

# Home building

## complaints, disputes and appeals

November 2007

If you have engaged a builder/contractor to do a particular job but a problem arises, you should first try to resolve it yourself through discussion or by correspondence. Many disputes can be resolved simply by talking about them.

You should explain the problem clearly to your builder and ask that it be corrected.

Writing to the builder/contractor may allow you to detail your concerns in a clear and concise manner. Your letter should include details of the contract date, when the work was completed, the amount paid, the faults in the work and what you consider would be reasonable action to remedy the problem. Ask, in writing, for a reply to your letter within 10 days time by either telephoning or writing. It is important to keep a copy of your letter.

If agreement cannot be reached, there are other ways of dealing with the problem.

### **Complaints about workmanship or contracts for \$7,500 or less**

If the builder/contractor fails to reply to you or refuses to rectify the problem, you can lodge your complaint with the Department of Consumer and Employment Protection. Department staff can examine complaints relating to: contractual issues (valued at \$7,500 or less); or workmanship.

Make sure you write to the builder/contractor before you consider approaching the department. You should provide the department with a copy of the letter.

### **Magistrates Court**

The Department of Consumer and Employment Protection may be able to resolve the dispute through conciliation, otherwise we may advise you to lodge a claim at the Magistrates Court.

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The Magistrates Court deals with both civil and criminal matters. Applicants wanting to lodge a claim with the Magistrates Court must complete the relevant form, lodge it with the court registry and pay any relevant fees at that time.

For claims of \$7,500 or less, people can also elect to have access to a less formal dispute resolution process where the main objective is to bring the parties to an acceptable settlement, generally without lawyers and with more privacy for parties.

*If you are in any doubt about commencing a claim, you should contact the Magistrates Court and seek legal advice from a lawyer.*

## Complaints about contracts between \$7,500 and \$500,000

### Building Disputes Tribunal

Before lodging a complaint with the Building Disputes Tribunal you are required to fill out a prescribed form detailing your complaint and supply it to the builder/contractor. The form is known as Form 1 Preliminary Notice under Section 17(3) of the *Building Registration Act 1991*. Remember to keep a copy for your records. The Building Disputes Tribunal issues information packs including the correct form.

### Complaints over contractual matters

Complaints relating to disagreements over contracts for home building work can be lodged with the Building Disputes Tribunal from anywhere in the State, provided the value of the contract is more than \$7,500 and less than \$500,000.

The dispute may have arisen from you or the builder/contractor breaking the terms of the contract, or by either of you not complying with the *Home Building Contracts Act*. Contractual complaints under the Act must be lodged with the Tribunal within three years from the time the problem arose.

## Complaints about faulty work

The Building Disputes Tribunal can also deal with complaints arising from dissatisfaction with the standard of work done by a builder/contractor employed by you. Complaints must be lodged within six years of the date that the work is completed.

### Building Disputes Tribunal procedure

The Building Disputes Tribunal comprises a chairperson, who is a legal practitioner, a builder nominated by the Master Builders' Association or Housing Industry Association, and a consumer representative nominated by the Minister for Consumer Protection.

Once you have lodged your complaint with the Tribunal, it will be categorised as either a contractual or workmanship dispute. Accordingly, you will be notified of the time and place for an inspection or hearing. Depending on the nature of the dispute, it may be handled by the Registrar, or may proceed to a preliminary hearing or full hearing before the Tribunal. If the matter goes to the Tribunal, generally you will be required to present your own case, but you can be represented by a lawyer in some special circumstances

Both you and the builder/contractor will be asked to tell your side of the dispute and must provide documents or other proof to support your story. You may also call witnesses to give evidence on your behalf. When both of you have finished presenting your cases, the Tribunal will consider the evidence and make an order, which could be one of these:

- “ the builder/contractor is required to remedy the problem;
- ▶ builder/contractor pays the consumer to allow for someone else to fix a defect;
- ▶ builder/contractor pays compensation or damages;

#### Regional offices:

Goldfields/Esperance	(08) 9021 5966
Great Southern	(08) 9842 8366
Kimberley	(08) 9169 2811
Mid-West	(08) 9964 5644
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Quality of Service Feedback Line: Tel: 1800 30 40 59

- ▶ consumer is ordered to pay the builder/contractor;
- ▶ consumer is granted relief from payment; or
- ▶ the complaint is dismissed.

The order is legally binding on both you and the builder/contractor, although there are avenues of appeal to the District Court.

## Appeals

If either party is dissatisfied with a decision made by the Building Disputes Tribunal, they may apply to the State Administrative tribunal (SAT) to have a decision reviewed.

An application to the SAT for leave to appeal must be made within 28 days of the Tribunal's decision (or the notice of decision).

The SAT has discretion in certain circumstances to grant an extension of time in which to lodge an application.

If you have any queries about the appeal process you should contact the SAT or seek advice from a legal practitioner.

Neither the Minister for Consumer Protection nor the department has the power to intervene in the judicial process of the Building Disputes Tribunal or to review its decisions. Similarly, the Parliamentary Commissioner for Administrative Investigations (the State Ombudsman) does not have the power to inquire into the actions or proceedings of the Tribunal.

## Enforcement of orders

If a builder fails to perform building work or to rectify unsatisfactory work in accordance with the terms of an order made by the Building Disputes Tribunal, the owner can make a further application to the Tribunal.

The Building Disputes Tribunal may then either:

- ▶ grant the builder an extension of time to carry out the work; or
- ▶ revoke the original order and make a new order for the builder to cover the cost of the owner getting another builder to do the work.

Where such an order is sought, the owner has to produce quotes to substantiate the amount being requested.

If a builder who has been granted an extension of time fails to comply with an order to perform building work or rectify unsatisfactory work within the specified time period, the owner can apply to the Tribunal for a revised order requiring the builder to pay money in lieu of completing the work.

A builder who fails to comply with an order to perform building work or rectify unsatisfactory work without a legitimate reason, commits an offence and is also liable to criminal prosecution by the Registrar of the Building Disputes Tribunal.

Likewise if an owner has not paid the builder a payment required under the contract, the builder may seek an order of the Tribunal for payment, or for the outstanding sum to be paid into the Tribunal's Trust Fund until all other outstanding matters are finalised.

## Court Orders

Where a builder fails to pay money to an owner in accordance with an order of the Building Disputes Tribunal, the owner can apply to the Registrar for a certified copy of the order.

The owner can then lodge the certified copy of the order with the Magistrates Court. The Clerk of the Court will register the order which can then be enforced as if it were an order of that Court.

Although there are several ways a court order can be enforced, the most common methods involve either a warrant of execution against goods and/or land owned by the debtor, or a judgment summons taken out against the debtor.

Under a warrant of execution a bailiff can seize and sell goods or land owned by the debtor and use the proceeds of the sale to pay the amount of the debt plus costs.

In the case of a judgment summons, the debtor is summoned to attend court for examination of his or her financial capacity to pay the judgment debt. Where the court is satisfied that the debtor has some capacity to pay the debt, it will make orders requiring payment. In some cases the court will instruct the debtor to pay the debt by regular instalments.

There are court fees to pay when registering and enforcing an order of the Building Disputes Tribunal in the Magistrates Court. These are usually added to the amount of the debt being claimed and are recoverable from the debtor.

## We are available

*For further advice contact the Consumer Protection Advice Line on 1300 30 40 54 (cost of a local call from anywhere in the State).*

*The Builders' Registration Board and Building Disputes Tribunal telephone (08) 9476 1200 can also provide information.*

