

Direction to Fix Guidelines for Referral to the VBA (for the relevant building surveyor)

Direction to Fix Referral s37K of the Building Act 1993 (Act)

If a builder fails to comply with a direction to fix (DTF) issued by the relevant building surveyor (RBS), then the RBS must refer the matter to the Victorian Building Authority (VBA).

Pursuant to s37K(2) the relevant building surveyor must refer a written direction to fix to the VBA within 7 days after the final date for compliance specified in the direction.

After a DTF has been referred to the VBA the RBS is still responsible for ensuring compliance is achieved, and should consider further enforcement action, such as a building notice or building order.

Written Notice to the VBA

The following information would assist the VBA in assessing any referred written DTF:

- (a) Confirm that the time frame given for compliance on the DTF has lapsed and the referral is within the 7-day timeframe.
- (b) Advise as to how the DTF was served.
- (c) Confirm that no occupancy permit or certificate of final inspection has been issued. If additional building work is required, confirm that there is a valid building permit for the work.
- (d) Explain how you are aware that the DTF has not been complied with.
- (e) Confirm whether the DTF has been progressed to a building notice or building order.
- (f) If there is a concern to life safety, confirm that the Municipal Building Surveyor at the relevant council has been made aware.
- (g) Provide the following documentation:
 - Copy of the DTF;
 - Copy of the building permit;
 - Method and proof of service, e.g. email, registered post, personal service;

- Copy of building notice or building order (if applicable); and
- Copy of reference documents (if applicable).

What happens next

Once all the correct information is received, the DTF is assessed with the following outcomes:

- (1) If the DTF is determined to be compliant 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 written DTF is 500 penalty units).
- (2) If the DTF is determined to be non-compliant with the Act and Regulations, then the VBA will send an educational letter to the RBS with a recommendation to cancel the DTF and to re-commence the process to resolve the situation or progress the matter to building notice or building order. The VBA will take no further action.

Life safety

If the RBS is concerned that there is a possible life safety matter (i.e. swimming pool, swimming pool barrier, balcony, balustrade, egress issues, deficient smoke alarms/detectors, inadequately secured building elements, etc.), the RBS should progress the enforcement action and advise the Municipal Building Surveyor at council of the concern.

Compliance of building work after the referral of a DTF

If the builder has complied with the DTF after it has been referred to the VBA, please advise the VBA and property owner of the compliance with the DTF.