

9 August 2022

Gina Webster  
Secretary  
Office of the Secretary  
Department of Justice

Via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

Dear Ms Webster

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

Thank you for the opportunity to provide comment on the Draft *Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022*. In particular, thank you to Consumer, Building and Occupational Services (CBOS) personnel for providing a briefing for council permit authorities on the draft Bill. This direct engagement is commendable and greatly appreciated by the sector.

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. LGAT has consulted its members to inform this submission. Councils may also make direct submissions to this process to reflect their particular experience. Any omission of their issues in this submission should not be viewed as lack of support by LGAT for those specific issues.

Please contact Michael Edrich, Senior Policy Officer, if you have any questions or would like further information at [michael.edrich@lgat.tas.gov.au](mailto:michael.edrich@lgat.tas.gov.au) or (03) 6146 3740.

Yours sincerely



Dion Lester  
**CHIEF EXECUTIVE OFFICER**

## LGAT Submission: *Draft Residential Building (Miscellaneous Consumer Protection Amendments) Bill 2022*

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### Introduction

Local government, in particular council permit authorities, play a critical role in the safety, health and amenity of Tasmania's built environment. They are a key partner of the Tasmanian Government and private building surveyors in our building regulation system. Direct engagement, such as this consultation, contributes to the functioning and continual improvement of the system.

### What problem is the Bill trying to solve?

Our consultation revealed that councils are generally supportive of the initiatives presented in the Bill, viewing them as improvements to both accountability and authority to act to achieve the objectives of the *Building Act 2016*. This accords with our experience that permit authorities are highly motivated to ensure a building regulation system that supports consumers.

However, these changes are clearly designed to address a perceived problem, but the information provided gives no detailed analysis of the nature and extent of the problem. No information has been provided as to:

- The investigative processes employed by CBOS.
- The evidence relied upon to illustrate the nature of the problem and contributing causes.
- Any cross-organisation interviews undertaken to confirm accurate problem identification and appropriate solution generation.
- The range of solutions considered.
- Why this solution was selected amongst that range.

As a result, it cannot be determined whether the proposed changes actually address and resolve the problem causes, in whole or in part, and prevent it arising again.

As a good example, the measures proposed by the Bill are almost purely punitive. If the issues that this Bill is reacting to are caused or compounded by insufficient resourcing within the building regulation system then more punitive action will do nothing to address this deeper, more systemic problem. For example, if councils are unable to recoup building regulation costs through the legislative mechanisms of the *Building Act 2016* and need to compete with other services for general revenue then fines don't properly address this financial problem and may make it worse.

We have asked for information on the investigation undertaken but this has not been provided.

In mid-2021 when high-profile building regulation issues hit the media, LGAT wrote to CBOS (21 August 2021) inviting them to work with us and council building regulation experts on addressing the problems highlighted in that, and other, examples. We noted the following:

- That despite the primary and ultimate cause of the situation originating from failure by the proponent, then secondary failure by private certifiers, it is both the council and the regulator that are the end focus of blame by the media.
- That this is not a good outcome for either the Tasmanian Government or councils, nor for consumers and that we have a collaborative interest in learning from and resolving these issues.
- That council building regulation professionals have repeatedly expressed to us their desire to ensure consumers receive quality and compliant Tasmanian building products, yet frequently feel unsure that the new building system supports them properly to deliver this for Tasmanians.
- That the sector is keen to engage with the Tasmanian Government to continually improve the system and its implementation.
- Local government's desire to achieve a fluid and certain building regulation system where both councils and CBOS can coordinate and cooperate seamlessly in their regulatory roles.

Our invitation to address these issues is yet to be taken up by CBOS, representing another opportunity lost to work together to properly address problems and to achieve a functioning building regulation system for Tasmania. We reiterate our strong desire to collaborate on improving the system.

### **Dispute resolution for building work**

Our consultation reveals that councils generally welcome the establishment of a new stream under the General Division of the Tasmanian Civil and Administrative Appeals Tribunal (TASCAT). Councils see this as a helpful addition to the dispute resolution framework and beneficial to the community, providing an alternative and appropriately scaled enforcement pathway and assuming sound resourcing, potentially reducing magistrate court case loads.

## Addressing defective building work

Councils generally support the intent behind the proposed Defective Work Orders but recommend that it apply to plumbing work as well. Failing onsite wastewater management systems are good case for Defective Work Orders.

Councils note the similarity between the proposed Defective Work Orders and the existing Building/Plumbing Notices (sections 237 and 238) and Orders (sections 246 and 250). Rather than creating an additional regulatory layer, it is suggested that the value of separate Defective Work Orders be reassessed and the potential of amending the existing sections to reflect the intent of the proposed Defective Work Orders be considered.

Councils object to the relative shortness of the 24-month timeframe of both the proposed Defective Work Orders and the existing section 310 that will hinder compliance outcomes. Councils find this timeframe causes many Orders to become unenforceable due to lapsing and find that it frequently takes consumers longer than 24 months to identify and act on problems associated with defective works. The timeframes for dilapidated building under section 252 suffer similarly. We suggest a measure to allow the extension of the timeframe, as needed, to allow sufficient time to progress to a resolution.

Where a landowner is uncontactable there is no provision in the Act to enable enforcement notices and orders to be served, preventing enforcement. A process that enables this is needed, such as providing for service of notice on land in circumstances where the landowner is not contactable by ordinary means of notice.

Councils support the amendment of the *Occupational Licencing Act 2005* to allow the Director of Building Control to undertake disciplinary action against licensed persons that fail to comply with orders made under the *Building Act 2016*, settlements reached under the *Residential Building Work Contracts and Dispute Resolution Act 2016*, or orders made by the TASCAT. Councils recall that CBOS's similar work to audit building surveyors worked well to increase accountability and compliance.

One council suggests that in the interests of natural justice and transparency, the right for licensed holders to appeal Director of Building Control decisions in TASCAT should be considered. Alternatively, a 'show cause' preliminary step before disciplinary action may also benefit the both the process of justice and the continual improvement in the sector.

### Accountability of statutory office holders

Councils generally support the consolidation of the responsibilities of the Permit Authority role on the councils, such that the responsibility of the permit authority functions 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. However, it was suggested that the Minister's power be defined or directed by relevant criteria, such as:

- Evidence of risk to life or safety; or
- Evidence of risk to significant property damage (value to be determined).

### Enforcement resourcing and subsidisation

It is important that councils have the appropriate legislative mechanisms, as well as appropriate resourcing capacity for undertaking their role and enforcing the *Building Act 2016*. Councils are reporting intensifying resourcing strain on their enforcement capability due predominately to two factors:

- The unintended consequence of the risk-based approach to building regulation introduced by the *Building Act 2016*. This has reduced permit applications and so reduced application assessment revenue. This has moved the building regulation system further away from a self-sustaining user pays system to one requiring greater general revenue subsidisation, typically from ratepayers.
- The emerging trend of costs not being awarded to councils (or the Director of Building Control) for Court action taken to enforce resolution of offences under the *Building Act 2016*. Again, this puts pressure on the budgets of councils to use general revenue to fund enforcement of non-compliant behaviour.

A permit authority may be unable to fully exercise their powers on a matter as a result of constrained resources and capacity to comprehensively address the full gamut of compliance matters. Applying a Ministerial order that may lead to a significant fine for a General Manager will not address this problem and will likely further exacerbate discord between regulators, councils and State Government, when collaboration and cooperation is needed.

The Bill provides the opportunity to begin addressing these issues. Yet there is limited consideration, for example, of provisions that could set criteria around when and how Court costs will be awarded.

Another suggestion to help reduce ratepayer subsidisation and move towards a more self-sustaining user-pays system is for regulator revenue collected from the building administration fee (BAF) to be invested toward compliance and enforcement action. This could occur by establishing enforcement services within CBOS, or by enabling councils to claim enforcement costs from the BAF funds.

We urge CBOS to consider measures such as those suggested to ensure the Tasmanian building regulation system is adequately and sustainably resourced to achieve its objectives successfully.