



CBOS

Consumer, Building &
Occupational Services

Promoting a fair marketplace

Fact Sheet

Our Adjudication Process

This fact sheet outlines the adjudication process under the *Residential Building Work Contracts and Dispute Resolution Act 2016 (the Act)*. The adjudication process takes place when:

- mediation has failed to reach an agreed outcome
- a matter has been referred to an expert panel by the Director of Building Control (the Director), and
- is within 12 months of practical completion.

Referring matters to an expert panel

Only an owner can lodge an application for a building dispute to be adjudicated. The owner in these disputes must have:

- made previous attempts to reach a mediated agreement, and
- have issued a Work-completion Claim that has not been adhered to.

An application for adjudication must include:

- details of the applicant and the building contractor
- a copy of the Work-completion Claim
- specify the residential building work that has not been completed
- the prescribed application fee
- any submissions, relating to the claim
- proof of the application being served on the building contractor

The building contractor will be provided a copy of the adjudication application. They will be given 10 business days to respond. Once this time has passed the Director will decide whether to accept or reject

the application. If the application is accepted, the Director will appoint an expert panel from a pool of experts.

Role of the expert panel

The panel determines adjudication applications relating to residential building work contracts.

Expert panels can:

- determine an adjudication application
- determine its own practices and procedures
- conduct adjudication proceedings
- call a conference of parties (Legal representatives cannot attend)
- conduct inspections

The panel may:

- request further written submissions
- give each party the opportunity to comment, and
- give a timeframe for any submissions and comments to be received

The panel will then make a determination which may include orders that are enforceable through the courts.

Communication and adjudication proceedings

Adjudication will be tailored to suit each circumstance, on a case-by-case basis. When a party appears before the panel, this will be done with as little formality as possible. Other parties cannot be present, unless consent has been given prior. All other communication between parties and the expert panel will be in writing.

Other party involvement

At any stage during the process there may be a need to add other parties. This may include a person who can provide:

- technical advice
- expert opinion, or
- interpreter services

The panel must gain the Director's approval, and notify all parties in writing of adding another party to the process.

Please note: Only with the consent of all parties can the process be discussed with a legal or expert adviser.

Confidentiality

Confidentiality in the adjudication process is important to all parties. Parties will not disclose any confidential information supplied during the adjudication process. This is unless required by law or to get professional advice, for example, from a lawyer.

How to seek further advice or information

During the adjudication process, parties may wish to seek advice and guidance. The panel members, who are assigned to the matter, are the best people to provide further advice.

If panel members are unavailable the parties may contact CBOS:

- by phone 1 300 654 499, or
- by email cbos.info@justice.tas.gov.au

Please note: Adjudication is not a substitute for legal or other expert advice.

Adjudication determination

The panel must provide parties with a copy of the determination and reasons for the decision in writing.

The determination may include one or more of the following orders:

- a work-completion order
- an order to determine payment of fees for expert advice and tests
- an order to determine disbursement of the payment of fees for the expert panel

All orders made by an expert panel are enforceable **by** a court of law.

Indemnity provisions

The expert panel will not be liable to a party for any act or omission by the panel in the performance or purported performance of the expert panel's obligations during the adjudication process, unless the act or omission is fraudulent.

Each party indemnifies the expert panel members against all claims by that party or anyone claiming under or through that party, in the performance or purported performance of the expert panel's obligations during adjudication proceedings, unless the act or omission is fraudulent.

No statements or comments, whether written or oral, made or used by the parties, their representatives, or the expert panel, within the adjudication process, are to be used in any action for defamation, libel, slander or any related complaint.

This document has been produced and published by the Consumer, Building and Occupational Services Division of the Department of Justice. Although every care has been taken in the production of the work, no responsibility is accepted for the accuracy, completeness, or relevance to the user's purpose, of the information. Those using it for whatever purpose are advised to verify it with the relevant government department, local government body or other source and to obtain any appropriate professional advice. The Crown, its officers, employees and agents do not accept liability however arising, including liability for negligence, for any loss resulting from the use of or reliance upon the information and/or reliance on its availability at any time.

August 2019

