

Enforceable undertakings

A key function of the Victorian Building Authority (VBA) is to supervise and monitor the conduct and ability to practise of registered building practitioners (practitioner) to ensure compliance with the *Building Act 1993* (the Act) and associated legislation.

From 1 September 2016, a show cause process will replace the existing Building Practitioners Board. This new process will apply when the VBA reasonably believes a ground exists for it to take disciplinary action against a practitioner.

The VBA may accept an enforceable undertaking from a practitioner under the Act as an alternative to taking disciplinary action against a practitioner.

Who should read this guide?

Practitioners issued with a show cause notice, and who are in discussions with the VBA regarding an enforceable undertaking, should read this guide to ensure they are fully aware of their responsibilities, what to do, and where to get further information or advice.

It is highly recommended practitioners also read the **Show Cause Process Practitioner Guide** and **Frequently Asked Questions** for further information.

Enforceable undertakings

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.

In the context of the Act, an enforceable undertaking is a written agreement that is voluntarily given by a practitioner to the VBA to address conduct or issues raised in the show cause notice.

An enforceable undertaking may require the practitioner to:

- do a specified thing, including rectifying or completing building or protection work
- refrain from doing a specified thing
- arrange for another practitioner to rectify or complete building or protection work
- pay an amount to the owner sufficient to rectify or complete specified building work, and/or
- not undertake certain building work until specific training is completed by the practitioner.

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 a practitioner 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.

If the VBA accepts a proposed undertaking, the practitioner will be provided with a copy of a formal written undertaking. Once the signed undertaking is returned to the VBA, the VBA will send a copy to the practitioner.

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.

When can a practitioner offer an enforceable undertaking?

An enforceable undertaking may be entered into as an alternative to disciplinary action and may be offered by a practitioner during or after the show cause period.

Varying or withdrawing an accepted enforceable undertaking

A practitioner may vary or withdraw an accepted enforceable undertaking at any time, if the practitioner has first obtained the written consent of the VBA.

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

Failure to comply with an enforceable undertaking

If the VBA considers that a practitioner has failed to comply with an enforceable undertaking it may apply to a court for an order, directing the practitioner to:

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

Should the VBA commence proceedings in court against a practitioner, in order to enforce an

undertaking, the practitioner may be required to pay the VBA's legal costs.

Failure to comply with an enforceable undertaking may also be a ground for the VBA to take disciplinary action against a practitioner.

Register of Undertakings

Once an enforceable undertaking is accepted by the VBA, a copy of the undertaking will be provided to the practitioner and must be registered on the Register of Undertakings. The register is accessible to the public at www.vba.vic.gov.au

This register must include the name and address of the practitioner who gave the undertaking, a copy of the undertaking and the date of the undertaking.

When an accepted enforceable undertaking ends

The VBA will only accept enforceable undertakings that have a defined end point.

An enforceable undertaking end point will be agreed in writing during the process of acceptance by the VBA.

An end point could comprise one or more actions and/or a specific point in time or date.

Want to know more?

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

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www.vba.vic.gov.au