

Rebecca Vassarotti MLA

Minister for the Environment
Minister for Heritage
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Member for Kurrajong

22/66820

Christopher Kerin
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Dear Mr Kerin

Thank you for your email of 23 May 2022 about the commencement of Part 6A of the *Building and Construction Legislation Amendment Act 2020* (the Act). I am advised that you have recently discussed this matter with Ms Alison Kemp, Senior Director, Building Reform in the Environment, Planning and Sustainable Development Directorate.

Part 6A of the Act had a two-year delayed commencement date and is due to commence on 24 June 2022. Part 6A of the Act introduced the framework for a Residential Building Disputes Scheme that allows a scheme to be introduced in the ACT that helps homeowners and the building industry resolve residential building disputes earlier and at less cost. The intention of the scheme is to facilitate constructive and productive dialogue between parties to a dispute, to ensure relatively rapid and low-cost solutions that are technically and legally workable while not requiring complex legal negotiations. The scheme is also intended to help resolve simpler matters without parties having to have the matter heard in ACT Courts and Tribunals.

The framework:

- establishes what is a residential building dispute
- establishes the requirements for lodging a dispute and handling a lodged dispute
- establishes the statutory office of the Residential Building Dispute Administrator and the powers of the Administrator. Appointment is made by the Director-General of the Environment, Planning and Sustainable Development Directorate
- provides the Construction Occupations Registrar and the Commissioner for Fair Trading with the power to refer complaints to the Administrator

- establishes the power to create a dispute resolution trust account managed by the Director-General of the Environment, Planning and Sustainable Development Directorate. The trust account would hold amounts in dispute as a sign of engaging in the process in good faith
- provides protections from personal liability for the Administrator, dispute resolution officers and technical building assessors for acts done or omitted to be done while exercising a function under the Act
- contains confidentiality provisions protecting information disclosed or obtained during the course of a dispute resolution process; and
- establishes regulation making powers.

The framework established by the Act was intended to provide the high-level provisions with the detail contained in a regulation following a second round of consultation. The delayed commencement of two-years was to allow for this consultation, development of a new detailed regulation and appointments of officers to manage the scheme.

The aspects of the scheme that require consultation are:

- The scope of matters about residential building work that may be referred to the Administrator for resolution.
- The eligibility and appointment requirements for dispute resolution officers and technical officers.
- The criteria for the issuing of dispute resolution orders and how they will be enforced.
- Whether it will be compulsory for licensed construction practitioners to participate in dispute resolution.

This consultation is vital to designing a scheme that is the most beneficial for consumers and the industry and must be undertaken before any scheme is finalised and implemented.

Following passage of the Act, this further consultation was delayed due to impacts of the COVID-19 pandemic and the need to progress other priority reforms, for example, work on updates to the National Construction Code 2022, automatic mutual recognition, engineer registration and work with the implementation team on recommendations from the Building Confidence Report. Consultation is expected to commence in the later part of this year.

There are several existing processes available for people experiencing residential building issues:

- The Construction Occupations Registrar is able to investigate complaints about breaches of building standards and take regulatory actions as appropriate including to make rectification orders.
- Access Canberra's Contact Centre can provide general advice and refer callers to other areas of government.
- The ACT Government provides through its Build, Buy, Renovate website, the mechanism for people to obtain information on their rights and obligations when building, buying or renovating property in the ACT.

- Further information including on how to make a complaint is available on the Build, Buy, Renovate website - <https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints>
- Statutory rapid adjudication processes exist for people who carry out construction work, or supply goods and services, so they can receive timely payment.
- Access Canberra Fair Trading can attempt to conciliate disputes under the Australian Consumer Law. Complaints can be made through the Access Canberra website - <https://www.accesscanberra.act.gov.au/s/article/make-a-complaint-against-a-business-or-trader-tab-overview>

In your conversation with Ms Kemp, you indicated that you provide a fortnightly update on upcoming new laws, and you wish to include an update on the ACT's residential building disputes scheme. To assist with this, the Directorate has prepared the following:

- The ACT Government is committed to supporting homeowners and the building industry to manage disputes in a timely and cost-effective manner.
- The first step in this was introduction of the framework for a residential building disputes scheme through the *Building and Construction Legislation Amendment Act 2020* (ACT).
- The framework established by the Act provides the high-level provisions with the detail to be contained in regulation following a further round of consultation.
- Further consultation on the details of the scheme is expected to be undertaken in the second half of this year. This consultation is vital to designing a scheme that is the most beneficial for consumers and the industry and must be undertaken before any scheme is finalised and implemented.
- Further information on this and the scheme can be obtained by contacting EPSDDBuildingReform@act.gov.au.

Thank you for your interest in this matter. I hope this information is of assistance.

Yours sincerely



Rebecca Vassarotti MLA

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