



Australian Capital Territory

Building and Construction Industry Training Levy Act 1999

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About this republication

The republished law

This is a republication of the *Building and Construction Industry Training Levy Act 1999* effective from 21 November 1999 to 9 September 2001.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

As in force on
24 May 2001



Australian Capital Territory

Building and Construction Industry Training Levy Act 1999

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As in force on
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Australian Capital Territory

Building and Construction Industry Training Levy Act 1999

An Act to impose a levy for improving training in the building and construction industry

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building and Construction Industry Training Levy Act 1999*.

3 Definitions for Act

In this Act:

board means the Building and Construction Industry Training Fund Board established by section 4.

chairperson means the chairperson of the board.

council means the ACT Regional Building & Construction Industry Training Council Incorporated.

fund means the fund established under section 23 (1).

member means a person referred to in section 7 (1).

training levy means the levy payable under section 17.

training plan means a training plan approved under section 25.

work means—

- (a) work specified in the schedule; or
- (b) prescribed work.

Part 2 **The building and construction industry training fund board**

Division 1 **Establishment and functions**

4 **Establishment**

- (1) There is hereby established a board by the name of the Building and Construction Industry Training Fund Board.
- (2) The board—
 - (a) is a body corporate; and
 - (b) shall have a common seal.

5 **Functions**

The functions of the board are—

- (a) to administer the fund; and
- (b) to make payments, or direct that payments be made, from the fund in accordance with training plans.

6 **Powers**

The board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

7 **Members of the board**

- (1) The board shall consist of—
 - (a) a chairperson; and
 - (b) 2 persons to represent the interests of employers in the industry;
and
 - (c) 2 persons to represent the interests of employees in the industry.

- (2) A member—
- (a) shall be appointed by the Minister by instrument; and
 - (b) holds office, subject to this Act, for such period not exceeding 3 years as is specified in the instrument of appointment; and
 - (c) is eligible for reappointment.
- (3) The performance of a function of the board is not affected only by reason of a vacancy in the membership of the board.
- (4) In this section:
- industry* means the building and construction industry.

8 Leave of absence

The Minister may grant leave of absence to a member.

9 Disclosure of interest

- (1) A member who—
- (a) has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the board; and
 - (b) intends to attend, or attends, the meeting of the board at which the matter is likely to be, or is, considered;
- shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the board.
- (2) A disclosure shall be recorded in the minutes of the meeting and, unless the board otherwise determines, the member shall not—
- (a) be present during any deliberation of the board with respect to that matter; or
 - (b) take part in any decision of the board with respect to that matter.
- (3) A member referred to in subsection (1) shall not—

- (a) be present during any deliberation of the board for the purpose of considering whether to make a determination under subsection (2) in relation to that member; or
- (b) take part in the making by the board of such a determination.

10 Resignation

A member may resign his or her office by notice in writing signed by the member and delivered to the Minister.

11 Termination of appointment

The Minister shall terminate the appointment of a member if the member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors; or
- (b) is absent, except on leave granted under section 8, from 3 consecutive meetings of the board; or
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 9; or
- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.

12 Acting appointments

- (1) The Minister may, by instrument, appoint a person to act as a member of the board—
 - (a) during a vacancy in an office of a member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a member is for any reason unable to perform the functions of the office.

- (2) A person appointed to act as a member during a vacancy in an office of member shall not so act continuously for more than 12 months.
- (3) The Minister may at any time by instrument terminate the appointment of a person appointed under this section.
- (4) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—
 - (a) the appointment was ineffective or had ceased to have effect; or
 - (b) the occasion to act had not arisen or had ceased;if the action was taken in good faith and in ignorance of the ground of invalidity.

13 Meetings and procedures

- (1) The chairperson—
 - (a) may convene a meeting of the board at any time; and
 - (b) shall convene a meeting on receipt of a written request signed by at least 2 of the other members.
- (2) At a meeting of the board a quorum consists of 3 members, of whom—
 - (a) 1 shall be a member who represents the interests of employers in the building and construction industry; and
 - (b) 1 shall be a member who represents the interests of employees in the industry.
- (3) The chairperson shall preside at all meetings of the board.
- (4) The board shall keep a written record of its proceedings.
- (5) A question arising at a meeting shall be determined by a majority of votes of the members present and voting.
- (6) In the event of an equality of votes, the chairperson has a casting vote.
- (7) Subject to this section, the board may determine the procedures for the convening of, and to be followed at, its meetings.

14 Administration

The board may make arrangements with the council or any other person for the provision of—

- (a) administrative or secretarial services to the board; or
- (b) the administration of the fund in accordance with the directions of the board.

Part 3 Levy on building and construction work

15 Definitions for pt 3

In this part:

Building Act means the *Building Act 1972*.

building approval means a building approval under the Building Act.

building controller means the building controller under the Building Act.

building work—see the Building Act, section 5 (1).

exempt work means work—

- (a) in respect of which a building approval has been issued before the commencement of section 19; or
- (b) for the carrying out of which a written offer or tender has been made before the commencement of section 19; or
- (c) the value of which does not exceed \$10,000; or
- (d) that is carried out by a public authority, not being work that has been awarded to the public authority as the result of a public tendering process.

owner, for land—see the Building Act, section 5 (1).

project owner, for work, means the owner of the land on which the work has been, is being or will be carried out.

public authority means—

- (a) the Territory, the Commonwealth, a State or another Territory; or

- (b) a body corporate established for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory, other than a company or incorporated association; or
- (c) any other person or body (including a company or incorporated association) that is prescribed for the purposes of this paragraph.

rate of levy means the rate set out in section 16.

value, for work, means the value assessed under section 19.

16 Rate of levy

For the purposes of this part, the rate of levy is 0.2 % of the value of the work in respect of which the training levy is payable.

17 Training levy liability

- (1) A levy, ascertained in accordance with this part is payable, in accordance with this part, to the board in respect of work other than exempt work.
- (2) The training levy is payable by the project owner.
- (3) Training levy for building work may be paid to the building controller as agent for the board.

18 Calculation of training levy

The amount of training levy payable is the amount ascertained by multiplying the value of the work by the rate of levy.

19 Assessment of value of work

- (1) The value of work on which levy is payable is—
 - (a) if the work is building work—the value used for calculating the determined fee payable within 7 days of the issue of a building approval under the Building Act, section 34 (7) (b) (iv); or

- (b) in any other case—the value agreed by the board and the project owner or, if they disagree, the value assessed by a valuer appointed under this section.
- (2) The board or the project owner may, if reasonably satisfied that they are unlikely to agree on value, ask the council to appoint a qualified valuer to assess the value of the work.
- (3) The council must give effect to a request under subsection (2).
- (4) The reasonable cost of the appointment of a valuer under this section is payable by the board and the project owner equally.

20 Payment of levy

- (1) If training levy is payable in respect of work, the project owner must pay it—
 - (a) if the work is building work—before the issue of the building approval; or
 - (b) if the work is not building work—within 7 days after the commencement of the work.
- (2) A project owner must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 50 penalty units.

21 Refund of levy if work not carried out

- (1) If—
 - (a) training levy has been paid for work before its commencement; and
 - (b) the work does not commence;the board must refund to the project owner the amount paid.
- (2) The board must make a refund under subsection (1) within 1 month after receiving a written request for it from the project owner.

22 Adjustment of levy

- (1) This section applies if training levy has been paid for work other than building work and, in the opinion of the board or the project owner, the value of the work—
 - (a) at the completion of the work; or
 - (b) if the work is abandoned before completion—when the work is abandoned;
differs from the value on which the training levy was based.
- (2) The board or the project owner may tell the other in writing that the amount of the training levy should be recalculated on the basis of the value of the work at its completion or abandonment (as the case requires).
- (3) If a notice under subsection (2) is given, the value of the work at its completion or abandonment must be assessed in accordance with section 19.
- (4) If the amount of training levy paid is smaller than the amount that would have been payable if the levy had been calculated on the value of the work ascertained by virtue of this section, the project owner must pay to the board an amount equal to the difference.
- (5) If the amount of training levy paid is greater than the amount that would have been payable if the levy had been calculated on the value of the work ascertained by virtue of this section, the board must pay to the project owner an amount equal to the difference.
- (6) An amount payable under subsection (4) or (5) is payable within 1 month of the ascertainment of the value of the work under subsection (3).

Part 4 The building and construction industry training fund

23 Establishment and operation of fund

- (1) The board shall establish and maintain a fund.
- (2) The fund shall consist of—
 - (a) moneys received by the board as payments of training levy or amounts payable under section 22 (4) after reassessment of the value of work; and
 - (b) interest generated by moneys standing to the credit of the fund.
- (3) The moneys of the fund—
 - (a) are the property of the board; and
 - (b) shall be kept separate from all other property of the board; and
 - (c) shall be expended only in accordance with this Act.
- (4) The board shall administer the fund in such manner as the Minister approves in writing.

24 Application of fund

The fund shall be applied only for the following purposes:

- (a) to meet the costs and expenses incurred in the administration of the fund by the board;
- (b) to make any payments that are payable under arrangements made under section 14;
- (c) to make payments of refunds under section 21 or 22 (5);
- (d) to make payments approved by the board under section 28.

Part 5 Building and construction industry training plans

25 Approval of training plans

- (1) The Minister may, after consultation with the council and the board, by instrument approve a training plan for the building and construction industry.
- (2) A training plan shall—
 - (a) identify training needs in the building and construction industry that warrant financial support from the fund; and
 - (b) provide an estimate of the funds that appear to be required for the fulfilment of those needs;in respect of a calendar year.
- (3) The Minister shall cause to be published in the Gazette a notice of the approval of a training plan.

26 Inspection of training plans

- (1) A person may inspect a copy of a training plan at the office of the council during ordinary office hours.
- (2) This section does not apply in relation to a training plan that has no effect or no longer has effect.

27 Application of training plans

- (1) Subject to this section, a training plan has effect in respect of the calendar year specified in the training plan.
- (2) A training plan, other than the first training plan, has no effect unless approved by the Minister on or before 30 June in the year immediately before the calendar year specified in the training plan as the year in respect of which the plan is to have effect.

- (3) Where, in respect of a calendar year, no training plan would, but for this subsection, have effect, the training plan that had effect in respect of the immediately previous calendar year continues, by virtue of this subsection, to have effect in relation to the firstmentioned calendar year.

28 Funding for training

- (1) Subject to this section, the board may approve the expenditure of fund moneys for the provision, in a calendar year, of training identified as warranting financial support from the fund in the training plan that has effect in respect of that year.
- (2) The board shall not approve the expenditure of an amount if the total of the commitment in relation to that amount and of all other outstanding commitments for expenditure from the fund would exceed the amount standing to the credit of the fund.
- (3) The expenditure of fund moneys under this section shall only be approved for the purpose of approved training to be provided by a registered provider.
- (4) In this section:

approved training means training, or training of a kind, that is declared by the regulations to be approved training for the purposes of this section.

registered provider—see the *Vocational Education and Training Act 1995*, section 4 (1).

Part 6 Inspectors

29 **Appointment**

The board may, by notice in writing, appoint a person to be an inspector for the purposes of this Act.

30 **Identity cards**

- (1) The board shall cause to be issued to an inspector an identity card that specifies the name and appointment of the inspector and bears a recent photograph of the inspector.
- (2) A person appointed inspector shall, on ceasing to be an inspector, return his or her identity card to the board.
- (3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

Maximum penalty (subsection 3)): 1 penalty unit.

31 **Powers of entry**

- (1) Where an inspector believes on reasonable grounds that—
 - (a) work is being carried out on any land; or
 - (b) work has been carried out on any land and the training levy in respect of that work has not been paid or has not been paid in full;the inspector may, in accordance with this section and with such assistance as is reasonably necessary for the discharge of his or her functions under this part, enter during normal business hours the land and any premises, whether on the land or not, in which the inspector believes on reasonable grounds that documents or records relating to the work are kept.
- (2) An inspector may enter any land or premises and exercise any power specified in section 34—

- (a) with the consent of the occupier of the land or premises; or
 - (b) under a warrant issued under section 33 (2).
- (3) An inspector who enters land or premises under subsection (1) is not entitled to remain if, on request by the occupier, the inspector does not produce his or her identity card to the occupier.
- (4) Where an inspector is satisfied, after making reasonable inquiries, that no person is present and in charge of land or premises entered by him or her under a warrant, he or she shall leave, in a conspicuous position on the land or the premises (as the case requires), a notice advising that he or she made an entry in pursuance of this section.

32 Consent to entry and inspection

- (1) Before seeking the consent of the occupier of premises for the purposes of section 31 (2) (a), an inspector shall inform the occupier that he or she may refuse to give that consent.
- (2) If the inspector obtains the occupier's consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—
- (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 31 (2) (a), for the inspector to enter the occupier's premises and to exercise any power under section 34; and
 - (b) that the occupier has given the inspector that consent; and
 - (c) of the day on which, and the time at which, the consent was given.
- (3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 31 (2) (a), and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but the presumption is rebuttable.

33 Search warrants

- (1) This section applies where information is laid before a magistrate alleging that an inspector has reasonable grounds for suspecting that there may be—
- (a) on any land—work in respect of which payment of training levy has not been made, or made fully, in accordance with this Act; or
 - (b) on any premises—
 - (i) a thing of a particular kind connected with a particular offence against this part; or
 - (ii) a document or record relating to work mentioned in paragraph (a);
- and the information sets out those grounds.
- (2) Where this section applies, the magistrate may, subject to this section, issue a search warrant authorising the inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—
- (a) to enter any land or premises described in the warrant; and
 - (b) to search the premises for things of the kind mentioned in subsection (1) (b) (i) or a document or record mentioned in subsection (1) (b) (ii), as the case requires; and
 - (c) to exercise any of the powers listed in section 34 in relation to a thing, document or record to which the warrant refers.
- (3) A magistrate shall not issue a warrant unless—
- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (4) The warrant shall—

- (a) state the purpose for which it is issued; and
- (b) specify the nature of the offence, or the lack of compliance, in relation to which the entry and search are authorised; and
- (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night; and
- (d) specify the date (being a date not later than 1 month after the date on which the warrant is issued) on which the warrant ceases to have effect.

34 Powers of inspectors

- (1) An inspector who enters land or premises in accordance with this part may—
 - (a) inspect or examine any work on the land and take measurements relating to it; and
 - (b) require any person apparently in charge of the land or premises to make available to the inspector any document or record or provide information, including information stored in a computer, that appears to be relevant to the calculation of training levy; and
 - (c) inspect, make copies of and take extracts from any document or record or any information made available to the inspector; and
 - (d) require any person apparently in charge of the land or premises to answer questions related to the calculation of training levy; and
 - (e) require any person apparently in charge of the land or premises to render such assistance as is necessary and reasonable to enable the inspector to exercise his or her powers under this section.
- (2) A person is not excused from providing information or from producing a document or other record when requested to do so under subsection (1) on the ground that providing the information or producing the document or record may tend to incriminate the person or expose the person to a civil penalty, but the information or the production of the document is

not admissible in evidence against the person in any proceedings, other than proceedings for an offence against section 36.

35 Obstruction of inspectors

A person shall not, without reasonable excuse—

- (a) obstruct or hinder an inspector in the performance of a function under this Act; or
- (b) fail to comply with a requirement made by an inspector under section 34.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

36 False or misleading information

A person shall not, in purported compliance with a request under section 34 (1) (d) or (e), knowingly or recklessly—

- (a) make a statement or provide information that is false or misleading in a material particular; or
- (b) give to the inspector a document or record containing information that is false or misleading in a material particular without—
 - (i) indicating to the inspector that the document or record is false or misleading and the respect in which it is false or misleading; and
 - (ii) providing correct information to the inspector if the person has, or can reasonably obtain, the correct information.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Part 7 Miscellaneous

37 Regulation-making power

The Executive may make regulations for this Act.

Schedule Work for the purposes of Act

(see s 3)

The following constitute work for the purposes of this Act:

- 1 The construction, erection, alteration, repair, renovation, demolition, maintenance or removal of a building or structure.
- 2 The construction, alteration or repair of a road, street parking area, footpath, thoroughfare (for pedestrians or vehicles), kerbing, guttering, roundabout, median strip, or the performance of other road works.
- 3 The construction, alteration, repair, demolition or removal of a railway or part of a railway, or of any platform, signal or other structure connected with a railway.
- 4 The construction, alteration, repair, demolition or removal of an aircraft runway or a helicopter landing pad.
- 5 The construction, alteration, repair, demolition or removal of a bridge, viaduct, aqueduct or tunnel.
- 6 The construction, alteration, repair, demolition or removal of a harbour, breakwater, retaining wall or marina.
- 7 The performance of excavation work.
- 8 The construction, alteration, repair, demolition or removal of a dam, reservoir, weir or other embankment or structure for the catchment, collection, storage, control or diversion of water.
- 9 The laying of pipes and other prefabricated material in the ground.
- 10 The construction, erection, installation, alteration, repair, demolition or removal of any system or plant associated with the conveyance, collection, storage, treatment or distribution of water or gas, or the disposal of sewage or effluent.
- 11 On-site electrical, electronic, communications or data networks or mechanical services work, including on-site work that is related to the

- construction, erection, installation, alteration, repair, servicing or dismantling of any plant, plant facility or equipment.
- 12 The on-site construction, installation, alteration, repair, renovation, demolition or removal of—
- (a) a lift or escalator; or
 - (b) any airconditioning, ventilation or refrigeration system or equipment.
- 13 The construction, repair, alteration or removal of a playing field, golf course, racecourse, stadium, swimming pool or other sporting or recreational facility.
- 14 Landscaping or the construction, alteration or removal of a park or garden.
- 15 Work to improve the drainage of land.
- 16 The removal of material that is asbestos for the purposes of the *Building Act 1972* from a building or any machinery, plant or equipment located in or on a building.
- 17 Any site preparation work (including pile driving) preliminary to the performance of any construction work.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation (Republication) Act 1996*, section 13 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	p = page
amdt = amendment	par = paragraph
ch = chapter	pres = present
cl = clause	prev = previous
def = definition	(prev...) = previously
dict = dictionary	prov = provision
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = Gazette	reg = regulation/subregulation
hdg = heading	renum = renumbered
ins = inserted/added	reloc = relocated
lap = lapsed	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified	sch = schedule
No = number	sdiv = subdivision
notfd = notified	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	sp = spent
orig = original	<u>underlining</u> = whole or part not commenced

Endnotes

3 Legislation history

3 Legislation history

Building and Construction Industry Training Levy Act 1999 No 30

notified 21 May 1999 (Gaz 1999 No S24)

s 1, s 2 commenced 21 May 1999 (s 2 (1))

remainder commenced 21 November 1999 (s 2 (2))

as amended by

Building and Construction Industry Training Levy Amendment Act 1999 No 68

notified 3 December 1999 (Gaz 1999 No S62)

s 1, s 2 commenced 3 December 1999 (IA s 10B)

s 3 commenced 3 December 1999 (s 2 (1))

remainder (ss 4-14) commenced 21 November 1999 (s 2 (2))

4 Amendment history

Commencement

s 2 om R1 (LRA s 15 (1))

Definitions for Act

s 3 hdg sub 1999 No 68 s 4 (a)

s 3 def **provisional levy** om 1999 No 68 s 4 (b)

Division 1—Preliminary

pt 3 div 1 hdgom 1999 No 68 s 5

Definitions for pt 3

s 15 hdg sub 1999 No 68 s 6 (a)

s 15 def **Building Act** ins 1999 No 68 s 6 (c)

def **building approval** sub 1999 No 68 s 6 (b)

def **building controller** ins 1999 No 68 s 6 (c)

def **building work** ins 1999 No 68 s 6 (c)

def **owner** ins 1999 No 68 s 6 (c)

def **project owner** sub 1999 No 68 s 6 (b)

def **value** ins 1999 No 69 s 6 (c)

Division 2—Liability for training levy

pt 3 div 2 hdgom 1999 No 68 s 7

Training levy liability

s 17 am 1999 No 68 s 8

Calculation of training levy

s 18 am 1999 No 68 s 9

Division 3—Assessment, payment and adjustment of training levy

pt 3 div 3 hdgom 1999 No 68 s 10

Assessment of value of work

s 19 sub 1999 No 68 s 10

Payment of levy

s 20 sub 1999 No 68 s 10

Refund of levy if work not carried out

s 21 sub 1999 No 68 s 10

Adjustment of levy

s 22 sub 1999 No 68 s 10

Establishment and operation of fund

s 23 am 1999 No 68 s 11

Application of fund

s 24 am 1999 No 68 s 12

Powers of entry

s 31 am 1999 No 68 s 13

Search warrants

s 33 am 1999 No 68 s 14

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