



# Resolving Building Disputes

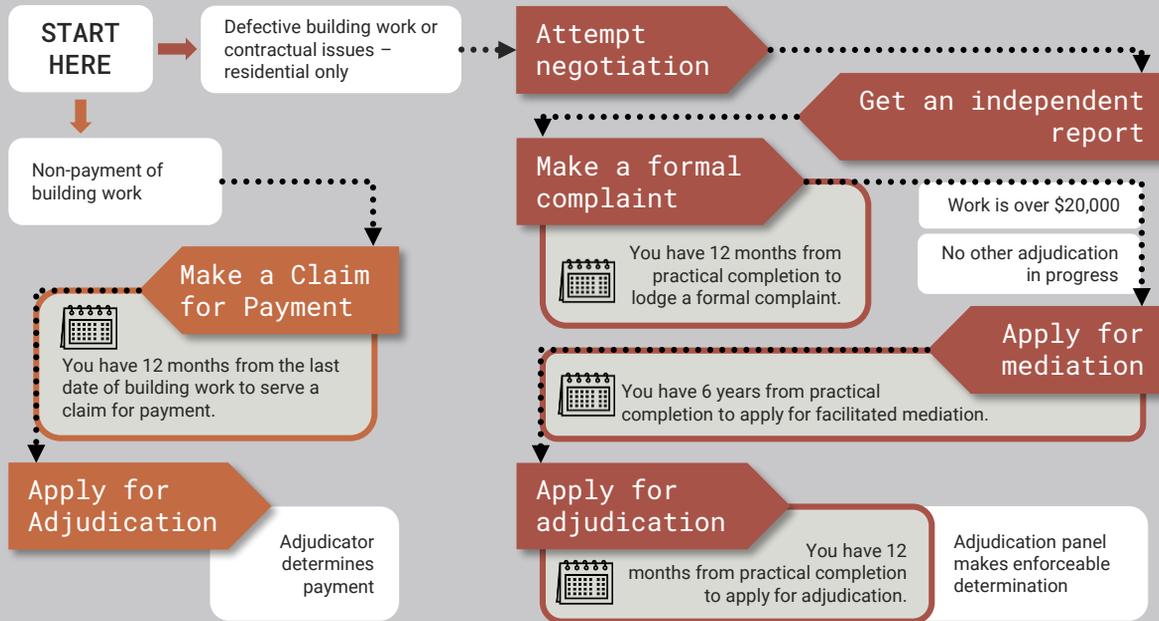
A guide for  
builders and owners

There are two pathways for resolving building disputes under the Tasmanian legislation: one for the non-payment of building work and one for problems with the quality of building work.

These dispute resolution processes are summarised here and detailed on the Consumer Building and Occupational Services (CBOS) website for [resolving residential disputes](#) and [non-payment disputes](#). The requirements and timeframes around each process can be quite specific, so you'll need to check the relevant Acts to be sure.

These processes don't prevent you from using other dispute resolution approaches, and we're always available as well if you just need a good vent.

# Resolving building disputes – pathways overview



## Non-payment of building work

[Building and Construction Industry Security of Payment Act 2009](#)

### Make a Claim for Payment

If you have not been paid for building work or services carried out you can issue a **Claim for Payment**.

Must include claimant and respondent details, details of building work, the amount claimed, and that the claim is served under the [BCISP Act 2009](#).



Respondent has 10 days to respond to commercial claims, or 20 business days for residential claims.

If payment or a payment schedule is not received within the contractual timeframe or within 10 days of the claim being issued (20 days if it's issued to the owner), you can serve a notice under the Act:



That you intend to apply for adjudication or for a court ruling.



That the building work will be suspended.



Respondent has 5 business days to provide payment schedule in response to notice.



You have 12 months from the last date of building work to serve a claim for payment.



If you receive a Claim for Payment and you don't respond within the applicable timeframes with either a payment in accordance with the payment schedule, or a payment schedule that includes your reasons for not paying, then you will not have the opportunity to raise a defense later if it goes to a court.

### Apply for Adjudication

If your Claim for Payment has not been successful you can apply for adjudication by a nominated adjudicator.



You must apply within 10 business days of receiving payment schedule or 20 business days of payment due date.

Your application must be copied to the respondent and include:

- application fee,
- the contract and payment claim,
- notice of intent to apply,
- payment schedule (if provided), and
- any relevant submissions.

Your application is to the [nominating authority](#), who nominates a qualified adjudicator.



Respondent has 10 business days to provide a response.

The adjudicator may request further submissions, conduct inspections and convene meetings in making a determination.

The respondent must pay the adjudicated amount, otherwise it may be filed as a court judgement for a debt.



If you receive an adjudication application, you can only provide reasons for non-payment if they were included in the payment schedule already provided.



# Defective building work and contractual issues

Residential Building Work Contracts and Dispute Resolution Act 2016

## Attempt negotiation

Present your concerns to the other party

Do it in writing – aim to keep your project progressing:

- ↓ Maintains objectivity.
- ↓ Forms a record.
- ↓ Demonstrates an attempt at resolution.

The [Guide to Standards and Tolerances](#) provides a benchmark of acceptable workmanship for comparison.

## Get an independent report

The **project building surveyor** can distinguish between compliance and workmanship.

Compliance = legislative requirements

Workmanship = contractual requirements

They can issue a direction, building notice and building order for non-compliant work to be rectified.

An **independent building surveyor** or building practitioner can report on the degree to which building work falls outside acceptable standards and is defective.

## Make a formal complaint

You can lodge a formal complaint with [CBOS](#)

You need to include your independent report, approved plans, relevant correspondence, and anything else relevant (see Part 3 of the [Guide to Residential Building Works Issues](#)).

CBOS will accept the complaint and prescribe a remedy to the situation, or reject the complaint.

Your complaint must relate to defective building work and informal resolution must have been attempted.



You have 12 months from practical completion to lodge a formal complaint.

## Apply for mediation

You can apply for free mediation and dispute resolution facilitated by CBOS.

For residential building contracts over \$20,000 and signed after 1 January 2017.

You must issue a **Notice of Dispute** to the other party and the Director of Building Control stating your intention to apply for mediation if steps are not taken to resolve the dispute within a set timeframe.

Your application must include all relevant information: notice of dispute, building contract, approved plans, independent report, evidence of attempted informal resolution, etc. – [contact CBOS](#) for an application package.

If accepted, CBOS will establish a mediation panel and provide 20 business days to reach resolution.



The mediation panel may give directions and aims to facilitate a negotiated settlement between the parties.



Evidence and documents used in mediation cannot be used in other legal proceedings without consent.

If resolution is reached and is agreed upon by the Director of Building Control, it is documented, registered, and legally binding and enforceable.



You have 6 years from practical completion to apply for facilitated mediation.



To be accepted for mediation you must have attempted informal resolution, and there cannot be another adjudication or court action in relation to the disputed work in progress.

## Apply for adjudication

If mediation fails, you can apply for adjudication by an independent expert panel.

You must issue a **Work-Completion Claim** stating the details of the claimant, respondent and building work, that it is made under the [RBWCDR Act 2016](#), and your intention to apply for adjudication if the work is not completed in accordance with the contract terms and in a reasonably specified timeframe.

After the specified timeframe lapses, you have 20 business days to apply for adjudication, and the application must include applicant, respondent and building work details, work-completion claim, supporting submissions, etc. – [contact CBOS](#) for application package.

The respondent may respond within 10 days, and the Director of Building Control may arrange an inspection of the work and consult with both parties in determining acceptance of application.

Reasons why application may be rejected:

- ➔ Informal resolution not attempted.
- ➔ Mediation process not completed.
- ➔ Court or adjudication action in progress.
- ➔ Completion timeframe unreasonable.

If accepted, the dispute will be referred to an independent expert panel (appointed by the Director of Building Control) for adjudication.

The panel may request further submissions, conduct inspections and convene meetings in making a determination.

On determination of adjudication, the panel's orders are enforceable by a court.



You have 12 months from practical completion to apply for adjudication.

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