

TASMANIA

OCCUPATIONAL LICENSING BILL 2005

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OCCUPATIONAL LICENSING BILL 2005

(Brought in by the Minister for Infrastructure, Energy and Resources, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to ensure that contractors, practitioners and other persons engaged in certain occupations, trades or callings are appropriately qualified, licensed and regulated to perform their work safely and in accordance with established benchmarks, to promote safety, to provide for the investigation of incidents in those activities, to amend the *Building Act 2000* and the *Electricity Industry Safety and Administration Act 1997* and to repeal the *Plumbers and Gas-fitters Registration Act 1951*

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Occupational Licensing Act 2005*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“Administrator” means the person appointed by the Minister as the Administrator of Occupational Licensing under section 10;

“approved” means approved by the Administrator;

“approved authority” means a local authority, statutory authority or any body or organisation, whether incorporated or not, that is approved by the Administrator for the purposes of this Act in respect of an occupation, trade or calling to which this Act applies;

“authorised officer” means a person who is appointed or taken to be appointed under section 16 as an authorised officer;

“Board” means the Occupational Licensing Advisory Board established under section 14;

“body corporate” includes a corporation within the meaning of the Corporations Act;

“code of practice” means a code of practice established under section 53;

“continuing professional development” has a meaning given by section 4;

“contractor” means the holder of a contractor’s licence under section 21 who –

- (a) enters into a contract to carry out any prescribed work; or
- (b) employs another person to carry out any prescribed work; or
- (c) has the management or control of any other person carrying out any prescribed work;

“contractor’s business” means a business involving entering into a contract or contracts to carry out prescribed work;

“defective work” means –

- (a) any work that does not comply with a code of practice; or
- (b) any work where the materials, tools or equipment used are faulty or unsuitable for the purposes of the work; or
- (c) any work that has been left in an incomplete and unsafe condition; or
- (d) any other work that is determined to be defective work under a code of practice or in accordance with the regulations;

“director” has the same meaning as in section 9 of the Corporations Act;

“document” means any record of information, and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph –

and a reference in this Act to a document includes a reference to –

- (e) any part of the document; and
- (f) any copy, reproduction or duplicate of the document or of any part of the document; and
- (g) any part of such a copy, reproduction or duplicate;

“fit and proper”, in the case of a contractor, practitioner or other person who is subject to this Act, means fit and proper as defined in a code of practice relevant to that contractor, practitioner or other person;

“Fund” means the Occupational Licensing Administration Fund established under section 96;

“licence” means –

- (a) an authority granted and in force under this Act to carry out any prescribed work; or
- (b) a document that evidences that authority; or
- (c) any such authority or document continued in force under this Act;

“nominated manager” means a person who is named in a licence or a notice under section 26 as a nominated manager;

“owner”, in respect of any premises, means a person who –

- (a) is entitled to any interest in the premises; or
- (b) has contracted to buy the premises; or
- (c) is entitled to receive, or is in receipt of, the rents and profits of the premises, whether as beneficial owner, trustee, mortgagee in possession or otherwise –

and includes a person who has, or is entitled to have, the management or control of any premises;

“practitioner” means a person who is the holder of a licence authorising him or her to carry out any prescribed work;

“premises” includes –

- (a) land and a structure, building, caravan, vehicle or vessel, whether temporary or not and whether under construction or not; and
- (b) a place, whether enclosed or built on or not and whether on, within, over or under land or water; and
- (c) a part of premises, including premises referred to in paragraph (a) or (b);

“prescribed work” means any work usually carried out in the course of an occupation, trade or calling specified in Schedule 2 which is determined by the regulations to be prescribed work but does not include any work that under the regulations is excluded from the application of this Act;

“regulations” means regulations made and in force under this Act;

“representation” means an express or implied representation;

“specified person” means a person specified in an infringement notice under section 62 as a person to whom a prescribed penalty is payable;

“standard” means a standard issued by a standards authority;

“standards authority” means Standards Australia International Limited, the British Standards Institution, the International Organisation for Standardization, the American National Standards Institute, Standards New Zealand or any other similar authority approved by the Administrator;

“statutory authority” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the Royal Prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority but does not include a Government department;

“supervision” means supervision within the meaning of a code of practice.

- (2) A reference in this Act to an approved course of training in respect of any prescribed work includes a course of training undertaken for the purposes of a qualification or statement of attainment within the meaning of the *Vocational Education and Training Act 1994*.
- (3) In this Act, a reference in a penalty provision to a level is a reference to the level of the penalty as described in Schedule 1.

4. Meaning of continuing professional development

For the purposes of this Act, a practitioner is taken to demonstrate continuing professional development if he or she has undertaken and can show commitment to –

- (a) development of skills in respect of the prescribed work which he or she proposes to carry out and any learning required for that purpose; and
- (b) maintenance of his or her existing skills.

5. Objects of Act

The objects of this Act are to ensure that –

- (a) all work carried out in the course of certain occupations, trades or callings is carried out by appropriately qualified and licensed persons; and
- (b) all such work is carried out safely without injury or damage to any person, property or infrastructure; and
- (c) all persons carrying out any such work acquire, maintain, further develop and apply their skills properly.

6. Crown to be bound

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

7. Application of Act to occupations, trades and callings

(1) This Act applies to the occupations, trades and callings specified in Schedule 2.

(2) Where the Minister is satisfied that, in the course of any occupation, trade or calling, a person is likely to, or may, create a hazard, risk or danger to –

(a) public health or safety; or

(b) property or infrastructure –

the Minister may, by order published in the *Gazette* and in such daily newspapers circulating generally in Tasmania as the Minister thinks fit, amend Schedule 2 by adding or varying an occupation, trade or calling.

(3) An order under subsection (2) –

(a) is to state the grounds on which it is made by reference to public health, safety, property or infrastructure; and

(b) is to be published in a way that ensures, in the Minister's opinion, that the order will come to the attention of persons affected by it; and

(c) may provide that only such provisions of this Act as are specified in the order are to apply to the relevant occupation, trade or calling; and

(d) may provide that the provisions of any other Act that relates to the relevant occupation, trade or calling, or such

provisions of that Act as are specified in the order, are to continue to have effect notwithstanding the provisions of this Act.

- (4) The Minister must cause a copy of the order to be laid before each House of Parliament within 14 sitting-days of that House and the order is subject to disallowance under section 47 of the *Acts Interpretation Act 1931* as if it were a regulation.
- (5) The provisions of the Acts referred to in Schedule 3 continue to have effect notwithstanding the provisions of this Act.

8. Act not to affect laws relating to mutual recognition

Nothing in this Act affects the application of any other law relating to the mutual recognition of qualifications to perform any prescribed work.

9. Application of other Acts

- (1) This Act is in addition to, and does not derogate from, any other Act –
 - (a) relating to contractors, practitioners and other persons engaged in any occupation, trade or calling to which this Act applies; or
 - (b) prescribing any requirements with which any prescribed work must comply.
- (2) This section is subject to the provisions of any order made under section 7(3)(c) or (d).

PART 2 – ADMINISTRATION

Division 1 – Administrator of Occupational Licensing

10. Administrator

The Minister administering the *State Service Act 2000* may appoint a State Service officer or State Service employee to be the Administrator of Occupational Licensing and that officer or employee may hold that office in conjunction with State Service employment.

11. General functions of Administrator

The Administrator has the following functions:

- (a) to advise the Minister on legislation and any other matter relating to the administration of this Act;
- (b) to confer with and seek advice from State Service Agencies, approved authorities and any other persons, bodies or organisations engaged in any relevant industry and other interested groups or bodies on matters relating to the administration of this Act;
- (c) to confer with and seek advice from any national body established to deal with matters relating to occupational licensing and to represent Tasmania in respect of the administration of this Act;
- (d) to promote continuing professional development in respect of any

occupation, trade or calling to which this Act applies;

- (e) to publish reports and disseminate information on matters relating to the administration of this Act;
- (f) to review the performance of licence holders and authorised officers;
- (g) to carry out any other function relating to the administration of this Act that the Minister determines.

12. Assistance to Administrator

The Administrator may make arrangements with the Head of a State Service Agency for such State Service officers and State Service employees employed in that Agency as the Administrator considers necessary to be made available to the Administrator to enable the Administrator to perform his or her functions and exercise his or her powers under this Act and those officers and employees may, in conjunction with State Service employment, serve the Administrator in any capacity.

13. Power to obtain information

- (1) The Administrator may, by written notice given to a person who may, in the Administrator's opinion, be in possession of information, documents or materials relating to any occupation, trade or calling to which this Act

applies or otherwise to the administration of this Act, require the person –

- (a) to provide written answers to specified questions within a specified period; or
- (b) to produce documents or other materials for examination at a specified time and place; or
- (c) to appear before an authorised officer at a specified time and place for examination on a specified matter; or
- (d) having appeared for examination as mentioned in paragraph (c), to answer any question relating to the administration of this Act.

(2) A person who –

- (a) without reasonable excuse fails to comply with a requirement under this section; or
- (b) in response to such a requirement, knowingly gives information that is false or misleading or deliberately refrains from giving material information; or
- (c) having been required to appear before an authorised officer for examination, fails to comply with any reasonable requirement of the authorised officer –

is guilty of an offence.

Penalty: Level 2.

Division 2 – Occupational Licensing Advisory Board**14. Occupational Licensing Advisory Board**

- (1) The Minister may establish a board, to be known as the “Occupational Licensing Advisory Board”.
- (2) The functions of the Board are to advise the Administrator on –
 - (a) the performance of the Administrator’s functions or the exercise of his or her powers under this Act; and
 - (b) the administration of licences granted to contractors and practitioners; and
 - (c) the training and skills required of practitioners, nominated managers and authorised officers; and
 - (d) any other matter referred to the Board by the Administrator.
- (3) Schedule 4 has effect with respect to the constitution, membership and meetings of the Board.
- (4) With the approval of the Administrator, the Board may establish committees to advise it on the training and skills required of practitioners, nominated managers and authorised officers and on any other matter on which the Administrator has sought its advice.
- (5) With the approval of the Administrator, the Board may engage additional persons to advise it

on the performance of its functions under this Act.

- (6) The Minister may determine procedures to be followed by the Board and, to the extent that the Board's procedures are not so determined, the Board may determine its own procedures.

Division 3 – Delegation

15. Delegation of Administrator's functions

- (1) The Administrator may delegate any of his or her functions under this Act, except this power of delegation.
- (2) A delegation may be made to –
 - (a) an approved authority; or
 - (b) a State Service officer or State Service employee; or
 - (c) an officer or employee of an approved authority; or
 - (d) any other person of an occupation or class prescribed by the regulations.

Division 4 – Authorised officers

16. Appointment of authorised officers

- (1) The Administrator may appoint –
 - (a) a State Service officer, State Service employee or any other person; or

- (b) a member of a class of police officers, State Service officers, State Service employees or employees of a company carrying out functions for the purposes of this Act –

to be an authorised officer for the purposes of this Act on such terms and conditions as are specified in the instrument of appointment and, in the case of a State Service officer or State Service employee, he or she may hold that office in conjunction with State Service employment.

- (2) The Administrator is to issue an authorised officer appointed under subsection (1)(a) with –

- (a) an instrument of appointment; and
- (b) an identity card.

- (3) A person may not be appointed as an authorised officer under this section unless the Administrator is satisfied that he or she is qualified by reason of knowledge and experience to hold that office.

- (4) The powers and functions of an authorised officer under this Act must be exercised or performed in accordance with any limitations stated in the instrument of his or her appointment.

Penalty: Level 3.

- (5) Where an authorised officer appointed under subsection (1)(a) ceases to be appointed as such, he or she must within 10 days surrender his or her identity card to the Administrator.

Penalty for failure to comply with this subsection: Level 1.

17. Entry to premises

- (1) An authorised officer may enter any premises –
 - (a) in which, on which or for the purposes of which any prescribed work has been, is being or is intended to be carried out; or
 - (b) for the purposes of inspecting any article or thing on which prescribed work has been, is being or is intended to be carried out; or
 - (c) for the purposes of taking any action that is reasonably necessary or desirable for the purposes of this Act.
- (2) A power of entry conferred by this Act may be exercised –
 - (a) with the consent of the occupier of the premises to be entered; or
 - (b) with the authority of a warrant; or
 - (c) in an emergency, where it is impracticable to obtain a warrant or the consent of the occupier.
- (3) On entering any premises in or on which an authorised officer appointed under section 16(1)(a) proposes to exercise his or her powers or perform his or her functions under this Act, the authorised officer, if so requested by –
 - (a) the owner of the premises; or

- (b) the employer of any person engaged in carrying out any prescribed work in or at the premises –

is to show his or her identity card to the owner or employer.

- (4) A failure by an authorised officer to show his or her identity card does not invalidate any subsequent exercise of his or her powers.

18. Warrant to enter premises

- (1) An authorised officer may apply to a justice for a warrant to enter the premises specified in the application.
- (2) The justice may issue the warrant if satisfied that a warrant is reasonably required for the purposes of this Act.
- (3) A warrant authorises the authorised officer –
 - (a) to enter the premises specified in the warrant; and
 - (b) to do anything reasonably required for the administration or enforcement of this Act.
- (4) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.
- (5) An application for a warrant may be made by telephone, facsimile or other prescribed means if the authorised officer considers that the urgency of the situation requires it.

- (6) If the justice decides to issue a warrant on an application under subsection (5), the justice is to –
- (a) complete and sign the warrant; and
 - (b) inform the applicant of –
 - (i) the terms of the warrant; and
 - (ii) the date and time of the issue of the warrant; and
 - (iii) the date and time when the warrant is to cease to have effect; and
 - (c) record on the warrant the reasons for issuing it.
- (7) The authorised officer must –
- (a) complete a warrant form in the same terms as the warrant signed by the justice; and
 - (b) write on the form –
 - (i) the name of the justice; and
 - (ii) the date and time of the issue of the warrant; and
 - (c) send to the justice the completed form not later than the day after the warrant is executed or ceases to have effect.
- (8) On receipt of the warrant form, the justice is to attach it to the warrant signed by the justice.

- (9) A warrant form completed under subsection (7) by an authorised officer has the same force as the original of the warrant signed by the justice.

19. Powers of authorised officers

If an authorised officer reasonably considers that an offence against this Act has been, is being or is likely to be committed or a code of practice has been, is being or is likely to be contravened in any premises, the authorised officer may enter those premises and do one or more of the following:

- (a) require the owner or occupier of those premises or any employee of the owner or occupier to produce any records relating to any business in which, or for the purposes of which, any prescribed work is being carried on;
- (b) search for, inspect, take extracts from and make copies of those records;
- (c) require any person who appears to be able to do so to answer any question relating to any prescribed work, the duties of contractors or the duties of practitioners under this Act.

20. Offences relating to authorised officers

A person must not –

- (a) obstruct, wilfully delay, threaten or intimidate an authorised officer or a person assisting an authorised officer in

the performance of his or her functions under this Act; or

- (b) without lawful excuse, refuse or fail to comply with a requirement made, or to answer a question asked, by an authorised officer under this Act; or
- (c) provide an authorised officer with information requested under this Act knowing that it is false or misleading in a material particular; or
- (d) directly or indirectly prevent any person from appearing before, or being questioned by, an authorised officer.

Penalty: Level 5.

PART 3 – DUTIES OF PERSONS RELATING TO PRESCRIBED WORK

21. Obligation to hold contractor's licence

A person must not carry on business as a contractor unless he or she holds a contractor's licence of the occupation and class appropriate to the prescribed work carried out in the course of the business.

Penalty: Level 5.

22. Obligation to hold practitioner's licence

(1) A person must not carry out any prescribed work unless –

- (a) the person holds a practitioner's licence of the relevant occupation and class; or
- (b) the person is undergoing an approved course of training and the prescribed work is supervised by a practitioner of the relevant occupation and class; or
- (c) the person is permitted to do so under section 36(4) and (5).

Penalty: Level 5.

(2) A person must not supervise the performance of prescribed work unless he or she is a practitioner of the relevant occupation and class.

Penalty: Level 5.

- (3) A practitioner must ensure that he or she acts only in the area of his or her competence.

Penalty: Level 5.

23. Duties of licence holders and nominated managers relating to prescribed work

- (1) In carrying out any prescribed work, a licence holder and a nominated manager must ensure that –
 - (a) any relevant code of practice is complied with; and
 - (b) any requirements imposed by subsections (2) and (3) are complied with; and
 - (c) he or she complies with any directions given to him or her by the Administrator or an authorised officer.

Penalty: Level 2.

- (2) A licence holder and a nominated manager must ensure that any directions given by him or her, in the course of carrying out any prescribed work, are complied with by a person who is not a licence holder and who is entitled to perform prescribed work under this Act.

Penalty: Level 2.

- (3) A contractor or nominated manager who carries out any prescribed work must ensure that the prescribed work is carried out in a manner that does not cause –

- (a) a risk to public health; or
- (b) a danger to the public; or
- (c) damage to property or infrastructure.

Penalty: Level 4.

- (4) A contractor or nominated manager who carries out any prescribed work must also ensure that the prescribed work is in accordance with any permit or authority required under any other law.

Penalty: Level 4.

- (5) A contractor or nominated manager who carries out any prescribed work must ensure that the materials, and the quality of the materials used in the prescribed work, are in accordance with the requirements of this Act.

Penalty: Level 4.

24. Duties of owners and occupiers relating to prescribed work

An owner or occupier of any premises who authorises any prescribed work in respect of the premises, must ensure that, so far as is reasonably practicable, any person engaged to carry out the prescribed work holds a licence if so required under this Act.

Penalty: Level 1.

25. Duties of licence holders

- (1) A holder of a licence who carries out any prescribed work under the licence must ensure that –

- (a) the prescribed work; and
- (b) any other work performed in connection with, or for the purposes of, the prescribed work –

complies with any relevant code of practice.

Penalty: Level 4.

- (2) A contractor must ensure that any prescribed work carried out under his or her licence is carried out by a person who –

- (a) is the holder of a practitioner's licence of the relevant occupation and class; or
- (b) is undergoing an approved course of training and whose prescribed work is supervised by the holder of a practitioner's licence of the relevant occupation and class.

Penalty: Level 4.

- (3) A practitioner supervising prescribed work by a person who is undergoing an approved course of training must –

- (a) give any directions necessary to ensure that the prescribed work is carried out as required by this Act; and

- (b) personally ensure that the prescribed work is correctly carried out as required by this Act.

Penalty: Level 4.

26. Obligation to ensure that contractor's business is properly managed

- (1) A contractor must not carry on business as such unless any prescribed work carried out in the course of the business is subject to the management and supervision of a nominated manager who –

- (a) is a practitioner; and
- (b) is, in the Administrator's opinion, competent –
 - (i) to assess the scope and technical requirements of any prescribed work to be carried out under a contract or proposed contract; and
 - (ii) to determine the skills and resources necessary to carry out that work; and
 - (iii) to make arrangements for carrying out that work properly and safely; and
- (c) is named in the contractor's licence, or in a notice under subsection (5), as the nominated manager.

Penalty: Level 5.

- (2) A contractor must not obstruct a nominated manager in the performance of his or her duties.

Penalty: Level 5.

- (3) A nominated manager is to be appointed under this section in respect of each occupation and class appropriate to the prescribed work carried out in the course of the contractor's business.

- (4) A nominated manager must perform competently his or her duties under this Act.

Penalty: Level 5.

- (5) If the nominated manager for a contractor's business dies or ceases to manage any prescribed work carried out in the course of that business, no offence is committed against this section if, within 60 days or any longer period allowed by the Administrator, the contractor nominates, by a notice in writing in an approved form given in the manner required by the Administrator, a new manager who is eligible to be the nominated manager for the contractor's business.

27. Insurance for licence holders

- (1) Notwithstanding section 8, the Administrator may, by notice published in the *Gazette*, require licence holders to be covered by insurance of a type and to an amount specified in the notice.
- (2) Notwithstanding subsection (1), it is lawful for a practitioner to perform prescribed work gratuitously if, in doing so, he or she is covered by insurance of a type and to an amount as required by subsection (1).

28. Insurance cover for contractors

- (1) A contractor is taken to be covered by the required insurance if –
 - (a) the prescribed work carried out by or on behalf of the contractor is covered by the required insurance; or
 - (b) the contractor is not a party to the required insurance but is specified or referred to in the contract of insurance by name or otherwise as a person covered by that insurance.
- (2) Where the contractor has the licence cancelled under section 46, the cancellation does not affect the insurance cover for any work carried out before notice of the cancellation is given to that holder.

29. Offences relating to insurance cover

- (1) A contractor must not carry out any prescribed work or allow any prescribed work to be carried out under his or her licence unless he or she holds, or is taken to hold, the required insurance under section 28.

Penalty: Level 5.

- (2) A contractor must not represent that he or she holds, or is taken to hold, the required insurance cover unless that is the case.

Penalty: Level 3.

- (3) A court that convicts a person of an offence under subsection (1) is to order, in addition to

any other penalty imposed in respect of the offence, that the person pay into the Fund an amount equal to the total of any insurance premiums which the court is satisfied the person has avoided by failing to maintain the insurance cover required by subsection (1).

- (4) A practitioner must not perform prescribed work gratuitously unless he or she is covered by insurance as required by section 27.

Penalty: Level 3.

- (5) A contractor must, on request by an owner or occupier of land on which any prescribed work is carried out, produce a certificate of currency or other evidence of the required insurance cover.

Penalty: Level 3.

PART 4 – LICENSING OF CONTRACTORS AND PRACTITIONERS

Division 1 – Preliminary

30. Classes of prescribed work

- (1) For the purposes of issuing licences under this Act, the Administrator may determine that –
 - (a) any prescribed work is to be divided into classes of prescribed work; and
 - (b) any class of prescribed work may be combined with any other class of prescribed work.
- (2) The Administrator is to notify any determination under subsection (1) in the *Gazette* and in such daily newspapers circulating generally in Tasmania as the Administrator thinks fit and the notification is to be available for public inspection –
 - (a) at the office of the Administrator during normal business hours; and
 - (b) by means of the World Wide Web; and
 - (c) by any other means determined by the Administrator.

31. Competencies and requirements

The Administrator is to determine, by notice published in the *Gazette*, entry competencies, continuing competencies and other requirements

which an applicant for a licence relating to a particular occupation and class of prescribed work must satisfy or continue to satisfy.

32. Publication of determinations and amendments

- (1) The Administrator may amend a determination under section 30 or 31 by omitting, substituting or adding a provision but, before doing so, must consult with the Board and may consult with any other person or organisation that he or she considers appropriate.
- (2) The Administrator is to notify any amendment under subsection (1) in the *Gazette* and in such daily newspapers circulating generally in Tasmania as the Administrator thinks fit and the notification is to be available for public inspection –
 - (a) at the office of the Administrator during normal business hours; and
 - (b) by means of the World Wide Web; and
 - (c) by any other means determined by the Administrator.

Division 2 – Contractors' licences

33. Application for contractor's licence

- (1) An application for a contractor's licence is to be made to the Administrator in an approved form and is to be accompanied by the prescribed fee.
- (2) The application –

- (a) is to state the occupation, trade or calling and class of prescribed work for which the licence is sought; and
- (b) is to be accompanied by any information required by the Administrator relating to –
 - (i) the suitability of the applicant to hold a contractor's licence of the relevant occupation and class; and
 - (ii) the nominated manager for the prescribed work to be carried out under the licence; and
 - (iii) any arrangements made or proposed by the applicant to ensure that prescribed work is carried out, or supervised, by a practitioner of the relevant occupation and class.
- (3) The applicant must provide the Administrator with proof of identity as may be required by the Administrator.

34. Determination of application

- (1) On receipt of an application for a contractor's licence, the Administrator must consider the application and –
 - (a) issue an appropriate licence to the applicant, which may be unconditional or subject to any conditions that the Administrator considers appropriate; or

- (b) refuse the application.
- (2) Unless otherwise agreed with the applicant, the Administrator is to make a decision within 21 days after receiving the application.
- (3) If the Administrator refuses an application, the Administrator, on the request of the applicant, must give the applicant written notice setting out the reasons for the refusal.
- (4) The applicant may request the Administrator to review the decision and, if he or she is not satisfied with the review, the applicant may appeal to the Magistrates Court (Administrative Appeals Division) under section 82.

35. Enforceability of contracts

- (1) A person who contracts to do prescribed work in contravention of section 21, 22 or 26 –
 - (a) is not entitled to recover any payment under the contract in respect of that prescribed work; and
 - (b) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; and
 - (c) is not entitled to damages or to enforce any other remedy in respect of any prescribed work carried out or supervised by the person in contravention of section 21, 22 or 26 –

but is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

- (2) This section does not affect the liability of any person for an offence against this or any other Act.

Division 3 – Practitioners’ licences

36. Application for practitioner’s licence

- (1) An application for a practitioner’s licence is to be made to the Administrator in an approved form and is to be accompanied by the prescribed fee.
- (2) The application –
 - (a) is to state the occupation or occupations and class or classes of prescribed work for which the licence is sought; and
 - (b) is to be accompanied by any information required by the Administrator about –
 - (i) the applicant’s qualifications and experience in carrying out prescribed work of the relevant occupation and class; and
 - (ii) the applicant’s capacity and fitness to carry out prescribed work of that occupation and class; and
 - (iii) the maintenance of the applicant’s skills and continuing professional development.

- (3) The Administrator may, as a condition of granting a practitioner's licence, require the applicant to show satisfactory completion of an approved course of training.
- (4) A person who completes an approved course of training may, subject to subsection (5), continue to carry out prescribed work until he or she is granted a practitioner's licence or such other time as may be determined by the Administrator, whichever first occurs.
- (5) The prescribed work referred to in subsection (4) –
 - (a) is to be work to which the completed approved course of training relates; and
 - (b) is to be supervised by a practitioner of the relevant occupation and class.

37. Determination of application

- (1) On receipt of an application for a practitioner's licence, the Administrator must consider the application and –
 - (a) issue an appropriate licence to the applicant, which may be unconditional or subject to any conditions that the Administrator considers appropriate; or
 - (b) refuse the application.
- (2) Unless otherwise agreed with the applicant, the Administrator is to make a decision within 21 days after receiving the application.

- (3) If the Administrator refuses the application, the Administrator, on the request of the applicant, must give him or her written notice setting out the reasons for the refusal.
- (4) The applicant may request the Administrator to review the decision and, if he or she is not satisfied with the review, the applicant may appeal to the Magistrates Court (Administrative Appeals Division) under section 82.

Division 4 – Offences related to occupational licensing

38. Offences

- (1) A person must not hold himself, herself or any other person out as a practitioner or a contractor, or as a nominated manager or authorised officer, when that is not the case.

Penalty: Level 3.

- (2) A person must not represent that he or she or any other person is prepared to enter into a contract to carry out any prescribed work unless the intended contractor holds a contractor's licence of the relevant occupation and class.

Penalty: Level 5.

- (3) An applicant for a licence must not represent that he or she holds a qualification, certificate, accreditation, registration or licence when that is not the case.

Penalty: Level 3.

- (4) A person must not materially alter or deface a licence.

Penalty: Level 3.

- (5) A person must not impersonate an authorised officer.

Penalty: Level 3.

- (6) In providing any information, statement, report or document under this Act, a person must not –

- (a) provide it knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the information, statement, report or document is false or misleading.

Penalty: Level 4.

39. Vicarious liability

- (1) Where a person commits an offence against this Act –

- (a) any other person who has the management or control of the offender; or
- (b) any person who is a nominated manager in respect of the offender –

is also guilty of that offence and liable to a penalty not exceeding the maximum penalty prescribed for the offence.

- (2) It is a defence to a charge for an offence arising under subsection (1) if the person charged can show that he or she could not, by the exercise of

reasonable diligence, have prevented the commission of the offence.

- (3) A person who under subsection (1) is charged with an offence against this Act may be convicted of the offence whether or not proceedings have been brought against any other person.
- (4) If a body corporate commits an offence against this Act –
 - (a) each director or manager of the body corporate who authorised or permitted the offence is also guilty of an offence and is liable to a penalty not exceeding the maximum prescribed for the body corporate's offence; and
 - (b) a director or manager of the body corporate may be convicted of an offence under this section whether or not proceedings have been brought against the body corporate.

Division 5 – General provisions about licences

40. Power to add, &c., conditions of licence

- (1) The Administrator may, at any time, by written notice given to a licence holder, apply a condition to his or her licence or vary or remove a condition of the licence.
- (2) A licence holder must not contravene a condition of his or her licence.

Penalty: Level 3.

41. Certificate of identification

- (1) The Administrator is to issue to a licence holder a certificate of identification in an approved form.
- (2) The certificate of identification may, if the Administrator considers it appropriate, be incorporated in a licence issued on an application for the grant or renewal of the licence.
- (3) A person must not materially alter or deface a certificate of identification granted or issued under this Act.

Penalty for failure to comply with this subsection: Level 3.

42. Term of licence

- (1) A practitioner's licence is to be granted for a period, not exceeding 3 years, specified in the licence.
- (2) A contractor's licence is to be granted for a period, not exceeding one year, specified in the licence.

43. Renewal of licence

The Administrator may, on application by a licence holder who can show continuing professional development satisfactory to the Administrator, renew the licence for a further period, not exceeding the relevant period specified in section 42.

44. Surrender of licence

- (1) A licence holder may, by written notice to the Administrator, surrender the licence.
- (2) Within 10 days after surrender of a licence, the licence holder must return the licence and the certificate of identification issued under section 41(1) to the Administrator.

Penalty: Level 1.

45. Duplicate certificate of identification

Where the Administrator is satisfied that a licence holder has lost or misplaced his or her certificate of identification, the Administrator may issue a duplicate certificate of identification to him or her.

46. Cancellation of licence

- (1) The Administrator may, by notice in writing given to a licence holder, cancel the licence if any of the statements or information contained in the licence holder's application for the licence is materially false or misleading.
- (2) The cancellation of a licence does not render unlawful any prescribed work carried out by a person before he or she receives notice of the cancellation.

47. Production of certificate of identification

- (1) A licence holder must, at the request of the Administrator and within such time as the Administrator may require, produce to the Administrator any certificate of identification issued to him or her under section 41.

Penalty: Level 1.

- (2) A person who is carrying out, proposes to carry out or has carried out any prescribed work must, on demand, by –
- (a) the Administrator; or
 - (b) an authorised officer; or
 - (c) the owner or occupier of any relevant premises; or
 - (d) a person with whom the licence holder has contracted or proposes to contract to carry out the prescribed work –

produce to him or her any certificate of identification issued to him or her under section 41.

Penalty: Level 1.

48. Licence not transferable

A licence is not transferable.

Division 6 – Registers**49. Registers**

- (1) For the purposes of this Act, the Administrator is to keep registers.
- (2) One register is to include –
 - (a) the full name of the licence holder; and
 - (b) any preferred name of the licence holder; and
 - (c) the address of any premises used by the licence holder for the purposes of his or her business; and
 - (d) any business name used by the licence holder for the purposes of his or her business; and
 - (e) in the case of a practitioner, his or her residential address; and
 - (f) such other information relating to the licence holder or the conduct of his or her business as the Administrator considers appropriate for the purposes of this Act.
- (3) The information referred to in subsection (2)(b), (c) and (d) is to be available to the public by means of the World Wide Web but the information referred to in subsection (2)(a), (e) and (f) is not to be so available.
- (4) For the purposes of this Act, the Administrator is to keep another register giving details of –

- (a) the Administrator's determinations in respect of classes of prescribed work; and
- (b) the Administrator's determinations in respect of competencies and requirements; and
- (c) the publication of any such determinations and any amendments to them; and
- (d) codes of practice; and
- (e) information given to the Administrator for the purposes of demerit points; and
- (f) any infringement notice issued to a licence holder; and
- (g) any disciplinary action against a licence holder under Division 2 of Part 9; and
- (h) reports published and information disseminated on matters relating to the administration of this Act; and
- (i) administrative guidelines as to the disclosure of information in a register; and
- (j) notices requiring insurance under section 27; and
- (k) the constitution, meetings and procedure of disciplinary panels; and
- (l) orders granting exemptions under section 99; and
- (m) authorised officers; and

- (n) any other information that the Administrator considers appropriate for the purposes of the Act.
- (5) The information referred to in subsection (4)(a), (b), (c), (d), (h), (i), (j), (k), (l) and (m) is to be available to the public by means of the World Wide Web but the other information referred to in that subsection is not to be so available.
- (6) The Administrator must correct a mistake, error or omission in a register subject to the requirements, if any, of the regulations.

50. Access to registers

- (1) The registers kept under section 49 may be kept in the form of, or as part of, a computer database or in any other form that the Administrator considers appropriate.
- (2) Subject to sections 49 and 51, the registers are to be available for public inspection by means of the World Wide Web and by any other means determined by the Administrator.

51. Security of information in registers

- (1) Information recorded in the registers is protected information if it is –
 - (a) personal information other than that which may identify the licence holder; or
 - (b) commercially sensitive information.

- (2) The Administrator must not allow protected information to be divulged except as follows:
- (a) as the Administrator considers appropriate in the public interest for the purposes of the administration of an Act of Tasmania, another State, a Territory or the Commonwealth;
 - (b) as authorised by the person to whom the information relates;
 - (c) as required by a court or other body or person authorised to take evidence;
 - (d) in accordance with administrative guidelines issued by the Administrator;
 - (e) as otherwise authorised by the Administrator.

52. Administrative guidelines

- (1) The Administrator may issue administrative guidelines governing the disclosure of information (including protected information) from the registers kept under section 49.
- (2) The Administrator may, from time to time, revise administrative guidelines issued under this section.

PART 5 – CODES OF PRACTICE

53. Codes of practice

- (1) The Administrator may, by notice published in the *Gazette*, establish one or more codes of practice in respect of any occupation, trade or calling to which this Act applies but a code of practice is to be consistent with any other law relevant to the occupation, trade or calling.
- (2) A code of practice may consist of the whole or a part of any code, standard, rule, specification or provision relating to any prescribed work formulated, prepared or adopted by the Administrator and may apply, incorporate or refer to any document formulated or published by any body or authority as in force at that time.
- (3) The Administrator may, by notice published in the *Gazette*, amend any part of a code of practice or revoke a code of practice.
- (4) A code of practice may contain requirements to be observed for –
 - (a) the level of supervision required of the holders of licences and other persons in performing prescribed work; and
 - (b) ensuring that the holders of licences and other persons acquire, maintain, further develop and apply their skills relating to the performance of prescribed work.
- (5) A code of practice may have effect by reference to the types of prescribed work or the degree of

experience required of the contractors, practitioners and other persons concerned.

- (6) Before establishing a code of practice, amending any part of a code of practice or revoking a code of practice, the Administrator may consult with the Board.
- (7) The Administrator is to give notice in the *Gazette*, and in such daily newspapers circulating generally in Tasmania as the Administrator thinks fit, of –
 - (a) the approval of a code of practice; or
 - (b) the approval of the revision of the whole or a part of a code of practice; or
 - (c) the revocation of a code of practice.
- (8) A notice under this section is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

54. Certification of prescribed work

- (1) The Administrator may, in accordance with the regulations, require that, on completion of any prescribed work, the responsible licence holder provides a certificate that the prescribed work complies with the relevant code of practice.
- (2) A licence holder must comply with a requirement under subsection (1).

Penalty: Level 2.

PART 6 – REGULATION OF PRESCRIBED WORK***Division 1 – Inspection, investigation and rectification of prescribed work*****55. Inspection and investigation of prescribed work**

The Administrator may, either on complaint or on his or her own initiative, inspect and investigate the performance of any prescribed work and any alleged contravention of this Act.

56. Appointment of investigator

- (1) For the purposes of this Act, the Administrator may appoint a person as an investigator on any terms and conditions that he or she considers appropriate.
- (2) An investigator may be appointed to assist an authorised officer in the performance of his or her duties under this Act.

57. Power to make rectification order

- (1) If the Administrator or an authorised officer is satisfied, on inspection and investigation, that any prescribed work is defective, the Administrator or authorised officer may make a rectification order or undertake any other action as prescribed.
- (2) A rectification order –
 - (a) is to give reasons for the order; and

- (b) is to give reasonable particulars of the work required to be carried out under the order so as to rectify the prescribed work; and
 - (c) may be made orally but must, as soon as practicable, be given in writing to the owner, occupier, licence holder or his or her agent.
- (3) A person against whom a rectification order is made must comply with the order.

Penalty: Level 4.

Division 2 – Emergency powers

58. Powers of authorised officers in emergency

- (1) In an emergency, an authorised officer may take any action that he or she considers necessary to protect life or property.
- (2) Without limiting the generality of subsection (1), an authorised officer may take any one or more of the following actions under that subsection:
 - (a) enter premises;
 - (b) disconnect a source of danger to life or property;
 - (c) carry out prescribed work on infrastructure or an installation;
 - (d) give any directions to the person in charge of infrastructure or an installation that may be necessary to make it safe;

- (e) remove or cause to be removed a hazard that may cause danger to life or serious damage to property;
 - (f) give any directions that the authorised officer considers necessary to avert danger to life or property.
- (3) A person to whom a direction is given under this section must comply with the direction.

Penalty: Level 3.

Division 3 – Complaints

59. Complaints

- (1) A person may make a complaint to the Administrator on the ground of defective work or a contravention of this Act by a licence holder, an authorised officer or a person appointed as an investigator under section 56.
- (2) A complaint –
 - (a) is to be in writing; and
 - (b) is to contain particulars of the grounds of the complaint with a statement that the complainant consents to those particulars and all supporting documents being given to the person against whom the complaint is made; and
 - (c) is to be supported by a statutory declaration.
- (3) The Administrator may require the complainant to give further particulars of the complaint

supported by a statutory declaration within such time as the Administrator may specify.

- (4) The Administrator, by notice in writing given to the complainant, may dismiss any complaint without investigation if –
- (a) further particulars are not given as required; or
 - (b) the complaint or further particulars are not supported by a statutory declaration; or
 - (c) the complaint does not relate to a contravention of this Act; or
 - (d) the complaint is otherwise vexatious or frivolous –

and must dismiss the complaint if it does not contain the particulars and statement referred to in subsection (2)(b).

60. Notification of complaint

After receiving a complaint about a person mentioned in section 59(1), the Administrator, by written notice given to the person complained about, must –

- (a) inform the person of the particulars of the complaint; and
- (b) provide the person with any documents relating to the complaint; and

- (c) invite the person to make, within 14 days or any longer period stated in the notice, written comments about the complaint –

and, if the Administrator is satisfied that there are compelling reasons for doing so, the Administrator may inform the person that he or she will withhold the identity of the complainant.

61. Investigation of complaints

- (1) Subject to section 59, the Administrator, as soon as is reasonably practicable after receiving a complaint, must make inquiries and take any other action the Administrator considers necessary to investigate the matter.
- (2) Before considering a complaint, the Administrator may require the complainant to demonstrate to the Administrator that –
 - (a) the complaint has been brought to the attention of, and considered by, the person mentioned in section 59(1); and
 - (b) a satisfactory resolution of the complaint could not be achieved.

Division 4 – Infringement notices

62. Service of infringement notices

- (1) An authorised officer may serve an infringement notice on a person who is over the age of 16 years if of the opinion that the person has committed an offence under this Act that is

prescribed as an offence for which an infringement notice may be issued.

- (2) An infringement notice is not to relate to 4 or more offences.

63. Form of infringement notice

- (1) An infringement notice –

(a) is to be in an approved form; and

(b) is to specify –

(i) the offence to which it relates; and

(ii) the prescribed penalty for that offence; and

(iii) the total amount payable under the notice; and

(iv) the methods by which the penalty may be paid; and

(v) any other matter that the Administrator thinks fit.

- (2) An infringement notice is to state that the person on whom it is served may disregard the notice but that, on doing so, he or she may be prosecuted for the prescribed offence to which the notice relates.

64. Acceptance of infringement notice

A person may accept an infringement notice by –

- (a) the payment, within 21 days after being served with the notice, of the prescribed penalty to the person specified for that purpose in the notice; or
- (b) lodging with that person, within 21 days after being served with the notice, a written undertaking to pay the penalty by such instalments or within such time as that person may direct.

65. Extension of acceptance period

If an infringement notice is not accepted within the period referred to in section 64, the specified person may allow a further period of 14 days commencing on the expiry of that period for the acceptance of the notice.

66. Payment

- (1) A person who undertakes under section 64(b) to pay an amount payable under an infringement notice may make representations to the specified person in respect of the person's ability to pay the amount.
- (2) The specified person is to take the representations into account before determining the period within which the amount is to be paid.
- (3) The specified person may determine the period, not exceeding 60 days from the day on which the notice was served, within which the amount must be paid.

- (4) If a person fails to pay any amount in accordance with an undertaking, proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

67. Effect of acceptance

- (1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings.
- (2) Proceedings against a person for an offence to which an infringement notice relates that has not been withdrawn must not be brought –
 - (a) if the person accepts the infringement notice; or
 - (b) if the person has not been allowed an additional period under section 65, within 28 days after the notice was served; or
 - (c) if the person has been allowed an additional period under section 65, within 42 days after the notice was served.

68. Withdrawal of infringement notice

- (1) The Administrator may withdraw an infringement notice served on a person if of the opinion that –
 - (a) the infringement notice should not have been served; or

- (b) the person should be proceeded against for the offence to which the notice relates.
- (2) An approved authority may withdraw an infringement notice served on a person by an authorised officer who is an employee or agent of the approved authority.
- (3) An infringement notice may be withdrawn whether or not it has been accepted.
- (4) An infringement notice is to be withdrawn –
 - (a) by serving on a person a notice stating that the infringement notice has been withdrawn; and
 - (b) within 108 days after service of the infringement notice.
- (5) Where an infringement notice has been withdrawn under this section and any amount has been paid to a specified person by way of penalty under that notice, that person must repay that amount to the person on whom the notice was served.

69. Certain evidence not admissible

Evidence of the service or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.

*Division 5 – Demerit points***70. Interpretation**

(1) In this Division –

“demerit disciplinary ground” means a matter in respect of which the Administrator may take disciplinary action against a licence holder where –

- (a) the matter is a contravention of this Act or a code of practice; and
- (b) an infringement notice may be served under section 64(a);

“disciplinary action” means any disciplinary action taken under section 75(2);

“disciplinary incident”, in respect of a demerit disciplinary ground, means the circumstances that gave rise to that ground;

“licence holder”, in respect of a demerit disciplinary ground, includes a person who holds or held a licence when the disciplinary incident relating to the demerit disciplinary ground occurred;

“previous 3 years”, in respect of a licence holder with demerit points, means the 3-year period ending on the day when the licence holder last incurred a demerit point;

“register” means the register kept under section 49(4).

- (2) A reference in this Division to a 3-year period does not include a period of time during which the licence holder is suspended or did not hold a licence.

71. Recording demerit points

- (1) The Administrator must record in the register, against the licence holder, the number of demerit points incurred.
- (2) The demerit points must be recorded in the register by reference to the day when an authorised officer first became aware of the relevant demerit disciplinary ground.
- (3) The Administrator may, in conjunction with an infringement notice, impose demerit points.

72. When demerit points are incurred

One or more demerit points are taken to have been incurred by a licence holder for a demerit disciplinary ground on the day when the authorised officer first became aware of the relevant disciplinary incident.

73. Deleting demerit points

- (1) This section applies to demerit points incurred by a licence holder, recorded in the register and taken into account for –
 - (a) a notice of licence suspension under section 76; or

- (b) other disciplinary action which may be taken under section 75(2)(b).
- (2) The demerit points are to be deleted from the register at the beginning of the period of suspension, or on the imposition of the disciplinary action.
- (3) Subsection (2) does not prevent the Administrator keeping a record of deleted demerit points.

74. Warning notices

- (1) This section applies if –
 - (a) the Administrator records one or more demerit points against a licence holder; and
 - (b) in the previous 3 years, the licence holder has incurred at least 10 other demerit points; and
 - (c) the Administrator has not given the licence holder a notification under this section within a period of 3 months ending on the day when the demerit point is incurred.
- (2) The Administrator must notify the licence holder in writing how many demerit points the licence holder has and the effect of this Division.
- (3) A failure to comply with subsection (2) does not affect the validity of anything done by the Administrator or a court.

75. Consequences of incurring demerit points – licence holders and former licence holders

- (1) This section applies to –
 - (a) a licence holder who has incurred 15 or more demerit points in respect of an occupation, trade or calling within the previous 3 years; and
 - (b) a former licence holder who has incurred 15 or more demerit points in respect of an occupation, trade or calling within a period of 3 years and who applies for a new licence.
- (2) The Administrator is to consider the disciplinary incidents for which the licence holder incurred the demerit points and –
 - (a) serve a notice of licence suspension under section 76 on the licence holder in respect of the relevant licence and occupation; or
 - (b) take any other disciplinary action against the licence holder that the Administrator considers appropriate.
- (3) In considering what action to take under subsection (2), the Administrator is to take into account the following considerations:
 - (a) the need to protect public safety;
 - (b) the desirability of not allowing people to undertake work which they are financially unable to complete;

- (c) the frequency of the disciplinary incidents to which the demerit points relate;
- (d) the seriousness of the disciplinary incidents to which the demerit points relate;
- (e) in the case of a contractor, the number of persons performing prescribed work for or on behalf of the contractor;
- (f) any other relevant matter.

76. Licence suspension

A notice of suspension of a licence served on a licence holder by the Administrator under this section –

- (a) is to state the date of the notice; and
- (b) is to state each licence or class of licence to which the notice relates; and
- (c) is to state the date, at least 21 days after the day on which the notice is served on the licence holder, when the suspension of the licence is to begin; and
- (d) is to state the period, not exceeding 3 months, of the suspension of the licence; and
- (e) is to include any other information required under the regulations; and

- (f) may include any additional information that the Administrator considers appropriate.

77. Demerit points incurred but not taken into account for notice of licence suspension, &c.

(1) This section applies to –

- (a) demerit points incurred by a licence holder on or before the date of a notice of licence suspension served on the licence holder under this Division that were not taken into account for the notice; and
- (b) demerit points incurred by the licence holder after the date of the notice and before the period of licence suspension applying under the notice begins.

(2) The demerit points to which this section applies are to be taken into account only in respect of the licence holder from the end of the period of licence suspension applying under the notice.

78. Issue of licence suspension notice

On giving notification under section 74 to a licence holder, the Administrator may give a notice of suspension of licence to him or her under this Division without giving him or her an opportunity to make representations why the notice should not be given.

PART 7 – REVIEW OF DECISIONS

79. Reviewable decisions

- (1) This Part applies to –
 - (a) any decision made by the Administrator for the purposes of section 13, section 34(1)(a) or (b), section 36(3), section 37(1)(a) or (b), section 40(1), section 43, section 46(1) or section 57(1); and
 - (b) any decision made by an authorised officer for the purposes of section 57(1).
- (2) For the purposes of this Part, a reference to a decision is taken to include a reference to any action taken to give effect to that decision.
- (3) Where the Administrator or an authorised officer makes any decision or takes any action to which this Part applies, he or she must, by notice served on any person who is directly affected by the decision or action, notify him or her –
 - (a) of the decision or action and, if so requested, the reasons for it; and
 - (b) that the person may apply for a review of the decision or action under section 80.

80. Application for review of decision

- (1) A person referred to in section 79(3) may apply to the Administrator to review a decision to which this Part applies.

- (2) The application –
 - (a) is to be made in writing within 14 days after the date of service of a notice under section 79(3); and
 - (b) is to specify the reasons for the application.
- (3) The Administrator may extend the period referred to in subsection (2) for making an application.
- (4) Subject to any other enactment, the making of an application to the Administrator for a review of a decision to which this Part applies does not –
 - (a) affect the operation of the decision; or
 - (b) prevent the taking of any action to give effect to the decision.
- (5) Despite subsection (4), the Administrator –
 - (a) may, by order, suspend the operation of the decision; and
 - (b) may order a stay of any proceeding under the decision.
- (6) The Administrator may make the order –
 - (a) of his or her own motion; or
 - (b) on the application of the person who made the application for a review of the decision.

81. Review of decisions

- (1) The Administrator must, within 45 days after receiving an application under section 80 for a review of a decision to which this Part applies, make a determination –
 - (a) substituting the decision with another decision; or
 - (b) confirming the decision; or
 - (c) revoking the decision.
- (2) The Administrator must, by notice served on the applicant, notify the applicant of –
 - (a) the determination made; and
 - (b) the findings on material questions of fact; and
 - (c) the evidence or other material on which the findings are based; and
 - (d) the reasons for the determination; and
 - (e) the right to appeal to the Magistrates Court (Administrative Appeals Division) against the determination.

PART 8 – APPEALS**82. Appeal to Magistrates Court (Administrative Appeals Division)**

- (1) A person who is directly affected by a decision taken by the Administrator may appeal to the Magistrates Court (Administrative Appeals Division) for a review of the decision.
- (2) The Magistrates Court (Administrative Appeals Division) may not hear an appeal under subsection (1) if it appears to the Court that the proposed proceedings would be an abuse of the process of the Court.

83. Exclusion of right of appeal against certain determinations

No appeal lies against a determination under Division 1 of Part 4 or Part 5.

84. Enforcement of determination

The Administrator must give effect to a determination or order of the Magistrates Court (Administrative Appeals Division) under this Part.

PART 9 – LEGAL AND DISCIPLINARY PROCEEDINGS

Division 1 – Legal proceedings

85. Time for commencing prosecutions

Notwithstanding anything in any other Act, proceedings for an offence against this Act may not be instituted later than 12 months after an authorised officer becomes aware of the act or omission alleged to constitute the offence.

86. Evidentiary provisions

- (1) A certificate apparently issued under the authority of the Administrator and certifying that a specified person was, or was not, the licence holder of a particular class at a specified time or premises or for a specified period is admissible in proceedings under this Act –
 - (a) as evidence of the facts so certified; and
 - (b) if the certificate contains information about the terms and conditions of the licence, as evidence of the information contained in the certificate.
- (2) A certificate apparently issued under the authority of the Administrator and certifying that a specified licence was suspended, surrendered or cancelled on a particular date is admissible in proceedings under this Act as evidence of the fact so certified.

- (3) A certificate apparently issued under the authority of the Administrator and certifying that a notice, report or other document was, or was not, given or received at or before a specified time or at specified premises is admissible in proceedings under this Act as evidence of the fact so certified.
- (4) Where, in proceedings under this Act, an allegation in the complaint that, at a specified time or on specified premises, a person was an authorised officer is evidence of that fact.
- (5) In proceedings for an offence against this Act, an allegation in the complaint that, at a specified time or premises –
 - (a) a person or a practitioner was an employee; or
 - (b) a person or a practitioner was an employer; or
 - (c) a person was a holder of a contractor's licence; or
 - (d) a person was a practitioner; or
 - (e) a notice was given under this Act; or
 - (f) a notice required to be given under this Act was not given; or
 - (g) a prescribed fee has not been paid; or
 - (h) a person was an authorised officer; or
 - (i) an authorised officer became aware of an act or omission alleged to constitute an offence –

is evidence of that fact.

- (6) In proceedings under this Act, proof of the required insurance cover lies on the person or licence holder charged with the offence.
- (7) Where, in proceedings under this Act, it is alleged that a person contravened a provision of this Act in respect of which a code of practice was in effect at the time of the alleged contravention –
 - (a) if the code of practice refers to another document, any document purporting to be the document so referred to is admissible in evidence in those proceedings; and
 - (b) if the court is satisfied, in respect of any matter that it is necessary for the prosecution to prove in order to establish the alleged contravention, that –
 - (i) any provision of the code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the code of practice –

the matter is taken as proved unless the court is satisfied that, in respect of that matter, the person complied with the relevant provision of this Act otherwise than by way of observance of the relevant provision of the code of practice.

- (8) A document purporting to be published by or under the authority of a standards authority or to

have effect under any other Act is, on its production in proceedings under this Act, evidence of the matters appearing in the document.

- (9) For the purposes of this section, a reference to a certificate includes a reference to a notice and an order.

87. Offences by corporations and partnerships, &c.

- (1) If a corporation commits an offence against this Act, each person who is an officer, or is concerned in the management, of the corporation is also guilty of the offence and liable to the penalty prescribed for the offence.
- (2) It is a defence to a charge brought under subsection (1) against a person who is an officer, or is concerned in the management, of a corporation if that person proves that –
- (a) the commission of the offence by the corporation occurred without the knowledge of the person; or
 - (b) the person was not in a position to influence the conduct of the corporation in respect of the commission of the offence; or
 - (c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence by the corporation; or

- (d) the corporation would not have been found guilty of the offence by reason of a defence available under this Act.
- (3) A person who is an officer, or is concerned in the management, of a corporation may, under subsection (1), be proceeded against and be convicted of an offence whether or not the corporation has been proceeded against or convicted in respect of the offence.
- (4) Where, in proceedings under this Act, it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.
- (5) If a partner in a partnership commits an offence against this Act in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence and liable to the penalty prescribed for the offence.
- (6) If a person who is concerned in the management of an unincorporated association commits an offence against this Act in the course of the activities of the unincorporated association, each other person who is at the time of the commission of the offence concerned in the management of the unincorporated association is also guilty of the offence and liable to the penalty prescribed for the offence.
- (7) It is a defence to a charge brought under this section if the person charged proves that –
 - (a) the commission of the offence occurred without the knowledge of the person; or

- (b) the person was not in a position to influence the conduct of the person who committed the offence; or
- (c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence; or
- (d) the person who committed the offence would not have been found guilty of the offence by reason of a defence available under this Act.

(8) In this section –

“officer” –

- (a) in respect of a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; or
- (b) in respect of a corporation which is not a corporation within the meaning of the Corporations Act, means any person, by whatever name called, who is concerned or takes part in the management of the corporation –

and in either case includes any employee of the corporation who gives to the Administrator or authorised officer any information relating to any part of the operations of the corporation over which that employee exercises any supervision or control.

88. Enforcement of undertakings

- (1) In this section –

“Court” means the Magistrates Court.

- (2) The Administrator may accept a written undertaking given by a person for the purposes of this section in connection with a matter in respect of which the Administrator has a power or function under this Act.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Administrator.
- (4) If the Administrator considers that the person who gave the undertaking has contravened any of its terms, the Administrator may apply to the Court for an order under subsection (5).
- (5) If the Court is satisfied that the person has contravened a term of the undertaking, the Court may make all or any of the following orders:
- (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Administrator an amount not exceeding any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the contravention;
 - (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the contravention;

- (d) an order to suspend or cancel a licence;
 - (e) any other order that the Court considers appropriate.
- (6) Where the Court has ordered a person to pay an amount under subsection (5), the amount is taken to be a judgment of the Court and enforceable under the *Magistrates Court (Civil Division) Act 1992*.

Division 2 – Disciplinary proceedings

89. Interpretation

In this Division, references to a licence holder include references to a former licence holder.

90. Proper cause for disciplinary action

- (1) There is proper cause for disciplinary action against a contractor if –
- (a) he or she is guilty of improper conduct; or
 - (b) it appears to the Administrator that the contractor has failed to ensure, or is not in a position to ensure, that any prescribed work carried out under his or her licence is properly managed or supervised; or
 - (c) the contractor is not a fit and proper person to hold a contractor's licence; or

- (d) where the contractor is a body corporate, any officer of the body corporate is not a fit and proper person to be an officer of the body corporate.
- (2) There is proper cause for disciplinary action against a practitioner if –
- (a) he or she is guilty of improper conduct; or
 - (b) he or she has given to any other person information relating to any prescribed work provided, or to be provided, by him or her that was false or misleading in a material particular; or
 - (c) the Administrator is satisfied that he or she is not a fit and proper person to hold a practitioner's licence.
- (3) A licence holder is guilty of improper conduct if –
- (a) he or she contravenes a provision of this Act; or
 - (b) he or she contravenes a code of practice; or
 - (c) he or she is responsible for defective work; or
 - (d) he or she has given to any other person information relating to any prescribed work provided, or to be provided, by the licence holder that was false or misleading in a material particular.

91. Show cause notice

If the Administrator has reason to believe that there may be cause for disciplinary action against a licence holder under this Part, the Administrator may give the licence holder a show cause notice, which –

- (a) states that the Administrator believes there is cause for disciplinary action for reasons specified in the notice; and
- (b) allows the licence holder a reasonable opportunity to show cause in writing why that disciplinary action should not be taken against the licence holder.

92. Disciplinary panels

- (1) The Administrator may establish disciplinary panels for the purposes of this Act.
- (2) Before the Administrator takes disciplinary action against a licence holder –
 - (a) the Administrator must refer the matter to a disciplinary panel for its recommendation; and
 - (b) the panel must –
 - (i) consider the matters set out in the relevant show cause notice and the licence holder's written response, if any, to the notice; and
 - (ii) afford a reasonable opportunity for the Administrator and the

licence holder to be present and heard; and

(iii) consider representations made by or on behalf of the Administrator and the licence holder; and

(iv) make a recommendation to the Administrator about whether disciplinary action should be taken and, if so, the nature of the disciplinary action; and

(c) the Administrator must consider the panel's recommendation.

93. Disciplinary action

(1) After considering a recommendation of a disciplinary panel, the Administrator may do any one or more of the following:

(a) administer a caution or a reprimand to a licence holder;

(b) require a licence holder to undergo a course of training specified by the Administrator;

(c) apply a condition to the licence, or add to, or alter, the conditions of the licence;

(d) suspend the licence for a period not exceeding the unexpired term of the licence or until compliance with another order made under this subsection;

- (e) cancel the licence and disqualify the licence holder from holding a licence for a specified period;
 - (f) order rectification of defective work within a time specified in the order;
 - (g) order the licence holder to pay the reasonable costs of any investigation conducted by a person appointed under section 56, including the reasonable costs of that person attending the disciplinary panel.
- (2) If an amount ordered to be paid by a licence holder as costs under subsection (1)(g) is not paid as directed by the order, that amount is taken to be a judgment of the Magistrates Court (Civil Division) and enforceable under the *Magistrates Court (Civil Division) Act 1992*.

94. Constitution, meetings and procedure of disciplinary panels

The Administrator may, from time to time, publish guidelines, not inconsistent with this Act, governing meetings and procedures of disciplinary panels.

PART 10 – FINANCIAL PROVISIONS

95. Recovery of fees, fines and costs

- (1) The Administrator may waive, remit or refund part or all of a fee payable under this Act.
- (2) A fee payable under this Act may be recovered as if it were a judgment of the Magistrates Court (Civil Division) and enforceable under the *Magistrates Court (Civil Division) Act 1992*.
- (3) Where a person has been ordered to pay a fine or costs –
 - (a) by a court; or
 - (b) by the Administrator –

and the person is in default in payment of the fine or costs, the amount of the fine or costs is taken to be a judgment of the Magistrates Court (Civil Division) and enforceable under the *Magistrates Court (Civil Division) Act 1992*.

96. Payments to approved authorities or Occupational Licensing Administration Fund

- (1) The Administrator is to establish a fund to be known as the Occupational Licensing Administration Fund into which there are to be paid –
 - (a) fees for the grant of licences; and
 - (b) any money paid by way of a fine for an offence against this Act; and

- (c) any other money received by the Administrator in the administration of this Act.
- (2) The Fund is to be managed by the Administrator.
- (3) Any payments made in respect of an infringement notice –
 - (a) are payable to an approved authority, if the notice was served by the approved authority; or
 - (b) in any other case, are payable into the Fund.
- (4) There may be paid from the Fund money that is required –
 - (a) for the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Board in the performance of its functions or the exercise of its powers; and
 - (b) for the administration of this Act; and
 - (c) for any other purpose relating to occupational licensing matters.

PART 11 – MISCELLANEOUS AND SUPPLEMENTAL**97. Confidentiality**

A person who obtains information in performing functions in the administration of this Act must not disclose the information unless the disclosure is made –

- (a) for the purposes of this or any other Act; or
- (b) with the consent of the person to whom the information relates; or
- (c) for the purposes of legal proceedings; or
- (d) in accordance with a requirement or authority made or conferred by law.

Penalty: Level 2.

98. Contractors to keep register

- (1) A contractor must keep in an approved form an accurate register of persons employed or engaged by the contractor to carry out prescribed work.
- (2) The register is to contain full particulars of –
 - (a) each employee or practitioner, or person undergoing an approved course of training, who is engaged by the contractor; and
 - (b) the occupations and classes of prescribed work undertaken by each employee,

practitioner or person undergoing an approved course of training; and

- (c) the qualifications, competencies and continuing professional development of each employee, practitioner or person undergoing an approved course of training.

- (3) A contractor must, at the request of an authorised officer, make the register available for inspection by the authorised officer within a period specified by the authorised officer.

- (4) A contractor who fails to keep an accurate register, or to make it available for inspection within the period specified by the authorised officer, as required under this section is guilty of an offence.

Penalty: Level 2.

99. Exemptions

- (1) The Administrator may make an order –
 - (a) exempting specified persons, or persons of a specified occupation and class of work, from the provisions of this Act or specified provisions of this Act; or
 - (b) exempting specified prescribed work, or prescribed work carried out by licence holders of a specified occupation and class, from the provisions of this Act or specified provisions of this Act; or

- (c) varying or revoking an order previously made under this section.
- (2) An order under this section –
 - (a) is to be published in the *Gazette*; and
 - (b) takes effect on publication in the *Gazette* or on a later date specified in the order; and
 - (c) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (3) An exemption under this section –
 - (a) may be unconditional or subject to conditions stated in the order; and
 - (b) may be granted for a specified period or without limitation of its period of operation.
- (4) A person who has the benefit of an exemption under this section must comply with any conditions of the exemption.

Penalty: Level 5.

100. Licence number to be shown in advertisements, &c.

A contractor must show his or her licence number in any advertisement in respect of the business conducted under the contractor's licence and in any account or correspondence issued by the contractor in respect of that business.

Penalty: Level 2.

101. Immunity from liability

No liability attaches to the Crown, the Administrator, an authorised officer, a person appointed under section 56 of this Act or any other person appointed by the Administrator acting under this Act for an act done, or omission made, in good faith in performing or exercising, or purportedly performing or exercising, functions or powers under this Act.

102. Assistance from police officers

- (1) A police officer may, on request by an authorised officer, assist the authorised officer in the exercise of powers under this Act.
- (2) A police officer is, for the purposes of this Act, taken to be an authorised officer while acting under subsection (1).

103. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
 - (a) fees to be paid to the Administrator in the administration of this Act;
 - (b) contractors' licences and practitioners' licences;

- (c) supervision of prescribed work and of any work associated with prescribed work;
- (d) notification of carrying out prescribed work, rectification of prescribed work and inspection and investigation of prescribed work;
- (e) standards of prescribed work;
- (f) certificates of compliance to be provided by licence holders on completion of prescribed work;
- (g) competency standards;
- (h) acquisition, maintenance and further development of skills required to carry out any prescribed work;
- (i) regulating or prohibiting the use of any words which may imply that a person is authorised to carry on an occupation, trade or calling to which this Act applies;
- (j) proceedings under this Act;
- (k) any matter necessary for, or incidental to, the winding-up of the Plumbers and Gas-fitters Registration Board –

and the regulations may also contain transitional and savings provisions providing for –

- (l) any person who is registered, or holds a certificate or other qualification, under –
 - (i) the *Plumbers and Gas-fitters Registration Act 1951*; or

- (ii) any other enactment relating to an occupation, trade or calling to which this Act applies –

to be taken to be the holder of an appropriate licence under this Act or a nominated manager under this Act;
 - (m) a requirement that any such person is to be covered by insurance as provided by sections 27 and 28;
 - (n) any other matter that is necessary or desirable arising from the amendments set out in Schedule 6 or the repeal or rescission effected by Schedule 7 or 8.
- (3) The regulations may adopt or incorporate, with or without modification, the provisions as in force at the time of the adoption or incorporation or as in force from time to time of –
- (a) a law in force in another jurisdiction; or
 - (b) a standard, rule, code, specification, criterion or protocol issued or published by a body or authority specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of any such offence, provide for the imposition of a fine not exceeding 200 penalty units for a body corporate and 100 penalty units for a natural person; and

- (c) provide for the issue of infringement notices for offences specified in the regulations; and
 - (d) provide for the awarding of demerit points to a licence holder as a result of any disciplinary incident specified in the regulations.
- (5) The regulations may provide for the payment, remitting, refunding and waiving of fees in respect of any matter under this Act.
- (6) The regulations –
 - (a) may be of limited or general application; and
 - (b) may be made so as to apply differently, according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
 - (c) may authorise any matter to be determined by the Administrator from time to time.

104. Transitional and savings provisions

The transitional and savings provisions in Schedule 5 have effect.

105. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

106. Consequential Amendments

The legislation specified in Schedule 6 is amended as specified in that Schedule.

107. Act repealed

The Act specified in Schedule 7 is repealed.

108. Statutory Rule rescinded

The Statutory Rule specified in Schedule 8 is rescinded.

SCHEDULE 1 – PENALTIES

Section 3(3)

1. Level 1 means –

- (a) in the case of a body corporate, a fine not exceeding 50 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 20 penalty units.

2. Level 2 means –

- (a) in the case of a body corporate, a fine not exceeding 100 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 50 penalty units.

3. Level 3 means –

- (a) in the case of a body corporate, a fine not exceeding 150 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 75 penalty units.

4. Level 4 means –

- (a) in the case of a body corporate, a fine not exceeding 250 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 125 penalty units.

5. Level 5 means –

- (a) in the case of a body corporate, a fine not exceeding 400 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 200 penalty units.

**SCHEDULE 2 – OCCUPATIONS, TRADES OR
CALLINGS TO WHICH THIS ACT APPLIES**

Section 7

Each of the following is an occupation, trade or
calling to which this Act applies:

	Column 1 Occupation, Trade or Calling	Column 2 Description
1.	Performance of electrical work	<p>(a) Work on the installation, repair, alteration or removal of an electrical circuit or associated fittings, equipment or accessories.</p> <p>(b) Work on the installation, repair, alteration or removal of electrical infrastructure including lines and wires for the generation, transmission or distribution of electricity and also including supporting and protective structures relating to any such equipment, lines or wires.</p>

	Column 1 Occupation, Trade or Calling	Column 2 Description
		(c) Work that is, by determination of the Regulator as defined in the <i>Electricity Supply Industry Act 1995</i> , to be regarded as specialist work.
2.	Performance of gas-fitting work	<p><i>Domestic, commercial or industrial</i></p> <p>Work carried out in connection with the installation, commissioning, relocation, repair, modification, maintenance or disconnection of a gas installation to convey liquefied petroleum gas, compressed natural gas, liquefied natural gas, hydrogen gas or calorific gas, or any part of that gas installation, including work on –</p> <p>(a) any pipe or system of pipes for, or incidental to, the conveyance of gas and components or fittings associated with the pipe or pipes which are downstream from the gas supply point; and</p> <p>(b) any one or more of the following:</p>

	Column 1 Occupation, Trade or Calling	Column 2 Description
		<p>(i) any appliance and associated components or fittings which are downstream from the gas supply point;</p> <p>(ii) any meter which is downstream from the gas supply point;</p> <p>(iii) any means of ventilation or system for the removal of combustion products which is downstream from the gas supply point.</p>
		<p><i>Automotive gas systems</i></p> <p>Work involved in –</p> <p>(a) the installation, alteration, extension, disconnection or repair of an autogas installation; or</p>

	Column 1 Occupation, Trade or Calling	Column 2 Description
		<p>(b) the connection of a gas cylinder to, or the disconnection of a gas cylinder from, an autogas installation –</p> <p>including work on a system of pipes and associated equipment that forms part of a vehicle, vessel or machine that is designed to convey liquefied petroleum gas, compressed natural gas, liquefied natural gas or hydrogen gas to an internal combustion engine that is installed in, or forms part of, the vehicle, vessel or machine.</p>
3.	Performance of plumbing work	<p>Any work relating to installing, altering, maintaining or disconnecting a plumbing installation, including work on the following systems:</p> <p>(a) heating, ventilation and airconditioning (including heater, ventilation and airconditioning systems);</p> <p>(b) hydraulic;</p> <p>(c) liquid fuel;</p> <p>(d) medical gas, including vacuum;</p>

	Column 1 Occupation, Trade or Calling	Column 2 Description
		<p>(e) on-site waste water management (including on-site waste water management systems and on-site liquid trade waste systems);</p> <p>(f) pneumatic;</p> <p>(g) refrigeration;</p> <p>(h) reticulated, including steam;</p> <p>(i) sanitary plumbing and drainage (including sanitary plumbing systems and sanitary drainage systems);</p> <p>(j) stormwater drainage (including roof drainage, and surface and sub-surface drainage systems);</p> <p>(k) systems utilising commercially available gases;</p>

	Column 1 Occupation, Trade or Calling	Column 2 Description
		(1) water services (including cold water services, heated water services, non-drinking water services and firefighting water services).

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**SCHEDULE 3 – ACTS CONTINUING TO HAVE
EFFECT**

Section 7(5)

Building Act 2000

*Electricity Industry Safety and
Administration Act 1997*

Gas Act 2000

SCHEDULE 4 – CONSTITUTION, MEMBERSHIP AND MEETINGS OF BOARD

Section 14(3)

1. Constitution of Board

The Board is to consist of at least 7 members but not more than 9 members appointed by the Minister on the advice of the Administrator.

2. Qualifications for membership

- (1) A person is not eligible for appointment as a member of the Board unless –
 - (a) the person has significant qualifications, knowledge and experience relevant to the Board's functions; or
 - (b) where, under section 7(2), an occupation, trade or calling is added to Schedule 2, the person has, in the opinion of the Minister, knowledge and experience relevant to that occupation, trade or calling.
- (2) The members of the Board must collectively have significant qualifications, knowledge and experience, with respect to the occupations, trades and callings to which this Act applies, relating to practitioners, contractors, training, infrastructure, law, administration, consumer affairs, local government and insurance.

3. Chairperson

One member of the Board is to be appointed by the Minister as the Chairperson of the Board.

4. Conditions of membership

- (1) Each member of the Board –
 - (a) is to be appointed by the Minister for a term not exceeding 3 years stated in the instrument of appointment; and
 - (b) is entitled to be paid remuneration and travelling allowances fixed by the Minister from time to time in respect of that member; and
 - (c) is not, as a member of the Board, subject to the *State Service Act 2000*.
- (2) A member of the Board is eligible for reappointment at the end of a term of appointment.
- (3) A member of the Board –
 - (a) may resign by written notice to the Minister; and
 - (b) may be removed by the Minister on the advice of the Administrator for incapacity or misbehaviour or on the ground that he or she ceases to hold any qualification by virtue of which he or she was appointed.

5. Disclosure of pecuniary interests

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, other than a determination as to the remuneration and allowances payable to a member, is required, as soon as possible after the relevant facts have come to the member's knowledge, to disclose the nature of the interest at a meeting of the Board if the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- (2) A disclosure by a member at a meeting of the Board that the member –
 - (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or a specified person –

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this section are to be recorded in a book kept for the purpose and that book is required to be open at

all reasonable hours for inspection by any person on payment of a fee determined by the Board.

- (4) After a member has disclosed the nature of an interest in any matter or thing under subclause (1), the member may not, unless the other members of the Board concerned otherwise determine, be present during any deliberation, or take part in any decision, of the Board with respect to that matter or thing.
- (5) For the purposes of the making of a determination by other members under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not –
 - (a) be present during any deliberation of those members for the purposes of making the determination; or
 - (b) take part in the making of the determination by the other members.

6. Power of Board to determine procedure

Except as provided in this Schedule, the Board may determine its own procedure.

**SCHEDULE 5 – TRANSITIONAL AND SAVINGS
PROVISIONS**

Section 104

**1. Funds held by Plumbers and Gas-fitters
Registration Board**

Any funds held by the Plumbers and Gas-fitters Registration Board on the commencement of section 104 are to be paid to the Administrator to the credit of the Occupational Licensing Administration Fund.

2. Saving for licences under *Electricity Industry Safety and Administration Act 1997*

Where, immediately before the commencement of section 104, a person held a licence under the *Electricity Industry Safety and Administration Act 1997*, that licence is taken to be a licence granted under this Act on the same terms and conditions.

3. Saving for nominated managers under *Electricity Industry Safety and Administration Act 1997*

Where, immediately before the commencement of section 104 –

- (a) a person held an electrical contractor's licence under the *Electricity Industry Safety and Administration Act 1997*; and
- (b) in the course of carrying on business as such had arranged for the business to be

under the management and supervision of a nominated manager in accordance with section 18 of that Act –

the person acting as the nominated manager is taken to have been named as such in any licence granted under this Act.

4. Saving for certificates of competency under *Workplace Health and Safety Act 1995*

Where, immediately before the commencement of section 104, a person held a certificate of competency under the *Workplace Health and Safety Act 1995*, he or she is taken to hold a licence under this Act on the same terms and conditions.

5. Saving for registration under *Plumbers and Gas-fitters Registration Act 1951*

Where, immediately before the commencement of section 104, a person was registered as a plumber or gas-fitter under the *Plumbers and Gas-fitters Registration Act 1951*, he or she is taken to be a licence holder under this Act on the same terms and conditions.

6. Winding-up of Board

- (1) Notwithstanding the repeal effected by section 107, the Plumbers and Gas-fitters Registration Board continues in existence but only for the purpose of performing its functions under this clause.

- (2) As soon as practicable after the commencement of this Schedule and, in any case, within 12 months after that commencement, the Board must –
- (a) prepare its final report and financial statements under the *Financial Management and Audit Act 1990*; and
 - (b) do any other act, matter or thing necessary to wind itself up including, without limitation, the power –
 - (i) to realise its assets and discharge its liabilities; and
 - (ii) to employ staff; and
 - (iii) to execute a contract, deed or other document necessary for its winding-up.
- (3) Where the Minister is satisfied that the Board has complied with this clause and that there has been a satisfactory audit of the financial statements referred to in subclause (2)(a), the Minister may, by notice published in the *Gazette*, declare that the Board is dissolved.

SCHEDULE 6 – CONSEQUENTIAL AMENDMENTS

Section 106

Building Act 2000

1. Section 3(1) is amended by omitting the definition of “plumber” and substituting the following definition:

“plumber” means a person who holds a licence under the *Occupational Licensing Act 2005* authorising him or her to carry out any plumbing work that is prescribed work within the meaning of that Act;

2. Section 12(2) is amended by omitting “*Plumbers and Gas-fitters Registration Act 1951*” and substituting “*Occupational Licensing Act 2005*”.

3. Section 23(3) is amended as follows:

(a) by omitting paragraph (b) and substituting the following paragraph:

(b) a person carrying out plumbing work which is prescribed work under the *Occupational Licensing Act 2005* and which requires a building permit; or

(b) by omitting paragraph (d) and substituting the following paragraph:

(d) a person carrying out electrical work which is prescribed work

under the *Occupational Licensing Act 2005* and which requires a building permit; or

Electricity Industry Safety and Administration Act 1997

1. The long title is amended by omitting “**to ensure that electrical contractors and workers are appropriately qualified and regulated,**”.
2. Section 3 is amended as follows:
 - (a) by omitting the definition of “Board”;
 - (b) by omitting the definition of “electrical contractor's business”;
 - (c) by omitting the definitions of “electrical work” and “electrical worker”;
 - (d) by omitting the definitions of “holder” and “licence”.
3. Section 4 is repealed.
4. Section 6(2) is amended by omitting paragraph (a).
5. Section 7 is repealed.

- 6.** Section 8(1) is amended by omitting “or the Electrical Licensing Board”.
- 7.** Section 12 is repealed.
- 8.** Part 3 is repealed.
- 9.** Section 90 is amended by omitting subsections (1) and (2).
- 10.** Section 96(1) is amended by omitting paragraph (c).
- 11.** Section 103(2) is amended by omitting paragraphs (a) and (b).
- 12.** Schedule 1 is repealed.

SCHEDULE 7 – ACT REPEALED

Section 107

Plumbers and Gas-fitters Registration Act 1951 (No. 74 of 1951)

SCHEDULE 8 – STATUTORY RULE RESCINDED

Section 108

Plumbers and Gas-fitters Registration Regulations 2004 (No. 163
of 2004)