

## Building Practice Note NO-02: Directions to fix building work

This Practice Note provides guidance on formal and procedural matters relating to directions to fix building work.

The content below provides guidance on:

- The direction to fix building work process
- Oral and written directions to fix building work
- Role of the owner
- Appealing a direction to fix building work

### Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (Act) or the Building Regulations 2018 (Regulations).

- **Act** – Building Act 1993
- **BAB** – Building Appeals Board
- **Builder** – the person specified as the builder on the building permit
- **DBDRV** – Domestic Building Dispute Resolution Victoria
- **DTF** – Direction to Fix Building Work
- **MBS** – Municipal Building Surveyor
- **RBS** – Relevant Building Surveyor
- **Regulations** – Building Regulations 2018
- **VBA** – Victorian Building Authority
- **VCAT** – Victorian Civil and Administrative Tribunal

### Direction to Fix Building Work

A DTF is commonly given to the builder or person apparently in charge of a building site when a non-compliance is found at an inspection following notification of completion of one of the mandatory notification stages during the construction of a building.

Under section 37A(2) of the Act, a DTF must be given after an inspection of building work, if the RBS believes on reasonable grounds that the building work fails to comply with the Act, Regulations or building permit. Section 37A provides that a DTF may be given as an oral direction or a written direction by the RBS, or a building surveyor or a building inspector may be authorised by the RBS to give an oral DTF on behalf of the RBS.

Once a DTF is given a path of escalating enforcement actions should be followed until compliance is achieved. The builder may face disciplinary action and prosecution for non-compliance. Refer to the Directions to Fix Building Work flowchart in Appendix A for an overview of the process.

A DTF may require the person who is given the DTF to carry out work so that the building work complies with the Act, the Regulations or the building permit, and to stop any further building work that would prevent the building work from being inspected.

The person given a DTF is under a duty to comply with the DTF.

The RBS is not required to give a DTF where the RBS is of the view that this is inappropriate or impossible. Instances where it may be considered by the RBS to be inappropriate or impossible to give a DTF include:

- the work needed to achieve compliance requires a reporting authority's report and consent
- consultation of other parties will be required to be carried out by the owner
- building work gives rise to an emergency situation where an emergency order (which can only be issued by the MBS) is required
- building work gives rise to emergency protection work being required.

Where the RBS determines that it would be inappropriate or impossible to give a DTF, they may proceed to the building notice/building order process.



A builder must not request or receive payment from the person for whom the building work was originally carried out (e.g., owner or their agent) for any costs associated with complying with the direction and may be subject to disciplinary action or prosecution for breach of this provision.

## Oral Direction to Fix Building Work

An oral DTF is a less formal process of directing a builder to fix building work. An oral DTF is a spoken direction to the builder providing the builder 7 days to comply with the direction before a written DTF must be given if the RBS is not satisfied that the building work complies. It is recommended that an oral DTF be given initially if it is considered reasonable that compliance could be achieved in this timeframe. The builder or person in charge of the site should be advised of the timeframe when giving an oral DTF.

An oral DTF can be given by a registered building inspector who is carrying out an inspection on behalf of the RBS.

It may not always be appropriate for an RBS to give an oral DTF. A written DTF can be given without an oral DTF being given.

## Written Direction to Fix Building Work

A written DTF is a more formal process that within it carries financial penalties for the builder if it is not complied with.

A written DTF must be given to the builder and a copy to the owner. The written DTF must be in the form approved by the VBA, available on the VBA website.

When giving a written DTF, the RBS must specify the time given to comply. In determining a suitable period, the RBS may ask the builder how much time they require. However, the RBS must ensure that the specified period reasonably reflects the time required to complete the building work in a timely manner. It is inappropriate to give a DTF with a time for compliance that clearly cannot be met. The time required should not be less than the appeal period (seven days under regulation 271(1)(h) of the Regulations).

A builder may request the RBS to extend the time to comply with the direction before the end of the period for compliance with the written DTF. The RBS may grant an extension if considered appropriate to do so in the circumstances. If an extension of time is granted, the RBS must give written notice, specifying the period of extension, to the builder and a copy to the owner. It would be appropriate to grant an extension where it is reasonable to expect the builder to comply within the extended timeframe.

The RBS may place a direction on hold if the building work is being disputed and accepted for conciliation with DBDRV by giving the builder written notice of the stay. If the dispute is resolved by DBDRV or at VCAT then then the RBS may revoke the direction by giving the builder written notice of the revocation.

The RBS may also revoke a DTF if they consider that the builder is not able to comply with the direction. For example, if the builder has disappeared, the building contract has been terminated or the builder is incapable of practicing due to mental or physical infirmity. Revocation must be done in writing to the builder and the owner. A building notice may then be served, or a building order made, if appropriate, to the owner.

If the building work is rectified in compliance with the DTF, it is recommended that the builder notifies the RBS. The RBS must undertake an inspection when advised by the builder that the directed building work is complete, or on expiry of the DTF to determine if the DTF has been complied with.

The RBS must make a record of the inspection as provided in section 35A of the Act, containing the information set out in regulation 173.

If the directed work has been completed in accordance with the DTF, it is recommended that the RBS provide written confirmation to the builder, and a copy to the owner, that the directed work has been completed. If the builder completes all building work in accordance with the building permit after the DTF expiry date, an occupancy permit or certificate of final inspection can be issued. In this situation it is recommended that the RBS notify the builder, the owner and the VBA that the DTF has been complied with.

If at any time before a DTF expires the RBS is satisfied that the DTF will clearly not be complied with, the RBS may proceed to the building notice/order process without waiting for the DTF to expire. This may be applicable, for example, in situations where the builder has ceased to perform their functions or has indicated that they do not intend to comply.

If the builder fails to comply with the direction, the RBS must give written notice to the VBA using the letter template found on the VBA website and the owner within 7 days of expiry of the DTF and consider serving a building notice, or making a building order, to the owner. Notice can be sent to the VBA via e-mail to [referrals@vba.vic.gov.au](mailto:referrals@vba.vic.gov.au), with 'Direction to fix notification' in the subject line of the e-mail. For further information about the VBA role, refer to the VBA website.

## Role of the owner

The owner is provided with a copy of a written DTF for their information and to ensure they are aware of items that do not comply. The DTF does not permit or require the owner to enter the building site to undertake the work required by the DTF.

However, if the owner is nominated as an owner-builder on the building permit, the written DTF must be given to the owner. The owner-builder takes on the responsibilities of the builder in complying with the DTF and building in accordance with the Act, the Regulations, and the building permit.

## Appealing a direction to fix building work

A builder who has been given a written DTF may appeal to the Building Appeals Board (BAB) under section 138A. The appeal must be made within seven days of the written DTF being given (regulation 271(1)(h)).

## Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)

## Contact Us

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

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