

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY BILL 1999

EXPLANATORY MEMORANDUM

Circulated by authority of

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**BUILDING AND CONSTRUCTION INDUSTRY
TRAINING LEVY BILL 1999**

OUTLINE

In recognition of the importance of training to the building and construction industry this Bill sets up a fund, administered by a board and funded by a levy on building and construction work.

**BUILDING AND CONSTRUCTION INDUSTRY
TRAINING LEVY BILL 1999**

PART 1 - PRELIMINARY

Clauses 1 and 2 are formal requirements. Clause 1 refers to the short title of the Bill and clause 2 sets out the commencement arrangements.

Clause 3 - Interpretation

Clause 3 gives the definitions for terms which are used in the Bill.

**PART 2 - THE BUILDING AND CONSTRUCTION
INDUSTRY TRAINING FUND BOARD**

Clause 4 establishes the Building and Construction Industry Training Fund Board as a body corporate with a common seal.

Clause 5 describes the functions of the Board. It administers the Fund and directs that payments be made, in accordance with Training Plans.

Clause 6 sets out the powers of the Board.

Clause 7 specifies that the Board will consist of three members - a chairperson, an employer representative and an employee representative. These will be appointed by the Minister for three years. The employer and employee members represent the interests of the building and construction industry. Members will be eligible for reappointment.

The Board will not be prevented from performing its duties by a vacancy in its membership.

Clause 8 allows the Minister to grant a leave of absence to a member.

Clause 9 specifies that a member must disclose the nature of any direct or indirect personal or pecuniary interest to the Board.

Any disclosures are to be recorded in the minutes and the member should not be present during deliberations on that matter nor should the member take part in any Board decision on that matter unless otherwise determined by the Board.

The clause provides that the member should not be present during deliberations on nor should the member take part in any Board decision on the issue of whether the Board should make a determination in relation to their disclosure.

Clause 10 allows for a member to resign by notice in writing signed by the member and delivered to the Minister.

Clause 11 sets out the conditions for the termination of the members appointed by the Minister. These conditions include bankruptcy; absent without leave from three consecutive Board meetings; failure without reasonable excuse to comply with clause 9 (Disclosure of interest) or conviction of an offence punishable by imprisonment for one year or longer.

Clause 12 allows the Minister to make acting appointments for up to 12 months if there is a vacancy or if a member is unable to perform the functions of the office. The Minister may at any time issue an instrument to terminate an acting appointment.

This clause also provides for the probity of any action taken by or in relation to an acting member if it was taken in good faith and in ignorance of any ground of invalidity.

Clause 13 specifies the processes and procedures for Board meetings, including how meetings are convened; quorum provisions; chairing arrangements; requirement to keep minutes; and voting arrangements.

The clause also allows the Board to determine other procedures for the convening of, and to be followed at, its meetings.

Clause 14 recognises the Board's need for administrative or secretarial services and the administration of the Fund in accordance with the Board's directions. These arrangements may be made with either the ACT Regional Building and Construction Industry Training Council Incorporated or any other person.

PART 3 - LEVY ON BUILDING AND CONSTRUCTION WORK

Division 1 - Preliminary

Clause 15 - Interpretation

Clause 15 gives the definitions for terms which are used in this Part of the bill.

Clause 16 sets the rate of levy at 0.2 per cent of the value of work which attracts the levy.

Division 2 - Liability for training levy

Clause 17 specifies that the levy is payable, except for exempt work, to the Board and that it is to be paid by the project owner.

Clause 18 - Calculation of training levy

This clause set out the method of calculating the levy as multiplying the value of the work by the rate of levy. It also includes the definition for “value of work”.

Division 3 - Assessment, payment and adjustment of training levy

Clause 19 sets out the conditions for the assessment and payment of a provisional levy which applies to work carried out after the commencement of this clause. This clause applies where building approval is required to commence or carry out work on or before the issue of the approval or before commencement of the work.

This clause also provides for the Board to assess what is a reasonable estimate of the amount of levy payable.

This clause provides that no work can be commenced or carried out unless the provisional levy has been paid to the Board. The penalties for failure to comply with this section are 50 penalty units for a natural person and 250 penalty units for a body corporate.

Clause 20 requires that a project owner notify the Board, within three months of completion or abandonment of the work. Sub-clause (1) acknowledges that “exempt work” is not covered by this clause. Sub-clause (2) requires the project owner to provide any documents and information needed by the Board to assess the training levy payable. Sub-clause (3) provides for the penalties for failure to comply with sub-clause (2). These are 50 penalty units for a natural person and 250 penalty units for a body corporate.

The Board is required to provide a written assessment of the training levy to the project owner as soon as practicable after compliance with sub-clause (2).

Clause 21 provides a mechanism for payment under certain conditions of a refund. These conditions are : if the project was abandoned before any work was carried out; the project was abandoned before completion but the work is exempt in its incomplete state; or the work, on completion, is exempt.

The project owner may apply in writing to the Board within three months of either the abandonment or completion of the work, for a certificate that no levy is payable.

Clause 22 sets out the conditions under which the amount paid as a provisional levy can be adjusted.

The adjustments include :

- a refund by the Board to the project owner of the excess where the provisional levy paid exceeds the training levy payable;

- payment by the project owner of the training levy where the provisional levy has not been paid - irrespective of whether or not clause 19 (Assessment and payment of provisional levy) has been breached;
- payment by the project owner of the excess where the training levy exceeds the provisional levy; and
- a refund of the provisional levy by the Board where a certificate has been issued under clause 21 (Refund of provisional levy paid in respect of exempt work).

Clause 22 also requires that payments be made within one month after either the relevant assessment or the issue of a relevant certificate.

PART 4 - THE BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND

Clause 23 requires the Board to establish and maintain the Building and Construction Industry Training Fund.

The Fund holds provisional and training levy moneys and interest earned on those moneys. The moneys in the Fund are the property of the Board and must be kept separate from all other Board property. The moneys in the Fund can only be spent in accordance with this legislation.

The Board is to administer the Fund in the manner approved in writing by the Minister.

Clause 24 sets out the purposes for which the Fund can be applied. The Fund can :

- meet the costs and expenses incurred in its administration by the Board;
- make payments identified under clause 14 (Administration);
- make payments as set out under clause 22 (Adjustment of levy);
- make payments approved by the Board under clause 28 (Funding for training).

PART 5 - BUILDING AND CONSTRUCTION INDUSTRY TRAINING PLANS

Clause 25 allows the Minister, by instrument, to approve a Building and Construction Industry Training Plan after consultation with the Council.

The clause provides that a Training Plan, must, in a calendar year, identify training needs in the industry that warrant support and provide an estimate of funds required to fulfil those needs.

The Minister must notify approval of a Training Plan in the *Gazette*.

Clause 26 provides for the inspection of current Training Plans at the Council's office during ordinary office hours.

Clause 27 sets out time frames for the application of Training Plans.

Training Plans have effect in the calendar year specified in the Plan. They have no effect, other than the first Training Plan, unless approved by the Minister on or before 30 June in the year immediately before the calendar year specified in the Plan.

If no Plan has been approved for a particular calendar year, and no Training Plan would otherwise be in place, then sub-clause 27 (3) allows the Plan for the previous calendar year to continue.

Clause 28 allows the Board to approve expenditure from the Fund for the Training Plan that has effect in the calendar year of its effect. It also precludes the Board from making commitments which exceed the amount in the Fund.

Under sub clause (3) money can only be approved if the training is provided by a registered provider. Sub clause (4) defines the terms "approved training" and "registered provider".

PART 6 - INSPECTORS

Clause 29 provides that inspectors are appointed, in writing, by the Board.

Clause 30 requires that the Board to provide photographic identification cards to inspectors.

The identification card must show the name and appointment of the inspector and include a recent photograph. The cards must be returned to the Board when an inspector ceases to be an inspector. Failure without a reasonable excuse to return the identification card incurs, on conviction, a fine of one penalty unit.

Clause 31 sets out entry provisions by inspectors. Inspectors, who on reasonable grounds believe that work is being carried out on any land or work has been carried out and the provisional levy or training levy has not been paid or has not been paid in full, may enter the land and any premises on the land during normal business hours. The inspector may use any assistance reasonably necessary to carry out his or her functions under Part 6.

An inspector may, either with the consent of the occupier of the land or premises, or, with a search warrant issued under clause 33 (Search warrants), exercise any powers under clause 34 (Powers of inspectors).

An inspector working under this clause cannot remain if he or she does not produce his or her identity card on request by the occupier.

Where there is no one in charge of the land present, an inspector must leave a note in a conspicuous position advising that he or she made an inspection under this clause.

Clause 32 requires that an inspector seeking entry under clause 31 (2) (a) (Powers of entry) must inform the occupier that he or she may refuse to give consent for entry.

The clause ensures that consent is to be in writing acknowledging that the occupier has been informed that he or she may refuse to give consent, that the occupier has given consent and the date and time on which consent was given and signed by the occupier.

If written consent signed by the occupier is not produced in evidence and a court needs to be satisfied that the occupier consented, it shall be presumed that the occupier did not consent. This presumption is rebuttable.

Clause 33 sub clause (1) provides for the issuing of a search warrant by a magistrate. The search warrant is issued after information on oath is placed before the magistrate alleging that an inspector has reasonable ground to suspect that there may be work where the provisional levy or training levy has not been paid or not been paid in full; or things connected with a particular offence against this legislation.

The information must set out the grounds.

The magistrate may issue a warrant authorising an inspector named in the warrant to :

- a) enter the land and any premises on the land;
- b) search the premises for things identified in clause 33 (1) (b); and
- c) exercise the powers under clause 34 (Powers of inspectors).

Sub-clause 33 (2) requires that any further information required by the magistrate concerning the grounds on which the warrant is being sought, be provided either orally or in writing by the informant or any other person. The magistrate must be satisfied that there are reasonable grounds for issuing the warrant. Unless both these requirements are met a magistrate shall not issue a warrant.

Sub-clause 33 (3) specifies what a warrant must contain. A warrant shall -

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence, or lack of compliance in relation to which the entry and search are authorised;
- (c) specify the time that entry is authorised - either specific hours or that the entry is authorised at any time of the day or night; and
- (d) specify the date on which the warrant ceases to have effect. This must not be more than one month after the date on which the warrant is issued.

Clause 34 identifies the powers of inspectors. Where an inspector enters land or premises in accordance with this Part of the legislation he or she may -

- (a) inspect and examine any work on the land including taking measurements;

- (b) require access to documents or records or the provision of information relevant to the calculation of training levy. The inspector may require this of any person apparently in charge of the land or premises. The information may include computer records;
- (c) inspect, make copies of or take extracts from, any document or record or any information made available to the inspector;
- (d) require any person apparently in charge of the land or premises to answer questions related to the calculation of the levy; and
- (e) require any person apparently in charge of the land or premises to assist as is necessary and reasonable, to enable the inspector to exercise his or her powers under this section.

A person cannot refuse to provide information or produce a document or other record on the ground that to do so may incriminate that person or expose them to civil penalty. However, the information or production of the document is not admissible in evidence in any proceedings other than for an offence under clause 36 (False or misleading information).

Clause 35 provides a penalty of 50 penalty units or six months imprisonment or both for an individual and 250 penalty units for a body corporate where a person obstructs or hinders an inspector in the performance of a function under the Act, or fails to comply with a requirement made by an inspector under clause 34 (Powers of inspectors).

Clause 36 provides a penalty of 50 penalty units or six months imprisonment or both for an individual and 250 penalty units for a body corporate for providing false or misleading information on a request under sub-clauses 34 (1) (d) or (e) (Powers of inspectors).

PART 7 - MISCELLANEOUS

Clause 37 enables regulations concerning this legislation to be made by the Executive.