



# Building complaint resolution

## A guide for consumers

***An important role of the Building and Energy Division of the Department of Mines, Industry Regulation and Safety, is to assist consumers to resolve building disputes with building service providers.***

### Building disputes

A building dispute is a disagreement about the carrying out of a regulated building service or a home building work contract.

A 'regulated building service' means:

- a prescribed building service carried out by a registered building service provider (builders, painters, building surveyors) or an approved owner-builder; and
- home building work carried out under a contract or similar arrangement, whether covered by the *Home Building Contracts Act 1991* (HBC Act) or not. This includes residential plumbing work.

Unauthorised work, being work performed in the absence of a permit when one was required, or work that did not comply with a permit that was in effect at the time.

To resolve a building dispute a party may make a complaint to the Building Commissioner.

### What the law says

Building and Energy offers consumers and industry a dispute resolution process under the *Building Services (Complaints Resolution and Administration) Act 2011* (the Act).

Complaints are received and dealt with by the Building Commissioner if possible, with intractable and complex disputes being referred to the State Administrative Tribunal (SAT).

### What sort of complaints can the Building Commissioner deal with?

The Building Commissioner has powers to deal with disputes about:

1. Regulated building services:
  - building work done by registered building service providers (i.e. builders, painters, building surveyors);
  - work done under a contract (or similar arrangement) for home building work; and
  - unauthorised work.
2. Matters under the HBC Act:
  - Section 17 – breach of contract;
  - Section 20 – payments if a contract is terminated; and
  - Schedule 1 clause 5 – excessive or unjustified cost increases (variations).

The Building Commissioner also receives and investigates complaints about disciplinary matters relating to registered building service providers. If you believe you have information about the conduct of a registered building service provider further guidance on lodging a complaint can be found on the 'Enforcement' webpage on the Building and Energy website.

### Who can make a complaint about a building dispute?

A complaint may be made to the Building Commissioner by:

- a person whose interests are being, or have been, adversely affected by the carrying out of a regulated building service (such as the owner of the work, a neighbour, or some other affected third party); or
- an owner or builder under a contract for carrying out home building work.

A complaint about regulated building services is assessed with regard to the quality of that service. If the service is not carried out in a proper and proficient manner or is faulty or unsatisfactory, then the making of a complaint may be warranted.

An assessment as to whether a regulated building service was carried out in a proper and proficient manner or is faulty or unsatisfactory is ultimately a question of fact and degree which needs to be determined on a case by case basis. The following factors and considerations (by no means exhaustive) may have relevance in making such an assessment:

- The National Construction Code and Australian Standards;
- manufacturers recommendations;
- industry standards;
- the contract, plans and specifications for the building service;
- whether the building service can be used for its intended purpose;
- the contracted value of the building service provided; and
- the age, nature and amount of use of a specific item.

Please note: The Building Commissioner, does not have jurisdiction to accept or continue with complaints where the parties are individuals and one resides or comes to reside in a state other than Western Australia. Affected persons may wish to seek legal advice on their ability to pursue this through the Courts.

### Time limits for making a complaint

A building service complaint cannot be made more than six years after completion of the work. The Building Services (Complaint Resolution and Administration) Regulations 2011 (the Regulations) prescribe a process<sup>1</sup> for determining when the six-year limit is reached in respect of a regulated building service.

When ascertaining the completion date of a regulated building service:

- if the work was done under a building or demolition permit and the person responsible for the work ceases their responsibility under the permit, the work is completed when the notice of cessation is given;
- if not above, the work is completed when the notice of completion is given; or
- if the work is not carried out under a permit, the work is completed on the date that practical completion is achieved.

A home building work contract complaint regarding a breach of the HBC Act, or a matter referred to in the HBC Act, cannot be made more than three years after the cause of action arose. If the complaint relates to a variation to the contract made under section 8(3) of the HBC Act, an application for relief must be made within 10 working days after receiving notification from the builder.

## Resolution process

### Step one – talk to the service provider

This involves thinking about what the grievance is really about and talking to the service provider in a rational manner. If it helps, write down your main points first. Keep in mind that most service providers simply want to provide their services and keep their customers happy. This can certainly work to your advantage!

Make sure you keep any notes, quotes, receipts or other paperwork and evidence to support your case.

### Step two – give notice of the proposed complaint

If after approaching the service provider you have not been able to resolve the matter to your satisfaction, you can consider making a formal complaint to the Building Commissioner.

In order to do this, the legislation requires **preliminary action** to be taken to formally draw the issue to the attention of the party who is subject to the complaint. This makes sure that the service provider knows what your complaint is and what remedy you are seeking, and has a chance to respond. In many cases the response will be satisfactory, thereby removing the need to commence a formal complaint process.

You are required to give the party who is subject to the complaint written notice of the proposed complaint at least 14 days before a formal complaint is lodged with the Building Commissioner. The notice must provide (as far as you are reasonably able to give):

- advice that you propose to make the complaint;
- details of the remedy you propose to seek; and
- details of the evidence on which you propose to rely.

A 'notice of proposed complaint' form is available for this purpose from the Building and Energy office or website, but is not mandatory.

You may wish to serve the notice by email, however please ensure you keep a copy of the sent email as proof of service'.

### Step three – lodge the complaint with the Building Commissioner

Should you not receive a satisfactory response to the notice of proposed complaint within 14 days, you can lodge a formal complaint with the Building Commissioner.

To do this, complete and lodge a **Building Services Complaint Form**, available from Building and Energy office or website. The relevant box must be ticked to note whether your complaint is a:

- **Building service complaint**  
Matters relating to building services not being carried out in a proper and proficient manner or being faulty or unsatisfactory.

- **Home building work contract complaint**  
Specific matters under the HBC Act section 17 (breach of contract), section 20 (payments if a contract is terminated), and Schedule 1 clause 5 (excessive or unjustified cost increases).
- **Or both**

The complaint form can be lodged by post, online, via e-mail, or in person at the Building and Energy office.

### Fees

You must pay a fee to lodge a complaint about a building dispute with the Building Commissioner. This fee covers the cost of the initial assessment of whether we should accept or reject your complaint. If your complaint is accepted, the rest of the complaint process is free to both you and the respondent.

Fees are prescribed in the Regulations and are available in the fee schedule on the Building and Energy website.

### Step four – acceptance of complaint

After receiving your complaint the Building Commissioner will make a **preliminary decision** to refuse or accept your complaint.

Your complaint will be assessed to ensure it satisfies the requirements of the Act. The Building Commissioner is most likely to accept and investigate your complaint if it:

- is made in the approved form;
- is accompanied by the prescribed fee;
- is made within the prescribed time;
- contains proof that you have given notice of the proposed complaint, and you have generally made reasonable attempt to resolve the matter before lodging a formal complaint;
- is not considered to be vexatious, misconceived, frivolous, or without substance;
- is not the subject of an existing complaint under the Act;
- has not been subject to an order, judgment or other finding about the matter of the complaint;
- has not been the subject of a previous complaint to the Building Commissioner that has been refused or dismissed; and
- contains sufficient detail and evidence to support your complaint. This may consist of supporting evidence in the form of photographs or, in some cases, an inspection report.

### Step five – investigation of complaint

If your complaint is accepted the Building Commissioner will arrange for an authorised person from Building and Energy to investigate the complaint and make a report.

In addition to commencing an investigation, where appropriate the Building Commissioner may also refer the matter to the relevant permit authority<sup>2</sup> for the building work for action under the *Building Act 2011*, or to a regulatory body or board for disciplinary action.

An investigation of your complaint may involve the investigator:

- contacting you and the respondent;
- carrying out research on matters relating to the complaint;
- contacting another jurisdiction or agency;
- entering the place where the building service was carried out, or other places where evidence or information may be available, and collecting relevant information; and
- directing a person to produce required information or records, or answer any question in relation to the investigation.

Part 4 of the Act gives authorised persons considerable entry and evidence-gathering powers.

### Report on complaint

The investigator must prepare a report for the Building Commissioner based on the investigation of your complaint. Where appropriate the report may include recommendations for dealing with the complaint or resolving any related disputes.

### Step six – decision of Building Commissioner

Each complaint is unique and no one solution to a complaint is necessarily suitable for another. This is why there is a range of ways to resolve your complaint under the Act. Once assessed by the Building Commissioner your complaint may be dismissed, or may be resolved through any number of the following ways:

- conciliation;
- interim order;
- building remedy order;
- Home Building Work Contract (HBWC) remedy order; or
- referral to the SAT.

This variety of building-related orders is intended to prevent relatively low cost disputes from proceeding to court by making a decision for parties at an early stage. Orders can be made to rectify substandard work or to correct any regulated work that requires remedying.

It is possible that a single set of facts may trigger a series of parallel processes. The Building Commissioner and/or sat may make remedy orders to fix unsatisfactory work, a permit authority under the *Building Act 2011* may take action for failure to obtain or comply with a relevant permit, and the Building Services Board may take disciplinary action for a person doing work without being registered in the appropriate category or level, or for inappropriate conduct.

### Dismiss the building complaint

Where a complaint is dismissed by the Building Commissioner you and the respondent will receive written notification of the decision. There is no right of review against the Building Commissioner's decision to dismiss a complaint. A complaint may have other avenues for redress in the court system.

## Conciliation

You and the respondent can either be ordered to conciliate a complaint or may opt for conciliation. Conciliation is a process whereby parties, with the help of a conciliator, meet to identify issues, develop solutions to the problem, and explore ways to reach an agreement. Building and Energy will appoint a conciliator and actively encourage parties to reach an agreement.

A conciliator may:

- communicate with the parties;
- arrange and facilitate conferences about the complaint; and
- give advice and make recommendations to assist in reaching an agreement.

If the parties can agree to an outcome, the Building Commissioner can make an order to give effect to the agreement. If the parties do not agree to an outcome, your complaint will be referred back to the Building Commissioner for further consideration.

## Interim order

In some cases, if there is a risk of significant loss or damage occurring, the Building Commissioner can make an interim building service order to stop work or take other action before a final decision is made.

## Building remedy order

A building remedy order can be issued by the Building Commissioner where he or she is satisfied that a building service that is subject to a building complaint has not been carried out in a proper or proficient manner or is faulty or unsatisfactory.

A building remedy order requires the person who carried out the regulated building service to:

- remedy the work;
- pay the cost of someone else remedying the work; or
- pay compensation.

The Building Commissioner cannot order work or payments of more than \$100,000. The SAT cannot order work or payments of more than \$500,000 from an unregistered person. There is no limit to work or payments the SAT can order from a registered building service provider. If you think the remedy you are seeking is in excess of these limits you may need to take your complaint through the relevant court, rather than this building complaint resolution process.

## Home building work contract remedy order

A HBWC remedy order can be issued if the Building Commissioner is satisfied that it is justified to do so.

A HBWC remedy order may consist of, but is not limited to, an order:

- to stop an action in breach of the contract, or require work to be done;
- to pay an amount payable under the contract;
- that an amount is not payable under the contract, or if already paid, an order to repay the amount;
- for compensation;
- declaring that an amount of money claimed for work done is not payable; or
- voiding a contract.

## Referral of a complaint to the State Administrative Tribunal

Complex or intractable disputes are referred to the SAT for determination. If your complaint is referred to the SAT both you and the respondent will receive written notification of the decision. The complaint will then be dealt with by the SAT.

## Step seven – right of review of decision

If you are not satisfied, or are aggrieved by an order or other decision made by the Building Commissioner, you may apply to the SAT for a review of that decision.

SAT considers applications for review of decisions or orders issued by the Building Commissioner or the SAT. Reviews of decisions of the SAT are referred to the internal review in the SAT.

## Other avenues for dealing with disputes

A party to a building contract can also seek rapid adjudication of a payment dispute under the *Construction Contracts Act 2004*.

We can advise you on the operation of this Act if you wish to make a claim, or are responding to a claim made by a builder.

We can also help you with issues about plumbing and dividing fences.

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

## Building and Energy | Department of Mines, Industry Regulation and Safety

**1300 489 099**

8.30am – 4.30pm

Level 1 Mason Bird Building  
303 Sevenoaks Street (entrance Grose Avenue)  
Cannington Western Australia 6107

M: **Locked Bag 100, East Perth WA 6892**

W: [www.dmirns.wa.gov.au/building-and-energy](http://www.dmirns.wa.gov.au/building-and-energy)

E: [be.info@dmirs.wa.gov.au](mailto:be.info@dmirs.wa.gov.au)

### Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

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