

Transfer of building surveyor functions

This fact sheet explains the changes to Part 6 of the *Building Act 1993 (the Act)*, regarding the transfer of building surveyor functions.

The Changes

A Private Building Surveyor (PBS) may transfer functions relating to building work to another building surveyor. A PBS may wish to transfer their functions due to circumstances such as: taking extended leave, relocating their business, ill health or retiring.

Key Points

- The transfer of functions must be initiated by the PBS.
- The person who appointed the PBS cannot initiate a transfer.
- To transfer their functions to another PBS (or a Municipal Building Surveyor) there must be agreement by the person who appointed them and the new Building Surveyor.
- A transfer may be for a specified period or it may be permanent.
- Should an owner wish to terminate the appointment of a PBS, they must seek consent from the VBA.

Changes to the Act¹ specify the requirements to enable a PBS to transfer their functions to another building surveyor.

A transfer may only occur where the new building surveyor is registered in the appropriate category² and there is agreement from the person who appointed the original PBS and the new building surveyor³.

The transferring PBS must complete a transfer form⁴ and give a copy of the form to the new relevant building surveyor. The new relevant building surveyor must give a copy of the form to the VBA, relevant Council, owner/agent and builder⁵.

A transfer may be for a specified period or permanent, and will take effect on the latest of:

- the date a copy of the transfer form is given to the VBA; or
- the date a copy of the transfer form is given to the relevant Council; or
- the date specified in the transfer form (if any) on which the transfer is to take effect.

For a permanent transfer of functions, the transferring building surveyor's appointment is taken to be terminated, and the new building surveyor is taken to be appointed, when the transfer of functions takes effect.

For a transfer of functions for a specified period, upon the end of the transfer period, the new relevant building surveyor's appointment is taken to be terminated and the transferring relevant building surveyor is taken to be appointed.

VBA 'consent to terminate' an appointment is not required for a transfer occurring under section 80C of the Act.

Penalties for breaching section 80C(8)

50 penalty units (approx. \$8,059 as at 1 July 2018), in the case of a natural person.

250 penalty units (approx. \$40,297 as at 1 July 2018), in the case of a corporation.

¹ Section 80C of the *Building Act 1993*.

² Section 78A of the *Building Act 1993*.

³ Section 80C(2) of the *Building Act 1993*.

⁴ Available on www.vba.vic.gov.au

⁵ Sections 80C(4) and 80C(8) of the *Building Act 1993*.

The VBA may direct the transfer of functions of employee building surveyor

From 31 January 2018, the Act⁶ allows the VBA to direct a registered building surveyor who has employed or engaged a person to act as a PBS to transfer all functions under the Act or the Building Regulations to another PBS employed or engaged by the registered building surveyor.

The VBA may direct⁷ a registered building surveyor who has employed or engaged a person as a 'designated building surveyor' to transfer all functions being carried out by the designated building surveyor to another designated building surveyor employed or engaged by the registered building surveyor.

The Act specifies the circumstances that will allow the VBA to direct the transfer of building surveyor functions. These include:

- suspension or cancellation of the registration of the employee building surveyor or designated building surveyor; or
- circumstances where the employee building surveyor or designated building surveyor:
 - has died; or
 - is in prison; or
 - has become a represented person⁸; or
 - has become insolvent under administration; or
 - in the opinion of the VBA is incapable of carrying out the work because the building surveyor is mentally or physically infirm or for any other reason; or
 - in the opinion of the VBA has ceased to carry out the functions of a private building surveyor or a designated building surveyor.

A direction from the VBA must be in writing and may specify a period within which the functions are to be transferred.

A registered building surveyor must comply with the VBA's direction and must notify:

- in the case of transfer of functions from a PBS, the person who appointed the PBS; and
- in all other cases, the relevant Council.

Want to know more?

Review new and amended sections within the Building Act 1993.

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

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

www.vba.vic.gov.au

⁶ Section 80D(1) of the *Building Act 1993*.

⁷ Section 80D(2) of the *Building Act 1993*.

⁸ Within the meaning of the *Guardianship and Administration Act 1986*.