

1994  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Education and Training)

**Construction Industry Training Fund Bill  
1994**

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CONSTRUCTION WORK**

1994  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Education and Training)

**Construction Industry Training Fund Bill  
1994**

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**A BILL  
FOR**

**An Act to provide for the establishment and  
administration of a fund to be used to improve the  
quality and quantity of training in the construction  
industry**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**PART I—PRELIMINARY**

**Short title**

- 5     **1.** This Act may be cited as the *Construction Industry Training Fund Act 1994*.

**Commencement**

- 2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

5 (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### Interpretation

3. In this Act, unless the contrary intention appears—

“Administrator” means an Administrator appointed under section 20;

10 “Board” means the Construction Industry Training Fund Board established by section 4;

“building” includes—

- (a) a structure on or attached to land;
- (b) an addition to a building;
- 15 (c) a structure attached to a building; and
- (d) a part of a building;

“building permit” means a building permit granted under the *Building Act 1972*;

20 “construction industry” means the industry of carrying out construction work;

“construction work” means—

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

“contract” includes an agreement or arrangement;

25 “Council” means the ACT Regional Building & Construction Industry Training Council Incorporated;

“determined rate” means the rate determined by the Minister under section 26;

30 “Fund” means the Construction Industry Training Fund established by subsection 39 (1);

“project owner”, in relation to construction work, means—

- (a) where a person has applied for a building permit—that person; or

- (b) in any other case—the person who carries out the construction work;

“public authority” means—

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

15 “structure” includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, advertising device, notice or sign;

“training” includes instruction and closely supervised practice;

“training levy” means the levy payable under section 27.

## PART II—CONSTRUCTION INDUSTRY TRAINING FUND BOARD

### 20 *Division 1—Establishment and functions*

#### **Establishment**

4. (1) There is established by this section a board by the name of the Construction Industry Training Fund Board.

(2) The Board—

- 25 (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) is capable of acquiring, holding and disposing of real and personal property; and
- (d) may sue and be sued in its corporate name.

30 (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

#### **Constitution of Board**

35 5. (1) Subject to subsection (2), the Board is constituted in the manner set out in Division 2.

(2) When an Administrator is in office, the Board is constituted by the Administrator.

### Functions

5 6. In addition to any other function conferred upon it by this Act, the Board has the following functions:

- (a) to advise the Minister on Funding Frameworks submitted for approval;
- (b) to consult with the Council on the preparation of Funding Frameworks;
- 10 (c) to advise the Minister on the operation of this Act.

### Powers

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

### Board may obtain information

15 8. (1) For the purpose of discharging its functions under this Act the Board may, by notice in writing given to a person, require the person, within 14 days after the day on which the notice is given and at a place specified in the notice—

- 20 (a) to furnish in writing such information as is specified in the notice; or
- (b) to produce such documents or other records as are specified in the notice.

(2) Where a document or other record is produced to the Board in pursuance of a notice under subsection (1), the Board—

- 25 (a) may take possession and make copies of, or take extracts from, the document or record;
- (b) shall not retain possession of the document or record for more than 30 days; and
- 30 (c) while in possession of a document or record, permit the person otherwise entitled to its possession to inspect or make a copy of it.

(3) A person served with a notice under paragraph (1) (a) or (b) shall not, without reasonable excuse, fail to comply with the notice.

### Penalty:

- (a) if the offender is a natural person—\$1,000;
- 35 (b) if the offender is a body corporate—\$5,000.

(4) A person shall not, in purported compliance with a notice under paragraph (1) (a) or (b), knowingly or recklessly—

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

Penalty:

- (a) if the offender is a natural person—\$5,000;
  - (b) if the offender is a body corporate—\$25,000.
- 15 (5) A person is not excused from providing any information or from producing a document or other record under this section on the ground that providing the information or producing the document or record might tend to incriminate the person, but the provision of the information or the production of the document is not admissible in evidence against the person
- 20 in any criminal proceedings, other than proceedings for an offence against subsection (4).

#### Delegations by Board

25 9. (1) The Board, when constituted in the manner set out in Division 2, may, by instrument under its common seal, delegate any of its functions, other than this power of delegation, to 1 of its members or to a committee of its members, being a committee constituted of members named in the instrument.

30 (2) In the exercise of a delegated function a committee shall act only by resolution approved by a majority of its members but otherwise may, subject to any directions of the Board, determine its own procedures.

- (3) An instrument of delegation ceases to be valid—
  - (a) if the Board ceases to be constituted in the manner set out in Division 2;
  - 35 (b) where the delegation is to a member—if he or she ceases to be a member of the Board; or
  - (c) where the delegation is to a committee—if a majority of members of the committee cease to be members of the Board.

**Directions by Minister**

10. (1) The Minister may, by notice in writing given to the Board, give directions to the Board with respect to the performance of any of its functions, either generally or in relation to a particular case.

5 (2) The Board shall comply with a direction under subsection (1).

**Application of Audit Act**

11. For the purposes of subsection 87 (2) of the *Audit Act 1989*, the Board is declared to be a public authority to which Divisions 1 and 2 of Part IX of that Act apply.

10 **Estimates**

12. (1) The Board shall prepare and give to the Minister, not less than 6 weeks before the commencement of a financial year, estimates of its expenditure in the administration of the Fund for that financial year.

15 (2) The estimates shall be in such form as the Minister in writing directs.

**Staffing arrangements**

13. (1) The staff of the Board shall be public servants.

20 (2) The Board may make an arrangement with an administrative head or other appropriate person for the use of the services of the staff of an administrative unit of the Public Service.

(3) The Board shall pay to the Territory, as soon as practicable after the end of each quarter, an amount determined by the Minister in writing to be the aggregate of the proportion of—

- 25 (a) the remuneration; and  
(b) any other costs or expenses borne by the Territory;

that is attributable to the performance of functions on behalf of the Board by any public servant made available to the Board under this section.

30 (4) In this section, "quarter" means the period of 3 months commencing on 1 January, 1 April and 1 October in each year.

30

**Division 2—Members****Membership of the Board**

14. (1) Subject to this Act, the Board shall consist of the Chief Executive of the Vocational Training Authority and 6 other members appointed by the Minister in writing, of whom—

- (a) 1, after consultation with the Council, shall be appointed Chairperson;
- (b) 2 shall be appointed after consultation with the members of the Council who are or represent employers;
- 5 (c) 2 shall be appointed after consultation with the members of the Council who represent employees; and
- (d) 1 shall be a public servant performing duties in an administrative area with responsibility for the construction of major Territory public works.
- 10 (2) Before making an appointment under paragraph (1) (b) the Minister may also consult with any body or organisation that—
- (a) has substantial connection with the construction industry; and
- (b) has members who are or represent employers.
- 15 (3) Before making an appointment under paragraph (1) (c) the Minister may also consult with any body or organisation that has—
- (a) substantial connection with the construction industry; and
- (b) members who are or represent employees.
- (4) Subject to this Act, an appointed member holds office for such period, not exceeding 3 years, as is specified in the instrument of
- 20 appointment.
- (5) The performance of a function of the Board is not affected only by reason of a vacancy in its membership.
- (6) In this section—
- 25 “employee” means a person who performs construction work in the course of his or her employment;
- “employer” means a person who performs construction work otherwise than as an employee, whether or not he or she employs another person for the purpose of doing so.

**Appointment of deputies**

- 30 15. (1) The Minister may—
- (a) after consultation with the Chief Executive of the Vocational Training Authority, appoint a person to be the deputy of the Chief Executive;
- 35 (b) after consultation with the Council, appoint an appointed member to be Deputy Chairperson of the Board;

- (c) appoint, in the manner specified in paragraph 14 (1) (b), a person to be the deputy of a member referred to in that paragraph;
- (d) appoint, in the manner specified in paragraph 14 (1) (c), a person to be the deputy of a member referred to in that paragraph; and
- 5 (e) appoint a public servant who is qualified to be the member referred to in paragraph 14 (1) (d) to be the deputy of that member.

(2) Subject to this Act, a person appointed under this section holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

- 10 (3) A deputy of a member is entitled to attend meetings of the Board—
- (a) at which the member of whom he or she is the deputy is not present; or
  - (b) if there is a vacancy in the office of member of the holder of which he or she is the deputy;

15 and, while so attending, shall be deemed to be a member of the Board.

(4) Anything done by or in relation to a person purporting to act under this section or by the Board at a meeting attended by such a person is not invalid on the ground that the occasion for the person to act had not arisen or had ceased.

## 20 **Resignation**

16. A member and a deputy of a member may resign by notice in writing given to the Minister.

## **Termination of appointment**

25 17. (1) The Minister may terminate the appointment of a member or a deputy of a member for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of a member or a deputy of a member if—

- 30 (a) the member or deputy becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) the member or deputy is absent from 3 consecutive meetings of the Board, being, in the case of a deputy of a member, meetings that the deputy is entitled to attend, without advising the Minister or  
35 (except in the case of the Chairperson of the Board) the Chairperson of the Board of the reason for his or her absence;

- 5
- (c) the member or deputy is convicted, in the Territory or in a State or another Territory, of an offence punishable on conviction by imprisonment for 1 year or more;
  - (d) the member or deputy fails, without reasonable excuse, to comply with section 19; or
  - (e) in the case of a person appointed under paragraph 14 (1) (d) or his or her deputy—he or she ceases to hold the qualification set out in that paragraph.

**Meetings and procedures**

- 10      18. (1) The Board shall meet not less than 3 times a year.
- (2) 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 3 members.
- 15      (3) At a meeting a quorum is constituted by 4 members of whom—
- (a) 1 is a member referred to in paragraph 14 (1) (b) or his or her deputy;
  - (b) 1 is a member referred to in paragraph 14 (1) (c) or his or her deputy; and
- 20      (c) 1 is a person who is a member of the Board or a deputy of a member, other than a person referred to in paragraph (a) or (b).
- (4) The Chairperson shall preside at all meetings at which he or she is present.
- 25      (5) If the Chairperson is absent from a meeting or part of a meeting, the Deputy Chairperson shall preside.
- (6) If both the Chairperson and the Deputy Chairperson are absent from a meeting or part of a meeting, the members present shall elect 1 of their number to preside.
- 30      (7) The Board shall keep a record of its proceedings and, in particular, of the approval of all expenditure to be made by it, including the amount, the name of the payee and the reason for the expenditure, and shall keep such records for a period of not less than 10 years.
- (8) A question arising at a meeting shall be determined by a majority of votes of the members present and voting, other than the presiding member.
- 35      (9) In the event of an equality of votes, the presiding member has a casting vote.

(10) Subject to this section, the Board may determine the procedures to be followed at its meetings.

#### **Disclosure of interests**

5       **19. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Board meeting.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Board otherwise determines, the member shall not—

10       (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 (2) shall not—

15       (a) be present during any deliberation of the Board for the purpose of considering whether to make a determination under that subsection in relation to that member; or

(b) take part in the making by the Board of such a determination.

Penalty: \$2,000.

#### **Division 3—Administrator**

##### **20 Appointment**

**20. (1)** If, in the opinion of the Minister, the Board as constituted under Division 2—

(a) is incapable of effectively performing its functions;

25       (b) has refused to comply with a direction of the Minister given under section 10; or

(c) is conducting its affairs in an improper manner;

the Minister may by instrument—

(d) terminate the appointment of all members and deputies of members; and

30       (e) appoint a person to be Administrator of the Fund.

(2) Subject to this Division, an Administrator holds office for such period, not exceeding 12 months, as is specified in the instrument of appointment.

(3) The Minister shall cause to be published in the *Gazette* a copy of an instrument under this section.

### Resignation

5 21. An Administrator may resign by notice in writing given to the Minister.

### Termination of appointment

22. (1) The Minister may terminate the appointment of an Administrator for—

- 10 (a) misbehaviour or physical or mental incapacity; or  
(b) if the Administrator has failed to comply with a direction under section 10.

(2) The Minister shall terminate the appointment of an Administrator if—

- 15 (a) the Administrator becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or  
(b) the Administrator fails, without reasonable excuse, to comply with section 23.

### 20 Disclosure of interests

23. (1) An Administrator who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by him or her shall, as soon as practicable after the relevant facts have come to his or her knowledge, disclose the nature of the interest, to the Minister.

25 (2) An Administrator shall not perform any function in relation to such a matter unless directed to do so by the Minister in writing.

### Acting Administrator

24. (1) The Minister may, by instrument, appoint a person to act as Administrator—

- 30 (a) during a vacancy in the office of Administrator, whether or not an appointment has previously been made to the office; or  
(b) during any period, or during all the periods, when the Administrator is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

35 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act pursuant to an appointment under this section is not invalid on the ground that—

- (a) the occasion for the appointment had not arisen;
- 5 (b) there is a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### PART III—LEVY ON CONSTRUCTION WORK

#### *Division 1—Preliminary*

#### 10 Interpretation

25. In this Part—

“exempt work” means construction work—

- (a) in respect of which a building permit has been issued before the commencement of this Part;
- 15 (b) for the carrying out of which a written offer or tender has been made before the commencement of this Part;
- (c) the value of which does not exceed \$5,000; 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.

#### Determination of rate

26. (1) The Minister may, by instrument, determine a rate for the purposes of this section.

25 (2) The rate determined under subsection (1) shall be not less than 0.2 per cent nor more than 0.5 per cent of the value of construction work.

(3) In determining a rate under this section the Minister shall have regard to any advice given in writing by the Board after consultation with the Council.

30 (4) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Division 2—Liability for levy**

**Training levy liability**

5 27. (1) A levy, ascertained in accordance with this Part, is payable, in accordance with this Part, to the Board in respect of construction work other than exempt work.

(2) The training levy is payable—

- (a) where the construction work is carried out for a public authority that is a party to an arrangement under Division 3—by that public authority; and
- 10 (b) in any other case—by the project owner.

**Division 3—Bulk payment of levy by public authorities**

**Arrangements with public authorities**

15 28. (1) The Board may arrange with a public authority for it to pay to the Board at specified times the training levy payable in respect of construction work carried out for the authority.

(2) An arrangement under subsection (1) may be terminated by the Board or the public authority at any time.

(3) The Board shall cause to be published in the *Gazette* notice of—

- (a) the making of an arrangement under subsection (1); and
- 20 (b) the termination of such an arrangement.

**Amount of training levy payable by public authorities**

25 29. (1) The amount of training levy payable by a public authority that is a party to an arrangement under this Division is the amount ascertained by multiplying the value of the work, ascertained at its completion, by the determined rate.

(2) In this section—

“value of the work” means—

- (a) where the work is carried out under a contract that fixes its total cost—the amount fixed by the contract; or
- 30 (b) in any other case—such amount as the Board and the public authority agree to be the cost of the work or, in default of agreement, such amount as is determined by a person appointed by the Council.

**Division 4—Training levy in respect of individual projects****Application of Division**

5       **30.** This Division applies in relation to construction work other than work carried out or to be carried out for a public authority that is a party to an arrangement under Division 3.

**Payment of training levy**

**31. (1)** Where training levy is payable in respect of construction work to which this Division applies, the levy is payable—

- 10       (a) where a building permit is required in order to commence or carry out the work—on or before the grant of the permit; and
- (b) in any other case—on or before the commencement of the work.

15       **(2)** The amount of training levy payable in relation to construction work to which this Division applies is the amount obtained by multiplying the value of the work ascertained, at the time when the levy is payable, in accordance with subsection (3), by the determined rate.

**(3)** For the purposes of this section, the value of construction work is—

- 20       (a) where a building permit is required before the construction work may be commenced or carried out—the amount that is the amount of the cost of that work for the purposes of the *Building Act 1972*; and
- (b) where a building permit is not required—
- 25       (i) where the work is to be carried out under a contract that fixes its total cost—the amount fixed by the contract; and
- (ii) in any other case—such amount as the Board and the project owner agree to be the cost of the work or, in default of agreement, such amount as is determined by a person appointed by the Council.

30       **(4)** A person shall not commence or carry out construction work to which this Division applies in respect of which training levy is payable unless the training levy has been paid.

Penalty: \$5,000 or imprisonment for 6 months.

**Variation in value of work**

35       **32. (1)** This section applies where construction work to which this Division applies is completed and—

- (a) where no levy in respect of that work has been paid (whether or not the levy was payable)—the value of the work ascertained, at its completion, in accordance with subsection (2) exceeds \$25,000; or
- 5 (b) where levy in respect of that work has been paid in accordance with section 31—the value of the work ascertained, at its completion, in accordance with subsection (2) exceeds the value of the work ascertained in accordance with subsection 31 (3) by more than \$25,000.
- 10 (2) For the purposes of this section the value of construction work is—
- (a) where the work has been carried out under a contract that fixes its total cost—the amount fixed by the contract; or
- 15 (b) in any other case—such amount as the Board and the project owner agree to be the cost of the work or, in default of agreement, such amount as is determined by a person appointed by the Council.
- (3) Where this section applies, the project owner—
- (a) shall notify the Board in writing, within 3 months after the completion of the work, of the value of the work ascertained in accordance with subsection (2); and
- 20 (b) is liable to pay to the Board, within 3 months after the completion of the work—
- (i) where no levy has been paid—the training levy; or
- 25 (ii) in any other case—a further amount of training levy, being the difference between the amount of training levy that would have been payable in accordance with section 31 if the value of the work for the purposes of that section had been the value of the work ascertained in accordance with subsection (2) and the amount of training levy paid.
- 30 (4) A project owner who, without reasonable excuse, fails to comply with paragraph (3) (a) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for 6 months.
- (5) Where—
- (a) training levy has been paid in respect of construction work; and
- 35 (b) the value of the work ascertained in accordance with subsection 31 (3) exceeds the value of the construction work ascertained, at its completion, in accordance with subsection (2) by more than \$25,000;

the Board shall, upon being notified by the project owner in writing of the value of the work ascertained in accordance with subsection (2), refund to him or her—

- 5 (c) where that value does not exceed \$5,000—the amount of training levy paid; and
- (d) in any other case—the difference between the amount of training levy paid and the training levy that would have been payable in accordance with section 31 if the value of the work for the purposes of that section had been the value ascertained in accordance with subsection (2).
- 10

#### **Abandonment of project**

33. Where—

- (a) training levy has been paid in respect of construction work; and
- (b) the project is abandoned before any work is carried out;
- 15 the Board, upon being notified by the project owner in writing of the abandonment of the project, shall refund to him or her the amount of training levy paid.

### **PART IV—INSPECTORS**

#### **Appointment**

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

#### **Identity cards**

- 25 35. (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.

- 30 (3) A person who, without reasonable excuse, fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

#### **Powers of entry**

36. (1) Where an inspector believes on reasonable grounds that—
- (a) construction work is being carried out on any land; or

- (b) construction 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;

5 the inspector may, with such assistance as is reasonably necessary for the discharge of his or her functions under this Part—

- (c) enter the land and any building on the land at any reasonable time; and
- (d) enter any premises, other than premises used solely for residential purposes or premises that may be entered under paragraph (c), during normal business hours.

10 (2) An inspector who enters land or premises under subsection (1) is not entitled to remain thereon if, on request by the occupier, the inspector does not produce his or her identity card to the occupier.

15 (3) An inspector may, with the consent of the occupier, enter any land and any premises at any time.

20 (4) Where an inspector is satisfied, after making reasonable enquiries, that no person is present and in charge of land, a building or premises entered by him or her, he or she shall leave, in a conspicuous position on the land, in the building or in the premises (as the case requires), a notice advising that he or she made an entry in pursuance of this section.

#### **Powers of inspection**

37. (1) An inspector who enters land or premises in accordance with this Part may—

- 25 (a) inspect or examine any building or construction work on the land and take measurements relating to it;
- (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 that appears to be relevant to the calculation of training levy;
- 30 (c) inspect, make copies of and 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 training levy; and
- 35 (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 shall not, in purported compliance with a request under subsection (1), 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—
  - 5 (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.

10 **Penalty:**

- (a) if the offender is a natural person—\$5,000;
  - (b) if the offender is a body corporate—\$25,000.
- (3) A person is not excused from providing any 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 might tend to incriminate the person, but the information or the production of the document is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (2).

20 **Obstruction of inspectors**

38. A person shall not, without reasonable excuse, obstruct or hinder an inspector in the performance of a function under this Act.

**Penalty:**

- 25 (a) if the offender is a natural person—\$5,000 or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—\$25,000.

## **PART V—THE FUND**

### **Establishment and operation of Fund**

30 39. (1) The Board shall establish and maintain a fund to be called the Construction Industry Training Fund.

- (2) The assets of the Fund—
  - (a) are the property of the Board;
  - (b) shall be kept separate from all other property of the Board; and
  - (c) shall be expended only for the purposes set out in this Act.

(3) The Board shall administer the Fund in such manner as the Minister approves in writing.

**Moneys of Fund**

40. The Fund shall consist of—

- 5 (a) moneys received by the Board as payments of training levy; and  
(b) interest generated by moneys standing to the credit of the Fund.

**Application of Fund**

41. The Fund may be applied only for the following purposes:

- 10 (a) to meet the costs and expenses incurred in its administration by the Board;  
(b) to reimburse to the Territory the amount payable under section 13;  
(c) to make refunds under section 32 or 33;  
(d) to make payments approved by the Board under section 51.

**PART VI—FUNDING FRAMEWORKS**

15 **Preparation of Funding Frameworks**

42. (1) The Council shall, as soon as practicable after the commencement of this section and thereafter annually, after consultation with—

- (a) the Board; and  
20 (b) a person or body approved by the State training agency for the purpose of providing advice on training needs in the construction industry;

cause to be submitted to the Minister a Funding Framework in accordance with this Part.

25 (2) In this section—

“State training agency” means a person, organisation or body nominated under section 6 of the *Australian National Training Authority (Territory Functions) Act 1993*.

**Objects**

30 43. The objects of a Funding Framework shall be—

- (a) to identify the training needs in the construction industry that warrant priority for financial support from the Fund;

- (b) to improve the quality and quantity of training in the construction industry; and
- (c) to increase the levels of skill in the construction industry.

#### **Requirements of a Funding Framework**

5       **44. (1) A Funding Framework shall—**

- (a) describe the training needs in the construction industry that warrant priority for financial support from the Fund, including—
  - 10           (i) the estimated number of training places required;
  - (ii) the occupational categories for which training is required; and
  - (iii) the types of training that are required in respect of each category;
- (b) set out details of training programs and courses required to fulfil those needs, including—
  - 15           (i) the contents, length and competency levels of the programs and courses; and
  - (ii) when the programs and courses are to be provided;
- (c) identify any facilities or processes that are not available but are required or to be provided in order to facilitate or enhance the provision of training, including training that is envisaged will be required by future Funding Frameworks; and
- 20       (d) specify any projects required to enable future training needs to be identified as soon as practicable.

25       **(2) In so far as it is possible to do so, a Funding Framework shall provide for equitable access to training to be available to all persons employed in the construction industry who are in need of training or desire to improve their work skills and ensure that language and cultural differences are not barriers to such access.**

30       **(3) In subparagraph (1) (b) (i), the reference to a competency level shall be read as a reference to a competency level set out in the publication entitled "National Competency Standards Policy and Guidelines", as amended and in effect from time to time, that is published by The National Training Board Ltd.**

#### **Variations**

35       **45. The Council may, from time to time, prepare a variation to a Funding Framework.**

**Approval and period of effectiveness**

46. (1) The Minister may, by instrument—

- (a) approve a Funding Framework; and
- (b) from time to time, approve a variation to a Funding Framework.

5 (2) A Funding Framework and a variation take effect on the date of execution of the instrument of approval or, if the Plan or variation specifies a later date, the date so specified.

(3) A Funding Framework ceases to be in effect when another Funding Framework takes effect.

10 **Publication**

47. (1) The Board shall cause to be published in the *Gazette* notice of the approval of a Funding Framework and any variation.

(2) The notice shall specify—

- (a) the date on which the instrument of approval was executed; and
- 15 (b) a place or places at which a copy of the approved Funding Framework may be inspected.

(3) The Board shall ensure that a copy of an approved Funding Framework or a variation is available for public inspection at the place or places specified in the notice under subsection (1) during office hours.

20 **Application for approval of training projects**

48. A person may apply to the Board for approval of a training program, course or project.

**Approval of projects**

25 49. (1) The Board may approve a training program, course or project that—

- (a) satisfies the requirements of the Funding Framework in effect at the time of the approval that are referred to in paragraph 44 (1) (b) and are applicable to a program, course or project of that kind; or
- (b) is, or is of a kind, specified in paragraph 44 (1) (d).

30 (2) The Board shall not approve a training program, course or project—

- (a) that provides, or is designed to provide, benefits that in substance are, or are to be, provided by a program, course or project that has already been approved; or

(b) unless it is satisfied that the program, course or project is or will be effective in providing the benefits that it is designed to provide.

5 (3) In order to discharge its function under this section, the Board may make such enquiries and endeavour to obtain such information as to the Board seems necessary.

#### Ministerial review

50. (1) An applicant for approval of a program, course or project that the Board has declined to approve may apply to the Minister for a direction that the Board approve it.

10 (2) The Minister shall not direct the Board to approve a program, course or project—

(a) that provides, or is designed to provide, benefits that in substance are, or are to be, provided by a program, course or project that has already been approved; or

15 (b) unless he or she is satisfied that the program, course or project is or will be effective in providing the benefits that it is designed to provide.

#### Financial support for approved projects

20 51. (1) Upon approval of a training program, course or project, the Board may approve the expenditure of Fund moneys to meet, or partly meet, its cost.

(2) The Board shall not make a grant under subsection (1) to a project owner unless he or she has applied for approval of the training program, course or project before the commencement of any training under it.

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### PART VII—MISCELLANEOUS

#### Contracts to evade training levy void

52. (1) A provision of a contract, whether in writing or otherwise, that has the effect or purpose, whether directly or indirectly, of—

(a) altering the incidence of liability to pay training levy;

30 (b) relieving a person from liability to pay training levy;

(c) defeating, evading or avoiding any duty or liability imposed on a person by this Act; or

(d) preventing the operation of any provision of this Act;

is void for the purposes of this Act or in regard to any proceedings under it.

(2) Subsection (1) does not affect any validity that the provision may have apart from this Act.

5 (3) This section does not apply to a provision in a contract that relates to work to be carried out for a public authority that is a party to an arrangement with the Board under Division 2 of Part III.

#### Interest on unpaid training levy

10 53. (1) If an amount of training levy payable under this Act is not paid on or before the due date, the person liable to pay it is liable to pay an additional amount by way of penalty interest, calculated at the prescribed rate per annum of the unpaid amount, from and including the day after the due date until the day when it is paid.

(2) Where judgment is entered for the payment of an amount of training levy—

15 (a) the training levy shall not be taken, for that reason alone, to have ceased to be payable for the purposes of subsection (1); and

(b) if interest is payable on the judgment debt, the interest that would, but for this paragraph, be payable under subsection (1) in relation to that amount is, by force of this paragraph, reduced by the amount of the interest payable on the judgment debt.

#### 20 Regulations

54. The Executive may make regulations, not inconsistent with this Act, 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 this Act.

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## SCHEDULE

Section 3

### CONSTRUCTION WORK

The following constitute construction 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.

**SCHEDULE—continued**

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 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 air-conditioning, ventilation or refrigeration system or equipment.
13. The construction, repair, alteration or removal of a playing field, golf course, race course, stadium, swimming pool or other sporting or recreational facility.
14. Landscaping or the construction, alteration or removal of a park or garden.
15. Works to improve the drainage of land.
16. The removal of asbestos from a building or from any machinery, plant or equipment located in or on a building.

**SCHEDULE—continued**

17. Any site preparation work (including pile driving) preliminary to the performance of any construction work.