

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**CONSTRUCTION INDUSTRY TRAINING FUND (MISCELLANEOUS)
AMENDMENT ACT 2000**

No. 75 of 2000

[Assented to 14 December 2000]

An Act to amend the Construction Industry Training Fund Act 1993.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 3—Interpretation
4. Amendment of s. 5—Composition of the Board
5. Amendment of s. 22—Estimated value of building or construction work
6. Amendment of s. 23—Exemptions
7. Amendment of s. 24—Liability of project owner to pay levy
8. Amendment of s. 26—Notice of variation
9. Amendment of s. 27—Adjustment of amount paid
10. Amendment of s. 34—Powers of entry and inspection
11. Amendment of s. 38—Review of Act
12. Amendment of schedule 1
13. Insertion of schedule 1A

SCHEDULE 1A

Value of building or construction work

14. Amendment of schedule 2
15. Amendment of schedule 3
16. Revision of penalties

SCHEDULE

Revision of Penalties

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Construction Industry Training Fund (Miscellaneous) Amendment Act 2000*.

(2) The *Construction Industry Training Fund Act 1993* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "building approval" and substituting the following definition:

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

(b) by striking out from subsection (1) the definition of "local council" and substituting the following definition:

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

(c) by striking out from subsection (1) the definition of "project owner" and substituting the following definition:

"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 person¹;

(b) in any other case—the person for whose direct benefit the building or construction work exists on its completion;

¹ 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.

Amendment of s. 5—Composition of the Board

4. Section 5 of the principal Act is amended by inserting after subsection (1) the following subsection:

**Construction Industry Training Fund (Miscellaneous)
Amendment Act 2000**

No. 75 of 2000

(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).

Amendment of s. 22—Estimated value of building or construction work

5. Section 22 of the principal Act is amended by striking out "is the value of the building or construction work estimated as prescribed" and substituting "will be determined in accordance with schedule 1A".

Amendment of s. 23—Exemptions

6. Section 23 of the principal Act is amended—

- (a) by striking out from subsection (1) "\$5 000" and substituting "\$15 000";
- (b) by striking out subsections (2) and (3).

Amendment of s. 24—Liability of project owner to pay levy

7. Section 24 of the principal Act is amended by inserting after subsection (5) the following subsections:

(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.

Amendment of s. 26—Notice of variation

8. Section 26 of the principal Act is amended by striking out "in accordance with the regulations" and substituting "under this Act".

Amendment of s. 27—Adjustment of amount paid

9. Section 27 of the principal Act is amended by striking out "in accordance with the regulations" and substituting "under this Act".

Amendment of s. 34—Powers of entry and inspection

10. Section 34 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(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.

Amendment of s. 38—Review of Act

11. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (1) "the third anniversary of the commencement of this Act" and substituting "1 January 2003";
- (b) by inserting in subsection (1)(a) "(over the period of three years ending on 31 December 2002)" after "the Board";
- (c) by inserting in subsection (1)(b) "(over the period of three years ending on 31 December 2002)" after "this Act".

Amendment of schedule 1

12. Schedule 1 of the principal Act is amended—

- (a) by striking out from clause 1 "the following constitute building or construction work for the purposes of this Act" and substituting "for the purposes of this Act, building or construction work will be taken to include";
- (b) by striking out paragraph (h) of clause 1 and substituting the following paragraph:
 - (h) the laying, placing or installing of pipes, cables or other prefabricated materials in, on or above the ground;;
- (c) by striking out from paragraph (p) of clause 1 "or the *Mining Act 1971*" and substituting ", the *Mining Act 1971* or the *Opal Mining Act 1995*".

Insertion of schedule 1A

13. The following schedule is inserted after schedule 1 of the principal Act:

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

**Construction Industry Training Fund (Miscellaneous)
Amendment Act 2000**

No. 75 of 2000

(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.

Amendment of schedule 2

14. Schedule 2 of the principal Act is amended—

(a) by striking out the following items:

Australian Federation of Construction Contractors (South Australian Branch)

Building Owners and Managers Association of Australia Limited

Earthmoving Contractors Association of South Australia Incorporated;

(b) by inserting alphabetically the following items:

Civil Contractors Federation SA Branch

Property Council of Australia.

Amendment of schedule 3

15. Schedule 3 of the principal Act is amended—

(a) by striking out the following items:

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;

(b) by inserting alphabetically the following item:

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

Revision of penalties

16. The principal Act is further amended in the manner set out in the schedule.

SCHEDULE

Revision of Penalties

Amendment of s. 8—Disclosure of interest

1. Section 8 of the principal Act is amended by striking out the penalty provision at the foot of subsection (1) and substituting the following provision:

Maximum penalty: \$10 000.

Amendment of s. 9—Members' duties of honesty, care and diligence, etc.

2. Section 9 of the principal Act is amended—

(a) by striking out the penalty provision at the foot of subsection (1) and substituting the following provision:

Maximum penalty: \$10 000.;

(b) by striking out the penalty provision at the foot of subsection (2) and substituting the following provision:

Maximum penalty: \$10 000.;

(c) by striking out the penalty provision at the foot of subsection (3) and substituting the following provision:

Maximum penalty: \$20 000.;

(d) by striking out the penalty provision at the foot of subsection (4) and substituting the following provision:

Maximum penalty: \$20 000.

Amendment of s. 24—Liability of project owner to pay levy

3. Section 24 of the principal Act is amended—

(a) by striking out the penalty provision at the foot of subsection (2) and substituting the following provision:

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

(b) by striking out the penalty provision at the foot of subsection (4) and substituting the following provision:

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

Amendment of s. 26—Notice of variation

4. Section 26 of the principal Act is amended by striking out the penalty provision at the foot of the section and substituting the following provision:

Maximum penalty: \$5 000.

Amendment of s. 30—Offence to provide false information

5. Section 30 of the principal Act is amended by striking out the penalty provision at the foot of the section and substituting the following provision:

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

Amendment of s. 34—Powers of entry and inspection

6. Section 34 of the principal Act is amended—

(a) by striking out the penalty provision at the foot of subsection (2) and substituting the following provision:

Maximum penalty: \$10 000.;

(b) by striking out the penalty provision at the foot of subsection (3) and substituting the following provision:

Maximum penalty: \$10 000.

Amendment of s. 37—Regulations

7. Section 37 of the principal Act is amended by striking out from subsection (2)(h) "a division 7 fine" and substituting "\$2 500".