



Western Australia

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

Reprinted as at 9 March 2001

Western Australia

Building and Construction Industry Training Fund and Levy Collection Act 1990

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Act to bind Crown	4
5.	Application off-shore	5

Part 2 — Building and Construction Industry Training Board

Division 1 — Establishment, functions and powers

6.	Board established	8
7.	Functions and powers of Board	8
8.	Operational plans	9
9.	Directions by Minister	10

Division 2 — Membership, constitution, proceedings, etc.

10.	Membership of Board	10
11.	Deputy members	11
12.	Relationship to Public Service	12
13.	Protection of members	12
14.	Disclosure of pecuniary interests	12
15.	Constitution and proceedings of Board — Schedule 1	13

Contents

	Division 3 — Staff	
16.	Staff	13
	Part 3 — Fund	
17.	Building and Construction Industry Training Fund	14
18.	Application of Fund	14
19.	Temporary investment of moneys	15
20.	Power to borrow from Treasurer	15
	Part 4 — Collection of levy	
21.	Payment of levy	16
22.	Adjustment of amount paid after completion of construction work	17
23.	Cancellation of construction work	17
24.	Penalty for late payment	17
25.	Recovery of levy and other amounts	18
25A.	Minister may publish notice relating to reduction in, or exemption from, levy	18
25B.	Project owner may apply to Board for reduction in, or exemption from, levy	19
25C.	Dissatisfied applicant may appeal to Minister	19
	Part 5 — Miscellaneous	
26.	Application of <i>Financial Administration and Audit Act 1985</i>	21
27.	Collection agencies	21
28.	Authorised persons	21
29.	Prosecution	22
30.	Offences	23
31.	Regulations	24
32.	Review of Act	24
33.	Consequential amendments to other Acts — Schedule 2	24
34.	<i>Building and Construction Industry Training Levy Act 1990</i> repealed	25
35.	Duration of Act	25

**Schedule 1 — Members and proceedings of
the Board**

1.	Term of office	26
2.	Remuneration and allowances of members	26
3.	Proceedings not affected by irregularities	26
4.	Vacation of office	26
5.	Meetings	27
6.	Member to preside	27
7.	Voting	27
8.	Quorum	28
9.	Minutes	28
10.	Common seal and execution of documents by Board	28

**Schedule 2 — Consequential amendments to
other Acts**

Notes

Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 9 March 2001

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*¹.

2. Commencement

This Act shall come into operation on the day on which the *Building and Construction Industry Training Levy Act 1990* comes into operation¹.

3. Interpretation

(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*;

“**building licence**” means a building licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*, or a licence to take down a building or part of a building under section 374A of that Act;

“**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 comes within the description of work in section 374 or 374A of the *Local Government (Miscellaneous Provisions) Act 1960*²,

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);

“project owner” in respect of any construction work means —

- (a) the person who is required to hold a building licence in respect of that construction work;
- (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.

s. 4

- (2) For the purposes of this Act, construction work shall be regarded as commencing —
- (a) where a building licence is required for the construction work, when any work the subject, or that is required to be the subject, of a building licence commences;
 - (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 has been issued before this Act comes into operation.

[Section 3 amended by No. 14 of 1996 s. 4; No. 42 of 1996 s. 71(1); No. 6 of 1998 s. 4(1).]

4. Act to bind 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 off-shore

- (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;
 - (ii) the project owner concerned is connected with the State;
 - (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;
 - (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;
 - (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.

s. 5

- (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;
 - (b) is resident in the State, normally or temporarily;
 - (c) being a body corporate, is registered, incorporated, or established under a law of the State or is for the purposes of the *Companies (Western Australia) Code*³ deemed to be related to such a body;
 - (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*; 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*;
 - (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.

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;
 - (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. Functions and powers of Board

- (1) The functions of the Board are —
 - (a) to ensure the efficient collection of levy;
 - (b) to control and administer the Fund;
 - (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;
 - (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 by 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 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) 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) repealed]

- (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 by No. 42 of 1996 s. 71(1); No. 6 of 1998 s. 6.]

9. Directions by Minister

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

Division 2 — Membership, constitution, proceedings, etc.

10. Membership of Board

- (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);

- (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.

[Section 10 inserted by No. 6 of 1998 s. 7(1).]

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) repealed]*
- (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 by 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 by No. 32 of 1994 s. 3(2).]

13. Protection of members

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. Disclosure of pecuniary interests

- (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) repealed]

- (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 by No. 6 of 1998 s. 9.]

15. Constitution and proceedings of Board — Schedule 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.
- (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 by 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*;
 - (b) any penalty under section 24;
 - (c) all moneys borrowed by the Board under section 20;
 - (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) The moneys referred to in subsection (1) shall be paid into and placed to the credit of an account —
 - (a) at the Treasury; or
 - (b) at a bank approved by the Treasurer,

to be called the “Building and Construction Industry Training Fund”.

18. Application of Fund

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;
- (b) any moneys the Board has agreed to pay to a collection agency for carrying out functions under this Act;
- (c) interest on and repayment of moneys borrowed under section 20;

- (d) all expenditure approved by the Board as a result of implementing operational plans approved by the Minister under section 8;
- (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 by 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 building licence is required, pay to a collection agency the levy in respect of that construction work based on the value of the construction work estimated as prescribed;
 - (b) before commencing any construction work for which a building licence is not required —
 - (i) notify the Board of the construction work and the value of the construction work estimated as prescribed; 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.

[Section 21 amended by No. 6 of 1998 s. 10(1).]

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 by No. 6 of 1998 s. 10(3).]

23. Cancellation of construction work

If construction work, or a part of any construction work, is cancelled after the project owner has paid 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.

24. Penalty for late payment

Where construction work is commenced before the project owner has paid the levy due in respect of that work, the project

s. 25

owner is liable to pay to the Board, by way of penalty, an amount calculated from the time the construction work commenced at a prescribed rate per annum on the unpaid levy.

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 publish notice relating to 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 by No. 6 of 1998 s. 11.]

25B. Project owner may apply to Board for 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 by 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 person

s. 25C

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 25C inserted by No. 6 of 1998 s. 11.]

Part 5 — Miscellaneous

26. Application of *Financial Administration and Audit Act 1985*

Subject to section 27(2), the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Board and its operations.

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 Administration and Audit Act 1985* 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.

28. Authorised persons

- (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;
 - (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.
- (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,

s. 29

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;
 - (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 by No. 6 of 1998 s. 4(2).]

29. Prosecution

- (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 complaint for an offence against this Act may be made at any time within 2 years from the time when the matter of complaint arose.

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.
- (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

s. 31

Act arising out of the false or misleading nature of the information or document.

[Section 30 amended by No. 6 of 1998 ss. 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 by No. 6 of 1998 s. 13.]

32. Review of Act

- (1) Within a period of 12 months before the date referred to in section 35(1)(a), the Minister shall cause an investigation and review to be conducted, and a report prepared, concerning —
 - (a) the effectiveness of the Board;
 - (b) the attainment of the objects of this Act;
 - (c) the need for this Act to continue in operation;
 - (d) any other matters that appear to the Minister to be relevant.
- (2) The Minister shall prepare a report based on the review of this Act under subsection (1) and shall cause the report to be laid before each House of Parliament not less than 4 months before the date referred to in section 35(1)(a).

[Section 32 amended by No. 6 of 1998 s. 14.]

33. Consequential amendments to other Acts — Schedule 2

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

**34. *Building and Construction Industry Training Levy Act 1990*
repealed**

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

[Section 34 inserted by No. 6 of 1998 s. 15.]

35. **Duration of Act**

(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.

[Section 35 inserted by No. 6 of 1998 s. 15.]

Schedule 1

Schedule 1

[Section 15]

Members and proceedings of the Board

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.
- (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.
- (3) A member, who does not sooner resign or is removed from office or whose office does not otherwise become vacant under clause 4, shall continue in office until the member's successor comes into office, notwithstanding that the term for which the member was appointed has expired.

2. Remuneration and allowances of members

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

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;
 - (b) if the member is an insolvent under administration, as that expression is defined in the *Companies (Western Australia) Code*³;
 - (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.

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.

6. Member to preside

At a meeting of the Board —

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

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*]

Schedule 1

8. Quorum

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

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;
 - (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.

[Schedule 1 amended by No. 6 of 1998 ss. 4(3) and 16.]

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(f).]

=====

Notes

- ¹ This reprint is a compilation as at 9 March 2001 of the *Building and Construction Industry Training Fund and Levy Collection Act 1990* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i>	76 of 1990	20 December 1990	1 July 1991 (see section 2 and <i>Gazette</i> 28 June 1991 p. 3101)	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 2</i>	32 of 1994	29 June 1994	Proclaimed 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p. 4948)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Vocational Education and Training Act 1996, section 71(1)</i>	42 of 1996	16 October 1996	Proclaimed 1 January 1997 (see section 2 and <i>Gazette</i> 12 November 1996 p. 6301)	
<i>Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998</i>	6 of 1998	30 April 1998	Proclaimed 19 April 1999 (see section 2 and <i>Gazette</i> 9 April 1999 p. 1433)	Section 7(2) transitional ⁴ Part 3: transitional ⁵

² Formerly the *Local Government Act 1960*. Text changed under the *Reprints Act 1984* s. 7(3)(gb).

³ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

⁴ Section 7(2) of the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998* (No. 6 of 1998) 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.

”

⁵ Part 3 of the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 1998* (No. 6 of 1998) reads as follows —

“

Part 3 — Transitional provisions and consequential amendments applying on the expiry of the principal Act

17. Interpretation

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.

18. Training Trust Fund

- (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.

- (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.

19. Minister may direct application of moneys in Training Trust Fund

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.

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

- (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.

21. Financial Reporting

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.

22. Transitional regulations

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.

”

Defined Terms

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)
an operational plan.....	8(1)
authorised person	3(1)
Board.....	3(1)
building and construction industry.....	3(1)
building licence.....	3(1)
chairperson.....	3(1)
collection agency	3(1)
construction work	3(1)
Fund	3(1)
levy	3(1)
member	3(1)
project owner	3(1)
specified.....	25A(3)
the industry	8(1)