

CLAUSE NOTES

Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022

PART 1 – PRELIMINARY

Clause 1 Short title

Specifies the name of the proposed Act as being the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*.

Clause 2 Commencement

Specifies that the Act commences on a day, or days, to be proclaimed.

PART 2 – BUILDING ACT 2016 AMENDED

Clause 3 Principal Act

Specifies that, within this part, the *Building Act 2016* is referred to as the Principal Act.

Clause 4 Section 4 amended (Interpretation)

Omits “general manager” from the definition of “authorised person”.

Clause 5 Section 8 amended (Delegation)

Amends section 8(1) of the Principal Act to provide that the Minister may not delegate the Minister’s powers and functions under section 27B.

Amends section 8(3) to provide that a council may not delegate the powers and functions of permit authority.

Omits section 8(4) which currently provides for the delegation of the general manager’s powers and functions under the Principal Act.

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

Amends section 16(g) by omitting subparagraph (ix), which currently provides for the Director of Building Control to audit the performance of general managers in respect of building work, plumbing work or demolition work.

Clause 7 Section 24 substituted

24. Who is a permit authority

Replaces section 24 of the Principal Act with a new section to provide, at subsections (1) and (2):

- that the council of a municipal area is the permit authority for that municipal area;
- that the council of a municipal area must be licensed as an entity under the *Occupational Licensing Act 2005*;
- that the functions and powers of the permit authority only be carried out by:
 - the licensed person nominated by the council under the *Occupational Licensing Act 2005*; or
 - a person appointed as permit authority by the Director of Building Control under subsection (6) of this section; or
 - the Director of Building Control if a notice has been issued by the Minister under subsection (7) of this section; or
 - a person authorised to perform the functions by order of the Minister under section 27B(3).

Subsections (3) to (5) then provide:

- that any function or power performed or exercised by a person not referred to under subsection (2)(b) of this section be invalid, unless the Director of Building Control determines that the actions are to be valid, and publishes such determination in the *Gazette*. This determination by the Director may relate to past or future functions of the permit authority.

Subsections (6) to (8) provide:

- that, if the council ceases to hold a licence as required under subsection (2), or there ceases to be a licensed person as required under the *Occupational Licensing Act 2005*, the Director of Building Control may appoint a person as the permit authority for that area; and
- that the council be liable for reasonable costs incurred in the performance of the permit authority functions unless the Director specifies otherwise.
- The Minister may also appoint the Director of Building Control as the permit authority for one or more municipal areas via notice in the *Gazette*, with this appointment subject to terms and conditions as specified in the relevant notice.
- The Director, if appointed by the Minister, may subdelegate functions or powers of a permit authority if the notice of appointment does not specifically prohibit subdelegation.

Clause 8 Section 25 amended (Functions of permit authorities)

Amends section 25 of the Principal Act to insert additional functions for the permit authority of a municipal area. The additional functions are to, as far as is reasonably practicable:

- ensure that owners within the relevant municipal area are informed of their duties under the Principal Act in relation to building, plumbing and demolition work and maintenance of buildings; and

- make itself aware of building, plumbing, demolition work, and the use of occupation of buildings, within the municipal area.

Additional functions include:

- ensuring that proceedings are instituted against persons failing to comply with the Principal Act; and
- enforcing relevant orders issued by building surveyors, if appropriate.

These functions are currently provided to 'councils' under section 41 of the Principal Act, which is to be repealed under clause 11 of this Bill.

Clause 9 Section 27 amended (Record of permit authority)

Amends section 27(3) of the Principal Act in relation to access to permit authority records required to be kept under the Principal Act by omitting “an employee of the council that appointed the permit authority” from paragraph (b) and substituting “an employee of the council, if access to the information is necessary as part of his or her employment”. This provision is to provide that a council employee may access records required to be kept by the permit authority, if it is necessary for their employment.

Clause 10 Section 27A and 27B inserted

Section 27A. Director of Building Control may recommend Minister to direct permit authority

Inserts section 27A in Division 2 of Part 3 of the Principal Act to provide that:

- If the Director of Building Control believes that a permit authority has not satisfactorily performed a function of a permit authority, the Director may recommend to the Minister that the Minister make an order directing the permit authority to perform the function or exercise a power.
- Before making a recommendation the Director must notify the permit authority, set out the reasons for the intended recommendation, and afford the permit authority an opportunity to make a submission with respect to the prospective recommendation.
- If after considering the submissions of a permit authority under this section, the Director believes that the permit authority has not satisfactorily performed a function, the Director may then give a written recommendation to the Minister, specifying the reasons why the recommendation has been made and a summary of submissions made by the permit authority in respect of the recommendation.

Section 27B. Minister may direct permit authority

Inserts section 27B in Division 2 of the Principal Act to provide that:

- If the Minister is satisfied that a permit authority has not satisfactorily performed a function, or power of a permit authority under this Act, the Minister may direct the permit authority by order to perform the function

within a specified time; or to carry out such acts as are necessary to enable the function to be carried out.

- The Minister may make this order:
 - on their own initiative if it is to protect public health or safety, or to prevent significant damage to safety; or
 - in any other case on the recommendation of the Director as provided under section 27A.
- The Minister may also provide an opportunity for the permit authority to provide a submission prior to making an order.

Section 27B inserted also provides, at subsections (4) – (5), that:

- If an order is not complied with, the Minister may:
 - take any action that the Minister thinks is reasonable to ensure that the function or power of the permit authority is performed or exercised;
 - authorise another person to take action to see that the function or power is performed or exercised; and
 - recover reasonable costs incurred in the performing of the function from the permit authority.

Section 27B(6) provides a penalty of a fine not exceeding 500 penalty units for failure to comply with an order of the Minister.

Clause 11 Section 41 Repealed

Repeals section 41 of the Principal Act (Councils). These functions are provided to the permit authority under clause 8 of this Bill.

Clause 12 Section 70 amended (Works on contaminated or undrainable premises)

Amends section 70 of the Principal Act to omit “general manager” and substitute “permit authority” from subsections (1) and (2), in relation to who may be satisfied of the work on contaminated or undrainable premises.

Clause 13 Section 73 amended (Works involving, or in proximity of, existing drains)

Amends section 73 of the Principal Act to omit “general manager” and substitute “permit authority” from subsections (1), (2) and (3), in relation to responsible persons for providing consent for work involving or in proximity to existing drains.

Clause 14 Section 209 amended (Rectification of defective building work)

Amends section 209(a) of the Principal Act to extend time frames by when a person who carried out building work that is defective work must have the work rectified at their own cost from “any time before the first anniversary” to “any time before the second anniversary” of the issue of a certificate of completion for both notifiable building work and permit building work.

Clause 15 Section 209A inserted

209A. Defective work order

Inserts section 209A in Part 15 of the Principal Act to provide that:

- The relevant building surveyor, or in certain circumstances the Director of Building Control, may issue a defective work order to the responsible person in respect of the work, or, if unable to issue the order to that person, the owner of the premises where the work is located, requiring that the defective work be rectified.

Subsection (2) provides that a defective work order must be issued if the work has been certified, either by the relevant building surveyor or the Director of Building Control, under section 209(b) of the Principal Act.

Subsection (3) provides that the defective work order be in a form approved by the Director.

Subsection (4) provides that a defective work order may only be issued if:

- a certificate of completion (notifiable building work), or a certificate of completion (permit building work), has been issued in respect of the work; and
- it has been less than 2 years since the abovementioned certificate of completion has been issued.

Subsection (5) provides that a defective work order:

- must specify the period in which the defective work must be rectified;
- is to specify the defective work to be rectified; and
- may specify conditions regarding how the work be rectified.

Subsection (6) provides that the Director of Building Control may issue a defective work order if the relevant building surveyor in respect of the work is no longer a building surveyor.

Subsection (7) requires that a copy of a defective work order is to be provided to the relevant permit authority and the Director of Building Control, as soon as practicable after the order has been issued.

Subsection (8) provides that a defective work order must be complied with, and provides a penalty not exceeding 100 penalty units (natural person) or 500 penalty units (body corporate).

Clause 16 Section 237 amended (Building notice)

Amends section 237 of the Principal Act to omit “a temporary structure” and substitute “a temporary structure, or a builder performing work on the premises or temporary structure” in relation to who may be subject to a building notice.

Clause 17 Section 241 amended (Dilapidated building report)

Amends section 241 of the Principal Act by omitting subsection (1) and substituting a new subsection (1) to provide that the permit authority for the municipal area now be able to inspect potentially dilapidated buildings and prepare a dilapidated building report, rather than the general manager.

Amends section 241 of the Principal Act to omit “general manager” and substitute “permit authority” in subsections (2)(b), (2)(c) and (3).

Clause 18 Section 242 amended (Dilapidated building notice)

Amends section 242 of the Principal Act to omit “general manager” and substitute “permit authority” in subsection (1) in relation to who may issue a dilapidated building notice.

Clause 19 Section 245 amended (Emergency order)

Amends section 245 of the Principal Act to omit “general manager” and substitute “permit authority” in subsections (1) and (6), in relation to the responsibility for making, revoking and providing copies of an emergency order, and to omit subsection (7).

Clause 20 Section 247 amended (Building order relating to illegal building work)

Amends section 247 of the Principal Act to omit “performed” and substitute “performed, or a builder performing building work” in relation to who may be subject to a building order relating to illegal building work.

Clause 21 Section 251 amended (Court Orders)

Amends section 251 of the Principal Act to omit “general manager” and substitute “permit authority” in subsection (1) in relation to who apply to a court for an order in relation to the contravention of the Principal Act or a notice, order or determination of the Principal Act.

Clause 22 Section 253A inserted

253A Contents of orders

Inserts section 253A after section 253 of the Principal Act to provide that:

- An order under Division 3 of Part 18 of the Principal Act is to specify the period within which the order is to be complied with.
- If an order does not specify a period, the relevant permit authority may amend the order to specify such a period.
- If a permit authority amends an order the permit authority is to notify the person who made the order, and the person who was served the order,

informing them of the amendment, and the amendment is to take effect on a day specified by the permit authority.

Subsection (4) provides that the permit authority may amend orders by virtue of this section whether the order was made prior to the commencement of the section.

Clause 23 Section 265 amended (Failure to comply with emergency, building or plumbing order)

Amends section 265 of the Principal Act to provide that, if a person fails to comply with a building order made by a building surveyor, the building surveyor must notify the Director of Building Control of this failure and then the building surveyor is to notify the relevant permit authority.

Clause 24 Section 267 amended (Demolition order)

Amends section 267 of the Principal Act to:

- omit “council” and substitute “permit authority for a municipal area” in subsection (1) in relation to what party may serve a demolition order;
- omit “a permit authority” and substitute “the permit authority” in subsection (1)(c) in relation to certain circumstances whereby a demolition order may be served;
- omit “council” and substitute “permit authority for a municipal area” in subsection (2) in relation to when a demolition is to be served; and
- omit “council” and substitute “permit authority for a municipal area” in subsection (3) in relation to the entry onto land to facilitate demolition.

Clause 25 Section 272 amended (Police assistance)

Amends section 272 of the Principal Act to omit “general manager” and substitute “permit authority” in relation to who may request the assistance of a policy officer to evacuate a builder or structure under an emergency order, or to remove persons from a building or structure in respect of which an order is in effect.

Clause 26 Section 275 amended (Compliance with Act in certain circumstances)

Amends section 275 of the Principal Act to:

- omit “general manager” and substitute “relevant permit authority” at subsection (1) in relation to the parties which may direct that work performed in accordance with an emergency order requires a building permit;
- omit “general manager” and substitute “relevant permit authority” at subsection (2) in relation to the parties which may direct that work performed under a building order or demolition order is not required to comply with the Principal Act.

Clause 27 Section 277A inserted

277A. Appeals relating to defective work orders

Inserts section 277A after section 277 of the Principal Act to provide that the owner or person issued with an order under section 209A may appeal to the Tasmanian Civil and Administrative Tribunal against the issuing of a defective work order in respect of defective building work.

Clause 28 Section 281A inserted

281A Appeals relating to Director of Building Control

Inserts section 281A after section 281 of the Principal Act to provide that an owner, or a building services provider, licensed builder, or licensed plumber engaged by the owner, may appeal to the Tasmanian Civil and Administrative Tribunal against a decision of the Director of Building Control under Part 15 of the Principal Act (Defective Work).

Clause 29 Section 286 amended (Onus of proof in certain cases)

Amends section 286 of the Principal Act to omit “general manager” and substitute “relevant permit authority” at subsections (1) and (2) in relation to onus of proof in respect of building orders issued with regard to fire upgrading notices.

Clause 30 Section 308 amended (Habitation of certain buildings)

Amends section 308 of the Principal Act to omit “general manager” and substitute “permit authority” at subsection (2) in relation to the responsible party for providing consent for the inhabitation, or a period that exceeds 30 days, of a building which is not built as a dwelling.

Clause 31 Section 309 amended (restriction on use of land)

Amends section 309 of the Principal Act to omit “general manager” and substitute “permit authority” in relation to who may provide consent for the erection of a fence, building or any other structure which will restrict use of land.

Clause 32 Section 324 amended (Infringement notices)

Amends section 324 of the Principal Act to omit “the relevant general manager or” from subsection (4)(a) in relation to payments made to a council in respect of an infringement notice issued by certain persons.

Clause 33 Section 325 amended (Immunity from liability)

Amends section 325 of the Principal Act to omit “general manager or” twice from subsection (2) regarding immunity from liability.

Clause 34 Section 330B inserted

330B Transitional and savings provisions in respect of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*

This clause inserts section 330B after section 330A of the Principal Act, to provide transitional and savings provisions to make for an action, a notice or an order given, made or issued by a general manager before commencement of this Bill is to be an action, notice or an order given by the permit authority for the municipal area on the same terms and conditions.

This is to ensure that orders made by a general manager prior to the commencement of Part 2 of this Bill continue to have valid effect following commencement.

Clause 35 Schedule 1 amended (Information Registers)

Omits “or general manager” from Clause 1 (j) from Schedule 1 of the Principal Act in relation to the keeping of records relating to orders issued by a general manager.

PART 3 – BUILDING REGULATIONS 2016 AMENDED

Clause 36 Principal Regulations

Specifies that, within this part, the Building Regulations 2016 are referred to as the Principal Regulations.

Clause 37 Regulation 18 amended (Mandatory notification stages)

Inserts waterproofing of wet areas; and penetrations of fire rated construction on class 2-9 buildings, as being mandatory notification stages for the purposes of the *Building Act 2016*.

Clause 38 Regulation 61 amended (Significant works in landslip areas)

Omits “general manager” and substitutes “permit authority” at sub-regulation (4)(b) in relation to who may authorise significant works in landslip areas.

Clause 39 Regulation 83 amended (Building certificates)

Omits “general manager” and inserts “permit authority” in relation to who may certify that the relevant council does not intend to take action under the *Building Act 2016* in relation to a building.

Clause 40 Schedule 5 amended (Infringement Notice Offences)

Introduces penalty units for breaches of provisions to be inserted into the *Building Act 2016* by this Bill.

PART 4 – OCCUPATIONAL LICENSING (BUILDING SERVICES WORK) REGULATIONS 2016 AMENDED

Clause 41 Principal Regulations

Specifies that, within this part, the Occupational Licensing (Building Services Work) Regulations 2016 are referred to as the Principal Regulations.

Clause 42 Regulation 15A inserted

15A Licensed entity fees for council

Provides that fees are not payable in respect of a building services licence that is issued to a council enable the council to perform the functions of a permit authority under the *Building Act 2016*.

PART 5 – OCCUPATIONAL LICENSING ACT 2005 AMENDED

Clause 43 Principal Act

Specifies that, within this part, the *Occupational Licensing Act 2005* is referred to as the Principal Act.

Clause 44 Section 3 amended (Interpretation)

Omits “municipal” from the definition of *licensed entity*.

Omits “municipal” twice occurring from the definition of *licensed person*.

These amendments to remove the word “municipal” throughout this Part of the Bill are to align the definition of “council” with standard definitions within other Acts including the *Local Government Act 1993* and the *Acts Interpretation Act 1931*.

Clause 45 Section 37C amended (Certain organisations may apply for building services licence)

Omits “municipal” from subsection (1)(c) and twice in subsection (3)(c).

Inserts, after subsection (5) the following subsections:

Subsection (6), which provides that a building services licence in respect of a council of a municipal area does not cease to have effect if the council notifies the Administrator of Occupational Licensing under section 37D(2) of the Principal Act; or a person has been appointed as the permit authority for the municipal area under section 24 of the *Building Act 2016*.

Subsection (7), which provides that nothing in section 37C prevents a person from being a licensed person in respect of one or more licensed entities if each of those licensed entities is a council.

Subsection (8), which provides that on the commencement of Part 2 of this Bill, a council is taken to have been issued with a building services licence under this section for a period of 24 months unless sooner suspended or cancelled; and within 7 days of the commencement of that Part the council must nominate a person employed or engaged who holds a building services licence to be the licensed person for the council.

Clause 46 Section 37D amended (Continuation of Building services licence held by certain organisations)

Omits “licensed entity” and inserts “licensed entity; or;” at paragraph (c).

Inserts paragraph (d) which provides that, in relation to circumstances whereby the Administrator of Occupational Licensing is not required to cancel a licence, such a circumstance exists if the licensed entity is a council of municipal area, a person has been appointed, under section 24 of the *Building Act 2016*, as the permit authority for the municipal area.

Clause 47 Section 39 amended (Vicarious liability)

Omits “municipal” from section 39(1A)(c).

Clause 48 Section 90 amended (Proper cause for disciplinary action)

Amends section 90 of the Principal Act to provide that there is proper cause for disciplinary action against a contractor, practitioner or building services provider if the Administrator is satisfied:

- that the prescribed work of the relevant licensee is subject to compliance orders under the *Building Act 2016* or the *Residential Building Work Contracts and Dispute Resolution Act 2016*; or
- that the relevant licensee has failed to comply with an order of the Tasmanian Civil and Administrative Tribunal.

PART 6 – RESIDENTIAL BUILDING WORK CONTRACTS AND DISPUTE RESOLUTION ACT 2016 AMENDED

Clause 49 Principal Act

Specifies that, within this part, the *Residential Building Work Contracts and Dispute Resolution Act 2016* is referred to as the Principal Act.

Clause 50 Section 4 amended (Definitions)

Omits “expert panel member” from the definition of “member of a panel”.

Clause 51 Section 11 amended (Functions and powers of Director)

Amends section 11 of the Principal Act to provide an additional function of the Director of Building Control. This additional function is to:

- to advise, and make recommendations to, the Minister in respect of matters relating to residential building work disputes generally.

Clause 52 Section 11A inserted

11A Director may make determination in certain circumstances

Inserts section 11A after section 11 of the Principal Act, which provides that the Director may make determinations in respect of:

- the provisions that must be included within a residential building work contract;
- the details provided within, and the timing of, a notice of dispute;
- the qualifications required to be held by a person for the person to be appointed to a mediation panel; and
- any other matter relating to a notice of dispute, or mediation panel, not otherwise specified in the Act.

For a determination to be made under this section it:

- must be published before it comes into effect;
- is to specify the date on which it takes effect; and
- must remain published while in effect.

Subsection (6) also provides that a notice made under section 14(2) of the Principal Act that is in force before the commencement of section 53 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022* is taken to be a determination made under this section.

Clause 53 Section 14 amended (General contents of contracts)

Amends section 14 of the Principal Act to provide that a residential building work contract must set out provisions specified in a Director's determination made under section 11A.

Clause 54 Section 45 amended (Interpretation of Part 9)

Amends section 45 of the Principal Act to:

- Omit "a building contractor, and an owner," from the definition of *dispute* and substitute "an owner and either a building contractor or a prescribed licensed professional".
- Omit "owner" and substitute "owner; or" from paragraph (c).

- Insert paragraph (d) to provide, in relation to the definition of *dispute*, that another matter relating to residential building work, or residential building work contracts, may be prescribed for the purposes of the definition.
- Insert a definition for *prescribed licensed professional*, for the purposes of this section, which provides “a class of building services work within the meaning of the *Occupational Licensing Act 2005*, means a person of a class of persons who are prescribed as the licensed professionals for that class of building services work”.

Clause 55 Section 47 amended (Lodging of notice of dispute)

Amends section 47 of the Principal Act to provide a limitation on when a notice of dispute may be lodged to the Director of Building Control with respect to a dispute. This limitation is 6 years after practical completion, or, if there is no date of practical completion, then 6 years after the day on which the residential building work was last performed by, or on behalf of, the building contractor.

A notice of dispute must also comply with the provisions of the determination under section 11A.

Clause 56 Section 48 amended (Acceptance of notice of dispute lodged with Director)

Amends section 48 of the Principal Act to provide that the Director of Building Control may request additional information in respect of the dispute to which the notice relates from one or more parties to the dispute.

Omits paragraph (a) from subsection (2) and inserts paragraphs (a), (ab), (ac) to provide that the Director must reject a notice of dispute if:

- it has not been lodged within 6 years since completion; or
- a notice of dispute has already been issued; or
- the matter is being, or has already been, adjudicated under the *Building and Construction Security of Payment Act 2009*.

Inserts paragraph (ab) after paragraph (a) in subsection (3) to provide that the Director may reject a notice of dispute if the notice does not contain information required under the Act to form part of the notice.

Inserts subsection (6) after subsection (5) to provide that, if the Director decides to reject part of a notice of dispute, the Director is to clearly identify the part of the notice that has been rejected.

Clause 57 Section 51 amended (Panel to mediate dispute)

Amends section 51 of the Principal Act to provide that a mediation panel established to mediate a dispute may request the parties to a dispute to provide information that may be relevant to the resolution of the dispute within a specified timeframe. Also, a mediation panel may refuse to proceed due to a party that fails

to comply with a direction; fails to comply with a condition imposed; or a reason specified in a determination or by the mediation panel.

Clause 58 Section 52A Inserted

52A Completion of mediation

Inserts section 52A after section 52 of the Principal Act, to provide that if a settlement is reached as a result of mediation, the mediation panel must:

- issue a certificate of mediation (agreement);
- prepare a document setting out the terms of the settlement, which is to be registered under section 53; and
- provide to the Director and each party to the dispute a copy of the certificate issued under this section, and the document setting out the terms of the settlement as required by this section.

If parties to the dispute do not reach a settlement as a result of mediation, the mediation panel must:

- issue a certificate of mediation (dispute not resolved) in respect of the settlement; and
- within 2 business days after the certificate is issued, provide to the Director and each party to the dispute a copy of the certificate so issued.

The certificates and documents prepared for the purposes of this section must be in accordance with a Determination made under section 11A of the Principal Act in force when the certificate or document is issued or prepared.

Clause 59 Section 52 amended (Director may issue guidance materials)

Amends section 52 of the Principal Act by omitting subsection (2) which provided that the mediation panel is to have regard to a Guide to Standards and Tolerances. This requirement for the mediation panel to have regard to this Guide, by virtue of clause 57 of this Bill, relocated to section 51 of the Principal Act.

Clause 60 Section 53 amended (Where parties reach settlement within relevant period)

Amends section 53 of the Principal Act to:

- omit, from subsection (3) “and the mediation panel”, in relation to who must sign a document setting out the terms of a settlement; and
- omit subsection (4) providing that a signed settlement is binding and may be enforced in a court of competent jurisdiction.

Clause 61 Section 55A inserted

55A Costs of mediation under this Part

Provides that unless agreed by the parties, the costs of mediation under this Part are to be shared equally by the parties.

Clause 62 Part 10 Substituted

Repeals Part 10 of the Principal Act and substitutes: "Part 10 – Matter May Be Determined by Tasmanian Civil and Administrative Tribunal".

By doing so, it inserts:

56 Interpretation of Part

Provides that for the purposes of this Part:

- "relevant notice of dispute" means a notice that is lodged under section 47(1) in relation to residential building work that forms a matter that is within the jurisdiction of the Tribunal to review or determine, as a result of this Part.
- "TASCAT Act" means the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- "Tribunal" means the Tasmanian Civil and Administrative Tribunal.

57 TASCAT to review certain decisions

Provides for what matters the Tribunal has jurisdiction to review under the Act:

- A decision of the Director under section 48 to refuse to accept a notice of dispute;
- A decision of the Director under section 53(1) to register, or refuse to register, a settlement in respect of a dispute;
- A decision prescribed to be a reviewable decision for the purposes of this section;
- a decision referred to in this subsection that has been referred to the Tribunal under section 63.

Provides that, for the avoidance of doubt, the review by the Tribunal of any of the above listed matters is within the review jurisdiction of the Tribunal and is allocated to the Civil and Consumer stream of the General Division of the Tribunal.

58 TASCAT to determine certain matters

Provides that the Tribunal has the jurisdiction to determine the following matters:

- 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;
- whether residential building work complies with the requirements of the Act or another Act that applies to the work or to the building where the work is to be performed;
- a dispute between the parties to a residential building work contract as to the terms of the contract including, but not limited to: the legal and practice effect of one or more terms of the contract; or whether something is or is not a term of the contract.
- A matter referred to in this subsection that has been referred to the Tribunal under section 63. Section 63 sets out the effect of TASCAT proceedings on a residential building work contract.

It also provides that the Tribunal only has jurisdiction to determine a matter as outlined above if:

- there is a relevant notice of dispute in respect of the matter; and
- one of the following applies in respect of the matter:
 - the Director has rejected the notice of dispute under section 48(3)(d);
 - a settlement has been registered under section 53; or
 - a certificate has been issued under section 52A.

It further provides that, residential building work is taken not to have been completed satisfactorily if:

- the work has not been completed or is deficient; or
- the work has not been completed to the standard, or using the materials required under the contract; or
- a statutory warranty that applies in relation to the work has been breached; or
- the Tribunal has made an order in respect of the residential building work and the order has not been complied with; or
- a requirement under another Act, that applies in relation to the work, has not been complied with. Such requirements may be (but are not limited to):
 - relevant certificates, permits, notices or orders issued under the *Building Act 2016*; or
 - relevant determinations made by the Director under the *Building Act 2016*;
- the work has caused, or resulted in, damage to any building, structure or residential building work.

Subsection (4) provides that, for the avoidance of doubt, such matters are within the original jurisdiction of the Tribunal and are allocated to the Civil and Consumer stream of the General Division of the Tribunal.

59 TASCAT not to determine certain matters

Provides that the Tribunal does not have the jurisdiction to determine:

- any matter that is the subject of an adjudication application under the *Building and Construction Industry Security of Payment Act 2009* where either that application has not been rejected or withdrawn or the matter has been resolved or determined under that Act;
- any matter that is the subject of proceedings under another Act, if those proceedings have not been completed, finalised or otherwise discontinued under that Act;
- any matter that is the subject of a work-completion claim or adjudication application, under this Act as in force immediately before the commencement of Part 6 of this Bill, if –
 - the person served with the claim has complied with the claim in accordance with this Act, as in force immediately before the commencement of Part 6 of this Bill; or
 - an expert panel has issued a declaration under this Act, as in force immediately before the commencement of Part 6 of this Bill, that the residential building work to which the matter relates has been completed satisfactorily;
- any matter that relates to a residential building work contract that was entered into by the parties before 1 July 2021; or on or after this date 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.

It also provides that an exclusion of a matter from the Tribunal's jurisdiction:

- only applies to the part of the residential building work to which an adjudication application under the *Building and Construction Industry Security of Payment Act 2009* has been made; and
- does not prevent the Tribunal from determining a matter in respect of a part of the residential building work to which the adjudication application has not been made.

Furthermore, it provides that, for the avoidance of doubt, this Act, as in force immediately before the commencement of Part 6 of this Bill, applies in respect of any matter referred to in subsection (1)(c) or (d).

60 Application of TASCAT Act to disputes

Provides that an application to the Tribunal for the determination of a matter that is within the jurisdiction of the Tribunal by virtue of this Part:

- may only be made by a party to the dispute, or mediation of the dispute, to which the matter relates; and
- must specify each proceeding and dispute resolution that has been commenced in respect of the matter; and
- must specify whether those proceedings have, or dispute resolution has, been completed, discontinued or is still in progress; and
- must include a copy of:
 - a copy of the settlement registered under section 53, if it exists;
 - a copy of the certificate issued under 52A, if it exists; and
- must, if the application relates to work that has not been completed satisfactorily, identify clearly each manner in which the applicant believes that the residential building work is taken not to have been completed satisfactorily within the meaning of section 58(3).

61 Determination of matter by Tribunal

Provides that, for the avoidance of doubt, in determining a matter that is within the jurisdiction of the Tribunal by virtue of this Part:

- the Tribunal is to take into account each of the following where applicable to the matter:
 - this Act and any other relevant Act;
 - the National Construction Code;
 - the Guide to Standards and Tolerances approved by the Director under section 82;
 - each contract, entered into in respect of the residential building work, that forms the basis of the matter, including each variation of, and amendment to, that contract;
 - each of the following notices and orders made or issued under the *Building Act 2016* in respect of the residential building work that forms the basis of the matter:
 - a defective work order made under section 209A of that Act;
 - a notice issued under Division 2 of Part 18 of that Act;
 - an order made under Division 3 of Part 18 of that Act;
 - each approval, or document, given, issued or otherwise granted:
 - in respect of the residential building work that forms the basis of the matter; and
 - under, or in accordance with, an Act.

It is also provided that section 79 of the TASCAT Act, being the section that specifies the principles governing proceedings of the Tribunal, applies in respect of the Tribunal.

Subsection (2) of this section provides that, in addition to any other power the Tribunal has under the TASCAT Act, the Tribunal may take one or more of a range of actions when determining proceedings under this Part.

This includes to:

- order the payment of a sum of money –
 - that the Tribunal has found owing to a party to proceedings; or
 - that the Tribunal considers reasonable to award a party to proceedings as damages, including exemplary damages or damages in the nature of interest; or
 - in restitution to a party to proceedings;
- order the repayment of a sum of money the Tribunal has found –
 - was paid by a party to proceedings to another party to proceedings; and
 - was paid outside the terms of a contract in force between the parties;
- order a party to proceedings, or another person specified in the order –
 - to rectify defective residential building work; or
 - to complete incomplete residential building work;
- if an order of the Tribunal is made that requires a person who is not a party to proceedings to do residential building work, order a party to proceedings to pay the other person an amount, as specified by the Tribunal, for the reasonable costs of doing that work;
- declare that a term of a residential building work contract is unjust;
- declare that a term of a residential building work contract is, or is not, void;
- vary, by order, a term of a residential building work contract;
- declare that a settlement, registered under Part 9 of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, being the Part providing for mediation, is binding and enforceable;
- specify a period, or time frame, within which an action must be taken or completed;
- make any other order the Tribunal considers fair, or reasonable, in respect of the Tribunal matter.

Subsection (3) of this section then provides, for the avoidance of doubt, that the orders provided under subsection (2)(a), (b) or (d) are monetary orders within the meaning of the TASCAT Act.

Subsection (4) of this section provides that the Tribunal may not make an order under subsection (2)(c), being an order for a person to do residential building work, if:

- the proceedings relate to whether residential building work has been completed satisfactorily; and
- an order is already in force under subsection (2)(c) in respect of the residential building work.

Subsection (5) of this section sets out certain considerations that the Tribunal may take into account when determining whether a term of a residential building work contract is unjust. This includes:

- the intelligibility of the contract generally and of the term in particular;
- 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;
- the relationship of the term to the other terms of the contract;
- whether unfair pressure, undue influence, or unfair tactics were used to obtain the consent, to the contract, or a party to the contract;
- 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;
- whether the term is unconscionable, harsh or oppressive;
- any other factor that the Tribunal considers relevant.

Subsection (6) of this section provides that, when determining whether a term of a contract is unjust, the Tribunal is not to take into account any injustice that arises from circumstances that were not reasonably foreseeable when the term was agreed to.

Subsection (7) then provides that, when making an order in respect of residential building work, the Tribunal is to take into account, if relevant:

- what, in the opinion of the Tribunal, is the reasonable price or cost, or price and cost, of the residential building work; and
- if a residential building work contract is in place in respect of the residential building work, the price or cost, or price and cost, of the residential building work specified in the contract.

Subsection (8) provides that regulations may prescribe:

- the maximum cumulative amount of damages that may be awarded by the Tribunal under an order;
- a maximum amount of a class of damages that may be awarded by the Tribunal under an order;

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

62. Impact of termination of residential building work contract

This section provides, for the avoidance of doubt, that the termination of a residential building work contract does not affect the jurisdiction of the TASCAT under this Part in respect of a matter that occurred under the contract before it was terminated.

This is to provide certainty that the Tribunal may still determine matters if the matter relates to circumstances prior to the termination of the relevant residential building work contract.

63. Effect of TASCAT proceedings on residential building work contract

This section provides that, subject to an order or decision made by the Tribunal, the commencement, or determination of proceedings, does not, of itself –

- stay, suspend or alter the relevant residential building work contract in respect of the matter to which the proceedings relate; or
- affect a right or obligation of a person under the relevant residential building work contract to which the matter relates.

64. Court may refer matters to Tribunal

This section provides that the Supreme Court, or the Magistrates Court, may refer proceedings which have been commenced within the court to the Tribunal if the court is satisfied that:

- the proceedings are within the jurisdiction of the Tribunal; and
- the Tribunal is the most appropriate authority to determine the proceedings.

Clause 63 Section 84 amended (Members of panels disqualified in interested)

Amends section 84 of the Principal Act to provide that the definition of *application* in relation to the TASCAT is a notice of dispute provided in relation to mediation under Part 9 of the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

This clause also omits subsections (4) and (5) from section 84.

Clause 64 Section 89A inserted

89A. Savings and transitional on commencement of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*

This section provides that the amendments made to the Principal Act by this Bill do not apply to residential building work contracts entered into before 1 July 2021.

PART 7 – TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED

Clause 65 Principal Act

Specifies that, within this part, the *Tasmanian Civil and Administrative Tribunal Act 2020* is referred to as the Principal Act.

Clause 66 Section 3 amended (Interpretation)

Amends the Principal Act to provide a definition for the *Civil and Consumer stream* to be established at clause 1 of Part 9 of Schedule 2 of the Principal Act.

Clause 67 Schedule 1 amended (Relevant Acts)

Amends the Principal Act by inserting the *Residential Building Work Contracts and Dispute Resolution Act 2016* into Schedule 1. Schedule 1 specifies the relevant Acts for the purposes of the Principal Act, being Acts that confer jurisdiction on the Tribunal.

Clause 68 Schedule 2 amended (General Division)

Amends the Principal Act by inserting the *Residential Building Work Contracts and Dispute Resolution Act 2016* in clause 1(1) of Part 3 to Schedule 2. The effect of this insertion is to provide that the functions and powers of the General Division of the Tribunal are allocated to the *Residential Building Contracts and Dispute Resolution Act 2016*.

This clause also inserts a new Part 9 after clause 13 in Part 8 of the Principal Act, to establish the Civil and Consumer stream of the General Division of the Tribunal.

Part 9 – Civil and Consumer Stream

1. Civil and Consumer Stream

This clause provides that there is a stream of the General Division of the Tribunal to be known as the Civil and Consumer stream.

2. Functions and powers allocated to stream to determine residential building work disputes

This clause provides that the functions and powers of the Tribunal in relation to the *Residential Building Work Contracts and Dispute Resolution Act 2016*, including

any such functions and powers imposed by regulations, determinations or other instruments made under that Act, are allocated to the Civil and Consumer Stream.

3. Composition of Tribunal in relation to Civil and Consumer Stream

This clause provides that, if proceedings relate to the functions or powers of the Tribunal allocated to the Civil and Consumer stream, the Tribunal must be constituted by:

- A legally qualified member who is assigned to the stream; or
- 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.

This clause under Part 9 also provides that, in determining the members who are to constitute the Tribunal in relation to proceedings in the Civil and Consumer stream, the President is to have regard to:

- the nature of the issues likely to be involved in the proceedings; and
- the particular expertise of each proposed member; and
- the degree of complexity to which the proceedings relate; and
- the need for the Tribunal's affairs to be conducted expeditiously and efficiently.

4. Tribunal may stay proceedings in relation to residential building work disputes

This clause provides that the Tribunal may temporarily stay proceedings in respect of jurisdiction conferred upon the Tribunal by the *Residential Building Work Contracts and Dispute Resolution Act 2016* if the Tribunal is satisfied that:

- the proceedings may be impacted by other proceedings being heard by another stream of the Tribunal; and
- that it is in the interest of natural justice, and procedural fairness, for the proceedings in the Civil and Consumer stream to not continue until the other proceedings are completed or discontinued.

5. Tribunal to inform Director

This clause under Part 9 provides that if the Tribunal makes an order in respect of a matter under the *Residential Building Work Contracts and Dispute Resolution Act 2016*, the Tribunal is to inform the Director of Building Control of the making of the order.

Clause 690 Repeal of Act

This clause provides that the Bill is repealed on the first anniversary of the day on which the last uncommenced provision of this Bill commences.