



Proposed new consumer protection laws apply to architects and engineers

Proposed amendments to the Trade Practices Act will require architects and engineers to guarantee that their services are fit for purpose. Under the Trade Practices (Australian Consumer Law) Bill (No.2) 2010, which is before parliament, architects and engineers will lose the fit for purpose exemption that they have enjoyed for the past 25 years. The Senate Economics Committee has recently recommended that the Senate pass the bill.

Effect of the proposed new law

The current law under the *Trade Practices Act* exempts architects and engineers from the implied warranty that services are fit for purpose, if the consumer makes the purpose known to the supplier. The effect of the new law will mean that consumer warranties apply to all professions, including architects and engineers.

It is often the case that clients of an architect or engineer will want the services provided to achieve a particular purpose. If the client communicates the purpose to the architect or engineer, and they proceed to supply services to the client, under the new law the architect or engineer will be held to guarantee that the services will be fit for that purpose.

Remedies available to consumers for a breach of the fitness-for-purpose warranty will include an ability to seek damages for breach of the warranty.

In approving the proposed new law, the Senate Economics Committee concluded that the product received by the consumer from architects and engineers is a design concept rather than the building itself, which limits the liability of architects and engineers to the purpose of the design, rather than the interpretation or installation of the final building.

What does this mean for you?

- The proposed new law is a deliberate policy decision by the Government to allow consumers to seek remedies from those providing professional services for the construction of a consumer's home.
- Architects and engineers will need to be vigilant in ensuring that they understand and document the purpose of the client's brief at the outset of the project and when new instructions are received.
- Architects and engineers may take comfort from Treasury's view that later failures by a builder in implementing the architect's or engineer's design would give rise to a liability on the part of the builder, not the architect or engineer.

Should you have any questions or would like further advice, please contact:

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