North West Community Legal Centre Inc.

Engaging Tradespersons: *Information Sheet*

Everyone at some stage seeks out a tradesperson to provide services in their home and/or business. Tradespersons typically contract their services to consumers on an hourly rate or for a fixed sum.

From time to time we are approached by members of the public as well as small business operators with issues around matters such as the quality of work carried out, the cost of the work being charged or unpaid accounts rendered.

This is a practical guide on ways to avoid the common problems seen in practice around contracts for trade related work and services generally.

Common Problems

Most problems arise out of unclear or misleading communications. These problems can relate to misunderstandings or lack of detail prior to commencing work. An agreement to engage a tradesperson is a contract, whether it is in writing, verbal, implied or a combination of some or all of those. Common issues arise out of:

- the nature and extent of the project or job;
- timelines for the work and for payment;
- cost of labour and/or materials;
- quotes v estimates;
- what happens if problems or delays develop during the project;
- how the standard *Housing Industry Association* (HIA) building contracts work;
- how and when complaints should be made; and
- whether the tradesperson engaged is performing work for which they are required to be licensed, and if so, are they licensed via *Consumer Building and Occupational Services* (CBOS) to carry out such work.

Other problems can arise if either party is not honest about their skills or capacity to do the job or to pay for the job.

How to Avoid Common Problems

1. ***A written contract and a written quote -*** A written contract which is separated into sections helps both the consumer and the service provider. Basic details that should be confirmed in writing in a single document signed by all parties should include:

   (a) Details of the contracting parties (name(s) of individuals and/or registered company name and ACN and the address of each party);
   (b) The licence number of the tradesperson;
   (c) Specific detail as to the work to be performed;

(d) Details of what materials are to be used;
(e) how payment is to be made, when payment is to be made and at what rate services are being charged. It should be clear whether it is a fixed quote or estimate.
(f) Details of a timeframe for when the work will commence and estimated time to complete; and
(g) Arrangements for dealing with any problems unforeseen at the time of entering the contact. For simple small contracts, this could be as simple as a contact person's name, phone number and email address.

A legally binding contact at its core, requires an offer and an acceptance. A quote is therefore not a contract unless it is accepted by the consumer. It is therefore important that if there are any uncertainties that you require to be addressed, you raise these matters with the other party in writing, to ensure there is full clarity around what is being offered before reaching agreement.

If possible, all elements of the agreement should be placed into a single written document and signed by all parties before commencing any work. It would be best to rewrite the quote as the contract to achieve this outcome.

2. ***Provide/obtain licence details -*** Most tradespersons can evidence their competence in a specific field of work by sharing their trade licence and/or membership/accreditation details. Whilst not all trades or building service providers are required to be registered or licensed, some areas of work such as electrics, plumbing, gas fitters, building and so on cannot be completed by an unlicenced tradesperson. Other dangerous work such as that involving explosives or asbestos must have licenced tradespeople who are registered with *WorkSafe Tasmania*.

   The fact a tradesperson is licensed through CBOS or holds other memberships or accreditation can give you a degree of assurance as to their competence. Memberships and Licensing also comes with a degree of oversight whereby CBOS or the organisation they are affiliated under can be contacted and provide assistance or impose sanctions should there be a dispute as to the contract or quality of workmanship.

   Before engaging a tradesperson, one of the first steps you should undertake is enquire as to what, if any, licence(s) they hold via CBOS. You can conduct a search via the CBOS website here.

3. ***Public Liability Insurance -*** It is essential for all parties that the tradesperson has public liability insurance. If something happens during the work to cause personal or property damage and the tradesperson has no insurance, not only are they liable but the client who contracted the work could be liable to pay or compensate for any damage caused to another as a result of work being carried out (e.g. if the house next door is damaged as a result of work). Insurance will ensure that there is no personal liability flowing.

4. ***Effective communication -*** Communication is everything. The terms of the contract between the parties governs what the legal remedies available if issues arise. As a result, it's very important the terms of the contract are in writing. This ensures everyone is clear as to their rights and responsibilities, what work is to be done and when and how payment is to be made.

Communication during the project is essential and can help to work out any problems that crop up and alert each party to ongoing expectations around the project. If there are any verbal agreed changes to the work to be carried out, such agreed changes should be reflected in writing through an exchange of written communication. This can be as simple as sending an email to the other party confirming the details of the verbal changes agreed to. You do not want to put yourself in a position where you are relying on words allegedly said to assert a term into the contract.

Respectful communication helps both parties understand the work and issues around it from both parties' perspective.

5. ***Know Your Rights* -** As a consumer, you have certain rights and consumer guarantees when it comes to the provision of both goods and services. These derive from *The Australian Consumer Law* and include:

    - **Right for the service to be rendered with due care and skill:** Tradespeople are legally required to provide services that meet a reasonable standard of workmanship.
    - **Right to have the work provided be reasonably fit for the particular purpose:** Meaning the service and any resulting product should be suitable for the intended use.
    - **Right for the service to be delivered within an agreed time, or if no time is stipulated, a reasonable period of time:** What constitutes a reasonable period of time depends on the circumstances, which can include consideration of the nature of the work, the availability of resources and external factors.
    - **Right to clear communication:** You are entitled to be informed of progress, delays, and changes in the scope of work.
    - **Right to repairs or refunds:** If the work is defective or incomplete, you may be entitled to a remedy (e.g. a repair, reduction in price or a refund in full or part).

    As a tradesperson, you have a right to be paid for your work and the provision of materials.

    If you are unsure about your legal rights or need advice, consider contacting a consumer protection organisation such as CBOS or a lawyer.

    For more information regarding *The Australian Consumer Law,* see our Information Sheet: *"Consumer Law Basics: Information Sheet"* available on our website.

<u>**Residential Building Contracts**</u>

A residential building contract for the construction of a new home is often in the form of the standard *Housing Industry Association* (HIA) Contract.

There are two main types of building contracts available:

1. **Fixed price or lump sum** - where the builder or contractor agrees up front to a fixed amount for the residential building work to be performed; or

2. **Cost plus contract** - where there is no guaranteed final cost for the residential building work. This type of contract usually provides a fair and reasonable cost estimate and the method for calculating the final contract price is clearly stated. The consumer then agrees to pay the contractor at agreed payment intervals.

Most contracts for new homes are in the form of a "Fixed Price of lump sum" contract, however the price stated within the agreement is seldom the final price of the build, primarily due to:

(a) **Prime Cost Items** – these items refer to fixtures, fittings and materials whereby a reasonable allowance is made in the contract for these items which are yet to be selected or determined. This can include items such as: kitchen appliances, joinery, bathroom fittings etc; and

(b) **Provisional Sum allowances** – labour and materials for subcontractors where a reasonable allowance or estimate is made for works where the full scope is not yet known. This can include items such as: floor coverings, excavation work, driveways etc.

If the actual cost of supplying an item or providing the work exceeds the allowance, the builder can claim the actual cost of the item, the excess over and above what the allowance provides for, plus a margin of up to 20% on that excess.

If the actual cost of supplying an item or providing the work is less than the allowance, the builder must credit the owner the difference between the actual cost of the item and the allowance in the next progress stage payment that becomes due.

It is therefore important before entering a contract to build a home that you pay close attention to the allowances within the contract for Prime Cost Items and Provisional Sum Allowances to ensure you remain close to budget or otherwise have sufficient financial capacity to pay for those more expensive items selected to finish off your new home build.

***Building and Construction Industry Security of Payment Act 2009* (Tas)**

Certain types of Building Contracts trigger the *Building and Construction Industry Security of Payment Act 2009 (Tas*). This legislation was introduced to ensure that anyone involved in construction work or the supply of related goods or services for both public and private sector projects in Tasmania can receive timely progress payments. Similar legislation exists in other States and Territories.

This Act provides a dispute resolution mechanism (adjudication), allowing a party (the claimant) who believes they are owed money under a construction contract to quickly obtain payment from the respondent. This is done through an independent and qualified adjudicator who assesses the validity of the claim, outside of the traditional court processes.

Moreover, the Act grants claimants' access to mandatory adjudication, even if the construction contract does not specify progress payments or is for a one-off supply at a fixed price.

This legislation can be complex and offers significant advantages to builders working under specific types of construction contracts when it comes to securing progress payments, especially since strict timeframes apply.

If you, as a consumer are threatened with a “Payment Claim” or are served with a "Payment Claim" under this Act, you should seek urgent legal advice.

What to do if things go wrong

1. **Negotiate a Resolution -** When things don’t go to plan, you need to ensure you communicate clearly and respectfully with the other party. If the tradesperson acknowledges the issue, work together to find a fair resolution. This could involve:

   - **Repairs or corrections:** The tradesperson may offer to fix the problem at no extra cost. In most circumstances you should allow the tradesperson the opportunity to remedy the issue before considering other options.
   - **Discount or price adjustment:** If the work was unsatisfactory but not easily remedied, a discount or adjusted payment could be offered. The sum involved should give consideration to the likely cost for a third party to rectify the issue. This may require you to obtain a quote from another suitably qualified tradesperson to quantify the cost of the rectification work required.
   - **Additional time for completion:** If delays are the issue, agree on a new completion date. Remember, court intervention can be both expensive, emotionally draining and lengthy.

   If one of the above scenarios has arisen, it is important that communications take place in writing (email, letter etc) to ensure there is clear evidence of each party’s position and any agreement reached. If you reach a position through a verbal communication, you should ensure you follow that up in writing by reflecting on what was agreed at a specific date and time to prompt confirmation from the other party to avoid any confusion and to more fully evidence what was agreed.

   If the issue is not easily resolved through appropriate communication, consider suggesting a third-party mediator or dispute resolution service to help both parties come to an agreement. CBOS can often assist in this process, depending on the nature of the work involved and contract entered into.

2. **Seek Alternative Solutions -** If the tradesperson or customer is unwilling to resolve the issue or offers unsatisfactory solutions, you may need to consider alternative actions:

   - **Contract dispute resolution:** If you have a formal contract, check whether it includes a dispute resolution clause. This may guide you on how to proceed.
   - **Professional mediation or arbitration:** A neutral third party can help facilitate a solution that works for both sides.
   - **Legal Advice:** If the dispute is significant, this may include considering filing a claim in the appropriate jurisdiction.

3. **Consider a Formal Complaint -** If the issue cannot be resolved through direct communication, you may file a formal complaint. You can contact:

   - **The tradesperson's licensing or regulatory body**: If they are a member of a trade association or regulated by a government body, they may have procedures for handling complaints.
   - **Consumer protection organisations**: Some local or national organisations can mediate disputes between consumers and businesses. In Tasmania, this is CBOS.

Summary of Tips for Preventing Issues

Most disputes with tradespeople we see come down to insufficient communication. This usually stems from a lack of clarity around the terms of the agreement from the outset.

By addressing the problem early, reviewing the contract and negotiating a fair resolution, you can often resolve issues amicably. If needed, don't hesitate to seek legal advice or third-party help. Remember to:

- **Vet your tradesperson**: Research their qualifications, licences, professional affiliations, prior work and reputation before hiring.
- **Vet your client**: Whilst this is difficult, ensure there is full clarity around how you are charging and whether any quote given is fixed or an estimate. It is good practice to ensure that were extensive work is provided; accounts are rendered at regular intervals to ensure payment is received in a timely manner.
- **Get as much information in writing**: Ensure there is a clear contract between parties before commencing work. This should provide appropriate detail around the scope of work, cost, timeline, and payment terms at a minimum.
- **Stay involved**: Regularly check the progress of the work and communicate with the the tradesperson and the client to prevent issues from arising.
- **Be respectful**: Communication is so much easier if both parties remain respectful when dealing with each other.

By staying proactive, most issues can be resolved before they escalate into bigger problems.

Other Helpful Resources

Legislation

The Australian Consumer Law

Australian Consumer Law (Tasmania) Act 2010

Building and Construction Industry Security of Payment Act 2009

Residential Building Work Contracts and Dispute resolution Act 2016

Websites

Service Tasmania:	Australian Consumer Law advice | Service Tasmania
Consumer Protection Agencies:	Consumer protection agencies | Consumer Law
ACCC:	Buying products and services | ACCC
CBOS:	Licensing and Registration
WorkSafe Tasmania:	Licensing permits and registration
Magistrates Court (Civil Claims)	Magistrates Court: Civil Court
Magistrates Court (Minor Claims)	Magistrates Court: Minor civil claim ($15,000 or less)

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