

# **Building and Construction Industry Training Fund and Levy Collection Regulations 1991**

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**THE TEXT OF THE LEGISLATION FOLLOWS**



# **Building and Construction Industry Training Fund and Levy Collection Regulations 1991**

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## CONTENTS

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1.	Citation	1
2.	Commencement	1
3.	Work excluded from definition of “construction work”	1
3A.	Levy relief for cyclone damage repair work	4
3B.	Exemption for foreign missions and consulates	4
4.	Commencement of construction work under section 3(2)(d)	4
5.	Sectors of the building and construction industry — Schedule 1	5
6.	Estimating the value of construction work	5
7.	Adjusting for inflation	5
8.	Penalty rate on unpaid levy	6
9.	Project owner to maintain records	6
10.	Levy payment form	7
11.	Procedures to be followed by collection agencies in collecting and paying levy to fund	7
12.	Certificate of appointment of authorised person	8

### **Schedule 1**

### **Schedule 2**

### **Notes**



Building and Construction Industry Training Fund and  
Levy Collection Act 1990

**Building and Construction Industry Training  
Fund and Levy Collection Regulations 1991**

**1. Citation**

These regulations may be cited as the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991*<sup>1</sup>.

**2. Commencement**

These regulations shall come into operation on the day on which the *Building and Construction Industry Training Fund and Levy Collection Act 1990* comes into operation<sup>1</sup>.

**3. Work excluded from definition of “construction work”**

- (1) The following work is work that is excluded from the definition of “**construction work**” under section 3(1) of the Act —
- (a) work the value of which is \$20 000 or less;
  - (b) work which is maintenance or repairs of a routine or minor nature carried out by employees for an employer whose primary activity is not related to the building and construction industry;
  - (c) agricultural work;

r. 3

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- (d) government work; or
- (e) mining and petroleum work.

(2) In this regulation —

**“agricultural land”** means land wholly or mainly used for farming, cropping or grazing purposes;

**“agricultural work”** means work directly associated with the care, conservation or rehabilitation of agricultural land or land that has been agricultural land where some or all of the work is to be carried out by the owner of the land or by a person who will not be employed or engaged for remuneration to perform any part of the work, but does not include work for which a building licence is required;

**“government authority”** means —

- (a) the Crown;
- (b) an agency or instrumentality of the Crown; and
- (c) the executive body of a municipality or regional council within the meaning of the *Local Government Act 1960*<sup>2</sup> or a Commissioner appointed pursuant to that Act;

**“government work”** means work carried out —

- (a) by a government authority; or
- (b) for or on behalf of a government authority by —
  - (i) an officer or employee of a government authority; or
  - (ii) another government authority;

**“minerals”** has the same meaning as in the *Mining Act 1978*;

**“mining and petroleum work”** means work associated with any operation under the *Mining Act 1978*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969* which is not

carried out in the housing sector or the commercial sector (as defined in Schedule 1) and includes —

- (a) earthworks associated with the construction or maintenance of any temporary water supply or temporary access track for any purpose associated with any mineral or petroleum exploration activity, and any other earthworks associated with any such exploration activity;
- (b) any excavation work associated with exploration for, or the extraction of, any minerals or petroleum;
- (c) any work directly related to the fabrication of a pipeline system used in mineral or petroleum production or processing (but not including associated work such as earthworks, excavation work or the construction of culverts, bridges, drains or structural supports), and any subsequent repair work that involves welding or coating a pipeline system (or part of a pipeline system) used in mineral or petroleum production or processing;
- (d) the construction or maintenance of any haul road or track which is —
  - (i) in or around a mine or other mineral or petroleum production facility; and
  - (ii) directly used in a mineral or petroleum production operation;
- (e) the maintenance of an airstrip or landing pad used in conjunction with any mineral or petroleum production operation;
- (f) work associated with an environmental clean-up or environmental restoration;
- (g) work associated with a mine back-filling operation;
- (h) repair or maintenance work carried out on any plant or equipment directly associated with mineral or petroleum exploration, production or processing, or for piloting;

**r. 3A**

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**“petroleum”** has the same meaning as in the *Petroleum Pipelines Act 1969*.

*[Regulation 3 amended in Gazette 8 March 1994 p.943; 14 February 1995 pp.491-3; 13 August 1999 p.3831.]*

**3A. Levy relief for cyclone damage repair work**

- (1) Construction work that consists of rebuilding, renovation or repair work carried out because of damage caused by Cyclone Elaine or Cyclone Vance is excluded from the definition of **“construction work”** in section 3(1) of the Act.
- (2) In subregulation (1) —  
**“Cyclone Elaine”** means the cyclone given that designation by the Bureau of Meteorology;  
**“Cyclone Vance”** means the cyclone given that designation by the Bureau of Meteorology.

*[Regulation 3A inserted in Gazette 4 June 1999 p.2274.]*

**3B. Exemption for foreign missions and consulates**

Construction work carried out for the government of a foreign country in the course of, or in connection with, constructing, extending or altering a building that is used or is to be used for the purposes of a diplomatic mission or consulate of the foreign country is excluded from the definition of **“construction work”** in section 3(1) of the Act.

*[Regulation 3B inserted in Gazette 7 January 2000 p.20.]*

**4. Commencement of construction work under section 3(2)(d)**

Construction work commences under section 3(2)(d) of the Act when any of the construction work is commenced on the building or construction site.



**5. Sectors of the building and construction industry —  
Schedule 1**

Each sector of the building and construction industry referred to in section 8(9) of the Act is comprised of the parts of that industry described following that sector in Schedule 1.

**6. Estimating the value of construction work**

- (1) For the purposes of section 21(a) and (b) of the Act —
- (a) where the construction work is to be carried out under a contract, the estimated value of the construction work shall be the contract price (including the GST), where that price includes value for at least each of the components referred to in paragraph (b); and
  - (b) where the construction work is carried out other than under a contract or under a contract the contract price for which does not include value for each of the following components, the estimated value of the construction work shall be the sum of the value (including the GST) of all goods (including manufactured goods) forming part of the construction work, labour, services necessary, fees payable, overheads to be met and profit margin.

- (2) In this regulation —

“**GST**” has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

*[Regulation 6 amended in Gazette 8 March 1994 p. 943;  
16 January 2001 p. 338.]*

**7. Adjusting for inflation**

- (1) Adjustment shall be made for inflation for the purpose of section 21(c) of the Act by calculating interest on the value of the construction work as estimated for the purposes of section 21(a) or (b) of the Act at the CPI rate as determined by the Board in accordance with subregulation (2).

**r. 8**

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- (2) The CPI rate of interest to be used under subregulation (1) shall be determined by the Board in accordance with the following —
- (a) in this subregulation “**Index**” means the table described as the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;
  - (b) the CPI rate shall be determined before 1 July to take effect for the following year from 1 July to 30 June;
  - (c) the percentage rate determined under paragraph (b) shall be that which the Board declares to be the percentage by which the Index for the quarter ending in March of the current year is greater than the Index for the quarter ending in March of the previous year; and
  - (d) if the Index for the quarter ending in March of the current year is not greater than the Index for the quarter ending in March of the previous year, the CPI rate for the following year from 1 July shall be nil.

**8. Penalty rate on unpaid levy**

The rate per annum to be paid to the Board by way of penalty under section 24 of the Act where construction work is commenced before the levy due in respect of that work is paid is 100% of the unpaid levy.

**9. Project owner to maintain records**

- (1) Subject to subregulation (2), a person shall keep the following records in relation to construction work for which he or she is the project owner for a period of 5 years from the commencement of that work —
- (a) a copy of all forms submitted to or received from the Board or a collection agency relating to the payment or refund of levy;
  - (b) the date on which the construction work commenced;

- (c) the value of the construction work;
  - (d) the site address of the construction work; and
  - (e) brief details describing the type of construction work.
- (2) The Board may, in writing, exempt a project owner from keeping any records referred to in subregulation (1), either in general or in relation to specific construction work, for the period of time specified in the exemption.

Penalty: \$1 000.

*[Regulation 9 amended in Gazette 16 August 1991 p.4279.]*

**10. Levy payment form**

All levy paid by a project owner to the Board or a collection agency shall be accompanied by a form in a form approved by the Board which makes provision for —

- (a) a brief description of the construction work;
- (b) the estimated value of the construction work;
- (c) the signature of the project owner; and
- (d) the estimated levy payable on the construction work.

**11. Procedures to be followed by collection agencies in collecting and paying levy to fund**

- (1) The procedures set out in this regulation are the procedures to be followed by a collection agency in collecting levy and paying levy to the fund under section 27(2) of the Act.
- (2) In this regulation “**levy payment form**” means a form in a form referred to in regulation 10.
- (3) A collection agency shall —
  - (a) provide to any project owner a levy payment form;
  - (b) calculate the amount of levy due on the construction work, based on the estimated value of that work contained in the levy payment form signed by the

**r. 12**

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- project owner, and enter the estimated amount of levy due on the levy payment form;
- (c) collect from the project owner the completed levy payment form and the levy as calculated under paragraph (b);
  - (d) pay the levy collected into an account approved by the Treasurer until it is paid to the Fund;
  - (e) pay all levy collected to the Fund not later than the tenth day of the month following the month in which the levy was received; and
  - (f) provide to the Board at the time of each payment of levy to the Fund under paragraph (e), all levy payment forms and a summary of levy payments in a form approved by the Board, relating to that levy.

**12. Certificate of appointment of authorised person**

The certificate issued to an authorised person under section 28(2) of the Act shall be in the form of Form 1 in Schedule 2.

## **Schedule 1**

### **Sectors of the Building and Construction Industry**

[s.8(9) of the Act and Reg. 5]

1. **THE HOUSING SECTOR** — That part of the building and construction industry, other than that included in the description of the government construction sector, which carries out construction work on, or resulting in, a building that is a residential dwelling unit, or a number of residential dwelling units, each of which contains cooking and bathing facilities and is intended to be used predominantly for long term residential purposes.  
  
A building that is a dwelling unit which is part of an educational institution, a hospital or other building offering institutional care or temporary accommodation (i.e. a motel, hostel or holiday apartment) is not included in the housing sector.
2. **THE COMMERCIAL SECTOR** — That part of the building and construction industry, other than that included in the description of the government construction sector, the housing sector, or the engineering construction sector, which carries out construction work on, or resulting in, a rigid, fixed and permanent structure with a roof, the intended purpose of which is for the shelter, or the use of, people, plants, machinery, goods or livestock.
3. **THE ENGINEERING CONSTRUCTION SECTOR** — That part of the building and construction industry, other than that included in the description of the government construction section, which carries out construction work on, or resulting in —
  - (a) a road, railway, airfield or other structure for the passage of persons, animals or vehicles;
  - (b) a breakwater, dock, jetty, pier, wharf or other structure for the improvement or alteration of any harbour, river or watercourse for the purposes of navigation;
  - (c) any structure for the storage or supply of water or for the irrigation of land;
  - (d) any structure for the conveyance, treatment or disposal of sewage or of the effluent from any premises;

**Schedule 1**

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- (e) a structure for the extraction, refining, processing or treatment of heavy industry materials or for the production or extraction of heavy industry products and by-products from materials;
  - (f) a bridge, viaduct, aqueduct or tunnel;
  - (g) a chimney stack that is over 15 metres in height and is not part of a building included in the description of the housing sector or the commercial sector, a cooling tower, drilling rig, gas holder or silo;
  - (h) a pipeline;
  - (i) a navigational light, beacon or marker;
  - (j) a structure for the drainage of land;
  - (k) a structure for the storage of liquid or gas;
  - (l) a structure for the transmission of wireless or telegraphic communications;
  - (m) a fence, other than a fence on a farm;
  - (n) a grandstand, stadium or swimming pool; or
  - (o) a structure for the generation, supply or transmission of electric power.
4. THE GOVERNMENT CONSTRUCTION SECTOR — That part of the building and construction industry where construction work is carried out for the Crown in right of the State or by a municipality under the *Local Government Act 1960*<sup>2</sup> by employees of the Crown or the municipality.

*[Schedule 1 amended in Gazette 16 August 1991 p.4279.]*

**Schedule 2**

[s.28(2) of Act and Reg. 12]

**Form 1**

*Building and Construction Industry Training Fund and Levy Collection  
Act 1990*

**CERTIFICATE OF APPOINTMENT OF AUTHORISED PERSON  
(Section 28)**

This is to certify that ..... is an  
authorised person for the purposes of the *Building and Construction Industry  
Training Fund and Levy Collection Act 1990*.

.....  
Presiding member of the Board

.....  
Date

**Schedule 2**

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**Reverse of Form 1**

**Summary of powers of an authorised person under the *Building and Construction Industry Training Fund and Levy Collection Act 1990*.**

1. An authorised person shall produce this certificate wherever required to do so by any person in respect of whom the authorised person has, or is about to, exercise any power under the Act.
2. An authorised person may require a person in writing to give to the authorised person, or the Board, relevant information or documents within the reasonable time specified in writing and to verify such information by statutory declaration.
3. An authorised person may, if directed by the Board, for the purposes of ascertaining whether there has been compliance with the Act —
  - (a) enter, inspect and examine any place at a reasonable time;
  - (b) conduct an examination or inquiry; or
  - (c) require the production of, examine and take copies or extracts from, any documents.



**Building and Construction Industry Training Fund and Levy Collection  
Regulations 1991**

**Notes**

- <sup>1</sup> This is a compilation of the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991* and includes the amendments referred to in the following Table.

**Table of Regulations**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Building and Construction Industry Training Fund and Levy Collection Regulations 1991</i>	28 June 1991 pp.3122-5	1 July 1991 (see regulation 2 and <i>Gazette</i> 28 June 1991 p.3101)	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 1991</i>	16 August 1991 p.4279	16 August 1991	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 1993</i>	8 March 1994 p.943	8 March 1994	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 1994</i>	14 February 1995 pp.491-3	14 February 1995	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 1999</i>	4 June 1999 pp.2273-4	4 June 1999	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations (No. 2) 1999</i>	13 August 1999 p.3831	1 September 1999 (see regulation 2 and <i>Gazette</i> 13 August 1999 p.3831)	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 2000</i>	7 January 2000 pp.19-20	7 January 2000	

***Building and Construction Industry Training Fund and Levy  
Collection Regulations 1991***

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 2001</i>	16 January 2001 p. 338	1 February 2001 (see regulation 2)	

<sup>2</sup> Now see *Local Government Act 1995* (No. 74 of 1995).