

Reforms to the *Home Building Act 1989* (NSW)

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The ***Home Building Act 1989* (NSW)** is the foremost piece of legislation governing the domestic building sector in New South Wales. Its primary aim is to provide consumer protection for owners.

In September 2013, the NSW government published a position paper entitled ***Review of the Home Building Act 1989*** in September 2013, outlining 50 proposed reforms to the ***Home Building Act 1989* (NSW)** (“the Act”). The government expects to introduce a Bill containing these reforms into Parliament in late 2013, with the reforms to take effect in early 2014.

The stated aim of the reforms is to maintain protection for homeowners while reducing regulation and red tape impeding competition and growth in the building industry.

Some of the key reforms proposed in the position paper are as follows:

Statutory warranties

Part 2C of the Act outlines a number of statutory warranties that automatically form part of all residential building contracts. These warranties ensure that parties cannot “contract out” of minimum standards of work.

Under the current Act, the statutory warranties only last for two years after the building work is completed. However, in the case of “structural defects”, the warranties last for six years.

The definition of “structural defect” is unclear and has been the source of a number of disputes. Accordingly, the proposed reforms will replace the term “structural defect” with “major defect”. The following two-step test will be introduced to determine whether a “major defect” exists:

1. First, the defect must be a “major element” of the building. This will include structural elements, but also major non-structural elements such as waterproofing or fire safety systems;

2. Second, the defect must also have a sufficiently severe effect on the building's safety, use and performance.

Home building contracts

The cap on deposits for contracts of over \$20,000 will be increased from 5 to 10 percent. As a result, deposits for all residential building contracts will be capped at 10 percent, regardless of the contract price.

The reforms will require contracts over \$20,000 to contain a progress payment schedule that must be negotiated and agreed to by the owner and the builder. Contracts over \$20,000 must also contain a termination clause setting out the grounds and procedure for termination of the contract.

Moreover, under the reforms, the total value of progress payments made to the builder cannot exceed the value of the building work carried out at that time by more than 20%. This is aimed at protecting homeowners from excessive loss in the event that the builder is unable to complete the work.

Dispute resolution

The Act does not currently require owners to give builders a reasonable opportunity to return to the building site to rectify defective works after completion. This requirement will be implemented through the reforms.

The reforms will also implement a defect notification period, where owners must notify builders of defects within 6 months after the owner became aware, or should reasonably have become aware, of the defect. Although a failure to notify the builder within 6 months may not prevent the owner from pursuing a breach of the statutory warranties in the CTTT or a court, the owner may not receive compensation for further loss or damage arising after the 6 month period.

Finally, the reforms will introduce a pilot expert determination model to allow technical issues regarding building defects to be determined quickly and cost-effectively by experts at the beginning of the building process.

Home warranty insurance

The Act currently requires builders to take out home warranty insurance on all residential building contracts, to provide a safety net for owners.

To improve the effectiveness of this scheme, the reforms will create a public register of home warranty insurance certificates that can be accessed by potential purchasers or beneficiaries of the property.

Owner-builders

The owner-builder permit scheme enables homeowners to carry out or oversee work on their own home without a licence (save for specialist work such as electrical or plumbing work, which does require a licence).

One object of the reforms is to ensure that commercial operators cannot use owner-builder permits to circumvent licensing requirements. Accordingly, the reforms will prohibit owner-builder permits in relation to dual occupancies where it is possible to subdivide and on-sell the land.

The reforms will also require all owner-builders to obtain a White Card (proving that the owner-builder has completed basic health and safety training) before an owner-builder permit will be issued. This is aimed at decreasing health and safety risks among owner-builders.