

## **TRIBUNAL EASES THE PAIN OF DISPUTES**

### ***New Property***

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THE Domestic Building Tribunal began in May 1996 and is the only legal forum in Victoria permitted to hear residential building disputes.

Most of these disputes revolve around defective building work.

It was set up to provide a more cost-effective approach to residential building disputation than its predecessors, the courts and arbitration.

The architects of the system also recognised that residential building disputes displayed a unique conflict pathology - a cocktail of incredible emotional volatility, stress and highly complex elements of the laws of negligence and contract law.

The procedural documents and rules are generally uncomplicated and the flexibilities of the new system appear to have made law more accessible to the public. The new system is definitely cheaper than arbitration, mainly because disputants do not have to pay for the adjudicators.

The disputants are generally builders and owners. Sub-contractors and other building practitioners such as surveyors, architects and engineers, can however also be joined as defendants.

Lawyers have to take particular care to ensure that all parties responsible for any building defects are joined in the one set of proceedings.

One of the compelling reasons for this is that the Building Act 1993 applies a principle called proportionate liability, where no defendant can be held liable for more than their own portion of blame.

If a tribunal member found that a practitioner was only partly responsible for defective building work, then the plaintiff may only receive partial recompense. Therefore, it is critical that the full cast of defendants are involved in a dispute.

The "dispute resolution conveyor belt" is activated by the lodging of a dispute schedule with the registrar. A disputant fills out the schedule along with a summary of disputed matters.

A date for mediation is then set. Where the matter is complex, a case management conference may be convened instead.

If the mediation is successful, a settlement agreement is documented and executed and the matter concluded. If the mediation is unsuccessful, the dispute proceeds to a hearing.

If a matter progresses to a hearing, the presiding judge or a legally qualified member hears the dispute.

Generally, disputes do not get this far because they tend to be settled by mediation.

One of the attractions of the new system is that mediation is "front-end", occurring a matter of weeks of filing of the dispute schedule.