

Accountability of Statutory Office Holders

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 Accountability of Statutory Office Holder provisions of the Bill, which can be found at Part 2 of the Bill.

Existing Role of Statutory Office Holders

The Tasmanian Building Regulatory Framework is reliant on all people operating within the Building Regulatory Framework playing their part to ensure a safe and compliant built environment.

Recent experiences have brought to light occasions where existing protections of the framework may have been inadequate, resulting in unacceptable risks to health, safety and amenity, in addition to the potential for substantial financial loss.

One example included a number of significant non-compliances with both the Building Act and the National Construction Code. In some instances, these non-compliances may have presented a threat to occupant and community safety, resulting in this review of what options are available to strengthen the accountability and roles of statutory office holders within the state's building regulatory framework.

The Role of Councils

The role of councils in building assessment, approval and inspections has evolved over time. However, councils as a body corporate, their General Managers and the officers appointed as 'Permit Authorities', continue to have important roles in granting approvals and for ensuring general compliance regarding building and construction in their local government area.

The *Local Government Act 1993* provides the framework for councils to plan for, develop and manage municipal areas in the interests of their communities.

To achieve this objective, councils have been given wide powers within the *Building Act 2016* (the Building Act) for dealing with approvals of building work and for enforcement when there are examples of non-compliance within their municipality.

The Act also provides for specific roles within a council, with distinct and separate responsibilities regarding approvals, compliance and enforcement.

Permit Authorities

Permit authorities approve permits for building, plumbing and demolition work as part of their duties to ensure that the Building Act is complied with.

Each council must appoint a permit authority. The permit authority may be one or more people, appointed by a General Manager of a council in Tasmania.

The permit authority is usually an employee of the council, however they may also be employed by another council and carry out the role through resource sharing arrangements.

Licensing of permit authorities was introduced in 2017 along with changes to the *Occupational Licensing Act 2005*, and they are a class of building services provider along with building surveyors and designers.

The permit authority has many important functions and powers, including:

- receiving and assessing permit applications and checking them for completeness and compliance;
- granting or refusing permits;
- checking to ensure that work performed under a permit is carried out by an appropriately qualified person;
- issuing or refusing a permit of substantial compliance for building work performed without a permit;
- placing conditions on permits;
- issuing notices and orders to rectify noncompliant or illegal work, including:
 - Building or Plumbing Notices;
 - Building or Plumbing Orders;
 - Demolition Orders;
- following up on non-compliance by:
 - enforcing building orders issued by a building surveyor;
 - serving infringement notices;

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Postal Address, PO Box 56, ROSNY PARK TAS 7018
Phone: 1300 654 499
Email: cbos.info@justice.tas.gov.au Visit: cbos.tas.gov.au

- assisting in preparing a prosecution by the council;
- recovering reasonable costs and expenses from a person served with a building order.

With this range of functions and powers, the permit authority plays a significant role in the safety, health and amenity of Tasmania's built environment.

However, the permit authority is a council-appointed person, usually an employee, and therefore can be directed by council management to either take action or not to take action. In these circumstances, disciplinary action by the Administrator of Occupational Licensing under the *Occupational Licensing Act 2005* against an individual permit authority licensee may be inappropriate where they are acting under the order or supervision of their superiors.

Consolidated Responsibilities of Permit Authority on the Council

The Bill proposes to consolidate responsibilities of the roles of Permit Authority on the council, so that the responsibility of the permit authority functions sit with the council as a body corporate. This will address a key issue regarding the appropriateness of the regulator taking disciplinary action, where necessary, against the permit authority in cases where the permit authority may have failed to exercise their powers or functions.

Minister May Direct Permit Authority

The Bill provides that the Minister for Workplace Safety and Consumer Affairs may direct a permit authority, or a council, to exercise any of their respective functions under the Building Act, if the Minister is satisfied that the permit authority has not satisfactorily performed its functions.

This amendment will resolve situations where the council refuses to take prompt and appropriate action for the protection of consumers, residents or the public. In such circumstances, where the Minister is satisfied that the circumstances warrant it, the Minister may then direct the council to carry out their functions within a specified time.

How to Have Your Say

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

Submissions close **5 August 2022**.

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