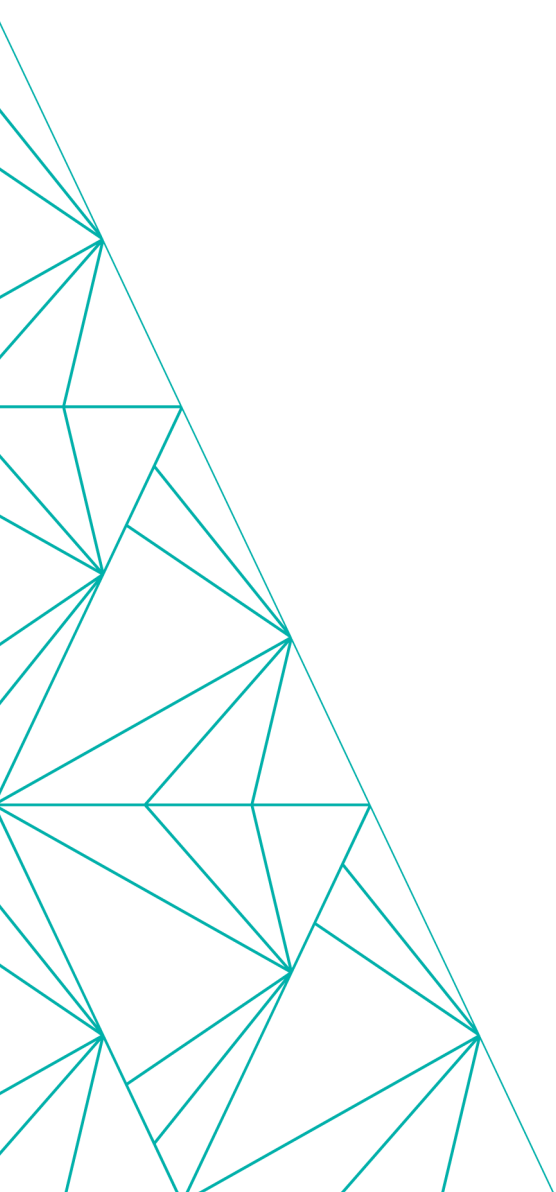


# A guide to **Domestic Building Dispute Resolution Victoria**



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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.

Ms Gina Ralston is the Chief Dispute Resolution Officer (CDRO) of DBDRV and responsible for the operation of the domestic building dispute resolution scheme.

You can access further information on the [DBDRV website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au). Alternatively, contact the Building Information Line on 1300 55 75 59 between 9:00 am – 5:00 pm, Monday to Friday (excluding public holidays).

## 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 or carrying out domestic building work.

## 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
- sub-contractor
- building practitioner, for example a surveyor, engineer or draftperson.

## 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
- not be between a building owner and single tradesperson engaged directly by the owner to carry out **only one** of the following types of work: plumbing, painting, plastering, tiling, insulating, glazing, installing floor coverings or electrical work
- be between the building owner and a builder, architect, subcontractor, or building practitioner
- 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.

You need to take reasonable steps to try to resolve the dispute directly with the other party before you apply for our services. We may refuse your application as not suitable for conciliation if you have not done so.

'Reasonable steps' depends on the circumstances, but generally you should:

- try to contact the other party to raise your concerns, repeatedly if they do not respond
- clearly inform the other party of the issues you are disputing, preferably in writing
- give the other party an opportunity to respond to you and carry out any agreed actions
- preferably advise them that you intend to lodge an application with DBDRV if the issues cannot be resolved.

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

If you have a domestic building dispute, visit the [DBDRV website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au) and apply using the online application form.

There is no fee to lodge an application.

Applications can also be submitted by post. Call the Building Information Line on 1300 55 75 59 between 9:00 am – 5:00 pm, Monday to Friday (excluding public holidays) to request an application form.

### 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.

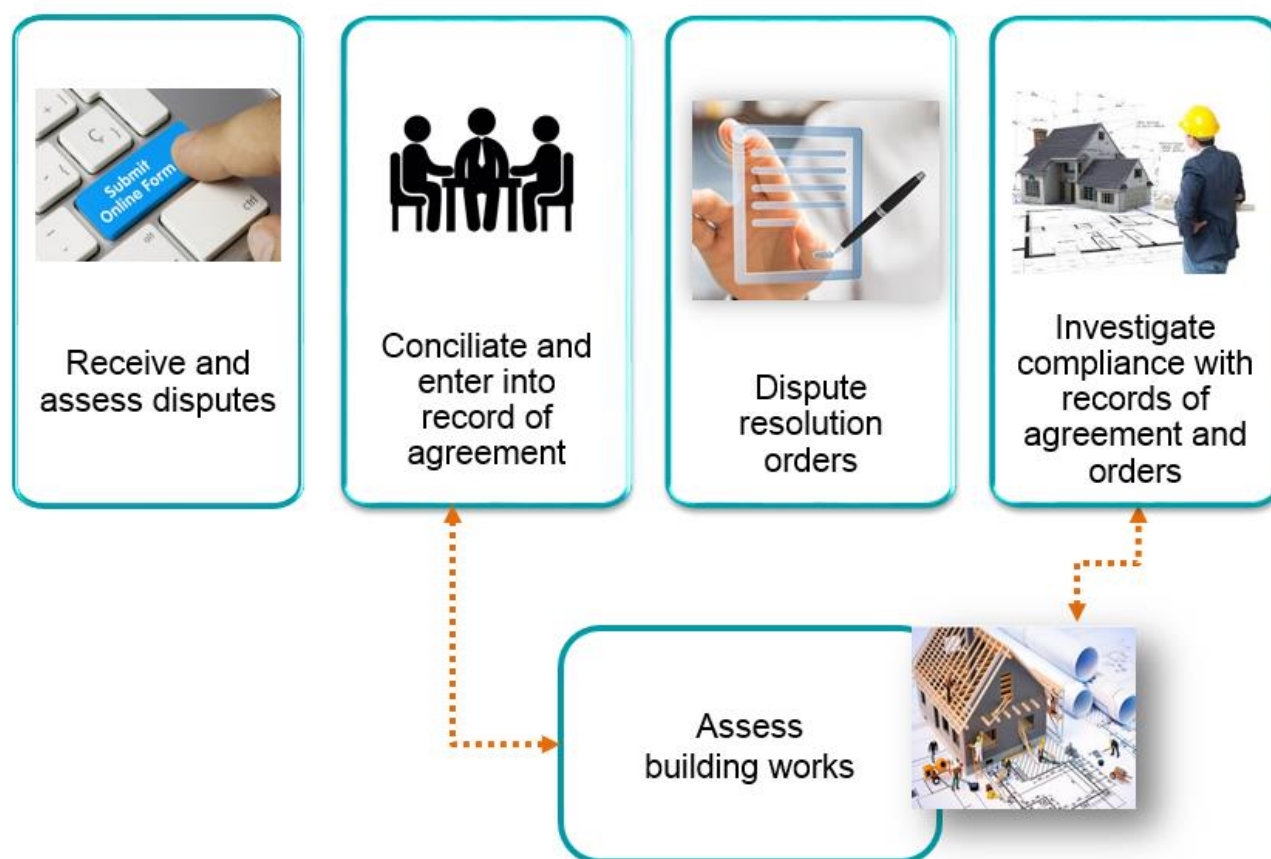
Once we receive your application, a Dispute Resolution Officer will attempt to talk to each party and assess whether the dispute is suitable for conciliation. They will also provide you with information on how to prepare for conciliation.

### 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 an 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 by conciliation.

## Dispute resolution process



### Step 1: Apply

Check the eligibility criteria on [our website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au). If you are eligible, complete and submit the application form. At this stage, we need basic information including:

- Your contact details — we may need to call, email or send you documents.
- The other party's details — we will contact both parties after you have lodged your application.
- Dispute details — we need basic facts about the dispute, including the building address and type of dispute.

After you submit your application, you will receive a dispute reference number and confirmation email attaching 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 within our jurisdiction, we will advise you and refer you to the most appropriate agency. If your dispute is within our jurisdiction, 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 complete list of suitability criteria against which your dispute will be assessed can be found in section 45C(3) of the *Domestic*

*Building Contracts Act 1995*. The criteria include the steps that have already been taken to resolve the dispute and the likelihood that conciliation will help resolve the dispute.

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

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

A Dispute Resolution Officer will:

- notify both parties and explain your options
- provide both parties with a certificate of conciliation (dispute not suitable). This certificate is necessary if a party wishes to apply to VCAT.

### **If your application is accepted as suitable for conciliation**

A Dispute Resolution Officer will:

- notify both parties and discuss next steps
- provide both parties with a notice of decision which outlines the applicant's stated reasons for the dispute.

## **Step 4: Prepare for conciliation**

We conduct conciliations to suit the nature of the dispute and the circumstances of the parties. Your 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 an experienced conciliator.

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

- your domestic building contract or agreement, and associated plans and specifications
- architectural and/or engineering drawings
- the building permit and plans
- records of any inspections undertaken by a building surveyor
- variation requests
- extension of time requests
- correspondence with the other party relevant to your dispute
- your occupancy permit (for newly built homes) or your certificate of final inspection (for renovations).

## **Step 5: Building assessment**

As part of the dispute resolution process we may organise a DBDRV assessor to examine the disputed building work. Assessors determine whether domestic building work is defective or incomplete. They may also specify the cause of a defect and a timeframe for any work required to rectify or complete the building work.

When examining building work, our building assessors must also consider whether there have been any contraventions of building legislation. If the assessor identifies any contraventions, these must be reported to the Victorian Building Authority. You can read more about our assessors on [our website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au).

The issues that will be assessed are determined by the Dispute Resolution Officer based on information provided by the parties. Not all issues raised may be assessed. Prior to the assessment, both parties will be notified about the full list of issues that will be assessed. Additional items will not be considered on the day.

Assessments are carried out in the presence of all relevant parties. Only the parties previously notified by the Dispute Resolution Officer should be present and it is important that all parties act respectfully throughout this process. Recordings of the assessment are not permitted.

During the assessment, the assessor will not advise whether they believe the disputed building work is defective or incomplete. The parties will receive an assessment report after the assessment is complete. They have five business days to make submissions in relation to the report, if they wish.

There is no fee for an assessment unless the party requests an assessment when the dispute has been rejected or the dispute was not resolved by conciliation.

## Step 6: Conciliation

The conciliation conference is facilitated by the conciliator and brings the parties together to discuss the issues in dispute, in a safe and confidential environment.

The conciliator will:

- facilitate the conciliation conference
- encourage understanding and communication between the parties, and
- listen to the parties and help them come up with ways to resolve the dispute.

Conciliation conferences will usually be held at our offices and on some occasions may be conducted with an assessor present, or by teleconference or video link. We will liaise with the parties before determining the most suitable option.

**All parties with authority to resolve the dispute must attend conciliation.** Other attendees may include the building assessor or an interpreter. The parties may request to bring a support person or legal representative to the conciliation conference. We will consider these 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 you failed to participate in conciliation.

## Step 7: 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. 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 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 their dispute, the Chief Dispute Resolution Officer may issue a binding Dispute resolution order against one or both parties.

There are significant consequences and costs for a party who does not comply with an order. View [our website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au) 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). The parties will then be entitled to make an application to VCAT, if they wish.

For more information about all possible outcomes, view [our website](http://dbdrv.vic.gov.au) (dbdrv.vic.gov.au).

## What happens if I don't participate in conciliation?

If you do not participate in conciliation, or do not participate in good faith, this will 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 you failed to participate in conciliation.

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

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, or if they refused to participate at all.

## Confidentiality

The conciliation process is confidential, with some limited exceptions. Your 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 your dispute is not resolved by conciliation, or a record of agreement is not honoured, the Chief Dispute Resolution Officer may issue a Dispute resolution order.

Before deciding whether to issue a Dispute resolution order, the Chief Dispute Resolution Officer will consider:

- the building assessment report
- whether there has been any change in the nature of the dispute or the circumstances of the parties since the assessor's report (if any) was delivered to the parties
- the conduct of the parties during conciliation
- any direction to fix building work given under the *Building Act 1993*
- the extent of non-compliance with the record of agreement, 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
- 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
- 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
- complete the building work in accordance with the contract
- rectify any damage, caused as a result of carrying out the building work
- 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)
- 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).

**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
- 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
- payment for work 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, 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](http://vcat.vic.gov.au/case-types/building-and-construction) (vcat.vic.gov.au/case-types/building-and-construction).