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Building and Energy, Department of Local Government, Industry Regulation and Safety

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Submission: Review of Western Australia's Home Building Contract Laws

Response to the Discussion Paper (May 2026)

1. Introduction

The Australian Institute of Architects (the Institute) welcomes the opportunity to provide a submission to the review of Western Australia's home building contract laws.¹

The Institute represents architects working across residential design, including bespoke homes and medium-density housing, and brings a design-led perspective to improving contract clarity and dispute prevention.

Architects play an important role in safeguarding design quality, contract clarity and client outcomes across the lifecycle of residential projects.

The Institute supports the intent of the review to ensure that the regulatory framework strikes an appropriate balance between consumer protection, industry viability and efficient dispute resolution.²

Across our membership, there is strong support for reforms that improve transparency, reduce contractual disputes and reinforce trust in the residential construction sector.

2. Overarching Position

The Institute broadly supports the direction of the proposed reforms, particularly those that improve contract clarity and consumer understanding, reduce systemic causes of disputes, strengthen early and low-cost dispute resolution pathways, and align regulatory settings with contemporary construction costs and practice.³

The Institute emphasises the need to ensure that reforms do not disproportionately favour volume builders at the expense of bespoke design services, that the role of architects as independent client representatives is properly recognised, and that stronger integration is achieved between design, procurement and construction phases. There is an opportunity to address a key gap in the current framework where there is limited recognition of design and procurement phases as drivers of dispute.

¹ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia's Home Building Contract Laws: Discussion Paper (May 2026), p. 5. – <https://www.wa.gov.au/media/161071/download?inline>

² Government of Western Australia, Review of Western Australia's Home Building Contract Laws – Terms of Reference, p. 2. – <https://www.wa.gov.au/media/152597/download?inline>

³ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia's Home Building Contract Laws: Discussion Paper (May 2026), p. 10. – <https://www.wa.gov.au/media/161071/download?inline>

3. Response to Proposed Reforms and Improvements

3.1 Consumer and industry knowledge of the home building contract laws

The Institute strongly supports the proposal to improve the accessibility, transparency and usability of home building information, including through a centralised online information platform and better access to assistance for consumers.⁴

The discussion paper identifies significant knowledge gaps across the sector, including limited consumer confidence in understanding contracts and broader difficulties navigating rights, obligations and dispute pathways.⁵

Institute position: The Institute strongly supports centralised guidance and legal assistance programs.

The proposed information platform should include guidance on design procurement pathways, a clearer explanation of the respective roles of architects and builders, and model client-architect agreements alongside builder contracts.

Recommendation: Ensure the proposed information platform includes material explaining how independent design advice and contract administration can improve project outcomes and reduce downstream disputes.

3.2 Jurisdictional limits of the HBC Act

The Institute supports increasing the HBC Act thresholds to reflect contemporary construction costs and supports the proposal to review those thresholds on a periodic basis.⁶

The discussion paper notes that construction costs have risen substantially since the thresholds were last updated and that the proportion of contracts covered by the Act has decreased over time.⁷

Institute position: The Institute supports a periodic review mechanism to ensure thresholds remain relevant and reflective of prevailing market conditions.

However, increasing the upper threshold to \$800,000 may still exclude a growing proportion of architect-designed homes and more complex residential projects.

Recommendation: Consider either removing the upper threshold entirely or introducing a tiered regulatory framework for higher-value residential projects so that consumer protections remain available across a broader portion of the market.

3.3 Financial limits on remedial orders

The Institute supports increasing the financial limits for remedial orders so that the dispute resolution system remains fit for purpose in the context of inflation and rising construction costs.⁸

⁴ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia’s Home Building Contract Laws: Discussion Paper (May 2026), p. 10. –

<https://www.wa.gov.au/media/161071/download?inline>

⁵ Ibid. p. 7. – <https://www.wa.gov.au/media/161071/download?inline>

⁶ Ibid. p. 11. – <https://www.wa.gov.au/media/161071/download?inline>

⁷ Ibid. p. 11. – <https://www.wa.gov.au/media/161071/download?inline>

⁸ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia’s Home Building Contract Laws: Discussion Paper (May 2026), p. 12. –

<https://www.wa.gov.au/media/161071/download?inline>

The discussion paper identifies that existing limits have not been updated since 2011 and that inflation has eroded the practical utility of those orders.⁹

Institute position: The Institute supports increases to the value of BROs and HBWCROs that may be issued without party consent, and the corresponding changes to SAT limits.

Recommendation: Include a periodic review mechanism so that these order limits remain effective and continue to support accessible and low-cost dispute resolution.

3.4 Deposit limits

The Institute acknowledges the rationale for increasing deposit limits in response to rising upfront costs faced by builders.¹⁰

At the same time, the discussion paper makes clear that increases in deposit levels can increase the uninsured component of homeowner exposure unless insurance settings remain aligned.¹¹

Institute position: The Institute supports adjustment in principle but notes the need to manage increased financial risk exposure for consumers.

Recommendation: Link any increase in deposit limits to corresponding Home Indemnity Insurance settings and require clearer disclosure of deposit use and consumer risk exposure.

3.5 Cooling-off periods

The Institute supports the introduction of a statutory cooling-off period for home building work contracts.¹²

The discussion paper notes that Western Australia currently does not provide a cooling-off period, while several other jurisdictions provide five business-day cooling-off periods in residential building contracts.¹³

Institute position: The Institute strongly supports the proposal for a five-day cooling-off period.

The Institute also notes that significant financial commitments are often made before the building contract is signed, including under Preparation of Plans Agreements.

Recommendation: Extend equivalent protections, or at least clearer guidance, to key pre-contract phases where consumers may already incur substantial cost and commit to a project pathway before the main building contract is executed.

3.6 Price escalations – Statutory framework

The Institute considers price uncertainty to be one of the central drivers of disputes in the residential building sector.¹⁴

The discussion paper proposes extending the commencement delay trigger from 45 working days to 60 working days and removing land titles as a basis for owner-caused delay.¹⁵

Institute position: The Institute strongly supports both reforms.

⁹ Ibid. p. 12. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁰ Ibid. p. 13. – <https://www.wa.gov.au/media/161071/download?inline>

¹¹ Ibid. p. 13. – <https://www.wa.gov.au/media/161071/download?inline>

¹² Ibid. p. 14. – <https://www.wa.gov.au/media/161071/download?inline>

¹³ Ibid. p. 14. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁴ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia's Home Building Contract Laws: Discussion Paper (May 2026), p. 15. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁵ Ibid. p. 16. – <https://www.wa.gov.au/media/161071/download?inline>

The Institute also supports a framework that requires greater transparency about the assumptions underpinning price at the time of contract, to avoid reinforcing inflexible fixed-price risk allocation where this is not appropriate to the project.

Recommendation: Require transparent cost assumptions at contract stage, remove settings that unfairly shift risk to consumers, and support procurement approaches that better reflect complex or bespoke projects, including recognition of cost-plus residential contracts administered independently by a suitably qualified consultant, such as an architect.

3.7 Price escalations – Complaints process

The Institute supports reforms that improve transparency and evidentiary clarity in relation to price escalation disputes.¹⁶

The discussion paper proposes both an index-linked benchmark approach and the ability for a builder to support higher increases with evidence of actual cost changes.¹⁷

Institute position: The Institute supports requirements for evidence-based justification of price increases and supports the use of benchmark indices as a reference point, while noting that index-based approaches may have limitations in bespoke residential projects.

Recommendation: Ensure that any complaint framework is transparent, evidence-based and capable of responding appropriately to both standardised and architect-designed project types.

3.8 Progress payments and defined stages

The Institute supports greater clarity in relation to progress payments and defined stages.

The discussion paper identifies benefits in allowing defined progress payment stages to be prescribed in regulations, while referring to models in other jurisdictions.¹⁸

Institute position: The Institute supports optional prescribed stages that improve clarity and transparency, including the facility for parties to mutually agree to opt out of the prescribed residential construction progress payment stages to provide flexibility for alternative contract forms or bespoke project delivery models.

Recommendation: Ensure any prescribed staging framework remains flexible enough to accommodate architect-administered contracts and other project delivery arrangements that rely on independent certification and tailored payment structures.

3.9 Limitation periods for remedial work complaints

The discussion paper proposes clarifying that the six-year complaints period restarts only in relation to the specific remedial work carried out, and that unregistered builders are responsible for specific remedial works for an additional six years from completion.¹⁹

Institute position: The Institute supports reforms that improve clarity, fairness and consistency in the dispute resolution framework, particularly where they reduce uncertainty for consumers and improve access to practical remedies.

¹⁶ Ibid. p. 17. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁷ Ibid. p. 18. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁸ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia's Home Building Contract Laws: Discussion Paper (May 2026), p. 19. – <https://www.wa.gov.au/media/161071/download?inline>

¹⁹ Ibid. p. 20. – <https://www.wa.gov.au/media/161071/download?inline>

3.10 Limitation period clarification for price escalation complaints

The discussion paper proposes expressly setting out a three-year limitation period for price escalation complaints and creating a right for the owner to seek compensation for delay where the builder has caused the delay.²⁰

Institute position: The Institute supports clearer statutory pathways for consumers in relation to price escalation disputes and supports reforms that improve transparency and accountability where delay risk is allocated or passed through to the owner.

3.11 Early mediation and conciliation conferences

The Institute supports proposals to improve early mediation and conciliation pathways under the BSCRA Act.

The discussion paper notes that early mediation may assist with timely resolution of time-sensitive contractual disputes and proposes additional conciliation capacity and expert support.²¹

Institute position: The Institute strongly supports expanded early mediation mechanisms.

Recommendation: Recognise architects as appropriate expert participants in dispute resolution and enable the role of architect certification and contract administration to be properly recognised within complaint and conciliation processes.

3.12 Site access to building site – Harmonisation with WHS requirements

The discussion paper proposes clarifying the interaction between site access rights and WHS obligations, including a minimum notice period.²²

Institute position: The Institute supports reforms that provide clearer and more workable rules where contract administration, site attendance and inspection functions need to operate alongside health and safety obligations.

Recommendation: Expressly confirm that architects and other consultants engaged to administer the contract on the owner's behalf are recognised as 'authorised persons' for the purposes of section 26, and that the proposed notice and WHS compliance requirements apply consistently to such representatives without imposing requirements, such as a white card, that are not reasonably necessary for design professionals attending site in a non-trade capacity.

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

The discussion paper proposes permitting owner-builders to make complaints in a consumer capacity while excluding complaints between registered building service providers in commercial settings.²³

Institute position: The Institute supports reforms that improve the fairness and accessibility of complaint pathways for consumers and that preserve the focus of the statutory regime on genuine consumer protection.

²⁰ Ibid. p. 21. – <https://www.wa.gov.au/media/161071/download?inline>

²¹ Ibid. p. 22. – <https://www.wa.gov.au/media/161071/download?inline>

²² Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia's Home Building Contract Laws: Discussion Paper (May 2026), p. 23. – <https://www.wa.gov.au/media/161071/download?inline>

²³ Ibid. p. 24. – <https://www.wa.gov.au/media/161071/download?inline>

3.14 Prohibition on caveats in residential building contracts

The discussion paper identifies substantial consumer protection concerns associated with caveats, including the risk that homeowners may be pressured into unfavourable outcomes by restrictions on sale or refinancing.²⁴

Institute position: The Institute supports prohibiting caveats in residential building contracts.

3.15 Notice of the proposed complaint and provision of evidence

The discussion paper proposes removing the mandatory requirement for a complainant to provide a written description of the evidence before the Building Commissioner accepts a complaint.²⁵

Institute position: The Institute supports reforms that reduce unnecessary administrative barriers where those barriers can delay access to dispute resolution without improving substantive fairness.

3.16 General inspections

The discussion paper proposes allowing a registered building service provider to request a written record following a general inspection.²⁶

Institute position: The Institute supports greater clarity and transparency in inspection processes where this assists in early issue resolution and reduces the likelihood of disputes escalating unnecessarily.

3.17 Inspection reports and the SAT

The discussion paper proposes requiring the SAT to have regard to building inspection reports prepared by the Building Commissioner.²⁷

Institute position: The Institute supports reforms that improve continuity, consistency and evidentiary clarity across dispute resolution processes, particularly where inspection findings can assist in efficient and proportionate resolution.

3.18 Powers of the Building Commissioner to issue warnings

The discussion paper identifies a need for broader warning powers in circumstances where multiple complaints have arisen in relation to the same issue or provider.²⁸

Institute position: The Institute supports expanded powers for the Building Commissioner to issue public warnings, subject to procedural fairness, to improve consumer protection.

3.19 Accreditation framework for building inspectors

The discussion paper identifies scope for improving the quality and consistency of inspections and the objective of an accreditation framework for building inspectors.²⁹

Institute position: The Institute notes the need to avoid duplication with existing regulated professions and to ensure that suitably qualified architects are recognised within any accreditation model.

²⁴ Ibid. p. 25. – <https://www.wa.gov.au/media/161071/download?inline>

²⁵ Ibid. p. 26. – <https://www.wa.gov.au/media/161071/download?inline>

²⁶ Department of Local Government, Industry Regulation and Safety – Building and Energy, Reforming Western Australia’s Home Building Contract Laws: Discussion Paper (May 2026), p. 26. – <https://www.wa.gov.au/media/161071/download?inline>

²⁷ Ibid. p. 27. – <https://www.wa.gov.au/media/161071/download?inline>

²⁸ Ibid. p. 28. – <https://www.wa.gov.au/media/161071/download?inline>

²⁹ Ibid. p. 29. – <https://www.wa.gov.au/media/161071/download?inline>

Recommendation: Recognise architects as suitably qualified professionals within any accreditation framework and avoid unnecessary duplication of existing professional regulation.

3.20 HBC Act penalties for offences

The discussion paper proposes increasing HBC Act penalties to ensure they remain an effective deterrent and reflect the seriousness of non-compliance.³⁰

Institute position: The Institute supports reforms that strengthen compliance and consumer confidence where penalties are proportionate, clear and consistent with the broader policy objective of fair and transparent residential contracting.

4. Additional Issues Not Directly Addressed in the Discussion Paper

While the Institute supports the direction of the proposed reforms, several issues remain important to improving outcomes across the residential construction sector and should be considered as part of the broader reform agenda.

- The current reform package remains focused primarily on builder-client contracts, with limited consideration of the design and procurement phase, including Preparation of Plans Agreements, even though many disputes originate upstream through unclear scope, unrealistic budgets or misaligned expectations formed early in the project.
- The present framework has limited recognition of architects acting as independent contract administrators or certifiers, despite architect-administered contracts being an established mechanism for certifying progress payments, managing risk and preventing disputes.
- While the discussion paper addresses price escalation risk in fixed-price contracts, there remains scope for greater guidance on alternative procurement models, including cost-plus and negotiated approaches, particularly in complex or bespoke residential work.
- Improved coordination between planning, permitting and contract systems would help address delay and escalation risks acknowledged in the discussion paper but not fully resolved by the proposed reforms.
- The Terms of Reference identify rights to extensions of time in home building work contracts as a key focus area, however, this issue is not addressed as a discrete reform item in the discussion paper.³¹ Architects routinely assess and certify extension of time claims under contract administration arrangements, and clearer statutory guidance on the grounds, notice requirements and assessment of extension of time claims would address a common source of dispute between owners and builders, separate from the price escalation issues already addressed in the discussion paper.
- The Terms of Reference also identify the suitability of alternative dispute resolution mechanisms, including the permissibility of arbitration clauses in home building contracts, as a focus area, however, this issue is not substantively addressed in the discussion paper.³² The Institute considers that any move to permit or expand arbitration clauses in home building work contracts should be approached with caution, given the existing BSCRA Act framework already provides an accessible, low-cost dispute resolution pathway, and arbitration clauses risk directing matters into a more costly and formal process that may disadvantage consumers with less bargaining power. If arbitration clauses are to be permitted, appropriate safeguards

³⁰ Ibid. p. 30. – <https://www.wa.gov.au/media/161071/download?inline>

³¹ Government of Western Australia, Review of Western Australia's Home Building Contract Laws – Terms of Reference, p. 3. – <https://www.wa.gov.au/media/152597/download?inline>

³² Ibid. p. 3. – <https://www.wa.gov.au/media/152597/download?inline>

should apply, including ensuring such clauses cannot be relied upon to exclude a homeowner's access to the Building Commissioner or the SAT.

- Finally, the Institute considers there to be merit in broader transparency measures, stronger links between contractual settings and long-term housing quality, and regulatory approaches better suited to higher-value and more complex residential projects.

5. Conclusion

The Institute supports the intent and broad direction of the proposed reforms.

To maximise their effectiveness, the reforms should address upstream causes of disputes, including design and procurement settings, properly recognise the role of architects within the residential construction framework, maintain flexibility across delivery and contract models, and strengthen coordination across the broader building process.

The Institute welcomes continued collaborative engagement as the review progresses and would be pleased to participate in any further consultation, including roundtables or working groups, as the recommendations phase of the review is developed.

Yours sincerely,



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