

Building Enforcement Webinar

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Welcome



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In today's session

Enforcement Instruments



Common Issues with Enforcement

What does the VBA do with referred Enforcement Instruments



Enforcement Case Studies

Enforcement instruments





Directions to Fix (DtF) – s37a

What is it?

A power given to the RBS to require building work to be brought to compliance in accordance with the *Building Act 1993*, Building Regulations 2018 or building permit.

When must it be used?

If the building work fails to comply with the *Building Act 1993*, Building Regulations 2018 or building permit, RBS must issue DtF (s37a(2)).

To whom and how?

Oral – to either or both the builder and the person who is apparently in charge of the site.

Written – to the builder.



Directions to Fix (DtF) – s37a

- Use the VBA's approved forms/templates (s37f)
 - Right to Building Appeals Board (BAB) appeal.
 - May request an extension of time.
 - Time for compliance must be reasonable.
- An extension of time for compliance (s37g)
- Operation of DtF may be stayed (s37h(a))
- DtF may be revoked (s37i)
- RBS records (r175)
- VBA's DtF (s37b)



Emergency order (s102)

What is it?

A power given to the MBS to direct or require an owner or occupier or any person or builder to do or refrain from doing a certain action, within a maximum of 48 hours.

When can it be used?

- Danger to life or property arising out of the condition or use or proposed use of:
 - A building.
 - The land on which building work is being or is proposed to be carried out.
 - A place of public entertainment.

To whom and how?

Written – Owner of a building, land or place of public entertainment, occupier or builder.



Building Notice (s106)

What is it?

A power given to the MBS/PBS (RBS) to require the owner to “show cause” within a specified period why they should not do or refrain from doing a certain action.

When can it be used?

- Building work carried out without building permit.
- Building work carried out in contravention of a building permit, Act or regulations.
- Use contravenes the Act or regulations.
- Safety or emergency services, installations or equipment have not been maintained; unfit for occupation or for use as a POPE.
- Danger to the life, safety or health of any member of the public or of any person using the building, land or place or to any property.

To whom and how?

Written – Owner of a building, land or place of public entertainment.



Building Order - General (s111)

What is it?

A power given to the MBS/PBS (RBS) to direct or require an owner or occupier (or any person) to do or refrain from doing a certain action within a specified period.

When can it be used?

After the end of the time allowed by the Building Notice for making representations.

To whom and how?

Written – owner or occupier of a building, land or place of public entertainment (or any Person), as appropriate to circumstances.



Building Order to Stop Building Work (s112)

What is it?

A power given to the MBS/PBS (RBS) to require an owner or other person to stop building work.

When can it be used?

If the building work:

- Fails to comply with the Act or regulations.
- Is a danger to the life, safety or health of any member of the public or any person using the building, land or place or to any property.
- Affects the support of any adjoining property.

To whom and how?

Written – Owner of a building, land or place of public entertainment or builder (another person).



Building Order Minor Work (s113)

What is it?

A power given to the MBS/PBS (RBS) to require building, work or place of public entertainment to be brought into compliance with the Act, regulations or building permit.

When can it be used?

Building work, protection work or other work required by the regulations is of minor nature.

To whom and how?

Written – Owner of a building, land or place of public entertainment.



Service of Documents (s236)

- Deliver in person.

**Relevant person actually
receives the document**

- Leaving at person's usual or last known place of residence or business (with a person at least 16yrs who resides or is employed at the place).

**Relevant person
deemed to have
received the document**

- Posting to person's usual/last known place of residence/business.*

**Ordinary post*



General Considerations

- Do you need to inspect between the Notice and the Order?
- Use approved forms and templates.
- Specify clear and reasonable timeframes for compliance
 - Is a building permit required?
 - Is the report and consent required?
- Look at the *Building Act 1993* and Building Regulations 2018.
- Notice or Order can be amended or cancelled
 - Any time
 - On request
- Consider timeframes in which a person may appeal to BAB when specifying when compliance must be achieved.
- Keep records.



Additional Considerations

- Mandatory referral of enforcement by PBS where compliance not achieved.
- What about Council's MBS issuing enforcement as "visiting" MBS?
- Council/MBS' Prosecution.

What does the VBA do with referred Enforcement Instruments





Referred PBS' DtF & BO

- Assessment of the referred DtF and BO within 3 weeks of the receipt date.
- DtF enforceable:
 - Outstanding DtF
 - Show Cause Notice issued within 3 weeks that will propose:
 - a) Reprimand
 - b) Monetary penalty
 - c) Partial suspension until compliance with DtF is achieved
 - Resolved DtF
 - Show Cause Notice issued within 8 weeks that will propose:
 - a) Reprimand
 - b) Monetary penalty

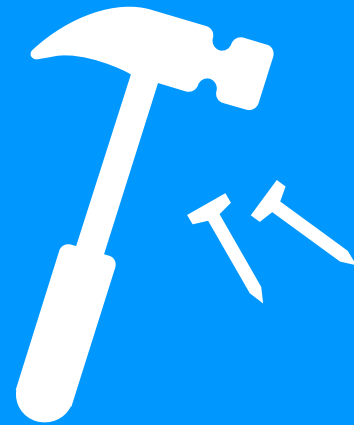


Referred PBS' DtF & BO

- BO enforceable:
 - Warning letter to owner providing 5 days for compliance to the satisfaction of RBS.
 - If owner does not comply, matter is referred for prosecution.

- DtF/BO non enforceable:
 - An education letter explains the reason and offers a call from a VBA Senior Technical Advisor if it is unclear.

Common Issues with Enforcement



Common Issues with Referred PBS' DtF and BOs



- Incorrect section of the *Building Act 1993* nominated for breach.
- Actual building work that needs to be carried out to achieve compliance not specified.
- Directions are in relation to work that it is not building work.
- Directions are not specific and too broad.
- Inspection undertaken months or years prior to issuing enforcement.
- Incorrect dates or typographical errors.
- Inadequate time provided to rectify the work or provide written show cause.
- Additional items included in the BO.
- Use of DtF.

Enforcement Case Studies





Case Study 1

You are the RBS for a building permit to construct a new two-storey dwelling at the subject site.

Following the notification from the builder that the work had been completed to frame stage and a request for a mandatory inspection, you cause an inspection of the building work.

The Building Inspector contacted you after the inspection to advise of minor non-compliances identified and has just sent you the written inspection report. No oral direction has been given.

What action should you take?



Case Study 1



- 1. Issue an oral direction to fix to the builder**
2. Issue a written direction to fix to the builder
3. Issue a building notice to the owner
4. Refer the matter to the VBA for enforcement





Case Study 2

You are the RBS for a building permit to construct a new two-storey dwelling at the subject site.

The building permit has lapsed and you have not carried out your final inspection.

The owner has finally consented to give you access for your inspection which reveals that the variation between the first riser and other risers is 15mm. Dwelling is not occupied.

Building permit drawings clearly show consistent risers' dimension and notes specify that the stairs construction must comply with clause 3.9.1.2 of the BCA.

What action should you take?



Case Study 2



1. Issue an oral direction to fix to the builder
2. Issue a written direction to fix to the builder
- 3. Issue a building notice to the owner**
4. Refer the matter to the VBA for enforcement





Case Study 3

You are the RBS for a building permit to construct a new single storey dwelling at the subject site.

At the end of the required period for compliance with the written DtF you cause a re-inspection of the frame and identify that the required work has not been completed.

No extension of time was requested, and the builder did not appeal the Direction.

You have followed the required process for methods of service set out in s236 of the Act.

The Builder has not responded to follow up calls and emails.

What action should you take?



Case Study 3



1. Keep calling and e-mailing the builder
2. Issue a building notice to the owner
3. Refer the matter to the VBA for enforcement
- 4. Refer the matter to the VBA for enforcement and give a written notice to owner of that failure**





Case Study 4

You are the RBS for a building permit to construct a new single storey dwelling at the subject site.

You cause an inspection before placing a footing and identify that the builder is excavating a deep site cut on the boundary, at a maximum depth of 2m, next to the adjoining property dwelling and driveway.

Approved building permit drawings show site cut measuring depth of 1m.

The site cut appears in imminent danger of collapse.

What action should you take?





Case Study 4

1. Issue a direction to fix to the builder
2. Issue a building notice to the owner
3. Refer the matter to the VBA for enforcement
- 4. Seek an immediate inspection by the relevant council's MBS, issue building order to stop work to the builder and refer the builder to the VBA for discipline**





Case Study 5

You have accepted appointment to issue building permit for construction of a new dwelling and garage.

You have not required protection work because there is no work shown in close proximity to the boundary.

You have submitted your s80 notification to the relevant council but you have NOT yet issued a building permit.

You have received a complaint from the adjoining owner about the building work being carried out right on the boundary and caused damage to their dwelling.

What action should you take?





Case Study 5

1. Seek relevant council's MBS to undertake inspection and enforcement
2. Issue a building notice to the owner
3. Refer the matter to the VBA for enforcement
- 4. Carry out an inspection, and if allegations are correct, issue building order to stop work and determine protection work is now required**





Case Study 6

You are the RBS for a building permit to construct a new dwelling and garage.

The endorsed building permit documents require a screen for an upstairs bedroom.

At the time of the final inspection, the screen to prevent a direct line of sight into a habitable room window of an existing dwelling on an adjoining property, is installed and you issue the occupancy permit.

A year later you received a complaint from the adjoining owner that the screen has been removed and the occupants are now able to see into the adjoining dwelling.

What action should you take?





Case Study 6

1. Seek relevant council's MBS to undertake inspection and undertake enforcement
2. Issue a direction to fix to the builder
3. Refer the matter to the VBA for enforcement
- 4. Carry out an inspection, and if allegations are correct, issue building notice to the owner**





VBA Building Practitioners Resources Hub Useful Documents & Templates

Building Practice Notes

- NO-01 Building Notices and Orders
- NO-02 Direction to Fix Building Work

Building forms – Enforcement

- Direction to Fix Building Work
- Building Notice
- Building Order (General)
- Building Order – Minor Work
- Building Order to Stop Building Work
- Emergency Order



If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.



Q & A



Thank you