



Building Amendment Act 2013

Member Update 27 November 2014

The Building Amendment Act 2013 was passed in November 2013 and amends the Building Act 2004. Some of the changes had immediate effect (e.g. rules about building consents). Other changes will impact on the way residential builders do business with their clients, but are not yet in effect. The framework for those changes is set out in part 4A of the 2013 Act. However, we don't yet know all the details of the changes. Part 4A of the 2013 Act doesn't become law until regulations are passed, and that hasn't happened yet. Also, in order to know exactly how the new system will work, the Government has to finalise certain rules and lists, and we are still waiting on that. In general terms, how the changes are going to work is set out below.

When the Rules start and what they apply to

The Government has said that the new rules are due to kick in on 1 January 2015. However, given delays to date, we would not be surprised if commencement was not until sometime between February and April 2015. The new rules will apply to residential building contracts for over the "prescribed minimum price". The Ministry of Business, Innovation & Employment ("MBIE") initially stated that they consider the "prescribed minimum price" should be \$20,000. However, the figure of \$30,000 has now been proposed. We expect the figure to be inclusive of GST. We also expect it to be inclusive of the value of sub-contractor's work.

Checklists and Disclosure Information

Residential Builders will have to offer some information to clients before they sign their building contract (and fines will be possible for non-compliance). We intend to prepare precedents (possibly in pamphlet form) for members to download and use. We expect this information to include:

- A "Checklist" – a standard form setting out what clients should consider when engaging builders, including:
 - Basic information about getting a building project underway.
 - How to find out about the rules relating to building work.
 - The basics of project structure and management.
 - The importance of hiring competent contractors.
 - The need to put building contracts in writing.
 - Dispute resolution.
- A "Disclosure Information" - containing details about that contractor, such as:
 - Name, legal status (e.g. whether a company), contact details etc.
 - Name and details of key contact person (e.g. project manager or foreman), including his qualifications.
 - Insurance in place.
 - Guarantees available.
- At some point (perhaps not initially) "Disclosure Information" might also need to set out:
 - Name and qualifications of other licenced building practitioners who may work on site (including sufficient information to show that builders are working within their area of competency).
 - Roles and business history of directors (if the contractor is a company).
 - The contractor's dispute history.

We also expect builders to have to provide certain information and documents at the end of the build, such as a schedule setting out the building's maintenance requirements.

New Minimum Requirements for Residential Building Contracts

The new regime will provide minimum requirements for residential building contracts for over the "prescribed minimum price". The minimum requirements are expected to provide that the contract must be in writing and signed by the parties and contain the following:

- Basic particulars including parties' names, date signed, contact details and address for service, and the location of the building work to be carried out.
- A start date and a finish date, plus details of how delays and force majeure events are dealt with.
- The contract price or how that price will be calculated.
- Details of the work (including materials, who will be doing the work, and who will be supervising).
- Stipulation of who is responsible for consents.
- The payment process (including details for staged payments).
- Details of how notice is to be given.
- Dispute resolution procedures.
- How to deal with variations.
- An explanation of rights and remedies regarding defects.
- An acknowledgement that client has received the Checklist and the Disclosure Information.

If a contract doesn't expressly deal with these matters, then default clauses written by MBIE (dealing with the issues) will be deemed to be inserted. It will also be more important for builders to be diligent in providing their clients with written notices for variations, changes to start or completion dates (i.e. time extensions) and changes to the contract price.

Statutory Defect and Maintenance Regime

The new legislation also provides:

- Residential builders will be subject to a statutory implied warranty regime.
- Statutory remedies for implied warranty regime.
- A person can make a claim whether or not they were a party to the contract.
- Residential builders will be subject to a mandatory liability for a 12 month maintenance period to remedy defective building work within a reasonable time following notice from the client.
- If a client makes a claim during the 12 months following the build, and if the builder disputes that claim, the onus will be on the builder to show why they are not liable.
- An "on-seller" (e.g. from a spec build) will also be subject to this liability in some circumstances.
- A list of situations where the builder is not liable (e.g. where the defect is caused by the homeowner failing to carry out normal maintenance).

The way these rules are set out might make uncomfortable reading for some builders; but in reality the liabilities set out in the legislation are not that much different in substance to the legal rules that apply presently (and RMBA doesn't agree

with the suggestion made by some people in the industry that a “defect” is anything the client is unhappy about). However, the fact that these rules are to be set out in this way might empower parties to make claims against builders. Also, builders may also now need to be more cautious about addressing liability for what might be considered defects by providing the customer with a partial refund or discount.

New RMBA Residential Contracts

RMBA is working on updating our residential contracts (especially RBC1) so that it will comply with the new rules. Once the Government has finalised the details of how the new regime is going to work, we will be able to finalise the updates to our contracts and make them available to members (along with templates to help members provide Checklists and Disclosure Information). These will be available before the new laws come into force. RMBA will provide ongoing advice to members as information become available.