

Mandatory disciplinary action on breach of dispute resolution order notice

THE GROUND FOR DISCIPLINARY ACTION

On 26 September 2018, the *Building Act 1993* (**the Act**) was amended to require the VBA to take disciplinary action when a registered building practitioner has been issued with a breach of dispute resolution order notice for the failure to comply with a dispute resolution order, and written notice of that failure has been provided to the VBA by the Domestic Building Dispute Resolution Victoria (**DBDRV**).

WHAT THIS MEANS FOR BUILDING PRACTITIONERS

This is a significant amendment to the Act for building practitioners, as the ground attracts the imposition of a **mandatory suspension** of the building practitioner's registration.

THE PROCESS

Domestic Building Dispute Resolution Victoria

DBDRV was established under the *Domestic Building Contracts Act 1995* (**DBCA**) to resolve disputes between building owners and builders in relation to any matter relating to a domestic building contract, or the carrying out of domestic building work.

Dispute Resolution Order

The dispute resolution process begins with a referral of the dispute to the Chief Dispute Resolution Officer (**CDRO**) of DBDRV.

An assessment of the referral is conducted and a recommendation is made to the CDRO as to whether the referral should be referred to conciliation.

If a dispute is referred for conciliation, and the parties do not resolve the dispute, the CDRO may issue a Dispute Resolution Order (**DRO**).

The DRO may direct a builder to whom the DRO is issued to:

- rectify any defective domestic building work; or
- complete the domestic building work under the domestic building contract.

The builder required to comply with the DRO must be a registered building practitioner authorised to carry out the work, or must otherwise cause the work to be carried out.

The CDRO may at any time amend or cancel the DRO.

Alternatively, the builder required to comply with the DRO may apply to the VCAT for a review of the decision to issue the DRO.

Please refer to the DBDRV webpage as follows <https://www.dbdrv.vic.gov.au/binding-orders> for further information regarding DROs.

Breach of Dispute Resolution Order

If a building owner gives written notice to the CDRO of a builder's failure to:

- rectify defective domestic building work; or
- complete domestic building work in compliance with a DRO,

the CDRO **must** direct an assessor to examine and report on compliance with the DRO.

If the assessor's report states that the builder has failed to comply with the DRO, the CDRO **must** issue a breach of DRO notice (**BODRON**) to the builder.

The builder may apply to the VCAT for a review of the CDRO's decision to issue the BODRON. Such an application must be made within 20 business days after the later of:

- the day on which the builder was served with a copy of the BODRON; or
- if a statement of reasons is requested, the day on which the builder receives the statement

of reasons, or is informed that reasons will not be given.

If the builder does not make application to the VCAT for review within the time permitted, or an application is made and the VCAT affirms the decision to issue the BODRON, the CDRO **must** give written notice to the VBA of the issue of the BODRON, either at the end of the VCAT appeal period, or upon the VCAT's determination.

THE SHOW CAUSE PROCESS

Upon receiving written notice of the BODRON from the CDRO of DBDRV, the VBA **must** issue the builder with a show cause notice within 28 days.

The disciplinary action proposed in the show cause notice, **must** include a suspension of the builder's registration.

The suspension may be a full suspension or a partial suspension and may be imposed for a period of up to three years.

During the Show Cause Period

During the show cause period, the show cause process can come to an end in two ways, those being:

- by cancellation of the BODRON by the CDRO of DBDRV; or
- if the builder is granted an extension of time by the VCAT for review of the decision to issue a BODRON, and the builder is successful on that review.

If an application for review by the VCAT is made during the show cause period, any disciplinary action is stayed pending the outcome of the review.

When an undertaking can be given

If the builder demonstrates that there are exceptional circumstances why they failed to

seek review by the VCAT of the issue of the BODRON within 20 days, the VBA may:

- accept an undertaking from the builder that they will apply for an extension of time to apply to the VCAT for a review of the decision to issue the BODRON and inform the VBA when that application has been made and the outcome of that application; and
- defer from taking the proposed disciplinary action for a specified period (which may be extended if the builder's application for an extension is successful).

If the builder fails to comply with the above undertaking, or if the VCAT rejects the application for an extension of time, the VBA must proceed with the proposed disciplinary action.

Cancellation of the BODRON

If the BODRON is cancelled during the show cause period, the ground for disciplinary action will no longer exist, and the VBA will be precluded from imposing the disciplinary action proposed, including the suspension.

The BODRON may be cancelled by the CDRO of DBDRV upon notification of settlement of the dispute by the builder and the building owner.

AFTER A DECISION IS MADE BY THE VBA

If, at the end of the show cause period the BODRON is still in force, the VBA **must** impose the disciplinary action proposed, including the suspension.

After a decision has been made, the VBA may revoke a suspension only in circumstances that it is satisfied that it is appropriate to do so.

Alternatively:

- the BODRON may be cancelled by the CDRO of DBDRV;

- the builder may apply for an internal review of the decision by the VBA (whilst the BODRON is in force however the ground will continue to exist); or
- the builder may make application to the VCAT for a review of the decision.

An application for internal review by the VBA may be made at any time before any disciplinary action imposed ceases to have effect. A practitioner who is suspended for failure to comply with a BODRON may therefore apply for internal review at any time during the period of suspension.

An application for review to the VCAT must be made:

- within 14 days after receipt of a decision on an application for internal review; or
- within 28 days after the decision to take disciplinary action is made, where no application for internal review is made.

Want to know more?

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

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