

**BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND
AND LEVY COLLECTION AMENDMENT BILL 2020**

Second Reading

Resumed from 11 March.

MRS L.M. HARVEY (Scarborough — Leader of the Opposition) [5.38 pm]: I rise on behalf of the state Parliamentary Liberal Party to support the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020. In 2019, there was a statutory review into the Building and Construction Industry Training Fund and Levy Collection Act 1990. The fund is more colloquially known by its acronym, the BCITF. In my former life as the Minister for Training and Workforce Development, I was responsible for the fund's legislation and also the very important appointments to the board. The board has input into and oversees not only the collection of the fund, but also the allocation of resources and funds so they go towards exactly what the fund is intended to do—that is, to strengthen, broaden and deepen the commitment to apprenticeships and traineeships within the construction sector.

The government previously brought forward legislation to amend the BCITF to involve the construction component of the mining and resources sector. Many in the construction industry were keen to see that change. Indeed, as minister I was lobbied for quite some time to include the mining and resources sectors in the collection of the levy because the construction sector felt as though it was doing all the heavy lifting when it came to training apprentices in the skillsets that were needed for not only construction but also the mining and resources sector. When mining and resources projects start up, there is significant inflationary pressure on the scarce trades that are required for the construction component of those projects. Often there is a big emptying of skillsets from the traditional construction sector to the mining and resources sector. It was thought that the mining and resources sectors should do more to contribute to the training fund, given that they, ultimately, are often the beneficiary of the trades that build capacity in various different skillsets.

Legislation came through the Parliament, was supported and became law. A statutory review was completed in 2019. It contained 22 recommendations and a number of findings for the government. The bill before us today is a response to three of those 22 recommendations—recommendations 11, 14 and 15. I understand that six recommendations will be further considered in 2020, with a report to come back to cabinet. Four recommendations will be referred to the next statutory review of the legislation and nine recommendations that relate to operational matters of the CTF will be referred to the board to respond to and report back to the minister. A number of the recommendations of the review were certainly of great interest to the mining and resources sector. We will go into consideration in detail on this bill—not for an extended period—to get an understanding of how the fund is building and how it is being administered, and to get some reassurance and additional information from the minister so that we can acquaint ourselves with what is happening with the fund.

Recommendation 11 is one recommendation that is being dealt with by this legislation. Recommendation 11 will allow for larger projects, which would mainly sit within the mining and resources sector, where there is a significant construction component. The way the fund operates is that the levy is collected at the start of the project. It can be cost prohibitive for companies to provide a payment to the fund at the front end of projects with very large construction costs. Indeed, this legislation will allow companies to make progress payments of the levy that are due and payable. It will allow larger projects that will have significant outlays to comply with the legislation to make progress payments over a period of time. That is indeed something that we support.

Recommendation 11 came out of key finding 12 of the statutory review. Finding 11 found that resources industry stakeholders had raised concerns that in certain cases full payment of the levy up-front impacted a project's viability. To address that risk, a mechanism should be introduced to allow project owners to apply for payment instalment plans when it could be demonstrated that full payment of a levy liability up-front would impact the project's viability. Obviously, in these times, we want to be lessening any negative impact on a project's viability. As we know, everybody right now in Western Australia is focused on creating jobs and we want projects to go ahead. Indeed, if an instalment plan could allow payments over a certain threshold to be levied so that a project is viable, it would be a very good idea to do that. Certainly, the opposition supports that recommendation and any legislative reform that could bring about that particular change. I believe—the minister can confirm this—that if the levy that is due is \$1 million or more, a payment instalment plan would be considered. As I understand it, that would apply to construction work that exceeds \$500 million over the life of a project. But we will go into consideration in detail to firm up those details and to get that on the record.

Recommendations 14 and 15 of the review seeks to modernise and contemporise the composition of the BCITF board and to also include members with expertise from the mining and resources sector, given that that sector now contributes to the fund. The proposal to change the composition of the board came out of finding 15 around board representation. In looking through the body of the report, the board needed to be contemporised. The Australian Institute of

Company Directors, ASX companies and others tend to run their businesses on the general agreement that a board chair should not be in place for more than 10 consecutive years. This legislation will ensure that the chair of the BCITF board cannot be in the role for a period longer than 10 consecutive years. That is consistent with modern board practices and governance practices; indeed, it is supported by the opposition because it contemporises that component of the board.

The bill also contemplates including on the board individuals with expertise in mining construction and petroleum construction work. This is important. Finding 15 found that the experience and expertise required in resources, engineering and construction projects is different from general construction. In order to ensure that the fund subsidises and assists the training of individuals in those particularly complex and often different construction jobs in the mining and resources sector, it was deemed appropriate to add an additional two board members—one with mining construction expertise and one with petroleum resources construction expertise. That seems to be a very good idea. It increases the number of board members from seven to nine. As a result, the legislation amends the board's quorum for meetings from four members to five members, which is administratively sensible and, obviously, supported.

One thing we will ask about during consideration in detail is how the fund is going and the value held by the fund. With the inclusion of the resources construction component, we notice that the balance of the fund, year to date, is sitting at about \$19.5 million from traditional sectors and \$13 million from the resources and construction sectors. Over time this may fluctuate depending on the projects that come online within the mining and resources sector. We would like to get some input on this from the minister, and perhaps that may need to occur in the other place because the minister in this place is representing the minister responsible for the Building and Construction Industry Training Fund. If we start to see an imbalance and a higher proportion of the fund's income coming from the resources sector rather than traditional construction sectors, would the government contemplate a greater representation of the resources sector on the board to ensure that the board's membership balance is reflective of the sectors from which it collects the levy? There is a commitment to training apprentices across all construction sectors, no matter which area they come from. However, if I ran a company in the mining and resources sector that paid a significant amount of money to the fund, I would seek to have additional representation on the board to ensure that the training revenues are distributed evenly across all the contributing construction sectors, regardless of whether they are from a traditional construction area or a specialist construction area in the mining and resources sector.

When we move into consideration in detail, we would like the minister to tell us about the fund's revenue forecast. The budget estimates process that we were meant to have in two weeks has been put off until October, but in the meantime we would like to use this as an opportunity for transparency and governance and to get some predictions and revenue forecasts for the *Government Mid-year Financial Projections Statement*. We would also like to know if those forecasts have been revised as a result of the interruptions to some of these projects caused by COVID-19. We need to be cognisant of that because we want a continuous commitment to training. If we see a downturn in certain sectors, the one thing we want to avoid is the shedding of apprenticeships and trainee positions. When the upturn happens we will then have a skills shortage that puts upwards inflationary pressure on wages, which adds to the cost prohibition, and the viability of projects once again comes into question.

We are also interested to find out if, as a result of this additional input into the Building and Construction Industry Training Fund, additional programs will be set up to address the effects of COVID-19. Have more companies asked the fund for assistance to keep their apprentices and trainees employed, given the downturn in work in some sectors? Our trades sector is certainly facing some project continuity issues around construction with new home starts and those sorts of things. Could the minister give us an idea if the board is considering a COVID-19 response allocation for additional programs or spending, what that might be used for specifically and what the quantum of that might be?

We are interested in interrogating the government on this bill a little more during consideration in detail. This will probably be done more thoroughly in the other place where the minister responsible for the legislation can answer our questions more effectively. I am not undermining the ability of the minister who has carriage of the legislation in this place, but as a minister who has had to represent a minister in charge of the legislation in a previous life, I understand that it is difficult and the minister representing does not have the authoritative answer. They often need to hold those answers in abeyance until the questions are in front of the minister in the other place who is ultimately responsible for the legislation and its governance. We would like to know if there are guidelines and criteria around the use of funding for capital, what the allocation is between mining, oil and gas, and civil construction and whether it will be commensurate with the level of contribution.

The legislation contains some more controversial components that I understand are currently subject to different review and response processes. There was a request and a push from industry to make certain projects potentially exempt from the collection of the levy, which can get very messy. The resource sector's response suggested that a cap might be placed on the capital value of the project for levy purposes. Other states have contemplated a tiered structure

for the collection of the levy, which is messy as well and not supported. The review certainly highlighted significant issues around the efficiency of running a tiered levy-collection structure. Key finding 11 of the review states —

The policy intent of the removal of the exemption granted to resources engineering construction work undertaken by or on behalf of the resources industry may be undermined in some isolated cases of very large capital value projects, where the capital value of the project is driven solely by the high value of imported capital equipment. To address this risk, a cap on the capital value of any building and construction project for the purposes of calculating the levy could be considered. The Queensland construction training levy capital value is capped at \$5 billion.

That key finding supports recommendation 10 of the report, which introduces a capital value cap to achieve that policy intent. The government is not considering that at this time, but I acknowledge that it is considering the other recommendations through various different processes. The opposition would be supportive of that recommendation in certain circumstances because having a capital value cap is a much clearer signal to send to a sector, particularly if a company imports products that, for whatever reason, cannot be constructed or made in Australia and they distort, if you like, the value of the levy that a company might be responsible for paying under this legislation.

I have flagged some of the issues that we will be raising in consideration in detail. Hopefully, the minister's advisers will have the answers on hand or this will give them some time to source the answers for consideration in detail. It is not our intention to labour the point. We support this legislation. We think it is good legislation and it will go down very well because it will support training, and particularly apprenticeships, over the next few years. The support and development of the skillsets that we need across all our trades has never been more important than it is now. We will come out of the COVID-19 economic crisis on the back of building the skillsets that our workforce needs for the future. The BCITF is an integral part of supporting business to provide those skills to young people in particular and those who may want to be retrained to ensure that we have the relevant skills force to lead us into the future.

With those remarks, I commend the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020. I look forward to a brief consideration in detail and hopefully this legislation will have swift passage through both house of Parliament so that the administrative provisions dealing with the composition of the board and related issues can be put in place in as quickly as possible.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [5.59 pm]: I rise just before the dinner break to make a few comments on the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020. I will not get stuck into my main comments now because there is not much time. This is an important bill. Training is particularly important, as the Leader of the Opposition said, now that the Building and Construction Industry Training Fund includes the mining and the oil and gas industries. A lot of expertise is required in terms of staffing for those projects. Now that this training fund has been expanded to include the mining and oil and gas industries, it is important that the funds acquired are distributed to training for those needs. I am the shadow Minister for Mines and Petroleum and I am very supportive of training funds going into those areas. I am pleased that one reason why this bill has come before the house is to increase the number of members on the board.

Sitting suspended from 6.00 to 7.00 pm

Mr W.R. MARMION: I continue my remarks on the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020, which the opposition is supporting. As I said before, this bill is about collecting a levy. It now collects a levy from mining, oil and gas companies during the construction process, and the levy is based on 0.2 per cent of the total construction costs of a project. As I understand the way the current act is worded, it is an up-front cost; so 0.2 per cent of the total construction components of the project, as we might talk about in respect of a mining or petroleum project, is paid up-front. This bill has three components. One component is that it recognises that mining and petroleum projects can have a very high capital value and that 0.2 per cent of that can be a large number. This bill allows for the payment of the levy in instalments on an annual basis. It also allows the minister to vary the instalments if he or she so desires.

There has always been a bit of contention about how we ascertain what proportion of the total construction costs of mining and petroleum companies relate to the construction industry. That is an issue that has been debated over many years, but when the current government came to power its aim was to bring the mining, oil and gas industries into the fund, and that is what has happened. It has also chosen to keep the rate at 0.2 per cent. Over the last two or three years there have been some discussions and toing and froing between the various associations about the definition of “construction” for the purposes of this legislation. I might get onto that later, because it relates to one of the recommendations of the statutory review that was completed in October 2019 regarding the definition of construction, but it has not been dealt with in this bill.

This bill is really the result of the statutory five-year review that was undertaken and completed in October 2019. The Minister for Education and Training, Hon Sue Ellery, put out a press release on Thursday, 5 December 2019, that talked about the government's response to the recommendations and what it planned to do. Part of the government's plan, phase 1, is to implement three of the recommendations in the review of the legislation. The review covers the main points from the industry's point of view. There are 22 recommendations and 11 of them relate to possible legislative changes—recommendations 10 to 20. The bill we are looking at this evening responds to recommendations 11, 14 and 15. These are straightforward, and the opposition supports them; they make a lot of sense. The first recommendation is for levy payments in instalments. It is pointed out in the explanatory memorandum that the 0.2 per cent levy on a project of more than \$500 million is \$1 million. Under the new amendments, a \$500 million project that is required to pay a levy of \$1 million can do so over the life of the project, so if it is a five-year project, that will make it five payments of \$200 000. The bill also provides penalties if the company is late in making the first or subsequent payments. Maybe during consideration in detail the minister representing might be able to explain what the quantum of those penalties are. The act has a formula for dividing the levy by the number of years, to come up with the amount per year. I think most people could work that out, but it is very precise in its definition of what they pay.

The next recommendation covered by the bill is board representation. This is very important. When the five-year review was completed, the mining and petroleum industries were concerned that if they were to contribute a significant amount of the total levy, a reasonable proportion of the funds should go towards training jobs in the mining, oil and gas industries. This bill amends the current seven board members to nine. It actually specifies that the Chamber of Minerals and Energy of Western Australia, the Association of Mining and Exploration Companies and the Australian Petroleum Production and Exploration Association have membership on the board. I read the last annual report I could get hold of to get a bit of an idea of the board fees for the fund. I am sure the minister will be able to tell the opposition what the current fees are. Of course, I assume that two new members will increase the total amount of board fees, so I would be interested to know what the board fees will be.

Quite often when one goes through an annual report, it will identify the different quantum in bands. One might not identify the exact person and the fee, but sometimes one can get that information anyway. I always like to see how many meetings board members attend because I think it is a good performance indicator of whether board members are actually doing their job. I am jumping over a bit. When I was Minister for Finance—the minister might be able to correct me—the Construction Industry Portable Paid Long Service Leave Board reported to me. It came out of the blue; I had never heard of it.

Mr W.J. Johnston: It's still there.

Mr W.R. MARMION: I must say that the CEO who ran it was very diligent. He knew everything backwards. He knew all the acts in the other states, how funds could be portable across states and how some states did not work very well. Interestingly, when I was the minister responsible for that board, I found out that not all members of the board regularly attended meetings. He did say—he is probably not still there so I am not defaming him—that some members did not attend at all. Some members of the board were getting fees for a very small number of attendances. I am sure this is a very responsible board, and I do not think any of the members of this board would be like that, but it is useful to put in an annual report that members have attended at least 80 per cent of board meetings unless they have a reasonable excuse.

That is the second of the three recommendations that is being implemented. Of course, the other recommendation is pretty obvious. Recommendation 15 is that there is a time limit of 10 years for board members. That is probably reasonable. I guess one could argue that if someone had just become the chairman and had been served a couple of four-year terms, they might go a bit longer. Anyway, I do not think we have a problem with that recommendation of review that is being put in. Basically, they are the three recommendations of the review that this legislation implements.

Disappointingly, some of the other recommendations are quite good. The first recommendation under legislative change is recommendation 10, which is to introduce a capital value cap. This probably works in conjunction a little with recommendation 16, which is a definition of "construction". One of the problems for, say, an LNG project is defining the components of a quite complex project when some of the vessels of an LNG project may have been produced in other countries that have intellectual protection of their rights, so they have to be produced overseas. Should the full component of an LNG plant be included in construction? Indeed, it is not. In the past, I have spoken to the department and been told components are excluded. However, we have to have the knowledge within the department—people in the department do not know the detail of an LNG plant—to go through a whole LNG project and look at all the different components and say what is a construction component, a mechanical component, that has been produced overseas, or something that is not part of normal construction, that could be excluded. I saw a two pager on what is in and out on an LNG project a couple of years ago. One way to solve that problem would be to introduce a capital value cap, and that was one of the recommendations. If a project is of a certain value, they would know, "Bang, you just have to pay \$1 million or \$2 million. That's your levy." I will

give an example. Let us say it is a \$30 billion LNG project and assume that the levy is applied to the whole amount—that is, \$60 million. Let us assume the proponent has to pay \$60 million. Thank goodness, under this new bill, he or she would not have to pay the \$60 million upfront. Say it is a five-year project, it would be divided by five—that is, \$12 million a year. That is a fair bit. In fact, \$12 million a year would cover the whole current resource levy that we get now from resources in one year. That is a significant figure. Maybe one could argue that it is so significant that the project may not go ahead. That is something the minister might think about. I think the answer from the minister might be, “You’re not going to pay at the point. Two per cent won’t apply to the whole \$30 billion project. There’ll be components taken out.”

That leads me to recommendation 16, which is the definition of “construction”. Ironically, believe it or not, the definition of “construction” is not in the legislation. The recommendation of the review was that that definition probably should be in the legislation. Believe it or not, to find the definition of “construction” one has to go to the Construction Industry Portable Paid Long Service Leave Act 1985. I am sure the next bill that comes through on this issue will probably address both those components, or one hopes it will, but “construction” is tricky to define. Whether a project has to be broken down into components and those various components defined will probably be a bit of a struggle.

The other recommendation in the review that I found interesting was the concessional expenditure threshold of \$10 million. The purpose of the \$10 million threshold is to cover big mining and oil and gas projects that might have fairly extensive regular maintenance and possibly small expansions over time that might be done on an annual basis. If the project is under the \$10 million threshold, my understanding is that the levy does not come into play. But it also opens up the possibility of ensuring maintenance and expansions are broken up into different components with breaks between. It is probably a messy thing to do.

[Member’s time extended.]

Mr W.R. MARMION: I better move on quickly; I did not mean to speak for this long.

We support the three recommendations from the review being implemented by the bill. We want answers to the questions I have raised. We asked some questions in the briefing, and I thank the team that answered our questions—they are sitting up the back of the chamber. Of interest, our leader will probably ask a few more questions, but we received very useful information that the current levy amount this year, or the last year, was \$32.2 million—from the traditional construction sector it came in at about \$19.35 million and from resources, it was \$12.95 million. We were provided with the number of possible future projects that would produce a levy over \$1 million. If we look at the graph of future projects, we see that all the projects from 2020–21 onwards will be either onshore or offshore resources projects. I asked whether offshore projects were included, and was told that they are. I was quite surprised. We asked whether the levy applies to resource projects located in commonwealth waters. The answer was that the levy does apply to offshore construction work as this is an existing provision in section 5 of the act. I was quite surprised about that. It is probably a bit of a bonus for the state because we do not usually get anything from offshore projects. That is a good thing.

If we look at the projected levy values, we see that 10 projects will be over the \$500 million mark. Of those 10 projects for 2019–20 to 2020–21, only one is a non-resource project. In future, nine of the 10 projects will come from the resources sector. In conclusion, I will refer to the notes that were prepared as part of its input into the review by the Chamber of Minerals and Energy in which it indicated it was worried about the potential scope for the fund. It may rely on what future LNG projects come onstream. They are on the backburner at the moment but if they come back onstream, significant funds might flow into the levy in future years. The chamber’s concern is that if the fund gets the money, it will spend it, so the government needs to look at what projects will come on board and make sure we get value for money for this fund and, indeed, make sure the training is really needed and delivers proper training to create jobs that will be of benefit to the industry. The Liberal Party supports the Building and Construction Industry Training Fund and Levy Collection Amendment Bill and looks forward to it becoming an act.

MR P.J. RUNDLE (Roe) [7.21 pm]: Thank you, Madam Deputy Speaker, for my welcome. I look forward to speaking on this bill, brief though it may be. I will say up-front that the Nationals WA will support the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020. However, I will ask some questions, which I would like the minister to answer, if possible, either in his reply to the second reading debate or in consideration in detail.

Firstly, I will give a quick overview of the bill. As we know, the Building and Construction Industry Training Fund levy is 0.2 per cent applied to the value of all construction work as prescribed in the Building and Construction Industry Training Fund and Levy Collection Act 1990. It includes engineering construction work in the resources sector, which was included in the act in October 2018. The Construction Training Fund, which administers the BCITF levy, supports training in general. The review made 22 recommendations. The three proposals we are talking about today will allow the projects to use an instalment payment plan for levies over \$1 million, and the

appointment of two additional board members to the BCITF board, one with expertise in mining and construction and the other with expertise in petroleum construction projects. It will also introduce a 10-year limit for board member continuous service.

The review found that resource stakeholders raised some concerns about the requirement for the up-front payment, and that is obviously why the instalments provision will be included in the legislation. It will apply to construction work with an estimated value of more than \$500 million. That is a little bit of the background. I will provide a quick summary. The fund supports apprenticeships, occupational health and safety subsidies, supplementary skills training subsidies, career promotions and pre-apprenticeship completion. However, I will ask about my main concerns about the bill.

The first question relates to the board. There will be mandated representatives from the mining and petroleum industries. However, the other sections of industry that are covered by this bill are not mandated. Straightaway I can see that over time, either the mining sector or the oil and gas sector may develop some dominance on the board. Numbers could potentially build up. In the current scenario, the independent board member is an employee of Woodside. Rather than having one oil and gas and one mining representative—I am not suggesting the independent board member does not act independently—the independent board member is from the oil and gas sector. I am a little concerned about that. The residential housing, civil construction and commercial construction industries are represented. However, I can see an erosion of that representation occurring over time. I have reached out and consulted with those industries over the last few days, including the likes of the Housing Industry Association, which does not appear to be too concerned at this stage, so I guess that is a good sign. However, I question whether that may change over time.

The other big concern for me is the size of the board. In today's age, the likes of the Australian Institute of Company Directors says that for good governance, the number of board members should be reduced, yet we are seeking to increase it from seven to nine. Good governance does not necessarily follow from increasing board member numbers. We have seen that with various other organisations around the state and the country.

The other thing I want to talk about is that the board, generally, appoints a chair from within. I would like to refer to a question on notice from Hon Martin Aldridge of 12 March 2020 about the media statement from Hon Sue Ellery about the appointment of the new chairperson to the Building and Construction Industry Training Board, Reg Howard-Smith. The first question was —

- (1) Was the position advertised; ...

The answer was no.

- (2) How many applications were received for the position?

The answer was, "Not applicable."

- (3) How many applicants were short-listed ...

The answer again was, "Not applicable."

- (4) What is the total value of Mr Howard-Smith's remuneration package?

The answer to this was \$40 624 per annum.

- (5) Does the remuneration package differ materially from that of the former chairperson; ...

The answer to that was no.

That is where my concern is. Mr Howard-Smith, formerly of the Chamber of Minerals and Energy, from a mining and resources background, was appointed chairperson by the minister. There is also a board member from mining, a board member from oil and gas and an independent board member, who is also from oil and gas. Can the minister see why to me representation is becoming lopsided towards the oil and gas sector? I guess we are looking at some large numbers that I will now refer to. I suggest there is some disquiet, probably from all sectors, that Treasury estimates of the income are relatively conservative. In the estimates hearings, one of the first questions Hon Martin Aldridge asked was: what is the expected revenue from 2019–20 to 2022–23? The answer was that the total revenue generated by the BCITF levy across that period is \$132 million. Obviously, that scenario shows that a lot of money will be coming in. As I said, there is disquiet that Treasury estimates are relatively conservative in relation to building projects of gas, oil and mining projects that are well and truly underway and will be over the next two or three years.

The other question that was asked related to regulatory changes and that with the conservative approach that has been adopted in expecting revenue and the volatility factors influencing investment in resource projects, how would the estimated \$36 million that will be generated in 2019–20 be spent? The Building and Construction Industry Training Fund board has a very good reputation in the way it administers the fund. Those elements that I pointed

out earlier such as apprenticeship support, supplementary skills training, career promotions and the like are how that money is spent, but we are certainly talking about some large amounts of revenue that will be spent and administered with the BCITF levy by the Building and Construction Industry Training Fund. Those are the main elements. I understand the instalments. I think that is reasonable and I have no problem with that. But I certainly have concerns with the way the board is constructed. I think the levy itself achieves some very good things for our apprentices. I have spoken to quite a few people in the regions and they are very supportive of the work that it does, so my concerns are about the board's structure, what it may evolve to in time and a potential future dominance of the resources in the oil and gas industries.

Other questions that the minister might like to answer are: What does he see as the potential with the COVID-19 situation? Would there be a drop-off in the revenues? Is there any potential for the government to dip into that fund for the COVID-19 recovery? I would like to hope not, but we are in difficult times, so the minister may want to comment on that. In general terms, we the Nationals WA support the bill, but we do have questions and concerns that we will potentially prosecute in consideration in detail if they are unanswered.

MR P. PAPALIA (Warnbro — Minister for Tourism) [7.32 pm] — in reply: I thank all members for their contribution, and I appreciate their interest in the Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020. As noted, I am representing the Minister for Education and Training. The advisers have given me some advice in the break about the questions raised. Hopefully, I will be able to address some of the Leader of the Opposition's questions now. If other questions do not get answered, I would not like to venture some answers in case I err. Rather than do that, we can do a quick consideration in detail in which we will have the advisers and I will seek their advice. I do not think any questions members have asked are beyond the knowledgeable gentleman at the back of the room.

The Leader of the Opposition noted that construction manufacturing had been doing the heavy lifting prior to the changes in recent times and therefore she is supportive of the intent of the bill and the other changes made last year. The Leader of the Opposition asked questions about the status of the fund, how it is building, how it is administered, what is happening with it and has there been a balance shift in funds since the changes, and she asked for forecasts to revenue to the fund, as did other members, with respect to the post-COVID era. The Leader of the Opposition asked whether there had been additional programs as a result of the impact of the COVID crisis and whether there had been requests for more funding from industry. After she asked about the capital value cap, the Leader of the Opposition asked whether the expenditure of the fund would adjust to reflect that the bill would be commensurate with the contributions, and I do have answers for that.

The member for Nedlands made a few similar observations and asked about penalties and the quantum of those penalties. Because some of the questions were repeated, I will come back to that. I will read what I have been given. I do not have an answer on that one. The member asked about board fees and the number of meetings, and suggested that it would be good if that information was in the annual report. I have no idea whether they are or not. Both the Leader of the Opposition and the member for Nedlands asked about the capital value cap and the member for Nedlands acknowledged that there is no definition of that in this bill. We have indicated that that will be considered in future amendments.

The member for Roe said he supports that instalment option, as did the other members who spoke. He expressed concerns about the appointments to the board and he feared that over time it could possibly become skewed towards overrepresentation from offshore oil and gas mining sectors. To that end, the member also expressed a concern about the potential for the size of the board growing and whether that is efficient. The member had a concern about whether the projections for the extent of the levy being raised might be conservative, as was expressed by Hon Martin Aldridge in the other place. We will talk about those sorts of matters in consideration in detail, but I have received the answers for a few of the questions, in particular from the Leader of the Opposition.

As a forecast as a result of COVID, the board is currently undertaking an analysis of this issue, which will help the board to determine how it will sustain support for the construction workforce for the recovery phase of COVID, with particular attention to apprentices and trainees, so there is work being done. However, members will all be aware, I am sure, that the Premier and the Minister for Education and Training announced a \$24.5 million package on 23 April. The support package assists the building and construction industry to maintain its workforce during the COVID crisis. The work that is being done and the potential further investments to address COVID will be different from the amount that has already been announced.

For the guidelines on the use of the funding, the revenues distributed to various programs of the fund are based on priorities set in the board's annual operational plan, which is approved by the minister, and are applied to programs that support apprenticeships and other entry-level training to support people to gain employment in the building and construction industry. It is also dedicated to support additional training for those who are already qualified to work in the industry, to support occupational safety and health and technology-related training required for the

industry, to support recognition of prior learning for workers with existing skills and to support research and innovation for industry's training requirements.

The Leader of the Opposition asked how the fund is going generally and some revenue sources and board representation questions regarding that. I was informed that the fund is operating in a sustainable manner. Revenue from the year to date from traditional construction sectors is \$22.5 million and from the resources construction centre is \$13.3 million. I think the Leader of the Opposition is aware of that anyway, having had the briefing.

This answer is again for the member for Roe and the Leader of the Opposition, who asked about additional representation on the board being tied to a proportion of revenue from each sector. The intention of this bill is to provide the resources sector with representation on the board. Any further consideration of this matter is for the Minister for Education and Training, but she has expressed to the resources sector that there will be no taxation without representation. She has been true to her word. This amendment moves to place on the board representatives from the offshore oil and gas and mining sectors. I understand the member for Roe's observations about Reg Howard-Smith. I am appalled that he would suggest that Reg would not be an independent chair of the board! I think he is an outstanding Western Australian and quite capable of acting independently of his prior history and relationships in the commodities sector. I am sure he sees the full picture, but I note the member's point. The only observation I would make is that, as the member would know, the minister determines part of the membership of a lot of government boards. That is not unusual. That actually represents a safeguard against any likelihood that a board's representation will be skewed in any way, because the minister has an interest. That is particularly so in the management of this fund.

As the Leader of the Opposition indicated, representatives from the construction and manufacturing sectors have felt for a long time that they were contributing to training the workforce for the mining sector. Every time there was a boom or a peak in demand in the mining sector, businesses in Henderson would lose all their shipbuilders and businesses in the suburbs that were building houses or those in the centre of the city building large towers would lose their skilled labour. They felt it was fair for that big sector that drew on their workforce to contribute. Even if it might not initially have been their first choice, I think people generally recognise that there is a benefit in everyone contributing, regardless of what sector they are in. As the member for Roe indicated, the board seems to be doing a good job of allocating funding where it is needed.

I have the defence issues portfolio and am aware that the Minister for Education and Training has a workforce development activity going on. There is a workforce development office in Defence. It is looking at the overall demand in manufacturing right across all sectors in the state. We cannot isolate one sector and say that this is the demand for that workforce and that if we meet that, we have met our obligations. It is looking at the demand right across the state and working towards using these funds and other measures from government to make sure we meet the demand. I will ask the advisers to provide me with further responses if necessary when we get into consideration in detail, but just from that element of planning for the use of the fund, I am aware that a really broad analysis is being done—it is not looking at individual sectors in isolation. To that end, the Leader of the Opposition asked whether revenue raised by one sector is returned to that sector. I am told that funds are disbursed based on the priorities set by the board in the operational plan following the analysis of data and extensive consultation with industry. The established practice of the board for nearly 30 years has been to disburse funds to support the construction industry broadly, where it is needed most. This is in recognition of the cross-sectorial deployment of the workforce. There is no plan for revenue to be disbursed in each sector based on where it was derived. That position was recently affirmed by a disbursement working group, which included representation from the mining, oil, gas and traditional construction sectors. I guess that reflects the observation I made that regardless of where someone was trained or initially employed, no worker will necessarily be isolated in or rigidly adhere to that career path for their entire working career. That is why we need to look at the full spectrum of demand in the state, which appears to be the intent of the management of the fund.

The final answer I have is mainly based on the Leader of the Opposition's contribution, and we will seek further advice from the advisers shortly. The member for Nedlands also raised the issue of a cap. He asked why the government had not introduced a cap for levy payments as requested by the resources industry. I am advised that the government decided to refer this matter to the next statutory review to allow more time to assess its implications, particularly as the government's stage 2 work on other legislative changes will consider definitional issues around construction work, which, as the member for Nedlands observed, may have an impact on this proposal. These matters are complex and more time is needed to assess their potential impact on the construction training fund, the resources sector and workers in the building and construction industry. More work will be done; it will be considered. It has not been totally ruled out or anything of that nature, but the amendment will be for the next review. That ends my response to the second reading debate.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 10 amended —

Mr P.J. RUNDLE: Clause 4 proposes to insert a new subsection (2) on the breakdown of the board. There are paragraphs (a), (b) and (c). I would like some clarity about the board, as I mentioned previously. Paragraph (a) outlines a member with expertise in the mining industry, paragraph (b) refers to the petroleum industry and paragraph (c) states —

2 members who are, in the Minister's opinion, independent of the bodies referred to in subsection (1).

The chair is Reg Howard-Smith and one of the independent directors, I assume, is Sandra McInnes, who is from the resources sector—that is in brackets in the information I have got. I want an answer about the people who, in the minister's opinion, are independent of the bodies referred to in subsection (1).

Mr P. PAPALIA: I am informed that the paragraph that requires two independent members is in the act as it stands at the moment. That is not an amendment. That is not a new provision. Is the member concerned that that has changed in some way or is the member concerned that it may not be reflected in the current make-up of the board?

Mr P.J. RUNDLE: I guess I was just looking for clarity on how they are regarded by the minister as being independent. That is really what I am trying to focus on.

Mr P. PAPALIA: I think it might be best that the member have one of his colleagues in the upper house ask the minister herself, because the member is talking about people whom she has appointed, and whatever is in her mind about their independence is probably beyond me and my advisers at the moment. I refer to those specific individuals. The member is reflecting on the fact that Reg is a chair as an independent member, and yet he reflected on his engagement or his history with the sector. I understand that, but it is probably best that he ask the minister. I am not trying to be difficult; I just do not know the answer.

Mrs L.M. HARVEY: I do not have a marked up copy of the bill, but could the minister refresh us for the record on the composition of the board? I know a number of bodies are required to be represented on the board. Could I please have the information? Unfortunately, I do not have it in my notes.

Mr P. PAPALIA: Representation is drawn from a range of bodies. I think there are 11 bodies. There is Housing Industry Association; Master Builders Association; Construction, Forestry, Maritime, Mining and Energy Union—the member knows the one I am talking about; it has changed its name recently; Electrical Trades Union; Australian Manufacturing Workers' Union; Civil Contractors Federation; Construction Contractors Association; Master Plumbers and Gasfitters Association; Master Painters and Decorators Australia; and Electrical Contractors Association. We will fix the names if I have any of them wrong. From that list the minister appoints five. There are two independents on the board and the minister appoints five representatives from nominees from the list. Those bodies all nominate someone and the minister of the day selects five people.

Mrs L.M. HARVEY: I understand that in the amending legislation there is basically a requirement to consult with the Chamber of Minerals and Energy of Western Australia, Association of Mining and Exploration Companies and Australian Petroleum Production and Exploration Association about the composition of the board, but there is also a requirement for the minister to select people who are independent of those organisations. I wonder whether that is consistent with the other organisations that need to be consulted about board membership. I am trying to understand whether this is to rule out a conflict, if you like. If the CME is consulted, for example, the CEO and the chair are probably going to be dealt with. Does that then preclude either of those people from being appointed to the board as a result of proposed section 10(2)?

Mr P. PAPALIA: I am informed that there is no history of that ever happening. All the nominees have been selected from the membership of those organisations. There has not been a history of any sitting executive being appointed.

Mrs L.M. HARVEY: I just have a further question to clarify. Does the operation of proposed subsection (2) preclude company representatives who might be members of those organisations from being selected to be part of the board, given that the organisations are consulted about its composition? I want to be really clear that membership of the organisations would not preclude someone's ability to be appointed to the board.

Mr P. PAPALIA: No. Historically, it would be the opposite. They would be a member and that would be the manner in which they would be nominated.

Mr P.J. RUNDLE: I want to clear something in my mind. According to me, currently we have five board members from those various elements that the minister has been talking about, we have two independents and we have a chairperson. Now, we are going to add two more board members, so we will have nine board members plus

the chairperson. Is the chairperson also regarded as a board member as such or are there nine board members and one chairperson?

Mr P. PAPALIA: Effectively, the chair is one of the two independent nominees, one of whom is appointed by the minister. One of those two independents will be the chair. That is dictated in the legislation. That means that as a consequence of our new addition of someone with experience in offshore oil and gas and someone with experience in the mining sector there will be nine members on the board in total. There are seven members currently and we are going to nine, which is not an inefficient number. There are concerns about large boards. It is not an absolute law of any fashion, but, generally, I understand that in management terms a board of about 12 members becomes a bit unwieldy and beyond that things get difficult. I think nine is an efficient number.

Mr W.R. MARMION: While we are talking about the board, I asked a question in my second reading contribution and Mr Fitzgerald the adviser might have the answer. What is the remuneration of the board members? There will be two extra members, so I am interested in the total.

Mr P. PAPALIA: We do not have that information to hand, but can we get it to the member after this? I am sure we will track it down and get it to the member tomorrow. He will not want it later tonight, will he?

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 24 replaced —

Mr W.R. MARMION: I raised the issue of a penalty for late payment in my contribution to the second reading debate. My question is to do with the penalty for late payment. Proposed subsection 24(3) refers to a “prescribed rate” —

If the construction work is commenced before the project owner pays the levy, the project owner is liable to pay to the Board, by way of penalty, an amount calculated for the penalty period —

We can work that out —

at a prescribed rate on the amount of the levy unpaid.

What is the prescribed rate or how is it determined?

Mr P. PAPALIA: It is 100 per cent of the outstanding levy, annualised. If the project is 30 days late, it is divided by 365 per day.

Ms M.J. DAVIES: I have a strange question, which I think probably comes under the provisions of clause 7. A local government in my electorate has found itself subject to the levy. The late payment interests me because, in correspondence between the construction training fund and the shire it says that unfortunately, if works do not require a building or demolition payment, there is no control mechanism to ensure payment of the levy prior to the commencement of work. Would the project then be subject to a late fee? The project is a skate park, which is what my next question is about. When I read through the works that are included as part of what can be levied, I saw no space for a skate park, although the CTF and the organisation are pursuing it. They are saying that because no demolition is required, there is no trigger for them to capture it, so they are trying to make sure they capture all the works to apply the levy. My first question is: does that mean the project would be subject to a late payment. My second question is, from my perspective, about the application of the levy to something like a skate park from a local government perspective.

Mr P. PAPALIA: I am informed that the skate park is subject to the requirement for a contribution because it requires construction and it exceeds \$20 000. There is no requirement for a permit to perhaps initiate the process the member suggested had not been required, and therefore that the obligation had been missed. It is required to make a contribution. With respect to the late payment, there has not been an application of the penalty in recent times so I would suggest that the Leader of the National Party might suggest they engage in some sort of discussion or negotiation with the construction training fund. It is likely, based on recent history, that they will not be subject to the provisions, but they are officially obliged to make a contribution.

Ms M.J. DAVIES: At this point, they are not quibbling about the late payment. It is more about its application to the project. If I go through the Construction Industry Portable Paid Long Service Leave Act 1985—I will not read out the sections because we all want to go home, but I refer to section 3, “*construction industry*” subparagraphs (a)(i) through to (xviii) and I struggle to find how a skate park would be applicable. They are saying the levy is applicable under subparagraph (a)(ii), which refers to “roads, railways, airfields or other works for the passage of persons, animals or vehicles”. That is a broad interpretation of what a skate park is, if that is where the definition comes from. I will not pursue it any further because it is not particularly specific to this bill, but given the minister’s advisers have given that advice in the debate, I question why they have been asked to pay for it through identification of the project without it being triggered, and they are disputing whether they should have to pay it. It is not a significant amount of money; it is the principal at this point.

Mr P. PAPALIA: Noting that the member did not really pose a question, I make the observation that it was on advice that there is a precedent. Other construction projects of this nature have been obligated to make a contribution.

Ms M.J. Davies interjected.

Mr P. PAPALIA: However it is captured, there is a precedent and it has been captured in the past. Similar construction types have been required to make a contribution.

Clause put and passed.

Clauses 8 and 9 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr P. Papalia (Minister for Tourism)**, and transmitted to the Council.

House adjourned at 8.08 pm
