Building Amendment Bill (No 4) 2011 (2012 No 322-2)

**Date of Introduction:** 6 September 2011

**Portfolio:** Building and Construction

**Select Committee:** Local Government and Environment

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**Caution:** This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.

Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

**Purpose**

The main aims of this Bill as introduced are to: introduce enhanced and more comprehensive consumer protection measures; clarify the exemptions from building consent requirements; provide a new power for territorial authorities to deal with buildings that are at risk because they are near or adjacent to dangerous buildings; increase the maximum penalty for the offence of doing building work without a building consent from $100,000 to $200,000; clarify the powers of the Chief Executive of the Department of Building and Housing to review the performance of territorial authorities, regional authorities, and building consent authorities under the Act; introduce the concept of a “classifiable dam” and a “referable dam” and give regional authorities the discretion to investigate and refer a “referable dam” for classification; improve the administrative efficiency of the Dam Safety Scheme; and to make a number of other minor and technical amendments.¹

*The Bill as introduced is described in Bills Digest No 1944.*

¹ Building Amendment Bill (No 4), 2011 No 322-1, Explanatory note, General policy statement, pp. 1 and 2.
Main changes

Responsibilities of product manufacturers

The bar-2 Bill includes provisions relating to product manufacturers. The term product manufacturer is defined as “a person who manufactures or supplies a building product and who states that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the building code”

The bar-2 Bill also provides that a product manufacturer or supplier is responsible for ensuring that the product will, if so installed, comply with the relevant provisions of the building code (Part 1, inserting New Clause 5A, inserting New Section 14G into the Act).

Comment
This provision “summarises the existing legal obligations for code compliance”.2

Dams and canals

The bar-2 Bill refers to the “crest” of a dam and includes a measurement option specific to canals. It also makes other amendments relating to the classification of dams to make it clear which dams that fall into the “referable” dam category must be assessed by regional authorities. Provision is made for all the dams in a particular canal to be treated collectively in a single dam safety assurance programme. The owners of a large dam are required to notify the relevant regional authority of the dam’s size and location. It is also provided that a building is affected for the purposes of the Building Act if it is adjacent to, adjoining, or nearby a “dangerous dam” (the provision already is drafted to cover dangerous buildings) (Part 1, Clauses 29-35 (relating to New Sections 133B-153B of the Act; Clause 19 amending New Section 121A of the Act).

Consumer rights and remedies in relation to residential building work

The Bill as introduced sets out consumer rights and remedies in relation to residential building work including:

- Pre-contract information to be provided to clients by building contractors;
- the minimum provisions to be included in a residential building contract, implied warranties and the remedies available for breaches of those warranties.

The Bill provides that nothing in this context limits or derogates from the provisions of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993. In general terms, the Bill provides the following rights and remedies (which are provided for in great detail in the Bill):

What is a “residential building contract”?

The Bill as introduced defines the term “residential building contract” as “a contract under which one person (the building contractor) agrees with another person (the client) to do building work for the client in relation to a household unit.

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2 Building Amendment Bill (No 4), 2013 No 322-2, As reported from the Local Government and Environment Committee, Commentary, p. 2.
The bar-2 Bill expands this definition by providing that a residential building contract does not include a subcontracting agreement between a building contractor and a building subcontractor and that design work is not covered (Part 1, Clause 44, inserting New Part 4A into the Act, amending New Section 326B).

Pre-contract information

The Bill as introduced provides that a building contractor must not enter into a residential building contract unless the building contractor has first provided to the client (or each client if there is more than one) the prescribed information (if any); and a prescribed checklist (if any) (prescribed in regulations) and any person who contravenes this commits an infringement offence and is liable to a fine not exceeding $2,000. Any person who in any communication or document required to be made knowingly makes a statement that is false or misleading in a material particular or knowingly makes a material omission commits an offence liable to a fine not exceeding $20,000.

The bar-2 Bill provides a description of the purpose of regulations including certain information about the building contractor such as legal status, dispute history, and skills and licensing status. The bar-2 Bill also provides greater regulation-making powers in relation to the content of checklists and disclosure information (Part 1, Clause 44, inserting New Part 4A into the Act, amending New Section 326D and inserting New Section 362DA into the Act).

Minimum requirements for residential building contract over a certain value.

The bar-2 Bill includes that regulations may be made prescribing the minimum terms to be included in a residential building contract. Those prescribed minimum terms and conditions apply only if there is no written contract. If the written contract does not contain a term or condition on the topic covered by a minimum term and condition, the prescribed minimum terms and conditions apply (Part 1, Clause 44, inserting New Part 4A into the Act, amending New Section 326E and substituting New Section 362F).

Breaches of implied warranty

The bar-2 Bill specifies that the proposed remedy for a breach of warranty, that of cancelling a contract for breach of implied warranty, does not apply to contracts for sale. The ability to cancel a contract is available only when implied warranties are breached under a residential building contract (Part 1, Clause 44, inserting New Part 4A into the Act, amending New Section 326G).

Remedy for defects or exclusion of defects

The bar-2 Bill specifies that the defect repair period applies to on-sellers, that the client may use the remedy when a subcontractor, or any person the contractor was responsible for, does the work, and the provision does not have retrospective effect (i.e. the provisions in New Section 362P does not apply to work carried out before it came into force). Defect exclusions are to include force majeure events (acts of God). It is made clear that contractors are responsible for subcontractors, and an on-seller cannot escape liability by arguing they were not the building contractor (Part 1, Clause 44, inserting New Part 4A into the Act, amending New Sections 326P and 326Q; inserting New Section 362PA).

Fee for building without a consent

The Bill amends the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to increase the infringement fee for doing building work without a building consent from $750 to $1,000 (Part 2, inserting Clause 65A into the Bill amending Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007).