



AUSTRALIAN CAPITAL TERRITORY

Building and Construction Industry Training Levy Act 1999

No. 30 of 1999

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SCHEDULE
WORK FOR THE PURPOSES OF ACT



AUSTRALIAN CAPITAL TERRITORY

Building and Construction Industry Training Levy Act 1999

No. 30 of 1999

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

[Notified in ACT Gazette S24: 21 May 1999]

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

PART 1—PRELIMINARY

1. Short title

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

2. Commencement

(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, or respective days, fixed by the Minister by notice in the *Gazette*.

(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.

3. Interpretation

In this Act, unless the contrary intention appears—

- “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 subsection 23 (1);
- “member” means a person referred to in subsection 7 (1);
- “provisional levy” means the amount payable under section 19;
- “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;
 - (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;
 - (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;
- (b) is absent, except on leave granted under section 8, from 3 consecutive meetings of the Board;
- (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

Division 1—Preliminary

15. Interpretation

In this Part—

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

“exempt work” means work—

- (a) in respect of which a building approval has been issued before the commencement of section 19;
- (b) for the carrying out of which a written offer or tender has been made before the commencement of section 19;
- (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;

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

- (a) where a person has applied for a building permit or building approval—that person; or
- (b) in any other case—the person who carries out the work;

“public authority” means—

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

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.

Division 2—Liability for training levy

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.

18. Calculation of training levy

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

(2) In this section—

“value of the work” means—

- (a) where the construction work has been completed under a contract that fixes its total cost—the amount fixed by the contract; or
- (b) in any other case where the work has been completed or where the work, having been commenced, is abandoned before being completed—such amount as is agreed by the Board and the project owner to be the cost of the work or, in default of agreement, such amount as is determined by a qualified valuer appointed by the Council.

Division 3—Assessment, payment and adjustment of training levy

19. Assessment and payment of provisional levy

(1) This section applies in relation to work that is carried out after the commencement of this section, other than exempt work.

(2) An amount is payable in respect of work to which this section applies—

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

(3) The provisional levy payable under subsection (2) is such amount as the Board assesses to be a reasonable estimate of the amount of training levy that will be payable in respect of the work.

(4) The project owner shall not cause work to which this section applies to be carried out unless the provisional levy in respect of the work has been paid to the Board.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

20. Assessment of levy

(1) In this section—

“work” does not include exempt work.

(2) A project owner shall, within 3 months after the completion of work or the abandonment of work that has not been completed—

- (a) notify the Board in writing of the completion or the abandonment, as the case requires; and
- (b) give to the Board such documents and information as the Board reasonably requires in order to assess the training levy payable in respect of the work.

(3) A project owner who, without reasonable excuse, fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(4) The Board shall, as soon as practicable after compliance with subsection (2) by a project owner, issue to him or her a written assessment of the training levy in respect of the relevant work.

21. Refund of provisional levy paid in respect of exempt work

(1) Where provisional levy has been paid in respect of work and—

- (a) the project has been abandoned before any work has been carried out;
- (b) the project has been abandoned before completion and, in its incomplete state, the work is exempt work; or
- (c) the work, on completion of the project, is exempt work;

the project owner may, within 3 months after the abandonment or the completion of the work, as the case requires, apply to the Board in writing for the issue of a certificate that no levy is payable in respect of the work.

(2) The Board—

- (a) on receipt of an application under subsection (1); and
- (b) on being satisfied that a paragraph of that subsection applies in respect of the work;

shall issue the required certificate.

22. Adjustment of levy

(1) Where the amount of provisional levy paid in respect of work exceeds the amount of the training levy payable, the Board shall refund to the project owner an amount equal to the excess.

- (2) Where no provisional levy had been paid in respect of work, whether or not in breach of section 19, the project owner shall pay to the Board an amount equal to the amount of the training levy.
- (3) Where the training levy payable in respect of work exceeds the provisional levy paid in respect of that work, the project owner shall pay to the Board an amount equal to the amount of the excess.
- (4) Where a certificate has been issued under section 21 the Board shall refund to the project owner an amount equal to the provisional levy paid in respect of the work to which the certificate relates.
- (5) An amount payable under this section shall be paid within 1 month after—
 - (a) in the case of an amount under subsection (1), (2) or (3)—the issue of the relevant assessment; or
 - (b) in the case of an amount under subsection (4)—the issue of the relevant certificate.

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 provisional or training levy; 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;
 - (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 any payments that the Board must make under section 22;
- (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 first-mentioned 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” has the same meaning as in the *Vocational Education and Training Act 1995*.

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) is guilty of an offence punishable, on conviction, by a fine not exceeding 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 provisional levy or 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 subsection 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 paragraph 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 paragraph 31 (2) (a), for the inspector to enter the occupier's premises and to exercise any power under section 34;
- (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 paragraph 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 provisional levy or 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;
- (b) to search the premises for things of the kind mentioned in subparagraph (1) (b) (i) or a document or record mentioned in subparagraph (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;
- (b) specify the nature of the offence, or the lack of compliance, in relation to which the entry and search are authorised;

- (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;
- (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;
- (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
- (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.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 month, or both;
- (b) if the offender is a body corporate—250 penalty units.

36. False or misleading information

A person shall not, in purported compliance with a request under paragraph 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.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 month, or both;
- (b) if the offender is a body corporate—250 penalty units.

PART 7—MISCELLANEOUS

37. Regulations

The Executive may make regulations for the purposes of this Act.

SCHEDULE

Section 3

WORK FOR THE PURPOSES OF ACT

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

SCHEDULE—continued

- (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.
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NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 24 March 1999]

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