

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

This Bill delivers on our Government's commitment to further strengthen protections for consumers and property owners within Tasmania's building regulatory framework.

Mr Speaker, following our considerable building reforms of 2016, Tasmania's building regulatory framework became nation-leading. This was confirmed by the high degree of compliance – in fact the highest in Australia – with the recommendations set out within the landmark *'Building Confidence Report'* (also known as the *Shergold Weir Report*) authored by Professor Peter Shergold AC and Ms Bronwyn Weir.

The *Building Act 2016* and the *Residential Building Work Contracts and Dispute Resolution Act 2016*, alongside the *Occupational Licensing Act 2005*, form this robust framework that supports a vibrant and healthy building and construction sector, providing for a safe built environment for all people who own, work, live or conduct business in Tasmanian buildings.

Our building regulatory framework requires that work within certain risk categories is designed, certified, constructed and inspected by persons who are suitably qualified, competent and licensed. This framework also requires that our licensed persons undertake compulsory Continuing Professional Development (CPD), to ensure that our stock of licensed trades and professions remains at the highest standard, keeping up to date with new and emerging practices and technologies.

Mr Speaker, it will not be news to anyone in this place that building and construction is a key sector of our Tasmanian economy, employing over 20,000 Tasmanians, with this number continually growing. Our Government has a strong and ambitious plan to deliver a record number of housing within the next decade, supported by a 'High-Vis Army' to build the workforce which will, in turn, build Tasmania.

This Bill aims to get the balance right in ensuring strong protections for consumers without impeding construction activity.

I have significant confidence in our existing building regulatory framework following our major reforms of 2016. Since this time, our Government has actively listened to the concerns of consumers, local government, and the building and construction sector regarding opportunities to further strengthen protections for consumers in respect of residential building work. This is precisely what this Bill achieves.

Mr Speaker, this Bill makes substantial improvements to our already nation-leading building regulatory framework.

This Bill will amend:

- the *Building Act 2016*;
- the *Residential Building Work Contracts and Dispute Resolution Act 2016*;
- the *Occupational Licensing Act 2005*;
- the *Tasmanian Civil and Administrative Tribunal Act 2020*;
- the *Building Regulations 2016*; and
- the *Occupational Licensing (Building Services Work) Regulations 2016*.

I will now provide detail on the reforms contained within this Bill, which focus on strengthening consumer protections when undertaking residential building work in three key areas.

### ***Addressing Defective Work***

Firstly, the Bill makes a number of amendments in relation to addressing defective building work.

The Bill amends the *Building Act 2016* (the Building Act) to provide for a new order called a Defective Work Order.

On a small number of occasions, building defects may not be detected during the construction phase of a building project. This can include situations relating to external weatherproofing, where the building may only show signs of defective work or defective installation after a cycle of weather change, or rain highlights an issue with the building.

Under the Bill, the new Defective Work Order provisions will allow for the relevant building surveyor, who was engaged in respect of the building work project, to issue an order to the builder to rectify defective work. The building surveyor may make this order within a two-year period following building completion.

If the relevant building surveyor, or the Director of Building Control, certifies that the work is defective, the relevant building surveyor must issue this Defective Work Order in respect of the defective work.

The Bill also provides that the Director of Building Control may issue such an order in circumstances where the relevant building surveyor is no longer a building surveyor.

These changes will ensure that building surveyors have appropriate accountability and the ability to ensure that defective work is rectified quickly, within this two-year period, post-completion. This is a significant extension of time from the current six month period for rectification of work post-completion.

Mr Speaker, in addition to this new Defective Work Order, the Bill also introduces two new mandatory notification stages for building work to assist in addressing defective work.

Under the Building Regulatory Framework, builders must notify the building surveyor at certain prescribed notification stages during construction, informing the building surveyor that the work is ready for inspection.

Currently, *Building Regulations 2016* (the Building Regulations) prescribe that the builder must notify at four different stages. These are:

- covering the foundations of the work;
- pouring structural concrete;
- cladding or building in the structural frame; and
- completion of the work.

These mandatory notification and inspection stages ensure that the key structural and finishing components of a building project are compliant.

Over time, Tasmania's building regulator, Consumer, Building and Occupational Services (CBOS), has observed a significant number of defects which relate to waterproofing of wet areas. Often defects regarding waterproofing of wet areas do not become apparent until the building has been occupied for a period of time.

Mr Speaker, the Bill will amend the Building Regulations to include two additional mandatory notification stages, which are:

- waterproofing of wet areas; and
- penetrations of fire-rated construction, on commercial building classes 2 to 9 under the National Construction Code.

These two new mandatory notification stages are consistent with the model guidance issued by the Australian Building Codes Board (ABCB) in response to recommendations of the *Building Confidence Report*.

Importantly, to the benefit of consumers and property owners, these changes ensure that buildings are checked and inspected at additional key stages to reduce the risk of defects and structural issues post-construction.

These additional mandatory notification stages will be supported by new guidelines issued by the Director of Building Control before these requirements commence. This guidance material will be appropriately consulted on, including with key building industry stakeholders.

Finally, the Bill will amend the *Occupational Licensing Act 2005* (the Occupational Licensing Act) to provide that a failure of a licensed person to comply with an order under the Building Act may be considered proper cause for disciplinary action against that licensee. This is necessary to ensure that the Administrator of Occupational Licensing is empowered to consider the licensee's appropriateness to hold a licence, if that person fails to comply with orders made under the Building Act.

## *Accountability of Statutory Office Holders*

Mr Speaker, in addition to the important amendments I have just outlined regarding defective work, the Bill also makes significant changes regarding the role of statutory office holders, such as local councils, within our building regulatory framework.

It is important to recognise that the role of councils in building assessment, approval and compliance has evolved over time since this State's first town building Acts of the 19<sup>th</sup> century. However, councils as a body corporate, the General Managers and officers called 'permit authorities,' continue to have specific roles in granting approvals and ensuring general compliance regarding building and construction within their respective local government areas.

Mr Speaker, this Bill amends the Building Act and the Occupational Licensing Act to consolidate all of the functions of the council to be the responsibilities of the permit authority. The Bill also transfers the responsibility of the permit authority away from an employee of the council and provides that the council as body corporate is the permit authority for the purposes of the Building Act. Importantly, this will transfer accountability of decision-making from an individual employee to the council itself.

This is done by mandating the existing provisions under the Occupational Licensing Act that the council be licensed as a permit authority. This will also provide the Administrator of Occupational Licensing appropriate power with respect to the licensed entity, including the ability to apply conditions to the licence.

Importantly, while these changes ensure that the accountability of actions taken within a council rest with the council as a body corporate, councils will still require individuals who are licensed as permit authorities to undertake these important functions. It is not expected that such reforms will require significant on-the-ground operational change, as the employee of the council will still be performing the functions and exercising the powers of the permit authority. Each council will also continue to determine their own decision-making framework with respect to the carrying out of this key regulatory and compliance role within the building framework.

Mr Speaker, this change will address a key issue regarding the appropriateness of our building regulator, Consumer Building and Occupational Services (CBOS), to take action against a permit authority in extreme circumstances, as the responsibility will rest with the council, not solely with an individual employee of the council.

To support implementation of this change, the Bill provides a two-year transition period where councils are deemed to hold this licence. My Department will work closely with local government to ensure that this new licence requirement results in limited administrative burden for the councils.

In addition to this change, the Bill also provides that the Minister with responsibility for administration of the Building Act, which sits within my Consumer Affairs portfolio, may provide directions to a council. This will function similarly to existing Performance Improvement Directions under the *Local Government Act 1993*.

My Speaker, if I may, I will now step through an example of where such a direction may be appropriate. If the Director of Building Control believes that a permit authority has not satisfactorily performed a function of that authority, such as issuing a Building Order in the case of a building that is unfit for occupation, the Director may make a recommendation to the Minister. After receiving a recommendation from the Director, the Minister may then direct the permit authority by order, requiring that the Permit Authority perform the relevant function.

Further to this, the Bill includes sensible measures such that the Director must first allow for the permit authority to make a submission with respect to the Director's intention to make a recommendation.

The Bill also provides that the Minister may direct the council by the Minister's own initiative if the order is necessary to protect public health or safety, or to prevent significant damage to property.

Mr Speaker, unfortunately, recent failures of a permit authority responsible for a subdivision has highlighted the need for the Tasmanian Government to be able to step in and perform the function of a permit authority under the Building Act, or to direct a council to undertake their approval and enforcement functions as the relevant permit authority.

This is a vital measure to ensure that where there is significant risk to an occupant or to public safety, the Tasmanian Government will have appropriate powers to ensure that the relevant statutory officers carry out their functions.

Mr Speaker, these are significant improvements and safeguards to be implemented within our building regulatory framework. I will speak to our detailed consultation process shortly, however in relation to these reforms regarding local government, I would like to briefly quote from the submission received from the Local Government Association of Tasmania (LGAT), which stated:

*"Councils generally support the consolidation of responsibilities of the permit authority on the councils, such that the responsibility of the permit authority sit with the councils as a body corporate."*

*"LGAT received no objections to the proposed power for the Minister for Workplace Safety and Consumer Affairs to direct a permit authority, or a council, to exercise any of their respective functions under the Building Act, if the Minister is satisfied that the permit authority has not satisfactorily performed its functions."*

I would like to thank LGAT and all of Tasmania's permit authorities, who do play, and will continue to play, a fundamental role within our building regulatory framework.

### **Dispute Resolution**

Mr Speaker, I would now like to turn to the most significant reform provided within this Bill, being dispute resolution for residential building work disputes.

I am immensely proud to have been the Minister responsible for delivering the new Tasmanian Civil and Administrative Tribunal (TASCAT) which has brought in a new era for Tasmania's

tribunals and boards through a transition from multiple hearing bodies to a single civil and administrative tribunal, improving access to justice for all Tasmanians.

Moving residential building disputes to the TASCAT will make it simpler, faster and cheaper to resolve such disputes, and dramatically improve the resolution of building disputes within Tasmania.

I have said on a number of occasions in this place that Stage 3 of the TASCAT reforms will include the transfer of further powers and functions to the TASCAT. This Bill forms an important part of Stage 3.

Mr Speaker, this Bill provides the TASCAT with original jurisdiction to hear residential building work dispute matters. This will bring Tasmania in line with other jurisdictions and will be an important step in providing a more timely and cost-effective dispute resolution pathway for Tasmanian property owners and building contractors alike.

Under the Bill, a residential building work dispute application may be lodged with the TASCAT if the parties to the dispute have attempted mediation and a certificate of mediation has been issued by the mediation panel appointed by the Director of Building Control. A building dispute application can then be lodged to the TASCAT, which is an application for the commencement of proceedings.

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

- whether residential building work is incomplete or is deficient;
- whether the work has been completed to the standard, or using the materials required, under the contract;
- whether residential building work complies with the requirements of a relevant Act, such as permits, certificates and compliance orders under the Building Act; and
- disputes relating to the terms of a contract.

The Bill provides the TASCAT with powers to make a range of orders. The TASCAT will be able to make orders relating to:

- the payment of money found owing to a party to proceedings, or that TASCAT considers reasonable to award as damages or restitution;
- the rectification or completion of residential building work;
- monetary orders requiring a party to pay the reasonable costs required for another person to complete or rectify work;
- the contract terms, including the voiding or variations of a term of a contract; and
- importantly, any other orders the TASCAT considers fair or reasonable.

These changes will deliver a significant reduction in time and cost to consumers seeking rectification of defective work, and/or resolution of contract disputes, where other methods, such as mediation, have failed.

To confer jurisdiction, the Bill also amends the *Tasmanian Civil and Administrative Tribunal Act 2020* to establish a new stream under the General Division of the TASCAT, namely the Civil and Consumer Stream.

Under the Bill, the TASCAT will also have the power to review certain decisions made by the Director of Building Control under the *Residential Building Work Contracts and Dispute Resolution Act 2016* (the Contracts Act) relating to the mediation process which is to occur prior to the TASCAT hearing a matter.

### *Consultation*

Mr Speaker, I'd now like to turn to outlining the significant and positive consultation that was undertaken.

Firstly, the Bill was provided for public consultation for a period of five weeks, from 1 July to 5 August of this year. The consultation draft Bill was provided on the Department of Justice Community Consultation webpage, and was supported by three separate information sheets detailing the key themes within the Bill.

My Department has also met with interested stakeholders at each stage of this development of this Bill. This has included providing briefings, meetings and presentations to a very wide range of audiences with an interest in these important reforms.

I wish to thank all stakeholders who met with my office, me personally, or the Department, and who provided their views or a submission on this important Bill.

We had a range of written submissions from local councils, industry associations and members of the public, and although the responses differed, there was a supportive consensus from these stakeholder groups.

Mr Speaker, I will now step through some key changes that have been made in response to stakeholder feedback.

We heard from some councils and the LGAT that there should be a threshold for the Minister to make orders directing a council, recognising that the intent is not that the Minister be burdened by spurious or insignificant requests. In response, amendments have been made to adopt a similar model to that which exists currently in the *Local Government Act 1993*, where the Minister may only make an order upon a recommendation of the Director of Building Control, or where such an order is necessary to protect public health or safety, or to prevent significant damage to property.

Some local government stakeholders also did not support the Minister being able to order a General Manager to carry out a function – for example, an Emergency Order – or the penalties which may be applied if a General Manager fails to comply with such an order by the Minister. In response to this feedback, changes were made to consolidate all functions of the permit authority, General Manager and council, to be functions of the permit authority being the council as body corporate.

In moving to the dispute resolution reforms, some stakeholders raised that there should be a timeframe for when a matter may be brought before the TASCAT. In response, the Bill makes clear that the limitation period within which a party to a dispute may commence dispute

resolution is six years from the date of practical completion, or if there is no date of practical completion, six years from the date on which work was last performed. This aligns within existing statutory warranty periods provided within the: Contracts Act.

In response to feedback and for the avoidance of doubt, the Bill clarifies that termination of a residential building work contract does not affect the jurisdiction of the TASCAT in respect of the matter that occurred under the contract before it was terminated. In addition, the Bill clarifies that an order of the TASCAT does not, of itself, stay, suspend, or alter the relevant contract to which the proceedings relate.

### *Concluding remarks*

Mr Speaker, our Government is committed to providing robust protections for people owning, occupying or living here in Tasmania.

In conclusion, the Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022 will further strengthen our building regulatory framework, making important changes to improve protections for owners who have residential building work carried out, in response to recent events and feedback received from consumers and industry.

Once again, the importance of consumer protections within our building regulatory framework cannot be understated, as building a home is likely to be the most significant investment that many Tasmanians may make.

This Bill further strengthens and enhances Tasmania's building regulatory framework for the benefit of all Tasmanians.

Mr Speaker, I commend the Bill to the House.