

Part 1F of the Civil Liability Act - What's the fuss all about?

If you are involved in the world of construction and engineering, whether as principal, contractor, subcontractor or consultant, you have probably come across reference to Part 1F of the *Civil Liability Act*. But do you know what it means, and more importantly, what it means when its excluded?

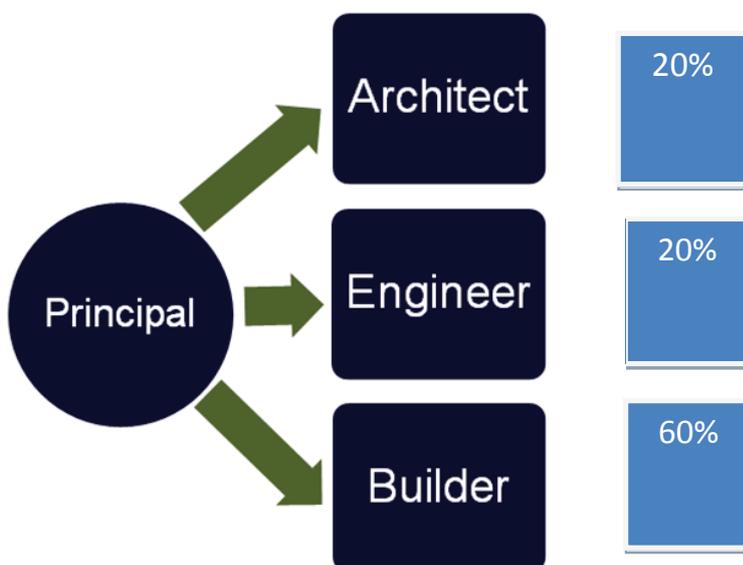
Construction Update

What does Part 1F deal with?

Part 1F of the *Civil Liability Act* introduces "proportionate recovery" in relation to civil liability claims.

For example, on major construction and engineering projects, when something goes badly wrong, the "cause" can often be difficult to pin down to one party. For example, a "defect" could be a combination of fault by the architect, the engineer and the builder. There may even be some fault on the part of the principal who has failed to provide clarity, or provided incorrect information at the outset.

Part 1F of the *Civil Liability Act* means that if a principal takes action in such a scenario, then he can only recover from each party, a proportion of his overall damages that reflects that party's fault. So, as the diagram show:



So, in the above diagram, the principal has to sue each of the parties it thinks it is at fault to recover 100% of his losses. The critical impact is that if one of the

Who does this affect?

The Civil Liability Act will affect principals in the construction industry including architects, engineers, builders, sub contractors and consultants.

Article Highlights

- It is important for principals, contractors and consultants to consider whether to include or exclude Part 1F and if it is in their best interest.
- Including Part 1F in a contract introduces "proportionate recovery" in relation to civil liability claims.
- Inclusion may mean principals must sue multiple parties in order to recover its full quantum of damages.

parties becomes insolvent, or has some other way of avoiding liability it means the principal cannot recover that “%” of his damages claim against that party.

So why is Part 1F of the *Civil Liability Act* excluded?

It should be obvious – a principal does not want to have its prospect of recovering the full quantum of its damages limited by one party going bust or some other technical consideration getting in the way. Nor does it want to have to sue multiple parties. It wants to sue one party only for 100% of its losses, leaving that party to seek to share the burden (by joining other parties into the proceedings) as appropriate. The principal will always seek to avoid multi-party litigation and push that responsibility to its consultant/contractor.

Should Part 1F be deleted?

Western Australia is one of only two States that permit the exclusion of the proportionate claim aspects of the *Civil Liability Act* but exclusion is common.

Consultants, contractors and principals should all carefully consider whether it is appropriate for them in the circumstances of the particular project for the provisions of this legislation to be deleted.

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