

TASMANIA

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**RESIDENTIAL BUILDING WORK CONTRACTS  
AND DISPUTE RESOLUTION BILL 2015**

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# **RESIDENTIAL BUILDING WORK CONTRACTS AND DISPUTE RESOLUTION BILL 2015**

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

## **A BILL FOR**

**An Act to regulate certain residential building contracts, to provide for the resolution of disputes arising under or related to such contracts, to amend the *Judicial Review Act 2000*, to repeal the *Housing Indemnity Act 1992*, and for related purposes**

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:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Residential Building Work Contracts and Dispute Resolution Act 2015*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

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**3. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.



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**PART 2 – INTERPRETATION**

**4. Definitions**

- (1) In this Act, unless the contrary intention appears –

***appropriate variation document*** means a variation document that complies with the formal requirements specified in section 18(2);

***building*** includes a proposed building or part of a building and a building that is able to be relocated;

***building contractor*** means a person who performs, has performed, or intends to perform, residential building work;

***building site*** means a place where residential building work has been, is being, or is to be, performed;

***business day*** means a day that is not a Saturday, a Sunday, a statutory holiday as defined in the *Statutory Holidays Act 2000* or a public holiday throughout the State;

***contract price***, in relation to a residential building work contract, means the total amount payable under the contract for the performance of residential building work under the contract and includes –

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- (a) an amount in relation to labour and materials; and
- (b) an amount the building contractor is entitled to receive and keep under the contract; and
- (c) an amount the building contractor is entitled to receive under the contract for payment to another person;

***cost-plus contract*** means a residential building work contract under which the amount the building contractor is to receive under the contract cannot be calculated when the contract is entered into;

***date of practical completion***, in relation to a residential building work contract, means the day by which –

- (a) the residential building work to be performed under the contract is completed in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (b) the residential building work to be performed under the contract is completed without any defects or omissions, other than minor defects, or minor omissions, that

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will not unreasonably affect  
occupation; and

- (c) if the owner claims there are minor defects or minor omissions – the building contractor has given the owner a defects document for the minor defects or minor omissions;

***defects document***, for a residential building work contract, means a document that –

- (a) lists the minor defects, and minor omissions, in the residential building work performed under the contract, that the building contractor and the owner agree exist; and
- (b) states when the building contractor is to remedy the minor defects and minor omissions referred to in paragraph (a); and
- (c) lists the minor defects, and minor omissions, in the residential building work performed under the contract, that the owner claims exist and the building contractor does not agree exist; and
- (d) is signed by the building contractor;

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***deposit***, in relation to a residential building work contract, includes any payment for residential building work demanded or received by the building contractor before the residential building work begins to be performed under the contract;

***Director*** has the same meaning as in the *Building Act 2000*;

***fixed-price contract*** means a residential building work contract that is not a cost-plus contract;

***Guide to Standards and Tolerances*** means a guide approved under section 81(1);

***materials***, in relation to residential building work, includes goods to be supplied and fitted or installed in the course of the residential building work;

***member of a panel*** means –

- (a) a member of a mediation panel who is appointed under section 50(2); and
- (b) a member of an expert panel who is appointed under section 71(2);

***NCC*** means the National Construction Code series, published by the Australian Building Codes Board, as varied or replaced from time to time;

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

***perform***, in relation to residential building work, includes –

- (a) cause residential building work to be carried out; and
- (b) manage, or arrange, the carrying out of residential building work;

***prime cost item***, in relation to a residential building work contract, means an item, (including, but not limited to, a fixture or fitting) –

- (a) that has not been selected, or the price of which is not known, when the contract is entered into; and
- (b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the building contractor;

***progress payment***, in relation to a residential building work contract, means a payment of an amount that is a part of the contract price for the contract, but does not include a payment of an amount that is, or is in the nature of, a deposit under the contract;

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***provisional sum*** has the meaning it has in section 7;

***residential building*** has the meaning it has in section 5;

***residential building consumer guide*** means a residential building consumer guide approved under section 80(1);

***residential building work*** has the meaning it has in section 6;

***residential building work contract*** means a contract between a building contractor and an owner for the performance by the building contractor of residential building work, but does not include –

- (a) a contract between a building contractor and a subcontractor or supplier; or
- (b) a contract between a building contractor and an owner builder within the meaning of the *Building Act 2000*;

***statutory warranty*** means a warranty arising under Part 6;

***structure*** includes a proposed structure, a part of a structure and a temporary structure;

***subcontract***, in relation to residential building work, means a contract for the

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performance of residential building work for a building contractor who is obliged, under a residential building work contract, to perform residential building work;

***subcontractor*** means a person who contracts to perform residential building work for a building contractor who is obliged, under a residential building work contract, to perform residential building work;

***supplier*** means a person who supplies goods or services related to the performance of residential building work;

***temporary structure*** includes any –

- (a) structure that does not form part of the land and is temporary; and
- (b) structure of a prescribed type;

***variation***, in relation to a residential building work contract, means –

- (a) an addition of residential building work to the residential building work to be performed under the contract; or
- (b) an omission of residential building work from the residential building work to be performed under the contract –

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but, for a cost-plus contract, an addition or omission is a variation only if the addition or omission is not reasonably contemplated by the contract;

***variation document*** means a document setting out a variation to a residential building work contract.

(2) In this Act –

- (a) a reference to the building contractor, in relation to a residential building work contract, is a reference to the building contractor referred to in the contract; and
- (b) a reference to the owner, in relation to a residential building work contract, is a reference to the owner referred to in the contract; and
- (c) a reference to performing residential building work, or residential building work performed, under a residential building work contract includes a reference to residential building work that a building contractor arranges, or manages the carrying out of, under a subcontract in order to comply with the building contractor's obligations under the residential building work contract.



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**5. Meaning of *residential building***

- (1) In this Act, a ***residential building*** is a building, or structure, that is classified under Volume One of the NCC as –
- (a) a class 1a building; or
  - (b) a class 2 building; or
  - (c) a class 10 building, if that building is associated with a class 1a building or class 2 building.
- (2) Despite subsection (1), the following are not residential buildings for the purposes of this Act:
- (a) a caravan or any motor vehicle, trailer, aeroplane, or boat, used as a residence;
  - (b) a boarding house, guest house, hostel or lodging house;
  - (c) a motel, residential club, residential hotel or residential part of licensed premises, within the meaning of the *Liquor Licensing Act 1990*, or any other building or structure, or part of a building or structure, used or intended to be used as tourist, holiday or overnight accommodation;
  - (d) a residential part of an educational institution;
  - (e) a hospital or care institution;

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- (f) if a building or structure contains only one residence and that residence is used, or is intended to be used, by a caretaker for the building or structure – that part of the building comprising the residence;
- (g) a prison within the meaning of the *Corrections Act 1997*, a detention centre within the meaning of the *Youth Justice Act 1997*, or premises, or part of premises, where offenders on remand are held or it is intended that such offenders are to be held;
- (h) Government House;
- (i) a building, structure or other thing that is prescribed by the regulations not to be a residential building.

(3) In subsection (2) –

***care institution*** means an institution where accommodation and personal, nursing or medical care are provided to elderly, sick or rehabilitating persons, but does not include an institution for persons otherwise living independently even though the provision of accommodation may include domestic services such as the preparation of meals, cleaning and laundry services.

(4) If a building or structure, or part of a building or structure, constitutes a residential building, the

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following structures, fixtures and fittings are taken to be part of the residential building:

- (a) all structures, fixtures and fittings that form part of the residential building or are used for, or partly for, the purposes of the residential building;
  - (b) any thing that is prescribed by the regulations to be such a structure, fixture or fitting.
- (5) For the purposes of subsection (4), the structures, fixtures and fittings that form part of the residential building or are used for, or partly for, the purposes of the residential building include, but are not limited to, passageways, retaining structures, driveways, paths, fencing, paving, garages, carports, workshops, storage sheds, swimming pools and spas.
- (6) Despite subsection (4), a structure, fixture or fitting that forms part of a residential building or is used for or partly for the purposes of a residential building is not taken to be part of the residential building under that subsection if the regulations prescribe that it is not to be so taken.

**6. Meaning of *residential building work***

- (1) In this section –

*fire safety system* includes –

- (a) a booster assembly; and

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- (b) fire mains, hydrants and hose reels; and
- (c) sprinklers; and
- (d) fire and smoke alarms; and
- (e) fire control centres; and
- (f) structures or devices to mitigate the fire hazard in respect of special fire hazard buildings, within the meaning of the *Building Regulations 2014* or any regulations that replace those regulations; and
- (g) stairwell pressurisation; and
- (h) air-handling systems; and
- (i) smoke and heat vents;

***plumbing system*** means –

- (a) a water supply system; or
- (b) a system of sewage, or of sullage, drainage or removal; or
- (c) a system of storm water drainage or roof drainage; or
- (d) an on-site waste water management system;

***relevant system*** means any of the following:

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- (a) a system for lighting, heating, ventilation, air conditioning or cooling;
  - (b) a power supply system;
  - (c) a sewerage, water supply, or drainage, system;
  - (d) a communications system;
  - (e) a fire safety system;
  - (f) a security system;
  - (g) a plumbing system;
  - (h) a gas supply system.
- (2) For the purposes of this Act, the following work is ***residential building work***:
- (a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a residential building;
  - (b) adding to, or removing a part of, a residential building;
  - (c) the restoration, maintenance, renovation, alteration, extension, improvement or repair of a residential building;
  - (d) work, on the land on which building work referred to in paragraph (a), (b) or (c) is being, or is to be, carried out, that

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is work in preparation for the use of that land for residential purposes or in preparation for that or other residential building work, including, but not limited to –

- (i) work required to gain access, or to remove impediments to access, to that land, part of that land or other land related to any other residential building work, including the construction of a road to enable access to the residential building or to that land or part of that land; and
  - (ii) site clearance, earth moving, excavation, tunnelling, boring and filling; and
  - (iii) the preparation of foundations; and
  - (iv) the erection, maintenance or dismantling of plant and equipment; and
  - (v) work required in preparation for the erection of a prefabricated dwelling;
- (e) all associated work carried out in conjunction with work referred to in paragraph (a), (b) or (c) including, but not limited to –

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- (i) the provision, installation, alteration, repair or removal, of all, or a part of, a relevant system in relation to the residential building or the land on which the residential building is, or is to be, situated; and
  - (ii) the erection, re-erection, construction, alteration, repair or removal of buildings, structures and fixtures associated with a residential building; and
  - (iii) the cleaning, painting and decorating of the inside and outside surfaces of the residential building; and
  - (iv) paving; and
  - (v) landscaping and site restoration;
  - (f) the prefabrication of any component that is to form part of a residential building, including the manufacture of a prefabricated dwelling, regardless of where that prefabrication is carried out;
  - (g) any work carried out on any part of a prefabricated dwelling, or on any prefabricated component of a dwelling, in preparation for the erection of the prefabricated dwelling or component, regardless of where that work is carried out;

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- (h) any other work that is prescribed by the regulations to be residential building work.
- (3) Although a caravan, motor vehicle, trailer, aeroplane or boat is not a residential building, if the caravan, motor vehicle, trailer, aeroplane or boat is, or is to be, used as a residence on any land, the following work is residential building work:
- (a) all work done in relation to the use of the land for residential purposes, including, but not limited to, landscaping, paving and the erection, construction or removal of any building or fixture associated with the caravan, motor vehicle, trailer, aeroplane or boat;
  - (b) the provision of water supply, sewerage or drainage to the land on which the caravan, motor vehicle, trailer, aeroplane or boat is, or is to be, situated;
  - (c) loading, unloading or transporting a building or structure that, if fixed to land, could be a residential building, regardless of whether the loading, unloading or transportation is solely on the land on which the building or structure was or is to be located;
  - (d) loading, unloading or transporting a prefabricated building or structure that, if



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fixed to land, could be a residential building, regardless of whether –

- (i) the building or structure is whole or in parts; and
  - (ii) the loading, unloading or transportation is solely on the land on which the building or structure was or is to be located;
  - (e) any other work that is prescribed by the regulations to be residential building work in relation to the land on which the caravan, motor vehicle, trailer, aeroplane or boat is, or is to be, situated.
- (4) For the purposes of subsections (2) and (3), buildings and fixtures associated with a residential building or a caravan, motor vehicle, trailer, aeroplane or boat include, but are not limited to, passageways, retaining structures, driveways, paths, fencing, paving, garages, carports, workshops, storage sheds, swimming pools and spas.
- (5) Despite subsections (2) and (3), the following work is not residential building work for the purposes of this Act:
- (a) any delivery of materials;
  - (b) any work that is exempted from the application of this Act in accordance with section 10;

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- (c) work for the purposes of the subdivision of land;
- (d) work in relation to a building, caravan, motor vehicle, trailer, aeroplane, or boat, intended to be used only for business purposes;
- (e) work in relation to a building, caravan, motor vehicle, trailer, aeroplane, or boat, intended to be used only for the accommodation of animals;
- (f) other work that is prescribed by the regulations not to be residential building work.

**7. Meaning of *provisional sum***

- (1) In this Act, a provisional sum, in relation to a residential building work contract, is an amount that is an estimate, of the cost of performing a part of the residential building work to be performed under the contract (including the cost of supplying any materials needed for the residential building work), that is made by the building contractor.
- (2) However, subsection (1) only applies to a part of residential building work to which the relevant residential building work contract relates if the building contractor, after making all reasonable enquiries, cannot state a definite amount in relation to the part of the contract work when the contract is entered into.

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**8. Certain contracts taken to be one contract**

- (1) This section applies if a building contractor and an owner enter into 2 or more separate contracts that –
  - (a) could be the subject of a single contract that relates to the performance of residential building work by the building contractor; and
  - (b) if they were a single contract, would be a residential building work contract.
- (2) The separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

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Part 3 – Application

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**PART 3 – APPLICATION**

**9. Application of Act**

This Act does not apply to, or in relation to, residential building work that –

- (a) is performed, or is to be performed, for a contract price that is less than \$20 000 or another greater amount, if any, that is prescribed by the regulations; or
- (b) is begun before the commencement of this Act, or performed, in pursuance of a residential building work contract entered into before the commencement of this Act; or
- (c) consists solely of demolition work; or
- (d) is exempted from this Act in accordance with section 10.

**10. Exemptions from application of Act**

The regulations may provide for the exemption of any specified residential building work, or class of residential building work, from the application of this Act or a specified provision of this Act, either unconditionally or subject to any conditions specified in the regulations.

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Part 4 – Functions and Powers of Director

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**PART 4 – FUNCTIONS AND POWERS OF DIRECTOR**

**11. Functions and powers of Director**

- (1) In addition to his or her functions under any other Act, the Director has the following functions:
  - (a) to investigate and research matters relevant to residential building work contracts;
  - (b) to publish reports and information relevant to residential building work contracts;
  - (c) to inform the public about the provisions of this Act;
  - (d) to report to the Minister in relation to –
    - (i) the Director’s functions; and
    - (ii) matters, referred to the Director by the Minister, in relation to residential building work contracts;
  - (e) to assist in the administration of the provision of mediation and adjudication under this Act.
- (2) The Director has the powers necessary to perform his or her functions under this Act.

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Part 4 – Functions and Powers of Director

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**12. Delegation**

The Director may delegate to a person any of the Director's functions or powers under this Act, other than this power of delegation.

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**PART 5 – CONTRACTS**

***Division 1 – Contracts generally***

**13. Contracts must be in writing**

A building contractor who enters into a residential building work contract must ensure the contract –

- (a) is in written form when it is entered into;  
or
- (b) is put into written form –
  - (i) as soon as practicable (but in any case within 5 business days) after it is entered into; and
  - (ii) before residential building work begins to be performed under the contract.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
- (b) an individual, a fine not exceeding 300 penalty units.

**14. General contents of contracts**

- (1) A building contractor who enters into a residential building work contract must ensure the contract –

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- (a) is in English and is readily legible; and
- (b) sets out in full all the terms of the contract; and
- (c) specifies the names of the parties to the contract; and
- (d) if the building contractor holds a licence under the *Occupational Licensing Act 2005*, specifies the number of the licence; and
- (e) includes a description of, and any plans or specifications in relation to, the residential building work to be performed under the contract; and
- (f) specifies either –
  - (i) the contract price; or
  - (ii) a method for calculating the contract price and an estimate of the contract price, as determined in accordance with the method of calculation, that is fair and reasonable; and
- (g) specifies the date of practical completion or the method for estimating the date of practical completion; and
- (h) sets out the warranties that are part of the contract under Part 6; and



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- (i) sets out provisions in relation to the matters, if any, specified under subsection (2); and
  - (j) includes the required checklist in relation to the contract; and
  - (k) has attached to it a copy of a residential building consumer guide that is in effect under section 80(3), unless the building contractor has already given to the owner a copy of the guide.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
  - (b) an individual, a fine not exceeding 300 penalty units.
- (2) The Director, by notice, may specify the matters in relation to which provisions must be included in a residential building work contract.
- (3) For the purposes of subsection (1)(j), a required checklist is a document containing, in language that is readily comprehensible, a summary of the provisions of the residential building work contract to which the checklist relates.

**15. Contracts must be signed**

A residential building work contract has effect only if it is signed by the building contractor and the owner (or their authorised agents).

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**16. Copy of contract for owner**

As soon as practicable (but in any case within 5 business days) after entering into a residential building work contract, the building contractor must give the owner a readily legible signed copy of the contract, to which is attached the residential building consumer guide required under section 14(1)(k) to be attached to the contract, unless the building contractor has already given to the owner under section 39(1) a copy of the guide.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
- (b) an individual, a fine not exceeding 300 penalty units.

***Division 2 – Variations of contracts***

**17. Variations must be in writing**

- (1) A building contractor must ensure any variation of the residential building work contract agreed to between the building contractor and the owner is put into written form –
  - (a) within the shortest practicable time; and
  - (b) for a variation consisting of an addition to the residential building work to be performed under the contract – before any residential building work to which

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the variation relates begins to be performed.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) Subsection (1) does not apply to a building contractor for a variation of a residential building work contract if –
  - (a) the variation is in relation to residential building work that is required to be performed urgently; and
  - (b) it is not reasonably practicable, in the particular circumstances, to produce a variation document before the residential building work to which the variation relates begins to be performed.
- (3) For the purposes of subsection (2), the circumstances in which residential building work may be required to be performed urgently include, but are not limited to, where the condition of the building site on which the residential building work is to be performed requires an alteration to the work and the condition could not have been discovered, before the work begins to be performed, by reasonably diligent investigation.

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(4) Subsection (5) applies if –

- (a) a proposed variation of a residential building work contract has not yet been agreed to between the building contractor under the contract and the owner, but is proposed to come into existence on the signing of a variation document by the owner and the building contractor; and
- (b) the variation document is to be the first and only agreement between the building contractor and the owner for the particular variation.

(5) A building contractor must ensure that no residential building work to which a proposed variation of a residential building work contract relates is performed until the variation document has been signed by the building contractor and the owner, if the proposed variation consists of –

- (a) an addition to the residential building work that is to be performed under the contract; or
- (b) a variation sought by the owner.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

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**18. General contents of variation document**

- (1) The building contractor under a residential building work contract must ensure a variation document in respect of the contract complies with the formal requirements for a variation document.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) A variation document in respect of a residential building work contract complies with the formal requirements for a variation document if the document –
- (a) is in English and is readily legible; and
  - (b) describes the variation; and
  - (c) where the variation was sought by the building contractor – states the reason for the variation; and
  - (d) where the variation will result in a delay affecting the residential building work to be performed under the contract – states the building contractor’s reasonable estimate for the period of delay; and
  - (e) for a fixed-price contract – states the change of the contract price because of

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the variation, or how the change of the contract price is to be determined; and

- (f) for a cost-plus contract – states a fair and reasonable estimate of the costs associated with the addition or omission the subject of the variation; and
- (g) if the contract provides for progress payments – makes appropriate provision for payments under the contract to reflect any change, to the contract price, caused by the variation.

**19. Variation document must be signed**

As soon as practicable after an appropriate variation document is made, the building contractor must –

- (a) sign the document; and
- (b) take all reasonable steps to ensure the document is signed by the owner.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

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**20. Copy of variation document for owner**

- (1) As soon as practicable (but in any case within 5 business days) after a variation of a residential building work contract is agreed to between the building contractor and the owner, the building contractor must give the owner –
- (a) a readily legible copy of an appropriate variation document for the variation signed by the building contractor and the owner; or
  - (b) if acceptable circumstances apply to the building contractor – a readily legible copy of an appropriate variation document for the variation, signed by the building contractor.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) For the purposes of subsection (1)(b), acceptable circumstances apply to the building contractor if the building contractor has taken all reasonable steps to ensure an appropriate variation document for the variation is signed by the owner, but the owner has not signed the document.

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**21. Where variation requires consent by building surveyor or authorisation to be obtained**

(1) In this section –

*certificate of likely compliance* means a certificate of likely compliance issued under the *Building Act 2000*.

(2) If a variation of a residential building work contract is such that residential building work, if performed in accordance with the variation, would require the consent, under the *Building Act 2000*, of a building surveyor because it varies from the residential building work to which a certificate of likely compliance relates, the building contractor must ensure that –

- (a) the copy of the variation document provided to the owner has attached to it the written consent of a building surveyor to the residential building work to be performed in accordance with the variation; and
- (b) residential building work in accordance with the variation is not performed until paragraph (a) has been complied with.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.



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- (3) If a variation to a residential building work contract relates to residential building work in relation to which a permit, or other authorisation, under the *Land Use Planning and Approvals Act 1993* or the *Building Act 2000* is required, the building contractor must ensure that –
- (a) the residential building work to which the variation relates is authorised by the permit or other authorisation, or if the permit or authorisation required amendment in order for the work to be authorised, has been so amended; and
  - (b) the copy of the variation document provided to the owner has attached to it a copy of the permit or other authorisation, as so amended, if at all; and
  - (c) residential building work in accordance with the variation is not performed until paragraph (b) has been complied with.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

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Part 6 – Statutory Warranties in Contracts

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**PART 6 – STATUTORY WARRANTIES IN  
CONTRACTS**

***Division 1 – Statutory warranties for all residential building  
work contracts***

**22. Implied warranties**

The warranties on the part of the building contractor that are contained in this Division are implied in a residential building work contract.

**23. Suitability of materials**

(1) In this section –

***relevant criteria***, for materials, means –

- (a) generally accepted practices, or standards, applied in the building industry for the materials; or
- (b) specifications, instructions or recommendations of manufacturers or suppliers of the materials;

***responsible person***, in relation to a residential building work contract, means the person who carries out residential building work required to be performed under the contract.

(2) The building contractor warrants that all materials to be supplied for use in the residential

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building work to which the relevant residential building work contract relates –

- (a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and
  - (b) unless otherwise stated in the contract, will be new.
- (3) Subsection (2) applies to the building contractor in relation to materials only if the materials are supplied by the responsible person in relation to the residential building work contract.
- (4) Despite subsection (3), if the residential building work contract is being administered by –
  - (a) an agent of the owner; or
  - (b) an architect, engineer, or building designer, who is engaged by the building owner –

subsection (2) does not apply to the owner in relation to materials if the responsible person is subject to the direction of the agent, architect, engineer or building designer for supplying the materials.

- (5) Also, despite subsection (3), subsection (2) does not apply to the building contractor for materials if –
  - (a) the owner is responsible for nominating the materials for use in the residential

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building work to which the relevant residential building work contract relates; and

(b) either –

(i) there are no reasonable grounds for not using the materials; or

(ii) if there are reasonable grounds for not using the materials – the owner insists on the materials being used despite written advice to the contrary given to the owner by the building contractor.

(6) An owner is responsible for nominating materials for use in the residential building work to be performed under a residential building work contract only if –

(a) the owner nominates the materials specifically; and

(b) the nomination is made without any recommendation, representation, suggestion, or other approach, being made to the owner by the building contractor –

(i) supporting, or approving, the use of the materials; or

(ii) criticising, or disapproving, the use of other materials that could be considered to be appropriate

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for use for the purpose for which  
the materials nominated by the  
owner are to be used.

**24. Compliance with legal requirements**

The building contractor warrants the residential building work to be performed under the relevant residential building work contract will be performed in accordance with all relevant laws and legal requirements.

**25. Standard of work and exercise of care and skill**

The building contractor warrants the residential building work to be performed under the relevant residential building work contract will be performed –

- (a) in an appropriate and skilful way; and
- (b) with reasonable care and skill.

***Division 2 – Statutory warranties for particular contracts***

**26. Implied warranties**

The warranties on the part of the building contractor that are contained in a provision in this Division are implied in a residential building work contract to which the provision applies.

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**27. Adherence to plans and specifications**

- (1) This section applies to a residential building work contract if plans and specifications form part of the contract.
- (2) The building contractor warrants the residential building work to be performed under the relevant residential building work contract will be performed in accordance with the plans and specifications.

**28. Suitability of residential building for occupation**

- (1) This section applies to a residential building work contract if the residential building work to be performed under the contract –
  - (a) consists of the erection or construction of a residential building to a stage suitable for occupation; or
  - (b) is work intended to renovate, alter, extend, improve or repair a residential building to a stage suitable for occupation.
- (2) The building contractor warrants the residential building will be suitable for occupation when the residential building work is completed.

**29. Carrying out work with reasonable diligence**

The building contractor warrants that the residential building work to be performed under

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the relevant residential building work contract  
will be performed with reasonable diligence.

**30. Calculation of provisional sums and prime cost items**

- (1) This section applies to a residential building work contract if the contract provides for a provisional sum or a prime cost item.
- (2) The building contractor warrants the provisional sum or prime cost item has been calculated with reasonable care and skill, having regard to all the information reasonably available when the residential building work contract is entered into, including information about the nature and location of the building site.

*Division 3 – Effect of statutory warranties*

**31. Succession to statutory warranties**

- (1) A person who purchases or otherwise acquires a residential building succeeds to the rights, in respect of statutory warranties, of his or her predecessor in title.
- (2) If a person purchases a residential building from a building contractor who has performed residential building work in relation to the residential building, the purchaser is entitled to the benefit of the statutory warranties as if the building contractor had performed the residential

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building work for the purchaser pursuant to a residential building work contract.

- (3) A person who purchases or otherwise acquires a residential building in relation to which an owner builder, within the meaning of the *Building Act 2000*, performed residential building work is entitled to the benefit of the statutory warranties in relation to the residential building as if the owner builder had performed the residential building work for the person pursuant to a residential building work contract.

**32. Proceedings for breach of statutory warranty**

- (1) Proceedings for a breach of a statutory warranty are to be commenced within 6 years after the date of practical completion of the residential building work to which the proceedings relate.
- (2) Subsection (3) applies in relation to residential building work if –
- (a) proceedings, for a breach of a statutory warranty, are to be or have been commenced, in relation to the residential building work, by or on behalf of a person who is entitled under section 31(2) or (3) to the benefit of a statutory warranty in relation to the residential building work; and
  - (b) but for the application of subsection (3), the person bringing the proceeding could not, by reasonable diligence, establish



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the date of practical completion of the work.

(3) If this subsection applies in relation to residential building work, the date of practical completion of the residential building work is to be taken to be –

(a) the date on which a certificate of completion (building work), within the meaning of the *Building Act 2000*, is issued in relation to the residential building work; or

(b) if –

(i) paragraph (a) does not apply in relation to the residential building work; and

(ii) an occupancy permit, within the meaning of the *Building Act 2000*, is issued in relation to the residential building to which the work relates before the building is first occupied after the residential building work is carried out –

the date on which the occupancy permit is issued; or

(c) if –

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(i) paragraphs (a) and (b) do not apply in relation to the residential building work; and

(ii) a building permit was required under the *Building Act 2000* for the carrying out of the residential building work –

the date that is 2 years after the date on which the building permit was issued; or

(d) if –

(i) paragraphs (a), (b) and (c) do not apply in relation to the residential building work; and

(ii) the authorisation of a building surveyor was required under the *Building Act 2000* for the carrying out of the residential building work –

the date that is 2 years after the date on which the authorisation was given by a building surveyor.

(4) In proceedings for breach of a statutory warranty it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arose from instructions given by the owner contrary to the advice in writing of the defendant.

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**PART 7 – COOLING-OFF PERIOD**

**33. Right of owner to withdraw from contract in cooling-off period**

(1) In this section –

*receipt day*, for a residential building work contract, means –

- (a) the day on which the owner receives the following documents from the building contractor:
    - (i) a copy of the signed contract;
    - (ii) a copy of the residential building consumer guide that is in effect under section 80(3); or
  - (b) if the documents mentioned in paragraph (a) are received by the owner from the building contractor on different days – the later of the days.
- (2) The owner under a residential building work contract may withdraw from the contract under this section.
- (3) The owner may withdraw from the contract within 5 business days after the receipt day for the contract.

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- (4) If 5 business days have elapsed since the contract was entered into and there is no receipt day for the contract, the owner may withdraw from the contract.
- (5) Nothing in subsection (4) affects the right of the owner to withdraw from the contract under subsection (3) if a receipt day subsequently applies to the contract.

**34. Restrictions affecting right of withdrawal in cooling-off period**

- (1) In this section –

*formal legal advice* means independent advice –

- (a) given by a practising legal practitioner; and
- (b) for the giving of which an amount is paid, or is payable, to the legal practitioner by the person to whom the advice is given;

*practising legal practitioner* means an Australian legal practitioner authorised under a law of the State to practise as a lawyer for purposes including the giving, for reward, of advice, including, for example, advice about residential building work contracts.

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- (2) This section applies despite section 33.
- (3) An owner may not withdraw from a residential building work contract (the ***current contract***) under section 33 if –
- (a) the owner and building contractor previously entered into a residential building work contract (the ***previous contract***); and
  - (b) the terms of the previous contract and current contract are substantially the same; and
  - (c) the contracted services for the previous contract and current contract –
    - (i) are substantially the same; and
    - (ii) relate to the same residential building or land.
- (4) Also, an owner may not withdraw from a residential building work contract under section 33 if –
- (a) before entering into the contract, the owner received formal legal advice about the contract; or
  - (b) when, or after, the contract is entered into, the owner tells the building contractor that the owner received formal legal advice about the contract before entering into the contract.

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**35. Right of owner to withdraw from contract if cooling-off warning not given**

- (1) This section applies if an owner has not received from the building contractor a residential building consumer guide that is in effect under section 80(3).
- (2) The owner may withdraw from the contract within 7 days of becoming aware that the owner should have received from the building contractor a residential building consumer guide that is in effect under section 80(3).

**36. Withdrawal procedure**

- (1) In this section –

***withdrawal notice*** means a written notice signed by the owner, in relation to a residential building work contract, stating –

- (a) that the owner withdraws from the contract; and
  - (b) the section of this Act under which the withdrawal is made.
- (2) To withdraw from a residential building work contract under section 33 or 35, the owner must, within the time allowed under the section for the withdrawal –
    - (a) give a withdrawal notice to the building contractor; or

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- (b) leave a withdrawal notice at the address shown as the building contractor's address in the contract; or
- (c) serve a withdrawal notice on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by the owner.

**37. Rights and obligations of parties following withdrawal in cooling-off period**

(1) In this section –

*pre-paid amount*, in relation to a contract, means the amount paid to the building contractor under the contract by the owner before the owner withdrew from the contract;

*retainable amount*, in relation to a contract, means the sum of –

- (a) \$100; and
- (b) an amount equal to any out-of-pocket expenses reasonably incurred in relation to the contract by the building contractor before the owner withdrew from the contract.

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- (2) This section applies if an owner withdraws from a residential building work contract under section 33.
- (3) If there is a pre-paid amount for the contract that is not less than the retainable amount, the building contractor –
  - (a) may keep an amount equal to the retainable amount out of the pre-paid amount; and
  - (b) must refund any balance of the pre-paid amount to the owner.
- (4) If there is a pre-paid amount for the contract that is less than the retainable amount, the owner must pay the building contractor an amount equal to the difference between the retainable amount and the pre-paid amount.
- (5) If there is no pre-paid amount for the contract, the owner must pay the building contractor an amount equal to the retainable amount.
- (6) If an amount is not paid by a person as required under this section, the person to whom it is payable may recover the amount from the other person as a debt.
- (7) Except as provided under subsection (4) or (5), the owner is not liable to the building contractor in any way for withdrawing from the contract.



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**38. Rights of building contractor following withdrawal  
for failure to give warning**

- (1) This section applies if an owner withdraws from a residential building work contract under section 35.
- (2) The building contractor is entitled to receive a reasonable amount for the performance of residential building work under a residential building work contract before the time of withdrawal.
- (3) However, the building contractor is not entitled to receive an amount that is more than the amount the building contractor would have been entitled to receive under the contract.

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**PART 8 – OBLIGATIONS OF BUILDING  
CONTRACTOR**

**39. Building contractor must give owner copy of residential building consumer guide**

- (1) A building contractor must, before the building contractor or the owner enters into a residential building work contract, give the owner a copy of the residential building consumer guide that is in effect under section 80(3).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) A building contractor must, before performing residential building work under a residential building work contract, ensure the owner has been given a copy of the residential building consumer guide that is in effect under section 80(3).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

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- (3) A document, signed by an owner, containing a statement that a building contractor has given the owner a copy of the residential building consumer guide that is in effect under section 80(3) is evidence of that matter and, in the absence of evidence to the contrary, is proof of that matter.

**40. Building contractor to give commencement notice**

- (1) A building contractor must, within 10 business days after residential building work to which a residential building work contract relates begins to be performed, give to the owner a commencement notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) For the purposes of subsection (1), a commencement notice is a notice, signed by the building contractor in relation to a residential building work contract, stating –
  - (a) the day on which the residential building work to be performed under the contract began to be performed; and
  - (b) the estimated date of practical completion in relation to the contract.

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**41. Deposits**

(1) In this section –

*off-site work*, in relation to a residential building work contract, means work that –

- (a) relates to or forms part of residential building work; and
- (b) is performed at a place that is not the place at which an object resulting from the performance of the residential building work is to be finally installed or constructed under the contract;

*set amount* means –

- (a) the amount, above \$20 000, prescribed under a regulation as the set amount; or
- (b) if an amount is not prescribed for paragraph (a) – \$20 000.

(2) A building contractor must not, before starting to perform residential building work under a residential building work contract, demand or receive a deposit under the contract of more than –

- (a) if the contract price is equal to or more than the set amount and is not a contract

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price to which paragraph (c) applies –5%  
of the contract price; or

- (b) if the contract price is less than the set amount and is not a contract price to which paragraph (c) applies – 10% of the contract price; or
- (c) for a residential building work contract under which the value of the off-site work is more than 50% of the contract price – 20% of the contract price.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
  - (b) an individual, a fine not exceeding 300 penalty units.
- (3) In this section, a reference to the contract price for a contract includes, for a cost-plus contract, a reference to the estimated amount for the contract.

**42. Progress payments**

- (1) In this section –

*building site*, in relation to a residential building work contract, does not include a place where residential building work has been, is being, or is to be, performed, if the work is required to later be

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installed or constructed at another place  
under the contract.

- (2) A building contractor must not demand or receive an amount, other than a deposit, under a residential building work contract unless the amount –
- (a) is directly related to the progress of the performance at the building site of the residential building work to be performed under the contract; and
  - (b) is proportionate to the value of the residential building work, to be performed under the contract, that has been performed or is less than that value.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
- (b) an individual, a fine not exceeding 300 penalty units.

**43. Building contractor to give notice of practical completion**

- (1) A building contractor must, within 10 business days after the date of practical completion in relation to a residential building work contract, give a notice of practical completion to –
- (a) the owner; and

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- (b) if the residential building work to which the contract relates was work in relation to which a certificate of likely compliance is required under the *Building Act 2000* to be given to a person – the person to whom the certificate is required under that Act to be given.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) For the purposes of subsection (1), a notice of practical completion is a notice, signed by the building contractor in relation to a residential building work contract, stating that the date of practical completion has occurred.

**44. Correction of minor defects and omissions**

- (1) In this section –

***completion day***, in relation to a residential building work contract, means the day when the residential building work to be performed under the contract is completed –

- (a) in compliance with the contract, including all plans and

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specifications for the work and all  
statutory requirements applying  
to the work; and

- (b) without any defects or omissions,  
other than minor defects, or  
minor omissions, that will not  
unreasonably affect occupation.

- (2) If, on or after the completion day in relation to a  
residential building work contract –

- (a) the owner claims there are minor defects  
or minor omissions (other than minor  
defects, or minor omissions, that will not  
unreasonably affect occupation) in  
relation to the residential building work  
performed under the contract; and
- (b) the building contractor agrees that there  
are minor defects or minor omissions  
(other than minor defects, or minor  
omissions, that will not unreasonably  
affect occupation) in relation to the  
residential building work performed  
under the contract –

the building contractor, as soon as practicable,  
must give to the owner a defects document in  
relation to the minor defects or minor omissions.

Penalty: In the case of –

- (a) a body corporate, a fine not  
exceeding 800 penalty units; or



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(b) an individual, a fine not exceeding 300 penalty units.

- (3) A building contractor, as soon as practicable, but in any case within 6 months, after giving to an owner a defects document in relation to a minor defect or minor omission, must take all reasonable steps to correct the defect or the omission.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 800 penalty units; or

(b) an individual, a fine not exceeding 300 penalty units.

- (4) A building contractor –

(a) does not commit an offence under subsection (3); and

(b) is not liable under a residential building contract –

in relation to any failure to correct a minor defect or minor omission in relation to the residential building work performed under a residential building work contract, if the owner does not enable the building contractor to have the access to any land, building, or structure, that the building contractor reasonably requires in order to comply with subsection (3).

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**PART 9 – MEDIATION**

**45. Interpretation of Part 9**

In this Part –

*dispute* means a dispute between a building contractor, and an owner, in relation to –

- (a) a residential building work contract entered into by the building contractor and the owner; or
- (b) the performance of residential building work under a residential building work contract entered into by the building contractor and the owner; or
- (c) whether a provision of this Act has been complied with by the building contractor or the owner in relation to the residential building work contract entered into by the building contractor and the owner;

*mediation panel*, in relation to a dispute, means a panel established under section 50(2);

*notice of dispute* means a notice that is lodged under section 47(1);

*party*, in relation to a dispute, means –

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- 
- (a) a person who has lodged under section 47(1) a notice of dispute in relation to the dispute; and
  - (b) a person on whom a notice of dispute in relation to the dispute is served under section 47(2); and
  - (c) any person who is joined under section 51(3) as a party to the mediation of the dispute.

**46. Application of Part**

Nothing in this Part is to be taken to require a person to lodge a notice of dispute in relation to a matter before the person may exercise any other right the person may have to commence any proceedings in relation to the matter.

**47. Lodging of notice of dispute**

- (1) A building contractor or an owner may lodge with the Director a notice of dispute in relation to a dispute between the building contractor and the owner.
- (2) A building contractor or owner who lodges with the Director a notice of dispute must serve a copy of the notice on the owner, or building contractor, respectively.
- (3) A notice of dispute is to specify the grounds of the dispute.

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- (4) A person who has lodged a notice of dispute may, by notice to the Director, withdraw the notice at any time.

**48. Acceptance of notice of dispute lodged with Director**

- (1) The Director, within 10 business days after a notice of dispute is lodged under section 47(1), must accept or reject the notice of dispute.
- (2) The Director must reject under subsection (1) a notice of dispute in relation to a dispute if the Director is satisfied that –
  - (a) an adjudication application in relation to the matter to which the dispute relates has been lodged under section 63(1) and has not been determined, rejected, or withdrawn, under Part 10; or
  - (b) proceedings under another Act, or in a court, in relation to the dispute to which the notice relates have commenced.
- (3) The Director may reject under subsection (1) a notice of dispute in relation to a dispute if the Director is satisfied that –
  - (a) the person lodging the application has not made a reasonable attempt to resolve the dispute with the other party to the dispute; or

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- (b) the notice of dispute does not appear to contain any grounds of a dispute; or
  - (c) the dispute is frivolous or vexatious; or
  - (d) it is appropriate for the dispute to be dealt with under Part 10, or under any other Act, or by a court, without mediation occurring.
- (4) The Director may not reject under subsection (1) a notice of dispute unless permitted or required to do so under subsection (2) or (3).
  - (5) The Director must, by notice in writing to the building contractor and owner to whom a notice of dispute relates, notify the building contractor and owner of the Director's decision to accept or reject the notice of dispute.

**49. Director may require information to be provided**

- (1) The Director, by notice to a building contractor or owner or a person who, in the opinion of the Director, has information that may be relevant to a dispute, require the person to whom the notice is given to provide to the Director, within the period specified in the notice, information specified in the notice.
- (2) A person must comply with a requirement of a notice given to the person under subsection (1).

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 800 penalty units; or
- (b) an individual, a fine not exceeding 300 penalty units.

**50. Establishment of mediation panel**

- (1) Within 2 business days after deciding under section 48(1) to accept a notice of dispute in relation to a dispute, the Director is to establish a mediation panel in relation to the dispute.
- (2) The Director is to establish a mediation panel in relation to a dispute by appointing to the panel one or more persons who the Director thinks have suitable qualifications or experience to assist in the mediation of the dispute.

**51. Director may join parties to mediation of dispute**

- (1) The Director, by notice to a person who, in the opinion of the Director, ought to be a party to mediation of a dispute in relation to which a notice of dispute is lodged, may notify the person that the person is to be a party to the mediation of the dispute.
- (2) The Director is to give a copy of a notice under subsection (1) to the building contractor, and the owner, to whom the notice of dispute relates.
- (3) A person is a party to the mediation of a dispute if the person is notified under subsection (1) that

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the person is to be a party to the mediation of a dispute.

**52. Panel to mediate dispute**

- (1) A mediation panel in relation to a dispute may mediate in a dispute and may impose conditions that must be satisfied if the mediation is to proceed.
- (2) If a mediation panel proceeds with the mediation, the mediation panel –
  - (a) may give directions to the parties to the dispute to assist in the resolution of the dispute; and
  - (b) must make a reasonable attempt to assist the parties to agree to a negotiated settlement of the dispute.
- (3) A mediation panel may assist in the resolution of a dispute in any manner it thinks fit that is not inconsistent with any directions that the Director may issue under section 53 in relation to the performance of the functions, and the exercise of the powers, of a mediation panel under this Part.

**53. Director may issue practice directions**

- (1) The Director may issue directions in relation to the performance of the functions, and the exercise of the powers, of a mediation panel under this Part.

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- (2) The Director may direct a mediation panel to have regard to a Guide to Standards and Tolerances in performing its functions and exercising its powers.

**54. Where parties reach settlement within relevant period**

- (1) The Director may approve, or refuse to approve, a settlement of a dispute by the parties to the dispute.
- (2) Without limiting the circumstances in which the Director may refuse to approve a settlement, the Director may refuse to approve a settlement in relation to a dispute if he or she is satisfied that the settlement –
  - (a) was not entered into in good faith by a party to the dispute; or
  - (b) was entered into as a result of unconscionable conduct by a party to the dispute or a person acting on behalf of a party to the dispute; or
  - (c) is not the result of a genuine attempt by the parties to the dispute to ensure the settlement is fair to all the parties to the dispute.
- (3) If the parties to a dispute agree to a settlement of a dispute and the Director approves the settlement, the parties who are to be bound by the settlement and the mediation panel must sign



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a document setting out the terms of the settlement.

- (4) If a document setting out the terms of a settlement is signed under subsection (3), the settlement is binding on the parties who signed the settlement and may be enforced in a court of competent jurisdiction.

**55. Where parties fail to settle dispute within relevant period**

If a settlement, approved by the Director, to a dispute is not, within 20 business days after the Director establishes a mediation panel in relation to the dispute, signed by the parties to the dispute who are to be bound by the settlement –

- (a) the mediation panel must cease to assist the parties to the dispute; and
- (b) the mediation panel must notify the Director that the mediation panel has ceased to assist the parties to the dispute.

**56. Use of evidence obtained in the course of mediation**

- (1) Evidence of anything said, or of any admission made, in the course of mediation under this Act –
- (a) is not admissible in any proceedings before any court, tribunal or body, including under Part 10; and

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- (b) may not be used by the Director, or a State Service officer or State Service employee, for the purposes of the *Occupational Licensing Act 2005*.
- (2) Any document prepared for the purposes of, in the course of, or as a result of, mediation under this Act –
  - (a) is not admissible in any proceedings before any court, tribunal or body, including under Part 10; and
  - (b) may not be used by the Director, or a State Service officer or State Service employee, for the purposes of the *Occupational Licensing Act 2005*.
- (3) Subsections (1) and (2) do not apply with respect to any evidence or document –
  - (a) if the persons who take part in mediation under this Act and, in the case of a document, the persons identified in the document, consent to the admission of, or the use of, the evidence or document; or
  - (b) if the parties involved in the mediation agree to the waiver of the privilege set out in those subsections; or
  - (c) if the document was prepared to give effect to a decision taken, or an undertaking given, or a settlement, in relation to the mediation.

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**PART 10 – ADJUDICATION**

***Division 1 – Introductory provisions***

**57. Interpretation of Part 10**

In this Part –

***adjudication application*** means an application lodged with the Director under section 63(1);

***adjudication proceedings*** means proceedings, in relation to an adjudication application, that are conducted by an expert panel;

***applicant*** means a person who has made an adjudication application under section 63(1);

***expert panel*** means an expert panel appointed under section 71(1) in relation to an adjudication application;

***inspection*** means an inspection conducted under section 68 or section 72(8);

***inspector*** means a person –

- (a) who is nominated under section 67(3) to conduct an inspection; or
- (b) who conducts an inspection under section 72(8);

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***owner***, in relation to a residential building work contract, means –

- (a) a person for whom residential building work is being, is to be, or has been, performed under the contract; and
- (b) any successor in title to land in respect of which residential building work is being, is to be, or has been, performed under the contract;

***party***, in relation to adjudication proceedings, means the applicant, the respondent and any other person joined under section 73(3) as a party to the adjudication proceedings;

***respondent*** means a building contractor on whom an adjudication application is served under section 63(5);

***work-completion claim*** means a work-completion claim referred to in section 61.

**58. When work taken to not be satisfactorily completed**

For the purposes of this Part, residential building work to which a residential building work contract relates has not been satisfactorily completed if –

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- 
- (a) the work has not been completed or is deficient; or
  - (b) the work has not been completed to the standard, or using the materials, required under the contract; or
  - (c) any statutory warranties that apply in relation to the work have been breached; or
  - (d) any requirements under another Act that apply in relation to the work have not been complied with; or
  - (e) the work has caused, or resulted in, damage to any building, structure or residential building work.

**59. Application of Part**

Nothing in this Part is to be taken to require a person to lodge a work-completion claim, or an adjudication application, in relation to a matter before the person may exercise any other right the person may have to commence any other proceedings in relation to the matter.

***Division 2 – Work-completion claims***

**60. Work-completion claims**

- (1) An owner may serve on the building contractor a work-completion claim in relation to a residential building work contract.

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- (2) A work-completion claim in relation to a residential building work contract may only be served on a building contractor by an owner if the owner is of the opinion that –
  - (a) residential building work that was required by the contract to be completed within a period, or by a day, specified in, or determined under, the contract, has not been satisfactorily completed within that period or by that day; or
  - (b) residential building work, to which the contract relates, that was not required by the contract to be completed within a period, or by a day, specified in, or determined under, the contract, has not been satisfactorily completed within a reasonable period.
- (3) For the purposes of subsection (2), a period, or a day, within which, or by which, residential building work is required to be completed may be –
  - (a) a period by the end of which, or a day by which, a stage of the residential building work is required to be completed; or
  - (b) the date of practical completion in respect of the residential building work contract under which the work is required to be performed.

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**61. Contents of work-completion claims**

A work-completion claim must –

- (a) be in writing; and
- (b) be addressed to the building contractor to whom the claim relates; and
- (c) state the name of the owner who is making the claim; and
- (d) specify the residential building work –
  - (i) that has not been satisfactorily completed; and
  - (ii) to which the claim relates; and
- (e) specify a reasonable period within which the residential building work is to be satisfactorily completed; and
- (f) state that the claim is made under this Act; and
- (g) include the prescribed details, if any.

**62. Time limit for making work-completion claims**

A work-completion claim must not be served on a building contractor under section 60(1) after the expiry of –

- (a) the period of 12 months after the last day on which any residential building work

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was performed under the relevant residential building work contract; or

- (b) a longer period, if any, specified in the relevant residential building work contract as the period within which a work-completion claim may be served on the building contractor.

***Division 3 – Application for adjudication of work-completion claims***

**63. Application for adjudication of work-completion claim**

- (1) A person who has served a work-completion claim under section 60(1) on a building contractor may lodge with the Director an adjudication application in relation to residential building work specified in the work-completion claim in accordance with section 61(d).
- (2) A person may only lodge under subsection (1) an adjudication application in relation to residential building work specified in a work-completion claim in accordance with section 61(d) if the building contractor to whom the claim relates has not satisfactorily completed the work within the period specified in the claim in accordance with section 61(e).
- (3) A person may only lodge under subsection (1) an adjudication application in relation to residential building work specified in a work-completion claim if the claim is lodged before the expiry of



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20 business days after the last day of the period specified in the claim in accordance with section 61(e).

- (4) An adjudication application under subsection (1) –
- (a) must be in writing; and
  - (b) must identify the applicant and the building contractor to whom the application relates; and
  - (c) must contain a copy of the work-completion claim, served on the building contractor under section 60(1), to which the application relates; and
  - (d) must specify the residential building work, specified in the work-completion claim in accordance with section 61(d) –
    - (i) that has not been satisfactorily completed; and
    - (ii) to which the application relates; and
  - (e) must be accompanied by the prescribed application fee; and
  - (f) may contain any submissions relating to the claim that the applicant thinks fit.
- (5) The applicant must serve on the building contractor to whom an adjudication application relates a copy of the application.

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- (6) An applicant, within 2 business days after a copy of the adjudication application is served on a building contractor under subsection (5), must provide to the Director proof of that service.

**64. Respondent may respond to application**

- (1) A respondent to an adjudication application, within 10 business days after being served with a copy of the application under section 63(5), may lodge with the Director a response in relation to the adjudication application.
- (2) A response in relation to an adjudication application –
  - (a) must be in writing; and
  - (b) must identify the adjudication application to which it relates; and
  - (c) may contain any submissions, relevant to the application, that the respondent thinks fit.
- (3) The respondent must serve on the applicant a copy of a response that is lodged under subsection (1) by the respondent.
- (4) The Director –
  - (a) before making a decision under section 65(1) in relation to an adjudication application, must consider a response lodged under subsection (1) in relation to the application; and

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- (b) if he or she appoints an expert panel in relation to the adjudication application, must forward the response to the expert panel.

**65. Director to determine whether to accept or reject application**

- (1) The Director, as soon as practicable after 10 days after a copy of an adjudication application is served on the respondent under section 63(5), must decide whether to –
  - (a) accept the application; or
  - (b) reject the application.
- (2) For the purposes of assessing whether to accept or reject an adjudication application under subsection (1), the Director may take the action that he or she thinks fit, including consulting with the applicant and the respondent.
- (3) The Director must reject under subsection (1) an adjudication application made by an applicant if the Director is satisfied that –
  - (a) the applicant has not served a work-completion claim under section 60(1) on the building contractor to whom the adjudication application relates; or
  - (b) the period specified, in accordance with section 61(e), in the work-completion

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- claim to which the adjudication application relates has not expired; or
- (c) the adjudication application is frivolous, vexatious or apparently without substance; or
  - (d) there is an alternative adjudication process on foot in relation to the residential building work specified, in accordance with section 63(4)(d), in the adjudication application under this Act; or
  - (e) proceedings, in relation to all or part of the residential building work specified, in accordance with section 63(4)(d), in the adjudication application, have been commenced in a court; or
  - (f) a notice of dispute has been lodged under section 47(1) in relation to the residential building work specified, in accordance with section 63(4)(d), in the adjudication application and the notice has not been withdrawn, the matter to which the notice relates has not been settled or the mediation panel in relation to the dispute has not ceased to exist; or
  - (g) the adjudication application does not contain the matters that it is required to contain under section 63(4).
- (4) For the purposes of subsection (3)(d), there is an alternative adjudication process on foot in

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relation to residential building work specified, in accordance with section 63(4)(d), in an adjudication application under this Act if –

- (a) an adjudication application (***the other application***) under the *Building and Construction Industry Security of Payment Act 2009* has been lodged in relation to the residential building work; and
  - (b) either –
    - (i) the other application has not been determined or withdrawn under that Act; or
    - (ii) the Director is of the opinion that the person who made the other application has not, within a reasonable time, taken steps to resolve the matter to which that application relates.
- (5) The Director may reject under subsection (1) an adjudication application made by an applicant if the Director is of the opinion –
- (a) that no reasonable attempt has been made by the applicant to resolve with the respondent the matter to which the application relates; or
  - (b) that it is appropriate for the matter to which the adjudication application relates to be dealt with by mediation under

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Part 9 or in proceedings before a court or  
under another Act.

- (6) The Director may not reject under subsection (1) an adjudication application unless permitted or required to do so under subsection (3) or (5).
- (7) The Director must, by notice in writing, notify the applicant, and the respondent, of the Director's decision under subsection (1) to accept or reject an adjudication application.

**66. Withdrawal of application**

An applicant may, at any time before an adjudication application has been determined by an expert panel, withdraw the application by notice served on the Director and the respondent.

***Division 4 – Inspections***

**67. Director may, on request of party, arrange for inspection of work**

- (1) If the Director accepts an adjudication application under section 65(1), an applicant or respondent may request the Director to make an arrangement for an inspection of all or part of the residential building work to which the application relates.
- (2) The Director, at the request of an applicant or respondent, may make, before an expert panel is appointed under section 71 in relation to the relevant adjudication application, an

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arrangement for an inspection of all or part of the residential building work to which the application relates.

- (3) The Director may nominate to conduct an inspection a person (an *inspector*) who has, in the opinion of the Director, the qualifications or experience, or both, that are necessary in order to satisfactorily conduct the inspection.
- (4) The Director is to inform the applicant and the respondent of the nomination under subsection (3) of an inspector.

**68. Conduct of inspection**

- (1) An applicant and a respondent must provide to an inspector such reasonable access to the relevant building site, and such assistance, as is reasonably required in order to enable the inspector to conduct an inspection.
- (2) An inspector is to prepare a report in relation to an inspection conducted by him or her.
- (3) An inspector is to provide the report in relation to an inspection to the applicant, the respondent and, if an expert panel is appointed in relation to the relevant adjudication application, the expert panel.
- (4) An inspector who is not a State Service officer or State Service employee may charge an applicant and a respondent a fee for the conduct of an inspection and the preparation of a report,

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and for the provision of any information to, or any appearance before, an expert panel, by the inspector.

- (5) The applicant and respondent are jointly and severally liable to pay to an inspector the fees charged by the inspector for conducting an inspection.

**69. Time to be given to enable consideration of inspection report**

- (1) If the Director nominates an inspector in relation to an adjudication application, the Director must not appoint an expert panel under section 71(1) in relation to the application until the applicant has notified the Director that the applicant intends the application to proceed.
- (2) If an applicant has not, within 20 business days, or a longer time agreed with the Director, after the Director has nominated an inspector in relation to an adjudication application, notified the Director that the applicant intends the application to proceed, the applicant is to be taken to have withdrawn the application under section 66.

***Division 5 – Expert panels***

**70. Establishment of pool of experts**

- (1) The Director is to appoint to be members of a pool of experts those persons who, in the opinion



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of the Director, have experience or expertise in relation to such matters as the Director considers may be relevant to assist in the conduct and determination of adjudication applications.

- (2) The Director must consult with industry bodies and representatives before appointing a person to be a member of the pool of experts.
- (3) A State Service officer or State Service employee may not be appointed to be a member of the pool of experts if he or she has been made available to the Director, under another Act, to enable the Director to perform his or her functions and exercise his or her powers under this Act or any other Act.

**71. Appointment of expert panel**

- (1) The Director must appoint an expert panel in relation to an adjudication application that the Director has accepted under section 65(1) and that has not been withdrawn under section 66.
- (2) The Director is to appoint an expert panel in relation to an adjudication application by appointing an uneven number of persons to be members of the expert panel.
- (3) A person appointed under subsection (2) in relation to an adjudication application –
  - (a) is to be selected from the members of the pool of experts appointed under section 70(1); and

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- (b) is to be a person who, in the opinion of the Director, has experience or expertise relevant to the adjudication of the adjudication application; and
  - (c) is not to be a person who has been appointed under section 50(2) to a mediation panel in relation to the matter to which the application relates.
- (4) The Director must not direct, or attempt to influence, an expert panel in the performance or exercise of the functions or powers of the expert panel under this Act.

**72. Conduct of adjudication proceedings**

- (1) An expert panel in relation to an adjudication application is to determine the application as soon as practicable after the panel is appointed.
- (2) Subject to regulations, if any, under this Act in relation to the practice and procedures of an expert panel, an expert panel may determine its own practice and procedures.
- (3) An expert panel is to conduct adjudication proceedings with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matter permit.
- (4) An expert panel is not bound by the rules of evidence but may inform itself of any matter in any manner that it considers appropriate.

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- (5) In adjudication proceedings –
- (a) the expert panel may request further written submissions from a party to the proceedings; and
  - (b) if an expert panel requests a party to make further written submissions, the expert panel must give each other party an opportunity to comment on the submissions; and
  - (c) the expert panel may specify periods in which submissions and comments may be made by the parties.
- (6) An expert panel may call a conference of the parties to the adjudication proceedings and may invite to attend the conference those persons who, in the opinion of the expert panel, have an interest in, or may assist in the consideration of, the matter to which the proceedings relate.
- (7) A conference is to be conducted informally and may not be attended by a legal representative of any party.
- (8) An expert panel, a member of an expert panel or a person appointed by an expert panel may conduct an inspection of any matter that relates to the adjudication application to which the adjudication proceedings relate.

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**73. Expert panel may join parties to adjudication proceedings**

- (1) An expert panel, with the approval of the Director, may, by notice to a person who, in the opinion of the expert panel, ought to be a party to the adjudication proceedings, notify the person that the person is to be a party to the adjudication proceedings.
- (2) The expert panel is to give a copy, of a notice under subsection (1) in relation to adjudication proceedings, to the applicant and respondent in respect of the adjudication application to which the proceedings relate.
- (3) A person is a party to adjudication proceedings if the person is notified under subsection (1) that the person is to be a party to the adjudication proceedings.

***Division 6 – Determination of adjudication applications***

**74. Determination of adjudication application**

- (1) An expert panel is to determine an adjudication application by deciding to –
  - (a) issue a work-completion order under section 75(1); or
  - (b) refuse to issue a work-completion order under section 75(1).
- (2) Without limiting the matters that an expert panel may take into account, the expert panel, in

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determining an adjudication application, is to take into account the following matters:

- (a) the provisions of this Act and any other Act that sets out requirements that apply in relation to the residential building work to which the application relates;
  - (b) the provisions of the residential building work contract to which the application relates;
  - (c) the work-completion claim to which the application relates;
  - (d) any response or submissions relating to the work-completion claim or the application;
  - (e) the results, provided to the panel, of any inspection, carried out by the expert panel or any other person, in relation to any matter to which the application relates;
  - (f) whether any of the relevant building work has not been satisfactorily completed;
  - (g) any other prescribed matter.
- (3) An expert panel may determine an adjudication application even if –

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- (a) a party fails to make a submission or comments within the period specified by the expert panel; or
  - (b) a party fails to attend a conference called by the expert panel.
- (4) An expert panel must serve on each party to adjudication proceedings a copy of the determination under subsection (1) in relation to the adjudication application to which the proceedings relate.
- (5) A determination –
  - (a) must be in writing; and
  - (b) must include the reasons for the determination, unless the applicant and the respondent have both requested the expert panel not to include the reasons in the determination.
- (6) An expert panel may determine that a party to adjudication proceedings is required to pay to another party some or all of the costs that have been incurred by another party because of frivolous or vexatious conduct, or the making of unfounded submissions, by the first-mentioned party.
- (7) An expert panel may, on its own initiative or on the application of an applicant or respondent, correct –

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- (a) a clerical mistake in a determination under this section or an order made under this Part in pursuance of the determination; or
  - (b) an error arising from an accidental slip or omission in a determination under this section or an order made under this Part in pursuance of the determination; or
  - (c) a material miscalculation of figures or a material mistake in the description of a person, thing or matter referred to in a determination under this section or an order made under this Part in pursuance of the determination; or
  - (d) a defect of form in a determination under this section or an order made under this Part in pursuance of the determination.

**75. Work-completion orders**

- (1) An expert panel that determines an adjudication application under section 74(1)(a) by deciding to issue a work-completion order may issue a work-completion order in relation to the application.
- (2) An expert panel may only issue a work-completion order if satisfied, on information that the expert panel considers relevant, in relation to the following matters:

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- (a) that residential building work has not been satisfactorily completed;
  - (b) any other matter prescribed by the regulations for the purposes of this section.
- (3) A work-completion order in relation to an adjudication application may require any or all of the following:
  - (a) the respondent to take any necessary action, or the action specified in the order, to do one or more of the following:
    - (i) satisfactorily complete residential building work under a residential building work contract;
    - (ii) rectify any defective residential building work;
    - (iii) correct any damage caused in the carrying out of residential building work or by defective residential building work;
  - (b) a respondent to take, or refrain from taking, any action so as to satisfy a term of the residential building work contract;
  - (c) a respondent to take, or refrain from taking, any action so that another person may perform residential building work so as to meet the requirements of a statutory



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warranty or any requirement, under another Act, that applies in relation to the residential building work;

- (d) a party to a dispute to pay a sum of money to another party to ensure that residential building work ceases to be unsatisfactorily completed;
  - (e) the respondent or another party to the dispute to pay the costs of ensuring that residential building work ceases to be unsatisfactorily completed.
- (4) A requirement specified under subsection (3) in a work-completion order may relate to residential building work that has been unsatisfactorily completed, whether or not the work is specified in the work-completion claim, or the adjudication application, to which the order relates.
- (5) A work-completion order may specify conditions, including conditions relating to the payment of money or access to a building site, to be complied with by a party to the relevant adjudication proceedings before another party must comply with the requirements of the work-completion order.
- (6) A work-completion order is to specify a date by which the requirements of the work-completion order must be complied with.

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- (7) A work-completion order must be served on each person who is required by the order to take, or refrain from taking, any action.

**76. Other orders or declarations**

- (1) An expert panel may issue a declaration that residential building work has been satisfactorily completed.
- (2) An expert panel may issue one or more of the following orders to a party to adjudication proceedings:
- (a) if a party has agreed to the obtaining of expert advice or the procuring of tests – an order requiring the party to reimburse the person who had to disburse fees for all or part of the cost of obtaining that expert advice or procuring those tests;
  - (b) if the person who had to disburse those fees considers that a party to the dispute has behaved frivolously or vexatiously or made unfounded submissions – an order requiring that party to pay to another party some or all of the costs of obtaining that expert advice or procuring those tests.
- (3) An order under subsection (2) is to specify a date by which the requirements of the order must be complied with.

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- (4) An order under subsection (2) must be served on a person who is required by the order to take, or to refrain from taking, any action.

**77. Orders relating to fees and expenses of expert panel**

- (1) For the purposes of this section, the fees and expenses of the expert panel in relation to an adjudication application are –
- (a) the amounts of remuneration and expenses that the members of the expert panel are entitled to receive under section 82 in relation to the performance of the functions of the members in relation to the adjudication application; and
  - (b) the amount of any expenses incurred by the expert panel in relation to the adjudication application; and
  - (c) the prescribed amounts, if any, in relation to an adjudication application.
- (2) Except if subsection (4) applies, an expert panel is to order the applicant and the respondent in respect of an adjudication application to pay to the Director the fees and expenses of the expert panel in relation to the application.
- (3) The applicant and the respondent in relation to an adjudication application are –

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- (a) jointly and severally liable to pay to the Director, by the date for payment specified in the order, the fees and expenses that they are ordered to pay under subsection (2); and
  - (b) each liable to contribute to the payment of the amount in equal proportions, or, if the panel determines different proportions in the order, in the proportions so determined.
- (4) If an adjudication application is withdrawn under section 66, the expert panel is to order the applicant to pay to the Director the fees and expenses of the expert panel in relation to the application.
- (5) The applicant in relation to an adjudication application is liable to pay to the Director, by the date for payment specified in the order, the fees and expenses that the applicant is ordered to pay under subsection (4).
- (6) The Director may, on the application of a person, waive all or part of an amount that the person is ordered to pay under this section, if the Director is satisfied that it would cause hardship to the person if he or she were required to pay all, or part, respectively, of the amount.
- (7) An order that applies to a person under this section is to be served on the person.

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**78. Compliance with orders**

(1) In this section –

*adjudication order* means –

- (a) a work-completion order; and
- (b) an order under section 76(2); and
- (c) an order under section 77.

(2) A person on whom an adjudication order is served and who is required by the order to take, or refrain from taking, any action must comply with the requirement by the date specified in the order as the date by which the requirement must be complied with.

Penalty: In the case of –

- (a) a body corporate or partnership, a fine not exceeding 100 penalty units; or
  - (b) an individual, a fine not exceeding 50 penalty units.
- (3) If a person commits an offence against subsection (2) by failing to comply with a requirement of an adjudication order, the court may, in addition to imposing a penalty under subsection (2), order the person to comply with the requirement.
- (4) The expert panel may notify the Administrator of Occupational Licensing appointed under

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section 10 of the *Occupational Licensing Act 2005* of a failure by the building contractor, or a contractor, or practitioner, within the meaning of that Act, to comply with an adjudication order.

- (5) The failure of a building contractor, or of a contractor, or practitioner, within the meaning of the *Occupational Licensing Act 2005*, to comply with an adjudication order is improper conduct for the purposes of section 90 of that Act and the expert panel may provide a report of that failure to the Administrator, within the meaning of that Act.
- (6) If –
  - (a) an adjudication order requires a person to pay a sum of money to another person, whether or not conditional on the taking or completion of some other action required by the order; and
  - (b) the person fails to comply with the order –

the sum of money is a debt due and owing to the other person from the date of that failure to comply and may be recovered in a court of competent jurisdiction.

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**PART 11 – MISCELLANEOUS**

**79. Avoidance of requirements of Act**

- (1) A contract, agreement or arrangement made or entered into, orally or in writing, is void, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly, defeating, evading or avoiding the requirements of this Act.
- (2) Any exclusion, limitation, modification, or waiver, of a right conferred by this Act, or a statutory warranty implied by this Act, is void.

**80. Director may approve residential building consumer guides**

- (1) The Director may, by notice in the *Gazette* –
  - (a) approve a residential building consumer guide; and
  - (b) specify the date on which the guide is to take effect.
- (2) A residential building consumer guide is to –
  - (a) contain information about the operation of this Act; and
  - (b) contain any other information relevant to the operation of this Act that the Director considers necessary.

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- (3) A residential building consumer guide is in effect on and from the day specified in the notice under subsection (1) as the day on which it takes effect, until the day specified in a notice under subsection (6) as the day on which the rescission of the guide takes effect.
- (4) As soon as practicable after approving under subsection (1) a residential building consumer guide, the Director must cause a notice to be published in 3 newspapers circulating generally in Tasmania specifying –
  - (a) that the residential building consumer guide has been approved; and
  - (b) the purpose of the residential building consumer guide, with particular reference to section 39; and
  - (c) how and where copies of the residential building consumer guide may be obtained; and
  - (d) the date on which the residential building consumer guide is to take effect; and
  - (e) any other information relating to the residential building consumer guide that the Director considers necessary.
- (5) The Director must, by electronic means and any other means the Director considers necessary, take all reasonable steps to ensure that copies of a residential building consumer guide are publicly available.



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- (6) The Director may, by notice in the *Gazette* –
- (a) rescind a residential building consumer guide; and
  - (b) specify the date on which the rescission is to take effect.
- (7) As soon as practicable after rescinding under subsection (6) a residential building consumer guide, the Director must cause to be published, in 3 newspapers circulating generally in Tasmania, a notice specifying –
- (a) that the guide has been rescinded; and
  - (b) the date on which the rescission of the guide is to take effect.
- (8) A notice of the approval of, or of the rescission of, a residential building consumer guide is not –
- (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
  - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

**81. Guide to Standards and Tolerances**

- (1) The Director may approve one or more Guides to Standards and Tolerances.
- (2) The Director may approve as a Guide to Standards and Tolerances a document that specifies either or both of the following:

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- (a) the quality and standards required in relation to residential building work;
  - (b) whether or not a building structure, or other object, created as a result of the carrying out of residential building work is defective.
- (3) The Director, by electronic means and any other means the Director considers necessary, must take all reasonable steps to ensure that copies of a Guide to Standards and Tolerances are publicly available.
- (4) The Director may rescind a Guide to Standards and Tolerances.
- (5) A Guide to Standards and Tolerances is not –
  - (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
  - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

**82. Remuneration of panel members**

- (1) A member of a panel is entitled to be paid, in relation to his or her carrying out the functions of the panel, the remuneration, and the expenses (including travelling and subsistence allowances), determined by the Minister.
- (2) A State Service officer or a State Service employee who is a member of a panel is not entitled to be paid remuneration, in relation to

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his or her carrying out the functions of the panel, unless authorised by the Minister to be so entitled.

**83. Members of panels disqualified if interested**

(1) In this section –

*application* means –

- (a) a notice of dispute within the meaning of section 45; and
- (b) an adjudication application within the meaning of section 57;

*expert panel* means a panel appointed under section 71(1).

- (2) A member of a panel is disqualified from mediating or adjudicating an application if he or she has a material personal interest in a contract, dispute, or party to the contract, to which the application relates.
- (3) As soon as practicable after becoming aware that he or she is disqualified from mediating or adjudicating an application, a member of a panel must –
  - (a) cease to deal with the application; and
  - (b) serve notice in writing on the Director, specifying that the member is disqualified from mediating or adjudicating the application.

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- (4) A decision, in relation to an application, of an expert panel is void if a member of the panel who is disqualified under this section from adjudicating the application takes part in the making of the decision.
- (5) A fee that consists of the fee of a member of a panel may not be charged under section 77 by an expert panel if the member is disqualified from mediating or adjudicating an application to which the fee relates.

**84. Liability of Director and members of panels**

The Director, and any member of a panel, does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power of the Director, or the member, respectively, under this Act.

**85. Fees payable to Building Administration Fund**

Any amount of money received under this Act by the Director is to be paid into the Building Administration Fund established under the *Building Act 2000*.

**86. Regulations**

The Governor may make regulations for the purposes of this Act.

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**87. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Justice.

**88. Savings and transitional**

The repeal of the *Housing Indemnity Act 1992* by this Act does not affect any right or obligation imposed on a person under that Act in respect of a warranty implied by that Act in a contract to which that Act applied before its repeal.

**89. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

**90. Legislation repealed**

The legislation specified in Schedule 2 is repealed.

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**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 89

***Judicial Review Act 2000***

1. Schedule 1 is amended by inserting after item 7 the following item:
  8. A decision made by the Director of Building Control under section 48 of the *Residential Building Work Contracts and Dispute Resolution Act 2015*.

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**SCHEDULE 2 – LEGISLATION REPEALED**

Section 90

*Housing Indemnity Act 1992 (No. 49 of 1992)*