

Domestic building disputes at VCAT

Fact Sheet



This fact sheet covers:

- ✔ Types of domestic building disputes at VCAT
- ✔ What you should do if your builder or tradesperson has issued VCAT proceedings against you
- ✔ The kinds of orders VCAT can make

This fact sheet explains the types of building dispute claims that can be brought to VCAT and what you should do if your builder or tradesperson issues VCAT proceedings against you.

This fact sheet is relevant to homeowners who have domestic building disputes with their builder at VCAT because they:

- have been through the [Domestic Building Dispute Resolution Victoria \(DBDRV\)](#) process
- fit within one of the [exceptions](#) to the requirement that a matter must first go through the DBDRV process, or
- are responding to VCAT proceedings brought against them by their builder.

DOMESTIC BUILDING DISPUTE RESOLUTION VICTORIA

From 26 April 2017, except in limited circumstances, domestic building disputes between a homeowner and a builder must first be taken to DBDRV.

You should check with VCAT to see if you need to go to DBDRV before making an application to the Building and Property List.



1. Key Definitions

- ✔ **Domestic building work:** any work to erect, construct, renovate, improve, alter or repair a home.
- ✔ **A home:** any residential premises, including any part of a commercial building used as a residential premise.

2. Domestic building disputes at VCAT

Most domestic building disputes between you and your builder must first be taken to DBDRV, a free conciliation service supported by expert building assessors, before proceedings can commence at VCAT.

However, there are some exceptions. If an exception applies, you can make an application to the [Victorian Civil and Administrative Tribunal](#) (VCAT) without first taking your dispute to DBDRV.

DOMESTIC BUILDING LEGAL SERVICE - ELIGIBILITY CRITERIA

The Domestic Building Legal Service (**Service**) can only assist eligible homeowners with Certificates of Conciliation issued by DBDRV. Therefore, the Service cannot assist homeowners who have gone directly to VCAT.



2.1 Do I need to go to DBDRV first?

You can bypass DBDRV and go straight to VCAT with your domestic building dispute fall within one of the below exceptions. In all other circumstances, you must first go to DBDRV with your domestic building dispute before you can go to VCAT.

Exception 1: Disputes with a single tradesperson

You do not need to go to DBDRV first if your dispute is with a single tradesperson engaged directly by you to carry out **only one** of the following types of work:

- attaching external fixtures (including awnings, security screens, insect screens and balustrades)
- electrical work
- glazing
- installing floor coverings
- insulating
- painting or plastering
- tiling (wall and floor)
- plumbing work including drainage, fire protection work, gas fitting, irrigation (non-agricultural) work, mechanical services work (heating and cooling), refrigerated air conditioning work, roofing (stormwater) work, sanitary work, gas appliance conversion and servicing work or water supply work (but not work carried out by a gas company or water authority or drainage works by a council)
- erecting a chain wire fence to enclose a tennis court
- erecting a mast, pole, antenna, aerial or similar structure.

If your dispute is with a single tradesperson engaged by you to carry out only one of the above tasks, you can apply to VCAT directly by completing this [application form](#).

Exception 2: Seeking an injunction from VCAT

You do not need to go to DBDRV first if you are seeking an injunction from VCAT. An injunction is an order from VCAT that stops a party from physically doing something that causes damage to you.

You can read more about asking VCAT for injunctions [here](#).

Exception 3: Disputes that have been to BACV

You do not need to go to DBDRV first if your dispute has already been the subject of a complaint to BACV before 26 April 2017.

If this is the case, you will need to provide a letter from Consumer Affairs Victoria (**CAV**) to VCAT. The letter must state that BACV had received your complaint before 26 April 2017.

To obtain this letter from CAV, please call 1300 558 181 and follow the prompts for domestic building disputes.

Once you have obtained this letter, you can apply to VCAT directly by completing this [application form](#).

2.2 How do I go to VCAT after DBDRV?

2.2.1 If you would like to take your domestic building dispute to VCAT

If you have been to DBDRV, you can only take your domestic building dispute to VCAT if you have received a Certificate of Conciliation from DBDRV.

DBDRV will only issue a Certificate of Conciliation if:

- the dispute is unsuitable for conciliation, or
- the dispute could not be resolved.

2.2.2 If you would like to review a DBDRV decision

As a homeowner, you can also apply to VCAT to seek review of DBDRV decisions.

In the course of helping builders and homeowners resolve their contractual disputes, DBDRV may:

- Decide to issue or amend a dispute resolution order
- Decide to Issue a notice of breach of dispute resolution order
- Fail to issue a Certificate of Conciliation within the statutory required period of time, or
- Decide to pay money out of the DBDRV Trust Fund.

As a homeowner, you may seek review of the above decisions. However, you must do so within time periods specified in the *Domestic Building Contracts Act 1995* (Vic).

NOTE

In review proceedings, VCAT will only decide whether the DBDRV decision was made correctly. It will not hear your domestic building dispute.

WHAT HAPPENS NEXT?

For information about what to do if your builder is seeking merits review of a DBDRV decision, see our factsheet on **“What to do if a builder has sought merits review of a DBDRV order?”** at www.justiceconnect.org.au/buildingfactsheets



3. What to expect when VCAT opens the case

NOTE

If an application has been made against you, the VCAT documents will describe you as the Respondent.

VCAT will open a case once it has received an application that has been made validly and falls within VCAT's jurisdiction.

If you are the Applicant, VCAT will inform the Respondent that an application has been made against them and inform you both of the next steps.

If you are the Respondent, you will be informed that a case has been opened when you receive a copy of the application from VCAT. The correspondence from VCAT will inform you of the next steps.

If you need help understanding the documents you have received, please contact the [Domestic Building Legal Service](#) on 1800 727 550. If you are eligible, you may receive a once off one hour appointment with a volunteer lawyer who will help you understand the documents.

CAUTION

Read the documents you receive from VCAT carefully. Sometimes, you will be required to send VCAT a response within a certain timeframe. This will be clearly stated in VCAT's notice to you. You should file your response within the stated timeframe.



3.1 Instructions from VCAT

In VCAT, domestic building disputes are dealt with differently depending on the amount claimed.

Amount claimed	Steps followed
Less than \$25,000	A member reviews the application, and usually schedules a hearing or mediation without orders being made.
Between \$25,000 and \$100,000	VCAT usually schedules a mediation first.
More than \$100,000	A member reviews the application, and may schedule a mediation or a directions hearing .
Counterclaim	VCAT may vacate any scheduled hearing and schedule for a mediation or a directions hearing .

WHAT ARE HEARINGS AND MEDIATIONS?

For information about types of hearings, see our fact sheet on "Going to VCAT".

For information about mediation, see our factsheet on "Alternative Dispute Resolution".

Our factsheets are available at justiceconnect.org.au/buildingfactsheets.



3.2 Responding to VCAT

If you are the Respondent, you may have to provide a response to VCAT. A response may also be called a defence or 'points of defence'. A response tells VCAT whether you agree or disagree with the Applicant and what they said in their application.

Sometimes, you may also be required to provide witness statements or other supporting documents.

WHAT HAPPENS NEXT?

For information about the preparation of VCAT documents, see our factsheet on “**Preparing VCAT Documents**” at justiceconnect.org.au/buildingfactsheets



3.3 Lodging a counterclaim

If you are a Respondent, and you believe that you also have a claim against the Applicant, you can lodge your own claim with VCAT. This is called a counterclaim.

A counterclaim is different from your defence to the builder's claim. A counterclaim is your own separate application where you make a claim against the other party. If you simply want to defend the builder's claim against you, you can simply respond to their claim.



TIP

When counterclaiming, use the reference number of the application against you. This will ensure both claims can be heard together.

For example, your builder may have claimed that you have failed to make a payment that is due. If you have already made the payment, you may simply defend the claim by stating that you have made the payment. However, if the builder has also failed to complete work or has carried out defective work, you may choose to lodge a counterclaim with VCAT.

3.4 Attending the hearing

Whether you file a response or not, you should attend the hearing. This is because VCAT can make a decision even if you are absent. Any decision VCAT makes in your absence is called a **default judgment**.

The following steps will best equip you to tell your own side of the story on hearing day.

1. Prepare early –

Have a look at the hearing preparation checklist in our factsheet “**Tips for hearing day**” at justiceconnect.org.au/buildingfactsheets.

2. Follow VCAT procedures -

There may be legal consequences if you do not. Have a look at the rules and procedures set out in VCAT's [Practice Notes](#).

3. On hearing day -

Make sure you are at the hearing venue at least 30 minutes early to pass through security and locate your hearing room.

During the hearing, the member and the other party may ask you and your witnesses questions. You may also ask the other party and their witnesses questions.

WHAT HAPPENS NEXT?

For information about preparing for and attending your hearing, see our factsheet on “**Tips for Hearing Day**” at justiceconnect.org.au/buildingfactsheets.



3.5 Fees

VCAT charges a fee when you lodge an application in the Building and Property List. The amount of the fee will depend on the value of your claim against the builder.

You do not have to pay a fee if an application is made against you. However, you may need to pay a fee to lodge a counterclaim.

If your matter proceeds to hearing, you may also be required to pay hearing fees. The amount of hearing fees you may need to pay will depend on the amount you are claiming, and the number of days the hearing goes for.

BUILDING AND CONSTRUCTION FEES

VCAT’s application fees for Building and Construction claims can be viewed [here](#).

The schedule sets out application fees and hearing fees, which will differ depending on whether you have a Health Care Card.



4. What orders can VCAT make?

After the hearing, VCAT will make a decision. This is called an **order**.

VCAT will give you the order on the day or send it to you at some point after the hearing.

The order is a formal instruction on how the dispute is going to be resolved. It is legally binding.

VCAT can make two kinds of orders:

- a **monetary order**, which means a party must pay another party money
- a **non-monetary order**, which means a party must do or not do something (for example, complete construction already commenced)

4.1 What can I do with VCAT orders?

If either you or your builder do not follow the order made by VCAT, it is up to one of you to enforce the order through the courts.

If you want to appeal a VCAT decision, you must apply to the Supreme Court of Victoria within 28 days of the decision being made.

More information about appealing a VCAT decision to the Supreme Court of Victoria is available [here](#).

! CAUTION

Appeals of VCAT decisions are limited to questions of law. This has a specific legal meaning, and you should seek legal advice before commence legal action at the Supreme Court of Victoria.

Resources

Related Resources

- ✔ [Domestic Building Claims \(VCAT\)](#)
- ✔ [Domestic Building Dispute Resolution Victoria \(DBDRV\)](#)
- ✔ [Victorian Building Authority](#)
- ✔ [Consumer Affairs Victoria](#)
- ✔ [Domestic Building Legal Service Factsheets](#)

Legislation

- ✔ *Victorian Civil and Administrative Tribunal Act 1998*
- ✔ *Domestic Building Contracts Act 1995*
- ✔ *Australian Consumer Law and Fair Trading Act 2012*
- ✔ *Building Act 1993*
- ✔ *Domestic Building Contracts Regulations 2017*

A Domestic Building Legal Service resource. Access more resources at www.justiceconnect.org/building

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