

Disputes Investigation and Resolution Agreement 2021

1. HOW WE CAN HELP: DESCRIPTION OF OUR SERVICES

1.1 This is a service offered by the New Zealand Pool Industry Association Incorporated (the "NZPIA") through its volunteer Disputes Committee. Builder Members of the NZPIA are expert professionals in their field that operate their own pool business and are qualified in their Trade to inspect and report on work performed by any other member or non-member engaged in the construction or installation of a pool or any structure associated with a pool.

Our Code of Ethics require any Builder Member engaged in the process of inspecting or Reporting on an inspection must be impartial and unbiased in that process and/or the deliberation in forming a Final Report.

1.2 Upon receipt of payment of the deposit indicated elsewhere for costs for this service, the NZPIA Executive will appoint suitably experienced Inspector/Inspectors who will arrange an inspection of the building site and problem(s) described in the Schedule. There may be some delay in this occurring, as work commitments may interrupt the process.

1.3 The appointed Inspector(s) will travel to the building site and thoroughly investigate the work with regard to the problem(s) and compile a Report of their findings and whether or not there are suitable grounds supporting the Applicant's Report of a problem and if so, what those problems are and whether there are grounds for compiling a Report to be used as evidence supporting the complaint.

1.4 The Report will be provided to the Applicant in draft for approval and the Applicant is responsible for final proof reading of the Report. Any amendments brought to the attention of the inspectors by the Applicant, if accepted by the inspectors, will be incorporated, and form the basis of the approved NZPIA Inc Report.

1.5 The approved Report will be submitted to the NZPIA Convenor who will assemble a Disputes Committee comprised of three Builder Member(s) including the member(s) who conducted the inspection and compiled the Report.

They will discuss the approved Report and evaluate it against the problem(s) listed in the schedule. This Committee will record the conclusions of its discussion and if a remedy is appropriate suggest a remedy

1.6 The suggested remedy will be contained in the form of a written Formal Report containing the unanimous conclusions of the Disputes Committee together with an Invoice for services provided. This Report remains the property of the NZPIA and may not be reproduced, disseminated, or used in any way until full payment is received.

1.7 The Report may or may not be advantageous to the Applicant but may - at the Applicant's discretion - be used as supporting evidence in any Legal Action against the Respondent.

2. GENERAL

2.1 This document forms the terms by which the Applicant contracts for the provision of Dispute Investigation and Resolution Services supplied by the NZPIA through its Member's professional services in investigating a problem Reported to it by the Applicant in dealings with a second party ("the Respondent") relating to the construction of a swimming pool or other related work. Following a candid and unbiased evaluation of the alleged issues, a Formal Report based on the NZPIA Member's 'Accepted Prior Experience & Proficiency' "Pool Expert" qualifications (APEP) by the NZPIA Disputes Committee will be provided.

2.2 This Agreement covers only a Reported Dispute on the part of the Applicant, involving a Respondent.

2.3 This Dispute may involve:

- (a) Suspected deficiency in the swimming pool construction or finish,
- (b) The failure of either party to conduct himself/herself in accordance with the original Agreement,
- (c) Breach of Ethics as required by the NZPIA,
- (d) Breach of the Respondent's legal and financial obligations to the Applicant, or
- (e) Anything else related to the professional construction of a swimming pool causing concern by either party.

2.4 This Dispute shall not involve:

- (a) Action or inaction of any third party not immediately related to the Applicant or Respondent
- (b) Ongoing maintenance of the pool construction, interior plaster finish, or external weatherable component of the pool
- (c) Mechanical or Electrical products included in the pool construction contract that are not protected against weather.
- (d) Opinion or Advice given to the Applicant or Respondent by any third party that has not been officially verified as factual.

2.5 At any time, the Dispute may not require a written Report, it may simply be resolved by mediation or verbal agreement.

2.6 This Dispute will involve an Applicant and a Respondent. The Applicant or Respondent may or may not be a Member of the Public or a Member of the NZPIA.

2.7 NZPIA Members are bound by the findings of the Disputes Committee under threat of cancellation of their Membership

3. TERM/TERMINATION

3.1 The NZPIA Inc undertakes to the best of its abilities, to assess both sides of this Dispute and the Disputes Executive Convener will report back to the Applicant whether, in the best opinion of, the Convener, the Application has sufficient merit to proceed.

If the NZPIA Inc decides that there is insufficient merit (or for any other reason, stated or otherwise) it may Terminate this Agreement with no revival from the Applicant. Otherwise, this Agreement shall terminate automatically on completion of the Applicant paying the NZPIA Inc for its charges in full.

4. RELATIONSHIP OF PARTIES

4.1 It is understood by the parties that the NZPIA is an independent identity with respect to Applicant, and not an agent or employee of or subcontractor to Applicant.

5. OWNERSHIP OF REPORTS

5.1 The draft and approved as well as any Final Report provided to the Applicant is copyrighted to, and shall remain the sole property of, the NZPIA all Invoices have been paid in full.

6. CONFIDENTIALITY

6.1 The NZPIA will not at any time or in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner any information that is proprietary to the Applicant, with the exception of communications with the Respondent if the Applicant so wishes.

The NZPIA will protect such information and treat it as strictly confidential, such provision to continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the NZPIA will return to Applicant all records, notes, documentation and other items that were used, created, or controlled by it during the term of this Agreement however it will retain a copy of any Report written.

7. INDEMNITY

7.1 The Applicant shall indemnify the NZPIA and any of its Members or persons specifically involved by the NZPIA in support of receiving this agreement, arranging the investigation of the problem(s), the investigation itself, the draft and approved Reports compiled, the Formal Report, any mediated solution or verbal agreement reached between the parties and hold the NZPIA harmless from all claims, losses, expenses, fees including legal fees, costs, and actions or judgments that may be asserted against the NZPIA or the Applicant that result from the acts or omissions of the NZPIA that are not deliberate acts or omissions of the NZPIA or its members.

This indemnification does not extend to include the Respondent, who may or may not hold Current Membership status with the NZPIA.

8. ENTIRE AGREEMENT

8.1 This Agreement contains the entire agreement of the parties and supersedes any other agreement whether oral or written. There are no other promises, conditions and all warranties are excluded to the full extent permitted by law.

9. SEVERABILITY

9.1 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. APPLICABLE LAW

10.1 This Agreement shall be governed by the Laws of New Zealand

11. PAYMENT FOR SERVICES

11.1 The Applicant will pay a non-refundable deposit for potential costs of \$750.00 + GST into the NZPIA account Number 06 0996 0753693 02 for the Services of the Members with the final payment due on provision of the Final Report or any refund due at that time.

11.2 Costs for the services we provide are charged in the following manner:

- (a) Initial administration fee \$150.00 + GST
- (b) Initial telephone discussion 30 minutes maximum
- (c) Personal or on-site visit (One or two Members) Court Appearances etc. Member(s) \$150.00 + GST hr pp
- (d) Travel costs reimbursement (Airline, Ferry, Taxi costs etc. or \$2.50 c/ Km personal vehicle use) Cost \$ TBD*
- (e) Accommodation/Meal Costs where applicable. Cost \$ TBD
- (f) Disputes Committee investigation/evaluation (3 Members @\$210 + GST per hr)
- (g) \$ 150.00 + GST Report production, typing and communication costs
- (h) \$ 150.00 + GST Third Party Witness costs: time, travel etc. \$ if/as required @\$150 hr pp (see 1.7 above)

*TBD = to be determined and notified as required.

12. AGREEMENT

12.1 In consideration of the NZPIA Inc providing the services and Report(s) as described in this agreement,

We the undersigned Applicant(s) do hereby guarantee to the NZPIA due and punctual payment thereof of all amounts owing, and the NZPIA Inc agrees to supply the services and Report in accordance with the conditions set out above.

Applicant 1 (Signed) _____ Applicant 2 (Signed) _____

Write Name: _____

Address: _____ Contact Phone 1 _____ 2 _____

_____ Email Address _____

_____ Area Code: _____

Date: _____

Scan and email this document to: executive@poolguild.org.nz

COMPLETE AND RETURN THE FOLLOWING PAGE

Disputes Investigation and Resolution Agreement advice notice

Dated: _____

APPLICANT DETAILS

Applicant Name: _____
Address: _____
Company or Trading Name: _____
Email/Web Address: _____
Tel: _____

Financial Compensation sought? _____ Amount \$ _____
Being for: _____

AND: The NZ Pool Industry Association Incated PO Box 17 069, Auckland 1546

RESPONDENT DETAILS:

Respondent Name: _____
Company or Trading Name: _____
Email/Web Address: _____
Address: _____
Tel: _____

Current NZPIA Inc Member? - YES - NO Go here: www.poolguild.org.nz to view current Membership list

On production of an Approved or Final Report do you want us to provide a copy of the Report(s) to the Respondent Company? Circle one YES NO

NATURE OF DISPUTE:

[Circle that apply] Quality Issues- Failure to Perform – Ethics Issue – Financial Issues – Other

Details: _____

