



Western Australia

Building and Construction Industry Training Fund and Levy Collection Act 1990

Building and Construction Industry Training Fund and Levy Collection Act 1990

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Defined terms

Western Australia

Building and Construction Industry Training Fund and Levy Collection Act 1990

An Act to establish a fund to be used to improve the quality of training and to increase the number of skilled persons in the building and construction industry, to establish a Building and Construction Industry Training Board to administer the fund and to collect the building and construction industry training levy, and for connected purposes.

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act shall come into operation on the day on which the *Building and Construction Industry Training Levy Act 1990* comes into operation.

3. Terms used

- (1) In this Act, unless the contrary intention appears —
authorised person means a person appointed under section 28(1);

Board means the Building and Construction Industry Training Board established under section 6(1);

building and construction industry has the same meaning as the term **construction industry** in the *Construction Industry Portable Paid Long Service Leave Act 1985*;

chairperson means the chairperson of the Board appointed under section 10(3);

collection agency means a person or body appointed under section 27(1);

construction work means all of the work carried out in the State or as referred to in section 5 —

- (a) that is included in the definition of **construction industry** in the *Construction Industry Portable Paid Long Service Leave Act 1985*; or
- (b) that is building work or demolition work as defined in the *Building Act 2011* section 3,

but does not include any work that is prescribed as excluded from this definition;

Fund means the Building and Construction Industry Training Fund established under section 17;

levy means the levy imposed by the *Building and Construction Industry Training Levy Act 1990*;

member means a member of the Board appointed under section 10(1);

permit, except in section 5(2)(e), means a building permit or a demolition permit as defined in the *Building Act 2011* section 3;

project owner in respect of any construction work means —

- (a) the person who is required to hold a permit in respect of that construction work; or
 - (b) where the construction work is carried out by the State, or an agent or instrumentality of the State, the person or organization designated in writing by the Minister to be the project owner or, if the State or an agent or instrumentality of the State has engaged another person or body, other than as an employee, to carry out or cause to be carried out all of the construction work, the person or body so engaged; or
 - (c) where paragraphs (a) and (b) do not apply —
 - (i) the person or body for whose direct benefit construction work exists upon its completion; or
 - (ii) if the person or body referred to in subparagraph (i) has engaged another person or body, other than as an employee, to carry out or cause to be carried out all of the construction work, the person or body so engaged.
- (2) For the purposes of this Act, construction work shall be regarded as commencing —
- (a) where a permit is required for the construction work, when any work the subject, or that is required to be the subject, of a permit commences;

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- (b) if paragraph (a) does not apply, where the construction work is to be carried out under a contract executed after this Act comes into operation, when any of that construction work commences;
 - (c) if paragraph (a) does not apply —
 - (i) where the construction work is to be carried out under a contract executed before this Act comes into operation; and
 - (ii) the project owner, after this Act comes into operation, engages another person or body, other than as an employee, to carry out or cause to be carried out any part or stage of that work, when any of the construction work that the person or body is engaged to carry out or cause to be carried out commences;
 - (d) if paragraph (a), (b) or (c) does not apply, when the construction work is prescribed as commencing.
- (3) Notwithstanding subsection (2), levy is not payable in relation to construction work for which a building licence or a demolition licence under the *Local Government (Miscellaneous Provisions) Act 1960* was issued before this Act comes into operation.

[Section 3 amended: No. 14 of 1996 s. 4; No. 42 of 1996 s. 71(1); No. 6 of 1998 s. 4(1); No. 24 of 2011 s. 159(2)-(7).]

4. Act binds Crown

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

5. Application of Act to off-shore construction work

- (1) Where any construction work is carried out —
 - (a) partly within the State and partly within an area to which this subsection applies; or

- (b) wholly or partly in an area to which this subsection applies, and —
- (i) facilities for servicing or supporting that construction work are maintained in the State by or on behalf of the project owner concerned; or
 - (ii) the project owner concerned is connected with the State; or
 - (iii) the construction work is carried on from, or on, or by means of, an aircraft, or from, or by means of, a ship or vessel certificated, registered, or licensed under a law of the State or by a department of the Public Service of the State or an agent or instrumentality of the State or any other body established under a law of the State, or which is required to be so certificated, registered, or licensed; or
 - (iv) the construction work is carried on from, or on, or by means of, a rig or other structure, installation, or equipment, the use or function of which is regulated by the State or by the State and the Commonwealth, or is required to be so regulated; or
 - (v) the construction work is authorised or regulated by the State or by the State and the Commonwealth; or
 - (vi) the construction work is carried on under a law of the State,

then this Act applies to and in relation to that construction work.

- (2) A project owner shall, for the purposes of subsection (1), be connected with the State if that project owner —
- (a) is domiciled in the State; or
 - (b) is resident in the State, normally or temporarily; or

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- (c) is a body corporate that is —
 - (i) registered, incorporated or established under a law of the State; or
 - (ii) taken to be registered in the State; or
 - (iii) a related body corporate, for the purposes of the *Corporations Act 2001* of the Commonwealth, of such a body;or
 - (d) in connection with the construction work concerned, has an office or a place of business in the State; or
 - (e) is the holder of a licence, lease, tenement, permit, or other authority, granted under a law of the State or by a department of the Public Service of the State or an agent or instrumentality of the State or any other body established under a law of the State under which the construction work is carried on.
- (3) The areas to which subsection (1) applies are —
- (a) that area situate west of 129° of East Longitude reckoning from the meridian of Greenwich, that is part of the areas known as and comprised within —
 - (i) the Australian fishing zone as defined by the Commonwealth *Fisheries Act 1952*¹; or
 - (ii) the continental shelf, within the meaning of the Convention on the Continental Shelf a copy of which in the English language is set out in Schedule 1 to the Commonwealth *Petroleum (Submerged Lands) Act 1967*²;
 - (b) any other area seaward of the State to which from time to time the laws of the State apply or, by a law of the Commonwealth, are applied.

- (4) For the purposes of any proceedings under this Act an averment in the application or process —
- (a) that a project owner was, pursuant to subsection (2), at a specified time or during a specified period or at all material times connected with the State; or
 - (b) that any conduct, event, circumstance, or matter occurred, or that any place is situate, within an area referred to in subsection (3),

shall, in the absence of proof to the contrary, be deemed to be proved.

- (5) Effect shall be given to subsections (1), (2) and (3) only where this Act or any provision of this Act would not otherwise apply as a law of the State to or in relation to any person, circumstance, thing or place.

[Section 5 amended: No. 10 of 2001 s. 32.]

Part 2 — Building and Construction Industry Training Board

Division 1 — Establishment, functions and powers

6. Board established

- (1) There is established by this subsection a body to be known as the Building and Construction Industry Training Board.
- (2) The Board is a body corporate with perpetual succession and a common seal and is capable of —
 - (a) acquiring, holding and disposing of real and personal property; and
 - (b) suing and being sued; and
 - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Board does not represent, and is not an agent or servant of, the Crown.

7. Board, functions of

- (1) The functions of the Board are —
 - (a) to ensure the efficient collection of levy; and
 - (b) to control and administer the Fund; and
 - (ba) by the allocation of resources of the Fund, to provide for, or support, training programmes and research the aim of which is to improve the quality of training, and to increase the number of skilled persons, in the building and construction industry; and
 - (c) to formulate operational plans in accordance with section 8; and
 - (d) to implement operational plans approved by the Minister under section 8.

- (2) The Board may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

[Section 7 amended: No. 6 of 1998 s. 5.]

8. Operational plans

- (1) The Board shall formulate and prepare in writing, in respect of each financial year, an Annual Operational Plan (an ***operational plan***) the aim of which is to improve the quality of training and to increase the number of skilled persons in the building and construction industry (the ***industry***) by the allocation of resources of the Fund to programmes that support —

- (a) apprenticeships and other forms of entry level training for employment in the industry;
- (b) supplementary training for those already qualified to work in the industry;
- (c) training in technology used in the industry and in the work health and safety requirements of the industry;
- (d) the recognition, for the purposes of employment in the industry, of persons with existing skills, knowledge and aptitude appropriate to the industry;
- (e) the accreditation of training courses for employment in the industry or that are otherwise appropriate to the industry;
- (f) innovations in training in the industry and research relating to the levels of competency in, and the training needs of, the industry.

- (2) An operational plan shall set out the priorities the Board proposes for the allocation of resources of the Fund during the financial year concerned to the programmes supported by the operational plan and to the administration of the operational plan.

[(3) deleted]

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- (4) The Board shall submit an operational plan, together with such other submissions (if any) that it considers appropriate, to the Minister for approval.
- (5) The Minister may request an operational plan to be amended or revised prior to approval.
- (6) If the Minister approves an operational plan the Minister shall give notice in writing of the approval to the Board.
- (7) An operational plan shall have effect from the date specified in the notice of approval.
- (8) The Board may with the approval of the Minister vary an operational plan and the operational plan as so varied has effect accordingly.

[Section 8 amended: No. 42 of 1996 s. 71(1); No. 6 of 1998 s. 6; No. 36 of 2020 s. 350.]

9. Minister, directions by

- (1) The Minister may give directions in writing to the Board with respect to its functions or powers, either generally or with respect to a particular matter, and the Board shall give effect to any such direction.
- (2) The text of any direction received by the Board under subsection (1) shall be included in the annual report submitted by the accountable authority of the Board under Part 5 of the *Financial Management Act 2006*.

[Section 9 amended: No. 77 of 2006 Sch. 1 cl. 17(1).]

Division 2 — Membership, constitution, proceedings, etc.

10. Members

- (1) The Board shall consist of 9 members appointed by the Minister after consultation with the bodies known as —
 - (a) the Master Builders' Association of Western Australia (Union of Employers Perth); and

-
- (b) the Housing Industry Association Limited (Western Australian Division); and
 - (c) the Construction Contractors Association of Western Australia; and
 - (d) Master Plumbers and Gasfitters Association of Western Australia; and
 - (e) the Master Painters Decorators and Signwriters Association of Western Australia; and
 - (f) the National Electrical and Communications Association of Western Australia; and
 - (g) the Construction, Forestry, Mining and Energy Union of Workers; and
 - (h) the Civil Contractors Federation of Western Australia; and
 - (ia) the Australian Workers' Union, West Australian Branch, Industrial Union of Workers; and
 - (ib) the Communications, Electrical and Plumbing Union of Western Australia; and
 - (i) the Australian Manufacturing Workers' Union; and
 - (j) the Chamber of Minerals and Energy of Western Australia; and
 - (k) the Association of Mining and Exploration Companies; and
 - (l) the Australian Petroleum Production and Exploration Association.
- (2) The Board must include at least —
- (a) 1 member with experience or expertise in the construction of facilities associated with the mining industry; and
 - (b) 1 member with experience or expertise in the construction of facilities associated with the petroleum industry; and

- (c) 2 members who are, in the Minister's opinion, independent of the bodies referred to in subsection (1).
- (3) The Minister must appoint 1 of the members referred to in subsection (2)(c) as the chairperson of the Board.
- (4) The regulations may amend subsection (1) in order to reflect a change in the name of any body referred to in that subsection.

[Section 10 inserted: No. 6 of 1998 s. 7(1); amended: No. 47 of 2010 s. 4; No. 23 of 2020 s. 4.]

11. Deputy members

- (1) The Minister may appoint a deputy member to act in the place of a member where the member is unable to act due to sickness, absence or other cause, and while so acting the appointee has all the functions and entitlements of a member.

[(2) deleted]

- (3) An appointment under subsection (1) may be revoked by the Minister at any time.
- (4) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for the acting had not arisen or had ceased.

[Section 11 amended: No. 6 of 1998 s. 8.]

12. Relationship to Public Service

The fact that a person is a member does not —

- (a) render Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service of the State applicable to that person; or
- (b) affect or prejudice the application to that person of those provisions if they applied to the person at the time of the appointment.

[Section 12 amended: No. 32 of 1994 s. 3(2).]

13. Members, protection of

A member is not personally responsible for any act done or omitted to be done in good faith by the Board or by that member acting as a member.

14. Pecuniary interests, disclosure of

- (1) A member who has a direct or indirect pecuniary interest in a proposal before the Board —
 - (a) shall disclose the nature of the interest to the Board at each meeting where the proposal is discussed; and
 - (b) shall not take part in any deliberation or decision of the Board with respect to the proposal.
- (2) A disclosure made by a member under this section shall be recorded in the minutes of the Board.

[(3) deleted]

- (4) A member who fails to comply with subsection (1) is guilty of an offence and is liable to a penalty of \$20 000.

[Section 14 amended: No. 6 of 1998 s. 9.]

15. Board, constitution and proceedings of (Sch. 1)

Schedule 1 has effect with respect to the members and proceedings of the Board.

Division 3 — Staff

16. Staff

- (1) The Board may from time to time appoint such persons as are necessary for the purposes of the administration of this Act.
- (2) Subject to any relevant award or agreement under the *Industrial Relations Act 1979* the terms and conditions of persons employed by the Board are such as the Board determines.

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- (3) The Board may engage under a contract for services such professional, technical or other assistance as the Board considers necessary to assist it in the effective administration of this Act.
- (4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to the members of the staff of the Board.
[Section 16 amended: No. 32 of 1994 s. 3(2).]

Part 3 — Fund

17. Building and Construction Industry Training Fund

- (1) The funds available to the Board for the purposes of this Act are —
- (a) all levy imposed under the *Building and Construction Industry Training Levy Act 1990*; and
 - (b) any penalty under section 24; and
 - (c) all moneys borrowed by the Board under section 20; and
 - (d) any moneys derived from investment by the Board under section 19; and
 - (e) any other moneys lawfully received by, made available to, or payable to the Board.
- (2) An account called the Building and Construction Industry Training Fund is to be established —
- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the moneys referred to in subsection (1) are to be credited.

[Section 17 amended: No. 77 of 2006 Sch. 1 cl. 17(2).]

18. Fund, application of

There shall be paid from the moneys from time to time in the Fund —

- (a) the remuneration and allowances payable to members and other persons referred to in section 16; and
- (b) any moneys the Board has agreed to pay to a collection agency for carrying out functions under this Act; and
- (c) interest on and repayment of moneys borrowed under section 20; and

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- (d) all expenditure approved by the Board as a result of implementing operational plans approved by the Minister under section 8; and
- (e) any refund under section 21(3), 22 or 23; and
- (f) all other expenditure lawfully incurred by the Board in the exercise or performance of its functions.

[Section 18 amended: No. 6 of 1998 s. 10(2).]

19. Temporary investment of moneys

Moneys standing to the credit of the Fund may, until required by the Board for the purposes of this Act, be temporarily invested or dealt with by the Board in such manner as the Treasurer approves.

20. Power to borrow from Treasurer

The Board may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment, payment of interest or any other matter as the Treasurer imposes.

Part 4 — Collection of levy

21. Payment of levy

- (1) Every project owner shall —
 - (a) before commencing any construction work for which a permit is required, pay to a collection agency the levy in respect of that construction work based on the value of the construction work estimated under Schedule 2; and
 - (b) before commencing any construction work for which a permit is not required —
 - (i) notify the Board of the construction work and the value of the construction work estimated under Schedule 2; and
 - (ii) pay to the Board the levy in respect of that construction work based on the value of that work as notified to the Board;and
 - (c) where, on the completion of construction work, the value of the construction work varies by an additional amount of \$25 000 or more (after adjustment has been made for inflation in the prescribed manner) from the value of that work as estimated for the purposes of paragraph (a) or (b), notify the Board of that variation.
- (2) Subsection (1) applies to a project owner whether or not the project owner —
 - (a) applies to the Board for a reduction in, or an exemption from, a levy under section 25B; or
 - (b) appeals to the Minister under section 25C.
- (3) If, as a result of an application or appeal referred to in subsection (2), a project owner pays a levy that is later reduced, or from which an exemption is later granted, the Board shall refund from the Fund to the project owner the amount appropriate to that reduction or exemption.

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- (4) It is declared, to avoid doubt —
- (a) that regulation 6 has always been valid; and
 - (b) that the estimation of the value of construction work as prescribed in regulation 6 has always been authorised; and
 - (c) that the doing of any of the following on the basis of the value so estimated has always been valid —
 - (i) the imposition of the levy;
 - (ii) the calculation and collection or recovery of a required amount;
 - (iii) the payment to the Fund of a required amount collected or recovered.

- (5) In subsection (4) —

regulation 6 means the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991* regulation 6 as originally made and as amended from time to time until its repeal by the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 2009* section 7;

required amount means —

- (a) an amount of levy; or
- (b) an amount under section 22(b) or 24.

[Section 21 amended: No. 6 of 1998 s. 10(1); No. 6 of 2009 s. 4; No. 24 of 2011 s. 159(8).]

21A. Payment of levy by instalments

- (1) Despite section 21, a project owner liable to pay a levy in respect of construction work may pay the levy by instalments if the value of the construction work, estimated for the purposes of section 21(1)(a) or (b), is \$500 million or more.

- (2) The amount for each instalment is calculated using the following equation —

$$IA = \frac{LP}{PP}$$

where —

- IA is the amount of each instalment of the levy payable in respect of the construction work;
- LP is the levy payable under section 21 in respect of the construction work;
- PP is the payment period for the construction work, expressed in years (rounded down to the nearest whole year).

- (3) In subsection (2) —

payment period, for the construction work, means —

- (a) the estimated period during which the construction work is to be carried out as agreed to by the Board and the project owner; or
- (b) if the Board and the project owner are unable to agree to an estimate — the period during which the construction work is to be carried out as estimated by the Board; or
- (c) if the Minister determines a period over which the levy is payable for the construction work under subsection (4) — that period.
- (4) On application by the project owner in the approved form, the Minister may, after consultation with the Board, determine a period over which the levy is payable for the construction work.
- (5) A period determined by the Minister under subsection (4) prevails over any estimated period during which the construction work is to be carried out.

[Section 21A inserted: No. 23 of 2020 s. 5.]

s. 21B

21B. Time for payment of instalments

- (1) An instalment is due for payment —
 - (a) if it is the first instalment — on the day on which the whole of the levy amount would be due for payment if it were not payable by instalments; and
 - (b) if it is another instalment — on the day that is 12 months after the day on which the previous instalment was due for payment.
- (2) If the project owner does not pay the first instalment on or before the day on which the instalment is due for payment, the whole of the levy amount payable in respect of the construction work becomes due for payment.
- (3) The Board may accept the payment of an instalment, other than the first instalment, that is made after the day on which it was due for payment and the instalment is, if the Board so directs, taken to have been paid on the day on which it became due for payment.

[Section 21B inserted: No. 23 of 2020 s. 5.]

22. Adjustment of amount paid after completion of construction work

Where on the completion of construction work the Board is satisfied that the value of construction work varies by \$25 000 or more (after adjustment has been made for inflation in the prescribed manner) from the value of that work as estimated for the purposes of section 21(1)(a) or (b) —

- (a) the Board shall refund from the Fund to the project owner an amount equal to the extra amount paid, where the value of the construction work was over estimated; and
- (b) the project owner shall pay to the Board or to a collection agency an amount equal to the extra amount that would have been payable if the estimated value of

the construction work had been the actual value of that work, where the value of the construction work was under estimated.

[Section 22 amended: No. 6 of 1998 s. 10(3).]

23. Cancellation of construction work, refund payable

If construction work, or a part of any construction work, is cancelled after the project owner has paid the levy, or an instalment of the levy, in respect of that work, the Board shall refund from the Fund to the project owner the amount paid in respect of the value of the cancelled construction work on proof of the cancellation to the satisfaction of the Board.

[Section 23 amended: No. 23 of 2020 s. 6.]

24. Penalty for late payment

(1) In this section —

penalty period means —

- (a) for subsection (3) — the period starting on the day construction work commenced and ending on the day the whole of the levy amount payable in respect of the construction work is paid; and
 - (b) for subsection (5) — the period starting on the day the instalment became due for payment and ending on the day the instalment is paid.
- (2) Subsection (3) applies if a project owner is not paying the levy in respect of construction work in instalments under section 21A.
- (3) If the construction work is commenced before the project owner pays the levy, the project owner is liable to pay to the Board, by way of penalty, an amount calculated for the penalty period at a prescribed rate on the amount of the levy unpaid.
- (4) Subsection (5) applies if a project owner is paying the levy in respect of construction work in instalments under section 21A.

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- (5) If the project owner does not pay an instalment, other than the first instalment, before it is due for payment, the project owner is liable to pay to the Board, by way of penalty, an amount calculated for the penalty period at a prescribed rate on the amount of the instalment unpaid.

[Section 24 inserted: No. 23 of 2020 s. 7.]

25. Recovery of levy and other amounts

The Board may recover —

- (a) amounts of levy that are due for payment; and
- (b) amounts due under sections 22 and 24,

in any court of competent jurisdiction.

25A. Minister may establish criteria etc. for reduction in, or exemption from, levy

- (1) After consultation with the Board, the Minister may publish a notice in the *Gazette* providing that, if specified conditions and criteria relating to —
- (a) the provision of training arrangements; or
 - (b) the carrying out of construction work for charitable purposes,

by a project owner are met by that project owner, the Board shall grant a specified reduction in, or exemption from, the levy payable by the project owner under this Part.

- (2) The Minister may amend or revoke a notice under subsection (1) by a notice published in the *Gazette*.

- (3) In subsection (1) —

specified means specified in the notice referred to in that subsection.

[Section 25A inserted: No. 6 of 1998 s. 11.]

25B. Applying for and granting reduction in, or exemption from, levy

- (1) If a notice is published under section 25A(1), a project owner may apply to the Board, in a form approved by the Board, for a reduction in, or an exemption from, the levy payable by the project owner under this Part.
- (2) On receiving an application under subsection (1), the Board —
 - (a) shall determine in accordance with the conditions and criteria specified in the notice published under section 25A(1) —
 - (i) whether or not to reduce the levy payable by the applicant and, if so, the amount of the reduction; or
 - (ii) whether or not to grant an exemption from the levy payable by the applicant,as the case requires; and
 - (b) shall notify the applicant accordingly.

[Section 25B inserted: No. 6 of 1998 s. 11.]

25C. Dissatisfied applicant may appeal to Minister

- (1) A project owner who is dissatisfied with a determination by the Board under section 25B(2) may appeal to the Minister, in a form approved by the Board, setting out the grounds on which the project owner is dissatisfied with the determination.
- (2) An appeal by a project owner under subsection (1) shall be made within 30 days after notification of the determination that is the subject of the appeal is given to the project owner under section 25B(2).
- (3) On receiving an appeal under subsection (1), the Minister shall review the determination by the Board and may appoint a

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person who, in the Minister's opinion, is independent of the Board and the appellant —

- (a) to investigate any matters referred to in the appeal, as directed by the Minister; and
 - (b) to make written recommendations in relation to those matters to the Minister.
- (4) After reviewing the determination by the Board and considering any recommendations made under subsection (3), the Minister —
- (a) shall confirm or vary the determination or cancel the determination and substitute the Minister's determination; and
 - (b) shall notify the Board and the appellant accordingly.
- (5) A determination that is confirmed, varied or cancelled and substituted by the Minister is final.
- (6) A report of a determination that is varied or cancelled and substituted by the Minister shall be included in the annual report submitted by the accountable authority of the Board under Part 5 of the *Financial Management Act 2006*.

[Section 25C inserted: No. 6 of 1998 s. 11; amended: No. 77 of 2006 Sch. 1 cl. 17(3).]

Part 5 — Miscellaneous

26. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

Subject to section 27(2), the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Board and its operations.

[Section 26 amended: No. 77 of 2006 Sch. 1 cl. 17(4).]

27. Collection agencies

- (1) The Board shall appoint such persons or bodies to be collection agencies for the purposes of this Act as the Board thinks fit.
- (2) Notwithstanding any provision of the *Financial Management Act 2006* to the contrary, a collection agency shall collect levy and pay levy to the Fund in accordance with prescribed procedures.
- (3) A collection agency may be paid such moneys for carrying out its functions under this Act as the Board determines.

[Section 27 amended: No. 77 of 2006 Sch. 1 cl. 17(5).]

28. Authorised persons, appointment and functions of

- (1) The Board may, in writing appoint a person to be an authorised person for the purposes of this Act.
- (2) Every authorised person appointed under subsection (1) shall be issued with a certificate of appointment in a form prescribed —
 - (a) signed by the chairperson; and
 - (b) specifying that the person is an authorised person for the purposes of this Act; and
 - (c) containing a brief statement summarizing the nature of the powers of an authorised person under this Act.

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- (3) An authorised person shall produce the certificate referred to in subsection (2) whenever required to do so by any person in respect of whom an authorised person has, or is about to, exercise any power conferred on the authorised person under this section.
- (4) A certificate purporting to have been furnished under subsection (2) is, without proof of the signature of the chairperson, evidence in any court of the appointment to which the certificate purports to relate.
- (5) An authorised person may, by notice in writing given to a person require the person to submit to the authorised person, or to the Board, within such reasonable time as is specified in the notice, such information or documents relevant to the operation of this Act as is specified in the notice.
- (6) An authorised person may require a person to verify by statutory declaration information to be submitted under subsection (5).
- (7) If authorised in writing by the Board either in general or in a particular case, an authorised person may, for the purposes of this Act —
 - (a) at all reasonable times enter, inspect and examine any building or other place; and
 - (b) conduct any examination or inquiry as the authorised person considers necessary to ascertain whether there has been compliance with this Act; and
 - (c) require the production of, examine, and take copies or extracts of, any documents.

[Section 28 amended: No. 6 of 1998 s. 4(2).]

29. Prosecutions of offences

- (1) Proceedings for an offence against this Act may be instituted by the Board or any person authorised to do so by the Board.

- (2) A prosecution for an offence against this Act must be commenced within 2 years after the date on which the offence was allegedly committed.

[Section 29 amended: No. 84 of 2004 s. 80.]

30. Offences

- (1) A person shall not —
- (a) fail to notify the Board of construction work and its estimated value in accordance with section 21(1)(b);
 - (aa) knowingly provide in an application to the Board under section 25B(1), or in an appeal to the Minister under section 25C(1), any information or document that is false or misleading in a material particular;
 - (b) knowingly provide to the Board, or to a collection agency or to an authorised person any information or document that is false or misleading in a material particular regarding construction work and its value, or refuse to provide such document or information when required to do so under section 28;
 - (c) commence construction work before paying the levy due in respect of the construction work;
 - (d) fail to notify the Board that, on completion of construction work the actual value of the work varied from the value of the work estimated for the purposes of section 21(1)(a) or (b) by an additional amount of \$25 000 or more (after adjustment has been made for inflation in the prescribed manner).
- (2) A person who contravenes subsection (1) commits an offence the penalty for which is —
- (a) in the case of a natural person, \$20 000; or
 - (b) in the case of a body corporate, \$50 000.

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- (3) A person is not excused from complying with a requirement under this Act to provide information or documents on the ground that to do so might tend to incriminate or render the person liable to a penalty, but information or documents provided by a person when so required is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the information or document.

[Section 30 amended: No. 6 of 1998 s. 10(4) and 12.]

31. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[Section 31 amended: No. 6 of 1998 s. 13.]

32. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 3 years from the commencement of the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 2004* and thereafter at intervals of 5 years calculated from the date on which the original report is laid under subsection (3).
- (2) In the course of each review the Minister is to consider and have regard to —
- (a) the effectiveness of the Board; and
 - (b) the attainment of the objects of this Act; and
 - (c) the need for this Act to continue in operation; and
 - (d) any other matters that appear to the Minister to be relevant.

- (3) The Minister is to prepare a report following each review and, as soon as practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

[Section 32 inserted: No. 9 of 2004 s. 4.]

[33. Omitted under the Reprints Act 1984 s. 7(4)(e).]

[34, 35. Deleted: No. 9 of 2004 s. 5.]

Schedule 1 — Members and proceedings of the Board

[s. 15]

[Heading amended: No. 19 of 2010 s. 4.]

1. Term of office

- (1) The chairperson shall hold office for such term, not exceeding 5 years, as is specified in the instrument of appointment and is eligible for reappointment, but cannot hold office for more than 10 consecutive years.
- (2) A member, other than the chairperson, shall hold office for such term, not exceeding 3 years, as is specified in the instrument of appointment and is eligible for reappointment, but cannot hold office for more than 10 consecutive years.
- (3) A member whose term of office expires without a person having been appointed to fill the vacancy continues in office until whichever of the following occurs first —
 - (a) a person is appointed to fill the vacancy;
 - (b) a period of 3 months elapses after the expiry of the term of office.

[Clause 1 amended: No. 6 of 1998 s. 4(3); No. 23 of 2020 s. 8.]

2. Members, remuneration and allowances of

A member shall be paid such remuneration and allowances as the Minister, on the recommendation of the Public Sector Commissioner, from time to time determines.

[Clause 2 amended: No. 6 of 1998 s. 16(1); No. 39 of 2010 s. 89.]

3. Proceedings not affected by irregularities

An act, decision or proceeding of the Board, or an act or decision of a member or person acting under the direction of the Board or a member, shall not be invalid or called into question by reason only of any defect or irregularity in —

- (a) the constitution of the Board; or
- (b) the appointment of a member.

4. Vacation of office

- (1) A member may resign from office by notice in writing delivered to the Minister.
- (2) A member may be removed from office by the Minister —
 - (a) if the Minister is satisfied that the member is permanently incapable of performing the duties of a member; or
 - (b) if the member is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth; or
 - (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
 - (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.

[Clause 4 amended: No. 10 of 2001 s. 33.]

5. Meetings

- (1) The procedure for convening meetings of the Board and the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.
- (2) The first meeting of the Board shall be convened by the chairperson.
- (3) The Board shall meet at least 4 times in every year at intervals of not more than 6 months.
- (4) The chairperson may at any time and shall when requested to do so by not less than 3 members convene a meeting of the Board to be held at a place and time determined by the chairperson.

[Clause 5 amended: No. 6 of 1998 s. 4(3) and 16(2).]

6. Who presides at meetings

At a meeting of the Board —

- (a) the chairperson shall preside; or

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- (b) in the absence of the chairperson, the member elected by the members present to act in the place of the chairperson shall preside.

[Clause 6 amended: No. 6 of 1998 s. 4(3).]

7. Voting

- (1) At a meeting of the Board where any question requiring a vote arises the question shall be resolved by a majority of the votes of the members present.

[(2) repealed]

[Clause 7 amended: No. 6 of 1998 s. 16(3) and (4).]

8. Quorum

At a meeting of the Board 5 members constitute a quorum.

[Clause 8 amended: No. 6 of 1998 s. 16(5); No. 23 of 2020 s. 9.]

9. Minutes

The Board shall cause accurate minutes of each of its meetings to be recorded and preserved.

10. Common seal and execution of documents by Board

- (1) A document is duly executed by the Board if —
 - (a) the common seal of the Board is affixed in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the Board by the member or members authorised by the Board to do so.
- (2) The common seal of the Board shall not be affixed to any document except by resolution of the Board.
- (3) The common seal of the Board shall be affixed to a document in the presence of 2 members, or by one member and any person appointed by the Board under section 16 as the chief executive of the Board, and each of them shall sign the document to attest that the common seal was so affixed.
- (4) The common seal of the Board shall —
 - (a) be in a form determined by the Board; and

- (b) be kept in such custody as the Board directs; and
 - (c) not be used except as authorised by the Board.
- (5) When a document purporting to bear the common seal of the Board is produced before any court, judge or person acting judicially, that court, judge or person shall unless the contrary is proved, presume that —
- (a) the document bears that common seal; and
 - (b) that common seal was duly affixed to that document.

[Clause 10 amended: No. 6 of 1998 s. 16(6).]

Schedule 2 — Estimating the value of construction work

[s. 21]

[Heading inserted: No. 6 of 2009 s. 5.]

1. Terms used

In this Schedule —

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

relevant components means —

- (a) all goods (including manufactured goods) forming part of the construction work; and
- (b) labour; and
- (c) services necessary; and
- (d) fees payable; and
- (e) overheads to be met; and
- (f) profit margin.

[Clause 1 inserted: No. 6 of 2009 s. 5.]

2. Estimated value for s. 21(1)(a) and (b)

For the purposes of section 21(1)(a) and (b) —

- (a) where the construction work is to be carried out under a contract and the contract price includes value for at least each of the relevant components — the estimated value of the construction work is the contract price (including the GST); and
- (b) where the construction work is to be carried out —
 - (i) other than under a contract; or
 - (ii) under a contract the contract price for which does not include value for each of the relevant components,
the estimated value of the construction work is the sum of the value (including the GST) of the relevant components.

[Clause 2 inserted: No. 6 of 2009 s. 5.]

Notes

This is a compilation of the *Building and Construction Industry Training Fund and Levy Collection Act 1990* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---------------|---|
| <i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i> ³ | 76 of 1990 | 20 Dec 1990 | s. 1 and 2: 20 Dec 1990; Act other than s. 1 and 2: 1 Jul 1991 (see s. 2 and <i>Gazette</i> 28 Jun 1991 p. 3101) |
| <i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2) | 32 of 1994 | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948) |
| <i>Local Government (Consequential Amendments) Act 1996</i> s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| <i>Vocational Education and Training Act 1996</i> s. 71(1) | 42 of 1996 | 16 Oct 1996 | 1 Jan 1997 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301) |
| <i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998</i> ⁴ | 6 of 1998 (as amended by No. 9 of 2004 s. 6) | 30 Apr 1998 | s. 1 and 2: 30 Apr 1998; Act other than s. 1 and 2: 19 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433) |
| Reprint of the <i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i> as at 9 Mar 2001 (includes amendments listed above) | | | |
| <i>Corporations (Consequential Amendments) Act 2001</i> Pt. 10 | 10 of 2001 | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285) |
| <i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 2004</i> | 9 of 2004 | 18 Jun 2004 | 18 Jun 2004 (see s. 2) |
| Reprint 2: The <i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i> as at 10 Sep 2004 (includes amendments listed above) | | | |

Building and Construction Industry Training Fund and Levy Collection Act 1990

Notes Other notes

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|--|
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| <i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 17 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137) |
| <i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 2009</i> Pt. 2 | 6 of 2009 | 19 May 2009 | 20 May 2009 (see s. 2(b)) |
| <i>Standardisation of Formatting Act 2010</i> s. 4 | 19 of 2010 | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341) |
| <i>Public Sector Reform Act 2010</i> s. 89 | 39 of 2010 | 1 Oct 2010 | 1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563) |
| <i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 2010</i> | 47 of 2010 | 12 Nov 2010 | s. 1 and 2: 12 Nov 2010 (see s. 2(a)); Act other than s. 1 and 2: 13 Nov 2010 (see s. 2(b)) |
| Reprint 3: The Building and Construction Industry Training Fund and Levy Collection Act 1990 as at 4 Mar 2011 (includes amendments listed above) | | | |
| <i>Building Act 2011</i> s. 159 | 24 of 2011 | 11 Jul 2011 | 2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033) |
| <i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 2020</i> | 23 of 2020 | 27 May 2020 | s. 1 and 2: 27 May 2020 (see s. 2(a)); Act other than s. 1 and 2: 28 May 2020 (see s. 2(b)) |
| <i>Work Health and Safety Act 2020</i> Pt. 15 Div. 4 Subdiv. 1 | 36 of 2020 | 10 Nov 2020 | 31 Mar 2022 (see s. 2(1)(c) and SL 2022/18 cl. 2) |

Other notes

- ¹ Repealed by the *Fisheries Legislation (Consequential Provisions) Act 1991*. Now see the *Commonwealth Fisheries Management Act 1991* (Cwlth).
- ² Repealed by the *Offshore Petroleum (Repeals and Consequential Amendments) Act 2006* (Cwlth). Now see *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth).

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- ³ This Act shall be read as one with the *Building and Construction Industry Training Levy Act 1990* (see s. 3 of that Act).
- ⁴ The *Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998* s. 7(2) reads as follows:
- (2) A person holding office as a member of the Board immediately before the day on which this Act comes into operation ceases to hold office on that day but, subject to the principal Act as amended by this Act, is eligible for reappointment to the Board.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined term | Provision(s) |
|---|---------------------|
| authorised person | 3(1) |
| Board..... | 3(1) |
| building and construction industry..... | 3(1) |
| chairperson..... | 3(1) |
| collection agency | 3(1) |
| construction work | 3(1) |
| Fund | 3(1) |
| GST..... | Sch. 2 cl. 1 |
| industry | 8(1) |
| levy | 3(1) |
| member | 3(1) |
| operational plan..... | 8(1) |
| payment period | 21A(3) |
| penalty period | 24(1) |
| permit..... | 3(1) |
| project owner | 3(1) |
| regulation 6 | 21(5) |
| relevant components | Sch. 2 cl. 1 |
| required amount | 21(5) |
| specified | 25A(3) |