

Steps in the determination process

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MBIE follows a set process when considering and issuing determinations. The key steps are explained below.

MBIE is required to issue the final determination within 60 working days of receiving the application, or longer if all parties agree. The process will take longer than 60 working days if further information is required in order for MBIE to make a decision.

MBIE may need additional information from you to support a determination. You can ask for an extension if you are unable to provide the information in the timeframe requested, but MBIE can make the determination without it if the information cannot be provided in a reasonable timeframe.

Applying for a determination includes a link to the application form and also gives reasons your application may be declined.

MBIE receives and considers the application

When MBIE receives an application for a determination the first step is to decide whether or not to accept it. If the Building Act applies to the dispute or question, it is a valid application by a relevant party and there are no other reasons not to proceed, we will confirm our acceptance to the applicant. We will also check the correct fees have been paid before proceeding and we may contact the applicant to clarify the matter being disputed.

The applicant should also have contacted the other parties at the same time as applying to MBIE and have sent them application forms to complete and send to MBIE. We will advise these parties whether or not the application has been accepted and what to expect.

Assessment

Our next step is to look at all the information provided with the application. We may need to ask for clarification or for any other details that might help us make a determination. The information provided by the parties should contain all the key information that is necessary to inform the decision.

Determinations often concern technical matters and there may be circumstances where we need to engage independent experts to investigate and report on the matter. However, MBIE is not bound by the expert's recommendations. Copies of any expert's report will be sent to the parties for comment.

Draft determination sent to parties

MBIE will consider all the information, including any expert reports, and create a draft of the determination. The draft will be sent to all parties for comment, to correct any errors or omissions or provide further relevant information.

Holding a technical meeting when appropriate

The decision to hold a technical meeting or not will be at the Manager's discretion.

Legal representation is not necessary, although you can have a lawyer, technical advisor or agent attend and speak on your behalf if you wish. MBIE will not make a decision at a technical meeting.

If a technical meeting is held this will usually be after the release of a draft determination. Sometimes site meetings are also held to clarify technical issues arising from the determination.

Final determination issued

We will issue the final determination after all parties have had the chance to comment on the draft and after any hearing. The final determination will respond to matters raised in response to the draft determination (or at the hearing, if there was one).

The final determination will appear on MBIE's website as public information.

If you wish to seek a clarification you must do so within 20 working days from when the final determination is issued.

Appealing the determination

If any party disagrees with the determination they have the ability to take the matter to court.

- The District Court can decide whether the determination decision was correct – this is called an appeal.
- The High Court can decide whether the determination-making process was correct and fair – this is called a judicial review.

An appeal can only be requested after MBIE has issued the final determination. If you want to appeal the decision you must do so within 15 working days from when the determination was issued (or clarified, if relevant). You may consider seeking legal advice. The court's decision will be final.

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- with compliance with the Building Act, it is published under section 175 of the Building Act
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