

TASMANIA

BUILDING PRACTITIONERS ACCREDITATION (MISCELLANEOUS PROVISIONS) BILL 2008

CONTENTS

Preamble

1. Short title
2. Commencement
3. Interpretation
4. Objects of Act
5. Application of Act
6. Act binds Crown
7. Appointment of auditor
8. Duty of Company to forward financial records to auditor
9. Audit of Company's financial records
10. Powers of auditor
11. Submission of draft report to Company
12. Publication of report
13. Debts due to Crown by Company
14. Representative liability of original members
15. Power of Minister to require payment by Company or original members
16. Duty of Director of Building Control
17. Power of Supreme Court to set aside dispositions
18. Expenses of administration of this Act

19. Regulations
20. Administration of Act

BUILDING PRACTITIONERS ACCREDITATION (MISCELLANEOUS PROVISIONS) BILL 2008

This Public Bill originated in the Legislative Council, and, having this day passed, is now ready for presentation to the House of Assembly for its concurrence.

D. T. PEARCE, *Clerk of the Council*
17 April 2008

(Brought in by the Honourable Andrew Paul Harriss)

A BILL FOR

**An Act relating to certain agreements for the accreditation
of building practitioners**

Preamble

WHEREAS:

A. On 15 February 2006 an agreement was made by the Minister for Infrastructure, Energy and Resources (in this Preamble referred to as “the Minister” and Tasmanian Compliance Corporation Pty Ltd (ACN 104 148 165, in this Preamble referred to as “the Company”) which agreement conferred on the Company an authorisation to accredit building practitioners and purported to make that authorisation exclusive:

B. During the month of June 2006, owing to concern in the community, a registered company auditor was appointed to conduct an audit at public expense of the Company’s financial affairs relating to the accreditation of building practitioners:

C. During the month of September 2006 the auditor provided a detailed report to the Attorney-General but it is desirable that a further audit be conducted to determine certain matters not covered in that report:

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 1

D. Pursuant to a subsequent deed signed on behalf of the Crown and the Company on 25 September 2006, the 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:

E. Consequent on the amendments made by the *Building Amendment Act 2006*, it is just and equitable to make provision, if the further audit so indicates, for an amount paid to the Company by accredited building practitioners to be repaid to them and for another amount to be paid to the Crown to be applied in the administration of a scheme of accreditation provided by the *Building Act 2000*:

F. On 20 March 2007 the Company was placed under external administration.

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:

1. Short title

This Act may be cited as the *Building Practitioners Accreditation (Miscellaneous Provisions) Act 2008*.

2. Commencement

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

3. Interpretation

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

“accredited building practitioner” means a person who is or was accredited under Part 5 of the *Building Act 2000*;

“auditor” means a registered company auditor appointed under section 7;

“authorisation” means the authorisation to accredit building practitioners conferred on the Company under the original agreement;

“Company” means Tasmanian Compliance Corporation Pty Ltd;

“original agreement” means the agreement referred to in paragraph A of the Preamble;

“original members” means the persons who on 17 November 2006 were members of the Company;

“registered company auditor” has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

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

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

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 4

- (2) In this Act, a reference to a member, director or employee of the Company is to be read as including a reference to a former member, director or employee of the Company.

4. Objects of Act

The objects of this Act are –

- (a) to provide for an audit of the financial records of the Company; and
- (b) if the audit so indicates, to require the Company –
 - (i) to repay a certain amount for the benefit of certain accredited building practitioners; and
 - (ii) to pay a further certain amount to the Director of Building Control for the administration of the *Building Act 2000*; and
- (c) if the Company is wound up or unable to pay any amount required under this Act, to transfer the Company's liability under this Act to its original members.

5. Application of Act

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

6. Act binds Crown

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. Appointment of auditor

- (1) As soon as practicable after the commencement of this Act, the Minister must appoint a registered company auditor to audit the financial records of the Company in accordance with this Act.
- (2) The Minister must deliver to the auditor all papers, books and documents in the possession of the Crown relating to the grant of the authorisation or in any other respect relating to the Company.

8. Duty of Company to forward financial records to auditor

- (1) For the purposes of the audit required by section 7, the auditor may, by notice in writing given to a member, director or employee of the

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 9

Company require that member, director or employee to forward to the auditor, within such time as may be determined by the auditor, 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.

9. Audit of Company's financial records

- (1) The auditor must audit the financial records of the Company and, within 14 days after completion of the audit, 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

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 9

1 July 2006 for the purpose of accreditation –

- (i) which have been retained by the Company, or which the auditor 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 been actually applied for a purpose specified in subparagraph (i) or (ii); and

- (b) all amounts paid to the Company by accredited building practitioners on or after 1 July 2006.

(3) The auditor must include in the report –

- (a) a certificate stating the amount which, in the opinion of the auditor, 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; and
- (b) a certificate stating the amount which, in the opinion of the auditor fairly represents the estimated cost of administering the scheme by the Crown for the period commenced on

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 9

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 paragraph (a); and

- (c) a certificate stating the amount of any payments made by the Company that were inconsistent with any representations made to the Crown for the purposes of the authorisation.
- (4) The auditor must include in the report a statement whether, in his or her opinion, the Company failed at any time to provide a merchantable service for the accredited building practitioners as required by the terms of the authorisation and its obligations under the *Building Act 2000*.
- (5) A statement under subsection (4) is to give the auditor's opinion of whether the persons who paid a fee for that service should be entitled to a refund of that fee and, if so, the amount that should be so repaid.
- (6) If the auditor considers it desirable to do so, the auditor may also include in the report a statement as to how any amount referred to in subsection (5) should be distributed between classes of accredited building practitioners.
- (7) For the purposes of this section, the auditor 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.
- (8) The auditor must also include in the report a certificate stating the amount which, in the opinion of the auditor, fairly represents the total of the amount referred to in subsection (7)(a) and the value referred to in subsection (7)(b).

10. Powers of auditor

For the purposes of this Act, the auditor has all the powers conferred under Part 3 of the *Financial Management and Audit Act 1990* as if references in that Part to the Auditor-General were references to the auditor and the application of that Part extends to the auditor accordingly.

11. Submission of draft report to Company

- (1) The auditor must submit a draft of the report to each member, director and employee of the Company and invite him or her to comment in writing on the report within a period of 28 days.
- (2) The final report is to contain a copy of any comments made under subsection (1).

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 12

12. Publication of report

- (1) The Minister must 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.
- (2) If, in the opinion of the Solicitor-General, the report contains any material relating to any criminal proceedings which have not been finally disposed of and publication of that part of the report might prejudice the proper course of those criminal proceedings –
 - (a) the Minister is to delete that material from the report; and
 - (b) the Minister is to publish the full report as provided by subsection (1) when all the criminal proceedings have been finally disposed of.

13. Debts due to Crown by Company

- (1) If the total amount determined under section 9(2), after deducting the total of –
 - (a) the amount stated in the auditor's certificate referred to in section 9(3)(a); and
 - (b) any amount referred to in section 9(5); and

- (c) the amount stated in the certificate referred to in section 9(8) –

is more than zero, that total amount is taken to be for all legal purposes money had and received by the Company for the use of the Crown and is recoverable as such by the Crown in any court of competent jurisdiction.

- (2) If the auditor determines an amount under section 9(5), that amount is taken to be for all legal purposes money had and received by the Company for the use of accredited building practitioners in accordance with any statement made by the auditor under section 9(6) and is recoverable as such by the Crown in any court of competent jurisdiction.
- (3) Any amount recovered under subsection (2) is to be paid into an account in the Special Deposits and Trust Fund to be disbursed to accredited building practitioners in accordance with any directions given by the Minister, having regard to any statement made by the auditor under section 9(6).

14. Representative liability of original members

- (1) If –
- (a) the Company has been wound up before payment of any debt arising under section 13; or

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 15

- (b) the assets of the Company are for any other reason insufficient to satisfy that debt –

the liability of the Company under section 13 becomes, by force of this section, a liability of the original members but the liability of each member is not to exceed the amount which he would have been entitled to receive as such a member if the Company had been wound up on 17 November 2006.

- (2) Any liability arising under subsection (1) is to be in substitution for liability arising under section 13.

15. Power of Minister to require payment by Company or original members

On compliance with section 9 by the auditor –

- (a) the Minister may, by notice in writing served on the Company, require payment of any amounts recoverable under section 13(1) or (2); and
- (b) the Minister may, by notice in writing served on the original members, require payment of any amount recoverable under section 14(1).

16. Duty of Director of Building Control

Any amount paid to the Crown on account of any liability arising under section 13(1) is to be applied by the Director of Building Control in the administration of the scheme on and after 1 November 2006.

17. Power of Supreme Court to set aside dispositions

If the Supreme Court is satisfied that, on or after 17 November 2006 –

- (a) the Company or any of its members or directors has made a disposition of property for the purpose of, or which may have the effect of, frustrating the operation of this Act; or
- (b) any such disposition has taken effect by operation of law –

and, if the Court is satisfied that it is just and equitable to do so, the Court may, on the application of any person who in the opinion of the Court has a sufficient interest in the matter –

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

Building Practitioners Accreditation (Miscellaneous Provisions)
Act 2008
Act No. of

s. 18

18. Expenses of administration of this Act

The money required for the purposes of this Act is to be paid from money to be appropriated by the Parliament for the purpose.

19. Regulations

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

20. Administration of Act

Until provision is made in relation to this Act by order under section 5 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.