

Power to issue directions to fix building work

This fact sheet explains sections 37, 37A–K, 118A and 138A of the *Building Act 1993* (the Act) and Regulations 902, 902A and 1601(c) that commenced 4 July 2016 and new obligations and penalties for body corporates that commenced 16 August 2017.

PENALTIES FOR BREACHING SECTION 37H (The value of a penalty unit is \$158.57 as at 1 July 2017)

- **500 penalty units**, (to a maximum of \$79,285) for failure to comply with a written direction in the case of a natural person; and
- **2500 penalty units**, (to a maximum of \$396,425) for failure to comply with a written direction in the case of a body corporate.
- **50 penalty units**, (to a maximum of \$7928.50) for requesting or receiving payment for complying with a direction in the case of a natural person.
- **250 penalty units**, (to a maximum of \$39,642.50) for requesting or receiving payment for complying with a direction in the case of a body corporate.

THE CHANGES

From 4 July 2016, the following changes apply in relation to building work in breach of the Act, the Building Regulations 2006 (the Regulations) and subsequently from the 4th July 2017, the Building Interim Regulations 2017 or a building permit:

- the relevant building surveyor (RBS) is required by law to issue a direction to fix building work if, after inspection, the RBS reasonably believes that the work fails to comply with the Act, the Regulations or the permit
- the Victorian Building Authority (VBA), or a person authorised by the VBA, may issue a written direction to fix building work
- a time frame is prescribed for compliance

- with an oral direction to fix building work
- a written direction must be issued if an oral direction is not complied with
- a written direction must be issued in the form approved by the VBA
- it is an offence not to comply with a written direction
- it is an offence to request or receive payment in relation to complying with a direction
- an owner must be given a copy of a written direction and any notice of extension, stay or revocation of the written direction
- written notice must be given to the VBA and the owner if a builder fails to comply with a written direction
- building notices and building orders are to be issued as a last resort
- a person may appeal a decision to issue a written direction to fix building work to the Building Appeals Board.

Also from 4 July 2016, new Regulations specify record-keeping requirements in relation to written directions to fix building work and the appeal period for appeals against a decision to issue a written direction.

WHAT THE CHANGES MEAN

Building surveyors

The RBS is required by law to issue a direction to fix building work if, after inspection, the RBS reasonably believes that the work fails to comply with the Act, the Regulations or the permit.

The RBS must keep a copy of each written direction issued until

- an occupancy permit or certificate of final inspection is issued
- the direction is revoked, or
- the direction is quashed or set aside by the Building Appeals Board.

The RBS is no longer required to follow an oral direction with a written direction in every

instance, or to issue an oral direction before issuing a written direction. However, if after seven days of issue an oral direction is not complied with, the RBS must issue a written direction.

The relevant written direction must be issued in the approved form and must specify the period for compliance.

On request, the RBS may grant an extension to the period for compliance and the owner.

The RBS may stay or revoke a direction to fix under certain circumstances.

The RBS must give copies of directions and notices of extension, stay or revocation to the builder and the owner.

If a builder fails to comply with a written direction, the RBS must within seven days after the period for compliance notify the VBA and the owner in writing of non-compliance.

A direction issued by the RBS ceases to have effect if a direction is issued by the VBA in relation to the same building work.

If the VBA issues a direction, the VBA is required to give the RBS a copy of the direction as well as any written notice of extension or revocation of the direction.

Building notices and orders must not be issued:

- unless a direction has been issued and it is clear the direction will not be complied with, or

Example

A direction to fix building work has expired without compliance and the builder expressly states they do not intend to comply with the direction.

- unless it is not possible or appropriate to give a direction to fix in the circumstances

Example

A relevant building surveyor may not consider it appropriate to issue a direction to fix non-compliant building work when the building work requires a reporting authority's consent (such as the consent of a council or a water authority).

Building practitioners

A building practitioner must comply with a direction to fix:

- in the case of an oral direction, within seven days, or
- in the case of a written direction, within the time period specified in the written direction.

In circumstances where a written direction is not complied with, the RBS is required to notify the owner and the VBA.

It is an offence for a building practitioner to fail to comply with a written direction, and to request or receive payment for any costs associated with complying with a direction.

A building practitioner may request an extension to the period for compliance from the RBS.

A building practitioner may appeal to the Building Appeals Board against the decision to issue a written direction.

Owner-builder

An owner-builder, including for building work not requiring a certificate of consent, must comply with a direction to fix:

- in the case of an oral direction, within seven days, or
- in the case of a written direction, within the time period specified in the written direction.

In circumstances where an owner-builder does not comply with a written direction, the RBS is required to notify the VBA.

It is an offence for an owner-builder to fail to comply with a written direction.

An owner-builder may request an extension to the period for compliance from the RBS.

An owner-builder may appeal to the Building Appeals Board against the decision to issue a written direction.

Read the revised sections of the Act

Definitions

In this Division—

authorised person means—

- (a) the Authority; or
- (b) a person authorised by the Authority under section 228(2); or
- (c) a performance auditor appointed under section 227A;

builder in relation to building work, means the person who is specified as the builder in the building permit issued in relation to that building work;

direction to fix building work means a direction to fix building work given under this Division;

relevant owner, in relation to building work, means the owner of the building or land in or on which the building work is being carried out;

relevant person means a person referred to in section 37C who can be, or has been, given a direction to fix building work.

37A Direction by relevant building surveyor to fix building work

- (1) This section applies if, after the inspection of building work, the relevant building surveyor believes on reasonable grounds that the building work fails to comply with this Act, the building regulations or the building permit issued in relation to the building work.
- (2) The relevant building surveyor must give a direction to fix the building work to a relevant person in accordance with this Division.

(3) If, under this section, an authorised person gives a person a direction to fix building work, any direction to fix that work given by or on behalf of a relevant building surveyor under section 37A ceases to have effect.

37B Direction by authorised person to fix building work

- (1) This section applies if, after the inspection of building work, an authorised person believes on reasonable grounds that the building work fails to comply with this Act, the Building Regulations or building permit issued in relation to the building work.
- (2) The authorised person may give a direction to fix the building work to a relevant person in accordance with this Division.
- (3) If, under this section, an authorised person gives a person a direction to fix building work, any direction to fix that work given by or on behalf of a relevant building surveyor under section 37A ceases to have effect.

37C Method of giving directions

A direction to fix building work may be given as—

(a) an oral direction to either or both of the following persons—

(i) the builder;

(ii) the person who is apparently in charge of the site on which the building work is being carried out; or

(b) a written direction to the builder.

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37D Written direction if oral direction not complied with

- (1) This section applies if an oral direction to fix building work has been given under this Division.
- (2) The relevant building surveyor or authorised person must give the builder a written direction to fix building work if the relevant building surveyor or authorised person is not satisfied at the end of the prescribed period after the oral direction was given that the building work complies with this Act, the building regulations or the building permit issued in relation to the building work.
- (3) In this section—

prescribed period means—

- (a) the period prescribed by the regulations (if any); or
- (b) if a period is not prescribed, 7 days.

37E Requirements of directions to fix building work

A direction to fix building work may require the relevant person to do all or any of the following—

- (a) carry out work so that the building work complies wholly or substantially with this Act, the building regulations and the building permit issued in relation to the building work;
- (b) stop any further building work that may prevent the building work to which the direction applies from being adequately inspected, until the relevant building surveyor or authorised person is satisfied that a requirement under paragraph (a) has been complied with.

37F Written directions to fix building work

- (1) A written direction to fix building work must be given in a form (if any) approved by the Authority.
- (2) A written direction to fix building work must specify a period within which the direction must be complied with.
- (3) A written direction to fix building work must state the following—
 - (a) that the builder has a right to appeal the decision to give the direction to the Building Appeals Board within a prescribed period; and
 - (b) that the builder may ask the relevant building surveyor or authorised person to extend the period within which the direction must be complied with.

37G Extension of time to comply with direction

- (1) A builder who is subject to a written direction to fix building work may ask the relevant building surveyor or authorised person to extend the period for compliance with the direction.
- (2) A request under subsection (1) must be made before the end of the specified period for compliance with the direction.
- (3) On a request under subsection (1), the relevant building surveyor or authorised person may grant an extension of the period for compliance with the direction to fix building work if the relevant building surveyor or authorised person considers it appropriate to do so in the circumstances.
- (4) The relevant building surveyor or authorised person must give written notice of the extension to the builder.

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37H Offences relating to compliance with direction

- (1) A builder must comply with a written direction to fix building work within the period for compliance specified in the direction.

**500 penalty units, (to a maximum of \$79,285) in the case of a natural person; and
2500 penalty units, (to a maximum of \$396,425) in the case of a body corporate.**

- (1A) A builder, to whom a written direction to fix building work has been given, must ensure that any other person engaged or employed by the builder who is carrying out the building work—

(a) carries out the building work in accordance with the direction; and

(b) if required by the direction, stops carrying out the building work in accordance with the direction.

**500 penalty units, (to a maximum of \$79,285) in the case of a natural person; and
2500 penalty units, (to a maximum of \$396,425) in the case of a body corporate.**

- (2) A builder to whom a direction to fix building work is given must not request or receive from the person for whom the building work was originally carried out (or any agent of that person) any payment for or in respect of any costs arising from anything done for the purpose of complying with the direction.

**50 penalty units, (to a maximum of \$7928.50) in the case of a natural person; and
250 penalty units, (to a maximum of \$39,642.50) in the case of a body corporate.**

37HA Operation of direction may be stayed

The relevant building surveyor or the authorised person may stay the operation of a direction to fix building work if—

- (a) the building work is the subject of a domestic building work dispute; and
- (b) the domestic building work dispute has been accepted for conciliation under Part 4 of the **Domestic Building Contracts Act 1995**.

37I Direction may be revoked

(1) The relevant building surveyor or authorised person may revoke a direction to fix building work given to the relevant person if—

- (a) the relevant building surveyor or authorised person considers that the relevant person is not able to comply with the direction; or
- (b) the building work is the subject of a domestic building work dispute and—
 - (i) a dispute resolution order has been issued in relation to the building work; or
 - (ii) the dispute has been resolved by conciliation under Part 4 of the **Domestic Building Contracts Act 1995**; or
 - (iii) the dispute has been determined by VCAT under the **Domestic Building Contracts Act 1995**.

(2) The relevant building surveyor or authorised person may revoke a direction to fix building work given to a relevant person if the relevant building surveyor or authorised person considers that the relevant person is not able to comply with the direction.

(3) The relevant building surveyor or authorised person must give written notice of the revocation of a written direction to fix building work to the relevant person.

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37J Relevant building surveyor or authorised person must give copies of directions and other notices to owner

The relevant building surveyor or authorised person must give the following documents to the relevant owner and any other prescribed person in relation to a written direction to fix building work—

- (a) a copy of the direction;
- (b) a written notice of any extension of the period for compliance granted under section 37G;
- (c) a written notice of the stay of the direction under section 37HA or of the revocation of the direction under section 37I;
- (d) a written notice of the revocation of the direction under section 37I.

37K Notice to owner and Authority of non-compliance with direction

- (1) If a builder fails to comply with a written direction to fix building work within the required period for compliance, the relevant building surveyor or authorised person must give written notice of that failure to the Authority and the relevant owner.
- (2) The relevant building surveyor or authorised person must comply with subsection (1) within 7 days after the end of the required period for compliance.

138B Direction to fix builders work

A person may appeal to the Building Appeals Board against a decision to give that person a written direction to fix building work under Division 2 of Part 4.

118A Building notices and building orders to be last resort

A municipal building surveyor or private building surveyor must not cause a building notice to be served on an owner or make a building order in relation to the carrying out of building work unless—

- (a) a direction to fix the building work was given under Division 2 of Part 4 and it is clear that the direction will not be complied with; or*
- (b) the municipal building surveyor or private building surveyor is satisfied that it is either not possible or not appropriate to give a direction to fix the building work under that Division.*

Want to know more?

Please [submit an enquiry](#) or call us on 1300 815 127.

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