

CONSULTATION DRAFT

TASMANIA

RESIDENTIAL BUILDING (MISCELLANEOUS CONSUMER PROTECTION AMENDMENTS) BILL 2022

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DRAFT

**RESIDENTIAL BUILDING (MISCELLANEOUS
CONSUMER PROTECTION AMENDMENTS) BILL
2022**

*(Brought in by the Minister for Workplace Safety and
Consumer Affairs, the Honourable Elise Nicole Archer)*

A BILL FOR

An Act to amend the *Building Act 2016*, the *Building Regulations 2016*, the *Occupational Licensing Act 2005*, the *Residential Building Work Contracts and Dispute Resolution Act 2016* and the *Tasmanian Civil and Administrative Tribunal Act 2020*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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Amendments) Act 2022
Act No. of 2022*

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Part 2 – Building Act 2016 Amended

PART 2 – BUILDING ACT 2016 AMENDED

3. Principal Act

In this Part, the *Building Act 2016** is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4(1) of the Principal Act is amended by omitting paragraph (d) from the definition of *authorised person*.

5. Section 8 amended (Delegation)

Section 8 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) A permit authority may delegate to any person any of the permit authority's powers and functions under this Act, other than this power of delegation.

6. Section 16 amended (Functions of Director of Building Control)

Section 16(g) of the Principal Act is amended by omitting subparagraph (ix).

*No. 25 of 2016

*Residential Building (Miscellaneous Consumer Protection
Amendments) Act 2022
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Part 2 – Building Act 2016 Amended

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7. Section 24 substituted

Section 24 of the Principal Act is repealed and the following section is substituted:

24. Who is a permit authority

- (1) Subject to subsection (7), the council of a municipal area is the permit authority for a municipal area.
- (2) The council of a municipal area must ensure that –
 - (a) at least one person who holds a licence under the *Occupational Licensing Act 2005*, that authorises the person to perform the functions and exercise the powers of a permit authority, is employed or engaged by the council; and
 - (b) a function or power of the permit authority for the municipal area is only performed or exercised in respect of the municipal area by –
 - (i) an employee, or contractor, of the council for the municipal area who holds such a licence; or
 - (ii) a person appointed under subsection (6) as the

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Part 2 – Building Act 2016 Amended

permit authority for the
municipal area; or

(iii) the Director of Building
Control, if a notice under
subsection (7) is in force
in respect of the
municipal area; or

(iv) a person authorised to
perform the function or
exercise the power, in
respect of the municipal
area, under an order of the
Minister made in
accordance with
section 27A(3).

Penalty: Fine not exceeding 500 penalty
units.

(3) Subject to subsection (4), the
performance of a function, or the
exercise of a power, of a permit authority
in respect of a municipal area is of no
effect if it is performed or exercised by a
person other than a person referred to in
subsection (2)(b) in respect of the
municipal area.

(4) The Director of Building Control may,
by notice published in the *Gazette*,
determine that subsection (3) does not
apply in respect of the performance of
one or more functions, or the exercise of

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Amendments) Act 2022
Act No. of 2022*

Part 2 – Building Act 2016 Amended

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one or more powers, of a permit authority specified in the determination.

- (5) A determination under subsection (4) –
- (a) may relate to the past, or future, performance of one or more functions, or the exercise of one or more powers, of a permit authority; and
 - (b) if the determination relates to the future performance of a function, or exercise of a person, is to specify the period for which the determination has effect in respect of those function or power; and
 - (c) is not a determination to which section 20 applies.
- (6) If there is not an employee of a council of a municipal area that holds a licence under the *Occupational Licensing Act 2005*, that authorises the person to perform the functions and exercise the powers of a permit authority –
- (a) the Director of Building Control may appoint a person as the permit authority, for that municipal area, on the terms and conditions that are specified in the instrument of appointment; and

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Part 2 – Building Act 2016 Amended

- (b) the council is liable for any reasonable costs that are incurred as a result of the appointment under paragraph (a) unless the Director of Building Control otherwise determines.
- (7) The Minister may, by notice in the *Gazette*, appoint the Director of Building Control as a permit authority, for one or more municipal areas, on the terms and conditions specified in the notice, including which functions or powers of a permit authority they are appointed to perform or exercise.

8. Section 25 amended (Functions of permit authorities)

Section 25 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) A permit authority for a municipal area, as far as is reasonably practical, is to –
 - (a) ensure that the owners of property within the municipal area are informed of their duties under this Act –
 - (i) in relation to any building work, plumbing work or demolition work; and

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Amendments) Act 2022
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Part 2 – Building Act 2016 Amended

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- (ii) in maintaining and using a building; and
- (b) make itself aware of –
 - (i) building work, plumbing work or demolition work being performed in the municipal area; and
 - (ii) the use and occupation of buildings in its municipal area; and
- (c) if applicable, ensure that proceedings are instituted against any person or body failing to comply with this Act; and
- (d) enforce an order issued by a building surveyor, if appropriate to do so.

9. Section 27 amended (Records of permit authority)

Section 27(3) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) an employee of the council, if access to the information is necessary as part of his or her employment;

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Part 2 – Building Act 2016 Amended

10. Section 27A inserted

After section 27 of the Principal Act, the following section is inserted in Division 2:

27A. Minister may direct permit authority

- (1) If the Minister is satisfied that a permit authority has not satisfactorily performed a function of a permit authority under this Act, the Minister may direct the permit authority, by order, to perform the function within a specified time.
- (2) The Minister must not make an order under subsection (1) in respect of a permit authority if the permit authority has not been provided with an opportunity to make, in respect of the proposed order –
 - (a) a written submission to the Minister; or
 - (b) a submission by such other means as are agreed between the Minister and the permit authority.
- (3) If the Minister makes an order under subsection (1) in respect of a permit authority and the permit authority fails to comply with the order, the Minister may do either or both of the following:
 - (a) take such action as the Minister thinks reasonable to ensure that

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Part 2 – Building Act 2016 Amended

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the function of the permit authority is performed;

- (b) authorise another person to take such action as the person thinks reasonable to perform the function, and exercise any relevant power, of the permit authority in accordance with this Act.
- (4) If the Minister, or a person authorised by the Minister, takes an action under subsection (3) in respect of the performance of a function of a permit authority for a council, the Minister may recover from the council, as a debt due and owing, such reasonable costs and expenses as are incurred by the Minister or person in performing the function.
- (5) A permit authority must comply with an order of the Minister made, under subsection (1), in respect of the permit authority.

Penalty: Fine not exceeding 500 penalty units.

11. Section 41 substituted

Section 41 of the Principal Act is repealed and the following section is substituted:

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Part 2 – Building Act 2016 Amended

41. Minister may direct council

- (1) If the Minister is satisfied that a council has not satisfactorily performed a function of a council under this Act, the Minister may direct the council, by order, to perform the function within a specified time.
- (2) If the Minister is satisfied that a general manager has not satisfactorily performed a function of a general manager under this Act, the Minister may direct the general manager, by order, to perform the function within a specified time.
- (3) The Minister must not make an order under subsection (1) or (2) in respect of a council or general manager if the relevant council, or general manager, has not been provided with an opportunity to make, in respect of the proposed order –
 - (a) a written submission to the Minister; or
 - (b) a submission by such other means as are agreed between the Minister and the relevant council or general manager.
- (4) If the Minister makes an order under subsection (1) in respect of a council or general manager and the relevant council, or general manager, fails to

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Part 2 – Building Act 2016 Amended

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comply with the order, the Minister may do either or both of the following:

- (a) take such action as the Minister thinks reasonable to ensure that the function of the relevant council or general manager is performed;
 - (b) authorise another person to take such action as the person thinks reasonable to perform the function, and exercise any relevant power, of the relevant council or general manager in accordance with this Act.
- (5) A council must comply with an order of the Minister made, under subsection (1), in respect of the council.

Penalty: Fine not exceeding 500 penalty units.

- (6) A general manager must comply with an order of the Minister made, under subsection (2), in respect of the general manager.

Penalty: Fine not exceeding [x].

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Part 2 – Building Act 2016 Amended

12. Section 208 amended (Discovery of defective building work)

Section 208 of the Principal Act is amended by omitting subsection (7).

13. Section 209A inserted

After section 209 of the Principal Act, the following section is inserted in Part 15:

209A. Defective work order

- (1) In addition to any other action that may be taken under this Act in respect of defective building work, the relevant building surveyor for the work is to issue an order requiring the rectification of the work to –
- (a) the responsible person in respect of the work; or
 - (b) if the relevant building surveyor is unable to issue the order to the responsible person for the work, the current owner of the premises where the work is located.
- (2) An order must be issued under this section, by a relevant building surveyor in respect of building work, if the work is certified under section 209(b) as defective work, regardless of who certified the work under that section.

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Part 2 – Building Act 2016 Amended

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- (3) An order may only be issued under this section in respect of defective building work if –
- (a) a certificate of completion (notifiable building work), or a certificate of completion (permit building work), has been issued in respect of the work; and
 - (b) it has been less than 2 years since the certificate of completion (notifiable building work), or a certificate of completion (permit building work), has been so issued in respect of the work.
- (4) An order issued under this section –
- (a) is to specify the defective work to be rectified under the order; and
 - (b) may specify conditions, requirements and restrictions on how the defective work is to be rectified under the order.
- (5) The Director of Building Control may issue an order under this section in respect of defective building work if the relevant building surveyor for the work is no longer a building surveyor.
- (6) If a person issues an order under this section in respect of defective building work, the person is to provide a copy of

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Part 2 – Building Act 2016 Amended

the order to each of the following as soon as practicable after the order has been issued:

- (a) the relevant permit authority for the work;
 - (b) the Director of Building Control.
- (7) A person issued with an order under this section in respect of defective building work must rectify the work in accordance with the notice.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

14. Section 210 amended (Discovery of defective plumbing work)

Section 210 of the Principal Act is amended by omitting subsection (7).

15. Section 212 amended (Discovery of defective demolition work)

Section 212 of the Principal Act is amended by omitting subsection (7).

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Amendments) Act 2022
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Part 2 – Building Act 2016 Amended

s. 16

16. Section 253A inserted

After section 253 of the Principal Act, the following section is inserted in Division 3:

253A. Contents of orders

- (1) An order under this Division is to specify the period within which the order is to be complied with.
- (2) If an order under this Division does not specify a period within which the order is to be complied with, the relevant permit authority, for the municipal area where work is to be stopped or performed under the order, may amend the order to specify such a period.
- (3) If a permit authority amends an order under subsection (2) –
 - (a) the permit authority is to notify the person who made the order, and the person who was served with the order, of the amendment; and
 - (b) the amendment takes effect on the day specified by the Director.
- (4) Subsection (2) applies to an order made under this Division, whether the order was made before or after the commencement of section 17 of the *Residential Building (Miscellaneous*

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s. 17

Part 2 – Building Act 2016 Amended

*Consumer Protection Amendments) Act
2022.*

17. Section 265 amended (Failure to comply with emergency, building or plumbing order)

Section 265 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) If a person fails to comply with a building order made by a building surveyor, the building surveyor –
 - (a) must notify the Director of Building Control of the failure to comply with the building order; and
 - (b) is to refer the matter to the permit authority.

18. Section 275 amended (Compliance with Act in certain circumstances)

Section 275 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “general manager” and substituting “relevant permit authority”;
- (b) by omitting from subsection (2) “general manager” and substituting “relevant permit authority”.

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Part 2 – Building Act 2016 Amended

s. 19

19. Section 277A inserted

After section 277 of the Principal Act, the following section is inserted in Division 1:

277A. Appeals relating to defective work orders

An owner of premises, or a building services provider or licensed builder engaged by such an owner, may appeal to the appeal tribunal against the issuing of an order under section 209A in respect of defective building work on those premises.

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Amendments) Act 2022
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s. 20

Part 3 – Building Regulations 2016 Amended

PART 3 – BUILDING REGULATIONS 2016 AMENDED

20. Principal Regulations

In this Part, the *Building Regulations 2016** are referred to as the Principal Regulations.

21. Regulation 18 amended (Mandatory notification stages)

Regulation 18(1) of the Principal Regulations is amended by inserting after paragraph (b) the following paragraphs:

- (ba) waterproofing of wet areas;
- (bb) if the work is performed on a class 2-9 building, penetrations of fire rated construction;

*S.R. 2016, No. 110

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Amendments) Act 2022
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Part 4 – Occupational Licensing Act 2005 Amended

s. 22

**PART 4 – OCCUPATIONAL LICENSING ACT 2005
AMENDED**

22. Principal Act

In this Part, the *Occupational Licensing Act 2005** is referred to as the Principal Act.

23. Section 90 amended (Proper cause for disciplinary action)

Section 90 of the Principal Act is amended as follows:

(a) by inserting the following paragraphs after paragraph (b) in subsection (1):

(ba) the Administrator is satisfied, on reasonable grounds, that the prescribed work of the contractor is the subject of, or may be the subject of, an order under Division 3 of Part 18 of the *Building Act 2016*; or

(bb) the Administrator is satisfied, on reasonable grounds, that the contractor –

(i) is a party to a settlement of a dispute that has been registered by the Director of Building Control under

*No. 47 of 2005

*Residential Building (Miscellaneous Consumer Protection
Amendments) Act 2022
Act No. of 2022*

s. 23

Part 4 – Occupational Licensing Act 2005 Amended

section 53 of the
*Residential Building Work
Contracts and Dispute
Resolution Act 2016*; and

(ii) without lawful excuse,
has failed to comply with
the settlement of dispute
so registered; or

(bc) the Administrator is satisfied, on
reasonable grounds, that the
contractor has failed to comply
with an order of the Tasmanian
Civil and Administrative Tribunal
that is in force in respect of the
contractor; or

(b) by omitting from subsection (2)(c) “he or
she” and substituting “the practitioner, or
building services provider,”;

(c) by inserting the following paragraphs
after paragraph (c) in subsection (2):

(ca) the Administrator is satisfied, on
reasonable grounds, that the
prescribed work of the
practitioner, or building services
provider, is the subject of, or may
be the subject of, an order under
Division 3 of Part 18 of the
Building Act 2016; or

(cb) the Administrator is satisfied, on
reasonable grounds, that the

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Part 4 – Occupational Licensing Act 2005 Amended

s. 23

practitioner, or building services provider –

- (i) is a party to a settlement of a dispute that has been registered by the Director of Building Control under section 53 of the *Residential Building Work Contracts and Dispute Resolution Act 2016*; and
- (ii) without lawful excuse, has failed to comply with the settlement of dispute so registered; or
- (cc) the Administrator is satisfied, on reasonable grounds, that the practitioner, or building services provider, has failed to comply with an order of the Tasmanian Civil and Administrative Tribunal that is in force in respect of the practitioner or provider; or

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s. 24 Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

**PART 5 – RESIDENTIAL BUILDING WORK
CONTRACTS AND DISPUTE RESOLUTION ACT 2016
AMENDED**

24. Principal Act

In this Part, the *Residential Building Work Contracts and Dispute Resolution Act 2016** is referred to as the Principal Act.

25. Section 4 amended (Definitions)

Section 4(1) of the Principal Act is amended by omitting paragraph (b) from the definition of *member of a panel*.

26. Section 46A inserted

After section 46 of the Principal Act, the following section is inserted in Part 9:

46A. Director may make determination in certain circumstances

- (1) The Director may make a determination in respect of the following matters:
 - (a) details of the information to be provided as part of a notice of dispute;

*No. 32 of 2016

*Residential Building (Miscellaneous Consumer Protection
Amendments) Act 2022*
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Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

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- (b) the timing of processes relating to a notice of dispute, or a mediation panel, not otherwise specified in this Act;
- (c) the qualifications required to be held by a person for the person to be appointed to a mediation panel;
- (d) any other matter relating to a notice of dispute, or mediation panel, not otherwise specified in this Act.
- (2) A determination made under subsection (1) –
- (a) must be published before it comes into effect; and
- (b) is to specify the date on which it takes effect; and
- (c) must remain so published while the determination remains in effect.
- (3) For the purposes of subsection (2), a determination is published if –
- (a) the determination is made available for viewing by members of the public on a website that is freely accessible by the public; or

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Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

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- (b) must be in the form approved by the Director; and
- (c) must comply with the relevant provisions of a determination, made under section 46A, that is in force at the time when the notice of dispute is lodged with the Director.

28. Section 48 amended (Acceptance of notice of dispute lodged with Director)

Section 48 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
 - (a) a notice of dispute in relation to the same dispute, between a building contractor and the owner, has been accepted under this section; or
 - (ab) the notice of dispute relates to a matter that is the subject of an adjudication application under the *Building and Construction Industry Security of Payment Act 2009* and –

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s. 29 Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

- (i) that application has not been rejected, or withdrawn, under that Act; or
- (ii) the matter has been resolved, or determined, under that Act; or
- (b) by omitting from subsection (3)(a) “the application” and substituting “the notice of dispute”;
- (c) by inserting the following paragraph after paragraph (a) in subsection (3):
 - (ab) the notice of dispute does not contain the information required under this Act to form part of the notice; or

29. Section 51 amended (Panel to mediate dispute)

Section 51 of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (a) in subsection (2):
 - (ab) may request the parties to the dispute to provide information, that may be relevant to the resolution of the dispute, within

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Amendments) Act 2022
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Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

s. 29

the time frame specified by the mediation panel; and

- (ac) is to have regard to the Guides to Standards and Tolerances approved by the Director under section 82; and
- (b) by inserting the following subsection after subsection (3):
- (4) For the avoidance of doubt, a mediation panel may refuse to proceed with mediation for any of the following reasons:
- (a) a party to the mediation has failed to comply with a direction given, or a request made, by the mediation panel;
- (b) a party to the mediation has failed to comply with a condition imposed on the mediation by the mediation panel;
- (c) a reason specified in a determination, in force under section 46A, as a reason that a mediation panel may refuse to proceed with mediation;

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s. 30 Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

- (d) any other reason that the mediation panel considers appropriate.

30. Section 52A inserted

After section 52 of the Principal Act, the following section is inserted in Part 9:

52A. Completion of mediation

- (1) If the parties to a dispute reach a settlement of the dispute as a result of mediation under this Part, the mediation panel for the dispute must –
 - (a) issue a certificate of mediation (agreement) in respect of the settlement; and
 - (b) prepare a document, setting out the terms of the settlement, to be registered under section 53; and
 - (c) provide to the Director and each party to the dispute a copy of –
 - (i) the certificate of mediation (agreement) issued in respect of the dispute; and
 - (ii) the document setting out the terms of the settlement.

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Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

s. 31

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- (2) If the parties to a dispute do not reach a settlement of the dispute as a result of mediation under this Part, the mediation panel for the dispute must –
- (a) issue a certificate of mediation (dispute not resolved) in respect of the settlement; and
 - (b) within 2 days after the certificate is issued, provide to the Director and each party to the dispute a copy of the certificate of mediation (dispute not resolved) issued in respect of the dispute.
- (3) A certificate issued under this section, or a document prepared for the purposes of this section, is to be in accordance with each relevant provision of a determination, made under section 46A, that is in force at the time when the certificate is issued or document is prepared.

31. Section 52 amended (Director may issue guidance materials)

Section 52 of the Principal Act is amended by omitting subsection (2).

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Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

s. 34

34. Part 10 substituted

Part 10 of the Principal Act is repealed and the following Part is substituted:

**PART 10 – MATTER MAY BE DETERMINED BY
TASMANIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL**

56. Interpretation of Part

In this Part –

relevant notice of dispute means a notice lodged under section 47(1) in respect of the residential building work that forms a matter that is within the jurisdiction of the Tribunal, to review or determine, by virtue of this Part;

TASCAT Act means the *Tasmanian Civil and Administrative Tribunal Act 2020*;

Tribunal has the same meaning as in the TASCAT Act.

57. TASCAT to review certain decisions

- (1) The Tribunal has the jurisdiction to review the following decisions under the Act:

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s. 34 Part 5 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

- (a) a decision of the Director under section 48 to refuse to accept a notice of dispute;
 - (b) a decision of the Director under section 53(1) to register, or refuse to register, a settlement in respect of a dispute;
 - (c) a decision prescribed to be a reviewable decision for the purposes of this section.
- (2) For the avoidance of doubt, the review, by the Tribunal, of a decision specified in subsection (1) is –
- (a) within the review jurisdiction of the Tribunal; and
 - (b) allocated to the Residential Building Dispute stream of the General Division of the Tribunal.

58. TASCAT to determine certain matters

- (1) The Tribunal has the jurisdiction to determine the following:
- (a) whether residential building work has been completed satisfactorily, if a notice has been lodged under section 47(1) in respect of a dispute relating to the work;

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- (b) whether residential building work complies with the requirements of –
- (i) this Act; or
 - (ii) another Act that applies to the work or to the building where the work is to be performed;
- (c) a dispute between the parties to a residential building work contract as to the terms of the contract including, but not limited to –
- (i) the legal and practical effect of one or more terms of the contract; or
 - (ii) whether something is, or is not, a term of the contract.
- (2) For the purposes of subsection (1)(a), residential building work is taken not to have been completed satisfactorily if –
- (a) the work has not been completed or is deficient; or
 - (b) the work has not been completed to the standard, or using the materials, required under the contract; or

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- (c) a statutory warranty that applies in relation to the work has been breached; or
 - (d) the Tribunal has made an order in respect of the residential building work and the order has not been complied with; or
 - (e) a requirement under another Act, that applies in relation to the work, has not been complied with including, but not limited to –
 - (i) relevant certificates, permits, notices or orders issued under the *Building Act 2016*; or
 - (ii) relevant determinations made by the Director under the *Building Act 2016*; or
 - (f) the work has caused, or resulted in, damage to any building, structure or residential building work.
- (3) For the avoidance of doubt, the matter specified in subsection (1) as being within the jurisdiction of the Tribunal is –

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- (a) within the original jurisdiction of the Tribunal; and
- (b) allocated to the Residential Building Dispute stream of the General Division of the Tribunal.

59. TASCAT not to determine certain matters

- (1) Despite sections 57 and 58, the Tribunal does not have the jurisdiction to determine the following matters:
 - (a) any matter that is the subject of an adjudication application under the *Building and Construction Industry Security of Payment Act 2009* and –
 - (i) that application has not been rejected, or withdrawn, under that Act; or
 - (ii) the matter has been resolved, or determined, under that Act;
 - (b) any matter that is being, or has been, determined by the Supreme Court, the Magistrates Court or another court of competent jurisdiction;

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commencement of Part 5
of the *Residential
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that the residential
building work to which
the matter relates has been
completed satisfactorily;

(e) any matter that relates to a
residential building work contract
that was entered into by the
parties –

(i) before 1 July 2021; or

(ii) on or after 1 July 2021 if,
in the opinion of the
Director, the contract has
substantially the same
terms, and essentially
replaces, a contract that
was entered into before
that date.

(2) For the avoidance of doubt, this Act, as
in force immediately before the
commencement of Part 5 of the
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Consumer Protection Amendments) Act
2022*, applies in respect of any matter
referred to in subsection (1)(d) or (e).

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60. Application of TASCAT Act to disputes

In addition to the requirements of the TASCAT Act and the Tribunal, an application to the Tribunal for the determination of a matter, relating to a dispute, that is within the jurisdiction of the Tribunal by virtue of this Part –

- (a) may only be made by a party to the dispute, or mediation of the dispute, to which the matter relates; and
- (b) must include a copy of –
 - (i) the certificate issued in respect of the matter under section 52A; and
 - (ii) if there has been a settlement registered under section 53 in respect of the dispute, a copy of the settlement so registered; and
- (c) must clearly identify each manner in which the applicant believes that the residential building work, that forms the basis of the matter, is taken not to have been completed satisfactorily within the meaning of section 58(2).

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61. Determination of matter by Tribunal

(1) For the avoidance of doubt, in determining a matter that is within the jurisdiction of the Tribunal by virtue of this Part –

(a) the Tribunal is to take into account the provisions, or terms, of each of the following that are applicable to the matter:

(i) the NCC;

(ii) the Guides to Standards and Tolerances approved by the Director under section 82;

(iii) each contract, entered into in respect of the residential building work, that forms the basis of the matter;

(iv) each approval, or document, given, issued or otherwise granted –

(A) in respect of the residential work that forms the basis of the matter; and

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- (B) under, or in accordance with, an Act; and
- (b) section 79 of the TASCAT Act applies in respect of the Tribunal.
- (2) In addition to any other power that the Tribunal has under the TASCAT Act, the Tribunal may take one or more of the following actions when determining proceedings for a matter that is within the jurisdiction of the Tribunal by virtue of this Part:
 - (a) order the payment of a sum of money –
 - (i) that the Tribunal has found owing to a party to proceedings; or
 - (ii) that the Tribunal considers reasonable to award a party to proceedings as damages, including exemplary damages or damages in the nature of interest; or
 - (iii) in restitution to a party to proceedings;

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- (b) order the repayment of a sum of money that the Tribunal has found –
- (i) was paid by a party to proceedings to another party to proceedings; and
 - (ii) was paid outside the terms of a contract in force between the parties;
- (c) order a party to proceedings, or another person specified in the order –
- (i) to rectify defective residential building work; or
 - (ii) to complete incomplete residential building work;
- (d) if an order of the Tribunal is made that requires a person other than a party to proceedings to rectify or complete residential building work, order a party to proceedings to pay the other person an amount, as specified by the Tribunal in the order, for the reasonable costs of rectifying or completing that work;

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- (e) declare that a term of a residential building work contract is unjust;
 - (f) declare that a term of a residential building work contract is, or is not, void, including an unjust term of the contract;
 - (g) vary, by order, a term of a residential building work contract, including an unjust term of the contract;
 - (h) declare that a settlement, registered under Part 9, is binding and enforceable;
 - (i) specify a period, or timeframe, in which an action, specified in the order, must be taken or completed;
 - (j) make any other order that it considers fair, or reasonable, in respect of the Tribunal matter.
- (3) For the avoidance of doubt, an order made under subsection (2)(a) or (b) is a monetary order within the meaning of the TASCAT Act.
- (4) The Tribunal may not make an order under subsection (2)(c) in respect of proceedings if –

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- (a) the proceedings relate to whether residential building work has been completed satisfactorily; and
- (b) an order is already in force under subsection (2)(c) in respect of the residential building work.
- (5) In determining whether a term of a residential building work contract is unjust under subsection (2)(e), the Tribunal may take into account one or more of the following in respect of the term, the contract or a party to the contract:
- (a) the intelligibility of the contract generally and of the term in particular;
- (b) the consequences to the parties to the contract if the term is complied with, or not complied with, and the relative hardship of those consequences to each party;
- (c) the relationship of the term to the other terms of the contract;
- (d) whether unfair pressure, undue influence or unfair tactics were used to obtain the consent, to the contract, of a party to the contract;

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- (e) whether, at the time when the term was agreed to, the building contractor knew, or reasonably ought to have known, that the term would cause the owner undue hardship;
 - (f) whether the term is unconscionable, harsh or oppressive;
 - (g) any other factor that the Tribunal considers relevant.
- (6) Despite subsection (5)(b), in determining if a term of a residential building work contract is unjust, the Tribunal is not to take into account any injustice that arises, or that may arise, from circumstances that were not reasonably foreseeable when the term was agreed to.
- (7) When making an order in respect of residential building work and in addition to any other matter that the Tribunal considers relevant, the Tribunal is to take into account –
- (a) what, in the opinion of the Tribunal, is the reasonable price, or cost, of the residential building work; and
 - (b) if a residential building work contract is in place in respect of

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the residential building work, the price, or cost, of the residential building work specified in the contract.

(8) The regulations may prescribe one or more of the following:

(a) the maximum cumulative amount of damages that may be awarded by the Tribunal under an order in relation to residential building work;

(b) a maximum amount of a class of damages that may be awarded by the Tribunal under an order in relation to residential building work;

(c) a maximum amount that may be awarded by the Tribunal, under an order in relation to residential building work, for any other reason.

35. Section 84 amended (Members of panels disqualified if interested)

Section 84 of the Principal Act is amended as follows:

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Part 6 – Tasmanian Civil and Administrative Tribunal Act 2020 Amended

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**PART 6 – TASMANIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

37. Principal Act

In this Part, the *Tasmanian Civil and Administrative Tribunal Act 2020** is referred to as the Principal Act.

38. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of *relevant Board or Tribunal* the following definition:

Residential Building Dispute stream means the Residential Building Dispute stream established by clause 1 of Part 9 of Schedule 2;

39. Schedule 1 amended (Relevant Acts)

Schedule 1 to the Principal Act is amended by inserting after item 32 the following item:

32A. The *Residential Building Work Contracts and Dispute Resolution Act 2016*.

40. Schedule 2 amended (General Division)

Schedule 2 to the Principal Act is amended as follows:

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(a) by inserting the following paragraph after paragraph (z) in clause 1(1) of Part 3:

(za) the *Residential Building Work Contracts and Dispute Resolution Act 2016*;

(b) by inserting the following Part after clause 13 in Part 8:

PART 9 – RESIDENTIAL BUILDING DISPUTE STREAM

1. Residential Building Dispute stream

There is a stream of the Division to be known as the Residential Building Dispute stream.

2. Functions and powers allocated to Residential Building Dispute stream

The functions and powers of the Tribunal in relation to the *Residential Building Work Contracts and Dispute Resolution Act 2016*, including the functions and powers conferred or imposed on the Tribunal by regulations, determinations or other instruments made under that Act, are allocated to the Residential Building Dispute stream.

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3. Composition of Tribunal in relation to Residential Building Dispute stream

(1) If proceedings relate to the functions or powers of the Tribunal allocated to the Residential Building Dispute stream, the Tribunal is not to be constituted, in whole or in part, in relation to the proceedings by a person or persons other than –

(a) a legally qualified member who is assigned to the stream; or

(b) a legally qualified member who is assigned to the stream and not more than 4 other members, each of whom is assigned to the stream and is either a legally qualified member or has expertise in the subject matter to which the proceedings relate, which may include any of the following:

(i) architecture;

(ii) building;

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- (iii) building services design;
- (iv) building surveying;
- (v) engineering;
- (vi) environmental and public health;
- (vii) land use planning;
- (viii) local government;
- (ix) plumbing;
- (x) science.

(2) In determining for the purposes of this clause the members who are to constitute the Tribunal in relation to proceedings in the Residential Building Dispute stream, the President is to have regard to –

- (a) the nature of the issues likely to be involved in the proceedings; and
- (b) the particular expertise of each proposed member; and
- (c) the degree of complexity of the matters to which

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the proceedings relate;
and

- (d) the need for the Tribunal's affairs to be conducted expeditiously and efficiently.

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