

LOOKING AFTER YOUR APARTMENT  
IN THE LONG TERM

Your rights and how  
you are protected  
Owner's Guide

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## Message from Samantha Reece Director WAAA



The Australian Apartment Advocacy is the voice for 2.5 million people who own or live in an apartment within Australia.

And it is anticipated that this number will only continue to grow as we evolve as a nation.

As education is one of the core roles of the Australian Apartment Advocacy, our agency partnered with the Building and Energy Division of the Department of Mines, Industry Regulation and Safety (formerly WA Building Commission) to create this education kit.

Whether you are looking to buy or are a current owner or renter, this kit, which is broken into the 3 stages of purchasing and living in an apartment is the first publication Australia wide, which outlines what it is like to live in an apartment.

While AAA advocates that apartment living is “easy breezy” we also advocate that buyers are empowered to make wiser decisions about choosing, purchasing and living in an apartment that reflects high standards of quality.

As with any new apartment, there are a number of specialists who are involved in its construction and ongoing maintenance, which ensures that your apartment complex stays healthy and hence retains its property values.

“The Australian Apartment Advocacy is the voice for 2.5 million people who own or live in an apartment within Australia.”

These specialists include the developer, builder, architect, structural engineer, specialized maintenance contractors, strata manager and of course you – the apartment owner.

These are certainly exciting times for WA with the revised Strata Titles Act 1985 (WA) (the Act) and the Strata Titles [General] Regulations 2019 (the Regulations) coming into effect (1st May 2020), which address both strata management and construction processes. This guide will aid with informing buyers about what they should be mindful of, as well as educate apartment owners about their role in maintaining their apartment and complex.

The AAA is a big believer that education is essential in making any calculated decision. And now this Apartment buyer and owners guide can be that trustworthy resource to help with your purchasing decision.

We know that if the market starts asking for additional proof of quality, ultimately the standard of our apartments will only improve and that is our long term aim.

We hope that you enjoy this document and that it is the start of your positive experience as an apartment owner and resident.

The WAAA is here for all WA apartment owners and we can be contacted on email [sam@waaa.net.au](mailto:sam@waaa.net.au) or phone **0452 067 117**.

**WAAA is very grateful for the working group that contributed towards the creation of this kit and who have set a high benchmark in terms of standards that we are seeking to come to the fore here in WA as well as other states.**

- Sandy Randall – Building and Energy
- Bryn Williams (WA Representative for the Australian Institute of Waterproofing)
- Tristan Salter, RSA Pty Ltd
- Will Schofield, Plus Architecture
- Kylie Wigham, Celsius
- Matthew Burkett, Paint Inspec
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- Greg Keet, AllianceFM
- Leanne Wahlert, CHU Insurance
- Scott Bellerby, B-Strata
- Faris Saba

# WHY DO 2.5 MILLION PEOPLE CHOOSE APARTMENTS IN AUSTRALIA?

Recent research conducted by the Australian Apartment Advocacy with 3300 people nationally found:



## HOW WA GOVERNMENT PROTECTS YOUR RIGHTS

The Department of Mines, Industry Regulation and Safety (DMIRS) – Building and Energy Division (Building and Energy) oversees the resolution of disputes between consumers and builders relating to the carrying out of regulated building services. These services are provided to parties as an alternative to the commencement of court proceedings.

### Who can make a complaint?

A complaint under the Building Services (Complaint Resolution and Administration) Act 2011 can be made by any person who is adversely affected by the carrying out of regulated building services.

A complaint may be made to Building and Energy by:

- a person whose interests are being or have been adversely affected by the carrying out of a regulated building service (i.e. the owner of the work or an affected third party);

A complaint about regulated building services is assessed with regard to whether it has been carried out in a proper and proficient manner or is faulty or unsatisfactory.

An assessment as to whether a regulated building service was carried out in a proper and proficient manner or is faulty or unsatisfactory is ultimately a question of fact and degree which needs to be determined on a case by case basis.

The following factors and considerations (by no means exhaustive) may have relevance in making such an assessment:

- The National Construction Code and Australian Standards;
- Manufacturers recommendations;
- Industry standards;
- The contract, plans and specifications for the building service;
- Whether the building service can be used for its intended purpose;
- The contracted value of the building service provided; and
- The age, nature and amount of use of a specific item.

# RESOLUTION PROCESS

## Step one – Talk to the builder

This involves thinking about what the grievance is really about and talking to the builder in a rational manner. If it helps, write down your main points first. Keep in mind that most builders simply want to provide their services and keep their customers happy. This can certainly work to your advantage! Make sure you keep any notes, quotes, receipts or other paperwork and evidence to support your case.

All defects affecting common areas of the complex should be managed by the Council of Owners on behalf of individual apartment owners. Where a defect is detected by an individual apartment owner it would be useful to check with the Council of Owners to see whether the same issue is affecting other owners. Individual apartment owners are able to lodge a building services complaint about defects affecting their own property.

## Step two – Give notice of the proposed complaint

If after approaching the builder you or the Council of Owners have not been able to resolve the matter to your satisfaction, you or the Council of Owners can consider making a formal complaint to the Division of Building and Energy. In order to do this, the legislation requires preliminary action to be taken to formally draw the issue to the attention of the party who is subject to the complaint. This makes sure that the builder knows what your complaint is and what remedy you are seeking, and has a chance to respond. In many cases the response will be satisfactory, thereby removing the need to commence a formal complaint process.

You or the Council of Owners are required to give the party who is subject to the complaint written notice of the proposed complaint at least 14 days before a formal complaint is lodged with Building and Energy.

The notice must provide (as far as you are reasonably able to give):

- advice that you propose to make the complaint;
- details of the remedy you propose to seek; and
- details of the evidence on which you propose to rely.

## Step three – Lodge the complaint with Building and Energy

Should you not receive a satisfactory response to the notice of proposed complaint within 14 days, you can lodge a formal complaint with the Building Commissioner. To do this, complete and lodge a Building Services Complaint Form, available from Building and Energy office or website.

The relevant box must be ticked to note that your complaint is a building service complaint. This relates to building services not being carried out in a proper and proficient manner or being faulty or unsatisfactory.



When dealing with building disputes relating to regulated building services, the onus is on the parties to provide sufficient evidence to substantiate their respective positions. Depending on the complexity and nature of the issue, evidence in the form of photographs or a report from a building expert may be required. **The Guide** to the provision of evidence to support a building work complaint publication can help in understanding what is required.

**The Inspection of buildings:** guidelines for building complaint reports publication is intended to provide information and direction to private building inspectors when preparing reports that are likely to be used in a complaint process, so that the reports are presented in a consistent format and enable a speedy resolution of their client's complaints.

## Step four – Acceptance of complaint

After receiving your complaint, Building Energy Division will make a preliminary decision to refuse or accept your complaint. Your complaint will be assessed to ensure it satisfies the requirements of the Act.

The Building Commissioner is most likely to accept and investigate your complaint if it:

- is made in the approved form;
- is accompanied by the prescribed fee;
- is made within the prescribed time;
- contains proof that you have given notice of the proposed complaint, and you have generally made reasonable attempt to resolve the matter before lodging a formal complaint;
- is not considered to be vexatious, misconceived, frivolous, or without substance;
- is not the subject of an existing complaint under the Act;



- has not been subject to an order, judgement or other finding about the matter of the complaint;
- has not been the subject of a previous complaint to the Building Commissioner that has been refused or dismissed; and
- contains sufficient detail and evidence to support your complaint.

This may consist of supporting evidence in the form of photographs or, in some cases, an inspection report.

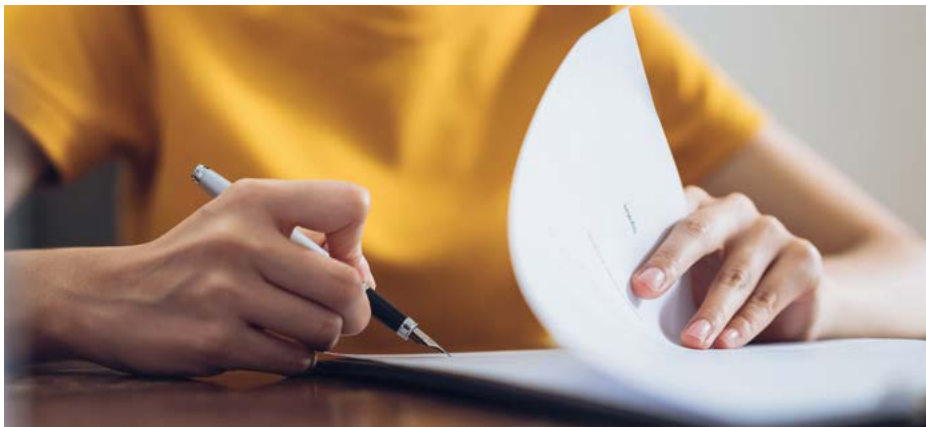
### Step five – Investigation of complaint

If your complaint is accepted, Building and Energy will arrange for the complaint to be investigated and will make a report. In addition to commencing an investigation, where appropriate Building and Energy may also refer the matter to the relevant permit authority for the building work for action under the Building Act 2011, or to a regulatory body or board for disciplinary action.

An investigation of your complaint may involve the complaints officer:

- contacting you and the respondent;
- carrying out research on matters relating to the complaint;
- contacting another jurisdiction or agency;
- entering the place where the building service was carried out, or other places where evidence or information may be available, and collecting relevant information; and
- directing a person to produce required information or records, or answer any question in relation to the investigation.

Part 4 of the Act gives authorised persons considerable entry and evidence-gathering powers.



## REPORT ON COMPLAINT

The complaints officer must prepare a report for the Building Commissioner based on the investigation of your complaint. Where appropriate the report may include recommendations for dealing with the complaint or resolving any related disputes.

### Step six – decision of Building Commissioner

Each complaint is unique and no one solution to a complaint is necessarily suitable for another. This is why there are a range of ways to resolve your complaint under the Act. Once assessed by the Building Commissioner your complaint may be dismissed, or may be resolved through any number of the following ways:

- conciliation;
- interim order;
- building remedy order; or
- referral to the SAT.

This variety of building-related orders is intended to prevent relatively low cost disputes from proceeding to court by making a decision for parties at an early stage. Orders can be made to rectify substandard work or to correct any regulated work that requires remedying. It is possible that a single set of facts may trigger a series of parallel processes. The Building Commissioner and / or SAT may make remedy orders to fix unsatisfactory work, a permit authority under the Building Act 2011 may take action for failure to obtain or comply with a relevant permit, and the Building Services Board may take disciplinary action for a person doing work without being registered in the appropriate category or level, or for inappropriate conduct.

### Dismiss the building complaint

Where a complaint is dismissed by the Building Commissioner you and the respondent will receive written notification of the decision. There is no right of review against the Building Commissioner's decision to dismiss a complaint. A complaint may have other avenues for redress in the court system.

### Conciliation

You and the respondent can either be ordered to conciliate a complaint or may opt for conciliation. Conciliation is a process whereby parties, with the help of a conciliator, meet to identify issues, develop solutions to the problem, and explore ways to reach an agreement. Building and Energy will appoint a conciliator and actively encourage parties to reach an agreement.

A conciliator may:

- communicate with the parties;
- arrange and facilitate conferences about the complaint; and
- give advice and make recommendations to assist in reaching an agreement.

If the parties can agree to an outcome, the Building Commissioner can make an order to give effect to the agreement. If the parties do not agree to an outcome, your complaint will be referred back to the Building Commissioner for further consideration.

### Interim order

In some cases, if there is a risk of significant loss or damage occurring, the Building Commissioner can make an interim building service order to stop work or take other action before a final decision is made.

### Building remedy order

A building remedy order can be issued by the Building Commissioner where he or she is satisfied that a building service that is subject to a building complaint has not been carried out in a proper or proficient manner or is faulty or unsatisfactory.

A building remedy order requires the person who carried out the regulated building service to:

- remedy the work;
- pay the cost of someone else remedying the work; or
- pay compensation.

The Building Commissioner cannot order work or payments of more than \$100,000. The SAT cannot order work or payments of more than \$500,000 from an unregistered person. There is no limit to work or payments the SAT can order from a registered builder. If you think the remedy you are seeking is in excess of these limits you may need to take your complaint through the relevant court, rather than this building complaint resolution process.

### Referral of a complaint to the State Administrative Tribunal

Complex or intractable disputes are referred to the SAT for determination. If your complaint is referred to the SAT both you and the respondent will receive written notification of the decision. The complaint will then be dealt with by the SAT.

### Step seven – right of review of decision

If you are not satisfied, or are aggrieved by an order or other decision made by the Building Commissioner, you may apply to the SAT for a review of that decision. SAT considers applications for review of decisions or orders issued by the Building Commissioner or the SAT. Reviews of decisions of the SAT are referred to the internal review in the SAT.



### Other avenues for dealing with disputes

A party to a building contract can also seek rapid adjudication of a payment dispute under the Construction Contracts Act 2004. We can advise you on the operation of this Act if you wish to make a claim, or are responding to a claim made by a builder.

### Time limits for making a complaint

There are time limits for lodging complaints with the Building Commissioner. In general, a complaint cannot be considered more than six years after completion of the work.

### Preliminary requirements

Before initiating a complaint with Building and Energy, read the important information provided in the **Building complaint resolution guide**. Complete the Notice of proposed complaint and provide it to the party against who the complaint is going to be made at least 14 days before submitting a formal complaint to the Building Commissioner.

If a satisfactory response to your notice of proposed complaint is not received, complete the Building complaint form and lodge it with Building and Energy together with copies of relevant documents and the complaint fee.

When preparing your complaint form, detailed information is required to enable proper investigation of the complaint. The Building Commissioner may, in writing, require a person making a complaint to provide further details about the complaint. Where these details are not provided within a reasonable time, the Building Commissioner may refuse to accept a complaint.

Payments can be made by cheque, credit card, EFTPOS or cash (in person).

## NEW CONSTRUCTION REGULATIONS

In 2017, the Building Ministers' Forum commissioned a report by Professor Peter Shergold and Ms Bronwyn Weir, *Building confidence: improving the effectiveness of compliance and enforcement systems* for the building and construction industry across Australia, (**Building Confidence report**). The Building Confidence report observed weaknesses with the compliance and enforcement frameworks across Australia.

The Western Australian Government supports the recommendations in the Building Confidence report and is committed to address the shortcomings identified in the regulation of the building and construction sector. As a result, a number of reforms are underway and these aim to enhance and improve levels of compliance in new residential and commercial building work, to provide safe, long-lasting buildings that better meet public needs and expectations. Further information on the proposed reforms can be viewed at: <https://www.commerce.wa.gov.au/announcements/proposed-reforms-approval-process-commercial-buildings>

## NEW STRATA LEGISLATIONS

Under the Strata Titles Act 1985 (WA) and the Strata Title (General) Regulations 2019, which came into effect on 1 May 2020, a number of changes have been made relating to the obligations of Strata Company council members.

Under these reforms, the Act will require Strata Company council members to declare conflicts of interest, and not make improper use of their position for their own personal gain, or that of any other person; or to cause detriment to the Strata Company.

They will now also be protected from any civil liability relating to the performance of functions under the Strata Titles Act or scheme by-laws. Instead, any such liability will attach to the Strata Company as a whole.

The Strata reforms now require all Strata Companies over 10 lots, or those valued over a certain replacement cost, to coordinate and maintain a 10-year plan for anticipated maintenance. This will need to be reviewed at least once every five years, and the Strata Company will be obliged to retain a reserve fund to cover the cost of such anticipated maintenance as outlined. The Council would be wise to engage competent and qualified professionals to provide written building reports in order to guide them in prioritising maintenance and budgeting accordingly.

## RESOURCES

### Complaints process:

<https://www.commerce.wa.gov.au/building-and-energy/building-service-and-home-building-work-contract-complaints>

### Buying off the plan:

<https://www.commerce.wa.gov.au/consumer-protection/buying-property-plan>

### Off the plan contracts:

<https://www.commerce.wa.gov.au/consumer-protection/plan-property-contracts>

### Home indemnity insurance:

<https://www.commerce.wa.gov.au/publications/home-indemnity-insurance>

### Western Australian Guide to standards and tolerances:

[https://www.commerce.wa.gov.au/sites/default/files/atoms/files/guide\\_to\\_standards\\_and\\_tolerances\\_2019\\_wa\\_0.pdf](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/guide_to_standards_and_tolerances_2019_wa_0.pdf)

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