



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Your Ref: Petition 119

Our Ref: 44-22131

Hon. Simon O'Brien MLC
Chairperson
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Mr O'Brien

LEGISLATIVE COUNCIL STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS - PETITION NO. 119 - BUILDING COMMISSION AND STATE ADMINISTRATIVE TRIBUNAL

Thank you for your letter dated 11 May 2016 inviting my comments on Petition No. 119 before the Standing Committee on Environment and Public Affairs (the Committee) and the petitioners' submissions regarding dispute resolution services provided by the Department of Commerce - Building Commission Division (Building Commission) and the State Administrative Tribunal (SAT).

Under the *Building Services (Complaint Resolution and Administration) Act 2011* (the Act), the SAT can review the decisions of the Building Commission and the Building Commissioner can refer matters to the SAT. At commencement of the Act it was estimated that 50 per cent of complaints would require referral to SAT for determination. In fact, the Building Commission has consistently resolved in excess of 80 per cent of all complaints lodged (without referral to the SAT).

During the 12 month period ending 30 April 2016, the average time taken for the Building Commission to finalise a complaint was 26 weeks. During the same period, the average time taken for the SAT to finalise a complaint from the time of referral was 24 weeks. The average time taken to finalise a matter from lodgement at the Building Commission to finalisation at the SAT was 47 weeks.

Given that 80 per cent of matters are finalised by the Building Commission without referral to the SAT, the overall average time taken to finalise a complaint under the current Act is 31 weeks. This compares to an average time taken of 75 weeks by the former Building Disputes Tribunal to resolve a complaint.

While timeliness is a priority for the SAT, as it continues to manage building dispute matters in accordance with its budgeted key performance indicators, the SAT also deals with these matters in accordance with the objectives set out in the *State Administrative Tribunal Act 2004* (the SAT Act).

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When a complaint is referred to the SAT, parties are encouraged to engage in facilitative dispute resolution. This is intended to assist parties in creating their own solutions to resolving a dispute, rather than having a decision imposed on them. During the 12 month period ending 30 April 2016, 60 per cent of building matters were resolved through facilitative dispute resolution.

In addition to his views about the Building Commission's dispute resolution services in his petition, Mr John Samuel also raised concerns about the conduct of a particular Sessional Member during an onsite mediation. I am advised this matter was referred to the President of the SAT who was satisfied that the Sessional Member in question conducted the mediation in a competent and professional manner.

I note Ms Janine Freeman MLA, Member for Mirrabooka, raised concerns about the potential for conflicts of interest as a result of SAT Sessional Members working in the industry, or appearing as expert witnesses. I am advised that all Sessional Members, when inducted, are provided with a Members Handbook and informed of their obligations to declare conflicts of interest, specifically their obligations under section 144 of the SAT Act. Any issue of conflict must be brought to the attention of the President of the SAT. Where a real or perceived conflict is deemed to exist, the member in question will not have any part in the proceedings in question.

Ms Freeman considers consent orders to be more advantageous to complainants than Deeds of Settlement as they can be enforced by the SAT. Accordingly Ms Freeman suggests that:

The Committee may wish to enquire as to the practice of Deeds of Settlement and whether this disadvantages complainants and they would be better served by a consent order that could be enforced by [the] SAT.

While the SAT makes use of consent orders, it is not empowered to enforce such orders. Enforcement of SAT orders occurs by way of application to a relevant court by the affected party in accordance with sections 85 and 86 of the SAT Act.

It is also suggested by Ms Freeman that the Committee investigate whether the SAT should facilitate a duty lawyer for parties in building matters, and suggests that an alternative may be for the Building Commissioner to take matters to the SAT on a complainant's behalf. The SAT is not in a position to facilitate legal representation for parties. In addition, it would be inappropriate for an impartial decision maker such as the Building Commissioner to be acting as an advocate for one party against another in a proceeding before the SAT.

I note the Act will be due for review shortly. Respectfully, I believe this would be the appropriate time to assess any concerns regarding the operation and effectiveness of the dispute resolution services provided for in the Act.

Thank you for bringing this to my attention. I trust my comments are of assistance to the Committee.

Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

15 JUN 2016