

The hearing allows all parties a chance to make submissions, to give and hear evidence, ask questions of you and your witnesses (if any), and provide supporting documents. A Building Appeals Board panel of members listens to submissions and evidence, and makes a decision, either at the end of the hearing or in writing as soon as possible afterwards. You may have to attend more than one hearing depending on your case.

Before the hearing day

You are requested to provide the names of the people attending the hearing and the capacity in which they are attending, at least two (2) business days prior to the hearing.

On the hearing day

The hearing is the time and place that the Building Appeals Board ('BAB') hears the parties argue their case and makes a decision.

Make sure you are at the hearing venue at least 30 minutes early to pass through security and locate your hearing room. If you arrive late there may be orders made against you.

The BAB is less formal than a court, but there are still some rules to follow and things to do when you attend a hearing.

Our cases are heard by members. You may call a member 'Sir' or 'Madam'. If their name appears on the table in front of them, you may also call them 'Ms' or 'Mr' and their family name.

Your right to a fair hearing

The applicant and respondent must attend personally or be represented at the hearing. The interested parties may attend personally or be represented. All parties have a right to a fair hearing, and it is the member's job to make sure that happens. The member explains what to do

as the case goes along. If you are not sure what to do, ask the member.

Hearings are open to the public

All our hearings are open to the public unless the member orders them closed. If you want your hearing to be held in private, or your name or the name of a witness suppressed, you must make that request in writing before the hearing or at the beginning of the hearing.

Order of proceedings

Usually a hearing proceeds in a structured way. The order in which parties present their case can be different according to the case type. Depending on the case, the Applicant or Respondent may be the first party to state their case, provide evidence and call witnesses.

The member may ask the applicant and its witnesses questions especially where there is no respondent. The other parties may also ask the applicant and the applicant's witnesses questions. This is called cross examination. The respondent will then give evidence as will the witnesses for the respondent and the applicant may ask them questions.

Everyone must be polite. We expect everybody in the hearing to treat others in the hearing with courtesy and respect.

Mobile phones, electronic devices and photography and recording in hearings

Your mobile must always be switched off or on silent inside the hearing room. You must get the member's permission to:

- make or take phone calls; or
- use an electronic device to instantly publish; for example, posts on social media such as Facebook or Twitter, and live blogging or broadcasting.

You can use a laptop or tablet for legal business related to the hearing, but it must not disrupt proceedings.

The member has the final say about using mobile and other electronic devices during a hearing.

If you do not comply with these directions or the member's instructions, you may be asked to leave the hearing room or building.

Who pays for my legal costs?

At BAB, parties are expected to bear their own costs, unless we order otherwise. BAB may only award costs if it is fair to do so.

If you would like someone else to pay your legal costs, tell the BAB member overseeing your case during the hearing. BAB will typically include on a final determination an order allowing the parties to make an application for costs of the proceedings within a specified time period.

Examples of circumstances where an order for costs may be made include:

- where a matter was brought to BAB without merit;
- where a matter was brought to BAB to harass, annoy or distress someone;
- where a matter was brought to BAB without a serious purpose;
- where someone has unreasonably prolonged a hearing;
- where someone deceived BAB or others involved in a case; and
- where the application made is not well supported, such as by fact or law.

Clause 17 of Schedule 3 of the *Building Act 1993* governs BAB's power to award costs.

If you resolve the matter before the hearing day

If the proceeding is resolved between the parties more than 2 business days before the hearing day, you must inform BAB in writing copying in all parties. BAB will then advise if the parties are required to attend on the day of hearing.

If the proceeding is resolved less than 2 business days prior to the hearing day, all parties should be prepared to attend the hearing before BAB on the hearing day and verbally request the matter be withdrawn.

If you cannot attend the hearing

If it is difficult for you or your representative to come to a hearing in person – for example, if you live outside of the metropolitan area or you have a disability – you may be able to attend by telephone. Apply by emailing BAB registry and copy in the other parties. Make your request at least 2 business days prior to the hearing.

If you need to vary/adjourn a hearing date

If a party or parties are not able to conduct the hearing on the scheduled hearing day and an adjournment is required, you must send written notification to all other parties to the proceeding and to the BAB at the earliest opportunity.

You must indicate the reason for the adjournment request and indicate when you and your witnesses are able to conduct the hearing. If all other parties agree to the adjournment request, the Board will confirm in writing that the hearing has been adjourned to a future date. If all other parties do not agree to the adjournment request, the BAB will consider the request and determine whether the hearing will be adjourned.

After the final hearing

After the panel hearing the matter makes a determination, the BAB will issue an order. We either give the order verbally on the day of the hearing or typically send the written determination to you afterwards.

The order is a legal document that tells parties how the case has been decided and what action they must take.

All parties must act according to the terms of the order. For example, if we order that a party must make a payment, they must do so by the deadline given in the order. If no date is given for the payment, it must be made immediately.

When we give a written determination, we send a copy to the parties. Some determinations are also available on the Australasian Legal Information Institute website (AustLII) - <https://www.austlii.edu.au/cgi-bin/viewdb/au/cases/vic/VBAB/>.

BAB Determinations and Orders

BAB decides a matter after hearing the evidence, looking at the documents provided by each party and considering how the law applies to your case. Sometimes the other party gives us a document that explains how they think we should make our decision. This document is usually called 'submissions' or 'contentions'.

Well before the hearing you must give the other parties copies of all documents, reports and other materials that BAB may take into account when making a decision.

When we make a determination about a case or a step in a case, we also make an order. Order is the legally correct term for determination.

BAB's Determination is final

Our decision is final and must be followed by all parties. The only exceptions to this are when one of the following applies:

- when the determination is set aside on appeal by a party to the Supreme Court on a point of law; or
- the order contains a mistake and is corrected under Sch 3, Cl. 18 of the *Building Act 1993*.

Monetary Orders and non-monetary Orders

An order may be monetary or non-monetary. A monetary order requires a party to pay money to another party.

All other orders are called non-monetary orders. If the other party does not follow the order, it is up to you to enforce it through a court. BAB does not enforce the decision or order.

Enforcing a monetary Order

When BAB makes a monetary order, we give a copy to both parties and the money must be paid immediately or by the deadline given in the order. If the party fails to pay as ordered, contact them to make sure they received and understood the order.

If they still do not pay or you cannot contact them, you may ask the appropriate court to enforce the order. An order will only be enforced at your request.

Where the amount to be paid is \$100,000 or less, you may ask the Magistrates' Court of Victoria to enforce the order. To do this, you will need to file two documents with your local Magistrates' Court:

- a copy of the order certified by BAB to be a true copy. You can request this by contacting us; and
- an affidavit stating the amount not paid under the order (called an Affidavit in support of enforcement of a monetary order).

When you file these documents, the BAB order becomes an order of the Magistrates' Court and may be enforced accordingly. For more information about how the Magistrates' Court enforces orders and court locations, visit the Magistrates' Court of Victoria's website.

Where the amount to be paid is over \$100,000, you can enforce the monetary order in either the County Court or the Supreme Court.

Enforcing a non-monetary Order

For a non-monetary order to be enforced in the Supreme Court, that court will require all the following:

- a certified copy of the order from BAB;
- a certificate from BAB stating that it is appropriate for filing in the court; and
- an affidavit about the non-compliance.

To get the certified copy of the order and certificate from BAB, make a request in writing to the registry.

Fixing a mistake in a BAB Order

If you notice a mistake in a BAB order you can ask for a correction order. Our power to correct a mistake is known as the slip rule. It helps us to avoid unfairness that might happen because of a simple mistake.

Mistakes covered by the slip rule may include typos, misspellings, missing information, miscalculations or inaccurate descriptions.

If you learn of a mistake in an order or decision, you must write to BAB and the other parties in the case as soon as possible and explain why you think the order contains a mistake.

Further information

If you have an inquiry, please email
registry@buildingappeals.vic.gov.au or call 1300
421 082.