

## FACT SHEET

### Residential Building Work Quality (Warranties and Disputes) Bill 2012

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Building disputes legislation is in force in most other Australian States and Territories. The Tasmanian Bill is based on legislation that has introduced alternative dispute resolution processes that have proven to be successful in Queensland, New South Wales and Western Australia.

The *Residential Building Work Quality (Warranties and Disputes) Bill 2012* replaces the *Housing Indemnity Act 1992* and is intended to work alongside the *Building and Construction Industry Security of Payment Act 2009* and *Building Act 2000* to provide a framework for building in Tasmania.

The introduction of this Bill is the culmination of a consultation process that began with the release of a discussion paper in 2004. This was followed by a further consultation paper in January 2008 that detailed a proposed statutory framework for the resolution of building disputes in Tasmania. In January this year, Workplace Standards Tasmania released a draft Bill along with a Minor Assessment Statement for further consultation. Consultation has continued with stakeholders throughout this year to a point where most industry bodies are supportive of the proposals contained in the legislation.

The exhaustive consultation process undertaken to develop this legislation has revealed a number of gaps in consumer protection for building and renovation work under current laws.

Principally, consumers and contractors that find themselves in dispute over the quality of workmanship or non-performance under a contract are left to resolve disputes. These disputes

constantly escalate beyond a point where the matters can be resolved without civil litigation.

Civil legal processes are notoriously expensive and beyond the means of most people. The cost of rectifying poor workmanship is born by owners if the contractor refuses to return and the cost of pursuing civil redress is prohibitive.

Overall this does nothing to improve consumer confidence in the building industry.

A significant issue that contributes to the cost of building is contracting practices. Inexperienced owners building and renovating can become victims of poor contracting practices. There are two main issues with contracting processes. Firstly, the type of contract and misunderstanding of the nature and terms in the contract and secondly the conduct of the parties administering a contract.

Queensland, New South Wales and Western Australia have introduced legislation that deals with the contracting issues and also offers alternative dispute resolution processes that have proven to be effective in resolving more than 90% of disputes before they reach a civil court or tribunal.

Free template contracts that are fairly structured to represent the interests of both contractors and residential home owners will be developed.

The benefits of the proposed legislation are expected to be:

- fairer statutory warranties;
- less confusion about the contracting processes;
- fairer contracts and contract administration; and
- a 'one stop shop' alternative dispute resolution service for both contractors and residential home owners.

There is overwhelming support for the introduction of the legislation from most stakeholders including the majority of

Tasmanian building representative organisations. The one exception is the Housing Industry Association (HIA). This Association supports the legislation but does not support the 'one stop shop' approach.

The HIA has advised that they do not support a process that will allow a Building Dispute Commissioner to provide an alternative dispute resolution process which can end in parties being directed to rectify substandard work. This is described in the legislation as a 'Rectification Order'.

A rectification order is a direction from the Building Dispute Commissioner for the parties to take certain action to resolve a dispute. For instance, the order could require a residential home owner to pay money owing into a Trust Account and require the building contractor to rectify defective work – at the end of which the building practitioner would receive payment from the Trust Account. Alternatively, in cases where payment has already been made, the order may simply require the building practitioner to return to the site and rectify defective work.

A rectification order would be issued following an investigation of the building work. A person subject to a rectification order has the power to request a review of that order through the Resource Management and Planning Appeals Tribunal (RMPAT) before taking the action required by the order. RMPAT has the ability to convene an expert panel to assess the merit of the rectification order.

The importance of the rectification order cannot be underestimated. Interstate regulators have advised that without the power to issue a rectification order, the conciliation process is significantly marginalised. People may be less inclined to constructively engage in the conciliation process if there is no power to direct a rectification order.

The HIA's suggested model is similar to the process currently under review in Victoria where the rectification order is issued

by the Victorian Civil and Administrative Tribunal (VCAT). Victoria is currently completing a review into its consumer building framework. Amongst other things it is reported that up to 30% of building practitioners do not engage in the conciliation process. Contractors choose instead to challenge the consumer to take action through VCAT. Workplace Standards experiences an almost identical attitude under the current framework.

Significantly, the submission lodged by the body issuing rectification orders supports the notion of a 'one stop shop' approach where the same body undertakes conciliation and issues a rectification order. VCAT suggests that there should be a clear right of review of the rectification order to VCAT. This is identical to the system proposed in this Bill. In Tasmania's case the appeal would be to the RMPAT.

Given the shortcomings of the Victorian model, which is favoured by the HIA, Tasmania is better served by an alternative dispute resolution system that works in other States.