



Statutory Review

*The Building and
Construction Industry
Training Fund and
Levy Collection Act
1990 (WA)*

Issues Paper

September 2024

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Introduction

The *Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA) (Act)* establishes the Building and Construction Industry Training Board (**Board**) and the Building and Construction Industry Training Fund (**CTF**).

The principal functions of the Board include the collection of levies payable under the Act, the administration of the CTF, and the provision and support of training programs and research directed towards the improvement in the quality of training and the increase in the number of skilled persons in the building and construction industry.¹

Section [32](#) of the Act requires the Minister to undertake a review of the operation and effectiveness of the Act every five years. The Minister is required to have regard to three matters identified in s.32(2) in each statutory review, together with any other matters that the Minister considers relevant.

The Honourable Simone McGurk, Minister for Training and Workforce Development; Water; Industrial Relations, approved terms of reference for a statutory review on 17 January 2024.² In addition to the three terms in s.32(2), the Minister included two terms which carried over 10 items from the 2014 and 2019 statutory reviews, as well as an additional term concerning the issue of diversity in the building and construction industry.³

The Review has undertaken an extensive process of information gathering over the course of six months, including by way of industry consultation⁴, engagement of experts for the provision of advice, and the receipt of written submissions from stakeholders and interested parties.⁵

The Terms of Reference have been the subject of comment and submissions, and divergent opinions have emerged in respect of certain issues. The purpose of this paper is to identify the principal matters where issue is joined in respect of each Term of Reference, and to invite feedback on those matters to assist the Review in arriving at its final position.⁶

Submissions responding to this Issues Paper must be received by Friday, 11 October 2024.⁷

¹ Section [7](#) of the Act.

² The "Review".

³ The "Terms of Reference" are annexed to this Issues Paper.

⁴ Including with CTF Board members and staff; industry participants; unions; interested individuals; State and federal government agencies; and training funds established in other States. A schedule setting out the engagement process is available on the Review's [webpage](#).

⁵ The Review received 25 written submissions in the first tranche, which are accessible on the Review's webpage.

⁶ The Terms of Reference have been re-ordered in this Issues Paper.

⁷ To be lodged via email to statutoryreview@ctf.wa.gov.au.

Principal issues that emerge from the Terms of Reference

1. Threshold at which the Levy applies

(Term of Reference (d); Recommendation 12)⁸

Increase the following thresholds in line with an appropriate indexation factor (such as the Consumer Price Index or Construction Cost Index) and introduce an annual indexation process to adjust them:

- the threshold at which the Levy applies; and
- the threshold for application of adjustments to the value of construction projects on completion.

Explanation of the Issue

The CTF currently collects a levy of 0.2% where the value of construction work (as defined) is over \$20,000 (**levy threshold**).⁹

The levy threshold when the Act commenced operation was \$6000.¹⁰ The current levy threshold of \$20,000 was implemented in 1999.¹¹

The CTF also collects a levy of 0.2% where the value of the construction work varies by an amount of \$25,000 or more from the initial estimate (**adjustment threshold**).¹²

The adjustment threshold has not changed since the Act came into force.¹³

Summary of Submissions

There were 11 responses from stakeholders addressing this Term of Reference.

Nine stakeholders supported an increase in the thresholds at which the levies become payable.¹⁴ The principal reason for supporting an increase was that the thresholds had not changed to keep up with the increasing cost of construction over the same period.

Two stakeholders opposed any change to the thresholds.¹⁵ The principal reason for opposing change was based on the view that the current thresholds were appropriate, and that any increase in the thresholds would have an adverse impact on the CTF's revenue.

Indexation of thresholds was not broadly supported.

⁸ The issues raised in this Term of Reference overlap with Term of Reference (e); Recommendation 19 (at [18]).

⁹ Regulation 3(1)(a) of the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991* (WA) (**Regulations**); ss.4-6 of the *Building and Construction Industry Training Levy Act 1990* (WA).

¹⁰ WA Government Gazette No.83 (28 June 1991) at p.3122; The threshold was then increased from \$6000 to \$10,000 (WA Government Gazette No.30 (8 March 1994) at p.943).

¹¹ Regulation 3 of the *Building and Construction Industry Training Fund and Levy Collection Amendment Regulations (No.2) 1999* (WA); WA Government Gazette No.155 (13 August 1999) at p.3831.

¹² Sections 21(1)(c) and 22 of the Act.

¹³ Section 21(c) of Act No.76 of 1990 (WA).

¹⁴ Submissions received from ABN Group, Association of Mining and Exploration Companies (AMEC), BGC Housing Group (BGC), Civil Contractors Federation WA (CCF), Construction, Forestry, Mining and Energy Union, Western Australia (CFMEU), Chamber of Minerals and Energy, Western Australia (CME), The Construction Training Fund (WA) (CTF), Housing Industry Association (WA) (HIA), and Master Builders Association (WA) (MBA).

¹⁵ Submissions received from Master Painters and Decorators Australia (WA) (Master Painters), and UnionsWA.

Actuarial (interim) findings

The Review engaged actuaries to gauge the impact of any increase in the thresholds on CTF revenue, and on the workload associated with the collection and processing of levies.

The interim findings were to the effect that:

- (a) Benchmarking using thresholds applied by training funds in other States suggests that the levy threshold in the Act is relatively low.¹⁶
- (b) Increasing the thresholds within certain ranges may not significantly impact on levies collected.

Table 1 – Levy Threshold Increases and Levy Income Forgone

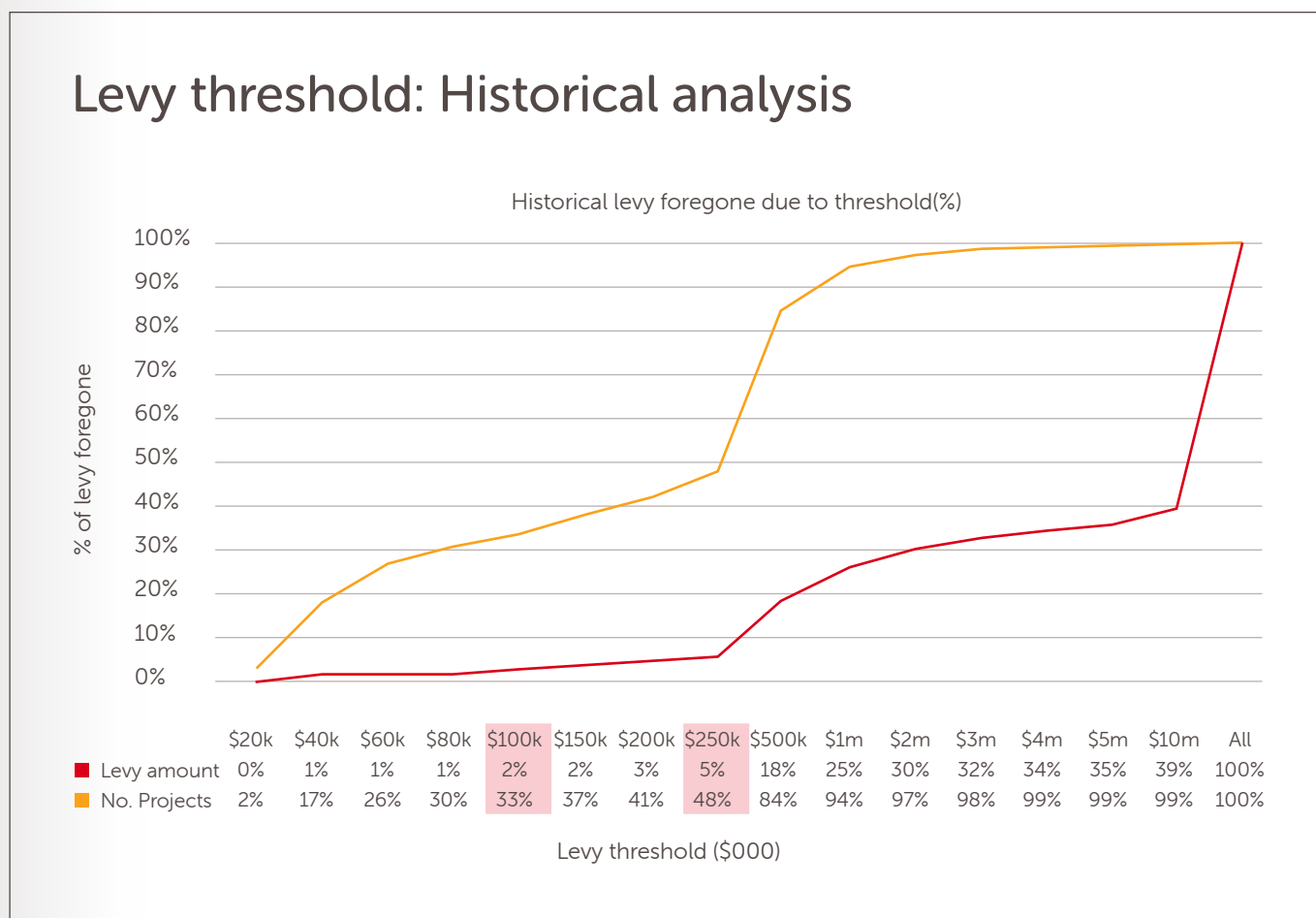


Table 1 reflects the distribution of all construction projects from January 2020 to December 2023 that were the subject of the levy. Small projects contributed minimally to the levies collected, but comprised a material proportion of projects that paid the levies.

¹⁶ For example, thresholds of \$40,000 (South Australia) and \$150,000 (Queensland).

Table 2 – Levy Threshold Impact Analysis

Levy threshold: Impact analysis							
	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29
Levy Removed \$100k Threshold (\$m)	0.9	0.9	1.0	1.0	1.1	1.2	1.2
Levy Removed \$100k Threshold + \$100k Adjustment threshold (\$m)	1.0	1.0	1.0	1.1	1.2	1.2	1.3
Est. Projects Removed (\$100k Threshold Only)	10,976 (33%)	11,134 (34%)	11,173 (33%)	11,673 (33%)	12,852 (33%)	13,495 (32%)	13,876 (32%)
Est. Projects Removed (\$100k Adjustment Threshold Only)	786 (2%)	771 (2%)	781 (2%)	821 (2%)	896 (2%)	944 (2%)	971 (2%)
Levy Removed \$250k Threshold (\$m)	3.2	3.4	3.3	3.2	3.4	3.4	3.3
Levy Removed \$250k Threshold + \$250k Adjustment threshold (\$m)	3.3	3.5	3.4	3.3	3.5	3.5	3.4
Est. Projects Removed (\$250k Threshold Only)	17,006 (51%)	17,596 (53%)	17,364 (52%)	17,716 (50%)	19,001 (48%)	19,518 (46%)	19,698 (45%)
Est. Projects Removed (\$250k Adjustment Threshold Only)	962 (3%)	941 (3%)	952 (3%)	1,004 (3%)	1,104 (3%)	1,159 (3%)	1,197 (3%)

Values in this table are nominal.

Table 2 shows the effect that an increase in the thresholds would have on (a) levies collected; and (b) the number of projects that would become exempt as a result of the change.

Based on the actuarial analysis to date:

- (a) Increasing the levy threshold to \$100,000 would result in a reduction in levy income of \$900,000 in the 2023 financial year (where income from levies totalled \$70 million)¹⁷, and 33% of all currently leviable projects would become exempt.
- (b) Increasing the levy threshold to \$250,000 would result in a reduction in levy income of \$3.2 million in the 2023 financial year, and 51% of all currently leviable projects would become exempt.
- (c) Increasing both the levy threshold and the adjustment threshold to:
 - (i) \$100,000 would result in a reduction in levy income of \$1 million, and 35% of all currently leviable projects would become exempt, giving rise to a reduction in the administrative burden involved in collecting and processing levies of approximately \$300,000.
 - (ii) \$250,000 would result in a reduction in levy income of \$3.3 million, and 54% of all currently leviable projects would become exempt, giving rise to a reduction in the administrative burden involved in collecting and processing levies of approximately \$400,000.

¹⁷ CTF Annual report 2022-2023 at p.45.

Issues

The principal issues that emerge from the submissions, consultations and actuarial work are as follows:

- (a) The current levy threshold is \$20,000. The current adjustment threshold is \$25,000.
- (b) There has been no change to the thresholds in over 25 years. In that time, the cost of building has increased significantly.¹⁸
- (c) The increase in the cost of building has meant that the levy is now being applied to a far broader base than was the case when the levy threshold was last increased.¹⁹
- (d) Increases to the adjustment threshold may motivate project owners to underestimate the value of construction work.²⁰
- (e) Actuarial advice suggests that there are combinations of increases in the thresholds that will result in savings associated with the collection and processing of levies, principally due to the large number of small projects that will become exempt from the need to pay the levies.

Submissions sought

The Review invites submissions, informed by the issues identified, on proposed recommendations to the effect that:

- (1) The levy threshold should be increased within a range of \$20,000 to \$250,000.
- (2) The adjustment threshold should not be materially increased.

¹⁸ By over 60% based on indices in *Rawlinson's Australian Construction Handbook 2023* (Edition 41) at pp.815, 828.

¹⁹ The number of projects from which a levy was collected in 2022-2023 was 22,931 (CTF Annual Report 2022-2023, p.18).

²⁰ Sections 21(1), 22 and Schedule 2 of the Act.

2. Introduction of a capital value cap

(Term of Reference (d); Recommendation 10)²¹

Consider introducing a cap on the capital value of any single building and construction project for the purposes of calculating the levy to prevent the policy intent of the Levy from being undermined by large capital value projects, where the capital value of the project is driven solely by the high value of imported capital equipment.

Explanation of the Issue

The 2019 Statutory Review identified the issue as follows:

“Resource industry stakeholders advised that some resource projects may have very large capital values due to the complex and highly specialised capital inputs required. These inputs may skew the capital-to-labour ratio of the project and lead to a levy payment that is disproportionately larger than the project’s construction skills requirement, which could undermine the intent of the Levy. The introduction of a cap on the capital value of any project is a simple way to address this risk and should not undermine the policy intent of the Levy nor the achievement of the CTF’s objectives.

Queensland has adopted this approach through imposing a cap of \$5 billion on the capital value of a project. This addresses a recommendation from the 2014 statutory review to consider applying a tiered levy based on project value.”²²

Summary of Submissions

There were 11 responses from stakeholders addressing this Term of Reference.

Eight stakeholders opposed the introduction of a capital value cap.²³ The principal reasons for the opposition were that the resources sector currently has a number of exclusions that apply to projects within that sector; the resources sector benefits greatly from the investment in the training of skilled workers in other sectors; and the introduction of a capital value cap would undermine the policy intent of the Act.

Three stakeholders supported the introduction of a capital value cap.²⁴ The principal grounds for the support were that the levy creates a cost burden on projects in the resources sector; and that a capital value cap would minimise the impact to resources sector projects that generate jobs and stimulate economic growth.

²¹ The issues raised in this Term of Reference overlap with Term of Reference (d); Recommendation 22 (at [16]).

²² 2019 Statutory Review at p.4; Appendix A to the 2019 Statutory Review at pp.36-37.

²³ Submissions received from ABN Group, CCF, CFMEU, CTF, HIA; Master Painters, MBA, and UnionsWA.

²⁴ Submissions received from Australian Energy Producers (AEP), CME, and Woodside Energy Ltd (Woodside).

Actuarial (interim) findings

The Review engaged actuaries to gauge the impact of the introduction of a capital value cap on CTF revenue.

The interim findings, based on available data, were to the effect that:

- (a) A single project has exceeded \$5 billion in value to date. That project was valued at \$5.2 billion.
- (b) A very significant proportion of the levies collected in recent years was derived from projects valued at over \$900 million.
- (c) The levy income generated from the largest 5 per cent of projects averaged approximately \$15 million.

Table 3 – Proportion of Levies Collected based on Resources Project Value

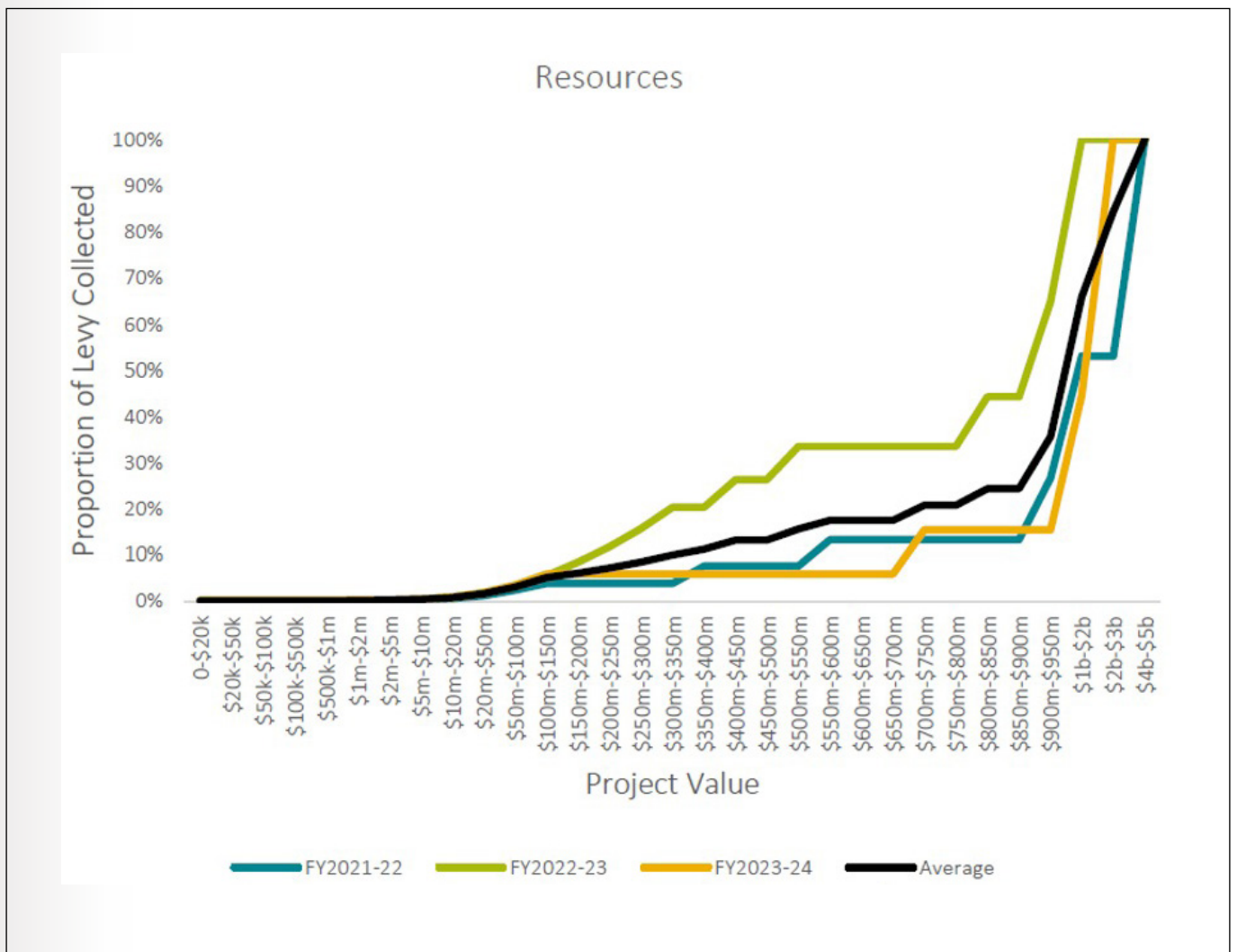


Table 3 shows that the total value of projects in the top 5 per cent is \$3 billion on average per year. The levy collected from the largest 5 per cent of projects based on that average is approximately \$15 million *per annum*.

Issues

The issues that have emerged include the following:

- (a) There is scant data in the resources sector submissions that could:
 - (i) establish that the labour intensity of a project decreases as the size of the project increases²⁵; or
 - (ii) quantify any such decrease in labour intensity,such as to support a recommendation to introduce a capital value cap.
- (b) The introduction of a capital value cap based on an argument that imported materials should be excluded from the project value could set a precedent in other sectors. For example, a wide range of materials and equipment used in the residential building sector is imported, or manufactured from imported inputs.²⁶
- (c) The resources sector submissions rely upon the existence of a cap and tiered levy approach to resources projects in Queensland (as identified in the 2019 Statutory Review).²⁷ However, Queensland removed the tiered levy concessions (and therefore any “cap”²⁸) in 2020.²⁹ The policy rationale for removing the concessions was to improve the medium to long-term financial viability of the Queensland scheme.³⁰

- (d) No submissions referenced or engaged with sections [25A](#) to [25C](#) of the Act. Those provisions provide that, upon a project owner meeting various criteria that are published by the Minister from time to time, the Board “shall” grant a reduction in, or an exemption from, the levy payable.

Submissions Sought

The Review invites submissions, informed by the issues identified, on the question of whether the Act already provides a sufficient basis for project owners to apply for levy reductions and exemptions.

The Review will consider recommending that:

- (a) Criteria should be published under s.25A which will permit a project owner to make application under s.25B for a reduction in, or an exemption from, the levy otherwise payable.³¹
- (b) Section 25A of the Act be amended to expand the matters that the Board may take into account, including, for example, circumstances where the high capital-to-labour ratio of a project will lead to levy payments that are disproportionately larger than the project’s construction skills requirements.

Submissions are invited to address these matters.

²⁵ The data in the CME Submission at page 2 suggests that there was a lower capital-to-labour ratio associated with the resources construction project at the Rio Tinto [Gudaj-Darri](#) mine in the Pilbara than that associated with the commercial project at the Brookfield Properties [One the Esplanade](#) building in Perth.

²⁶ National Housing Supply and Affordability Council “State of the Housing System 2024” at page [30](#); see also HIA Submission at page 11.

²⁷ CME Submission at page 6.

²⁸ Between 2014 and 2020, a tiered levy structure provided for a discounted rate for the portion of a project’s costs that exceeded certain thresholds, with project costs above \$5 billion (indexed annually) attracting a nil levy: regulation [6](#) of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013* (Qld).

²⁹ Section [5](#) of the *Building and Construction Industry (Portable Long Service Leave) (Levy Changes) Amendment Regulation 2020* (Qld) repealed the tiered levy structure in regulation 6 of the *Building and Construction Industry (Portable Long Service Leave) Regulation 2013* (Qld).

³⁰ Explanatory Notes accompanying the *Building and Construction Industry (Portable Long Service Leave) (Levy Changes) Amendment Regulation 2020* (Qld) at pp. [1-2](#).

³¹ There have been no criteria published under s. [25A](#) of the Act to date.

3. Resources integration

(Term of Reference (d), Recommendation 21)³²

Carry forward the review of any legislative implications of the Levy on the resources sector, including those matters raised by them relating to the operation of the Act to the next statutory review to provide a longer timeframe over which the operation of the new policy can be assessed.

Explanation of the Issue

In 2018, the Regulations were amended to remove the levy exemption applicable to the resources sector.³³

In 2019, the resources sector made submissions to the statutory review that addressed its inclusion within the ambit of the Act. The 2019 Review determined that there was “insufficient information” to allow a proper consideration of the matters raised, and recommended that the submissions be carried over and considered in the 2024 Review.

The principal recommendation made by the Chamber of Minerals and Energy on behalf of the resources sector in 2019 was that a differential levy rate of 0.1% should be applied to projects over \$500 million in value “to be consistent with the threshold incorporated in the *Australian Jobs Act 2013*”, together with a \$5 billion cap on projects to which the levy applied.³⁴

Summary of Submissions

There were 11 responses from stakeholders addressing this Term of Reference.

Eight stakeholders supported the continued application of the levy to the resources sector.³⁵ The principal reason for the support was that the resources sector was said to draw its workforce from other sectors, and took the benefit of the investment in the training and skills development of that workforce. The movement of skilled workers into the resources sector was said to contribute to labour shortages, increased construction costs and project delays in other sectors.

Three stakeholders did not support (or offered qualified support for) the application of the current levy arrangements to the resources sector.³⁶ The principal reasons for not supporting the current levy arrangements were that the resources sector was not directly comparable to other sectors, and that the inclusion of large-scale resources projects would result in levies being disproportionate to the workforce training requirements of the sector.

³² The issues raised in this Term of Reference overlap with Term of Reference (d); Recommendation 22 (at [16]).

³³ WA Government Gazette No.145 (28 September 2018) at pp. [3584-3587](#).

³⁴ CME Submissions to the 2019 Review at p.4.

³⁵ Submissions from ABN Group, Carey Group Holdings (Carey Group), CCF, CTF, HIA, MBA, Matt Dolan Building Services Pty Ltd (Matt Dolan), Motivation Foundation.

³⁶ Submissions from AMEC, CME, Fortescue Ltd (Fortescue).

Actuarial (interim) findings

The Review sought actuarial advice on the impact of a differential levy of 0.1% for the resources sector for projects of over \$500 million.

Despite the relatively low volume of large projects, the reduction in the levy would adversely impact the CTF's levy income due to the size of these projects.

Table 4 – Impact Analysis of a Tiered Levy

Resource sector levy: Impact analysis						
Foregone levy from 0.1% levy rate on projects >\$500m (\$m)						
	2023/24	2024/25	2025/26	2026/27	2027/28	2027/28
Distribution of projects unchanged from history	3.5	3.9	4.1	4.1	4.0	4.2
% of base forecast levy	6.6%	6.9%	6.9%	6.5%	6.1%	6.1%
1 additional \$10bn resource project	18.0	18.4	18.6	18.6	18.5	18.7
% of base forecast levy	34.1%	33.0%	31.4%	29.3%	28.2%	27.0%

Table 4 shows projected levies forgone of over \$4 million per year.

18 resource projects were identified as exceeding \$500 million in value in the interim actuarial analysis. Applying a 0.1% differential levy for amounts over \$500 million is projected to result in \$19.4 million in levy income forgone (based on the current levy rate of 0.2%).

Issues

The issues that have emerged include the following:

- There is a relatively low number of large resource projects when compared to other sectors.
- A reduction in the levy rate is likely to materially impact on CTF levy income due to the large size of those projects.

Submissions Sought

As is the case with Term of Reference (d); Recommendation 10 (at [2]), the Review invites submissions addressing the question of whether the Act already provides a sufficient basis for project owners to apply for levy reductions and exemptions on high-value projects.³⁷

³⁷ See ss.25A-25C of the Act.

4. The concessional expenditure threshold for resources

(Term of Reference (e), Recommendation 13)³⁸

Review the concessional expenditure threshold of \$10 million for alterations and additions to resources facilities prior to the next statutory review to ensure it is operating as intended.

Explanation of the Issue

Regulation 3 of the Regulations creates a levy exclusion for “resources operational work”, as defined.

The Regulation extends the “resources operational work” exclusion to work that:

- (a) includes “alteration or renovation” to resources facilities, replacement of decommissioned resources facilities, and relocation of resources facilities (together, “**alteration and renovation work**”); and
- (b) is valued at \$10 million or less.

The effect of the Regulation is to apply the levy to alteration and renovation work valued at over \$10 million on resources sector projects (**concessional expenditure threshold**).

Summary of submissions

There were six responses from stakeholders addressing this Term of Reference.

Two stakeholders submitted that there was no need to review the concessional expenditure threshold.³⁹ The principal reason for not supporting any change is that the stakeholders were satisfied that the \$10 million cap should remain in place.

Four stakeholders submitted that consideration should be given to whether the \$10 million cap was achieving its intended purpose.⁴⁰ The principal reason for supporting a review of the concessional expenditure threshold was to ensure the Regulations effectively distinguish between exempt resources operational work, and alteration and renovation work where the levy is payable.

³⁸ The issues raised in this Term of Reference overlap with Term of Reference (e), Recommendation 17 (at [17]).

³⁹ Submissions from ABN Group, MBA.

⁴⁰ Submissions from CME, HIA, AMEC, Woodside.

Actuarial (interim) findings

Using data derived from the CTF, nine projects were identified as involving work that could be characterised as alteration and renovation work.

Increasing the concessional expenditure threshold to \$20 million would have resulted in six of the nine projects becoming exempt from paying the levy. The impact of an increase of the concessional expenditure threshold to \$20 million would be \$100,000 in levy income forgone over four years.

The Review understands, based on stakeholder submissions and consultation, that there is difficulty associated with the resources sector properly characterising resources operational work as either exempt or non-exempt. The CTF, in turn, has largely relied upon the accuracy of the characterisations provided to it.

Misclassification of alteration and renovation work has been identified by the actuaries as a material issue affecting levy collections based on historical data.

Issues

The issues that emerge include the following:

- (a) Relatively little levy income is generated from projects properly classified as alteration and renovation work.
- (b) The terms of Regulation 3 give rise to an additional regulatory burden on the resources sector, including the need to distinguish between exempt operational work and non-exempt alteration and renovation work.

Submissions Sought

The Review invites submissions, informed by the issues identified, as to whether the current exception to the exemption applicable to resources operational work in Regulation 3 should be:

- (a) amended to increase in the concessional expenditure threshold from \$10 million to a higher figure; or
- (b) removed from the Regulation altogether, such that no alteration and renovation work is leviable.

5. Issues with the current definition of construction work

(Term of Reference (e), Recommendation 16)

- The Building and Construction Industry Training Fund and Levy Collection Act 1990 is amended to include a definition of construction without reference to other legislation.
- The definition adopted in the Act is made more general and all-encompassing, rather than the current approach of seeking to define what is construction in great detail.
- The Building and Construction Industry Training Fund and Levy Collection Regulations 1991 be the instrument which is used to define any and all exclusions from the Levy.
- Any reference to the difference between work being done on-site (and by implication off-site) is removed, with matters of applicability to be addressed by the current clause within the regulations of a person being engaged by an employer “whose primary activity is not related to the building and construction industry” being deemed not part of the construction industry.

Explanation of the Issue

The Act does not have self-contained definitions of “building and construction industry” or “construction work”. Rather, the Act defines (in s.3):

- (a) “construction work” as the work that is included in the definitions of:
- (i) “construction industry” in s.3 of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA); and
 - (ii) “building work” and “demolition work” in s.3 of the *Building Act 2011* (WA).
- (b) “building and construction industry” by reference to the definition of “construction industry” found in s.3 of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA).

The legal obligation to pay the levy under the Act is conditioned by the expression “construction work”.⁴¹ The definition of “construction work” is predicated on work being carried out “on a site”.⁴²

The expression “building and construction industry” is used in the Act’s to variously identify the purpose of the legislation⁴³; a principal function of the Board by reference to the purpose of the legislation⁴⁴; and the scope of the programs that are to receive financial support within an Annual Operational Plan.⁴⁵

Summary of Submissions

There were 13 responses from stakeholders addressing this Term of Reference.

There was broad agreement amongst stakeholders that the Act’s definitions should not be based on definitions in other legislation; that the definitions are complex; and that the Act should contain a relevant and broadened definition of construction.

⁴¹ Section 4 of the *Building and Construction Industry Training Levy Act 1990* (WA); ss.21 and 22 of the Act.

⁴² The expression “on a site” as applicable to the definitions in the Act has been held to mean, in effect, the place where the work is being performed: *Programmed Industrial Maintenance Pty Ltd v The Construction Industry Long Service Leave Payments Board* [2021] WASC 208 at [9]-[15] (Buss & Murphy JJ); [163] (K. Martin J).

⁴³ In the Act’s Long Title.

⁴⁴ Section 7(1)(ba) of the Act.

⁴⁵ Section 8(1) of the Act.

There were 10 stakeholders who supported the Act being amended to include a definition of construction without reference to other legislation.⁴⁶

There were 13 stakeholders who supported a definition in the Act that is more general and all-encompassing.⁴⁷

There were six stakeholders who identified the Regulations as the appropriate instrument to contain definitions and levy exclusions.⁴⁸

Stakeholders overwhelmingly supported the removal of any distinction between on-site and off-site work.

Issues

There are various cognate definitions found in other legislation that may be considered preferable to those found in the Act.⁴⁹ For example, the relevant Queensland legislation extends the definition of “building and construction industry” to include work performed “off site”.⁵⁰

Similarly, the definitions of ‘construction industry’ and “construction work” in clause 1 of the Rules of the Construction Industry Long Service Leave Fund in Victoria provide a means of encompassing off-site work.⁵¹

The result of the exclusion of off-site work in the Act is that work relating to, for example, prefabricated modular housing⁵², manufacturing of building components⁵³, or plant hired out for use in civil and resource construction⁵⁴, may not be considered eligible for grant assistance under the CTF’s current eligibility criteria.⁵⁵

Stakeholders wish to see the Act amended in respect of the current definitions to provide for the flexibility necessary to allow the CTF to better achieve the objectives in the Act. However, the Review also understands that stakeholders do not expressly seek an expansion of the “tax base” beyond that which currently exists, or the creation of additional regulatory burdens.

A change to the definition of “construction work” carries the risk that it may:

- (a) broaden the assessment base for the collection of levies beyond its current limits; and
- (b) result in ‘double taxation’. For example, if “construction work” was to include off-site activities, then building components could conceivably become leviable at the manufacturing stage, and again as part of the overall project cost once installed.

A preferable means of ensuring greater flexibility and to avoid such ‘double taxation’ issues may be to unfetter, if necessary, the power to allocate CTF funds from the definitional strictures that condition the collection of levies.

Section 8(1) of the Act provides that the CTF’s funds are to be allocated “to programmes that support” various training-related matters in and of the building and construction industry. A question arises as to whether the language of the section should provide for greater flexibility in the allocation of funds, for example, by way of capital grants to assist training providers generally and beyond the mere funding of “programmes”; in respect of off-site employment; and in respect of organisations that provide important services to the building and construction industry but who may not directly engage in construction work *per se*.

⁴⁶ Submissions from BGC Housing Group, Carey Group, CFMEU, CME, CTF, HIA WA, MBA WA, Matt Dolan, National Fire Industry Association (NFIA), and Woodside.

⁴⁷ Submissions from AMEC, BGC, Carey Group, CCF, CFMEU, CME, CTF, HIA, Kais Hire Pty Ltd (Kais Hire), MBA, Matt Dolan, NFIA, and Woodside.

⁴⁸ Submissions from ABN Group, CTF, HIA, MBA, NFIA, and Woodside.

⁴⁹ For example, the definitions in section 6 of the *Building and Construction Industry (Security of Payment) Act 2021* (WA); Section 15 of the *Building and Construction Industry Training Levy Act 1999* (ACT) and section 6 of the *Building Act 2004* (ACT); Schedule 1 of the *Construction Industry Training Fund Act 1993* (SA); Schedule 2 of the *Building and Construction Industry Training Fund Act 1990* (Tas); Section 3AA of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

⁵⁰ Section 3AA(3) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

⁵¹ The portable long service leave scheme in Victoria is operated by way of a trust, constituted by a trust deed, which appoints a corporate trustee to oversee a fund. Rather than defining “construction industry” in legislation, the expression is defined by the corporate trustee in the rules of the fund made pursuant to the trust deed which is given statutory recognition: sections 1 and 26 of the *Construction Industry Long Service Leave Act 1997* (Vic); *Jemena Asset Management (3) Pty Ltd v Coinvest Ltd* [2011] HCA 33; 244 CLR 508 at [25].

⁵² Final Report of the Independent Review of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) (30 November 2023) (MyLeave Review) at p.29; HIA Submission at p.11.

⁵³ Jarrimber Furniture Submission (regarding the manufacture of cabinetry and flooring).

⁵⁴ Kais Hire Submission (regarding the wet and dry hire of heavy plant to the civil and resources sectors).

⁵⁵ CTF Submission at p.9; The CTF website identifies that “Eligibility for CTF grants, subsidies and additional benefits depends on an individual’s and company’s ability to demonstrate *primary and substantial direct involvement* on projects in WA’s construction industry, specifically in on-site construction, installation and/or fabrication activities” (original emphasis).

Submissions Sought

The Review will consider the definition of construction work and the exemptions in the Act.⁵⁶

The Review invites submissions, informed by the issues identified, on the following matters:

- (a) Whether it is necessary to clarify that the CTF is empowered to allocate its funds to achieve the principal objects in the Act by the means it considers necessary and appropriate, subject to the current requirements that the Board identifies such means in its Annual Operational Plan, and that the Minister approves of them.
- (b) Whether the Act should be amended to make clear that, whilst the definition of “construction work” should continue to be the determinant for levy collection, the power to allocate funds should extend to the support of activities relating to the building and construction industry where the funding of such activities is considered by the Board to be a necessary or appropriate means of achieving the Act’s principal objectives.

⁵⁶ Including, for example, Recommendation 1A of the MyLeave Review at p.43.

6. Exemption for government work

(Term of Reference (e), Recommendation 18)

Consider removing the current exemption for “government work” in the regulations as there does not appear to be a rationale for why government work undertaken by government employees should be exempt from the Levy.

Explanation of the Issue

Regulation [3\(1\)\(d\)](#) of the Regulations currently excludes “government work” from the definition of “construction work”.

The Regulation defines government work to include work carried out by a local government or regional local government within the meaning of the *Local Government Act 1995* (WA).

Summary of Submissions

There were seven responses from stakeholders addressing this Term of Reference.

All seven stakeholders agreed that the current exemption for government work should be removed.⁵⁷ The principal basis for this view was that there is no clear justification for exempting construction work; and that local government is the beneficiary of the training provided to the industry generally and so should be subject to the levy.

WALGA did not make a submission to the Review.

Issues

The functions of Local Governments have expanded over time from the provision of traditional municipal services to involvement in complex and commercially-oriented enterprises and activities including roles in economic development and large infrastructure projects.⁵⁸

Local Governments engage in construction work, and employ workers who require skills in building trades.⁵⁹

Submissions Sought

Submissions are sought from the Local Government sector, informed by the issues identified, as to why construction work undertaken by Local Government should not be leviable under the Act.

⁵⁷ Submissions from ABN Group, CFMEU, HIA WA, MBA WA, NFIA, Unions WA, and Woodside.

⁵⁸ Section [3.59](#) of the *Local Government Act 1995* (WA); WALGA, “Final Submission to the Select Committee into Local Government” (September 2019) at p.[28](#); Productivity Commission, “Local Government, Shifting the Dial: 5 year Productivity Review”, Supporting Paper No.16 (3 August 2017) at p.[5](#); Legislative Council, WA Parliament, Select Committee Final Report – “Inquiry into Local Government” (September 2020) at p.12 [\[2.8\]](#); For example, the City of Perth budget in 2023/2024 was \$297 million, of which \$58 million was set aside for a capital works program: City of Perth [Budget 2023/2024](#).

⁵⁹ Australian Local Government Association, “2022 Local Government Workforce Skills and Capability Survey - Western Australia Report” (November 2022) at p.[110-111](#).

7. Remove 'quality of training' from the Act

(Term of Reference (e); Recommendation 20)⁶⁰

Explanation of the Issue

The recommendation to remove references to "quality of training" from the Act was made in the 2014 Review, and supported in the 2019 Review.

In 2017, the *Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2017* (WA) was introduced for the purpose of removing the references to "quality of training" from the Act.⁶¹ The Explanatory Memorandum accompanying the Bill identified that there were "limited mechanisms in place to regulate or support the quality of training" when the Act commenced operation, but that "a number of other Government bodies, regulatory provisions and State and National policy frameworks have been put in place".⁶²

The Training Accreditation Council, established under s.25 of the *Vocational Education and Training Act 1996* (WA), has functions that include the regulation of training providers and courses.⁶³ Similarly, the Australian Skills Quality Authority, established under s.155 of the *National Vocational Education and Training Regulator Act 2011* (Cth), is the national regulator that exercises complementary jurisdiction over training providers and courses.⁶⁴

These Vocational, Education and Training (VET) regulators have various powers to issue directions to ensure that conditions are observed, and to enforce sanctions such as the cancellation of course accreditations, qualifications earned, and the registration of training providers.

Summary of Submissions

There were 11 responses from stakeholders addressing this Term of Reference.

Eight stakeholders opposed the removal of the reference to quality of training in the Act.⁶⁵ The principal reasons for the opposition were that the CTF should take responsibility to ensure that its funding is directed to supporting training that is of a high quality, and that the CTF should be empowered to ensure that appropriate outcomes are achieved in this respect.

Two stakeholders supported de-emphasising or removing the objective to improve the quality of training in the Act.⁶⁶ The principal reason for the support was that the VET regulators should have sole responsibility for the regulation of registered training providers.

The CTF submitted that it had "limited levers at its disposal that directly impact the quality of training through the industry", and that the Act "could lessen the emphasis of the improvement to the quality of training that is currently described".⁶⁷ It also submitted that quality assurance and auditing of registered training organisations are the responsibility of the Training Accreditation Council and the Australian Skills Quality Authority.

⁶⁰ The issues raised in this Term of Reference overlap with Term of Reference (b)(1) (at [15]).

⁶¹ Clauses 3-6 of the Bill.

⁶² Explanatory Memorandum accompanying the *Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2017* at p.1.

⁶³ Part 7A of the *Vocational Education and Training Act 1996* (WA).

⁶⁴ Division 3 of Part 2 of the *National Vocational Education and Training Regulator Act 2011* (Cth).

⁶⁵ Submissions received from CCFWA, CFMEU, CME, HIA; Mr Darren Kavanagh (Former WorkSafe Commissioner) (Mr D. Kavanagh), MBA, Unions WA.

⁶⁶ Submissions received from ABN Group and NFI.

⁶⁷ CTF Submission at pp.4-5.

Issues

The point raised by the stakeholders who support the retention of the references to quality in the Act does not concern enforcement.⁶⁸ A training provider may, for example, deliver substandard training based on key performance indicators that the CTF includes in its contractual arrangements. It does not necessarily follow that the standard of such training will attract sanctions from the VET regulators. The issue raised by stakeholders thus concerns the ability of the CTF to ensure an appropriate quality of training in respect of the programs it funds.⁶⁹

Quality exists as an appropriate objective in other jurisdictions. For example, the NSW Government's funding to subsidise training via registered training organisations is underpinned by a Quality Framework that "sets out the standard of quality expected" under the policy.⁷⁰ The Quality Framework identifies that the NSW government expects training providers to expand their focus from mere compliance "toward achieving better student outcomes by actively seeking to become high performing in the market".⁷¹

Another issue is the proper characterisation of certain CTF programs, and whether they are concerned with achieving quality or quantity outcomes. For example, the CTF currently allocates funds towards the CTF's Construction Careers Scholarship Program. The scholarship program is available to high school students across a one or two-year program leading to a Certificate II qualification. It is promoted by the CTF as offering "additional services not covered in a traditional pre-apprenticeship course", which is said to only run for an average of 10 weeks by comparison.⁷² One stakeholder submitted that the CTF scholarship program may not necessarily serve to increase the number of skilled persons in the building and construction industry in light of government changes to the funding of VET courses.⁷³ However, the additional services offered in the CTF scholarship program may represent an improvement in the quality of training, and thus justify the allocation of CTF funds to achieving that objective.

Submissions Sought

Submissions are sought, informed by the issues identified, on the question of whether the removal of the references to quality of training in the Act may affect or call into question the CTF's ability to allocate its funds in the manner that:

- (a) the Board presently considers necessary or appropriate; or
- (b) is contemplated by the terms of the Act itself including, for example, programs that support "innovations in training in the industry and research relating to the levels of competency in, and the training needs of, the industry".⁷⁴

⁶⁸ South Metropolitan College of Tertiary and Further Education (SM TAFE) Submission at p.2.

⁶⁹ See, for example, Submission of Mr D. Kavanagh at pp.7-10; CFMEU Submission at [12].

⁷⁰ Discussed below under Term of Reference (b)(2) (at [8]).

⁷¹ NSW Quality Framework (Version 2.1).

⁷² CTF [website](#) - Construction Careers Scholarship Program.

⁷³ SM TAFE Submission at p.3; the effect of government changes is discussed in (Term of Reference (b)(2) (at [8]) and Term of Reference (c) (at [11]).

⁷⁴ Section 8(1)(f) of the Act.

8. Attainment of the Act's objectives: increase the number of skilled persons

(Term of Reference (b)(2))⁷⁵

Summary of Submissions

There were 12 responses from stakeholders addressing this Term of Reference.

Four stakeholders agreed that the Act and the Board were effective in satisfying the objective to increase the number of skilled persons in the building and construction industry.⁷⁶ The principal reason was that the funding provided support to employers for apprentices and trainees, and facilitated the engagement of new workers to the industry.

Eight stakeholders provided a range of feedback as to why the objective to increase the number of skilled persons in the building and construction industry may not have been effectively achieved.⁷⁷

Issues

In 2022-2023, the CTF expended over \$35 million of its funds on programs directed to the attainment of the objectives under the Act.⁷⁸ Of that amount, the CTF allocated the bulk of its funding (over \$24 million) to the Employer Grant program where employers receive payments to reduce the salary and wage expenses of apprentices and trainees in their employ.⁷⁹

During the pandemic, governments employed a range of stimulus measures that included a wage subsidy of 50% of an apprentice or trainee's gross wage.⁸⁰ The result was a sharp increase in apprenticeship and traineeship commencements from 2020 after several years of decline.⁸¹

The stimulus programs led to around 230,000 extra apprentices over-and-above the roughly 290,000 commencements that would have been expected under normal conditions.⁸² When the 50% wage subsidies ended in June 2022, apprentice commencements began reverting to trend.

The Review has identified, through consultation, that the employer subsidy model is not widely considered to be most effective means to ensure participation and completion of apprenticeships, or to increase the numbers of skilled persons in the industry.

For example:

- (a) Construction Skills Queensland does not use the employer subsidy model. It principally allocates funds to courses run by registered training organisations such that at least 75% of course costs are subsidised.⁸³
- (b) Similarly, in the States that do not have Construction Industry Training Funds:
 - (i) Incolink funds training in Victoria and a number of other States by way of direct investment in industry-based training providers that it considers will achieve "cost effective, quality and measurable industry investment in skills training initiatives".⁸⁴
 - (ii) The NSW Government funds the Smart and Skilled program that provides subsidised training via registered training organisations. It does not fund wage subsidies.⁸⁵

⁷⁵ The issues raised in this Term of Reference overlap with Term of Reference (a)(4) (at [9]).

⁷⁶ Submissions from Carey Group, CTF, Mr D. Kavanagh, and Woodside.

⁷⁷ Submissions from ABN Group, CFMEU, CME, HIA, Master Painters, Motivation Foundation, NFIA, and SM TAFE.

⁷⁸ CTF Annual Report 2022-2023 at p.45.

⁷⁹ CTF Annual Report 2022-2023 at p.55. Payments made to employers to subsidise the wages of apprentices is referred to as the "employer subsidy model".

⁸⁰ For example, the federal government's Boosting Apprenticeship Commencement Scheme; Completing Apprenticeship Commencement Scheme; and the HomeBuilder grant; the WA government's Building Bonus Grant; Group Training Organisation Wage Subsidy Program; and the Jobs and Skills WA Employer Incentive: Australian Government Department of Employment and Workplace Relations "Strategic Review of the Australian Apprenticeships Incentive System: Background Paper" (June 2024) at pp.8, 13.

⁸¹ State Training Board "State Training Plan 2023-2024" at p.13.

⁸² Robert Sobyra "Are apprentice subsidies worth the cost?" *BuildSkills* (14 February 2024).

⁸³ CSQ [website](#).

⁸⁴ Incolink Industry Training Funding - Principles & Criteria at p.1, [1]-[4]; p.2, [3].

⁸⁵ NSW Smart and Skilled [policy](#).

- (c) A number of stakeholders including the representatives of Buildskills Australia informed the Review that they considered the decision to employ and retain apprentices was principally driven by market factors, and not by subsidies at the levels funded by the CTF.
- (d) The Productivity Commission in its report on the 2020 Review of the National Agreement for Skills and Workforce Development cited findings that employer incentives are widely seen to have little effect on the decisions made by employers of trade apprentices, and that relatively modest employer incentives are only likely to change the behaviour of a small number at the margin. The data cited showed that fewer than 2 per cent of employers reported financial incentives as a reason for employing apprentices.⁸⁶ The Productivity Commission also favoured the removal of employer completion incentive payments. It concluded that “overall, given their limited effectiveness relative to scale, employer incentives do not appear to offer a good return on investment. Increasing the size of incentives is unlikely to be prudent”.⁸⁷

The modern approach to workplace market intervention appears to involve focus on programs, rather than incentives.

Because interpersonal relationships are a significant factor in determining apprenticeship completions, programs that assist industry in making informed decisions on who to employ may lead to better outcomes.⁸⁸ Thus, support services (including mentoring) are identified in the literature as more likely to improve completion rates than financial incentives.⁸⁹

Where subsidy-type incentives are to be used, the modern approach involves targeted funding directed at achieving additional trainees and apprentices in order to genuinely increase the number of skilled people in the industry.⁹⁰

Submissions Sought

Submissions are sought, informed by the issues identified, on the following matters:

- (a) Whether the Board’s current business model, with its heavy emphasis on employer wage subsidies:
- (i) has been an effective means of attaining the objectives in the Act; and
 - (ii) represents an efficient allocation of the CTF’s funds to attain the objectives in the Act.
- (b) Whether the Board would benefit from having members with relevant economic expertise to assist in achieving the objects in the Act.
- (c) Whether the objective in (b) should be achieved by way of increasing the number of Board members, or by specifying the particular expertise desired in s.10(2) of the Act.

⁸⁶ Productivity Commission “National Agreement for Skills and Workforce Development review” (2020) at pp.361-363.

⁸⁷ Productivity Commission “National Agreement for Skills and Workforce Development review” (2020) at p.364.

⁸⁸ 80% of apprentice cancellations are initiated by the apprentice, with reasons typically related to the employment experience: Australian Government Department of Employment and Workplace Relation “Strategic Review of the Australian Apprenticeships Incentive System: Background Paper” (June 2024) at pp.18-21; Bednarz, A “Understanding the non-completion of apprentices” NCVER (2014) at pp.24-25, 35; Harris, R *et al* “Factors that contribute to retention and completion rates for apprentices and trainees” NCVER (2001) at p.14; Karmel T, “Factors affecting apprenticeships and traineeships, research commissioned by the Fair Work Commission” Research Report 3/2017, Part II at p.70.

⁸⁹ Australian Government Department of Employment and Workplace Relation “Strategic Review of the Australian Apprenticeships Incentive System: Background Paper” (June 2024) at p.27; The data on the effectiveness of pre-apprenticeships on completion rates appears to be similarly limited and mixed, and suggests that pre-apprenticeships have no significant effect on apprentice satisfaction: at p.26.

⁹⁰ Such as the federal Additional Identified Skills Shortage (AISS) payment which introduced an ‘additionality criteria’ formula to determine employer’s baseline employment numbers in order to limit the payment to each *additional* apprentice hired above the baseline: Productivity Commission “National Agreement for Skills and Workforce Development review” (2020) at pp.365.

9. Effectiveness of the Board: collection of levy and administration of programs

(Term of Reference (a)(4))⁹¹

Summary of Submissions

There were seven responses from stakeholders addressing this Term of Reference.

Two stakeholders submitted that the Board was efficient in the collection of levies and its administration of programs.⁹² The principal reason for taking this view was that effective administrative processes and resources are said to be in place to enable such outcomes.

Five stakeholders provided varied feedback in relation to the efficient collection of levy and administration of programs.⁹³ Submissions referred to the underutilised application of the enforcement powers provided for in the Act; the inconsistent application of the requirement to pay the levy; complex and unclear requirements relating to the payment of levies; and inflexible and unclear funding guidelines.

Issues

The lack of enforcement issue raised in the submissions has been the subject of consultation between the Review and the CTF.

The Review has been informed that the Board has never utilised the powers under section 24 of the Act to penalise a project owner for a late payment; or under section 29 to prosecute a project owner for any of the offences in s.30 of the Act including because “there was no appetite for enforcement under the previous Board”.⁹⁴ However, the Review has been informed that the Board endorsed a “Levy Integrity Strategy” in “2022/23” and that it is “currently establishing the necessary processes and templates for utilising the powers in s 24 and s 29 of the Act”.⁹⁵

Submissions Sought

The Review invites submissions, informed by the issues identified under this term of Reference and under Term of Reference (b)(2), on the following matters:

- (a) Whether the Board’s current business model, with its a lack of utilisation of the enforcement mechanisms under the Act, has been an effective means of collecting levies and administering CTF programs.
- (b) Whether the Board would benefit from having members with relevant legal expertise to assist in interpreting the Act and utilising its powers as parliament intended.
- (c) Whether the objective in (b) should be achieved by way of increasing the number of Board members, or by specifying the particular expertise desired in s.10(2) of the Act.

⁹¹ The issues raised in this Term of Reference overlap with Term of Reference (b)(2) (at [8]).

⁹² Submissions from ABN Group, and Carey Group.

⁹³ Submissions from CFMEU, CME, CTF, Mr D. Kavanagh, and Motivation Foundation.

⁹⁴ By contrast, the Review was informed in consultation that the MyLeave Board, which deals with the collection of levies based on the same definitions applicable in the Act, typically considers a number of potential prosecutions at its Board meetings.

⁹⁵ CTF Letter to the Review dated 13 May 2024.

10. Diversity

(Term of Reference (f))

Summary of Submissions

There were 18 responses from stakeholders addressing this Term of Reference.⁹⁶

Stakeholders were overwhelmingly in favour of allocating of CTF funds towards measures to address the lack of diversity in the building and construction industry.

On the issue of the under-representation of women in the construction workforce, stakeholders identified issues of:

- Discrimination, harassment and bullying;
- Recruitment bias;
- Male-dominated culture;
- Gender pay-gaps⁹⁷;
- Lack of flexible working arrangements;
- Lack of information in educational and career pathways;
- Lack of gender appropriate facilities on construction sites;
- Lack of education of, and awareness by, employers; and
- Lack of adequate support services.

On the issue of the participation of First Nations peoples in the construction workforce, stakeholders identified issues of:

- Discrimination and racism;
- Lack of innovative and targeted programs to attract and retain workers;
- Poor workplace culture;
- Indigenous pay gaps⁹⁸;
- Lack of understanding of barriers and culture, and of inclusionary strategies to address them⁹⁹;
- Inexperience and prejudice in doing business with First Nations companies;
- Lack of consultation and collaboration with First Nations peoples;
- 'Blackcladding'¹⁰⁰;
- Lack of adequate support services.

The issue of whether the Act adequately addresses diversity was viewed by stakeholders as primarily a matter for the CTF to determine. The CTF submitted that a "more prescriptive Act requiring the Board to deliver on a more diversified workforce through programs and initiatives would not drive a different outcome than what is being achieved to date".¹⁰¹

⁹⁶ Submissions from NAWIC, ABN Group, AEP, Carey Group, CCF, CFMEU, CME, CTF, HIA, Mr D. Jones and Mr B. Eades, Dr John Byrne AM, Commissioner, Equal Opportunity Commission, Kais Hire, Mr D. Kavanagh, MBA, Matt Dolan, Motivation Foundation, NFIA, and SM TAFE.

⁹⁷ Including as a result of the 'motherhood penalty'.

⁹⁸ Construction Skills Queensland, "Aboriginal and Torres Strait Islander People in Queensland's Construction Industry - Report" (2018) at p.13.

⁹⁹ [Reconciling Australia](#) "The impact of Reconciliation Action Plans in 2023"; CTF "Reconciliation Action Plan (2022-2023)" at p.6.

¹⁰⁰ [Blackcladding](#) refers to the practice of non-indigenous business entities or individuals taking unfair advantage of an indigenous business entity or individual for the purpose of gaining access to otherwise inaccessible indigenous procurement policies, contracts or funds.

¹⁰¹ CTF Submission at p.7.

Issues

The CTF, government, and a number of stakeholders variously provide education, recognition, programs, enhanced funding and wrap-around services that are intended to progress the interests of underrepresented cohorts including women and First Nations peoples.

However, very significant imbalances remain in the construction industry.¹⁰² In 2023, women made up around 15 per cent of the building and construction workforce, but only about three percent were working in trades.¹⁰³

Despite the WA Government's social procurement policies requiring indigenous employment targets to be met¹⁰⁴, indigenous people in the construction industry suggest that those targets are not being met, and their experiences remain harrowing.¹⁰⁵

The submissions of indigenous stakeholders and (for example) South Metropolitan TAFE align well with the literature insofar as they identify the need for relevant mentoring or wrap-around services.¹⁰⁶

As discussed under Term of Reference (e); Recommendation 20 (at [7]), the Board can institute quality frameworks that require information sharing and provide for social targets as part of its funding arrangements. The Board can also provide funding to encourage initiatives that seek to normalise the balance of the workforce; and collect data on the experience of under-represented cohorts.¹⁰⁷

These initiatives appear to the Review to be matters within the present remit of the CTF to address in the ordinary course of its operations, and not matters that require legislative change.¹⁰⁸

Submissions Sought

Submissions are sought, informed by the issues identified, on the following matters:

- (a) Whether there is any change needed to the Act, including the composition of the Board in section 10, in order to better assist the CTF to address the issues raised under Term of Reference (f).
- (b) If yes to (a), what amendment would assist the CTF to promote diversity in the building and construction industry.

¹⁰² Holdsworth S, et al, "Gender Bias in the Australian Construction Industry: Women's Experience in Trades and Semi-Skilled Roles", *Soc. Sci.* 2023, 12, 627; Submission of Mr D. Jones and Mr B. Eades; Submission of Carey Group.

¹⁰³ Master Builders Association, "Breaking Ground: Women in Building and Construction" (March 2024) at p.2; NAWIC Submission at p.5.

¹⁰⁴ WA Government "Aboriginal Procurement Policy" (2023-2024) at pp.9-10.

¹⁰⁵ Submission of Mr D. Jones and Mr B. Eades at p.2.

¹⁰⁶ Australian Government Department of Employment and Workplace Relation "Strategic Review of the Australian Apprenticeships Incentive System: Background Paper" (June 2024) at pp.18-21.

¹⁰⁷ Section 8(1)(f) of the Act.

¹⁰⁸ The CTF currently runs the Women in Non-Traditional Trades Scholarship Program, and offers employer incentives on top of the Employer Grant for apprentices that are female, or indigenous, or mature age, or are from the regions: CTF Submission at p.7.

11. The need for the Act to continue in operation

(Term of Reference (c))

Summary of Submissions

There were 13 responses from stakeholders addressing this Term of Reference.

There were 11 stakeholders that supported the continued operation of the Act.¹⁰⁹ The principal reason was that the Act provides an instrument that supports the building and construction industry in meeting important objectives; and the commitment of the industry to having a well-trained, skilled workforce to deliver on the construction requirements for the State.

Two stakeholders offered qualified support for the Act to remain in operation.¹¹⁰ The qualifications were to the effect that the Act was outdated, complex and confusing¹¹¹; and that “several features in the current levy system are ill-matched when applied to the oil and gas industry”.¹¹²

Issues

The question raised in the Term of Reference is expressed in the language of “need”, which invariably sets a high bar for any affirmative response.¹¹³

This high bar may explain, at least in part, why the 1994 Hitchen Statutory Review concluded that “the BCITF Act has not been an effective mechanism to promote training in the building and construction industry and that on balance there is no need for the levy to continue”.¹¹⁴

The views of the 1994 Hitchen Statutory Review are not supported by current industry stakeholders with any similar degree of alacrity.

To properly address this Term of Reference, the role of the CTF must be seen in context against the various initiatives and market interventions that intersect with the objectives in the Act.

The federal government’s Australian Skills Guarantee Procurement Connected Policy came into effect on 1 July 2024. On Commonwealth projects worth over \$10 million, suppliers will be required to meet overarching apprentice targets; as well as trade-specific apprentice targets for women. The targets set a minimum percentage of the total estimated labour hours that must be completed by target groups on the projects.

The federal government in its 2024 Budget announced that it will fund 20,000 fee-free training places for workers in the construction industry including 15,000 fee-free TAFE and VET places, and 5,000 Pre-Apprenticeship Trade Experience program.

The Commonwealth New Energy Apprenticeships Program will give apprentices up to \$10,000 in support over the duration of their apprenticeship. There are 40 different occupations in the Priority List which include many building and construction trades such as carpenters, electricians, plumbers and painters. The policy is designed to encourage more apprentices to build skills relevant for the net-zero emissions transition.

¹⁰⁹ Submissions from ABN Group, Carey Group, CFMEU, CTF, HIA, Mr D. Kavanagh, Master Painters, MBA, Motivation Foundation, NFIA, and SM TAFE.

¹¹⁰ Submissions from AEP and CME.

¹¹¹ CME Submission at p.5.

¹¹² AEP Submission at p.3.

¹¹³ Which could ostensibly be answered by the fact that Victoria and NSW do not have construction training funds equivalent to those found in other States and the ACT.

¹¹⁴ At p.38.

Under the WA Jobs and Skills WA Employer Incentive, employers can receive financial assistance of up to **\$8,500** across 48 months to assist in meeting the cost of employing an apprentice or trainee. By comparison, under the current CTF wage-subsidy funding arrangements, the base grant for eligible employers is **\$15,000** for a 48-month apprenticeship.

An issue for the Board is the coordination of information about government incentives, and to adapt its strategy to the planned market interventions foreshadowed by government in order that the Act remains effective and efficient in the fulfilment of its objectives.

12. Effectiveness of the Board: meeting the needs of different sectors of industry

(Term of Reference (a)(2))

Summary of Submissions

There were 11 responses from stakeholders addressing this Term of Reference.

Five stakeholders submitted that the structure of the Board was effective in meeting the needs of different sectors of industry.¹¹⁵ Stakeholders submitted that the Board was well-balanced and that it reflected the interests of the various sectors in the building and construction industry.

Six stakeholders provided feedback that the current structure of the Board should be reviewed.¹¹⁶ The reasons for adopting this view included the need for greater representation from particular sectors, or additional representation from currently under-represented sectors.

The resources sector stakeholders sought greater representation to support their interests. Union stakeholders also sought greater representation. Other stakeholders submitted that the VET training sector should be represented; and that each sector should have equal representation.

Submissions Sought

The Review presently considers that the Act should remain in place.

Unless stakeholders take a different view, any submissions made in respect of this Term of Reference should, informed by the issues identified, address the following matters:

- (a) Whether the Act, including its principal objects, should be amended to maintain the “need” for the Act to remain relevant and effective.
- (b) Whether the statutory Term of Reference in s.32(2)(c) should be amended to provide that Minister is to consider and have regard to “the *desirability* of the Act to continue in operation”.

Issues

The consultation has, to date, identified a Board structure that appears apt for fulfilling its statutory functions and achieving the objects in the Act. Stakeholders consider that the present iteration of the Board is functioning better than previous iterations.

Consultation with training funds in other States has identified that boards made up of industry participants are susceptible to becoming dysfunctional. The issues identified revolved around concerns that some board members act to promote the interests of the organisation or sector that nominated the person to the board, as opposed to acting in the best interests of the training fund itself.¹¹⁷ The danger of patronage is particularly acute where there are no shareholders to hold board members to account (as is the case with the CTF Board).

¹¹⁵ Submissions from ABN Group, Carey Group, CTF, HIA, and Mr D. Kavanagh.

¹¹⁶ Submissions from CCF WA, CFMEU, CME, Fortescue, Motivation Foundation, and SM TAFE.

¹¹⁷ Edwards, M *et al* “Public Sector Governance in Australia” (AUN Press, Canberra, 2012) at pp.71, 205.

Board members who have representative roles can therefore “fail to produce independent and objective views”.¹¹⁸ There is no evidence that such dysfunction has manifested in the CTF Board in its present iteration. It is noted, however, that some stakeholders seek a greater degree of representation for their sectors based on the amount of levy contributed.

Board members should be appointed based on merit including by reference to appropriate skills, qualifications and experience; and Board members should discharge their duties as fiduciaries who are concerned with the best interests of the CTF. Consistent with these normative principles, the Act now (only) requires the Minister to consult with industry stakeholders from the various sectors on the issue of Board appointments. The Act originally provided for a right of “nomination” from the bodies representing various sectors of industry.¹¹⁹

The 1994 Hitchen Statutory Review similarly noted that “the criteria of selection should be directed at having a Board with a blend of training, evaluation and financial expertise”.¹²⁰ The chairperson is typically best placed to inform the relevant Minister of the skillset a board requires to meet its obligations.¹²¹

Submissions Sought

The composition of the Board is a matter for the Minister to determine, as prescribed by s.10 and Schedule 1 of the Act.

Submissions are sought on the question of whether the current system for nominating Board members ensures that the best person with the most appropriate and desired skill set is selected.

13. Effectiveness of the Board: industry relationship and communication

(Term of Reference (a)(1))

Summary of Submissions

There were 10 responses from stakeholders addressing this Term of Reference.

The 10 stakeholders provided feedback that the Board has a positive and constructive relationship with industry, and effectively communicates with it.¹²² The feedback relates to the Board’s relationship with industry stakeholders, its commitment to engagement with stakeholders, and its marketing efforts. The feedback is complimentary of the Board.

Comment

The Review is presently satisfied that the Board as constituted has established good relationships and dialogue with industry for the purposes of this Term of Reference.

¹¹⁸ Uhrig, J “Review of the Corporate Governance of Statutory Authorities and Office Holders” (2003) at p.98; Edwards, M et al “Public Sector Governance in Australia” (AUN Press, Canberra, 2012) at p.208.

¹¹⁹ Section 10 of Act No.76 of 1990 (WA).

¹²⁰ 1994 Hitchen Statutory Review at p.41.

¹²¹ Edwards, M et al “Public Sector Governance in Australia” (AUN Press, Canberra, 2012) at p.142.

¹²² Submissions from ABN Group, Carey Group, CCF, CFMEU, CTF, HIA, Mr D. Kavanagh, MBA, Motivation Foundation, WA Chapter of the National Association of Women in Construction (NAWIC).

14. Effectiveness of the Board: strategic management of the CTF

(Term of Reference (a)(3))

Summary of Submissions

There were six responses from stakeholders addressing this Term of Reference.

Three stakeholders provided feedback that the Board operated effectively in the strategic management of the Construction Training Fund.¹²³ Stakeholders submitted that there was adequate balance between the strategic priorities and operational requirements.

Three stakeholders took the view that there was further work to be done including greater consultation with stakeholders on planning, programs, and achieving the objectives of the Act.¹²⁴

Comment

The issues raised by this Term of Reference overlap with the Term of Reference (b)(2) (at [8]) and Term of Reference (a)(4) (at [9]). Stakeholders are invited to address the issue identified in their submissions directed to those Recommendations.

15. Attainment of the objectives of the Act: quality of training

(Term of Reference (b)(1))

Summary of Submissions

There were 12 responses from stakeholders addressing this Term of Reference.

Two stakeholders agreed that the Act is achieving the objective of improving the quality of training.¹²⁵ The submissions identified the CTF's training initiatives, and the ongoing collaboration with industry with a focus on improvement in training.

10 stakeholders provided a range of feedback including the proper role of the CTF to improve the quality of training, and the alleged lack of consultation with industry stakeholders in the formation of the CTFs operational plan.¹²⁶

Comment

The issues raised by this Term of Reference overlap with Term of Reference (e); Recommendation 20 (at [7]). Stakeholders are invited to address the issue identified in their submissions directed to that Recommendation.

¹²³ Submissions from ABN Group, Carey Group, and the CTF.

¹²⁴ Submissions from CFMEU, CME, and Mr D. Kavanagh.

¹²⁵ Submissions from Carey Group and the MBA.

¹²⁶ Submissions from ABN Group, CFMEU, CME, CTF, Mr D. Kavanagh, Master Painters, Matt Dolan, Motivation Foundation, NFIA, and SM TAFE.

16. Review of levy revenue and CTF expenditure

(Term of Reference (d), Recommendation 22)

Review the amount of revenue raised by the levy and the demand for CTFs programs in light of the removal of the exemption on resources engineering construction work undertaken by or on behalf of the resources industry as part of the next statutory review.

Summary of Submissions

There were 10 responses from stakeholders addressing this Term of Reference.

The responses varied between stakeholders. There was agreement that the resources sector has contributed significant funds through the application of the levy to resources sector construction projects. However, the theme that emerged indicates there was little support for the resources sector to receive any further concessions in the Act.¹²⁷ Many stakeholders submitted that the resources sector benefits greatly from accessing trained construction workers from other sectors.

Resources sector stakeholders sought access to funding and programs that address the training needs of their workforces commensurate with the scale of the sector's levy contribution.

Issues

The resources sector contributed \$31 million out of a total of \$70.4 million (or 43 per cent) of total levies received from project owners across all sectors in the last financial year.¹²⁸

Comment

The issue raised in this Term of Reference largely overlaps with the Term of Reference (d); Recommendation 10 (at [2]), and Term of Reference (d); Recommendation 21 (at [3]). Stakeholders are invited to address the issue identified in their submissions directed to those Recommendations.

¹²⁷ Submissions from ABN Group, BGC, CCF, CME, CTF, Mr D. Kavanagh, Fortescue, HIA, MBA, and Woodside

¹²⁸ CTF Annual Report 2022-2023 at p.28.

17. Streamlined definition of resources construction

(Term of Reference (e), Recommendation 17)

Explore amending the definition of 'resources operational work' to imply that all work which does not meet the definition of construction on what is defined as a resources facility is considered operational work and so does not attract a levy liability.

Summary of Submissions

There were 10 responses from stakeholders addressing this Term of Reference.

Three stakeholders do not agree that there should be a streamlined definition of resources construction.¹²⁹ The principal reason is that the definitions are adequate and clear.

Seven stakeholders agree that a review of the definition of resources construction would be of some value as the applicability of the levy to resources construction activities remains complex and a challenge when considering capital expenditure and maintenance programs. However, some of the stakeholders suggest that any review that diluted the present coverage would not be supported.¹³⁰

Comment

The issues raised in this Term of Reference overlap with the Term of Reference (e), Recommendation 13 (at [4] above). Stakeholders are invited to address the issues identified in their submissions directed to that Recommendation.

¹²⁹ Submissions from ABN Group, CFMEU, and MBA.

¹³⁰ Submissions from AMEC, Carey Group, CME, CTF, Fortescue, HIA, and Woodside.

18. Specify levy adjustments in regulations

(Term of Reference (e), Recommendation 19)

That Sections 21, 22 and 30 of the Act, providing for adjustment of amounts paid after completion of construction work, are amended by removing reference to the specific threshold value for adjustment of the Levy and that the threshold value be specified within the Building and Construction Industry Training Fund and Levy Collection Regulations 1991.

Summary of Submissions

There were five responses from stakeholders addressing this Term of Reference.

The five stakeholders agreed that the specific threshold value for adjustment of the levy be specified within the Regulations.¹³¹ The principal reason advanced is that the threshold cannot be efficiently administered under the current Act, and placing the adjustment threshold in the Regulations would provide a more appropriate means for accounting for final project value.

Comment

The issues raised in this Term of Reference largely overlap with the Term of Reference (d); Recommendation 12 (at [1]). Stakeholders are invited to address the issues identified in their submissions directed to that Recommendation.

¹³¹ Submissions from ABN Group, CTF, HIA, MBA, and NFIA.

Conclusion

Interested parties should provide any submissions that address the matters identified in this Issues Paper by the deadline to:

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T: 08 9244 0100

Website: [Statutory Review 2024 | Construction Training Fund \(ctf.wa.gov.au\)](https://www.ctf.wa.gov.au/statutory-review-2024)



T.J. Dixon

Chair of the Review

Date: 16 September 2024



K.J. Armstrong

Executive Officer of the Review

Annexure

The Terms of Reference of the 2024 Statutory Review

The Terms of Reference for the 2024 Statutory Review are as follows:

(a) **Effectiveness of the Board**

- 1) Relationship with industry and effectiveness of communication.
- 2) Structure of the Board and its effectiveness in meeting the needs of different sectors of the industry.
- 3) Operation of the Board in strategic management of the Construction Training Fund.
- 4) Efficiency of the Board in collection of levy and administration of programs.

(b) **Attainment of the objectives of the *Building and Construction Industry Training Fund and Levy Collection Act 1990* including:**

- 1) To improve the quality of training.
- 2) To increase the number of skilled persons in the building and construction industry.

(c) **The need for this Act to continue in operation.**

(d) **Review the operation of the Act with respect to the resources sector, including four recommendations referred from the 2019 statutory review to this review.**

Recommendation 10 – Introduce a capital value cap*.¹³²

Consider introducing a cap on the capital value of any single building and construction project for the purposes of calculating the levy to prevent the policy intent of the Levy from being undermined by large capital value projects, where the capital value of the project is driven solely by the high value of imported capital equipment.

Recommendation 12 - Increase threshold at which the Levy applies*.

Increase the following thresholds in line with an appropriate indexation factor (such as the Consumer Price Index or Construction Cost Index) and introduce an annual indexation process to adjust them:

- the threshold at which the Levy applies; and
- the threshold for application of adjustments to the value of construction projects on completion.

Recommendation 21 – Resources integration.

Carry forward the review of any legislative implications of the Levy on the resources sector, including those matters raised by them relating to the operation of the Act to the next statutory review to provide a longer timeframe over which the operation of the new policy can be assessed.

Recommendation 22 – Review of levy revenue and CTF expenditure.

Review the amount of revenue raised by the levy and the demand for CTFs programs in light of the removal of the exemption on resources engineering construction work undertaken by or on behalf of the resources industry as part of the next statutory review.

¹³² * denotes a legacy item carried over from previous statutory reviews.

- (e) Test six recommendations from the 2019 statutory review noted and for further consideration (Stage 2 legislative change), including four recommendations arising from the 2014 statutory review.

Recommendation 13 – Review of concessional expenditure threshold.

- Review the concessional expenditure threshold of \$10 million for alterations and additions to resources facilities prior to the next statutory review to ensure it is operating as intended.

Recommendation 16 - Consider pursuing the following legislative changes in the medium to long term to address issues with the current definition of construction.

- *The Building and Construction Industry Training Fund and Levy Collection Act 1990* is amended to include a definition of construction without reference to other legislation.
- The definition adopted in the Act is made more general and all-encompassing, rather than the current approach of seeking to define what is construction in great detail.
- *The Building and Construction Industry Training Fund and Levy Collection Regulations 1991* be the instrument which is used to define any and all exclusions from the Levy.

Any reference to the difference between work being done on-site (and by implication off-site) is removed, with matters of applicability to be addressed by the current clause within the regulations of a person being engaged by an employer “whose primary activity is not related to the building and construction industry” being deemed not part of the construction industry.

The current definition of construction industry as referred to in S3 of the Act is taken from the *Construction Industry Portable Paid Long Service Leave Act 1985*.

Recommendation 17 - Streamlined definition of resources construction.

Explore amending the definition of ‘resources operational work’ to imply that all work which does not meet the definition of construction on what is defined as a resources facility is considered operational work and so does not attract a levy liability.

Recommendation 18 - Exemption for government work

Consider removing the current exemption for “government work” in the regulations as there does not appear to be a rationale for why government work undertaken by government employees should be exempt from the Levy.

Recommendation 19 - Specify levy adjustments in regulations*.

That Sections 21, 22 and 30 of the Act, providing for adjustment of amounts paid after completion of construction work, are amended by removing reference to the specific threshold value for adjustment of the Levy and that the threshold value be specified within the *Building and Construction Industry Training Fund and Levy Collection Regulations 1991*.

Recommendation 20 - Remove ‘improve the quality of training’ from the Act*.

- (f) Consider the benefits of a more diverse construction workforce and assess whether First Nations people participation and gender imbalances in training are being adequately addressed under the Act.

