

Dear Jane,

We are writing to provide you with legal advice on your options for claiming against ABC Construction for the defects and deficiencies in the construction work that they completed on your home.

Based on our review of the contract entered into between you and ABC Construction dated [X] (**Contract**) and the defects report prepared by your Superintendent dated [Y] (**Defects Report**), our view is that ABC Construction has breached its contractual obligations for the standard of the construction work.

Section 1 - Advice Requested:

You have asked us to advise you on your best option for rectifying the “**Defects**” identified in the Defects Report or otherwise claiming against ABC Construction.

Section 2 - Summary and Recommendation:

In our view, the best option is to send a letter to ABC Construction setting out:

- 2.1 a request to rectify the Defects previously notified to ABC Construction in the Defects Report by a specified time;
- 2.2 the contractual requirements for ABC Construction to carry out the construction work to the standard set out in the Contract and rectify any defects that do not meet that standard (see **Section 4.1**); and
- 2.3 your contractual rights to withhold payment or otherwise engage another builder to rectify the Defects and claim the rectification costs from ABC Construction as a debt due to you if ABC Construction refuses to rectify the Defects (see **Section 4.2**).

We recommend this option because it is the most cost effective avenue and has the best prospects of success for the Defects to be rectified by ABC Construction. This is also preferable to the other options that you had considered (i.e. immediately withholding payment, drawing down on security or commencing litigation) given that ABC Construction is still carrying out landscaping work on your property and in the interest of preserving the commercial relationship.

The detailed reasoning supporting this recommendation is set out below:

Section 3 - Background and Assumptions:

ABC Construction was contracted to complete the construction work on your home in accordance with the agreed-upon quality standards and local building codes. On or about [Z], ABC Construction completed and handed over the construction work on the house, and is currently completing the landscaping works. In your review of the handed over work, your Superintendent has identified Defects, as set out in the Defects Report (which we are relying on to set out the technical explanation of the Defects). You had submitted the Defects Report to ABC Construction but they have indicated that they would not carry out any rectification work.

Section 4 - Detailed Arguments in Support:

The Contract contains provisions related to the quality of the construction work. Based on the Defects Report, our view is that ABC Construction has breached its contractual obligations by failing to meet the agreed-upon quality standards and local building codes. This entitles you to pursue legal remedies to address the defects and deficiencies in the construction work.

4.1 – Standard of Work

Clause 3.8 of the Contract sets out the standard of work required by ABC Construction, and its obligation to rectify any defects that do not meet that standard:

“[ABC Construction] warrants that all work performed under this Contract shall be performed in a good and workmanlike manner and in accordance with all applicable laws, regulations, codes, and standards. [ABC Construction] further warrants that all materials and equipment used in the performance of the work shall be of good quality and free from defects.”

The Defects Report sets out the specific reasons where the construction work does not achieve the standard set out in the Contract, including the scope documents.

4.2 – Other contractual remedies

Clause 12.3 of the Contract gives you the option of engaging another contractor to carry out the rectification work in the event that ABC Construction refuses to rectify the Defects:

“If [ABC Construction] fails to correct or replace any defective work or materials as required by this Contract, [you] may give notice to [ABC Construction] specifying the failure and requiring [ABC Construction] to correct or replace the defective work or materials within a specified period of time. If [ABC Construction] fails to comply with such notice, [you] may, at [your] option, make good such defective work or materials or arrange for another contractor to make good such work or materials, and the cost and expense thereof will be a debt due and payable by [ABC Construction].”

Clause 14.9 of the Contract also gives you the power to withhold payment to ABC Construction if ABC Construction does not rectify the Defects:

“If [ABC Construction] fails to correct or replace any defective work or materials as required by this Contract, [you may] may, without prejudice to any other right or remedy [you] may have, withhold payment of any amount otherwise due to [ABC Construction] in respect of such defective work or materials until such time as [ABC Construction] has corrected or replaced the defective work or materials to [your satisfaction].”

However, we understand that the remaining payment that may be payable to ABC Construction under the Contract (approximately \$9,000) would not cover the estimated value of rectifying the Defects (approximately \$85,000).

Section 5 – Next Steps:

We recommend that you consider sending a letter to ABC Construction setting out the details set out in Section 2 above. We can assist you in drafting the letter to ensure that your legal rights are protected.

If ABC Construction does agree to rectify the Defects following receipt of the letter, we recommend that you engage a different contractor to carry out the rectification work. We can assist you with claiming the cost of the rectification work from ABC Construction, as well as any other contractual or legal avenues for claiming against ABC Construction.

Section 6 - Schedules / Attachments for Supporting Documentation:

Attached to this email is a copy of the Contract (Attachment 1) and the Defects Report (Attachment 2) referred to in our advice.

Please let us know if you would like us to assist in preparing the letter. Otherwise, please let us know if you have any further questions or if you would like to discuss these options in more detail.

Kind regards,

[Your Name]
Construction Lawyer