

Dispute Resolution

Within the Residential Building
(Miscellaneous Consumer Protection Amendments) Bill 2022

The Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022 will update and amend key Acts within Tasmania's Building Regulatory Framework to provide additional protections for owners undertaking residential building work. The Bill focuses on three priority areas, including dispute resolution, addressing defective building work, and accountability of statutory office holders.

This Infosheet provides information on the Dispute Resolution provisions of the Bill, which can be found at Parts 5 and 6 of the Bill.

Current Mediation and Adjudication Process

The *Residential Building Work Contracts and Dispute Resolution Act 2016* (the Contracts Act) is the Act which regulates residential building contracts and provides mechanisms for the resolution of disputes relating to these contracts. Currently, the Contracts Act provides for the resolution of disputes via mediation and adjudication.

A party to residential building work may lodge a notice of dispute relating to the residential building work contract or the performance of the work under such a contract. This notice then commences the mediation process. The Contracts Act also provides that an owner may make an application for adjudication in relation to a work-completion claim if the owner is of the opinion that the residential building work has not been satisfactorily completed.

Work-completion claims may only be served by the owner within the period of 12 months after the last day on which any residential building work was performed under the contract. In determining an adjudication application, an expert panel may make orders for the completion of the residential building work, or other associated orders relating to the work completion.

The adjudication processes within the existing Act have not functioned as intended, despite the promotion of this service to consumers, industry bodies and other relevant stakeholders. Due to the limited opportunities for recourse relating to the disputes, affected consumers have instead chosen to pursue civil action against the building contractor, often resulting in costly and protracted legal arguments.

A new proposed role for the Tasmanian Civil and Administrative Tribunal (TASCAT)

The recently established Tasmanian Civil and Administrative Tribunal (TASCAT) presents an opportunity to improve the existing dispute resolution framework of the Contracts Act, by providing the TASCAT with original jurisdiction for residential building work dispute matters. This will bring Tasmania in line with other jurisdictions and will be an important step in providing a more timely and cost-effective dispute resolution pathway.

The changes proposed within the Bill would provide that a party to a dispute will be able to lodge a notice of dispute with the TASCAT if mediation, by a mediator appointed by the Director of Building Control, has failed to resolve the dispute to the satisfaction of the parties.

Proposed jurisdiction of the TASCAT

The Bill amends the Tasmanian Civil and Administrative Appeals Tribunal Act 2020 (the TASCAT Act) to establish a new stream under the General Division of the Tribunal. This stream will be called the Residential Building Dispute Stream and will have original jurisdiction for matters (as well as some discrete review powers) within the Contracts Act. The Tribunal's composition for Residential Building Dispute matters will be similar to its constitution for matters under the existing Resource Management and Planning Appeals Stream.

The Tribunal will have the power to determine a range of matters, including:

- If residential building work is incomplete or is deficient;
- The work has not been completed to the standard, or using the materials, required under the contract;
- If the work has caused, or resulted in, damage to any building, structure or residential building work;
- If residential building work complies with the requirements of a relevant Act, such as permits, certificates and compliance orders under the Building Act; and
- Disputes relating to the terms of a contract.

The Bill provides that the TASCAT does not have jurisdiction to determine matters in the following circumstances:

- The matter is, or has been, the subject of an adjudication application under the *Building and Construction Security of Payment Act 2009*;
- Matters which are, or have been, determined by a the Magistrates Court or other court of competent jurisdiction;
- Matters which are the subject of a work-completion claim under the existing framework; and
- Matters relating to contracts which were entered into prior to 1 July 2021.

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Under the Bill, TASCAT will also have the power to review certain decisions made by the Director under the Contracts Act relating to mediation.

Processes

The Bill provides that a residential building work dispute notice may be lodged with the TASCAT if the parties to the dispute have attempted mediation and a certificate of mediation has been issued by the mediation panel appointed by the Director. A Building Dispute Application must then be submitted to the TASCAT, which is an application for the commencement of proceedings.

Proposed Orders of the Tribunal

The Bill will provide the Tribunal with powers in addition to existing powers within the TASCAT Act. These include the power to make orders such as:

- Orders relating to the payment of a sum of money found owing to a party to proceedings, or that the Tribunal considers reasonable to award as damages or restitution;
- Orders for the repayment of money paid by a party to proceeding outside of the terms of a contract;
- Orders to rectify or complete residential building work;
- Monetary orders requiring a party to pay the reasonable costs required for another person to complete or rectify work;
- Orders relating to the contract, including the voiding or variation of a term of a contract; and
- Any other order the Tribunal considers fair or reasonable.

These changes will deliver a significant reduction in time and costs to consumers seeking rectification of defective work where other methods of mediation have failed.

How to Have Your Say

For full details on how to Have Your Say in relation to this Bill, [click here](https://www.justice.tas.gov.au/community-consultation) or visit: <https://www.justice.tas.gov.au/community-consultation>.

Submissions close **5 August 2022**.

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