

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

EXPLANATORY MEMORANDUM

Overview and background

The Building and Construction Industry Training Fund (BCITF) levy of 0.2 per cent is applied to the value of all construction work as prescribed in the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (the Act). This includes engineering construction work in the resources sector, whose exclusion from the levy was removed through the *Building and Construction Industry Training Fund and Levy Collection Amendment Regulations 2018* effective from 1 October 2018.

The Construction Training Fund (CTF) administers the BCITF levy to support the training of eligible people involved in construction work.

An independent statutory review (the Review) of the operation and effectiveness of the Act was completed in October 2019.

While the Review found that the BCITF effectively achieves its objectives, 22 recommendations were made to enhance the operation of both the Act and the CTF.

In its response to the Review, the State Government endorsed that:

- three proposals for legislative change be implemented immediately;
- six recommendations be further considered in 2020 with a report back to Cabinet;
- four recommendations be referred to the next statutory review; and
- nine recommendations, which relate to operational matters of the CTF, be referred to the Building and Construction Industry Training (BCIT) Board for a response and report back to the Minister for Education and Training.

The three proposals for immediate legislative change provided for in this Bill are as follows:

1. Allow project owners to pay the assessed levy in yearly instalments, where the assessed levy is over \$1 million, on a pro-rata basis over the life of the construction work, or over another period as agreed to by the Minister;
2. Include the appointment of two additional members to the BCIT Board, one with experience and/or expertise in mining construction projects and the other in petroleum construction projects; and
3. Introduce a limit of 10 years on the length of continuous service by BCIT Board members.

Levy payment by instalments

Currently, project owners are required to pay the full amount of the assessed levy prior to the commencement of construction work.

During the Review consultations, resources sector stakeholders raised concerns that the requirement for an upfront payment may affect the viability of large projects in some cases. The Review recommended that the Government explore the feasibility of allowing project owners of large value construction projects to pay the levy in instalments.

The State Government agreed to amend the Act to allow project owners to pay the assessed levy in yearly instalments, where the assessed levy is over \$1 million, on a pro rata basis over the life of the construction work, or over another period as agreed to by the Minister.

This proposed amendment will apply to all construction work with an estimated construction value of more than \$500 million in accordance with Schedule 2 of the current Act.

Board representation

The BCIT Board is currently made up of seven members and primarily reflects the building and construction industry.

Now that engineering construction work in the resources sector is no longer excluded from the levy, the Review recommended that representation on the Board include members that have experience or expertise in both mining and petroleum construction work to provide the resources industry with the ability to provide input into the CTF's decision making and information gathering processes.

The State Government has approved that the Act be amended to add two members to the BCIT Board, enabling the appointment of one person with experience and/or expertise in mining construction work, and the other person with experience and/or expertise in petroleum construction work.

A consequential amendment has also been made to increase the quorum for Board meetings from four to five, to reflect the change in the size of the Board from seven to nine.

Term of membership for BCIT Board members

The Review recommended that consideration be given to limiting the length of continuous service of BCIT Board members. This proposal reflects standards for board membership that are recommended by organisations who are recognised for providing guidance on corporate governance.

The State Government has agreed to amend the Act to place a limit of 10 years for the length of continuous service of the chairperson and members.

Amendment Bill

The *Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2020* (the Bill) is summarised as follows:

Clause 1: Short title

This clause provides that when the Bill passes, it will be known as the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 2020* (the Amendment Act).

Clause 2: Commencement

This clause provides that the Amendment Act (clauses 3 to 9) will become operative on the day after the day it receives Royal assent.

Clause 3: Act amended

This clause provides that all the provisions contained in the Bill will amend the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (the Act).

Clause 4: Section 10 amended

This clause amends section 10 of the current Act, which outlines the composition of the Building and Construction Industry Training (BCIT) Board and prescribes the bodies the Minister must consult with in order to appoint members to the Board.

Clause 4 (1) amends section 10 (1) of the Act to increase the number of Board members from seven to nine, and adds the Chamber of Minerals and Energy of Western Australia; the Association of Mining and Exploration Companies; and the Australian Petroleum Production and Exploration Association to the list of bodies to be consulted by the Minister in appointments to the Board.

Clause 4 (2) deletes subsections (2) and (3) of the current Act, and inserts new subsections (2) and (3).

The new subsection (2), through paragraphs (a) and (b), requires the Board to have at least one member with experience or expertise in the construction of facilities associated with the mining industry, and another with experience or expertise in the construction of facilities associated with the petroleum industry.

Paragraph (c) retains the current provision requiring that at least two members must be independent of the bodies which are consulted by the Minister in the appointment of members.

The new subsection (3) now refers to paragraph (c) of the new subsection (2) outlined above, but retains the current requirement that the Minister must appoint the chairperson of the Board from one of the two independent members.

Clause 5: Sections 21A and 21B inserted

This clause inserts new sections into the Act providing for the payment of the levy by instalments (section 21A) and the timing of the payment by instalments (section 21B).

Section 21A

Subsection (1) provides the option for project owners to pay the levy by instalments if the estimated value of the construction work is \$500 million or more.

Subsection (2) outlines the formula to calculate the amount of each instalment of the levy payable, and subsection (3) defines the term “payment period”, which is used as the denominator of the equation in subsection (2) and is expressed in years. This means that the payment of instalments is to be made annually on a pro-rata basis over the payment period determined in subsection (3).

The “payment period” in subsection (3) (a), (b) and (c) is defined as:

- the estimated period of construction work as agreed to by the Board and the project owner, or by the Board if no agreement can be reached; or
- the period determined by the Minister under subsection (4).

Subsection (4) provides that the Minister may, after consultation with the Board, determine a period over which the levy is payable. To enable this to occur, the project owner must submit an application in the approved form.

Subsection (5) provides that a period determined by the Minister under subsection (4) will prevail over any estimated period during which the construction work is to be carried out.

Section 21B

Subsection (1) outlines when the payment of an instalment is due. Paragraph (a) requires the first instalment to be paid on the day on which the whole of the levy amount would have been due if it were not payable by instalments. Paragraph (b) requires further instalments to be paid on the day that is 12 months after the day on which the previous instalment was due.

If the project owner does not pay the first instalment at or before the day on which the instalment is due for payment, subsection (2) requires the project owner to pay the whole of the levy amount payable in respect of the construction work.

As the current Act requires the payment of the levy before the commencement of the construction work, the project owner is also required to pay the first instalment prior to the commencement of construction work. If this does not occur, the option to pay by instalments will not be available to the project owner in respect of this construction work.

Subsection (3) provides for the Board to accept a late payment of an instalment, other than the first instalment, and have it deemed as being paid on the day due.

Clause 6: Section 23 amended

Section 23 of the Act currently provides for refund of the levy paid by the project owner if construction work, or a part of any construction work, is cancelled. This clause amends section 23 to allow a refund on instalments of the levy paid when construction work is cancelled.

Clause 7: Section 24 replaced

Section 24 in the current Act specifies that a project owner is liable to pay a penalty where any construction work is commenced prior to the payment of the levy due. This penalty is at a prescribed rate, which is defined in regulation 8 of the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991*.

The new section 24 affirms this position in subsections (2) and (3).

Subsections (4) and (5) provide for a penalty to be also applied for the late payment of an instalment other than the first instalment (noting that the option to pay by instalments will be not available if construction work commences before the payment of the first instalment, as per clause 5 above).

Subsection (1) defines how the “penalty period” is to be calculated for both non-instalment and instalment late payment circumstances. For non-instalment circumstances, paragraph (a) outlines that the penalty period will start on the day the construction work commenced, and end on the day the whole levy amount due is paid. For the late payment of an instalment, paragraph (b) states that the penalty period will start on the day the instalment became due for payment and end on the date it is paid.

Clause 8: Schedule 1 clause 1 amended

Clause 8 (1) inserts a new provision in subclauses (1) and (2) of Schedule 1 clause 1 of the current Act, stipulating that the

chairperson or member of the BCIT Board cannot hold office for more than 10 consecutive years.

Clause 8 (2) amends subclause 1 (3) in Schedule 1 of the current Act to allow a member, whose term of office expires without a person having been appointed to fill the vacancy, to continue in office for a period of up to three months from the expiry of the term of office. The current legislation does not provide a limit on how long a member could continue in office after the expiry of their term i.e., they could continue in office indefinitely until a new appointment is made. The three month period provided for in the amendment is consistent with other legislation addressing similar situations and reflects good corporate governance.

Clause 9: Schedule 1 clause 8 amended

This clause changes the quorum for the Board meetings from four members to five members, which reflects the increase in the size of the board membership with the inclusion of two additional members introduced through this Bill (clause 4).