

Building and Energy Compliance and Enforcement Policy

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Definitions

Building service providers fall into two categories;

1. Building, painting and building surveying practitioners and contractors registered under the *Building Services (Registration) Act 2011* and approved owner builders; and
2. Non-registered persons or entities that provide home building and associated works as defined under the *Home Building Contracts Act 1991*.

Electrical contractors and electrical workers licensed under the Electricity (Licensing) Regulations 1991.

Gasfitters licensed under the Gas Standards (Gas Supply and System Safety) Regulations 2000.

Plumbing contractors and plumbers licensed under the Plumbers Licensing and Plumbing Standards Regulations 2000.

Collectively, all parties that fall within the scope of this Policy are referred to as “contractors and workers”.

The Role of Building and Energy

The Department of Local Government, Industry Regulation and Safety (LGIRS) – Building and Energy Division (Building and Energy) is the regulator for building, electrical, gas and plumbing occupations in Western Australia. It is also the technical and safety regulator for both electricity and gas production, transmission, distribution and utilisation.

Building and Energy seeks to enhance public safety through effective compliance administration and is responsible for investigating disciplinary matters in relation to the standard of work and the conduct of contractors, workers, network operators, gas suppliers and appliance (electrical and gas) retailers. Non-registered and non-licensed individuals and businesses that breach legislation administered by Building and Energy also fall within the scope of Building and Energy’s compliance role.

In addition to investigating reports and complaints, Building and Energy issues warnings to the public about unsatisfactory or dangerous services, and products that pose a risk or may adversely affect the interests of consumers.

Building and Energy has powers to order the remediation of non-compliant electrical, gas and plumbing work, however the enforcement of compliance with building standards rests with permit authorities which are usually the local governments in which buildings are located. While Building and Energy can monitor how well building standards are being applied generally, its role is advisory and educational.

Purpose of this policy

The purpose of this Compliance and Enforcement Policy (Policy) is to outline Building and Energy's approach to its compliance and enforcement functions, including the publication of information and warnings, and should be read in conjunction with Building and Energy's Public Naming Policies.

The Policy seeks to:

1. Protect the community from unsafe and/or non-compliant building, electrical, gas and plumbing work, appliances and installations;
2. Minimise harm to consumers from the behaviour of contractors and workers that is unfair or unscrupulous;
3. Ensure enforcement action is applied in a fair and consistent manner; and
4. Provide transparency for stakeholders and consumers about how Building and Energy carries out its compliance and enforcement functions.

This Policy applies to all occupations, work and installations that fall under the legislation administered by Building and Energy, detailed in [Appendix 1](#).

Policy objectives

Building and Energy will deliver compliance and enforcement activities that are undertaken in accordance with the law, the Department's Codes of Conduct, Codes of Practice and the WA Public Sector Code of Ethics.

It will strive to ensure its actions and decisions are effective and proportionate; fair and impartial; and within officers' authority.

It will work proactively to monitor and detect non-compliance and emerging risks in Western Australia's building, electrical, gas and plumbing industries, and respond to complaints about alleged contraventions of building, electrical, gas and plumbing legislation.

It will act without fear or favour when carrying out proactive inspections and audits, investigations and practitioner discipline.

It will act in a transparent, consistent and objective manner; apply its resources efficiently; and ensure that the areas of greatest risk are identified and dealt with effectively and appropriately.

Statutory Powers

Building Commissioner

The Building Commissioner's functions are primarily set out in section 86 of the Building Services (Complaint Resolution and Administration) Act 2011 (BSCRA Act) with other functions detailed in both the Building Services (Registration) Act 2011 (Registration Act) and the Building Act 2011. The Building Commissioner has all the powers needed to perform the functions under the BSCRA Act and these powers can be delegated to another person. The Building Commissioner may also designate a public service officer as an authorised person to undertake activities under the Registration Act.

Director of Energy Safety

Western Australia's Director of Energy Safety is responsible for regulatory oversight of electricity production, transmission, distribution and utilisation (consumers' installations and appliances); and gas distribution and production plants connected to gas distribution systems and gas utilisation (consumers' installations and appliances). The statutory functions of the Director of Energy Safety are set out in section 5 of the Energy Coordination Act 1994 (Energy Coordination Act) with other functions detailed in the Energy Safety Act 2006; Energy Safety Levy Act 2006; and Gas Standards Act 1972.

The Director of Energy Safety has all the powers needed to perform the functions under these energy safety Acts and these powers can be delegated to another person. The Director of Energy Safety may also designate a public service officer as an authorised person to undertake activities defined under the Energy Coordination Act.

Statutory Boards

Building and Energy provides administrative support to the following Statutory Boards:

- **Building Services Board** – the role of this Board is set out in the Building Services (Registration) Act 2011. Its primary function is to register builders, building surveyors, engineers and painters and to make decisions in relation to disciplinary matters.
- **Electrical Licensing Board** – the role of the Board is set out in the Electricity (Licensing) Regulations 1991. Its primary function is to determine the competence of applicants and holders of electrical licenses and permits issued under the Regulations.
- **Plumbers Licensing Board** – the role of the Board is set out in the Plumbers Licensing Act 1995. Its primary function is to administer the licensing scheme established under the Act and supervise the activities of licensed plumbers under the provisions of the Plumbers Licensing and Plumbing Standards Regulations 2000. The Board is also responsible for the designation of plumbing inspectors employed by Building and Energy to carry out these functions as well as decision making in relation to prosecuting licensed and/or unlicensed persons and disciplinary complaints about licensed plumbers.

Permit Authorities

A permit authority is usually a local government but can also be a state government department. A permit authority controls the construction, occupation and demolition of buildings and incidental structures through the issue of permits and enforcement of compliance with permits. Building and Energy will refer suspected non-compliant building work detected during its inspection to the relevant permit authority; particularly if Building and Energy has not been able to achieve a satisfactory outcome by working directly with the builder.

Our approach

Building and Energy adopts a risk-based, intelligence-led approach to its compliance and enforcement activities. This approach allows Building and Energy to focus efforts and resources in areas where they are most needed and will have the greatest impact. It means individuals and businesses doing the right thing will be less burdened, and those not meeting their regulatory responsibilities will be prioritised.

Building and Energy considers encouragement, education and monitoring to be the three key pillars of effective compliance and regards both proactive and reactive compliance activities as vital to its work.

Building and Energy aims to build a strong culture of compliance where industry participants operate on the basis that it is better to do the job right the first time than risk being caught cutting corners or making costly mistakes that put the community at risk.

Proactive activities include robust audit and inspection strategies; encouraging compliance; and supporting industries with timely education and information.

Reactive activities encompass the application of disciplinary measures; taking of prosecution action; issuing notices to prohibit the sale, hire or use of unsafe gas and electrical appliances and issuing public warnings.

Fundamental to Building and Energy's approach is its ability to gather and analyse information from a wide range of sources. Risk priorities are determined through the analysis of information, including from consumer complaints; inspections; investigations; intelligence gathering; and engagement with industry stakeholders, social media, other regulators and government departments and agencies.

Enforcement of the law is also an essential element in controlling or regulating activities and achieving compliance with the legislation. This is done by detecting breaches, bringing them to the attention of the alleged offender, requiring corrective preventative action, applying penalties (either directly, by issuing of infringement notices, or prosecution through the courts) and providing deterrence.

The legislation administered by Building and Energy enables authorised officers to determine what approaches are appropriate to encourage compliance and when it is necessary to pursue enforcement action.

Our principles

In deciding whether it is in the public interest for action to be taken, and the measures that should be adopted, Building and Energy applies the following principles:

3. **Proportionality:** action will commensurate with the severity of the breach.
4. **Responsive:** action will be undertaken without undue delay having regard to the safety of the community.
5. **Consistency:** action will be administered consistently and equitably.
6. **Procedural fairness:** action will be carried out within the powers and processes of the legislation, applying principles of procedural fairness.
7. **Cost-effective:** the cost-effective use of resources will be a key consideration in all its activities.
8. **Compatibility:** actions will be undertaken within the context of wider Government policy; and any other relevant statutory requirements.
9. **Decisive:** The full force of the law will apply in situations where a failure to comply with regulatory obligations poses a clear risk to life safety or where compliance obligations are repeatedly ignored.

Corrective options

Building and Energy's corrective options include:

10. **Education:** help individuals and organisations to understand their responsibilities through the delivery of advice and education.
11. **Require a plan to be revised.** For example, a safety management plan.
12. **Caution:** notify and caution individuals and organisations who are not complying with their obligations.
13. **Warning:** issue a written and/or public warning about unsatisfactory or unfair practices.
14. **Notices:** issue rectification notices (e.g. Inspectors Order, Notice of Defect, or Building Remedy Order) to responsible parties requiring non-compliant installations or work to be remedied or made safe.
15. **Directions:** issue a direction to take action to make a gas or electricity emergency or plumbing dangerous situation safe, including taking a specific action that will address the potential for harm (this can include ceasing certain electrical and gas work practices and the use of electrical equipment or gas appliances).
16. **Referral:** where applicable, refer concerns to other regulatory bodies empowered to take action.

17. **Disciplinary action:** suspend or place conditions on a licence or registration for a contractor or worker; or require the holder of a licence to complete training courses or exams.
18. **Infringement penalties:** infringement notices can be issued to contractors and workers requiring them to pay a financial penalty in circumstances where a breach of the legislation has been identified. Such notices allow a contravention of building, plumbing or energy safety laws to be dealt with by payment of a fine, rather than through court proceedings.
19. **Public Naming:** publishing the names of individuals and organisations in accordance with the relevant Public Naming Policies.

Exercise of discretion

Building and Energy undertakes a comprehensive assessment of information before taking any action. This is guided by whether the matter involves one or more of the following factors:

- The risk of death, injury, property damage, threat to public safety or harm to the environment;
- The need for deterrence, either personal or general;
- The seriousness or technical nature of the matter;
- If there is a pattern of non-compliance, either by the alleged offender or in the industry more broadly;
- If the conduct in the matter appears unlawful;
- If the non-compliance appears intentional;
- The extent of financial loss incurred by the injured party;
- The time elapsed since the alleged breach was identified;
- The availability or efficacy of any alternatives to prosecution or disciplinary action; or
- If it is beneficial to test or clarify the law regarding the particular matter.

Statutory limitations on actions

Building and Energy cannot commence a prosecution if the statute of limitations has expired. If there is no likelihood of achieving a finding before a matter becomes statute-barred, discretion will be exercised to determine whether to commence an investigation and whether it is in the public interest to do so.

Appendix 1

Legislation relevant to this policy

Building Act 2011

Building Regulations 2012

Building Services (Complaint Resolution and Administration) Act 2011

Building Services (Complaint Resolution and Administration) Regulations 2011

Building Services Levy Act 2011

Building Services (Registration) Act 2011

Building Services (Registration) Regulations 2011

Construction Contracts Act 2004

Construction Contracts Regulations 2004

Energy Coordination Act 1994 (other than Parts 1A, 2A, 2B, 2C and 2D)

Energy Coordination (General) Regulations 1995

Electricity Act 1945

Electricity (Licensing) Regulations 1991

Electricity (Network Safety) Regulations 2015

Electricity Regulations 1947

Energy Safety Act 2006

Energy Safety Levy Act 2006

Energy Safety Regulations 2006

Gas Standards Act 1972

Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999

Gas Standards (Gas Supply and System Safety) Regulations 2000

Gas Standards (Infringement Notices) Regulations 2007

Home Building Contracts Act 1991

Home Building Contracts Regulations 1992

National Construction Codes, volumes 1-2 (*Building Code of Australia* [BCA])

Plumbers Licensing Act 1995

Plumbers Licensing and Plumbing Standards Regulations 2000

Water Services Coordination Regulations 1996.