

A new system for the resolution of building complaints in Western Australia

In May 2011 the Western Australian parliament passed the *Building Services (Complaint Resolution and Administration) Act 2011* ("the Act"). The Act is one of four pieces of legislation recently enacted by parliament, which together deliver the most significant reform to building legislation in Western Australia in over 50 years.

Construction Update

The Act establishes the office of the Building Commissioner and provides for a new system for dealing with complaints about regulated building services and home building work matters. The Act aims to provide for a more efficient and modernised complaint resolution system, replacing the former Building Disputes Tribunal. The Act came into operation from 29 August 2011.

The Building Commission

The newly established Building Commission is responsible for:

- dealing with complaints under the Act, including issuing orders to building service providers to remedy or to pay in respect of works not carried out in a 'proper and proficient manner';
- promoting and conducting research and training into building industry policy and building services;
- providing information on the registration of building service providers;
- providing advice, information, education and training in building standards and codes; and
- auditing the work and conduct of registered building service providers.

Complaints about building work

The Act repeals the *Builders' Registration Act 1939* and replaces the old system of complaints to the Building Disputes Tribunal with a new two stage system, involving the newly established Building Commissioner and the State Administrative Tribunal ("SAT").

Under the new system the following types of complaints may be made to the

Who does this affect?

- Building Companies
- Sub-contractors
- Home owners
- Neighbours of building sites

Article Highlights

- The Building Disputes Tribunal was recently replaced with the Building Commission.
- After a report is lodged with the Commission, they review, audit, facilitate mediation and make a Building Remedy Order if so required.
- All appeals against such Orders are then referred to the State Administrative Tribunal for final determination.

Building Commissioner:

- By any person regarding a 'regulated building service' not being carried out in a 'proper and proficient' person and home building work. Any person adversely affected by the work may make a complaint, for example neighbours or subcontractors, as well as owners.
- An owner or builder about a breach of a home building work contract (provided that the contract is not a cost plus contract and the contract sum is between \$7,500 and \$500,000).

In relation to complaints about workmanship the Act refers to a "regulated building service not being carried out in a proper and proficient manner or being faulty or unsatisfactory". The language is very similar to that under the former section 12A(1) of the *Builders' Registration Act 1939*, which referred to building work not being carried out in a proper and workmanlike manner, by reason that the work was faulty or unsatisfactory. While it remains to be seen, the relevant standard to be applied in assessing workmanship is likely to be the same as that under the repealed legislation.

The Regulations provide that 14 days notice must be given prior to making a complaint, however, the Building Commissioner may waive compliance with this requirement, if adequate notice of the proposed complaint has been provided. The Building Commission has recently published forms for the Notice of a Proposed Complaint and a Building Complaint Form which are available on the Commission's website.

The time limit for making a complaint remains unchanged, with a complaint required to be commenced within 6 years of completion of the work.

After a complaint is lodged the Building Commissioner is required to investigate and report on the complaint and to provide a copy of the report to the parties involved. It is likely that the investigation and reporting process under the new complaint system will be similar to the process of inspection and reporting by Builders' Registration Board Inspectors under the repealed legislation.

After the report into the complaint is prepared the Building Commissioner must consider the report and may then:

- Dismiss the complaint, if it is considered to be unfounded;
- Commence conciliation between the parties - such conciliations are generally to take place without legal representatives present and on the usual without prejudice basis;
- Make a Building Remedy Order or Home Building Work Contract Order - if either party is dissatisfied with such an order they may apply to the SAT for a review;
- Refer the complaint to the SAT for determination.

Contact



Matthew Lang
SENIOR ASSOCIATE

t: +61 8 9426 6629

e: mlang@jacmac.com.au



The SAT replaces the former Building Disputes Tribunal for the formal hearing of building complaints and may either dismiss a complaint or make a Building Remedy Order or Home Building Contracts Order.

The Building Commissioner or, if the matter is referred, the SAT, may make a Building Remedy Order requiring a person to:

- Remedy the works within a reasonable time;
- Pay the costs of someone else remedying the works; or
- Pay compensation.

The amount of compensation or value of the work that can be awarded by the Building Commissioner is limited to \$100,000. If a higher amount is considered appropriate the matter must be referred to the SAT. If a complaint is made against an unregistered person the SAT cannot order payment or work to be done in excess of \$500,000. However, there is no such limit on the amount of an order that the SAT may make against a registered service provider, such as a registered builder.

In relation to a complaint about a breach of a home building work contract the Building Commissioner (to a limit of \$100,000) or SAT (to a limit of \$500,000) may make a Home Building Works Contract Order, which may include an order:

- To pay a specified amount payable under the contract;
- Restraining an action in breach of the contract;
- Requiring specified work to be done under the contract;
- That a party pay compensation for loss or damage caused by a breach of contract.

Existing complaints made to the Building Disputes Tribunal under the old system, other than part heard matters, are currently being referred to the Building Commissioner for consideration. Complaints that are well advanced and would have been heard before the Tribunal are likely to be referred to the SAT for determination.

It remains to be seen whether the new two stage system will in fact deliver a more efficient process of dispute resolution for both builders and owners.

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Contact Us

t +61 8 9426 6611 **f** +61 8 9321 2002 **e** jacmac@jacmac.com.au

a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au