

## Introduction

This information sheet explains how the Tribunal deals with complaints which are referred to it by the Building Commissioner under s 11(1)(d) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA).

The complaints which can be referred to the Tribunal by the Building Commissioner (Building and Energy) can be:

- a 'building service complaint' that building work is faulty or unsatisfactory or has not been carried out in a proper and proficient manner; and/or
- a 'HBWC complaint' that there has been a breach of a home building work contract or a claim under the *Home Building Contract Act 1991* (WA).

When a complaint is referred to the Tribunal by the Building Commissioner it is dealt with as an application to the Tribunal by the complainant, who becomes the applicant and the person against whom the complaint has been made is the respondent. The Building Commissioner (Building and Energy) has no further involvement in the matter.

## What happens when a complaint is referred to the Tribunal?

### Action by Building and Energy

When the Building Commissioner (Building and Energy) refers a complaint to the Tribunal, they send an email to each party informing them that the complaint has been referred. Attached to that email are copies of the referral application and the three documents which are sent to the Tribunal with that application:

1. A 'List of All Complaint Items lodged with Building Commissioner', which sets out all the complaint items which have been lodged with the Building Commissioner and which of those complaint items have been referred to the Tribunal. **Note:** The Tribunal only has jurisdiction to deal with the complaint items which have been referred to it and the Tribunal is not able to permit any additions or changes to the referred complaint items.
2. The investigation report prepared for the Building Commissioner by the authorised person at Building and Energy under s 10 of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA).
3. The original building complaint lodged with the Building Commissioner by the complainant (who becomes the applicant in the Tribunal proceeding).

### Initial case management by the Tribunal

The first step in the Tribunal proceeding is a directions hearing. The Tribunal sends a notice of directions hearing to each party which explains the purpose of the directions hearing, which is to:

- Establish how the matter may be most appropriately dealt with by the Tribunal.
- Ensure the issues are properly identified.
- Ensure parties understand the relevant evidence that needs to be provided at final hearing.
- Establish the number of witnesses likely to give evidence, the estimated length of the final hearing and the parties unavailable dates for the final hearing.
- Explore the possibility of settlement, including referring the matter to mediation to be conducted by a Tribunal Member or Members.

## Questionnaire

The Tribunal sends a questionnaire to each party which they must complete and return to the Tribunal and give to the other party at least five working days prior to the directions hearing. The information provided by each party ensures that the matter is handled as efficiently as possible.

**Note:** Parties are not to send any other documents to the Tribunal before the first directions hearing.

## First Directions Hearing

In a matter concerning a building service complaint (alleged faulty or unsatisfactory building work) the Tribunal will usually order:

- the applicant to prepare a complaint schedule and an indexed and paginated book of all the documents they wish to rely on to prove their case, using templates provided by the Tribunal; and
- the respondent to then complete their section of the complaint schedule and an indexed and paginated book of all the documents they wish to rely on to prove their case.

In a matter concerning a HBWC complaint (breach of contract) instead of a complaint schedule being required, the applicant may be ordered to file a statement of the grounds for their claim/s, or a statement of issues facts and contentions (SIFC) and the respondent ordered to file a response to that. Information regarding the preparation of a statement of issues facts and contentions is contained in the Tribunal's Info Sheet 16 - Statements of Issues, Facts and Contentions.

At the first directions hearing, the Tribunal will often refer a matter to mediation or, sometimes, to a compulsory conference.

## What should be included in a party's book of documents?

The Building Commissioner (Building and Energy) does not send to the Tribunal any of the documents which have been given to it (other than the original building complaint form) and each party must include in their book of documents all the expert reports, photographs, quotations/invoices, and other documents they wish to rely on, even though they may have previously given those documents to the Building Commissioner.

## What is mediation?

Mediation is a process in which a neutral third party (in SAT, a Member, or Members of the Tribunal) assists the parties to negotiate a resolution of their dispute. Information regarding mediations in the Tribunal is contained in the Tribunal's Info Sheet 10 - Mediation.

## What is a compulsory conference?

Sometimes, instead of being referred to mediation, a matter will be listed for a compulsory conference. The purpose of a compulsory conference is to identify and clarify the issues in the proceeding and promote the resolution of the matter by a settlement between the parties.

## What is an expert conferral?

The Tribunal will often require the expert witnesses in a particular field of expertise (such as building inspectors or engineers) who have been engaged by the parties to confer with one another in the absence of the parties and their representatives, either on their own or at a conference chaired by a Tribunal member.

The experts are required to prepare a joint statement which sets out the issues in the proceeding which are within their expertise, the matters on which they agree in relation to those issues, the

matters on which they disagree in relation to those issues and the reasons for any disagreement.

Information regarding the role of expert witnesses in proceedings in the Tribunal and the conferral of experts is contained in the Tribunal's Info Sheet 11 - Guide to giving expert evidence.

## Witnesses

Witnesses are persons who can give evidence from their own direct knowledge of a something which is relevant to the determination of the matter.

Each party is responsible for ensuring the attendance of their witnesses at the final hearing.

## What happens at a final hearing?

At a final hearing each party is given the opportunity to present its case, starting with the applicant and then the respondent.

The documents which have been filed by the party and given to the other party prior to the final hearing are received into evidence.

Also, the persons (witnesses) called by each party to give evidence do so and can be questioned (cross-examined) by the other party regarding their evidence. The Tribunal member/s conducting the final hearing may also put questions to a witness to clarify their evidence.

The parties will have been required to file and give to the other party prior to the final hearing a list of their witnesses and either a statement, or a summary, of their evidence.

At the conclusion of the final hearing the Member/s of the Tribunal may hand down their decision immediately or may adjourn the matter for a short period of time to make their decision and then hand it down, or may reserve the decision, in which case they have 90 days to make the decision, or sometimes longer if that period is extended by the President of the Tribunal.

## Access to the property the subject of the complaint for inspection

The party which has possession of the property which is the subject of the complaint should allow the other party reasonable access for the purpose of that party and accompanying persons (such as experts) inspecting the building work, which is the subject of the complaint, to enable them to produce reports to be put into evidence in the determination of the matter by the Tribunal.

If reasonable access is not allowed, the Tribunal may make an order adverse to the party who does not permit the access.

## Rules to remember:

1. You must always give a copy to the other party of every document or communication which you file (lodge) with the Tribunal.
2. You are encouraged to file (lodge) documents via the eCourts portal, rather than by email.
3. You do not need to (and must not) send a document to the Tribunal by email if you have lodged it in the eCourts portal. However, you must give a copy to the other party (by email, post, or delivery) after you have lodged it in the eCourts portal.
4. It is essential that you comply with orders made by the Tribunal by the required date. If you fail to do that there may be adverse consequences for you. For example, if you are the applicant, the proceeding may be dismissed for want of prosecution or, if you are the respondent, an order adverse to your interests may be made against you. Also, you may be ordered to pay the costs of the party and the Tribunal's costs caused by your failure to comply with an order.