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## BUILDERS REGISTRATION ACT 1977

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**BUILDERS REGISTRATION**

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No. 112 of 1977

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**AN ACT to make provision for the registration of builders and for matters related thereto.**

**[14 December 1977]**

**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 I**

**PRELIMINARY**

**1—(1)** This Act may be cited as the *Builders Registration Act* Short title and commencement.  
1977.

**(2)** This Act shall commence on a date to be fixed by proclamation.

## Interpretation.

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

- “ Board ” means the Building Industry Contractors Registration Board established under this Act;
- “ builder ”, in relation to a building contract, means any party thereto who under that contract has engaged to carry out or arrange for the carrying out of any building operations;
- “ building contract ” means a contract for the carrying out of any building operations;
- “ building default ” has the meaning assigned to that expression by section 20;
- “ building operations ” means any operations undertaken for the construction, alteration, maintenance, or renovation of a building, and includes any operations carried out on, or within the curtilage of, a building for the provision, alteration, or maintenance of services provided for persons living or working in the building;
- “ building owner ”, in relation to a building contract, means—
- (a) any party thereto who under the contract provides consideration for the carrying out of the building operations under the contract; or
  - (b) any party thereto (not being the builder) having an estate in the land on which the building operations under the contract have been, are being, or are to be, carried out;
- “ certificate ” means a building supervisor’s certificate referred to in section 11 (1);
- “ exempt small operation ” has the meaning assigned to that expression by subsection (2);
- “ farm building ” means any building used or intended for use for agricultural, pastoral, forestry, horticultural, viticultural, apicultural, orcharding, dairy farming, or poultry farming purposes, but does not include any building used or intended to be used for human habitation;
- “ registered builder ” means a person holding a registration;
- “ Registrar ” means the Registrar of the Board;
- “ registration ” means a builder’s registration referred to in section 9.

(2) For the purposes of this Act an “ exempt small operation ” is any building operation carried out on land in pursuance of a building contract in a case where the building owner has an estate

in the land and the total value of the building operations to be carried out under the contract (as assessed at the time the contract is entered into) does not exceed \$1 000.

## PART II

### BUILDING INDUSTRY CONTRACTORS BOARD

**3**—(1) There shall be established a board, to be called the Building Industry Contractors Registration Board, which shall be a body corporate with perpetual succession and a common seal.

The Building  
Industry  
Contractors  
Registration  
Board.

(2) The Board shall consist of a chairman and 6 other members appointed by the Governor.

(3) The members of the Board, other than the chairman, shall be appointed on the recommendation of the Minister—

- (a) two being appointed as representative of building contractors;
- (b) one being appointed as representative of building employees;
- (c) one being appointed as representative of the architectural profession;
- (d) one being appointed on the nomination of the Municipal Association of Tasmania; and
- (e) one being appointed as representative of organizations lending money for the carrying out of building operations.

(4) Before recommending the appointment of a person as representative of building contractors or representative of building employees the Minister shall consult with such associations of building contractors or of building employees, as the case may be, as he considers appropriate; and, for the purposes of this subsection, any person who acts as a builder under a building contract shall be regarded as a building contractor and any person carrying out building operations in the employment of a builder shall be regarded as a building employee.

(5) Before recommending the appointment of a person as representative of the architectural profession the Minister shall consult with the Tasmanian Chapter of the Royal Australian Institute of Architects or, if that body ceases to exist or ceases to exist under that name, such association as he considers sufficiently represents the interests of architects practising in this State.

(6) Before recommending the appointment of a person as representative of the organizations referred to in subsection (3) (e) the Minister shall consult with such associations of, or representative of, those organizations as he considers appropriate.

(7) A member of the Board shall be appointed for a term of four years, but may resign his office by notice in writing addressed to the Minister.

(8) The Governor may remove any member of a Board from office if he is satisfied that that member—

- (a) has become incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
- (d) has been convicted (whether in this State or elsewhere) of an offence of such a nature that renders it improper for him to continue to hold his office.

(9) The Governor may remove any member of the Board (other than the chairman) from office if he is satisfied that, by reason of circumstances that have arisen since that member was appointed, he is no longer a person suitable to represent the persons or organizations that he was appointed to represent.

(10) The Governor shall not remove from office a member of the Board otherwise than in accordance with subsection (8) or subsection (9).

(11) The members of the Board are not, as such, subject to the *Public Service Act 1973*, but, subject to this section, an officer of the Public Service may hold office as a member of the Board in conjunction with his office as a member of the Public Service.

(12) There shall be paid to a member of the Board such remuneration and allowances as the Governor may determine, but no such determination shall be made without the approval of the Public Service Board in respect of a member of the Board who is an officer of the Public Service.

Proceedings  
of the Board.

4—(1) At a meeting of the Board the chairman or, if he is absent or there is no chairman, such one of the other members present, as they may choose, shall preside at the meeting.

(2) The person presiding at a meeting of the Board has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Board, the matter stands adjourned to the next meeting of the Board.

(3) Four members of the Board constitute a quorum at any meeting of the Board.

(4) Subject to this Act, the Board may regulate its own proceedings.

**5—**(1) For the purpose of facilitating the exercise of its functions the Board may appoint such committees as it thinks fit. Committees of the Board.

(2) The Board may, either generally or in any particular case, delegate to a committee appointed under this section, with or without restrictions, the exercise of any of its functions under this Act, and may, either generally or in a particular case, vary or revoke any such delegation.

(3) A committee appointed under this section shall not include persons who are not members of the Board.

(4) The Board may appoint the chairman of a committee appointed under this section or direct the manner in which the chairman is to be appointed.

(5) The terms of office of the members of a committee appointed under this section shall be such as the Board determines.

(6) Subject to any directions given to it by the Board a committee appointed under this section may regulate its own proceedings.

**6—**(1) The Board may, with the approval of the Minister, appoint a person to be Registrar of the Board, or, if a Registrar is not so appointed, the Minister may make the appointment. Registrar and other officers of the Board.

(2) Without prejudice to the power of the Board to provide such accommodation and engage such staff as it may require for the purpose of the exercise of its functions, the Minister may, at the request of the Board, make arrangements for the provision of any accommodation or assistance it may require.

(3) The Board shall pay to the Registrar and other officers of the Board such remuneration as the Minister, on the recommendation of the Public Service Board, approves.

(4) With the approval of the Minister the Board may make arrangements with a municipality for the officers of the municipality to give assistance to the Board in the exercise of its functions.

**7—**(1) Fees paid under this Act shall be paid to the Board and the funds of the Board shall comprise the fees so paid and any other sums paid to the Board under this Act. Fees, expenses, and financial assistance.

(2) The expenses of the Board shall be defrayed out of its funds, and any arrangements made by the Minister under section 6 may provide for the payment by the Board of sums, either into the Consolidated Revenue or otherwise, in respect of any accommodation or assistance provided under that section.

(3) At the request of the Minister, the Treasurer may make such arrangements as appear to him necessary to afford to the Board such financial assistance as it may require to enable it to commence or carry on its operations; and any such assistance may be provided out of moneys provided by Parliament for the purpose.

(4) The accounts of the Board are subject to the *Audit Act* 1918.

Annual report.

8 As soon as practicable after the 30th June in each year the Board shall submit to the Minister a report on its proceedings under this Act during the period of 12 months ending on that day, and on receiving the report the Minister shall cause a copy thereof to be laid before each House of Parliament.

### PART III

#### REGISTRATION OF BUILDERS AND CERTIFICATION OF BUILDING SUPERVISORS

##### *Division I—Registrations and certificates*

Nature of  
builder's  
registrations.

9—(1) Builder's registrations may be granted under this Act, and any such registration may be either a full registration or a limited registration, a limited registration being a registration specifying the particular class of building operations in respect of which it is granted.

(2) A builder's registration (whether it is a full registration or a limited registration) is of no effect unless it is endorsed with the name of a person who holds a building supervisor's certificate in respect of all of the building operations in respect of which the registration is granted, or the names of two or more persons who between them hold building supervisor's certificates, in respect of the operations.

(3) As provided by this Act the name, or one of the names, endorsed on a registration as required by subsection (2) may be the name of the person or one of the persons to whom the registration is granted.

(4) Where a reference is made in this Act to the building operations in respect of which a registration is granted that reference shall, in the case of a full registration, be construed as a reference to building operations of all classes, and, in the case of a limited registration, to building operations of the particular class in respect of which the registration was granted.



(5) A registration may be granted to a corporation or an individual or two or more individuals jointly, and a registration granted to an individual or individuals may specify the business name registered under the *Business Names Act 1962* under which he or they carry on business.

**10**—(1) The Board may, on application being made to it, grant a registration in respect of any building operations if it is satisfied—<sup>Grant of builder's registrations.</sup>

(a) that the person to whom the registration is granted has available financial resources adequate for the carrying on of a business for carrying out those building operations; and

(b) that it is reasonably to be anticipated, having regard to the antecedents, training, skill, and experience of that person or, if that person is a corporation, the persons having the management of its affairs, that that business will be properly conducted,

but a registration shall not be granted to a person who is disqualified from holding it.

(2) A registration shall not be granted unless at the same time it is endorsed as required by section 9 (2).

**11**—(1) Building supervisors' certificates may be granted under this Act.<sup>Building supervisors' certificates.</sup>

(2) A certificate may be either a full certificate or a limited certificate, and a limited certificate shall specify the class of building operations in respect of which it is granted.

(3) Where a reference is made in this Act to the building operations in respect of which a certificate is granted that reference shall, in the case of a full certificate, be construed as a reference to building operations of all classes and, in the case of a limited certificate, to building operations of the particular class in respect of which the certificate was granted.

(4) Subject to this section, on the application of an individual, the Board shall grant him a certificate if it is satisfied that he is of good fame and character and is, by reason of his knowledge and

experience, competent to supervise the building operations in respect of which the certificate is granted in a manner sufficient to ensure that they are properly carried out in a workmanlike manner.

(5) Subject to this Act, a certificate shall not be granted unless the person to whom it is granted—

(a) has completed a course of training prescribed in relation to the building operations in respect of which the certificate is granted; and

(b) since completing that course has had practical experience that the Board considers adequate in the carrying out of building operations for a period of not less than 3 years or periods that in the aggregate are of not less than 3 years.

(6) A certificate shall not be granted to a person who is disqualified from holding it.

Endorsement of  
building  
registrations.

**12—**(1) Where the person or one of the persons to whom a registration in respect of any building operations is granted, or is to be granted, holds a certificate in respect of all or any of those building operations the Registrar shall, on the application of that person, cause the registration to be endorsed with his name and particulars of the certificate.

(2) On the application of a registered builder and a certificated supervisor the Registrar shall cause the registration of that registered builder to be endorsed with the name of the certificated supervisor and particulars of the certificate held by him.

(3) Where the certificate held by any person ceases to have effect the Registrar shall cause the endorsement of the name of that person on any registration to be cancelled.

(4) Where the name of a person is endorsed on a registration the Registrar shall, on the application of that person or the person holding that registration, cause that endorsement to be cancelled.

**13**—(1) A registration or certificate, unless renewed or further renewed, ceases to have effect on 30th June following the date on which it was granted or last renewed, except that a registration or certificate granted during the months of April, May, or June in any year may be granted so as not to expire under this subsection until 30th June in the following year.

Period of registrations and certificates.

(2) On the application of the holder thereof the Board shall subject to section 10 renew a registration or certificate.

(3) On the application of the holder thereof the Board shall cancel a registration or certificate.

**14** Such fees as may be prescribed shall be paid on the grant or renewal of a registration or certificate and, notwithstanding anything in this Act, no registration or certificate shall be granted or renewed unless the fee prescribed in relation to the grant or renewal is paid to the Board.

Fees.

**15**—(1) A person who holds an electrical contractor's licence shall be deemed to be qualified for the grant of registration in respect of electrical wiring work and to be granted a certificate in respect of electrical wiring work.

Special provisions as to electrical wiring work and plumbing work.

(2) Except in a case where the applicant is qualified as mentioned in subsection (1), the Board shall refer an application for the grant of a certificate in respect of electrical wiring work or any class of electrical wiring work to the Hydro-Electric Commission, and, before granting the certificate, shall consider any observations made by the Commission with respect to this application.

(3) In the foregoing provisions of this section "electrical contractor's licence" means an electrical contractor's licence under Part X of the *Hydro-Electric Commission Act* 1944, and "electrical wiring work" has the same meaning as it has for the purposes of that Act.

(4) The holder of a certificate of registration under the *Plumbers' Registration Act* 1951 of a prescribed kind authorizing him to engage in or undertake plumbing work of any prescribed class in any part of the State shall be deemed to be qualified for the grant of a certificate in respect of that plumbing work.

(5) Where a person is under this section qualified for the grant of a registration or certificate the Board shall, on an application

under this Act, grant him that registration or certificate, and so long as he remains so qualified, shall, on his application under this Act, renew the registration or certificate.

(6) Where a person who holds a registration or certificate referred to in this section ceases to be qualified under this section to hold that registration or certificate he shall thereupon be deemed to have become disqualified from holding that registration or certificate which shall accordingly cease to be of any further effect.

(7) Nothing in this section shall be construed as preventing the imposition of a disqualification under any other provision of this Act on a person to whom this section applies or permitting the grant to any such person of any registration or certificate that under any such provision he is so disqualified from holding.

Appeals with respect to licences and certificates.

**16—**(1) A person who is aggrieved by a refusal of the Board to grant him a registration or certificate, or the terms of a registration or certificate granted to him, may appeal to a magistrate.

(2) An appeal under this section may be brought within one month of the notification to the appellant of the decision to which the appeal relates.

(3) Where an appeal is brought under this section, the magistrate, unless he dismisses the appeal, may quash the decision of the Board and direct it to take such action as he considers it should have taken in the matter to which the appeal relates.

(4) The Board shall comply with any directions given to it under this section.

The Building Register.

**17—**(1) The Registrar shall maintain a register to be called the Building Register in which he shall enter particulars of the grant and renewal of registrations and certificates and the imposition and removal of disqualifications under this Act.

(2) As soon as practicable after 31st December in each year the Registrar shall cause to be published in the *Gazette* a notice showing particulars of the persons who at that date held registrations or certificates (other than non-operative registrations or non-operative certificates) and the classes of building operations in respect of which those registrations and certificates were granted.

(3) Subject to subsection (4), the production of a copy of the *Gazette* containing such a notice as is referred to in subsection (2) is sufficient evidence, unless the contrary is shown, of the sub-

sistence of the registrations and certificates indicated therein and that no other registrations or certificates (not being non-operative registrations or non-operative certificates) subsist.

(4) Production of a document purporting to be a certified copy of an entry in the register signed by the Registrar is sufficient evidence, unless the contrary is shown, that that entry was duly made in the Register.

(5) Forthwith on the imposition of any disqualification the Registrar shall cause notice thereof to be published in the *Gazette*, and any such notice shall state registrations and certificates that cease to have effect as a consequence of the disqualification.

*Division II—Provisions relating to defaults, &c., by builders*

**18**—(1) Where a registered builder, being an individual, or a certificated supervisor, has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors, the Board may impose a disqualification on him. Disqualification on bankruptcy, &c.

(2) Where proceedings are being, or have been, taken for the winding up, or dissolution, of a corporation that is a registered builder, the Board may impose a disqualification on it.

**19**—(1) Where the Board is satisfied that a registered builder or certificated supervisor— Disqualification on convictions &c.

(a) obtained his registration or certificate by fraud or misrepresentation; or

(b) has been convicted for an offence, whether in this State or elsewhere, of such a nature that it is undesirable in the public interest that he should hold a registration or certificate,

it may impose a disqualification on him.

(2) Before it imposes a disqualification on any person under this section the Board shall notify him of its intention, specifying the grounds on which it proposes to impose the disqualification and, if within 10 days after being so notified he informs the Board that he desires to be heard in the matter, shall give him a reasonable opportunity of being so heard.

**20**—(1) The following shall be treated as building defaults for the purposes of this Act:— Building defaults.

(a) A default by a builder under a building contract;

- (b) A building defect;
- (c) A contravention of any of the provisions of this Act or of any Act regulating or affecting building or building operations.

(2) For the purposes of this Act there shall be deemed to be a default by a builder under a building contract if, without reasonable cause—

- (a) there has been a failure on the part of the builder to discharge any of his obligations under the contract or to comply with any of its terms; or
- (b) there has been a failure on his part to comply with the terms of an arbitration award made under the contract.

(3) For the purposes of this Act a building defect means any defect in a building resulting from the carrying out of any building operations in an improper or unworkmanlike manner.

Responsibility  
for building  
defaults.

**21**—(1) For the purposes of this Act, a registered builder shall be deemed responsible for all building defaults arising from the building operations that he carries out, or causes to be carried out, unless it appears that in all the circumstances of the case it is reasonable that he should be excused.

(2) Without derogating in any way from the responsibility imposed on the registered builder under subsection (1), it shall be assumed that it is the duty of each person whose name is endorsed on the registration of that builder to supervise the carrying out of the building operations referred to in that subsection in a manner sufficient to ensure that they are properly carried out in a workmanlike manner, unless it is shown that some other person whose name is so endorsed has at the direction of the registered builder undertaken the supervision of those operations.

Inquiries into  
complaints in  
respect of  
alleged building  
defaults.

**22**—(1) Where a complaint is made to the Board that appears to show that there may have been a building default in respect of which action should be taken under section 24 it shall conduct an inquiry into the complaint.

(2) An inquiry shall not be conducted under this section into any matter that the Board is satisfied arose from an exempt small operation or a contract to carry out such an operation.

(3) An inquiry shall not be conducted under this section into any matter that arises from a building operation, carried out otherwise than in an urban building area or a changing building area under the *Local Government Act 1962*, for the construction, alteration, maintenance, or renovation of a farm building or for the provision, alteration, or maintenance of services provided in connection therewith, or a contract to carry out such an operation.

(4) Before deciding whether or not to hold an inquiry into a complaint the Board may require the complainant to furnish it with further particulars of the matters alleged in the complaint and may require any such matters to be verified by statutory declaration.

(5) Where it appears to the Board that a matter alleged in a complaint is reasonably capable of being remedied by the person against whom the complaint is made, the Board shall not conduct, or proceed with, an inquiry into the complaint so far as it relates to that matter unless—

(a) that person disputes the matter; or

(b) the Board is satisfied—

(i) that he has refused or does not intend to remedy it; or

(ii) that, having been given a reasonable opportunity so to do, he has failed to remedy it.

(6) The Board shall not conduct, or proceed with, an inquiry into a complaint if the Board is satisfied that the matters alleged in the complaint came, or should have come, to the knowledge of the owner of the building to which the complaint relates more than 12 months before the complaint was made to the Board.

(7) Before holding an inquiry under this section the Board shall serve notice of the complaint on the person against whom it was made informing him of the particulars of the complaint, and stating that, whether or not he intends to appear at the inquiry, he may, before the inquiry is held, furnish written representations to the Board with regard to the complaint.

(8) For the purposes of this section a complaint shall be deemed to have been made, not only against the person specified therein as the person against whom it is made, but also against any person who, the Board considers, should be made to answer the complaint.

(9) Where any person is served with a notice of a complaint and, within the prescribed time, that person serves notice on the

Board naming some other person who, he considers, should also be called upon to answer the complaint, that notice has effect as if it were a complaint made against that other person.

(10) The Board shall not hold an inquiry under this section into a complaint unless it has given the prescribed notice of the inquiry to the complainant and the person against whom the complaint was made.

(11) If the Board finds it convenient so to do it may hold one inquiry into two or more complaints.

(12) The complainant and the person against whom the complaint is made are entitled to be heard at an inquiry under this section, either personally or by some person authorized by him in that behalf, and any person appearing at the inquiry is entitled to tender such evidence as he considers necessary, and to examine any person giving evidence before the Board at the inquiry.

(13) At any inquiry under this section the Board may hear and receive any evidence it considers relevant, whether or not the evidence is such as would be admissible in a court of law, and, if it considers it convenient to do so—

(a) may appoint a suitable person to make any inspection, investigation, or survey and consider the report made by him thereon; and

(b) may consider the report of any inspection, investigation, or survey made by a person who, it is satisfied, was competent to make that inspection, investigation, or survey.

(14) A copy of any report considered under subsection (13) shall be made available to the parties to the proceedings.

(15) Where any person entitled to be heard by the Board in any proceedings does not, after being notified of the time and place of the hearing, appear to be heard, the Board may proceed with the hearing in his absence.

(16) The Board may adjourn any hearing from time to time as it thinks fit.

Deposits and  
costs of inquiry.

**23**—(1) Before the Board inquires into a complaint it may require the complainant to deposit a specified sum with the Board and if, on inquiry into the complaint, the Board is satisfied that there was no reasonable ground for the complaint it may apply the sum so deposited to meeting the expenses of the inquiry.

(2) If, on an inquiry, the Board is satisfied that the expenses of a party to any proceedings before the Board have been caused or increased by unreasonable or improper conduct by any person, the



Board may order the latter to pay the former such sum by way of costs as it may fix, and, if the person by whom that sum is to be paid has made a deposit under subsection (1), the Board may apply the deposit or any portion thereof in payment of the sum, but otherwise any sum ordered to be paid under this section may be recovered as a debt in any court of competent jurisdiction.

**24**—(1) Where on an inquiry into a complaint under this Part the Board is satisfied that there has been a building default it may cause a record to be made of the default and, in addition, may caution or reprimand any person against whom the complaint is made whom it holds to be wholly or partially responsible for the default, or impose a disqualification on him. Action on inquiries.

(2) In exercising its powers under subsection (1) in respect of any person the Board may have regard to any matters previously recorded against him under that subsection.

(3) Where the Board records a building default under subsection (1) it may, whether or not it exercises the powers conferred on it by that subsection, serve on the person referred to in subsection (1) a notice (in this Act referred to as a “ default notice ”) to remedy, or ameliorate the effects of, the default.

(4) Where the Board serves a default notice in respect of a building default it may authorize the building owner under any building contract in relation to the building operations carried out for the purposes of which the default arose to rescind the contract.

**25**—(1) Where the Board imposes a disqualification on any person it may disqualify him from holding all or any of the following registrations or certificates, namely:— Nature and effect of disqualification.

- (a) Any registration or a registration of a particular kind;
- (b) Any certificate or a certificate of a particular kind.

(2) Where the Board imposes a disqualification on any person it may specify the conditions on compliance with which the disqualification may be removed, and if, on the application of the person to whom the order relates, the Board is satisfied that those conditions have been complied with it shall revoke the disqualification.

(3) Without prejudice to the provisions of subsection (2) on an application by a person upon whom a disqualification has been imposed the Board may revoke or modify the disqualification if, having regard to the circumstances that have arisen since the disqualification was imposed, it is satisfied that it is just and reasonable, and not contrary to the public interest, so to do.

(4) Where a disqualification is imposed on any person under this Act any registration or certificate then held by him that he is thereby disqualified from holding ceases to be of any further effect.

(5) Where a disqualification is imposed on any person under this Act he shall within 7 days of being so required by the Board furnish it with such particulars as it may require with regard to the building contracts entered into by him before the disqualification was imposed.

(6) As soon as practicable after a disqualification is imposed on any person under this Act the Board shall give the notifications referred to in section 27 and publish such other notice of the disqualification as it is satisfied is required in the public interest.

Default notices.

**26**—(1) A default notice shall specify the matters that are alleged to constitute the default and shall, as the circumstances of the case require—

- (a) specify which of the steps already taken for the purpose of investigating, remedying, or ameliorating the effects of, the default the Board approves as having been reasonably taken for that purpose; and
- (b) specify the steps or further steps that the Board requires to be taken in order to remedy, or to ameliorate to the greatest extent practicable, the effects of the default.

(2) Where a person has incurred, or incurs, any expense in taking any of the steps approved or required by the Board under subsection (1) he may recover those expenses to the extent to which they were reasonably incurred from the person on whom the notice was served.

Rescission of contracts in force at time of disqualification, &c.

**27**—(1) For the purposes of this section a building owner under a building contract shall be deemed to have a statutory right to rescind the contract on being notified by the Board in writing—

- (a) that by reason of his disqualification the registration of the builder has ceased to be of effect in respect of the building operations specified in the notification, being building operations some or all of which are required to be carried out under the contract; or
- (b) that the rescission of the contract is authorized under section 24 (4),

and that statutory right shall be deemed to have arisen on the building owner being so notified.

(2) The Board shall not give a notification under this section in respect of a disqualification or authorization unless the time for appealing against the disqualification or authorization has expired or, if an appeal is brought in respect thereof, the proceedings on the appeal have terminated.

(3) Where under this section a building owner has a statutory right of rescission of a building contract he may, by notice in writing served on the builder within 30 days of the right having arisen, rescind the contract.

(4) Where a building owner rescinds a contract under this section the parties to the contract have the like rights and liabilities as if the builder under the contract had committed such a breach thereof as would have entitled the building owner so to rescind the contract, and the rescission had been in consequence of such a breach.

**28**—(1) A person who is aggrieved by a disqualification imposed on him under section 19 may appeal to a magistrate. Appeal against action in respect of building defaults.

(2) A person who is aggrieved by any action taken against him under section 24 may appeal to a magistrate on either or both of the following grounds:—

(a) That the matters in respect of which the action was taken do not constitute a building default;

(b) That those matters did not justify that action being taken.

(3) On the determination of an appeal under this section the magistrate (unless he dismisses the appeal) shall give directions to the Board for giving effect to his determination, including, where appropriate, directions for the quashing of any notice and the serving of another notice in lieu thereof; and the Board shall comply with the directions.

(4) Regulations under this Act may prescribe the time within which appeals may be brought under this section, and regulate the proceedings on such an appeal.

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Division I—Offences*

**29** This Division only applies to operations carried out in—

Application of Division.

(a) the cities of Hobart, Launceston, and Glenorchy;

(b) the municipalities of Kingborough and Clarence; and

(c) such areas as may be prescribed as areas to which this Division applies.

Interpretation  
of Division I.

**30**—(1) For the purposes of this Division the holder of a registration for the time being in force in respect of any building operations shall be deemed to be authorized to carry out those operations.

(2) Where such a person as is referred to in subsection (1) enters into a contract for the carrying out of any building operations he is authorized to carry out and before those operations are carried out or completed his registration ceases to have effect by reason of his disqualification he shall nevertheless be regarded for the purposes of this Division as being authorized to carry out such building operations as are required to be carried out to discharge his obligations under the contract so far as those obligations still subsist.

(3) References in this Division to unauthorized building operations shall be construed as references to building operations that are carried out by a person who, within the meaning of this section, is not authorized to carry out those operations.

(4) Where building operations are carried out by a person acting in the employment of another person, references in this Part to the person carrying out those operations shall be deemed to include references to that other person.

(5) Without prejudice to the generality of the provisions of this Division, where building operations are carried out in pursuance of a building contract each party to the contract shall be deemed for the purposes of this Division, to be a person causing those operations to be carried out.

Prohibition on  
unauthorized  
building  
operations.

**31**—(1) No person shall carry out, or cause the carrying out of, unauthorized building operations for reward.

(2) Subsection (1) does not apply to exempt small operations.

(3) Subsection (1) does not apply to building operations carried out, elsewhere than in an urban building area or a changing building area under the *Local Government Act 1962*, for the construction, alteration, maintenance, or renovation of a farm building or for the provision, alteration, or maintenance of services provided in connection therewith.

(4) It is no defence in any proceedings for an offence under subsection (1) to show that the reward was not received or intended to be received by the defendant or for his benefit or that the reward was provided by the defendant himself.

(5) Where a person having an estate in land erects a building on that land, or causes a building to be erected on the land, any valuable consideration received by him or for his benefit on a subsequent disposal of that estate shall be regarded in part as a reward received by him from the carrying out of the building operations involved in the erection of the building.

(6) No offence is committed under this section by reason of the receipt by any person of such a reward as is referred to in subsection (3)—

- (a) where the building was erected on a property for a purpose incidental to that for which the property was already being used; or
- (b) where the Board is notified of the erection of the building and that person had not, within the previous 3 years, in any other case received such a reward.

(7) It is a defence in any proceedings for an offence under this section to show that—

- (a) the building operations were carried out under a building sub-contract to which the defendant was not a party; and
- (b) he was not aware that those building operations were unauthorized building operations.

(8) For the purposes of subsection (7) a building sub-contract is a contract entered into by a builder under a building contract for the purpose of providing for the carrying out by some other person of the building operations required to be carried out under that building contract.

(9) A person is not criminally liable under this section for anything done in the course of his employment with another person, and references in this section to a reward shall be deemed not to include references to wages or other remuneration paid to or received by an employee in respect of his employment.

Improper  
advertising.

**32**—(1) No person shall falsely represent that he holds any registration or certificate, or a registration or certificate of a particular kind.

(2) No person shall, in an advertisement, indicate, expressly or impliedly, that he is willing or prepared to carry out building operations that he is not authorized to carry out.

(3) No person shall indicate to any other person, expressly or impliedly, that he is willing or prepared to carry out under a contract building operations unless he is authorized to carry out those building operations.

(4) Nothing in this section prevents a person indicating that he is willing or prepared to carry out building operations in the employment of any person.

Regulation of  
employment.

**33**—(1) Regulations under this Act may, in respect of building operations of any prescribed class, specify the qualifications and experience required of any person before, in respect of those operations, he may be regarded as a skilled tradesman; and, in relation to building operations of that class, references in this section to a skilled tradesman shall be construed as a person having the qualifications and experience so specified.

(2) Except with the approval of the Board, a builder under a building contract shall not employ a person who is not a skilled tradesman to carry out any building operations of a class prescribed for the purposes of subsection (1) that are required for the purpose of fulfilling that contract.

(3) It is a defence in any proceedings for an offence under subsection (2) in respect of the employment of a person to carry out any building operations to show—

- (a) that all reasonable steps were taken to obtain a skilled tradesman to carry out those operations; and
- (b) that notice was given to the Registrar of the need to employ a person to carry out those operations who was not a skilled tradesman as soon as reasonably practicable.

Exemptions.

**34**—(1) The Governor may, by order, exempt from any of the provisions of this Part specified in the order such building operations as may be so specified.

(2) Without prejudice to the generality of the foregoing provisions of this section the building operations referred to therein may be specified with reference to all or any of the following matters:—

- (a) Their nature or the purpose for which they are carried out;
- (b) The persons, or classes of persons, by whom they are carried out;
- (c) The places at which, or the lands on which, they are carried out;
- (d) The circumstances in which, or the conditions under which, they are carried out.

(3) This Act does not apply to any building operations to the extent they are operations for the construction, erection, alteration, repair, or maintenance of a building or structure, or part of a building or structure, that is attached to, or within the curtilage of, a dwelling and is intended for the accommodation of the vehicles used by persons residing in the dwelling.

(4) On the application of a person who does not hold a registration the Board may authorize him to carry out such building operations as may be specified in the authority and any building operations carried out in accordance with the authority are exempt from the provisions of this Act.

#### *Division II—Other functions of Board*

**35**—(1) In relation to any agreement to submit to arbitration differences that have arisen or may arise under a building contract, the Board has power to act as a single arbitrator, or as a third arbitrator or an umpire.

Board as an arbitrator.

(2) Regulations under this Act may prescribe the remuneration to be paid to the Board in respect of the exercise of its powers under this section or may prescribe or otherwise regulate the manner in which it is to be determined.

**36**—(1) The Board shall inquire into the matter of the provision of compensation to persons for the losses suffered by them as a result of building defaults and shall report to the Minister thereon setting forth, as far as it considers it practicable so to do, a scheme for the purpose of providing for that compensation or otherwise for mitigating the effect of any such losses.

Inquiry as to meeting of losses in defaults under building contracts.

(2) Where the Minister receives a report under this section, he shall lay a copy of the report before each House of Parliament.

Inquiry as to meeting of losses by employees as a result of defaults by registered contractors.

**37—**(1) The Board shall inquire into the matter of the provision of compensation to persons for the loss of their entitlements as employees as a result of the failure of a registered builder to provide those entitlements and shall report to the Minister thereon setting forth, as far as it considers it practicable to do so, a scheme for the purpose of providing that compensation or otherwise for mitigating the effect of any such losses.

(2) Where the Minister receives a report under this section, he shall lay a copy of the report before each House of Parliament.

Examination of building workers.

**38—**(1) The Board may make arrangements for the examination of persons for the purpose of assessing their knowledge of, or skill in, building operations of any kind, other than electrical wiring work (within the meaning of the *Hydro-Electric Commission Act 1944*) or plumbing work, and for the issue of diplomas and certificates on the results of any such examinations.

(2) Regulations under this Act may—

- (a) prescribe the persons eligible to take any of the examinations referred to in subsection (1);
- (b) prescribe the fees payable by persons taking any of those examinations; and
- (c) provide for the appointment and remuneration of the examiners at those examinations.

Apprenticeship schemes.

**39—**(1) The Board, with the approval of the Apprenticeship Commission of Tasmania, may formulate apprenticeship schemes for trades within the building industry.

(2) An apprenticeship scheme shall specify the trade to which it relates and shall make provision for—

- (a) the engagement by the Board of persons as apprentices in that trade; and
- (b) the making of arrangements with registered builders for the employment and training of those persons in that trade.

(3) An apprenticeship scheme may contain such provisions as the Board is satisfied are necessary to give effect to the scheme and, in particular, may include provisions for determining the respective obligations and liabilities of the Board and any such registered builder as is referred to in subsection (2) with respect to the employment and training of the apprentices to which the scheme relates.



(4) For the purposes of the *Apprentices Act* 1942 the Board shall be deemed to be an employer in a trade to which a scheme under this section relates, but subject to the foregoing provisions of this subsection nothing in any scheme under this section shall prejudice or affect the operation of that Act.

*Division III—Supplemental*

**40** A person who contravenes this Act is guilty of an offence and Penalties. liable to a penalty of \$2 000.

**41** A notice required or authorized by this Act to be served on Notices. any person may be so served—

- (a) by delivering it to him personally;
- (b) by leaving it addressed to him at his usual or last known place of abode or business; or
- (c) by sending it by certified mail addressed to him at his usual or last known place of abode or business.

**42** The Board may institute proceedings for offences under this Proceedings by Board. Act.

**43** A member of the Board, the Registrar, or any officer acting Protection of Board members, &c. under the direction of the Registrar, is not personally liable in respect of any statement made or published, or any act done, in good faith for the purpose of carrying out, or assisting in the carrying out, of any of the functions of the Board or the Registrar.

**44—(1)** Subject to this section, no person shall divulge any Requirements as to secrecy of members of Board, &c. information with respect to the business carried on by any person that he acquires in the course of his duties as a member of the Board or the Registrar, or as an officer acting under the direction of the Registrar.

(2) Subsection (1) shall not be taken as prohibiting the divulging of any information—

- (a) if the information is divulged with the consent of the person by whom the business to which the information relates was being carried on at the time the matter to which the information relates arose; or
- (b) if the person divulging the information is required so to do in the course of any of the duties referred to in subsection (1) or by due process of law.

Regulations.

**45** The Governor may make regulations for the purposes of this Act and without prejudice to the generality of the foregoing provisions of this section any such regulations may make provision regulating the proceedings of the Board, and prescribing and regulating the duties of the Registrar and of persons carrying out, or assisting in the carrying out, of any of the functions of the Board or the Registrar.

*Division IV—Transitional provisions*

Interpretation  
of Division IV.

**46** In this Division the “appointed day” means such day as the Governor may, by order, declare to be the appointed day for the purposes of this Act, and the “initial period” means the period of 6 months beginning on that day.

Rights of  
existing  
operators.

**47**—(1) Where, on an application made before the expiration of the initial period, the Board is satisfied that the person making the application carried on, at any time before the appointed day, a business for the carrying out of any building operations it shall grant him a registration which—

(a) if it appears to the Board that the business was a business limited to the carrying out of building operations of a particular kind, shall be limited registration in respect of building operations of that kind; and

(b) in any other case, shall be a full registration.

(2) Subject to subsection (3) where, on an application made before the expiration of the initial period, the Board is satisfied that the person making the application was, at any time before the appointed day, engaged in the supervision of building operations it shall grant him a certificate which—

(a) if it appears to the Board that those operations were operations of a particular kind, shall be a limited certificate in respect of building operations of that kind; and

(b) in any other case, shall be a full certificate.

(3) Subsection (2) does not apply in respect of any building operations unless—

(a) those building operations are carried out under a building contract entered into in the course of a business for the carrying out of building operations and he is employed by the builder under that contract to supervise those operations; or

(b) those building operations were carried out in pursuance of a contract entered into by him as a builder.

**48** Section 31 does not apply to building operations that are carried out in pursuance of contracts entered into before the appointed day. Exclusion of operations under existing contracts.

**49**—(1) In this section “prescribed trade” means any trade that before the appointed day is prescribed as a prescribed trade for the purposes of this section. Recording of building tradesmen.

(2) Where, on an application made during the initial period, the Board is satisfied that the applicant was at any time before the appointed day—

(a) employed full-time in the work of that trade; or

(b) carried on a business, on his own account or in partnership with any other person, in which he worked substantially full-time in that trade,

the Board shall record him as being employed in that trade.

(3) Where a person is aggrieved by the failure or refusal of the Board to record him under this section as being employed in any prescribed trade he may appeal to a magistrate who, on the hearing of the appeal may, if he is of opinion that the Board should have so recorded him, direct the Board so to record him and the Board shall comply with that direction.

(4) Where a person is recorded under this section as being employed in any prescribed trade he shall, for the purposes of section 33, be regarded as a skilled tradesman in respect of the building operations ordinarily carried out by tradesmen of that kind.

#### *Division V—Expiry of Act*

**50** This Act expires at the expiration of a period of 2 years Expiry of Act. beginning on the appointed day referred to in section 46.

