

**BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND AND LEVY COLLECTION
AMENDMENT BILL 2009**

First Reading

Bill read a first time, on motion by **Mr T.R. Buswell (Treasurer)**.

Explanatory memorandum presented by the Treasurer.

Second Reading

MR T.R. BUSWELL (Vasse — Treasurer) [4.19 pm]: I move —

That the bill be now read a second time.

The purpose of the bill is to remove doubt as to the validity of all levies imposed by the Building and Construction Industry Training Levy Act 1990—the levy act—and paid in accordance with the Building and Construction Industry Training Fund and Levy Collection Act 1990—the collection act—by retrospectively validating those payments.

The collection act and the levy act were enacted in 1990 with the object of establishing a fund to be used to improve the quality of training and to increase the number of skilled workers in the building and construction industry. The collection act established a board to administer the fund to collect the building and construction industry training levy imposed by the levy act on construction work carried out by a project owner.

Section 21 of the collection act provides that every project owner is to pay the levy on construction work, before commencing that work, based on the value of the work estimated as prescribed. There is provision for levy adjustment when, upon completion of construction work, the board is satisfied that the value of construction work varies by \$25 000 or more, after adjustment for inflation, from the value of that work as estimated.

Regulation 6 of the Building and Construction Industry Training Fund and Levy Collection Regulations 1991—the regulations—sets out the manner in which the value of construction work is estimated for the purposes of section 21(a) and (b). It provides that —

- (a) where the construction work is to be carried out under a contract, the estimated value of the construction work is the contract price (including the GST), where that price includes value for at least each of the components referred to in paragraph (b) below; and
- (b) where the construction work is carried out other than under a contract or under a contract the contract price for which does not include value for each of the following components, the estimated value of the construction work shall be the sum of the value (including the GST) of all goods (including manufactured goods) forming part of the construction work, labour, services necessary, fees payable, overheads to be met and profit margin.

Recent District Court litigation has raised the issue of whether, for the purposes of calculating the value of construction work, account can be taken, firstly, of the value of the non-labour components of construction and, secondly, of labour components that occur off-site, and therefore whether regulation 6 of the regulations is valid. These issues will inevitably be raised when recovery of the levy is sought from the entities identified by the board as project owners.

Advice given by the State Solicitor's Office and by independent Senior Counsel is that it is reasonably arguable that regulation 6 is valid. However, the State Solicitor's Office has advised that it could not be said that the other legal advice was wrong, and has expressed the view that in these circumstances there is an unacceptable risk that a court would hold that regulation 6 is invalid. It has advised that the collection act be amended to validate all levies paid and to include the manner of determining the value of construction work in the collection act to avoid future argument about the manner in which the value of construction work is determined for the purposes of the levy act and the collection act. Failure to address these uncertainties will result in unnecessary litigation and will affect the efficient application of the levy act and the collection act, which may result in a reduction in future levy contributions and involve hundreds of thousands of dollars.

The training levy has been collected from project owners based on the total project value since inception of the fund in 1991. The proposed amendments will not change the method of collection or the value of the levy but will simply ensure that no doubt exists about the validity of the collection provisions. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.