

Do I Have to Pay My Builder if They Didn't Provide a Signed Contract? NCAT Ruling

If you are a homeowner in a [building dispute](#) and your builder hasn't provided a signed contract, a recent NCAT case, [Dyjecinska v Step-Up Renovations \(NSW\) Pty Ltd \[2023\] NSWCATAP 36](#), may offer some clarity. In this article, we'll break down the key points and findings of the case to help you understand the implications.

The Importance of a Signed Contract

In the *Dyjecinska* Case, the homeowner, Izabela Dyjecinska, entered into an agreement with the builder, Step Up Renovations (NSW) Pty Ltd. The agreement was a NSW construction contract for alterations and additions. The parties used a Master Builders Association of NSW Residential Building BC4 Contract, commonly known as the MBA BC4 contract.

However, the contract was not signed by either party.

One of the main issues in the dispute was whether the builder could enforce the unsigned contract. The homeowner argued that the unsigned contract meant the builder was in breach of the [Home Building Act 1989](#) (NSW) (Home Building Act) sections 7(1) and 7B. Simply, the Owner's position was that the contract was unenforceable under section 10(1) of the Home Building Act.

Key Findings of the Case

The Appeal Panel allowed the homeowner's appeal in part, but not with regard to the enforceability of the unsigned contract.

One of the presiding members, Principal Member Thode, held that the plain reading of section 10 of the Home Building Act does not require a signature. Only that the construction contract to be in writing and with sufficiently described works. The Member stated that the provision was intended to prevent builders from enforcing unwritten contracts that were not sufficiently described.

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Principal Member Thode held that:

"61. ...the omission of a signature from an otherwise standard contract did not create uncertainty of the type requiring specific legislative intervention."

Additionally, the Principal Member considered it a "capricious argument" for the homeowner to rely on section 10 of the Home Building Act to prevent the builder from enforcing the contract but require the builder to remedy any [defect](#) or breach. The Member further expressed:

"This is particularly so in light of the Tribunal's decision at [122] that "the evidence strongly suggests that [the owner] refused to [sign the contract](#)" but permitted the builder to carry out the work."

This case is distinguished from others on this similar point. A simplified case analysis will help identify the main issues and corresponding ruling.

Table: Key Findings in Dyjecinska v Step-Up Renovations

Issue	Ruling
Enforceability of Unsigned Contract	Contract enforceable despite the lack of signature
Compliance with Act	Contract complied with requirements for being in writing and sufficiently describing works

The [NCAT decision](#) in Dyjecinska distinguished these findings from a recent 2022 NCAT decision of *Vujica v TNM Roofing Pty Ltd [2022] NSWCATAP 305*. The Principal Member expressed at 59:

For reasons of comity, it is preferable to follow the decisions of the Appeal Panel, but I consider Vujica sufficiently distinguishable from the present case as it did not concern a signed written contract.

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Table: Vujica Case vs. Dyjecinska Case - Key Differences

Aspect	Vujica Case	Dyjecinska Case
Contract Formation	Only a quotation identified as contract	Contract used Master Builders Association of NSW Residential Building BC4 Contract
Compliance with HB Act s 7(2)	Did not comply; not in writing and insufficient description of work	Complied; contract in writing and sufficiently described works
Appeal Panel's Interpretation	'Writing' in s 10 should not be construed narrowly; must meet section 7 requirements	Unsigned contract enforceable as it met section 10 requirements for being in writing and sufficiently describing works

Implications for Homeowners

The Dyjecinska case highlights the importance of having a signed contract when entering into an agreement with a builder. While the unsigned contract was found enforceable in this instance, it's crucial to ensure your building contract complies with the requirements of the Home Building Act.

Conclusion

The recent [NCAT](#) case, *Dyjecinska v Step-Up Renovations*, provides valuable insights for homeowners facing building disputes where a signed contract was not provided. Although the unsigned contract was found enforceable in this case, it is crucial to have a signed contract to avoid potential legal complications.

If you are a homeowner and require advice with a building dispute, then phone our office to speak with a [construction lawyer](#) for a 15-minute free consultation.

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