

## Immediate suspension of registration

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, the VBA is responsible for determining if disciplinary action should be taken against a practitioner, including, where appropriate, immediate suspension of a practitioner's registration.

### Who should read this guide?

Practitioners issued with an immediate suspension notice should read this guide to ensure they are fully aware of their responsibilities, what to do and where to get further information or advice.

For the purposes of this guide, 'practitioner' means both a company and a natural person.

### Decision to immediately suspend

Pursuant to section 180 of the Act, the VBA may immediately suspend a practitioner's registration in prescribed circumstances.

The conduct of a practitioner that requires action by way of immediate suspension may come to the attention of the VBA in a number of ways.

The VBA may receive a complaint from a building owner, from someone neighbouring a building site, from another member of the building industry or from a building surveyor.

Where the VBA considers that the conduct of a practitioner may constitute a ground for immediate suspension, the VBA will investigate that conduct. The findings of that investigation will then be considered by the VBA and a decision will be made on whether there is a

'reasonable belief' that grounds exist for immediate suspension

A decision to immediately suspend will take effect on the day notice is given to the practitioner and will continue until the day the suspension is revoked by the VBA or set aside by the Victorian Civil and Administrative Tribunal (VCAT).

Grounds for immediate suspension relate to matters that pose a serious risk to the safety of individuals, the public or to property, and therefore suspension must be immediate.

Grounds for immediate suspension include the practitioner:

- being insolvent
- being convicted of a serious offence involving fraud, dishonesty, drug trafficking or violence
- no longer being covered by the required insurance
- not having a registered building practitioner as a director, if the practitioner is a company
- not complying with the conditions of registration.

Note: the loss of insurance eligibility **will** result in immediate suspension while being insolvent or convicted of a relevant offence **may** result in an immediate suspension.

See box at the end of this guide for a summary of legislative grounds for immediate suspension.

### Notice of immediate suspension

The VBA may, by written notice given to a practitioner, immediately suspend (either wholly or as a partial suspension in relation to a specified matter) the registration of a practitioner if it forms a reasonable belief that a ground for immediate suspension exists. The grounds, as prescribed by section 180 of the Act, are outlined at the end of this guide.

The immediate suspension notice must outline:

- the decision
- the ground or grounds under section 180 of the Act for the decision
- the period of suspension
- that the practitioner may apply to the VCAT for a review of the VBA's decision to immediately suspend the practitioner within 28 days of that decision to suspend the practitioner being made.

The VBA must give the practitioner written reasons for the decision within five (5) business days after giving the notice to the practitioner.

### Show cause process

The VBA must give the practitioner a show cause notice without delay following the delivery of the immediate suspension notice as part of a show cause process.

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

### Revocation of immediate suspension

The VBA must revoke an immediate suspension if it determines that no ground for immediate suspension exists or in relation to insurance matters, if the practitioner provides evidence they are covered by the required insurance.

### Challenging a decision to immediately suspend

A practitioner can apply for internal review of a decision to immediately suspend registration. However, a decision to immediately suspend a practitioner is not stayed pending the outcome of an internal review.

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

A practitioner may apply directly to the VCAT and then make an application for a stay of the

immediate suspension pending review by the VCAT.

Practitioners are encouraged to seek their own legal advice as to whether the VBA internal review or the VCAT is the preferable review process, depending on their own facts and circumstances.

### Grounds for immediate suspension under the Act

Section 180 of the Act, outlines the grounds for immediate suspension as follows:

- (a) the practitioner is insolvent under administration or is an officer of a body corporate that is insolvent under administration; or
- (b) the practitioner has contravened—
  - (i) a prescribed provision of this Act or the regulations; or
  - (ii) a prescribed provision of the *Domestic Building Contracts Act 1995* or the regulations under that Act; or
  - (iii) a prescribed Act or law or a prescribed provision of a prescribed Act or law; or
- (c) the practitioner has been convicted of an indictable offence involving fraud, dishonesty, drug trafficking or violence; or
- (d) the practitioner has ceased to be covered by the required insurance; or
- (e) the practitioner is a body corporate and the practitioner has no nominee director; or
- (f) the practitioner is an excluded person; or
- (g) the practitioner does not comply or no longer complies with a condition prescribed under section 171(d) or prescribed or imposed under section 170H for the registration.