



PUBLIC NAMING OF BUILDING SERVICE PROVIDERS POLICY

May 2019

POLICY

The Building Commissioner's Public Naming of Building Service Providers' policy:

The Building Commissioner will name all building service providers who have been found by the Building Services Board or State Administrative Tribunal to have committed a disciplinary breach or who have been convicted in a Court of an offence under a building service Act.

The Building Commissioner will only name a building service provider without a finding having been made when satisfied that it is in the public interest to do so.

To achieve this policy the Department of Mines, Industry Regulation and Safety - Building and Energy Division (Building and Energy) will adhere to guidelines governing how Building and Energy handles the naming of building service providers.

PURPOSE

The purpose of the Building and Energy's Public Naming of Building Service Providers policy is to:

- define the guiding principles that apply when the Building Commissioner undertakes a public naming;
- clearly identify who can be the subject of a public naming, what factors will be considered and when a public naming will be undertaken; and
- identify the powers vested in the Building Commissioner to undertake a public naming.

OBJECTIVES

The Building Commissioner's Public Naming of Building Service Providers policy seeks to reduce the risk for consumers by issuing warnings about:

- building services carried out in an unsatisfactory or dangerous manner and persons who carry out or are likely to carry out those services in that manner;
- unfair business practices in relation to the carrying out of building services and persons who engage or are likely to engage in these practices;
- any other matter which adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of building services.

Naming is an enforcement action available to Building and Energy. It can be used to:

- influence building service providers to remedy unfair practices or comply with specific legislative obligations;
- deter other building service providers from adopting similar practices;
- warn the public about particular unsatisfactory building service providers, or services; or
- provide information to the public about ways to deal with problem building service providers and how to obtain any redress to which they may be entitled.

GUIDING PRINCIPLES

In the course of implementing this policy the Building Commissioner will ensure the public naming of building service providers is undertaken in accordance with the law, the Department of Commerce Code of Conduct, the WA Public Sector Code of Ethics and is fair and impartial.

The following guiding principles apply when considering whether to name a building service provider:

- the decision to name a building service provider can have serious consequences for his or her livelihood and may be more damaging than a monetary fine or suspension imposed by a court or tribunal;
- the risk to the building service provider needs to be weighed against the risk for consumers and a failure to warn or a warning issued too late may cause physical injury, extensive financial loss or significant inconvenience to members of the public;
- the naming of building service providers prior to the truth of an allegation of a disciplinary matter or statutory breach being established will only be applied when it is in the public interest to do so;
- commercial in confidence information is protected from freedom of information disclosure and this protection will also be considered when deciding whether to publically name an individual building service provider. This includes information about parties involved in a building service or HBWC dispute who are able to make commercial business decisions in order to resolve a complaint without a finding of fault being determined;
- other than building service providers who have been found to have committed a disciplinary matter or an offence under a building service Act, building service providers will be afforded the right to respond to the proposal to issue of a public warning when it is practicable to do so. Time given to respond to a proposed warning will depend upon the circumstances of the case and the potential risk to consumers; and
- a decision to name a building service provider will be made on full and accurate information. The statement published will accurately reflect and not embellish that information.

WHAT IS A PUBLIC NAMING?

A naming is a public statement that provides information or a warning and is issued to protect the public from personal or financial harm or any other matter which may adversely affect it.

BUILDING SERVICE PROVIDERS

Building service providers fall into two categories;

- builders, painters and building surveyors registered under the *Building Services (Registration) Act 2011*, plumbers licensed under the Plumbers

Licensing and Plumbing Standards Regulations 2000 and approved owner builders; and

- non-registered entities that provide home building and associated work as defined under the *Home Building Contracts Act 1991*.

Home building work includes constructing or reconstructing, altering, improving or repairing a dwelling or part of a dwelling, or placing a dwelling on land.

Associated work includes site works, swimming pools, spas, pergolas, carports, garages, sheds, fencing, retaining walls, paving, driveways, landscaping and other like works.

DISCIPLINARY AND STATUTORY BREACH COMPLAINTS

Disciplinary complaint means a complaint about the alleged occurrence of a disciplinary matter in relation to a registered building service provider or an approved owner builder. Disciplinary matters are those prescribed in Part 5 of the *Building Services (Registration) Act 2011*.

Statutory breach complaint means a complaint about an alleged breach of a building service Act.

Building Service Act means any of the following:

- *Building Services (Complaint Resolution and Administration) Act 2011*
- *Building Act 2011*
- *Building Services (Registration) Act 2011*
- *Construction Contracts Act 2004*
- *Home Building Contracts Act 1991*
- *Water Services Licensing Act 1995* Part 5A
- *Local Government (Miscellaneous Provisions) Act 1960* Parts VIII, IX and XV
- Any other enactment prescribed for the purposes of the definition in the *Building Services (Complaint Resolution and Administration) Act 2011*, Part 1.

BUILDING SERVICE AND HOME BUILDING WORK CONTRACT COMPLAINTS

Building service complaint means a complaint about a regulated building service not being carried out in a proper and proficient manner or being faulty or unsatisfactory.

HBWC means a complaint about a matter referred to in the *Home Building Contracts Act 1991* section 17 or 20 or Schedule 1 clause 5.

Regulated building service means a building service carried out by a registered building service provider or an approved owner builder; or home building work that is carried out by a person for another person under a contract or arrangement for gain or reward.

BUILDING COMMISSIONER'S POWERS

Section 88 of the *Building Services (Complaint Resolution and Administration) Act 2011* gives the Building Commissioner the power to publish a statement identifying or giving warnings or information about:

- building services carried out in an unsatisfactory or dangerous manner and persons who carry out or are likely to carry out those services in that manner;
- unfair business practices in relation to the carrying out of building services and persons who engage or are likely to engage in these practices;
- any other matter which adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of building services.

The Building Commissioner uses this power when the public or section/s of the public need to be informed immediately about a building service provider to protect them from personal or financial harm.

The Building Commissioner must not make a statement unless satisfied that it is in the public interest to do so.

Generally, the Building Commissioner will name a building service provider via a media release, although it can also occur via an interview, in the Annual Report, or in Parliamentary statements or responses to the general public.

The Building Commissioner and thier officers must not directly or indirectly disclose or make use of information obtained during the course of their employment except:

- as required or allowed under written law; or
- for the purpose or in connection with performing a function under a law; or
- with the written consent of the Minister or the person to whom the information relates; or
- for the purpose of investigation of a suspected offence or the conduct of proceedings against a person.

The building services legislation administered by Building and Energy is listed at:

<http://www.commerce.wa.gov.au/building-commission/legislative-framework-0>

WHEN IS A BUILDING SERVICE PROVIDER NAMED?

The public naming of a building service provider will be considered in the following situations:

1. *A building service provider has been found by the Building Services Board or State Administrative Tribunal to have committed a disciplinary breach or has been convicted in a Court of an offence under a building service Act.*

All building service providers who fall into this category will be publically named under this policy, except those with spent convictions.¹

2. *An investigation has commenced into a building service provider in relation to an alleged disciplinary matter or alleged statutory breach but no finding has been determined.*

Building service providers who fall into this category will only be named in exceptional circumstances such as when an investigation has commenced into the provider's conduct and there is a public interest in issuing a warning to consumers.

3. *No investigation has been commenced.*

Building service providers who fall into this category will seldom be publically named. Builders that have disappeared or are at risk of imminent insolvency and there is a public interest in issuing a warning to consumers will be considered in this category.

4. *A change in registration status.*

The Building Commissioner may issue a public statement regarding a condition imposed on the registered building service provider's registration by the Building Service Board or a change in the registration status when it is in the public interest to do so.

5. *Upon the commencement of proceedings.*

In select cases, where it is in the public interest and as determined by the Commissioner, a building service provider may be named upon the commencement of proceedings against them. A building service provider will only be named after any relevant documents have been filed with the relevant court, tribunal or board and the building service provider has been provided with those documents.

¹ Builder service providers with a spent conviction recorded against them in connection with a breach of a building service Act will not be named in any statement publicised by the Building Commissioner. Details of the breach and any penalty imposed by the court will be released.

LEGAL ADVICE

In almost all circumstances it will be appropriate for the Building Commissioner to seek legal advice prior to the public naming of a building service provider.

PUBLIC INTEREST

The following factors will be considered when deciding whether to name a building service –

- The level of risk to the health or safety of the public
- The degree of potential financial loss to the public
- The number of complaints and/or enquiries from the public
- The level of media interest in the matter
- The availability of sufficient evidence to prove the allegations
- Any actions taken by the building service provider to address the conduct
- Any attempts to resolve disputes with consumers (if applicable)
- The extent of cooperation by the building service provider
- The effectiveness of alternative options available to the Building Commissioner other than naming
- The status of any other matters before the BSB, the SAT or a Court
- Previous actions against the building service provider
- The potential consequences of naming or not naming
- The effect of naming on the building service provider's industry group
- Any mitigating or aggravating circumstances including whether or not the building service provider is registered.

REQUESTS TO REMOVE A NAME FROM THE DEPARTMENT'S WEBSITE

The Building Commissioner will consider applications made in writing from building service providers who have previously been named to remove the media statement from the Department's website provided the application is received no sooner than six years from the date of publication.

When considering whether to remove the record the Building Commissioner will take into account the public interest factors listed earlier in this policy.

The Building Commissioner is able to exercise discretion when receiving a request from a building service provider for the early removal of the statement from the website. The grounds on which this may be done, however, will be generally limited to the overturning of the decision, a change of business ownership, on humanitarian grounds or where it is demonstrated it is in the public interest to do so.