

## Capacity to practise

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.

The term ‘capacity to practise’ refers to a practitioner’s ability to practise when their capability to do so may be affected by physical or mental infirmity.

### Who should read this guide?

- Practitioners issued with a show cause notice regarding their capacity to practise due to physical or mental infirmity to ensure they understand what to do after receiving the notice, their right to seek review of a decision to suspend or cancel their registration, and where to find further information.
- Practitioners who have had their registration suspended based on their capacity to practise due to physical or mental infirmity and who want to have the suspension revoked.

### Capacity to practise

From 1 September 2016, the VBA may enquire into a practitioner’s capacity to practise when the practitioner has a physical or mental infirmity that potentially compromises their ability to carry out building work in a safe and competent manner.

The VBA acknowledges the sensitive nature of such matters and will conduct itself in a compassionate and considerate manner in such cases where it is reasonably satisfied that a practitioner is incapable of practising due to physical or mental infirmity.

### Show cause process

A decision to suspend or cancel a practitioner’s registration on grounds of physical or mental infirmity can only be made following a show cause process.

This process involves the VBA sending the practitioner a written show cause notice:

- setting out the grounds for proposing to either suspend or cancel the practitioner’s registration
- setting out an outline of the facts and circumstances forming the basis for the ground for proposing to suspend or cancel the practitioner’s registration
- inviting the practitioner to respond within a specified period showing why their registration should not be suspended or cancelled.

Practitioners should ensure they read the show cause notice carefully and provide a response to the VBA by the due date in the notice.

A practitioner may respond to the show cause notice by making either a written or an oral representation to the VBA.

If the VBA does not receive a response from the practitioner within the period specified in the show cause notice, it may proceed to make a decision to take the proposed action in the show cause notice.

The VBA will take into account all relevant information and materials it has obtained and received from the practitioner, including either a written or oral representation, before determining whether it is satisfied the practitioner is incapable of practising as a building practitioner due to physical or mental infirmity.

The VBA takes any decision to suspend or cancel a practitioner’s registration very seriously, and

must make its decision within 28 days after the show cause period ends to either take the proposed action or take no further action under the show cause notice.

See the [Show Cause Process Practitioner Guide](#) and [Frequently Asked Questions](#) for further information.

### Decision not to take action

If the VBA is **not satisfied** the practitioner is incapable of practising as a building practitioner due to physical or mental infirmity, the VBA must:

- take no further action in relation to the show cause notice
- as soon as practicable after making its decision, give notice to the practitioner that no further action will be taken in relation to the show cause notice.

### Decision to take action

If the VBA is **satisfied** the practitioner is incapable of practising as a building practitioner due to physical or mental infirmity, the VBA must:

- take action by either suspending (for up to three (3) years) or cancelling the practitioner's registration
- as soon as practicable after making its decision, give notice to the practitioner of its decision to take action and its reasons for decision.

The decision to suspend or cancel a practitioner's registration takes effect on the day the notice of the decision is given to the practitioner or on a date specified in the notice.

### Review rights

A practitioner has a right to seek review of a decision by the VBA to suspend or cancel their registration if it determines they are incapable of practising due to physical or mental infirmity.

If the decision was made by a delegate of the VBA, other than the VBA Commissioner or Chief Executive Officer, the practitioner may apply to the VBA for internal review of the decision.

See the [Internal Review Process Practitioner Guide](#) and [Frequently Asked Questions](#) for further information.

If the decision was made by the VBA Commissioner or Chief Executive Officer, the practitioner may apply to the Victorian Civil and Administrative Tribunal for review of the decision within 28 days of the date of decision. See [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) for further information.

### Revocation of suspension

The VBA may, at any time, revoke the suspension of a practitioner's registration if it is satisfied that the practitioner is capable of practising as a registered building practitioner.

If a practitioner believes their capacity to practise is no longer compromised due to physical or mental infirmity, the practitioner may apply to the VBA to revoke the suspension. A practitioner can do this by submitting a [Practitioner Revocation of Suspension Request Form](#) and supporting documentation.

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If a practitioner's registration was cancelled on grounds of physical or mental infirmity, the VBA cannot revoke the cancellation of the registration. However, a practitioner may submit a new application for registration as a building practitioner. Practitioners should contact the VBA to discuss their circumstances and to obtain further information about the requirements for registration.

## Surrender of registration

Should a practitioner wish to voluntarily surrender their registration (e.g. due to retirement or ill health) they can do this by informing the VBA in writing of their intention.

The correspondence should contain the practitioner's registration number, other contact information and the reason for surrender.

The VBA will confirm any surrender of registration in writing to the practitioner.

### Want to know more?

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

Victorian Building Authority  
733 Bourke Street Docklands VIC 3008

[www.vba.vic.gov.au](http://www.vba.vic.gov.au)