

2001

**LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY
AMENDMENT BILL 2001**

EXPLANATORY MEMORANDUM

**Circulated by the Authority of
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Minister for Education**

Introduction

The Bill ensures that all non-exempt work as outlined in the Schedule to the Act is liable for the Training Levy. This is done by broadening the scope of the term *project owner*. The Bill also broadens the definition of qualified valuer to ensure that suitably qualified persons are eligible under the Act to determine the value of work where required to settle a dispute.

Details of clauses

Clauses 1, 2 and 3 are formal clauses. They set out the name of the Bill once enacted, the commencement arrangements and the name of the Act amended by the Bill. The commencement of schedule 1 of the Bill (that contains technical amendments) is delayed until the commencement of the *Legislation Act 2001*. This is because most of the amendments in schedule 1 omit material that is now contained in the *Legislation Act 2001*.

Clause 4 the definition of *project owner* is broadened to include the owner of work that is done on land not owned by the owner of the work, for example on public land or on easements on land owned by other parties.

Clause 5 inserts a new definition of *qualified valuer* as a person prescribed under the regulations as a qualified valuer. This ensures that persons such as engineers or quantity surveyors can accurately value non-building work.

Clause 6 changes the wording of section 19 to refer to a *qualified valuer* because that term is now defined.

Clause 7 inserts an application provision (new section 38) that provides that the amended definition of *project owner* and the amendments of the schedule, item 11 do not apply to certain work. The purpose of the provision is to make it clear to what work the amendments do not apply.

Clauses 8 and 9 remove the qualifier *on-site* from electrical and other work described in the schedule, item 11. This is to remove ambiguity, particularly where the work may be a power line or underground cable on public land, areas which would not normally be referred to as a building site.

Schedule 1 Technical amendments

Technical changes to the *Building and Construction Industry Training Levy Act 1999* as listed below are made to bring the Act into line with current drafting practice.

Amendment 1 replaces section 1 with new sections 1 and 2. New section 1 revises the section providing for the Act's name. New section 2 is a standard provision explaining the status of the dictionary. A dictionary replaces the existing interpretation section (section 3) by other amendments in schedule 1.

Amendments 2 and 3 relocates all definitions (as amended by the Bill, other than the definition of *work*) to the dictionary and replaces the existing interpretation section with a standard provision explaining the status of notes.

Amendment 4 Part 2, division 1 heading is omitted because it is unnecessary.

Amendment 5 revises section 4 to bring it into line with current drafting practice.

Amendments 6 and 7 insert a note in section 5 and omits section 6. Section 6 is no longer necessary because of the *Legislation Act 2001*, section 196 (1). That section provides that a provision of a law that gives a function to an entity (including the board) also gives the entity (the board) the powers necessary and convenient to exercise the function.

Amendment 8 Section 7 has been brought into line with current drafting practice and material covered by the *Legislation Act 2001* has been omitted, as follows:

- existing section 7 (2) (a): the words “by instrument” have been taken out because the *Legislation Act 2001*, section 206, provides that an appointment must be made, or evidenced, in writing.
- existing section 7 (2) (c) is omitted because the *Legislation Act 2001*, section 208 (1) (c), provides that a person can be reappointed if the person is eligible for appointment.
- existing section 7 (3) is omitted because the *Legislation Act 2001*, section 199 (4) states that the exercise of a function of a body is not affected only because of vacancies in the body’s membership.

Amendments 9 and 10 Section 10 is omitted because the *Legislation Act 2001* section 210 makes it unnecessary. Section 210 provides for an appointment to end when the member resigns. Amendment 10 inserts an explanatory note in section 11 to that effect.

Amendment 11 Section 12 is omitted because the *Legislation Act 2001* deals with matters dealt with in this section (see sections 209, 221 (1), 219 (1) (b) and 212 for existing sections 12 (1) to (4), respectively).

Amendment 12 This amendment inserts a new, current definition of *exempt work*. The Act has been in place for over eighteen months and the paragraphs dealing with work for which a building approval has been issued and work contracted before the commencement of the Act are no longer required. However, in case they do have an ongoing operation, those paragraphs have been remade as a transitional provision (see amendment 13).

Amendment 13 This amendment (new section 15A) remakes existing paragraphs (a) and (b) of the definition of *exempt work* in section 15 and inserts a sunset provision to remove the section because it has no ongoing operation. If it does have an ongoing operation, the *Legislation Act 2001*, section 88 (1) will save the ongoing operation.

Amendment 14 This amendment makes it clear that the penalty only applies to section 20 (2). It does not change the penalty amount.

Amendment 15 This amendment omits a reference to the first training plan that is no longer necessary.

Amendment 16 This amendment replaces the term performance with the term exercise in section 35 (a) because *exercise* a function is defined in the *Legislation Act 2001*, dictionary to include perform a function.

Amendment 17 The schedule is renamed as schedule 1, *Work*.

Amendment 18 This amendment inserts a dictionary, a modernised definition of *work* (the old definition was omitted by the amendment that substituted existing section 3 for a new section 3) and signpost definitions of the definitions contained in section 15, in line with current drafting practice.