

Guide to Resolving Contractual Disputes



Contractual disputes can be time-consuming, expensive and lead to unfavorable outcomes for everyone involved. This Guide sets out practical steps that we recommend you take to resolve your contractual disputes quickly, efficiently and cost effectively.

STEP 1 – TRY TO RESOLVE IT AMICABLY

A majority of the time disputes arise due to simple misunderstandings. You should always remain calm, polite and professional during disputes. Before you take any further steps, we recommend you first identify the issues, what resolution you would like to see and give the other party a call or meet in person. Often, emails can be misinterpreted and come across as aggressive, which will only inflame the situation. In our experience, a verbal discussion is the fastest way to achieve a resolution.

If you are having a meeting, it may assist to prepare an agenda in advance so that everyone stays on topic.

STEP 2 – COMPILE YOUR FACTS

If you have identified that there is a real issue at hand you should then document all key details to the dispute while they are fresh in your mind. This may include compiling evidence such as emails, conversations, agreements, a summary of any other previous correspondence and a timeline.

STEP 3 – USING YOUR FACTS

Once you have compiled your facts, you should work out what leverage you have to incentivise the other party to agree with the resolution you are seeking. Also consider their perspective. You should look at possible solutions that are 'win-win' or a compromise for both parties, particularly if you may have dealings with the other party again in the future. Now would be a good time to seek some guidance from a lawyer.

STEP 4 – CHECK THE RESOLUTION CLAUSE IN THE CONTRACT

If there is a written contract in place between the parties, you should review it to check whether it specifies the process that is to take place when a dispute arises. Contracts will commonly specify that a meeting between executives of each party must occur, and/or a formal mediation must be held prior to the commencement of litigation.

STEP 5 – SEND A FORMAL LETTER

If the dispute can not be resolved by way of a discussion, the next step is to draft a formal letter or email that clearly outlines your position and what it is that you seek. You should keep any correspondence polite, amicable and understanding, as this letter may be used as evidence if the matter proceeds to Court. You should ensure that it complies with any requirements set out in the dispute resolution clause in your contract (if any), and is sent in accordance with the notice provisions of the contract.

If you are making a settlement offer in the letter, you should consider marking it "without prejudice, save as to costs" and explicitly reserve your legal rights at the end of the letter. At this stage, ideally you will seek legal advice to avoid prejudicing your position.

Depending on the terms of your contract, you may also refer to undertaking the mediation or other dispute resolution process set out in the contract. You should show an intention to comply with that process in the correspondence.

STEP 6 – FORMAL LEGAL LETTER

If the above process and any dispute resolution process in your contract fails to achieve a resolution, then if you have not already, we recommend you engage a lawyer and instruct us to draft a formal letter to the other side. The letter will be substantiated by referring to the terms of the contract and any applicable laws.

The purpose of this letter is to inform the other party that you are taking this matter very seriously and you are willing to proceed to litigation should the need arise.

The letter may contain a settlement offer for the other party to accept within a certain amount of time after which you may proceed to litigation.

STEP 7 – COURT

You should carefully consider all of your options prior to litigation. Often the time, costs (including indirect costs to your business) and stressful nature of going to Court can outweigh the advantages of having the Court rule in your favour. Depending on the dollar value of the dispute, you may either proceed to VCAT or a higher court.

Even if you are successful in Court, you may not be able to recover all of your legal costs and depending on the other party's financial position, you may be left out of pocket.

At Beck Legal, we only recommend our clients proceed to Court where it is absolutely necessary and the benefits outweigh the potential detriment. We are a solution focused team of advisers and will attempt to get you results as quickly and cost effectively as possible, so you can get back to business.

KEY TAKEAWAY

This guide provides a brief overview of steps which may assist you in achieving a speedy resolution of disputes. If you require assistance in resolving a dispute, including advice as to your legal position and what strategies you can adopt to improve your probability of success, contact our litigation team as early as possible.