

New Building Legislation

October 2016



What is changing?

New building laws start **1 January 2017**

Areas covered today:

1. Licensing
2. Approvals of building or plumbing
3. Residential contracts



What does it mean to me?

For building and plumbing contractors:

Recognise these key changes:

1. The way work is approved
2. New requirements for contracts for residential work

Why make changes?

- Approvals too long and too expensive
 - Same approval process for a carport as a ten storey office block
- Too many contractual disputes
- Duplication of licensing laws

Whose idea was it?

- Feedback from owners and builders
- We talked to industry, councils and practitioners over three years
- Reforms supported by:
 - Industry Associations (HIA, MBAT)
 - All State MPs

New Laws created:

- *Occupational Licensing Act 2005* (OLA) (amended)
- *Building Act 2016* (New)
- *Residential Building Contracts and Dispute Resolution Act 2016* (New)

Licensing changes

- Practitioners licensed under the OLA
- Current licences continue without change
- Same scope of work
- Licence fees remain same
 - ✓ **You do not have to do anything**

Licensing threshold

Building or demolition work:

- costs \$20,000 or more; *and*
- it requires a Certificate of Likely Compliance from a building surveyor

Approvals Process:



Currently a Low Risk project requires a building permit

High Risk work



also requires a Building Permit

Building Act 2016

Uses a risk-based approvals process:

- Level of risk decides the approval process



Low



Medium



High

What's low/high risk?

A Determination (detailed list) is available of types of low, medium and high risk work

- Building
- Demolition
- Plumbing

Director's Determination

(example)

Outdoor structures associated with a Class 1a building:

2.2.1

Shed, garage, or carport, of steel

- Engineer designed and prefabricated
- Maximum size 36m²
- Single storey
- Maximum height 4.5m
- If located in a bushfire-prone area must be located a minimum of six metres from any habitable building

Low Risk Building Work

- Licensed builder can do without council approval
- No longer any “exempt work” or “minor alterations”
- No building surveyor needed

Low risk examples

- Sheds, Carports
- Low decks
- Fences, Low retaining walls
- Outdoor structures (pergola)
- Farm structures

Medium Risk Building Work

- No council permit needed
- Building surveyor checks plans for compliance
- Building surveyor issues start work authorisation
- Building surveyor **notifies** council (“**Notifiable Work**”)

Notifiable Work examples:

- New house or unit (size limits or planning approval is not required)
- Residential additions, extensions, alterations & improvements (Class 1)
- Outbuildings of any size or type
- Commercial alterations (minor and non-structural)

High Risk Building Work

- Same permit process as now
- public, commercial, industrial, and accommodation buildings
- residential work by owner-builders
- work in hazardous areas (bushfire, flooding)

Approvals – PV Panels

- No building permit required
- No engagement of a building surveyor required.
- Engagement of competent person to perform work

Approvals – PV Panels - continued

- “Building Work” components (fixing of the panels) must meet the NCC/ Australian Standards.
- Reference: Director’s Determination of categories of Building or Demolition Work (draft) clause 1.1.13

Approvals – PV Panels - continued

- Solar panels that are larger than 38m², or inclined on stands, or close to roof edges, etc., are “Notifiable Work” and require the formal approval of a building surveyor.
- In that case that work is unlimited in its scope (area, installation criteria)

Approvals – Energy Efficient Heated Water Systems

- work is governed by the Director's Determination of Categories of Plumbing Work
- **New heated and cold water reticulation** including water heaters (all types of building) is required to be notified to the council plumbing permit authority pre-construction or installation.
- Reference: Clause 3.3.5 of the draft Determination.

Approvals – Energy Efficient Heated Water Systems - continued

Replacement heated water services

- New HWS installation (in a new location) in all Classes of buildings, *from an existing service*;
- Requires a mandatory Notification to the Plumbing Permit Authority when work is completed only
- Reference Clause 2.3.1 of the draft Determination.

Residential Contracts Changes



New Residential Contracts Act

- Projects over \$20K MUST have a written contract
- Contract MUST contain certain clauses
- Builder MUST give owner Consumer Guide
- New dispute resolution options

Residential Contracts

The new Contracts Act applies to:

- owners and building contractors
- residential building work only
- work of \$20,000 or more contract value

Residential Contracts – Building Contractors

There is a **very wide definition** of the types of work covered by that Act will include performance of electrical or plumbing work of \$20,000 where those “building contractors” are dealing directly with the owner.

Residential Contracts – Building Contractors

This means that for electricians installing solar panels or plumbers for plumbing installations, and the cost is \$20K or more –

- Then they are a “Building Contractor” and
- a written contract will have to be entered that complies with the Act.

“Residential Building Work”

- a system for lighting, heating, ventilation, air conditioning or cooling;
- a power supply system;
- a sewerage, water supply, or drainage, system;
- a plumbing system;

Contracts

- Must contain certain key clauses
- Parties cannot agree to “leave out” or disregard Act provisions
- No standard contract – you can still use industry association or your own contracts if they include mandatory terms

Mandatory clauses

- Must be in writing, signed and dated
- Contact details, including builder's licence
- Clear description of building work (including plans, specifications, drawings)
- Final contract price or estimation
- Practical completion date
- List the statutory warranties

Consumer Guide

- Important information for consumers
- Includes rights and obligations, and how to avoid and resolve disputes
- Guide must be given to owners before the contract is signed
- Keep signed acknowledgement sheet as proof of receipt

Cooling-off periods

- Owners can withdraw within 5 days of receiving the Consumer Guide
- If Consumer Guide not given, they can also withdraw from contract
- Owner must give notice in writing
- Retainable amount allowed – must refund the rest of deposit

Deposits and progress payments

Maximum deposits allowed are:

- 10% of contracts between \$20,000 and \$50,000
- 5% of contracts of \$50,000 or more
- 20% of contracts where half the value performed off-site
- Progress payments in just proportion

Variations

- Must be in writing
- Variation document must be agreed and signed before that work starts
- Warning must be given to owners that variations impact final contract price

Practical completion

- Notice of practical completion to owner within 10 days
- Defects document agreed and signed
- Minor defects and omissions to be fixed no later than 6 months after practical completion
- Guide to Standards and Tolerances

Warranties

- Legal rights that can be enforced by owner
- Certain warranties apply to all residential building work contracts
 - Materials - good quality, suitable and new
 - In accordance with contract plans and specifications
- Last for 6 years & transfer to a new owner

When things go wrong



Avoiding disputes

- Clear contract terms
- Variations put in writing
- Free mediation
- Adjudication by experts
- Can still use Security of Payment legislation or courts

Mediation

- Free and voluntary
- Can be lodged by either party
- Independent third party, as mediator, assists parties to negotiate a settlement
- Agreements are legally binding

Adjudication

Where parties will not mediate, or mediation failed, and dispute unresolved

- An alternative to going to court
- Started by owner
- Experts are appointed by the Director to determine dispute
- Binding decision made by expert panel

More Information:

CBOS website:

www.justice.tas.gov.au/building/regulation/review

- Fact sheets
- *Building Act 2016* and Determinations (building and plumbing)
- Consumer Guide

Email: cbosinfo@justice.tas.gov.au

Questions?



Tasmanian
Government