WESTERN AUSTRALIA

STATE ADMINISTRATIVE TRIBUNAL

Matter No: CC 754 of 2025
Contact Officer: Tracey
Your Ref:

Ms Karen Frances FOSTER
Email: smiley0772@hotmail.com

Dear Parties

**FOSTER v JARVIS**

I enclose for your reference a copy of the written reasons for the Tribunal's decision (**Reasons**).

I also enclose for your reference a copy of the orders which were made by the Tribunal on 15 June 2026 to give effect to the decision set out in the Reasons.

You may have a right to:

a. seek to have the Tribunal conduct a review of the decision; and/or

b. appeal the decision.

Entitlements to review and to appeal are provided for in the *State Administrative Tribunal Act 2004* (WA) and/or the relevant enabling Act. I am unable to provide you with any legal advice about any rights of review or appeal which you may have.

Yours sincerely

**EXECUTIVE OFFICER**

15 June 2026

Enc.

| | | |
|---|---|---|
| **JURISDICTION** | : | STATE ADMINISTRATIVE TRIBUNAL |
| **ACT** | : | BUILDING SERVICES (COMPLAINT RESOLUTION AND ADMINISTRATION) ACT 2011 (WA) |
| **CITATION** | : | FOSTER and JARVIS [2026] WASAT 68 |
| **MEMBER** | : | MR E CADE, MEMBER |
| **HEARD** | : | 12 MARCH 2026 |
| **DELIVERED** | : | 15 JUNE 2026 |
| **FILE NO/S** | : | CC 754 of 2025 |
| **BETWEEN** | : | KAREN FRANCES FOSTER<br>Applicant<br><br>AND<br><br>MATTHEW PAUL JARVIS<br>Respondent |

*Catchwords:*

*Building Services (Complaint Resolution and Administration) Act 2011* (WA) - Building service complaint - Whether building service not carried out in a proper and proficient manner or is faulty or unsatisfactory - Whether order to remedy or order to pay is appropriate - Costs

*Legislation:*

*Building Services (Complaint Resolution and Administration) Act 2011* (WA), s (3), s 5(1), s 11(d), s 36(1), s 36(1)(b), s 37(1), s 38(1)(a), s 38(1)(b)
*Building Services (Complaint Resolution and Administration) Regulations 2011*

(WA), reg 5A(2)
*State Administrative Tribunal Act 2004* (WA), s 63(2), s 87(2)
*State Administrative Tribunal Rules 2004* (WA)

*Result:*

Application is successful

*Category:* B

**Representation:**

*Counsel:*

| | | |
|---|---|---|
| Applicant | : | In Person |
| Respondent | : | No Appearance |

*Solicitors:*

| | | |
|---|---|---|
| Applicant | : | N/A |
| Respondent | : | N/A |

**Case(s) referred to in decision(s):**

Marsh Outdoor Pty Ltd and Schnuriger [2021] WASAT 108
Medical Board of Australia and Tan [2022] WASAT 57 (S)

**REASONS FOR DECISION OF THE TRIBUNAL**:

## Introduction

1 This proceeding is within the original jurisdiction of the State Administrative Tribunal (**Tribunal**) pursuant to the *Building Services (Complaint Resolution and Administration) Act 2011* (WA) (**BSCRA Act**). In these reasons, all references to provisions of legislation are, unless stated otherwise, references to the BSCRA Act.

2 Karen Frances Foster is the applicant in the proceeding (**applicant**). Matthew Paul Jarvis trading as Creative Patios is the respondent to the proceeding (**respondent**). The proceeding concerns the removal of the metal roof on the applicant's home in Hamel and its replacement with a new metal roof.

3 The questions I must decide in this proceeding are:

(a) Did the respondent, pursuant to a contract for gain, remove the metal roof on the applicant's home in Hamel and replace it with a new metal roof?

(b) If the answer to question 1 is yes, is this a regulated building service?

(c) If the answer to question 2 is yes, is any aspect of the regulated building service carried out by the respondent work which has not been carried out in a proper and proficient manner or is faulty or unsatisfactory?

(d) If the answer to either the first limb or the second limb of question 3 is yes, what building remedy order should I make?

4 For the reasons which I will now give I am satisfied and I find:

(1) The answer to question 1 is that the respondent did, pursuant to a contract for gain, remove the metal roof on the applicant's home in Hamel and replace it with a new metal roof.

(2) The answer to question 2 is that this work is a regulated building service.

(3) The answer to question 3 is that the regulated building service carried out by the respondent has not been carried out in a proper or proficient manner or is faulty or unsatisfactory.

(4) The answer to question 4 is that I will make a building remedy order the respondent is required to pay to the applicant the costs of remedying the building service.

## Background

5 On 21 March 2025, the applicant gave to the respondent a notice of complaint relating to a building service said to have been carried out by the respondent at the home. This notice of complaint was then lodged by the applicant with the Building Commissioner on 7 April 2025.

6 The Building Commissioner reformulated the applicant's complaint as three complaint items and on 27 October 2025 it referred two of the complaint items to the Tribunal pursuant to s 5(1).

7 The complaint items the Building Commissioner referred to the Tribunal are set out in the following table:[1]

| Item Number | Location | Description of complaint item | Remedy sought | Is item referred to SAT or Not referred? |
|---|---|---|---|---|
| 1 | roof and gutters | leaking | roof replacement costs | referred to SAT |
| 2 | roof and gutters inspection costs | costs associated with determining cause of leaking and required remedy | invoice costs $577.01 $264.00 $1,540.00 | referred to SAT |

8 The proceeding was heard as a final hearing on 12 March 2026.

## Non-attendance of the respondent at the final hearing

9 The respondent did not attend the final hearing listed to commence at 10.00 am on 12 March 2026 and nor did he apply to have the hearing vacated and relisted.

10 Section 63(2) of the *State Administrative Tribunal Act 2004* (WA) says that if a person, including a party, to whom notice of a hearing has been given in accordance with the *State Administrative Tribunal Rules 2004* (WA) fails to attend the hearing the hearing may be held in the

[1] Complaint item 3, which duplicated complaint item 1, is withdrawn and is therefore not relevant to this proceeding.

absence of that person. After hearing from the applicant, who informed me she wished for the hearing to proceed in the absence of the respondent, I decided to proceed with the final hearing in the absence of the respondent.

11 This, in part, was because the respondent had been served with the notice of complaint, with the Building Commissioner's referral of the complaint items to the Tribunal, with the applicant's book of documents, with the notice of the hearing and with copies of all orders and yet he did not apply to have the hearing vacated and he failed to attend the hearing.

12 Even though the hearing proceeded in the absence of the respondent I was mindful that he was not participating in the hearing and I questioned the applicant and her expert, Russell McCarthy, more extensively than I would have done had the respondent participated in the hearing.

## The evidence

13 The applicant lodged with the Tribunal the following documents relevant to the proceeding:

(1) *Investigation Report Complaint No BC2025-1274 Building Service at [redacted] St, Hamel,* dated 27 October 2025;

(2) *GZR Report*, undated;

(3) *WA Building and Pest Inspections Report*, dated 13 September 2024;

(4) *B Waddell Consulting Engineers Roof Inspection Report*, dated 6 December 2024;

(5) *Blue Manor Roof Restorations Re-Roofing Report,* dated 26 September 2025;

(6) *Blue Manor Roof Restorations Re-Roofing Report,* dated 31 October 2025;

(7) Marketplace messages between the applicant and the respondent 15 September 2023 to 14 August 2024;

(8) Letter from the applicant to the respondent dated 12 March 2025; and

(9) Letter from the applicant to the respondent dated 14 August 2025

14 The following people gave sworn oral evidence at the final hearing:

(1) The applicant, Karen Frances Foster; and

(2) The author of the *WA Building and Pest Inspections Report*, Russell McCarthy, who possesses qualifications in architecture and is a registered building practitioner.

15 The applicant gave evidence that:

(a) In August 2023 she purchased her home in Hamel knowing it had an old and patched corrugated iron roof which would require replacement at some future time. However, even though the roof needed eventual replacement it was nonetheless watertight and the interior of her home remained dry during wet weather.

(b) In September 2023 she sought interest through a Marketplace message from contractors for the replacement of her existing roof with new sheeting and new insulation.[2]

(c) In response to her Marketplace message the respondent contacted the applicant through a Marketplace message and then attended the home to inspect the roof for the purpose of quoting for this work. On 17 September 2023 the respondent sent the applicant on Marketplace message a photograph of a written quote on a printed form with the business name 'Creative Patios' in the following terms:

> Remove old tin roof and replace with new colorbond roof, new screws, new flashings, new insulation under the sheets and new batts in the roof.
>
> Removal of all the old sheets, and timber up all the holes in the home between the sheeting and the walls.
>
> [Illegible]
>
> $15000

(d) She accepted this quote on 17 September 2023 and was asked for and paid a deposit to the respondent of $1,000.

(e) In a telephone conversation she asked the respondent if he had experience in roofing work and he told her that he had 18 years' experience in that industry but, as it was hard on his knees, he

[2] HB, pages 55 - 59.

now mainly worked on patios and only occasionally did roofing work.

(f) The respondent commenced work on the roof on 10 October 2023 and completed the work on 19 October 2023. The work appeared to her to be performed proficiently. The applicant paid the balance of $14,000 on 19 October 2023.

(g) On 18 April 2024 the respondent sent her a Marketplace message asking how her roof had performed 'through summer'. The applicant replied that it was '[f]abulous' and that she was planning to replace a fence, carport and shed. Between May and July 2024 the applicant exchanged Marketplace messages with the respondent about his quotes for this work.

(h) On 11 July 2024 the applicant sent the following Marketplace message (along with some photos of water damage to a ceiling in her home) to the respondent:

| | |
|---|---|
| **Applicant:** | Hi Matt<br><br>Looks like I may have a problem with my roof after this last bout of rain. Any chance you can come check it in the next few days before I contact my insurance company? |

(i) On 11 July 2024 the respondent through a Marketplace message asked where water was entering the home. The next few messages between the applicant and respondent are as follows:

| | |
|---|---|
| **Respondent**: | Where abouts on the house is that? |
| **Applicant**: | At the back above the sliding glass door area where roof joins verandah |
| **Respondent**: | Oh ok then maybe the heavy rain has gotten under the sheets where the veranda sheets join the roof sheets But still don't know how as they were pretty tight join Must have been heavy rain |
| **Applicant**: | It was very heavy tho not for long which is why I was kind of shocked when I saw that and stepped in a puddle last night |

| | |
|---|---|
| **Respondent**: | I can't see that happening so I'm thinking that the gutters probably backed up That happens when there's a heavy rain. |

(j) On 16 July 2024 applicant and respondent had the following exchange on Marketplace messages:

| | |
|---|---|
| **Respondent**: | You must have had some serious rain come in side ways |
| **Applicant**: | It was pretty full on for about an hour. Even the laundry window was wet from the rain coming in on the wind. Couldn't open the back door without getting wet… I think whoever did the rafter screwed up and didn't put enough of a slope on them. |
| **Respondent**: | Yeah ok that's crazy. Unfortunately all I did was replace what was there |

(k) The applicant served a notice of complaint on the respondent on 14 August 2024. The respondent responded to the notice of complaint to say:

> Your roof was damaged and was leaking from all the rust over years of time[.] I installed a new roof and gutters and replaced the roof with all brand new material and then you trying to say I caused your house damage …
>
> I installed all brand new sheets exactly how the old sheets were[.] All I was doing was replacing your old rusted sheets and gutters[.]
>
> I replaced your old rusted sheets[.] I never caused an issue you already had the issue when you bought that house[.]
>
> Roof was exactly installed same as old sheets as I replaced like for like[.]
>
> Incline is irrelevant as I did no structural work all I did was pull old sheets off and installed new sheets
>
> So your telling me old rusted sheets didn't leak and new brand new sheets leaked?
>
> Your free willed to do what ever you like but I never caused an issue[.] I replaced old rusted sheets with brand new sheets[.]

16 The respondent, after sending these messages, did not engage again with the applicant or with the Building Commissioner despite multiple attempts in 2024 and 2025 by both the applicant and the Building Commissioner to engage with him.

17 In December 2024, as water was continuing to enter the home, the applicant engaged B Waddell Consulting Engineers (**B Waddell**) to inspect the roof of the home. B Waddell then provided the applicant with a report dated 6 December 2024 noting water damage to the ceiling of the home, noting the inadequate pitch of the rear area of the roof and recommending the installation of new rafters to 'achieve the required pitch of 5 degrees to avoid further damage and water pooling to the ceiling'. In September 2025 the applicant engaged Blue Manor Roof Restorations (**Blue Manor**) to remove the insulation, sheets, gutters and downpipes installed by the respondent, to install the new rafters recommended by B Waddell and to install new insulation, sheets, gutters and downpipes. With the work done by Blue Manor water has stopped entering the applicant's home.

18 Mr McCarthy spoke to his report and gave oral evidence explaining some of the technical aspects of his report. It is convenient to set out Mr McCarthy's evidence as it is contained in his report along with some of his oral evidence. Mr McCarthy in his report said:

(1) He is a registered building practitioner, a qualified architect and has experience in the engineering and construction industries. He now works as a building inspector and has extensive experience in this industry.

(2) He inspected the roof on 13 September 2024;

(3) He found the roof (including gutters and downpipes) were 'non-compliant' in the following respects:

(a) Minimum overlap of roof cover from top sheet to sheet below (200 mm 5-15 degrees) and (150 mm for 15 degrees and above) - As most overlaps are 50 mm the overlaps are non-compliant - NCC[3] 2022 7.2.6.ii - the minimum end lap must be: a) for roof slopes above 15 degrees, 150 mm and b) for roof slopes between 5-15 degrees, 200 mm;

[3] National Construction Code.

(b) Minimum pitch of corrugated roofing is 5 degrees and so the lower portion of the roof which is corrugated and is pitched lower than 5 degrees is non-compliant - NCC 2022 figure 7.2.3;

(c) Roof cover must be free of dents, scratches, oil canning, overtightening dents and imperfections visible from a normal viewing distance. As the roof contains folds, splits, dents and open joints between panels visible for a normal viewing position at ground level or an upper floor level it is non-complaint - GTST 2019, 6.02;

(d) Fixings must be installed in a straight line and with cover installed with clean and aligned material cuts. As some of the fixings are not installed in a straight line the fixings are non-compliant - GTST 2019 6.02;

(e) Penetrations through roof are to be flashed, fixed and completely sealed with a neutral cure sealant. As the roof vent is not sealed with a neutral cure sealant these seals are non-compliant - NCC 2022 7.2.7 and AS 3500 2.7.1.2;

(f) All joins in flashings are to be sealed with a neutral cure sealant. As the joins in flashings are not sealed with a neutral cure sealant the joins in flashings are non-compliant - Manufacturers installation guidelines - Lysaght Architectural Detailing Manual (June 2016) Section 3;

(g) Minimum distance between fixings for joins in flashings must be not less than 75 mm, lapped in the direction of the fall of the roof, and fastened at intervals not more than 40 mm. (All flashings to have a 75 mm lap in joins) - As the joins in flashings are not less than 75 mm, lapped and fastened at intervals of not more than 40 mm they are non-compliant - NCC 3.5.1.7 (75 mm lap in joins);

(h) Anti-Capillary breaks must be 10 mm overhang and 30 or 90 degrees - as anti-capillary breaks are not installed with the required overhang they are non-compliant - NCC 2022 7.2.7;

(i) Lap joints in metal gutters must be 20 mm minimum and fully sealed, laps should not be in the direction of flow and joints that leak are defective - AS 3500.3 4.5.3 GTST 8.04;

(j) Gutters must be supported at 1.2 m centres. As the eaves gutters are not supported by securely fixed brackets at the stop ends and at not more than 1.2 m centres they are non-compliant - NCC 2019 3.5.3.4;

(k) Distance from grated drain must be 75 mm above unpaved surface or level with pavers - As surcharge outlets do not discharge to grated drains they are non-complaint - AS3500.3 5.4.12.1;

(l) Downpipes must not serve more than 12 m of gutter length - as the downpipes do serve more than 12 m of gutter length they are non-compliant - NCC3.5.3.5 and

(m) Ponding should not be observable in eaves and box gutters for more than three days after the cessation of flow - As the gutters pond they are non-compliant - AS 3500.3 4.5.3 and 1.4.8.

(4) Mr McCarthy concluded: 'It is the inspectors opinion that the roof cover works were installed poorly. We recommend engaging a quality and qualified roof plumber for the rectification works.'

(5) Mr McCarthy's oral evidence is that:

(a) That part of the rear roof which is less than 5 degrees should have a trapezoidal profile rather than a corrugated profile. However, all parts of the roof have a corrugated profile including the rear roof. A corrugated profile sheet which is less than 5 degrees will permit water ingress into the home. This aspect of the rear roof can be remedied by either of two methods. The first is to instal new sheeting with a corrugated profile on that part of the roof but then to increase the pitch of that part of the roof so that it is at least 5 degrees. The second is to instal new sheeting on the roof which has a trapezoidal profile.

(b) The roof when inspected consisted of sheets with a corrugated profile. The join between sheets should be

overlapped by 150 mm to 200 mm. However, no overlaps on the joins between sheets was more than 50 mm. Inadequate overlapping will permit water ingress into the home.

(c) While it is possible to retain the existing corrugated sheets on the higher parts of the roof and replace the sheets which are pitched at less than 5 degrees with trapezoidal sheets this will not only fail to remedy the other non-compliant aspects of that part of the roof but it will also make it difficult to overlap the sheets where they join. Therefore, it is preferable that all sheets on the roof have the same profile as it is difficult to join a trapezoidal profile sheet to a corrugated profile sheet.

(d) The overhang of the roof should be a minimum of 10 mm with a 90 degree or 135 degree fold. If the overhang is not of the minimum length or does not have the required fold then water can blow along the undersection of the sheet and enter the home. The overhang of this roof does not have either the minimum overhang or the required fold.

(e) These non-compliant aspects of the roof are the sources of water ingress into the home and so are major defects. The only way these major defects can be rectified is by the replacement of the roof sheets with trapezoidal sheets with sufficient overlapping where the sheets join and with a sufficient amount of overhang and fold or to increase the pitch of the rear area of the roof to at least 5 degrees and replace the roof sheets with corrugated sheets with sufficient overlapping where the sheets join and with a sufficient amount of overhang and fold. The other non-compliant aspects of the roof are capable of remediation, such as, for example, the insufficient number of downpipes can be corrected by installing additional downpipes or are not within the scope of the roofing works, such as for example, to instal grated drains on the property.

6. At my request Mr McCarthy spoke to the *GZR Report*, the *B Waddell Consulting Engineers Roof Inspection Report*, the

*Blue Manor Roof Restorations Re-Roofing Report*, dated 26 September 2025 and the *Blue Manor Roof Restorations Re-Roofing Report*, dated 31 October 2025. With respect to these reports Mr McCarthy said:

(a) The amounts in the invoices submitted by Blue Manor to replace the insulation sheets and install new beams as recommended by B Waddell in the amount of $19,965.00 and to install replace the guttering and downpipes in the amount of $2,760.00 (for a total of $22,725) are reasonable. While Blue Manor did not provide an itemized invoice for its work it is probable that part of the work performed by Blue Manor recommended by B Waddell is about $3,750.

(b) The Blue Manor report shows water had entered the roof through the inadequately overlapped sheets and had saturated the insulation installed in the ceiling of the home. The photographs provided by Blue Manor show this insulation is heavily contaminated by mold and would need to be removed and replaced.

(c) The GZR report identifies the major sources of water ingress into the roof being the lack of overlap between sheets and the absence of an overhang and fold on the end of sheets.

(d) The B Waddell report identifies the same non-compliant defect he identified with the shallow pitch of the rear roof with the proposed solution being the installation of new rafters in the roof to achieve a 5-degree pitch to that part of the roof.

## Consideration and findings

### Question 1: Did the respondent pursuant to a contract for gain remove the metal roof on the applicant's home in Hamel and replace it with a new metal roof?

19 I accept the sworn oral evidence given by the applicant (and which is corroborated by the Marketplace messages in the HB) that the respondent did carry out the work of replacing the insulation, roofing sheets, gutters and downpipes on the applicant's home between 10 October 2023 and 19 October 2023 and that it did this under a contract

for gain, being a contract for the payment by the applicant to the respondent of $15,000.

20 I also accept the applicant's evidence that she paid the respondent the full amount due under the contract by way of two payments, the first being a payment of a deposit of $1,000 before the respondent commenced the works on the roof and the second being the balance due under the contract of $14,000 once the work was carried out by the respondent.

21 That is, I am satisfied and I find that the respondent did pursuant to a contract for gain remove the old insulation, roof, gutters and downpipes from the home and he did replace these with new insulation, new sheets, new gutters and new downpipes.

22 For these reasons, my answer to question 1 is 'yes'.

**Question 2: If the answer to question 1 is yes, is this a regulated building service?**

23 Under s 5(1) an applicant may make a complaint to the Building Commissioner that a regulated building service has not been carried out in a proper or proficient manner or is faulty or unsatisfactory. A 'regulated building service' under s 3 is 'a building service carried out by a registered building service provider' that is carried out for another person under a home building work contract or other contract for gain. In the context of this proceeding a 'regulated building service' would include the work of replacing the applicant's metal roof. Under reg 5A(2) of the *Building Services (Complaint Resolution and Administration) Regulations 2011* (WA) unauthorised work is work that is prescribed for the purposes of the definition of 'regulated building service' under s 3.

24 While the respondent is not a registered building service provider I am satisfied that the work of replacing the applicant's metal roof is a 'unauthorized work' within the meaning or reg 5A(2).

25 That is, I am satisfied and I find the respondent in replacing the applicant's home pursuant to a contract for gain did carry out a regulated building service.

26 For these reasons, my answer to question 2 is 'yes'.

**Question 3: If the answer to question 2 is yes, is any aspect of the regulated building service carried out by the respondent work which has not been carried out in a proper and proficient manner or is faulty or unsatisfactory?**

27 Should the Building Commissioner refer a building service complaint to the Tribunal under s 11(d) the Tribunal is able, under s 38(1)(a), to make a building remedy order if satisfied the regulated building service has not been carried out in a proper and proficient manner or is faulty or unsatisfactory. If not so satisfied the Tribunal is, under s 38(1)(b), to decline to make a building remedy order.

28 I note the Building Commissioner did refer complaint items 1 and 2 to this Tribunal as a building service complaint.

29 As this Tribunal (differently constituted) explained in ***Marsh Outdoor Pty Ltd and Schnuriger*** [2021] WASAT 108 at [34] the phrase 'has not been carried out in a proper and proficient manner or is faulty or unsatisfactory' within s 5(1) and s 37(1) is a broad expression which incorporates two distinct limbs, such that:

> a) the description 'in a proper and proficient' attaches to the *manner* in which the regulated building service *has been carried out*;
>
> b) the phrase 'is faulty or unsatisfactory' makes it clear that this element attaches to *the regulated building service itself* ... ;
>
> c) those limbs are not exclusive, with the result that deficiencies in a regulated building service may in certain circumstances fall under both limbs; and
>
> d) whether either limb is engaged is to be determined on an objective basis.

30 The applicant called Mr McCarthy as an expert witness. Mr McCarthy in his oral evidence spoke to his written report. He also answered several questions I put to him about his written report. At my request he also spoke to several other reports which were before me.

31 The respondent, in Marketplace messages it sent to the applicant, put forward the view that as it simply replaced the sheets on the roof like for like it is not responsible for water entering the home through the roof. I do not accept this view for reasons which include that the roof did not leak before the respondent replaced the sheets on the roof and these sheets were installed without sufficient overlap, without sufficient overhang and without folds on the overhang.

32 I therefore accept Mr McCarthy's report and oral evidence (which is consistent with the opinions given in the GZR and Blue Manor reports) and I reject the views of the respondent. I therefore also find that the work the respondent carried out on the applicant's roof in installing the roofing sheets without sufficient overlap or overhang and without folds and in installing corrugated iron sheets on the low pitched rear area of the roof is work that is not proper or proficient.

33 I am also satisfied and I find that for the reasons given by Mr McCarthy and in the GZR report that water did, as alleged by theapplicant, enter the home through the overlapped sheets and under the overhang of the sheets and that this water damaged the insulation installed by the respondent in the ceiling of the roof.

34 I also satisfied and I find for the reasons given by Mr McCarthy that the works could not be rectified by using the existing sheets as they were not of sufficient length and because they have now been penetrated by fixings. I am therefore satisfied and I find that the only proper solution which will prevent water ingress into the home is to replace the sheets with new sheets with sufficient overlap, with sufficient overhang and with folds on the overhang. I also accept that the other lesser difficulties with the fixings, the flashings, the gutters and the downpipes were properly rectified when Blue Manor replaced the sheets, guttering and downpipes installed by the respondent.

**Question 4: If the answer to either the first limb or the second limb of question 3 is yes, what building remedy order should I make?**

35 Under s 36(1), the Tribunal may make a building remedy order requiring the person who carried out the regulated building service to do one or more of the following:

(1) Remedy the building service in the manner specified in the order;

(2) Pay to the applicants the costs of remedying the building services which the Tribunal considers reasonable and which it specifies in the order; and

(3) Pay to the applicants a specified sum of money to compensate the applicants for the failure to carry out the building service in a proper and proficient manner for faulty or unsatisfactory work.

36 Given that Blue Manor has now replaced the insulation, sheets, guttering and downpipes and it has placed new beams in the roof it is no

longer possible to require the respondent to remedy the building service it performed on the applicant's home.

37 Given that the applicant and the Building Commissioner attempted to engage with the respondent during 2024 and 2025 but that the respondent did not respond to these attempts I am satisfied and I find that the applicant did give the respondent a sufficient opportunity to remedy the works it carried out on the home but that the respondent chose not to take up this opportunity. I am also satisfied and I find that due to water continuing to enter the applicant's home through the roof during 2024 and 2025 that it was then reasonable for the applicant in September 2025 to engage Blue Manor to carry out remediation works on the home.

38 I am therefore satisfied and I find that under s 36(1)(b) the respondent should pay to the applicant the reasonable cost of remedying the building service.

39 I am also satisfied and I find that while the amounts charged by Blue Manor for the remediation works on the applicants home are reasonable that the work recommended by B Waddell is not work that was within the scope of the contract between the applicant and respondent.

40 I am therefore satisfied and I find that I should deduct the cost of the work recommended by B Waddell (as this is estimated by Mr McCarthy to be $3,750) from the amount charged by Blue Manor ($22,725.00) for the works it performed. I therefore find the respondent should, under s 36(1)(b), pay to the applicant the amount of $18,975.00 being the reasonable cost of remedying the building service carried out by the respondent on the home.

## The applicant's claim for its costs

41 The applicant claims its costs in this proceeding under s 87(2) of the SAT Act in the following amounts:

| | |
|---|---|
| Mr McCarthy's inspection report: | $577.01 |
| Mr McCarthy's time at the hearing: | $1,700.00 |
| B Waddell inspection report: | $1,540.00 |
| | $3,817.01 |

42 The applicant has supported its claim for its costs with tax invoices. While I am satisfied the applicant has incurred these costs in this proceeding I am not satisfied, for the reasons set out above, that it is proper for the applicant to claim for the B Waddell inspection report. I will therefore not allow this part of the applicant's claim for its costs.

43 I am, however, satisfied that it was reasonable and necessary for the applicant to engage Mr McCarthy to inspect the home and to engage Mr McCarthy to give evidence at the final hearing. I am also satisfied that the respondent's refusal to engage with the applicant, with the Building Commissioner and with the Tribunal in this proceeding was both unreasonable and made it necessary for the applicant to produce the evidence of Mr McCarthy to the Tribunal at the final hearing.

44 Therefore, while I accept the starting point in relation to this application for costs is that the parties are to bear their own costs I have decided that in the exercise of my discretion that the respondent's unreasonable conduct in refusing to engage with the applicant, with the Building Commissioner and with this Tribunal means that it is fair and reasonable that the applicant should be reimbursed for the reasonable costs it incurred in producing Mr McCarthy's evidence to this Tribunal: ***Medical Board of Australia and Tan*** [2022] WASAT 57 (S) [127] - [138]. I will therefore make an order for the respondent to pay the applicant its costs in the amount of $2,277.00, this being the amount charged by Mr McCarthy for his report and his time at the hearing.

## Orders:

The Tribunal orders:

1. Pursuant to s 36(1)(b) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), by no later than 31 July 2026 the respondent must pay $18,975.00 to the applicant, this being the cost of remedying complaint item 1.

2. Pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA), by no later than 31 July 2026 the respondent must pay $2,277.00 to the applicant, this being its costs of the proceeding.

3. The proceeding is otherwise dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MR E Cade, MEMBER

15 JUNE 2026

STATE ADMINISTRATIVE TRIBUNAL

| | |
|---|---|
| **Jurisdiction:** | *Building Services (Complaint Resolution and Administration) Act 2011* |
| **Application:** | Referral by Commissioner of a building service or HBWC complaint |
| **Parties:** | **Karen Frances FOSTER** (Applicant)<br>**Matthew Paul JARVIS** (Respondent) |
| **Matter Number:** | CC 754/2025 |
| **Application Lodged:** | 31 October 2025 |
| **Date of Decision:** | 15 June 2026 |
| **Decision of:** | Member Edward Cade |

The Tribunal orders:

1. Pursuant to s 36(1)(b) of the Building Services (Complaint Resolution and Administration) Act 2011 (WA), by no later than 31 July 2026 the respondent must pay $18,975.00 to the applicant, this being the cost of remedying complaint item 1.

2. Pursuant to s 87(2) of the State Administrative Tribunal Act 2004 (WA), by no later than 31 July 2026 the respondent must pay $2,277.00 to the applicant, this being its costs of the proceeding.

3. The proceeding is otherwise dismissed.