

# BuildLaw in Brief

## Unit Titles Amendment Bill now at Select Committee

The Unit Titles [\(Strengthening Body Corporate Governance and Other Matters\) Amendment Bill](#) passed its first reading on 10 March 2021, and has been referred to the Finance and Expenditure Committee. This members' bill has its origins in the work completed by Nikki Kaye but enjoys cross-party support with Prime Minister Jacinda Ardern saying she expects that Labour will support the Bill.

The Bill aims to improve the position for both purchasers or buyers of units and for those who live in them. For those looking to purchase a unit, the information disclosure regime is being improved so that potential buyers can obtain information, not just about the unit itself, but the building as a whole. This may help buyers avoid future repair costs they are not ready to commit to. For those who live in or own a unit, the Bill has three main aspects to it. First, it intends to strengthen the governance arrangements of the body corporate. Second, it will set standards for body corporate managers (with the intention of improving the professionalism of those managers). And last, it aims to ensure that long-term maintenance projects are funded in proportion to the size of each unit concerned.

Dispute resolution is also addressed in the Bill. An amendment to section 171 of the Act extends the jurisdiction of the Tenancy Tribunal to include disputes with the body corporate manager – a welcome relief to occupants who previously had to apply to the courts for relief. The Bill will also allow regulations to impose fees and charges for the settling of disputes. The Bill recommends a more economical dispute resolution process and breaks down the fees structure in more details.

## Revision to scope of NZS3910 underway, following sector consultation by NZCIC and Standards New Zealand

NZCIC and Standards New Zealand conducted

a sector consultation and survey on 14 February 2021 to determine whether a revision of NZS3910 is necessary. The New Zealand Standard for Conditions of Contract for Building and Civil Engineering Construction, also known as NZS3910, is heavily relied on by New Zealand's building, construction, engineering, and infrastructure industries to ensure their contracts are suited to New Zealand's industrial and legislative sectors.

NZS3910 meets the requirements of the Construction Contracts Act and contains essential commercial provisions designed to allocate risk fairly. NZS3910, which has its roots in Standard NZS 623:1964, has had "limited scope" reviews in 2003 and 2013, and the consensus is that it has failed to keep up with the changes in the construction industry, making it no longer considered fit for purpose.

Various issues with NZS3910 have been identified over the years such as:

- The difficulties in the dual role of the engineer specified under NZS3910 (this has been raised numerous times during the COVID-19 pandemic).
- NZS3910 is very much "one size fits all" and does not incorporate options for improved functionality.
- NZS3910 is not collaborative and does not have appropriate Principal involvement.
- Too much risk is transferred onto contractors.

The New Zealand Construction Industry Council engaged Standards New Zealand and other government agencies to develop a scope for revising NZS3910. This required representatives from several organisations who regularly utilise NZS3910 to attend a preliminary scoping workshop on 23 November 2020, where they discussed the extent of the scope of revision. This was followed by a sector wide consultation through a survey.

The consultation sought high level feedback on the type of changes required to bring NZS3910 up to speed with the needs and legal requirements of the construction sector. While a model contract cannot be expected to fit every situation or circumstance, the expectation is that a revision of the standard will make contracts easier to



understand and distribute risk more evenly between contractors and principals.

Standards New Zealand has indicated that it is using a “smart contract” approach to speed up the revision process of NZS3910 as it wanted to avoid the historically sluggish and cumbersome amendment procedure used in the past.

The NZS3910 survey closed on 14 February 2021 but Standards New Zealand is planning another opportunity later this year for people to make further submissions and to recommend specific changes to NZS3910.

## Update to the NSW Security of Payment Regime

From 1 March 2021, the *Security of Payment Regime*<sup>1</sup> (SPR) in New South Wales can be used by residential builders to resolve disputes and recover progress payments from owner occupiers. Prior to the release of the *Building and Construction Industry Security of Payment Regulation 2020* (Regulations), owner occupier construction contracts were exempt from sections 4(1)<sup>2</sup> and 7(5)<sup>3</sup> of the *Building and Industry Security of Payment Act 1999* (Act).

The changes to the Act are applicable retrospectively to all owner occupier contracts entered into from 21 October 2019. Builders will now be able to apply for adjudication to resolve disputes with homeowners, in addition to receiving statutory rights to payment in instances where a homeowner does not provide the builder with a payment schedule setting out the reasons behind why the builder’s progress payments are being withheld.

Historically, subcontractors engaged by builders could utilise the SPR for dispute resolution and recovery of progress payments, however builders were required to approach the NSW Civil and Administrative Tribunal (NCAT) for resolution. Builders are now able to apply for an independent adjudication for disputed payments and obtain an enforceable determination against the

1 Security of payment legislation which allows building and construction industry participants to claim interim progress payments and apply for adjudication.

2 Section 4(1): Exempt residential contract means a construction contract that is connected with an owner occupier construction contract.

3 Section 7(5): This Act does not apply to any construction contract, or class of construction contracts, prescribed by the regulations for the purposes of this section.



homeowner in as little as 21 days if they are successful at the independent adjudication.

The process of resolving building disputes through NCAT is lengthy and cumbersome, making the Regulations a long overdue and welcome change for builders. More information on the recent changes to the SPR can be found [here](#).

