

Enforceable undertakings

What is an enforceable undertaking?

An enforceable undertaking is a legally binding written agreement that a person voluntarily provides to another person or organisation. It sets out certain things the person agrees to do and/or refrain from doing.

Under the *Building Act 1993* (the Act), the Victorian Building Authority (VBA) may accept a written undertaking from a registered building practitioner (practitioner) agreeing to:

- do a specified thing, or
- refrain from doing a specified thing

in circumstances where the VBA believes a ground exists to take disciplinary action against them and has commenced a show cause process under the Act.

By providing an enforceable undertaking to the VBA, the practitioner acknowledges that, if they do not comply with the undertaking, legal action may be taken against them and they may also be subject to disciplinary action.

An enforceable undertaking can be given by an individual builder or a body corporate.

When can I propose an enforceable undertaking?

You can propose to give the VBA an undertaking during the show cause process – prior to the VBA making a final decision about whether or not to take the proposed disciplinary action against you.

Do I need to provide a proposed undertaking in writing?

Yes. For the VBA to consider your proposed undertaking, you must set out in writing what you propose to do and/or not do. For example, if you receive a show cause notice, you may write to the VBA proposing that you undertake not to, and/or, will do certain things identified by the VBA in, or arising from, the show cause notice.

What happens when I give an enforceable undertaking?

By accepting an enforceable undertaking, the VBA will agree to do one or more of the following in relation to taking proposed disciplinary action against you following a show cause process:

- defer taking the proposed disciplinary action for a specified period
- take disciplinary action that the VBA considers to be less serious than the proposed disciplinary action
- take no further action.

The practitioner will be given the opportunity to discuss the contents of an enforceable undertaking with the VBA, before the VBA formally makes an offer to enter into an enforceable undertaking with the practitioner.

If the VBA accepts your proposed undertaking, you will be provided with a copy of a formal written undertaking. Once you return the signed undertaking, the VBA will send you a copy.

The VBA must register the undertaking on its publicly accessible Register of Undertakings at www.vba.vic.gov.au

Can I make changes to or withdraw an enforceable undertaking once it's accepted?

Yes. A practitioner may, at any time, vary or withdraw an undertaking with the VBA's written consent.

If the VBA does not consent to you varying or withdrawing the undertaking, it will remain in force. This means you will be required to comply with the undertaking, as originally provided, until such time as the VBA agrees to release you from the undertaking.

What if I need more time to consider a proposed undertaking?

A proposed undertaking should be provided to the VBA within the show cause period. The VBA may extend this period on request by emailing discipline@vba.vic.gov.au. If the VBA refuses an extension, the show cause period ends on the date stated in the original show cause notice.

What happens if I don't comply with an enforceable undertaking?

If the VBA considers you have failed to comply with an undertaking, they may apply to a court for an order seeking enforcement of the undertaking and require you to:

- comply with the undertaking
- carry out building work or protection work
- pay an amount up to the equivalent amount of any financial benefit you have obtained (either directly or indirectly) from a failure to comply with the undertaking
- compensate any person who has suffered loss, injury or damage as a result of your failure to comply with the undertaking.

The VBA may also take disciplinary action against you if it considers you have failed to comply with an undertaking.

Will the VBA check if I am complying with an undertaking?

Yes, compliance will be monitored. This may involve requiring you to report or provide evidence to the VBA that you are complying.

The VBA may also conduct audits to ensure you are complying with an undertaking.

A member of the public may also complain to the VBA if they believe a practitioner, who is subject to an undertaking, is not complying with an undertaking, as published in the Register of Undertakings.

Key points to remember

- An enforceable undertaking:
 - is a legally binding agreement between a practitioner and the VBA
 - must be entered into by the practitioner voluntarily
 - must be accepted by the VBA
 - must be in writing
 - must be signed by the practitioner
 - may be subject to court proceedings if a practitioner fails to comply with the undertaking.
- A practitioner who does not comply with an undertaking may also be subject to disciplinary action by the VBA.

Want to know more?

Please [submit an enquiry](#) or call us on 1300 815 127.

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