

FACT SHEET

Building and Construction Industry Security of Payment Amendment Bill 2015

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

It follows a significant period of consultation with key stakeholders that began in April 2014.

This Bill introduces provision for a second level of review of any decision made under the *Building and Construction Industry Security of Payment Act 2009*.

The Security of Payment Act provides a mechanism whereby building practitioners can seek payment for work done, and was introduced as a means to ensure building practitioners did not bear the financial burden of late or missed payments from their clients.

Key features of this amendment Bill include:

- The Director of Building Control may appoint an expert panel to independently review a decision by an adjudicator. The panel may confirm that decision or may quash it and substitute an alternative adjudication decision.
- Preservation of the "security of payment" process available to building practitioners to secure payment for work done.
- Requirement for Nominating Authorities to report to Government on the operation of this Act.

This Bill will deliver a key reform of the Building Regulatory Framework Review by providing an additional safeguard for building practitioners when seeking payment for work completed.

Currently, a building practitioner can make a claim for payment under the *Building and Construction Industry Security of Payment Act 2009*.

Following significant consultation with key stakeholders it was identified that, in rare circumstances, an adjudication determination under the Act does not deliver a fair and reasonable outcome.

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

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

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

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

The right of a building contractor to make a claim for payment for work done under the Security of Payment provisions of the Act will not be changed.

This Amendment Bill also introduces revised requirements for the Nominating Authorities authorised to operate in Tasmania for reporting to the Government on the operation of this Act. The Security of Payment Official will receive reports from the Nominating Authority, which will include details of all adjudication decisions made and fees charged by the Nominating Authorities and adjudicators.

Another complementary dispute resolution option will be introduced by the new Residential Building Work Contracts and Dispute Resolution Bill 2015. It provides for voluntary negotiation and mediation of residential building dispute disputes. Where settlement cannot be achieved through mediation, application can be made for adjudication by an expert panel.

If a building contractor has already initiated a payment claim for the same work through the *Building and Construction Industry Security of Payment Act 2009*, the formal dispute resolution processes in that new Bill are put on hold until the payment claim is finalised.