

FIRST PRINT

## BUILDING SERVICES CORPORATION BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The following Bills are cognate with this Bill:

Builders Licensing (Amendment) Bill 1987;

Plumbers, Gasfitters and Drainers (Amendment) Bill 1987.

The objects of this Bill are—

- (a) to constitute the Building Services Corporation and to define its objects which include the promotion and protection of the interests of home owners, home purchasers and the users of building services; and
- (b) to confer and impose on the Corporation the functions at present exercised by the Builders Licensing Board and the Plumbers, Gasfitters and Drainers Board, both of which it is proposed to abolish by the operation of the cognate Bills.

The Builders Licensing Act 1971 and the Plumbers, Gasfitters and Drainers Act 1979, as amended by the cognate Bills, are to continue in force, but the present references in them to the Boards proposed to be abolished are to be replaced by references to the new Corporation which will be a continuation of the abolished Boards.

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### PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

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Clause 3 contains definitions for use in interpreting the proposed Act.

PART 2—THE BUILDING SERVICES CORPORATION

Clause 4 constitutes a corporation with the name "Building Services Corporation", specifies its objects and refers to its functions under the proposed Act, the Builders Licensing Act 1971 and the Plumbers, Gasfitters and Drainers Act 1979.

Clause 5 provides for the Corporation to consist of—

- (a) a General Manager and 8 part-time members (including the Chairperson) except for the purpose of exercising a function referred to in clause 7; and
- (b) when exercising a function referred to in clause 7—the General Manager only.

Clause 6 provides for associate members of the Corporation who would be persons with expertise in matters associated with the administration of the proposed Act and the other Acts administered by the Corporation. Associate members would attend and take part in relevant meetings of the members of the Corporation or its committees but would not be able to vote or preside.

Clause 7 specifies the functions of the Corporation that are exclusive to the General Manager.

Clause 8 provides for the management of the affairs of the Corporation by the General Manager subject to any directions given by the Corporation otherwise than in relation to such of its functions the exercise of which is exclusively a matter for the General Manager.

Clause 9 provides for the employment under the Public Service Act 1979 of the General Manager and other staff of the Corporation.

Clause 10 enables the Corporation to establish committees to assist it.

PART 3—MISCELLANEOUS

Clause 11 deals with the financial arrangements relating to the Corporation.

Clause 12 imposes restrictions on the disclosure of information.

Clause 13 provides for delegations by the Corporation and the General Manager.

Clause 14 provides for the manner of service of documents on the Corporation.

Clause 15 prescribes the manner of authentication of documents on behalf of the Corporation.

Clause 16 enables the Corporation to recover as a debt any charge, fee or money due to it.

Clause 17 provides for a rebuttable presumption of, among other things, the due constitution of the Corporation, its resolutions and the signature of the General Manager.

Clause 18 requires an offence against the proposed Act or regulations to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 19 gives effect to Schedule 3 containing savings and transitional provisions.

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Clause 20 provides for the making of regulations for the purposes of the proposed Act.

Clauses 21–23 make amendments to other Acts consequential on the constitution of the new Corporation in the place of the abolished Boards.

Schedule 1 contains provisions relating to the members and associate members of the Corporation.

Schedule 2 contains provisions relating to the procedure of the Corporation.

Schedule 3 contains savings and transitional provisions.

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# BUILDING SERVICES CORPORATION BILL 1987

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### SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF THE CORPORATION

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SCHEDULE 2—PROVISIONS RELATING TO THE PROCEDURE OF THE  
CORPORATION  
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# BUILDING SERVICES CORPORATION BILL 1987

NEW SOUTH WALES



No.           , 1987

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## A BILL FOR

An Act to constitute the Building Services Corporation; to define its functions; and for other purposes.

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See also Builders Licensing (Amendment) Bill 1987; Plumbers, Gasfitters and Drainers (Amendment) Bill 1987.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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## PART 1

## PRELIMINARY

**Short title**

1. This Act may be cited as the "Building Services Corporation Act 1987".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation  
15 published in the Gazette.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "associate member" means a person who, under section 6, is an associate member of the Corporation;

"Chairperson" means the Chairperson of the Corporation;

"Corporation" means the Building Services Corporation constituted by this Act;

25 "General Manager" means the person for the time being holding or acting in the office of General Manager of the Corporation;

"member" means a member of the Corporation other than an associate member;

"part-time member" means a member other than the General Manager;

"regulations" means regulations made under this Act.

30 (2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and



- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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## PART 2

### THE BUILDING SERVICES CORPORATION

#### 5 The Corporation

4. (1) There is constituted by this Act a corporation under the corporate name of the "Building Services Corporation" the objects of which are—

- (a) to promote and protect the interests of home owners, home purchasers and users of building services;
- 10 (b) to license, and grant certificates to, builders and persons doing associated trade work and, where appropriate, take disciplinary action;
- (c) to set, assess and maintain standards of competence of licensees;
- 15 (d) to bring about the resolution of disputes which may involve building work, or associated trade work, that is defective or incomplete or in relation to which there may have been unfair conduct;
- (e) to complement the work of industry organisations, public authorities and educational institutions in promoting building standards and associated trade standards; or
- 20 (f) to promote the giving of general advice and guidance to the public in relation to building contracts and associated trade contracts.

(2) The Corporation—

- 25 (a) shall have and may exercise the functions conferred or imposed on it by or under this Act, the Builders Licensing Act 1971, the Plumbers, Gasfitters and Drainers Act 1979 or any other Act;
- (b) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown; and
- 30 (c) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

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**Membership of the Corporation**

5. (1) Except for the purpose of exercising a function referred to in section 7, the Corporation shall consist of—

(a) the General Manager; and

5 (b) 8 part-time members appointed by the Governor.

(2) For the purpose of exercising a function referred to in section 7, the Corporation shall consist of the member who is the General Manager.

(3) Of the part-time members—

10 (a) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Master Builders' Association of New South Wales;

(b) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Housing Industry Association (New South Wales);

15 (c) 1 shall be selected by the Minister from a panel of 3 persons resident in New South Wales and nominated by the Federal Executive of the Plumbers and Gasfitters Employees' Union of Australia;

(d) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Executive Committee of The Master Plumbers and Mechanical Contractors Association of New South Wales;

20 (e) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales;

(f) 1 shall be nominated by the Minister after consultation with the Minister administering the Local Government Act 1919; and

(g) 2 shall be nominated by the Minister to represent the interests of home owners and home purchasers.

25 (4) If a panel is not nominated for the purposes of a provision of subsection (3), the Governor may appoint any person instead of a person selected under the provision.

(5) Schedule 1 has effect with respect to the members.

30 (6) Schedule 2 has effect with respect to the procedure of the Corporation except when the Corporation consists of the General Manager.

**Associate members**

6. (1) A prescribed organisation may, as directed by the Corporation, submit to the Corporation—

5 (a) the names of persons with expertise in a particular field with which the administration of this Act, the Builders Licensing Act 1971 or the Plumbers, Gasfitters and Drainers Act 1979 is concerned; and

(b) such other particulars relating to the persons and their qualifications in that field as the Corporation requires.

10 (2) The Minister may, from among the persons whose names are submitted under subsection (1), by order appoint persons whose services may be used by the Corporation.

(3) A person appointed under subsection (2) is an associate member of the Corporation.

15 (4) An associate member may, as determined by the Corporation, attend and take part in meetings of the Corporation or a committee established by the Corporation but—

(a) may not vote or preside at a meeting of the Corporation; and

(b) may not be counted towards a quorum at a meeting of the Corporation.

**20 Corporate functions of the General Manager**

7. (1) The functions conferred or imposed on the Corporation in relation to—

(a) inspection services;

(b) the resolution of disputes;

25 (c) the issue of rectification orders;

(d) the administration of the insurance scheme;

(e) the administration of the licensing and certification system (except in disciplinary matters);

(f) public information and guidance programmes; and

30 (g) the delegation of any of those functions,

are exercisable only by the Corporation consisting of the General Manager.

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(2) Any act, matter or thing done under subsection (1) in the name of, or on behalf of, the Corporation by the General Manager (whether or not under seal) shall be deemed to have been done by the Corporation.

(3) Subsection (1) does not limit the power of the Corporation to delegate any other function (including a disciplinary function) to the General Manager.

**Other functions of General Manager**

8. The General Manager—

- 10 (a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation given otherwise than in relation to a function exercisable only by the Corporation consisting of the General Manager; and
- 15 (b) shall have and may exercise such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

**General Manager and staff of the Corporation**

9. (1) To enable the Corporation to exercise its functions, a General Manager of the Corporation shall be appointed under the Public Service Act 1979.

20 (2) The General Manager shall hold office for such period, not exceeding 7 years, as may be specified in the instrument of his or her appointment but is eligible, if otherwise qualified, for re-appointment.

(3) Such other staff as may be necessary for the purposes of this Act shall be employed under the Public Service Act 1979.

25 (4) The Corporation may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

30 arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(5) The Corporation may—

- (a) for any purpose approved by the Minister; and

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(b) on such terms and conditions as may be approved by the Public Service Board,

employ such casual staff as may be required by the Corporation in exercising its functions.

5 (6) The Public Service Act 1979 does not apply to or in respect of the employment of casual staff under subsection (5) and a person is not, as a member of that casual staff, subject to that Act.

(7) For the purposes of this Act, a person who is employed for the purposes of subsection (1), (3) or (5) or whose services are made use of  
10 under subsection (4) is an officer of the Corporation.

**Committees**

10. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are  
15 not members of the Corporation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Corporation or (subject to any determination of the Corporation) by the committee.

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**PART 3****MISCELLANEOUS****Financial provisions**

11. (1) There shall be established in the Special Deposits Account in the Treasury a Building Services Corporation Account into which shall be  
25 deposited all money received by the Corporation and from which shall be paid—

(a) to the Treasurer for payment into the Consolidated Fund—such  
30 amounts as the Treasurer from time to time certifies to be chargeable against the Corporation in respect of officers and employees appointed and employed under this Act;

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- (b) to the Treasurer for payment into the Consolidated Fund—such amounts as the Minister determines in relation to the Consumer Protection Act 1969, the Consumer Claims Tribunals Act 1974 and the Commercial Tribunal Act 1984;
- 5 (c) to the Licensed Builders Education Fund established under section 39 of the Builders Licensing Act 1971 and to the Plumbers, Gasfitters and Drainers Education Fund established under section 42 of the Plumbers, Gasfitters and Drainers Act 1979—such amounts as the Treasurer determines;
- 10 (d) to the Building Services Insurance Fund established under section 40 of the Builders Licensing Act 1971—such amounts as are required to meet expenditure from the Fund; and
- (e) such other amounts as are required to meet expenditure in connection with the administration of this Act, the Builders Licensing Act 1971 and the Plumbers, Gasfitters and Drainers Act 15 1979.

(2) Money in the Building Services Corporation Account may be invested by the Corporation in any manner authorised by the Superannuation Act 1916 for investment of the State Superannuation Fund.

20 (3) The Treasurer may advance money to the Corporation on such terms and conditions as are fixed by agreement between them.

(4) The financial year of the Corporation shall be the year commencing on 1 January.

**Disclosure of information**

25 12. A person shall not disclose any information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing functions on the Corporation unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- 30 (b) in connection with the administration or execution of this Act or any other Act administered by the Minister;
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings;
- 35 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or

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(e) with other lawful excuse.

Penalty: \$2,000.

**Delegation by Corporation and General Manager**

15 **13. (1)** The Corporation may delegate to a person the exercise of any of its functions, other than this power of delegation.

(2) The General Manager may delegate to a person the exercise of any of the functions delegated to the General Manager by the Corporation, unless the Corporation otherwise provides in its instrument of delegation to the General Manager.

10 **(3)** A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Corporation or the General Manager, as the case requires.

15 **(4)** A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

**(5)** A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Corporation.

20 **(6)** A delegation does not prevent the exercise of a function by the Corporation or the General Manager.

**(7)** A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

25 **(8)** A delegation of a function conferred or imposed by Part IV of the Builders Licensing Act 1971 or Part V of the Plumbers, Gasfitters and Drainers Act 1979 may be made only—

(a) to a member of the Corporation;

(b) to a committee established by the Corporation which consists entirely of members of the Corporation; or

30 (c) to a committee established by the Corporation which includes 1 or more members of the Corporation together with 1 or more associate members.

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**Service of documents**

14. (1) A document may be served on the Corporation by leaving it at, or by sending it by post to—

- (a) the office of the Corporation; or
- 5 (b) if it has more than one office—any one of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in a manner not provided for by subsection (1).

**Authentication of certain documents**

10 15. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by—

- (a) the General Manager; or
- 15 (b) any officer of the Corporation authorised to do so by the General Manager in writing.

**Recovery of charges, etc., by Corporation**

16. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

**Proof of certain matters not required**

20 17. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any member;
- 25 (d) the presence or nature of a quorum at any meeting of the Corporation; or
- (e) the signature of the General Manager.

**Proceedings for offences**

30 18. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.



*Building Services Corporation 1987***Savings and transitional provisions**

19. Schedule 3 has effect.

**Regulations**

20. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

10 (3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

**Amendment of Act No. 4, 1976**

21. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the following words:

20 Chairman of the Builders Licensing Board.

Deputy Chairman of the Builders Licensing Board.

Chairman of the Plumbers, Gasfitters and Drainers Board.

**Amendment of Act No. 89, 1979**

22. The Public Service Act 1979 is amended by omitting from Part 2 of Schedule 2 the words "Builder's Licensing Board" and the words "Chairman of the Board."

**Amendment of Act No. 152, 1983**

23. The Public Finance and Audit Act 1983 is amended—

(a) by inserting in Schedule 2, in alphabetical order, the following words:

30 Building Services Corporation.

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(b) by omitting from Schedule 2 the following words:

Builders Licensing Board.

Plumbers, Gasfitters and Drainers Board.

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SCHEDULE 1

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(Sec. 5 (5))

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION

**Age of members**

- 10 1. A person of or above the age of 70 years is not eligible to be appointed as a part-time member or associate member or to act in the office of a part-time member or the office of associate member.

**Chairperson of the Corporation**

- 15 2. (1) Of the part-time members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as Chairperson of the Corporation.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- 20 (a) is removed from that office by the Governor under subclause (2);  
(b) resigns that office by instrument in writing addressed to the Minister; or  
(c) ceases to be a part-time member.

(4) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

**Acting members and acting Chairperson**

- 25 3. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a part-time member.

- 30 (2) The Governor may, from time to time, appoint a person to act in the office of Chairperson during the illness or absence of the Chairperson, and the person appointed while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

(4) A person while acting in the office of a part-time member or associate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

- 5 (a) a vacancy in the office of a part-time member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member shall be deemed to be absent from office as a part-time member during any period when the member acts in the office of the General
- 10 Manager pursuant to an appointment under subclause (1).

**Terms of office**

4. Subject to this Schedule, a part-time member shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**15 Remuneration**

5. A part-time member, and an associate member, are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member or associate member.

**Filling of vacancy in office of part-time member**

- 20 6. If the office of any part-time member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

7. (1) A part-time member shall be deemed to have vacated office if the member—
- (a) dies;
- 25 (b) absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- 30 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning
- 35 of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

(e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

5 (f) reaches the age of 70 years;

(g) is retired from office by the Governor under subclause (2); or

(h) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a part-time member from office.

10 (3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 8.

**Disclosure of pecuniary interests**

8. (1) A member or associate member who has a direct or indirect pecuniary interest—

15 (a) in a matter that is being considered, or is about to be considered, at a meeting of the Corporation or of a committee established by the Corporation that includes the member or associate member; or

(b) in a thing being done or about to be done by the Corporation or such a committee,

20 shall, as soon as possible after the relevant facts have come to the knowledge of the member or associate member, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure by a member at a meeting of the Corporation or a committee that the member—

(a) is a member, or is in the employment, of a specified company or other body;

25 (b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

30 shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Corporation or committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept by the Corporation for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Corporation from time to time.

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

- (4) After a member or associate member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member or associate member shall not, unless the Minister otherwise determines—
- 5       (a) be present during any deliberation of the Corporation or committee, or take part in any decision of the Corporation or committee, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,
- as the case requires.
- (5) Notwithstanding that a member or associate member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Corporation or
- 10 the exercise of any function under this Act.
- (6) Nothing in this clause applies to or in respect of an interest of a member or associate member in a matter or thing which arises by reason only that the member or associate member has general interests represented by the organisation by which the member or associate member was nominated.

15 **Effect of certain other Acts**

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act.
- (2) If by or under any other Act provision is made—
- 20       (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- 25 that provision shall not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.
- (3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

**Preservation of rights of General Manager previously public servant, etc.**

- 30 10. (1) Subject to subclause (2) and to the terms of appointment, where the General Manager was, immediately before being appointed as General Manager—
- (a) an officer of a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,  
he or she—
- 5 (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as General Manager; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- 10 as if he or she had continued to be such an officer, contributor or person during his or her service as General Manager and—
- (h) his or her service as General Manager shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that  
15 entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Corporation shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (2) If the General Manager would, but for this subclause, be entitled under subclause  
20 (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—
- (a) he or she shall not be so entitled upon becoming (whether upon appointment as General Manager or at any later time while holding office as General Manager) a contributor to any other superannuation scheme; and
- 25 (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Corporation in any case where he or she becomes a contributor to any such other superannuation scheme.
- (3) Subclause (2) does not prevent the payment to the General Manager upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would  
30 have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.
- (4) The General Manager is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.
- (5) In this clause—
- 35 “statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

**General Manager entitled to re-appointment to former employment in certain cases**

- 5 11. (1) A person who—
- (a) ceases to be General Manager by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as General Manager—
- 10 (i) an officer of the Public Service or a Teaching Service; or
- (ii) an officer or employee of a statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

15 is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as General Manager.

- (2) Where subclause (1) does not apply to a person who—
- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- 20 (b) is after that appointment appointed as General Manager,

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be General Manager, as are specified in the instrument of appointment as General Manager or as are agreed upon by the person and by or on behalf of the Government.

- 25 (3) In this clause, “statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

**Declaration of statutory bodies**

12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

*Building Services Corporation 1987*

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

**Liability of members, etc.**

13. No matter or thing done by the Corporation, any member or associate member or any person acting under the direction of the Corporation shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member, associate member or person so acting personally to any action, liability, claim or demand.

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SCHEDULE 2

(Sec. 5 (6))

PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION

**10 General procedure**

1. The procedure for the calling of meetings of the Corporation and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Corporation.

**Quorum**

- 15 2. The quorum for a meeting of the Corporation is 5 members, of whom one must be the General Manager unless clause 8 (4) of Schedule 1 requires the General Manager to be absent.

**Presiding member**

- 20 3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected to preside at the meeting by the members present shall preside at a meeting of the Corporation.

(2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

- 25 4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present shall be the decision of the Corporation.

**Minutes**

5. The Corporation shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.



*Building Services Corporation 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION—  
*continued***First meeting of Corporation**

6. The Minister shall call the first meeting of the Corporation in such manner as the Minister thinks fit.

## SCHEDULE 3

5

(Sec. 19)

## SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule—

“abolished Board” means—

- 10 (a) the Builders Licensing Board constituted under the Builders Licensing Act 1971 before the appointed day; or
- (b) the Plumbers, Gasfitters and Drainers Board constituted under the Plumbers, Gasfitters and Drainers Act 1979 before the appointed day;

15 “affected person” means a person who, immediately before the appointed day, held a prescribed office;

“appointed day” means the day appointed and notified under section 2 (2);

“prescribed office” means Chairman or Deputy Chairman of an abolished Board.

**Continuation of legal entity**

20 2. The Corporation is a continuation of, and the same legal entity as, the abolished Boards.

**Finance**

3. (1) On the appointed day, the Corporation shall transfer to the credit of the Building Services Corporation Account established under section 11 the money at credit immediately before that day in—

- 25 (a) the Builders Licensing Board Account then maintained under section 39 of the Builders Licensing Act 1971;
- (b) the Builders Licensing Board Insurance Account then maintained under section 40B of that Act; and
- 30 (c) the Plumbers, Gasfitters and Drainers Account then maintained under section 43 of the Plumbers, Gasfitters and Drainers Act 1979.

*Building Services Corporation 1987*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) On the appointed day, existing investments made before that day under—

- (a) section 41B of the Builders Licensing Act 1971; or
- (b) section 48 of the Plumbers, Gasfitters and Drainers Act 1979,

become investments made under section 11 of this Act.

**5 Office held by affected person**

4. (1) An affected person ceases to hold his or her prescribed office on the appointed day and is eligible, if otherwise qualified, to be appointed as General Manager.

(2) An affected person is not entitled to be paid any remuneration or compensation by reason of ceasing to hold an abolished office, but nothing in this subclause prevents the payment to that person of such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines out of the funds of the new Corporation.

(3) An affected person who—

- (a) is not appointed as General Manager with effect on and from that day; and
- (b) was, immediately before being appointed to his or her prescribed office, the holder of a full-time position in the service of the Government,

is entitled to be appointed to some position in the service of the Government.

(4) An affected person is, until—

- (a) the day on which the term of office for which the person had been appointed to the prescribed office expires; or
- (b) the day on which the person ceases to hold the position to which the person is appointed pursuant to subclause (3),

whichever first occurs, entitled to be paid such salary as the Statutory and Other Offices Remuneration Tribunal may from time to time determine in relation to the person, not lower than the salary for the time being applicable to the position that the person held immediately before being appointed to the prescribed office.

(5) Pending the making of the relevant determination under subclause (4) salary shall continue to be paid to an affected person at the rate at which it was payable to the person immediately before the appointed day.

**Reference to abolished Board in other Acts etc.**

5. (1) This clause applies to an instrument that is—

- (a) another Act enacted before the appointed day;
- (b) an instrument made before that day under an Act; and
- (c) any other kind of instrument executed before that day.

*Building Services Corporation 1987*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) In an instrument to which this clause applies, a reference to—

(a) the Builders Licensing Board or the Plumbers, Gasfitters and Drainers Board shall be read as a reference to the Building Services Corporation; or

5 (b) the Board, where it is a reference to an abolished Board, shall be read as a reference to the Corporation.

**General**

6. (1) In anything done or commenced by, or in relation to, an abolished Board could have been done or commenced by, or in relation to, the Corporation if the relevant Acts had been in force when it was done or commenced, it has effect on and after the  
10 appointed day as if it had been done or commenced by, or in relation to, the Corporation.

(2) In this clause—

“relevant Acts” means—

(a) this Act;

(b) the Builders Licensing (Amendment) Act 1987; and

15 (c) the Plumbers, Gasfitters and Drainers (Amendment) Act 1987.

**Regulations**

7. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

20 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

25 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.



# BUILDING SERVICES CORPORATION ACT 1987 No. 59

## NEW SOUTH WALES



### TABLE OF PROVISIONS

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#### SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF THE CORPORATION

*Building Services Corporation 1987*

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SCHEDULE 2—PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

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**BUILDING SERVICES CORPORATION ACT 1987 No. 59**

NEW SOUTH WALES



**Act No. 59, 1987**

An Act to constitute the Building Services Corporation; to define its functions; and for other purposes. [Assented to 29 May 1987]

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See also Builders Licensing (Amendment) Act 1987; Plumbers, Gasfitters and Drainers (Amendment) Act 1987.

*Building Services Corporation 1987*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**PART 1**  
**PRELIMINARY**

**Short title**

1. This Act may be cited as the "Building Services Corporation Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"associate member" means a person who, under section 6, is an associate member of the Corporation;

"Chairperson" means the Chairperson of the Corporation;

"Corporation" means the Building Services Corporation constituted by this Act;

"General Manager" means the person for the time being holding or acting in the office of General Manager of the Corporation;

"member" means a member of the Corporation other than an associate member;

"part-time member" means a member other than the General Manager;

"regulations" means regulations made under this Act.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and



- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- 

## PART 2

### THE BUILDING SERVICES CORPORATION

#### **The Corporation**

4. (1) There is constituted by this Act a corporation under the corporate name of the "Building Services Corporation" the objects of which are—
- (a) to promote and protect the interests of home owners, home purchasers and users of building services;
  - (b) to license, and grant certificates to, builders and persons doing associated trade work and, where appropriate, take disciplinary action;
  - (c) to set, assess and maintain standards of competence of licensees;
  - (d) to bring about the resolution of disputes which may involve building work, or associated trade work, that is defective or incomplete or in relation to which there may have been unfair conduct;
  - (e) to complement the work of industry organisations, public authorities and educational institutions in promoting building standards and associated trade standards; or
  - (f) to promote the giving of general advice and guidance to the public in relation to building contracts and associated trade contracts.
- (2) The Corporation—
- (a) shall have and may exercise the functions conferred or imposed on it by or under this Act, the Builders Licensing Act 1971, the Plumbers, Gasfitters and Drainers Act 1979 or any other Act;
  - (b) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown; and
  - (c) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

*Building Services Corporation 1987*

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**Membership of the Corporation**

5. (1) Except for the purpose of exercising a function referred to in section 7, the Corporation shall consist of—

- (a) the General Manager; and
- (b) 8 part-time members appointed by the Governor.

(2) For the purpose of exercising a function referred to in section 7, the Corporation shall consist of the member who is the General Manager.

(3) Of the part-time members—

- (a) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Master Builders' Association of New South Wales;
- (b) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Housing Industry Association (New South Wales);
- (c) 1 shall be selected by the Minister from a panel of 3 persons resident in New South Wales and nominated by the Federal Executive of the Plumbers and Gasfitters Employees' Union of Australia;
- (d) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Executive Committee of The Master Plumbers and Mechanical Contractors Association of New South Wales;
- (e) 1 shall be selected by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales;
- (f) 1 shall be nominated by the Minister after consultation with the Minister administering the Local Government Act 1919; and
- (g) 2 shall be nominated by the Minister to represent the interests of home owners and home purchasers.

(4) If a panel is not nominated for the purposes of a provision of subsection (3), the Governor may appoint any person instead of a person selected under the provision.

(5) Schedule 1 has effect with respect to the members.

(6) Schedule 2 has effect with respect to the procedure of the Corporation except when the Corporation consists of the General Manager.

*Building Services Corporation 1987*

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**Associate members**

6. (1) A prescribed organisation may, as directed by the Corporation, submit to the Corporation—

- (a) the names of persons with expertise in a particular field with which the administration of this Act, the Builders Licensing Act 1971 or the Plumbers, Gasfitters and Drainers Act 1979 is concerned; and
- (b) such other particulars relating to the persons and their qualifications in that field as the Corporation requires.

(2) The Minister may, from among the persons whose names are submitted under subsection (1), by order appoint persons whose services may be used by the Corporation.

(3) A person appointed under subsection (2) is an associate member of the Corporation.

(4) An associate member may, as determined by the Corporation, attend and take part in meetings of the Corporation or a committee established by the Corporation but—

- (a) may not vote or preside at a meeting of the Corporation; and
- (b) may not be counted towards a quorum at a meeting of the Corporation.

**Corporate functions of the General Manager**

7. (1) The functions conferred or imposed on the Corporation in relation to—

- (a) inspection services;
- (b) the resolution of disputes;
- (c) the issue of rectification orders;
- (d) the administration of the insurance scheme;
- (e) the administration of the licensing and certification system (except in disciplinary matters);
- (f) public information and guidance programmes; and
- (g) the delegation of any of those functions,

are exercisable only by the Corporation consisting of the General Manager.

*Building Services Corporation 1987*

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(2) Any act, matter or thing done under subsection (1) in the name of, or on behalf of, the Corporation by the General Manager (whether or not under seal) shall be deemed to have been done by the Corporation.

(3) Subsection (1) does not limit the power of the Corporation to delegate any other function (including a disciplinary function) to the General Manager.

**Other functions of General Manager**

8. The General Manager—

(a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation given otherwise than in relation to a function exercisable only by the Corporation consisting of the General Manager; and

(b) shall have and may exercise such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

**General Manager and staff of the Corporation**

9. (1) To enable the Corporation to exercise its functions, a General Manager of the Corporation shall be appointed under the Public Service Act 1979.

(2) The General Manager shall hold office for such period, not exceeding 7 years, as may be specified in the instrument of his or her appointment but is eligible, if otherwise qualified, for re-appointment.

(3) Such other staff as may be necessary for the purposes of this Act shall be employed under the Public Service Act 1979.

(4) The Corporation may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(5) The Corporation may—

(a) for any purpose approved by the Minister; and

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- (b) on such terms and conditions as may be approved by the Public Service Board,

employ such casual staff as may be required by the Corporation in exercising its functions.

(6) The Public Service Act 1979 does not apply to or in respect of the employment of casual staff under subsection (5) and a person is not, as a member of that casual staff, subject to that Act.

(7) For the purposes of this Act, a person who is employed for the purposes of subsection (1), (3) or (5) or whose services are made use of under subsection (4) is an officer of the Corporation.

#### **Committees**

10. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Corporation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Corporation or (subject to any determination of the Corporation) by the committee.

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### PART 3

#### MISCELLANEOUS

#### **Financial provisions**

11. (1) There shall be established in the Special Deposits Account in the Treasury a Building Services Corporation Account into which shall be deposited all money received by the Corporation and from which shall be paid—

- (a) to the Treasurer for payment into the Consolidated Fund—such amounts as the Treasurer from time to time certifies to be chargeable against the Corporation in respect of officers and employees appointed and employed under this Act;

*Building Services Corporation 1987*

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- (b) to the Treasurer for payment into the Consolidated Fund—such amounts as the Minister determines in relation to the Consumer Protection Act 1969, the Consumer Claims Tribunals Act 1974 and the Commercial Tribunal Act 1984;
  - (c) to the Licensed Builders Education Fund established under section 39 of the Builders Licensing Act 1971 and to the Plumbers, Gasfitters and Drainers Education Fund established under section 42 of the Plumbers, Gasfitters and Drainers Act 1979—such amounts as the Treasurer determines;
  - (d) to the Building Services Insurance Fund established under section 40 of the Builders Licensing Act 1971—such amounts as are required to meet expenditure from the Fund; and
  - (e) such other amounts as are required to meet expenditure in connection with the administration of this Act, the Builders Licensing Act 1971 and the Plumbers, Gasfitters and Drainers Act 1979.
- (2) Money in the Building Services Corporation Account may be invested by the Corporation in any manner authorised by the Superannuation Act 1916 for investment of the State Superannuation Fund.
- (3) The Treasurer may advance money to the Corporation on such terms and conditions as are fixed by agreement between them.
- (4) The financial year of the Corporation shall be the year commencing on 1 January.

**Disclosure of information**

12. A person shall not disclose any information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing functions on the Corporation unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act or any other Act administered by the Minister;
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or

*Building Services Corporation 1987*

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(e) with other lawful excuse.

Penalty: \$2,000.

**Delegation by Corporation and General Manager**

13. (1) The Corporation may delegate to a person the exercise of any of its functions, other than this power of delegation.

(2) The General Manager may delegate to a person the exercise of any of the functions delegated to the General Manager by the Corporation, unless the Corporation otherwise provides in its instrument of delegation to the General Manager.

(3) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Corporation or the General Manager, as the case requires.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Corporation.

(6) A delegation does not prevent the exercise of a function by the Corporation or the General Manager.

(7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(8) A delegation of a function conferred or imposed by Part IV of the Builders Licensing Act 1971 or Part V of the Plumbers, Gasfitters and Drainers Act 1979 may be made only—

(a) to a member of the Corporation;

(b) to a committee established by the Corporation which consists entirely of members of the Corporation; or

(c) to a committee established by the Corporation which includes 1 or more members of the Corporation together with 1 or more associate members.

*Building Services Corporation 1987*

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**Service of documents**

14. (1) A document may be served on the Corporation by leaving it at, or by sending it by post to—

- (a) the office of the Corporation; or
- (b) if it has more than one office—any one of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in a manner not provided for by subsection (1).

**Authentication of certain documents**

15. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by—

- (a) the General Manager; or
- (b) any officer of the Corporation authorised to do so by the General Manager in writing.

**Recovery of charges, etc., by Corporation**

16. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

**Proof of certain matters not required**

17. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any member;
- (d) the presence or nature of a quorum at any meeting of the Corporation; or
- (e) the signature of the General Manager.

**Proceedings for offences**

18. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.



*Building Services Corporation 1987*

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**Savings and transitional provisions**

19. Schedule 3 has effect.

**Regulations**

20. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

**Amendment of Act No. 4, 1976**

21. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the following words:

Chairman of the Builders Licensing Board.

Deputy Chairman of the Builders Licensing Board.

Chairman of the Plumbers, Gasfitters and Drainers Board.

**Amendment of Act No. 89, 1979**

22. The Public Service Act 1979 is amended by omitting from Part 2 of Schedule 2 the words "Builder's Licensing Board" and the words "Chairman of the Board."

**Amendment of Act No. 152, 1983**

23. The Public Finance and Audit Act 1983 is amended—

- (a) by inserting in Schedule 2, in alphabetical order, the following words:

Building Services Corporation.

*Building Services Corporation 1987*

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(b) by omitting from Schedule 2 the following words:

Builders Licensing Board.

Plumbers, Gasfitters and Drainers Board.

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SCHEDULE 1

(Sec. 5 (5))

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION

**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a part-time member or associate member or to act in the office of a part-time member or the office of associate member.

**Chairperson of the Corporation**

2. (1) Of the part-time members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as Chairperson of the Corporation.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

(a) is removed from that office by the Governor under subclause (2);

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a part-time member.

(4) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

**Acting members and acting Chairperson**

3. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a part-time member.

(2) The Governor may, from time to time, appoint a person to act in the office of Chairperson during the illness or absence of the Chairperson, and the person appointed while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

(4) A person while acting in the office of a part-time member or associate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

- (a) a vacancy in the office of a part-time member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member shall be deemed to be absent from office as a part-time member during any period when the member acts in the office of the General Manager pursuant to an appointment under subclause (1).

**Terms of office**

4. Subject to this Schedule, a part-time member shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

5. A part-time member, and an associate member, are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member or associate member.

**Filling of vacancy in office of part-time member**

6. If the office of any part-time member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

7. (1) A part-time member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) reaches the age of 70 years;
- (g) is retired from office by the Governor under subclause (2); or
- (h) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a part-time member from office.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 8.

**Disclosure of pecuniary interests**

8. (1) A member or associate member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Corporation or of a committee established by the Corporation that includes the member or associate member; or
- (b) in a thing being done or about to be done by the Corporation or such a committee,

shall, as soon as possible after the relevant facts have come to the knowledge of the member or associate member, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure by a member at a meeting of the Corporation or a committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Corporation or committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept by the Corporation for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Corporation from time to time.

*Building Services Corporation 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

(4) After a member or associate member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member or associate member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Corporation or committee, or take part in any decision of the Corporation or committee, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member or associate member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Corporation or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member or associate member in a matter or thing which arises by reason only that the member or associate member has general interests represented by the organisation by which the member or associate member was nominated.

**Effect of certain other Acts**

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act.

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

**Preservation of rights of General Manager previously public servant, etc.**

10. (1) Subject to subclause (2) and to the terms of appointment, where the General Manager was, immediately before being appointed as General Manager—

- (a) an officer of a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as General Manager; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as General Manager and—

- (h) his or her service as General Manager shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Corporation shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the General Manager would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled upon becoming (whether upon appointment as General Manager or at any later time while holding office as General Manager) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Corporation in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the General Manager upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) The General Manager is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(5) In this clause—

“statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

**General Manager entitled to re-appointment to former employment in certain cases**

11. (1) A person who—

- (a) ceases to be General Manager by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as General Manager—
  - (i) an officer of the Public Service or a Teaching Service; or
  - (ii) an officer or employee of a statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as General Manager.

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as General Manager,

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be General Manager, as are specified in the instrument of appointment as General Manager or as are agreed upon by the person and by or on behalf of the Government.

(3) In this clause, “statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

**Declaration of statutory bodies**

12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF  
THE CORPORATION—*continued*

**Liability of members, etc.**

13. No matter or thing done by the Corporation, any member or associate member or any person acting under the direction of the Corporation shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member, associate member or person so acting personally to any action, liability, claim or demand.

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SCHEDULE 2

(Sec. 5 (6))

PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION

**General procedure**

1. The procedure for the calling of meetings of the Corporation and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Corporation.

**Quorum**

2. The quorum for a meeting of the Corporation is 5 members, of whom one must be the General Manager unless clause 8 (4) of Schedule 1 requires the General Manager to be absent.

**Presiding member**

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected to preside at the meeting by the members present shall preside at a meeting of the Corporation.

(2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present shall be the decision of the Corporation.

**Minutes**

5. The Corporation shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.



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SCHEDULE 2—*continued*

PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION—  
*continued*

**First meeting of Corporation**

6. The Minister shall call the first meeting of the Corporation in such manner as the Minister thinks fit.

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SCHEDULE 3

(Sec. 19)

SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule—

“abolished Board” means—

- (a) the Builders Licensing Board constituted under the Builders Licensing Act 1971 before the appointed day; or
- (b) the Plumbers, Gasfitters and Drainers Board constituted under the Plumbers, Gasfitters and Drainers Act 1979 before the appointed day;

“affected person” means a person who, immediately before the appointed day, held a prescribed office;

“appointed day” means the day appointed and notified under section 2 (2);

“prescribed office” means Chairman or Deputy Chairman of an abolished Board.

**Continuation of legal entity**

2. The Corporation is a continuation of, and the same legal entity as, the abolished Boards.

**Finance**

3. (1) On the appointed day, the Corporation shall transfer to the credit of the Building Services Corporation Account established under section 11 the money at credit immediately before that day in—

- (a) the Builders Licensing Board Account then maintained under section 39 of the Builders Licensing Act 1971;
- (b) the Builders Licensing Board Insurance Account then maintained under section 40B of that Act; and
- (c) the Plumbers, Gasfitters and Drainers Account then maintained under section 43 of the Plumbers, Gasfitters and Drainers Act 1979.

*Building Services Corporation 1987*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) On the appointed day, existing investments made before that day under—

- (a) section 41B of the Builders Licensing Act 1971; or
- (b) section 48 of the Plumbers, Gasfitters and Drainers Act 1979,

become investments made under section 11 of this Act.

**Office held by affected person**

4. (1) An affected person ceases to hold his or her prescribed office on the appointed day and is eligible, if otherwise qualified, to be appointed as General Manager.

(2) An affected person is not entitled to be paid any remuneration or compensation by reason of ceasing to hold an abolished office, but nothing in this subclause prevents the payment to that person of such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines out of the funds of the new Corporation.

(3) An affected person who—

- (a) is not appointed as General Manager with effect on and from that day; and
- (b) was, immediately before being appointed to his or her prescribed office, the holder of a full-time position in the service of the Government,

is entitled to be appointed to some position in the service of the Government.

(4) An affected person is, until—

- (a) the day on which the term of office for which the person had been appointed to the prescribed office expires; or
- (b) the day on which the person ceases to hold the position to which the person is appointed pursuant to subclause (3),

whichever first occurs, entitled to be paid such salary as the Statutory and Other Offices Remuneration Tribunal may from time to time determine in relation to the person, not lower than the salary for the time being applicable to the position that the person held immediately before being appointed to the prescribed office.

(5) Pending the making of the relevant determination under subclause (4) salary shall continue to be paid to an affected person at the rate at which it was payable to the person immediately before the appointed day.

**Reference to abolished Board in other Acts etc.**

5. (1) This clause applies to an instrument that is—

- (a) another Act enacted before the appointed day;
- (b) an instrument made before that day under an Act; and
- (c) any other kind of instrument executed before that day.

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SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (2) In an instrument to which this clause applies, a reference to—
- (a) the Builders Licensing Board or the Plumbers, Gasfitters and Drainers Board shall be read as a reference to the Building Services Corporation; or
  - (b) the Board, where it is a reference to an abolished Board, shall be read as a reference to the Corporation.

**General**

6. (1) If anything done or commenced by, or in relation to, an abolished Board could have been done or commenced by, or in relation to, the Corporation if the relevant Acts had been in force when it was done or commenced, it has effect on and after the appointed day as if it had been done or commenced by, or in relation to, the Corporation.

(2) In this clause—

“relevant Acts” means—

- (a) this Act;
- (b) the Builders Licensing (Amendment) Act 1987; and
- (c) the Plumbers, Gasfitters and Drainers (Amendment) Act 1987.

**Regulations**

7. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

