

WESTERN AUSTRALIA

---

---

**BUILDING AND CONSTRUCTION  
INDUSTRY TRAINING FUND AND  
LEVY COLLECTION AMENDMENT  
ACT 1998**

---

**No. 6 of 1998**

---

**AN ACT to amend, and to provide for the expiry of, the *Building and Construction Industry Training Fund and Levy Collection Act 1990*, to provide for the repeal of the *Building and Construction Industry Training Levy Act 1990*, and for related purposes.**

*[Assented to 30 April 1998.]*

The Parliament of Western Australia enacts as follows:

s. 1 No. 6] *Building and Construction Industry  
Training Fund and Levy Collection  
Amendment Act 1998*

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998*.

### **Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

### **Principal Act**

3. In this Act the *Building and Construction Industry Training Fund and Levy Collection Act 1990\** is referred to as the principal Act.

[\* Act No. 76 of 1990.

*For subsequent amendments see 1996 Index to  
Legislation of Western Australia, Table 1, p. 24.]*

**PART 2 — PRINCIPAL ACT AMENDED**

**Section 3 amended, and consequential amendments**

4. (1) Section 3 (1) of the principal Act is amended by deleting the definition of “presiding member” and inserting in the appropriate alphabetical position the following definition —

“**“chairperson”** means the chairperson of the Board appointed under section 10 (3);  
”.

(2) Section 28 (2) (a) and (4) of the principal Act are amended by deleting “presiding member” and substituting the following —

“ chairperson ”.

(3) The provisions of Schedule 1 to the principal Act set out in the table to this subsection are amended by deleting “presiding member” in each place where it occurs and substituting in each place the following —

“ chairperson ”.

**Table**

clause 1 (1)	clause 5 (4) (twice)
clause 1 (2)	clause 6 (3 times)
clause 5 (2)	

**Section 7 amended**

5. Section 7 (1) of the principal Act is amended by inserting after paragraph (b) the following paragraph —

“

- (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;

”.

**Section 8 amended**

6. (1) Section 8 (1) of the principal Act is amended by deleting “industry.” and substituting the following —

“

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 occupational safety and health 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) Section 8 (2) and (3) of the principal Act are repealed and the following subsection is substituted —

“

(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) Section 8 (9) of the principal Act is repealed.

**Section 10 repealed and a section substituted; members of Board cease to hold office**

7. (1) Section 10 of the principal Act is repealed and the following section is substituted —

“

**Membership of Board**

**10.** (1) The Board shall consist of 7 members appointed by the Minister after consultation with the bodies known as —

- (a) the Master Builders’ Association of Western Australia (Union of Employers Perth);

No. 6]  
s. 7

*Building and Construction Industry  
Training Fund and Levy Collection  
Amendment Act 1998*

- (b) the Housing Industry Association Limited (Western Australian Division);
- (c) the Construction Contractors Association of Western Australia;
- (d) the Master Plumbers and Mechanical Services Association of Western Australia;
- (e) the Master Painters Decorators and Signwriters Association of Western Australia;
- (f) the Electrical Contractors Association of Western Australia (Inc);
- (g) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers;
- (h) the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Workers' Union of Australia (Western Australian Branch); and
- (i) the Australian Manufacturing Workers' Union.

(2) At least 2 of the members shall be, in the Minister's opinion, independent of the bodies referred to in subsection (1).

(3) One of the independent members referred to in subsection (2) shall be appointed by the Minister as the chairperson of the Board.

”.

(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.

**Section 11 amended**

8. (1) Section 11 (1) of the principal Act is amended by deleting “for each member and that appointee shall act in the place of the” and substituting the following —

“ to act in the place of a ”.

(2) Section 11 (2) of the principal Act is repealed.

**Section 14 amended**

9. Section 14 (3) of the principal Act is repealed.

**Section 21 amended, and consequential amendments**

10. (1) Section 21 of the principal Act is amended —

(a) by inserting after the section designation “21.” the subsection designation “(1)”; and

(b) by inserting the following subsections —

“

(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

No. 6]  
s. 10

*Building and Construction Industry  
Training Fund and Levy Collection  
Amendment Act 1998*

(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.

”.

(2) Section 18 (e) of the principal Act is amended by deleting “section 22” and substituting the following —

“ section 21 (3), 22 ”.

(3) Section 22 of the principal Act is amended by deleting “section 21 (a)” and substituting the following —

“ section 21 (1) (a) ”.

(4) Section 30 (1) of the principal Act is amended —

(a) in paragraph (a), by deleting “section 21 (b);” and substituting the following —

“ section 21 (1) (b); ”; and

(b) in paragraph (d), by deleting “section 21 (a)” and substituting the following —

“ section 21 (1) (a) ”.



**Sections 25A, 25B, and 25C inserted**

**11.** After section 25 of the principal Act the following sections are inserted in Part 4 —

“

**Minister may publish notice relating to reduction in, or exemption from, levy**

**25A.** (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.

**Project owner may apply to Board for reduction in, or exemption from, levy**

**25B.** (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.

**Dissatisfied applicant may appeal to Minister**

**25C.** (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 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 section 66 of the *Financial Administration and Audit Act 1985*.

”.

### **Section 30 amended**

**12.** Section 30 (1) of the principal Act is amended by inserting after paragraph (a) the following paragraph —

“

(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;

”.

**Section 31 amended**

**13.** Section 31 of the principal Act is amended by deleting “, on the recommendation of the Board,”.

**Section 32 amended**

**14.** (1) Section 32 (1) of the principal Act is amended by deleting “6 months commencing on the third anniversary of the day on which this Act comes into operation” and substituting the following —

“ 12 months before the date referred to in section 35 (1) (a) ”.

(2) Section 32 (2) of the principal Act is amended by deleting “within 6 sitting days of that House next following the completion of that report” and substituting the following —

“  
not less than 4 months before the date referred to in  
section 35 (1) (a) ”.

**Sections 34 and 35 inserted**

**15.** After section 33 of the principal Act the following sections are inserted —

“  
***Building and Construction Industry Training Levy Act 1990*** repealed

**34.** On the expiry of this Act under section 35, the *Building and Construction Industry Training Levy Act 1990* is repealed.

**Duration of Act**

- 35.** (1) This Act expires —
- (a) on 31 December 2002; or
  - (b) if a later day is fixed under subsection (2), on that later day.

(2) The Governor may, by proclamation made before 1 December 2002, fix a day that is later than 31 December 2002 as the day on which this Act expires.

”.

**Schedule 1 amended**

**16.** (1) Clause 2 of Schedule 1 to the principal Act is amended by deleting “Public Service Commissioner,” and substituting the following —

“ Minister for Public Sector Management, ”.

(2) Clause 5 (4) of Schedule 1 to the principal Act is amended by deleting “5 members” and substituting the following —

“ 3 members ”.

(3) Clause 7 (1) of Schedule 1 to the principal Act is amended by deleting “if and only if such majority is constituted by the prescribed majority”.

(4) Clause 7 (2) of Schedule 1 to the principal Act is repealed.

No. 6] *Building and Construction Industry*  
**s. 16** *Training Fund and Levy Collection*  
*Amendment Act 1998*

(5) Clause 8 of Schedule 1 to the principal Act is repealed and the following clause is substituted —

“

**Quorum**

**8.** At a meeting of the Board 4 members constitute a quorum.

”.

(6) Clause 10 (3) of Schedule 1 to the principal Act is amended by deleting “the presiding member and another member” and substituting the following —

“

2 members, or by one member and any person appointed by the Board under section 16 as the chief executive of the Board,

”.

**PART 3 — TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS APPLYING ON THE  
EXPIRY OF THE PRINCIPAL ACT**

**Interpretation**

17. In this Part —

**“Board”** means the Building and Construction Industry Training Board established under section 6 (1) of the principal Act;

**“Minister”** means the Minister to whom the administration of the *Vocational Education and Training Act 1996* is for the time being committed by the Governor;

**“the expiry day”** means the day on which the principal Act expires under section 35 of that Act, as amended by this Act;

**“the Fund”** means the Building and Construction Industry Training Fund established under section 17 of the principal Act;

**“the Training Trust Fund”** means the Building and Construction Industry Training Trust Fund established under section 18 of this Act.

**Training Trust Fund**

18. (1) On the expiry day, an account shall be established at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be known as the Building and Construction Industry Training Trust Fund.

No. 6] *Building and Construction Industry*  
s. 19 *Training Fund and Levy Collection*  
*Amendment Act 1998*

(2) For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the Training Trust Fund shall be taken to be a service of the department principally assisting the Minister in the administration of the *Vocational Education and Training Act 1996*.

(3) There shall be credited to the Training Trust Fund —

- (a) all moneys standing to the credit of the Fund immediately before the expiry day; and
- (b) all moneys payable to the Minister under section 20 (1) (a).

(4) There shall be charged to the Training Trust Fund —

- (a) all amounts due under section 18 of the principal Act immediately before the expiry day; and
- (b) those amounts that the Minister directs to be applied to the purposes referred to in section 19 of this Act.

(5) When the Treasurer is satisfied that there are no moneys left in the Training Trust Fund, and no moneys to be credited to the Training Trust Fund, the Treasurer shall by order published in the *Gazette* declare that the Training Trust Fund no longer exists.

**Minister may direct application of moneys in Training Trust Fund**

**19.** The Minister may direct that moneys standing to the credit of the Training Trust Fund be applied to purposes that are consistent with the purposes for which operational plans were, or could have been, formulated and prepared by the Board under section 8 of the principal Act, as amended by this Act.



**Transfer of assets, etc., of the Board, and appointment of Board members to terminate**

- 20.** (1) On the expiry day —
- (a) any moneys payable to the Board and outstanding on the expiry day become payable to the Minister at the time and in the manner in which those moneys would have been payable to the Board if the principal Act had continued in force after the expiry day;
  - (b) all assets of the Board become assets of the Minister without the need for any conveyance, assignment or assurance and —
    - (i) despite anything in the *Stamp Act 1921*, no duty is payable under that Act in respect of the passing of any of those assets; and
    - (ii) any person authorized by a written law to record and give effect to transactions affecting any estate or interest in land or other property is empowered to record and register in the appropriate manner any documents necessary to give effect to this subsection;
  - (c) all rights and liabilities of the Board become rights and liabilities of the Minister;
  - (d) any agreement, instrument, or policy of insurance to which the Board is a party has effect as if the Minister were substituted for the Board as a party to the agreement, instrument, or policy;
  - (e) all proceedings commenced before the expiry day by or against the Board and pending on the expiry day shall be taken to be proceedings commenced by or against the Minister;

- (f) anything done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (b) and (c) before the expiry day by, to, or in respect of the Board (to the extent that that thing has any force or effect) shall be taken to have been done or omitted to be done by, to, or in respect of the Minister; and
- (g) the Minister becomes the owner of all registers, documents, books, and other records (however compiled, recorded, or stored) relating to the Board and the exercise of its functions and of any tape, disc, or other device or medium relating to those records.

(2) The appointment of a person who, immediately before the expiry day, held office as a member of the Board terminates on the expiry day.

### **Financial Reporting**

**21.** As soon as possible after the expiry day the Minister shall cause sections 66 to 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the affairs of the Board —

- (a) for the period from 1 July last preceding the expiry day to the expiry day; and
- (b) if those sections have not been complied with before the expiry day in relation to a financial year that ended before the expiry day, for that financial year.

### **Transitional regulations**

**22.** On the expiry of the principal Act, the Governor may make regulations for the purpose of deleting from a written law any reference to the principal Act or to the Board.