



**LOCAL GOVERNMENT AMENDMENT (BUILDING
REGULATIONS BOARD) ACT 1985**

No. 80 of 1985

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AN ACT to amend the Local Government Act 1962.

[Royal Assent 17 October 1985]

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:—

1—This Act may be cited as the *Local Government Amendment* Short title.
(Building Regulations Board) Act 1985.

Commencement.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Principal Act.

3—In this Act, the *Local Government Act 1962** is referred to as the Principal Act.

Amendment of section 424 of Principal Act (Interpretation).

4—Section 424 of the Principal Act is amended as follows:—

(a) by inserting after “ In this Division ” in subsection (1) “ and in Schedules 5A and 6 ”;

(b) by inserting before the definition of “ builder ” in subsection (1) the following definitions:—

“ appointed member ” means a member other than the Chairman;

“ Board ” means the Building Regulations Board established by section 424A (1);

(c) by inserting after the definition of “ building line ” in subsection (1) the following definition:—

“ Chairman ” means the person for the time being holding, or acting in, the office of Chairman of the Board;

(d) by inserting after the definition of “ the inspector ” in subsection (1) the following definition:—

“ member ” means a person for the time being holding, or acting in, an office of member of the Board;

(e) by adding after subsection (3) the following subsections:—

(4) Subject to subsection (5), a law or a proposed law shall be taken, for the purposes of this Division, to relate to building if it relates to the design, erection, alteration, or demolition of buildings or other structures, including, in particular and without derogating from the generality of the foregoing, the matters and things specified in Schedule 6.

* No. 67 of 1962. For this Act, as amended to 1st July 1980, see the continuing Reprint of Statutes. Subsequently amended by Nos. 19, 44, and 59 of 1980, Nos. 48, 77, and 89 of 1981, Nos. 9, 35, 51, 56, 73, 76, 98, and 99 of 1982, Nos. 88 and 91 of 1983, Nos. 29, 46, 52, and 83 of 1984, and Nos. 7, 28, 31, 49, and 51 of 1985, and affected by No. 30 of 1981.

(5) A law or a proposed law shall not be taken, for the purposes of this Division, to relate to building if it is certified by the Board to relate only incidentally to the matters referred to in subsection (4).

5—After section 424 of the Principal Act, the following section is inserted:—

Insertion in
Principal Act
of new
section 424A.

424A—(1) There is established by this section a board to be known as the Building Regulations Board.

Building
Regulations
Board.

(2) The Board shall consist of the following members:—

(a) the Director, who shall be the Chairman of the Board;

(b) 6 other members appointed by the Minister, by instrument published in the *Gazette*, of whom—

(i) one shall be an officer of a municipality who is experienced in matters relating to the exercise of the functions of a municipality under this Division, being an officer selected by the Minister from 3 such officers nominated, as prescribed, by the Municipal Association of Tasmania;

(ii) one shall be an architect selected by the Minister from 3 architects nominated, as prescribed, by the Royal Australian Institute of Architects, Tasmanian Chapter;

(iii) one shall be a structural engineer selected by the Minister from 3 structural engineers nominated, as prescribed, by the Institution of Engineers, Australia, Tasmanian Division;

(iv) one shall be a builder, being a member of the Australian Institute of Building, Tasmanian Chapter, or the Master Builders Association of Tasmania, selected by the Minister from 4 such builders, being—

- (A) 2 builders nominated, as prescribed, by the Australian Institute of Building, Tasmanian Chapter; and
- (B) 2 builders nominated, as prescribed, by the Master Builders Association of Tasmania; and
- (v) 2 shall be persons, not being persons qualified for nomination under any of the preceding subparagraphs of this paragraph, who are, in the opinion of the Minister, capable of representing the interests of the Tasmanian community as a whole.

(3) In the event of the failure of a person to make nominations in accordance with subparagraph (i), (ii), or (iii), or sub-subparagraph (A) or (B) of subparagraph (iv), of paragraph (b) of subsection (2), the Minister may, as prescribed, make an appointment for the purposes of that subparagraph.

(4) Schedule 5A has effect with respect to the membership and meetings of the Board.

(5) The functions of the Board, in addition to its functions under section 425, are as follows:—

- (a) the review of all laws, and proposed laws, relating to building with a view to the rationalization of laws of that kind and of their administration;
- (b) the initiation of amendments of the Building Regulations for the purposes referred to in paragraph (a), including, in particular—
 - (i) the simplification, wherever possible, of the requirements imposed by those regulations;
 - (ii) the supersession of by-laws and other regulations relating to building;

- (iii) the bringing of the Building Regulations as far as practicable into conformity with the Australian Model Uniform Building Code or with any model code enjoying general acceptance in substitution for that code; and
 - (iv) the taking into account of technological changes affecting building materials and building techniques;
 - (c) the conduct of consultations with municipalities, other agencies of government, and bodies representative of persons having an interest in matters relating to building.
- (6) For the purposes of this Division—
- (a) the Director may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, for such employees employed in that Agency as may be considered necessary to be made available to him in order to enable him—
 - (i) to appoint as Secretary to the Board such an employee who is experienced in matters related to building; and
 - (ii) to make available to the Board and to any advisory committees established by the Board under this subsection such other staffing assistance as is necessary for the efficient performance by the Board of its functions under this Division, and any such employee may hold that office or provide assistance to the Board or an advisory committee, as the case requires, in conjunction with his position in the State Service; and
 - (b) the Board may establish such advisory committees as it determines are necessary or desirable to assist it in the exercise of its functions.
- (7) A member of an advisory committee established under subsection (6) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may

determine, but no such determination shall apply in respect of an employee, within the meaning of the *Tasmanian State Service Act* 1984, without the approval of the Head of the Agency in which the employee is employed.

Amendment of
section 425 of
Principal Act
(Building
Regulations).

6—Section 425 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “The Governor” and substituting “Subject to subsection (1A), the Governor”;

(b) by inserting after subsection (1) the following subsection:—

(1A) Regulations shall not be made under subsection (1) otherwise than upon the recommendation of the Board.

(c) by omitting subsection (6);

(d) by inserting after subsection (7) the following subsections:—

(7A) A proposed regulation, rule, or by-law that relates to building shall not be made on or after the date of commencement of this section under any Act, whether passed before or after that date, without having first been approved by the Board, unless that Act expressly provides to the contrary.

(7B) A regulation, rule, or by-law that relates to building and is made, otherwise than in compliance with subsection (7A), in purported exercise of a power conferred by an Act shall be without effect.

Amendment of
Schedule 4 to
Principal Act
(PURPOSES OF
BY-LAWS).

7—Schedule 4 to the Principal Act is amended by omitting paragraphs 1, 2, and 3 of Part II.

8—After Schedule 5 to the Principal Act, the following Schedule is inserted:—

Insertion in
Principal Act
of new
Schedule 5A.

SCHEDULE 5A Section 424A (4)

PROVISIONS WITH RESPECT TO MEMBERSHIP AND MEETINGS OF
BUILDING REGULATIONS BOARD

1—(1) An appointed member shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment.

Term of
office.

(2) An appointed member shall, subject to section 424A (2), be eligible for re-appointment for such term or terms, each not exceeding 3 years, as is specified in the relevant instrument of re-appointment.

2—Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to a member under clause 3.

Nature of
office of
member.

3—Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine, but no such determination shall apply in respect of an employee, within the meaning of the *Tasmanian State Service Act 1984*, without the approval of the Head of the Agency in which the employee is employed.

Remuneration.

4—(1) The office of an appointed member becomes vacant—

Vacation of
office.

- (a) when he dies;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (c) if he is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, he is excused by the Minister for his absence from those meetings;
- (d) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;
- (e) if he is convicted in Tasmania of an offence that is punishable by imprisonment for 12 months or more, or if he is convicted elsewhere than in Tasmania of an offence so punishable, or has been convicted, whether in Tasmania or elsewhere, of a crime or offence for which he has been sentenced to imprisonment;

- (f) if he is convicted of an offence against this Act;
- (g) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts the resignation; or
- (b) if he is removed from office by the Minister under subclause (2).

(2) The Minister may remove an appointed member from office—

- (a) for misbehaviour or incompetence; or
- (b) if the member ceases to be eligible, in accordance with section 424A (2), for appointment to the office of member held by him.

Filling of
casual
vacancies.

5—(1) On the occurrence of a vacancy in the office of an appointed member, the Minister may, by instrument published in the *Gazette*, appoint an eligible person to the vacant office for the balance of his predecessor's term of office.

(2) For the purposes of subclause (1), "eligible person" means a person who is eligible, in accordance with section 424A (2), to be nominated for appointment, or to be appointed, to the vacant office.

Validity of
proceedings,
&c.

6—(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 office of a member.

(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 or that any person was disqualified from acting as, or incapable of being, a member, as valid as if that 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.

Convening of
meetings.

7—The Chairman shall convene a meeting of the Board not less than twice in each period of 12 months, or whenever required to do so by the Minister.

Procedure at
meetings.

8—(1) Four members shall form a quorum at any duly convened meeting of the Board.

(2) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.

Chairman.

9—(1) The Chairman shall preside at all meetings of the Board at which he is present.

(2) If the Chairman is not present at a meeting of the Board, a member elected by the members present shall preside at that meeting.

10—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. General procedure.

9—Schedule 6 to the Principal Act is amended by omitting from the heading “ Section 425 ” and substituting “ Sections 424 (4) and 425 ”. Amendment of Schedule 6 to Principal Act.

10—(1) The Building Regulations in force immediately before the commencement of this Act continue in force, for the purposes of the Principal Act as amended by this Act, as if they had been made under that Act as so amended. Transitional.

(2) Notwithstanding the amendment made by section 7 of this Act, by-laws in force under the Principal Act immediately before the commencement of this Act shall continue in force, subject to subsection (3), as if that amendment had not been made.

(3) A by-law continued in force by subsection (2) may be amended or rescinded by by-law under section 188 of the Principal Act as amended by this Act or by regulation under section 425 of that Act as so amended but shall not be amended by by-law so as to extend its operation in any way.

(4) If the day fixed by proclamation under section 2 (2) of this Act is earlier than the day fixed by proclamation under section 2 (2) of the *Tasmanian State Service Act* 1984, a reference in the Principal Act as amended by this Act to the *Tasmanian State Service Act* 1984, to an employee within the meaning of that Act, or to the Head of the Agency in which such an employee is employed shall be read during the period commencing on the first-mentioned of those days and ending on the day immediately preceding the second-mentioned of those days as a reference to the *Public Service Act* 1973, to an officer within the meaning of that Act, or to the Public Service Board, as the case requires.

(5) If, at the commencement of this section, a definition of “ Director ” is not included in subsection (1) of section 4 of the Principal Act, a reference in that Act as amended by this Act to the Director shall, until such a definition is inserted in that subsection by another Act, be read as a reference to the person for the time being holding, or acting in, the office of Director of Local Government.

