speaking at an ANZSOG Regulatory Excellence webinar on 16 June 2020. A recording of the webinar is available at <https://www.youtube.com/watch?v=6eond8BiMtY>.

**Case study:**

The DoT has since continued making the ticketing system easier to use and informing and educating public transport users to help them to be fare compliant. The October 2019 twice-yearly Fare Compliance Survey found 96.8 per cent of passengers on the metropolitan network were fare compliant, a record high since the commencement of these surveys in May 2005.

A continuous improvement model has also been established out of the review. DoT and public transport operators collaborate on identifying opportunities to build on what has already been achieved.

High levels of fare compliance demonstrate that the vast majority of public transport passengers choose to comply with ticketing regulations. By identifying and mitigating issues that impacted transparency, clarity and fairness, DoT was able to support and encourage passengers to do the right thing while improving passenger experiences with the DoT as a regulator.

An extended Case study, relevant to Principles 1 to 5, is at Appendix 1.

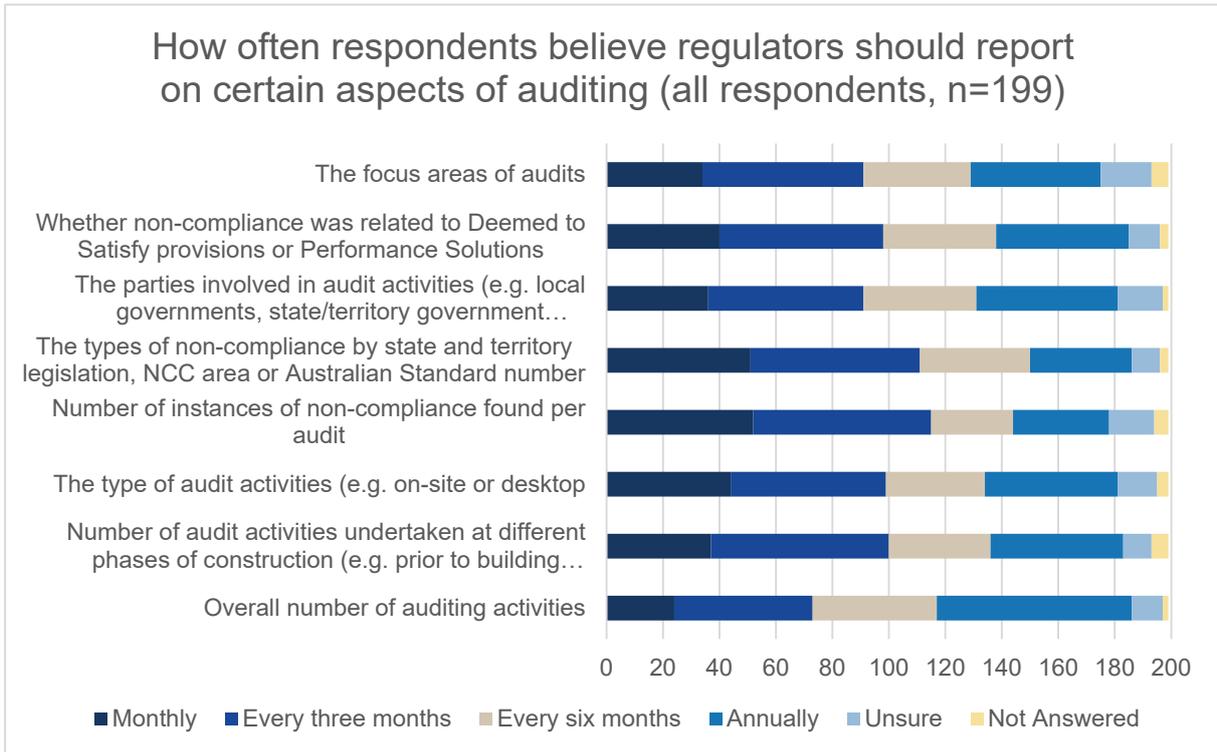
**Principle 2:****Regulators to promote and discuss auditing**

Regulators should use formal reporting combined with interactive communication channels such as their websites and social media to encourage continuous conversation with industry and the public about auditing activities and outcomes. Communications should focus on benefits to industry, prevention of non-compliance, learning from case studies and education and training.

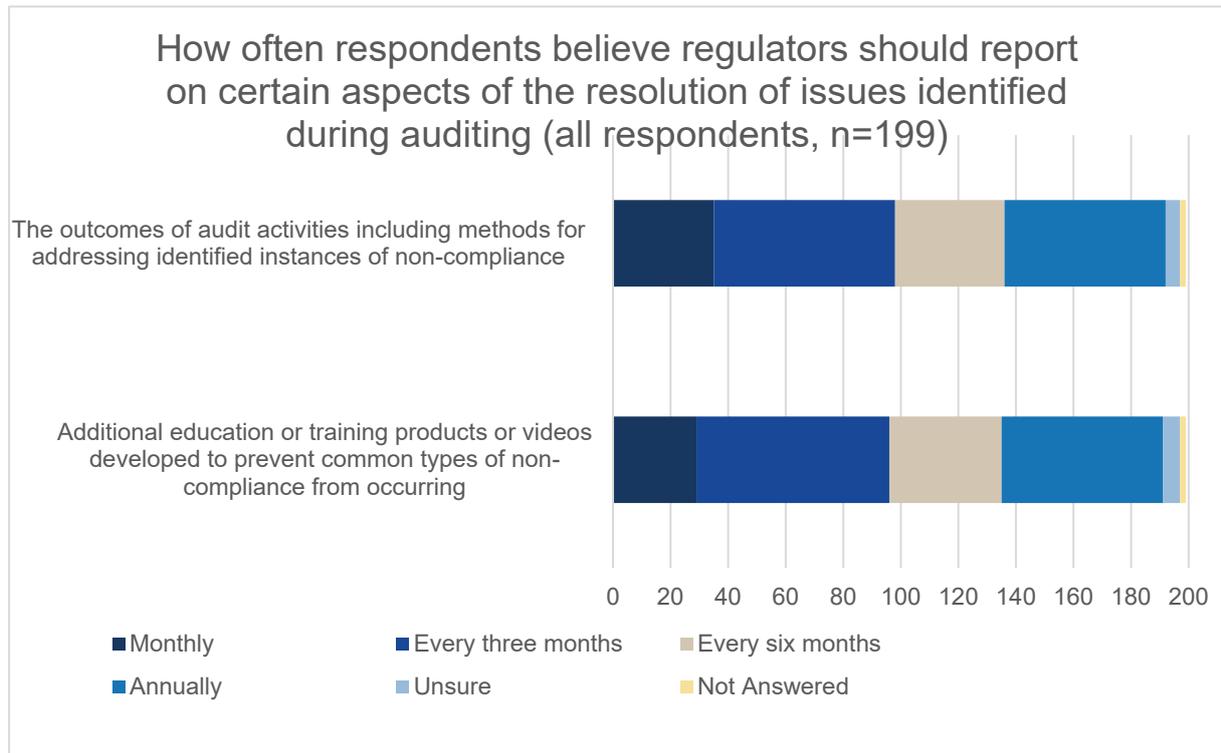
**Why Principle 2 was developed****Key survey results**

Survey respondents were asked to indicate how often they believed certain measures should be reported. The most common response was 'every three months', except for the measure 'Overall number of auditing activities'. This may be because annual reporting would not provide a frequent enough picture for industry participants to respond quickly to emerging trends. It is important that regulators respond to industry's desire to receive more information about auditing through reporting other than annual reports. It also supports regulators to encourage timely and constructive conversations about auditing and positively impact industry culture and views related to auditing.

Figure 9 How often respondents believe regulators should report on certain aspects of auditing



**Figure 10 How often respondents believe regulators should report on certain aspects of the resolution of issues identified during auditing**



Eighty-six per cent of respondents also indicated that they believe reporting on auditing will reduce non-compliance, with 75 per cent indicating they believe reporting on auditing may specifically discourage ‘taking shortcuts’.

## Empathic and constructive engagement

Listening Learning Leading<sup>16</sup> identifies one of three aspects of excellent regulation as ‘empathic engagement’. That is, transparency and public engagement that includes providing public notice of the regulator’s activities, seeking input and educating the public. Principle 2 aims to support empathic engagement, which in turn supports confidence in the regulator.

Creating and maintaining continuous conversation using multiple communication channels about auditing also allows the regulator to hear a variety of views from industry in a timely manner by not containing the conversation to a venue or timeframe, with evidence suggesting social media use particularly can drive innovation in public service delivery, including through ‘crowd-sourcing’ ideas<sup>17</sup>. The regulator further benefits by hearing less common views and better understanding the impact of its work on different stakeholder groups.

An extended Case study, relevant to Principles 1 to 5, is at Appendix 1.



### Principle 3:

#### Regulator performance to be publicly reported

Regulators should report on whether they met auditing targets and/or delivered on their auditing strategies. Regulators should report on how their performance is measured and how they are held accountable. They should explain whether they view auditing outcomes reported as regulatory ‘success’ and if not, what they define as regulatory ‘success’.

### Why Principle 3 was developed

#### Key survey results

Some survey responses showed a level of frustration from industry practitioners that non-compliance may be deliberate, repeated and undetected by the regulator. It can be difficult for the public to distinguish between industry practitioners who value

<sup>16</sup> C. Coglianesi, available online at <https://www.law.upenn.edu/live/files/4946-pprfinalconvenersreport.pdf>.

<sup>17</sup> OECD, available online at [https://www.oecd-ilibrary.org/governance/social-media-use-by-governments\\_5jxrcmghmk0s-en](https://www.oecd-ilibrary.org/governance/social-media-use-by-governments_5jxrcmghmk0s-en).

compliance and aim to be compliant from those who do not, so the actions of a few practitioners may affect public confidence in many.

Respondents to the survey were asked whether regulatory oversight of the construction of commercial buildings had changed significantly since the publication of the BCR in 2018. Fifty-five per cent of respondents believe it has not, while 18 per cent believe it has. Three quarters of respondents to the survey indicated that they take an interest in reporting from government regulators about their enforcement activities. This aligns with feedback from industry that auditing and compliance underpin the building regulation system and that it wants building regulators to act to ensure the integrity of buildings in Australia.

### **Being accountable**

Transparency is a key theme of the BCR. To reiterate its importance and encourage a culture where transparency is valued, regulators should set the tone by reporting on their own performance. While building regulators already report some measures in annual reports, these do not always provide a full picture of whether the regulator achieved what it was funded and planned to achieve, and if it did not, the reason why. Ideally, regulator performance should consider outcomes not just activities and output<sup>18</sup>.

In the same way that it is important that industry is accountable to regulators to increase public confidence, it is important that regulators are accountable. This increases confidence in the accuracy and integrity of reporting on auditing and the integrity and capability of the regulator in exercising statutory functions and using statutory powers to audit. Confidence in the regulator's integrity and capability will support industry buy-in to responses that are developed to trends identified through auditing.

The Productivity Commission's Report on Government Services series<sup>19</sup> reports on the performance of government service delivery in key areas including health and

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<sup>18</sup> Queensland Audit Office, Licensing builders and building trades Report 16: 2019–20, available at: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T978.pdf>.

<sup>19</sup> Report on Government Services 2020 available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020>.

justice. It identifies that measurement of performance and public reporting creates incentives for better performance, including by helping to clarify government objectives and responsibilities, promoting analysis of relationships between agencies and enabling better coordination across agencies, making performance transparent through informing the community and encouraging ongoing performance improvement.

While the Report on Government Services series focuses on service delivery, the benefits identified translate to building regulation. As the 2020 report notes, performance reporting “provides a level of accountability to consumers, who have little opportunity to express their preferences by accessing services elsewhere”.

### **Defining regulatory ‘success’ and managing expectations**

Defining regulatory ‘success’ is important because regulators have limited resources and must make choices about how they protect public interests and protect building users from harm. A building regulator’s perception of ‘success’ may not align with public perceptions. Increased transparency from the regulator may help to manage expectations.

Examining the concept of efficacy in regulation, the Victorian DoT acknowledged that achieving complete compliance with public transport ticketing regulation is impractical, given behavioural failures and system failures would always mean there would be some level of non-compliance. Likewise, the Australian Skills Quality Authority (ASQA) acknowledged in its regulatory strategy that it cannot regulate all risks contributing to non-compliance<sup>20</sup>. The DoT also considered that given limited resources, priorities should be established to efficiently allocate available resources to maximise compliance.

For many regulators, allocating resources efficiently means targeting high-risk activities or roles. Building regulators could consider explaining in reporting how their definitions of ‘success’ interact with their regulatory approaches and whether this is risk-based. In its public-facing Regulation strategy 2020-22, ASQA specifies it

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<sup>20</sup> ASQA Regulatory strategy 2020–22, available at: <https://www.asqa.gov.au/resources/corporate/asqa-regulatory-strategy-2020-22>.

recognises and responds to risk on a provider level and a systemic level<sup>21</sup>. This supports transparency and accountability by allowing stakeholders to understand how a regulator is using its publicly funded resources.

An extended Case study, relevant to Principles 1 to 5, is at Appendix 1.



## Principle 4:

### Data collection to support reporting and continuous improvement

Data collection should be designed to support reporting measures that enable a story to be told, including of long-term trends. Regulators should be transparent about the sources of their data and any limitations of the data. Regulators should also regularly review data collection and reporting measures and adapt them, if necessary, to ensure they remain relevant and continue to inform collaborative conversations with industry about auditing.

## Why Principle 4 was developed

### Key survey results

Survey results show respondents consider detailed reporting on auditing to be important. The survey tested potential reporting measures with respondents and responses show respondents want to be informed of the scope and impact of auditing activities and outcomes and how regulators address non-compliance.

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<sup>21</sup> ASQA Regulatory strategy 2020–22, available at: <https://www.asqa.gov.au/resources/corporate/asqa-regulatory-strategy-2020-22>.

Figure 11 Respondents' views on the importance of reporting certain auditing aspects

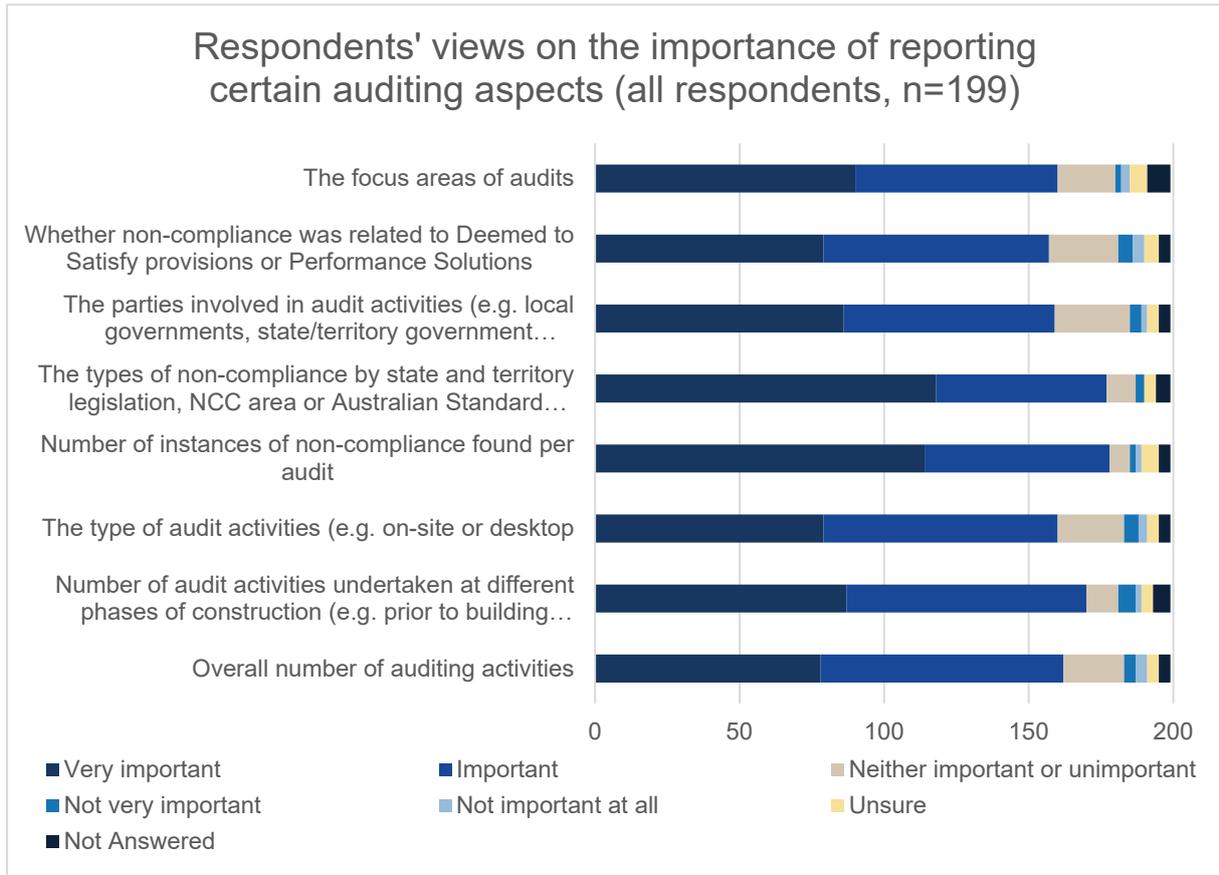


Figure 12 Respondents' views on the importance of reporting the resolution of certain issues identified during auditing

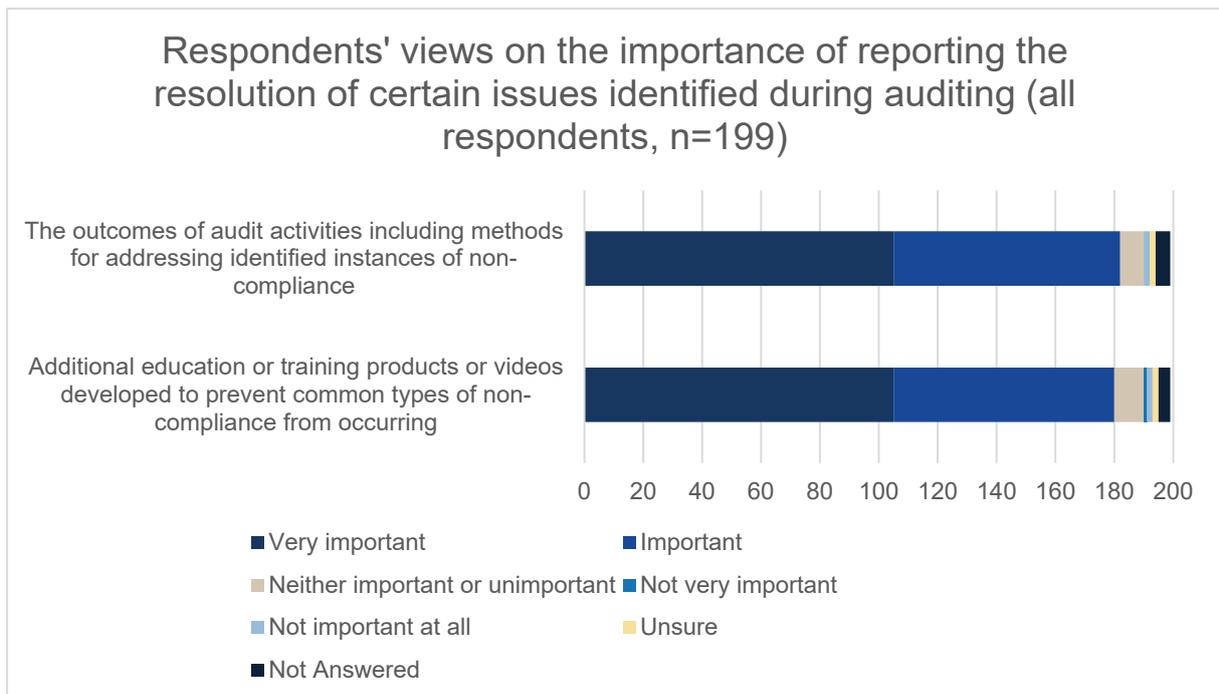
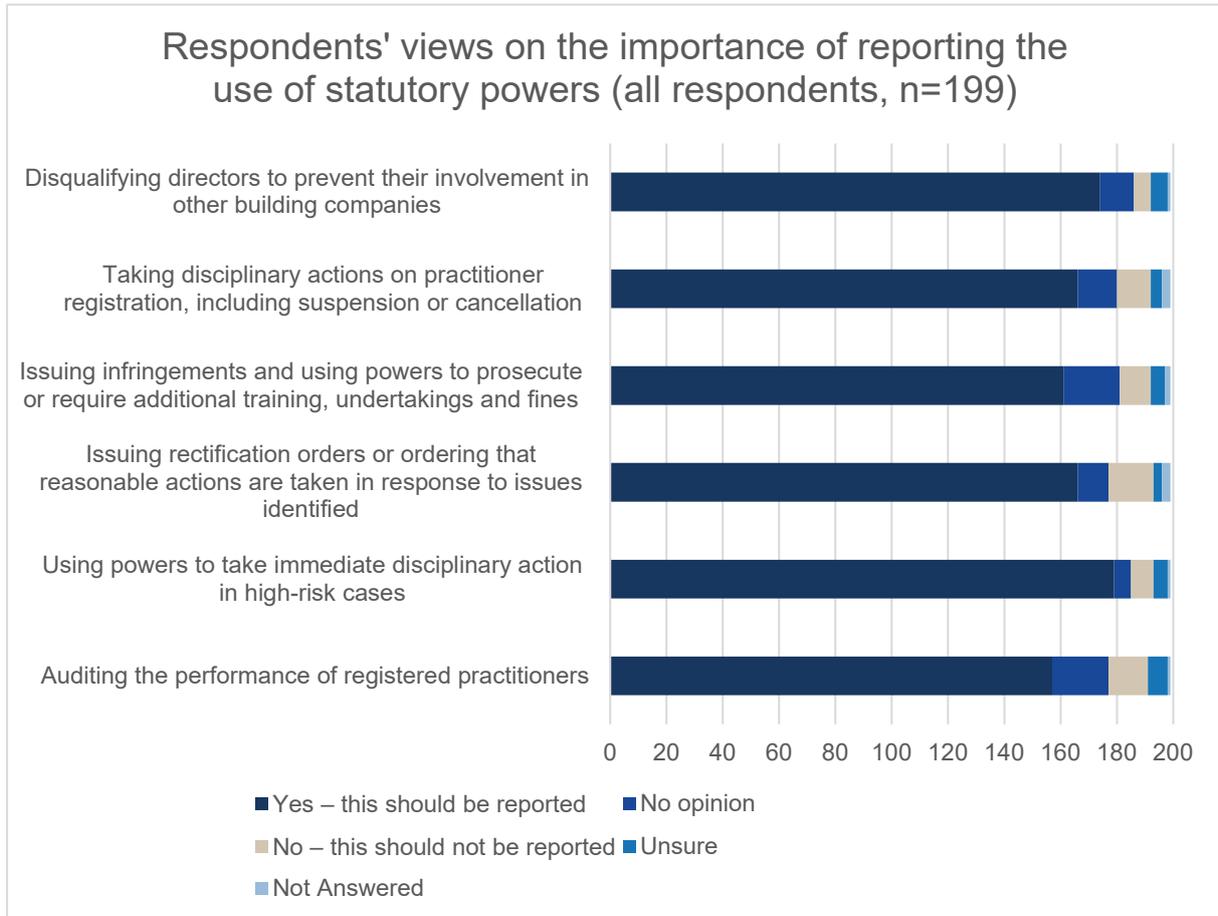


Figure 13 Respondents' views on the importance of reporting the use of statutory powers



Survey respondents also suggested a broad range of additional areas that auditing on reporting could cover, including, but not limited to:

- Classes of buildings audited
- Locations of buildings audited (i.e. metropolitan or rural)
- Follow-up audits or 're-auditing'
- Use of non-compliant building materials or non-compliant use of building materials
- Whether buildings are built as approved
- Accuracy and completeness of documentation, including building plans and design details
- Types of construction contracts e.g. design and construct
- Most common trends identified through auditing
- Most common types of non-compliance as per the NCC or Australian Standards
- Underlying reasons for non-compliance
- Major building failures

- Performance of a building following a major event
- Compliance with accessibility requirements such as the Disability (Access to Premises – Buildings) Standards 2010<sup>22</sup>
- Costs to industry of rectifying non-compliance i.e. following rectification orders
- Identified need for NCC reform
- Identified need for clarity in the NCC, legislation or Australian Standards
- ‘Phoenixing’ or ‘rebirthing’
- Experience and qualifications of supervisors and level of supervision provided on-site

This feedback underscores the need for regulators to develop and maintain reporting measures that enable meaningful analysis and discussion. Industry’s concerns are many and varied but can be linked back to the need for increased accountability and transparency.

Respondents’ expectations about the benefits of such reporting are below. Non-compliance significantly impacts industry and the public including through impacting the safety of building users, financially impacting building owners and requiring industry to spend time rectifying work. Even if respondents’ expectations are only partially met, the benefits that could be realised through reporting on auditing are significant.

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<sup>22</sup> Available at: <https://www.legislation.gov.au/Series/F2010L00668>.

Figure 14 Respondents' views on benefits of reporting on auditing to industry

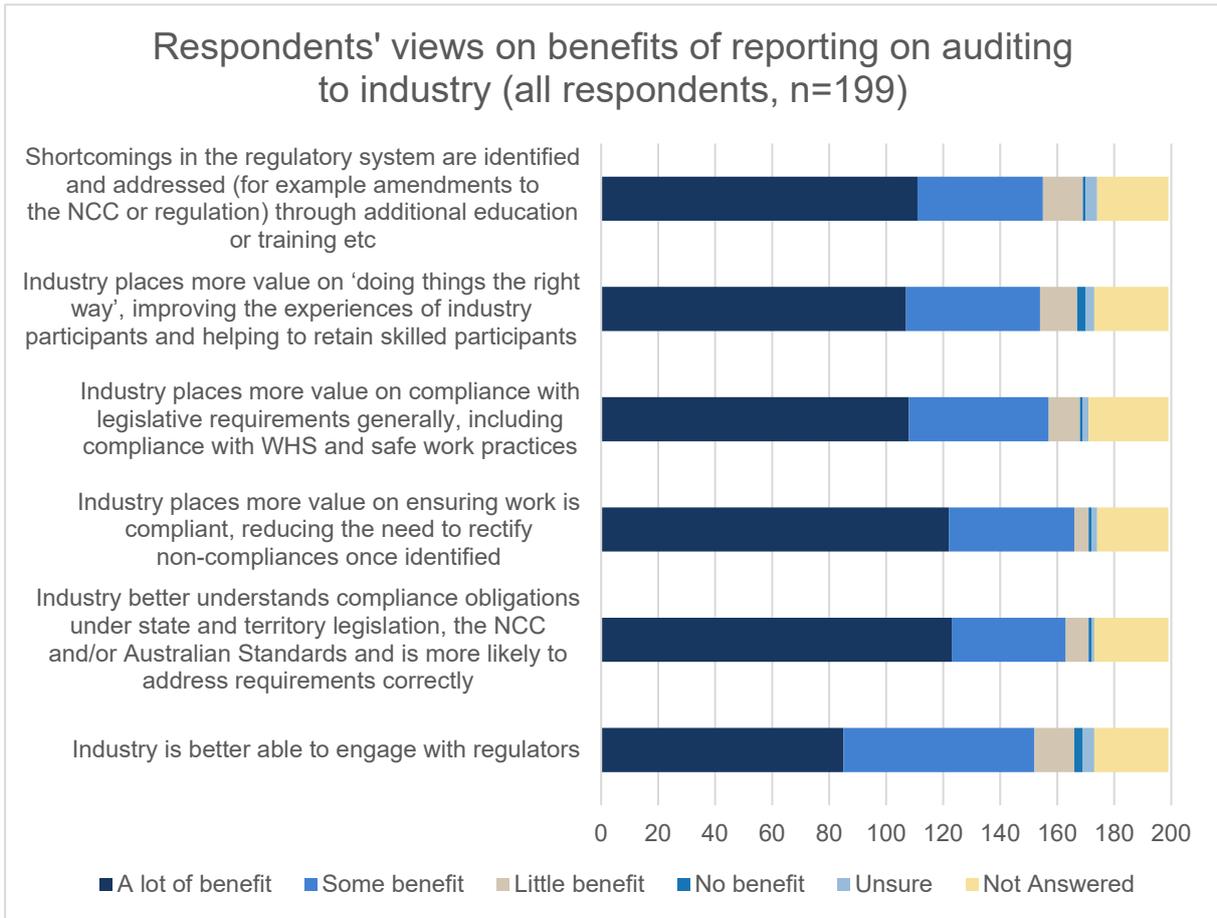
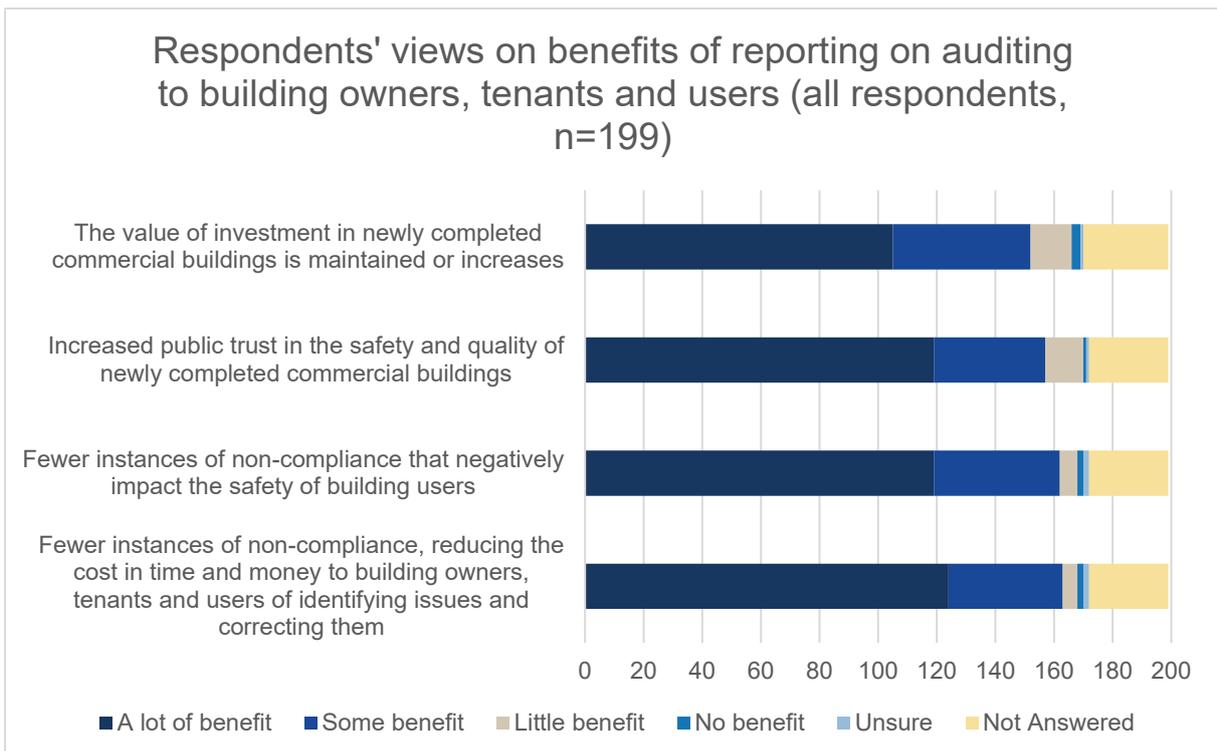


Figure 15 Respondents' views on benefits of reporting on auditing to building owners, tenants and users



Assessing change across periods and over the long-term is important to identify key reasons for substantial changes in level of compliance with requirements. If registered practitioner numbers increase by 0.5% year-on-year however there is an increase over the same period of 1.5% in referrals to a practitioner licensing board, the regulator should have the ability to monitor and/or investigate this further. Similarly, assessing why disparities in compliance exist across jurisdictions is important to identify how policy or regulation could be adapted to increase compliance. 83 per cent of respondents to the survey considered that it was 'important' or 'very important' that reporting on auditing was comparable across jurisdictions, potentially reflecting an interest in not just identifying issues but better understanding their causes to be able to address them.

Interestingly, anecdotal evidence suggests that key stakeholders may believe that governments hold vast data about the building industry and are choosing not to publish it, when this is largely not the case. Building regulators now have the opportunity to design data collection that enables reporting measures to tell a meaningful story to industry and empower industry to participate in the response. Development of data collection mechanisms and identification of appropriate data points will also support insight-driven regulation, which "relies on having appropriate information and data to form the necessary intelligence, and then using the intelligence to identify data-driven opportunities to improve regulatory outcomes"<sup>23</sup>.

Transparency about the collection or analysis of data allows industry and the public to determine their confidence in a reporting measure and can provide key context about why some trends may appear to change significantly from year to year. If, for example, a regulator reports a significant year-on-year increase in non-compliance in a particular area, useful context would include comparing the number of audits and the areas they targeted e.g. perhaps the auditor had specifically targeted that area the year before, resulting in increased compliance this year or the regulator audited 13 per cent of Class 2 – 9 buildings under construction this year instead of 5 per cent last year, potentially producing a more accurate finding.

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<sup>23</sup> Queensland Audit Office, Licensing builders and building trades Report 16: 2019–20, available at: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T978.pdf>.

**Case study:**

Aviation is an industry with a strong culture of transparency and accountability. CASA is accountable to the Australian Government for effective regulation of the aviation industry and aviation industry participants accountable to the regulator.

CASA has surveyed stakeholders most years since 2015, providing it the data to assess trends and target its communication and education efforts. While the 2018 survey results show an increase in respondents' confidence in ability to comply with relevant aviation safety regulations, considering the results by respondent age and years spent in the aviation industry shows that additional education and communication from the regulator with certain participants could prevent negative safety outcomes.

Respondents were asked to rate their confidence in their ability to comply with relevant safety regulations on a scale of 0 to 10. The average rating increased from 5.8 in 2015 to 7.4 in 2018<sup>24</sup>.

- In 2018, 28 per cent of respondents indicated that they were 'confident' in their ability to comply and 43 per cent indicated they were 'very confident'. 16 per cent were neutral on the matter, 6 per cent indicated they were not confident and 5 per cent were not at all confident.
- Analysis of sub-groups showed:
  - Respondents aged 18-29 years reported a mean of 8.3, significantly higher than the survey average.
  - Respondents who worked in remotely piloted aircraft systems reported a mean of 8.8 compared with air transport pilots, who reported a mean of 6.4.
  - Respondents who had been in the aviation industry less than 12 months or 1 – 3 years respectively reported means of 8.7 and 8.5, compared with those who had been in the industry for more than 40 years, who reported a mean of 6.8.

Without this granularity of data, the regulator may see an overall upward trend, but may not be able to further increase industry participant confidence in complying. This granularity of data provides the regulator the opportunity to further explore, through targeted consultations, why certain participants feel less confident than others in complying with safety regulations and how this could be mitigated, including through auditing, communication and education.

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<sup>24</sup> CASA Stakeholder Satisfaction Survey, available at: <https://www.casa.gov.au/sites/default/files/stakeholder-satisfaction-survey-2018.pdf>.

Ultimately, the ability for the regulator to understand what's happening in its industry and respond quickly protects consumers from potential negative safety impacts.

An extended Case study, relevant to Principles 1 to 5, is at Appendix 1.



### Principle 5:

#### Enforcement action to be published

Reporting and discussions about auditing should demonstrate a range of proportionate responses to issues identified through auditing, including strong responses where appropriate. States and territories should establish public registers of enforcement action taken against any registered practitioners and report additions to the register using a range of communication tools including social media.

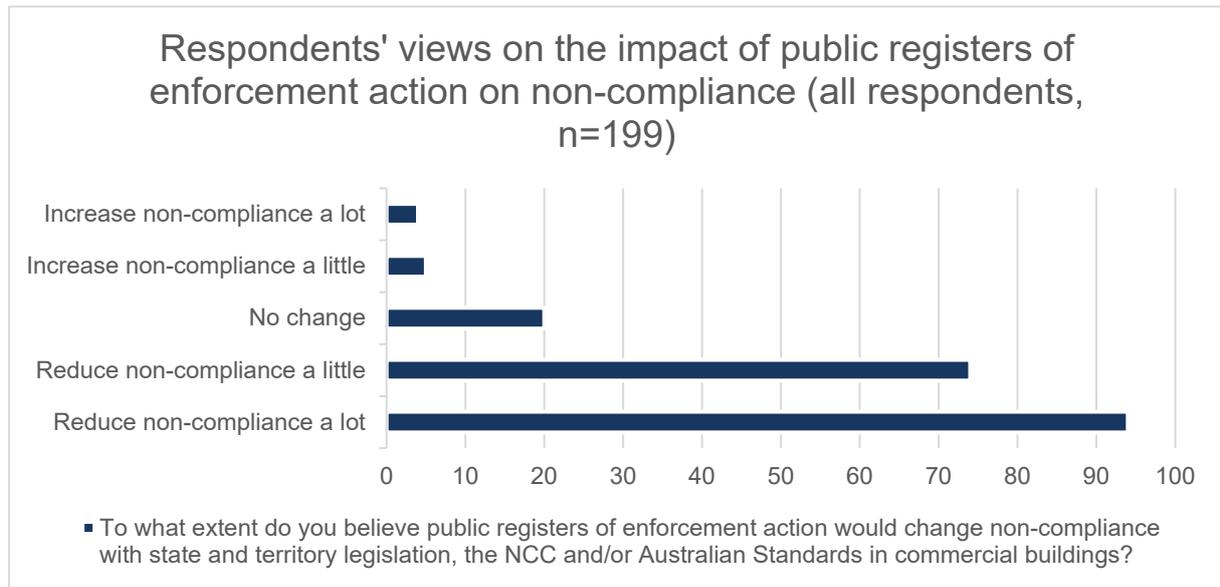
### Why Principle 5 was developed

#### Key survey results

Survey responses noted that a potential drawback of reporting on auditing could be that if the regulator's reporting does not demonstrate ability to take proportionate action, including strong action where necessary, it may act as a disincentive to achieve compliance.

Additionally, some survey responses showed a level of frustration from industry practitioners that non-compliance may be deliberate, repeated and undetected by the regulator. The majority of survey respondents believe the establishment of registers of enforcement action would reduce non-compliance and most comments were supportive. A few respondents, however, indicated that they believe some practitioners are so determined to do whatever it takes to generate profit that not even the establishment of a register of enforcement action would deter them from taking shortcuts or failing to prioritise compliance.

**Figure 16 Respondents' views on the impact of public registers of enforcement action on non-compliance**



Some responses also noted the importance of regulators drawing attention to registers of enforcement action to ensure they have a meaningful impact. Consumers may not be aware of their existence so the regulator must publicise additions to the registers and engage with consumers to encourage them to check these registers by default prior to engaging industry practitioners to undertake work.

### Information asymmetry

Information asymmetry describes the tendency for two parties to a transaction to hold different information. Typically, one party is also more informed than the other e.g. a person engaging the services of an industry participant or purchasing a new building may be unfamiliar with building processes and compliance standards and is unaware of the intention and ability of an industry participant to comply. In contrast, an industry participant typically has detailed knowledge of building processes and compliance standards and their intention and ability to comply.

The Western Australia Government’s Reforms to the approval process for commercial buildings in Western Australia – Consultation Regulatory Impact Statement<sup>25</sup> summarised the need for regulators to demonstrate they are active in identifying and responding to poor industry practice. It stated that “it is widely

<sup>25</sup> Available at: <https://www.commerce.wa.gov.au/publications/cris-reforms-approval-process-commercial-buildings-western-australia>.

accepted market forces can drive industries to produce their products quickly, for the lowest cost, both to offer competitive prices to consumers and to maximise profits. In the building industry, this can result in buildings that are unsafe due to poor design or construction. It is considered that Government intervention is required to set and enforce minimum standards of safety and amenity and to create a basis for all building industry participants to compete fairly.”

In this context, publicising strong regulatory action, including through establishment of a register of enforcement action, signals to industry and the public that the building regulatory system is protecting public interests and protecting building users from harm.

Publicising regulatory action should be accompanied by context about the regulator’s decision. Excellent regulation requires that a regulator explains its decisions fully, “being transparent not merely by providing access to information but also by giving reasons for its actions (including decisions not to act) and addressing important arguments for and against its chosen course of action”<sup>26</sup>.

This context is key to providing industry and the public confidence that the regulator has consideration for the causes of non-compliance and the circumstances of the individuals involved. That is, the regulator must be seen to be able to engage empathetically but still be able to penalise those who repeatedly do the wrong thing.

An extended Case study, relevant to Principles 1 to 5, is at Appendix 1.

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<sup>26</sup> C. Coglianese, available online at <https://www.law.upenn.edu/live/files/4946-pprfinalconvenersreport.pdf>.



## Principle 6:

### Regulators to collaborate within and across jurisdictions

Regulators within each jurisdiction and, where appropriate, across jurisdictions collaborate and communicate about auditing regularly.

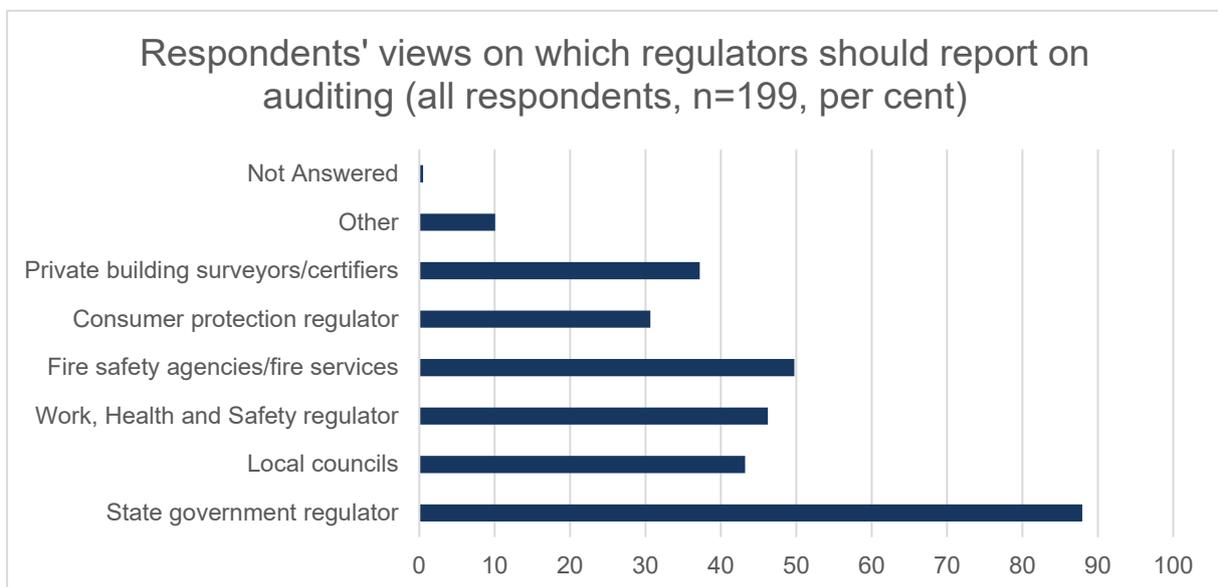
#### Why Principle 6 was developed

#### Key survey results

Multiple regulators in each jurisdiction play a role in ensuring newly built Class 2 – 9 buildings are compliant with the NCC, state and territory legislation and Australian Standards. It may be difficult for industry and the public to piece together a full picture of industry trends if reporting from regulators is infrequent, does not align or is difficult to find. There is merit in collating reporting on auditing, however, as noted below, this may be difficult to do.

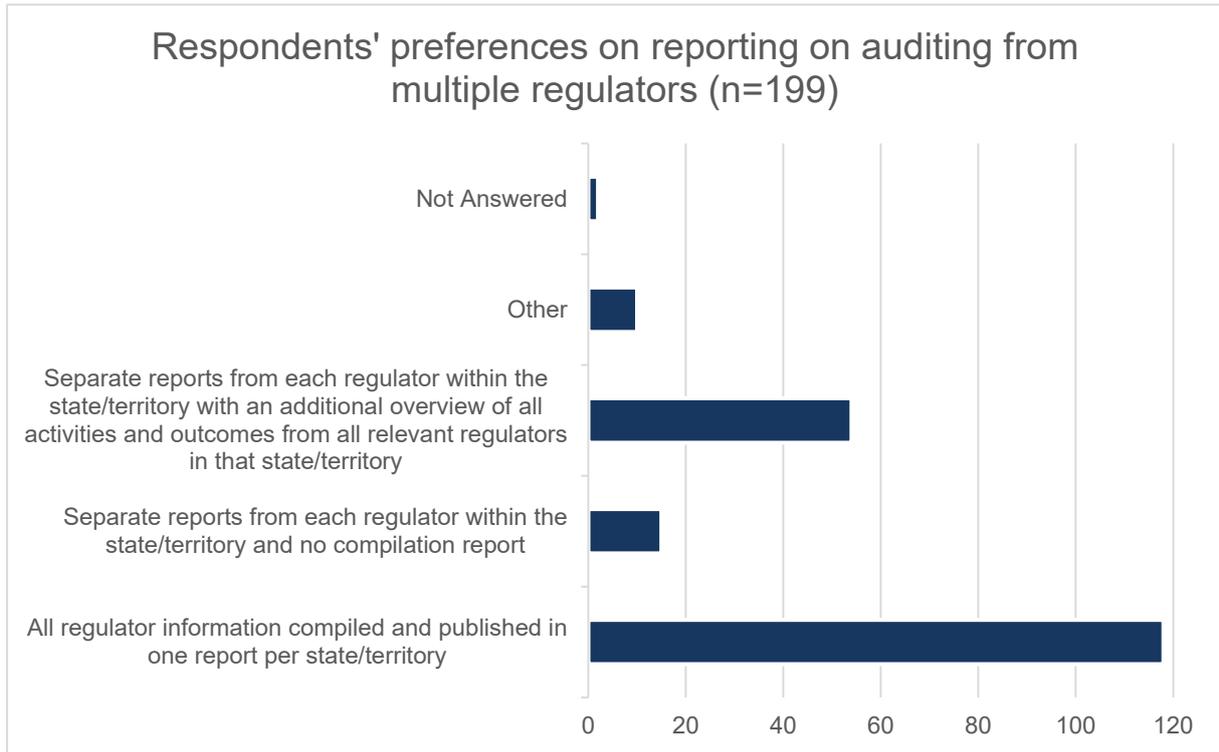
Survey results showed that nearly 88 per cent of respondents are interested in reporting on auditing from the state or territory building regulator, while nearly 50 per cent are interested in reporting on auditing from fire safety services.

**Figure 17 Respondents' views on which regulators should report on auditing**



The survey results also showed a preference from respondents for reporting on auditing to be collated.

Figure 18 Respondents' preferences on reporting on auditing from multiple regulators



Noting that some aspects of regulator reporting may be determined in legislation or by government requirements, it may be challenging to align reporting and collate information in one report. A compromise may be for regulators to explore options to make their reports as easy to find and compare as possible. This would include agreeing to include breakdowns of information according to standard reporting periods e.g. by financial quarters.

### Sharing resources

Consultations with regulators have revealed that not all have auditing strategies and there is not regular reporting of auditing outcomes, reflecting a potential tendency for regulators to allocate their limited resources to responding to urgent issues rather than planning and reporting, i.e. being reactive rather than proactive. Increased collaboration between regulators, particularly to share analysis of auditing data, may result in more effective targeting of auditing activities, enabling regulators to 'do more with less'. It could also support more cohesive communication strategies or targeted development of education and training responses to issues commonly identified through auditing. This in turn may increase compliance and be reflected positively in reporting on auditing.

The BCR identified that the oversight of the construction of buildings is fragmented, “prone to duplication, confusion, unclear lines of responsibility and a lack of information sharing” given the number of regulators. Most industry practitioners and the public do not have the ability to distinguish between the roles of each regulator, which is why it is important for regulators to make information available about their role including their role as an auditor. In the same way that the actions of a few practitioners may affect public confidence in many, lack of transparency and accountability of one regulator could affect confidence in another. By collaborating to increase transparency and accountability through reporting on auditing, all regulators with responsibilities related to the construction of new Class 2 – 9 buildings will benefit from greater confidence.

BCR recommendation 5 links to Principle 6. Recommendation 5 was that “each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role)”. If implemented, this will provide regulators an effective forum to communicate about auditing.

# APPENDICES



## Appendix A Case study – Extended

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This case study supports principles 1 to 5.

In its 2014 Regulator Performance Framework<sup>27</sup>, the Australian Government identified six outcomes-based key performance indicators for regulators:

- regulators do not unnecessarily impede the efficient operation of regulated entities,
- communication with regulated entities is clear, targeted and effective,
- actions undertaken by regulators are proportionate to the risk being managed,
- compliance and monitoring approaches are streamlined and coordinated,
- regulators are open and transparent in their dealings with regulated entities, and
- regulators actively contribute to the continuous improvement of regulatory frameworks.

CASA draws on surveys of its stakeholders to inform reporting against these key performance indicators. Between 2015 and 2018, CASA focused on improving its relationship with industry, including through increased stakeholder engagement mechanisms. Its success in better collaborating and communicating with the parties it regulates is reflected in significant improvements in industry satisfaction in its stakeholder survey. By 2018, CASA reported the percentage of ‘satisfied or very satisfied’ stakeholders had risen from 25 per cent in 2015 to 53 per cent, while respondents who were ‘dissatisfied to very dissatisfied’ fell from 46 per cent in 2015 to 20 per cent<sup>28</sup>. The survey results also showed that CASA is “increasingly seen as working collaboratively and transparently with industry”.

CASA offers stakeholders the ability to interact online and in-person, including through:

- industry forums including in-person aviation safety seminars,
- publication of Flight Safety magazine focused on safety-related industry participant experiences,
- public consultation through the online CASA Consultation Hub,

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<sup>27</sup> Available at: [https://www.pmc.gov.au/sites/default/files/publications/Regulator\\_Performance\\_Framework.pdf](https://www.pmc.gov.au/sites/default/files/publications/Regulator_Performance_Framework.pdf).

<sup>28</sup> Available at: CASA Stakeholder Satisfaction Survey 2018, available at: <https://www.casa.gov.au/sites/default/files/stakeholder-satisfaction-survey-2018.pdf>. CASA’s 2018 online survey ran from April to June 2018 and invited responses from 11,000 random industry participants. 1,169 respondents completed the survey. 34 in-depth interviews were also conducted.

- complaints processes,
- social media, and
- the Aviation Safety Advisory Panel. Established in 2017, in 2018-19, it established 19 technical working groups to provide expert technical advice on a range of matters, including fatigue rules, dangerous goods and the flight operations suite of regulations. The Aviation Safety Advisory Panel supports the development of regulations that are fit for purpose and supported by industry.

Using different types of stakeholder engagement mechanisms allows CASA to communicate with a wide variety of stakeholders and supports industry buy-in, particularly in response to new regulations. In addition to the above stakeholder engagement, CASA produces and makes available on its website a large amount of support and educational material including guidelines, information sheets and checklists<sup>29</sup>. This material is written in plain English but may also reference or explain the intent of legislation, underscoring the expectation that industry participants understand their legislative obligations. E-learning modules are provided on the CASA website<sup>30</sup>.

Surveying stakeholders allows a regulator to analyse changes in stakeholder sentiment and to consider and address underlying causes through the creation of new support or guidance material, education initiatives and/or targeted auditing and compliance activities.

A sample of the CASA stakeholder survey outcomes from 2015 and 2018 are below<sup>31</sup>. They show that building a collaborative relationship with regulated parties increases satisfaction with the regulator's performance, ultimately positively impacting desired outcomes of the regulator and allowing the regulator to better meet the expectations of the public that it protect their interests and regulate risks.

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<sup>29</sup> Available at: <https://www.casa.gov.au/publications-and-resources>.

<sup>30</sup> Available at: <https://www.casa.gov.au/education/elearning-catalogue/aviationworx>.

<sup>31</sup> CASA Stakeholder Satisfaction Survey 2018, available at: <https://www.casa.gov.au/sites/default/files/stakeholder-satisfaction-survey-2018.pdf>.

Table 1 Key metrics from the CASA stakeholder survey outcomes in 2015 and 2018

Metric	2015	2018
Overall satisfaction with relationship with CASA	4.2	6.2
Satisfaction with consistency of CASA's decision making	3.2	5.4
Likelihood of reporting situations of material non-compliance to CASA	6.0	6.9
Satisfaction with CASA's ongoing dialogue with industry	3.7	5.6
Satisfaction with CASA's audit and compliance activity	4.8	6.3
CASA's auditing role is critical to the safety of aviation in Australia	Unknown	7.8
CASA staff undertake audit activities in a professional manner	Unknown	7.5
CASA staff are fair and reasonable in dealing with those subject to audit	Unknown	6.9
Audits are undertaken in a constructive manner to improve safety	Unknown	6.6
Ease of complying with aviation safety regulations	4.2	5.9
Confidence in ability to comply	5.8	7.4
Regulations covering my activities are easy to understand	3.2	5.4
CASA explains the regulations and how they affect industry stakeholders in a clear and succinct manner	2.9	5.2
I have a sound understanding of all regulations governing my aviation activities	5.1	6.8

Metric	2015	2018
Regulations play a key role in ensuring I operate safely	5.7	7.2
I operate in excess of CASA's minimum safety requirements	8.0	8.2
Australian aviation safety regulations and aviation safety best practice are closely aligned	4.7	6.6
CASA seeks to identify and promote safety best practice within the aviation community	4.9	6.7
CASA recognises and values industry knowledge and experience	3.6	5.6

While surveys can provide quantitative insights, they are also able to provide qualitative insights. CASA's 2018 survey revealed the highest priority for the regulator's stakeholders was finalisation of regulatory reforms to ensure stakeholders can have greater certainty and confidence in meeting their obligations. Key feedback was that many stakeholders wanted to see the existing regulatory framework simplified, including clearer practical guidance and use of plain and accessible language.

The 2018 survey also showed a desire for "much greater contact between industry participants and CASA staff outside of the formal audit context", with analysis stating that "there is a common view that greater engagement and dialogue can only help strengthen understanding and mutual respect between industry and CASA, including how regulations can be interpreted and complied with in a practical, efficient and sustainable manner".

Demonstrating that regulation involves responses proportionate to risk and seriousness of non-compliance, analysis of the 2018 stakeholder survey results encouraged CASA to "continue to champion its adoption of its 'just culture' regulatory approach, ideally with case studies and examples of how such an approach has been applied in practice".

CASA defines 'just culture' as "an organisational culture in which people are not punished for actions, omissions or decisions taken by them that are commensurate with their experience, qualifications and training, but where gross negligence, recklessness, wilful violations and destructive acts are not tolerated"<sup>32</sup>.

While it is difficult to shift an entire industry culture towards greater transparency at all levels, the regulator has a role to play in demonstrating the benefits of such a culture. This includes demonstrating proportionate responses through reporting on auditing, including framing the requirement for additional training or education as beneficial to industry, not punitive.

The analysis of CASA's 2018 stakeholder survey results noted the importance of consistent decision-making and disclosing proportionate actions to address non-compliance, stating "stakeholders will not be convinced in this change of stance unless they see this in action – and most likely on several occasions. Those that have been in the industry for many years are often very jaded in their outlook towards CASA and will take time to move to even a neutral position. For younger and new industry entrants, attitudes are generally far more positive towards CASA, and the task for this group is to maintain such goodwill into the future."

### Measurement

CASA's stakeholders have a high level of engagement with their regulator and CASA is able to gauge the success of its interactions through assessing trends and measuring the success of individual programs. Examples of aspects CASA measures include:

- In 2018-19, there were almost 8,000 responses to 37 consultations on CASA's Consultation Hub, an average of 216 per consultation. This demonstrates industry participants are willing to take the time to provide their views to their regulator.
- In 2018-19, CASA conducted 221 aviation safety seminars, engineering safety seminars and flight instructor safety workshops around Australia, reaching more than 8,500 industry members. CASA reported that 95 per cent of seminar attendees understood the role of CASA's aviation safety seminars and their positive impact on safety.

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<sup>32</sup> CASA's regulatory philosophy, available at: <https://www.casa.gov.au/about-us/who-we-are/our-regulatory-philosophy>.

- In 2017-18, CASA reported it reviewed social media regularly, with 3,537 stories monitored during the reporting period. Of those, 81% were neutral in tone towards CASA, 2% were positive, 12 % were mixed and 5% were negative. Negative stories are trending below the long-term average of 6%.

The feedback and trends shown in CASA's stakeholder survey are highly relevant to the building industry and are reflected in the six principles in this Framework.

Likewise, building regulators need to consider the story they tell to key stakeholders and the data they need to understand why trends occur.