

TASMANIA

**BUILDING PRACTITIONERS
ACCREDITATION
(FINANCIAL AUDIT) BILL 2006**

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BUILDING PRACTITIONERS ACCREDITATION (FINANCIAL AUDIT) BILL 2006

(Brought in by Kim Dion Booth MHA)

A BILL FOR

An Act relating to certain agreements for the accreditation of building practitioners, including a full audit of the Tasmanian Compliance Corporation's finances up until the time the Tasmanian Compliance Corporation relinquished its accreditation authority to the Government, and to determine whether there are funds retained by the Tasmanian Compliance Corporation which ought to be recovered by the Crown to facilitate the ongoing accreditation of building practitioners as well as resolving complaints.

PREAMBLE

WHEREAS:

A. Pursuant to a deed signed on behalf of the Crown and Tasmanian Compliance Corporation Pty Ltd (ACN 104 148 165) on 25 September 2006, that Company has surrendered its authorisation, has paid an amount of \$143 239 to the Crown and has transferred certain property constituting its business assets to the Crown:

B. Consequent on the amendments made by the *Building Amendment Act 2006*, it is just and equitable to make provision for certain money paid to the Company by accredited building practitioners to be paid to the Crown to be applied in the administration of a scheme of accreditation provided by the *Building Act 2000*:

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative

Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Building Practitioners Accreditation (Financial Audit) Act 2006*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears –

“**accredited building practitioner**” means a person who is or was accredited under Part 4 of the *Building Act 2000*;

“**Company**” means Tasmanian Compliance Corporation Pty Ltd;

“**scheme**” means the scheme of accreditation provided by the *Building Act 2000*;

“**subsequent deed**” means the deed referred to in paragraph B of the Preamble.

Application of Act

4. Except as expressly provided in this Act, this Act does not derogate from the *Building Act 2000* or any other written law.

Act binds Crown

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

Audit by Auditor-General

6. (1) It is the duty of the Auditor-General to audit before 31 March 2007 the financial records of the Company and, within 14 days after completion of the audit, to provide a report of the audit to the Minister.

(2) The audit is to be conducted for the purpose of determining the total of –

- (a)** all amounts paid to the Company by accredited building practitioners before 1 July 2006 for the purpose of accreditation –
 - (i)** which have been retained by the Company, or which the Auditor-General considers should have been retained by the Company, for the purpose of dealing with complaints; or
 - (ii)** which have been retained by the Company for any other contingency – and which have not actually been applied for a purpose specified in subparagraph (i) or (ii); and
- (b)** all amounts paid to the Company by accredited building practitioners since 1 July 2006.

(3) The Auditor-General must include in the report a certificate stating the amount which, in the opinion of the Auditor-General, fairly represents the cost of administering the scheme by the Company for the period commenced on 1 July 2006 and ended on 31 October 2006.

(4) The Auditor-General must also include in the report a certificate stating the amount which, in the opinion of the Auditor-General fairly represents the estimated cost of administering the scheme by the Crown for the period commenced on 1 November 2006 and ending on 30 June 2007 in respect of the accredited building practitioners affected by the administration of the scheme referred to in subsection (3).

(5) The Auditor General must also include in the report a certificate stating whether that in the opinion of the Auditor-General, the Tasmanian Compliance Corporation ever provided a

service as required under the terms of its accrediting authority and to meet its obligations under the *Building Act 2000* –

(a) The certificate is to detail the extent, if any, to which a merchantable service was provided to persons who paid a fee for that service and whether in the opinion of the Auditor-General fairly should be refunded.

(6) For the purposes of subsection (4), the Auditor-General is to take into account –

(a) the amount paid to the Crown by the Company under the subsequent deed; and

(b) the value to the Crown of the Company having performed its other obligations under that deed – and the Auditor-General must also include in the report a certificate stating the amount which, in the opinion of the Auditor-General, fairly represents the total of the amount referred to in paragraph (a) and the value referred to in paragraph (b).

(7) For the purposes of this section, the Auditor-General has all the powers conferred on him or her under Part 3 of the *Financial Management and Audit Act 1990*.

(8) The Minister may cause a copy of the report to be laid upon the table of each House of Parliament within 10 sitting-days of that House after it is received by him or her.

Duty of Company to forward financial records to Auditor-General

7. (1) For the purposes of the audit required by section 6, the Auditor-General may, by notice in writing given to a member, director or employee of the Company require that member, director or employee to forward to the Auditor-General, within such time as may be determined by the Auditor-General, any documents constituting the financial records of the Company.

(2) A member, director or employee of the Company who fails to comply with a requirement under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(3) In a prosecution for an offence under subsection (2), it is a defence if the person charged can show that at the relevant time the required documents of the Company were not in the possession or custody of, or under the control of, that person, unless the lack of possession, custody or control arose from a wrongful act or omission on the part of that person.

Debt due to Crown by Company

8. (1) If the total amount determined under section 6(2), after deducting the amounts stated in the certificates under section 6(3) and (5), is more than zero, that amount is taken to be money had and received by the Company for the use of the Crown and is recoverable as such in any court of competent jurisdiction.

(2) On compliance with section 6 by the Auditor- General, the Minister may, by notice in writing to the Company, require payment of the amount recoverable under subsection (1).

(3) If the Auditor-General fairly determines that a refund is due to persons mentioned under Section 6 (5) that amount is taken to be an amount recoverable by the Crown in any Court of competent jurisdiction and will be re-paid by the Crown to those persons mentioned in Section 6 (5) no later than 30 days after receipt.

Duty of Director of Building Control

9. Any amount paid to the Crown under this Act is to be applied by the Director of Building Control in the administration of the scheme on and after 1 November 2006.

Power of Supreme Court to set aside dispositions

10. If the Supreme Court is satisfied that the Company has on, or after 17 November 2006, made a disposition of property for the purpose of, or which may have the effect of, frustrating the operation of this Act, the Court may, on the application of any person who in the opinion of the Court has a sufficient interest in the matter –

- (a) set aside the disposition; and
- (b) make any consequential orders that the Court considers just and equitable.

Regulations

11. The Governor may make regulations for the purposes of this Act.

Administration of Act

12. 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 Justice and Workplace Relations; and
- (b) the department responsible to the Minister for Justice and Workplace Relations in relation to the administration of this Act is the Department of Justice.