

TASMANIA

**BUILDING AND CONSTRUCTION INDUSTRY
SECURITY OF PAYMENT AMENDMENT BILL
2015**

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**BUILDING AND CONSTRUCTION INDUSTRY
SECURITY OF PAYMENT AMENDMENT BILL
2015**

*(Brought in by the Treasurer, the Honourable Peter Carl
Gutwein)*

A BILL FOR

**An Act to amend the *Building and Construction Industry
Security of Payment Act 2009***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Building and
Construction Industry Security of Payment
Amendment Act 2015*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Building and Construction
Industry Security of Payment Act 2009** is
referred to as the Principal Act.

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4. Section 3 amended (Object)

Section 3 of the Principal Act is amended by omitting “residential structure” and substituting “residential building”.

5. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *building or construction-related goods and services*:

building practitioner means any of the following persons:

- (a) a building practitioner, or an owner builder, within the meaning of the *Building Act 2000*;
- (b) a person who holds a licence under the *Occupational Licensing Act 2005*, authorising the person to perform a class of electrical work, plumbing work or gas-fitting work, referred to in that Act;
- (c) a person who holds a high risk work licence under

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regulations under the
*Work Health and Safety
Act 2012*;

(d) a person who is registered
as an architect under the
Architects Act 1929;

(e) a prescribed person;

(b) by inserting the following definition after
the definition of *claimed amount*:

Director means the Director of
Building Control appointed under
section 6 of the *Building Act
2000*;

(c) by inserting the following definition after
the definition of *nominating authority*:

owner means a person for whom
residential building work is, is to
be, or has been, performed;

(d) by omitting the definition of *residential
structure* and substituting the following
definitions:

residential building has the same
meaning as in the *Residential
Building Work Contracts and
Dispute Resolution Act 2015*;

residential building work has the
same meaning as in the

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*Residential Building Work
Contracts and Dispute Resolution
Act 2015;*

6. Section 38 substituted

Section 38 of the Principal Act is repealed and the following sections are substituted:

38. Provision of adjudication decisions by nominating authorities to Security of Payments Official

- (1) An adjudicator is to provide a copy of his or her adjudication decision to the nominating authority that referred the application to the adjudicator.
- (2) A nominating authority to which an adjudication decision is provided under subsection (1) is to forward a copy of the decision to the Security of Payments Official within 3 working days.
- (3) The nominating authority is also required to include information of any fees required by the adjudicator or nominating authority in relation to that adjudication decision.
- (4) The requirement of subsection (1) applies irrespective of whether the adjudicator or nominating authority has received any fees, including fees for the release of an adjudication decision to any party.

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- (5) The Security of Payments Official may determine the manner and form in which the information required by subsection (1) is provided.

38A. Review by expert panel of adjudication decisions

- (1) The Security of Payments Official may appoint an expert panel to review an adjudicator's adjudication decisions.
- (2) The Security of Payments Official may refer an adjudication decision to an expert panel for a review of the decision made by the adjudicator.
- (3) If the Security of Payments Official makes a referral under subsection (2) –
- (a) he or she is to inform the parties to the dispute, and the nominating authority, of the referral; and
 - (b) the adjudication decision is suspended until the expert panel has completed its review.
- (4) On the referral of an adjudication decision under subsection (2), the expert panel may either –
- (a) confirm the adjudication decision; or

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- (b) quash the adjudication decision, or any part of it, and substitute its own determination or order as if it were acting as the adjudicator.
- (5) An expert panel has 7 working days from the date of a referral by the Security of Payments Official to make its decision under subsection (4).
- (6) If, after 7 working days from the referral of a matter under subsection (2), an expert panel fails to make a decision under subsection (4), that adjudication decision ceases to be suspended and the decision of the adjudicator appointed by the nominating authority takes effect.
- (7) If the expert panel substitutes its own adjudication decision, that decision has the same status as if that panel were appointed as an adjudicator under section 22, and the nominating authority may issue an adjudication certificate in relation to that decision.

7. Section 39 amended (Protection from liability)

Section 39(1) of the Principal Act is amended as follows:

- (a) by inserting “, a member of an expert panel” after “against the Security of Payments Official”;

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- (b) by inserting in paragraph (a) “or expert panel” after “functions of the Security of Payments Official”;
- (c) by inserting in paragraph (a) “or expert panel” after “powers of the Security of Payments Official”;
- (d) by inserting in paragraph (b) “or expert panel” after “Official”.

8. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.