

Emergency Orders, Building Notices & Building Orders

This fact sheet explains new and amended provisions within the Building Act 1993 (the Act) that come into operation on 16 August 2017.

The changes affect:

Emergency Orders - sections 102-105B, Building Notices - sections 106 and 108; and Building Orders - sections 111, 112, 113 and 116.

Service of documents – section 236 is amended and a new section 251A – ‘Owners corporation may carry out work’ is introduced.

Changes to Emergency Orders – sections 102-105B

Division 1 of Part 8 of the Act has been substituted with new and amended sections 102 to 105B.

Section 102 ‘Emergency Orders’ is restructured but continues to specify when an emergency order can be issued. The pre-existing section 102(2) has been removed, restructured and inserted into new section 105(2).

Section 103 ‘Orders to vacate’ provides that an emergency order may direct an owner or occupier to evacuate a building, require a person to vacate a building, or prohibit a person from entering, using or occupying, a building or land or a place of public entertainment within a specified time or times in accordance with new section 105A.

Section 104 ‘Orders to owners, occupiers or builders’ specifies other orders that may be imposed:

- Subsection (1) provides that an emergency order may require an owner or occupier of a building or land or place of public entertainment not to conduct or not to allow the conduct of a public entertainment, immediately cease to conduct a public entertainment, or stop building work or carry out building work within a specified time to

make a building, land or place safe or to secure it from access.

- Subsection (2) provides that an emergency order may require an owner to cause an inspection to be conducted by a specified person within a specified time.
- Subsection (3) provides that an emergency order may require an owner or a builder to cause specified materials used in a building or place to be tested by a specified person within a specified time.

Section 105 ‘Form and service of emergency order’ requires that an emergency order be in writing, contain the prescribed information and requires the municipal building surveyor to serve it without delay on the person to whom it is directed. They must also provide a copy of the order to the relevant private building surveyor.

New section 105A ‘Duration of order’ specifies duration of orders and relating process.

- Subsection (1) requires an emergency order made under section 103 (relating to orders to vacate) to specify a period, not exceeding 48 hours, for the duration of the order.
- Subsection (2) provides that if a municipal building surveyor issues a building notice, asking an owner to show cause why entry, use or occupation of premises should not be prohibited, prior to the expiry of an emergency order, then the emergency order will remain in force until the earlier of 14 days or the end of the period of the building notice.
- Subsection (3) remakes with amendments current section 104. It provides that an emergency order remains in force until it is complied with or cancelled by the municipal building surveyor or the Building Appeals Board.

New section 105B remakes with amendments the pre-existing section 105. It provides that a municipal building surveyor may cancel an emergency order by written notice to the person

to whom it was directed, if the order was made in error or circumstances giving rise to the order have changed.

Changes to Building Notices – Sections 106 and 108

Section 106 ‘Building notices’ is amended through insertion of new sub-clause (ba) which provides that a failure to maintain safety or emergency services, installations or equipment in accordance with the requirements of the occupancy permit and the regulations is grounds to issue a building notice.

Section 108 ‘Contents and form of building notice’ has had sub-clause (1) amended and new (1A) inserted. These changes clarify that a building notice can require the owner to show cause why entry to the building or the use or occupation of the building should not be prohibited, why the owner should not evacuate the building or why building work, protection work or other work should not be carried out.

Changes to Building Orders – Sections 111, 112, 113 and 116

Section 111 ‘Building orders - general’ has had subsection (3) substituted and new subsections (4) to (7) inserted. This assists in clarifying that building orders can, in addition to requiring an owner or occupier to evacuate a building, land or place of public entertainment, require others in the building to vacate it and prohibit subsequent re-entry into or use of the building (even where this would not amount to occupation).

In addition, a building order can require an owner to carry out building work, protection work or other work or cause an inspection of the building, land or place of public entertainment to occur. Finally, a building order can require an owner or a builder to cause a specified material used in that building or place to be tested.

Section 112 ‘Building orders to stop building work’ has substituted subsection (5) and inserted new subsection (6). Amended subsection (5) expands exemptions from stop work orders to include work carried out under a direction to fix and work under subsection (6). New subsection (6) will enable a municipal building surveyor or private building surveyor to exempt some work from a building order to stop building work if they consider that it would be—

- in the interests of the safety or security of the building, land or place; or
- in the interests of the safety and health of any member of the public; or
- to prevent a nuisance to members of the public or occupiers of nearby properties.

Section 113 ‘Building orders—minor works’ now clarify that minor works orders can be given to the owner of a building or land on which building work is being or proposed to be carried out or a place of public entertainment.

Section 116 ‘Amendment or cancellation of certain building orders’, subsection (4) requires the relevant building surveyor to inform an owner without delay of the relevant building surveyor's decision on the owner's request to amend or cancel a building order. This must be in writing.

Changes to Service of documents – Section 236

Section 236 ‘Service of documents—generally’ has been revised to augment the service of emergency orders, building orders and building notices.

- New subsections (4A) to (4D) are inserted to enable emergency orders and building orders to evacuate or vacate a building to be served by putting them up in a conspicuous position on the building, land or place of public entertainment. A notice served in this

manner must contain additional prescribed information.

- In addition, notices or orders served on an owner of a lot affected by an owners corporation may be served on an owners corporation. The owners corporation is then required to pass on a copy of the notice or order to any affected lot owner. A penalty of 60 penalty units applies for non-compliance by the owners corporation.
- New subsection (7) is inserted to make it an offence to remove or deface a notice put up under subsections (4) or (4A). The penalty attached to the offence for individuals is 500 penalty units, while for corporations it is 2500 penalty units.
- New subsection (8) is inserted to enable service of notices on a body corporate named on the building permit as builder by serving it on the person named under section 24A(1)(e).

Introduction that an ‘Owners corporation may carry out work’ – New section 251A

New section 251A ‘Owners corporation may carry out work’ is inserted which enables an owners corporation to carry out building work, protection work, plumbing work or other work on an allotment as required by an order or proposed by a notice under the Act.

- Subsection (2) enables an owners corporation to make representations under Part 8 or Part 12A of the Act and requires the owners corporation to comply as though they were the owner.
- Subsection (3) makes it an offence for an owners corporation not to comply with a building order or emergency order. A 2500 penalty unit penalty will apply, reflecting the penalty at section 118(1) of the Act for bodies corporate who fail to

comply with a building order or emergency order.

- Subsection (4) empowers an owners corporation to authorise a person to enter a lot to carry out works.
- Subsection (5) applies section 51 of the Owners Corporations Act 2006 (which provides for notice of entry to a lot) as though an entry under subsection (4) was an entry under section 50 of that Act.
- Subsection (6) enables an owners corporation to recover the cost of works from lot owners as a debt if it cannot be recovered through insurance. Section 146 ‘Effect of decisions under appeal’ has been amended to clarify the effect of certain decisions under appeal. In particular, the making of a building order prohibiting occupation following the issuing of an emergency order does not stay the operation of the building order. In addition, the amendment clarifies that directions to fix are not stayed unless the Building Appeals Board otherwise determines.

Want to know more?

Review all new and amended sections directly from the Building Act 1993.

Review amended practice note PN-25-2017 Notices-and-Orders

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

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