

## Injunctions

This fact sheet explains the new provisions under sections 234E - 234J of the *Building Act 1993* (the Act), relating to the exercise of injunction powers by the VBA as of 31 January 2018

### THE CHANGES

From 31 January 2018, new injunction powers under the Act will enable the VBA to apply to a court for orders to compel a person to comply with and/or prevent a person from contravening, or proposing to contravene, provisions of the Act, the Building Regulations, a notice, building permit, direction, order or determination by the VBA (including those by the Building Appeals Board (BAB)).

### Injunction application

An injunction is a court order directing a person to do a specific thing or, more commonly, to not do a specific thing.

Under the new provisions, the VBA, a municipal building surveyor, Energy Safe Victoria or any other prescribed person can apply for an injunction from a court of competent jurisdiction.

An example of where an injunction may be sought is where a person who is in the business of building continues to carry out building work, or conducts works without a building permit, in contravention of a notice or order made under the Act.

### Interim injunction

The VBA may seek and obtain a temporary injunction under section 234G of the Act (known as an 'interim injunction') on an urgent basis, pending

the court's determination of an application for a permanent injunction.

The purpose of an interim injunction may include the prevention of further harm or to maintain the status quo. The interim injunction will be effective from the time the interim injunction is granted to the time that the court's final decision is made.

An application for an injunction may be made on an *ex-parte* basis<sup>1</sup>, meaning that the court can make orders without the respondent participating in the hearing. *Ex-parte* interim injunctions will generally be sought by the VBA at the start of court proceedings and in urgent circumstances where an injunction is required as soon as possible and it is not practicable for the VBA to first contact the respondent.

An injunction application may be made during proceedings for an offence under the Act or the Building Regulations, and instead of, or in addition to, any penalty imposed in those or any other proceedings.<sup>2</sup>

### WHAT THE CHANGES MEAN

#### Who does it apply to?

The VBA may apply to the court for an injunction which applies to anyone who has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

- a contravention of a provision of the Act, Regulations, a notice, building permit, direction, order or determination by the VBA (including those by the BAB); or
- attempting to contravene a provision; or

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<sup>1</sup> S.234E (3) of the *Building Act 1993* (the Act).

<sup>2</sup> S.234I of the Act.

- aiding, abetting, counselling or procuring a person to contravene a provision; or
- inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene a provision; or
- being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a provision; or
- conspiring with others to contravene a provision.

### Powers to grant injunctions

The power of the court to grant an injunction<sup>3</sup> may be exercised:

- whether or not it appears to the court that the person intends to commit, or continue to commit a breach or offence again under the Act and/or a relevant statutory document;
- whether or not the person has previously committed a breach or offence under the Act and/or a relevant statutory document; and
- whether or not there is an imminent danger of substantial or adverse impact on any other person if the alleged offender commits a breach or offence under the Act and/or a relevant statutory document.

### Orders to stop carrying on business

The power of the court to grant an injunction may be exercised to restrain a person from carrying on business as a building practitioner or a plumber, or supplying goods or services used in building or plumbing work (whether as part of or incidental to the carrying on of another business) for a specific period, or on specified terms and conditions.

### Requirement to comply

The court, in its discretion, may also grant an injunction directing or requiring a person to do an act or thing, such as any of the following:

- institute a training program for the person's employees in relation to compliance with the Act and Building Regulations;
- carry out building work, protection work, plumbing or other work;
- transfer property;
- pay money, including payment of money to the court for building work carried out, or to be carried out, under the Act by a municipal building surveyor; and
- destroy or dispose of goods that have been or may be used in carrying out building or plumbing work.

### Undertakings as to damages and costs

If the court has determined to grant the interim injunction application by the VBA, or municipal building surveyor or Energy Safe Victoria, the court must not, as a condition of granting the interim injunction, require the VBA, the municipal building surveyor, Energy Safe Victoria or any other person to give any undertaking as to damages or costs<sup>4</sup>.

#### Want to know more?

Review new and amended sections within the *Building Act 1993* (Act).

Submit an enquiry or call us on 1300 815 127.

Victorian Building Authority  
733 Bourke Street Docklands, VIC 3008.

[www.vba.vic.gov.au](http://www.vba.vic.gov.au)

<sup>3</sup> Ss.234E (4) & (7) of the Act.

<sup>4</sup> S.234J of the Act.