

South Australia

**CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993**

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An Act to establish a fund to be used to improve the quality of training in the building and construction industry; to establish the Construction Industry Training Board to administer the fund and to co-ordinate appropriate training; to provide for the imposition and collection of a levy for the purposes of the fund; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 July 2001**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

**CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993**

being

Construction Industry Training Fund Act 1993 No. 17 of 1993  
[Assented to 8 April 1993]<sup>1</sup>

as amended by

Construction Industry Training Fund Regulations 1993 No. 180 of 1993 [*Gaz.* 5 August 1993, p. 753]<sup>2</sup>  
**Construction Industry Training Fund (Miscellaneous) Amendment Act 2000 No. 75 of 2000 [Assented to  
14 December 2000]<sup>3</sup>**

<sup>1</sup> Came into operation 1 September 1993: *Gaz.* 5 August 1993, p. 746.

<sup>2</sup> Came into operation 1 September 1993: reg. 2.

<sup>3</sup> Came into operation (except ss. 3(c) and 6(b)) 1 March 2001; **ss. 3(c) and 6(b) came into operation 1 July 2001: *Gaz.* 1 March 2001, p. 796.**

N.B. The amendments effected to this Act by the *Offshore Minerals Act 2000* had not been brought into operation at the date of, and have not been included in, this reprint.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Construction Industry Training Fund Act 1993*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

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

"**agricultural land**" means land wholly or mainly used for agricultural or horticultural purposes, animal husbandry, or other similar purposes;

"**the Board**" means the Construction Industry Training Board constituted under this Act;

"**building approval**" in respect of building or construction work, means provisional building rules consent under section 33(1)(b) of the *Development Act 1993*;

"**building or construction work**"—*see schedule 1*;

"**collection agency**" means a person or body appointed under section 19;

"**the Fund**" means the Construction Industry Training Fund established under Part 5;

"**government authority**" means—

- (a) the Crown; or
- (b) an agency or instrumentality of the Crown; or
- (c) a local council; or
- (d) a body, or body of a prescribed class, prescribed by regulation for the purposes of this definition;

"**local council**" means a council under the *Local Government Act 1999* and includes a subsidiary of a council under that Act;

"**project owner**" in respect of building or construction work, means—

- (a) if a person has been engaged (other than as an employee) to carry out, or to cause to be carried out (including by the use of one or more subcontractors) all, or substantially all, of the building or construction work associated with a particular project—that person<sup>1</sup>;
- (b) in any other case—the person for whose direct benefit the building or construction work exists on its completion;

<sup>1</sup>. The regulations may prescribe principles to be taken into account for the purpose of determining whether a person falls within the ambit of this paragraph.

**"training plan"** means a training plan prepared by the Board under Part 6.

(2) The following constitute sectors of the building and construction industry for the purposes of this Act:

- (a) the housing sector;
- (b) the commercial sector;
- (c) the civil sector;
- (d) such other sectors (if any) as the regulations may prescribe.

(3) A sector will be constituted by such parts of the building and construction industry as the regulations may prescribe.

**PART 2**  
**THE CONSTRUCTION INDUSTRY TRAINING BOARD**

**Constitution of the Board**

4. (1) The Construction Industry Training Council (S.A.) Incorporated, as established under the *Associations Incorporation Act 1985*, is continued in existence as the *Construction Industry Training Board*.

(2) The Board—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is capable of suing and being sued in its corporate name; and
- (c) has the functions and powers assigned or conferred by or under this Act.

(3) The Board is not part of the Crown, nor is it an agency or instrumentality of the Crown.

(4) On the commencement of this Act, the incorporation of the Construction Industry Training Council (S.A.) Incorporated under the *Associations Incorporation Act 1985* is terminated.

(5) A reference in an instrument to the Construction Industry Training Council (S.A.) Incorporated will, where the context admits, be construed as a reference to the Board.

**Composition of the Board**

5. (1) Subject to this section, the Board consists of the following members appointed by the Governor:

- (a) a person nominated by the Minister, after consultation with the employer and employee associations referred to in schedules 2 and 3, to be the presiding member of the Board; and
- (b) two persons nominated by the Minister, being persons who have appropriate experience in vocational education or training and who are or have been employed or engaged in the provision of such education or training; and
- (c) five persons nominated in accordance with the regulations by the employer associations referred to in schedule 2, to represent the interests of employers in the building and construction industry; and
- (d) three persons nominated in accordance with the regulations by the employee associations referred to in schedule 3, to represent the interests of employees in the building and construction industry.

(1a) If the Minister does not receive a nomination under subsection (1)(c) or (d) within a reasonable time after requesting that a nomination be made, the Minister may, by notice in writing, request the relevant associations to nominate a person within a time (being not less than one month) allowed in the notice and if a nomination is not made within that time, then the Minister may select a person for appointment to the Board in lieu of a nominee of the relevant associations (and a person so selected may then be appointed to the Board as if he or she had been nominated by the associations under this section).

(2) A member of the Board is to be appointed for a term (not exceeding three years) specified in the instrument of appointment and is, on the expiration of a term of office, eligible for reappointment.

(3) The Governor may appoint a person to be a deputy of a member of the Board and the deputy may act as a member of the Board in the absence of that member.

(4) Without derogating from the other provisions of this Act, the Governor may remove a member of the Board from office for—

- (a) misconduct; or
- (b) incapacity to carry out satisfactorily duties of office; or
- (c) failure to carry out satisfactorily duties of office.

(5) The office of a member of the Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence; or
- (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (f) is removed from office by the Governor.

(6) On the office of a member becoming vacant, a person may be appointed in accordance with this section to the vacant office.

(7) An act of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **Immunity of members**

6. (1) A member of the Board incurs no liability for anything done honestly and with reasonable care and diligence in the performance or purported performance of functions or duties under this Act.

(2) Any liability that would, but for this section, attach to a member attaches instead to the Board.

### **Procedures of the Board**

7. (1) Six members constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.

(2) The presiding member of the Board will preside at meetings of the Board or, in the absence of that member, a member chosen by those present will preside.

(3) A decision supported by the majority of the votes cast by members present at a meeting of the Board is a decision of the Board if (and only if) that majority is constituted by at least—

- (a) one of the persons appointed by the Governor under section 5(1)(b); and
- (b) the majority of the persons appointed by the Governor under section 5(1)(c) who are present at the meeting and who vote on the question arising for decision; and

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- (c) the majority of the persons appointed by the Governor under section 5(1)(d) who are present at the meeting and who vote on the question arising for decision.
- (4) Subject to subsection (5), each member present at a meeting of the Board has one vote on any question arising for decision.
- (5) The member presiding at a meeting of the Board does not have a deliberative or a casting vote.
- (6) A person appointed by the Minister for Employment, Education and Training of the Commonwealth is entitled to attend any meeting of the Board and to participate in the discussions of the Board.
- (7) The person appointed under subsection (6)—
  - (a) will not be taken into account for the purpose of determining any quorum of the Board; and
  - (b) is not entitled to vote on any question before the Board.
- (8) The Board must have accurate minutes kept of its proceedings.
- (9) Subject to this Act, the Board may determine its own proceedings.

**Disclosure of interest**

- 8.** (1) A member of the Board who has a direct or indirect private interest in a matter decided or under consideration by the Board—
- (a) must disclose the nature of the interest to the Board; and
  - (b) must not take part in any deliberations or decisions of the Board on the matter.

Maximum penalty: \$10 000.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (3) A disclosure under this section must be recorded in the minutes of the Board.
- (4) If a member makes a disclosure of interest in respect of a contract or proposed contract—
  - (a) the contract is not liable to be avoided by the Board on the ground of the fiduciary relationship between the member and the Board; and
  - (b) the member is not liable to account to the Board for profits derived from the contract.

**Members' duties of honesty, care and diligence, etc.**

- 9.** (1) A member of the Board must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

Maximum penalty: \$10 000.

(2) A member of the Board must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions, whether within or outside the State.

Maximum penalty: \$10 000.

(3) A member or former member of the Board must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board.

Maximum penalty: \$20 000.

(4) A member of the Board must not, whether within or outside the State, make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board.

Maximum penalty: \$20 000.

(5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

(6) For the purposes of section 6, a person will not be taken to have acted honestly if the act constituted or involved contravention by the person of subsection (3) or (4) of this section.

**Allowances and expenses**

**10.** A member of the Board is entitled to receive allowances and expenses not exceeding amounts determined by the Minister after consultation with the Commissioner for Public Employment.

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**PART 3  
OPERATIONS OF THE BOARD**

**DIVISION 1—FUNCTIONS AND POWERS**

**Functions**

**11.** The functions of the Board are—

- (a) to act as a principal adviser to the Minister and the Minister for Employment, Education and Training of the Commonwealth on any matter relating to training in the building and construction industry and in particular to provide advice in relation to—
  - (i) skill requirements for the building and construction industry and the training arrangements to meet those requirements; and
  - (ii) pre-employment and training programmes; and
  - (iii) any other matter referred to the Board for advice by either of those Ministers;
- (b) to administer the Construction Industry Training Fund;
- (c) to prepare training plans in accordance with this Act;
- (d) generally to co-ordinate training and personnel development within the building and construction industry;
- (e) to promote increased productivity, career opportunities, personal satisfaction and occupational health and safety within the building and construction industry through training;
- (f) to review and evaluate employment related training programmes to ensure that they meet the training and skill requirements of the building and construction industry, and to support appropriate training programmes in the building and construction industry;
- (g) to ensure a more equitable distribution of effort amongst employers in relation to employment related training in the building and construction industry;
- (h) to initiate, carry out, support or promote research into the training and personnel needs of the building and construction industry and to develop and implement policies, plans and programmes to meet those needs;
- (i) to liaise with educational, professional and training bodies (in either the public or private sectors) in relation to training and personnel development within the building and construction industry;
- (j) to promote, undertake or support programmes designed to facilitate the international exchange of information relevant to training or personnel development within the building and construction industry;
- (k) to perform any functions that are necessary or convenient for or incidental to the performance of functions referred to above.

**Powers of the Board**

**12.** Subject to any limitation imposed by or under this Act, the Board has all the powers of a natural person.

### Committees

**13.** (1) For the purposes, or in the course, of performing its functions, the Board may establish such committees (which may, but need not, consist of or include members of the Board) as the Board thinks fit.

(2) The Board must establish and maintain a committee in relation to each sector of the building and construction industry.

(3) The functions of a committee established under subsection (2) are—

- (a) to represent the interests of its particular sector in relation to the management of the Fund; and
- (b) to advise the Board on the allocation of money from the Fund for the benefit of its particular sector; and
- (c) to advise the Board on any other matter relevant to its particular sector; and
- (d) to carry out other functions determined by the Board.

(4) Subject to the regulations, a member of a committee holds office at the pleasure of the Board.

### Delegations

**14.** (1) The Board may delegate any of the Board's functions or powers under this Act—

- (a) to a committee of the Board; or
- (b) to a particular individual.

(2) A delegation under this section—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the Board to act in any matter; and
- (c) is revocable at will by the Board.

(3) In any legal proceedings an apparently genuine certificate, purportedly signed by a member of the Board, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

(4) The Board must ensure that a list of the delegations that it makes in a particular financial year is included in its annual report for that year.

### Common seal and execution of documents

**15.** (1) A document is duly executed by the Board if—

- (a) the common seal of the Board is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Board by a person or persons in accordance with authority conferred under this section.

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(2) The common seal of the Board must not be affixed to a document except in pursuance of a decision of the Board, and the affixing of the seal must be attested by the signatures of two members of the Board.

(3) The Board may, by instrument under its common seal, authorise a member of the Board, an officer of the Board (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Board subject to conditions and limitations (if any) specified in the instrument of authority.

(4) Without limiting subsection (3), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Board.

**DIVISION 2—ACCOUNTS, AUDITS AND REPORTS**

**Accounts and audit**

**16.** (1) The Board must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at anytime, and must at least once in every year, audit the accounts of the Board.

**Annual report**

**17.** (1) The Board must, on or before 30 September in each year, prepare a report on its activities during the preceding financial year.

(2) A report under this section must incorporate the audited financial statements of the Board for the financial year to which the report relates.

(3) The Board must cause a copy of the report to be presented to the Minister within seven days after the report is completed.

(4) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

**DIVISION 3—ADMINISTRATION**

**Staff**

**18.** The staff of the Board are not public service employees.

**Collection agencies**

**19.** (1) The Board may appoint such persons or bodies to be collection agencies for the purposes of this Act as the Board thinks fit.

(2) Any levy collected by a collection agency must be paid to the Board in accordance with instructions issued by the Board.

(3) A collection agency is entitled to receive from the Board the remuneration agreed between the Board and the agency for carrying out the agency's functions under this Act.

**PART 4  
LEVIES**

**Imposition of levy**

**20.** (1) Subject to this Act, a levy is imposed in respect of any building or construction work which commences after the commencement of this Act.

(2) The levy is not payable in respect of building or construction work—

(a) approved under the *Building Act 1971* before the commencement of this Act; or

(b) for which written offers or tenders have been made before the commencement of this Act.

**Rate of levy**

**21.** (1) The rate of the levy is 0.25 per cent of the estimated value of building or construction work, or such other percentage not exceeding 0.5 per cent of that value as the regulations may prescribe.

(2) A regulation must not be made for the purposes of subsection (1) except on a recommendation of the Board approved at a meeting of the Board at which at least one person appointed by the Governor under section 5(1)(c), and at least one person appointed by the Governor under section 5(1)(d), are present.

**Estimated value of building or construction work**

**22.** The estimated value of building or construction work will be determined in accordance with schedule 1A.

**Exemptions**

**23.** (1) The levy is not payable in respect of building or construction work if the estimated value of the work does not exceed \$15 000 or such greater amount as may be prescribed.

\* \* \* \* \*

(4) Where—

(a) building or construction work is to be carried out on agricultural land; and

(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 this provision 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, be taken to be as follows:

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

Where

EV is the estimated value

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V is the value that would apply for the purposes of the calculation and imposition of the levy except for this subsection

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.

(5) For the purposes of subsection (4)—

"owner" of land includes a person who holds land from the Crown by lease or licence.

**Liability of project owner to pay levy**

**24.** (1) The project owner in respect of any building or construction work is liable to pay the levy on that building or construction work.

(2) 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.

Maximum penalty: \$5 000 plus twice the amount of levy required to be paid.

(3) A local council must not give a building approval in respect of any building or construction work unless satisfied—

(a) that the appropriate levy has been paid; or

(b) that no levy is payable.

(4) Notwithstanding subsections (2) and (3), if—

(a) 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; and

(b) building approval is required for the relevant work but at the time that the building approval is sought the government authority has not engaged the person or body to carry out that work,

then—

(c) the building approval may be granted without payment of the levy; but

(d) the person or body engaged to carry out the building or construction work must pay the levy before the commencement of the work.

Maximum penalty: \$5 000 plus twice the amount of levy required to be paid.

(5) It will be taken to be a condition of any contract for the performance of building or construction work where the work is to be carried out for or on behalf of a government authority by a person or body other than—

- (a) an officer or employee of a government authority; or
- (b) another government authority,

that the person or body will pay any levy due under this Act in accordance with this section.

(6) Despite a preceding subsection, the Board may, by notice to a particular project owner or by notice in the *Gazette*—

- (a) determine that a requirement of this section will not apply to a particular project owner, or to project owners of a particular class; and
- (b) determine that a levy may be paid in monthly instalments, or in other periodical instalments determined by the Board, in accordance with a scheme established by the Board.

(7) The Board may, by subsequent notice, vary or revoke a determination under subsection (6).

(8) A person must not contravene a determination under subsection (6)(b).

Maximum penalty: \$5 000 plus twice the amount of levy required to be paid under the determination.

#### **Penalties for late payment of levy**

**25.** (1) If a project owner fails to pay any levy due under this Act in accordance with the requirements of this Act—

- (a) the amount in arrears will, until paid, be increased by penalty interest at the prescribed rate under subsection (2); and
- (b) the Board may impose on the project owner a fine of an amount (not exceeding the prescribed sum) fixed by the Board.

(2) The prescribed rate under this subsection is the 10 year bond rate declared by the South Australian Government Financing Authority in respect of investments made on the first day of the financial year during which penalty interest becomes payable under subsection (1).

(3) The Board may for any proper reason remit penalty interest or a fine imposed under subsection (1) wholly or in part.

(4) The imposition of a penalty under this section does not affect the liability of a project owner to pay a levy.

#### **Notice of variation**

**26.** A project owner must notify the Board within three months after the completion of building or construction work if the actual value of the work (as determined under this Act) exceeds by an amount of \$25 000, or such other amount as may be prescribed, the estimated value of the work.

Maximum penalty: \$5 000.

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**Adjustment of amount paid**

**27.** If the Board is satisfied that the actual value of the building or construction work on completion (as determined under this Act) varies by an amount of \$25 000, or such other amount as may be prescribed, from the estimated value—

- (a) where the value of the work was overestimated, the Board must refund to the project owner an amount equal to the excess levy paid; or
- (b) where the value of the work was underestimated, the project owner must pay to the Board an amount equal to the additional levy that would have been payable if the estimated value of that work had been the actual value of that work.

**Cancellation of project**

**28.** (1) The project owner may notify the Board if any building or construction work or part of any building or construction work is not carried out after the levy is paid for the work.

(2) On receipt of a notice under subsection (1) and on proof to the satisfaction of the Board, the Board must refund to the project owner the amount of the levy paid in respect of the work or part of the work not carried out.

**Recovery of levy, etc.**

**29.** The Board may recover in any court of competent jurisdiction—

- (a) amounts of the levy that are due for payment; and
- (b) other amounts due to the Board under this Part.

**Offence to provide false information**

**30.** A project owner who provides to the Board or a collection agency any information or document that is false or misleading in a material particular regarding building or construction work or its cost is guilty of an offence.

Maximum penalty:       \$10 000 plus twice the amount of levy required to be paid in respect of that work.

**PART 5**  
**THE CONSTRUCTION INDUSTRY TRAINING FUND**

**Construction Industry Training Fund**

**31.** (1) The Board must establish and maintain a Fund to be called the *Construction Industry Training Fund*.

(2) The Board will be responsible for the administration of the Fund.

(3) The Fund will consist of—

(a) all levies collected under this Act; and

(b) all penalties collected under this Act; and

(c) any money derived from the investments of the Fund; and

(d) any money advanced to the Board for the purposes of this Act; and

(e) all other money received by the Board.

(4) There will be paid from the Fund—

(a) all amounts necessary for the implementation of a training plan; and

(b) all amounts required to be paid to collection agencies under any agreement under this Act; and

(c) the costs of the Board incurred in the administration of this Act; and

(d) any amount required for a refund of the levy under Part 4; and

(e) all other costs and expenses reasonably incurred by the Board in the performance of its functions.

(5) The Board may invest money that is not immediately required for the purposes of the Fund in such manner as the Treasurer may from time to time approve.

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**PART 6  
TRAINING PLANS**

**Training plans**

**32.** (1) The Board must—

- (a) in respect of the financial year commencing on 1 July 1993, or as soon as practicable after the commencement of this Act; and
- (b) in respect of each succeeding financial year, before 31 May last preceding that financial year,

prepare a training plan for the purpose of improving the quality of training, and to increase the levels of skills, in the building and construction industry across all skill areas of that industry.

(2) A training plan must set out priorities for employment related training to be funded from the Fund.

(3) A training plan must be prepared on the basis that money from the Fund for the provision of training will be allocated to each sector of the building and construction industry in approximately the same proportions as the resources of the Fund have been contributed by that sector.

(4) A training plan must, in the allocation of money to a particular sector of the building and construction industry, provide for training that is directly relevant to the needs of that sector.

(5) The Board must cause a training plan, together with such other submissions, if any, that the Board considers appropriate, to be submitted to the Minister for approval.

(6) The Minister may request that a training plan be amended or revised before approval.

(7) On the approval of a training plan—

- (a) the Minister must give notice in writing of the approval to the Board; and
- (b) the training plan has effect from the date specified in the notice of approval; and
- (c) it is the duty of the Board, so far as is reasonably practicable, to carry the training plan into effect.

(8) The Board must ensure that the resources of the Fund required for the purposes of a training plan are only allocated to properly structured training programmes that are relevant to the building and construction industry in the State.

(9) The Board may, with the approval of the Minister, vary a training plan.

**PART 7  
MISCELLANEOUS**

**Authorised officers**

**33.** (1) The Board may, with the approval of the Minister, appoint a person to be an authorised officer for the purposes of this Act.

(2) An appointment must be made in writing and the Board must ensure that each authorised officer is issued with an identity card that complies with subsection (3).

(3) An identity card—

(a) must contain a photograph of the authorised officer; and

(b) must be signed by the authorised officer and a member of the Board.

(4) The Board may, for any reasonable cause, revoke the appointment of an authorised officer under this Act.

**Powers of entry and inspection**

**34.** (1) An authorised officer, may, for the purposes of this Act—

(a) enter at all reasonable times, inspect and examine any site where building or construction work is being carried out;

(b) conduct any examination or inquiry necessary to ascertain whether this Act has been complied with;

(c) require the production of any document relevant to the calculation or payment of any levy under this Act, inspect and examine it, and take copies or extracts from it.

(2) A person who obstructs or hinders an authorised officer in the performance of the officer's duty is guilty of an offence.

Maximum penalty: \$10 000.

(3) A person who gives false or misleading information to an authorised officer in the performance of the officer's duty is guilty of an offence.

Maximum penalty: \$10 000.

(4) A person is not excused from answering a question or producing a document when required to do so under this Act on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(5) However, if the person objects to answering the question or producing the document on that ground, the answer or document is not admissible against the person in any criminal proceedings other than—

(a) proceedings for an offence with respect to false or misleading statements, information or records; or

(b) proceedings for an offence in the nature of perjury.

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**Contracts to evade levy void**

**35.** A contract, agreement or arrangement made or entered into, orally or in writing and whether before or after the commencement of this Act, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) relieving any person from liability to pay any levy; or
- (b) defeating, evading or avoiding any levy,

is void, as against the Board, or in regard to any proceeding under this Act, but without affecting any validity that it may have in any other respect or for any other purpose.

**Prosecution**

**36.** (1) Proceedings for an offence against this Act may be instituted—

- (a) by the Director of Public Prosecutions; or
- (b) in relation to any offence of a prescribed kind—by the Board or any person authorised to do so by the Board.

(2) Proceedings for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed.

(3) Where, in proceedings for an offence against this Act, the court finds that the defendant has contravened, or failed to comply with, this Act, the court may, in addition to any penalty that it may impose—

- (a) order the defendant to take specified action to make good the contravention or default in a manner, and within a period, specified by the court;
- (b) order the defendant to furnish or make available to the Board, within a period specified by the court, such information or records as the Board may reasonably require for the purposes of this Act.

**Regulations**

**37.** (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) provide for the membership of a committee established by the Board in relation to a sector of the building and construction industry;
- (b) provide that a prescribed person or body will be taken to have been appointed as a collection agency for the purposes of this Act, and prescribe the remuneration payable to that person or body for carrying out the functions of a collection agency under this Act;
- (c) prescribe information to be provided to the Board or collection agencies by project owners, and prescribe the manner in which that information must be provided;
- (d) require project owners to keep records for the purposes of determining the estimated cost of building or construction work;
- (e) prescribe the manner of payment of any levy;

- (f) prescribe procedures for giving notice to the Board and for refund of a levy paid in respect of any building or construction work that is not carried out;
  - (g) provide that the cost of items of a prescribed class will not be taken into account for the purposes of the calculation or imposition of the levy;
  - (h) prescribe penalties, not exceeding \$2 500, for breach of, or non-compliance with, any regulation.
- (3) A regulation—
- (a) may be of general or limited application; and
  - (b) may leave any matter or thing to be determined or dispensed with according to the discretion of the Minister or the Board (either generally or in a particular case or class of case); and
  - (c) may make different prescriptions according to prescribed circumstances; and
  - (d) may differentiate between various classes of persons.
- (4) A regulation must not be made under subsection (2) unless—
- (a) the regulation is made on the recommendation of the Board; or
  - (b) the Minister has certified that he or she has consulted with the Board on the proposed regulation and given due regard to any submissions made by the Board in relation to the matter.

#### **Review of Act**

**38.** (1) The Minister must, as soon as practicable after 1 January 2003, appoint an independent person to carry out an investigation and review concerning—

- (a) the effectiveness of the Board (over the period of three years ending on 31 December 2002);
- (b) the attainment of the objects of this Act (over the period of three years ending on 31 December 2002);
- (c) the need for this Act to continue in operation;
- (d) any other matters that appear to the Minister to be relevant.

(2) The person appointed under subsection (1) must present to the Minister a report on the outcome of the investigation and review within six months after his or her appointment.

(3) The Minister must within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

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**SCHEDULE 1***Building or construction work under the Act***Building or construction work**

1. Subject to clause 2, for the purposes of this Act, building or construction work will be taken to include:

- (a) the construction, erection, alteration, repair, renovation, demolition or removal of a building or structure;
- (b) the construction, alteration or repair of any road, street, parking area, footpath, thoroughfare (for pedestrians or vehicles), kerbing, guttering, roundabout, median strip, or the performance of other similar roadworks;
- (c) the construction, alteration, repair, demolition or removal of any railway, tramway or busway, or of any platform, signals or other structure in connection with a railway, tramway or busway;
- (d) the construction, alteration, repair or removal of an aircraft runway, or a landing pad;
- (e) the construction, alteration, repair, demolition or removal of a harbour, breakwater, retaining wall or marina;
- (f) the performance of dredging work;
- (g) the construction, alteration, repair, demolition or removal of a dam, weir, reservoir or other embankment or structure for the catchment, collection, storage, control or diversion of water;
- (h) the laying, placing or installing of pipes, cables or other prefabricated materials in, on or above the ground;
- (i) the performance of excavation work;
- (j) 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;
- (k) on site electrical 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;
- (l) the on site construction, erection, installation, alteration, repair, renovation, demolition or removal of—
  - (i) a lift or escalator;
  - (ii) any air-conditioning, ventilation or refrigeration system or equipment;
- (m) the construction, repair, alteration or removal of a playfield, golf-course, race course, stadium, swimming pool or other sporting or recreational facility;
- (n) landscaping or the construction, alteration or removal of a park or garden;
- (o) the removal of asbestos from a building or from any machinery, plant or equipment located in or on a building;
- (p) building or construction work associated with any operation under the *Petroleum Act 1940*, the *Petroleum (Submerged Lands) Act 1982*, the *Mining Act 1971* or the *Opal Mining Act 1995*;
- (q) any site preparation work (including pile driving) preliminary to the performance of any work referred to above;
- (r) any other kind of work prescribed by the regulations for the purposes of this provision.

**Exclusions**

2. The following do not constitute building or construction work for the purposes of this Act:

(a) maintenance or repair work carried out—

(i) by a self-employed person for his or her own benefit; or

(ii) by an employee for the benefit of his or her employer,

where the principal business activity of the self-employed person, or the employer (as the case may be) does not consist of building or construction work;

(b) the construction, alteration, repair, demolition or removal of a fence on (or on the boundary of) agricultural land;

(c) work directly associated with the care, conservation or rehabilitation of agricultural land, or of land that has been agricultural land;

(d) any other kind of work excluded from the operation of this Act by regulations prescribed for the purposes of this provision.

**Definitions**

3. In this schedule—

"**building**" includes—

(a) a portion of a building;

(b) a temporary building;

(c) a moveable building;

"**structure**" includes—

(a) a tank or other structure for the catchment, collection, storage or supply of water;

(b) a sewerage, effluent or storm-water drain, a sewerage treatment plant, a drainage system, or other associated or similar structure;

(c) a bridge, viaduct, aqueduct or tunnel;

(d) a chimney stack or cooling tower;

(e) a radio, television, communications or lighting mast;

(f) a mast or tower associated with the transmission of electricity;

(g) a silo;

(h) a dock, jetty, pier, terminal, wharf or mooring;

(i) a pipeline (including a pipeline placed in the ground);

(j) any structure, plant or facility associated with the production, storage, conveyance or distribution of oil, gas, coal or other minerals.

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**SCHEDULE 1A**

*Value of building or construction work*

**Estimated value**

1. The estimated value of building or construction work (whether carried out by the project owner or by another person or persons) will be—

- (a) if the work is to be carried out under a contract (or a series of contracts) where the total price includes value for at least each of the components referred to in paragraph (b) (insofar as they may be relevant to the building or construction work associated with the particular project)—the total contract price;
- (b) in any other case—an estimate of the reasonable market price for the work on the assumption that all of the following are included as components of that price (insofar as they may be relevant to the building or construction work associated with the particular project):
  - (i) the value of the labour, necessary services and fees (including professional fees) payable in relation to the work; and
  - (ii) the value of building or construction materials; and
  - (iii) the value of any prescribed components that are to be installed as part of, or in association with, the work; and
  - (iv) a reasonable allocation for a profit margin; and
  - (v) the value of any overheads; and
  - (vi) any other component prescribed by the regulations.

**Fixtures, etc.**

2. For the purposes of clause 1(b)(iii), "prescribed components"—

- (a) will be taken to be—
  - (i) any fixtures, fittings or other accessories or components (including, subject to paragraph (b), plant and equipment); and
  - (ii) any other items included by regulation; but
- (b) will be taken not to include—
  - (i) plant or equipment—
    - (A) that is used solely for the purposes of a process that forms part of the undertaking carried out within a building, structure or other place; and
    - (B) that is not installed as part of, or within, a structural component of a building, or as an integral part of a structure; and
    - (C) that is not otherwise incorporated (or substantially incorporated) as part of a building, structure or other place (but disregarding for the purposes of this subparagraph an incorporation by virtue only of the plant or equipment being a fixture); or
  - (ii) any fixtures, fittings or other accessories or components (including other plant or equipment) excluded by regulation.

**SCHEDULE 2**

*Employer Associations*

**Recognition of associations**

1. Subject to clause 2, the following are employer associations for the purposes of this Act:

Air Conditioning and Mechanical Contractors' Association of South Australia Incorporated  
Building Industry Specialist Contractors Association of South Australia Incorporated  
Civil Contractors Federation SA Branch  
Housing Industry Association Limited—South Australian Division  
Master Builders Association of South Australia Incorporated  
The Master Plumbers and Mechanical Services Association of South Australia Incorporated  
Property Council of Australia.

**Amendment of schedule**

2. The Governor may, by regulation, amend clause 1 by adding or deleting specified employer associations.

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**SCHEDULE 3**

*Employee Associations*

**Recognition of associations**

1. Subject to clause 2, the following are employee associations for the purposes of this Act:

Australian Building and Construction Workers Federation

Australian Workers Union

Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union  
of Australia

Construction Forestry Mining Energy Union.

**Amendment of schedule**

2. The Governor may, by regulation, amend clause 1 by adding or deleting specified employee associations.

**SCHEDULE 4**

*Public Accountability of the Board*

**Powers of Minister**

1. (1) If the Minister is satisfied that the Board has failed to comply with any provision of this Act or a training plan, the Minister may do one or more of the following:

- (a) direct the Board in writing to comply with this Act or that plan;
- (b) censure the Board in accordance with clause 2;
- (c) recommend that the Governor dismiss the members of the Board and appoint new members of the Board;
- (d) recommend to the Governor that an administrator of the Board be appointed in accordance with clause 3.

(2) If the Minister is satisfied that the Board has failed to comply with a direction given under subclause (1)(a), the Minister may do any one or more of the things specified in subclause (1)(b), (c) or (d).

**Notice or proposal**

2. (1) The Minister must, before exercising the powers conferred by clause 1—

- (a) give the Board notice in writing of the intended action and the reasons for it; and
- (b) consider any submissions, whether oral or in writing, made to the Minister by the Board within seven days after the giving of the notice or any further time specified in the notice.

(2) If the Minister proposes to censure or dismiss the Board, or to appoint an administrator of the Board, the Minister must—

- (a) give notice in writing of the censure, dismissal or appointment to the Board; and
- (b) cause to be laid before each House of Parliament within seven sitting days after the notice is given to the Board—
  - (i) a copy of the notice; and
  - (ii) a report of the circumstances leading to the action; and
  - (iii) a copy of any written submission made by the Board relating to that action.

**Appointment and powers of administrator**

3. (1) The Governor may, by notice in the *Gazette*, appoint an administrator to administer the affairs and activities of the Board if the Minister, after complying with clauses 1 and 2, certifies that the Board has failed to perform a duty arising from a provision of this Act or a training plan.

(2) An appointment of an administrator, unless sooner revoked under subclause (7) or terminated in accordance with the regulations, remains in force for a period of one year.

(3) A public employee within the meaning of the *Government Management and Employment Act 1985* may, subject to that Act, hold office as administrator of the Board in conjunction with the person's position or office in the Public Service.

(4) On the appointment of an administrator, the Minister must serve on the Board a copy of the instrument of the appointment and on the service of the copy of that instrument—

- (a) the members of the Board cease to hold office; and

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(b) the functions of the Board will be performed, and the powers of the Board may be exercised, by the administrator in the name and on behalf of the Board until the administrator's office is vacated under this section; and

(c) any delegation made by the Board under this Act ceases to have effect.

(5) Subject to this clause, an administrator—

(a) must, as soon as practicable after appointment as such, take into the custody or under the control of the administrator all the property and things in action to which the Board is, or appears to be, entitled; and

(b) may, subject to and in accordance with any direction given to the administrator by the Minister, perform the functions and exercise the powers of the Board in such manner as the administrator thinks fit.

(6) The office of an administrator becomes vacant if the administrator—

(a) dies; or

(b) resigns by written notice to the Governor; or

(c) is convicted of an indictable offence; or

(d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

(e) is subject to the revocation of his or her appointment under subclause (7).

(7) The Governor may, for any reason that the Governor considers sufficient, revoke the appointment of an administrator.

(8) Where the office of administrator becomes vacant under subclause (6), the Governor may, by instrument in writing, appoint another person to fill the vacancy.

(9) An administrator will be paid such remuneration, allowances and expenses (if any) as the Governor may determine.

**Expenses of administration**

**4.** The expenses of or incidental to the administration of the Board by an administrator are payable by the Board.

**Liability for losses incurred during administration**

**5.** An administrator of the Board is not liable for any loss incurred by the Board during office as such unless the loss is attributable to—

(a) misconduct; or

(b) negligence; or

(c) wilful failure to comply with a provision of this Act.

**Termination of administration**

**6.** If the Minister recommends to the Governor that the appointment of an administrator should be revoked, the Governor may act accordingly and on any such revocation—

(a) the Board will be reconstituted as provided by Part 2 and in accordance with the regulations; and

(b) the Board will again perform its functions and exercise its powers as provided by this Act.

## APPENDIX

### LEGISLATIVE HISTORY

*(entries in bold type indicate amendments incorporated since the last reprint)*

<b>Section 3(1):</b>	definition of "building approval" substituted by 75, 2000, s. 3(a) definition of "local council" substituted by 75, 2000, s. 3(b) <b>definition of "project owner" substituted by 75, 2000, s. 3(c)</b>
Section 5(1a):	inserted by 75, 2000, s. 4
Section 8(1):	amended by 75, 2000, s. 16 (Sched. cl. 1)
Section 9(1):	amended by 75, 2000, s. 16 (Sched. cl. 2(a))
Section 9(2):	amended by 75, 2000, s. 16 (Sched. cl. 2(b))
Section 9(3):	amended by 75, 2000, s. 16 (Sched. cl. 2(c))
Section 9(4):	amended by 75, 2000, s. 16 (Sched. cl. 2(d))
Section 22:	amended by 75, 2000, s. 5
Section 23(1):	amended by 75, 2000, s. 6(a)
<b>Section 23(2) and (3):</b>	<b>repealed by 75, 2000, s. 6(b)</b>
Section 24(2):	amended by 75, 2000, s. 16 (Sched. cl. 3(a))
Section 24(4):	amended by 75, 2000, s. 16 (Sched. cl. 3(b))
Section 24(6) - (8):	inserted by 75, 2000, s. 7
Section 26:	amended by 75, 2000, ss. 8, 16 (Sched. cl. 4)
Section 27:	amended by 75, 2000, s. 9
Section 30:	amended by 75, 2000, s. 16 (Sched. cl. 5)
Section 34(2):	amended by 75, 2000, s. 16 (Sched. cl. 6(a))
Section 34(3):	amended by 75, 2000, s. 16 (Sched. cl. 6(b))
Section 34(4):	substituted by 75, 2000, s. 10
Section 34(5):	inserted by 75, 2000, s. 10
Section 37(2):	amended by 75, 2000, s. 16 (Sched. cl. 7)
Section 38(1):	amended by 75, 2000, s. 11
Schedule 1	
Clause 1:	amended by 75, 2000, s. 12
Schedule 1A:	inserted by 75, 2000, s. 13
Schedule 2:	amended by 180, 1993, reg. 15; 75, 2000, s. 14
Schedule 3:	amended by 180, 1993, reg. 16; 75, 2000, s. 15