

INDUSTRY TRAINING LEVIES BILL

EXPLANATORY NOTE

LABOUR's pre-election policy was to require all employers to have a strategy for training. If Labour were in Government today, the present Industry Training Act would have been replaced with new legislation to encourage a partnership between government, industry, workers and their representatives and educators. Our strategy would have set in place a skills training system across the entire economy to continually upskill the existing workforce and meet the needs of industry.

In the absence of such a policy, we now find ourselves in the midst of a skills crisis. As a responsible Opposition we feel an obligation to offer some solution to the problems created for government and industry by the current skills shortage. All of us are affected indirectly by the impact of the skills shortage on economic growth. This bill is the most expedient way of ensuring that more quality training takes place as soon as possible.

Many industry training organisations (ITOs) are currently lobbying the Government to grant them the statutory power to levy their members. A significant number of ITOs have indicated that their on-going economic viability is in doubt if their funding remains voluntary and collection of funds unenforceable. It would be unfortunate to see ITOs collapse now, when we have skills shortages emerging in many areas of the economy.

Rather than proposing an across the board levy, this bill seeks to amend the Industry Training Act 1992 by providing a funding mechanism which will enable an ITO to impose and enforce a funding arrangement in its own industry.

Some ITOs do not consider compulsory levies to be an option in their industries, but generally accept that option should be available to other ITOs.

The introduction version of the Industry Training Bill included a levy provision, but that provision was removed in the select committee stage. Clearly the levy was opposed largely on philosophical grounds. There were, however, some concerns about the practical implementation of a levy.

The recently amended Commodity Levies Act 1990 provides a workable model for implementing a fair and equitable industry levy. For this reason the Industry Training Levies Bill is based on the provisions in that Act.

Ruth Dyson

INDUSTRY TRAINING LEVIES

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A BILL INTITULED

5 **An Act to enable the issuing of levy notices, imposing on certain industries levies payable to industry training organisations which shall be used for the administration of the delivery of industry based training to the industries primarily responsible for paying those levies; and to make trainees subject to the Minimum Wage Act 1983**

BE IT ENACTED by the Parliament of New Zealand as follows:

10 **1. Short Title**—This Act may be cited as the Industry Training Levies Act 1995, and shall be read together with and deemed part of the Industry Training Act 1992 (hereinafter referred to as the principal Act).

15 **2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

20 “ ‘Industry’, means a group of enterprises that use—
 “(a) Similar inputs and methods of production to produce similar products; or
 “(b) Similar methods to provide similar services:

- “ ‘Levy notice’, means a notice under **section 13A** of this Act:
- “ ‘Participant’, in relation to a support referendum, means a potential levy payer who returned, in accordance with the requirements of the organisation holding the referendum, a ballot paper— 5
- “(a) Whether completed or not; and
- “(b) If completed, whether completed validly or invalidly,—
- distributed or made available for the purpose by or on behalf of that organisation: 10
- “ ‘Potential levy payer’, in relation to a support referendum, means a person who, when the referendum is held, would be one of the persons primarily responsible for paying the proposed levy to which the referendum relates if there were then in force a levy notice imposing that levy: 15
- “ ‘Supporter’, in relation to a support referendum, means a participant who returned a valid ballot paper supporting the imposition of the levy concerned:
- “ ‘Support referendum’ means a referendum on whether to approve a proposal that a levy, payable to an organisation, should be imposed on an industry:” 20

3. New sections inserted—(1) The principal Act is hereby amended by inserting, after section 13, the following sections:

“**13A. Minister may impose levy**—Subject to **section 13B** of this Act, the Minister may from time to time, on the advice of the Board of the Education and Training Support Agency, by written notice in the *Gazette*,— 25

 “(a) Give effect to a levying scheme proposed by a recognised organisation: 30

 “(b) Amend any levy notice:

 “(c) Revoke any levy notice.

“**13B. Minister to be satisfied of certain matters**—
 (1) The Minister shall not publish a levy notice unless satisfied, on reasonable grounds,— 35

 “(a) That within the previous 12 months, the organisation has held a support referendum in relation to a proposal that the levy, payable to the organisation, should be imposed on the industry; and

 “(b) That the support referendum was competently devised; and 40

 “(c) That the ballot paper described the proposal clearly, specifying in relation to it all the matters required by

- section 13c** of this Act to be specified in a levy notice;
and
- 5 “(d) That the support referendum was so publicised that potential levy payers had a reasonable opportunity to be adequately informed about its holding, nature, and possible consequences; and
- “(e) That the support referendum was so held that potential levy payers were given a reasonable opportunity to participate in it; and
- 10 “(f) That more than half of the participants in the support referendum were supporters; and
- “(g) That the matters specified in the notice pursuant to **section 13c** of this Act do not differ in any material way from those specified in the ballot paper pursuant to **paragraph (c)** of this subsection; and
- 15 “(h) That the organisation has consulted adequately persons (other than persons entitled to participate in the support referendum) likely to be affected by the payment or collection of the levy; and
- 20 “(i) That—
- “(i) Persons opposing the levy’s imposition on the industry; and
- “(ii) Other organisations (if any) representing or purporting to represent the interests of the persons who are to be primarily responsible for paying the levy, or any of them,—
- 25 have had a reasonable opportunity to put their views to the Minister; and
- “(j) That the Minister has had due regard to all views put to the Minister about the proposed imposition of the levy; and
- 30 “(k) That the uses to which the levy will be put will be closely related to the interests of the persons who will be responsible for paying it; and
- 35 “(l) That overall, the benefits to the persons who will be primarily responsible for paying the levy of the spending for the purposes specified in the notice of the amount of levy likely to be raised will outweigh the disadvantages to them of the imposition, collection, and payment of the levy on the industry; and
- 40 and
- “(m) That the organisation, by virtue of its membership and structure, represents adequately the views and interests of the persons who will be primarily
- 45 responsible for paying the levy; and

- “(n) Either—
- “(i) That it would be impossible or impracticable to finance the doing, out of voluntary levies, of the things for which the levy is to be spent; or
- “(ii) That, if the doing of the things for which the levy is to be spent were paid for out of voluntary levies, persons who choose not to pay those levies would derive unearned benefits from the doing of those things; and
- “(o) That the organisation has or will have in place adequate systems for accounting to persons who will be primarily responsible for paying the levy of its receipt and expenditure (including, in particular, the uses to which it will be put); and
- “(p) That the organisation will spend the proceeds of the levy on the administration, development, and marketing of training programmes; and
- “(q) That the levy population is in the industries for which the relevant organisation is recognised by the Education and Training Support Agency to set standards and qualifications; and
- “(r) That all other matters known to the Minister have been properly considered.
- “13c. **Matters to be specified in levy notices**—Every levy notice imposing on any industry a levy payable to an organisation shall specify—
- “(a) The organisation; and
- “(b) The industry; and
- “(c) The persons primarily responsible for paying the levy; and
- “(d) The basis on which the amount of the levy is to be calculated or ascertained; and
- “(e) The rate of each levy imposed under the scheme to which the notice gives effect; and
- “(f) How the levy is to be collected; and
- “(g) How the organisation is to spend the levy; and
- “(h) The periods in respect of which the levy is to be paid; and
- “(i) How the rates of the levy are to be notified; and
- “(j) How often the levy is to be paid; and
- “(k) The due and latest days, or a means for ascertaining the due and latest days, for payment of the levy; and
- “(l) Penalties for late payment and non-payment of the levy; and

“(m) How the organisation that proposed the levy is to be accountable to the persons who pay the levy for its use.

5 “13D. **Effect of notices**—Where a levy notice has been made imposing on any commodity a levy payable to any industry organisation, the following provisions shall, in accordance with the notice, apply:

“(a) Every person responsible for paying the levy to the organisation shall do so:

10 “(b) The organisation may recover the levy from any person responsible for paying it to the organisation—

“(i) By deducting it from any amount the organisation owes the person; or

15 “(ii) As a debt due in any Court of competent jurisdiction:

“(c) Where a person responsible for paying the levy to the organisation—

“(i) Is not primarily responsible for paying any amount of levy; but

20 “(ii) Is required to deduct that amount from any amount the person owes the person primarily responsible, and pay it to the organisation,—

25 notwithstanding any rule of law to the contrary, the amount required to be deducted (if the larger amount from which it is required to be deducted is still in the person’s possession) shall, until it has been paid to the organisation, be deemed to be money held in trust for the organisation:

30 “(d) Where a person responsible for paying the levy to the organisation—

“(i) Is not primarily responsible for paying any amount of the levy; and

35 “(ii) Is required to deduct that amount from any amount the person owes the person primarily responsible, and pay it to the organisation; and

“(iii) Fails to make the full deduction required before paying the amount owed to the person who is owed it,—

40 the organisation may recover from the person to whom or which the other amount was paid the amount of the deduction that should have been made, as if the person were a person responsible for paying it to the organisation:

“(e) Where a person who has paid the levy to the organisation is not the person primarily responsible for paying it, the former may recover the amount paid from the latter—

“(i) By deducting it from any amount the former owes the latter; or

“(ii) As a debt due in any Court of competent jurisdiction.

“13E. **Conscientious objectors**—Every levy order shall make special provision for the payment of amounts of levy by persons who object on conscientious or religious grounds to paying it in the manner otherwise provided for in the order.

“13F. **Financial provisions**—Where a levy notice has imposed a levy payable to an organisation,—

“(a) The organisation shall open 1 or more bank accounts for the purpose of the levy, and shall use that account or those accounts for the following purposes only:

“(i) The deposit of amounts of levy paid or recovered:

“(ii) Making payments out of levy:

“(b) Only persons for the time being expressly authorised by the organisation shall be capable of operating the account or accounts:

“(c) No money shall be paid out of the account or accounts except for a purpose or purposes authorised by the notice or this Act.

“13G. **Use of levy**—(1) A levy notice—

“(a) May specify any purpose or purposes for which no amount of levy shall be spent:

“(b) May specify all or any of the following purposes:

“(i) Research relating to the training concerned, or in relation to any matter connected with it:

“(ii) The development of training programmes for the benefit of the industry concerned:

“(iii) The development or implementation of plans or programmes of quality assurance (relevant to the training concerned):

“(iv) Education, information or promotion (relating or relevant to the commodity or commodities concerned):

“(v) Day to day administration of the organisation’s activities:

“(vi) Any other purpose the Minister thinks fit.

“(2) **Subsection (1) (b)** of this section does not limit the generality of **section 13c** of this Act.

5 “(3) An industry organisation may, with the written approval of the Minister, and subject to the conditions (if any) subject to which the approval was given, spend any amount of a levy it has imposed pursuant to a levy order for a purpose prohibited by the notice.

10 “(4) The Minister shall not give an approval under **subsection (3)** of this section unless satisfied that—

“(a) The spending of money for the purpose concerned will benefit most of the persons primarily responsible for the payment of the levy concerned; and

15 “(b) If some members of the industry spend money for the purpose, other members who have not done so will derive unearned benefits from the expenditure; and

“(c) Persons who, together, are primarily responsible for paying considerably more than half the amount of the levy concerned each year support the spending of money for the purpose.

20 “**13H. Resolution of disputes**—Every levy notice shall provide for—

“(a) The appointment of mediators to resolve disputes as to—

25 “(i) Whether or not any person is required to pay the levy concerned:

“(ii) The amount of levy any person is required to pay; and

“(b) The procedures to be followed by mediators; and

“(c) Remuneration of mediators; and

30 “(d) The payment of costs in relation to mediation; and

“(e) A right of appeal to a District Court Judge against decisions of mediators; and

“(f) Any other matters relating to the resolution of such disputes.

35 “**13I. Levy notices deemed to be regulations**—Every levy notice is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

40 “**13J. Levy notices to expire after 3 years**—Every levy notice (and any amendments to it) shall expire, and be deemed to have been revoked, with the close of the day before the 3rd anniversary of the day it was given.”

4. Trainees to be subject to Minimum Wage Act 1983—Section 19 of the principal Act is hereby repealed.