

Building Regulations 2018

OVERVIEW



The Building Regulations 2018 will commence on 2 June 2018.

The changes improve the documentation of permits to improve information for the regulator, the general public and building owners.

The new Regulations also are designed to improve fire safety in multi-storey residential buildings.

Further information

Building Regulations 2018:
www.legislation.vic.gov.au

Summary of changes and Regulation number finder:
www.engage.vic.gov.au

Practice notes and fact sheets:
www.vba.vic.gov.au

Glossary

ESM	essential safety measure (such as fire fighting equipment)
MBS place	municipal building surveyor place of public entertainment
pool reg	swimming pool or spa regulation
RBS	relevant building surveyors section
SOU	sole occupancy unit
VBA	Victorian Building Authority

The 10 key areas of regulatory change are:

1. New forms and further requirements to make sure that the permits, orders and notices include the information that is needed.
2. The Regulations have been modernised for the electronic use of documents for permits.
3. Updated requirements for the chief officer, RBSs and building practitioners in relation to documenting performance solutions.
4. New building permit reporting requirements commencing on 1 July 2019.
5. New obligations for the RBS to provide notice 30 days prior to a building permit lapsing to minimise lapsed permits.
6. Clear obligations on the RBS and the owner to inform the adjoining owner about protection work.
7. Introducing a new mandatory notification stage and inspections if the building work includes fire and smoke resistant building elements, which are lightweight construction in multi-storey residential buildings, and service penetrations in multi-storey residential and healthcare buildings. The Regulations also clarify the prescribed mandatory notification stages for demolition work or the construction of a pool.
8. The Regulations clarify the obligations of owners in relation to ESM maintenance, and encourage the uptake of maintenance schedules to simplify information for the owner. They also clarify the notification requirements in relation to pool barriers.
9. As-of-right construction of a Class 10a building with a floor area not exceeding 10m² on undeveloped land.
10. Formalising the process for granting a determination to treat two or more allotments as a single allotment for the purpose of a building permit application.

Summary of key changes

1. New forms and further requirements to make sure that permits, orders and notices include the information that is needed

Reg 37 requires that the RBS must use new **Form 2** for the purpose of a building permit. Additional information required on the permit, includes:

- the nature of the building work in regard to the provisions of the NCC
- whether protection work is, or is not, required
- the determinations that the RBS has made to consent to partial compliance or exemptions.

Reg 44 requires the RBS to give additional documentation to the council for public record-keeping. The RBS must provide:

- a record under reg 38 that a performance solution complies with the performance requirements of the NCC
- any s 238 certificate relied on by the RBS together with any record of a performance solution that a building practitioner made under reg 124
- any determination issued by the RBS under reg 111(2) that protection work is required
- a copy of any permit required for a septic tank system.

On completion of the building work, reg 203 requires the RBS to give council new additional documents, including:

- a copy of the certificate of final inspection and certificates of inspection issued for other mandatory notification stages
- a determination made by the RBS that protection work was required in relation to the building work
- records of any pile-driving or testing of materials that took place during the building work.

New non-mandatory forms should be used for an emergency order, building notice, or building order (see Forms 10-14). The Regulations

allow a building surveyor to rely on a registered building practitioner to carry out an inspection. An order or notice should include the date of any inspection, and details of any other person relied on by the building surveyor to conduct the inspection(s).

2. The Regulations have been modernised for the electronic use of documents

The number of copies of documents to be provided with a building permit application has been modernised. Under **regs 25 and 26**, applicants must provide a single copy (either electronic or paper copy) of the prescribed information and documents to accompany a building permit application. The RBS can ask the applicant for additional copies that they reasonably require.

When the RBS provides the building permit, **reg 39** requires the RBS to provide one copy (either electronic or paper copy) to the applicant, or the owner if they are not the applicant, and the builder. Given the applicant does not have a power to ask for additional paper copies where reasonable, there is a duty on the RBS to provide two copies of the approved plans and specifications. The RBS may discharge that duty by providing two paper copies of the approved plans, or one electronic copy if the applicant agrees.

3. Updated requirements in relation to performance solutions

Reg 34 allows the time limit for the report and consent of the chief officer in relation to a building permit application to be 15 days, increased from 10 days.

Reg 38 requires the RBS when determining an application for a building permit, to record in writing how a performance solution has been assessed as meeting the performance requirements of the NCC. Alternatively, if the RBS has relied on a s 238 certificate under the Act, reg 124 requires any registered building practitioner who provides

the certificate, to prepare the record. This includes an independent engineer or peer reviewer.

Reg 121 requires that the RBS may only rely on a s 238 certificate from a second building surveyor in relation to a fire performance requirement, if that building surveyor has a Graduate Certificate in Performance Based Building and Fire Codes from Victoria University of Technology (or equivalent as determined by the VBA).

4. New building permit reporting requirements

From 1 July 2019, **reg 47(2)** and **47(4)** require the RBS to report on additional information in their building permit activity report to the VBA. This extra information is:

- whether an occupancy permit is required
- mandatory notification stages
- whether there is a combined allotment determination
- whether any exemption from or consent to partial compliance has been granted
- whether a pool barrier is included
- whether the RBS determined that protection work is required
- whether any extension has been granted to the commencement or completion date and the new dates
- any inspection at a mandatory notification stage.

5. RBS to notify of imminent lapse of building permit

Regs 56 and 57 require the RBS notify the applicant of the imminent lapse of the building permit if the RBS has not conducted:

- the first mandatory inspection of building work within 30 days of the required date for the building work to commence, or
- the final mandatory inspection of building work within 30 days of the required date for the building work to be completed.

The VBA may be in a position to notify applicants once the building permit numbering system is established on 1 July 2019.

6. Clear obligations on the RBS and the owner in relation to protection work

Reg 111 requires the RBS to determine if building work gives rise to the need for protection work and to document that decision on **Form 6**. **Reg 112** requires the RBS to have regard to the prescribed information, documents and considerations when making a determination on whether the nature of the building work gives rise to the need for protection work.

Reg 113 requires the owner to provide the adjoining owner with a statement published by the VBA explaining the protection works process along with other prescribed documents. **Reg 115** requires the RBS to determine the appropriateness of the protection work using **Form 9**.

7. New mandatory notification stage and inspections for fire and smoke resisting building elements, and clarifying the prescribed mandatory notification stages

Reg 167 introduces a new mandatory notification stage after the completion of framework, which is the carrying out of building work of fire and smoke resistant building elements in multi-unit residential and healthcare buildings, which are prescribed in **Reg 172**. These Regulations relate to lightweight fire resistant construction in Class 2, 3 and 4 buildings, and service penetrations in Class 2-4, and 9a and 9c buildings. On and after 2 June 2018, the RBS should specify on a new building permit, the building elements to be inspected at this stage, which must include:

- lightweight construction components of fire rated building elements, comprising:
 - each wall, floor and ceiling system of one SOU
 - the walls of the stair, lift and service shafts (if they are lightweight construction)
- the junctions and any building element referred to above, with other building elements
- one of each type of protection method (e.g. fire collars, pillows and dampers etc) for

each type of penetration (i.e. cable, ductwork, metal pipe, PVC pipe and power outlet) in light or heavy weight fire rated building elements, preferably in the SOU.

The builder named in the building permit must notify the RBS when carrying out the above building work specified by the RBS, on each floor of the building.

The RBS must cause the relevant prescribed lightweight construction building elements and service penetrations to be inspected on each floor of the building.

The timing of the inspections must occur when the components and junctions of the lightweight construction and service penetrations are accessible and able to be clearly viewed to ensure compliance with the manufacturer's requirements and performance solutions.

Regs 168 and 169 introduce prescribed mandatory notification stages for the demolition or removal of building, and for the construction of a pool.

The inspection stages respectively comprise the:

- inspection of precautions for the safety of the public and demolition, and final inspection on completion
- completion of any excavation, prior to the pouring of a footing, precautions for safety of the public, and final inspection on completion (including the safety barrier).

The RBS may omit a stage if that stage is not relevant to the building work, and must still record the required mandatory notification stages on the building permit.

8. Clarifying the obligations of owners in relation to ESM maintenance, encouraging the use of maintenance schedules, and clarifying the notification requirements in relation to pool barriers

The regulations make various changes to improve ESM maintenance of fire safety features in buildings:

- **Maintenance of ESMs - Reg 226** places an obligation on a non-occupying owner of a building or place - irrespective of the age of the building or

place - to maintain the ESMs so they can fulfil their purpose. This obligation continues even if the building is vacant.

- **Condition of occupancy - Reg 195** clarifies that it is a condition of occupying a building or place that the ESMs are inspected, tested and maintained. In addition, if a maintenance determination is made, and an occupancy permit applies to the building or place of public entertainment, it is a condition of occupancy that the ESMs listed in the maintenance determination are inspected, tested and maintained. For ease, the RBS must issue the owner with a maintenance schedule under **Reg 218**, which consolidates all of the ESMs to be maintained into one list.
- **Maintenance schedules - Reg 218** is designed to simplify information for the owner by encouraging the use of maintenance schedules. The RBS must now prepare or update the maintenance schedule for a building or place when they amend an occupancy permit or issue a maintenance determination.
- **ESM annual report - Reg 224** requires an owner to include a statement in their ESM annual report in relation to their compliance obligations.
- **Pool barrier maintenance - Reg 142** requires an occupier to take all reasonable steps to ensure that a pool barrier is operating effectively. This duty can be met by notifying the owner if the barrier is not operating effectively.

9. Class 10a building on undeveloped land

Sch 3, item 1 allows a Class 10a building to be built as-of-right on an allotment without a building of another class, if the Class 10a building has a floor area of no greater than 10 square metres, and meets the building height and setback requirements.

10. Exemption for a combined allotment

Regs 60-67 provide a clear and transparent process for making an application and granting and revoking a determination to treat two or more allotments as one allotment for the purpose of a building permit.

Forms

In making an application, issuing a permit, giving notice or making a determination, the following Forms should be used:

14	Application for certificate of consent See VBA website for UPDATED form	115	Notice of determination under section 87 of the Act See Form 9 in the Regulations – NEW
24	Application for building permit See Form 1 in the Regulations – UPDATED	126	Certificate of compliance (section 238 certificate) See VBA website for UPDATED statement
37	Building permit See Form 2 in the Regulations – UPDATED	178-182	Emergency order, building notice, building orders See Forms 10-14 in the Regulations – NEW
46	Building permit levies See VBA website for UPDATED form	186, 192, 200	Application for occupancy permit, occupancy permit and certificate of final inspection See Forms 15-17 in the Regulations – UPDATED
47	Information RBS must give to VBA. See VBA website for existing format (UPDATED on 1 July 2019)	215	Maintenance determination See VBA website for NEW form
56	Notice of imminent lapse of permit at commencement See Form 3 in the Regulations – NEW	222	Maintenance schedule See VBA website for NEW form
57	Notice of imminent lapse of permit at completion of work. See Form 4 in the Regulations – NEW	224	ESM report See VBA website for NEW form
64	Determination on a combined allotment See Form 5 in the Regulations – NEW	229, 231, 233, 234	Exemption from, or consent to partial compliance with, requirements. See Form 18 in the Regulations – NEW
111	Determination that protection work is required See Form 6 in the Regulations – NEW	242	Application for building product accreditation See Form 19 in the Regulations – NEW
113	Protection work notice See Form 7 in the Regulations – UPDATED	253, 262	Application for registration/renewal See VBA website for UPDATED forms
113	Statement that explains the protection work process See VBA website for NEW statement	264	Notice of suspension or cancellation of registration See Form 20-21 in the Regulations – UPDATED
114	Protection work response notice See Form 8 in the Regulations – UPDATED		

On-the-spot fines

Fines apply to clear offences under the Building Regulations 2018. A summary of new and existing offences and the approximate fines are:

41(1)	The builder named on the building permit must ensure that a copy of the building permit documents are on site – NEW \$320	223(2)	The owner of a building or place that was constructed before 1 July 1994 where an ESM was required must ensure that an annual ESM report is prepared. \$320 for a building, \$790 for a place
137	The owner of the land that has the swimming pool or spa must ensure that a prescribed barrier is in place to restrict access. \$320	225	An owner of a building or place must ensure that the prescribed documents relating to the building or place are available for inspection on site within 24 hours after being requested. \$320 for a building, \$790 for a place
197(2)	An owner of a building or place must ensure that a copy of the current occupancy permit is displayed and at an approved location on site. NEW – \$320 for a building, \$790 for a place	226(1)	The owner of a building or place must ensure that any ESM is maintained in a state which enables it to fulfil its purpose. \$320 for a building, \$790 for a place
199(2)	An owner of a building or place must ensure that a copy of the occupancy permit is available on site for inspection by the MBS or chief officer at any time on request. \$320 for a building, \$790 for a place	227	The owner of a building or place must ensure that any ESM is not removed from its location except during inspection, testing or maintenance. \$320 for a building, \$790 for a place
216(2)	The owner of the building or place must ensure that each ESM on a maintenance determination performs to the level required, and is inspected, tested and maintained as required. \$320 for a building, \$790 for a place	228	The occupier of a building or a place must ensure that all paths of travel to exits and the roadway are kept clear of obstruction. \$320 for a building, \$790 for a place
218(3)	The owner of a building or place must give the RBS working on a maintenance schedule, all prescribed documents within 7 days after the RBS requests them. NEW – \$320 for a building, \$790 for a place		
223(1)	The owner of a building or place where an ESM is required by an occupancy permit or a maintenance determination, must ensure that an annual ESM report is prepared. \$320 for a building, \$790 for a place		

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