

## Show cause 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.

From 1 September 2016, a show cause process replaced the existing Building Practitioners Board (BPB) disciplinary process. Under the new provisions the VBA can take disciplinary action against a registered practitioner where it reasonably believes that one or more of the grounds set out under section 179 (1) of the Act exist.

### Who should read this guide?

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

In the most serious cases, a practitioner may have their ability to work affected as a result of disciplinary action.

### Changes to the disciplinary process

Amendments to the Act mean that from 1 September 2016, a show cause process will be commenced if the VBA forms a 'reasonable belief' that one or more of the prescribed grounds under section 179(1) of the Act exist for disciplinary action to be taken against a practitioner.

The show cause process differs from the previous BPB process, where a notice of inquiry was issued followed by a hearing.

It is intended for these changes to provide a more efficient and streamlined disciplinary process where decisions are reached in a timely manner.

## Grounds for disciplinary action

Section 179(1) of the Act prescribes 15 *grounds* under which the VBA can take disciplinary action against practitioners.

Grounds for disciplinary action include:

- unprofessional conduct or failure to comply with a code of conduct
- failure to comply with an order or a direction issued by a relevant building surveyor
- failure to comply with determination or direction of the VBA or the Victorian Civil and Administrative Tribunal (VCAT)
- no longer a fit and proper person to practise as a building practitioner
- failure to comply with a condition of a practitioner's registration.

Prior to the commencement of a show cause process, the VBA will conduct an investigation to determine whether there is sufficient evidence for a 'reasonable belief' that a practitioner's conduct or omission forms one or more grounds for disciplinary action.

The term 'reasonable belief' is not defined in the Act, but requires a decision maker to believe, at the time of making a decision to, for example, take action against a practitioner, that the basis for doing so is reasonable and is not based on a mere belief or assertion. It will involve the decision maker objectively taking into account all known considerations.

Pursuant to section 180 of the Act, the VBA may also immediately suspend a practitioner's registration in prescribed circumstances. See the [Immediate Suspension of Registration Practitioner Guide](#) and [Frequently Asked Questions](#) for further information.

### Prior to a show cause process

The VBA may receive a complaint from a member of the public including a consumer or

another authority including a local authority regarding the conduct of a practitioner and/or aspect(s) of work undertaken by them.

An investigation will be undertaken at this point to identify if there is evidence to establish the alleged contraventions.

At the conclusion of an investigation, and before a matter is referred for consideration of disciplinary action, the practitioner will be asked if they wish to respond to the allegations.

In certain cases, however, an interview may not be required, such as when a complaint is found to be unsubstantiated as a result of the investigative process.

Additional materials may result in a determination by the VBA that there are no grounds for disciplinary action and no further action will be taken against the practitioner.

The evidence supplied by the complainant, if applicable, and the practitioner will be evaluated together with any other materials deemed relevant by the VBA.

### Show cause process

The show cause process is a mechanism in which the VBA considers the conduct or omission of a practitioner and determines whether there is sufficient evidence to form a reasonable belief that a ground(s) for taking disciplinary action against a practitioner exist, and, after consideration of any representations received from the practitioner, take appropriate disciplinary action, if any.

### Show cause notice

The show cause process commences once the VBA issues a show cause notice to a practitioner.

**This is a very important document, sent by registered post to a practitioner's address.**

Any practitioner receiving this notice should read it carefully and not ignore it.

The show cause notice outlines the following:

- the VBA proposes to take disciplinary action
- the disciplinary action proposed to be taken
- the registration in relation to which the proposed action is to be taken
- the ground(s) for the proposed action
- an outline of the facts and circumstances forming the basis for the ground(s) for the proposed action; and
- an invitation to the practitioner to show within a stated period (the show cause period) why the proposed action should not be taken.

See the [Changes to Practitioner Disciplinary Action Fact Sheet](#) and [Changes to Practitioner Disciplinary Proceedings Fact Sheet](#) for further details on the actions that the VBA may take as part of the show cause process.

### Show cause period

The show cause period is the timeframe within which the practitioner may give written or oral representation to the VBA to show why the proposed disciplinary action, as detailed in the show cause notice, should not be taken.

The show cause period is 28 days after the show cause notice is given to the practitioner. However, the timeframe may be extended by the VBA at the request of the practitioner.

The VBA will consider an extension to this time period based on the facts and circumstances of the individual case and taking into account factors such as difficulty in sourcing relevant information, seeking advice and the complexity of the matter.

### Practitioner representations

Practitioners are given the opportunity to make either a written or oral representation within the

show cause period to the VBA in response to the matters outlined in the show cause notice.

The practitioner may give written or oral representation in response to the show cause notice or not provide any representation at all.

Practitioners are deemed to have received the show cause notice five (5) business days from the date of postage by the VBA to the address recorded against their registration.

### Written representation

A practitioner may make a written representation to the VBA, and must ensure that it is received by the VBA within the show cause period.

In submitting a written representation, a practitioner should ensure that any copies of documents are clear and easily legible. Practitioners should not provide original documents to the VBA.

Practitioners are encouraged to keep their own copies of all documents provided to the VBA so that they can refer to them later on if needed.

### Oral representation

If a practitioner intends to make oral representations, they should notify the VBA of their preference as soon as possible to allow the VBA to arrange a forum to receive the oral representations.

This can be arranged by emailing or posting a completed **Practitioner Representation Request Form** within the show cause period.

An oral representation is a face-to-face meeting between the practitioner and the VBA. The purpose of the oral representation is to give the practitioner an opportunity to explain or rebut the matters set out in the show cause notice. It is **not** a hearing and a decision will not be made by VBA on the day of the oral representation.

An audio recording of the oral representation will be made and kept by the VBA. A copy will be made available to the practitioner on request.

A practitioner will be advised of the date of the oral representation, after returning the **Practitioner Representation Request Form** electing to make an oral representation.

### Extension of time to make a written or oral representation

A practitioner may submit an application for an extension of time to make a written or oral representation to the VBA before the expiry of the show cause period. The application should be made in the **Practitioner Representation Extension of Time Request Form** and sent to the VBA by email or post.

Acceptance of the application for an extension of time is at the discretion of the VBA. Following consideration of the application, the VBA will notify the practitioner of their decision by email or post without delay.

The VBA will consider the rescheduling of the oral representation on the facts and circumstances of the specific case, but including factors such as difficulty in sourcing relevant information from individuals, difficulty obtaining advice, and/or the complexity of the matters.

### Rescheduling of an oral representation

A practitioner may apply for an oral representation to be rescheduled. This request should be in writing using the **Practitioner Representation Rescheduling Request Form**.

The request must be received by the VBA three (3) business days prior to the date set for the oral representation. The VBA may refuse a request for an oral representation to be rescheduled.

The practitioner should continue on the basis that the oral representation will proceed unless the VBA notifies otherwise.

## Legal representation

A practitioner may choose to be legally represented at an oral representation. Alternatively, a practitioner may represent themselves and choose to be accompanied 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 VBA

### Key points to remember

- This guide is intended to provide practitioners with general information on the show cause process. It is not intended to replace detailed expert advice.
- Practitioners are encouraged to contact their member organisations for further information or seek their own legal advice.

### Want to know more?

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

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

attendees at the oral representation before it is conducted, and will be invited to nominate who, if anyone, will be attending the oral representation with them.

The oral representation is **not** a hearing and is intended to afford the practitioner with the opportunity to verbally respond to the content of

the show cause notice with any discourse limited to responding for this purpose.

## Show cause decision without representation

A practitioner does not have to make either a written or oral representation to the VBA regarding a show cause notice.

If no representation is made within the show cause period, the VBA will make a decision as to whether grounds still exist to take disciplinary action against the practitioner.

This decision will be based on information in the VBA's possession, and the practitioner will be notified of the outcome in writing within 28 days after the show cause period ends.

## Appealing a show cause decision

Pursuant to section 185 of the Act, a practitioner may appeal the decision by the VBA to take disciplinary action at the conclusion of the show cause process through the VBA's internal review process. A practitioner has 28 days after receiving a show cause decision to submit an application for internal review.

A practitioner may also apply to VCAT (without applying for internal review) for review of a decision to immediately suspend, suspend or cancel a registration under section 186 of the Act. See the [Internal Review Process Practitioner Guide](#) and [Frequently Asked Questions](#) for further information.