

TASMANIA

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

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**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 *Occupational Licensing (Building Services Work) Regulations 2016*, 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
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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 as follows:

- (a) by omitting paragraph (d) from the definition of *authorised person*;
- (b) by omitting the definition of *general manager*.

5. Section 8 amended (Delegation)

Section 8 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and the Minister’s powers and functions under section 27B” after “delegation”;
- (b) by inserting in subsection (3) “and its powers and functions as a permit authority” after “delegation”;
- (c) by omitting subsection (4).

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Part 2 – Building Act 2016 Amended

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

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

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Section 24 of the Principal Act is repealed and the following section is substituted: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 the municipal area.
- (2) The council of a municipal area must ensure that –
 - (a) the council is a licensed entity, under the *Occupational Licensing Act 2005*, and is authorised under that Act to perform the functions and exercise the powers of a permit authority for the municipal area; 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) subject to subsection (8)(a), the licensed person, within

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Part 2 – Building Act 2016 Amended

the meaning of the *Occupational Licensing Act 2005*, nominated by the council of the municipal area in its capacity as a licensed entity under that Act; or

- (ii) a person appointed under subsection (6) as the 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 27B.

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

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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 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 power, is to specify the period for which the determination has effect in respect of that function or power; and
 - (c) is not a determination to which section 20 applies.
- (6) If the council of a municipal area ceases to be a licensed entity under the *Occupational Licensing Act 2005*, or there ceases to be a licensed person as

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required under the *Occupational Licensing Act 2005* in respect of the council –

- (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
 - (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 specifies.
- (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 the Director is appointed to perform or exercise.
- (8) If, under subsection (7), the Minister appoints the Director of Building Control as the permit authority for one or more municipal areas –
- (a) a person employed or engaged by the relevant council of the

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Part 2 – Building Act 2016 Amended

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municipal area may not perform the functions, or exercise the powers, of a permit authority for the municipal area except with the approval of the Minister or the Director; and

- (b) the Director may subdelegate one or more functions, or powers, of such a permit authority if the notice under that subsection appointing the Director does not specifically prohibit the subdelegation of the function, or power, by the Director.

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 practicable, 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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- (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

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10. Sections 27A and 27B inserted

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

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

- (1) If the Director of Building Control believes that a permit authority has not satisfactorily performed a function of a permit authority under this Act, the Director may make a recommendation to the Minister under subsection (3) in respect of the permit authority.
- (2) Before making a recommendation to the Minister under subsection (3) in respect of the permit authority, the Director of Building Control must –
 - (a) notify the permit authority of each of the following:
 - (i) that the Director of Building Control intends to make a recommendation to the Minister under this section in respect of the permit authority;
 - (ii) the reasons why the Director of Building

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Control intends to make such a recommendation;

(iii) that the permit authority is entitled to make submissions to the Director of Building Control against the making of such a recommendation;

(iv) the period within which, and the manner in which, the permit authority may make such a submission to the Director of Building Control; and

(b) consider each submission made to the Director of Building Control by the permit authority, in accordance with the notice under paragraph (a), before making the proposed recommendation.

(3) If, after considering the submissions of a permit authority under this section, the Director of Building Control believes that the permit authority has not satisfactorily performed a function of a permit authority under this Act, the Director –

(a) may give a written recommendation to the Minister

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that the Minister make an order under section 27B in respect of the permit authority; and

(b) is to specify in the written recommendation –

(i) the reasons why the Director of Building Control has made such a recommendation in respect of the permit authority; and

(ii) a summary of the submissions made under this section by the permit authority, if any, in respect of the recommendation.

27B. Minister may direct permit authority

(1) If the Minister is satisfied that a permit authority has not satisfactorily performed a function, or exercised a power, of a permit authority under this Act, the Minister may direct the permit authority, by order –

(a) if the order relates to the performance of a function, to perform the function within a specified time; or

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- (b) to carry out such acts as are necessary to enable the specified function to be performed or the specified power to be exercised.
- (2) The Minister may make an order under subsection (1) –
 - (a) on the Minister’s own initiative, if the Minister is satisfied that the order is necessary –
 - (i) to protect public health or safety; or
 - (ii) to prevent significant damage to property; or
 - (b) in any other case, on the recommendation of the Director of Building Control under section 27A.
- (3) Before making an order under subsection (1) in respect of a permit authority, the Minister may give the permit authority 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.

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- (4) If the Minister makes an order under subsection (1) in respect of the functions or powers 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 –
 - (i) the function of the permit authority is performed; or
 - (ii) the power of the permit authority is exercised;
 - (b) authorise another person to take such action as the person considers reasonable –
 - (i) to perform the function, and exercise any relevant power, of the permit authority in accordance with this Act; or
 - (ii) to carry out such acts as are necessary to enable the function to be performed or the power to be exercised.
- (5) If the Minister, or a person authorised by the Minister, takes an action under subsection (4) in respect of the performance of a function of a permit

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authority for a municipal area, the Minister may recover from the council of the municipal area, as a debt due and owing, such reasonable costs and expenses as are incurred by the Minister or person in performing the function.

- (6) 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 repealed

Section 41 of the Principal Act is repealed.

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

Section 70 of the Principal Act is amended as follows:

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

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Part 2 – Building Act 2016 Amended

s. 13

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

Section 73 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “general manager of the council” and substituting “permit authority”;
- (b) by omitting from subsection (2) “general manager” and substituting “permit authority”;
- (c) by omitting from subsection (3) “general manager” twice occurring and substituting “permit authority”.

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

Section 209(a) of the Principal Act is amended as follows:

- (a) by omitting from subparagraph (i) “first anniversary” and substituting “second anniversary”;
- (b) by omitting from subparagraph (ii) “first anniversary” and substituting “second anniversary”.

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Part 2 – Building Act 2016 Amended

15. 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 defective building 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) The relevant building surveyor in respect of building work must issue an order under subsection (1) in respect of building work if the building surveyor, or the Director of Building Control, certified the building work as defective work under section 209(b).
- (3) An order issued under this section is to be in an approved form.

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Part 2 – Building Act 2016 Amended

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- (4) 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.
- (5) An order issued under this section –
- (a) must specify the period in which the defective work must be rectified under the order; and
 - (b) is to specify the defective work to be rectified under the order; and
 - (c) may specify conditions, requirements and restrictions on how the defective work is to be rectified under the order.
- (6) The Director of Building Control may issue an order under subsection (1) in respect of defective building work if the relevant building surveyor for the work is no longer a building surveyor.

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Part 2 – Building Act 2016 Amended

- (7) If a person issues an order under this section in respect of defective building work, the person is to provide a copy of 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.
- (8) A person issued with an order under this section in respect of defective building work must rectify the work in accordance with the order.

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.

16. Section 237 amended (Building notice)

Section 237(2) of the Principal Act is amended by omitting “a temporary structure” and substituting “a temporary structure, or to a builder performing work on the premises or temporary structure,”.

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Part 2 – Building Act 2016 Amended

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17. Section 241 amended (Dilapidated building report)

Section 241 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) If a permit authority for a municipal area believes that a building in the municipal area may be a dilapidated building, the permit authority –
 - (a) may inspect the building;
and
 - (b) is to prepare a dilapidated building report on the matter.
- (b) by omitting from subsection (2)(b) “general manager” and substituting “permit authority”;
- (c) by omitting from subsection (2)(c) “general manager” and substituting “permit authority”;
- (d) by omitting from subsection (3) “general manager” twice occurring and substituting “permit authority”.

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Part 2 – Building Act 2016 Amended

18. Section 242 amended (Dilapidated building notice)

Section 242(1) of the Principal Act is amended by omitting “general manager” and substituting “permit authority”.

19. Section 245 amended (Emergency order)

Section 245 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “general manager” and substituting “permit authority”;
- (b) by omitting from subsection (6) “general manager” and substituting “permit authority”;
- (c) by omitting subsection (7).

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

Section 247(1) of the Principal Act is amended by omitting “performed” and substituting “performed, or on a builder performing building work,”.

21. Section 251 amended (Court orders)

Section 251(1) of the Principal Act is amended by omitting “general manager” and substituting “permit authority”.

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Part 2 – Building Act 2016 Amended

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22. 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, being a period that has not yet expired.
- (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 permit authority.
- (4) Subsection (2) applies to an order made under this Division, whether the order was made before or after the

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Part 2 – Building Act 2016 Amended

commencement of section 22 of the
*Residential Building (Miscellaneous
Consumer Protection Amendments) Act
2022.*

23. 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 subsections:

- (1) 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 the failure to comply with the building order.

Penalty: Fine not exceeding 10 penalty units.

- (1A) As soon as practicable after notifying the Director of Building Control of the failure to comply with a building order, a building surveyor is to refer the building order to the relevant permit authority.

24. Section 267 amended (Demolition order)

Section 267 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “council” and substituting “permit authority for a municipal area”;
- (b) by omitting from subsection (1)(c) “a permit authority” and substituting “the permit authority”;
- (c) by omitting from subsection (2) “council” and substituting “permit authority for a municipal area”;
- (d) by omitting from subsection (3) “council” and substituting “permit authority for a municipal area”.

25. Section 272 amended (Police assistance)

Section 272 of the Principal Act is amended by omitting “general manager” and substituting “permit authority”.

26. 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

27. 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 person issued with an order under section 209A in respect of work on premises, may appeal to the appeal tribunal against the issuing of an order under section 209A in respect of defective building work on those premises.

28. Section 281A inserted

After section 281 of the Principal Act, the following section is inserted in Division 1:

281A. Appeals relating to Director of Building Control

An owner of premises, or a building services provider, licensed builder or licensed plumber engaged by such an owner, may appeal to the appeal tribunal against a decision of the Director of Building Control made under Part 15 in relation to the premises.

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Part 2 – Building Act 2016 Amended

s. 29

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

Section 286 of the Principal Act is amended as follows:

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

30. Section 308 amended (Habitation of certain buildings)

Section 308(2) of the Principal Act is amended by omitting “general manager” and substituting “permit authority”.

31. Section 309 amended (Restriction on use of land)

Section 309 of the Principal Act is amended by omitting “general manager” and substituting “permit authority”.

32. Section 324 amended (Infringement notices)

Section 324(4)(a) of the Principal Act is amended by omitting “the relevant general manager or”.

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Part 2 – Building Act 2016 Amended

33. Section 325 amended (Immunity from liability)

Section 325(2) of the Principal Act is amended by omitting “general manager or” twice occurring.

34. Section 330B inserted

After section 330A of the Principal Act, the following section is inserted in Division 6:

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

(1) In this section –

commencement day means the day on which Part 2 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022* commences;

general manager has the same meaning as in the *Local Government Act 1993*.

(2) An action taken, or a notice or order given, made or issued, by a general manager of a municipal area before the commencement day is taken, on and after the commencement day, to be an action taken, or a notice or order given, made or

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Part 2 – Building Act 2016 Amended

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issued, by the permit authority for that municipal area on the same terms and conditions.

35. Schedule 1 amended (Information Registers)

Clause 1(j) of Schedule 1 to the Principal Act is amended by omitting “or general manager”.

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Part 3 – Building Regulations 2016 Amended

PART 3 – BUILDING REGULATIONS 2016 AMENDED

36. Principal Regulations

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

37. 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;

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

Regulation 61(4)(b) of the Principal Regulations is amended by omitting “general manager” and substituting “permit authority”.

39. Regulation 83 amended (Building certificates)

Regulation 83 of the Principal Regulations is amended by omitting “general manager” and substituting “permit authority”.

*S.R. 2016, No. 110

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Part 3 – Building Regulations 2016 Amended

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40. Schedule 5 amended (Infringement Notice Offences)

Schedule 5 to the Principal Regulations is amended as follows:

(a) by inserting after item 7 the following:

7A.	Section 24(2)	-	50
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(b) by inserting after item 9 the following:

9A.	Section 27B(6)	10	50
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(c) by inserting after item 92 the following:

92A.	Section 209A(8)	10	50
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(d) by inserting after item 116 the following:

116 A.	265(1)	1	1
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s. 41 Part 4 – Occupational Licensing (Building Services Work) Regulations
2016 Amended

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

41. Principal Regulations

In this Part, the *Occupational Licensing
(Building Services Work) Regulations 2016** are
referred to as the Principal Regulations.

42. Regulation 15A inserted

After regulation 15 of the Principal Regulations,
the following regulation is inserted in Division
1:

15A. Licensed entity fees for council

A fee is not payable under this Division
in respect of a building services licence
that is issued to a council to enable the
council to perform the functions of a
permit authority under the *Building Act
2016*.

*S.R. 2016, No. 112

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Part 5 – Occupational Licensing Act 2005 Amended

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**PART 5 – OCCUPATIONAL LICENSING ACT 2005
AMENDED**

43. Principal Act

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

44. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “municipal” from the definition of *licensed entity*;
- (b) by omitting “municipal” twice occurring from paragraph (c) of the definition of *licensed person*.

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

Section 37C of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “municipal”;
- (b) by omitting from subsection (3)(c) “municipal” twice occurring;

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Part 5 – Occupational Licensing Act 2005 Amended

(c) by inserting the following subsections after subsection (5):

(6) Subsection (5) does not apply to a licensed entity in respect of an event specified in that subsection if –

(a) the licensed entity notifies the Administrator of that event in accordance with section 37D(2); or

(b) at the time the event occurred –

(i) the licensed entity is a council of a municipal area; and

(ii) a person has been appointed, under section 24 of the *Building Act 2016*, as the permit authority for the municipal area; and

(iii) that appointment is in force under that Act.

(7) Nothing in this section prevents one person from being a licensed

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person in respect of one or more licensed entities if each of those licensed entities is a council.

(8) On the commencement of Part 2 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022* –

(a) a council is taken to have been issued with a building services licence under this section; and

(b) a licence referred to in paragraph (a) is taken to be in force for a period of 24 months, unless sooner suspended or cancelled under this Act; and

(c) within 7 days of the commencement of that Part, the council is to nominate a person employed or engaged by the council, who holds a building services licence, to be the licensed person for the council.

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Part 5 – Occupational Licensing Act 2005 Amended

46. Section 37D amended (Continuation of building services licence held by certain organisations)

Section 37D(5) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “licensed entity.” and substituting “licensed entity; or”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) if the licensed entity is a council of a municipal area, a person has been appointed, under section 24 of the *Building Act 2016*, as the permit authority for the municipal area.

47. Section 39 amended (Vicarious liability)

Section 39(1A)(c) of the Principal Act is amended by omitting “municipal”.

48. 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):

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- (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 section 53 of the *Residential Building Work Contracts and Dispute Resolution Act 2016*; and
 - (ii) without lawful excuse, has failed to comply with the terms of 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

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- (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 –
 - (i) an order under Division 3 of Part 18 of the *Building Act 2016*; or
 - (ii) an order under section 209A of the *Building Act 2016*; or
 - (cb) the Administrator is satisfied, on reasonable grounds, that the 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

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- (ii) without lawful excuse,
has failed to comply with
the terms of 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
- (cd) the Administrator is satisfied, on
reasonable grounds, that the
building services provider has
failed to issue an order as
required under section 209A(2) of
the *Building Act 2016*; or

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s. 49 Part 6 – Residential Building Work Contracts and Dispute Resolution Act
2016 Amended

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

49. Principal Act

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

50. 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*.

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

Section 11(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) to advise, and make recommendations to, the Minister in respect of matters relating to residential building work disputes generally;

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52. Section 11A inserted

After section 11 of the Principal Act, the following section is inserted in Part 4:

11A. Director may make determination in certain circumstances

(1) In this section –

mediation panel has the same meaning as in Part 9;

notice of dispute has the same meaning as in Part 9.

(2) The Director may make a determination in respect of the following matters:

(a) the provisions that must be included in a residential building work contract;

(b) details of the information to be provided as part of a notice of dispute;

(c) the timing of processes relating to a notice of dispute, or a mediation panel, not otherwise specified in this Act;

(d) the qualifications required to be held by a person for the person to be appointed to a mediation panel;

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of a notice of dispute, or a mediation panel, if –

- (a) in the case of a notice of dispute, the notice is lodged under Part 9 before the determination takes effect; and
 - (b) in the case of a mediation panel, the panel is established under Part 9 before the determination takes effect.
- (6) A notice made by the Director under section 14(2) that is in force immediately before the commencement of section 52 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022* is taken, on and after the commencement of that section, to be a determination made under this section until it ceases to be in force, according to its terms, or is revoked.

53. Section 14 amended (General contents of contracts)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(i) “specified under subsection (2)” and substituting “specified in a determination, made under section 11A, for the purposes of this section”;

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(b) by omitting subsection (2).

54. Section 45 amended (Interpretation of Part 9)

Section 45 of the Principal Act is amended as follows:

- (a) by omitting “a building contractor, and an owner,” from the definition of *dispute* and substituting “an owner and either a building contractor or a prescribed licensed professional”;
- (b) by omitting “owner;” from paragraph (c) of the definition of *dispute* and substituting “owner; or”;
- (c) by inserting the following paragraph after paragraph (c) in the definition of *dispute*:
 - (d) another matter relating to residential building work, or residential building work contracts, that has been prescribed for the purposes of this definition;
- (d) by omitting “dispute.” from paragraph (c) of the definition of *party* and substituting “dispute;”;
- (e) by inserting the following definition after the definition of *party*:

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prescribed licensed professional, in respect of 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.

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

Section 47 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

(1A) A notice of dispute may only be lodged under subsection (1) –

(a) within 6 years after the date of practical completion of the residential building work to which the notice relates; or

(b) if there is no date of practical completion for the residential building work to which the notice relates, within 6 years after the day on which the

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residential building work
was performed by, or on
behalf of, the building
contractor.

(b) by omitting subsection (3) and
substituting the following subsection:

(3) A notice of dispute –

(a) is to specify the grounds
of the dispute; and

(b) must be in the form
approved by the Director;
and

(c) must comply with the
relevant provisions of a
determination, made
under section 11A, that is
in force at the time when
the notice of dispute is
lodged with the Director.

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

Section 48 of the Principal Act is amended as
follows:

(a) by inserting the following subsection
after subsection (1):

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- (1A) Before making a decision under subsection (1) in respect of a notice of dispute, the Director may request additional information, in respect of the dispute to which the notice relates, from one or more parties to the dispute.
- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
- (a) the notice of dispute has not been lodged within 6 years after the date of practical completion of the residential building work to which the notice relates; or
 - (ab) a notice of dispute in relation to the same dispute, between a building contractor and the owner, has been accepted under this section; or
 - (ac) 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 –
 - (i) that application has not been rejected, or

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subsection (5) in respect of the
notice of dispute.

57. 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 or documentation, that may be relevant to the resolution of the dispute, within the time frame specified by the mediation panel; and
 - (ac) is to have regard to the Guide 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

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- 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 11A, as a reason that a mediation panel may refuse to proceed with mediation;
- (d) any other reason that the mediation panel considers appropriate.

58. 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 –

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- (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.
- (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 business 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.

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- (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 11A, that is in force at the time when the certificate is issued or document is prepared.

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

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

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

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “and the mediation panel”;
- (b) by omitting subsection (4).

61. Section 55A inserted

After section 55 of the Principal Act, the following section is inserted in Part 9:

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55A. Costs of mediation under this Part

Unless otherwise agreed between the parties to a dispute, the costs of mediation under this Part are to be shared equally between the parties to the dispute.

62. 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*;

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Tribunal means the Tasmanian Civil
and Administrative Tribunal.

57. TASCAT to review certain decisions

- (1) The Tribunal has the jurisdiction to review the following decisions under the Act:
 - (a) a decision of the Director under section 48 to reject 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;
 - (d) a decision referred to in this subsection that has been referred to the Tribunal under section 64.
- (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

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- (b) allocated to the Civil and Consumer stream of the General Division of the Tribunal.

58. TASCAT to determine certain matters

- (1) Subject to subsection (2), 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;
 - (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 –

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- (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;
 - (d) a matter referred to in this subsection that has been referred to the Tribunal under section 64.
- (2) The Tribunal only has jurisdiction to determine a matter referred to in subsection (1) if –
- (a) there is a relevant notice of dispute in respect of the matter; and
 - (b) one of the following applies in respect of the matter:
 - (i) the Director has rejected the relevant notice of dispute under section 48(3)(d);
 - (ii) a settlement in respect of the matter has been registered under section 53;

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- (iii) a certificate has been issued in respect of the matter under section 52A.
- (3) 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
 - (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

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- (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 the subject of proceedings under another Act, including enforcement or review proceedings, if those proceedings have not been completed, finalised or otherwise discontinued under that Act;
 - (c) 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 the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*, if –
 - (i) 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 the *Residential*

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or

- (ii) an expert panel has issued a declaration under this Act, as in force immediately before the commencement of Part 6 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*, that the residential building work to which the matter relates has been completed satisfactorily;

- (d) 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.

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- (2) The exclusion of a matter from the jurisdiction of the Tribunal under subsection (1)(a) –
- (a) only applies to such 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
 - (b) does not prevent the Tribunal from determining a matter in respect of a part of the residential building work in respect of which the adjudication application has not been made.
- (3) For the avoidance of doubt, this Act, as in force immediately before the commencement of Part 6 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*, applies in respect of any matter referred to in subsection (1)(c) or (d).

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

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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 specify –
 - (i) each proceeding, and dispute resolution, that has been commenced in respect of, or in connection with, the matter; and
 - (ii) whether those proceedings have, or dispute resolution has, been completed or discontinued, or is still in progress; and
- (c) must include –
 - (i) if the notice of dispute was rejected by the Director in accordance with section 48, a copy of the written notification, of that rejection, given by the Director under section 48(5); and

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- (ii) if there has been a settlement registered under section 53 in respect of the dispute, a copy of the settlement so registered; and
 - (iii) if there has been a certificate issued under section 52A in respect of the matter, a copy of the certificate so issued; and
 - (d) if the application relates to residential building work that has not been completed satisfactorily, 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(3).

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,

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of each of the following that are applicable to the matter:

- (i) this Act and any other relevant Act;
- (ii) the NCC;
- (iii) the Guide to Standards and Tolerances approved by the Director under section 82;
- (iv) 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;
- (v) 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) a defective work order made under section 209A of that Act;

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- (B) a notice issued under Division 2 of Part 18 of that Act;
 - (C) an order made under Division 3 of Part 18 of that Act;
 - (vi) each approval, or document, given, issued or otherwise granted –
 - (A) in respect of the residential building work that forms the basis of the matter; and
 - (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:

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- (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;
- (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 –

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- (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;
- (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;

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- (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), (b) or (d) 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 –
 - (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:

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- (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;
 - (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

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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, if relevant –
- (a) what, in the opinion of the Tribunal, is the reasonable price or cost, or the reasonable price and cost, of the residential building work; and
 - (b) 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.
- (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;

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- (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.

62. Impact of termination of residential building work contract

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

63. Effect of TASCAT proceedings on residential building work contract

Subject to any order or decision made by the Tribunal, the commencement of proceedings under this Part, or the determination of proceedings commenced under this Part, does not, of itself –

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

64. Court may refer matters to Tribunal

The Supreme Court, or the Magistrates Court, may refer proceedings that have been commenced in the court to the Tribunal if the relevant court is satisfied that –

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

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

Section 84 of the Principal Act is amended as follows:

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- (a) by omitting the definitions of *application* and *expert panel* from subsection (1) and substituting the following definition:

application means a notice of dispute within the meaning of section 45.

- (b) by omitting subsections (4) and (5).

64. Section 89A inserted

After section 89 of the Principal Act, the following section is inserted in Part 11:

89A. Savings and transitional on commencement of Part 6 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*

- (1) The amendments made to this Act by the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022* do not apply in respect of a residential building work contract entered into before 1 July 2021.
- (2) For the avoidance of doubt, this Act, as in force immediately before the commencement of Part 6 of the *Residential Building (Miscellaneous Consumer Protection Amendments) Act 2022*, applies in respect of a residential building work contract entered into before 1 July 2021.

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**PART 7 – TASMANIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

65. Principal Act

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

66. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of *applicant* the following definition:

Civil and Consumer stream means the Civil and Consumer stream established by clause 1 of Part 9 of Schedule 2;

67. Schedule 1 amended (Relevant Acts)

Schedule 1 to the Principal Act is amended by inserting after item 31 the following item:

31A. The *Residential Building Work Contracts and Dispute Resolution Act 2016*.

68. 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 – CIVIL AND CONSUMER STREAM

1. Civil and Consumer stream

There is a stream of the Division to be known as the Civil and Consumer stream.

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

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 Civil and Consumer stream.

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

- (1) If proceedings relate to the functions or powers of the Tribunal allocated to the Civil and Consumer 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.
- (2) In determining for the purposes of this clause 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 –

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- (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 the proceedings relate; and
- (d) 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

If the Tribunal is hearing proceedings in relation to the *Residential Building Work Contracts and Dispute Resolution Act 2016*, the Tribunal may temporarily stay those proceedings if the Tribunal is satisfied –

- (a) that the proceedings may be impacted by other proceedings being heard

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by another stream of the Tribunal; and

- (b) that it is in the interests 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

- (1) In this clause –

Director has the same meaning as in the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

- (2) 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 the making of the order.

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Part 8 – Miscellaneous

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PART 8 – MISCELLANEOUS

69. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commences.