

Internal review process

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 VBA's internal review process gives an *affected person* the option to request an internal review of a *reviewable decision* made by the VBA.

Who should read this guide?

You should read this guide if:

- you have received notice of a VBA decision **and**
- the decision is a reviewable decision **and**
- you are an affected person **and**
- you want to know more about your review rights.

What is a 'reviewable decision'?

A *reviewable decision* is a decision made by the VBA under the Act to:

- refuse to grant registration
- impose a condition(s) on registration
- refuse to renew registration
- immediately suspend registration
- take disciplinary action
- give a direction under section 205M of the Act

or any other decision prescribed in Regulations. At date of publication no decisions have been prescribed.

Who is an 'affected person'?

An *affected person* is a person directly affected by a reviewable decision.

Applying for internal review

Following receipt of notice of a *reviewable decision*, an *affected person* will have the opportunity to apply for an internal review of the *reviewable decision* via the VBA internal review process, instead of applying directly to the Victorian Civil and Administrative Tribunal (VCAT).

An *affected person* cannot apply for internal review of a *reviewable decision* that has been made by the Chief Commissioner or Chief Executive Officer of the VBA.

The internal review process, which is separate and independent from the show cause process, is intended to provide a faster, less expensive way for a *reviewable decision* to be reviewed, rather than via a more formal external review function.

An *affected person* must complete and submit an **Application for Internal Review Form**.

Applications for internal review must be made in writing, stating fully the grounds for the application, and must be made within 28 days after the day the *affected person* is given notice of the *reviewable decision*. The VBA may, at any time, extend the time for applying for internal review.

Internal review process

The Act prescribes the requirements under which the VBA must undertake an internal review of a *reviewable decision*.

An application for internal review puts on hold the effect of the decision, unless the decision is a decision to immediately suspend registration of a practitioner. Such a decision is not put on hold as a result of internal review.

Once an application is received, it will be assessed to ensure it complies with the criteria for internal review, i.e:

- the application has been made within the required timeframe

- the applicant is an *affected person*
- the decision is a *reviewable decision*, and
- the decision was made by someone other than the Chief Commissioner or the Chief Executive Officer.

Valid applications will be referred to an internal review officer (Reviewer) who is a senior employee of the VBA that is:

- not the person who made the reviewable decision
- not a person that was involved in the matters that gave rise to the reviewable decision
- not in a less senior position than a person referred to above.

The Reviewer must review the decision having regard to the material that led to the *reviewable decision*, the reasons for the *reviewable decision* and any other information that may not have been available at the time the *reviewable decision* was made and that the Reviewer is satisfied is relevant.

The affected person will be given the opportunity to make either a written or oral representation to the VBA in relation to their application for internal review.

Seeking review of a decision to immediately suspend registration

A practitioner can apply for internal review of a decision to immediately suspend registration under section 184(d) of the Act. However, by virtue of section 185(7) of the Act, the decision is not stayed pending the outcome of the internal review.

A practitioner may also apply directly to VCAT under section 186(3) of the Act and then make an application for a stay of the immediate suspension pending review by VCAT.

Practitioners are encouraged to seek their own legal advice as to whether internal review or

external review by VCAT is the preferable review process depending on their own facts and circumstances.

Representations to the VBA

The VBA must give the *affected person* a reasonable opportunity to make either a written or oral representation as part of the internal review process.

Written representation

In submitting a written representation, the *affected person* should ensure clear copies of original documents are included to support the representation.

Oral representation

If an *affected person* intends to make an oral representation, they should notify the VBA as soon as possible to allow the VBA to arrange a forum to receive the internal review oral representation. This can be arranged by including this request with the [Application for Internal Review Form](#).

The *affected person* will be advised of the date of the oral representation after the required form electing to make an oral representation has been received by the VBA.

Legal representation

An *affected person* may choose to be accompanied at an oral representation by a legal representative, to provide advice or assist in clarifying issues, or by another support person.

The VBA's delegate may be accompanied by a legal adviser and/or technical expert as necessary. Practitioners will be advised of all attendees at the oral representation before it is conducted, and will be invited to nominate who will attend on their behalf as well.

The oral representation is not a hearing but is intended to afford the *affected person* with the

opportunity to verbally respond to the *reviewable decision*.

Internal review period

The internal review period is the timeframe within which the internal review process is to be completed and a notice of review decision given to the *affected person*. Section 185D(4) of the Act prescribes this period to mean 28 days after an application for internal review is made.

Internal review decision

Following the internal review, the reviewer will make a decision to either:

- affirm the reviewable decision
- amend the reviewable decision, or
- substitute another decision for the *reviewable decision*.

The VBA must provide a notice of review decision, stating the reasons for the decision and review rights to VCAT, within the internal review period.

If the VBA does not give a notice of review decision to the *affected person* within the internal review period, then the VBA is taken to have made a decision affirming the *reviewable decision*.

External review

An *affected person* may apply to the VCAT for review of an internal review decision made by the VBA. Contact details for the VCAT are:

VCAT (Review and Regulation List)
55 King Street
Melbourne Vic 3000
03 9628 9755
www.vcat.vic.gov.au

Remember:

The internal review process is intended to give an affected person access to a fast and inexpensive process of review of reviewable decisions made by the VBA.

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