

TASMANIA

BUILDING AMENDMENT BILL (No. 2) 2006

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BUILDING AMENDMENT BILL (No. 2) 2006

(Brought in by the Minister for Justice and Workplace Relations, the Honourable Steven Kons)

A BILL FOR

An Act to amend the *Building Act 2000*

Be it enacted by His 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:

1. Short title

This Act may be cited as the *Building Amendment Act (No. 2) 2006*.

2. Commencement

This Act commences on 1 November 2006 but, if it does not receive the Royal Assent on or before 1 November 2006, it is taken to have commenced on that date.

3. Principal Act

In this Act, the *Building Act 2000** is referred to as the Principal Act.

*No. 100 of 2000

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4. Section 3 amended (Interpretation)

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

- (a) by omitting the definition of “authorised body”;
- (b) by omitting “section 19(2)(a)(i)” from the definition of “scheme” and substituting “section 19”.

5. Section 7 amended (General functions of Director)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (h) “authorised bodies,”;
- (b) by inserting the following paragraphs after paragraph (h):
 - (ha) to carry out such other functions as are imposed on the Director under this Act;
 - (hb) to monitor compliance by accredited building practitioners with Part 4;

6. Section 10 amended (Functions of Advisory Committee)

Section 10(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) to advise the Minister in relation to a scheme;

7. Part 4, Division 1 substituted

Division 1 of Part 4 of the Principal Act is repealed and the following Division is substituted:

Division 1 – Accreditation scheme

19. Approval of scheme

- (1) The Minister after consulting with the Advisory Committee may, by notice published in the *Gazette*, approve a scheme for the accreditation of building practitioners.
- (2) A scheme may relate to any of the following:
 - (a) the accreditation of building practitioners in categories and classes;
 - (b) the minimum qualifications, experience or competence

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- required for the categories and classes;
- (c) a code of conduct with which accredited building practitioners must comply;
 - (d) a process for dealing with complaints relating to the conduct of accredited building practitioners;
 - (e) audits of accredited building practitioners;
 - (f) the requirements for professional development of accredited building practitioners;
 - (g) any other matter determined by the Minister.

20. Director to carry out functions in accordance with scheme

The Director is to carry out his or her functions under this Part in accordance with the scheme.

8. Section 23 amended (Offences relating to accreditation)

Section 23(1) of the Principal Act is amended by inserting “as specified in the scheme” after “class”.

9. Section 26 amended (Application for accreditation)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an authorised body” and substituting “the Director”;
- (b) by inserting in subsection (1) “as specified in the scheme” after “class”;
- (c) by omitting from subsection (2) “An authorised body” and substituting “The Director”;
- (d) by omitting from subsection (3) “An authorised body” and substituting “The Director”;
- (e) by omitting from subsection (4) “An authorised body” and substituting “The Director”.

10. Section 27 amended (Certificate of accreditation)

Section 27 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “Except as provided in subsection (3), the authorised body” and substituting “The Director”;
- (b) by omitting subsections (2) and (3).

11. Section 29 amended (Renewal of certificates)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an authorised body” and substituting “the Director”;
- (b) by omitting from subsection (3) “An authorised body” and substituting “The Director”.

12. Section 30 amended (Audit by Director)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An authorised body” and substituting “The Director”;
- (b) by omitting from subsection (1) “its” and substituting “the”;
- (c) by omitting subsection (3) and substituting the following subsection:

- (3) If the Director is satisfied that an audit indicates that an accredited building practitioner is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Director may deal with the matter as if it were a complaint made by a person other than the Director.

13. Section 31 repealed

Section 31 of the Principal Act is repealed.

14. Section 32 amended (Complaints)

Section 32 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “relevant authorised body” and substituting “Director”;
- (b) by omitting from subsection (1) “a” second occurring and substituting “an accredited”;
- (c) by omitting from subsection (1) “accredited by that body”;
- (d) by omitting from subsection (3) “An authorised body” and substituting “The Director”;

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- (e) by omitting from subsection (4) “An authorised body” and substituting “The Director”.

15. Section 33 amended (Notification to building practitioner)

Section 33(1) of the Principal Act is amended by omitting “an authorised body” and substituting “the Director”.

16. Section 34 amended (Approved investigator)

Section 34 of the Principal Act is amended as follows:

- (a) by omitting “an authorised body” and substituting “the Director”;
- (b) by omitting “it” and substituting “he or she”.

17. Section 35 amended (Investigations)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An authorised body” and substituting “The Director”;

- (b) by omitting from subsection (2) “An authorised body” and substituting “The Director”;
- (c) by omitting from subsection (3) “an authorised body” and substituting “the Director”;
- (d) by omitting from subsection (3) “it” and substituting “he or she”;
- (e) by omitting from subsection (4) “An authorised body” and substituting “The Director”.

18. Section 36 amended (Production of documents)

Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An authorised body” and substituting “The Director”;
- (b) by omitting from subsection (1) “to it”;
- (c) by omitting from subsection (5) “An authorised body” and substituting “The Director”.

19. Section 37 amended (Powers of entry and inspection)

Section 37 of the Principal Act is amended by omitting “an authorised body” and substituting “the Director”.

20. Section 38 amended (Warrant)

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An authorised body” and substituting “The Director”;
- (b) by omitting from subsection (3) “authorised body” and substituting “Director”;
- (c) by omitting from subsection (5) “An authorised body” and substituting “The Director”.

21. Section 39 amended (Offences)

Section 39(b) of the Principal Act is amended by omitting “an authorised body” and substituting “the Director”.

22. Section 40 amended (Decision of Director)

Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “relevant authorised body” and substituting “Director”;
- (b) by omitting from subsection (2) “an authorised body” and substituting “the Director”;
- (c) by omitting from subsection (3) “an authorised body” and substituting “the Director”;
- (d) by omitting from subsection (3) “it” first occurring and substituting “he or she”;
- (e) by omitting from subsection (3)(b) “it” and substituting “he or she”;
- (f) by omitting from subsection (3)(c) “authorised body” and substituting “Director”;
- (g) by omitting from subsection (3)(d) “authorised body” and substituting “Director”;
- (h) by omitting from subsection (3)(e) “a specified amount” and substituting “50 penalty units”;
- (i) by omitting from subsection (4) “an authorised body” and substituting “the Director”;

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- (j) by omitting from subsection (4) “it” first occurring and substituting “he or she”;
- (k) by omitting from subsection (4)(a) “it” and substituting “he or she”.

23. Section 41 amended (Notice of decision by Director)

Section 41(1) of the Principal Act is amended by omitting “An authorised body” and substituting “The Director”.

24. Section 42 amended (Appeals to Appeal Board)

Section 42(1) of the Principal Act is amended by omitting “an authorised body” and substituting “the Director”.

25. Section 43 amended (Hearing by Appeal Board)

Section 43(2) of the Principal Act is amended by omitting “an authorised body” and substituting “the Director”.

26. Section 44 amended (Decision of Appeal Board)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “authorised body” and substituting “Director”;

- (b) by omitting from subsection (1)(b) “an authorised body” twice occurring and substituting “the Director”;
- (c) by omitting from subsection (1)(b) “authorised body” third occurring and substituting “Director”;
- (d) by omitting from subsection (1)(c) “authorised body” and substituting “Director”;
- (e) by omitting from subsection (1)(c) “it” and substituting “him or her”;
- (f) by omitting from subsection (2) “authorised body” and substituting “Director”;
- (g) by omitting subsection (3).

27. Section 45 amended (Notice of decision of Appeal Board)

Section 45(1)(c) of the Principal Act is amended by omitting “authorised body” and substituting “Director”.

28. Section 47 amended (Powers of Court on review)

Section 47 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1)(a) “if the Director has not specified an amount of a fine under section 40(3)(e),”;
- (b) by omitting from subsection (2) “authorised body” first occurring and substituting “Director”;
- (c) by omitting from subsection (2) “any authorised body” and substituting “the Director”.

29. Section 251 amended (Immunity from liability)

Section 251(4) of the Principal Act is amended by omitting “An authorised body or” and substituting “An”.

30. Savings and transitional provisions

Schedule 1 has effect.

**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 30

1. Scheme

The scheme, in existence immediately before the commencement of this Act, under which the Tasmanian Compliance Corporation Pty Ltd granted accreditation to building practitioners is taken to have been approved by the Minister under section 19 of the Principal Act as amended by this Act as if –

- (a) references in that scheme to the Tasmanian Compliance Corporation Pty Ltd were read as references to the Director and references to the directors of the Tasmanian Compliance Corporation Pty Ltd were read as references to the Director; and
- (b) the provisions relating to financial planning and corporate governance were omitted.

2. Applications

An application under section 26 of the Principal Act that was pending immediately before the commencement of this Act is taken to be an application made to the Director.

3. Certificates of accreditation

A certificate of accreditation issued by an authorised body under section 27 of the Principal Act and in force immediately before the commencement of this Act is taken to be a certificate of accreditation issued by the Director.

4. Audits

An audit under Division 3 of Part 4 of the Principal Act carried out, or being carried out, by or for an authorised body before the commencement of this Act is taken to be an audit carried out, or being carried out, by or for the Director.

5. Complaints

A complaint made under section 32 of the Principal Act to the relevant authorised body that has not been finally dealt with immediately before the commencement of this Act is taken to be a complaint made to the Director.

6. Investigations

An investigation under Division 5 of Part 4 of the Principal Act conducted or being conducted by or for an authorised body before the commencement of this Act is taken to be an

investigation conducted, or being conducted, by or for the Director.

7. Decisions in relation to complaints

A decision made by an authorised body under section 40(2) of the Principal Act before the commencement of this Act is taken to be a decision made by the Director.

8. Cautions, reprimands, &c.

A caution, reprimand, accreditation condition or direction issued or imposed by an authorised body under the Principal Act and in force immediately before the commencement of this Act is taken to have been imposed or issued by the Director.

9. Appeals

An appeal to the Appeal Board under section 42 of the Principal Act against any decision or action of an authorised body and not finally determined by the Appeal Board before the commencement of this Act is taken to be an appeal against a decision or action of the Director.

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10. Acts, &c., done by or for authorised body

Any act, matter or thing done by or for an authorised body before the commencement of this Act in its capacity as an authorised body under the Principal Act is taken to be an act, matter or thing done by or for the Director.

11. Regulations

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.
- (2) Regulations made under subclause (1) may take effect on the day on which this Act commences or on a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.