

New rules will ensure builders get paid

Michael Bleby

Builders in Sydney's HomeBuilder and stimulus-driven wave of detached house construction have a new way to take on clients who refuse to pay after changes to NSW's Security of Payments Act kicked in this week.

Revisions to the 20-year-old act that took effect this week gave builders and other tradespeople the right to take individual owners to legally binding adjudication over unpaid bills, ending the need for them to take clients to court or to the NSW Civil and Administrative Tribunal.

The new adjudication mechanism, designed to take no more than six weeks from claim for payment to decision, removes the scope for homeowners to withhold payment, claiming defective work, while also refusing access to the completed property for inspection or remediation.

"[Owners] were always part of the payment chain but had the least amount of accountability," said Anthony Igra, the director of consultancy Contractors Debt Recovery.

"Security of Payments is simply a dispute resolution process. If the owner wants to say 'I'm not going to pay because the work is defective', it's the opportunity for them to put up or shut up."

The new rules don't alter a builder's responsibility to fix defective work or reduce their warranty obligations, but do make it easier for them to claim money when work is complete.

"To stay in business you need money," said Robert De Marcellis, the director of Foresight Constructions, a commercial and residential builder based in western Sydney's Padstow.

"That's the nature of the beast. If the builders [have] followed the right protocol and done the right thing or the

tradies [have] done everything and done it properly, people have to pay up."

The timing of the new rules, which were decided last year when regulations around the act were changed, is coincidental but will benefit builders and tradespeople servicing the boom of new houses triggered by pandemic stimulus measures.

Over the eight months between June, when the federal government's HomeBuilder payments were announced, and January, NSW authorities approved 18,122 new detached dwellings – a 13 per cent increase on the same period a year earlier.

"I don't think people appreciate the effect it will have," Mr Igra said.

"There will be a long period of adjustment for homeowners, particularly high-end homeowners who realise they can't rip their builders off any more and will find themselves subjected to proceedings."

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