



TASMANIA

**BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND
ACT 1990**

No. 38 of 1990

TABLE OF PROVISIONS

Preamble

PART 1

PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2

BUILDING AND CONSTRUCTION INDUSTRY TRAINING BOARD

Division 1—Continuation, functions, &c., of the Board

4. Continuation of the Board
5. Members of the Board
6. Board not to represent the Crown
7. Functions of the Board
8. Powers of the Board
9. Delegation of functions, &c., by Board to Management Committee

Division 2—Accounts of the Board

10. Accounts of the Board

Division 3—Control of the Board

11. Powers of Minister
12. Notice of proposal
13. Appointment and powers of administrator

No. 38 *Building and Construction Industry Training Fund* 1990

14. Expenses of administration
15. Liability for losses incurred during administration
16. Termination of administration
17. Saving of acts of Board
18. Consultation with Commonwealth

Division 4—Administration

19. Staff, &c., of Board
20. Collection agencies

PART 3

BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY

21. Imposition of levy
22. Rate of levy
23. Estimated cost of building or construction work
24. Exemption for certain work
25. Liability of project owner to pay levy
26. Exemption for construction work by Crown
27. Payment of levy
28. Offence for non-payment of levy
29. Notice of variation
30. Adjustment of amount paid
31. Cancellation of project
32. Recovery of levy, &c.
33. Offence to provide false information

PART 4

BUILDING AND CONSTRUCTION INDUSTRY TRAINING PLANS

34. Building and construction industry training plans
35. Amendment of training plan

PART 5

BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND

36. Building and Construction Industry Training Fund

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

- 37. Authorized officers
- 38. Powers of entry and inspection
- 39. Immunity for members of Board
- 40. Annual report by Board
- 41. Contracts to evade levy void
- 42. Regulations
- 43. Administration of Act

SCHEDULE 1

AGREEMENT BETWEEN THE COMMONWEALTH AND TASMANIA

SCHEDULE 2

BUILDING OR CONSTRUCTION WORK TO WHICH THIS ACT APPLIES

SCHEDULE 3

ORGANIZATIONS REPRESENTED ON THE BOARD

SCHEDULE 4

MEMBERSHIP OF THE BOARD

SCHEDULE 5

MEETINGS OF THE BOARD

SCHEDULE 6

MANAGEMENT COMMITTEE



**BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND
ACT 1990**

No. 38 of 1990

AN ACT to improve the quality of training in the building and construction industry

[Royal Assent 20 December 1990]

Preamble

WHEREAS—

- (a) by an agreement dated 5 February 1990, the Commonwealth and the State of Tasmania have agreed—
- (i) to co-operate in taking measures to provide training in industry; and
 - (ii) to form industry training bodies to act as advisors to both Governments; and
 - (iii) to ensure that those bodies will include representatives of employers and employees; and
 - (iv) that both the Commonwealth and the State may provide financial assistance for the provision of training for industry; and

- (b) a copy of the Agreement is specified in Schedule 1 to this Act:

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:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Building and Construction Industry Training Fund Act 1990*.

Commencement

2—This Act commences on a day to be fixed by proclamation.

Interpretation

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

“**the Board**” means the Tasmanian Building and Construction Industry Training Board continued in existence by virtue of section 4 (1);

“**building notice**” has the same meaning as it has in the *Building Regulations 1978*;

“**building or construction work**” means construction work specified in Schedule 2;

“**building surveyor**” means a person performing the duties of the office of building surveyor of a city or municipality, whether as the holder of that office or the office of city architect, under section 428 of the *Local Government Act 1962* or pursuant to an appointment under section 141 or 428A of that Act;

“**collection agency**” means a person or body appointed under section 20;

“**functions**” include duties;

“**the Fund**” means the Building and Construction Industry Training Fund established under section 36;

“**the levy**” means the levy payable under Part 3;

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

- (a) the person who is required to obtain a building notice for the building or construction work; and
- (b) in the case of work carried out on behalf of the Crown by a person or body other than an officer or employee of the Crown, that person or body; and
- (c) in the case of work carried out by or on behalf of a public authority or local authority, that authority; and
- (d) in any other case—
 - (i) the person or body for whose direct benefit building or construction work exists upon its completion; or
 - (ii) if that person or body has engaged another person or body, other than as an employee, to carry out or cause to be carried out all of the building or construction work, the person or body so engaged;

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

“training plan” means a building and construction industry training plan prepared under section 34 (1).

(2) For the purposes of the definition of “building or construction work” in subsection (1), the Governor may, by order, amend Schedule 2 by declaring that any work or work of a specified class or kind—

- (a) shall be building or construction work; or
- (b) shall not be building or construction work.

PART 2

BUILDING AND CONSTRUCTION INDUSTRY TRAINING BOARD

Division 1—Continuation, functions, &c., of the Board

Continuation of the Board

4—(1) The Building & Construction Industry Training Board Inc. as established under the *Associations Incorporation Act 1964* is hereby continued in existence as the Tasmanian Building and Construction Industry Training Board.

(2) The Board—

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name; and
- (e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) The common seal of the Board shall be kept as directed by the Board and shall only be used as authorized by the Board.

(4) The common seal of the Board shall be affixed to a document in the presence of 2 members authorized by the Board and each member shall sign the document to attest that the seal was so affixed.

(5) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document and shall presume that it was duly affixed.

(6) On the commencement of this Act—

- (a) the Board ceases to be subject to the *Associations Incorporation Act 1964*; and
- (b) the Commissioner for Corporate Affairs may make such entries in records kept for the purposes of that Act as may be necessary to give effect to this section.

Members of the Board

5—(1) Subject to this section, the Board consists of the following members appointed by the Governor:—

- (a) a person nominated by the Minister for Employment, Education and Training of the Commonwealth;
- (b) a person nominated by the Minister responsible for the administration of the *Industrial and Commercial Training Act 1985*;
- (c) an employee, within the meaning of the *Tasmanian State Service Act 1984*, nominated by the Minister responsible for the administration of the *Education Act 1932* in so far as it relates to the administration of technical and further education;
- (d) one person nominated by each of the organizations specified in Schedule 3.

(2) Where the Governor is satisfied, on the recommendation of the Board, that an organization specified in Schedule 3 has changed its name, the Governor may, by order published in the *Gazette*, amend that Schedule by omitting the name of that organization and substituting its new name.

(3) Where the Governor is satisfied, on the recommendation of the Board, that an organization specified in Schedule 3 has ceased to represent a part of the building and construction industry, the Governor may, by order published in the *Gazette*, amend that Schedule by omitting the name of that organization.

(4) Where the Governor is satisfied, on the recommendation of the Board, that an organization that is not specified in Schedule 3 represents a part of the building and construction industry, the Governor may, by order published in the *Gazette*, amend that Schedule by adding the name of that organization.

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

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

Board not to represent the Crown

6—The Board does not represent, and is not part of, the Crown.

Functions of the Board

7—(1) The Board is the principal advisor to the Minister and to the Minister for Employment, Education and Training of the Commonwealth on all matters relating to training in the building and construction industry and in particular shall advise those Ministers in relation to—

- (a) skill requirements for the building and construction industry and the training arrangements to meet those requirements; and
- (b) pre-employment and retraining programmes.

(2) In addition, the Board has the following functions:—

- (a) to ensure that its primary functions mentioned in the Agreement specified in Schedule 1 are performed;
- (b) to ensure that all training provided is in respect of skills formation accredited or approved by the building and construction industry;
- (c) to review and evaluate existing training programmes to determine whether they meet the training and skill requirements of the building and construction industry;

- (d) to ensure that principles of equal opportunity are applied to training in the building and construction industry;
- (e) to increase productivity, career opportunities and work safety in the building and construction industry through training;
- (f) to provide access to employment related training provided by employers in the building and construction industry;
- (g) to ensure a more equitable distribution of effort amongst employers in relation to employment related training in the building and construction industry;
- (h) to provide training programmes to improve the skills and knowledge of builders in the building and construction industry.

Powers of the Board

8—The Board has the following powers:—

- (a) to collect the levy;
- (b) to control and administer the Fund;
- (c) to develop and implement a training plan in respect of each financial year;
- (d) to appoint such sub-committees as may be necessary to assist it in the performance of its functions—

and may do everything necessary or convenient for it to do in, or in connection with, the performance of its functions.

Delegation of functions, &c., by Board to Management Committee

9—(1) The Board may, by instrument in writing, delegate to the Management Committee constituted under Schedule 6 the performance and exercise of such of its functions and powers (other than its power to develop and implement a training plan and this power of delegation) under this or any other Act as are specified in the instrument, and may, by a further instrument in writing, revoke wholly or in part any such delegation.

(2) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time by the Management Committee in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the Board may continue to perform or exercise all or any of the functions or powers delegated.

(5) Any act or thing done by, or to, the Management Committee while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by, or to, the Board and shall be deemed to have been done by, or to, the Board.

Division 2—Accounts of the Board

Accounts of the Board

10—(1) The Board shall keep proper accounts and records in relation to its administration of this Act and shall keep separate accounts for the provision of training.

(2) The Board shall, on or before 30 September in each year, prepare a statement of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and the transactions of the Board with respect to the preceding financial year.

(3) The accounts of the Board are subject to Part 3 of the *Financial Management and Audit Act 1990* and are also subject to an internal audit as provided by the regulations.

(4) The Board shall pay to the Consolidated Fund an amount to be determined by the Treasurer as the cost of an audit under this section.

Division 3—Control of the Board

Powers of Minister

11—(1) If the Minister is satisfied that the Board has failed to comply with any provision of this Act or a training plan, the Minister may do one or more of following:—

- (a) direct the Board in writing to comply with this Act or that plan;
- (b) censure the Board in accordance with section 12;
- (c) recommend that the Governor dismiss the members of the Board and appoint new members of the Board;
- (d) recommend to the Governor that an administrator of the Board be appointed in accordance with section 13.

(2) If the Minister is satisfied that the Board has failed to comply with a direction given under subsection (1) (a), the Minister may do any one or more of the things specified in subsection (1) (b), (c) or (d).

Notice of proposal

12—(1) The Minister shall, before exercising the powers conferred by section 11—

- (a) give the Board notice in writing of the intended action and the reasons for it; and
- (b) consider any submissions, whether oral or in writing, made to the Minister by the Board within 7 days after the giving of the notice or any further time specified in the notice.

(2) If the Minister proposes to censure or dismiss the Board or appoint an administrator of the Board, the Minister shall—

- (a) give notice in writing of the censure, dismissal or appointment to the Board; and
- (b) cause to be laid on the table of each House of Parliament within 7 sitting days of that House after the notice is given to the Board—
 - (i) a copy of the notice; and
 - (ii) a report of the circumstances leading to the action; and
 - (iii) a copy of any written submission made by the Board relating to that action.

Appointment and powers of administrator

13—(1) The Governor may, by order published in the *Gazette*, appoint an administrator to administer the affairs and activities of the Board if the Minister, after complying with sections 11 and 12, certifies that—

- (a) the Board has failed to perform a duty arising from a provision of this Act or a training plan; or
- (b) it is in the interests of the building and construction industry that an administrator be appointed.

(2) An appointment of an administrator, unless sooner revoked under subsection (7) or terminated in accordance with the regulations, remains in force for a period of one year.

(3) An employee, within the meaning of the *Tasmanian State Service Act 1984*, or a person appointed under Part V of that Act, may, subject to that Act, hold office as administrator of the Board in conjunction with the person's position or office, as the case may be, in the State Service.

(4) On the appointment of an administrator, the Minister shall serve on the Board a copy of the instrument of the appointment and on the service of the copy of that instrument—

- (a) the functions of the Board shall be performed, and the powers of the Board may be exercised, by the administrator in the name and on behalf of the Board until the administrator's office is vacated under this section; and
- (b) the members of the Board cease to hold office; and
- (c) the administrator shall assume, and be responsible for, the management of the Board; and
- (d) any delegation made by the Board under section 9 ceases to have effect.

(5) Subject to this section, an administrator—

- (a) shall, as soon as practicable after appointment as such, take into the custody or under the control of the administrator all the property and things in action to which the Board is, or appears to be, entitled; and
- (b) shall, subject to and in accordance with any direction given to the administrator by the Minister, perform the functions and exercise the powers of the Board in such manner as the administrator thinks fit.

(6) An administrator of the Board shall be deemed to have vacated office as such—

- (a) when the administrator dies; or
- (b) if the administrator becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the remuneration or estate of the administrator for their benefit; or
- (c) if the administrator is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months, or if the administrator is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable; or
- (d) if the administrator resigns office as such by writing under the hand of the administrator addressed to the Governor; or
- (e) if the appointment of the administrator is revoked by the Governor under subsection (7).

(7) The Governor may, for any reason that the Governor considers sufficient, revoke the appointment of an administrator appointed under this section.

(8) Where the office of administrator is deemed to have been vacated under subsection (6), the Governor may, by instrument in writing, appoint another person to fill the vacancy.

(9) An administrator shall be paid such remuneration, allowances and expenses (if any) as the Governor may determine.

(10) Notwithstanding subsection (9), where an employee, within the meaning of the *Tasmanian State Service Act 1984*, is appointed as administrator under this section, the administrator is entitled to receive, by way of remuneration, allowances and expenses, such amounts (if any) as the Governor, on the recommendation of the Commissioner for Public Employment, may determine.

Expenses of administration

14—(1) The expenses of and incidental to the administration of the Board by an administrator appointed under section 13 are payable by the Board.

(2) The remuneration, allowances and expenses (if any) of an administrator of the Board who is not an employee, within the meaning of the *Tasmanian State Service Act 1984*, or a person appointed under Part V of that Act are expenses referred to in subsection (1).

Liability for losses incurred during administration

15—An administrator of the Board is not liable for any loss incurred by the Board during office as such unless the loss was attributable to—

- (a) wilful misconduct; or
- (b) gross negligence; or
- (c) wilful failure to comply with any provision of this Act.

Termination of administration

16—If the Minister recommends to the Governor that the appointment of an administrator should be revoked, the Governor may declare that the appointment shall be revoked and on any such revocation—

- (a) the Board shall be reconstituted as provided by section 5 and in accordance with the regulations; and
- (b) the Board shall again perform its functions and exercise its powers as provided by this Act.

Saving of acts of Board

17—Nothing done by the Board is in any way affected by the dismissal of the members of the Board under section 12 or the appointment of an administrator under section 13.

Consultation with Commonwealth

18—So long as the Agreement specified in Schedule 1 or any agreement made by way of variation of, or in substitution for, that Agreement is in force, the Minister shall not exercise the powers conferred by section 11 or 13 without first consulting the Minister for Employment, Education and Training of the Commonwealth.

Division 4—Administration**Staff, &c., of Board**

19—(1) The Board may appoint any employees and engage any consultants it considers necessary for the administration of this Act.

(2) The employees of the Board and consultants to the Board are not subject to the *Tasmanian State Service Act 1984*.

Collection agencies

20—(1) The Board may appoint such persons or bodies to be collection agencies for the purposes of this Act as the Board thinks fit.

(2) A collection agency shall collect the levy and pay it to the Board.

(3) A collection agency is entitled to receive from the Board the remuneration agreed between the Board and the agency for the carrying out of the agency's functions under this section.

PART 3**BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY****Imposition of levy**

21—(1) Subject to this Act, a levy is imposed in respect of the cost of building or construction work which commences after the commencement of this Act.

(2) The levy is not payable in respect of building or construction work for which building notices were issued or for which written offers or tenders have been made before the commencement of this Act.

Rate of levy

22—The rate of the levy is 0·2% of the estimated cost of building or construction work, or such higher percentage not exceeding 0·5% of that cost, as the Minister, on the recommendation of the Board, may from time to time determine by notice published in the *Gazette*.

Estimated cost of building or construction work

23—The estimated cost of building or construction work is—

- (a) the contract price for the building or construction work; or
- (b) if there is no contract, the cost determined by the building surveyor of the city or municipal district in which the building or construction work is to be carried out.

Exemption for certain work

24—The levy is not payable in respect of building or construction work if the estimated cost of that work does not exceed \$5 000 or such other amount as may be prescribed.

Liability of project owner to pay levy

25—The project owner in respect of any building or construction work is liable to pay the levy on that building or construction work before the issue of a building notice in respect of that work.

Exemption for construction work by Crown

26—The levy is not payable in respect of any building or construction work which is carried out—

- (a) for the Crown by an officer or employee of the Crown; or
- (b) for a city or municipality by an employee of that city or municipality.

Payment of levy

27—A project owner shall pay the levy to the Board or a collection agency—

- (a) before obtaining a building notice for the relevant building or construction work; or
- (b) if a building notice is not required, before commencing that building or construction work.

Offence for non-payment of levy

28—(1) If any building or construction work is commenced before the levy due in respect of that work has been paid, the project owner is guilty of an offence and is liable on summary conviction to a penalty not exceeding twice the amount of the levy required to be paid.

(2) A penalty imposed under subsection (1) does not affect the liability of a project owner for payment of the levy.

Notice of variation

29—A project owner shall notify the Board or a collection agency within 30 days after the completion of building or construction work, if the actual cost of the work exceeds by an amount of \$25 000 or such other amount as may be prescribed the estimated cost of the work.

Penalty: A fine not exceeding the additional amount of the levy payable.

Adjustment of amount paid

30—If the Board is satisfied that the actual cost of the building or construction work on completion varies by an amount of \$25 000 or such other amount as may be prescribed from the estimated cost—

- (a) the Board shall refund to the project owner an amount equal to the excess levy paid; or

- (b) the project owner shall pay to the Board or a collection agency an amount equal to the additional levy that would have been payable if the estimated cost of that work had been the actual cost of that work.

Cancellation of project

31—(1) The project owner may notify the Board if any building or construction work or part of any building or construction work is not carried out after the levy is paid for the work.

(2) On receipt of a notice under subsection (1) and on proof to the satisfaction of the Board, the Board shall refund to the project owner the amount of the levy paid in respect of the work or part of the work not carried out.

Recovery of levy, &c.

32—The Board may recover in any court of competent jurisdiction—

- (a) amounts of the levy that are due for payment; and
- (b) other amounts due to the Board under this Part.

Offence to provide false information

33—A project owner who provides to the Board or a collection agency any information or document that is false or misleading in a material particular regarding building or construction work or its cost is guilty of an offence.

Penalty: A fine not exceeding 3 times the amount of the levy required to be paid in respect of that work.

PART 4

BUILDING AND CONSTRUCTION INDUSTRY TRAINING PLANS

Building and construction industry training plans

34—(1) The Board shall—

- (a) in respect of the financial year commencing on 1 July 1991, as soon as practicable after the commencement of this Act; and

- (b) in respect of each succeeding financial year, before 31 May last preceding that financial year—

prepare a building and construction industry training plan for the purpose of improving the quality of training and to increase the levels of skills in the building and construction industry.

- (2) A training plan—

(a) shall set out priorities for employment related training to be funded from the Fund; and

(b) shall provide for the allocation of money from the Fund for the provision of training.

(3) In preparing a training plan the Board shall provide for the allocation of the resources of the Fund only in respect of skills formation accredited or approved in respect of the building and construction industry.

(4) The Board shall cause a training plan together with such other submissions, if any, that the Board considers appropriate to be submitted to the Training Authority of Tasmania, which shall then submit the training plan and those submissions, if any, to the Minister for approval.

(5) The Minister may request that a training plan be amended or revised before approval.

- (6) If the Minister approves a training plan—

(a) the Minister shall give notice in writing of the approval to the Board; and

(b) the training plan has effect from the date specified in the notice of approval; and

(c) it is the duty of the Board to carry the training plan into effect.

Amendment of training plan

35—The Minister and the Board may by agreement amend a training plan.

PART 5**BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND****Building and Construction Industry Training Fund**

36—(1) The Board shall establish and maintain a Fund to be called the Building and Construction Industry Training Fund.

(2) The Board shall administer the Fund.

(3) There shall be paid into the Fund—

- (a) all levies collected under this Act; and
- (b) all penalties collected under this Act; and
- (c) any money derived from the investments of the Fund; and
- (d) all other money received by the Board.

(4) There may be paid out of the Fund—

- (a) all amounts necessary for the implementation of a training plan; and
- (b) all amounts required to be paid to collection agencies under any agreement under section 20; and
- (c) the costs of the Board incurred in the administration of this Act; and
- (d) any amount required for a refund of the levy; and
- (e) all other costs and expenses reasonably incurred by the Board in the performance of its functions.

(5) For the purposes of this section, the Board, with the approval of the Treasurer, may open and maintain one or more accounts in the name of the Board with a bank within the meaning of the *Banking Act 1959* of the Commonwealth or a bank constituted by a law of the State or of the Commonwealth.

PART 6**MISCELLANEOUS AND SUPPLEMENTAL****Authorized officers**

37—(1) The Board may, in writing, appoint any person to be an authorized officer for the purposes of this Act.

- (2) The Board shall issue an identity card to each authorized officer.
- (3) An identity card—
 - (a) shall contain a photograph of the authorized officer; and
 - (b) shall be signed by the authorized officer and a member of the Board.
- (4) An authorized officer shall produce an identity card upon being requested to do so in the administration of this Act but any action taken by an authorized officer is not invalidated by failure to do so.

Powers of entry and inspection

38—(1) An authorized officer of the Board may, for the purposes of this Act—

- (a) enter at all reasonable times, inspect and examine any site where building or construction work is being carried out; and
- (b) conduct any examinations and enquiries necessary to ascertain whether this Act has been complied with; and
- (c) require the production of any documents relevant to the payment of the levy, inspect and examine them and take copies or extracts from them.

(2) A person who obstructs or hinders an authorized officer in the performance of the officer's duty is guilty of an offence.

Penalty: A fine not exceeding 6 penalty units or imprisonment for a term not exceeding 6 months.

(3) A person who gives false or misleading information to an authorized officer in the performance of the officer's duty is guilty of an offence.

Penalty: A fine not exceeding 30 penalty units.

Immunity for members of Board

39—(1) An action does not lie against a member of the Board for anything done or omitted to be done in good faith in the course of giving effect to, or purporting to give effect to, the provisions of this Act.

(2) An action which would, but for subsection (1), lie against a member of the Board may be brought against the Board.

Annual report by Board

40—(1) The Board shall during the month of October in each year prepare and forward to the Minister a report on the performance of the functions and the exercise of the powers of the Board under this Act in respect of the preceding financial year.

(2) The report shall include financial statements as to the transactions of the Board in respect of that financial year.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament within 7 sitting days after receipt of the report.

Contracts to evade levy void

41—A contract, agreement or arrangement made or entered into, orally or in writing and whether before or after the commencement of this Act, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of the levy; or
- (b) relieving any person from liability to pay the levy; or
- (c) defeating, evading or avoiding the levy—

is void, as against the Board, or in regard to any proceeding under this Act, but without affecting any validity that it may have in any other respect or for any other purpose.

Regulations

42—(1) The Governor may, on the recommendation of the Board, make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

- (a) the establishment of committees to assist the Board in the exercise of its powers or the performance of its functions under this Act; and
- (b) administrative assistance to be given to the Board with the approval of the Minister by a government department or statutory authority; and
- (c) proceedings in respect of offences against this Act; and
- (d) prescribing information to be provided to the Board or collection agencies by project owners; and

- (e) requiring project owners to keep books and records for the purposes of determining the estimated cost of building or construction work; and
- (f) prescribing the manner of payment of the levy and for ensuring that it is paid before a building notice is issued in respect of the relevant work; and
- (g) prescribing procedures for giving notice to the Board and for refund of the levy paid in respect of any building or construction work that is not carried out; and
- (h) requiring an administrator appointed under section 13 to report to the Governor as to the administration of the Board; and
- (i) reconstituting the Board in accordance with section 5 on the termination of any such administration.

Administration of Act

43—Notwithstanding section 4 of the *Administrative Arrangements Act 1990*—

- (a) this Act is administered by the Minister for Employment, Industrial Relations and Training; and
- (b) the department responsible to the Minister in relation to the administration of this Act is the Department of Employment, Industrial Relations and Training—

until an order is made under that section assigning to another Minister the administration of this Act.

SCHEDULE 1

Preamble, paragraph (b)
and sections 7 (2) (a) and
18

AGREEMENT BETWEEN THE COMMONWEALTH AND TASMANIA COMMONWEALTH OF AUSTRALIA AND STATE OF TASMANIA AGREEMENT TO RATIONALISE STATE LEVEL INDUSTRY TRAINING ADVISORY ARRANGEMENTS IN TASMANIA

An agreement made this 5th day of February 1990 between the Commonwealth of Australia (in the agreement called “the Commonwealth”) of the one part and the State of Tasmania (in this agreement called “the State”) of other part.

WHEREAS the Commonwealth and the State have agreed to establish new industry training advisory structures in Tasmania through the formation of industry training bodies which will be advisory to both Governments.

NOW IT IS HEREBY AGREED AS FOLLOWS

1. In this agreement unless the context otherwise requires—

- (a) Industry Training Committee (ITC) means the tripartite Industry based body established under the Industry Training Services Program and assisted with funding by the Commonwealth.
- (b) TAT means the Training Authority of Tasmania (TAT) established under the Industrial and Commercial Training Act 1985.
- (c) Training Advisory Committee (TAC) means a committee established or recognised by the Tasmania Government under the Industrial and Commercial Training Act 1985 to advise and make recommendations to the Training Authority of Tasmania (TAT).
- (d) Industry Training Services Program (ITS) means the Commonwealth Program operated by the Department of Employment, Education and Training which provides financial support towards the general operating costs of the National Industry Training Committee Network.
- (e) DET means the Division of Employment and Training, within the Tasmanian Department of Employment, Industrial Relations and Training.
- (f) TAFE means the Technical and Further Education Division of the Tasmanian Department of Employment, Industrial Relations and Training.
- (g) DEET means the Commonwealth Department of Employment, Education and Training.
- (h) A word in the singular includes the plural and vice versa.

AGREED ARRANGEMENTS

- 2. The existing Commonwealth funded ITCs and other State advisory bodies be rationalised to form new Industry Training Boards (ITBs) as the principal focal point for industry advice on training matters to both Governments.

TIMETABLE

- 4. Steps towards rationalisation should be undertaken progressively through the 1989 calendar year with the objective of finalisation by 31 December 1989.
- 5. After 31 December 1989 continuation of funding of existing ITCs will be reviewed in the light of their progress towards rationalisation into single Industry Training Boards.
- 6. Details of existing ITCs and TACs are shown at Attachment A to this document.

NEW INDUSTRY TRAINING BOARDS (ITBs)

7. The new ITBs are to be permanent bodies and shall be recognised by both Governments as the principal authoritative voice on training in their industry in Tasmania and form part of the recognised national training network for that industry.
8. ITBs will be incorporated, tripartite and industry based with representatives of employers and employees able to speak on behalf of their industry on training matters, and representatives of Governments.
9. The primary functions of an ITB shall be—
 - (a) to promote training and the body and its aims and activities to industry
 - (b) to liaise with appropriate training organisations to advise on and co-ordinate training resources
 - (c) to assess current and future labour force training needs
 - (d) to provide advice on industry training matters to governments, training providers and industry itself
 - (e) to take appropriate action to meet training needs which could include the provision of training on a cost recovery, user pays basis
 - (f) to provide advice to the Commonwealth and Tasmanian Governments on matters referred to it where such matters come within the bodies' charter.

MEMBERSHIP

10. The nature and balance of industry membership of an ITB while a matter for the industry itself to resolve, must include both employer and employee representatives at a sufficient level to ensure support for the Body from both sides and all sectors of that Industry.
11. Government membership shall include representatives of the Commonwealth Department of Employment, Education and Training, the Training Authority of Tasmania (TAT) and the Division of Technical and Further Education, within the Tasmanian Department of Employment, Industrial Relations and Training. Other Government agencies may be requested to join industry bodies on an as required basis. These representatives shall be at an appropriate level of responsibility to make an effective contribution to the operation of the body.
12. Outside of their formal representatives, ITBs may establish sub-committees to consider specific matters and may nominate representatives where appropriate to provide input/representation on other bodies when requested.
 - members of such sub-committees may be co-opted as necessary and need not be members of the formal body.

TRAINEESHIPS

13. Traineeships are developed and implemented in Tasmania under the auspices of the State Traineeship Task Force which is a standing body under Section 11(4) of the Industrial and Commercial Training Act 1985.
14. Specific development tasks are conducted by Industry Working Groups which are appointed by the TAT on the advice of the Traineeship Task Force.
15. Both Governments agree that recognised ITBs or Specific Purpose Committees, will have responsibility for establishing IWGs for Traineeships in that industry at the request of the Traineeship Task Force. Where there is no recognised industry advisory body, IWGs will be established by TAT.

SPECIFIC PURPOSE COMMITTEES

16. Both Governments while having accepted that newly recognised advisory bodies will be the principal authoritative voice on all training matters in that industry, note that in certain circumstances it may be necessary for either Government to form specific purpose committees to provide advice.
17. It is agreed that such circumstances will occur when—
 - an industry or industry sector is not covered by an existing ITB
 - the issue to be addressed ranges across more than one ITB and it is considered inappropriate for one advisory body to co-ordinate the activity
 - the existing ITB is unable or unwilling to provide appropriate advice

in such circumstance, the continued recognition of the ITB is to be examined by both Governments.
18. Where specific purpose committees are established, they will not be permanent bodies but will operate only until the set task is accomplished.
19. In such cases, the Chairman of the TAT or DEET will seek advice from industry and any relevant recognised industry training body regarding membership.
20. Such committees will be recognised as the principal authoritative voice for that sector of industry and utilised by all parties for the period for which it is established and no other group will be established for the same purpose.
21. Where appropriate, specific purpose committees will be comprised of equal employer and employee representatives.

CURRICULUM DEVELOPMENT

22. Where there is a formally recognised ITB or Specific Purpose Committee in existence, skill/content matters will be the responsibility of that body. Curriculum matters arising from these will be developed jointly by a sub-committee, which will include a representative of TAFE, to undertake the task.
23. Where there is no recognised ITB or Specific Purpose Committee and curriculum advice is required by TAFE, a Specific Purpose Committee may be established by TAFE to provide this advice. In such cases the TAT and DEET will be consulted in the establishment of the group.

RECOGNITION BY GOVERNMENT

24. The State and Commonwealth shall formally recognise each new ITB.
25. Commonwealth recognition shall be by the Minister for Employment, Education and Training in accordance with the provisions of the Industry Training Services Program.
26. Tasmanian recognition shall be by the Minister for Employment, Industrial Relations and Training on the advice of TAT as Advisory Committees to TAT under Section 11 (4) of the Industrial and Commercial Training Act 1985.

FINANCIAL ASSISTANCE

27. Formally recognised Tasmanian ITBs are eligible for funding from the ITS Program under the provisions which currently apply to State Industry Training Committees and may apply for such financial assistance through their National Industry Training network. The Commonwealth Government reserves the right to allocate ITS funds in accordance with prevailing Government policies.
28. The Tasmanian Government agrees that their support for these ITBs would, when granted, be in the form of grants for research and development, or other special projects on a fee-for-service basis.
29. Members of ITBs or their sub-committees and Specific Purpose Committees shall not receive sitting or other associated fees for attendance at meetings other than by special arrangement with either Government.

REPORTING

30. ITBs and Specific Purpose Committees shall account for any funds provided by the Commonwealth or Tasmanian Governments according to the requirements set by the Government or authority concerned. Such accounting shall include annual reports, corporate plans and regular reports on training priorities for their industry.

IMPLEMENTATION

31. Progress towards the implementation of matters agreed in this document will be the subject of a review by officers of DEET and DET to commence prior to 31 December 1989.

J. S. DAWKINS

SIGNED for and on behalf of
the Commonwealth of Australia
by the Minister for Employment,
Education & Training

MICHAEL AIRD

SIGNED for and on behalf of
the State of Tasmania by the
Minister for Employment,
Industrial Relations and Training.

Date 5/2/90

Date 22/12/89

ATTACHMENT "A"**TASMANIAN INDUSTRY TRAINING COMMITTEES/COUNCILS**

Australian Automotive Industry Training Board (Tas.) Inc.
Tasmanian Building and Construction Industry Training Board Inc.
Tasmanian Fishing Industry Training Board Inc.
Tasmanian Food Industry Training Board Inc.
Tasmanian Furniture Industry Training Board
Tasmanian Local Government Industry Training Board Inc.
Tasmanian Printing Industry Training Board
Tasmanian Retail Industry Training Board
Tasmanian Road Transport Industry Training Board
Tasmanian Rural Industry Training Board
Australian Textiles, Clothing and Footwear Industry Board Committee
(Tas.)
Tasmanian Forest Industry Training Board Inc.
Tasmanian Tourism Industry Training Board Inc.
Tasmanian Arts Industry Training Board Inc.

SCHEDULE 2

Section 3 (1)

BUILDING OR CONSTRUCTION WORK TO WHICH THIS ACT APPLIES

1. Construction or alteration of—
 - (a) a building or structure which is subject to the *Building Regulations 1978*; and
 - (b) a building or structure which forms, or is part of, a water reticulation plant or works, a water treatment plant or works or a water pumping station.
2. Construction work in respect of, or in connection with—
 - (a) the construction of a pier, wharf, jetty, dock, silo, bridge, road, dam or reservoir; or
 - (b) the construction of a chimney exceeding 15 metres in height, and not forming part of a building; or
 - (c) the construction of a radio, television, lighting or communication mast exceeding 15 metres in height, but not including an electricity line, pole or tower of the Hydro-Electric Commission; or
 - (d) the construction of a sewerage disposal works; or
 - (e) the construction of a structure, used in the manufacture of materials, containing elevators, bins or other machinery used for or in connection with the crushing, mixing, storage or transport of those materials.
3. Construction work in respect of or in connection with the installation of—
 - (a) a sewerage system or drainage system of a district including any extension or addition made to such a system; and
 - (b) a reticulation main or bulk supply main for the support of water—which involves employees working in excavations which exceed a depth of 1.5 metres and have sides that exceed a slope of 1 metre horizontal and 2 metres vertical.
4. Construction work in respect of, or in connection with, shaft sinking or tunnelling where the shaft or tunnel exceeds 5 metres in depth or length and is not associated with construction work referred to in paragraph 1, 2 or 3.
5. The demolition of a building or structure referred to in paragraph 1 or 2 and which, in the case of a building, is more than one storey or has any wall which exceeds 6 metres in height, or, in the case of a structure, exceeds 6 metres in height.
6. The removal of asbestos from a building or structure or from machinery, plant or equipment located in or on a building or structure.
7. Any other similar work—
 - (a) that is subject to the approval of a municipality before it may be carried out; or

- (b) for which a building notice is required to be given to a building surveyor pursuant to the *Building Regulations 1978*.
-

SCHEDULE 3

Section 5 (1) (d),
(2), (3) and (4)

ORGANIZATIONS REPRESENTED ON THE BOARD

the Master Builders Association of Tasmania
the Building Industry Specialist Contractors Organisation of Australia Limited
the Housing Industry Association Victoria/Tasmanian Division
the Australian Federation of Construction Contractors
the Earthmovers and Road Contractors Federation (Tasmanian Branch)
the Master Plumbers Association of Tasmania
the Master Painters, Decorators and Signwriters Association of Tasmania
the Building Workers Industrial Union (Tasmanian Branch)
the Amalgamated Society of Carpenters and Joiners of Australia (Tasmanian Branch)
the Federated Engine Drivers and Firemen's Association of Australasia (Tasmanian Branch)
the Australian Construction and Builders Labourers Federation (Tasmanian Branch)
the Operative Painters and Decorators Union of Australia (Tasmanian Branch)
the Plumbers and Gasfitters Employees Union (Tasmanian Branch)
the Australian Institute of Refrigeration, Air-Conditioning and Heating Inc. (Tasmanian Division)
the Australian Institute of Building (Tasmanian Chapter)
the Cement and Concrete Association of Australia
the Building Group Apprenticeship Scheme Ltd.

SCHEDULE 4

Section 5 (5)

MEMBERSHIP OF THE BOARD**Term of office**

1—A member of the Board, other than a member referred to in section 5 (1) (a), (b) or (c), shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of the member's appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term, not exceeding 3 years, specified in the instrument of the member's re-appointment.

Provisions relating to members

2—Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of that person's time to the duties of that person's office, that provision shall not operate to disqualify that person from holding that office and also the office of a member of the Board.

Deputy members

3—(1) The Board may, in accordance with subclause (2), appoint a deputy member of the Board and that appointee shall act in the place of the member where the member is unable to act due to sickness, absence or other cause, and while so acting the appointee has all the functions and entitlements of a member.

(2) The Board shall not appoint a person as a deputy member unless that person is nominated as such by the Minister for Employment, Education and Training of the Commonwealth or, as the case may require, by a Minister referred to in section 5 (1) (b) or (c) or by an organization specified in Schedule 3.

(3) An appointment under subclause (1) may be revoked by the Board at any time.

Tasmanian State Service Act 1984 not to apply

4—The provisions of the *Tasmanian State Service Act 1984* do not apply to, or in respect of, the appointment of a member of the Board and a member of the Board is not, as such, subject to the provisions of that Act during the member's term of office.

Appointment of substitute to act during absence of member of Board

5—(1) The Governor may appoint any person (including a member of the Board other than the chairperson of the Board) to act in the office of the chairperson or appoint any person to act in the office of a member of the Board other than the chairperson while the chairperson or that member of the Board, as the case may be, is absent from office through illness or any other cause.

(2) A member of the Board other than the chairperson shall, for the purposes of subclause (1), be deemed to be absent from office if the member is acting in the office of chairperson pursuant to subclause (1).

(3) A member of the Board shall, for the purposes of subclause (1), be deemed to be absent from office if there is a vacancy in that office which has not been filled in accordance with clause 7.

(4) A person shall not be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a member of the Board, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the same consequences, as if they had been done or omitted to be done by that member.

Vacation of office

6—(1) A member of the Board shall be deemed to have vacated the member's office—

- (a) when the member dies; or
- (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) if the member is absent from 3 consecutive ordinary meetings of the Board of which reasonable notice has been given to the member, either personally or in the ordinary course of post, unless on leave granted by the Minister or unless, before the expiration of 3 weeks after the last of those meetings, the member is excused by the Minister for the member's absence from those meetings; or
- (d) if the member is convicted in the State of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months, or if the member is convicted elsewhere than in the State of an offence which, if committed in the State, would be a crime or an offence so punishable; or

1990 *Building and Construction Industry Training Fund* No. 38

- (e) if the member resigns the member's office by writing under the member's hand addressed to the Governor and the Governor accepts the resignation; or
 - (f) if the member is removed from office by the Governor under subclause (2).
- (2) The Governor may remove from office a member of the Board if the Governor is satisfied that the member—
- (a) has participated in, or has claimed to be entitled to participate in, the profit of, or any benefit arising from, any contract, agreement or arrangement made by or on behalf of the Board, other than a contract, agreement or arrangement for a service ordinarily supplied by the Board, on the same terms as that service is supplied to other persons in the same situation; or
 - (b) has voted at any meeting of the Board in respect of any matter in which the member was at that time interested (otherwise than as a member of the public or as an elector of, or ratepayer to, any municipality or as a shareholder in a company in which there were at that time more than 20 members and of which the member was not at that time a director or officer); or
 - (c) is unable to perform adequately the duties of the member's office.
- (3) A member of the Board shall not be removed from office otherwise than in accordance with this clause.

Filling of casual vacancies

7—On the occurrence of a vacancy in the office of a member of the Board otherwise than by the expiration of the term for which the member was appointed, the Governor may appoint a person to the vacant office for the balance of the member's term of office.

Validity of proceedings, &c.

8—(1) No act or proceeding of the Board or of any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Board.

(2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Board or that any person was disqualified from acting as, or incapable of being, a member of the Board, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

Presumptions

9—In any proceedings by or against the Board, unless evidence is given to the contrary, no proof shall be required of—

- (a) the constitution of the Board; or
 - (b) any resolution of the Board; or
 - (c) the appointment of any member of the Board; or
 - (d) the presence of a quorum at any meeting of the Board.
-

SCHEDULE 5

Section 5 (6)

MEETINGS OF THE BOARD

Chairperson of the Board

1—(1) The members of the Board shall elect a chairperson and a deputy chairperson from the members representing the organizations specified in Schedule 3.

(2) The chairperson of the Board or, in the absence of the chairperson, the deputy chairperson shall preside at any meeting of the Board at which the chairperson or, as the case may require, the deputy chairperson is present.

(3) If the chairperson or deputy chairperson is not present at a meeting of the Board, the members present shall appoint a member to preside at the meeting.

Proceedings

2—(1) Nine members of the Board constitute a quorum of the Board of whom one shall be a member referred to in section 5 (1) (a), (b) or (c).

(2) The Board shall meet at least 4 times a year and at intervals of not more than 6 months.

(3) If requested to do so by not less than 8 members, the presiding member shall convene a meeting of the Board to be held at a time and place determined by the presiding member.

(4) A question arising at a meeting shall be determined by a majority of members present and voting on the question.

(5) In the event of an equality of votes on any question at a meeting the person presiding has a second or casting vote.

(6) The Board shall ensure that accurate minutes are kept of each meeting.

Disclosure of interests

3—(1) A member who has a direct or indirect pecuniary interest in a proposal before the Board—

(a) shall disclose the nature of the interest to the Board at each meeting when the proposal is discussed; and

(b) shall not take part in any deliberation or decision of the Board with respect to the proposal.

(2) A disclosure of interest shall be recorded in the minutes of the Board.

(3) A member shall not be regarded as having an interest in a proposal only because the proposal may benefit or affect an organization referred to in Schedule 3.

(4) A member who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

Annual General Meetings

4—(1) The Board shall, in each year, hold an annual general meeting.

(2) The annual general meeting shall be held on such day not later than 3 months after the close of each financial year as the Board may determine.

(3) The annual general meeting shall be in addition to any other general meeting that may be held in the same year.

- (4) The ordinary business of the annual general meeting shall be—
- (a) to receive from the Management Committee constituted under Schedule 6 and servants of the Board reports on the transactions of the Board during the last preceding financial year; and
 - (b) to elect the officers of the Board and the members of the Management Committee.

Special General Meetings

5—(1) The Board may, whenever it thinks fit, convene a special general meeting of the Board.

(2) The Board shall, on the requisition in writing of not less than 8 members, convene a special general meeting of the Board.

(3) A requisition for a special general meeting shall state the objects of the meeting, shall be signed by the requisitionists and deposited at the office of the Board and may consist of several documents in similar form, each signed by one or more of the requisitionists.

(4) If the Board does not cause a special general meeting to be held within 21 days from the day on which a requisition for that meeting is deposited at the office of the Board, the requisitionists, or any of them, may convene the meeting; but any meeting so convened shall not be held after 3 months from the day of the deposit of the requisition.

General procedure

6—The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is specified in this Schedule, be as determined by the Board.

SCHEDULE 6

Section 9 (1)

MANAGEMENT COMMITTEE

Constitution of the Management Committee

- 1—(1) The Management Committee of the Board consists of—
- (a) the chairperson, the deputy chairperson and the members elected as Secretary and Treasurer of the Board; and

1990 *Building and Construction Industry Training Fund* · No. 38

- (b) the member holding office by virtue of section 5 (1) (a); and
- (c) other members of the Board including representatives from an equal number of employer and employee organizations specified in Schedule 3.

(2) Each member of the Management Committee shall, subject to this Schedule, hold office until the annual general meeting next after the date of the member's election, but is eligible for re-election.

(3) In the event of a casual vacancy occurring in the office of a member of the Management Committee, the Management Committee may appoint a member of the Board to fill the vacancy, and the member so appointed shall hold office subject to this Schedule until the conclusion of the annual general meeting next following the date of appointment.

(4) The members of the Building and Construction Management Board holding office as such immediately before the commencement of this Act shall continue in office as members of the Management Committee as if appointed under this Schedule.

Meetings of the Management Committee

2—(1) The Management Committee shall meet at least once in every 3 months at such place and at such times as the Management Committee may determine.

(2) Special meetings of the Management Committee may be convened by the chairperson or any 4 of its members.

(3) Any 4 members of the Management Committee may constitute a quorum for the transaction of the business of a meeting of the Management Committee.

(4) At meetings of the Management Committee the chairperson, or in the chairperson's absence, the deputy chairperson shall preside.

(5) Each member present at a meeting of the Management Committee (including the person presiding) is entitled to one vote and, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

(6) The procedure for the calling of, and for the conduct of business at, meetings of the Management Committee shall, subject to any procedure that is specified in this Schedule and to any direction given by the Board, be as determined by the Committee.