



The 2024 Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990*

Tiffany Allen
Chief Executive Officer
Construction Training Fund
104 Belgravia Street
Belmont WA 6104

Dear Tiffany,

Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA)*

The 2024 review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990 (Act)* is nearing completion.

The Review seeks further assistance from the CTF with a view to the information provided informing the final report to the Minister.

Accordingly, could you please arrange for the CTF to provide answers to the following requests, together with any relevant information and concrete examples that support the answers provided.

Questions / Requests for Information

In the Review's letter dated 28 March 2024, the CTF was asked the following (at Question 12(a)):

Has the CTF experienced any disputes with project owners over whether levies were payable on the project owners' projects, including any amounts due under sections 22 and 24 of the Act?

The CTF's response to Question 12(a) was as follows:

No significant disputes have arisen;

The CTF understands from its interviews that, for example:

- (i) On 15 March 2023, the CTF wrote to Civmec Construction and Engineering Pty Ltd (**Civmec**) concerning unpaid levies on the construction work associated with the Roy Hill Ultrafine Iron Recovery Project 1.5 in the Pilbara Region of WA (**Project**). The Project included the construction of new separation buildings and associated infrastructure and tie-ins to the Watroba Wet High Intensity Magnetic Separator plant.
- (ii) The CTF wrote again on 19 April 2023 as it had received no response to the email of 15 March 2023.



The 2024 Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990*

- (iii) On 19 April 2023, Civmec responded to the CTF. Civmec denied any obligation to pay a levy. Civmec identified “Roy Hill” as the project owner responsible for the payment of the levy.
- (iv) On or about 21 August 2023, the CTF wrote to Roy Hill Holdings Pty Ltd via email and inquired as to the payment of levies for the Project.
- (v) On or about 30 August 2023, Roy Hill responded to the CTF’s email and indicated that the Roy Hill legal team would respond in due course.
- (vi) On or about 12 September 2023, an email to CTF provided contact details for the Roy Hill legal team, with legal team member copied in.
- (vii) On 27 September 2023, the CTF sent an email reminder was sent to the Roy Hill legal team.

The CTF understands that, to date:

- (a) There has been no substantive response from Roy Hill to the CTF’s inquiries about levies owing on the Project;
- (b) No levies have been paid by the project owner in respect of the Project, which is understood to meet the levy threshold requirements; and
- (c) There have been no steps taken by the CTF Board to investigate the matter or enforce payment of any levies using the provisions in Parts 4 and 5 of the Act.

This appears to the Review to be an example of a dispute with Roy Hill Holdings Pty Ltd over the non-payment of the levy.

The Review understands that there are other projects in which inquiries about levies owing have been made. For example:

- (a) On 3 August 2022, the CTF wrote to Atlas Iron Pty Ltd in respect of the McPhee Creek Iron Ore project understood to be valued in the vicinity of \$600 million.
- (b) On 11 October 2022, the CTF wrote to Hancock Prospecting Pty Ltd in respect of the Mulga Downs Iron Ore project understood to be valued in the vicinity of \$10 billion.

The Review understands that the CTF’s inquiries in respect of these projects have also been met with a similar lack of (or no) response such that no levies have been collected from the project owners.

Question 1: Please reconcile the answer the CTF provided on 13 May 2024 in response to Question 12(a) with the examples of disputes set out above.



The 2024 Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990*

In the Review's letter dated 28 March 2024, the CTF was asked the following (at Question 12(d)):

Has the Board (or the CTF) ever utilised the powers in s.28 of the Act to appoint an authorised person to carry out inspections on projects and/or require the production of documents where levies and other payments due were in dispute?

The CTF's answer to Question 12(d) was:

Yes, in February 2021.

Question 2: Please provide full particulars (details) of what occurred in February 2021 with respect of the utilisation of the enforcement powers in the Act.

At page 10 of the CTF Submission to the Review dated 17 April 2024, the CTF raised the following issue:

At times the CTF finds it difficult to identify who is the project owner. Inter-agency cooperation is required however, it would be useful if the Act was more prescriptive in requiring agencies to have to report to the CTF on all infrastructure projects. Several agencies already do this through the mechanism of a Memorandum of Understanding; however, this doesn't apply to all agencies such as Western Power, Horizon Power and Synergy.

The Commonwealth introduced the *Data Availability and Transparency Act 2022* (Cth) ([DAT Act](#)) which established a legislative scheme for sharing Australian Government data wherein the National Data Commissioner is the regulator of the DATA Scheme. However, the DAT Act does not compel sharing. Data custodians are responsible for assessing each sharing request, and deciding whether to share their data if satisfied that any risks can be managed. Section [25](#) of the DAT Act only requires the entity to provide reasons as to why the data request is rejected.

The Western Australian Government's [Discussion Paper](#) on 'Privacy and Responsible Information Sharing for the Western Australian public sector' referred to the reluctance to share government data, and for the need for legislation that has been introduced in other states (at p.14).

It appears to the Review that information-sharing, and the lack thereof, between government departments in WA is seen as a whole-of-government issue with attendant risks including privacy concerns standing in the way of any overarching solution. It may also be the case that any solution will not solve the issue for the CTF if, like the DAT Act, there is no compulsion mechanism in the legislation.

Question 3:



The 2024 Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990*

- (a) Does the CTF consider that the powers in Parts 4 and 5 (including, specifically, those in section [28](#)) of the Act are insufficient to deal with the difficulties identified by the CTF at page 10 of its Submission?¹ If so, how and why?
- (b) Section [4](#) provides that the Act binds the Crown in right of the State. Section [28\(5\)](#) of the Act provides that:

“An authorised person may, by notice in writing given to a person require the person to submit to the authorised person, or to the Board, within such reasonable time as is specified in the notice, such information or documents relevant to the operation of this Act as is specified in the notice”

Has the CTF ever sought to use the provisions in Parts 4 and 5, including s.28(5), in order to deal with the information-sharing difficulties identified at page 10 of its Submission?

- (c) The CTF is otherwise invited to identify, in light of the matters raised in this correspondence, an appropriate recommendation in order to best assist it in dealing with the information-sharing difficulties identified at page 10 of its Submission.

The Review would appreciate responses to the matters posited as soon as is reasonably practicable, or by 12 September 2024.²

Thank you for your co-operation.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Tom Dixon", written over a horizontal line.

Tom Dixon

Date: 27 August 2024

¹ That is, in circumstances where the current means of dealing with the issues are exhausted.

² In a manner consistent with Review's request in its letter of 28 March 2024 that the CTF's responses to the Review's questions include "any relevant information and concrete examples that support the answers provided".