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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

CONSTRUCTION INDUSTRY TRAINING FUND BILL 1994

EXPLANATORY MEMORANDUM

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CONSTRUCTION INDUSTRY TRAINING FUND BILL 1994

The purpose of the Construction Industry Training Fund Bill 1994 (the Bill) is to establish a construction industry training levy scheme. The Bill establishes a Construction Industry Training Fund (the Fund) which will consist of amounts paid by way of a levy on construction work. The moneys of the Fund will be applied for the purposes of training in the construction industry.

A primary objective of the scheme set out in the Bill is to satisfy the requirements for a recognised alternative training levy scheme under the *Training Guarantee (Administration) Act 1990* of the Commonwealth. Section 4A of that Act provides that a person who, under the regulations, is taken to be covered by a recognised alternative training levy scheme is taken not to be an employee for the purposes of that Act. In this way, employers who are required to contribute to the industry specific Fund that is set up under the Bill will not be subject to the training guarantee requirements of the Commonwealth Act.

This scheme will also replace the existing provisions of the *Long Service Leave (Building and Construction Industry) Act 1981* which provide for the payment of 10% of the long service leave levy payments into a fund for the purposes of training in the building and construction industry. The necessary complementary amendments to the *Long Service Leave (Building and Construction Industry) Act 1981* are contained in the *Long Service Leave (Building and Construction Industry) (Amendment) Bill 1994*.

Financial considerations

The construction industry training levy scheme that is provided for in the Bill will be self funding.

Outline

The main features of the scheme are as follows:

- the creation of a Construction Industry Training Fund for the purposes of supporting training in the construction industry;

- . the creation of a Construction Industry Training Fund Board to administer the Fund;
- . provisions for the levying of construction work - such levy is to be paid into the Fund; and
- . the use of a Funding Framework, developed in consultation with the construction industry, to determine the manner in which the moneys of the Fund will be applied.

The new scheme will differ from the existing scheme in a number of significant areas. These are:

- . the method of collection of the levy;
- . the use of a specific Construction Industry Training Fund Board to administer the Fund; and
- . the manner in which the Fund will be applied.

The method collection of the levy

The levy collected under the *Long Service Leave (Building and Construction Industry) Act 1981* is collected as part of the long service levy. Long service leave payments are paid to the Construction Industry Long Service Leave Board and are calculated as a percentage of the total remuneration paid by an employer to her or his employees. Ten percent of the long service leave payment is paid into the Construction Industry Training Fund every 3 months.

Under the Bill, the Construction Industry Training Levy will be calculated on the basis of the value of the construction work rather than on the basis of the employer's payroll.

The Construction Industry Training Fund Board

The current Construction Industry Training Fund is administered by the Construction Industry Long Service Leave Board. The Bill creates a new

specific Construction Industry Training Fund Board to administer the Fund. The new Board will be subject to much the same constraints as the Construction Industry Long Service Leave Board when administering the Fund. In particular, the Construction Industry Training Fund Board will be deemed to be a public authority for the purposes of Divisions 1 and 2 of Part IX of the *Audit Act 1989*.

The manner in which the Fund will be applied

Under the current provisions of the *Long Service Leave (Building and Construction Industry) Act 1981* the Minister applies the moneys of the Construction Industry Training Fund for the purposes of training in the building and construction industry. The Minister is required to consider the recommendations of ACT Regional Building and Construction Industry Training Council Incorporated in relation to that application of moneys.

Under the Bill, the new Construction Industry Training Fund Board will approve the application of the moneys of the Fund in accordance with a Funding Framework. The Funding Framework will serve much the same purpose as the recommendations of the ACT Regional Building and Construction Industry Training Council Incorporated under the current legislation as the Funding Framework will be prepared by the Council for approval by the Minister.

Details of the Bill are as follows.

PART I - PRELIMINARY

Clause 1 provides for the citation of the Act as the *Construction Industry Training Fund Act 1994*.

Clause 2 provides for the commencement of the Act on a day to be fixed by the Minister by notice in the Gazette. The standard 6 month default commencement provision applies.

Clause 3 is the interpretation section for the Act. The definition of "construction work" is quite detailed and is included by reference to the Schedule to the Act.

PART II - CONSTRUCTION INDUSTRY TRAINING FUND BOARD

Clause 4 establishes the Board and sets out the legal identity of the Board. The Board has the same type of legal identity as the Construction Industry Long Service Leave Board.

Clause 5 is an interpretative type provision which, in effect, transfers the powers, duties and functions of the Board (as constituted under *clause 14*) to the Administrator where the Board is dissolved and an Administrator appointed. The Administrator is appointed under, and in the circumstances set out in, *clause 20*.

Clause 6 sets out the functions of the Board. These functions are in addition to the functions that the Board has that are specifically provided for under the Act. The main function that the Board has under the Act is the approval of, and allocation of funds to, training programs, courses and projects against the annual Funding Framework.

Clause 7 is a standard clause giving the Board power to do all things necessary or convenient to the performance of its functions.

Clause 8 gives the Board the power to request information where this would assist the Board in discharging its functions under the Act. This power might be used, for example, where a construction project is to be commenced but there is no contract for the work. The Board might need to request copies of

the plans for the project and related documents in order to assess the value of the work for the purposes of calculating the levy that must be paid before the work commences.

Clause 9 allows the Board to delegate any of its functions to one of the Board members or to a committee of members. This would allow the Board to delegate to the Chairperson, for example, the appointment of inspectors for the purposes of the Act. In delegating any of its functions, the Board may give directions as to how the delegation is to be exercised. Any delegation will automatically cease where the Board ceases to be constituted in the manner set out in the Act or if the member ceases to be a member of the Board or, in the case of a delegation to a committee, more than half of the committee members cease to be members of the Board.

Clause 10 provides that the Minister may give directions to the Board in respect of how the Board is to perform its functions. This type of power could be used to direct the Board to have regard to a general policy approach or it could be used more specifically to direct the Board to go through a particular process of consultation before making a decision in relation to approval of projects against the Funding Framework.

Clause 12 provides that the Board is declared to be a public authority to which Divisions 1 and 2 of Part IX of the *Audit Act 1989* apply. This provision establishes the financial identity of the Board and regulates the manner in which the Board operates financially. The *Audit Act 1989* specifies (in relation to the Board as a declared public authority):

- requirements in relation to the keeping of bank accounts by the Board (section 89);
- the manner and circumstances in which the Board may invest moneys standing to the credit of the Fund (section 90);
- that the Board must ensure that proper accounting records are kept and that all payments out of the Fund are correctly made and properly authorised (section 91);

- . that the Board will be subject to audit by the Auditor-General at least once in every year (section 92); and
- . that the Board must prepare, and give to the Minister, as soon as practicable after 30 June in each year an Annual Report on its operations during the year together with audited financial statements for the year - the Annual Report is then laid before the Legislative Assembly by the Minister (section 93).

Clause 12 requires the Board to prepare, before the beginning of each financial year, estimates of projected expenditure in administration of the Fund. This provision will allow the Minister to monitor administration costs and ensure that they are kept at a reasonable level.

Clause 13 provides for reimbursement for salary and other costs associated with the Territory making staff available to assist the Board. It is anticipated that the Board will use public servants in a secretariat role. This clause ensures that the construction industry training scheme is self funding.

Clause 14 sets out the membership requirements for the Board. The Chief Executive of the Vocational Training Authority is an *ex officio* member and there will be 6 other members appointed after consultation with various bodies representing the construction industry.

Clause 15 provides for the appointment of deputies for the various members of the Board. The deputies for the Board will be appointed through the same process as the members for whom they will be deputising. The deputy of the Chief Executive of the Vocational Training Authority, who is an *ex officio* member, will be appointed after consultation with the Chief Executive.

Clause 16 provides for the resignation of members of the Board.

Clause 17 is a standard provision for the Minister to terminate the appointment of a member or deputy member of the Board in certain circumstances.

Clause 18 provides for the manner in which the Board will meet and the procedure that is to be followed at meetings. The requirements for a quorum are also specified.

Clause 19 requires members of the Board to disclose any interest that they may have in a matter to be considered by the Board. A member who makes such a disclosure may not take part in any decision in respect of the that matter.

Clause 20 provides for the appointment of an Administrator in certain circumstances. Where the Board is incapable of performing its functions, refuses to comply with a direction of the Minister or is conducting its affairs in a improper manner then the Minister may dissolve the Board and appoint a person to be Administrator of the Fund. The Administrator may hold office for a period of up to 12 months however the appointment would generally be for a much shorter pending the appointment of a new Board. The Administrator has the same powers and functions as a Board appointed under *clause 14* by virtue of *clause 5*.

Clause 21 provides for the resignation of the Administrator.

Clause 22 is in similar terms to *clause 17* and provides that the Minister may terminate the appointment of an Administrator in certain circumstances.

Clause 23 carries the disclosure of interest requirements across to the Administrator. In the case of the Administrator having an interest in a particular matter, the Administrator may take action in respect of that particular matter only if directed to do so by the Minister.

Clause 24 provides for the appointment of an acting Administrator.

PART III - LEVY ON CONSTRUCTION WORK

Clause 25 is an interpretative clause for the Part. The definition of "exempt work" is intended so that the Act will have effect prospectively so that work for which a building permit has been issued at the date of commencement or for which a written offer of tender has been made will be exempt work. Construction work that does not exceed \$5000 in value is also exempt work.

Where construction work is carried out by a public authority then the public authority will not be ordinarily be liable for the levy. The public authority would be liable to pay the levy however, where it is carrying out the construction work as a result of a public tendering process. The ACT Electricity and Water Authority (ACTEW) for example, would not be liable to pay the levy for a new substation where the substation was constructed by the Authority. However, if ACTEW won a contract to do all of the electrical work for a new building with the Department of Urban Services through a public tender process then this would not be exempt work.

Clause 26 provides for the determination by the Minister of the rate to be used to calculate the training levy.

Clause 27 establishes the liability of both public authorities and project owners to pay the training levy on construction work. The provision for separate arrangements for payment of levy where work is carried out for a public authority is intended to streamline the payment process. This clause needs to be read in conjunction with *clause 28*.

Clause 28 allows the Board to come to an arrangement with public authorities whereby the public authorities will make bulk payments of levy that is "collected" by the public authority in respect of work done for the authority by private contractors. This provision is intended to operate so that a public authority may have, as part of any contracts with private contractors for construction work that would attract a liability to pay the training levy, a provision for the public authority to subtract the training levy from the final contract price. The public authority would then make bulk payments of these amounts to the Board at regular intervals with a schedule of the works attached to identify the individual components of the payment.

Clause 29 provides for the manner in which the training levy payable by public authorities will be calculated. This is done by multiplying the value of the construction work, on completion, by the determined rate (*clause 26*).

Clause 30 specifies the application of the Division to project owners carrying out construction work other than for a public authority.

Clause 31 stipulates that the training levy must be paid before construction work commences. Where a building permit is required for the work then the levy will be collected by ACT Building Control under an administrative arrangement with the Board before the building permit will be issued. Where no building permit is required then the levy must be paid before the commencement of the work. The provision also specifies the manner in which the levy will be calculated.

Clause 32 is designed to take account of variations in the value of the work upon which the levy is calculated and paid under *clause 31*. Variations of more than \$25 000 may result in either a liability for additional training levy (where the final value is more than \$25 000 over the amount on which the levy was originally paid) or a right to a refund (where the final value of the work is more than \$25 000 under the amount on which the levy was originally paid).

Clause 33 provides for a complete refund of training levy paid where a project is abandoned before any work is carried out.

PART IV - INSPECTORS

Clause 34 provides for the appointment of inspectors by the Board.

Clause 35 is a standard provision for the issue of identity cards to inspectors and for the return of those identity on ceasing to be an inspector.

Clause 36 sets out the powers of inspector to enter land for the purposes of discharging the inspection functions under the Act.

Clause 37 is a complementary provision to *clause 36* that sets out the powers that the inspector may exercise after entering the premises under that clause.

Clause 38 is a standard provision providing that it is an offence to obstruct or hinder an inspector.

PART V - THE FUND

Clause 39 establishes the Construction Industry Training Fund and specifies the manner in which the assets of the Fund are to be treated.

Clause 40 provides that the Fund is to consist of moneys received by the Board as payment of the training levy and interest generated by the moneys of the Fund.

Clause 41 is a purpose type clause that restricts the matters to which the moneys of the Fund may be applied.

PART VI - FUNDING FRAMEWORKS

Clause 42 provides that the ACT Regional Building & Construction Industry Council Incorporated is to prepare an annual Funding Framework for submission to the Minister. The Council is required to consult various bodies before submitting the Funding Framework to the Minister.

Clause 43 specifies the objects of the Funding Framework. This objects statement is intended as a general guiding rule for the more specific elements of the Funding Framework that are set out in *clause 44*.

Clause 44 sets out the specific elements that the Funding Framework must contain. A Funding Framework that did not address these matters would not be a valid Funding Framework. These are minimum requirements and the Funding Framework may in fact be more specific.

Clause 45 is a mechanism for the Council to have the Funding Framework varied.

Clause 46 provides for the formal approval of the Funding Framework by the Minister and for the period of effectiveness of the Funding Framework.

Clause 47 provides that once the Minister has approved the Funding Framework then the Board will publish a notice of that approval in the Gazette. The requirement to notify the place at which copies of the Funding

Framework may be inspected are to ensure that the document is publicly available and may be viewed by any member of the public.

Clause 48 provides that a person may apply to the Board for approval of a training program, course or project. Any person may make an application under this provision. For example, an employer in the construction industry who organises training for her or his employees "in house" may apply for approval under this section in order to obtain funding for that training.

Clause 49 specifies the process by which the Board may approve such an application. This provision should be read in conjunction with both *clause 50* and *clause 51*. Important points for the approval of an application are that it meets a need identified in the Funding Framework and that the application for approval is made before the training actually commences.

Clause 50 provides a review of decisions of the Board to refuse an application made under *clause 48*.

Clause 51 is complementary to *clause 49*. Once the Board has approved a training program, course or project under *clause 49* then the Board may approve the expenditure of moneys for the training. This financial support may be for funding of the training either fully or partially.

PART VII - MISCELLANEOUS

Clause 52 is a provision designed to prevent the Act being circumvented by project owners having provisions in a contract that would have the effect of avoiding or altering the liability to pay the training levy.

Clause 53 provides a method for the calculation and collection of interest on unpaid amounts of levy.

Clause 54 is the regulation making power for the Act.