

What Happens During a Construction Dispute Resolution?

When you find yourself stuck in a dispute, you need to review your contract and be guided through the construction dispute resolution process. It is advisable to discuss the process with a specialist building lawyer to make sure that you are taking the proper steps to resolve the ongoing dispute that you are in. Looking for a building dispute lawyer in Melbourne? Call 8639 9930 now!

What are Construction Disputes?

Construction disputes happen when a party in a building project fails to perform their contractual obligations. Some common causes of building disputes include:

- Poor workmanship
- Unlawful or noncompliant works
- Slow progress of work
- Incomplete or defective works
- Disagreements regarding contract variations

Building disputes may affect both parties of the building project whether directly or even indirectly. That is why in all stages of construction, it is important to be aware and be quick in identifying the said causes in order to avoid disputes and legal conflict. If disputes arise, both parties should try to resolve or settle them at a project site or in a courtroom.

Construction Dispute Resolution

There are various methods to resolve construction disputes and prevent them from escalating. Some of the known methodologies in resolving disputes are Alternative Dispute Resolution and Litigation. On the other hand, Dispute Avoidance Processes and Building Inspections are processes that could be implemented in a construction project's operations or be stated in the contract clauses.

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Dispute Avoidance Processes (DAP)

When it comes to DAP, one of the best practices is to set or implement a system within a construction project's operations that isolates conflicts in which causes for disputes may appear. If a building dispute is caught in an earlier stage, conflicts can be resolved between parties through DAP such as negotiation. This process serves as the remedy for an occurring conflict if the problem is resolved after talking it through.



Building Inspections

Building inspections are advised to avoid any future building dispute or to assist in dispute resolution. Preferably, the parties should hire registered building inspectors to inspect the works and identify any building defects that need to be remedied. Identifying and rectifying defects and incomplete works as early as possible will more likely avoid misunderstandings between the parties.

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Alternative Dispute Resolution (ADR)

Under ADR, some procedures that the parties may undergo to resolve building disputes include conciliation, mediation and arbitration. These legal procedures are cheaper and faster than court or tribunal proceedings, so you might want to consider seeking these alternative processes before escalating the dispute to litigation.

Conciliation

If you choose to undergo conciliation, a third party will serve as a **conciliator** who can give opinions and propose solutions on matters that are disputed. This process is also considered as the mildest form of dispute resolution.



Mediation

For mediation, a third party serves as a **mediator** who can facilitate negotiations and propose solutions. They can also comment on each party's strengths and weaknesses but are not compelled to make a resolution.

Also for some cases, the Dispute Settlement Centre of Victoria could mediate your dispute for free.

Arbitration

For disputes that have escalated, an independent party called an **arbitrator** can impose a decision on the matter after hearing both parties. The arbitrator somehow acts similarly to a judge and could create binding judgments without going to the tribunal or court.

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Litigation

If all other dispute resolution processes fail to resolve the building dispute, then litigation may help. Litigation is a legal proceeding done in courts involving a substantial application of certain rules and laws. In this process, a jury determines a decision based on facts while a judge decides based on law.

Courts and Tribunals in Victoria

There are two government bodies in Victoria that handle building dispute resolutions: Domestic Building Dispute Resolution Victoria and Victorian Civil and Administrative Tribunal. These agencies are composed of construction law experts who can help and guide contractors and owners to reach a decision in their dispute.



DBDRV

Domestic Building Dispute Resolution Victoria (DBDRV) protects the rights of consumers and offers dispute resolution services to both parties.

Parties may ask for the assistance of DBDRV if they could not resolve the dispute. While DBDRV could assist in the initial stages of the dispute, they mostly act as a mediator only between the parties.

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VCAT

The Victorian Civil and Administrative Tribunal (VCAT) offers a wide range of services including matters related to building and construction. This tribunal was established upon the legislation of the *Victorian Civil and Administrative Tribunal Act 1998* and started its operations on 1 July 1998.

VCAT may step in if the parties tried solving the dispute with the intervention of mediators or other parties but still can't reach an agreement or resolution. With assistance from VCAT's construction law experts, they could provide assistance to both to come up with a construction dispute resolution.

Preventing Construction Disputes

Domestic Building Insurance

There are certain events that can be guaranteed warranty with Domestic Building Insurance (DBI). This insurance covers losses due to incomplete and defective work. However, it is only applicable for projects with a contract price of more than \$16,000. It compensates one of the parties (e.g. homeowner) for damages when the other party (e.g. builder) dies, disappears, or becomes insolvent before building completion. Homeowners can also claim from this insurance in case the builder hasn't complied with a court or tribunal decision.

The DBI can provide up to \$300,000 to fix building defects.

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- For major building defects, the DBI can cover losses up to 6 years from the completion of the project.
- For minor building defects, the DBI can cover losses up to 2 years from the completion of the project.

Building Warranties

Implied building warranties are commonly referred to as warranties or consumer guarantees depending on relevant laws such as the Domestic Building Contracts Act 1993 and the Australian Consumer Law. These warranties are the builder's obligations to carry out the work with skill and care, using only the appropriate materials, and within the time period stated in the contract.

Building Contracts

Building contracts often have clauses that outline how to resolve a dispute when it happens. A properly written building contract would include clearly stated dispute resolution clauses so both parties are guided during a dispute. It is important that these solutions are possible for both parties to carry out. A clear contract and good communication between the parties show preparedness for whatever issue may arise.

Related Legislations in VIC

There are different Victorian legislation that ensures quality work with regard to residential building construction and that protects the rights of both parties. These are the Security of Payment Act and the Building Act.

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Security of Payment Act

The *Building and Construction Industry Security of Payment Act 2002* ensures that any person carrying out construction work and supplying related goods and services is entitled to and should receive progress payments. If the parties failed to pay the progress payments or if a dispute regarding works arises, the rights under the Act may be enforced and the person claiming for payment may apply for adjudication.

Payment disputes are common in the building and construction industry. These issues usually happen due to late payment, partial payment, and non-payment. With the help of a construction lawyer, builders will be able to resolve their payment disputes and recover their debts as quickly as possible.



Building Act

The *Building Act 1993* regulates and sets the standard for building work in Victoria. This Act gives protection to both builders and homeowners as it requires builders to be licenced, to have building insurance, and to comply with statutory warranties before, during and after the building period.

This Act guarantees safety among homeowners, as licenced builders can assure quality work and, therefore, avoid building disputes.

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How can our Construction Lawyer in Melbourne Help with Construction Dispute Resolution?

Our construction lawyer in Melbourne can help you with the basics of what you need to know in resolving building disputes. They could give you specialised building law advice, and guide you through the dispute resolution process

Just contact us today for a free first consultation and we'll help you get through any dispute.

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