
Changes made by the Residential Building (Miscellaneous Consumer Protection Amendments) Act 2023

**Fact sheet for Local Government and Building Industry
Stakeholders**

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The Residential Building (Miscellaneous Consumer Protection Amendments) Act 2023 (“the Consumer Act”) passed Parliament in 2023. It will amend several different Acts and Regulations after commencing in 2024.

This Fact Sheet covers a range of topics that will be changed by the Consumer Act.

What is the commencement date?

The provisions of the Consumer Act primarily affecting the work of building services providers and local government will commence on 1 October 2024.

Changes to resolving residential building work disputes, started on 1 July 2024.

Topic 1: Statutory responsibilities of councils, including permit authorities

- This Act makes miscellaneous changes to several Acts and Regulations that affect the activities of councils including;
 - The *Building Act 2016* (for the compliance and regulatory functions of general managers and Permit Authorities); and
 - The *Occupational Licensing Act 2005* and the Occupational Licensing (Building Services Provider) Regulations 2016 (for the licensing of Permit Authorities).
- The Consumer Act makes significant changes regarding the roles of the council, the permit authority, and the general manager of the council, consolidating these roles into one, being the council as the licensed permit authority.
- To facilitate these changes, some sections of the *Building Act 2016* have been amended, substituted, or repealed.
- For example, section 41 of the Building Act, which provided statutory obligations and community expectations of councils, has been repealed. This section included provisions that a council of a local government area, as far as reasonably practicable, is to –
 - Ensure that owners of property are informed of their duties under the Building Act;
 - Make the council itself aware of building work, plumbing work and demolition work being performed within their municipal area, and the use and occupation of such buildings;
 - Enforce an order issued by a building surveyor, if appropriate to do so; and
 - If applicable, ensure proceedings are instituted against any person or body failing to comply with this Act.
- These requirements have now been relocated to be under the “functions of permit authorities” in section 25 of the Act, given that these responsibilities of the council have become the responsibilities of the council as ‘permit authority’, licensed as a corporate entity.

- This model will ensure that councils as a corporate body are accountable in the performance of their statutory functions, and it will also ensure that the person who is acting as permit authority for the council is suitable qualified and competent.
- This also makes clear that it is still the expectation of councils to follow up on issues within their area, including enforcing orders, or commencing proceedings against persons who fail to comply with the Act or with relevant orders.

Topic 2: Changes to Council General Manager functions

Background

- The *Building Act 2016* provides that the General Manager appointed by the council has powers to perform functions under the Act, including certain compliance activities.
- Most of the general manager compliance functions in the *Building Act 2016*, will instead be performed by the council's Permit Authority;

Current examples of these activities or functions include:

- Serving of Building or Plumbing Notices and Orders
- Powers to enter premises to conduct investigations
- Issuing a Dilapidated Building Notice
- Serving infringement notices for offences against the Act or regulations
- Granting consent to temporarily occupy a non-habitable building.

The Consumer Act provides that Permit Authority will instead undertake broader compliance roles that the Council and General Manager now does under s.41(1) of the *Building Act 2016*.

Savings for notices and orders already issued by General Manager

- Where the general manager has issued any Notice or Order under the *Building Act 2016*, then after the commencement day of the Consumer Act, it immediately becomes a Notice or Order of the Permit Authority, issued on the same terms and conditions. (reference: new section 330B(2) of the *Building Act 2016*).

Topic 3: Permit Authority licensing

Background

Since 1 January 2017, the *Occupational Licensing Act 2005* has required that council staff appointed to perform the Permit Authority role for a council have needed to be licensed.

- Existing staff performing the Permit Authority role were transitioned into the occupational licensing system.
- Since 2017, new appointees as a Permit Authority, have had to make a licence application to Consumer Building and Occupational Services.

Changes:

From the commencement of the Consumer Act on 1 October 2024:

- All councils will become a licensed entity under the *Occupational Licensing Act 2005* with the council deemed as holding a Permit Authority licence; and
- The permit authority roles will then all belong to the council as a body corporate, which must be licensed under the Occupational Licensing Act.
 - The functions and powers of the permit authority under the *Building Act 2016* must still be exercised by a nominated natural person, licensed under the *Occupational Licensing Act 2005*.
 - The exercise of any functions of a Permit Authority are of no effect if they are performed by any person other than those appointed as a Permit Authority by the council under the Building Act, and have been licensed under the Occupational Licensing Act.
- As mentioned in Topics 1 and 2, to support these licensing changes, the Consumer Act made a number of amendments to remove references to ‘council’ or ‘general manager’ from the Building Act and the Building Regulations, as these matters now belong to the council as a licensed ‘Permit Authority.’

Permit Authority Licensing - Questions and Answers:

Q: What does a “Licensed Entity” mean?

A: The *Occupational Licensing Act 2005* covers the licensing of several types of building services providers, including builders, designers and building surveyors.

- In 2017 the new licence category of permit authority was created, for the natural persons who were appointed by the council to perform statutory roles under the *Building Act 2016*.
- The *Occupational Licensing Act 2005* also provides for a separate type of licence that can be held by a corporate body, including a company, a partnership, or a council.
- That entity licence exists independently from any natural person and therefore it can have perpetual succession – if the entity has nominated a licensed natural person to do that role, the entity can continue to operate or function.
 - Until now, CBOS has not required that a council itself must hold an entity licence for the Permit Authority role. However, as the role of the Permit Authority has now been expanded and upgraded, the amendments in the Consumer Act now require councils to hold this type of entity licence.

Q: Does this change mean that individual council officers and the Council, will both need a licence as a Permit Authority?

A: Yes, council officers appointed to that role will still need to hold a Permit Authority licence as a natural person, and the council as a statutory body corporate, will now hold a separate Permit Authority entity licence.

Q: Can a Council be a licensed “person” as well as a licensed entity?

A: No. The *Occupational Licensing Act 2005* provides for licensing of individuals, and a “corporate” type licence for any Building Services Providers, called an Entity Licence, which is applicable to “organisations” that are councils, trading corporations (companies) or a partnership.

- As the Local Government Act created the council as a legal “person”, then as a statutory corporation an Entity Licence is appropriate for that type of organisation, while an individual licence is appropriate for natural persons appointed to perform the Permit Authority functions for the council.

Q: Do these licensing amendments require the council to do something?

A: Yes, within 7 days of the commencement of these changes (on 1 October 2024), the council is to nominate a natural person employed or engaged by the council, who holds a permit authority licence, to be the licensed person for the council.

- However, as there has been a requirement since 2017 for the appointment of, and the licensing of Permit Authorities, this will not require any additional actions by councils, as they have already appointed a licensed person to perform the Permit Authority role on its behalf, and those persons currently licensed will be accepted by Consumer Building and Occupational Services (CBOS) as having been “nominated” to meet the requirements of the Occupational Licensing Act.

Q: Does the Council now have to apply for the new entity licence?

A: No. It will be deemed by law to have received this licence. Each council will be a licensed entity from the commencement of the Consumer Act amendments on 1 October. (Reference amended section 45 of the *Occupational Licensing Act 2005*).

Q: Do existing permit authority licences continue?

A: Yes. Every natural person with a current individual licence as a Permit Authority can continue to work in that role, and they are not affected by these changes regarding licensed entities.

Q: Why do we need to license individuals as a permit authority now that council permit authority licences are mandatory?

A: Since 2017, the *Occupational Licensing Act 2005* has provided that individual natural persons working as a permit authority for a council must hold a licence.

Amendments made by the Consumer Act will now require that the council itself, as a separate legal entity, must also hold a licence as a permit authority.

- In the case of a licensed council, this means that it must have a nominated natural person employed or engaged by the council, who holds the permit authority licence. This person will carry out all the functions of the Permit Authority for the council, with the council still being the responsible entity.
- It is necessary for both the council and the licensed natural person, who is the permit authority officer, to hold a licence, as the Permit Authority officer must still be the individual who meets minimum requirements regarding entry qualifications, experience and achieving the required continuing professional development activities.

Q: Can a person appointed as a permit authority and licensed by CBOS, perform that role for more than one council?

A: Yes, but the person must have been appointed as a Permit Authority by each of the councils that they intend to work for; (reference s.37C(7) *Occupational Licensing Act 2005*).

- Upon application for a licence from CBOS, they must indicate which council they are working for, to show that they will be the nominated person to act on behalf of that council, being a body with an entity licence.

Q: When will CBOS issue a licence number to councils?

A: CBOS is working on making changes to its occupational licensing systems and data bases to implement these changes and will provide a number to councils by September 2024.

Q: How long does each entity licence last for?

A: Initially, for 24 months (reference section 45 *Occupational Licensing Act 2005*). When it needs to be renewed in 2026, CBOS may then issue a three-year licence.

Q: Does the council have to pay a licence fee for its own entity licence?

A: No, the council itself as a licensed entity is exempt from paying a fee for that type of licence. (Reference new regulation 15A of the Occupational Licensing (Building Services Work) Regulations 2016).

Q: Do council officers (natural persons) still need to pay a licence fee?

A: Yes, it is payable either one or three yearly; currently (2024) a one-year fee is \$448.80, and the triennial fee is \$1148.10.

Q: Why is there no fee for a Council Entity Licence, but still a fee for individuals?

A: Regulation 13 of Occupational Licensing (Building Services Provider) Regulations 2016 provides that any natural person is required to pay a licence fee; but amendments in the new regulation 15A, requiring the council to hold an Entity Licence, will give a licence fee exemption: -

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*.

Q: As a council now holds an Entity Licence as a Permit Authority, can the council use anyone on staff to perform its role as the permit authority?

A: No, the council must appoint specific persons to perform the roles of that statutory position, and they must be licensed.

- It can also appoint the current holder of a particular job position in the council to be its Permit Authority. For example, the elected council can determine that the person who is the current holder of the position of “manager development services” can then do

that statutory permit authority role for it. The current holder of that position must still apply for a Permit Authority licence from CBOS.

Q: Is any officer of council who undertakes an investigation that leads to a building notice/order, required to be a licensed permit authority?

A: No. As the appointed decision maker with the statutory role of compliance functions, such as signing an order, only the person appointed by the council for performing the statutory Permit Authority role needs to be licensed.

- The Permit Authority officer can rely on the services or support of any other council employees or contractors necessary to give them the information needed to do its role as the Permit Authority.

Q: What happens if the council does not appoint a natural person as its Permit Authority?

A: Section 24 of the *Building Act 2016* requires that the council shall appoint a natural person as its Permit Authority. The Occupational Licensing Act also requires the council to have “nominated” a person to be licensed to perform that role.

- If the council fails to appoint a person, section 37D of the *Occupational Licensing Act 2005* provides that it may then have to forfeit its Permit Authority entity licence, which may then create significant problems for its ability to administer the *Building Act 2016*.
 - The Director of Building Control may then have to take on this role as an emergency measure; see also the information below: “No Permit Authority Available” under the section: “*Oversight of Council and Permit Authorities by the Director or the Minister*”.

Q: Are council Permit Authority officers (natural persons) still required to hold insurance?

A: Yes, but council staff are covered by the insurance that their council buys to cover the activities of its staff – so they do not need to buy individual insurance and they can expect to be indemnified by their employer for work done, including any act done, or an omission made, in good faith.

Q: Will council Permit Authority officers still need to undertake Continuing Professional Development?

A: Yes, the same as now, 36 points is required over the three-year licence period. As the council as a corporate body is not a natural person, it does not need to complete any CPD to retain its entity licence.

Q: Are there changes to the functions of a Permit Authority?

A: Yes, it will now take on certain compliance functions that have previously been the responsibility of the general manager.

Individuals (natural persons) who are currently licensed as a Permit Authority are not generally affected by the changes made by the Consumer Act, except for the statutory functions taken over from the general managers, meaning a potential change in their workload within individual councils.

Q: If the Council is responsible for issuing the approvals, notices, orders etc under the Council licence number, why do the individuals have to also hold a licence? *It would be nice if the Council only had to be licensed and obtain CPD points instead of each individual obtaining CPD points that are impossible to obtain? Council gives the GM delegation as the Permit Authority and we go back to the GM signing all permits, notices, orders, etc, with no need to individuals to be licenced as Permit Authorities, and a less of a cost to rate payers.*

A: As it is a corporate organisation, and not a natural person, a council can only act through the agency of its employees or contractors and it cannot itself undertake training, CPD or similar education-based activities to become qualified and experienced.

If a council only wants its General Manager to perform all the roles of its Permit Authority, then it may nominate only that person to the role to be licensed, and that person may delegate to other staff under section 8; however, for practical reasons it is better that councils have appointed several qualified and licensed staff able to perform these important statutory roles. Single person dependency is on organisational risk to be avoided.

Q: Who signs the approved forms: licensed individual Permit Authority or licensed corporate Permit Authority?

A: From 1 October each council will hold a licence as a Permit Authority (being the special “entity licence” in its own right as a corporate “person”).

Work such as statutory functions of a Permit Authority under the *Building Act 2016* are performed by natural persons, who are appointed by their council and are also licensed by CBOS as a Permit Authority.

Therefore, as that work by those natural persons is performed for and on behalf of the Council, it is appropriate that the council’s name and its unique Permit Authority licence number are entered on documents such as Forms approved by the Director of Building Control under the *Building Act 2016*.

For example, on Form 15 (Building Order) the “Permit Authority Details” would have the council’s name and the council’s permit authority licence number inserted.

- If a licensed natural person works at two councils as their Permit Authority, then for work within each council area, the name of the relevant council would appear on that form.
- The licensed natural person would then sign on behalf of the council as it is the responsible corporate body. Their employment or engagement by the council, their appointment to the Permit Authority role, and then their status as holding a licence to do statutory functions as a Permit Authority, is abundant authorisation and power to sign on behalf of the council.
- The Building Act Approved Forms can also have a header inserted, identifying the name of the council.

Topic 4: Oversight of Council and Permit Authorities by the Minister or the Director

The *Building Act 2016*, as amended by the Consumer Act, will ensure that councils are more accountable for their decisions, ensuring that when action is required by the council, the council will take that action in the interest of consumers and the community.

- The Building Act and *Occupational Licensing Act 2005* have been amended to change the accountability of councils in the building regulatory framework.
- Councils are provided significant powers under the Building Act. The objective in providing councils with such powers and functions under this Act, is to ensure that building, plumbing and demolition work within their municipal area is safe and compliant, for the enjoyment and amenity of the residents, building occupants and broader community.
- Recent events have highlighted a need for increased protection in circumstances where there is a need to act in relation to the safety of a building, but a council fails to act.
- The Building Act will provide that the Minister for Small Business and Consumer Affairs may issue an order directing a council to perform a function, or exercise a power, that the council as permit authority is provided to perform under the Act. This includes compliance and enforcement functions.
- The Order can be in relation to a power or function provided to the permit authority under the Building Act, so can relate to a range of matters such as the issuing of a Plumbing Order or the issuing of an Emergency Order.
- The Minister will be able to issue this order to direct a council on their own initiative if the Minister is satisfied that it is necessary to protect public health or safety; or to prevent significant property damage.
 - For example, if the Minister is satisfied that the council, as permit authority, has failed to satisfactorily exercise a power, such as issuing an Emergency Order, the Minister may order the council to exercise this power.
- In relation to all other circumstances, the Minister may only make such an order on the recommendation of the Director of Building Control.
 - Prior to making a recommendation to the Minister, the Director of Building Control must first provide the council, as licensed permit authority, the opportunity to be heard, allowing it to provide a submission.
 - If, after considering the submission from the council, the Director believes that the council as a permit authority has not satisfactorily performed a statutory function or exercised a power, the Director may then give a written recommendation to the Minister of a course of action.
 - This will ensure that in circumstances where the council as a permit authority will not act, or not act in an appropriate manner, the Director of Building Control and Minister for Small Business and Consumer Affairs can take appropriate action to protect the community.

It should be noted that the exercise of these powers by the Director or Minister are envisaged to only used where the interests of the public need to be protected, and must be

satisfied that the permit authority has not already satisfactorily performed its statutory functions.

Failure to exercise statutory functions by Permit Authority

- If the Minister for Small Business and Consumer Affairs is satisfied that a Permit Authority has not satisfactorily performed a function, or exercised a power, of a permit authority under the Building Act, the Minister may direct the Permit Authority, by order, to perform its duties under the Act.
- In addition to these Permit Authority changes, the Act also provides for the Minister for Small Business and Consumer Affairs to issue orders requiring a council, as permit authority, to carry out a function or exercise a power provided to the Permit Authority under the Building Act.

No Permit Authority available

- Amendments made by the Consumer Act will allow the Minister for Small Business and Consumer Affairs to appoint the Director of Building Control as the Permit Authority for one or more councils and specify which powers they may exercise.
- This appointment may be made where the council is no longer a licensed entity, or it has not appointed a licensed natural person to perform that role.
- That is to enable the filling of a gap in the performance of statutory regulatory functions, and it should only need to be used in exceptional circumstances.

Question:

Q: If a Council is directed by the Minister to undertake an action, is there an appeal to TASCAT for consistency and to protect legal rights for procedural fairness and natural justice?

A: Yes, there could be a review of a Ministerial decision under the *Judicial Review Act 2000* to the Supreme Court.

- A person who is aggrieved by a decision to which this Act applies may apply to the Court for an order of review relating to the decision.
- “a person aggrieved” (s.7) means that their “interests are adversely affected by the decision”.

Grounds for a right to seek review of an administrative decision are found in s.17(2) of the *Judicial Review Act*:

(2) The application may be made on any one or more of the following grounds:

- (a) breach of the rules of natural justice;
- (b) required procedures were not observed;
- (c) person did not have jurisdiction to make the decision;
- (d) decision not authorised by the enactment;
- (e) an improper exercise of the power conferred by the enactment;
- (f) decision involved an error of law;
- (g) fraud;

- (h) no evidence or other material to justify the decision;
- (i) otherwise contrary to law.

Topic 5: Changes to the Approved Forms under the *Building Act 2016* and Building Regulations 2016

Background

The *Building Act 2016* and the Building Regulations 2016 are amended by the Consumer Act in a number of ways.

- The Director of Building Control has approved forms as templates for use by councils, building services providers and other parties, to facilitate activities under the Act and its Regulations.

The commencement of the Consumer Act therefore required minor changes to some existing Approved Forms.

Existing Forms that are amended:

- Application for Building Certificate – Form 57
- Building Certificate - Form 51
- Building Inspection Direction - Form 44
- Registers Permit Authority - Form 36
- Demolition Order - Council - Form 32
- Emergency Order - Permit Authority - Form 27
- Plumbing Order - Permit Authority - Form 23
- Certificate of Substantial Compliance - Building Work - Form 17
- Building Order - Building Surveyor/Permit Authority - Form 15
- Certificate of Final Inspection - Building Work - Form 12
- Certificate of Likely Compliance - Building Work - Form 11A

New Form approved:

New provisions regarding rectification of defective building work have required that one new form be approved:

Defective Building Work Order - Building Surveyor - Form 16

Why are these changes being made?

The statutory compliance roles of the **council general manager** have been transferred to the council Permit Authority, so those references need to be changed on the Emergency or Demolition Order forms and on the Building Certificate form.

There are also new provisions relating to rectification of **defective building work** through defective work orders.

- This has required one new form to be created (Number 16 – Defective Work Order) and minor changes to the legislative references on some other forms. The new form 16 is used by the building surveyor when defective work is discovered, after a certificate of completion of the work was issued by the permit authority or building surveyor.
- The Certificate of Likely Compliance has an updated listing of additional mandatory notification points to trigger inspections.
- Terminology updates – to change Alternative Solution to Performance Solution.
- Building or Plumbing Notice or Order forms now have space to insert a “compliance by” date when the recipient must either do something or cease to do something after being ordered to do so, by the permit authority or building surveyor.

Consultation on draft amended forms

CBOS sought council and other stakeholder comments on these draft forms, with the consultation ending on 5 July 2024.

- As a result of the feedback received during consultation a further minor change was made to:
 - Amended Form 27 – (Emergency Order) to remove a reference to sending a “copy to the Permit Authority” as the Permit Authority is now the person who processes and sends this Order.
 - New Form 16 (Defective Work Building Order) – removed the reference to any “Low Risk Building work” as a building surveyor would not have been engaged for that work.

Question about Approved Forms:

Q: When will the amended forms be available?

A: The final forms that have been approved by the Director of Building Control will be available for download from the CBOS website as Word documents before they come into effect on 1 October 2024.

See also the question in Topic 3 on who signs Approved Forms.

Topic 6: New Defective Work provisions (Building Act 2016)

- The definition of ‘defective work,’ as provided in section 207 of the Building Act, is work that does not comply with the Act, or the National Construction Code, and is discovered during an inspection of the work under this Act or at any point after the completion of the work.
- Therefore, even if the work was approved, but does not comply with the National Construction Code, it is defective work and may be subject to a direction, or building order, or a defective work order, to make it comply.

Defective work found during construction

- If the building surveyor finds defects at any stage of construction prior to the issue of a Certificate of Completion of building work, they may issue an inspection direction to the builder. Failure to comply with this direction by the will lead to a building notice under section 237 of the Act, and if that is not complied with, the matter can be escalated to a building order under section 246.

Defective Work found since completion

Part 15 of the Act deals specifically with Defective Building Work. However, the operation of that Part has not been as practical as intended.

- For example, section 208 meant that it is limited to pre-completion defect rectification. If a Certificate of Completion of the building work had been issued by the Permit Authority under section 153 (permit building work) or by the building surveyor under section 104 (notifiable building work), the building surveyor then no longer has a power to direct that rectification must take place.
- Another deficiency in the Act regarding rectification of defects, was that section 209 was limited to rectification of defects by the builder, which were discovered within only 12 months after the issue of a Certificate of Completion.

The Consumer Act has made two major changes to rectification of work in Part 15:

Extended time period in which a person is required to rectify defects

The period in section 209 of the Building Act allowing for the discovery of defective work, requiring rectification by the builder at their own cost, has been extended from 12 months to a maximum of 24 months.

New Defective Work Order – Building Surveyor

The Consumer Act amends the Building Act to insert a new section 209A and provides for a new Defective Work Order that can be issued by the building surveyor.

- Significantly, this type of Order can be issued after the certificate of completion of building work, and overcomes the limitation found in section 208(7).
- The Defective Work Order can be served on the builder up to 24 months after a certificate of completion had been issued.
- Many latent defects may only be observable by the owner within this extended period of time, particularly given two full annual seasons.
- The building surveyor in respect of building work must issue this order if they, or the Director of Building Control, have certified that the building work as defective work under section 209(b).
- The person who carried out that work, and is served with this Order, must ensure it is rectified.
- This will add to the period by which a building surveyor is involved in respect of a building project. However, binding the building surveyor to a building project for 24 months following its completion, was considered a reasonable period of time.

Defective Work Orders are not limited to residential building work. The relevant building surveyor can issue an order irrespective of the class, or use, of a building.

Defective work orders can also be served on registered owner builders.

- The provisions of section 208 have not been changed and this can still be used to serve a written direction on the contractor to rectify defects, so long as a certificate of completion had not been issued.
- The new Defective Work Orders will not assist consumers when the defects are minor or only relate to workmanship issues relating to standards in the residential building contract. Instead, the Director of Building Control has new powers to organise mediation of residential building work disputes to attempt to arrange a settlement of those matters.

Questions about Defective Work Orders:

Q: Does the Building Surveyor have to notify Council that they issued the defective building order? if yes, is there timing and penalty?

A: There is no notification, instead the new section 209A(7) provides that a copy is to be provided to the permit authority:

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.

Q: Why don't the new Defective Work Orders apply to defective plumbing work?

- A: Tasmania's building regulatory framework provides significant responsibilities to a number of key persons, most notably building surveyors and the Council Permit Authority.
- In relation to building work, the building surveyor is the relevant technical approval authority who undertakes the technical and statutory assessments for that work, to ensure that the work is compliant, safe and, at the conclusion of the building work, that the building is safe and fit for occupation.
- Under the current provisions of the Building Act, the building surveyor has limited opportunities to have work rectified post-completion, as they cannot issue a building notice or a building order to the builder after formal completion of the building work.

The context for plumbing work is different.

- Under the Building Act the approval authority for plumbing work is the council permit authority.
- Permit Authorities can issue Plumbing Notices or Plumbing Orders at any time, including after completion of plumbing work.
- Circumstances where the council can issue a plumbing notice or order include that plumbing work or a plumbing installation is faulty or defective, meaning that the council can already take decisive action regarding defective plumbing work.
- Given these existing provisions for plumbing work, there is no need for specific defective work provisions for plumbing work.

Q: Does the new Defective Work Order need to be included on a s.337 Certificate?

A: Yes: in Schedule 6 of the Local Government General Regulations, item 48(b), provides that all orders are to be disclosed; but they will need to have been copied to the permit authority; and remain not yet complied with.

Topic 7: Advice to permit authorities and building surveyors regarding compliance with orders issued under the *Building Act 2016*

Under the Building Act, building surveyors and a council as Permit Authority may issue notices or orders requiring the responsible person for the building, plumbing, or demolition work, to do the work specified in the relevant notice or order.

The Building Act did not include a prescriptive requirement that these orders must always specify a period within which an order must be complied with.

This has had an unfortunate impact on non-compliance with some orders, with questions arising whether a person has failed to comply with an order if there is no required time within which they must comply.

- The amended Act now introduces a requirement that orders must specify a period within which the order must be complied with.
- This is a common sense approach to ensure that building compliance issues are addressed within an appropriate period of time.
- If an order was made without specifying a period, the relevant permit authority can then amend any order to specifying a time limit.
- This change will also apply to any orders that are currently in effect, including orders issued by building surveyors or the council as permit authority.

Note also that various Approved Forms dealing with compliance matters, have been amended by the Director of Building Control, and now provide a specific place for inclusion of details of by when that order must be complied with.

Question about compliance with orders:

Q: Orders remain in place until acted on or revoked, so why a need to have a complied by date on them?

A: Without a date given to the wrongdoer (owner/ builder/ plumber etc.) **to comply with the order**, it can effectively be ignored leading to continued non-compliance. This fundamental problem is not addressed by section 254 of the Building Act on the “duration” of a valid order.

Topic 8: Licensing changes – Proper cause for disciplinary actions (*Occupational Licensing Act 2005*)

Information for all licensed building services providers

Q: The Occupational Licensing Act has new provisions regarding a “proper cause for disciplinary action” against licensed persons. What is the purpose of these provisions?

A: Currently, within our building regulatory framework, the Director of Building Control and the Administrator of Occupational Licensing were given limited opportunity to consider the conduct of licensees as far as that conduct relates to non-fulfillment of compliance orders, such as a building order, issued against that person.

The Consumer Act now includes provisions that would allow the Administrator of Occupational Licensing to clearly consider orders issued against a licensed person as proper cause for disciplinary action.

If licensed persons consistently fail to do the right thing, the Administrator must be appropriately empowered to commence disciplinary action.

- For example, if a licensed builder has been subject to a building order, and the builder frequently failed to comply with those building orders, the Act will allow the Administrator to then commence disciplinary action against the licensee if the Administrator considers that it is appropriate to do so.
- Currently, the Occupational Licensing Act provides a range of reasons for why the Administrator may consider there is proper cause for disciplinary action. This includes that the licensed person is guilty of improper conduct, that the licensee has given false or misleading information, or that the licensee has contravened a provision of the Act or a code of practice.
- To support the changes, the Act also includes a mandatory notification in the event that a Building Order is not complied with. Currently, this information is not reported to the Tasmanian Government and is only obtained by undertaking audits.

Topic 9: Mandatory Inspection stages in the Building Regulations 2016

Background

- The Building Regulations provide that at on the completion of certain stages of building work, the person responsible for the work (the licensed builder) is required to notify the building surveyor for the work, that an inspection is ready to take place.
- Inspections provide for the assessment of building work before further work can continue and are critical in ensuring key structural, safety and amenity matters are achieved.

Changes

Two new mandatory notifications for inspections of stages during building work have been added to the Building Regulations 2016, effective 1 October 2024:

1. Work in wet areas of any class of building; and
2. Work involving penetrations of fire-resistant building elements (e.g. pipes through a fire-rated wall or floor). This applies to Class 2-9 buildings.
 - This change primarily affects builders (performing work) and building surveyors (who inspect that work after they have been notified)
 - These changes have required some minor additions to some Approved Forms e.g. to form No. 11A Certificate of Likely Compliance, to allow for these notification stages to be added.
 - It is required by the Regulations that an inspection of wet areas, as a mandatory notification, is to be performed for all new work in any buildings containing a wet area that had required a formal approval of the work.
 - The mandatory notification stages set out in the Regulations apply to new building work including the construction of a new building or the alteration of an existing building.

Definitions:

Wet area: The NCC 2022 defines a wet area as:

“an area within a building, supplied with water from a water supply system, which includes bathrooms, showers, laundries, and sanitary compartments (Water Closet) and excludes kitchens, bar areas, kitchenettes or domestic food and beverage preparation areas”.

Penetrations of fire rated construction:

are apertures created through fire-rated and smoke proof walls, floors and ceilings which must resist the spread of smoke and fire within a building. These include:

- building service penetration installations. These services might include plumbing, electrical, gas or telecommunication pipes, wires, and cable trays; or
- other building, plumbing or demolition work that compromise fire safety such as creating new doors, windows, skylights or similar through smoke or fire rated building elements.

Fire-resisting walls, floors and ceilings are installed to slow or stop the spread of fire through a buildings fire or smoke compartment or between separate tenancies, therefore, unsealed penetrations could reduce the effectiveness/ fire resistance level. Unsealed penetrations are unable to provide protection against the spread of smoke, heat and toxins. The Deemed to Satisfy provisions of the National Construction Code require that service penetrations in fire rated and smoke-proof construction are protected by fire stopping products.

What does this mean for builders?

- The regulations provide that at on the completion of those stages of building work, the builder responsible for the work is required to notify the building surveyor for the work, that an inspection is ready to take place.
- The builder must ensure that work is compliant with the approval and National Construction Code.
- After inspection, the building surveyor may either:
 - consent to the work progressing as it is compliant; or
 - direct the responsible person for the work to perform the building work so that it complies with the building approval issued in respect of the work.

What does this mean for building surveyors?

- Inspections provide for the assessment of building work before further work can continue and are critical in ensuring key structural, safety and amenity matters are achieved.
- On the certificate of likely compliance, the building surveyor will have ticked the box against the types of applicable work that require mandatory notification.
- A notification received from the builder for the mandatory inspection stage therefore advises the building surveyor that the building work has been progressed to the completion of the next mandatory stage when an inspection may be carried out.
 - On receipt of the notification, the building surveyor may inspect that work. Alternatively, they may determine if there is a reason they do not intend to inspect. In that case:
 - the building surveyor is to notify the builder that they do not intend to inspect the work; and
 - must make a record of the reason the inspection was not carried out; and
 - record the details of any alternative inspection, or certification, of the work that was relied on in place of the inspection.

Topic 10: Introduction to dispute resolution changes from 1 July 2024 in the *Residential Building Work Contracts and Dispute Resolution Act 2016*

Background

The Consumer Act makes a number of significant changes to *the Residential Building Work Contracts and Dispute Resolution Act 2016* to give more options for parties seeking to resolve building disputes. These changes chiefly are:

1. Informal mediation of disputes, arranged by the Director of Building Control, to encourage a negotiated settlement; and

2. For disputes where mediation was attempted but not successful, an application may be made to the Tasmanian Civil and Administrative Tribunal (TASCAT) to determine the dispute.

Who can apply for mediation?

The aim of the Act's mediation provisions is to facilitate discussion and mutual agreement of the parties to a residential building work dispute. If parties are willing to attend mediation it can often result in an agreement to resolve a dispute.

- Most residential building dispute matters are between the owner and the building contractor.
- The Director may also join parties to mediation.

Can building contractors also use the mediation and dispute resolution provisions in the Act?

Yes, as a party to the building contract, the building contractor can use these dispute resolution mechanisms in order to settle a dispute.

Are parties bound by mediation outcomes?

If the parties sign a settlement document, it is registered by the Director of Building Control. If a party to it defaults on the settlement, the other party may enforce it by making an application to the TASCAT.

What fees apply to parties attending mediation sessions?

The costs of mediation are to be shared equally between the parties to the dispute.

Will the mediation provisions be available to parties who entered a building contract at any time?

- Yes. The improved mediation mechanisms within the Contracts Act will also be available to owners who have entered into residential building work contracts before 1 January 2017.
- However, there are also time restrictions on seeking redress, which is six years from the date of practical completion, or, if there is no such date in relation to the work, six years from the date on which residential building work was last performed.

Does the Consumer Act prevent a person from pursuing action in a court?

- The Consumer Act does not prevent parties from pursuing action in a court to resolve a building dispute.
- The Act does, however, contain a provision that allows a court in which proceedings have commenced, to refer those proceedings to the TASCAT if the court is satisfied that the Tribunal is the most appropriate authority to determine the proceedings.

TASCAT given new jurisdiction

- The Consumer Act gives new powers to the TASCAT for dealing with residential building work dispute matters
- TASCAT will be able to determine:
 - If residential building work is incomplete or is deficient;

- If the work has not been completed to the standard, or using the materials, required under the contract;
 - If the work has caused, or resulted in, damage to any building, structure or residential building work;
 - If residential building work complies with the requirements of a relevant Act, such as permits, and certificates under the Building Act; and
 - Disputes relating to the terms of a contract.
- However, if the parties to a building contract have not already attempted mediation arranged by the Director of Building Control, then the TASCAT cannot accept an application to determine that building dispute.

Will the new TASCAT dispute resolution mechanism be available to parties whose contracts was entered into before 1 January 2017?

No. The changes made by the Consumer Protection Act (including giving the TASCAT authority to hear disputes) do not apply to contracts entered before the *Residential Building Work Contracts and Dispute Resolution Act 2016* commenced on 1 January 2017.

Note: For more detailed information on dispute resolution and mediation arrangements, see these CBOS website resources:

- [Resolving Residential Building Work Disputes](#)
- [Mediation](#)
- [Mediation Fact Sheet](#)

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