

FAQs

Power of Entry, Information Gathering & Inspection

(Part 13 of the *Building Act 1993*)

Summary

The following **Frequently Asked Questions (FAQs)** identify the queries building practitioners may be reasonably expected to ask in relation to the Power of Entry, Information Gathering and Inspection Powers under Part 13 of the *Building Act 1993* (the Act).

FAQs Power of Entry, Information Gathering and Inspection Powers functions under Part 13 of the *Building Act 1993*.

1. Which VBA staff members hold powers of entry, information gathering and inspection?

The following VBA staff hold new powers:

- A VBA inspector;
- A compliance auditor; and/or
- A plumbing inspector.

These staff are authorised under Part 13 of the Act, and for the purpose of this document, are referred to as 'Authorised Officers'.

2. How can I identify an Authorised Officer?

An Authorised Officer can be identified by their identification card, which must be produced prior to exercising any powers or at any time upon request. The identification card will include their name, a photo, the VBA logo and their actual role (VBA Inspector, Plumbing Inspector, and/or Compliance Auditor).

3. When can an Authorised Officer enter my residence?

In most cases, an Authorised Officer can only enter your residence with your written consent. As part of this process, you will be informed:

- of the purpose of the search;
- that you may refuse entry;
- that you may refuse to anything being seized, copied or taken as a sample;
- that you may refuse to produce documents; and
- anything seized or taken may be used as evidence in proceedings.

4. Are there any circumstances where an Authorised Officer can enter my residence without consent?

Consent is not required if:

- they believe there is a risk to the safety of the occupier or the public; or
- the building is subject to an Emergency Order or Emergency Plumbing Order; or
- a Magistrate has authorised a search warrant and entry is being made in accordance with that warrant.

5. Will I be provided with prior notice of an intended search or inspection?

The requirement to provide 24 hours notice of an intended inspection is no longer applicable. Whilst there is no requirement to provide prior notice, it will continue to be provided where appropriate, as both a matter of courtesy and to organise a suitable time for the proposed inspection.

6. Can I refuse entry to my residence by an Authorised Officer?

Yes, Authorised Officers will require your signed consent and you will be asked to sign an acknowledgement that you have provided consent. This right to refuse consent applies to any part of a building which is a residence.

That is, your right to refuse consent applies to your home itself, not the land that your home is on. If you live in an apartment block, the Authorised Officer can access the common areas without your consent, but can't access your apartment without your signed acknowledgement.

7. What about parts of my house/building that might not be a residence? I operate my business office out of my garage?

If you operate a business out of your garage, this is deemed a business office and does not require your consent to entry.

8. Can an Authorised Officer enter the backyard of my property to inspect building or plumbing works?

Yes, consent is not required to enter residential land, such as your backyard. In most circumstances, the VBA will inform the occupier prior to conducting an inspection of residential land. An inspection may be carried out between the hours of 8am and 6pm, when building or plumbing works are being conducted, or at any other time with the written consent of the occupier.

9. What are non-residential buildings and land?

Non-residential buildings or land include, amongst other things, buildings and land where a person is conducting a business related to the building and plumbing industries.

10. In summary, how do I know whether consent is required to enter my property?

Consent is required for the part of a building which is being used as a residence. For example, if you live in an apartment block, an Authorised Officer would be able to access the common areas of the building without your consent, but would need your written consent to enter your apartment.

11. At what times can an inspection be made of non-residential buildings and land?

Inspections can be made from 8am to 6pm, when the building or land is open for business, when building or plumbing work is being carried out, or at any other time with your written consent.

12. What can happen if I attempt to refuse entry to my business?

Section 244 of the Act prescribes a penalty of **60 penalty units** (approximately \$9,514 as at 1 July 2017) for hindering or obstructing an Authorised Officer when exercising their powers.

13. What can an Authorised Officer do once they enter my residence?

With your consent, an Authorised Officer can:

- examine building work or plumbing work;
- require the production of documents for examination;
- bring certain equipment on the land for the examination or processing of anything connected to a contravention;
- make still or moving images, audio and audio-visual recordings; and/or
- examine, seize, secure and keep samples of anything found on the building or land, if believed, on reasonable grounds, they are connected to a contravention.

Anything seized or taken with your consent may be used as evidence in any proceedings.

14. What can an Authorised Officer do once they enter my land or residence under a search warrant?

Broadly, an Authorised Officer can:

- examine any thing found at the building or land;
- take photographs, video recordings or make sketches;
- take samples of any thing; and
- inspect, examine and make copies of documents.

Depending on the nature of the warrant and what is described as possible, the warrant may also allow an Authorised Officer to:

- seize and secure items relevant for an investigation;
- Access computers and other electronic equipment to make copies of information; and
- Direct assistance from certain person(s), such as the owner or custodian of a computer or network, to provide assistance in accessing and downloading electronic information.
- A copy of the warrant will be provided to the occupier, which will include the purpose, any conditions the warrant is subject to, the time and day on which the warrant may be exercised, and the day on which the warrant ceases to take effect.

15. What happens when an Authorised Officer seizes an item belonging to me?

Once seized, you will receive a receipt stating what was seized, the reason for its seizure, and which authorised person seized the item. If you were not present at the time, the receipt will be given to the owner of the building or land.

For documents that are seized, as soon as practicable, you will be given a certified true copy of the document. Additionally, reasonable steps will be taken to return the document as soon as practicable if the reason for seizure no longer exists.

16. How long can an Authorised Officer hold onto a seized item?

The maximum period the VBA can hold a seized item, including a document, is 3 months after it was seized or, if proceedings for the purpose for which it was seized have commenced within that period, until the completion of those proceedings (including any appeal). An Authorised Officer may apply to the Magistrates' Court of Victoria for one or more extensions not exceeding 3 months, so long as the total retention period does not exceed 12 months.

17. What can an Authorised Officer do once they enter my land or residence under an emergency order?

Under an emergency order, Authorised Officers will have broad powers to investigate, gather evidence and secure documents and samples if they believe any thing presents a risk to the life, safety or health of any person, or poses a risk of significant damage to property. This includes being able to take samples, seize items or require the owner to remove items if it is reasonable to believe the item presents a risk to the life, safety or health of any person or poses a risk of significant damage to property.

18. What happens if an Authorised Officer seeks to take a sample from a building or plumbing site?

When a sample is being taken, the Authorised Officer must:

- provide a reason for why the sample is being taken;
- on request, provide part of the sample to the person from whom it was taken; and
- return the sample within 28 days if it is not required for proceedings.

19. Can I refuse to answer the questions of an Authorised Officer?

Yes, in certain circumstances you can refuse to answer questions on the basis that it would be self-incriminating. An Authorised Officer must advise, either prior to or at the time of the request, that you may refuse to say anything that may incriminate yourself.

20. Can I refuse to provide documents to an Authorised Officer?

No, unless you are in a residence and the Authorised Officer was required to seek your written consent to the entry and search. If this is the case, you will have your rights explained to you, which includes your ability to withdraw your consent at any time.

21. Can I refuse a request from an Authorised Officer to provide access to my computer?

No, unless you are in a residence and the Authorised Officer was required to seek your written consent to the entry and search. If this is the case, you will have your rights explained to you, which includes your ability to withdraw your consent at any time.

22. As a registered plumber or building practitioner, am I required to attend an inspection of my site or works?

Yes, section 228E of the Act provides that you can be required to attend at a mutually agreed time, and if a time cannot be agreed upon, at a time that the authorised officer believes is reasonable.

23. Will there be a record kept of an Authorised Officer performing an inspection?

Yes, the VBA is required to keep a register relating to the exercise of a power of entry. If you were subject to an inspection, you can request an extract of the information kept on the register which pertains to that inspection.

24. How do I lodge a complaint about how an Authorised Officer performed an inspection or utilised their powers of entry?

Section 231 of the Act provides that any person can complain to the VBA about an Authorised Officer's use of their power. The VBA must consider this complaint and provide a written report of its consideration and action to the complainant.

Complaints can be made to the VBA in writing via an email to either: customerservice@vba.vic.gov.au

or

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

Please submit an enquiry or call us on 1300 815 127.

www.vba.vic.gov.au