GOVERNMENT OF WESTERN AUSTRALIA

Department of **Local Government, Industry Regulation and Safety**

Building and Energy Western Australia

Reforming Western Australia's Home Building Contract Laws:

Recommendations Paper





Produced by

The Department of Local Government, Industry Regulation and Safety – Building and Energy Division.

Disclaimer

This paper proposes reforms to Western Australia's home building contract laws for government consideration.

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Acknowledgement of Country

The Department of Local Government, Industry Regulation and Safety respectfully acknowledges Aboriginal peoples as being the traditional custodians of Western Australia. We acknowledge the enduring connection Aboriginal people continue to share with the land, sea and sky through both their ancestral ties and custodianship to Country. We pay our respect to Elders both past and present, and acknowledge the value brought to our department through the collective contribution of Aboriginal and Torres Strait Islander peoples across Western Australia.

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Glossary

ABS WA HCP Index	The Australia Bureau of Statistics index which measures changes in the cost of constructing a house in Western Australia over time. 6427.0 Producer Price Index – Table 17. Output of the Construction Industries – House Construction Western Australia (Series A2333757A).
ABS WA RCI Index	The Australian Bureau of Statistics index which measure changes in the cost of residential construction inputs in the Perth market over time. 6427.0 Producer Price Index – Table 18. Input to the House Construction Industry – All groups – Perth (Series A2390606F).
BRO	Building remedy order
BSCRA Act	*Building Services (Complaint Resolution and Administration) Act 2011*
BSR Act	*Building Services (Registration) Act 2011*
Building Better reform package	The Cook Government's response to recommendations made in the Building Confidence Report (2018), as detailed in the *Decision Regulatory Impact Statement - Building Better: Reforms to WA's Building Regulatory Framework (2023)*
Building Commissioner	Statutory office created under the BSCRA Act and vested with various regulatory responsibilities, including resolving some building disputes.
Building permit	An approval, given under the *Building Act 2011*, which authorises specified building work to be carried out.
Building service complaint	A complaint about a building service made under the BSCRA Act.
Certified building permit application	An application for a building permit that is accompanied by a certificate of design compliance. A certified building permit application can be made for any building or incidental structure.
Class 1 building	A class of building within the National Construction Code classification system made up of Class 1a buildings (detached houses, townhouses and rowhouses) and Class 1b buildings (boarding houses, guest houses and short-term holiday accommodation).
Class 10 building or structure	A class of building within the National Construction Code classification system made up of Class 10a building (private garages, carports, sheds, or similar non-habitable structures), Class 10b structures (fences, masts, antennas, retaining walls, swimming pools, or similar) and Class 10c structures (a private bushfire shelter associated with but not attached to a residence).
Cost plus contract	A contract under which a builder is entitled to recover an amount that is not determined at the time when the contract is entered into, that includes the actual cost of materials and labour, together with a percentage of that cost, a specified sum, or both.

CP Act	*Criminal Procedure Act 2004*
HBC Act	*Home Building Contracts Act 1991*
HBWC complaint	Home building work contract complaint made under the BSCRA Act
HBWCRO	Home building work contract remedy order
HII	Home indemnity insurance, a type of insurance required under the HBC Act which protects homeowners and their successors in title.
Home building work contract	A contract between a builder and a homeowner for the performance by the builder of home building work, but does not include a cost plus contract or contracts below $7,500 or above $500,000.
LGIRS	The Department of Local Government, Industry Regulation and Safety
MBA	Master Builders Association of WA
Minister	The Minister for Commerce
Owner builder	An individual who is not a registered builder but has been given special approval to be the builder for their own building project.
Permit authority	A regulatory authority responsible for issuing building permits and enforcing building standards within a geographic area (typically a local government)
PPA	Preparation of plans agreement
Registered builder	A building contractor registered under the *Building Services (Registration) Act 2011*.
Residential building work contract	A contract between a builder and another person for the performance by the builder of home building work but does not include a contract for the performance by a builder of home building work for another builder who is in turn obliged to perform the work under another contract.
SAT	The State Administrative Tribunal
SBDC	The Small Business Development Corporation
Uncertified building permit application	An application for a building permit where the permit authority arranges the certificate of design compliance. An uncertified building permit application can only be made for Class 1 and 10 buildings and incidental structures.
WALGA	The Western Australian Local Government Association
WHS	Work health and safety
WHS Act	*Work Health and Safety Act 2020*
WHS Regulations	Work Health and Safety (General) Regulations 2022

Foreword

I am pleased to present the recommendations report for the home building contract laws review. The review was commissioned by the Cook Labor Government in July 2025 to strengthen WA's regulatory framework for home building contracts by providing appropriate safeguards for homeowners, while supporting a stable and resilient building industry.

In recent years, consumers and builders have experienced challenges that have highlighted the need for clearer information, effective regulation and stronger earlier intervention powers. Ongoing geopolitical events, growing construction costs, and supply and labour shortages, have highlighted the need for responsive, modern and fit-for-purpose home building contract laws.

This report addresses these issues by evaluating consultation feedback, analysing proposed reform options, and presenting recommendations for our government's consideration.

I would like to thank WA consumers, the building industry and government stakeholders, who have actively participated in the consultation processes throughout the review and provided their invaluable feedback, which has helped shape the proposed reforms. I would also like to acknowledge LGIRS and their dedicated staff in assisting me with the review.

The home building contract laws review is an important step towards ensuring Western Australians can continue to build homes with confidence while supporting the ongoing growth of a resilient building industry, a key contributor to the WA economy.



Hon Dan Caddy MLC

Parliamentary Secretary to the Minister for Commerce

Executive summary

This document is the final stage of the home building contract laws review into the HBC Act (except Part 3A, which deals with HII) and the dispute resolution process prescribed in the BSCRA Act. The review was initiated in July 2025 to ensure existing regulatory frameworks for the home building sector remain fit for purpose and to identify opportunities for longer-term improvement or reform.

To support the review, a broad range of stakeholders were consulted, including consumers, building industry stakeholders, the SAT, and government stakeholders. Feedback was collected through online surveys, written submissions, workshops, and stakeholder meetings during the inquiry, discussion and decision phases of the review. This engagement informed both the proposed reforms outlined in the discussion paper and the recommendations contained in this report.

Consultation findings identified gaps and areas for improvement within WA's home building regulatory framework. Key issues raised included limited consumer and industry knowledge of rights and dispute resolution processes, jurisdictional limits that no longer reflect current construction costs, and support for increasing financial thresholds to enable more disputes to be resolved through the BSCRA Act complaints process. Ultimately, the feedback demonstrated that the recommendations must strike a balance between improving consumer protections and supporting a sustainable and resilient home building industry.

This recommendations report evaluates stakeholder feedback on the proposed reforms, assesses the likely impacts of those reforms, and provides recommendations for the Government's consideration.

In accordance with the Government's Better Regulation Program, a cost-benefit analysis has also been undertaken by Marsden Jacob Associates to support Recommendation 22, the extension of registration to residential building inspectors. The analysis has found that registration is expected to generate a net economic benefit of $5.78 million to society over a 10-year period by improving the quality and reliability of inspections and reducing the number of complaints that escalate into more costly disputes.

Summary of recommended reforms

Based on consumer and building industry stakeholder feedback, the following recommendations are made to amend WA's building regulatory framework to improve consumer protections and dispute resolution processes.

No.	Recommendation
1	Consumer and industry knowledge of the home building contract laws • Increase the accessibility, ease of use and transparency of home building information provided by LGIRS, by providing information in one centralised online location (a 'WA Home Building HQ'). • Establish a two-year pilot program with suitable legal support services to assist consumers and builders (particularly small businesses) in understanding the rights and obligations under home building work contracts and how to utilise and navigate the BSCRA Act complaints process for resolving building disputes.
2	Jurisdictional limits of the HBC Act Home building contract laws are amended to: • change threshold values under the HBC Act to increase the lower threshold to $10,000 and increase the upper threshold to $800,000; and • expressly provide that the Building Commissioner must review the thresholds every three years and provide a report to the Minister.
3	Financial limits on remedial orders Home building contract laws are amended to: • increase the value of BROs and HBWCROs that the Building Commissioner can issue, without consent of the disputing parties, from $100,000 to $200,000; and • increase the value of HBWCROs that the SAT can issue from $500,000 to $800,000 to align with the jurisdictional threshold limits.
4	Deposit limits • For home building work contracts valued at $400,000 or less, the maximum deposit limit be increased to 10 per cent. • For home building work contracts valued at more than $400,000, the current maximum deposit limit of 6.5 per cent to remain unchanged. • No change to current exemptions to the above deposit limits (e.g. offsite kitchen cabinetry).
5	Cooling-off periods Home building contract laws are amended to: • provide for an owner's cooling-off period into home building work contracts of five working days; • outline that if the owner exercises their right to terminate the contract during the cooling-off period, the builder is entitled to be compensated for 'out of pocket expenses' incurred under the contract to the date the contract is ended; and • stipulate that any monies paid to the builder must otherwise be returned.

No.	Recommendation
6	Price escalations – Statutory framework Home building contract laws are amended to: • increase the period after which a delay in commencement of building work is grounds for escalation from 45 working days to 60 working days; • prescribe a disclosure statement required to be included at the front of the contract, outlining the circumstances in which a builder may increase the price of the contract; • require the disclosure statement to be explained to the homeowner and signed by both parties; and • if a disclosure statement is not included in the contract or signed by homeowner, the price escalation may be disallowed or deemed void where a complaint is made to the Building Commissioner.
7	Price escalations – Complaints process Home building contract laws are amended to: • expressly limit the time within which a builder may notify a homeowner of a price increase on account of a delay to the commencement of work under the home building work contract prior to works commencing on site; • void any additional price increase notices when a builder has already given a price increase notice for the same circumstance; • without limiting what price increase a builder may claim, deem a price increase to not be excessive where it does not exceed the pro-rated ABS WA RCI Index for the nearest preceding 12-month period; • provide a price increase (greater than that determined by reference to the above index-linked methodology) will not be considered excessive where the builder supports the claimed increases with evidence demonstrating the actual changes in costs that will be incurred (e.g. original and revised supplier quotes); and • harmonise section 10 (deposits and progress payments) of the HBC Act with Schedule 1 price increase complaints to ensure consistency between provisions.
8	Prohibition on rise and fall clauses No change be made to the current prohibition of rise and fall clauses or the variations provisions in the HBC Act.
9	Progress payments and defined stages No change be made to the existing laws to prescribe defined progress payment stages for home building contracts.
10	Limitation periods for remedial work complaints Home building contract laws are amended to clarify that: • the six-year complaints time period restarts only with respect to the remedial work done (not the initial whole works); and • unregistered builders will be responsible for specific remedial works performed for an additional six years from when the works were last complete, regardless of whether works were carried out for gain or reward (to ensure consistency with registered builders).
11	Limitation period clarification for price escalation complaints • Laws be changed to expressly set out the limitation period for HBC Act Schedule 1, clause 5 price escalation complaints to be no later than three months after practical completion is reached. • No change to the HBC Act price increase complaints to allow homeowners to claim compensation for builder caused delays to commencement.

No.	Recommendation
12	Early mediation and conciliation conferences Home building contract laws are amended to: • allow for early (voluntary) mediation for HBWC complaints pre-acceptance; • allow complaints to continue with the Building Commissioner post conciliation conference; and • permit inspections commissioned by the Building Commissioner at any point (e.g. before and after conciliation).
13	Site access to building site – Harmonisation with WHS requirements Home building contract laws are amended to: • ensure harmonisation with the WHS Act and WHS Regulations, so that the owner or authorised persons must comply with any reasonable WHS safety requirements; clarify that reasonable requirements do not include proof of insurances or white card, etc; and • with the exception of time-critical stage inspections (e.g. slab pour) or critical WHS risks, require a minimum notice period to the builder of 48 hours, unless otherwise agreed between the parties.
14	Standing of registered builders and owner-builders to make complaints Home building contract laws are amended to: • clarify that owner-builders should be considered a consumer in the normal sense and may be permitted to make a complaint against a builder for building service or HBWC complaints; • define builder for the purposes of building service or HBWC complaints; and • clarify that registered building service providers do not have a right to lodge a building complaint against another registered building service provider under the BSCRA Act.
15	Prohibition on caveats in residential building contracts No change to be made to home building contract laws.
16	Notice of the proposed complaint and provision of evidence Home building contract laws are amended to remove the mandatory requirement to provide a written description of the evidence to support the complaint before the Building Commissioner accepts a complaint.
17	General inspections Home building contract laws are amended to include a provision that after a general inspection is completed, the registered building service provider may request from the Building Commissioner (or authorised person) a written record of the inspection.
18	Inspection reports and the SAT Home building contract laws are amended to require the SAT to have regard to building inspection reports prepared by the Building Commissioner when determining matters under the BSCRA Act.
19	Powers of the Building Commissioner to issue warnings Home building contract laws are amended to broaden the powers of the Building Commissioner to: • issue public warnings where frequent complaints have been received about the same issue or building service provider; • make clear that a warning may be issued whether or not a formal complaint has been made; and • require the Building Commissioner to give the person concerned a reasonable opportunity to make representations before a proposed warning is issued, to ensure procedural fairness.

No.	Recommendation
20	**Infringements** The HBC Act be amended to align the process for issuing infringements with the BSCRA Act by adopting procedures in the CP Act. The amendment to include provisions to modify the operation of the CP Act to allow for infringement notices to be issued within: • 21 days after the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the office; and • within 12-months from the date of the alleged offence.
21	**Residential building work without HII, offence** The HBC Act be amended to clarify that home indemnity insurance must be in place before commencing work and before any payment is demanded from the owner.
22	**Registration of residential building inspectors** The BSR Act and the home building contract laws are amended to: • Prescribe a new class of registration in relation to building inspectors. The regulated scope of work is to be limited to only construction and completion stage inspections of Class 1 buildings. • Establish a co-regulatory approach to registration of building inspectors by giving the Building Commissioner the power to approve entities to assess and certify the qualifications, skills and competencies of applicants for registration as building inspectors against prescribed requirements. The Building Services Board would be required to assess eligibility against all other requirements for registration (e.g. financial requirements, fit and proper, etc). • Exempt the following persons from the requirement to be registered as a building inspector: – an owner inspecting their own home; – a person who is providing finance for the home building work or a person acting on behalf of such a person; – a registered building surveyor; – a registered building engineer; and – a registered architect under the *Architects Act 2004* and the Architect Regulations 2005. • Make appropriate amendments to section 26 of the HBC Act to ensure that only registered building inspector practitioners or those exempted from the requirement for registration can be authorised persons for the purposes of a residential building work contract under the HBC Act. Void (ab initio) any provisions in a home building contract that restrict or otherwise alter a homeowner's entitlement to appoint a registered building inspector to perform inspections (or an otherwise exempted person). • Provide that building inspection work cannot be the subject of a building service complaint under the BSCRA Act. • Give the Building Commissioner and SAT the ability to refuse to consider evidence not provided by an authorised person (as defined above). • Bring registered building inspectors under the disciplinary framework of the BSR Act. • Incorporate appropriate grandfathering provisions to facilitate building inspectors' transition into the new building inspector registration scheme.
23	**Work to be completed within a reasonable timeframe** The home building contract laws be amended to expressly set out that in absence of another set timeframe, works are to be completed within a reasonable timeframe.
24	**HBC Act penalties for offences** The penalties listed in Appendix 1 to be increased to meet community expectations.
25	**BSCRA Act penalties for offences** A penalty to be included under s.53(2) of the BSCRA Act, uniform with s.53(1) of the BSCRA Act.



Introduction

In July 2025, the Cook Government announced the home building contract laws review to assess the effectiveness of consumer protections and dispute resolution frameworks established under the HBC Act and the BSCRA Act.

Following the well-publicised experiences of both consumers and builders, the review was commenced to ensure that WA's home building regulatory framework remains fit for purpose, provides an appropriate balance between consumer protection and industry interests, and effectively supports the timely resolution of home building disputes. The review also sought to identify opportunities for longer-term improvements and reforms.

Terms of reference were released to identify the focus areas and scope of the review. The review considered the whole of the HBC Act, except Part 3A, which deals with HII, and the dispute resolution process established under Parts 2 and 3 of the BSCRA Act.

The review was conducted in three phases:

- **Inquiry Phase 1** focused on identifying issues and challenges experienced by consumers, builders and other stakeholders. Consultation was undertaken through surveys, written submissions, workshops and targeted stakeholder meetings.
- **Discussion Phase 2** involved the development of proposed reforms to address issues identified during the inquiry phase and other known regulatory gaps. Stakeholder feedback was sought through the release of a discussion paper and accompanying survey.
- **Decision Phase 3** drew on stakeholder feedback from the online survey and written submissions to the discussion paper, policy analysis and regulatory considerations, to develop recommendations for Government's consideration.

A cost-benefit analysis was conducted by independent consultant Marsden Jacob Associates to identify the economic benefits and risks of establishing a building inspectors' registration framework.

This report concludes Phase 3 of the home building contract laws review. It presents the findings of the review and outlines recommendations aimed at improving the operation of the home building regulatory framework, strengthening consumer protections, and enhancing dispute resolution outcomes within WA's home building sector.

Focus areas and recommendations

Consumer and industry knowledge of the home building contract laws

Access to accurate, up-to-date and well-organised information in one location is critical to helping both consumers and industry in WA's home building sector understand their rights, responsibilities and obligations. While a range of information is available, it is often fragmented, inconsistent, out-of-date or difficult to navigate.

Additionally, home building contracts are often lengthy, complex and filled with legal and technical terminology that can be difficult for consumers to interpret without support. This complexity contributes to confusion about key contract terms, payment schedules and dispute resolution processes, which can lead to preventable issues and disputes.

During the inquiry and discussion phases of this review, a common theme was a lack of knowledge across the home building sector. This was particularly the case with respect to contractual obligations, regulatory requirements and the overall building process. It was also noted that access to free legal advice was limited.

This gap can contribute to contractual disputes, construction delays and unmet expectations for both builders and homeowners. The stakeholder feedback received highlights the need for legal, regulatory and contractual rights and obligations to be communicated to homeowners and builders in a more transparent and accessible way. Improving the clarity of contractual documentation and ensuring consistent, easy to understand guidance and advice across the sector would improve understanding, reduce the risk of disputes and help set more realistic expectations from the outset.

As a government regulator, LGIRS is unable to provide legal advice regarding the individual circumstances of a stakeholder. Access to independent legal services is important to bridge the gap by supporting owners in situations where direct assistance by LGIRS is not possible.

The discussion paper sought feedback regarding the establishment of a centralised online information hub (a 'WA Home Building HQ') to improve access to clear, consistent and reliable guidance for both homeowners and industry participants. Additionally, the discussion paper asked for feedback regarding a proposal to establish a two-year pilot program with a suitable community legal centre to provide assistance, through a reduced fee, to consumers in understanding their rights under home building work contracts and how to utilise the BSCRA Act complaints process. After an initial two-year pilot program, the program will be reviewed to determine its effectiveness, relevance and success in achieving its intended objectives.

The WA Home Building HQ received strong support from stakeholders, with 94 per cent of consumers and 95 per cent of industry in support. Stakeholders indicated the reform will centralise fragmented information and improve understanding of contractual obligations, regulatory requirements, and dispute resolution processes. Consumers and industry mentioned difficulties in locating and understanding information about home building contract laws. One consumer noted the complexity of navigating the state government website to find information, while both consumers and industry emphasised the need for plain English information to explain contractual obligations.

A single, authoritative source from LGIRS would help address fragmented and outdated information by outlining rights and obligations, providing practical and straightforward guidance, and including short, engaging videos to make the content more accessible and easier to navigate. The hub is envisaged to bring together all relevant LGIRS information in one place, offering a reliable and consistent point of reference.

The WA Home Building HQ is recommended to be a standalone website, allowing consumers and industry to easily find and access information without needing to navigate through multiple webpages or follow numerous links. By bringing all relevant content together in one central online location, the WA Home Building HQ would make it quicker and simpler for users to locate the information they need.

There was broad support for the proposed legal-aid pilot program, with 97 per cent of consumers and 71 per cent of industry in support. The MBA and ABN Group supported the proposed legal pilot program but recommended extending it to builders. They argued that providing both parties with access to consistent information would promote a shared understanding of contractual rights and obligations. Some industry stakeholders opposed the reform, arguing that consumers should be responsible for understanding contractual obligations before entering into agreement and could utilise AI-based tools to assist in that process. It was also noted that builders may have access to professional associations that provide advice, guidance and training on a range of industry matters. While these supports may be available in some circumstances, they are not universally accessible or sufficient. Consumers come from diverse backgrounds and will often engage with complex, high-value building contracts only infrequently, limiting their familiarity with contractual rights and obligations. Similarly, many builders, particularly new market entrants and small or micro-business operators, may have limited experience with dispute resolution processes or lack the resources to find advice.

Piloting a legal assistance program for both consumers and small business builders recognises these practical realities. It promotes equitable access to information and support, helping all parties to better understand their rights and responsibilities and to navigate building disputes more effectively. A pilot based approach will allow for the effectiveness, suitability and uptake to be tested for an evidence-based decision to be made on continued operation and scope.

If implemented, the reform will assist consumers and builders in understanding their rights, obligations, and dispute resolution options through access to clear, centralised information. This is expected to reduce disputes, improve builder-consumer relationships and alleviate administrative pressures on LGIRS.

Recommendation

- Increase the accessibility, ease of use and transparency of home building information provided by LGIRS, by providing information in one centralised online location (a 'WA Home Building HQ').
- Establish a two-year pilot program with suitable legal support services to assist consumers and builders (particularly small businesses) in understanding the rights and obligations under home building work contracts and how to utilise and navigate the BSCRA Act complaints process for resolving building disputes.

Jurisdictional limits of the HBC Act

The HBC Act currently provides for minimum standards and protections for consumers when entering a lump sum home building work contract between $7,500 and $500,000. Any home building contract outside those thresholds is not protected by the HBC Act. Protections include requiring contracts to be made in writing and provided to the consumer, limiting the ability to increase the price once the contract is signed, and permitting the consumer to terminate a contract if certain circumstances are met. Protections also apply for builders, as the Act permits cost increases if certain circumstances are met and provides for a dispute resolution process for non-compliance by the consumer.

Owners whose contracts are not captured by the HBC Act do not benefit from the rights and protections established by the HBC Act. This includes the effective loss of access to the BSCRA Act dispute resolution process in relation to HBWC complaints, which is designed to provide an accessible and efficient mechanism for resolving contractual disputes between owners and builders.

Thresholds were last revised on 29 June 2007 to capture contracts for works valued between $7,500 and $500,000 respectively. Since 2007, the cost of constructing a new home has increased substantially. This is reflected in the ABS WA HCP Index, which indicates a 133.2 per cent increase in the cost of building a home from 30 June 2007 to 31 December 2025. By reason of this rise in construction costs, the proportion of home building contracts covered by the HBC Act has progressively decreased. Looking at HII data, the proportion of home building contracts valued under $500,000, and therefore covered, has fallen from 94 per cent in 2014 to 84 per cent in 2025. LGIRS does not have applicable data going back to 2007. The existing thresholds are no longer fit for purpose and do not provide adequate protections for owners and builders alike.

Across Australia, states and territories apply varying monetary thresholds and regulatory frameworks to home building contracts. WA remains the only jurisdiction to impose an upper limit on the value of contracts covered by home building legislation.

WA	VIC[1]	NSW	QLD	ACT	NT	SA	TAS
$7,500 to $500K	Above $10,000	Above $500 ‘small jobs’ Above $20,000	Above $3,300 ‘level 1’ Above $20,000 ‘level 2’	Above $12,000	Above $12,000	Above $12,000	Above $20,000

[1] In Victoria a ‘major domestic building contract’ is defined as a contract with a value over $10,000, which is where most requirements in the DBCA come into effect. However, some requirements in the Act apply to all contracts with those under 10,000 still having implied warranties, deposit amount and restrictions on variations to the contract price.

The discussion paper sought feedback on whether amendments should be made to the home building contract laws to change threshold values under the HBC Act to increase the lower threshold to $10,000 and increase the upper threshold to $800,000; and expressly provide that the thresholds are to be reviewed on a three-yearly basis reporting to the Minister. The proposed reform received strong support from both consumers (84 per cent) and industry (95 per cent). Stakeholders supported increasing the monetary thresholds for home building contracts, noting that the current thresholds no longer reflect contemporary construction costs. Raising the lower jurisdictional value threshold to $10,000 would remove the cross-over with the alternative low-cost minor case claims facility of the Magistrates Court of WA. Increasing the upper jurisdictional threshold to $800,000 would ensure that more home building contracts are covered by the HBC Act and can access the associated consumer protections and dispute resolution processes under the BSCRA Act.

Stakeholders generally supported periodic reviews of the monetary thresholds to ensure they remain relevant and proportionate to prevailing construction costs. Views differed however on the frequency and mechanism for undertaking such reviews. Suggestions included threshold increases being linked to ABS WA HCP Index movements, and that threshold adjustments could be administered through the Building Services Board rather than requiring Ministerial approval.

While stakeholders generally supported regular reviews of the thresholds, the length of the review cycle varied between industry stakeholders, with cycles of two, five and 10 years proposed. The proposed three-year review cycle represents the most balanced approach. It provides sufficient flexibility to consider economic conditions, stakeholder feedback and policy outcomes while ensuring thresholds remain current and effective.

Recommendation

Home building contract laws are amended to:

- change threshold values under the HBC Act to increase the lower threshold to $10,000 and increase the upper threshold to $800,000; and
- expressly provide that the Building Commissioner must review the thresholds every three years and provide a report to the Minister.





Financial limits on remedial orders

In resolving a complaint made under the BSCRA Act, the Building Commissioner and SAT are empowered to issue orders in the form of:

- BROs – A remedy for faulty or unsatisfactory work; and
- HBWCROs – A remedy for breaches of contract or HBC Act obligations.

These orders provide an accessible, low-cost remedy, without the need for formal court proceedings. Orders issued by the Building Commissioner or SAT must be complied with and can be enforced in a similar manner as a court order. Failure to comply with an order, without a reasonable excuse, is also an offence and may be treated as grounds for disciplinary action where the non-compliant party holds an occupational licence (e.g. a builder or painter).

The Building Commissioner can currently issue a BRO or HBWCRO for remedial work or payments valued up to $100,000 and valued over $100,000 with the consent of the disputing parties. The SAT can issue a BRO for remedial work or payments valued up to $500,000 against an unregistered entity, with no limits applicable for a BRO against a registered building service provider (e.g. a registered builder). The SAT can issue a HBWCRO valued up to $500,000.

These limits have not been reviewed or updated since 2011. As with the HBC Act jurisdictional thresholds, inflation has effectively eroded the coverage of these orders, and by extension, the practical utility of the BSCRA Act dispute resolution process.

This has gradually pushed building disputes out of:

- the Building Commissioner's jurisdiction and into the SAT's, increasing dispute resolution costs, time and procedural complexity; and
- the BSCRA Act framework, entirely on the higher end, and either into the court system or caused consumers to give up on seeking a remedy.

To ensure the BSCRA Act dispute resolution process remains fit for purpose and effective, the discussion paper sought feedback on whether amendments should be made to the home building contract laws to:

- increase the value of BROs and HBWCROs which the Building Commissioner can issue, without consent of the disputing parties, from $100,000 to $200,000; and
- increase the value of HBWCROs that the SAT can issue from $500,000 to $800,000.

Sixty per cent of industry supported increasing the monetary thresholds for remedial orders issued by both the Building Commission and the SAT. Consumer support was particularly strong, with more than 90 per cent supporting an increase to the financial remedy thresholds available.

Stakeholders agreed that the existing thresholds no longer reflect current construction costs and should be updated to maintain access to effective and cost-efficient dispute resolution mechanisms.

Consumers particularly noted that significant increases in building costs mean that current remedial order limits are often insufficient to cover the cost of rectifying defects or addressing contractual breaches. ABN Group further suggested that the remedial orders should be adjusted every two years in line with ABS WA RCI Index to ensure monetary thresholds are up to date.

Implementing this reform would expand the remedial powers of the Building Commissioner and the SAT, enabling a greater number of disputes to be resolved within the existing dispute resolution framework. This would reduce the need for parties to pursue matters through the court system, which can be more costly, time-consuming and complex.

Recommendation

Home building contract laws are amended to:

- increase the value of BROs and HBWCROs which the Building Commissioner can issue, without consent of the disputing parties, from $100,000 to $200,000; and
- increase the value of HBWCROs that the SAT can issue from $500,000 to $800,000 to align with the jurisdictional threshold limits.



Deposit limits

The HBC Act regulates deposits that can be taken under home building work contracts by setting limits intended to protect consumers. Deposits are generally limited to 6.5 per cent of the total amount payable under a home building work contract and up to 20 per cent of the total amount payable under a home building work contract for cabinetry work where 50 per cent of the value of the contract relates to off-site work.

According to industry, upfront costs have increased significantly since the 6.5 per cent limit was first set in 1991. That limit included costs associated with energy rating, acoustic and other reports, preparation and lodgement of permits with the Water Corporation and the local council, geotechnical surveys, fire zoning, HII premiums, compliance with expanded worker health and safety obligations and other administrative matters.

Some industry stakeholders advised that builders were having to cover upfront costs, above the 6.5 per cent limit, out of their own funds and wait to recoup these amounts from later progress payments, sometimes many months later. Of the industry stakeholders who considered the 6.5 per cent limit to be inadequate, more than half suggested a deposit limit of 10 per cent to cover a builder's costs.

Under the HII scheme, from 1997 to 2022, owners were covered for lost deposit of up to $20,000 in the event of a builder's death, disappearance or insolvency. This meant that, depending on the value of a home building work contract, part of a deposit provided by an owner to a builder was insured and part was uninsured (e.g. 6.5 per cent on a $500,000 contract is $32,500, of which $12,500 was uninsured).

In 2022, the WA Government doubled the level of HII cover across the board, including raising the cover for loss of deposit to $40,000. Increasing the upper value limit for home building work contracts from $500,000 to $800,000, as is proposed earlier in this paper, will see some deposits again become partially uninsured (e.g. 6.5 per cent on an $800,000 contract is $52,000, of which $12,000 would be uninsured). An increase to the deposit limit would further increase the uninsured component of an owner's deposit.

The discussion paper sought feedback regarding an increase to the deposit amount under a home building work contract to 10 per cent (capped at $40,000) to cover additional upfront builders' costs. This would effectively see 10 per cent deposits permissible on home building work contracts valued up to $400,000, with that percentage falling in relative terms for higher value contracts.

Industry provided qualified support for the proposal, with 75 per cent indicating support, noting it would assist smaller builders, with some opposed to a tiered approach to the maximum deposit payable. By contrast, HIA strongly opposed the proposal, noting that the $40,000 cap on deposits will "adversely impact cash flow for builders on contracts valued from $615,000 to $800,000 by further constraining their ability to claim a deposit to cover ever-rising upfront costs".

It noted that the proposed tiered caps on deposit limits would prejudice regional builders, introduce unnecessary complexity, and increase the risk of miscalculating deposit amounts, exposing builders to inadvertent non-compliance with the law. HIA supported maintaining a 6.5 per cent deposit limit with no cap for all home building work contracts to the increased threshold of $800,000. It noted that financial institutions typically apply the legislated limit regardless of the value of the contract.

The ABN Group also strongly opposed the proposal. In doing so, it cited builders that pre-purchase materials off-site, bespoke home builds, and costs that exceed the $40,000 cap, including, engineering costs, working drawings, quote compilation, site assessment costs and interior and exterior design fees.

Sixty-seven per cent of consumers supported the proposal to increase the deposit limit to 10 per cent with a $40,000 cap on deposits. Construction lawyer and arbitrator, Graham Morrow, suggested that if prior drawings and permit agreement is in place then the deposit amount payable should revert to 6.5 per cent.

A consumer respondent suggested that the HII deposit cover should be raised to $60,000 and deposits above 6.5 per cent should only be permissible where the builder provides evidence of specific upfront costs. Consumers opposed to the proposal to increase the deposit limit to 10 per cent (capped at $40,000) noted that builders can currently charge for costs associated with preliminary works, such as engineering drawings, site surveys, etc, under PPAs, which sit outside the HBC Act framework.

Consumer and industry stakeholders consistently noted that any increase to the maximum deposit limit should be accompanied by a corresponding increase in HII coverage for lost deposits.

However, consideration of Part 3A of the HBC Act, which establishes and governs the HII scheme, was expressly outside the scope of this review.

Given the interrelationship between deposit limits and HII coverage, and in the absence of a detailed review of the HII scheme, a measured and targeted approach is recommended.

Specifically:

- for home building work contracts valued at more than $400,000, the current maximum deposit limit of 6.5 per cent should remain unchanged; and
- for home building work contracts valued at $400,000 or less, the maximum deposit limit should be increased to 10 per cent.

This approach balances the objective of providing builders with improved cash flow and project commencement certainty, while limiting potential consumer exposure until the broader implications for the HII scheme can be fully considered.

Recommendation

- For home building work contracts valued at $400,000 or less, the maximum deposit limit be increased to 10 per cent.
- For home building work contracts valued at more than $400,000, the current maximum deposit limit of 6.5 per cent to remain unchanged.
- No change to current exemptions to the above deposit limits (e.g. offsite kitchen cabinetry).

Cooling off periods

A 'cooling-off period' is a short period of time, after signing a contract, within which a consumer can withdraw from a contract without incurring substantial liability for breach of contract. A cooling-off period can be created within the terms of a contract or through legislation.

WA's home building contract laws do not include a cooling-off period for home building work contracts. By contrast, Victoria, New South Wales, Queensland, South Australia and Tasmania all require five business-day cooling-off periods in residential building contracts. In these jurisdictions, if an owner withdraws from the contract during the cooling-off period, the builder is entitled to recover their out-of-pocket expenses incurred to that date or a reasonable price for the work carried out under the contract before the withdrawal. Any deposits paid to the builder must otherwise be returned.

Should cooling-off periods be introduced for home building work contracts, an owner that terminates their contract would be able to seek to recover monies paid to builder through the BSCRA Act complaints process. Disputes related to a builder's entitlement to compensation could also be managed through the BSCRA Act complaints process.

Before signing a building contract, it is common practice for drawing up of plans and technical documents to be performed under a separate PPA. A PPA may also cover a range of other services such as site inspection, preparation of an estimate or budget, arranging a site survey and arranging engineering drawings. This reform proposal does not include PPAs, as they are not covered by the HBC Act.

The discussion paper sought feedback regarding a proposal to imply an owner's cooling-off period into home building work contracts of five working days, outline that if the owner exercises their right to terminate the contract during the cooling-off period, the builder is entitled to be compensated for 'out of pocket expenses' incurred under the contract to the date the contract is ended, and stipulate that any monies paid to the builder must otherwise be returned.

Seventy-one per cent of consumers supported home building work contracts having a cooling-off period, noting that cooling-off periods already exist in other industries and suggesting that builders should be required to evidence their out-of-pocket expenses. A consumer respondent noted the power imbalance between owners and builders, citing high-pressure sales tactics used by some builders at the contract stage. He said that five days should be the minimum cooling-off period to allow the owner to seek independent legal advice regarding the contract. The Building Inspector's Association of WA supported the proposal and suggested that the cooling-off period be extended to 10 working days rather than five days.

Industry generally provided support of the proposal, with 76 per cent in support of cooling-off periods within home building work contracts. Feedback included that builders' out-of-pocket expenses should be covered and that builders be given same rights of termination.

The Australian Institute of Architects strongly supported the proposal, stating that the same protections should be extended to other key contract-phases. JWH Group did not oppose the proposal, noting that a cooling-off period may improve consumer confidence when entering into a contract, that similar arrangements already operate in other Australian jurisdictions and that a clearly defined framework is needed to minimise uncertainty and disputes. It also said that builders being compensated for out-of-pocket expenses provided an appropriate safeguard. ABN Group gave qualified support of the proposal, on the basis that the cooling-off period was available to both parties.

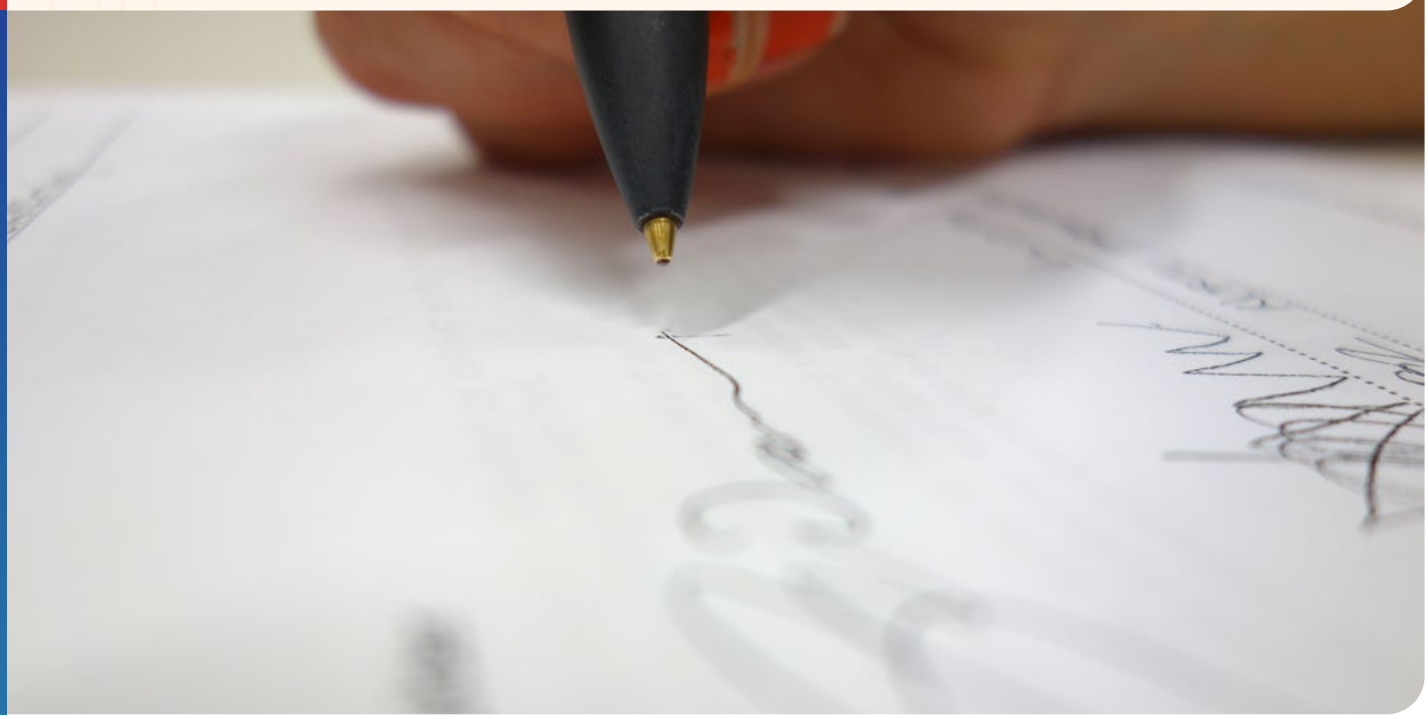
HIA and the MBA did not support a cooling-off period, noting the existing relationship between the owner and builder formed through the PPA stage, that it may lead to unrecoverable costs being absorbed by the builder and the risk that builders may not undertake substantial preliminary works until the cooling-off period has elapsed. HIA said that there was no identified need for a cooling-off period, but that should it be implemented in legislation, and it should extend to both the owner and builder.

While the industry associations raised the above concerns, the overall feedback from stakeholders reflected a broad endorsement of the proposed reform. If implemented, the reform would ensure that WA remains in step with all other Australian states, who already provide this consumer protection.

Recommendation

Home building contract laws are amended to:

- imply an owner's cooling-off period into home building work contracts of five working days;
- outline that if the owner exercises their right to terminate the contract during the cooling-off period, the builder is entitled to be compensated for 'out of pocket expenses' incurred under the contract to the date the contract is ended; and
- stipulate that any monies paid to the builder must otherwise be returned.



Price escalations – statutory framework

A builder cannot pass on price increases under a home building work contract except in limited circumstances set out in the HBC Act. Such circumstances include, but are not limited to, a delay in the commencement of building work beyond 45 working days after the contract is entered into, either:

- caused solely by a failure of the owner to comply with certain contractual conditions (e.g. evidence of finance approval or the owner's title to the land); or
- which occurs without any failure on part of the homeowner or builder.

A delay beyond 45 working days, which is not the fault of the builder, will entitle the builder to seek a price increase to cover changes in labour and/or material costs to be incurred by the builder and provided the conditions implied by section 9 of the HBC Act in terms of applying for the building permit, are met.

The 45 working day period was last set when the HBC Act was proclaimed by Parliament in 1991, 35 years ago. Since that time, there has been a significant increase in the total number of building permit applications made in WA, impacting local councils' timeframes to issue the same. According to data reported by local governments to the Western Australian Local Government Association (WALGA), 49,637 building permit applications were determined by those local governments for the year ending 30 June 2025.

Builders are obliged under the implied conditions in the HBC Act to do all things reasonably necessary to ensure that building work commences within 45 working days of the contract being entered into. Where a builder submits the building permit application to the applicable local government permit authority within 20 working days, with all necessary documentation, they are deemed-to-satisfy this obligation. Once received, a local government permit authority has 10 working days to determine certified building permit applications and 25 working days to determine uncertified building permit applications – where further information is not required. Where a permit authority needs further information, the builder has up to 21 days to provide it. It is noted that, most high-volume project builders submit certified building permit applications.

According to WALGA data for the 2024–25 financial year,[2] 41 per cent of certified building permit applications[3] required further information for the year ending 30 June 2025. For that same period, 49 per cent of uncertified building permit applications[4] required further information. As building work cannot commence prior to the issue of a building permit, this data strongly suggests that building work was not commenced within 45 working days.

[2] walga.asn.au/policy-and-advocacy/our-policy-areas/planning-and-building/local-government-performance-monitoring-project

[3] Certified building permit applications include all classes of construction, with class 1a and 10 being optional.

[4] Uncertified building permit applications may only be submitted in relation to class 1a and 10 structures.

Likewise, there is a risk that planning approvals, which are required under a separate enactment, but prevent a local government from issuing a building permit until satisfied, can also expose a homeowner to the risk of price escalation. Recent reforms to WA's planning laws mean that most residential housing construction projects receive deemed approval where the design complies with the relevant R-Codes, however where a development application requirement is triggered, this can unexpectedly increase the time for the final building approval.

Significantly, a homeowner failing to provide evidence of land title within 45 working days after the contract is entered into is considered to be a homeowner caused delay for which the builder may seek a price increase.

Many first home buyers enter a 'land and home package', where the land sale contract and home building work contract are signed at the same time. In these arrangements, the property developer, not the homeowner, is responsible for applying for and obtaining the land title certificate. When there is a delay to the release of land titles, including where representations are made by the developer on the timeline for titling, the homeowner can still face a price increase under the home building contract, even though they have no control over the release of the land titles.

The discussion paper sought feedback on whether amendments should be made to the home building contract laws to increase the period after which a delay in commencement of building work is grounds for price escalation from 45 working days to 60 working days, and whether the provision of land titles should be removed as a reason for an owner cause of delay from the HBC Act and entitlement for the builder to claim a price escalation.

The second proposal did not seek to shift responsibility for delay in land titles directly to builders but rather remove it as an event for which a price escalation could be claimed given it is beyond the reasonable control of either party to the home building contract, unless the builder is also the developer.

Consumers strongly supported increasing the period from 45 to 60 working days, with 86 per cent in favour. They said builders are better placed to manage this risk, while homeowners often have less bargaining power and limited capacity to absorb price increases.

Sixty-three per cent of industry respondents supported increasing the period to 60 working days. Those opposed said third-party delays can increase builder costs. JWH Group supported the change, noting that 45 working days no longer reflects the practical realities of starting a project. The Australian Institute of Architects said the change could reduce price-related disputes. HIA and ABN Group opposed the proposal, submitting that builders may price the increased risk into contracts, which could increase home building costs.

Stakeholders had mixed views on removing land titles as an owner-caused delay that can justify a price increase.

Most industry respondents opposed this proposal, with 63 per cent against it. HIA, the MBA, ABN Group and JWH Group noted that land title delays are often also outside the builder's control. The Urban Development Institute of Australia said builders may defer sales until titles are released, which could delay home builds and affect housing supply. By contrast, 86 per cent of consumers supported or partially supported the proposal, noting that title delays can also be outside the homeowner's control.

Land title releases are often beyond the control of either party to a home building contract and may, in some instances, be caused by delays in government processes (such as utilities and land titling decisions). Instead, a better approach is required to increase upfront disclosure requirements in home building contracts.

A statement at the beginning of the contractual documents should clearly explain when price increases may occur, so to ensure homeowners can make fully informed decisions before signing.

Queensland requires some domestic building contracts to include a price change warning on the first page of the contract schedule. A similar requirement in WA would align with other jurisdictions and strengthen consumer protections, particularly for first-home buyers. This statement would be in addition to the existing notice to homeowners prescribed in the regulations.

Recommendation

Home building contract laws are amended to:

- increase the period after which a delay in commencement of building work is grounds for price escalation from 45 working days to 60 working days;
- prescribe a disclosure statement required to be included at the front of the contract, outlining the circumstances in which a builder may increase the price of the contract;
- require the disclosure statement to be explained to the homeowner and signed by both parties; and
- if a disclosure statement is not included in the contract or signed by homeowner, the price escalation may be disallowed or deemed void where a complaint is made to the Building Commissioner.



Price escalations – complaints process

Where a builder is entitled under the HBC Act to increase the contract price on an otherwise fixed-price home building work contract, the increase must not be excessive or unjustified. If a homeowner believes that a claimed increase is excessive or unjustified, they may lodge a complaint with the Building Commissioner under the BSCRA Act to have the matter determined.

Further, if the increase notified by the builder to the homeowner amounts to an increase of more than five per cent of the overall contract price, the HBC Act gives the homeowner the right to terminate the contract, provided they do so within 10 working days of the builder giving notice of the price increase. Where a home building work contract is terminated in such a manner, the homeowner is liable to compensate the builder for reasonable costs incurred by the builder up to that date.

This right of termination suggests a builder should give a single price increase notice immediately following the end of the delay to commencement of building work. Otherwise, a homeowner's right to terminate may be of limited practical value. Notwithstanding this, the HBC Act does not expressly address:

- when a builder may notify a price increase; or
- whether a builder is restrained to a single price increase (or whether they could notify a further price increase if material and labour prices later increase more than anticipated).

If homeowners contest a builder's notified price increase through the complaint process, the Building Commissioner must assess whether the increase was unjustified or excessive. If the price increase is triggered by one of the grounds set out in the HBC Act, such as delays with finance or land titles, it will generally be found to be justified. Whether a price increase is excessive is a more difficult matter to determine and is regularly the subject of protracted disputes, with homeowners complaining of a lack of transparency or capacity to mitigate cost increases.

In the absence of a builder being able to demonstrate actual increases in the costs, linking the amount of the price increase to an independent benchmark, such as the ABS WA RCI Index, may provide a more transparent and efficient method in resolving price increase complaints for both parties.

The discussion paper sought feedback on whether amendments should be made to the home building contract laws to:

- expressly limit the time within which a builder may notify a homeowner of a price increase on account of a delay to the commencement of work under the home building work contract to prior to works commencing on site;
- void any additional price increase notices when a builder has already given a price increase notice for the same circumstance;
- without limiting what price increase a builder may claim, deem a price increase to not be excessive where it does not exceed the pro-rated ABS WA RCI Index for the nearest preceding 12-month period; and
- provide a price increase (greater than that determined by reference to the above index-linked methodology) will not be considered excessive where the builder supports the claimed increases with evidence demonstrating the actual changes in costs that will be incurred (e.g. original and revised supplier quotes).

Stakeholders broadly acknowledged the need for change and indicated general acceptance of the proposed reforms, with 82 per cent of consumers surveyed and 61 per cent of building industry surveyed in support.

In support, HIA submitted that limiting the time within which a builder must notify a homeowner of a price increase before works commence aligned with recent SAT decisions. ABN Group and the MBA offered qualified support for the proposal to void additional notices for the same circumstances, with the MBA submitting that multiple price increases should be allowed where there are demonstrable and additional actual costs incurred.

Regarding a deeming pathway by reference to the ABS WA RCI Index, construction lawyer and arbitrator Graham Morrow supported the proposed reform, suggesting that builders be required to itemise any cost increase with actual evidence. A consumer respondent noted that a reference to the ABS WA RCI Index provided certainty and could reduce the cost and time of resolving price escalation disputes. Other reasons for supporting this proposal among consumers surveyed included transparency and the objectivity of the ABS index.

The MBA and Australian Institute of Architects supported the reference to the above ABS WA RCI Index on the basis that the builder's ability to substantiate the cost escalation based upon actual evidence be retained. HIA and ABN Group preferred another cost calculation method, with HIA submitting that this index may not reflect 'real time costs'. It is noted that neither stakeholder proposed an alternative cost calculation method. JWH Group did not support this proposal, stating that actual project costs provided a more accurate basis for assessment than broad market indices.

For the sake of clarity, the proposed reform was not intended to limit a builder's ability to increase the price beyond the ABS WA RCI Index. A builder would still be able to seek an increase to their contract price by more than ABS WA RCI Index if the actual increase is greater provided, they were able to produce credible evidence to support their proposed increase

Recommendation

Home building contract laws are amended to:

- expressly limit the time within which a builder may notify a homeowner of a price increase on account of a delay to the commencement of work under the home building work contract to prior to works commencing on site;
- prohibit the builder from issuing more than one price increase under a home building contract for the same circumstance;
- without limiting what price increase a builder may claim, deem a price increase to not be excessive where it does not exceed the pro-rated ABS WA RCI Index for the nearest preceding 12-month period;
- provide a price increase (greater than that determined by reference to the above index-linked methodology) will not be considered excessive where the builder supports the claimed increases with evidence demonstrating the actual changes in costs that will be incurred (e.g. original and revised supplier quotes); and
- harmonise section 10 (deposits and progress payments) of the HBC Act with Schedule 1 price increase complaints to ensure consistency between provisions.

Prohibition on rise and fall clauses

A builder cannot pass on price increases under a home building work contract except in limited circumstances set out in the HBC Act. As outlined earlier, the circumstances include, but are not limited to, a delay in the commencement of building work beyond 45 working days after the contract is entered into, either:

- caused solely by a failure of the owner to comply with certain contractual conditions (e.g. evidence of finance approval or the owner's title to the land); or
- which occurs without any failure on part of the homeowner or builder.

A delay in obtaining a building permit within 45 working days of signing the contract, which is not the fault of the builder, will also entitle the builder to seek a price increase to cover any additional costs incurred. The HBC Act otherwise prohibits the use or rise and fall clauses within home building work contracts. A rise and fall clause generally relates to an increase in labour or material costs after a build has commenced. It is noted that rise and fall clauses are not prohibited in contracts to build new homes that fall outside of the HBC Act jurisdiction (currently fixed-price home building contracts valued at $500,000 or more and cost-plus home building contracts of any value).

In its 17 September 2025 submission, HIA outlined its (then) position with respect to rise and fall clauses within HIA contracts.

> "HIA contracts do not include standardised rise and fall clauses, even in jurisdictions and for contract types where these clauses are permitted. There are various reasons for this, including the complexity in administering the clauses, the additional ambiguity and risk for both parties, and limitations on financing. In some circumstances they are used where the project is funded predominantly or entirely by the owner, however these contracts are also more likely to be for high value works. There is also a range of other options available to deal with pricing risk that are not presently prohibited, and which are historically preferred to cost escalation clauses. These include provisional sums and prime cost items, force majeure clauses which may permit the recovery of some additional costs, as well as cost plus contracts".

In its 24 June 2026 submission to the discussion paper, HIA acknowledged that following the onset of the Middle East conflict in February 2026, it had reconsidered its above position, stating it wished to be involved in any future consultation if government was "minded to reconsider the prohibition on rise and fall clauses in home building work contracts". Conversely, the MBA in its submission to the discussion paper addressed this topic indirectly, stating that the requirements to provide written variations to home building contracts should be waived for unforeseen circumstances, which could include "declared pandemics or similar".

As part of this review, financial institutions were closely consulted through the Australian Banking Association (ABA) and the Customer Owned Banking Association (COBA), as well as Keystart WA. Member banks of the associations surveyed, and Keystart, were unanimously opposed to any changes to allow for price escalation clauses due to labour and material cost increases throughout the build.

Relevantly, feedback from the financial institutions included that:

- most homeowners borrow to their full borrowing capacity;
- any change to the law to allow for rise and fall clauses will lead to uncertainty and is likely to change their lending criteria for WA customers, including, restricting maximum loan-to-value ratios (LVR) – a risk with potential broader consequences;
- price increases in residential construction loans are not more common in jurisdictions where price escalations are permitted (with many financial institutions prohibiting the practice in their residential construction loans); and
- in the event that builders issue price escalations, financial institutions are not willing to agree to price increases under their residential construction loans.

Of concern, all financial institutions surveyed stated that were the laws to be changed to remove the prohibition on rise and fall clauses with home building work contracts, it may change their lending practices in WA, potentially making it more difficult for homeowners to get loans to build new homes.

For the above reasons (among others), there are genuine risks that any lifting of the prohibition of rise and fall clauses, including by altering the restriction on variations in section 8 of the HBC Act, may reduce the number of first homeowners able to get a loan, which in turn, may reduce the number of new houses constructed in the state.

As conceded in HIA's submission of 17 September 2025, HIA contracts do not include rise and fall clauses even in jurisdictions which do not prohibit them, due to (among other reasons), "limitations on financing".

Put differently, if WA were to consider lifting the prohibition on rise and fall clauses, any potential commercial benefit to builders will be entirely illusory, by reason of financial institutions applying a nationally uniform approach of routinely declining these price increases. This was confirmed in consultations held with interstate building associations in May 2026, where it was confirmed by a building association from a state which did not prohibit rise and fall clauses that financial institutions (in that state) were generally unwilling to provide residential construction loans in circumstances where the contracts contained terms allowing for cost escalation in any form[5].

Recommendation

For the above reasons, it is recommended that no change be made to the current prohibition of rise and fall clauses or the variations provisions in the HBC Act.

[5] Feedback by the interstate building association was provided on the condition of anonymity.

Progress payments and defined stages

The HBC Act regulates progress payments under home building work contracts. Progress payments in home building work contracts must represent genuine payments for work already performed or materials or services already supplied to ensure that owners are not paying for work that has not been done. Where this occurs and the project falters, an owner can be left significantly out of pocket.

Under home building work contracts, progress payments generally follow defined stages of the build, with banks or lenders releasing a percentage of the contract price to the homeowner or builder once each stage is completed. This provides certainty to contracting parties by specifying when and what proportion of the contract price must be paid when a defined stage is completed.

In WA, progress payment stages under home building work contracts are not prescribed by law and parties are left to agree upon milestones. For new home builds, progress payment stages are often agreed in conjunction with the financial institution that is providing finance to the project. This can lead to varying, and at times unclear, progress payment stages, depending on the practices of the particular builder or lender. As a result, homeowners can be left without a clear understanding of what each progress payment stage entails, which may lead to disputes during the build, including with lenders, regarding whether a defined stage has been reached or not.

Victoria and the Northern Territory currently limit by law the percentage of the contract price that can be demanded in relation to defined stages of work. By doing so, this ensures consistency and transparency and protects homeowners who might otherwise be unaware whether the percentage payments for each stage of work put forward by a builder are fair and reasonable. In the Northern Territory and Victoria, parties can opt out of the prescribed payment amounts provided prescribed warnings are given to the owner.

Consultation feedback indicated strong support for the proposed reform among consumers surveyed and financial institutions. These stakeholders considered that prescribed progress payment stages would provide greater certainty, improve transparency throughout the building process, and strengthen consumer protections by ensuring payments are more closely aligned with construction milestones. Major financial institutions operating in WA also supported the proposal, noting that defined progress payment stages could improve consistency in construction finance loans and provide consumers with clearer expectations regarding the release of funds during construction.

Industry raised concerns regarding the prescription of progress payment stages, with 37 per cent of industry opposed to this proposal. Builders observed that progress payments are already subject to lender oversight, with financial institutions commonly establishing construction milestones and controlling the release of funds. Consequently, some industry stakeholders questioned whether legislative intervention would deliver significant additional consumer protection benefits beyond those already achieved through existing lending practices. Whilst this might be the case, not all projects are financed.

Industry also raised concerns regarding the Victorian model, in particular, that prescribed percentages may not always reflect the actual value of work completed, particularly where labour costs, material costs, project complexity or construction sequencing vary. In such circumstances, builders may incur costs that exceed the amount able to be claimed, resulting in cash flow pressures. These concerns are exacerbated by the current environment, with industry continuing to experience increased material costs, labour shortages and broader economic pressures. It was noted that smaller builders may be particularly affected, given their limited capacity to absorb cash flow constraints across multiple projects.

Industry further noted that residential building projects vary significantly in scope, complexity and delivery methodology. As a result, a prescribed approach may reduce contractual flexibility and may not be suitable for all forms of residential construction, particularly renovations, extensions and bespoke building projects. While defined progress payment stages may improve certainty and transparency for consumers, the proposal may also create unintended consequences. Increased cash flow pressures on builders may lead to higher contract prices as businesses seek to manage financial risk and recover additional financing costs. These costs are likely to be passed on to consumers, potentially offsetting some of the intended consumer protection benefits of the reform.

While the proposed reform could have the potential to improve consumer protections, the potential benefits are outweighed by the risks associated with reduced contractual flexibility, increased cash flow pressures on builders and the potential for increased construction costs. The current legislative framework enables parties and lenders to structure progress payments according to the circumstances of individual projects, providing a level of flexibility that may be preferable in the current economic environment.

Further, established lending practices of financial institutions provide market-based consumer protections by ensuring a consistent and transparent approach to financing residential construction projects.

Recommendation

No change be made to the existing laws to prescribe defined progress payment stages for home building contracts.





Limitation periods for remedial work complaints

Under the BSCRA Act, building service complaints must be lodged within six years of completion (or 15 years for complaints relating to Typlex pipes), while HBWC complaints are (generally) to be made within three years from the date the cause of action arose, or the breach first occurred.

The BSCRA Act also provides for the resetting of the limitation period in certain circumstances where remedial building work has been undertaken. Where a registered building service provider carries out remedial work to address a defect or incomplete building service, a new limitation period may apply in relation to that remedial work. This recognises that defects may only become apparent after further work has been performed and provides consumers with a renewed opportunity to seek resolution if the remedial work itself proves defective.

This new limitation period does not however extend to remedial work carried out by an unregistered builder (i.e. most tradespersons). Once the original limitation period expires on the work performed by an unregistered builder, the homeowner has no avenue for recourse through the complaint process to the Building Commissioner in relation to defective remedial work performed by an unregistered builder, regardless of when the remedial work was undertaken (unless the homeowner paid for this remedial work). This creates a gap in protection for homeowners.

The discussion paper sought feedback on whether amendments should be made to home building contract laws to clarify:

- the six-year complaint limitation period restarts only with respect to the remedial work done (not the initial whole works); and
- unregistered builders will be responsible for specific remedial works performed for an additional six years from when the works were last complete, regardless of whether works were carried out for gain or reward (to make consistent with registered builders).

Overall, the feedback highlighted the value of improving clarity and consistency in how the limitation periods operate.

Consumers strongly supported restarting the six-year complaint limitation period for remedial work by builders, with 86 per cent in favour. They said this would improve accountability, make liability periods clearer, and give greater confidence that those who perform remedial work remain responsible for it.

Most industry respondents supported clarifying that a restarted limitation period applies only to the remedial work, with 82 per cent in favour. The MBA, JWH Group and ABN Group supported this approach. HIA opposed it, submitting that the six-year period should not restart and should run from the original completion date or notice of completion.

There was also broad support for treating remedial work by unregistered builders the same as remedial work by registered builders, with 86 per cent of consumers and 82 per cent of industry respondents in favour. Stakeholders said this would strengthen homeowner protections, improve consistency in the complaints framework, and support fairness and accountability for all builders.

Recommendation

Home building contract laws are amended to clarify that:

- the six-year complaint limitation period restarts only with respect to the remedial work done (not the initial whole works); and
- unregistered builders will be responsible for specific remedial works performed for an additional six years from when the works were last complete, regardless of whether works were carried out for gain or reward (to ensure consistency with registered builders).



Limitation period clarification for price escalation complaints

Since the commencement of the BSCRA Act in 2011, a person has had three years to make a home building work contract complaint to the Building Commissioner. This three-year limitation period applies to all alleged contractual breaches, including those concerning price increases. It operates alongside the general six-year limitation period for bringing breach of contract proceedings under the *Limitation Act 2005*.

Prior to the commencement of the BSCRA Act, the limitation period for complaints about price increases under the HBC Act was much shorter.

Despite the 2011 change, there remains uncertainty among industry and consumers about the three-year limitation period for price increase complaints. Two other factors have also compounded confusion on the limitation period, including:

- deficiencies and ambiguity in the express wording in section 17(b) of the HBC Act; and
- the practice of some builders notifying an entitlement to a price increase before construction commences but requiring payment as part of later progress payments or the final payment claim.

The discussion paper sought feedback on whether the HBC Act should be amended to make it clearer that price increase complaints must be made within three years. It also sought feedback on whether owners should have a right to seek compensation where a builder causes a delay to the commencement of the work.

Three-year limitation period for price-increase complaints

Consultation feedback on the proposed limitation period was mixed. Consumers supported the reform because an express limitation period would reduce uncertainty and make it easier for both consumers and builders to understand when a price increase complaint must be made. A clearer period would also improve transparency and reduce disputes about whether a complaint has been lodged out of time.

Industry opposed the proposal, arguing that the current three-year limitation period is excessive for price escalation disputes. Industry stakeholders noted that price increase issues usually arise during construction and are generally addressed soon after the increase is notified. On that basis, they submitted that it is unlikely such disputes would properly remain unresolved for several years before a complaint is made.

Industry expressed the view that retaining the three-year limitation period for price increase complaints creates unnecessary uncertainty for both parties. Residential building projects need to progress without avoidable delay, and an extended complaint period may leave price increase issues unresolved until well after the dispute should reasonably have been identified and addressed. This affects project progression, payment certainty and the ability of parties to finalise construction with confidence.

A shorter limitation period would better reflect the practical nature of price escalation disputes. It would encourage earlier dispute resolution, provide greater certainty during the life of the contract, and still preserve a reasonable opportunity for consumers to challenge disputed price increases. A period ending three months after practical completion would allow consumers time to consider the issue once the work is complete, while avoiding the uncertainty created by a three-year complaint period.

Owner right to seek compensation for builder caused delay to commencement

Stakeholder views on the proposed compensation right were mixed. Consumers generally supported a right for owners to seek compensation where delays are attributable to the builder. They considered this would strengthen consumer protection and improve builder accountability, particularly where work is significantly delayed or ceases after construction has commenced. Some stakeholders referred to prolonged project delays, including circumstances where little or no work was undertaken for extended periods before a builder became insolvent.

Industry generally opposed the proposal. Industry stakeholders submitted that commencement delays often arise from matters outside a builder's control, including labour shortages, material supply constraints, approval delays and broader economic conditions. They also noted that delays increase builders' own costs, meaning builders already have a strong commercial incentive to commence and complete projects as quickly as possible. HIA submitted that a statutory right to compensation for commencement delays is not justified, particularly where homeowners may already seek compensation through existing legal mechanisms, including common law damages and liquidated damages provisions in home building contracts where applicable.

The proposal was intended to respond to the significant financial and personal impacts that prolonged construction delays can have on consumers, including extended rental arrangements, ongoing financing costs and uncertainty about when, or whether, a project will be completed. A statutory right to seek compensation for builder-caused delay may also encourage more careful project planning before contracts are entered into.

However, a separate statutory compensation regime for commencement delays may create additional disputes at the outset of construction. Determining whether a delay was caused by the builder, or by external factors such as approvals, labour availability, supply constraints or owner-related matters, is likely to be factually complex. This may increase costs for both parties and divert attention from progressing the works. Importantly, consumers already have protections where delay causes loss, including liquidated damages clauses and common law rights to claim damages for late completion under home building work contracts.

Other proposed reforms are likely to address delay more directly and with fewer unintended consequences. These include strengthening dispute resolution through earlier mediation or conciliation and imposing statutory requirements for work to be completed within the contractual timeframe or, if no timeframe is specified, within a reasonable time. Those measures target the underlying problem of delayed construction, support earlier intervention, and avoid creating a separate compensation pathway focused only on commencement delay.

Recommendation

- Laws be changed to expressly set out the limitation period for HBC Act Schedule 1, clause 5 price escalation complaints no later than three months after practical completion is reached.
- No change to the HBC Act price increase complaints to allow homeowners to claim compensation for builder caused delays to commencement.

Early mediation and conciliation conferences

Currently, conciliation conferences are carried out as part of the building complaints process under the BSCRA Act. Conciliation conferences facilitate the opportunity for parties, often the owner and builder, to attend a meeting with a trained conciliator to work to resolve building service and HBWC complaints. Conciliation conferences support building complaints being resolved by the Building Commissioner in a timely, focused and amicable manner.

In the last two years, over 80 per cent of complaints conciliated by the Building Commissioner resulted in a resolution of the dispute with parties reaching an agreement and the Building Commissioner issuing an order. Over that same time, most complaints referred to conciliation involved HBWC contractual disputes.

Consumer and industry stakeholders believe that early mediations or conciliations conducted by the Building Commissioner will reduce the costs and time taken to resolve building service and home building contract disputes. Half of industry who had participated in conciliations run by the Building Commissioner found it to be a fair process. Industry associations supported the option of early mediation to attempt to resolve disputes in a timely and cost-effective manner.

HBWC complaints are usually time sensitive, relating to disputes regarding the suspension of works, price increases and non-payment under the building contract. Delays in resolving these types of complaints can negatively impact both owners and builders. For these reasons, parties are often motivated to resolve these disputes in a timely manner. Presently, conciliations can only take place once certain administrative and statutory steps have first been taken (for example, the acceptance of complaint, consideration of parties' evidence and preparation of an investigation report). Due to these requirements, this process can take time, which is not ideal for many HBWC complaints.

Generally, Building Commissioner appointed inspectors conduct site inspections for building service (workmanship) complaints. The inspector's report commissioned by the Building Commissioner is then provided to the parties to allow them to consider the inspector's findings. Currently, once a conciliation takes place, the Building Commissioner only has the option to continue investigating aspects of the complaint that have not been dealt with in conciliation. Where a conciliation has taken place prior to a site inspection, there is no option for an inspection to occur after the conciliation.

The discussion paper sought feedback regarding a proposal to allow for early (voluntary) mediation (similar to the SBDC model) for HBWC complaints pre-acceptance, allow complaints to continue with the Building Commissioner post conciliation conference, and permit inspections commissioned by the Building Commissioner at any point (e.g. before and after conciliation).

Alongside conciliations to resolve disputes, mediation would enable parties to clarify issues, tailor solutions in consideration of their needs, and reach agreements that are legally binding. Mediations improve the likelihood of the parties continuing their relationship after the dispute is over. Early mediations could follow the mediation model followed by the SBDC.

The SBDC offers a low-cost mediation service involving at least one small business. Each mediation session runs for four to six hours, however, may last for a full day. A nominal cost of $125 is charged per party, per session, with the majority of the cost being covered by the WA Government. Most mediations are held in person.

All SBDC mediators are Australian Mediator and Dispute Resolution Accreditation Standards nationally accredited. The SBDC external mediator panel comprises of 25 mediators.[6] The SBDC advised that in the 2024/2025 financial year, 95 per cent of matters referred to mediation were successfully resolved with the parties reaching an agreement to resolve the dispute.

[6] As advised by the SBDC as at 1 April 2026.

Interstate, the Queensland Building and Construction Commission recently concluded a pilot program into early building complaint mediations. The program reported at 74 per cent rate of success. Under that program, the average timeframe to resolve a complaint was 32 days from notification of complaint to resolution. Eighty percent of participants said that they were pleased to be offered the service. As a result, mediation is now a permanent feature of the QBCC dispute resolution framework.

There was strong support for the proposed reforms from all stakeholders groups. Ninety per cent of consumers supported the proposal to allow for early mediations of HBWC complaints, noting the benefits in early complaint resolution. One consumer noted that early mediation is only effective if participation is substantive and in good faith. Another consumer said that a mediation panel should be independent and adequately qualified to provide technical informed assessments. Ninety-three per cent of consumers supported inspections taking place at any time of the BSCRA Act disputes process. A consumer noted that early mediation of complex or technical disputes may increase the likelihood of resolution before parties become entrenched in their positions.

Similarly, 79 per cent of industry supported early mediation of HBWC complaints, with feedback including that the Building Commissioner's appointed inspectors should be present during the session. HIA was in support of early mediation, commenting that the mediator panel should have experience and expertise in the building industry. The MBA supported early mediations following the SBDC model. Eighty-seven per cent supported inspections occurring at any stage of the BSCRA Act complaints process. To ensure that parties attend in good faith, the Master Electricians Australia suggested that early mediations remain a voluntary process to ensure parties are not "inappropriately or prematurely drawn into the process without reasonable grounds". The MBA, JWH Group and Master Electricians Australia said that early mediations should be adequately resourced to ensure successful outcomes. The overall feedback reflected a clear endorsement of the proposed reform.

Recommendation

Home building contract laws are amended to:

- allow for early (voluntary) mediation for HBWC complaints pre-acceptance;
- allow complaints to continue with the Building Commissioner post conciliation conference; and
- permit inspections commissioned by the Building Commissioner at any point (e.g. before and after conciliation).



Site access to building sites – harmonisation with WHS requirements

Currently, the HBC Act provides homeowners, and any authorised person acting on their behalf, with a right of access to home building work. Under the HBC Act, any contractual terms that restrict or prohibit such access are void, except where access is limited to normal business hours or where it would unreasonably impede or interfere with the building work. However, the interaction between this provision and WHS obligations is currently unclear.

Under the WHS Act, individuals must comply with any reasonable instruction issued by the person conducting the business to ensure WHS compliance. A builder has an obligation to secure the site where construction work is being carried out from unauthorised access under the WHS Regulations. Greater clarity is needed to ensure that rights under the HBC Act do not conflict with a builder's obligations under WHS laws.

The HBC Act does not presently require a minimum notice period or provide for any notice requirements to access the site of the home building work. Adding a minimum-notice requirement for homeowners or authorised persons may help support better communication and coordination between the parties, while also helping builders meet their WHS obligations by ensuring they have sufficient warning to manage hazards and maintain a safe work environment.

The discussion paper sought feedback on whether amendments should be made to home building contract laws to:

- ensure harmonisation with the WHS Act and WHS Regulations, so that the owner or authorised persons must comply with any reasonable WHS safety requirements;
- clarify that reasonable requirements do not include proof of insurances or white card, etc; and
- require a minimum notice period to the builder of 48-hours, unless otherwise agreed between the parties.

Stakeholders strongly supported harmonising WHS requirements within the HBC Act. Ninety-three per cent of consumers and 83 per cent of industry agreed that the proposed reform would clarify the interaction between WHS obligations and the HBC Act while enhancing the safety of homeowners and other authorised persons attending building sites. Eighty-one per cent of consumers and 87 per cent of industry also expressed support for the removal of requirements relating to proof of a white card and insurance for site visits, and the introduction of a mandatory 48-hour notice period before a site visit can occur.

The proposed reforms would provide greater clarity regarding the respective responsibilities of builders, homeowners and other authorised persons attending residential building sites. Under the WHS Act, duties of care apply to both the person conducting a business or undertaking (PCBU), such as a builder, and other persons at the workplace, including homeowners, inspectors and authorised visitors.

Homeowners attending site visits would be required to comply with their existing obligations under the WHS laws, including, taking reasonable care for their own safety, following safety directions, and avoid putting others at risk.

This may include wearing enclosed shoes, not climbing scaffolding or ladders and not entering a building site without the presence of the builder or their representative.

Feedback from both homeowners and industry also identified concerns regarding current site access arrangements. The Building Inspector Association of WA noted that requests for white card and proof of insurance, are sometimes being used to restrict homeowners and independent building inspectors from accessing sites. Stakeholders said that such practices can limit opportunities for homeowners to monitor construction progress and engage independent inspectors to assess work undertaken.

The introduction of a mandatory 48-hour notice period would provide a transparent and consistent framework for site access, enabling builders to make appropriate safety arrangements while ensuring homeowners and their authorised representatives have a reasonable opportunity to visit the site. The Building Inspectors Association of WA offered in principle support for the 48-hour notice period but raised concerns regarding this notice period for time-critical stage inspections, citing slab pours as an example. In these circumstances, a practical approach is required.

By clearly defining the responsibilities of builders and homeowners and facilitating reasonable site access, the reforms are expected to protect homeowners and ensure that builders can comply with their WHS requirements.

Recommendation

Home building contract laws are amended to:

- ensure harmonisation with the WHS Act and WHS Regulations, so that the owner or authorised persons must comply with any reasonable WHS safety requirements; clarify that reasonable requirements do not include proof of insurances or white card, etc; and
- with the exception of time-critical stage inspections (e.g. slab pour) or critical WHS risks, require a minimum notice period to the builder of 48 hours, unless otherwise agreed between the parties.

Standing of registered builders and owner builders to make complaints

An owner-builder is a person who manages building work and carries out certain types of building work on their property. Owner-builders are in a similar position to that of typical homeowners, particularly in terms of bargaining power and experience in engaging with the building industry.

Unlike registered builders, owner-builders are generally not regular participants in the industry and often do not possess the commercial knowledge or relevant expertise necessary to navigate complex contractual or technical issues. As a result, they may face difficulty enforcing their rights or resolving disputes without regulatory support.

Providing owner-builders with access to complaint mechanisms would help ensure they receive protections consistent with those afforded to homeowners and support fairer outcomes for individuals undertaking building work on their property.

Jurisdictional comparisons indicate a clear trend towards allowing owner-builders access to complaint pathways. Queensland, New South Wales, the Northern Territory and South Australia all allow owner-builders to lodge complaints regarding defective or incomplete work. Tasmania expressly prohibits such complaints. Victoria's dispute resolution scheme also does not accept complaints from owner builders.

In contrast, registered builders engaging with other registered builders/painters do so within a commercial environment where both parties are presumed to have the necessary expertise and bargaining power to manage contractual relationships.

Disputes between registered builders/painters are therefore considered commercial in nature and are more appropriately resolved through existing legal or contractual avenues such as litigation, private dispute resolution mechanisms, or negotiated settlement. Allowing registered builders/painters to lodge complaints against other registered builders/painters provides limited regulatory value.

The discussion paper sought feedback on whether amendments should be made to home building contract laws to clarify that:

- owner-builders should be considered a consumer in the normal sense and may be permitted to make a complaint against a builder for HBWC complaints or building service complaints; and
- registered building service providers do not have a right to lodge a building complaint against another registered building service provider under the BSCRA Act.

Stakeholders had mixed views on permitting owner-builders access to dispute resolution mechanisms. Consumers strongly supported this proposal, with 92 per cent in favour. They noted that some consumers become owner-builders due to the lack of availability of builders to perform lower value work.

By contrast, while 62 per cent of industry surveyed were supportive of the proposal, HIA, the MBA, ABN Group and Australian Institute of Building opposed this proposal, noting that in obtaining an owner-builder approval, an owner-builder should be treated as carrying the same risks and responsibilities as builders and therefore should not have the same level of consumer protection as an ordinary consumer.

The SAT submitted that the proposal is a matter for government policy. It noted that the BSCRA Act should clearly define who is to be regarded as a 'builder' for this purpose since there are numerous different tradespersons and others who might be engaged by an owner-builder to complete part of the building project. The SAT also noted that expanding who may make a building complaint against a builder will have resource implications for the Tribunal.

There were also mixed views on whether registered builders/painters should not have a right to lodge a complaint against another registered builders/painters under the BSCRA Act. Consumers supported the proposal, with 70 per cent in favour. They noted such disputes are commercial in nature and should be dealt with outside of the BSCRA Act.

Industry was more evenly split, with 56 per cent in favour. JWH Group and ABN Group supported the proposal. JWH Group noted such disputes are commercial in nature, parties generally possess comparable industry knowledge and bargaining power, and existing contractual and legal mechanisms provide appropriate avenues for resolution. The MBA noted that disputes between registered builders/painters are often resolved through legal or contractual avenues, however, said that a registered builder/painter should be able to lodge a complaint against another registered builder/painter.

Under the BSR Act, a registered builder has an overarching obligation to manage and supervise works performed by its subcontractors, including, registered subcontractors (e.g. registered painters). SAT decisions to-date have upheld this view, dismissing complaints made by registered builders against other registered builders/painters.

Recommendation

Home building contract laws are amended to:

- clarify that owner-builders should be considered a consumer in the normal sense and may be permitted to make a complaint against a builder for building service or HBWC complaints;
- define builder for the purposes of building service or HBWC complaints; and
- clarify that registered building service providers do not have a right to lodge a building complaint against another registered building service provider under the BSCRA Act.



Prohibition on caveats in residential building contracts

A caveat is a legal notice on a property title that shows a party claims an interest in the land. It alerts others to that claim and can stop the property being sold, transferred or further mortgaged until the caveat is removed. This can limit a homeowner's ability to sell or refinance, even where the underlying dispute is about contested claims or incomplete work. It can also place pressure on homeowners to accept an unfavourable outcome to have the caveat removed.

The HBC Act does not currently stop a builder from lodging a caveat over a homeowner's land. Some standard building contracts expressly allow builders to lodge a caveat to secure payment or other contractual rights. While this practice is used in parts of the industry, it raises consumer protection concerns because of its impact on a homeowner's property rights and financial position. It can also give builders significant leverage, particularly where homeowners do not understand how to challenge a caveat. New South Wales, Queensland and Victoria expressly prohibit builders from lodging caveats in connection with residential building contracts.

The discussion paper sought feedback on prohibiting caveats in home building work contracts and introducing a $25,000 penalty for non-compliance. Consultation showed a clear difference between consumers and industry. Ninety-seven per cent of consumers supported the reform, while more than 50 per cent of industry respondents opposed it.

Consumers were concerned that builders could misuse caveats, particularly after practical completion. They said caveats can create a power imbalance by preventing homeowners from selling, refinancing or otherwise dealing with their property until a dispute is resolved. Consumers saw the reform as a way to reduce misuse and improve homeowner protections.

Industry stakeholders said caveats are an appropriate way to protect builders' financial interests where payment disputes arise. They said caveats help secure unpaid amounts under a home building contract. The MBA gave practical examples where caveats protected builders when a lender took possession of, and later sold, a property after a client defaulted. Industry stakeholders were concerned that removing caveats could increase financial risk for builders, particularly where substantial payments remain unpaid at completion.

Industry stakeholders also said removing caveats could have unintended consequences. Builders may respond by seeking larger deposits, tighter payment terms or extra security. This could increase costs for homeowners and affect the affordability of residential building work.

The feedback shows that both consumers and industry raised legitimate concerns. Prohibiting caveats may reduce the risk of misuse, but it would also remove a tool builders use to protect unpaid amounts and could affect housing affordability. Many caveat disputes appear to arise from unresolved payment or workmanship issues during construction.

Alternative reforms recommended in this report are a more balanced way to address consumer concerns. They focus on preventing disputes from escalating, rather than removing the ability to lodge caveats altogether are considered a more balanced and practical means of addressing consumer concerns.

Recommendation

No change to be made to home building contract laws with respect to caveats in residential building contracts.

Notice of proposed complaint and provision of evidence

The BSCRA Regulations require that, at least 14 calendar days before making a complaint to the Building Commissioner, the complainant provides the respondent with written notice of the proposed complaint, including a description of the remedy the complainant proposes to seek and the evidence upon which the complainant proposes to rely.

This requirement is intended to encourage early resolution by giving the builder an opportunity to review and respond to the concerns raised, and where possible rectify the issue before regulatory intervention is sought. In most cases, the complainant provides the respondent with the above notice requirements. In some cases, the requirement to provide a written description of the evidence upon which the complainant proposes to rely is causing unnecessary administrative delays and confusion, as the complainant may not always have access to site. The Building Commissioner's appointed inspectors conduct site inspections on all building service complaints, so the burden of evidence is not necessary.

The evidentiary requirement for a notice of proposed complaint was introduced at a time when the Building Commissioner's appointed inspectors were not available to undertake site inspections and identify defects to support complaints. As a result, complainants were expected to provide evidence to substantiate their claims when making a complaint.

Since then, the Building Commission's appointed inspectors now routinely perform site inspections to assess whether building work complies with the relevant contractual documents, building codes and standards. Accordingly, the original rationale for requiring complainants to provide a description of evidence at the point of making the complaint no longer remains.

The discussion paper sought feedback regarding the removal the mandatory requirement to provide evidence in support of the complaint before the Building Commissioner accepts it. This does not however prevent a complainant from including it, as it may assist in resolving issues earlier on. For the sake of clarity, the proposal does not suggest any changes to the existing notice of proposed complaint form. While it is proposed that it no longer be a mandatory requirement, complainants will still be prompted to include a description of the evidence they rely upon.

During consultations with industry, a larger builder mentioned that only a very small cohort of notice of proposed complaints escalate into disputes at the Building Commission. Given that complaints are independently assessed by the Building Commissioner's appointed inspectors, concerns raised by industry that removing the evidentiary requirement would encourage frivolous claims are not supported by current operational practices. Seventy-nine per cent of consumers supported the reform. As consumers seek timely resolution of complaints, it is not in their interest to withhold evidence at the notice of proposed complaint stage where they have it available.

The Building Commissioner already has discretion under the BSCRA Regulations to waive or modify the evidentiary requirements for a notice of complaint. This recognises that there may be circumstances in which strict compliance with the evidentiary requirements is unnecessary or impractical.

Removing the evidentiary requirement would reduce the administrative burden associated with making a complaint and support the timely resolution of the dispute for all parties.

Recommendation

The regulations be changed to remove the mandatory requirement to provide evidence to support the complaint.

General inspections

Under the BSCRA Act, a registered building service provider who has carried out a building service may make a request to the Building Commissioner for a general inspection of the building service.

These general inspections are available to registered builders as a proactive measure to prevent complaints from arising and are primarily used to educate the industry in relation to relevant building standards with regards to the construction works performed.

Currently, there is no requirement in legislation for the Building Commissioner to provide a written record of the inspection to the building service provider. A written record of the site inspection from the Building Commissioner may assist the builder in the early resolution of potential disputes with homeowners.

For period of 1 June 2023 to 30 June 2026, the Building Commissioner received 23 requests for general inspections from registered building service providers. Of these, approximately half (12) resulted in inspections being performed by the Building Commissioner's appointed inspector.

The discussion paper sought feedback on whether the home building contract laws should be amended to include a provision that after a general inspection is completed, the registered building service provider may request from the Building Commissioner (or authorised person) a written record of the inspection.

Consumers strongly supported the proposal with 93 per cent in favour. Feedback received from consumers included that the proposed reform would assist in early resolution and in determining the validity of complaints.

The proposed reform was broadly supported by industry, with 84 per cent in favour, including HIA, the MBA, Australian Institute of Architects, JWH Group and ABN Group. An industry stakeholder noted "an independent inspection is the most reliable way to establish the facts of a building dispute, and allowing the Commissioner to commission one at any stage means decisions are based on what is actually happening on site rather than on competing assertions. Inspecting before conciliation in particular can resolve many disputes quickly, because a clear, code-referenced finding often settles the question for both parties".

In support, the Australian Institute of Architects submitted that the reform would assist early resolution and reduce the likelihood of disputes escalating unnecessarily. HIA supported general inspection reports being made available to both the builder and the owner and called on the government to ensure that LGIRS is sufficiently funded to enable general inspections to be utilised regardless of the value or complexity of the items in dispute.

Overall, there was strong support for the proposed reform from all stakeholder groups. The feedback highlights that a written record would assist in early dispute resolution.

Recommendation

Home building contract laws are amended to include a provision that after a general inspection is completed, the registered building service provider may request from the Building Commissioner (or authorised person) a written record of the inspection.

Inspection reports and the SAT

Under the BSCRA Act, the Building Commissioner's authorised officers usually inspect complaint issues against the contract, building codes and standards. The parties receive the inspection report, which often helps resolve the complaint and may form the basis of proposed or final building remedy orders.

If the matter later goes to the SAT, either due to referral by the Building Commissioner or review of a building remedy order, the SAT is not currently required to consider the Building Commissioner's inspection report. As SAT hearings are conducted afresh, the report may or may not be considered, depending on whether it is provided or requested.

Inspection reports can be important where a complaint involves several items, including some the Building Commissioner proposed to dismiss because they were not substantiated. These reports should therefore be available as a relevant resource in SAT proceedings.

There was strong support for the reform, with 71 per cent of surveyed stakeholders in favour and 14 per cent opposed. Most respondents recognised that the SAT already considers inspection reports in many cases. However, they supported making this a statutory requirement to improve consistency and give parties greater certainty.

The SAT submitted that the proposal is a matter for government policy. It also suggested that if the reform is to be implemented, the BSCRA Act should clearly define "inspection report", as the term is not currently used or defined in the Act. The SAT also noted that the reform would only be effective if it has access to the relevant reports. This could be achieved by requiring the Building Commissioner to provide them when a complaint is referred to the SAT, or by allowing the SAT to order their production.

Some industry stakeholders were concerned that Building Commissioner appointed inspector reports may be given greater weight than private inspection reports. However, the proposal would not limit the SAT's determination on the probative weight of other evidence or stop parties from submitting private reports. It would only require the SAT to consider Building Commissioner reports where they are available. By comparison, New South Wales legislation expressly provides that the New South Wales Civil and Administrative Tribunal may have regard to, but is not bound by, reports prepared by inspectors engaged to investigate statutory building disputes.[7]

Stakeholder feedback indicates the reform would improve consistency and transparency in SAT proceedings while preserving procedural fairness and flexible.

Recommendation

Home building contract laws are amended to:

- define what constitutes an inspection report; and
- require the SAT to have regard to building inspection reports prepared by the Building Commissioner when determining matters under the BSCRA Act.

[7] *Home Building Act 1989* (NSW), s. 48N(1).

Powers of the Building Commissioner to issue warnings

The Building Commissioner may issue warnings about unsatisfactory or dangerous building services, unfair business practices, and other matters that adversely affect, or may adversely affect, consumers acquiring building services.

Public warnings help inform the community about unsatisfactory or inappropriate conduct by building service providers. They are an important consumer protection tool because they allow the Building Commissioner to alert the public to conduct that may expose consumers to personal or financial harm.

Recent high-profile builder insolvencies have highlighted a gap in the existing warning powers. The Building Commissioner does not have clear powers to issue public warnings where a builder has been the subject of repeated complaints, even where those complaints may indicate an emerging pattern of conduct or risk to consumers.

The discussion paper sought feedback on whether home building contract laws should be amended to broaden the Building Commissioner's warning powers by:

- allowing public warnings to be issued where frequent complaints have been received about the same issue or building service provider;
- clarifying that a warning may be issued whether or not a formal complaint has been made; and
- requiring the Building Commissioner to give the person concerned a reasonable opportunity to make representations before a proposed warning is issued, to ensure procedural fairness.

Consumers strongly supported the proposal, with 97 per cent in favour. Consumer feedback indicated concern that the public may not receive timely warnings about builders who are the subject of repeated complaints. One consumer said they felt "absolutely let down" that no warning had been issued about builders with complaints against them. Other consumers considered the reform would strengthen consumer protection by giving prospective clients better information before engaging a builder. One consumer submitted that the reform is overdue and essential, noting that the inability of consumers to access complaint history before engaging a builder is a significant information failure in the current framework. Graham Morrow suggested a traffic-light style system on the Register of Registered Builders so consumers could identify builders with repeated complaints or warnings.

Industry also broadly supported the proposed reforms, with 82 per cent in favour. Industry stakeholders accepted that expanded warning powers could improve confidence in the regulatory system, provided there are appropriate procedural safeguards. In particular, stakeholders emphasised that affected building service providers should be given a reasonable opportunity to respond before a warning is issued.

The MBA submitted that the Building Commissioner's powers should be amended to better assist parties involved in complaints and disputes. The MBA and JWH Group supported broader warning powers, provided warnings are based on substantiated concerns and affected parties are afforded procedural fairness. The MBA also considered that warning notices issued to registered builders could increase confidence for both consumers and builders.

HIA opposed the proposed reforms. It submitted that, if government proceeds, careful consideration should be given to the type and level of information included in a warning, the seriousness of the issues, how long any warning or published information remains available, and the ability to correct errors.

Recommendation

Home building contract laws are amended to broaden the powers of the Building Commissioner to:

- issue public warnings where frequent complaints have been received about the same issue or building service provider;
- make clear that a warning may be issued whether or not a formal complaint has been made; and
- require the Building Commissioner to give the person concerned a reasonable opportunity to make representations before a proposed warning is issued, to ensure procedural fairness.



Infringements

The HBC Act currently empowers the Building Commissioner (or authorised person) to issue infringement notices for certain prescribed offences, within 21 days after the alleged offence is believed to have been committed. Due to this strict timeframe, the HBC Act infringement notices are not practical to issue.

Since 2004, the CP Act has provided the procedures for dealing with alleged offences and related matters for many pieces of legislation. The BSCRA Regulations, enacted in 2011, adopt the CP Act for this purpose. As a part of this review, and to improve efficiency by establishing a single, consistent process for infringements, it is recommended that the HBC Act adopt the CP Act process for issuing infringements, similar to the BSCRA Act, with an amendment as to the timeframes for issuing the notices.

Under Part 2 of the CP Act, an infringement notice must be issued by an authorised officer within 21 days of the date the alleged offence is believed to have been committed. For offences under the HBC Act the prescribed offences are often detected as a result of complaints made to the Building Commissioner. Consequently, by the time the matter has been identified and investigated, the 21-day limit will almost always have lapsed.

Consistent with work being undertaken by LGIRS on implementing the Building Better reform package, it is proposed that infringement notices must be issued within:

- 21 days after the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
- 12-months after the day on which the alleged offence is believed to have been committed.

The proposed reform was not subject to consultation in the discussion paper as it is administrative in nature and considered to be necessary to ensure consistency with the Building Better reform package and to align internal processes.

Recommendation

The HBC Act be amended to align the process for issuing infringements with the BSCRA Act by adopting procedures in the CP Act.

The amendment to include provisions to modify the operation of the CP Act to allow for infringement notices to be issued within:

- 21 days after the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the office; and
- within 12-months from the date of the alleged offence.

Residential building work without home indemnity insurance, offence

HII is a consumer protection measure that insures a builder's clients (and any successors in title) against financial losses in the form of loss of deposit, non-completion of a home or any defects that may be discovered within six years of practical completion of their home, in the event that the builder dies, disappears or becomes insolvent.

Builders are required to take out a policy of HII in the name of the owner before accepting payment or commencing work for residential building work valued over $20,000, with some exceptions. It is an offence to fail to do so under section 25C (2) of the HBC Act.

Section 25C (2) of the HBC Act currently lacks clarity and can be misinterpreted. The wording of this section needs to be amended to make it clear that a policy of HII must be in place before residential building work commences and before any payment is demanded from the owner such as by way of a deposit.

The proposed reform was not subject to consultation in the discussion paper as it is administrative in nature.

Recommendation

The HBC Act be amended to clarify that home indemnity insurance must be in place before commencing work and before any payment is demanded from the owner.



Registration of residential building inspectors

During the inquiry phase of this review, stakeholders raised concerns about the quality and consistency of private building inspection services in WA. Industry stakeholders reported that some private building inspectors engaged by homeowners during construction or at practical completion have varying levels of qualifications and experience. They also raised concerns that some inspection reports include factual inaccuracies or refer to incorrect codes or standards, creating confusion, escalating disputes and undermining confidence in the assessment of completed work.

The discussion paper sought feedback on whether a mandatory industry-based accreditation framework should be introduced for building inspectors. Under that model, only inspectors accredited by approved assessment entities would be permitted to inspect home building work during construction or at completion, unless the inspection was undertaken by the owner, financier or their representative.

The proposed framework included:

- approval by the Building Commissioner of assessment entities responsible for assessing, monitoring and accrediting building inspectors;
- accreditation, training and renewal fees set by assessment entities, with limited legislative control or regulatory oversight;
- cancellation of accreditation where an inspector consistently fails to meet acceptable standards;
- oversight by assessment entities of disciplinary action, including suspension or withdrawal of accreditation; and
- no right of review to the SAT for decisions made by assessment entities.

There was strong support across stakeholder groups for greater regulation of building inspectors, with 93 per cent of consumers and 81 per cent of industry supporting registration or accreditation. Stakeholders considered that a formal framework would raise minimum standards, improve the reliability of inspection reports, protect consumers and reduce disputes between builders and homeowners. They also emphasised that inspectors should be required to meet minimum qualification and experience requirements, maintain current knowledge of the National Construction Code and relevant standards, and undertake ongoing training.

The MBA and Australian Institute of Building supported an industry-based accreditation model. However, the Australian Institute of Architects suggested that, to avoid unnecessary duplication with existing regulated professions, registered architects should be recognised within any inspector framework.

Other industry stakeholders, except JWH Group, raised concerns about the proposed accreditation model. Their concerns focused on the limited regulatory oversight of assessment entities, the absence of clear accountability mechanisms, and whether there would be effective consequences for inspectors who fail to meet minimum standards. The Building Inspectors Association of WA also raised potential conflict of interest concerns if a builder-aligned body were appointed as an assessment entity. While supporting greater oversight and accountability for building inspectors, HIA submitted that an accreditation scheme would not be sufficient to achieve those outcomes or provide adequate recourse for poor inspection services.

A more robust and durable approach would be to expand the registration framework under the BSR Act to include a new class of building service provider – being a building inspector. This would place inspectors within an established statutory framework, subject to direct government oversight and consistent regulatory standards. Several consumers supported a mandatory framework administered by, or under the authority of, the Building Commissioner. Craig Foster submitted that any building inspector framework should sit under the Building Commissioner. HIA and ABN Group also considered that a registration scheme would provide stronger governance and oversight than an industry-based accreditation model.

A registration scheme would also bring WA closer to the approach taken in other jurisdictions. New South Wales and Victoria register building inspectors, while Queensland, the Australian Capital Territory, Tasmania and the Northern Territory also require inspections to be performed by registered building certifiers, building surveyors or, in the case of Queensland, licensed competent persons. Establishing a registration pathway in WA would also support future automatic mutual recognition and improve the ability of suitably qualified interstate inspectors to practise in WA.

A statutory registration scheme would offer several advantages over an industry-based accreditation model:

- stronger government accountability and greater perceived independence;
- clear and uniform requirements for entry, fees, conduct, training and reporting, set by law;
- public registration and disciplinary information, making it easier for consumers to verify an inspector's status;
- SAT review rights, supporting procedural fairness and consistent decision-making; and
- future mutual recognition, improving labour mobility and access to interstate expertise.

Under the proposed registration scheme, the Building Commissioner would approve entities to assess and certify (known as 'assessment entities') whether an applicant for registration meets the prescribed qualification, skill and experience requirements. The Building Services Board would then be responsible for assessing that the applicant meets all other requirements for registration (e.g. fit and proper, financial etc). This would operate in a similar way to the co-regulatory model recently introduced for registered building engineers.

Expansion of the registration requirements in the BSR Act to building inspectors is supported by a cost benefit analysis by independent consultant Marsden Jacob Associates, which considered the economic impacts of the proposed reform.

The analysis has found that registration is expected to generate a net economic benefit of $5.78 million to society over a 10-year period by improving the quality and reliability of inspections and reducing the number of complaints that escalate into more costly disputes.

Recommendation

The BSR Act and the home building contract laws are amended to:

- Prescribe a new class of registration in relation to building inspectors. The regulated scope of work is to be limited to only construction and completion stage inspections of class 1 buildings.
- Establish a co-regulatory approach to registration of building inspectors by giving the Building Commissioner the power to approve entities to assess and certify the qualifications, skills and competencies of applicants for registration as building inspectors against prescribed requirements. The Building Services Board would be required to assess eligibility against all other requirements for registration (e.g. financial requirements, fit and proper, etc).
- Exempt the following persons from the requirement to be registered as a building inspector:
  - an owner inspecting their own home;
  - a person who is providing finance for the home building work or a person acting on behalf of such a person;
  - a registered building surveyor;
  - a registered building engineer; and
  - a registered architect under the *Architects Act 2004* and the Architect Regulations 2005.
- Make appropriate amendments to section 26 of the HBC Act to ensure that only registered building inspector practitioners or those exempted from the requirement for registration can be authorised persons for the purposes of a residential building work contract under the HBC Act. Void (ab initio) any provisions in a home building contract that restrict or otherwise alter a homeowner's entitlement to appoint a registered building inspector to perform inspections (or an otherwise exempted person).
- Provide that building inspection work cannot be the subject of a building service complaint under the BSCRA Act.
- Give the Building Commissioner and SAT the ability to refuse to consider evidence not provided by an authorised person (as defined above).
- Bring registered building inspectors under the disciplinary framework of the BSR Act.
- Incorporate appropriate grandfathering provisions to facilitate building inspectors' transition into the new building inspector registration scheme.



Work to be completed within a reasonable timeframe

Consumers and industry participants entering a home building contract share a common interest in ensuring that residential building work is completed within a reasonable timeframe. Timely completion benefits consumers by enabling occupation of the home as planned and reducing the financial burden associated with often paying both rent and mortgage repayments. Builders also benefit from completing projects on time, as delays can increase project costs, affect cash flow and expose them to contractual and reputational risks.

Several Australian jurisdictions provide statutory protections in circumstances where a home building contract does not specify a completion date. In New South Wales, the Australian Capital Territory and the Northern Territory, statutory warranties require residential building work to be completed within the time stipulated in the contract, or, where no time is specified, within a reasonable time. The meaning of 'reasonable time' is determined according to the circumstances of each case. Victoria has also proposed introducing a similar statutory warranty. In these jurisdictions, failure to comply with the warranty can give rise to a dispute, enabling owners to seek remedies through courts, tribunals or other regulatory complaint mechanisms.

WA does not currently provide an equivalent statutory protection under the HBC Act. The proposed reform would introduce a statutory requirement for builders to complete residential building work within a reasonable time where a home building contract does not specify a date for practical completion.

The proposal would bring into legislation an existing general law principle that, in the absence of an express contractual provision, work must be completed within a reasonable time.[8] Establishing the above requirement in the HBC Act would provide greater certainty and transparency regarding the rights and obligations of parties to a home building contract. It would also assist homeowners who enter contracts without a completion date, as the absence of such a term may otherwise limit the availability of contractual remedies for delayed completion, including claims for liquidated damages.

Industry highlighted the challenging operating environment facing builders, including labour shortages, supply chain disruptions and escalating material costs. Stakeholders noted that some delays are beyond a builder's reasonable control and expressed concern that an additional statutory obligation could increase exposure to disputes and liability. However, as outlined above, the proposed obligation puts into legislation a general law right that currently exists. It would only apply where a contract does not specify a completion date. Any assessment of whether work was completed within a reasonable time would need to consider the circumstances of the project, including factors outside the builder's control.

Recommendation

The home building contract laws be amended to expressly set out that in absence of another set timeframe, works are to be completed within a reasonable timeframe.

[8] *Reid v Moreland Timber Co Pty Ltd* (1946) 73 CLR 1 at 13; *City of Wanneroo v Tah Land Pty Ltd* [2022] WASCA 53

HBC Act penalties for offences

The HBC Act contains penalties for a range of offences related to home building work contracts. These penalties have not kept pace to ensure they are an effective deterrent and remain sufficient to eliminate any financial gain or benefit from non-compliance. In some cases, HBC Act penalties for offences are substantially lower than for similar offences in other jurisdictions.

The proposed reform received strong support with 93 per cent of consumers and 66 per cent of industry supporting the proposal. One consumer observed that penalties serve as an important deterrent against non-compliant practices by builders. Similar views were expressed by other consumers, who emphasised that penalties are only effective as a consumer protection mechanism when set at a level sufficient to influence behaviour and discourage non-compliance.

Conversely, industry who opposed the proposed reform, said that higher penalties are unlikely to improve compliance outcomes and that the proposed increases were excessive.

The penalties prescribed under the HBC Act, have remained unchanged since the HBC Act commenced in 1991.

While the penalties reflected the economic and construction conditions at that time, significant increases in construction, labour and material costs over the past three decades have reduced their deterrent value.

WA has the lowest penalty rates compared to New South Wales, Victoria and Queensland, suggesting they may no longer reflect current regulatory expectations or community standards regarding compliance within the residential building sector. For example, the penalty for excessive deposit is $10,000 in WA, $20,000 in Victoria, $22,000 in New South Wales and $16,700 in Queensland.

In addition, the offences under the HBC Act are generally procedural in nature and relate to obligations that are largely within a builder's control, including contractual and disclosure requirements. As such, increasing penalties is unlikely to impose an unreasonable burden on compliant builders. Instead, higher penalties would reinforce the importance of complying with consumer protection obligations and help ensure the penalties remain relevant and effective. Updating the penalties would ensure they remain proportionate to current industry conditions and continue to provide an appropriate deterrent against non-compliance.

Recommendation

The penalties listed in Appendix 1 to be increased to meet community expectations.

BSCRA Act penalties for offences

The BSCRA Act provides a penalty for a person who fails to comply with an order of the Building Commissioner, or a building remedy order or HBWC remedy order of the SAT.[9] However, a penalty does not apply if a person fails to comply with an order requiring the payment of money.

To ensure consistency in the law, it is proposed that the same penalty should apply with respect to non-compliance with an order of the Building Commissioner, regardless of whether it relates to an order for work or an order for payment of money. In many instances, the value of a monetary order may be significantly higher than that of an order to perform remedial works. By ensuring a uniform penalty approach, consumers will be protected by creating an additional deterrent to non-compliance with orders of the Building Commissioner.

In Queensland and New South Wales, there are no monetary penalties for failing to comply with an order to pay money. Instead, builders who fail to comply may have their licence suspended, with Queensland providing for automatic licence suspension. Victoria does not impose penalties for non-compliance with monetary orders and parties are generally required to pursue enforcement through the court system. The Northern Territory imposes a monetary penalty, but builders can also be reprimanded and have their registration suspended or cancelled.

Implementing this reform would strengthen consumer protections. Where builders fail to comply with an order to pay money, consumers are often required to pursue enforcement through the courts, resulting in additional time and expense. This is inconsistent with the purpose of the building dispute resolution framework, which is intended to provide a timely and cost-effective alternative to court proceedings. Retaining this enforcement gap exposes consumers to potentially lengthy and costly court processes.

If the legislation continues to exclude penalties for non-compliance with monetary orders, some consumers may be unable or unwilling to pursue enforcement through the courts due to the financial burden involved. As a result, they may forgo payments to which they are entitled and be left out of pocket. For consumers who do pursue enforcement, the dispute may become protracted, delaying resolution and increasing costs.

Recommendation

A penalty to be included under s.53(2) of the BSCRA Act, uniform with s.53(1) of the BSCRA Act.

[9] First offence, fine of $50,000, second offence, fine of $75,000, third or subsequent offence, fine of $100,000 or 12 months imprisonment.

Appendix 1

HBC Act specified offence		Current penalty	Proposed penalty
Section 4(4)	Contracts must be in writing; prescribed explanatory notice must be given	$2,000	$10,000
Section 5(2)	Owner to be given copy of contract	$500	$5,000
Section 5(3)	Owner to be given copy of contract (within 10 days)	$10,000	$25,000
Section 7 (3)	Variation of contract to be in writing and given to owner	$500	$5,000
Section 10(1)	Deposits and progress payments, limits on terms as to (enter into a contract)	$10,000	$25,000
Section 10(5)	Deposits and progress payments, limits on terms as to (under a contract)	$10,000	$25,000
Section 12(1)	Understatement of prime cost items etc. by builder, offence	$10,000	$25,000
Section 13(1)	Rise-and-fall clause prohibited	$10,000	$25,000
Section 14(1)	Cost plus contracts, requirements as to	$10,000	$25,000
Section 25C(1)	Builder doing residential building work without insurance or corresponding cover	$10,000	$25,000
Section 25C(2)	Builder doing residential building work without insurance or corresponding cover	$10,000	$25,000
Section 25F	Sale by owner-builder, restrictions on	$10,000	$25,000
Section 25FA(1)	Sale by certain owner-builders, further restrictions on (builder under repealed Act)	$10,000	$25,000
Section 25FA(2A)	Sale by certain owner-builders, further restrictions on (building service contractor)	$10,000	$25,000
Section 26(1)	Inspection by owner etc. of building work, prevention of etc.	$1,000	$10,000
Section 28(3)	Contracting out prohibited	$10,000	$25,000



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