

11 June 2012

Committee Secretariat  
Local Government and Environment  
Parliament Buildings  
Wellington 6160

**SUBMISSION on  
Building Amendment Bill (No 4)**

**Introduction**

1. Thank you for the opportunity to make a submission on the Building Amendment Bill (No 4). This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial, and comprehensive consumer information and advice.

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2. We do not wish to appear before the committee to speak to our submission.

**Summary**

3. We support provisions in the Building Amendment Bill (No 4) that enhance consumer protection. In particular, we welcome the introduction of mandatory written contracts for certain types of building project as well as the disclosure of prescribed information before a contract is signed.
4. We also support the bill's attempt to provide remedies for breaches of the warranties in the Building Act 2004. However, these new remedies only improve consumer protection on paper. In practice, consumers have limited options if they want to enforce a warranty. Adjudication and arbitration carry significant costs. The Disputes Tribunal is rarely an option because it can only hear claims for less than \$15,000 (or \$20,000 if both parties agree).
5. Consumer NZ's preference is for a government-backed home warranty scheme for all building projects above a minimum value. We also recommend the establishment of a statutory building-disputes tribunal, one that can hear claims of at least up to \$500,000.

**Part 4A: Consumer rights and remedies in relation to residential building work**

**362D: Building contractor must provide information before residential building contract entered into**

6. We support requirements for building contractors to provide disclosure statements, checklists and critical product information before entering into a contract with a consumer.
7. We believe the prescribed information listed in the cabinet paper "Building Act review 2: Delivering accountability in the residential construction sector" is a good starting point. At a minimum, the disclosure statement should include:
  - The skills, qualification and licensing status of those building practitioners who will do the work;

- The dispute history of the building practitioners, including the outcome of any formal dispute ruling or court judgement;
  - What, if any, surety or insurance backing is available for the building work.
  - Information about the building company including:
    - How long the company has operated;
    - What role each director will play in the project;
    - Any previous breaches of relevant regulatory requirements.
8. We also think the prescribed information should include whether or not the building practitioners have previously owned companies which have been liquidated or struck off the Companies Register.
9. The dispute history, infringement notice penalties and information about any other breaches of relevant regulatory requirements should also be recorded on the register of licensed building practitioners administered by the Department of Building and Housing.

**362E: Minimum requirements for residential building contracts over a certain value**

10. We believe that written contracts should be mandatory for building projects over a set value.
11. As noted in the cabinet paper "Building Act review 2: Delivering accountability in the residential construction sector", mandatory contracts should include:
- The names and addresses of the parties involved in the project;
  - The date the contract is agreed;
  - A description of the work to be carried out;
  - The timeframe for the project;
  - Details of the contract price;
  - A summary of the warranty and remedy obligations of the seller, and the reciprocal obligations of the buyer;
  - The process that will be followed if a dispute arises;
  - Details of what, if any, surety or insurance backing is available;
  - The process for varying the contract.
12. We also believe a maximum deposit limit should be prescribed in the Building Act 2004. In Queensland, the Domestic Building Contracts Act 2000 sets out maximum deposit percentages. If the contract is for domestic building work priced at \$20,000 or more, the maximum deposit payable is 5 percent. If the contract price is between \$3,300 and \$20,000, the deposit must not exceed 10 percent.
13. Where the building work involves the construction of a home, Queensland's Act also sets out a basic payment schedule:
- |                        |     |
|------------------------|-----|
| • Deposit              | 5%  |
| • Base stage           | 10% |
| • Frame stage          | 15% |
| • Enclosed stage       | 35% |
| • Fixing stage         | 20% |
| • Practical completion | 15% |
14. We believe a basic payment schedule alongside better consumer information about the risks of pre-payment for work would encourage improved business practices in the building sector.
15. Queensland's Act also provides for less detailed payment schedules for home construction where not all the designated stages above are involved.

**362L and 362M: Remedies for breach of warranty**

16. The remedies prescribed in sections 362L and 362M clarify the course of action consumers can take if a warranty has been breached. However, the remedies do little to improve the position of consumers.
17. It is difficult for consumers to enforce the implied warranties in the Building Act. They can:
- File disputes with the Disputes Tribunal (but only if they're claiming for less than \$15,000 – or \$20,000 with the agreement of both parties);

- Opt for adjudication or arbitration (but fees can range from several thousand dollars to tens of thousands of dollars);
- Lodge a claim with the Weathertight Homes Tribunal (but only if they have a leaky home built or altered within the past 10 years);
- Take a case to court (but this is costly, time-consuming and stressful).

18. Consumer NZ believes there is a role for a specialist building disputes service. Building disputes are frequently complex and technical, and a specialist body that can award reparation to the consumer is the appropriate place for them to be resolved.

19. We note that NSW Fair Trading offers a free building dispute resolution service. If the service fails to resolve the dispute, the state's Consumer, Trader and Tenancy Tribunal can hear building claims up to \$500,000.

20. Without an effective means of enforcing implied warranties, New Zealand consumers often turn to private surety products such as building guarantees. Our members have reported problems when it comes to getting these guarantees honoured.

21. Queensland has a system of home-warranty insurance that acts much like a private building guarantee. It covers loss of deposit, defects and non-completion of work. Builders – not consumers – are required to obtain warranty insurance from the Building Services Authority (BSA) for residential building work worth more than \$3300.

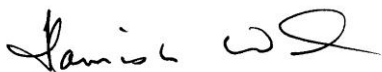
22. The BSA is also an independent statutory authority, rather than a private provider. As well as the insurance scheme, it is responsible for disputes resolution and mandatory licensing of all builders. Among its powers, the BSA can:

- Record instances where a builder has failed to rectify a defect (the records are publicly available);
- Revoke a builder's licence;
- Recover costs from the builder if it has to pay insurance cover to a homeowner;
- Fine dishonest builders \$2000 and pursue further penalties (up to \$25,000) through the Queensland Civil and Administrative Tribunal.

23. Consumer NZ believes Queensland's approach has more merit than a system relying on private surety products. Australia's experience suggests that home warranty insurance needs to be government-backed. We note that New South Wales has recently moved to a form of statutory home warranty insurance.

Thank you for the opportunity to make a submission on this bill. If you require any further information, please do not hesitate to contact me.

Yours sincerely



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