

MUNICIPAL BUILDING SURVEYOR - VICTORIA CHARTER

Victorian municipal councils have comprehensive and critical building control administration, compliance and enforcement duties, functions and responsibilities under the *Building Act 1993* (“**Act**”) that relate to the compliance and safety of buildings and the built environment in Victoria.

An integral and crucial part of the building compliance and building enforcement role and functions of a municipal council in Victoria is carried out by the statutory office of the municipal building surveyor (“**MBS**”).

Every municipal council must appoint a MBS in order to fulfill the Council role and functions under the Act. Section 212 of the Act makes a municipal council responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 of the Act and the building regulations within its municipal district. Further to this, the Act also provides that these responsibilities are not limited if a Private Building Surveyor is appointed.

The statutory duties and functions of a MBS are specified in the Act and the regulations, are unique, and in many instances distinct and separate to those of the council. In many cases, generally with regard to matters of compliance, safety and risk to life and property, a MBS may have a legal duty to act in a manner that should not be subject to the direction or impediment of the Council.

As the MBS is engaged by a council, the MBS is reliant upon the council to ensure that appropriate authority within the council organisational structure and sufficient resources and staffing are allocated to the office of the MBS for the statutory roles and functions under the Act and the regulations to be properly carried out. A council can be placed at risk if the office of MBS is not properly resourced.

The MBS may be subject to legal direction from the Victorian Building Authority or the Minister from time to time.

Specific functions of the MBS under the Act and regulations (and building practitioners that have powers delegated by the MBS) include:

- responding and attending to building related emergencies, unsafe or dangerous buildings and land within the scope of the Act and the building regulations.
- investigating safety matters concerning buildings, pool safety barriers, essential safety measure requirements, and the like;
- considering applications for building permits and the issuing of building permits, occupancy permits (including for places of public entertainment) and the administration and enforcement of compliance with permits.

- taking over the functions of a private relevant building surveyor (“RBS”) when the RBS is no longer able to complete required functions under the Act.
- issue of siting consent for prescribed temporary structures.
- advising and appearing before the Building Appeals Board in relation to certain decisions of the MBS and the relevant council.
- responding to regulatory modification applications.
- applications to the Building Appeals Board for s160A regulatory compliance determinations.
- exercising powers of entry to buildings and land.
- requesting copies of inspections records from private building surveyors.
- causing certain building work to be carried out.
- seeking recovery of costs in relation to matters of non-compliance.
- applying for search warrants.
- issue of emergency orders.
- issue of building notices, building orders and directions to fix building work.
- amendment or cancellation of occupancy permits for buildings.
- applying to a court for injunctions.
- matters relating to retaining walls and the protection of land and property.
- enforcement of the new Pool and Spa registration, certification, safety and compliance laws.
- provision of building control, legislative and regulatory advice and information to the public.
- compliance with the Code of Conduct for Building Surveyors issued by the Victorian Building Authority.

The MBS is also usually a delegate of the council and authorised to carry out a range of other duties, functions and responsibilities of the council (as distinct to those of the office of the MBS), including:

- report and consent under the regulations.
- Administration and enforcement of the new Pool and Spa registration and certification regulations.
- bringing court proceedings under the Act and the regulations.
- responding to Building Appeals Board appeals in relation to council decisions under the Act or regulations.
- managing a council’s building control services.

The MBS, and his or her delegate staff, must have expertise in the interpretation, application, administration and enforcement of the Act, the regulations, the National Construction Code, referenced Australian Standards as well as related legislation including town planning, domestic building contracts, local government, land titles and road management.

The office of the MBS is in effect the “coal face” of building regulation in Victoria.