

A photograph of various construction tools including a yellow hard hat, a hand saw, a hammer, and a paintbrush, all resting on a wooden plank surface. The image is partially covered by a blue curved graphic at the top and bottom.

Guide to Resolving Residential Building Works Issues

Consumer, Building and Occupational Services
Department of Justice



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Part I: Introduction

I. Background

About the Guide

This *Guide to Resolving Residential Building Works Issues* has been developed to help resolve issues related to residential building work in Tasmania between home owners and Building Services Providers. The Guide covers:

- contracts
- defective work
- licence or conduct complaints.

Additional support

Consumer, Building and Occupational Services (CBOS) is a division of Tasmania's Department of Justice. CBOS regulates the consumer, building, construction and occupational licensing sectors by promoting education, information, compliance and enforcement services.

Homeowners and Building Services Providers are expected to work together to resolve any disputes arising before, during, or following building works. CBOS can help if you are unable to resolve your dispute.



Part 2: Resolving Works Issues

1. Introduction

While most parties are satisfied at the end of a residential build, disputes do sometimes arise between an owner and their Building Services Provider. Usually, the dispute concerns:

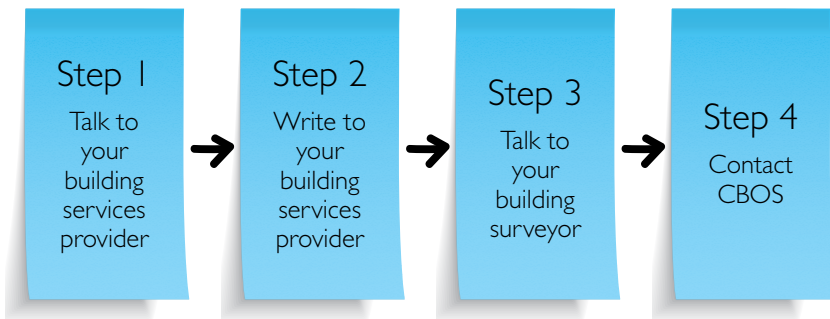
- the performance or quality of the residential building work carried out, or
- a residential building work contract, or
- the failure of either the Building Services Provider or the owner to meet their obligations (including requirements under all applicable legislation or national building standards).

There are a few steps you can take to resolve a dispute. These are described in the following sections of this Guide. It is important to know that if you are unable to resolve an issue on your own, support is available.

While primarily aimed at owners, this Guide also provides useful information for Building Services Providers who may be involved in residential building works disputes.

2. Resolving issues—all building work

The steps below describe actions an owner should initially take to try to resolve any issue that arises during building work.



Step 1 – Talk to your Building Services Provider

Having a good relationship with your Building Services Provider is important to ensure the building process runs smoothly. Try to develop and maintain positive communication with your Building Services Provider during a dispute. It is much harder to deal with an issue if you are unable to speak with the other party.

Speak to your Building Services Provider about your concerns. They can be about the contract or any aspect of the work being carried out. You may be able to resolve the issue quickly and easily. Keep notes so that you can be clear about the discussions and decisions.

Giving your Building Services Provider the opportunity to resolve the issues is the best first step to solving a dispute.

Step 2 – Write to your Building Services Provider

If you are not satisfied with the outcome of discussions, notify your Building Services Provider of your concerns in writing.

It is very important to keep a record of any communication between yourself and your Building Services Provider.

These records are evidence as to what is agreed, and what steps have been taken to resolve the issue.

Step 3 – Talk to your Building Surveyor

If communication between yourself and the Building Services Provider has broken down, speak to your Building Surveyor. A Building Surveyor is responsible for representing your best interests in ensuring that building design and building work meets the National Construction Code and Australian Standards. They may issue a written direction, notice and order to rectify the building work so that it is compliant with the building permit and plans.

Step 4 – Contact CBOS

Contact CBOS if you are not satisfied with the outcome of your own dealings with your Building Services Provider and Building Surveyor. All parties to

the building contract can access advice and resources to help in resolving the dispute. At this stage, this is generally an informal process—initiated by a phone call or email requesting help or advice about an issue.

3. Resolving issues—defective building work

Complaints against Building Services Providers for defective building work must be received within:

- 12 months of practical completion for notifiable and permit work, or
- 2 years for low-risk building work.¹

The *Building Act 2016* defines 'defective work' as building work, plumbing work or demolition work that:

- does not comply with the *Building Act 2016* or the National Construction Code in force at the time
- is discovered during an inspection of the work under the *Building Act 2016*, or at any point after the completion of the work.

The Guide to Standards and Tolerances may be used to help identify defective work.

The following steps describe what an owner should do to try to resolve any issue that relates to defective building work.



¹ If the building works are outside 12 months for notifiable or permit work, or 2 years for low-risk work, a person may be able to commence a building action through the Courts for damages incurred as a result of defective building work. However, time limits do apply. You may wish to seek independent legal advice in these circumstances.

Step 1 – Complete steps to resolve a building dispute

If you believe that building work is defective, follow the general dispute-resolution steps outlined above in *Part 2.2*:

- talk to your Building Services Provider
- write to your Building Services Provider
- talk to your Building Surveyor.

Step 2 – Talk to the Permit Authority at your local council

If your Building Surveyor has issued a notice and an order for work to be rectified, and this order has not been complied with, the Building Surveyor must refer the matter to the Permit Authority at your local council. You may also wish to speak to the local council about your concerns. The council can issue a notice and an order; or may elect to pursue the matter through the Courts.

Step 3 – Lodge a complaint with CBOS

Lodge a complaint with the Director of Building Control in CBOS if you are not satisfied with the outcome of your dispute.

Your complaint against a Building Services Provider for defective work should contain:

- a cover letter outlining the complaint
- a report from a Building Surveyor, or equivalent industry professional, showing the work to be defective
- the residential building works contract, including all plans, drawings and specifications
- the Certificate of Practical Completion
- the Occupancy Permit (if applicable)
- copies of relevant correspondence between you, your Building Services Provider or other related parties
- supporting photographic evidence
- other relevant information including statutory declarations that may support the application.

Outcome

The Director of Building Control will consider your Application of Complaint and will accept or reject the complaint. You will be notified of the outcome.

A complaint may be rejected if:

- there has been no reasonable attempt to resolve the dispute
- the application does not appear to contain any grounds for a complaint
- the dispute is not genuine, or it is false or misleading
- there are any other actions or proceedings already underway in relation to the matter.

If the complaint is accepted, a Compliance Officer will investigate the complaint and determine what remedy is applicable. Remedies include issuing an infringement, prosecution, or issuing an order for a builder to rectify defective building work.

4. Resolving issues—contracts

A free mediation service is available for disputes relating to residential building work contracts:

- worth \$20,000 or more; and
- signed on or after 1 January 2017.

A contractual matter can relate to:

- defective building work, or
- incomplete work, or
- time to complete the build.

Complaints relating to the residential building work contract, including warranties, can be mediated for the six years after the date of practical completion. This is the length of the statutory warranty period. See *Key Definitions* for a definition of date of practical completion.

To make a complaint about a contractual issue, you will need to issue the Building Services Provider with a Notice of Dispute.

This notifies the Building Services Provider that if they do not take steps towards resolving the building dispute within a specified timeframe, Compliance and Dispute Resolution Officers from CBOS will initiate a mediation process.

If mediation fails to resolve the contract issues, you may apply to have a building dispute adjudicated by an independent expert panel. Applications for Adjudication must be lodged with the Director of Building Control within 12 months of the date of practical completion.

The following steps (summarised in Figure 1) describe actions an owner or Building Services Provider should take to try to resolve any disputes issuing to contracts. If you have taken the steps outlined in Sections 2 and 3 and have been unsuccessful you may submit an Application for Mediation.

Figure 1 – Contract resolution process



Step 1 – Mediation

An Application for Mediation can be lodged by either the owner or Building Services Provider.

A complaint about building work is assessed as to whether the work has met the agreement stated in the contract. The assessment also considers the quality of the work that has been performed. Common complaints include work or a service that is not carried out in a proper and skilled manner; is faulty, or does not comply with the Guide to Standards and Tolerances.

Lodge application for mediation of a building contract works dispute

You can request mediation if you have made a reasonable attempt at resolving your contract dispute but are not satisfied with the outcome. Request mediation by submitting an application form and provide supporting evidence.

Your application must contain:

- evidence that a notice has been given to the other party. The notice must detail the concerns with the building work and state the intention to lodge an application for mediation
- the building works contract including all plans, drawings and specifications
- the signed checklist from the Residential Building Consumer Guide
- all variation agreements (if applicable)
- the Certificate of Practical Completion
- the minor Defects Document
- the Occupancy Permit (if applicable)
- correspondence between you and your Building Services Provider regarding the issue (if applicable)
- photographic evidence (if applicable)
- a report from a Building Surveyor, or equivalent industry professional, showing the work to be defective
- further information, including statutory declarations, that may support an application for mediation.

Contact CBOS to get further advice about the application forms and information required to lodge an Application for Mediation with the Director of Building Control.

Notification of outcome

After you have lodged an Application for Mediation, the Director of Building Control will accept or reject the mediation request. You will be notified within 10 business days whether the dispute is to be mediated.

The Director of Building Control is most likely to accept the application if:

- the contract was signed on or after 1 January 2017
- it is made within six years of the date of practical completion
- it contains proof that you have given prior notice of the application to the Building Services Provider and have made reasonable attempts to resolve the dispute
- the application contains a reasonable level of evidence to support the allegations
- it is not considered to be false or misleading
- it is not the subject of an existing complaint under another Act, or currently has an application for adjudication lodged about the matters covered by the application
- it is not subject to proceedings in a court about the matters covered by the application
- the issue has not been the subject of a previous application that has been refused or dismissed.

Mediation of dispute

After the Director of Building Control accepts the application, both parties have 20 business days to reach an agreement.

CBOS will notify both parties in writing about the voluntary mediation. This includes arrangements for the mediation process to take place, and how to work with the mediator to reach an acceptable compromise to the dispute.

Success will depend on both parties' goodwill during the mediation process.

If the parties fail to reach an agreement within the timeframe, the mediation will be terminated.

Outcome

Once an agreement has been reached between the parties, or the timeframe for mediation has lapsed, the parties will be notified of the outcome.

The Director of Building Control has the right to register or refuse any agreement made during the mediation process. If the parties reach an agreement, and the Director of Building Control agrees to register it, documentation setting out the terms of the agreement will be signed by all parties. This agreement is legally binding and enforceable.

Step 2 – Work-completion claim process

If mediation fails and the dispute is within 12 months of practical completion, the owner may serve the Building Services Provider with a Work-completion Claim. This requires work to be completed, within a specified period, and in accordance with all contract terms.

A Work-completion Claim is a written notice detailing:

- the unsatisfactory or defective work
- failure to complete work according to the contract terms (such as unsatisfactory standards or materials used)
- breaches of warranties, or
- if work carried out has resulted in damage to other work/buildings.

To submit a Work-completion Claim:

- Go to the CBOS website at www.justice.tas.gov.au to download a Work-completion Claim form
- Fill out the form
- Provide the completed form to your Building Services Provider

This form advises the Building Services Provider that, if they do not comply with the issues raised, you may seek adjudication.

Step 3 – Adjudication process

Only an owner can apply for a building works contract dispute to be adjudicated.

A matter can be adjudicated by an independent expert panel if:

- the owner has attempted mediation, which has failed
- the owner has served the Building Services Provider with a Work-completion Claim, which has not been adequately completed within the specified time period
- the building work is within 12 months of practical completion.

Lodge an Application for Adjudication with the Director of Building Control within 20 business days after the last day specified on the Work-completion Claim.

An Application for Adjudication must:

- be in writing
- identify the applicant and the Building Services Provider to whom the application relates
- include a copy of the Work-completion Claim served on the Building Services Provider
- specify the residential building work, specified in the Work-completion Claim, that has not been satisfactorily completed and to which the application relates
- be accompanied by the prescribed application fee.

It may contain any submissions relating to the claim.

When a formal Application for Adjudication is received, the Building Services Provider will be given the opportunity to respond.

The Director will decide whether to accept or reject the application after receiving all the information from both parties.

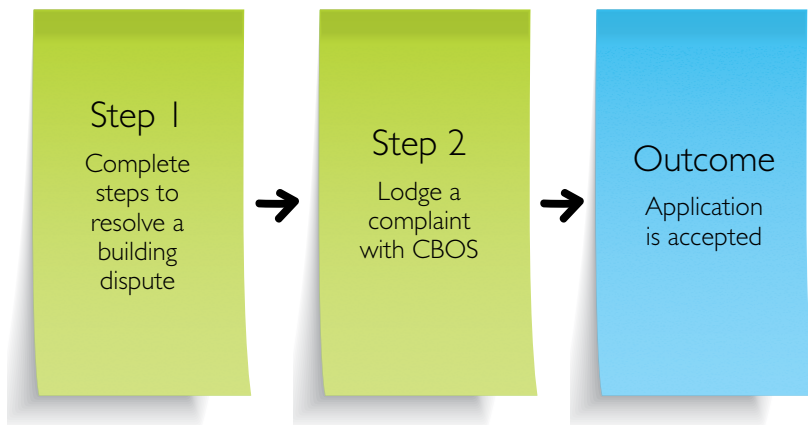
If the application is accepted, the parties will be notified and the dispute referred to an independent expert panel for adjudication. Orders made by an adjudication panel are enforceable by a Court.

5. Formal complaints (other matters)

The Director of Building Control can receive formal complaints relating to the conduct of a licence holder. For complaints outside of this time limit, you will need to seek independent legal advice.

Building Services Providers must be licensed to work in the building and construction industry in Tasmania. A licence holder must meet conduct and behaviour requirements under the *Occupational Licensing Act 2005*.

If a licence holder fails to meet these requirements, a complaint may be lodged with the Administrator of Occupational Licensing at CBOS.



Step 1 – Complete steps to resolve a building dispute

If you have concerns about the professional conduct of a Building Services Provider, follow general dispute-resolution steps as outlined above in *Part 2.2*:

- talk to your Building Services Provider
- write to your Building Services Provider
- talk to your Building Surveyor.

Step 2 – Lodge a complaint with CBOS

If you are not satisfied with the outcome after following the general steps to resolve a building dispute, you can lodge a complaint with the Administrator of Occupational Licensing at CBOS.

A complaint lodged against a Building Services Provider relating to their licence must be in writing and include the details and grounds for the complaint. You should also include any documents that support your complaint.

Required documents or evidence may include:

- a statutory declaration
- a report from a Building Surveyor or industry professional to show the work is defective
- any correspondence between parties showing attempts to resolve the issue before requesting third-party intervention
- a copy of the building work contract, including all plans, drawings, specifications and variations, showing that the work in question is included in the contract
- any photographic evidence of defective work
- any further evidence to support the complaint.

Outcome

The Administrator of Occupational Licensing will either accept or reject the complaint.

An initial investigation will determine if there is cause to:

- issue an infringement
- start disciplinary action, or
- dismiss a complaint against a licence holder.

After investigations are completed, CBOS will notify all parties of the decision and outcome.

Complaints may be accepted on the following grounds:

- Building Services Providers who perform building work while unlicensed, or while not holding the correct licence class
- defective work undertaken by licensed Building Services Providers
- improper conduct or behaviour of a Building Services Provider
- substantial contraventions of the *Occupational Licensing Act 2005* or other laws.

A complaint may be dismissed without investigation if:

- further information is not supplied when requested
- the complaint is not considered to be genuine, or is false or misleading after preliminary investigations, and there is no case to answer
- if the complaint relates to defective work and is made more than 12 months after the completion date.

CBOS will notify you of the outcome at the end of this assessment process.

Part 3: Further Information

1. Key definitions

In the table below, you will find an explanation of some of the terms and features that support the dispute resolution process in Tasmania.

Term/Feature	Explanation
Adjudication	A formal process to determine the outcome of a Work-completion Claim dispute and is conducted by a suitably qualified group or person.
Building Services Provider	Includes Architects, Builders, Engineers, Demolishers, Designers, Building Surveyors, Permit Authorities, and Occupational Licence Holders such as Plumbers and Electricians.
Building Surveyor	A person engaged by the owner to perform or exercise the role of the Building Surveyor. To find out more about the Building Surveyor's role refer to the Department of Justice website: www.justice.tas.gov.au
Contract (Residential Building Work Contract)	A document that details the building work to be done. It outlines the rights and responsibilities of the owner and the Building Services Provider. The contract is legally binding and consists of all plans, drawings and specifications. There is a minimum cooling-off period of five business days for all residential building work contracts. More information on contracts can be found in the Residential Building Consumer Guide at: www.justice.tas.gov.au

Date of Practical Completion (Residential Building Work Contract)	<p>The day by when –</p> <p>(a) work is completed in compliance with the contract. This includes all plans and specifications for the work and all statutory requirements applying to the work; and</p> <p>(b) work is completed without any defects or omissions, other than those that will not unreasonably affect occupation; and</p> <p>(c) the Building Services Provider has given the owner a defects document for the minor defects or minor omissions.</p>
Defective Building Work	Building work that does not comply with the <i>Building Act 2016</i> or the National Construction Code in force at the time the work is performed.
Defects Document	A document that lists the minor defects and omissions that the owner and Building Services Provider agree exist and the date by which the agreed defects are to be fixed. It also includes those defects that the owner claims exist but the Building Services Provider may not agree with. The Building Services Provider signs this document and provides a copy to the owner.
Low-Risk Building Work	<p>Building work that can, in most circumstances, be carried out by an owner and does not need a permit or approval.</p> <p>Some larger projects can be carried out only by a licensed Building Services Provider without a building permit and may need planning approval.</p>
Mediation	An activity undertaken with a third party, to try and reach an agreement or reconciliation between parties to a dispute.
Notifiable Building Work	Building work that must be carried out by a licensed builder and requires a Building Surveyor to oversee. Council must be notified that the work is taking place, however prior approval is not required.

Permit Authority	<p>A licensed person, appointed by the General Manager at your local council, to oversee the building process within the local municipality. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • acceptance and consideration of applications to build • making sure permits are issued • making the public aware of building and plumbing requirements.
Permit Building Work	<p>Building work considered high risk and requires full building approval. An application for a building permit must be submitted to council for approval. The work must be done by a licensed builder and a Building Surveyor overseeing the work.</p>
Residential Building Work Contract	<p>A contract between the Building Services Provider and the owner to perform residential building work.</p>
Statutory Warranties	<p>Building Services Providers must give a range of promises (warranties) which automatically form part of all residential building contracts for work over \$20,000. These warranties become a right that can be enforced by owners, whether or not they are written into the contract.</p> <p>Statutory warranties last for six years from the date of practical completion and transfer to new owners if the property is sold. A claim that a Building Services Provider has not met their obligations under the statutory warranties must be submitted within the six-year period.</p>
Work-completion Claim	<p>A written document that specifies the residential building work that has not been satisfactorily completed. The document:</p> <ul style="list-style-type: none"> • is addressed to the Building Services Provider • states the details of the owner making the claim • states the claim is being made under the <i>Residential Building Work Contracts and Dispute Resolution Act 2016</i>; and • must specify the period within in which the work is to be completed.

2. Legislative context

The resolution processes outlined in this Guide are drawn from the requirements of a number of Acts and associated legislation.

The Residential Building Work Contracts and Dispute Resolution Act 2016:

- aims to increase standards of residential building work contracts; and
- provides methods to resolve disputes that may develop between an owner and Building Services Provider.

The *Building Act 2016* addresses disputes for defective work:

- associated with notifiable or permit works (within the first 12 months of completion); and
- with low-risk work (within 2 years of completion).

The *Occupational Licensing Act 2005:*

- addresses eligibility requirements for Building Services Providers to be licensed
- details the professional conduct and behaviour responsibilities that must be upheld by licence holders; and
- a complaints process should these requirements not be met.

3. Useful Guides

Residential Building Consumer Guide

A Guide to help home owners understand their rights when undertaking residential building work with a contract price of \$20,000 or more.

It is designed to help you avoid disputes and common pitfalls, by explaining your rights and obligations under the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

Guide to Standards and Tolerances 2017

A Guide designed to outline acceptable standards of workmanship in residential building construction work. It is intended to address areas that are not prescribed under legislation or under a residential building contract.

4. Websites

Visit the Department of Justice website at www.justice.tas.gov.au to find more information and templates to assist you in resolving issues and disputes. You will find information about:

- claims for payment under the *Building and Construction Industry Security of Payment Act 2009*
- consumer rights and protections under the Australian Consumer Law
- contractual rights and guarantees under the Australian Consumer Law
- your rights and responsibilities
- requirements for residential building work contracts
- current legislation including:
 - *Building Act 2016*
 - *Occupational Licensing Act 2005*
 - *Residential Building Work Contracts and Dispute Resolution Act 2016*
- document templates including:
 - *General enquiry form*
 - *Notice of dispute*
 - *Mediation application checklist*
 - *Application for mediation*
 - *Work-completion claim form*





Further Information

You may also contact the Tasmanian State Government
Helpline or email CBOS directly.

Department of Justice - Consumer, Building and Occupational Services

HELPLINE: 1300 654 499

Email: cbosinfo@justice.tas.gov.au

Website: www.justice.tas.gov.au

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