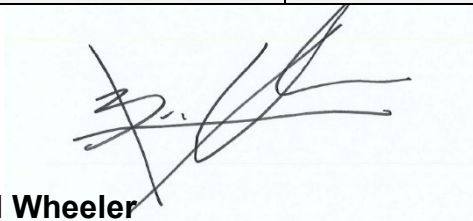


Mediation of Residential Building Work Disputes

I, Brad Wheeler, in my capacity as Director of Building Control, make the following Determination under section 11A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*:

Title	Mediation of Residential Building Work Disputes
Description	This Determination specifies matters in relation to the appointment of mediators and the mediation of residential building work disputes.
Version	Version number 1.0
Application	For the purposes of section 11A(2) of Act of the Act, this Determination applies from 1 July 2024 until its revocation.
Approval date	25/06/2024
Publication date	This Determination was published on the Consumer Building and Occupational Services website on 01/07/2024
Commencement date	1 July 2024



Brad Wheeler

Director of Building Control

Consumer, Building and Occupational Services
Department of Justice

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Document Development History

Version	Application Date	Sections amended
1.0	1 July 2024	Original release

Interpretation

Act means the *Residential Building Work Contracts and Dispute Resolution Act 2016*;

Approved means approved by the Director;

CBOS means Consumer Building and Occupational Services, an output of the Department of Justice, responsible for administration of the Act;

Determined means determined by the Director;

Director means the Director of Building Control appointed under the *Building Act 2016*;

Dispute has the same meaning as the Act;

Mediation panel has the same meaning as the Act;

Notice of dispute has the same meaning as the Act;

Party has the same meaning as the Act;

Part 1: Qualifications of persons appointed to a panel to perform mediation functions under the Act

Under section 49(2) of the Act, it is determined that the following persons or members of occupational groups have suitable qualifications or experience to assist, or to perform mediation functions on behalf of the Director regarding a residential building work dispute:

A person who:

- is a member of the Tasmanian State Service who has undertaken training in alternative dispute resolution to the satisfaction of the Director; or
- has been assessed by a Recognised Mediator Accreditation Body (RMAB) against standards established by the Mediator Standards Board (MSB); or
- has been accredited under the National Mediator Accreditation System (NMAS); or
- is a legal practitioner admitted to practice in any Australian jurisdiction with at least five years' experience; or
- is engaged by or acknowledged as a mediator by the Tasmanian Civil and Administrative Tribunal, or a court, or any other government appointed tribunal in Tasmania; or
- is eligible to be appointed by a Nominating Authority to perform functions as an adjudicator under the *Building and Construction Industry Security of Payments Act 2009*; or
- is a corporate entity that is a Nominating Authority appointed under the *Building and Construction Industry Security of Payments Act 2009*, where that authority provides services of mediation or arbitration of building disputes through its employees, contractors, agents or servants.

Part 2: Matters relevant to refusal of panel to proceed to mediation

The most common reason the appointed mediator panel cannot proceed with mediation is that the other party does not want to attend, or does not make contact with them. Neither the Director nor the panel can make people attend mediation. If a party is unwilling to comply with a direction given or request made by the panel, it may refuse to proceed with mediation. Mediation may also not be offered for a situation where a panel determines that a matter is unsuitable for mediation, even though the parties had agreed to attend. These circumstances may include:

- (a) any of the matters in section 48 of the Act relevant to the rejection of a Notice of Dispute by the Director, currently apply;
- (b) a reasonable period within which the residential building work, or any specific defects, is to be satisfactorily completed by the respondent, has not expired;
- (c) one or more parties is unwilling to resolve the dispute or are unwilling to negotiate;
- (d) parties cannot agree on a date, time, location and/or attendees for the mediation;
- (e) a party to mediation has failed to comply with a direction given, or a request made, by the mediation panel;
- (f) a party to the mediation has failed to comply with a condition imposed on the mediation proceedings, by the mediation panel;
- (g) history of how one or more parties have previously engaged with the Director, mediators or CBOS staff;
- (h) parties' attitudes towards each other;
- (i) a lack of good faith towards the process and spirit of mediation;
- (j) a party might have limited capacity to make decisions for themselves;
- (k) health, welfare and wellbeing of a party;
- (l) a history of violence between the parties (including domestic and family violence);
- (m) fear of the other party, or fear of retribution by a party;
- (n) existing criminal charges, court orders, bail conditions or court undertakings that prevent mediation;
- (o) any other reason that the mediation panel considers appropriate.

Part 3: Timing of processes for mediation proceedings

Action by the Director, a mediation panel or a party to a dispute	Period as determined by the Director	Act Reference
Period in which the Director is to advise the respondent or other parties of the acceptance of a Notice of Dispute.	Within two business days after a Notice of Dispute is accepted.	s.48(5)
After the rejection of the whole or a part of a Notice of Dispute Period, period in which the Director is to advise a party of that decision, by a written notice.	Within two business days after all, or a part, of a Notice of Dispute, is rejected.	s.48(6)
Period in which Director is to identify any other parties relevant to mediation proceedings and to give them notice that they are to be a party to the mediation proceedings.	Within two business days of acceptance of the Notice of Dispute.	s.50
Period in which a party must comply with a request by the Director, or the appointed mediation panel, to provide any relevant information.	Within two business days of the Director's or panel's request.	N/A
Period in which an appointed mediation panel is to convene a hearing of the matters for mediation.	If the parties have complied with any prior requests to provide further information, within five business days after the Director has established the panel.	N/A
Period in which parties are to reach a negotiated settlement, to sign a written document evidencing the terms of the settlement, and for it be registered by the Director.	Within 20 business days after the Director establishes a mediation panel in relation to the dispute.	s.54

Action by the Director, a mediation panel or a party to a dispute	Period as determined by the Director	Act Reference
Period in which a copy of the Terms of Mediated Settlement is to be provided to the Director by the mediation panel.	Within two business days after the conclusion of mediation proceedings and the signing of the Outcome Certificate.	s.53
Period in which: • a member of the mediation panel is to sign a Certificate of Mediation Outcome regarding the outcome of the mediation proceeding; and • the member is to provide it to the Director, with a copy to the parties to the dispute.	Within two business days after the conclusion of mediation proceedings and the signing of the Outcome Certificate; Within two business days of the signing of the Outcome Certificate.	s.51A(1) or (2)
Period in which the Director may refuse to register a Mediated Settlement that has been reached by parties to a dispute.	Within two business days after the conclusion of mediation proceedings and the signing by the parties of the Mediated Settlement.	s.53
Period in which parties to mediation are to pay the fees of the mediation panel or its members.	As per the individual contract between the parties and the mediator(s) appointed to a panel.	N/A

Part 4: Form and contents of approved documents

It is determined that the document attached as appendix A to this Determination, is approved as a Notice of Dispute; and that the information required to form part of the Notice includes:

1. Names of applicant and respondent or other parties
2. Contact details of those parties
3. Contractor's licence number (if known)
4. Status of the applicant (contractor, or owner)
5. Information about the property
6. Description of the works (building or plumbing, new build or renovations)
7. Copy of the written contract, including specifications (if available)
8. Relevant dates (e.g., when work was performed, the date of practical completion etc.)
9. Concise description of the dispute or the grounds of the dispute
10. Evidence that there is an unresolved dispute (documents such as emails between parties showing attempts to negotiate)
11. Application to the Director of Building Control for mediation
12. Particulars regarding the lodgement of the notice with the Director
13. Acknowledgement that there is a notification to the respondent by the applicant required after their lodgement of the Notice.

Mediation Outcome Certificates issued by mediation panel under:

- Section 52A(1) (dispute resolved and settlement reached); or
- Section 52A(2) (dispute not resolved):
- It is Determined that the Certificates attached as appendices B and C of this Determination are approved for use by a mediation panel, as appropriate to the outcome of each proceeding lodged with the Director regarding mediation.

Terms of Mediated Settlement agreed by the parties:

- It is Determined that the document attached as appendix D of this Determination is approved for use by a mediation panel and the parties to a dispute lodged with the Director regarding mediation.

Part 5: Mediation Panel's regard to certain matters during mediation proceedings

A mediation panel may at its discretion consider any matters that are relevant to the mediation proceedings and the settlement of the dispute including:

1. the Notice of Dispute lodged by the applicant;
2. any inspections of the work including reports, plans, diagrams, photographs or other documents, arranged or provided by a party to the dispute, or by the Director;
3. any submissions, written or oral, made to the panel by a party during mediation;
4. any prior attempts to negotiate a settlement of the dispute, including any offers made to a party to the dispute;
5. the Guide to Standards and Tolerances, as approved by the Director, that describes (or refers to) what are considered acceptable standards of finished workmanship in residential building construction.

Part 6: Costs of mediation proceedings

- There is no fee for the lodgement of a Notice of Dispute with the Director of Building Control, seeking mediation arranged by the Director.
- A mediation panel established to perform mediation services on behalf of the Director, is to be paid at the rate specified by the panel member(s) in their contract with the parties to provide those mediation services.
- Unless otherwise agreed between the parties to a dispute, the costs of mediation are to be shared equally between the parties to the dispute.