



Response to:

## **Reforming Western Australia's Home Building Contract Laws**

DISCUSSION PAPER

**Building and Energy | Western Australia**

<https://www.wa.gov.au/organisation/building-and-energy/review-of-western-australias-home-building-contract-laws>

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## Contents

About SPASA and the swimming pool & spa industry.....	2
Introduction & Contact .....	3
Consumer and industry knowledge of the home building contract laws.....	4
Jurisdictional limits of the HBC Act .....	4
Financial limits on remedial orders .....	5
Deposit limits .....	5
Cooling-off periods.....	5
Price escalations – Statutory framework .....	6
Price escalations – Complaints process.....	7
Progress payments and defined stages .....	8
Limitation periods for remedial work complaints .....	8
Limitation period clarification for price escalation complaints .....	8
Early mediation and conciliation conferences .....	9
Site access to building site – Harmonisation with WHS requirements .....	9
Standing of registered builders and owner-builders to make complaints .....	10
Prohibition on caveats in residential building contracts .....	10
Notice of the proposed complaint and provision of evidence .....	11
General inspections.....	11
Inspection reports and the SAT .....	11
Powers of the Building Commissioner to issue warnings.....	12
Accreditation framework for building inspectors.....	12
HBC Act penalties for offences.....	12
Additional reforms not proposed in the discussion paper.....	13
Registration and licensing .....	13
Price escalation not currently permitted .....	13

## ABOUT SPASA AND THE SWIMMING POOL & SPA INDUSTRY

The Swimming Pool & Spa Association of Australia (SPASA) is the peak industry body representing businesses involved in the design, construction, installation, and maintenance of pools, spas, and related products across Australia and New Zealand. SPASA's diverse membership includes large-scale operators, independent builders, retailers, consultants and service providers, all committed to delivering high-quality products and services that meet the needs of homeowners, builders and developers.

The swimming pool and spa industry is a key economic driver across Australia and New Zealand, supporting tens of thousands of jobs through the construction and installation of more than 12,000 new swimming pools and spas annually and the maintenance of more than 1 million existing swimming pools and spas.

SPASA recognises the role the industry has in delivering quality design, construction and installation, supporting by excellence in service and products. In advocating for our members, we are working to ensure there is a positive regulatory environment that balances the need for appropriate controls with the need to foster affordable and cost-effective building and maintenance solutions for swimming pools and spas.

SPASA is committed to fostering industry growth through collaborative policy development, guidance and support to understand and achieve compliance, and promoting the need for innovation in every part of the industry.

## INTRODUCTION

SPASA appreciates the opportunity to set out our position in relation to the proposed Home Building Contract Laws that are intended to support the operation of the *Home Building Contracts Act 1991*, the *Building Services (Registration) Act 2011*, and the *Building Services (Complaint Resolution and Administration) Act 2011*.

SPASA broadly supports a modern, balanced and enforceable home building contract framework for Western Australia.

While the broader context of the Discussion Paper relates to domestic (home) building and large-scale residential developments, there are key elements of the regulations that will directly impact the swimming pool and spa industry in Western Australia, their clients, and industry broader consumers. This submission focuses on those key elements.

The swimming pool and spa sector is operationally niche and comparatively standardised in its delivery model. For policy purposes, this means the dominant compliance issues are typically repeatable and well-bounded, and the sector is often ill-served by a 'whole-of-industry' approach that assumes each step and each role is consistent with those involved in home building and large-scale residential development.

Swimming pools are expressly recognised in the Discussion Paper as falling within the NCC Class 10b structure category. Pool and spa projects may also involve a wide range of residential building work, associated works, home building work contract issues, building permits, barrier compliance and dispute pathways. Accordingly, even where particular provisions do not apply to every pool or spa transaction, the reform package will influence consumer expectations, contract drafting, regulator conduct, dispute resolution and small-business compliance across the sector.

Imposing a 'broad brush' approach on this niche sector can increase administrative burden without improving consumer outcomes or lead to unintended negative outcomes for both consumers and builders. As such, SPASA believes that any changes should recognise that pool and spa construction is specialist work with different risk points, delivery timeframes, procurement practices and technical requirements from home building. In this context, SPASA recommends that the reform package include targeted pool and spa guidance, sector-specific progress payment treatment, evidence-based price escalation provisions, balanced site access rules and specialist technical expertise within mediation, inspection and accreditation frameworks, that are developed with input from the pool and spa industry, as a next stage in the consultation process.

This submission outlines SPASA's position on the proposed areas of reform set out in the Discussion Paper that relate to the swimming pool and spa industry.

Considering challenges such as increased demand, labour shortages, and supply chain disruptions, it is vital that regulations are modernised to better support businesses, ensure compliance, and protect both consumers and industry professionals.

To ensure this legislative reform meets the evolving needs of businesses and consumers, SPASA remains available for further consultation and would welcome further opportunities to meet with LGIRS and Building and Energy to discuss these matters in more detail.

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# Proposed reforms and improvements

## Consumer and industry knowledge of the home building contract laws

1. **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').**
2. **Establish a two-year pilot program with suitable legal aid services to provide assistance to consumers in understanding their rights under home building work contracts and how to utilise the BSCRA Act complaints process**

SPASA supports a centralised WA Home Building HQ and suggests it include a dedicated pool and spa section covering when pool and spa contracts may fall within home building contract laws, when work is treated as associated work, how building permits and barrier obligations interact, how deposits and progress payments should be documented, and how consumers can distinguish construction work from the retail supply of portable products and equipment. Including examples such as supply-only, supply-and-install, and integrated landscaping would also support consumer understanding.

The focus on consumer understanding and assistance is understood, however SPASA considered there is equally a need for the proposed pilot to operate in a balanced way, providing access to assistance for builders as well as consumers. Many pool and spa businesses are small operators that also need practical, plain-English guidance as to their rights, how to navigate a complaint being brought against them, and to avoid inadvertent non-compliance. SPASA recommends that LGIRS develop parallel guidance for industry, including model notices, approved contract information sheets, price escalation examples, progress payment examples, and a pool/spa-specific complaints pathway guide.

## Jurisdictional limits of the HBC Act

Home building contract laws are amended to:

3. **change threshold values under the HBC Act to increase the lower threshold to \$10,000 and increase the upper threshold to \$800,000; and**
4. **expressly provide that the thresholds are to be reviewed on a three-yearly basis reporting through to the Minister, to ensure they remain relevant and reflective of the prevailing market conditions.**

SPASA supports regular review of both the lower and upper thresholds.

SPASA considers that the proposed \$10,000 lower threshold is likely still too low. Many pool and spa-related ancillary works can exceed \$10,000 without being of a scale that warrants the full compliance burden of a regulated home building work contract. SPASA recommends the lower threshold be increased to \$15,000, which is in-line with CPI since 2008, with consideration given to \$20,000 which is more in-line with both the ABS's reported increase in the cost of building a house in WA and other jurisdictions. Noting these increases would require a sympathetic increase in the Magistrates Court Minor Claims rules and procedures (which should be reviewed in concert going forward).

If LGIRS retains a lower threshold, SPASA recommends a clear carve-out guide for pool and spa work, including portable spas, swim spas, pool equipment, barrier works, renovation and other ancillary works.

SPASA supports increasing the upper threshold to \$800,000, as high-end pool and spa projects, particularly those involving structural works, complex sites, suspended pools, retaining, wet-edge systems, integrated outdoor living works or difficult access, may exceed the current limit.

## Financial limits on remedial orders

### Home building contract laws are amended to:

- 5. 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**
- 6. increase the value of HBWCROs that the SAT can issue from \$500,000 to \$800,000.**

Providing scope for the Commissioner to commence remedy orders is supported, particularly where this can help limit protracted dispute resolution. However, SPASA considers it essential that the Commission work to ensure that this power is supported with technically competent assessment by experienced industry experts, rather than generalists.

Pool disputes can involve structural engineering, waterproofing, hydraulics, geotechnical conditions, equipment performance, barrier compliance and owner-supplied or third-party works that are unique to these structures and are not comparable to matters generally experienced in home building work. SPASA recommends that the Building Commissioner be supported by a panel of suitably qualified pool and spa construction experts to assist in remedy orders that relate to pools, spas, swim spas and associated works.

## Deposit limits

### Home building contracts laws are amended

- 7. to increase the deposit amount under a home building work contract to 10 per cent (capped at \$40,000) to cover additional upfront builders' costs.**
- 8. 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.**

SPASA supports increasing the permitted deposit to 10 per cent capped at \$40,000. This is a more realistic recognition of pre-commencement costs, including contract administration, design work, engineering, site assessment, permit preparation, material ordering and early project scheduling.

The preferred approach is 10 per cent capped at \$40,000, supplemented by express provisions permitting separately documented pre-commencement payments for bespoke design, engineering, permits, custom-manufactured shells, imported or special-order equipment and other identifiable costs, provided those amounts are transparent, evidenced and contractually allocated.

For fibreglass pools and some swim spa projects, the pool shell or product may be manufactured, allocated or ordered before site works commence. The legislation should not unintentionally prevent a builder or supplier from recovering legitimate, evidenced procurement or manufacturing costs where the consumer changes their mind, delays the project or terminates after costs have been incurred.

## Cooling-off periods

### Home building contract laws are amended to:

- 9. imply an owner's cooling-off period into home building work contracts of five working days;**
- 10. 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**
- 11. stipulate that any monies paid to the builder must otherwise be returned.**

SPASA acknowledges that introducing a five working day cooling-off period will bring WA into alignment with other jurisdictions.

Members have expressed that the introduction of a cooling off period is concerning, as many pool builders incur significant up-front costs during the sale and pre-contract process, and expose them to increased risk of

suffering losses which are not easily captured, or not deemed recoverable, should a consumer cancel the contract.

If implemented, the legislation should avoid uncertainty by expressly identifying recoverable out-of-pocket expenses during the cooling off period. For pool and spa projects, recoverable expenses should include design and drafting, engineering, site investigation, permit work, administration directly referable to the project, supplier deposits, ordered materials, custom-manufactured or allocated pool shells, crantage or access bookings, and other costs reasonably and necessarily incurred before cooling off.

SPASA recommends that buyer/owner advice which is required prior to signing be updated to include clear explanations of the cooling-off period, including that cancellation during the cooling-off period does not necessarily entitle the owner to a refund of all amounts where the builder has already incurred legitimate project-specific costs, and outlining the types of costs which may be forfeited on cooling off, depending on individual situations.

## Price escalations – Statutory framework

Home building contract laws are amended to:

- 12. increase period after which a delay in commencement of building work is grounds for price escalation from 45 working days to 60 working days; and**
- 13. remove the provision of land titles as reason for an owner cause of delay from the HBC Act and entitlement for the builder to claim a price escalation.**

Price escalation is a legitimate and necessary part of contemporary construction contracting where a builder can demonstrate that costs have increased for reasons outside the builder's control. This has been clearly demonstrated through COVID-19, international freight disruption, geopolitical instability, fuel and energy volatility, labour shortages, supplier repricing and continuing instability in construction input costs.

SPASA supports addressing the unfairness identified in the Discussion Paper where a homeowner may be exposed to a price increase because of a land title delay caused by a developer rather than by the homeowner. However, that concern should not be resolved by removing a builder's entitlement to recover legitimate delay-related cost increases where they arise.

For swimming pool and spa construction, the issue is not confined to whether commencement is delayed for 45 working days or 60 working days. A legitimate price increase may occur before 45 working days, after 60 working days, or one day after any statutory period expires. The legislation should not create an artificial distinction where the same genuine cost increase is recoverable on one side of a date, but unrecoverable on the other.

SPASA recommends that the legislation not impose an arbitrary statutory time limit as the sole gateway for price escalation. Instead, a builder should be entitled to claim a reasonable price escalation at any time when it can be shown the increase is real, project-related, not the builder's fault, outside the builder's reasonable control, transparently notified, and supported by documentary evidence. The policy test should be legitimacy, causation, transparency and evidence and not the expiry of a fixed number of working days.

**Note:** SPASA supports the introduction of additional price escalation provisions as outlined later in our submission. These additional provisions align with the majority of jurisdictions and rightly protect small businesses when genuine issues arise.

## Price escalations – Complaints process

Home building contract laws are amended to:

- 14. 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 to the home building work contract prior to works commencing on site.**
- 15. Void any additional price increase notices when a builder has already been given a price increase notice for the same circumstance.**
- 16. 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 Residential Construction Inputs Index for the nearest preceding 12-month period.**  
*For example, if construction inputs increase by eight per cent in the nearest preceding 12-month period, a price increase to account for a 3-month delay to the commencement of work would be deemed to not be excessive provided it did not amount to an increase of more than 2 per cent of the contract price (i.e. 8 per cent x 3/12).*
- 17. 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).**
- 18. Harmonise section 10 (deposits and progress payments) of the HBC Act with Schedule 1 price increase complaints to ensure consistency between provisions.**

SPASA supports transparent price escalation notices and evidence-based assessment. However, SPASA does not support any reform that imposes an arbitrary notification cut-off or makes a valid escalation unavailable merely because the cost increase arises after a prescribed notification date, after a prior notice, or after work has commenced. A legitimate supplier, labour, freight, fuel, imported equipment, compliance or authority-driven price increase may occur one day after any statutory period expires. It is difficult to justify a policy position where the same genuine increase is recoverable on one side of the line but unrecoverable on the other. The better test is whether the increase is real, project-related, not caused by the builder's default, transparent and supported by evidence.

The ABS WA Residential Construction Inputs Index is a useful reference point, and SPASA agrees that it should not operate as a hard ceiling or substitute for actual evidence. SPASA is supportive of recommendation 17, which supports builders, deeming a price increase be presumed reasonable where it is supported by clear project-specific evidence, such as original and revised supplier quotes, price lists, freight invoices, labour cost evidence or subcontractor repricing.

SPASA also recommends that the legislation not void later price increase notices merely because an earlier notice has been given for the "same circumstance" unless that phrase is precisely defined and limited. Construction projects can experience sequential cost increases affecting different inputs, renewed supplier price increases, later variations, further delays, changed site conditions, authority requirements or changes in scope. We advise caution; a poorly drafted rule may encourage builders to delay giving notice until the last possible moment, which would reduce transparency rather than improve it.

SPASA further recommends that escalation complaints be separated from genuine variations. A variation requested by an owner, required by site conditions, required by an authority, or arising from changed scope should remain capable of being priced and claimed independently of any prior escalation notice.

## Progress payments and defined stages

### **19. Home building contract laws are amended to allow defined progress payment stages to be prescribed in regulations, similar to the Victorian model.**

SPASA does not support prescribed progress payment stages and strongly cautions against adopting a house-building model for swimming pool and spa construction. Victorian-style stages designed for new homes do not translate to pool and spa projects. Additionally swimming pool and spa building contracts include a diverse range of stages depending on construction method, ancillary works, and situational requirements. Not all stages would apply to each project, and prescribing the stages may have adverse impacts on the industry. No other jurisdiction has defined project stages for swimming pool and spa contracts.

Pool and spa projects may involve Fibreglass pool projects can also be delivered in very short timeframes, sometimes within one to four weeks once works commence. Stages must reflect that operational reality.

On this basis SPASA does not support prescribed payment stages for pool and spa contracts, and only a deposit limit should be applied.

## Limitation periods for remedial work complaints

**Home building contract laws are amended to clarify that:**

- 20. the six-year complaints time period restarts only with respect to the remedial work done (not the initial whole works); and**
- 21. 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).**

SPASA supports clarifying that the six-year complaints period restarts only for remedial work actually undertaken, rather than affecting the whole original project. This is particularly important for pool and spa work where a minor remedial attendance, equipment replacement, leak repair, tile repair, coping repair or barrier adjustment, should not revive the limitation period for unrelated original works.

SPASA recommends that the legislation define “remedial work” and require the complaint to identify the remedial work, date of completion, scope, alleged defect and causal link. This will reduce opportunistic claims and allow genuine remedial failures to be addressed fairly.

## Limitation period clarification for price escalation complaints

**Home building contract laws are amended to:**

- 22. expressly set out the limitation period of three years in relation to HBC Act price increase complaints; and**
- 23. in relation to price increase complaints, create a right for the owner to seek compensation for delay where the builder has caused the delay.**

SPASA supports a clear limitation period for price escalation complaints. SPASA believes there is a case to be made for introducing a contract value cut-off, where a contract valued under \$150,000 would have a limitation of 12 months, and contracts in excess of this could be two, or three years.

As mentioned previously, many fibreglass pool projects can be completed in a few weeks. \$150,000 would sufficiently capture the overwhelming majority of these projects and curtail lengthy dispute windows.

It should be note that SPASA would see price escalation disputes raised as promptly as possible, preferably during the contract or shortly after the relevant notice, because delayed complaints after completion can be difficult to assess and may prejudice both parties.

If homeowners are given a statutory right to seek compensation for builder-caused delay, the legislation should be reciprocal and balanced. Builders should retain rights where delay is caused by the owner, owner's agent, developer, financier, permit authority, late selections, access restrictions, latent site conditions, weather or other matters beyond the builder's reasonable control.

## Early mediation and conciliation conferences

Home building contract laws are amended to:

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

*To support the reforms, additional funding will be sought for LGIRS to increase the number of trained conciliators and establish an expert panel to deal with complex HBWC early mediations (similar to the Small Business Development Corporation model) and general conciliations.*

SPASA supports voluntary early mediation, continued Building Commissioner involvement after conciliation where appropriate, and the ability to commission inspections at suitable points. Early intervention can prevent technical disputes from becoming entrenched.

SPASA recommends that complex pool and spa disputes be allocated to mediators, conciliators and inspectors with relevant subject-matter expertise. Pool matters can turn on technical issues that are not apparent from general building experience. As set out in previous questions, technical knowledge of pool construction is significantly different from home building and SPASA commends the Commission ensure that relevant experts are engaged in this process. SPASA members have expressed a willingness to work with the Commission to establish a panel of experts that can support this work.

## Site access to building site – Harmonisation with WHS requirements

Home building contract laws are amended to:

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

SPASA strongly supports harmonisation with WHS requirements. Pool construction sites are high-risk environments involving open excavations, mobile plant, craneage, formwork, steel, concrete, electrical work, plumbing penetrations, temporary fencing, uneven ground, trip hazards and partially completed barriers. However owner access must not override the builder's duty to secure and control the site.

SPASA recommends that the legislation make clear that 48 hours' notice is only a request mechanism and does not create an unconditional right of entry for an owner. Access should be subject to the builder's approval, reasonable site rules, timing, supervision, induction, PPE, safe access routes and exclusion zones. The builder should be entitled to refuse, defer or condition access where entry would create a safety risk, interfere with work, compromise site security or breach WHS obligations.

It is possible that reasonable requirements could include a white card, proof of insurance or similar matters, depending on the nature of the site and the person seeking access. SPASA's position is that access requirements must be reasonable, proportionate and at all times considerate of WHS obligations applying to the principal contractor with control of the site.

## Standing of registered builders and owner-builders to make complaints

Home building contract laws are amended to clarify that:

- 30. 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**
- 31. registered building service providers do not have a right to lodge a building complaint against another registered building service provider under the BSCRA Act.**

SPASA supports owner-builders having access to complaint pathways where they are genuinely in the position of a consumer affected by defective or incomplete building work. However, the legislation should prevent misuse by sophisticated parties seeking to convert commercial or subcontractor disputes into consumer-style complaints.

SPASA agrees that registered building service providers should generally not use the BSCRA consumer complaint pathway against other registered providers for ordinary commercial disputes. Those disputes should be dealt with through contractual, payment, adjudication or court pathways. Any exception should be narrow and directed to genuine public safety or regulatory issues.

## Prohibition on caveats in residential building contracts

- 32. Home building contract laws are amended to prohibit caveats in home building work contracts and impose a fine penalty of \$25,000 for improperly imposing a caveat in connection with a home building work contract.**

While SPASA can understand the consumer-centric mindset which is motivating this proposal to prohibit caveats in home building work contracts, and absolutely agrees that caveats must not be used improperly, vexatiously or without a proper legal basis, our members have highlighted important considerations in favour of keeping this as a useful and sometimes vital tool for swimming pool and spa builders to recoup lost payments.

This is particularly important in the swimming pool and spa industry. Pool and spa builders often incur significant upfront and project-specific costs, including excavation, shell manufacture, steel, concrete, cranes, freight, filtration equipment, heating equipment, covers, subcontractors and site-specific labour. By the time a final payment dispute arises, the builder may have already delivered most, if not all, of the contracted work and incurred substantial unrecovered cost at that point.

A new home builder has the keys for the entire project, and so has control over the project site until those keys are handed over, giving them leverage which helps ensure timely payment. In contrast, a pool builder does not have this leverage. A home owner is not limited with site access, and therefore they retain functional control of the site. In the event of a dispute such as a divorce, or family feud, the pool builder may find themselves significantly out of pocket, and without access or avenue to recover, except for placing a caveat over the property, much in the same way a council or other owed debtor would be able to ahead of the sale of the property.

SPASA is additionally aware of many instances where consumers use the final payment as leverage to seek a discount, obtain additional works, delay payment, negotiate a commercial concession, or avoid payment of amounts otherwise due under the contract. While this behaviour is not supported by the legislation it is a reality in many home building and pool building contract relations.

SPASA notes that the Discussion Paper raises general consumer protection concerns about the potential impact of caveats on homeowners, however it does not appear to provide data or evidence demonstrating that the use of caveats by builders is a systemic issue in Western Australia causing concern, nor does it identify evidence that caveats are being misused within the swimming pool and spa construction sector.

SPASA considers that a reform of this nature should be evidence-based. A blanket prohibition would remove an ordinary and lawful debt recovery mechanism from builders without first establishing that the mechanism is being used improperly, disproportionately or unfairly.

Consumers already have a range of protections and remedies available to them, as such SPASA does not consider it appropriate to remove a builder's ordinary debt recovery rights without clear evidence of demonstrated misuse. The policy balance should not assume that all leverage held by builders is inappropriate while accepting that consumers may retain substantial leverage by withholding payment.

If reform is considered necessary, SPASA recommends a targeted approach that addresses misuse, such as requiring a proper contractual basis, written notice before lodgement, evidence of the claimed debt or entitlement, and penalties for improper or vexatious caveats.

## Notice of the proposed complaint and provision of evidence

### **33. 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.**

SPASA is concerned that removing the mandatory requirement to provide a written description of the evidence may increase speculative or poorly particularised complaints, slow down triage and place greater pressure on inspectors and respondents. SPASA recommends replacing the current requirement with a simpler issue schedule rather than removing it altogether. A plain-English schedule would support consumers while still giving the builder enough information to understand, respond to and potentially resolve the complaint before formal acceptance.

A complaint should have to plainly identify the alleged defect, incomplete work, contractual issue, location, and date. It should also include supporting documents, photographs or videos, and the remedy sought.

## General inspections

### **34. 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**

SPASA supports a right for the registered building service provider to request a written record of a general inspection. The record should identify who attended, what was inspected, limitations on the inspection, documents considered, observations made and any next steps. This will improve transparency and reduce later disputes about what was or was not found.

## Inspection reports and the SAT

### **35. 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.**

SPASA supports requiring SAT to have regard to Building Commissioner inspection reports. However, such reports should not be treated as determinative. Parties should retain the ability to test the report, provide further evidence, identify errors or omissions, and rely on suitably qualified independent expert evidence.

Members report that photographic evidence is increasingly being relied upon as a sole source of evidence. Notwithstanding that photographic, and even video, evidence is these days under ever increasing suspicion and distrust because of fraudulent AI actions. SPASA is concerned that the requirement for in-person inspections is being reduced when they are clearly the best way to confirm the situation in context.

## Powers of the Building Commissioner to issue warnings

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

- 36. issue public warnings where frequent complaints have been received about the same issue or building service provider;**
- 37. make clear that a warning can be issued whether or not a complaint has been made; and**
- 38. include provision for the Building Commissioner to give the person concerned a reasonable opportunity to make representations, following a notice for proposing to issue the warning, to ensure procedural fairness.**

SPASA appreciates the Commission's desire for stronger early warning powers where there is a demonstrated and substantiated pattern of serious risk, repeated non-compliance, insolvency risk or consumer harm.

However, public warnings can cause immediate and potentially irreversible reputational damage. SPASA's members have raised that the SAT publications clearly address those issues which are of public concern and not include minor disputes and matters that commonly and often fairly occur in the builder/consumer relationship.

Any legislation introduced should include clear thresholds, procedural fairness, a right to make representations, correction mechanisms, proportionality and time limits for publication. It should also distinguish between insolvency risk, systemic misconduct, repeated technical non-compliance, and ordinary unresolved complaints. Repeated behaviour in-and-of-itself does not point to a likelihood of builder insolvency and consumer risk. A high complaint count alone should not justify a public warning unless complaints are substantiated or there is a clear risk to consumers.

## Accreditation framework for building inspectors

- 39. Home building contract laws are amended (and/or other enactments) to establish an industry-based accreditation scheme for building inspectors performing staged or completion inspections under home building contracts.**
- 40. As the proposed reform was not explored in depth during the Inquiry Phase of the review, feedback is sought on general and specific parameters that should apply to any accreditation scheme.**

SPASA recognises the potential purpose that an accreditation framework for building inspectors, may provide. However as indicated this is a new proposal and limited consultation has occurred to date. If such a framework was to be introduced this should include minimum qualifications or experience, defined scopes of inspection, professional indemnity insurance, CPD, independence requirements, conflict-of-interest rules, audit powers, complaints handling, disciplinary consequences and renewal requirements.

If this approach was to include pool and spa projects, clarity on a wide range of skills and experience should be required from experts in the industry.

SPASA would seek to work with LGIRS on the development of any accreditation parameters, CPD content, technical guidance and industry consultation for pool and spa-related inspection work.

## HBC Act penalties for offences

- 41. Home building contract laws are amended to increase penalties as set out in Appendix 1.**

SPASA accepts that penalties may need to be modernised. However, several proposed increases are substantial, particularly for administrative offences. The penalty framework should distinguish between deliberate consumer harm, repeated non-compliance, unlicensed or uninsured work, and inadvertent documentation errors by small businesses.

SPASA recommends a staged implementation period, extensive education, updated model forms and notices, regulator guidance and a warning or improvement-notice approach for first-time administrative breaches where there is no consumer loss, safety risk or deliberate misconduct. Higher penalties should be reserved for serious, repeated or intentional breaches.

## **Additional reforms not proposed in the discussion paper**

### **Registration and licensing**

SPASA recommends that LGIRS use this review to clarify the regulatory position of swimming pool and spa construction in Western Australia. In particular, the final recommendations should address (as needed depending on which proposals are implemented and the form those new requirements take):

- whether and when pool and spa builders should be registered or licensed;
- how home building contract laws apply to pool-only contracts;
- how portable spas and swim spas are distinguished from constructed pools;
- how pool and spa progress payments should be treated; and
- how pool barrier obligations interact with construction contracts and completion.

The absence of pool-specific guidance on these matters risks inconsistent consumer expectations, inconsistent contract drafting, inconsistent complaint handling and uneven compliance outcomes.

SPASA recommends direct consultation between LGIRS, Building and Energy and SPASA before final recommendations are settled.

### **Price escalation not currently permitted**

Currently in WA the contract price can only be subject to change as a result of the following circumstances:

- the actual cost of Prime Cost Items and work for which Provisional Sums have been specified exceeding the estimates set out in the Contract
- variations including those required by the council/registered building surveyor
- on overdue; or
- extra costs for delay claimed by the Builder

These constraints have put extreme pressure on pool and spa builders during times of supply chain and economic uncertainty. The inability to pass on genuine price increases in the wholesale price of materials, clear fuel levies, increased labour costs due to demand and shortage, and other similar elements has undoubtedly resulted in builders losing money on projects, increasing their base-line quotations for consumers, and even ceasing to trade.

SPASA strongly suggests that Western Australia, at a minimum, consider adopting price adjustment mechanisms in-line with those in South Australia, New South Wales, and Queensland. Additionally we ask that you consider including broader legitimate price-escalation allowances to ensure that the building industry is not unfairly punished when the majority of their suppliers and service providers, indeed a majority of other industries, can simply adjust to match and ride the price fluctuations without being required to absorb these sometimes-dramatic cost increases.