

DRAFT SECOND READING SPEECH

HON. PETER GUTWEIN MP

Building and Construction Industry Security of Payment Amendment Bill 2015

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Madam Speaker

The Building and Construction Industry is a significant contributor to Tasmania's economy. Renewed confidence by investors has seen a number of major construction projects taking place or being planned for the next few years.

The number of new homes built has been boosted by this government's extension of the First Home Builders' Grant.

This new Bill is one part of a package of legislation resulting from the Building Regulatory Framework Review initiated last year and will also include:

- amendments of the *Occupational Licensing Act 2005*;
- a new Residential Building Contracts Dispute Resolution Bill; *and*
- a new Building Bill that will replace the *Building Act 2000*.

This package is also part of the government's comprehensive reform package to reduce red tape and excessive regulation. For the built environment, that also includes complementary reforms to streamline the planning approval process.

The package which this Parliament will be asked to examine during the debate on this and the other Bills I am foreshadowing will make it easier to build in Tasmania; the level of regulation will match the risk.

We will seek to do away with the arrangements that currently exist where the regulatory oversight for a shed is the same as that for a 10 storey building. We will focus more on making sure we have quality buildings than on the need to have a particular form or permit. Under the existing Framework, it can at times appear that the paperwork has become more important than the building outcome.

In addition, we will propose that all building and construction licensing be dealt with by a single piece of law instead of having it spread across two Acts, this will result in a Building Bill that is about making sure that buildings meet contemporary standards rather than being partly about permit processes and partly about the standard of building practitioners – it will not only be easier to build in Tasmania, it will be easier to understand the law behind the process.

The *Building and Construction Industry Security of Payment Act 2009* has been providing certainty for the industry since 2009 by providing a mechanism for building practitioners to seek payment for work done.

This has ensured cash flow within the industry so that building practitioners can continue to operate without having to carry a financial burden due to tardy payment from clients.

However, following significant consultation with key stakeholders it has been identified that, in rare circumstances, an adjudication decision under the Act does not deliver a fair and reasonable outcome.

It is important therefore that there is a safeguard mechanism that the Director of Building Control can employ to have a Security of Payment decision re-examined.

We've talked to industry, and we've listened.

In this Amendment Bill, we're including a new provision that will allow the Director of Building Control to appoint an independent expert panel to review a decision of an adjudicator, if the Director believes the decision to be inappropriate or unfair. The panel may confirm an adjudicator's decision or may quash it. The panel may also substitute an alternative adjudication decision.

The Director of Building Control will have no involvement in the review of the decision and the expert panel will be drawn from practitioners within the Building and Construction Industry, following consultation with major industry representative bodies.

Any substituted decision will have the same status as the decision by the adjudicator.

Madam Speaker, I believe this will provide an additional safeguard for the industry which is at no additional cost to the owner or building contractor. Where a decision is prima facie out of step with the intent of the legislation then this expert panel review will provide an alternative which does not involve costly litigation.

This new review will not be commonly used, but will be available for those rare occasions where something goes wrong.

Madam Speaker, to ensure that the review process works to provide a timely outcome this Amendment Bill also introduces a new reporting requirement for Nominating Authorities – the organisations that manage the adjudication process. We're asking that these Authorities report to Government on the decisions that they make under the Security of Payments Act immediately instead of annually.

The Nominating Authority will be required to forward a copy of the decision within 3 working days to the Security of Payments Official – currently the Director of Building Control – and include information of any fees required by the adjudicator or nominating authority in relation

to that adjudication decision. This is will be a minor additional administrative step, as the nominating authority will already be collating this information for distribution to the parties.

Currently this information is made available in an annual report to the Building Regulation Advisory Committee established under the *Building Act 2000*. Providing information about Security of Payment decisions directly to the Director of Building Control, soon after a decision is made, will allow the Director to be more responsive to trends.

Madam Speaker, at the same time as these enhancements are introduced to the Security of Payment process, this government is introducing greater protection for consumers through the proposed Residential Building Work Contracts and Dispute Resolution Bill.

The new Dispute Resolution legislation will, in part, provide counter-balancing provisions for consumers to lodge a claim relating to defective or incomplete work by a building contractor. This process will operate independently from the Security of Payment process, but an owner will not be able to lodge a claim while a Security of Payment claim is in the process of being adjudicated.

Madam Speaker, we have consulted widely on the Building and Construction Industry Security of Payment Amendment Bill 2015 and it is supported by industry stakeholders. It has been subject to scrutiny by the four Reference Groups established to guide the reform process during the Building Framework Review. It will provide even greater certainty to industry that payment will be received for work done.

Madam Speaker, I commend the Bill to the House.