

# House of Representatives

# Supplementary Order Paper

Tuesday, 1 October 2002

## Construction Contracts Bill

### *Proposed amendments*

Dr Wayne Mapp, in Committee, to move the following amendments:

#### *Clause 3*

To add to paragraph (c) the expression “; and”, and to add the following paragraph:

- (d) to establish a Weathertightness Tribunal to resolve in an expeditious way claims relating to the weathertightness of buildings.

#### *New clause 3A*

To insert after *clause 3*, the following clause:

#### **3A Expiry**

**Part 4A** expires with the resolution of all claims to the Tribunal. All claims must be made within 2 years from the date the Tribunal is established.

#### *Clause 5*

To insert after the definition of **authorised nominating authority**, the following definition:

**building** has the same meaning as defined under the Building Act 1991.

To insert after the definition of **respondent**, the following definitions:

**Tribunal** means the Weathertightness Tribunal established by **section 50G**

**weathertightness** means the entry of water due to any factor related to quality of design, workmanship, or materials associated with the application of monolithic cladding.

*New Part 4A*

To insert, after *Part 4*, the following new Part:

**Part 4A**  
**Weathertightness Tribunal**

**50G Weathertightness Tribunal established**

- (1) There is established a Weathertightness Tribunal.
- (2) The functions and powers of the Tribunal are set out in **section 50H**.

*Functions and powers of Tribunal*

**50H Functions of Tribunal**

The functions of the Tribunal are—

- (a) to consider and adjudicate upon proceedings brought under this Part; and
- (b) to exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.

*Constitution and administration of Tribunal*

**50I Membership of Tribunal**

The Tribunal consists of—

- (a) a chairperson; and
- (b) all other members of the panel.

**50J Appointment and term of office of chairperson**

Every person appointed as a chairperson of the Tribunal must be a District Court Judge or any other judicial officer or former judicial officer with expertise in arbitration.

**50K Panel**

- (1) The chairperson must maintain a panel of not more than 12 persons who may be appointed under **section 50I**.
- (2) In considering the suitability of any person for inclusion on the panel, the Minister must have regard not only to that person's personal attributes but also to his or her knowledge of and experience in the different aspects of matters likely to come before the Tribunal.
- (3) The name of a person must be removed from the panel if—
  - (a) the person dies or is, under the Insolvency Act 1967, adjudged bankrupt; or
  - (b) the Minister directs that the name of the person be removed from the panel for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
  - (c) the person requests by writing addressed to the Minister that his or her name be removed.

**50L Hearings of Tribunal**

In a hearing, the Tribunal may sit individually or in panels of 3. The composition of the Tribunal in relation to any particular case is a matter for the direction of the chairperson, as is the identity of the chairperson of any 3-person panel.

*Jurisdiction*

**50M Jurisdiction of Tribunal**

- (1) The Tribunal has jurisdiction to determine in accordance with this Act all disputes arising between parties in relation to any buildings alleged to have problems of weathertightness.
- (2) All claims must be made within 2 years from the date the Tribunal is established.

**50N Orders of Tribunal**

- (1) The Tribunal may, in respect of any claim within its jurisdiction, make one or more of the following orders:
  - (a) an order that a party pay money to any other party;
  - (b) a work order;
  - (c) an order dismissing a claim.
- (2) Any order made by the Tribunal may be unconditional or subject to such conditions (whether as to the time for, or mode of, compliance, or otherwise) as the Tribunal thinks fit to impose.

**50O Orders of Tribunal to be final**

Every order made by the Tribunal is final and binding on all parties to the proceedings.

**50P Exclusion of other jurisdictions**

- (1) A provision in any agreement between parties to a dispute to which this Act applies, or in any such other agreement entered into by the parties to any such agreement, to exclude or limit—
  - (a) the jurisdiction of the Tribunal; or
  - (b) the right of any person to invoke that jurisdiction is of no effect.
- (2) Without limiting the generality of **subsection (1)**, the Tribunal has jurisdiction in respect of a claim notwithstanding any agreement relating to the matter that provides for—
  - (a) the submission to arbitration of any dispute or difference; or
  - (b) the making of an award upon such submission to be a condition precedent to any cause of action accruing to a party to the agreement.
- (3) **Subsection (1)** does not apply where a cause of action has accrued, or is believed to have accrued, to a person and that

person has agreed to the settlement or compromise of the claim based on that cause of action.

**50Q Owner of building to determine jurisdiction**

- (1) Notwithstanding any other enactment or rule of law to the contrary, no court or other body has originating jurisdiction in respect of any matter that is within the jurisdiction of the Tribunal unless—
  - (a) proceedings in respect of that matter were commenced before that court or other body before the commencement of this Act; or
  - (b) the owner of the building to which the dispute relates elects to issue proceedings in court.
- (2) Where **subsection (1)(a)** applies to proceedings before a court or other body, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) must not be the subject of proceedings between the same parties before the Tribunal unless the proceedings are transferred to the Tribunal under **subsection (3)**.
- (3) In any case to which **subsection (1)(a)** applies, the court or other body before which the proceedings were being conducted immediately before the date of the commencement of this Act may, with the consent of each of the parties, instead of determining the matter itself, order that the proceedings be transferred to the Tribunal subject to such provision, if any, as to the payment of costs as the court or other body thinks fit.
- (4) Where proceedings are transferred to the Tribunal under **subsection (3)**, the Tribunal may have regard to any evidence given before the court or other body, and it is not necessary for that evidence to be given again before the Tribunal unless the Tribunal so requires.

*Procedure*

**50R Procedure governed by Arbitration Act 1996**

Except to the extent provided in any other section of this Act, the provisions of the First and Second Schedules of the Arbitration Act 1996 apply to the proceedings and the making of the decisions of the Tribunal.

**50S Compulsory mediation**

All parties are required to undertake mediation. If mediation fails, parties must be bound by compulsory arbitration.

**50T Joinder of parties**

Notwithstanding **subsection (1)**, the Tribunal is governed by sections 102 and 103 of the District Court Rules 1992, in relation to joining parties.

**50U Legal representation**

In claims that are less than \$12,500, the Tribunal must not permit any person who is, or has been, enrolled as a barrister and solicitor to represent a party to the dispute.

*Appeals*

**50V Appeal on questions of law to High Court**

- (1) Any party to an arbitration who is dissatisfied with the decision of the Tribunal as being erroneous in point of law may appeal to the High Court on that question of law.
- (2) Every appeal under this section must be dealt with in accordance with the High Court Rules.

**50W Further appeal to Court of Appeal**

Any party to an appeal under **section 50V**, may with the leave of the High Court or, if that leave is refused, with special leave of the Court of Appeal, appeal to the Court of Appeal against the determination of the High Court.

