

SOUTH AUSTRALIA

CONSTRUCTION INDUSTRY TRAINING FUND REGULATIONS 1993

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SCHEDULE

**REGULATIONS UNDER THE CONSTRUCTION INDUSTRY TRAINING FUND ACT
1993**

Construction Industry Training Fund Regulations 1993

being

No. 180 of 1993: *Gaz.* 5 August 1993, p. 753¹

¹ Came into operation 1 September 1993: reg. 2.

Citation

1. These regulations may be cited as the *Construction Industry Training Fund Regulations 1993*.

Commencement

2. These regulations will come into operation on 1 September 1993.

Interpretation

3. In these regulations, unless the contrary intention appears—

"the Act" means the *Construction Industry Training Fund Act 1993*.

Sectors of the building and construction industry

4. Pursuant to section 3(3) of the Act, the sectors of the building and construction industry are constituted as follows:

- (a) THE HOUSING SECTOR—That part of the building and construction industry which carries out building or construction work on, or resulting in, a building that is a residential dwelling unit, or a number of residential dwelling units, each of which contains cooking and bathing facilities and is intended to be used predominantly for long term residential purposes. A building that is a dwelling unit which is part of an educational institution, a hospital or other building offering institutional care or temporary accommodation (such as a motel, hostel or holiday apartment) is not included in the housing sector;
- (b) THE COMMERCIAL SECTOR—That part of the building and construction industry, other than the housing sector, which carries out building or construction work on, or resulting in, a rigid, fixed and permanent structure with a roof, the intended purpose of which is for the shelter, or the use, of people, plants, machinery, goods or livestock;
- (c) THE CIVIL SECTOR—The remainder of the building and construction industry.

Composition of the Board

5. (1) For the purposes of section 5(1)(c) of the Act—

- (a) the method of selecting the persons to represent the interests of employers in the building and construction industry will be determined by majority agreement between the employer associations referred to in schedule 2 of the Act (as amended by these regulations); and
- (b) when the appropriate number of persons have been selected, the nominations under that section must be made by notice in writing to the Minister.

(2) For the purposes of section 5(1)(d) of the Act—

- (a) the method of selecting the persons to represent the interests of employees in the building and construction industry will be determined by majority agreement between the employee associations referred to in schedule 3 of the Act (as amended by these regulations); and

3.

- (b) when the appropriate number of persons have been selected, the nominations under that section must be made by notice in writing to the Minister.

Estimating the value of building or construction work

6. For the purposes of Part 4 of the Act—

- (a) where the building or construction work is to be carried out under a contract, the estimated value of the work will be the contract price, where that price includes value for at least each of the components referred to in paragraph (b); and
- (b) where the building or construction work is carried out other than under a contract or under a contract the contract price for which does not include value for each of the following components, the estimated value of the work will be the sum of—
- (i) the value of the building materials; and
 - (ii) the value of any fixtures, fittings or other accessories or components associated with the building or structure; and
 - (iii) the value of the labour, necessary services and fees payable in relation to the performance of the work; and
 - (iv) the value of any overheads; and
 - (v) the profit margin.

Forms

7. (1) Any levy paid for the purposes of the Act must be accompanied by a form in the form set out in the schedule completed in accordance with the instructions contained in the schedule.

(2) Pursuant to section 23(4)(c) of the Act, an owner of land who applies for the benefit of section 23(4) of the Act must provide, in addition to the form set out in the schedule, a statutory declaration under Part III of the *Oaths Act 1936* in which the owner declares—

- (a) that the building or construction work is to be carried out on agricultural land within the meaning of the Act; and
- (b) that some or all of the work is to be carried out by him or her, or by a person who will not be employed or engaged for remuneration to perform any part of the work; and
- (c) that he or she has made a reasonable estimation of that proportion of the building or construction work that is attributable to work carried out by him or her, or by a person who will not be employed or engaged for remuneration to perform a part of the work.

(3) A notice of variation for the purposes of section 26 of the Act where the actual value of the relevant work exceeds by the amount of \$25 000 or more the estimated value of the work must be in the form of the form set out in the schedule completed in accordance with the relevant instructions.

Penalties

8. Pursuant to section 25(1)(b) of the Act, the following amounts are prescribed as maximum amounts that may be imposed by the Board under that section if a project owner fails to pay any levy due under the Act in accordance with the requirements of the Act:

- (a) if the value of the unpaid levy does not exceed \$500 \$ 500;
- (b) if the value of the unpaid levy exceeds \$500 but does not exceed \$10 000 \$2 500;
- (c) if the value of the unpaid levy exceeds \$10 000 \$5 000.

Prosecutions

9. Pursuant to section 36(1)(b) of the Act, an offence under Part 4 of the Act is an offence of a prescribed kind.

Records

10. (1) Pursuant to section 37(2)(d) of the Act, a person must keep the following records in relation to building or construction work for which he or she is the project owner and which gives rise to any liability to pay levy under the Act for a period of five years from the commencement of that work—

- (a) a copy of all forms submitted to or received from the Board or a collection agency relating to the payment or refund of levy; and
- (b) the date on which the building or construction work commenced; and
- (c) the value of the building or construction work; and
- (d) the site address of the building or construction work; and
- (e) brief details describing the type of building or construction work.

(2) The Board may, in writing, exempt a person from keeping any of the records referred to in subregulation (1), either in general or in relation to specified work or work of a specified kind, for a period of time specified in the exemption.

Offence

11. A person who breaches, or fails to comply with, a provision of these regulations is guilty of an offence.

Penalty: Division 7 fine.

Items not subject to levy

12. (1) Pursuant to section 37(2)(g) of the Act (but subject to subregulation (2)), any plant or equipment directly associated with mineral, oil or natural gas exploration, production or processing constitute a class of items the cost of which will not be taken into account for the purposes of the calculation or imposition of the levy under the Act.

(2) Subregulation (1) does not apply in respect of any plant or equipment constructed, erected or installed as part of the housing sector or the commercial sector of the building and construction industry (as defined by these regulations).

Building or construction work—Schedule 1—Maintenance

13. Pursuant to clause 1(*r*) of schedule 1 of the Act (but not so as to affect the operation of regulation 14), maintenance work carried out on a building or structure, or on any place, machinery, plant, system, equipment, facility or operation referred to in schedule 1 of the Act, constitutes building or construction work for the purposes of the Act.

Exclusions—Schedule 1—Mining and Petroleum

14. (1) Pursuant to clause 2(*d*) of schedule 1 of the Act, the following work associated with any operation under the *Petroleum Act 1940*, the *Petroleum (Submerged Lands) Act 1982* or the *Mining Act 1971* does not constitute building or construction work for the purposes of the Act, provided that it is not carried out in the housing sector or the commercial sector of the building and construction industry (as defined by these regulations):

- (a) earthworks associated with the construction or maintenance of any temporary water supply or temporary access track for any purpose associated with any mineral or petroleum exploration activity, and any other earthworks associated with any such exploration activity;
- (b) any excavation work associated with exploration for, or the extraction of, any mineral or petroleum;
- (c) any work directly related to the fabrication of a pipeline system used in mineral or petroleum production or processing (but not including associated work such as earthworks, excavation work or the construction of culverts, bridges, drains or structural supports), and any subsequent repair work that involves welding or coating a pipeline system (or part of a pipeline system) used in mineral or petroleum production or processing;
- (d) the construction or maintenance of any haul road or track which is—
 - (i) in or around a mine or other mineral or petroleum production facility; and
 - (ii) directly used in a mineral or petroleum production operation;
- (e) the maintenance of an airstrip or landing pad used in conjunction with any mineral or petroleum production operation;
- (f) work associated with an environmental clean-up or environmental restoration;
- (g) work associated with a mine back-filling operation;
- (h) repair or maintenance work carried out on any plant or equipment directly associated with mineral or petroleum exploration, production or processing, or for piloting.

(2) In subregulation (1)—

"**petroleum**" has the same meaning as in the *Petroleum Act 1940*.

Amendment of schedule 2

15. Pursuant to clause 2 of schedule 2 of the Act—

(a) the following employer associations are deleted from schedule 2 of the Act:

Air Conditioning and Mechanical Constructors' Association of Australia Limited

Australian Federation of Construction Contractors

Master Plumbers Association of South Australia;

(b) the following employer associations are added to schedule 2 of the Act:

Air Conditioning and Mechanical Contractors' Association of South Australia Incorporated

Australian Federation of Construction Contractors (South Australian Branch)

The Master Plumbers and Mechanical Services Association of South Australia Incorporated.

Amendment of schedule 3

16. Pursuant to clause 2 of schedule 3 of the Act—

(a) the following employee associations are deleted from schedule 3 of the Act:

Amalgamated Society of Carpenters and Joiners of Australia—South Australian Branch

Plumbers and Gasfitters Employees Union;

(b) the following employee associations are added to schedule 3 of the Act:

Electrical Electronics Plumbing and Allied Workers Union—Plumbing Division

Federation of Industrial Manufacturing and Engineering Employees—Building Construction and Joinery Branch—South Australian Sub Branch.

CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993

- (i) THIS FORM IS TO BE USED FOR INITIAL LEVY PAYMENT AND FOR ADJUSTMENTS WHERE AN ADDITIONAL LEVY IS PAYABLE.
- (ii) "**Project Owner**" in respect of building or construction work, means—
- (a) where a person or body has been engaged (other than as an employee) to carry out or cause to be carried out all of the building or construction work, that person or body;
 - (b) where the building or construction work is to be carried out for or on behalf of a government authority by a person or body other than—
 - (i) an officer or employee of a government authority; or
 - (ii) another government authority,
 that person or body;
 - (c) in any other case, the person or body for whose direct benefit building or construction work exists upon its completion;
- (iii) **FOR BUILDING AND CONSTRUCTION WORK DEFINITIONS REFER TO FUND BROCHURE.**
- (iv) "**Sectors**", in relation to the building and construction industry, means the following sectors of that industry—
- (a) the housing sector;
 - (b) the commercial sector; and
 - (c) the civil sector.

For further details refer to Fund brochure.

- (v) **Owner builder** on agricultural land relates to the situation where—
- (a) building or construction work is to be carried out on agricultural land within the meaning of the Act;
 - (b) some or all of the work is to be carried out by the owner of the land, or by a person who will not be employed or engaged for remuneration to perform any part of the work; and
 - (c) the owner of the land applies for the benefit of section 23(4)(c) of the Act in accordance with the regulations.

The estimated value of the building or construction work will, for the purposes of the calculation and imposition of the levy in this case, be taken to be as follows:

$$EV = V (1 - A)$$

Where: EV is the estimated value

V is the value that would apply for the purposes of the calculation and imposition of the levy except for the relevant provisions of the Act

A is a reasonable estimation of that proportion of the building or construction work that is attributable to the work carried out by the owner of the land, or by a person who will not be employed or engaged for remuneration to perform any part of the work, expressed as a percentage of the total amount of building or construction work to be carried out.

9.

(vi) **The project owner** must pay the levy to the Board or a collection agency—

- (a) before obtaining building approval for the relevant building or construction work; or
- (b) if no building approval is required, before commencing that building or construction work.

For further details refer to Fund brochure.

Penalty for late payment

Where work is commenced before the project owner has paid the levy due in respect of that work, the project owner is liable to pay to the Board, by way of penalty, an amount calculated from the time the construction work commenced at a prescribed rate per annum on the unpaid levy. The Board may also impose a penalty fine. Prosecutions may occur in serious cases.

(vii) **Adjustment of amount paid after completion of work** (where variation increases the value of work)

Where on the completion of building or construction work the Board is satisfied that the value of the work varies by \$25,000 or more from the value of that work as estimated, the project owner must pay to the Board or to a collection agency, an amount equal to the extra amount that would have been payable if the estimated value of the work had been the actual value of that work.

(viii) **QUICK LEVY CALCULATOR** - multiply value by 0.0025

Note: Only payable on amounts exceeding \$5,000.

PAYMENTS MAY BE MADE TO:

- Construction Industry Training Fund Board
81 Greenhill Road
Wayville SA 5034
Phone: (08) 373 4744
Fax: (08) 373 2696
(Forward only original when payment direct to CITF)
- Participating Local Government Offices
(Provide all three copies when making payment)
- Home Owners Warranty South Australia Pty. Ltd.
Housing Industry Association
Station Place
Bowden SA 5007
Phone (08) 346 5091
Fax (08) 346 0922
(Provide all three copies when making payment)
- Master Builders Association Building Indemnity Insurance
47 South Terrace
Adelaide 5000
Phone (08) 211 7466
Fax (08) 231 5240
(Provide all three copies when making payment)