

Building Order Guidelines for Referrals to the VBA (for the relevant building surveyor)

Building Order Referrals under s115 of the *Building Act 1993* (Act)

If a person fails to comply with a building order made by a private building surveyor, the private building surveyor must refer the matter to the Victorian Building Authority (VBA) and must take no further action in respect of the matter.

The VBA can only accept an order issued under:

- s 111 of the Act (Building orders – general); or
- s 112 of the Act (Building orders to stop building work); or
- s 113 of the Act (Building orders – minor work).

Pursuant to s115(2) of the Act, the private building surveyor must refer the building order to the VBA within 14 days after the final date for compliance specified in the order.

Written Notice to the VBA

A building order referred to the VBA should include the following information to assist the VBA in assessing the referred building order:

- (a) Confirmation whether a building notice (s 106 of the Act) has been issued.
- (b) Confirmation that the time frame provided on the building order has expired and that the referral is being made within the required 14-day timeframe. Include details of whether any extensions of time for compliance with the building order were provided.
- (c) Detail as to how the building order was served (i.e. by post, email, etc.).
- (d) The information or documentation relied upon to confirm the current property ownership details (e.g. confirmation from

Council, current rates notice, certificate of title).

(e) Copies of the following documentation:

- the building order;
- the building notice, if applicable;
- any document demonstrating method and proof of service, which may include a copy of any email, registered post receipts, or evidence of personal service;
- the building permit (if applicable);
- any reference documents, including photographs (if applicable);

What happens next

Once all the correct information is received, the building order will be assessed. The VBA will take action depending on the following outcomes:

Building order determined enforceable

If the building order is determined to be enforceable, that is, correctly issued in accordance with the Act and Regulations, the VBA will take appropriate action according to the Act. This may include disciplinary action and/or prosecution (the maximum penalty for failure to comply with a building order is 500 penalty units in the case of a natural person).

Building order determined unenforceable

If the building order is determined to be unenforceable, the VBA will send a letter to the private building surveyor with a recommendation to cancel the building order and to re-commence enforcement to resolve the situation. The VBA will take no further action.

Life safety

If the VBA is concerned that the building work may be a life safety issue (e.g. swimming pool, swimming pool barrier, balcony, balustrade,

egress issues, deficient smoke alarms/detectors, inadequately secured building elements, etc.), the VBA may commence action, regardless of the enforceability of the building order.

Compliance of building work after the referral of a Building Order

If the person to whom the building order is directed has complied with the building order after it has been referred to the VBA, please advise the VBA accordingly.