

Defining Domestic Building Work: Can Sub-Contractors Escape the Jurisdiction Of VCAT?

By Michelle Janczarski, Solicitor, Lovegrove Solicitors

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VCAT has exclusive jurisdiction to hear domestic building disputes involving owners and building practitioners, including disputes between builders and sub-contractors. However, under section 54 of the **Domestic Building Contracts Act 1995** ("the DBCA"), these domestic building disputes must involve the carrying out of domestic *building work* or VCAT will not have jurisdiction to decide the dispute.

Under regulation 6 of the **Domestic Building Contracts Regulations 2007** ("the DBCR"), work will not be *domestic building work* if the work is to be carried out under a contract for only one type of work, including the following:

- Attaching external fixtures (including awnings, security screens, insect screens and balustrades);
- Electrical work;
- Glazing;
- Installing floor coverings;
- Insulating;
- Painting;
- Plastering;
- Plumbing work;
- Tiling;
- Erecting a chain wire fence to enclose a tennis court; or
- Erecting a mast, pole, antenna, aerial or similar structure.

Consequently, sub-contractors might argue that if they have performed only one type of work in relation to a project and they are subsequently involved in a dispute, regulation 6 of the DBCR should prevent VCAT from determining that dispute.

This argument was considered by VCAT in **Owners Corporation PS505245E and Ors v Moresi Builders Pty Ltd and Anor [2011] VCAT 1630**. In that case, the insurer of a

plumbing contractor responsible for allegedly defective roof plumbing works argued that the owner could not bring a claim in VCAT, because the plumber had only carried out one type of work (plumbing work) under the contract.

In rejecting this argument, Senior Member Riegler took a pragmatic approach and considered Parliament's intention in drafting the DBCA. VCAT was intended to have jurisdiction to resolve all domestic building disputes, including disputes between builders and sub-contractors. Effectively, to be a "one stop shop" to resolve disputes of this nature.

This intention is inconsistent with the interpretation of regulation 6 proposed by the plumber's insurer, which would effectively prevent builders from claiming against any of their sub-contractors in VCAT unless those sub-contractors performed more than one type of work on the project. Senior Member Riegler noted that this would effectively exclude a significant part of the work involved in constructing a home from the operation of the DBCA.

Instead, Senior Member Riegler stated that regulation 6 only applies when the entire building contract is for one type of work only. Regulation 6 does not apply when several types of work are carried out as part of the one project, even if each type of work is contained in its own contract or sub-contract. This then can encompass claims between a builder and its sub-contractors.

Accordingly, sub-contractors will not be protected from claims in VCAT purely by virtue of doing only one type of work in relation to a building project. That type of work must be the only type of work involved in the project before it will be excluded from VCAT's jurisdiction. For example, where an owner directly engages a specialist contractor to carry out just that specialist work.

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