

TASMANIA

**BUILDING AND CONSTRUCTION
INDUSTRY TRAINING FUND AMENDMENT
BILL 2004**

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**BUILDING AND CONSTRUCTION
INDUSTRY TRAINING FUND AMENDMENT
BILL 2004**

*(Brought in by the Minister for Education, the Honourable
Paula Catherine Wriedt)*

A BILL FOR

**An Act to amend the *Building and Construction
Industry Training Fund Act 1990***

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:

Short title

1. This Act may be cited as the *Building and Construction
Industry Training Fund Amendment Act 2004*.

Commencement

2. This Act commences on a day to be proclaimed.

Principal Act

3. In this Act, the *Building and Construction Industry Training Fund Act 1990** is referred to as the Principal Act.

Preamble repealed

4. The Principal Act is amended by omitting the preamble.

Section 3 amended (Interpretation)

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

- (a) by omitting the definitions of “building notice” and “building or construction work” and substituting the following definition:

“building or construction work” –

- (a) includes building or construction work specified in item 2 of Schedule 2; but
- (b) does not include building or construction work specified in item 3 of Schedule 2;
- (b) by omitting the definition of “project owner” and substituting the following definition:

“project owner”, in respect of building or construction work, means –

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- (a) the person for whose direct benefit the building or construction work is done; or
- (b) if the person referred to in paragraph (a) has engaged another person to carry out or cause to be carried out all of the building or construction work, the person so engaged;

Part 2, Division 1: Heading amended

6. Division 1 of Part 2 of the Principal Act is amended by omitting “*Continuation, functions, &c., of the Board*” from the heading to that Division and substituting “*Establishment, functions, &c., of the Board*”.

Sections 4 and 5 substituted

7. Sections 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Establishment of the Board

4. (1) The Tasmanian Building and Construction Industry Training Board is established.

(2) The Board –

- (a) is a body corporate with perpetual succession; and
- (b) may acquire, hold and dispose of real and personal property; and

- (c) may sue and be sued in its corporate name; and
- (d) may do and suffer all acts and things that a body corporate may by law do and suffer.

Members of the Board

5. (1) The Board consists of the following members appointed by the Minister:

- (a) one person who is appointed as chairperson of the Board;
- (b) three persons who have knowledge and understanding of the interests of employees within the building and construction industry;
- (c) five persons who between them have knowledge and experience of the following:
 - (i) residential building;
 - (ii) non-residential building;
 - (iii) civil construction;
 - (iv) building services;
 - (v) building professions.

(2) Before appointing a member, the Minister is to give notice in at least 3 daily newspapers published and circulating in the State that persons interested in being members may provide written expressions of interest to the Minister within the period specified in the notice.

(3) The Board is to contain, if practicable –

- (a) at least one member from each of the northern region, the north-western region and the southern region; and
- (b) a balance of genders; and
- (c) members with knowledge and skills in respect of –
 - (i) all sections within the building and construction industry; and
 - (ii) vocational education and training; and
 - (iii) policy development and strategic planning.

(4) Schedule 4 has effect in relation to membership of the Board.

(5) Schedule 5 has effect in relation to meetings of the Board.

Section 7 amended (Functions of the Board)

8. Section 7 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) The Board is the principal advisor to the Minister on all matters relating to training in the building and construction industry and, in particular, is to advise the Minister in relation to skill requirements for the building and construction industry and the training arrangements to meet those requirements.

- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
 - (a) to promote training in the building and construction industry;
 - (ab) to promote the Board, and its aims and activities, to the building and construction industry;
- (c) by omitting from subsection (2)(b) “accredited or approved by the building and construction industry” and substituting “approved by the Board”;
- (d) by inserting the following paragraphs after paragraph (c) in subsection (2):
 - (ca) to liaise with appropriate training organisations and other bodies;
 - (cb) to advise on, and coordinate, training resources;

Section 8A inserted

9. After section 8 of the Principal Act, the following section is inserted in Division 1:

Board to convene industry forum

8A. (1) The Board is to hold a public meeting at least once in each calendar year for interested members of the building and construction industry –

- (a) to consider issues that relate to the development of skills within the industry; and

- (b) to provide advice on those issues to the Board.

(2) The Board is to give not less than 2 weeks' notice of the public meeting in at least 3 daily newspapers published and circulating in the State.

Section 9 substituted

10. Section 9 of the Principal Act is repealed and the following section is substituted:

Delegation

9. The Board may delegate any of its functions or powers under this Act other than this power of delegation.

Part 2, Division 1A inserted

11. After section 9 of the Principal Act, the following Division is inserted in Part 2:

Division 1A - Committees

Committees

9A. (1) The Board may establish one or more committees to advise and assist the Board in the performance and exercise of its functions and powers under this Act.

(2) A committee consists of such persons as the Board appoints.

(3) A member of the Board may be a member of a committee.

(4) A member of a committee is entitled to be reimbursed for such expenses as the Minister determines.

(5) A member of a committee holds office on such conditions in relation to matters not provided for by this Act as are specified in his or her instrument of appointment.

(6) At any time, the Board may abolish a committee.

(7) The Board is to inform the Minister in writing if any committee is established, or abolished, under this section.

Procedure of committees

9B. (1) A committee must keep accurate minutes of its meetings.

(2) Except as otherwise provided by the Board, a committee may regulate its own proceedings.

Section 10A inserted

12. Before section 11 of the Principal Act, the following section is inserted in Division 3:

Ministerial directions

10A. (1) The Minister may direct that the Board exercise or perform any of its powers or functions, including the power of delegation.

(2) A direction given under subsection (1) may include any conditions that the Minister thinks fit.

(3) The Board must comply with a direction given by the Minister.

Section 11 amended (Powers of Minister)

13. Section 11 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “this Act or”;
- (b) by omitting from subsection (1)(c) “recommend that the Governor”;
- (c) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
 - (d) appoint an administrator in accordance with section 13.
- (d) by inserting in subsection (2) “or section 10A” after “(a)”.

Section 13 amended (Appointment and powers of administrator)

14. Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Governor” and substituting “Minister”;
- (b) by omitting from subsection (1) “certifies that” and substituting “is satisfied that”;
- (c) by omitting from subsection (6)(d) “Governor” and substituting “Minister”;
- (d) by omitting from subsection (6)(e) “Governor” and substituting “Minister”;

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- (e) by omitting from subsection (7) “Governor” twice occurring and substituting “Minister”;
- (f) by omitting from subsection (8) “Governor” and substituting “Minister”;
- (g) by omitting from subsection (9) “Governor” and substituting “Minister”;
- (h) by omitting from subsection (10) “Governor” and substituting “Minister”.

Section 16 amended (Termination of administration)

15. Section 16 of the Principal Act is amended as follows:

- (a) by omitting “recommends to the Governor” and substituting “is satisfied”;
- (b) by omitting “Governor” second occurring and substituting “Minister”.

Section 18 repealed

16. Section 18 of the Principal Act is repealed.

Section 21 substituted

17. Section 21 of the Principal Act is repealed and the following section is substituted:

Imposition of levy

21. Subject to this Act, a levy is imposed in respect of the value of building or construction work which commences after the commencement of this Act.

Section 22 amended (Rate of levy)

18. Section 22 of the Principal Act is amended by omitting “cost” twice occurring and substituting “value”.

Section 23 substituted

19. Section 23 of the Principal Act is repealed and the following section is substituted:

Estimated value of building or construction work

23. (1) In this section –

“**required component**” means any fixtures, fittings, accessories, components, plant or equipment, other than –

- (a) plant or equipment installed solely for the purposes of a process that forms part of building or construction work; and
- (b) plant or equipment that is not installed as an integral part of a structure or building; and
- (c) fixtures, fittings, accessories, components, plant or equipment prescribed as being excluded.

(2) The estimated value of building or construction work is –

- (a) the contract price of the building or construction work, being a price that includes a value for each of the following components:

- (i) the labour, necessary services and fees, including professional fees, payable in respect of the building or construction work;
 - (ii) the building or construction materials;
 - (iii) required components that are installed as part of, or in association with, the building or construction work;
 - (iv) a profit margin that is not greater than that approved by the permit authority as reasonable;
 - (v) any overheads;
 - (vi) any other prescribed component;
or
- (b) if there is no contract or the contract price does not cover the above components, the value of the building or construction work as determined by the permit authority after taking into account the value of those components;
or
- (c) the value agreed by the Board and the project owner.

(3) A person may apply to the Board to have the estimated value of building or construction work set under subsection (2) reviewed.

(4) The Board must review the estimated value of building or construction work on receipt of an application under subsection (3) within 30 days after receiving the application.

(5) On a review of an application, the Board may –

- (a) confirm the estimated value of building or construction work set under this section; or
- (b) vary the estimated value of building or construction work set under this section.

(6) The Board must notify its decision to the applicant within 7 days after reviewing the application under subsection (5).

Section 24 amended (Exemption for certain work)

20. Section 24 of the Principal Act is amended as follows:

- (a) by omitting “cost” and substituting “value”;
- (b) by omitting “\$5 000” and substituting “\$12 000”.

Section 28 amended (Offence for non-payment of levy)

21. Section 28(1) of the Principal Act is amended as follows:

- (a) by omitting “not exceeding twice the amount of the levy required to be paid.” and substituting “of the sum of –”;
- (b) by inserting the following paragraphs after subsection (1):
 - (a) twice the amount of the levy required to be paid; and

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- (b) a fine not exceeding 50 penalty units.

Section 29 amended (Notice of variation)

22. Section 29 of the Principal Act is amended by omitting “cost” twice occurring and substituting “value”.

Section 30 amended (Adjustment of amount paid)

23. Section 30 of the Principal Act is amended as follows:

- (a) by omitting “cost” first occurring and substituting “value”;
- (b) by omitting “cost” second occurring and substituting “value”;
- (c) by omitting from paragraph (b) “cost” twice occurring and substituting “value”.

Section 33 amended (Offence to provide false information)

24. Section 33 of the Principal Act is amended by omitting “cost” and substituting “value”.

Section 36 amended (Building and Construction Industry Training Fund)

25. Section 36(4)(c) of the Principal Act is amended by omitting “cost” and substituting “expenses”.

Section 38 amended (Powers of entry and inspection)

26. Section 38(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units.

Section 42 amended (Regulations)

27. Section 42(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (e) “cost” and substituting “value”;
- (c) by omitting from paragraph (h) “Governor” and substituting “Minister”.

Section 43 substituted

28. Section 43 of the Principal Act is repealed and the following section is substituted:

Savings and transitional

43. Schedule 6 has effect in respect of savings and transitional provisions consequent on the commencement of the *Building and Construction Industry Training Fund Amendment Act 2004*.

Schedule 1 repealed

29. Schedule 1 to the Principal Act is repealed.

Schedule 2 substituted

30. Schedule 2 to the Principal Act is repealed and the following Schedule is substituted:

**SCHEDULE 2 – BUILDING OR
CONSTRUCTION WORK TO WHICH THIS ACT
APPLIES**

Section 3(1)

1. In this Schedule –

“building” includes –

- (a) part of a building; and
- (b) a temporary building; and
- (c) a moveable building;

“structure” includes –

- (a) a tank or other structure associated with the catchment, collection, storage or supply of water; and
- (b) a plant, drain, facility, system, equipment or structure associated with the drainage or treatment of sewage, effluence or stormwater; and
- (c) a bridge, viaduct, aqueduct or tunnel; and
- (d) a chimney stack or cooling tower; and
- (e) an aerial or mast associated with the transmission or reception of

- radio, television or communications; and
- (f) an aerial or mast associated with the absorption or reflection of lightning; and
 - (g) a mast or tower associated with the transmission of electricity; and
 - (h) a silo; and
 - (i) a dock, jetty, pier, terminal, wharf, boat ramp or mooring; and
 - (j) a pipeline including a pipeline placed in the ground; and
 - (k) a structure, plant or facility associated with the production, storage, conveyance or distribution of oil, gas, coal or other minerals; and
 - (l) a fence.

2. Building or construction work on a site includes the following work for that site:

- (a) the construction, erection, alteration, repair, renovation, demolition or removal of a building or structure;
- (b) the construction, alteration or repair of a road, street, parking area, footpath, thoroughfare for pedestrians or vehicles, kerbing, guttering, roundabout, median strip, road barrier or other similar road works;

- (c) the construction, alteration, repair, demolition or removal of –
 - (i) a railway, bus area or tramway, or a structure, signal or platform that is connected with a railway, bus area or tramway; or
 - (ii) a harbour, breakwater, retaining wall or marina; or
 - (iii) a dam, weir, reservoir or other embankment or structure for the catchment, collection, storage, diversion or control of water;
- (d) the construction, alteration, repair or removal of an aircraft runway or a landing pad;
- (e) the performance of excavation work;
- (f) the laying of pipes and other prefabricated material in the ground;
- (g) the construction, erection, installation, alteration, repair, demolition or removal of any system, or plant, associated with the conveyance, collection, storage, treatment or distribution of water or gas;
- (h) electrical or mechanical service work including work that is related to the construction, erection, installation, alteration, repair, servicing or dismantling of a plant, plant facility or equipment;

- (i) the construction, erection, installation, alteration, repair, renovation, demolition or removal of –
 - (i) a lift or escalator; or
 - (ii) an airconditioning, ventilation or refrigeration system or equipment;
- (j) the construction, repair, alteration or removal of a playing field, golf course, racecourse, stadium, swimming pool or other sporting or recreational facility;
- (k) landscaping or the construction, alteration or removal of a park or garden;
- (l) the removal of asbestos from a building or from any machinery, plant or equipment located in or on a building;
- (m) the alteration of the surface of works referred to in paragraph (a), (b), (c) or (d) by painting, rendering, tarring, marking or other form of resurfacing;
- (n) site preparation work, including pile driving, that is preliminary work to the performance of any work in the above paragraphs;
- (o) other work prescribed as being building or construction work for the purposes of this Act.

3. Building or construction work does not include any of the following work:

- (a) if the principal business activity of a person, or employee, is not building or

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construction work, maintenance or repair work carried out –

- (i) by that person for his or her own benefit; or
 - (ii) by that employee for the benefit of his or her employer;
- (b) the construction, alteration, repair, demolition or removal of a fence that is on, or forms part of the boundary of, agricultural land;
 - (c) work directly associated with the care, conservation or rehabilitation of agricultural land or of land that has been agricultural land;
 - (d) work that involves the planting, removal or maintenance of any plant or other living thing;
 - (e) other work prescribed as not being building or construction work for the purpose of this Act.

Schedule 3 repealed

31. Schedule 3 to the Principal Act is repealed.

Schedule 4 amended (Membership of the Board)

32. Schedule 4 to the Principal Act is amended as follows:

- (a) by omitting from clause 1 “Board, other than a member referred to in section 5(1)(a), (b) or (c), shall be” and substituting “Board is”;

- (b) by omitting clause 3;
- (c) by omitting clauses 5 and 6 and substituting the following clauses:

Acting members

5. (1) If a member of the Board is absent from, or is unable to perform the functions of, the office of member, the Minister may appoint another person to act in the place of that member on the Board.

(2) An appointment under subclause (1) –

- (a) may be revoked at any time by the Minister; and
- (b) is revoked by the return to office of the member represented by the acting member; and
- (c) is revoked once the member represented by the acting member is able to perform the functions of the office of member again.

(3) If a person is appointed to act as a member of the Board that person is taken to be a member of the Board.

Remuneration and conditions of appointment

6. (1) A member of the Board is entitled to be paid such remuneration and allowances as the Minister determines.

(2) A member of the Board who is a State Service employee or a State Service

officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member of the Board holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

Vacation of office

6A. (1) A member of the Board vacates office if he or she –

- (a) dies; or
- (b) resigns by written notice given to the Minister and the Minister accepts the resignation; or
- (c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member of the Board from office if the member –

- (a) is absent from 3 consecutive meetings of the Board without the permission of the other members of the Board unless the member –
 - (i) is on leave granted by the Minister; or
 - (ii) is excused by the Minister for the member's absence from those meetings within 3 weeks after the last of those meetings; or

- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
- (d) has benefited from, or has claimed to be entitled to benefit from, the profit of, or any benefit arising from, any contract, agreement or arrangement made by or on behalf of the Board, other than a contract, agreement or arrangement for a service ordinarily supplied by the Board on the same terms as that service is supplied to other persons in the same situation; or
- (e) fails to disclose an interest as required under clause 3 of Schedule 5 except where the member's interest is as –
 - (i) a member of the public; or
 - (ii) an elector of, or ratepayer to, any municipality; or
 - (iii) a shareholder in a company in which there were at that time more than 20 members and of which the member

was not at that time a director or officer.

(3) The Minister may remove a member of the Board from office if satisfied that the member is unable to perform adequately or competently the duties of office.

(4) A member of the Board must not be removed from office otherwise than in accordance with this clause.

- (d) by omitting from clause 7 “Governor” and substituting “Minister”.

Schedule 5 amended (Meetings of the Board)

33. Schedule 5 to the Principal Act is amended as follows:

- (a) by omitting subclause (1) from clause 1 and substituting the following subclause:

(1) The members of the Board are to elect a deputy chairperson from the members of the Board.

- (b) by omitting subclause (1) from clause 2 and substituting the following subclause:

(1) Five members of the Board constitute a quorum of the Board.

- (c) by omitting from clause 2(3) “8 members” and substituting “4 members”;

- (d) by omitting subclause (5) from clause 2;

- (e) by omitting clause 3 and substituting the following clause:

Disclosure of interests

3. (1) If a member of the Board has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

Penalty: Fine not exceeding 100 penalty units.

(2) Unless the Board otherwise determines, a member of the Board who has made a disclosure under subclause (1) in relation to a matter must not –

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

(3) For the purposes of making a determination under subclause (2), the member of the Board to whom the determination relates must not –

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

(4) Subclause (1) does not apply –

- (a) in respect of a contract for goods or services supplied by the Board if

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those goods or services are ordinarily supplied by the Board and are supplied on the same terms as they are ordinarily supplied to other persons in the same situation; or

(b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

(f) by omitting subclause (4) from clause 4 and substituting the following subclause:

(4) The ordinary business of the annual general meeting is to receive from the members of the Board reports on the transactions of the Board during the last preceding financial year.

(g) by omitting from clause 5(2) “8 members” and substituting “4 members”.

Schedule 6 substituted

34. Schedule 6 to the Principal Act is repealed and the following Schedule is substituted:

**SCHEDULE 6 – SAVINGS AND
TRANSITIONAL**

Section 43

Interpretation

1. In this Schedule –

“commencement day” means the day on which the *Building and Construction Industry Training Fund Amendment Act 2004* commences;

“current Act” means this Act as in force immediately after the commencement of the *Building and Construction Industry Training Fund Amendment Act 2004*;

“former Act” means this Act as in force immediately before the commencement day;

“former Board” means the Tasmanian Building and Construction Industry Training Board continued under section 4 of the former Act;

“Management Committee” means the Committee constituted under Schedule 6 of the former Act;

“new Board” means the Tasmanian Building and Construction Industry Training Board established under section 4 of the current Act.

Abolition of Management Committee

2. (1) The Management Committee is abolished.

(2) The appointment of each member of the Management Committee is revoked.

Abolition of former Board

3. (1) Despite the repeal of section 4 of the former Act, the former Board continues for a period of 31 days after the commencement day and is abolished at the end of that period.

(2) The appointment of each member of the former Board is revoked on the day the former Board is abolished.

Annual report

4. (1) In this clause –

“transition year” means the financial year during which the commencement day falls.

(2) For the purposes of the annual report required under section 40 of the current Act, the new Board is to prepare the annual report for the transition year.

(3) The former Board is to provide, in respect of the portion of the transition year that precedes the commencement day, a report that includes all of the information that is required under section 40 of the current Act to be included in an annual report.

(4) The former Board is to provide the report under subclause (3) to the new Board within 30 days of the commencement day.

(5) The new Board is to include the report provided by the former Board under subclause (3) in the annual report for the transition year.

Decisions, &c., of former Board and Management Committee

5. (1) A decision, action, policy or delegation made or done by the former Board is taken to be a decision, action, policy or delegation made or done by the new Board.

(2) A decision, action, policy or delegation made or done by the Management Committee is taken to be a decision, action, policy or delegation made or done by the new Board.

Certain building or construction work exempt

6. (1) If building or construction work initiated before the commencement day was exempt from the levy payable under the former Act, that building or construction work is exempt from the levy payable under the current Act to the extent the work was exempt under the former Act.

(2) For the purposes of this clause, building or construction work is taken to be initiated if a contract for the undertaking of the building or construction work has been made by the parties and assessed for the purposes of the levy payable under the former Act.

(3) The Minister may determine that building or construction work, or a stage of building or construction work –

- (a)** forms part of building or construction work that was exempt from the payment of the levy under the former Act; and
- (b)** is exempt from the payment of the levy under the current Act.