

FACT SHEET

Residential Building Work Contracts and Dispute Resolution Bill 2015

This legislation is designed to implement one part of the legislative package resulting from the Tasmanian Government's Building Regulation Framework Review that commenced in 2014.

It will address the deficiencies in the out-dated *Housing Indemnity Act 1992*, and it will introduce contemporary consumer building laws that are cost effective and balance the requirements of consumers and builders. The Bill will also provide mechanisms for resolving disputes concerning residential building work.

Key features of the Bill include:

- The monetary threshold for the application of this Bill is that the cost of the residential construction will be \$20,000 or more.
- The Residential Building Work covered by this Bill includes: -
 - a new detached dwelling house or unit.
 - a self-contained unit in residential apartments (a "sole occupancy unit") up to three storeys.
 - associated outbuildings or structures, such as a garage, deck, swimming pool.
 - alterations or additions of these buildings.
 - work associated with a contract for building work on a residential building, including electrical, plumbing and communications work, site clearance and excavations.
- Minimum contractual clauses are to be specified as mandatory requirements in all residential building contracts.
- A Residential Building Consumer Guide informing consumers of their rights under this Bill is to be published and made available to building contractors to be given to prospective clients.
- Mandatory consumer warranties as to the fitness and quality of the building work are provided to apply to every contract and are enforceable by an owner for six years after completion of the work.
- Variations to residential building contracts are known to cause disputes and cost overruns. Therefore, all variations are to be agreed by the parties and then confirmed in writing.

- Restrictions are placed on the amounts of an initial deposit for works, and the progress payments for stages, to prevent consumers paying for works that the building contractor has not yet delivered.
- There is the introduction of a 'cooling-off' period (five business days) after the signing a building contract in which time an owner may withdraw from the contract.
- Attempts to "contract out" of any mandatory requirements of the Bill are illegal.

The Bill introduces a process for formal mediation of disputes. It will be free, voluntary, and either the owner or the building contractor may lodge a dispute with the Director of Building Control.

- The Director is to facilitate and to encourage parties to negotiate and settle. A mediation panel of one or more persons may be appointed to assist them in that process. The Director is not directly involved in the mediation.
- The mediation panel may make reference to a Guide to Standards and Tolerances to clearly determine whether a workmanship issue in dispute actually meets accepted industry standards.
- If parties agree to a settlement, the Director may approve it as a legally binding agreement. If after six weeks from the appointment of the mediation panel, the parties cannot reach an agreement, mediation is terminated and they must turn to other avenues for resolving contractual disputes.

If parties cannot resolve the dispute through mediation, or choose not to take part in mediation, there is a more formal adjudication process available whereby claims against the contractor for incomplete or defective work can be assessed by an expert panel.

This amendment Bill introduces the concept of a "work completion claim" that may be served on the contractor by a residential building owner, requiring a building contractor to complete the works agreed in their residential building work contract, within a specified period.

If the building contractor does not complete the work, or does not respond to the work completion claim within the period specified in the claim, the owner may then lodge an application for adjudication with the Director of Building Control.

The Director may reject the application if it is considered to be frivolous, vexatious or without substance. The Director must reject the application if proceedings relating to the matter are underway in another jurisdiction – for example, if a claim has been made by the contractor under the *Building and Construction Industry Security of Payment Act 2009*.

If the Director accepts the application, he or she will appoint an expert panel to assess the application.

The panel will be one or more people drawn from a pool of experts in their field. The pool is likely to include a builder, designer, architect, building surveyor and lawyer and the appropriate panel member or members will be appointed depending on the nature of the dispute.

The expert panel will consider submissions from the parties and make an adjudication determination. Determinations by adjudicators are enforceable as if made by a court. The panel will have the ability to award liquidated damages, order rectification of faulty work, or order completion of the building work to the agreed contractual standard.

The parties will pay a prescribed fee for this dispute resolution service. There is no need for either party to engage a lawyer and this system will be faster and less costly than civil litigation. The cost to the Government of the operation of this system will be minimal.

The rights of a building contractor to make a claim for payment for work done under the *Building and Construction Industry Security of Payment Act 2009* will not be affected. No action can be initiated under this Act if there are currently proceedings on this matter in another jurisdiction.

The *Housing Indemnity Act 1992* will be repealed by this Bill.