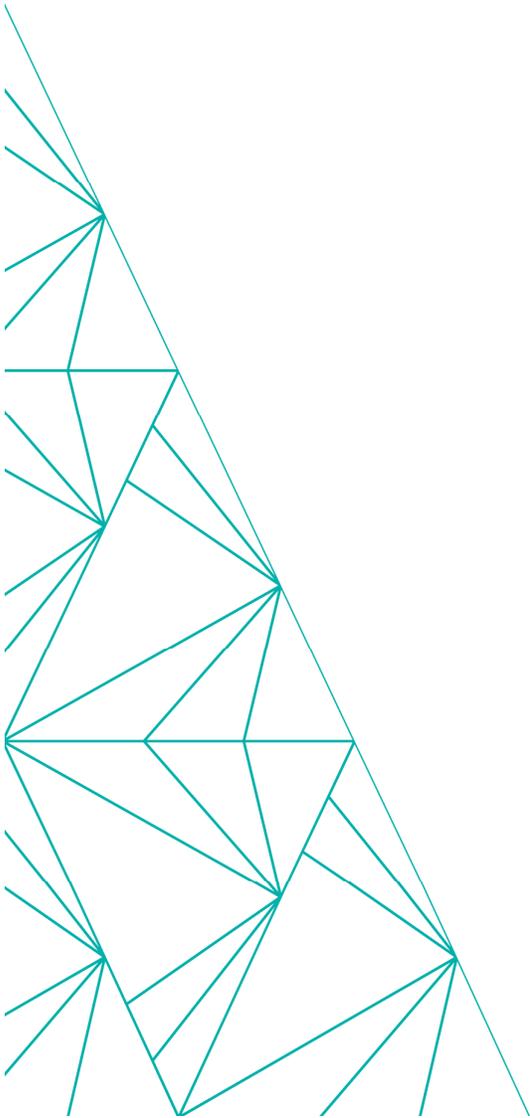


A guide to **Domestic Building Dispute Resolution Victoria**



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About Domestic Building Dispute Resolution Victoria

Domestic Building Dispute Resolution Victoria (DBDRV) is a government service which helps resolve domestic building disputes.

DBDRV makes it easier for builders and building owners to access a tailored dispute resolution service, which is free, fair and fast.

Qualified and experienced conciliators, known as Dispute Resolution Officers, help the clients of DBDRV reach a resolution to their dispute. The Dispute Resolution Officers are supported by independent building experts, known as Assessors.

The aim of DBDRV is to resolve disputes as informally as possible, but if agreement cannot be reached through conciliation, DBDRV has the legislative power to issue binding orders to finalise the dispute.

DBDRV is an independent business unit within the Department of Justice and Regulation and is part of the portfolio of the Minister for Consumer Affairs.

It is also a part of the broader framework of the Victorian Government's oversight of the residential building sector. Other Victorian Government stakeholders include the Victorian Building Authority, Consumer Affairs Victoria and the Victorian Managed Insurance Authority.

You can access further information about DBDRV on its website at www.dbdrv.vic.gov.au. Alternatively, contact the Building Information Line on 1300 55 75 59 between 9am – 5pm, Monday to Friday (excluding public holidays).

Chief Dispute Resolution Officer

The head of DBDRV is Ms Gina Ralston, Chief Dispute Resolution Officer (CDRO). Ms Ralston was previously the Director of the Dispute Settlement Centre of Victoria and brings extensive experience and expertise in implementing alternative dispute resolution services.

The CDRO is a new statutory position which is responsible for the operation of the domestic building dispute resolution scheme and reports to the Deputy Secretary, Regulation in the Department of Justice and Regulation.

How can DBDRV help?

DBDRV can help with a range of domestic building disputes including, but not limited to

- defective or incomplete building work
- delays to building work
- issues with payment
- other matters arising from a domestic building contract

Who is eligible for the DBDRV service?

You may be eligible to use our dispute resolution service if you are in dispute over domestic building work and you are a:

- builder,
- building owner,
- architect, or
- sub-contractor.

Does DBDRV charge fees for its service?

DBDRV does not charge for its dispute resolution service.

DBDRV aims to resolve domestic building disputes impartially, effectively and without expense to the parties in dispute.

Generally there will be no charge for a technical building assessment. However, in very limited circumstances, a fee may be charged for a technical report and this will be communicated to the relevant party on a case-by-case basis.

Applying to DBDRV

What criteria do you have to meet to access DBDRV services?

In broad terms, to be eligible for DBDRV services, your dispute must

- relate to residential (domestic) building work;
- include the building owner as one of the parties in dispute;
- not have been, or currently be subject to proceedings in the Victorian Civil and Administrative Tribunal (VCAT); and
- not relate to building work that is more than 10 years old.

How can you make an application to DBDRV? (Online Application)

If you have a domestic building dispute, visit www.dbdrv.vic.gov.au and apply using the online application form.

There is no fee to lodge an application.

Applications can also be provided by post. Requests can be made by contacting the Building Information Line on 1300 55 75 59 between 9am – 5pm, Monday to Friday (excluding public holidays).

What happens after you lodge an application?

After you lodge your application, you will be provided with a dispute reference number which will be assigned to your application and sent to you via email.

Once we receive your application, a Dispute Resolution Officer will contact you within five business days, talk to each party and then assess whether the dispute is suitable for conciliation. They will also provide you with details on how to prepare for conciliation.

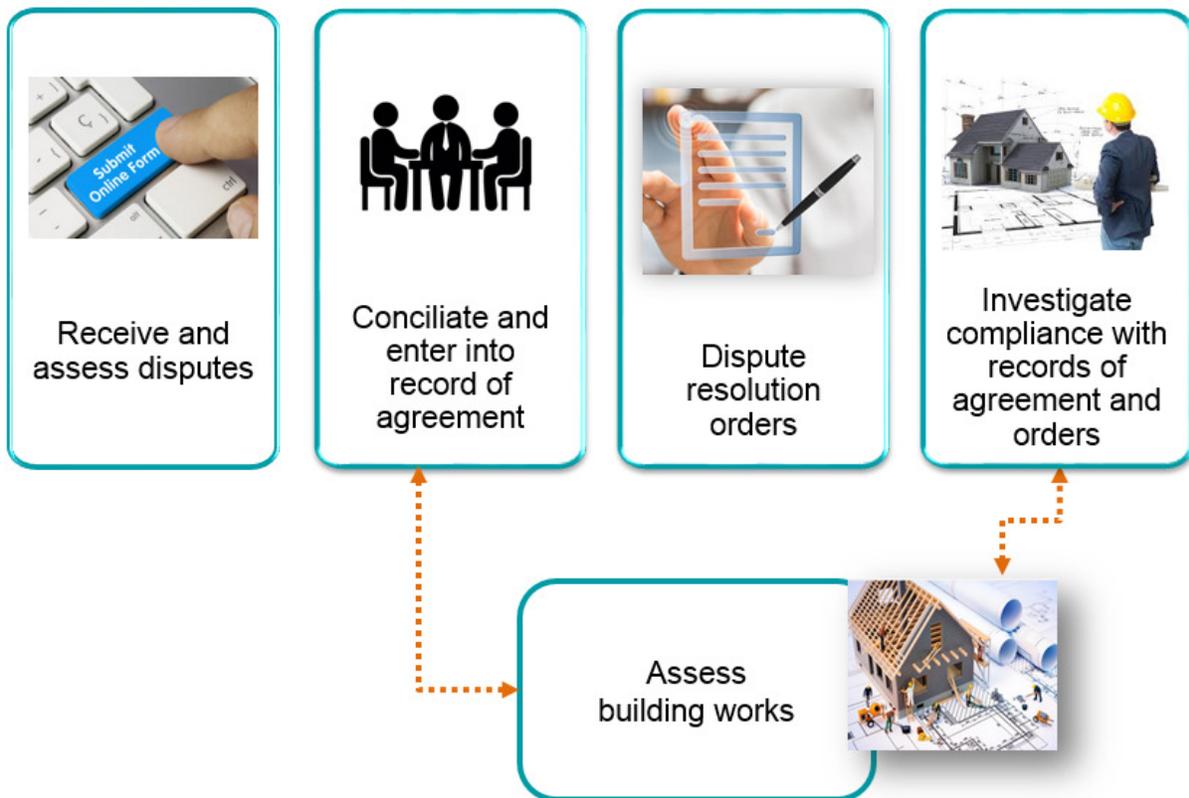
Can you go straight to VCAT?

No, you cannot go directly to VCAT.

All eligible domestic building disputes must first be lodged with DBDRV before any application may be made to VCAT.

VCAT will not accept your application unless it includes a DBDRV certificate of conciliation, confirming that the dispute was not suitable for our service or could not be resolved using our services.

Dispute Resolution Process



Step 1: Apply

Check the eligibility criteria then complete and submit the application form. At this stage, we only need some basic information including:

- Your contact details — we may need to call, email or send documents.
- The other party's details — you do not need to have all the details and we will not contact them without speaking to you first.
- Dispute details — at this stage we only need some basic facts about the dispute, such as the building address and type of dispute.

After you submit your application, you will receive a dispute reference number and confirmation email. The email will attach your completed application form along with information about next steps.

Step 2: Jurisdiction check

Once your application is received, a Dispute Resolution Officer will evaluate whether your dispute is covered by our service. If your dispute is not covered by our service, you will receive written confirmation of this. The Dispute Resolution Officer will also call to provide you with information about your options.

If your dispute is covered by our service, your application will progress to the initial assessment phase of the dispute resolution process.

Step 3: Initial assessment

A Dispute Resolution Officer will assess whether your dispute is suitable for conciliation. The suitability criteria against which your dispute will be assessed can be found in section 45C(3) of the *Domestic Building Contracts Act 1995*. These include what steps, if any, you took to resolve the dispute before applying to the DBDRV service and whether conciliation is likely to resolve the dispute.

During this step, the Dispute Resolution Officer may contact you, or the other party, to obtain further information.

If your application is *not* accepted as suitable for conciliation

A Dispute Resolution Officer will:

- let you know by telephone and explain your other options; and
- provide you and the other party with a certificate of conciliation (dispute not suitable). This certificate is necessary if a party subsequently applies to VCAT.

If your application is accepted as suitable for conciliation

A Dispute Resolution Officer will:

- notify both parties by telephone and discuss next steps; and
- provide both parties with the notice of decision to accept the application which will give an outline of the applicant's stated reasons for the dispute.

If the parties are willing, the Dispute Resolution Officer will help them come up with options to resolve the dispute at this early stage. If successful, the parties can enter into a record of agreement without the need to attend a conciliation conference.

Step 4: Prepare for conciliation

We tailor conciliation to suit the nature of the dispute and the circumstances of the parties. The Dispute Resolution Officer will work with both parties to assess and understand the dispute and determine the best way forward.

All parties to the dispute must attend conciliation, which will be facilitated by the Dispute Resolution Officer.

You may be asked to provide documents before the conciliation, including:

- domestic building contract;
- plans and specifications;
- architectural and/or engineering drawings;
- building permit;
- records of any inspections undertaken by the building surveyor;
- variation requests;
- extension of time requests; and
- relevant emails or correspondence between you and the other party.

Our independent, qualified building Assessors

As part of the dispute resolution process we may organise an independent building expert, known as an Assessor, to carry out a building assessment to determine whether or not domestic building work is defective or incomplete. This would be at no cost to the parties.

If the Assessor considers building work is not defective or incomplete, he or she must confirm this in his or her report.

An Assessor may also specify the cause of a defect, recommend how it should be rectified and indicate a reasonable timeframe within which the rectification work should be completed.

Assessor reports are admissible as evidence in VCAT or court proceedings.

When examining building work, our Assessors must also consider whether there have been any contraventions of the *Building Act 1993* or regulations. If there are contraventions, the Assessor must report them to the Victorian Building Authority.

Step 5: Conciliation

A conciliation conference may be held to bring the parties together to discuss the issues in dispute, in a safe and confidential environment.

Our qualified and experienced Dispute Resolution Officers will:

- facilitate the conciliation conference;
- encourage understanding and communication between the parties; and
- listen to you and the other party and help both parties come up with ways to resolve the dispute.

Conciliation may be conducted at our office at 222 Exhibition Street, Melbourne, onsite with an Assessor, or by teleconference or video link. We will liaise with you and the other party to determine the most suitable option.

All parties with authority to resolve the dispute must attend conciliation. Other attendees may include the Assessor or an interpreter. You or the other party may request to bring a support person or legal representative to the conciliation conference. We will consider such requests on a case-by-case basis.

If a party does not participate in conciliation

We expect the parties to participate in conciliation in good faith, that is, with an open mind and willingness to explore options to resolve the dispute. If you choose not to participate, we may do any of the following in your absence:

- appoint an Assessor to conduct a building assessment of the domestic building work in dispute;
- issue a dispute resolution order; or
- issue a certificate stating that the dispute is not suitable for conciliation.

In some cases, DBDRV may be entitled to recover the costs of obtaining an expert report. For example, if a builder fails to participate in conciliation and subsequently, a dispute resolution order is issued against the builder to rectify defective building work, the costs of that report are payable by the builder.

Step 6: Possible outcomes of conciliation

At the conciliation conference, one of the following outcomes may be achieved.

Agreement

If the parties resolve their dispute, this will be documented in a formal record of agreement signed by the parties. The record of agreement will contain the actions agreed to by the parties, together with the dates by which those actions must be performed.

Each of the parties will be provided with a copy of the signed record of agreement at the conclusion of the conciliation conference. It is the responsibility of the parties to honour the terms of the record of agreement.

Dispute resolution order

If the parties either partially resolve their dispute or are unable to resolve it, the Chief Dispute Resolution Officer may issue a dispute resolution order against one or both parties. There are significant consequences and costs for a party who does not comply with an order. See our dispute resolution orders page for more information.

Certificate of conciliation

If the parties are unable to resolve their dispute at the conciliation conference, the Chief Dispute Resolution Officer may issue the parties with a certificate of conciliation (dispute not resolved). Either party will then be entitled to make an application to VCAT.

What happens if I don't participate in conciliation?

If you do not participate in conciliation, or do not participate in good faith, this may be formally noted in a certificate of conciliation issued to the parties.

If you fail to participate in the dispute resolution process we may still, in your absence:

- appoint an Assessor to conduct a building assessment of the defective or incomplete work;
- issue a dispute resolution order; or
- issue a certificate stating that the dispute is not suitable for conciliation.

In some cases, a failure to participate by a builder will mean that the builder may have to pay DBDRV's costs of obtaining an expert report.

Also, if there are later proceedings in VCAT relating to the dispute, VCAT may make a costs order against the unsuccessful party if they did not participate in good faith in a conciliation conference arranged by DBDRV, or if they refused to participate in the conciliation conference.

Confidentiality

The conciliation process is confidential, with some limited exceptions mainly relating to building assessments. The Dispute Resolution Officer will explain this to all parties. In deciding whether to issue a dispute resolution order, the Chief Dispute Resolution Officer can take into account the conduct of the parties during the conciliation.

Dispute resolution orders

If the dispute is not resolved, the Dispute Resolution Officer will recommend to the Chief Dispute Resolution Officer whether it is appropriate to issue a dispute resolution order or issue a certificate of conciliation (dispute not resolved), enabling either party to make an application to VCAT.

If your dispute is not resolved by conciliation, or a record of agreement is not honoured, the Chief Dispute Resolution Officer (CDRO) may issue a dispute resolution order.

Before deciding whether to issue a dispute resolution order, the CDRO will consider:

- whether there has been any change in the nature of the dispute or the circumstances of the parties since the Assessor's report was given to the parties (if any) and the extent of any partial compliance;
- the conduct of the parties during conciliation;
- any direction to fix building work given under the *Building Act 1993*; and
- whether issuing a dispute resolution order would be unfair or unreasonable.

Orders DBDRV can make

A dispute resolution order issued against a building owner can direct the owner to:

- pay money to the builder for the completion of building work by a specified date;
- pay money into the Domestic Building Dispute Resolution Victoria Trust Fund, to be held until the defective or incomplete building work is fixed or completed; and
- refrain from doing anything that would stop the builder from complying with the contract or their warranty obligations.

A dispute resolution order issued against a builder can direct the builder to:

- rectify defective building work by a specified date;
- complete the building work in accordance with the contract by a specified date;
- rectify any damage, caused as a result of carrying out the building work, by a specified date;
- pay for the reasonable cost of another builder to rectify or complete the building work (if the building work is too defective to allow them to continue); and
- arrange for the building work to be carried out by a registered builder (if the building work in dispute should have been carried out by a registered builder) by a specified date.

Note: An order can include a finding that the building work in dispute is not defective or incomplete.

Challenging a dispute resolution order

Parties who have had a dispute resolution order issued against them may seek to have it reviewed by VCAT on the basis that:

- the description of the defective or incomplete building work is not accurate;
- the due date for carrying out the specified building work is not reasonable; or
- any requirement in the order to take or refrain from taking specific action is unreasonable.

If a building owner fails to comply with a dispute resolution order

If the builder has complied with the dispute resolution order and it includes a finding that the building work was not defective or incomplete, the builder is entitled to end the contract and apply to VCAT for:

- an order for damages as a result of the loss of work caused by the early end to the contract; and
- payment for works carried out to date.

If a builder fails to comply with a dispute resolution order

The building owner can notify us if a builder fails to comply with a dispute resolution order.

We will direct an Assessor to check the status of the building work and report on whether the order has been complied with. If the order has been breached, we will notify both parties by issuing a notice of breach of dispute resolution order.

The owner is then entitled to end the contract (as long as they have met any requirement in a dispute resolution order issued against them) and, if they wish, apply to VCAT for appropriate orders.

Builder challenging a breach notice

A builder who has been issued with a notice of breach of dispute resolution order can seek a review in VCAT by:

- challenging the accuracy of the DBDRV building assessment report on which the dispute resolution order is based; or
- proving that the dispute resolution order has since been complied with.

If a builder challenges the notice of breach of dispute resolution order, the owner must wait for the outcome of the review in VCAT before exercising their right to end the contract.

Review by VCAT

Parties involved in our dispute resolution process have the right to apply to VCAT for review of certain actions or decisions made by DBDRV:

More information can be found on the 'Building and Construction' section of the VCAT website www.vcat.vic.gov.au